

QUANTITY SURVEYORS' REGISTRATION ACT, 2013

No. 21



of 2013

ARRANGEMENT OF SECTIONS

SECTION

PART I — *Preliminary*

1. Short title and commencement
2. Interpretation

PART II — *Quantity Surveyors' Registration Council*

3. Establishment of Council
4. Seal of Council
5. Membership of Council
6. Institute to elect members
7. Powers and functions of Council
8. Tenure of office
9. Minister's power to appoint members required to be elected
10. Disqualification, removal and resignation
11. Filling of vacancies
12. Committees of Council
13. Election of Chairperson and Vice Chairperson
14. Meetings of Council
15. Co-option of advisory personnel to Council
16. Disclosure of interest
17. Confidentiality
18. Validity of decisions and acts of Council
19. Reports to Minister
20. Remuneration and allowance

PART III — *Registrar, Register and Registration*

21. Registrar
22. Register
23. Qualification for registration
24. Procedure for registration
25. Temporary registration
26. Certificate of registration
27. Effect of registration
28. Refusal to register
29. Suspension of registration

- 30. Removal from the register
- 31. Restoration of name to the register
- 32. Appeals Committee
- 33. Return of registration certificate to Registrar
- 34. Register to be *prima facie* evidence
- 35. Offences in connection with register

PART IV — *Disciplinary and other Inquiry*

- 36. Inquiries by Council
- 37. Disregard of summons, etc.
- 38. Powers of Council at inquiry
- 39. Disciplinary powers of Council
- 40. Quantity surveyor becoming unfit to practice
- 41. Appeal against decision of Council at inquiry
- 42. Publication of names removed from register

PART V — *Financial Provisions*

- 43. Revenues of Council
- 44. Financial year
- 45. Accounts and audit
- 46. Annual report

PART VI — *General*

- 47. Indemnity
- 48. Transitional provisions
- 49. Offence and penalty
- 50. Regulations.

Seal of
Council

4. (1) The seal of the Council shall be such device as may be determined by the Council and shall be kept by the Secretary of the Council.

(2) The affixing of the seal shall be authenticated by the Chairperson or Vice Chairperson and the Secretary or any other person authorised in that behalf by a resolution of the Council.

(3) Any contract or instrument which, if entered into or executed by a person not being a body corporate would not be required to be under seal, may be entered into or executed without seal on behalf of the Council by the Secretary or any other person generally or specifically authorised by the Council in that behalf.

Membership
of Council

5. (1) The Council shall consist of seven members who shall be resident in Botswana.

(2) Without prejudice to the generality of subsection (1) the Council shall consist of the following members –

- (a) one person eligible for registration under the Act, appointed by the Minister;
- (b) one person from outside the profession of quantity surveying, appointed by the Minister;
- (c) the Director of the Department of Building and Engineering Services or his or her nominated representative, who shall be an ex-officio member; and
- (d) four persons eligible for registration under the Act, elected by the Institute upon notification from the Minister to elect members, of whom at least three shall be from the private sector.

(3) The Minister shall cause the appointment of the members to be published by notice in the *Gazette*.

Institute to
elect
members

6. The Institute shall, within three months of the coming into force of this Act, elect members to the Council in accordance with section 5 (2) (d), and, thereafter, within one month of the expiry of the member's tenure of office.

Powers and
functions of
Council

7. (1) The Council shall regulate the activities and conduct of quantity surveyors in accordance with the powers and functions conferred upon it by this Act.

(2) Without prejudice to the generality of subsection (1), the Council shall –

- (a) protect the interests of members of the public in any dealings which such members of the public may have with quantity surveyors;
- (b) maintain the integrity of the profession of quantity surveying;
- (c) ensure compliance with set ethics and standards within the profession of quantity surveying;
- (d) encourage research by quantity surveyors into matters relating to the profession of quantity surveying;
- (e) finance, print or circulate publications relating to the profession of quantity surveying;
- (f) make recommendations to the Minister for the further development of the profession of quantity surveying;

- (g) authorise the Registrar to appoint, on behalf of the Council, such other officers as are reasonably necessary at such terms and conditions determined by the Council; and
 - (h) generally do all such things as, in the opinion of the Council, are necessary for the better performance of the functions of the Council.
- 8.** (1) A member shall hold office for a period not exceeding three years as may be specified in the notice appointing the member, and on the expiration of that period shall be eligible for re-appointment.
- (2) In appointing members, the Minister shall so specify such periods of appointment such that the periods of appointment of not more than one third of the members shall expire in any one year.
- 9.** (1) The Minister shall appoint a member where the Institute fails, neglects or refuses to elect a member —
- (a) within 21 days of notification by the Minister to elect a member, in accordance with section 5 (2) (d); or
 - (b) within the period referred to in section 11 (1) to fill a vacancy in terms thereof.
- (2) A member appointed under —
- (a) subsection (1) (a) shall hold office for such a period, not exceeding two years, as the Minister may determine; and
 - (b) subsection (1) (b) shall hold office in accordance with section 11 (1), and shall be deemed to have been duly elected to the Council.
- 10.** (1) A person shall not be appointed or elected as a member or be qualified to continue to hold office as a member if he or she —
- (a) in terms of a law in force in any country —
 - (i) is been adjudged or otherwise declared bankrupt or insolvent and has not been discharged, or
 - (ii) made an assignment, arrangement or composition with his or her creditors, which has not been rescinded or set aside; or
 - (b) has within a period of 10 years immediately preceding the date of his or her proposed appointment, been convicted —
 - (i) in Botswana, of a criminal offence, or
 - (ii) outside Botswana, of an offence which if committed in Botswana, would have been a criminal offence, and sentenced by a court of competent jurisdiction to imprisonment for six months or more without the option of a fine, whether that sentence has been suspended or not, and for which he or she has not received a free pardon.
- (2) The Minister may, by notice in writing, remove a member from office where the member —
- (a) is absent without reasonable cause from three consecutive meetings of the Council of which he or she has had notice;
 - (b) is inefficient;

Tenure of office

Minister's power to appoint members required to be elected

Disqualification, removal and resignation

- (c) has been found to be physically or mentally incapable of performing his or her duties efficiently, and a registered medical doctor in terms of the Botswana Health Professions Act; has issued a certificate to that effect; or
 - (d) contravenes a provision of this Act or otherwise misconducts himself or herself to the detriment of the objectives of the Council.
- (3) A member may resign from office by giving 30 days' notice, in writing, to the Chairperson.
- (4) The office of a member shall become vacant after —
- (a) a period of 30 days from the date a ruling against the member is made on all appeals made in respect of charges levelled against him or her under subsection (1) (b);
 - (b) a period of 30 days has elapsed from the date the member has given notice, in writing, to the Minister under subsection (3), of his or her intention to resign;
 - (c) a period of 30 days has elapsed from the date the member is given notice, in writing, by the Minister to vacate office; or
 - (d) the member is dismissed by the Minister for misconduct under subsection (2) (d).
- (5) For purposes of subsection (2), "misconduct" includes any act done without reasonable excuse by a member which —
- (a) amounts to failure to perform in a proper manner any duty imposed on him or her as a member;
 - (b) is prejudicial to the efficient conduct of the Council; or
 - (c) tends to bring the Council into disrepute.

Filling of
vacancies

11. (1) The Institute shall, on being notified by the Council, in writing, of a death of or vacation of office by an elected member, elect, within such period as may be specified in the notice, being not less than 60 days from the date of the notification, a member to fill the vacancy, and the member so elected shall hold office for the remainder of the period for which the former member would, but for his or her death or the vacation of his or her office, have continued in office.

(2) On the death of or vacation of office by an appointed member, the Minister shall appoint another person to fill the vacancy.

(3) Subsections (1) and (2) shall not apply where the remainder of the period for which the member whose office has been vacated would otherwise have held office is less than six months.

Committees
of Council

12. (1) The Council may, for the purpose of performing its functions, establish such committees as it considers appropriate, and may delegate, to any such committee, such of its powers and functions as it considers necessary.

(2) The Council may appoint, to any committees established under subsection (1), such number of members of the Council and such number of persons with specialised skills, not being members of the Council, as it considers appropriate, and the members of such committee shall hold office for such period as the Council may determine.

(3) The members of the committee who are not members of the Council may take part in the proceedings of the committee, but shall not have the right to vote.

(4) Subject to the specific or general directions of the Council, a committee established under this section may regulate its own procedure.

(5) Unless in appointing any such committee the Council has appointed a Chairperson, the committee shall elect one of its members as a Chairperson of the committee.

(6) The Council may revoke or amend any delegation made under the provisions of subsection (1) and may attach conditions to such delegation, including general or particular directions, as to the manner in which any delegated power is to be exercised.

(7) Meetings of a committee shall be held at such times and places as the committee may determine, or as the Council may direct.

13. (1) At the first meeting of the Council, the members shall elect, from among their number,

(a) a Chairperson; and

(b) a Vice Chairperson,

who shall hold office for such period, being not less than 12 months, as the Council may from time to time determine unless he or she ceases to be a member.

(2) On the expiry of the term of office of the Chairperson or Vice Chairperson or where the Chairperson or Vice Chairperson vacates his or her office as such, a new Chairperson or Vice Chairperson shall be elected by the members from among their number at the next meeting of the Council or as soon thereafter as may be convenient.

(3) The Chairperson or Vice Chairperson may vacate his or her office as such even though he or she remains a member.

(4) The Vice Chairperson shall, whenever the Chairperson is absent or unable to carry out his or her functions, exercise the functions of the Chairperson during the period that the Chairperson is absent or unable to act as Chairperson.

14. (1) Subject to the provisions of this Act, the Council shall regulate its own proceedings.

(2) The Council shall hold its first meeting on such date and at such place as the Minister may fix and thereafter the Council shall meet at least three times in a year for the transaction of business.

(3) The Chairperson may, at any time, convene a special meeting of the Council whenever he or she considers it desirable to do so.

(4) The quorum at any meeting of the Council shall be five members.

(5) There shall preside, at any meeting of the Council —

(a) the Chairperson;

(b) in the absence of the Chairperson, the Vice Chairperson; or

(c) in the absence of the Chairperson and Vice Chairperson, such member as the members present may elect from among their number for the purposes of the meeting.

Election of
Chairperson
and Vice
Chairperson

Meetings of
Council

Co-option
of advisory
personnel to
Council

(6) A decision of the Council on any question shall be by a majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding shall have a casting vote in addition to that person's deliberative vote.

15. The Council may co-opt any person to attend any meeting of the Council on any matter for purpose of assisting or advising the Council, but such person shall have no right to vote.

Disclosure of
interest

16. (1) A member of the Council or a member of a committee and any other person attending a meeting of the Council or a committee, at which meeting a matter which is the subject of consideration is one in which he or she is directly or indirectly interested in a private capacity, the member shall, as soon as practicable after the commencement of the meeting, disclose the full nature and extent of such interest and shall not, unless the Council otherwise directs, take part in any consideration or discussion of, or vote on any question touching upon, such matter.

(2) A disclosure of interest made in accordance with subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) Where a member of the Council or a member of a committee and any other person attending the meeting of the Council or a committee fails to disclose his or her interest in accordance with subsection (1) and a decision by the Council is made benefitting such member, the decision shall be null and void.

(4) A member of the Council or a member of a committee and any other person attending the meeting of the Council or a committee who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P2 000, or to imprisonment for a term not exceeding six months or to both.

Confidentiality

17. (1) A member of the Council or a member of a committee and any other person assisting the Council or a committee shall observe and preserve the confidentiality of all matters coming before the Council or the committee, and such confidentiality shall subsist even after the termination of their terms of office or their expert mandates.

(2) Any person to whom confidential information is revealed through working with the Council or a committee shall not disclose that information to any other person unless he or she is required to do so in terms of any written law.

(3) Any person who contravenes the provisions of this section commits an offence and is liable to a fine not exceeding P2 000, or to imprisonment for a term not exceeding six months, or to both.

Validity of
decisions
and acts of
Council

18. A decision or act of the Council done under the authority of the Council shall not be invalid by reason only of the fact that —

- (a) the Council did not consist of the full number of members for which provision is made under section 5;
- (b) the various members did not have the qualifications prescribed under section 5; or
- (c) a disqualified person acted as a member of the Council.

19. (1) The Chairperson shall from time to time submit, to the Minister, reports with regard to matters relating to the activities of the Council which, in the opinion of the Council, should be brought to the notice of the Minister.

Reports to
Minister

(2) The Council shall, when so requested by the Minister, furnish him or her with advice on matters in connection with the profession of quantity surveying or cognate matters and shall communicate, to the Minister, information acquired by it in the course of its duties on matters regarded by it as being of public importance.

20. A member of the Council or a member of a committee and any other person assisting the Council or a committee, shall be paid, out of the funds of the Council, such remuneration and allowance, if any, as the Council may from time to time determine.

Remuneration
and allowance

PART III — *Registrar, Register and Registration*

21. (1) The Council shall appoint a Registrar of Quantity Surveyors and may also appoint one or more Assistant Registrars on such terms and conditions as the Council may determine.

Registrar

(2) No person shall be appointed as Registrar unless the person holds such qualifications and has such experience as the Council may determine.

(3) The Assistant Registrar shall, where the Registrar is absent or unable to carry out any of the function under this Act, exercise, during the period that the Registrar is so absent or unable to act, such functions of the Registrar as the Chairperson may assign to him or her.

22. (1) Subject to the provisions of this Act, the Council shall establish and maintain a register of quantity surveyors.

Register

(2) The register shall be kept at the offices of the Council and shall be open to inspection during office hours to any member of the public upon payment of such fee as may be prescribed.

(3) The Registrar shall —

- (a) keep the register in such form as may be prescribed;
- (b) remove, from the register, the name of a quantity surveyor who dies or ceases to practise as a quantity surveyor;
- (c) when required to do so under this Act or in pursuance of an order of a court —
 - (i) register a quantity surveyor or suspend, from practice, a quantity surveyor, and
 - (ii) remove, from the register, the name of a quantity surveyor;
- (d) be the Secretary of the Council and of every committee of the Council;
- (e) on the instructions of the Chairperson, convene meetings of the Council or committee of the Council;
- (f) maintain records and minutes of meetings convened under paragraph (e);

Qualification
for
registration

- (h) appoint, after consultation with the Council, such other staff of the Council as the Council considers it necessary;
- (i) carry out any other duties assigned to him or her by the Council; and
- (j) cause to be published by notice in the *Gazette*, at the beginning of each year in January, a list containing the names, addresses and qualifications of all registered quantity surveyors whose names appear in the register for the first time since the start of the previous year.

23. A person may apply to the Council to be registered as a quantity surveyor, in such form and manner as may be prescribed if he or she —

- (a) is ordinarily resident in Botswana;
- (b) has passed an examination prescribed by the Council or any examination recognized by the Council as being equivalent to one so prescribed;
- (c) has performed the work of a quantity surveyor under the direction and control of, and in the same office as a quantity surveyor, for such period as may be prescribed by the Council, and
- (d) has, for such period as is prescribed —
 - (i) performed quantity surveying work under the direction and control of, and in the same office as, a quantity surveyor, or
 - (ii) performed quantity surveying work, which in the opinion of the Council, is of sufficient variety and of a satisfactory nature and standard for the purposes of registration as a quantity surveyor; and
- (e) for a minimum period of two years immediately before the coming into force of this Act, was a duly registered and paid-up member of the Institute.

Procedure for
registration

24. (1) A person may apply in such form as may be prescribed to the Registrar to be registered as a quantity surveyor, and shall submit —

- (a) such information as may be prescribed; and
- (b) such fee as may be prescribed.

(2) The Registrar may require a statement made in connection with an application under subsection (1), to be supported by a solemn declaration.

(3) Where the Registrar is satisfied that an applicant has satisfied the conditions specified in subsection (1), he or she shall refer the application and any report he or she may make thereon to the Council.

(4) An application made under subsection (1) by a person referred to in section 23 (d) shall be lodged with the Registrar within six months of the coming into force of this Act or within such further period as the Council may allow.

(5) The Council shall direct the Registrar to register an applicant where it is satisfied that the applicant meets the prescribed requirements under section 23.

25. (1) The Council may, on application in such form as may be prescribed, by a person —

Temporary
registration

- (a) who is not ordinarily resident in Botswana;
 - (b) who intends to be present in Botswana in the capacity of a quantity surveyor for the express purpose of carrying out specific work for which he or she has been engaged;
 - (c) who, immediately before entering Botswana, was in practice as a quantity surveyor in such capacity as to satisfy the Council of his or her fitness to serve the public as a quantity surveyor; and
 - (d) after payment of such fee as may be prescribed,
- direct that the person be registered either for period not exceeding one year or for the duration of the specified work.

(2) The Council may require an applicant under subsection (1) to appear before the Council for the purpose of facilitating consideration of the application, including furnishing the Council with documentary evidence of his or her work or employment immediately prior to his or her entering Botswana.

(3) Registration under this section shall be for the duration of specified work and be subject to such conditions as the Council may determine.

26. (1) Where the Registrar registers a quantity surveyor, he or she shall issue to the quantity surveyor, a certificate of registration in such form as may be prescribed.

Certificate of
registration

(2) There shall be paid to the Council in respect of each practising certificate to be issued, such annual practising fee as may be prescribed.

(3) Every practicing certificate issued shall expire at the end of 12 months from the date of issue.

Provided that where the name of any quantity surveyor is removed from or struck off the roll, the practising certificate of that quantity surveyor shall expire forthwith.

(4) On application by a quantity surveyor, the Registrar may issue, to the quantity surveyor a duplicate of his or her certificate of registration —

- (a) where the Registrar is satisfied as to the identity of the quantity surveyor;
- (b) on production by the quantity surveyor of an affidavit certifying that the certificate of registration has been lost or destroyed; and
- (c) on payment by the quantity surveyor of the appropriate fee, if any, as may be prescribed.

27. Every person whose name has been entered in the register as a quantity surveyor shall, as long as his or her name remains in the register, be entitled to adopt and use the words and title “Quantity Surveyor” or “Registered Quantity Surveyor” or such other style or title as may be approved by the Council, and to offer his or her services to the public for gain or reward based on fee scales provided in such tariffs of fees as may be prescribed.

Effect of
registration

Refusal to
register

28. (1) The Council shall refuse the registration of an applicant where it is satisfied that the applicant –

- (a) has at any time, whether within or outside Botswana –
 - (i) been removed from an office of trust on account of improper conduct, or
 - (ii) been convicted of extortion, bribery, fraud, forgery or uttering a forged document or perjury and sentenced in respect thereof to imprisonment without the option of a fine; or
- (b) notwithstanding that he or she is otherwise qualified, is not a fit person to be registered by reason of –
 - (i) his or her mental health,
 - (ii) the fact that he or she is not of good character or reputation, or
 - (iii) any conduct of his or hers which, if he or she had been registered, would have constituted improper or disgraceful conduct to the profession of quantity surveying.

(2) The Council shall, before refusing registration under subsection (1), hold an inquiry under Part IV, and the provision of this Part shall, with the necessary modifications, apply as if the applicant were registered.

Suspension of
registration

29. (1) The Council may suspend the registration of a quantity surveyor where an inquiry under Part IV has found the quantity surveyor guilty of any allegation referred to in section 35.

(2) A quantity surveyor who has been suspended in accordance with subsection (1) shall be disqualified from performing the work of a quantity surveyor and his or her registration shall be deemed to be cancelled until the period of suspension has expired.

Removal
from
register

30. (1) The Council shall order the removal from the register of –

- (a) the name of a quantity surveyor who –
 - (i) has failed to notify the Registrar of his or her present address, within six months of a notice being sent to him or her by registered letter by the Registrar requesting him or her to so notify the Registrar:

Provided that where such registered letter is returned to the Registrar by reason of it being unclaimed or for any other reason, the Council may, as soon as practicable, direct that the name of the quantity surveyor be removed from the register,

- (ii) has requested that his or her name be removed from the register and has lodged an affidavit stating that no disciplinary inquiry under Part IV or criminal proceedings are being or are likely to be instituted against him or her in connection with his or her practice of quantity surveying, or
 - (iii) has been found guilty by an inquiry under Part IV; or

- (b) any entry which is proved, to the satisfaction of the Council, to have been made in error or through fraudulent representation or concealment of material facts or in circumstances not authorised by this Act.

(2) The Registrar shall remove, from the register, the name of a quantity surveyor who the Council has, in accordance with sub-section (1), directed that his or her name be removed.

(3) Where the Registrar removes, from the register, the name of a quantity surveyor or enters, in the register, the suspension of a quantity surveyor, he or she shall —

(a) enter, in the register, a record of the reasons therefor; and

(b) notify the quantity surveyor, in writing, of the reasons therefor.

(4) A certificate of registration issued to a quantity surveyor whose name has been removed from the register in terms of this section shall be deemed to have been cancelled on the date of the removal and the quantity surveyor shall be deemed not to be registered with effect from that date.

31. Where the name of a quantity surveyor has been removed from the register or the registration of a quantity surveyor has been suspended, the Council may, either of its own volition, or on the application of the quantity surveyor concerned made in such form as may be prescribed, and after holding such inquiry as the Council may consider necessary, direct that the name of the quantity surveyor be restored to the register.

Restoration
of name to
register

32. (1) The Minister shall appoint an Appeals Committee which shall consist of the following members —

Appeals
Committee

(a) a legal practitioner, admitted to practice in the courts of Botswana;

(b) a quantity surveyor;

(c) a representative of the Institute;

(d) a representative of the Tertiary Education Council; and

(e) a quantity surveyor recommended by the Ministry responsible for local government.

(2) The members of the Appeals Committee shall elect, from among their number, a Chairperson.

(3) A person aggrieved by the Council's decision to —

(a) refuse to register him or her as a quantity surveyor;

(b) suspend his or her registration; or

(c) remove his or her name from the register,

may appeal, in writing, to the Appeals Committee within 30 days of notification of the decision.

(4) The provisions of sections 8, 10, 11, 16, 17 and 20 shall apply with the necessary modifications to the members of the Appeals Committee.

(5) Before determining an appeal under this section, the Appeals Committee shall give the Council a reasonable opportunity to submit its own written submissions in connection with the appeal and may give both the appellant and the Council a reasonable opportunity to make oral submissions before it.

Return of
registration
certificate to
registrar

(6) In determining an appeal under this section, the Appeals Committee shall give due consideration to every submission made to it by virtue of this section and shall thereafter proceed to confirm, reverse or vary the decision of the Council against which the appeal is brought and may make any decision in respect of the subject matter of the appeal that the Council might have made and the Council shall comply with the order of the Appeals Committee.

(7) A person aggrieved by a decision of the Appeals Committee under this section may appeal to the High Court within 30 days of the notification to him or her of the Appeals Committee's decision.

33. (1) A quantity surveyor whose name has been removed from the register under section 30 shall return, by registered letter to the Registrar, his or her certificate of registration within 30 days of the date upon which he or she is directed in writing by the Registrar to do so.

(2) A person who refuses to return a certificate of registration in contravention of subsection (1) commits an offence and is liable to a fine not exceeding P2 000, or to imprisonment for a term not exceeding two years, or to both.

Register to be
prima facie
evidence

34. (1) The register shall be *prima facie* evidence of the matters set out therein.

(2) Notwithstanding the generality of subsection (1), a certificate purporting to be signed by the Registrar to the effect that —

- (a) the name of a person does not appear in the register shall be *prima facie* evidence that the person is not a quantity surveyor;
- (b) the name of a person appears in the register shall be *prima facie* evidence that the person is a quantity surveyor; or
- (c) a quantity surveyor has been suspended from practice as such for the period specified in the register shall be *prima facie* evidence that the person has been suspended from practice for the period.

(3) A copy of an entry in the register, a document in the custody of the Registrar or an extract from the register or from any document purporting to be certified by the Registrar, shall be admitted as evidence in all courts without further proof or production of the original.

Offences in
connection
with register

35. Any person who —

- (a) makes or causes to be made an unauthorised entry, alteration or deletion in the register;
- (b) procures or attempts to procure for himself or herself or another person, registration or a certificate of registration by means of fraud, false pretence or concealment of a material fact;
- (c) makes or causes to be made in connection with an application for registration, a false declaration in a document used for the purpose of establishing his or her identity;
- (d) willfully destroys or renders illegible an entry in the register;

- (e) without the permission of the holder, willfully destroys or renders illegible a certificate of registration; or
 - (f) forges or utters, knowing the same to be forged, a document purporting to be a certificate of registration,
- commits an offence and is liable to a fine not exceeding P2 000 or to imprisonment for a term not exceeding two years, or to both.

PART IV — *Disciplinary and other Inquiry*

36. (1) Subject to the provision of this Act, the Council may hold an inquiry into any allegation made, in writing, by a member of the public —

Inquiries by
Council

- (a) that a quantity surveyor has acted or omitted to act, and the act or omission amounts to improper or disgraceful conduct; or
- (b) in respect of any matter referred to in section 39.

(2) The Council shall cause to be sent, to a quantity surveyor against whom an allegation has been made under subsection (1), a registered letter to his or her address as shown in the register, containing a notice setting out the allegation against him or her and the Council shall afford the quantity surveyor an opportunity to be heard either by himself or herself or by a legal representative.

(3) The Council shall invite and have present, during its deliberations under this section, a legal practitioner of their choice, to render legal advice to the Council, during the course of an inquiry under this Part.

(4) For the purposes of an inquiry under this Part, the Council shall —

- (a) administer oaths;
- (b) summon persons to attend and give evidence; and
- (c) order the production of documents.

(5) All summonses and orders issued under the hand of the Chairperson or Vice Chairperson shall be deemed to be issued by the Council.

(6) The Chairperson, or in his or her absence the Vice Chairperson, shall record or cause to be recorded a summary of any oral evidence given at an inquiry under this section.

(7) Subject to the provisions of this Act, the Council shall regulate its own procedure at an inquiry held under this Part:

Provided that all parties having an interest in the inquiry shall be advised by the Council of the form of the procedure of such inquiry.

37. (1) A person to whom a summons or order is served, who —

Disregard of
summons, etc.

- (a) refuses or omits, without sufficient cause, to attend at the time and place mentioned in the summons;
- (b) refuses, without sufficient cause, to answer fully and satisfactorily, questions put to him or her by or with the concurrence of the Council; or

Powers of
Council at
inquiry

(c) refuses or omits, without sufficient cause, to produce any document in his or her possession or under his or her control, commits an offence and is liable to a fine not exceeding P1 000, or to imprisonment for a term not exceeding two months, or to both.

(2) A person giving evidence before an inquiry under this Part shall, in respect of evidence given by him or her or documents produced by him or her, be entitled to all the privileges to which he or she would be entitled as a witness before the High Court.

38. (1) The Council may, where it finds a quantity surveyor guilty of any allegation made under section 35 —

- (a) order the Registrar to remove, from the register, the name of the quantity surveyor;
- (b) order the suspension of the quantity surveyor for a specified period, from performing the work of a quantity surveyor;
- (c) impose, on the quantity surveyor, such conditions as it considers appropriate;
- (d) order the quantity surveyor to pay such fine as the Council may determine;
- (e) order the quantity surveyor to pay any costs or expenses of, and incidental to, the inquiry; or
- (f) caution, in writing, the quantity surveyor and set conditions for the conduct of the quantity surveyor's business, that he or she comply with for a period not exceeding three years.

(2) The Council may, after giving reasonable notice, in writing, to a quantity surveyor take further action against the quantity surveyor where he or she has not complied with an order under subsection (1) (b), (d), (e) or (f).

(3) An inquiry held under this Part shall be deemed to be a quasi judicial proceeding.

Disciplinary
powers of
Council

39. The Council may institute an inquiry, under this Part, into the conduct of a quantity surveyor where —

- (a) the quantity surveyor has been convicted of an offence within or outside Botswana, after the date of registration; and
- (b) the Council is of the opinion that the offence under paragraph (a) constitutes improper or disgraceful conduct.

Quantity
surveyor be-
coming unfit
to practice

40. (1) Where it is alleged, under section 35, that a quantity surveyor has become mentally disabled to such an extent that it would be contrary to the public interest to allow the quantity surveyor to continue to practice, the Council shall —

- (a) call for information regarding the allegation;
- (b) cause such investigation to be made as it thinks necessary; and
- (c) seek such legal advice or other assistance as it may require.

(2) The provision of section 36 shall, with the necessary modification, apply to a quantity surveyor referred to under subsection (1).

41. A quantity surveyor aggrieved by a decision of the Council at an inquiry under this Part may, within 30 days of the date of the decision, appeal to the Appeal Committee.

Appeal
against
decision of
council at
inquiry

42. (1) Where the Registrar is directed by the Council, he or she shall cause to be published by notice in the *Gazette*, the name of any quantity surveyor whose name has been removed from the register in terms of section 30 (1) (a) (iii) or who has been suspended from practice under this Act.

Publication
of names
removed from
register

(2) A notice published in accordance with subsection (1) shall be *prima facie* evidence that the name of a quantity surveyor specified in the notice has been removed or the quantity surveyor so specified has been suspended from practice for the period specified in such notice.

PART V — *Financial Provisions*

43. (1) The revenues of the Council shall consist of —

Revenues of
Council

- (a) fees that the Council may charge for services it may render;
- (b) levies that the Council may charge quantity surveyors;
- (c) grants and donations that the Council may receive;
- (d) annual membership subscriptions; and
- (e) income that the Council may receive from the rental or sale of land, buildings or published materials.

(2) The Council shall use the funds acquired under subsection (1) to meet the costs incurred in its operations and shall use any surplus accrued for such purpose as it may determine.

(3) The Council shall manage its own budget through a subvention or grant from government until such time that the Council is able to source its own funding.

44. The financial year of the Council shall be a period of 12 months commencing on 1st April in each year and ending on 31st of March of the following year.

Financial year

45. (1) The Council shall keep and maintain proper books of accounts and records of accounts in respect of every financial year relating to the assets, liabilities, income and expenditure of the Council, and shall prepare, in each financial year, a statement of such accounts.

Accounts and
audit

(2) The accounts of the Council in respect of each financial year shall, within three months of the end thereof, be audited by an auditor appointed by the Council.

(3) An auditor appointed under subsection (1) shall report in respect of the accounts for each financial year, in addition to any other matter on which the auditor considers it necessary to comment on, whether or not —

- (a) the auditor has received all information and explanations which, to the best of the auditor's knowledge and belief, were necessary for the performance of the auditor's duties;

- (b) the accounts and related records of the Council have been properly kept;
- (c) the Council has complied with all the financial provisions of this Act with which it is the duty of the Council to comply; and
- (d) the statement of accounts prepared by the Council was prepared on a basis consistent with that of the preceding year and represents a true and fair view of the transactions and financial affairs of the Council.

(4) The report of the auditor and a copy of the audited accounts shall, within 14 days of the completion thereof, be forwarded to the Council by the auditor.

Annual report

46. (1) The Council shall, within a period of six months of the end of the financial year, submit, to the Minister, a comprehensive report on the operations of the Council during that year, together with the auditor's report and the accounts audited under section 45 and the Council shall cause such report to be published in such manner as the Minister may require.

(2) A report compiled in accordance with subsection (1) shall be laid before the National Assembly by the Minister within three months of receipt thereof.

PART VI — *General*

Indemnity

47. No matter or thing done or omitted to be done by a member of the Council or a member of a committee or other person assisting the Council or a committee member or staff of the Council shall, if the matter or thing is done or omitted to be done *bona fide* in the course of the operations of the Council, render a member or staff personally liable to an action, claim or demand.

Transitional provisions

48. The Minister may, by Order published in the *Gazette*, make such transitional arrangements as shall be necessary for the establishment of the Council.

Offence and penalty

49. (1) Any person who is not a quantity surveyor who —

- (a) performs the work of a quantity surveyor for gain;
- (b) practices or carries on business under any name or style which contains the title "Quantity Surveyor" or "Cost Engineer";
- (c) uses by way of advertisement, description, document, drawing or other means, any name, title, addition, description, letters, motto, emblem, symbol, badge, seal or other insignia which indicates or is calculated to lead persons to assume that he or she is a quantity surveyor;

(d) pretends or by any means whatsoever, holds himself or herself out to be a quantity surveyor,

commits an offence.

(2) A quantity surveyor who knowingly employs or engages in the capacity of a quantity surveyor any person who was registered and —

- (a) whose name has been removed from the register and has not been restored; or

- (b) who has been suspended from practice in terms of this Act, during the period of suspension, save with the prior written consent of the Council, which consent may be given for such period and subject to such conditions as the Council may determine,

commits an offence.

(3) A person convicted of an offence under subsections (1) or (2) shall be liable on a first conviction to a fine not exceeding P2 000, or to imprisonment for a term not exceeding six months or to both and, on a second or subsequent conviction, to a fine not exceeding P5 000, or to imprisonment for a term not exceeding two years or to both.

(4) For the purposes of subsection (1), a person shall be deemed to be performing the work of a quantity surveyor for gain if he or she or a partnership of which he or she is a member or an employee including a director in relation to a company —

- (a) performs the work of a quantity surveyor for or in expectation of a fee, gain or reward, direct or indirect to himself or herself or to any other person; or
- (b) holds himself or herself out as prepared in expectation of a fee, gain or reward, direct or indirect to himself or herself or to any other person, to perform the work of a quantity surveyor.

50. The Minister may, after consultation with the Council, make regulations, generally for the better carrying out of the provisions of this Act, and without prejudice to the generality of the foregoing, any such regulations may provide for —

Regulations

- (a) the conduct of business of the Council;
- (b) the procedure to be followed at an inquiry under this Act;
- (c) the fees and fines to be paid under the Act;
- (d) the determination and regulation of the professional conduct and ethics of quantity surveyors;
- (e) the establishment and administration of a fidelity fund;
- (f) the establishment of a tariff of fees for the provision of services of quantity surveyors;
- (g) the forms to be used under the Act;
- (h) the issuing of certificates;
- (i) the exemption of any person from all or any provision of the Act;
- (j) the holding of the examination of any person wishing to apply under section 23 (d); and
- (k) anything which is to be prescribed under the Act.

PASSED by the National Assembly this 5th day of August, 2013.

BARBARA N. DITHAPO,
Clerk of the National Assembly.