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THE PRESIDENCY

DIE PRESIDENSIE

No. 1301.

1 December 2000

No. 1301.

1 Desember 2000

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

Hierby word bekend gemaak dat die Presidensie goedgekeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 43 of 2000: Council for the Built Environment Act, 2000.

No. 43 van 2000: Wet op die Raad vir die Bou-omgewing, 2000.

(English text signed by the President.)
(Assented to 26 November 2000.)

ACT

To provide for the establishment of a juristic person to be known as the Council for the Built Environment; to provide for the composition, functions, powers, assets, rights, duties and financing of such a council; 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) “built environment” means the field within which the registered persons 5
practise;
- (ii) “built environment professions” means the professions regulated by the
professions’ Acts;
- (iii) “council” means the Council for the Built Environment contemplated in
section 2; 10
- (iv) “councils for the professions” means the—
 - (a) South African Council for the Architectural Profession, established by
the Architectural Profession Act, 2000;
 - (b) South African Council for the Project and Construction Management
Professions, established by the Project and Construction Management 15
Professions Act, 2000;
 - (c) Engineering Council of South Africa, established by the Engineering
Profession Act, 2000;
 - (d) South African Council for the Landscape Architectural Profession,
established by the Landscape Architectural Profession Act, 2000; 20
 - (e) South African Council for the Property Valuers Profession, established
by the Property Valuers Profession Act, 2000; and
 - (f) South African Council for the Quantity Surveying Profession, estab-
lished by the Quantity Surveying Profession Act, 2000;
- (v) “department” means the national department responsible for public works; 25
- (vi) “Director-General” means the director-general of the national department
responsible for public works;
- (vii) “Minister” means the Minister responsible for public works;
- (viii) “prescribed” means prescribed by regulation;
- (ix) “professional” means a person who is registered as such in terms of any of the 30
professions’ Acts;
- (x) “professions’ Acts” means the—
 - (a) Architectural Profession Act, 2000;
 - (b) Project and Construction Management Professions Act, 2000;
 - (c) Engineering Profession Act, 2000; 35
 - (d) Landscape Architectural Profession Act, 2000;
 - (e) Property Valuers Profession Act, 2000; and
 - (f) Quantity Surveying Profession Act, 2000;
- (xi) “registered person” means a person registered in terms of any of the
professions’ Acts; 40

- (xii) "registrar" means a person appointed as registrar under section 15(1)(a);
- (xiii) "relevant Minister" means any Minister, except the Minister responsible for public works, whose portfolio is affected by this Act;
- (xiv) "this Act" includes the regulations; and
- (xv) "voluntary association for the built environment professions" means any voluntary association recognised as such by the councils for the professions in terms of any of the professions' Acts.

Establishment of Council for the Built Environment

2. The Minister must, by notice in the *Gazette* and with effect from a date specified in such notice, establish a juristic person to be known as the Council for the Built Environment.

Objects of council

3. The objects of the council are to-

- (a) promote and protect the interests of the public in the built environment;
- (b) promote and maintain a sustainable built environment and natural environment;
- (c) promote ongoing human resource development in the built environment;
- (d) facilitate participation by the built environment 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 built environment professions;
- (s) promote liaison in the built environment in the field of training, both in the Republic and elsewhere, and to promote the standards of such training in the Republic; 25
- (h) serve as a forum where the representatives of the built environment professions may discuss the relevant—
 - (i) required qualifications;
 - (ii) standards of education;
 - (iii) training and competence; 30
 - (iv) promotion of professional status; and
 - (v) legislation impacting on the built environment; and
- (i) ensure the uniform application of norms and guidelines set by the councils for the professions throughout the built environment.

Functions, powers and duties of council

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4. The council may—

- (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 for this purpose carry out such investigations as it or the relevant Minister deems necessary; 40
- (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 composition, functions, assets, rights, employees or financing of the council; 45
- (d) advise the Minister with regard to the amendment of this Act, if necessary, 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, if necessary, on all proposed legislation impacting on health and safety in the built environment; 5
- (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 [o the council through the relevant Minister, require joint and co-ordinated action by the built environment 10 professions:
- (j) coordinate the establishment of mechanisms for professionals to gain international recognition;
- (k) ensure the consistent application of policy by the councils for the professions with regard te- 15
- (i) accreditation;
- (ii) the registration of different categories of registered persons;
- (iii) key elements of competence testing of registered persons;
- (iv) codes of conduct to be prescribed by the councils for the professions;
- (v) the principles upon which the councils for the professions must base the 20 determination of fees which registered persons are entitled to charge in terms of any of the professions' Acts, and in accordance with any legislation relating to the promotion of competition;
- (vi) standards of health, safety and environmental protection within the built 25 environment;
- (vii) the recognition of voluntary associations for the built environment professions, by approving the framework for that recognition submitted by the councils for the professions, taking due cognizance of the characteristics of each built environment 30 profession;
- (l) investigate or initiate investigations into matters pertaining to its functions and policies with regard to the built environment and, if necessary, recommend legislation in this regard;
- (in) act as an appeal body with regard to matters referred to it in terms of the law 35 regulating the built environment professions;
- (n) in consultation with councils for the professions, obtain recognition for the councils for the professions as bodies responsible for the establishment of education and training standards in terms of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);
- (o) ensure the consistent application of policy throughout the built environment 40 by encouraging coordination between the councils for the professions;
- (p) promote coordination between the Council on Higher Education and the councils for the professions in relation to the accreditation of education institutions;
- (q) liaise with the Competition Commission, established in terms of the 45 Competition Act, 1998 (Act No. 89 of 1998), on behalf of the councils for the professions regarding the identification of work 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; 50
- (s) charge—
- (i) membership fees in the prescribed manner from the councils for the professions, calculated pro rata to the number of persons registered with that council;
- (ii) fees payable for appeals in terms of section 21; and 55
- (iii) any other fee it considers necessary.
- (t) institute legal proceedings to recover all outstanding membership fees payable under this Act;
- (u) consider proposals from the councils for the professions with regard to the determination of policy contemplated in paragraph (k); 60
- (v) receive and assimilate the annual reports of the councils for the professions and submit a summary to the Minister;

- (w) 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;
- (x) subject to 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; 5
- (y) perform such functions as may be prescribed; and
- (z) generally, do all such things as the council deems necessary or expedient to achieve the objectives of this Act.

Composition of council 10

5. (1) The Minister must appoint the members of the council.

(2) The council consists of the following members, taking into account, among other things, the principles of transparency and representivity:

- (a) One representative from the department.
- (b) Not more than three persons nominated, from the nominations contemplated in section 6(2)(u) by state departments within whose functional areas the professions are also practised, taking due cognizance of provincial participation. 15
- (c) Two representatives nominated by each council for the professions, which representatives may be members of a council for the professions, a voluntary association for the built environment professions or any other person with appropriate expertise. 20
- (d) Not more than four persons nominated, from the nominations contemplated in section 6(2)(b) by the public through an open process of public participation.

(3) (a) If a profession which is involved and active in the built environment establishes a council in terms of legislation similar to the professions' Acts, that council may make a request to the Minister to be represented on the council. 25

(b) On receipt of a request contemplated in paragraph (a), the Minister may appoint representatives to the council in accordance with this section for the remainder of the term of office of the council. 30

Appointment of members of council

6. (1) For the purposes of the first term of office of the council—

- (a) the councils for the professions must, within 30 days from the date of the publication of the notice of establishment of the council in the *Gazette*, submit in writing to the Director-General the names of the persons nominated by them for purposes of section 5(2)(c); 35
- (b) the Minister must, for the purposes of section 5(2)(d), on the date of publication of the notice of establishment of the council in the *Gazette*, invite nominations for representatives from the general public;
- (c) the invitation referred to in paragraph (b), must be published in the *Gazette* and in any newspaper generally circulated throughout the Republic. 40

(2) For purposes of subsequent terms of office of the council—

- (a) when nominations in terms of section 5(2)(a), (b) or (c) become necessary, the council must invite the department, state departments referred to in section 5(2)(b) and councils for the professions, respectively, to nominate within the period specified, persons who qualify for nomination in terms of section 5(2)(a), (b), or (c), respectively; 45
- (b) when nominations in terms of section 5(2)(d) become necessary, the council must invite the public by notice in the *Gazette* and any newspaper generally circulated throughout the Republic, to nominate persons for appointment to the council within the period specified in the notice from the date of the notice; 50
- (c) the period referred to in the invitation and the notice must be at least 60 days;
- (d) on receipt of any nomination the council must, within 30 days from the expiry date specified in the invitation and the notice, submit its recommendations to the Minister. 55

(3) (a) If no nominations are submitted as contemplated in subsection (1) or (2), or if a council for the profession or referred to in subsection (1) fails to submit the names of nominated persons to the Director-General under subsection (1), the Director-General must immediately inform the Minister of such failure in writing.

(b) In the case of failure as contemplated in paragraph (a), the Minister must appoint 5 the required number of persons who qualify to be appointed in terms of this Act, as members of the council.

(4) The Minister must, as soon as possible after the appointment of the members of the council, publish the names of the members of the council and the date of commencement of their period of office in the *Gazette*. 10

(5) The members of the council hold office for a period of four years calculated from the date contemplated in subsection (4).

Removal from office

7. The Minister may remove a member of the council from office on account of misconduct or inability to perform his or her duties efficiently after due inquiry. 15

Disqualification, vacation of office and filling of vacancies

8. (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;
- (c) has been convicted of an offence in the Republic, other than an offence 20 committed prior to 27 April 1994 associated with political objectives, and was sentenced to imprisonment without an option of a fine, or, in the case of fraud, to a fine or imprisonment or both.
- (d) subject to subsection (3), has been convicted of an offence in a foreign country and was sentenced to imprisonment without an option of a fine, or, in the case 25 of fraud, to a fine or imprisonment or both.
- (e) has, as a result of improper conduct, been removed from an office of trust;
- (f) has in terms of this Act been found guilty by the council of improper conduct; or
- (g) in the case of persons referred to in section 5(2)(c) is not a registered person. 30

(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 35 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(2)(c) and ceases to be associated with the council or voluntary association for the built environment profession that 40 nominated him or her;
- (f) is appointed in terms of section 5(2)(b) and ceases to be employed by the State;
- (g) ceases to be permanently resident in the Republic; or
- (h) is removed from office in terms of section 7. 45

(3) For the purposes of subsection (1)(d), the Minister must take cognizance of the prevailing circumstances in a foreign country relating to a conviction.

(4) 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 subject to section 5, to 50 fill the vacancy for the unexpired portion of the period for which that member was appointed.

Chairperson and deputy chairperson

9. (1) The Minister must, in the prescribed manner, appoint a chairperson and a deputy chairperson for every newly constituted council.

(2) The chairperson and deputy chairperson hold office for the period of four years from the date of their appointment. 5

(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) (a) If both the chairperson and the deputy chairperson are for any reason unable to preside at a council meeting, the members present must elect one of the members to preside at that meeting. 10

(b) 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 the deputy chairperson becomes vacant, the Minister must, in the prescribed manner, appoint one of the members as chairperson or deputy chairperson, as the case may be, and the member so appointed holds office for the unexpired portion of the period for which his or her predecessor was appointed. 15

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

Meetings of council 20

10. (1) (a) The Minister must, within 30 days from the date of the appointment of the council, determine the time and place of the first meeting of the council.

(b) The council must determine the time and place of any future meeting.

(2) The council must hold at least two meetings in a year, but may hold more meetings if necessary. 25

(3) (u) The chairperson may at any time convene a special meeting of the council, to be held on a date and at a place as determined by him or her.

(b) The chairperson must, on written request by the Minister or a written request signed by at least six members, convene a special meeting.

(c) A special meeting contemplated in paragraph (b) must be held within 30 days from the date of receipt of the request, on a date and at a place determined by the chairperson. 30

(d) The written request contemplated in paragraph (b) must clearly state the purpose for which the meeting is to be convened.

(4) Subject to the approval of the council, any person who is not a member of the council may attend or take part, but may not vote, in a meeting of the council. 35

Quorum and decisions

11. (1) The majority of the members of the council constitute a quorum at any meeting of the council.

(2) (a) A decision of the majority of the members of the council present at any meeting constitutes a decision of the council. 40

(b) In the event of an equality of votes the chairperson has a casting vote in addition to his or her deliberative vote.

(3) If the requisite majority of the members who are entitled to sit as members at a meeting of the council, make a decision or authorise an act at that meeting, the decision made or act performed under that authorization, is valid despite the fact that at that meeting a member who had become disqualified in terms of section 8(2) but had not vacated his or her office, sat as a member. 45

Executive committee

12. (1) (a) The council must have an executive committee consisting of the chairperson of the council and not more than three other members elected by the council. 50

(b) The council may appoint alternate members to the executive committee.

(2) A majority of the total number of members of an executive committee constitutes a quorum.

(3) (a) A member--

- (i) serves on the executive committee for a period of one year;
- (ii) may be re-elected; and
- (iii) remains in office until his or her successor is elected.

(b) Upon expiry of the term of office of any member of the executive committee, the 5 vacancy must be filled by the council at its next ordinary meeting or, failing which, at a special meeting convened for that purpose by the chairperson of the council within 21 days from the date of that ordinary meeting.

(c) A 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 as 10 contemplated in section 8.

(d) (i) If a vacancy occurs in the executive committee the vacancy must be filled by the council at its next ordinary meeting or, failing which, at a special meeting convened for that purpose by the chairperson of the council within 21 days from the date of that ordinary meeting. 15

(ii) The member elected serves for the unexpired portion of the term of office of his or her predecessor.

(4) The executive committee must hold a meeting as and when necessary, but at least four times per year.

(5) A special meeting of the executive committee— 20

(a) may, at any time, be convened by the chairperson; 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

13. The executive committee has the power to— 25

- (a) ensure that the resolutions of the council are carried out;
- (b) consider any matter delegated to it by the council in terms of any law, 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 30 estimates and all other moneys or funds made available by the council;
- (e) exercise "or perform any power, duty or function delegated to it by the council under section 16; and
- (f) report at every ordinary meeting of the council on the activities of the committee. 35

Committees of council

14. (1) The council—

(a) may establish any committee to—

- (i) assist it in the performance of its functions; or
- (ii) investigate and make recommendations on matters relating to any of its 40 functions;

(b) must designate a chairperson for any such committee, and determine the quorum for meetings.

(2) The council must determine the terms of reference of the committees.

(3) Section 10 applies with the necessary changes in respect of a committee of the 45 council.

Appointment of registrar and staff

15. (1) The council—

(a) must appoint a registrar; and

(b) may employ such staff as it may deem necessary for the carrying out of its 50 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 enter into a performance agreement, as prescribed, with the council on acceptance of his or her appointment.

(3) 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.

Delegation of powers

16. (1) The council may, subject to subsection (2), delegate any power, duty or function conferred or imposed on it by this Act to— 10

- (a) a committee established under section 14;
- (b) the executive committee elected under section 12;
- (c) the chairperson of the council or any member of the council; or
- (d) any officer of the council.

(2) The council may not delegate the power to appropriate funds or appoint committees. 15

(3) The council may amend, ratify or repeal any decision made in relation to any power, duty or function delegated by the council in terms of subsection (1).

(4) Any delegation under subsection (1) does not prohibit the exercise of the power or the performance of the duty or function in question by the council. 20

Financing of council

17. (1) The funds of the council consist of any money received in terms of this Act, and all other monies accrued to the council from any other legal source, including—

- (a) membership fees payable by the councils for the professions to the council;
- (b) donations, contributions or grants received from any person, institute or government; and 25
- (c) interest on investments.

(2) The council must use its funds to defray expenses in connection with the performance of its functions and generally to pursue the objects of the council.

(3) The council— 30

- (a) (i) may invest any unspent portion of the funds of the council at the end of a financial year; and
- (ii) must carry over any surplus to the next financial year and such surplus may be used to defray expenses incurred by the council during that financial year; 35

(b) must, during each financial year, submit an estimated income and expenditure statement of the council for the following financial year to the councils for the professions for comment.

(4) The Minister may, with the concurrence of the Minister of Finance—

- (a) advance or grant to the council money, from the money appropriated by Parliament, to enable the council to carry out its functions; and 40
- (b) determine the conditions to, and repayment of, the advance.

(5) The council must apply due care and diligence when investing such money or incurring any expenditure from the funds of the council.

Accounting and accountability 45

18. (1) The registrar is the accounting officer of the council and must—

- (a) cause proper records to be kept of all 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— 50

- (i) statement of the income and expenditure of the council for that financial year; and
- (ii) 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 appointed by the council. 5

(3) The financial year of the council is the period from 1 April in any year to 31 March of the following year.

Reporting

19. (1) The council must— 10

(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 from 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. 15

(2) Without derogating from the generality 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 and documents containing the relevant information; 20

(b) particulars of any donations, contributions or grants received under section 17(1)(b);

(c) the report on the audit referred to in section 18(2);

(d) a report regarding the execution of the functions of the council;

(e) a report regarding the envisaged strategies of the council; and 25

(f) such other information as the Minister may from time to time determine.

(3) The Minister may cause the council to be investigated if he or she suspects that there are any irregularities with regard to the functions of the council.

(4) The Minister must table the annual report referred to in this section and a summary of the reports referred to in section 4(v) in Parliament within 14 days after the receipt thereof if Parliament is then in ordinary session or, if Parliament is not then in ordinary session, within 14 days after the commencement of its following ordinary session. 30

Identification of work

20. (1) The council must, after receipt of the recommendations of the councils for the professions submitted to it in terms of the professions' Acts, and before liaising with the Competition Commission in terms of section 4(q)— 35

(a) determine policy with regard to the identification of work for the different categories of registered persons;

(b) consult with any person, body or industry that may be affected by the identification of work in terms of this section. 40

(2) The council must, after consultation with the Competition Commission, and in consultation with the councils for the professions, identify the scope of work for every category of registered persons.

Appeal

21. (1) Any person who is aggrieved by a decision of any of the councils for the professions may upon payment of the prescribed fee and, within 30 days from that person becoming aware of such decision, in writing appeal to the council, and the council must consider and decide the appeal. 45

(2) The appellant must 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 for the profession and furnish proof of such submission for the information of the council 50

(3) The council must appoint an appeal committee consisting of—

(a) a professional who has appropriate experience;

(b) a person qualified in law and who has appropriate experience; and

(c) a person who specialises in the professional field concerning the appeal.

(4) The appeal committee must conduct the appeal in accordance with section 33 of the Constitution. 5

(5) The appeal committee must decide an appeal within 60 days from the date on which the appeal was lodged, and inform the appellant and the council concerned accordingly.

Regulations

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22. The Minister may, after consultation with the council, make regulations with regard to—

(i) any matter that is required or permitted to be prescribed in terms of this Act;

(ii) any other matter for the better execution of this Act; or

(iii) any power granted or duty imposed by this Act. 15

Short title

23. This Act is called the Council for the Built Environment Act, 2000, and commences on a date fixed by the President by proclamation in the *Gazette*.