

## CHAPTER 27:13

# QUANTITY SURVEYORS ACT

*Acts 2/1981, 29/1981, 31/1983 (s. 26), 8/1988 (s. 164), 9/1999 (s. 82), 22/2001 (s. 4).*

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**AN ACT to establish a council for the profession of quantity surveying to be known as the Quantity Surveyors Council of Zimbabwe and to provide for its functions and powers; to provide for the registration and regulation of the practice of quantity surveyors in Zimbabwe; and to provide for matters incidental to or connected with the foregoing.**

[Date of commencement: 1st November, 1981.]

## PART I

### PRELIMINARY

#### 1 Short title

This Act may be cited as the Quantity Surveyors Act [*Chapter 27:13*].

#### 2 Interpretation

In this Act—

- “appointed member” means a member referred to in paragraph (a) of subsection (1) of section *four*;
- “bill of quantity” means a document detailing all the quantities of both labour and materials required for a building or civil engineering project itemized under trades or sections in such a manner that by applying a monetary rate to each item the total cost of the project may be established thus enabling a negotiated or competitive tender to be obtained;
- “certificate of registration” means a certificate issued in terms of paragraph (a) of subsection (3) of section *twenty* or a duplicate certificate issued in terms of subsection (4) of that section;
- “certificate of temporary registration” means a certificate issued in terms of subsection (4) of section *twenty-five*;
- “Council” means the Quantity Surveyors Council of Zimbabwe established by section *three*;
- “elected member” means a member referred to in paragraph (b) of subsection (1) of section *four*;
- “fixed date” means the date fixed in terms of subsection (2) of section *one* as the date on which this Act shall come into operation;
- “improper or disgraceful conduct” means improper conduct or disgraceful conduct or conduct which, when regard is had to the profession of quantity surveying, is improper or disgraceful, whether defined in by-laws referred to in paragraph (a) of subsection (1) of section *thirty-five* or not;
- “Institute” means the Zimbabwe Institute of Quantity Surveyors as represented by its governing body;
- “member” means member of the Council;
- “Minister” means the Minister of Public Construction and National Housing or such other Minister to whom the President may, from time to time, assign the administration of this Act;
- “Register” means the Register of Quantity Surveyors established in terms of subsection (1) of section *nineteen*;
- “registered” means registered in the Register in terms of this Act;
- “Registrar” means the Registrar of Quantity Surveyors appointed in terms of section *eighteen*;
- “Temporary Register” means the register established in terms of subsection (2) of section *nineteen*;
- “work of a quantity surveyor” includes—
- (a) preparing bills of quantities from drawings for new buildings for purposes of calling for tenders or for negotiating a building or civil engineering contract;
  - (b) administering contracts based on bills of quantities in all matters of cost, preparing and issuing statements for interim payment certificates and preparing the final account;
  - (c) preparing cost estimates for new buildings or alterations to existing buildings other than upon a “cost per area” basis;

- (d) inspecting existing buildings, preparing valuations thereon and reporting for purposes of mortgage, rental and insurance.

## PART II

### QUANTITY SURVEYORS COUNCIL OF ZIMBABWE

#### **3 Establishment of Quantity Surveyors Council of Zimbabwe**

There is hereby established a council to be known as the Quantity Surveyors Council of Zimbabwe, which shall be a body corporate and shall, in its corporate name, be capable of suing and being sued and, subject to the provisions of this Act, of performing all such acts as bodies corporate may by law perform.

#### **4 Composition of Council**

- (1) The Council shall consist of eleven members of whom—
- (a) three shall be appointed by the Minister; and
  - (b) eight shall, subject to the provisions of this Part, be elected by the registered members of the Institute in the manner prescribed:

Provided that the persons who, immediately before the fixed date, were members of the Council of the Institute referred to in paragraph (1) of the Constitution of the Zimbabwe Institute of Quantity Surveyors shall be deemed to have been duly elected in terms of this paragraph.

(2) At the first meeting of the Council after the fixed date the members shall elect from among their number a chairman and vice-chairman who shall hold office for such period, being not less than twelve months, as the Council may from time to time determine unless, in either case, he sooner resigns or ceases to be a member.

(3) On the expiration of the period of office of the chairman or vice-chairman or if the chairman or the vice-chairman vacates his office as such, a new chairman or vice-chairman, as the case may be, 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.

(4) The chairman or vice-chairman may vacate his office as such even though he remains a member.

(5) The vice-chairman, if able to do so, shall, whenever the chairman is absent or unable to carry out his functions, exercise the functions of the chairman during the period that the chairman is so absent or unable to act.

#### **5 Functions, powers and expenses of Council**

(1) It shall be the function of the Council to hold inquiries for the purposes of this Act and to do all other things required or permitted to be done by the Council in terms of this Act and such other things as, in the opinion of the Council, are necessary or desirable for the proper regulation of the practice of the profession of quantity surveying and the improvement of quantity surveying services in Zimbabwe.

(2) Subject to the provisions of this Act and any other law, the Council shall have the power to do all or any of the things specified in the First Schedule, either absolutely or conditionally and either solely or jointly with others.

(3) Any expenses incurred by the Council in the exercise of its functions in terms of this Act shall be met out of the funds of the Council

#### **6 Tenure and conditions of office of members**

- (1) Subject to the provisions of this Part, a member shall hold office—
- (a) in the case of the appointed member for such period, not exceeding three years, as may be fixed by the Minister on his appointment;
  - (b) in the case of an elected member, for a period of two years:

Provided that—

- (i) of the members deemed to have been elected in terms of the proviso to section *four*, four, who shall be determined by lot, shall hold office for a period of one year;
- (ii) on the expiration of his period of office an elected member shall continue to hold office until a successor has been elected or a period of three months has elapsed, whichever is the sooner.

(2) A member shall be paid out of the funds of the Council such remuneration and allowances, if any, as the Council, with the approval of the Minister, may fix.

(3) A retiring member shall be eligible for appointment, reappointment, election or re-election as a member, as the case may be.

#### **7 Appointment of members on failure to elect members**

(1) Subject to the provisions of this section, if the registered members of the Institute for any reason whatsoever fail, neglect or refuse—

- (a) within twenty-one days from the fixed date to elect any or all of the members referred to in paragraph (b) of section *four*;
- (b) within the period referred to in paragraph (a) of subsection (1) of section *eleven*, to fill a vacancy in terms of that paragraph;

the Minister may appoint to the Council a registered quantity surveyor or registered quantity surveyors to be the member or members, as the case may be, which the Institute has failed, neglected or refused to elect or may appoint a registered quantity surveyor to fill the vacancy, as the case may be.

(2) A member appointed by the Minister in terms of subsection (1)—

(a) shall, notwithstanding subsection (1) of section *six*, hold office for such period, not exceeding two years, as the Minister may fix; and

(b) shall be deemed to have been duly elected to the Council in terms of this Part.

## **8 Disqualification for appointment or election as a member**

No person shall be appointed or elected as a member and no person shall be qualified to hold office as a member who—

(a) has in terms of a law in force in any country—

(i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or

(ii) made an assignment to, or arrangement or composition with, his creditors which has not been rescinded or set aside; or

(b) has in the period of five years immediately preceding the date of his proposed appointment or election, been convicted—

(i) within Zimbabwe of a criminal offence; or

(ii) outside Zimbabwe of an offence by whatever name called which if committed within Zimbabwe would have been a criminal offence;

and sentenced therefor by a court to imprisonment without the option of a fine, whether or not such sentence has been suspended and has not received a free pardon therefor; or

(c) within the period of five years immediately preceding his proposed appointment, he has been sentenced—

(i) in Zimbabwe, in respect of an offence; or

(ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would have constituted an offence;

to a term of imprisonment of not less than six months imposed without the option of a fine, whether or not any portion has been suspended, and has not received a free pardon; or

[Paragraph repealed by section 4 of Act No. 22 of 2001]

(d) has in the period of five years, immediately preceding the date of his proposed appointment or election, been found guilty of improper or disgraceful conduct; or

(e) is a member of the Senate or the House of Assembly.

## **9 Vacation of office**

A member shall vacate his office and his office shall become vacant—

(a) one month after the date he gives notice in writing to the Minister of his intention to resign his office or after the expiration of such shorter period as he and the Minister may agree; or

(b) thirty days after the date he is sentenced by a court to imprisonment such as is referred to in paragraph (b) of section *eight* or to imprisonment or a fine such as is referred to in paragraph (c) of section *eight* after conviction of an offence referred to in the paragraph concerned:

Provided that, if during the said period of thirty days an application for a free pardon is made or an appeal is filed, the question whether the member is to vacate his office shall not be determined until the final disposal or the withdrawal of such application or appeal, whereupon the member shall forthwith vacate his office and his office shall become vacant, unless he is granted a free pardon, his conviction is set aside or a punishment other than imprisonment or a fine exceeding two hundred dollars, as the case may be, is substituted; or

(c) thirty days after the date he is found guilty of improper or disgraceful conduct:

Provided that, if during the said period of thirty days an appeal is filed in terms of subsection (1) of section *thirty-three*, the question whether the member is to vacate his office shall not be determined until the final disposal or the withdrawal of such appeal, whereupon the member shall forthwith vacate his office and his office shall become vacant unless the decision of the Council finding him guilty of improper or disgraceful conduct is set aside;

(d) if he becomes disqualified in terms of paragraph (a) or (e) of section *eight* for appointment or election as a member; or

(e) if he is required in terms of subsection (1) of section *ten* to vacate his office; or

(f) if he is absent, without the permission of the Council, from three consecutive meetings of the Council of which he has had notice; or

(g) in the case of an elected member, if he ceases to be a registered quantity surveyor.

## **10 Minister may require member to vacate office or suspend him**

(1) The Minister, after consultation with the chairman or vice-chairman of the Council, may require a member to vacate his office if the Minister is satisfied that the member—

- (a) has been guilty of improper conduct as a member; or
- (b) is mentally or physically incapable of performing his duties as a member.

(2) The Minister, after consultation with the chairman or vice-chairman of the Council, may suspend from office a member against whom—

- (a) criminal proceedings have been instituted for an offence in respect of which a sentence of imprisonment without the option of a fine may be imposed; or
- (b) disciplinary proceedings are instituted by the Council;

and while that member is so suspended he shall not carry out any duties as a member.

## **11 Filling of vacancies on Council**

(1) On the death of or vacation of office by a member who is—

- (a) an elected member, the Minister shall, on being notified thereof by the Council, by notice in writing, call upon the Institute to appoint, within such period as may be specified in the notice, being not less than sixty days, a member to fill the vacancy and the person so appointed shall hold office for the remainder of the period of which the member would, but for his death or the vacation of his office, have continued in office:

Provided that if the remainder of the period for which the member whose office has been vacated would otherwise have held office is less than six months, it shall not be necessary for the Minister to call upon the Institute to appoint a member;

- (b) an appointed member, the Minister shall appoint another person to fill the vacancy.

(2) If—

- (a) any member is granted leave of absence by the Council, the Council may, if it thinks fit, co-opt a registered quantity surveyor to fill the vacancy during the absence of that member; or
- (b) in terms of the proviso to paragraph (a) of subsection (1) the Institute is not required to fill a vacancy the Council may, if it thinks fit, co-opt a registered quantity surveyor to fill the vacancy for the remainder of the period for which the member concerned would, but for his death or the vacation of his office, have continued in office.

(3) Subsection (2) of section *six* and of sections *eight*, *nine* and *ten* shall apply, *mutatis mutandis*, in respect of a member co-opted in terms of subsection (2).

## **12 Meetings and decisions of Council**

(1) 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 for the dispatch of business and adjourn, close and otherwise regulate its meetings and procedures as it thinks fit.

(2) A special meeting of the Council—

- (a) may be convened by the chairman of the Council at any time;
- (b) shall be convened by the chairman within twenty-one days of the receipt by him of a request in writing signed by not less than five members and specifying the purposes for which the meeting is to be convened.

(3) At any meeting of the Council—

- (a) the chairman or, in his absence, the vice-chairman shall preside;
- (b) in the absence of both the chairman and the vice-chairman the members present shall elect one of their number to preside;
- (c) five members shall form a quorum.

(4) All acts, matters or things authorized or required to be done by the Council shall be decided by a majority vote at a meeting of the Council at which a quorum is present.

(5) At all meetings of the Council each member present shall have one vote on a question before the Council and, in the event of an equality of votes, the person presiding at the meeting shall have, in addition to a deliberative vote, a casting vote.

## **13 Committees of Council**

(1) For the proper exercise of its functions and powers the Council may—

- (a) establish committees; and
- (b) appoint such registered quantity surveyors, whether or not they are members of the Council, and other persons as it may consider expedient to be members of a committee established in terms of paragraph (a):

Provided that at least one elected member shall be appointed to the committee and the chairman of the committee shall be a member of the Council; and

- (c) assign to a committee established in terms of paragraph (a) such powers and duties of the Council as the Council may consider expedient:

Provided that—

- (i) the vesting in a committee or imposition on a committee of any powers or duties in terms of this paragraph shall not thereby divest the Council of such powers or duties;
- (ii) the Council may amend or rescind any decision of any committee in the exercise of its powers or duties, save that if the Council has assigned to a committee the power to determine whether or not any person shall be registered in terms of this Act or to cancel the registration of a registered quantity surveyor or to inquire into any case of alleged improper or disgraceful conduct and to impose a punishment in respect thereof in terms of this Act, the Council shall not amend or rescind any decision arrived at or anything done by that committee under the power so assigned.

(2) The chairman of the Council or chairman of a committee may at any time and at any place convene a meeting of that committee.

(3) At any meeting of a committee such number of members as may be fixed by the Council in any particular case shall form a quorum.

(4) A member of a committee shall be paid out of the funds of the Council such remuneration and allowances, if any, as the Council, with the approval of the Minister, may fix.

(5) Any reference in this Act to the Council or to the chairman of the Council, in relation to the exercise of any power which the Council has assigned to a committee, shall be construed as including a reference to that committee, as the case may be.

(6) The provisions of section *fourteen* shall apply, *mutatis mutandis*, in respect of a committee.

#### **14 Decisions of Council**

No decision or act of the Council or act done under the authority of the Council shall 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 in section *four*;  
or
- (b) the various members of the Council did not have the qualifications prescribed by this Part; or
- (c) a disqualified person acted as a member of the Council.

#### **15 Funds and accounts of Council**

(1) The funds of the Council shall consist of—

- (a) all fees and other moneys payable to the Council in terms of this Act; and
- (b) such other moneys and assets as may vest in or accrue to the Council, whether in the course of the exercise of its functions or otherwise.

(2) The Council shall keep proper books of account and other records relating thereto in respect of its funds.

(3) The accounts of the Council shall be audited annually by an auditor, registered in terms of the Public Accountants and Auditors Act [27:12] appointed by the Council.

(4) The Council shall cause to be prepared in each year a statement of its income and expenditure during its last preceding financial year and a balance sheet showing its financial position at the end of that financial year and shall, after such statement and balance sheet have been audited by an accountant appointed in terms of subsection (3), cause copies thereof to be transmitted to every member and cause a copy thereof to be open to inspection during office hours at the office of the Council by any registered quantity surveyor.

#### **16 Council to report to Minister**

(1) The Council shall in each year, within six months after the end of its financial year, submit to the Minister a report in regard to its activities during that financial year, together with a copy of the audited statement of income and expenditure and the balance sheet referred to in subsection (4) of section *fifteen* in respect of that financial year and a list of registered quantity surveyors whose names appeared on the Register on the last day of that financial year.

(2) The chairman of the Council shall from time to time submit to the Minister reports in 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.

(3) The Council shall, when so requested by the Minister, furnish to the Minister advice on matters in connection with the profession of quantity surveyors 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 import.

## PART III

### REGISTRAR, REGISTER AND REGISTRATION

#### 17 Qualification for registration

For the purposes of this Part, a person shall, subject for to this Act, be qualified to be registered if he is a member of a class specified in the Second Schedule.

#### 18 Registrar of Quantity Surveyors and other employees

(1) The Council—

- (a) shall appoint a Registrar of Quantity Surveyors; and
- (b) may appoint one or more assistant registrars and such other employees as it considers necessary or desirable.

(2) The functions of the Registrar shall be—

- (a) to be the secretary to the Council and to every committee thereof in which connection he shall, on the instructions of the chairman of the Council or of the committee, as the case may be, convene meetings of the Council or committee, as the case may be, and maintain records and minutes of all such meetings; and
- (b) to carry out any other duties assigned to him by the Council.

(3) If the Registrar is absent or unable to carry out any of his functions under this Act or any other law, an assistant registrar shall exercise, during the period that the Registrar is so absent or unable to act, such of the functions of the Registrar as the chairman or the Council may assign to him.

#### 19 Register and Temporary Register

(1) The Council shall, subject to this Act, establish and maintain a register of quantity surveyors.

(2) The Council shall, subject to this Act, establish and maintain a register of quantity surveyors who are temporarily registered in terms of section *twenty-five*.

(3) The Register and the Temporary Register shall be kept at the offices of the Council and shall be open to inspection during office hours by any member of the public upon payment of the appropriate fee prescribed by the Council.

#### 20 Duties of Registrar and certificates of registration

(1) It shall be the duty of the Registrar—

- (a) to enter in the Register, in relation to a registered quantity surveyor, his name, address, qualifications and date of first registration and such other particulars as the Council may from time to time determine; and
- (b) to make in the Register any necessary alterations to the particulars referred to in paragraph (a); and
- (c) to erase from the Register the name of a registered quantity surveyor who dies; and
- (d) when required to do so by or under this Act or in pursuance of an order of the High Court—
  - (i) to enter in the Register the registration of an applicant or, as the case may be, the suspension from practice of a registered quantity surveyor; and
  - (ii) to erase from the Register the name of a registered quantity surveyor;

and generally in connection with the Register to comply with the provisions of this Act and any order of the High Court.

(2) Where the Registrar erases from the Register the name of a registered quantity surveyor, he shall enter in the Register a record of the reasons therefor.

(3) If, in the performances of the duties imposed upon him by or under this Act, the Registrar—

- (a) registers an applicant or restores a person's name to the Register, he shall issue to him a certificate of registration;
- (b) erases from the Register the name of a registered quantity surveyor or enters in the Register the suspension from practice of a registered quantity surveyor he shall, if possible, notify him in writing accordingly.

(4) On an application by a registered quantity surveyor the Registrar may issue to that person a duplicate certificate of registration—

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

#### 21 Offences in connection with Register, etc.

A person who—

- (a) makes or causes to be made an unauthorized entry in or alteration of or deletion from the Register or a certified copy thereof or extract therefrom or a certificate of registration; or

- (b) procures or attempts to procure for himself or another person registration or a certificate of registration by means of a fraud, a false representation or the concealment of a material fact; or
  - (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 identity; or
  - (d) wilfully destroys, injures or renders illegible or causes to be destroyed, injured or rendered illegible any entry in the Register; or
  - (e) without the permission of the holder, wilfully destroys, injures or renders illegible or causes to be destroyed, injured or rendered 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;
- shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Section as amended by section 4 of Act 2 of 2001]

## 22 Register and certificates from Registrar to be evidence

- (1) The Register shall be *prima facie* evidence of all matters directed or authorized by this Act to be noted therein.
- (2) A certificate purporting to be signed by the Registrar to the effect that—
  - (a) the name of a person appears in the Register shall be *prima facie* evidence that the person is a registered quantity surveyor;
  - (b) the name of a person has been deleted or removed from the Register or does not appear in the Register shall be *prima facie* evidence that the person is not a registered quantity surveyor;
  - (c) a registered quantity surveyor has been suspended from practice as such for a period specified in that certificate shall be *prima facie* evidence that such person has been suspended from practice for that period.
- (3) A document certified by the Registrar to be a copy of an entry in the Register or of a document in the custody of the Registrar or an extract from the Register or from any such document purporting to be certified by the Registrar shall be admitted in evidence in all courts without further proof or production of the original.

## 23 Return of certificate of registration

- (1) Any person whose name has been erased from the Register in terms of section *twenty-six* shall return to the Registrar his certificate of registration within thirty days from the date upon which he is directed by the Registrar, by notice in writing, to do so.
- (2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

## 24 Application for registration

- (1) Any person who wishes to be registered shall apply in writing to the Registrar and shall submit with his application—
  - (a) a certificate of any qualification on which he relies for registration or a certified copy thereof; and
  - (b) the appropriate fee prescribed by the Council; and
  - (c) such evidence of identity and of good character and reputation and such other evidence or information as may be required by the Council.
- (2) The Registrar—
  - (a) may require any statement made in or in connection with an application in terms of subsection (1) to be supported by affidavit or solemn declaration;
  - (b) shall refer an application in terms of subsection (1) and any report he may wish to make thereon to the Council.
- (3) An application in terms of subsection (1) by a person who relies on the qualifications specified in paragraph 2 or 3 of the Second Schedule shall be lodged with the Registrar within six months after the fixed date or within such further period as the Council may for good cause in any particular case allow.
- (4) Subject to subsections (5) and (6), the Council shall direct the Registrar to register an applicant if it is satisfied that the applicant is qualified in terms of section *seventeen* and is a fit person to be registered.
- (5) The Council shall refuse to direct the Registrar to register an applicant if it is satisfied that the applicant has at any time, whether within or outside Zimbabwe—
  - (a) been removed from an office of trust on account of improper conduct; or
  - (b) been convicted of extortion, bribery, theft, fraud, forgery or uttering a forged document or perjury and sentenced in respect thereof to imprisonment without the option of a fine or to a fine exceeding level five.

[Subsection amended by section 4 of Act 22 of 2001]

(6) The Council may refuse to direct the Registrar to register an applicant if, in its opinion, the applicant, notwithstanding that he is otherwise qualified, is not a fit person to be registered by reason of—

- (a) his physical or mental health; or
- (b) the fact that he is not of good character or reputation; or
- (c) the fact that he has not an adequate knowledge of the English language; or
- (d) any conduct of his which, if he had been registered, would have constituted improper or disgraceful conduct:

Provided that, before refusing registration in terms of this paragraph, the Council shall hold an inquiry in terms of Part IV and that Part shall apply, *mutatis mutandis*, as if the applicant were registered.

## 25 Temporary registration

(1) Any person who wishes to be registered on the Temporary Register shall apply therefor in writing to the Registrar submitting with his application such evidence of qualification for such registration as he deems fit and which the Council may direct.

(2) The Registrar shall refer any application in terms of subsection (1) to the Council.

(3) The Council may direct the Registrar to register on the Temporary Register an applicant who has made application therefor in terms of subsection (1) and who—

- (a) has, in the opinion of the Council, been *bona fide* engaged to perform the work of a quantity surveyor in a consultative capacity; and
- (b) is not ordinarily resident in Zimbabwe; and
- (c) is of or over the age of twenty-one years; and
- (d) has passed an examination prescribed by the Council for the purposes of this paragraph or any examination recognized by the Council as being equivalent thereto; and
- (e) after passing the examination referred to in paragraph (d), has had not less than three years' practical experience in quantity surveyor's work which, in the opinion of the Council, is of a sufficient variety and of a satisfactory nature or standard for the purposes of temporary registration; and
- (f) is, in the opinion of the Council, a fit person to be so registered.

(4) When the Council has directed the Registrar to register a person in the Temporary Register the Registrar shall issue to that person a certificate of temporary registration.

(5) The registration of a person in the Temporary Register and the certificate of temporary registration shall be valid for such period, not exceeding twelve months, as the Council may in each case determine.

(6) A person who is or has been registered in the Temporary Register may, on application in terms of this section, be registered on a second or subsequent occasion in the Temporary Register.

(7) Save as otherwise specifically provided in this Act, the provisions of this Act shall apply, *mutatis mutandis*, in relation to the Temporary Register, temporary registration and certificates of temporary registration as they apply to the Register, registration in the Register and certificates of registration.

## 26 Erasure from Register

(1) The Council may direct the Registrar to erase from the Register—

- (a) the name of any person who—
  - (i) ceases to be ordinarily resident in Zimbabwe; or
  - (ii) has failed to pay any fee payable in terms of any regulations referred to in subparagraph (ii) of paragraph (a) of subsection (5) of section *thirty-nine* within six months after the date on which that fee became payable; or
  - (iii) has failed within a period of six months after the date of any inquiry sent by the Registrar by registered letter to his address as shown in the Register to notify the Registrar of his present address:

Provided that, if such registered letter is returned to the Registrar by reason of it being unclaimed or for any other reason, the Council may forthwith direct that the name of the person be erased from the Register; or

- (iv) has requested that his name be removed from the Register and, if so required by the Council, has lodged an affidavit that no disciplinary or criminal proceedings are being or are likely to be taken against him in connection with the practice of his profession;

or

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

(2) The Registrar shall erase from the Register the name of any person where the Council has—

- (a) in terms of subsection (1) directed the erasure of the name; or
- (b) in terms of subparagraph (i) of paragraph (a) of subsection (1) of section *thirty* directed the cancellation of the registration of the person concerned.

(3) A certificate of registration issued to a person whose name has been erased from the Register in terms of this section shall be deemed to have been cancelled on the date of the erasure and the person concerned shall be deemed not to be registered with effect from that date.

### **27 Restoration to Register**

Where the name of a person has been erased from the in terms of section *twenty-six*, the Council may, if it thinks Register fit, authorize the restoration to the Register of the name of such person if representations are made by the person concerned after the expiration of such period as the Council may determine in that particular case.

### **28 Appeals against refusal to register or erasure from Register**

- (1) A person, other than a person referred to in subsection (1) of section *thirty-three*, who is aggrieved by—
- (a) the refusal of the Council to register him or to register him temporarily in terms of section *twenty-five*; or
  - (b) the erasure of his name from the Register;

may, after notice to the Council and within thirty days after the date on which notice is given to him by the Registrar of such refusal or erasure, appeal to the High Court in such manner as may be prescribed by rules of the court made in terms of the High Court Act [*Chapter 7:06*] for bringing a decision of any tribunal under review by the High Court.

- (2) On an appeal in terms of subsection (1) the High Court may—
- (a) dismiss the appeal; or
  - (b) allow the appeal and give such direction in the matter as it thinks the Council ought to have given and such direction shall be deemed to be the direction of the Council; or
  - (c) remit the matter to the Council for further consideration;

and may make such other order as to costs or otherwise as may to it seem just.

## **PART IV**

### **DISCIPLINARY AND OTHER INQUIRIES**

### **29 Inquiries by Council**

- (1) Subject to the provisions of this section, the Council may hold inquiries into an allegation—

- (a) that a registered quantity surveyor—
  - (i) has been guilty of improper, disgraceful or unprofessional conduct; or
  - (ii) is grossly incompetent or has performed any act pertaining to his profession in a grossly incompetent manner;
- (b) referred to in section *thirty-two*.

(2) Before exercising its powers referred to in subsection (1) the Council shall cause to be sent to the person concerned at his address as shown in the Register a registered letter containing a notice setting out the allegations against him and the Council shall afford the person concerned a reasonable opportunity of being heard, either in person, or, if he so wishes, by a legal representative:

Provided that, where the person concerned is by reason of mental disorder or defect legally incapable of representing himself, the Council may apply to the of Zimbabwe for the appointment of a curator *ad litem* and the notice setting out the allegations shall be sent to such curator.

(3) The powers, rights and privileges of the Council in an inquiry referred to in subsection (1) shall be the same as those conferred upon a commissioner by the Commissions of Inquiry Act [*10:07*], other than the power to order a person to be detained in custody, and sections 9 to 13 and 15 and 16 of that Act shall apply, *mutatis mutandis*, in relation to an inquiry and to a person summoned to give evidence or giving evidence at an inquiry.

(4) For the purposes of any inquiry in terms of subsection (1) the Council may appoint any person to advise the Council at such inquiry on matters pertaining to law, procedure or evidence.

### **30 Exercise of powers by Council after inquiry**

- (1) At the conclusion of an inquiry held in terms of section *twenty-nine* the Council may—
- (a) in the case of an allegation referred to in paragraph (a) of subsection (1) of that section, if the Council decides that the registered quantity surveyor has been guilty of improper, disgraceful or unprofessional conduct or is grossly incompetent or has performed any act pertaining to his profession in a grossly incompetent manner, do one or more of the following—
    - (i) direct the Registrar to cancel the registration of the registered person;
    - (ii) order the suspension of the registered person for a specified period from performing the work of a quantity surveyor;
    - (iii) impose such conditions as it deems fit subject to which the registered person shall be entitled to carry on performing the work of a quantity surveyor;
    - (iv) order the registered person to pay a penalty not exceeding an amount equivalent to a fine of level six, which penalty shall be payable to the Council;

[Paragraph amended by section 4 of Act 22 of 2001]

- (v) order the registered person to pay any costs or expenses of, and incidental to, the inquiry;
- (vi) censure the registered person;
- (vii) caution the registered person and postpone for a period not exceeding three years any further action against him on such conditions, if any, as the Council may deem fit to impose as to his future conduct, including the conduct or nature of his practice during that period;

(b) in the case of an allegation referred to in paragraph (b) of subsection (1) of that section, do one or more of the things referred to in paragraph (a) and subsections (2) and (3) shall apply, *mutatis mutandis*.

(2) If at any time the Council is satisfied that a registered person has not complied with the conditions imposed in terms of subparagraph (iii) or (vii) of subsection (1) the Council, after giving reasonable notice to the registered person concerned and affording him a reasonable opportunity of being heard either in person or, if he so wishes, by a legal representative, may decide further to do one or more of the things specified in paragraph (a) of subsection (1).

(3) A person who has been suspended in terms of subparagraph (ii) of paragraph (a) of subsection (1) shall be disqualified from performing the work of a quantity surveyor and his registration shall be deemed to be cancelled until the period of suspension has expired.

### **31 Exercise of disciplinary powers on conviction for offence: court to forward evidence**

(1) A registered person who has been convicted within or outside Zimbabwe, whether before, on or after the date of his registration, of an offence by a court of law shall be liable to be dealt with by the Council in accordance with the provisions of this Part if the Council is of the opinion that such offence constitutes improper, disgraceful or unprofessional conduct.

(2) The Council may, if it thinks fit on proof before it of a conviction referred to in subsection (1) and without hearing further evidence, deal with the convicted person in accordance with the provisions of this Part:

Provided that the convicted person shall be afforded an opportunity of tendering in writing or in person or by his legal representative, as he may elect, an explanation to the Council in extenuation of his conduct.

(3) Subject to the Courts and Adjudicating Authorities (Publicity Restriction) Act [*Chapter 7:04*], if, after the termination of proceedings before a court of law in Zimbabwe—

- (a) it appears to the court that there is *prima facie* evidence of improper, disgraceful or unprofessional conduct on the part of a registered person, the court shall direct that a copy of the record of such proceedings as is material to the issue shall be transmitted to the Council; or
- (b) the Council requests that a record of the proceedings before a court of law in Zimbabwe or part of such record be supplied to it on the grounds that it is of direct interest to the Council in the exercise of its functions under this Act, the registrar or clerk of the court shall transmit to the Council a copy of the record of the proceedings or a copy of such part of the proceedings as is material.

### **32 Registered persons becoming unfit to practise**

Whenever there is brought to the notice of the Council an allegation that a registered person has become mentally or physically disabled to such an extent that it would be contrary to the public welfare to allow him to continue to practise, the Council shall have the power to call for information, to cause such investigation to be made as it thinks necessary and to seek such legal advice or other assistance as it may require and thereafter sections *twenty-nine* and *thirty* shall apply, *mutatis mutandis*.

### **33 Appeals to High Court**

(1) Any person who is aggrieved at the findings of, or penalty imposed by, the Council under this Part may, within thirty days after the date of such findings or the imposition of such penalty, appeal to the High Court in such manner as may be prescribed by rules of court made in terms of the High Court Act [*Chapter 7:06*] for bringing a decision of any tribunal under review by the High Court.

(2) On an appeal in terms of subsection (1) the High Court may—

- (a) confirm, vary or set aside any findings or penalty of the Council; or
- (b) remit the matter to the Council for further consideration;

and make such other order as to costs or otherwise as may to it seem just:

Provided that the High Court shall not set aside any finding or penalty by reason of any informality in the proceedings of the Council which did not embarrass or prejudice the appellant in answering the charge or in the conduct of his defence.

(3) For the purpose of any appeal in terms of this section, the court may, if it thinks expedient so to do, call in the aid of one or more assessors who are specially qualified and hear the appeal wholly or partly with their assistance but the decision of the court in such an appeal shall be made or given by the judge or judges alone.

(4) The remuneration, if any, to be paid to an assessor called in terms of subsection (3) shall be determined by the court.

### **34 Publication of result of disciplinary proceedings**

(1) The Registrar shall, if so directed by the Council, cause to be printed and published in the *Gazette* the name of any person—

- (a) whose registration has been cancelled; or
- (b) who has been suspended from practice;

in terms of this Part.

(2) A notice published in terms of subsection (1) shall be *prima facie* evidence in all legal proceedings that—

- (a) the registration of the person specified in that notice has been cancelled; or
- (b) the person so specified in that notice has been suspended from practice for the period specified in that notice;

as the case may be.

### **35 Improper or disgraceful conduct**

(1) The Council may, in by-laws made in terms of subsection (4) of section *thirty-nine*—

- (a) define what in the case of a quantity surveyor shall constitute improper, disgraceful or unprofessional conduct;
- (b) provide for the manner in which complaints or charges against a registered person may be lodged;
- (c) provide for any other matters incidental to the investigation of, and inquiry into, a complaint against a registered person.

(2) Notwithstanding anything to the contrary contained in this Act, by-laws referred to in paragraph (a) of subsection (1) may define that—

- (a) any sharing of or agreement to share fees payable in respect of the work of a quantity surveyor;
- (b) any partnership relating to the work of a quantity surveyor between a registered person and a person who is not a registered person or a member of a class of persons specified for the purposes of this provision;

shall constitute improper or disgraceful conduct.

(3) If any registered person has counselled or knowingly been a party to the performance of any act in respect of which an unregistered person has been convicted of an offence under Part V, the conduct of such registered person shall, for the purpose of this Part, constitute improper, disgraceful or unprofessional conduct:

Provided that the provisions of this subsection shall not be construed as exempting such registered person from prosecution in a court of law for any offence which such conduct may constitute.

(4) The by-laws referred to in subsection (1) shall not be deemed to limit the general power conferred on the Council to inquire into allegations of improper, disgraceful or unprofessional conduct not covered by such by-laws and to impose any penalty under this Part on any person guilty of such conduct.

## **PART V**

### **GENERAL**

### **36 Publication of names of members**

On the appointment or election of a member the Registrar shall cause to be published in the *Gazette* notice of such appointment or election showing the date from which the appointment or election took effect and the period for which the member has been appointed or elected, as the case may be.

### **37 Offences by unregistered or registered persons**

(1) Subject to section *thirty-eight*, a person who is not a registered quantity surveyor shall not, after expiration of three months from the fixed date—

- (a) perform the work of a quantity surveyor for gain; or
- (b) practise or carry on business under any name, style or title which contains the words “quantity surveyor”; or
- (c) use, 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 is a registered quantity surveyor; or
- (d) pretend to be or by any means whatsoever hold himself out to be a registered quantity surveyor.

(2) A registered quantity surveyor shall not knowingly employ or engage in any capacity whatsoever any person who was registered and—

- (a) whose registration has been cancelled and who has not been restored to the Register; 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.

(3) No person shall use or issue for the purpose of calling for tenders or for negotiating a building or civil engineering contract, bills of quantities which have not been prepared by a registered quantity surveyor without the written approval of the Council.

(4) Any person who contravenes subsection (1), (2) or (3) shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

(5) A conviction for an offence in terms of subsection (4) shall not be a bar to a further prosecution or prosecutions for continuance of the offence.

(6) For the purposes of paragraph (a) of subsection (1) a person shall be deemed to be performing the work of a quantity surveyor for gain, if and only if, he or a partnership of which he is a member or an employee of his or of the partnership—

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

(7) In subsection (6)—

“employee”, in relation to a company, includes a director.

### 38 Exemptions

(1) Notwithstanding anything to the contrary contained in section *thirty-seven*, it shall be lawful for—

- (a) a person in the bona fide employment of a registered quantity surveyor to perform the work of a quantity surveyor under the direction and control of such registered quantity surveyor;
- (b) a body corporate, firm or partnership which carries on a business which involves the performance of the work of a quantity surveyor to perform the work of a quantity surveyor or to describe or hold itself out to be a quantity surveyor if—
  - (i) the business of the body corporate, firm or partnership so far as it relates to the work of a quantity surveyor is under the direct control and management of a principal who is a registered quantity surveyor and who does not act at the same time in a similar capacity for any other body corporate, firm or partnership; and
  - (ii) in every premises where any business referred to in subparagraph (1) is carried on and is not personally conducted by the said principal, such business is being conducted under the direction of the said principal by an assistant who is a registered quantity surveyor;
- (c) a person in the *bona fide* employment of a body corporate, firm or partnership referred to in paragraph (b) to perform the work of a quantity surveyor under the direction and control of a principal or assistant referred to in paragraph (b);
- (d) a duly registered corporate member of the Zimbabwean Institution of Engineers or a registered estate agent or any person in *bona fide* employment of such a member or estate agent to carry out the functions that are customarily performed by such a member in the normal course of the conduct of his profession as such.

(2) This Act shall not apply to any person in the full-time employment of—

- (a) the State; or
- (b) a municipal council, town council or local board established in terms of the Urban Councils Act [*Chapter 29:15*]; or
- (c) a rural district council established in terms of the Rural District Councils Act [*Chapter 29:13*];

in relation to his duties as such an employee.

### 39 Regulatory powers

(1) The Minister, after consultation with the Council, may make regulations providing for anything which under this Act is required or permitted to be prescribed by the Minister or which in the opinion of the Minister is necessary or convenient to be provided for carrying out or giving effect to this Act.

(2) The Minister after consultation with the Council may, at any time by a statutory instrument, amend the Second Schedule by the insertion of an additional class or classes of Persons.

(3) The Council may make by-laws prescribing all matters which by this Act are required or permitted to be prescribed by the Council or which in the opinion of the Council are necessary or convenient to be prescribed for the purpose of carrying out the functions or exercising the powers of the Council.

(4) By-laws made in terms of subsection (3) may provide for—

- (a) the fees which shall be payable—
  - (i) for registration in the Register or Temporary Register;
  - (ii) as annual fees by persons so long as they remain registered and the date on which such fees shall become due and payable;

- (iii) for restoration to the Register;
- (iv) for the issue of duplicate certificates of registration or certified extracts from the Register or other certificates issued by the Registrar;
- (b) the certificates to be kept, maintained or issued under this Act and the manner in which alterations thereto may be effected;
- (c) the minimum fees which shall be chargeable by a registered quantity surveyor for his professional services.

(5) By-laws made in terms of subsection (3) shall not have effect until they have been approved by the Minister and published in a statutory instrument.

#### **40 Council not to be liable**

(1) Save as is provided in this Act, no legal proceedings, whether civil or criminal, shall lie against the Council or any member or alternate member or any employee of the Council in respect of any act or duty performed in accordance with Part III or Part IV.

(2) The Council shall not be responsible for any loss of earnings by a person as a result of action taken under Part IV by the Council.

#### **41 Recovery by Council of costs or penalty**

The Council may, by action in a competent court, recover any annual fee payable by a person who is or was registered and any costs or penalty ordered in terms of Part IV to be paid by a person who is or was registered.

#### **42 Burden of proof**

In any criminal proceedings against any person for an offence in terms of section *thirty-seven* the person charged shall be deemed not to be registered, temporarily registered or exempted unless he proves the contrary.

### **FIRST SCHEDULE (Section 5 (2))**

#### POWERS OF COUNCIL

1. (a) To fix the terms and conditions of employment of the Registrar and other employees of the Council, including provisions relating to remuneration and allowances, leave of absence, the granting of bonuses, gratuities and pensions and the discharge or suspension of employees.
- (b) To authorize the Registrar, after consultation with the chairman or vice-chairman of the Council, to appoint on behalf of the Council temporary employees at such remuneration as he may consider appropriate and to discharge such employees.
2. To acquire or hire such movable or immovable property as the Council may consider necessary for the effective performance of its functions.
3. To borrow, raise or secure the payment of money, with or without security, as the Council thinks fit, and to guarantee or become liable for the payment of money or for the performance of an obligation.
4. To enter into contracts and to decide the manner in which contracts shall be entered into on behalf of the Council.
5. To invest the funds of the Council which are not immediately required with any bank or other financial institution registered in terms of the Banking Act [*Chapter 24:20*] or any building society registered in terms of the Building Societies Act [*Chapter 24:02*] or the Post Office Savings Bank of Zimbabwe.  
[Paragraph amended by section 82 of Act 9 of 1999]
6. To take any steps which the Council considers expedient—
  - (a) for the protection of the public in dealing with quantity surveyors;
  - (b) for the maintenance of the integrity and the enhancement of the status and the improvement of the standards of professional qualifications of quantity surveyors.
7. To encourage research into matters relating to the profession of quantity surveying.
8. To give advice and render assistance, including financial assistance, to any educational institution, institute of quantity surveyors or examining body in regard to the educational facilities for, and the training and education of, persons intending to become quantity surveyors.
9. To finance, print, circulate, administer the publication of, or take any other steps necessary in connection with, any publication relating to the profession of quantity surveying and cognate matters.

### **SECOND SCHEDULE (Section 17)**

#### PERSONS QUALIFIED FOR REGISTRATION

1. A person who—
  - (a) is of or over the age of twenty-one years; and
  - (b) is ordinarily resident in Zimbabwe; and

- (c) has passed an examination prescribed by the Council or any examination recognized by the Council as being equivalent to one so prescribed; and
  - (d) has for such period as is prescribed by the Council performed—
    - (i) the work of a quantity surveyor under the direction and control of, and in the same office as, a registered quantity surveyor or a person who, immediately before the fixed date, was a duly registered member of the Zimbabwe Institute of Quantity Surveyors; or
    - (ii) 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.
2. A person who—
- (a) is ordinarily resident in Zimbabwe; and
  - (b) immediately before the fixed date was a duly registered member of the Zimbabwe Institute of Quantity Surveyors.
3. A person who, although not resident in Zimbabwe, was for the whole of the period of six months immediately preceding the fixed date a *bona fide* partner of a person who—
- (a) was ordinarily resident in Zimbabwe; and
  - (b) was a duly registered member of the Zimbabwe Institute of Quantity Surveyors.