

CONSTRUCTION PROFESSIONALS (REGISTRATION AND REGULATION) BILL, 2022

(Bill No. 18 of 2022)

EXPLANATORY STATEMENT

The object of this Bill is to establish the “Seychelles Council of Registered Professionals in Construction”, which will, amongst other things —

- (a) maintain a register of persons and businesses that can provide architectural services, engineering services, quantity surveying services, building surveying services and other related services in Seychelles;
- (b) regulate the qualifications and practice of Construction Professionals;
- (c) impose disciplinary measures and penalties on Construction Professionals found guilty of negligence or other malpractices. The Council will have the power to immediately suspend or prohibit a Construction Professional from providing services to the public where it is necessary for safeguarding of life, public health or property;
- (d) require that Construction Professionals are covered by indemnity insurance to cover any loss or damage to the equipment needed to complete the provision of services offered to the public; cover any accidental death, dismemberment or permanent disability resulting bodily injury incurred in connection with the provision of the services.

The Government is acutely aware of the threats to the public from the provision of engineering services, architectural services, quantity and building surveying services and other related services by unqualified or incompetent persons. Poor or deficient services may result in threats to public health, damage to property and threats to public and occupational safety. Unqualified persons providing construction services will only contribute to increased construction costs, delays and additional costs to the public in the form of

building rectification and repairs, and as such, there is a need to ensure that only suitably qualified persons provide these services so as to improve the public confidence in the construction industry.

Under this Bill, Construction Professionals are classified into 4 classes, namely: professional members; graduate members; associate members; and corporate members. The Professional Members will be considered experts in the specified construction-related discipline. The Graduate Members and Associate Members can only provide construction-related services under the employment and supervision or control of a registered Professional Member.

Moreover, the Corporate Members will include any firm, company, body, group, partnership or juridical person that provides construction services. Corporate membership will only be granted if at least 1 of the directors, managers, partner, employee or persons in control of the firm of construction professionals is registered as a Professional Member. Further, a Corporate Member will only be allowed to provide construction services that professional members of the company or partnership is authorized to provide by the Council. Finally, where a Corporate Member is suspended or removed from the register of Construction Professionals, the Professional Member will be suspended or have his or her name removed from the register but the Corporate Member will be responsible any financial penalty imposed by the Council.

The Minister is given, amongst other things, powers to regulate all matters in relation to project managers and architectural draughtspersons or technicians.

Finally, before a person can be registered as a construction professional, that person will need to comply with the requirements under the immigration laws if the person is not a citizen of Seychelles.

Dated this 25th day of August, 2022.

**BILLY RANGASAMY
MINISTER**

**CONSTRUCTION PROFESSIONALS (REGISTRATION AND
REGULATION) BILL, 2022**

(Bill No. 18 of 2022)

ARRANGEMENT OF SECTIONS

**PART 1
PRELIMINARY**

SECTIONS

1. Short title and commencement
2. Interpretation
3. Application of this Act

PART 2

SEYCHELLES COUNCIL OF REGISTERED PROFESSIONALS IN CONSTRUCTION

4. Establishment of Council
5. Tenure of members of the Council
6. Disqualifications for membership of the Council
7. Meeting of the Council
8. Registrar and other staff
9. Functions of the Council
10. Interim Council
11. Committees of the Council

PART 3

REGISTRATION AND CLASSIFICATION OF CONSTRUCTION PROFESSIONALS

12. Register of Construction Professionals
13. Application for registration
14. Categories of Construction Professionals
15. Classification of Construction Professionals
16. Registration as a professional member
17. Registration as a graduate member
18. Registration as an associate member
19. Registration as a corporate member
20. Registration of persons who lack qualifications as a professional member
21. Acknowledgment of receipt of an application

22. Provisional registration as a graduate member or an associate member
23. Additional qualifications
24. Correction of register
25. Redress for reject applicants
26. Certificate of registration
27. Certificate of registration and valid licence as prerequisite to practise

PART 4

RIGHTS AND PRIVILEGES OF CONSTRUCTION PROFESSIONALS

28. Illegal practice
29. Employment of unregistered construction professionals
30. Entitlement to recover fees
31. Minor construction services

PART 5

DISCIPLINE

32. Professional misconduct
33. Professional indemnity insurance
34. Proof of insurance
35. Complaints of professional misconduct
36. Disciplinary Committee
37. Disciplinary Powers of the Council
38. Order of the Council
39. Power to order immediate suspension
40. Removal of name from register
41. Restoration of name to the register
42. Appeal of Orders

PART 6

APPEALS

43. Establishment of Appeals Board
44. Grounds of appeal
45. Powers of the Appeals Board

PART 7

GENERAL PROVISIONS

46. General offences
47. Funds and resources of the Council

48. Accounts of the Council
49. Protection of action taken in good faith
50. Law inconsistent with this Act
51. Powers to make Regulations
52. Transitional provision

CONSTRUCTION PROFESSIONALS (REGISTRATION AND REGULATION) BILL, 2022

(Bill No. 18 of 2022)



A BILL FOR

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF THE SEYCHELLES COUNCIL OF REGISTERED PROFESSIONALS IN CONSTRUCTION; TO PROVIDE FOR THE REGISTRATION OF CONSTRUCTION PROFESSIONALS; TO REGULATE THE QUALIFICATION AND CONDUCT OF PERSONS WHO CARRY OUT CONSTRUCTION RELATED SERVICES; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

ENACTED by the President and the National Assembly.

PART 1 PRELIMINARY

Short title and commencement

1.(1) This Act may be cited as the Construction Professionals (Registration and Regulation) Act, 2022.

(2) This Act comes into operation on such date as the Minister may, by notice published in the Gazette, appoint.

Interpretation

2.(1) In this Act, unless the context otherwise requires —

“Appeals Board” means the Appeals Board established under section 43;

“architect” means a person who sells or supplies for gain or reward any architectural plan, drawing, tracing or any similar item for use in the construction, enlargement or alteration of any building or part thereof, but does not include an architectural draughtsperson or technician and such other persons that the Minister may specify by notice published in the Gazette;

“associate member” means a person registered as an associate member under section 18;

“building maintenance” means work undertaken to provide a report, an opinion or an assessment of work needed in order to keep, restore or improve a facility or a part of a building, its service and surroundings to an acceptable standard and to sustain the utility and value of the facility and includes inspection, testing, servicing, classification to serviceability, repair, refurbishment, rebuilding, rehabilitation, reclamation, preparation of maintenance schedules, planning, budgeting and management of maintenance works;

“building surveying services” means the range of services in the construction industry which comprises, amongst other thing, providing reports, opinions or assessments about a design, building work, building maintenance or a building through investigation, consultation and evaluation;

“certificate of registration” means a valid certificate of registration issued under section 26 to a registered construction professional;

“construction professional” means a person or a firm of construction professionals who is registered or eligible to be registered in the register under this Act;

“construction service” means the giving of an undertaking, with or without consideration, to engage in or perform a professional service or work

of an architect, an engineer, a surveyor or any other profession regulated under this Act;

“corporate member” means a firm of constructional professionals registered as a construction profession under section 19;

“Council” means the Seychelles Council of Registered Professionals in Construction established under section 4 and includes any committee established by the Council;

“Disciplinary Committee” means the committee established under section 36;

“engineer” means a person providing any professional service, consultation, investigation, evaluation, planning, design in connection with any public or privately owned utilities, buildings, machines, equipment, processes, works or projects wherein public interest and welfare, or the safeguarding of life, public health or property is concerned or involved, and that requires the application of engineering principles and data in any of the following branches of engineering —

- (a) civil engineering;
- (b) mechanical engineering;
- (c) structural engineering;
- (d) such other branches of engineering as may be prescribed by the Minister;

“Fair Trading Commission” means the Fair Trading Commission established under the Fair Trading Act, 2022;

“firm of construction professionals” means any company, commercial partnership or other juridical person that provides construction services;

“graduate member” means a person registered as a graduate member under section 17;

“Insurance” or “professional indemnity insurance” means the insurance that is required under section 33;

“Interim Council” means the Interim Council established under section 10;

“licence” means a valid licence issued to a construction professional in accordance with the Licences Act, Cap. 113, or any other written law;

“Licensing Authority” means the Authority established under the Licences Act;

“Minister” means the Minister responsible for infrastructure development;

“Planning Authority” means the Planning Authority established under the Physical Planning Act, 2021;

“professional member” means a person registered as a professional member under section 16;

“professional misconduct” has the same definition assigned to it under section 32;

“quantity surveying services” means the range of services in the construction industry consisting of, amongst other thing, financial viability analyses, estimates of construction costs, cost planning, cost control, cost management, value management, advice on procurement methods, preparation of bidding documents, bid evaluations, interim valuations, final account settlements, claims formulation and assessment, contractual advice, replacement cost for the purposes of insurance, mediation, arbitration or adjudication;

“Registrar” means the Registrar of the Seychelles Council of Registered Professionals in Construction appointed under section 8;

“register” means the Construction Professionals Register established under section 12;

“Seychelles Qualification Authority” means the Authority established under the Seychelles Qualifications Authority Act, 2021;

“**surveyor**” means a person who offers either —

- (a) quantity surveying services;
- (b) building surveying services.

Application of this Act

3. This Act shall apply to all construction professionals in Seychelles.

PART 2

SEYCHELLES COUNCIL OF REGISTERED PROFESSIONALS IN CONSTRUCTION

Establishment of Council

4.(1) There is established a Council, to be known as the “Seychelles Council of Registered Professionals in Construction”, which shall be a body corporate and discharge the responsibilities assigned to the Council under this Act.

(2) Subject to subsection (3), the Council shall comprise —

- (a) 1 representative of the Planning Authority; and
- (b) 6 registered professional members —
 - (i) to be elected by registered construction professionals; or
 - (ii) failing such election, to be appointed by the Minister under subsection (5).

(3) The Council shall not comprise more than 2 professional members from the same construction-related discipline, to be members of the Council at the same time.

(4) The Chairperson of the Council shall be elected by its members.

(5) If elections held for the purposes of subsection 2(b)(i) result in less than 6 professional members being elected as members of the Council

thereunder, the Minister may appoint such number, as the Minister thinks fit, of professional members, except that the number of professional members so appointed and the number of members elected under subsection 2(b)(i) shall not exceed 6 in the aggregate.

Tenure of members of the Council

5.(1) A member of the Council shall hold office for 4 years and shall be eligible for reappointment.

(2) Any vacancy in the membership of the Council shall be filled by a member, who shall be elected or appointed in accordance with section 4(2)(b), and that member shall hold the office for the remainder of the period of the vacancy.

(3) A member, other than the Chairperson, may at any time resign from office by notice addressed to the Minister and transmitted through the Chairperson.

(4) The Chairperson may at any time resign his office by notice addressed to the Minister.

(5) The Council may remove from office any member of the Council who fails, without good and justifiable reasons, to attend 3 consecutive meetings of the Council of which the member had notice or where a member becomes in any manner disqualified for office within the meaning of section 6.

Disqualifications for membership of the Council

6. A person shall not be qualified to be a member of the Council if that person is —

- (a) neither a citizen nor a permanent resident of Seychelles;
- (b) not registered as a construction professional;
- (c) declared bankrupted by the court;
- (d) convicted of any offence involving fraud, dishonesty or of

any other offence implying a defect in character which makes the person unfit to be a member of the Council;

- (e) interdicted in accordance with the Civil Code of Seychelles Act, 2020, or declared by a court to be physically or mentally incapacitated by reason of unsoundness of mind; or
- (f) found by the Disciplinary Committee to have committed professional misconduct.

Meeting of the Council

7.(1) The Council shall hold meetings at such places and times as may be necessary or expedient for the purpose of fulfilling its functions and such meetings shall take place not less than 4 times in each calendar year.

(2) A quorum of any meeting of the Council shall be 5 members.

(3) The decisions of the Council shall be by a majority of votes and in addition to the original vote, the Chairperson, or any member presiding at a meeting, shall have a second and casting vote in any case in which the voting is equal.

(4) Subject to this Act, the Council may regulate its own proceedings.

(5) The Chairperson shall give each member reasonable notice of a meeting of the Council, stating therein the agenda for the meeting.

Registrar and other staff

8.(1) The Council shall appoint a Registrar who shall hold office for a period of 4 years and shall perform the functions assigned to the Registrar under this Act.

(2) The Registrar shall provide the Council with such other staff and services and other facilities as are necessary or expedient for the performance of the functions of the Council.

Functions of the Council

9. (1) In addition to any other functions conferred on the Council under this Act or any other written law, the functions of the Council shall be to —

- (a) keep and maintain every register established under section 12;
- (b) assess the qualifications and experience of an applicant for registration as a construction professional;
- (c) assess and place applicants in categories or classes based on their qualifications and experience;
- (d) conduct or arrange for the conduct of an examination or interview, where appropriate, for the purpose of assessing the professional ability of any person applying for registration as a construction professional;
- (e) register construction professionals and to issue certificates of registration;
- (f) regulate the activities of construction professionals and may set class or grade limits of projects to be undertaken by construction professionals;
- (g) safeguard against illegal, improper or unethical construction-related practices, and to develop a Code of Conduct for construction professionals;
- (h) exercise disciplinary control over construction professionals by the appointment of a disciplinary committee;
- (i) facilitate the mutual recognition of the qualifications and standards regarding the practice of construction-related services with other countries;
- (j) advise the Minister on proposed amendments to this Act and carry out such other functions as the Minister may direct; and

- (k) generally undertake all acts, matters and things that are necessary to be carried out under this Act and ensure the efficiency of the Council.
- (2) The Seychelles Qualification Authority may —
 - (a) advise the Council regarding qualifications of an applicant;
 - (b) assist the Council with establishing standards for the different applicants; and
 - (c) assist the Council in devising examinations for registration and continuing education programmes for applicants.

Interim Council

10.(1) Pending the election of the first Council under this Act, the duties and functions of the Council shall be carried out by an Interim Council appointed by the Minister in accordance with the Act.

- (2) The Interim Council shall comprise —
 - (a) 1 representative of the Planning Authority;
 - (b) 6 persons who are eligible to be registered as professional members.

(3) The tenure of the Interim Council shall end within 18 months from the date of appointment.

(4) The members of the Interim Council constituted under this section shall vacate office in favour of the Council elected or appointed under section 4 on the last day of the month in which the election of the members of the Council is held.

(5) Nothing in this section prevents a member of the Interim Council from being elected or appointed under section 4.

Committees of the Council

11. The Council may

- (a) appoint committees comprising members of the Council and construction professionals for the purpose of carrying out the functions of the Council;
- (b) delegate to the committees any functions as it considers necessary.

PART 3

REGISTRATION AND CLASSIFICATION OF CONSTRUCTION PROFESSIONALS

Register of Construction Professionals

12.(1) The Council shall cause the Registrar to keep a register, to be known as “the Construction Professionals Register”, which shall contain the following particulars of each person registered under this Act —

- (a) the name of the person;
- (b) address and contact information of the person;
- (c) the date of registration in the register;
- (d) duration of registration;
- (e) the registration number;
- (f) the construction service that the person can provide;
- (g) the class, category or grade of the person in the construction service;
- (h) the qualifications of the person;
- (i) in case of a corporate member —
 - (i) the name of the director, manager or partners of the corporate member; and
 - (ii) the name of the professional member employed by the corporate member;
- (j) such other particulars as the Council may consider necessary.

(2) The register shall be in the custody and under the control of the Registrar and shall be kept in any form at the office of the Council or any other place that the Council may direct.

(3) The Registrar shall keep a separate register of professional members who are deemed by the Council to be a specialist in any particular construction-related discipline and the details of the speciality shall be recorded in the register.

(4) The registers shall be open to inspection by any member of the public at the office of the Registrar during working hours.

Application for registration

13.(1) A person wishing to be registered in the register shall make an application for registration to the Council in such manner or form as may be prescribed.

(2) An application under subsection (1) shall be accompanied by the prescribed fee.

(3) A person making an application under subsection (1) shall —

- (a) agree to have the Council conduct a background check on the person's qualifications and professional experience;
- (b) agree to attend an interview with the Council to determine the competence of the person, if necessary;
- (c) comply with the requirements under the immigration laws if the person is not a citizen of Seychelles; and
- (d) any other such information or direction that the Council may prescribe.

Categories of Construction Professionals

14.(1) A person may be registered as a construction professional providing construction services as —

- (a) an architect;

- (b) an engineer; or
- (c) a surveyor.

(2) The Minister may by order, published in the Gazette, add or remove a construction-related discipline set out in subsection (1).

Classification of Construction Professionals

15. A person may be registered in the register under the following classes of construction professionals —

- (a) a professional member;
- (b) a graduate member;
- (c) an associate member;
- (d) a corporate member; or
- (e) any other class as determined by the Minister, in consultation with the Council, by Order published in the Gazette.

Registration as a professional member

16.(1) A person shall be eligible for registration as a 'Professional Member' if that person —

- (a) has a graduate degree from a recognized university in the construction-related discipline and at least 2 years proven work experience in a specified construction service; or
- (b) has an undergraduate degree from a recognized university in the construction-related discipline and at least 4 years proven relevant work experience in a specified construction service; or
- (c) passed an examination set by the Council or recognized by the Council as an equivalent examination set by another authority and the person has demonstrated to the satisfaction of the Council that the person is proficient in a specified

construction service and has at least 10 years working experience in the specified construction service.

(2) A person registered as a professional member is deemed to be an expert in the specified construction-related discipline but the work that the professional member can undertake may be limited by the grade of construction service that the person can provide, or such other conditions imposed by the Council.

(3) The Council may recognize as a specialty in a specified construction-related discipline any qualifications or distinction awarded to a person registered as a professional member.

Registration as a graduate member

17.(1) A person shall be eligible for registration as a 'Graduate Member' if that person —

- (a) is the holder of a graduate degree from a recognized university in a construction-related discipline;
- (b) does not have the practical experience that may qualify the person to be registered as a professional member; and
- (c) has complied with any requirement as may be specified by the Council.

(2) A person registered under this section shall be entitled to practice in a specified construction service under the employment, supervision and control of a registered professional member, the Government or public body until the graduate member is registered a professional member.

(3) A graduate member may be eligible to register as a professional member on completion of a period of 2 years under the employment, supervision and control of a professional member, the Government or a public body, but the Council may extend the period of supervision.

Registration as an associate member

18.(1) A person shall be eligible for registration as an 'Associate Member' if that person —

- (a) has an undergraduate degree from a recognized university in the construction-related discipline and less than 4 years proven relevant work experience in a specified construction service; or
- (b) has a diploma or an associate degree (or equivalent) from a recognized institution in the construction-related discipline and less than 7 years proven relevant work experience in a specified construction service; or
- (c) passed an examination set by the Council or recognized by the Council as an equivalent examination set by another authority and the person has demonstrated to the satisfaction of the Council that the person is proficient in the construction-related discipline and less than 10 years working experience in a specified construction service.

(2) A person registered under this section shall be entitled to practice in a specified construction service under the employment, supervision and control of a registered professional member, the Government or a public authority until the associate member is registered a professional member.

Registration as a corporate member

19.(1) No firm of construction professionals shall provide construction services in Seychelles unless the firm of construction professionals is registered as a “Corporate Member” and employs a professional member.

(2) A firm of construction professionals is eligible for registration as a corporate member if at least 1 of the directors, managers, partners, employees or persons in control of the firm of construction professionals is registered as a professional member.

(3) A firm of construction professionals shall only provide construction services that any professional member specified in subsection (2) is authorized to provide pursuant to this Act.

(4) The Registrar shall register the name of any professional member specified in subsection (2) next to the name of the corporate member and the

professional member shall acknowledge in writing the liabilities that may be imposed on that professional member under section 37(3) or 39(4) if the firm of construction professionals is found to have committed a professional misconduct.

(5) Where a professional member specified in subsection (4) is no longer employed by the corporate member, the professional member shall immediately request that the Registrar removes the name of the professional member that was inserted next to the name of the corporate member in the register.

Registration of persons who lack qualifications as a professional member

20.(1) Notwithstanding any provision under this Act, any person who does not possess the qualifications required under section 16, but who on an application made to the Council within 1 year of the commencement of this Act, satisfies the Council that —

- (a) the person has had, before the commencement of this Act, at least 10 years' experience in the practice of construction services; and
- (b) the person is a fit and proper person to be registered as a professional member,

is entitled to be registered as a professional member.

(2) In determining whether a person satisfies the requirements in subsection (1), the Council may conduct an investigation relating to the experience of that person as a construction professional, as it considers necessary and may require that person to undergo an examination.

Acknowledgment of receipt of an application

21.(1) The Council shall acknowledge the receipt of an application for registration as a construction professional as soon as possible and in any case not later than 30 working days from the date of the receipt of the application and if the applicant does not submit all the documentation, the Council shall inform the applicant accordingly.

(2) The Council shall give its reasoned decision in relation to an application for registration as a construction professional within 90 working days after the date on which the complete application is received, but the Council may extend this period by 30 working days, provided that the applicant is notified prior to the expiration of the original period established in this subsection.

(3) In the event that the Council does not give its decision within the period established in subsection (2), this shall not imply tacit approval of the application.

(4) The acknowledgement referred to in subsection (1) shall specify —

- (a) the time period within which the application shall be processed;
- (b) the available means of redress for an applicant whose application was rejected; and
- (c) a statement that in the absence of a response within the specified time period, the approval shall not be deemed to have been granted.

Provisional registration as a graduate member or as associate member

22.(1) Notwithstanding section 21, the Council may on the application of a Seychellois, who is enrolled in the final year of that person's studies at a recognized institution but who has not obtained an academic degree or a diploma (or equivalent) from that recognized institution, cause the Seychellois to be registered in a register to be known as the “provisional registration register” for a period not exceeding 6 months.

(2) Sections 26 and 27 shall apply *mutatis mutandis* in respect of a registration under this section.

Additional qualifications

23. Every person registered under this Act who, subsequent to that person's registration, obtains any qualification or other designation relevant to that person's practice as a member, shall be entitled, on payment of the

prescribed fee, to have such qualification or other designation inserted in the register in substitution for or in addition to those previously entered.

Correction of register

24. It shall be the duty of the Registrar to —

- (a) remove from the register any entry which the Council directs the Registrar to remove;
- (b) restore to the register any entry which the Council directs the Registrar to restore;
- (c) correct any entry, omission, misdescription or error in the register which the Council directs the Registrar to correct;
- (d) remove from the register, with the approval of the Council, the name of any person who has died or who has for a period of at least one year ceased to be resident in Seychelles or who, in accordance with this Act, ceases to be a registered member.

Redress for reject applicants

25. An applicant aggrieved by the refusal of the Council to register the applicant as a construction professional may within 3 months of such refusal, appeal to the Appeals Board.

Certificate of registration

26.(1) Where the requirements for registration have been satisfied, the Council shall on receipt of the prescribed fee from the applicant, issue to the applicant a certificate of registration.

(2) A certificate of registration is valid for 12 months and shall be in such form as the Council may determine.

(3) A certificate of registration may be subject to such conditions as the Council may determine.

(4) A certified copy of a certificate of registration made by the Registrar shall be prima facie evidence that the person, to whom the certificate relates, is a registered construction professional.

(5) A letter signed by the Registrar stating that a person is not a registered construction professional, shall be prima facie evidence of that fact.

(6) The holder of a certificate of registration shall display it in a prominent position at the holder's office.

(7) Where a certificate of registration has been lost, destroyed or damaged, it may be replaced by the Council by the issue of a copy thereof on the application of the holder thereof, and on the payment of the prescribed fee.

(8) Where the Council refuses an application for registration as a registered construction professional, the Council shall provide reasons for such refusal.

Certificate of registration and valid licence as prerequisite to practice

27.(1) Save where this Act otherwise provides, a person shall not engage in any construction services in Seychelles unless that person possesses both a certificate of registration and a licence at the date of commencing construction services.

(2) A person who engages in any construction services in contravention of subsection (1) commits an offence.

(3) A licence shall be obtained from the Licensing Authority in accordance with the Licences Act or any other written law.

(4) Notwithstanding subsection (1), a registered professional member, graduate member or associate member who —

(a) is a public officer; or

(b) is employed by a corporate member,

is not required to obtain a licence to engage in construction services provided by the Government or corporate member, as the case may be.

(5) For the avoidance of doubt —

- (a) a corporate member shall obtain a licence to engage in construction services;
- (b) a registered construction professional, employed under a contract of employment by a registered professional member who owns a business other than a firm of construction professionals, is not required to obtain a licence.

(6) For the purposes of enforcing compliance under this Act, the Council and the Licensing Authority shall share information on all construction professionals who have obtained a licence or a certificate of registration in accordance with this Act.

PART 4

RIGHTS AND PRIVILEGES OF CONSTRUCTION PROFESSIONALS

Illegal practice

28.(1) Subject to this Act, a person shall not, in Seychelles, —

- (a) draw or prepare any architectural plan, drawing, tracing, design, specification or other document intended to govern the construction, enlargement or alteration of any building or part of a building;
- (b) engage in any of the prescribed branches of engineering work, or draw or prepare any plan, sketch, drawing, design, specification or other document relating to any of the prescribed branches of engineering work; or
- (c) supply or provide prescribed survey services, unless the person has a certificate of registration.

(2) Any document that is signed in contravention of subsection (2) shall be invalid.

(3) Subject to this Act, no person shall —

- (a) use or cause or permit to be used any written words, titles or

initials or any abbreviation thereof, such as “engineer”, “Er.”, “Engr.”, “architect”, or “surveyor”, which are be intended to cause or may reasonably cause any person to believe that the person using them is authorized to supply construction services in Seychelles; or

- (b) advertise or conduct one's self in any way or by any means as a person authorized to supply construction services in Seychelles, unless at the time of so doing the person is a professional member.

(4) A graduate member may use the words “graduate engineer”, “graduate architect”, “graduate surveyor” or similar title or description that does not mislead in believing that the graduate member is a professional member.

(5) An associate member may use the words “associate engineer”, “associate architect”, “associate surveyor” or similar title or description that does not mislead in believing that the associate member is a professional member.

(6) A registered graduate member or register associate member who possesses a licence shall perform construction services under the employment, authority, direction, supervision and control of a registered professional member.

(7) A person who contravenes this section shall be liable on conviction to a fine of level 1 on the standard scale and if the person is a repeat offender, to a fine of level 2 on the standard scale or to imprisonment for a term not exceeding 1 year or to both such fine and imprisonment.

Employment of unregistered construction professionals

29.(1) Subject to this Act, a person shall not employ as a construction professional, —

- (a) in case of a corporate member or a professional member, a construction professional who does not possess a certificate of registration;

- (b) in case of any other person, a construction professional who does not possess both a certificate of registration and a valid licence.

(2) A person who contravenes this section shall be liable on conviction to fine of level 2 on the standard scale unless the person can prove that the person had a reasonable cause to believe that the person employed as a construction professional was compliant with section 27.

Entitlement to recover fees

30.(1) Notwithstanding any other law, a construction professional who breaches section 27 is not entitled to recover in any proceedings any fee, charge, gratuity, remuneration or other reward under an agreement for construction services.

(2) A person, who has made any payment to a construction professional who was not compliant with section 27 at the time of carrying out construction services, may recover the payment in a court of competent jurisdiction if the person did not know or had reason to believe, when making payment, that the construction professional breached section 27.

(3) Nothing in subsection (1) shall prevent any a person from taking action mentioned in that subsection in respect of anything lawfully done while such person was compliant with section 27.

Minor construction services

31. Nothing in this Act shall be construed to prohibit or prevent any person not registered under this Act from carrying out work in respect of the construction of or repairs to any building or part thereof in any case which plans are not required by any written law to be submitted to the Planning Authority.

PART 5 DISCIPLINE

Professional misconduct

32.(1) For the purposes of this Act, “professional misconduct” means, in relation to a construction professional, —

- (a) negligence;
- (b) failure to make reasonable provisions for the safeguarding of life, health or property of a person who may be affected by the construction service or any work for which the construction professional is responsible;
- (c) failure to correct or report a situation that the construction professional believes may endanger the safety or welfare of the public;
- (d) failure to make responsible provision for complying with applicable laws, standards and codes in connection with construction services or any work being undertaken by or under the construction professional;
- (e) undertaking construction services or any work which the construction professional is not competent to perform by virtue of the construction professional's training or expertise;
- (f) conduct or an act relevant to the practice of construction professionals which, having regard to the circumstances, would reasonably be regarded by the profession as disgraceful, dishonourable or unprofessional;
- (g) failure to abide by the terms or conditions of the certificate of registration issued to the construction professional;
- (h) permitting, counselling or assisting a person who is not registered under this Act to engage in the practice of construction services except as provided for in this Act;
- (i) procuring registration by a statement which is false in a material particular;
- (j) the repeated performance of defective construction services to which adequate checks have not been applied;
- (k) making any report in connection with the performance of construction services containing any information which the

construction professional knows to be erroneous in any material particular; or

- (l) unjustified refusal to remunerate the services of any person contracted by the construction professional to carry out work on that professional member's behalf;
- (m) failure to maintain full professional indemnity insurance as specified in section 33 or to provide information in relation to the professional indemnity insurance as specified under section 34.

(2) In this section, “negligence” means an act or omission in the carrying out of construction services which constitutes a failure to maintain the standards which a reasonable and prudent construction professional would maintain in the circumstances.

Professional indemnity insurance

33.(1) The Minister may by Order published in the Gazette direct that a class, category or grade of registered construction professional shall maintain full professional indemnity insurance at all times during which the construction professional holds a licence to practise.

- (2) The professional indemnity insurance policy shall cover —
 - (a) loss or damage to the construction professional's equipment employed in the provision of the construction services;
 - (b) civil liability for damage caused to third parties arising out of the provision of the construction services;
 - (c) accidental death, dismemberment or permanent disability resulting from bodily injury incurred in connection with the provision of the construction services; and
 - (d) any other matter specified in the Order under subsection (1).
- (3) The Council, on the approval of the Minister responsible for

finance, may establish, administer, maintain or operate a professional insurance liability scheme for construction professionals for the purpose of subsection (2) and in respect of such scheme may —

- (a) determine classes of membership for insurance;
- (b) determine the insurance fee or contribution for members in each class;
- (c) determine the deductibles that apply in certain circumstances;
- (d) provide for payment of insurance fees by instalment or in advance; and
- (e) provide for specific types or values of transaction which require additional insurance fees or contributions to be paid.

Proof of insurance

34. The Council may at any time require a registered construction professional who holds a licence to practise to provide proof of —

- (a) the professional indemnity insurance;
- (b) the current status of the insurance policy including, proof of regular and up to date payment of premiums in respect of the insurance policy.

Complaints of professional misconduct

35.(1) A complaint that a construction professional has committed professional misconduct may be made to the Council by any person in such form as the Council may determine.

(2) If the Council is of the opinion that any complaint so made might, if established, call for the exercise of any of a disciplinary powers conferred by section 37, the Council shall appoint a disciplinary committee and shall refer the complaint to it.

Disciplinary Committee

36.(1) A Disciplinary Committee shall comprise 3 or more professional members who shall be appointed by the Council.

(2) In the conduct of the hearing of any complaint, the Disciplinary Committee shall commence a formal inquiry into any complaint and may require any person —

- (a) to attend at a specified time and place and give evidence before the Disciplinary Committee; and
- (b) to produce all books, documents and papers in the custody of such person or under the person's control which may be related to or be connected with the subject-matter of the formal inquiry.

(3) The Disciplinary Committee —

- (a) shall not be bound by the Evidence Act, Cap. 74, or by any other written law relating to evidence;
- (b) may administer an oath or affirmation to any person giving evidence before it; and
- (c) may regulate its own procedure for a formal inquiry.

(4) On an application made by the Disciplinary Committee to the Registrar of the Supreme, the Registrar of the Supreme Court may issue a summons for a person to appear before the Disciplinary Committee to give evidence where the person has failed to appear before the Disciplinary Committee on a previous occasion after given notice to do so.

(5) A Disciplinary Committee shall complete its inquiry not later than 6 months from the date of its appointment, unless the Council, on application of the Disciplinary Committee, allows otherwise.

(6) The decision of the Disciplinary Committee shall be by a majority of votes and shall be submitted in writing to the Council.

Disciplinary Powers of the Council

37.1) On the hearing of a complaint, the Disciplinary Committee shall make its recommendations to the Council and the Council may either dismiss the complaint or make such order of a disciplinary nature as it thinks fit, and such order may, in particular, provide for any of the following matters in relation to the person complained against, that is to say —

- (a) removal of the construction professional's name from the register;
- (b) suspension of the construction professional's registration for a period not exceeding one year;
- (c) payment, by the construction professional, of a penalty to the council not exceeding SCR 100, 000;
- (d) payment, by the construction professional, of costs or of such sum as the Council may consider to be reasonable contribution towards the costs incurred in connection with the hearing.

(2) Any payment ordered to be made by any person under paragraph (c) or (d) of subsection (1) may be enforced by the Council by ordering the construction professional's registration to be suspended until payment is made.

(3) Notwithstanding any written law, where an order under subsection (1)(a) or (b) is made against a corporate member, the Disciplinary Committee shall order that —

- (a) the name of the professional member identified under section 19 be removed from the register;
- (b) the professional member identified under section 19 be suspended.

Order of the Council

38.(1) Every order made by the Council under section 37 shall be prefaced by a statement of the Disciplinary Committee's findings on the

facts of the case and shall be signed by the Chairperson of the Disciplinary Committee.

(2) Every such order shall be filed with the Registrar and shall take effect where —

- (a) no appeal under section 44 is brought against the order within the time limited for the appeal;
- (b) an appeal is brought and is withdrawn or struck out, on the withdrawal or striking out of the appeal;
- (c) an appeal is brought and is not withdrawn or struck out, if and when the appeal is dismissed and not otherwise.

(3) The Registrar shall cause a note of the effect of every order filed with the Registrar pursuant to subsection (2) to be entered in the register against the name of the person to whom the order relates and, except in the case of an order making provision only for costs, shall forthwith on the taking effect of the order cause a notice stating the effect of the order to be published in the Gazette.

Power to order immediate suspension

39.(1) Notwithstanding section 38(2), the Council may make an order for removal or an order for suspension in respect of any construction profession if the Council is satisfied that to do so is necessary for the protection of members of the public or would be in the best interest of the construction professional.

(2) Where an order under subsection (1) is made in respect of a construction professional, the construction professional's registration shall be suspended or removed forthwith when the order is made.

(3) In this section “order for removal” means an order under section 37(1)(a) for the removal of a construction professional's name from the register and “order for suspension” means an order under that section 37(1)(b) for the suspension of a person's registration in the register.

(4) Notwithstanding any written law, where an order for removal or an order for suspension is made against a corporate member, the

professional member identified under section 19 shall be suspended or the name of that professional member shall be removed from the register, as the case maybe.

Removal of name from register

40.(1) The Registrar shall remove particulars of a construction professional from the register on the —

- (a) application of the construction professional; or
- (b) taking effect of an order of the Council under section 39(2) or (4), in relation to that construction professional:

Provided that where a complaint has been made against any construction professional under section 35(1) the person's name shall not be removed under paragraph (b) of this subsection until the complaint, or any appeal in relation thereto, has been finally disposed of under this Act.

(2) Where the name of any construction professional has been removed from the register or the construction professional's registration has been suspended, any certificate of registration or licence issued to the construction professional shall cease to have effect for as long as that construction professional's name remain off the register or, as the case may be, suspension continues in force.

(3) The Registrar shall cause the name of any construction professional whose name has been removed from the register or who has been suspended to be published in the Gazette.

(4) Where the name of any construction professional has been removed from the register, the Council shall, in writing, require that construction professional to return to the Registrar any certificate of registration issued to the person.

(5) Any person who fails without reasonable excuse to return the certificate of registration issued to the person, as required by subsection (4), commits an offence and is liable to pay to the Council a fine of SCR 1, 000 and to a further fine of SCR 50 for each day during which the offence continues.

Restoration of name to the register

41.(1) The Council may at any time, on application being made by a construction professional whose name has been removed from the register or whose registration has been suspended determine if the Council thinks fit, that such person's name shall be restored to the register or, as the case may be, that the person's suspension shall cease with effect from such date as the Council may appoint shall forthwith give notice of any such determination to the Registrar.

(2) On receipt of the notice of a determination made by the Council under subsection (1) in relation to any person, the Registrar shall forthwith cause the name of that person to be restored to the register or, as the case may be, cause a note of the cessation of the suspension to be entered therein, and in either such case —

- (a) shall cause notice of the determination of the Council to be published in Gazette; and
- (b) shall cause the certificate of registration returned under section 40(3) to be reissued to that person.

Appeal of Orders

42. Any person dissatisfied with any order or decision of the Council, made under this Part, shall first appeal to the Appeals Board within 3 months from the date of receipt of the order or decision.

PART 6 APPEALS

Establishment of Appeals Board

43.(1) There is established an Appeals Board appointed by the Minister.

(2) Subject to subsection (3), the Appeals Board shall comprise a representative of —

- (a) the Attorney General;
- (b) the Fair Trading Commission;

- (c) a non-governmental organization that represents the interests of the private sector.

(3) Where a representative of the Fair Trading Commission or non-governmental organization is unavailable to sit on the Appeals Board for any reason, the representative may be substituted by an additional representative of the Attorney General or by such other suitable person that the Minister may appoint.

(4) A decision of a majority of the members of the Appeals Board is the decision of the Appeals Board.

- (5) The Appeals Board shall regulate its own proceedings.

Grounds of appeal

44.(1) A person directly affected by a decision of the Council, including a decision in relation to an application for registration or a decision of the Council based on a report made by a committee, may within 3 months of such decision, appeal the decision to the Appeals Board on the following grounds that —

- (a) the Council failed to comply with the provisions of this Act or any regulations or rules made under this Act and that the failure amounted to a significant breach of such procedures;
- (b) the decision of the Council is based on information that is substantially incorrect or is of insufficient weight to support the decision; or
- (c) the decision of the Council is arbitrary or unreasonable, or inconsistent with or unsupported by the policies of the Council.

Powers of the Appeals Board

45.(1) At the hearing of an appeal, the Appeals Board may —

- (a) confirm the decision of the Council;
- (b) set aside the decision of the Council; or

- (c) set aside the decision of the Council and substitute any other decision that the Council has authority to take as the Appeals Board specifies.

(2) At the hearing of an appeal, the Appeal Board may seek the opinion of an expert in any relevant construction-relation discipline.

PART 7 GENERAL PROVISIONS

General offences

46. A person who —

- (a) fraudulently makes, causes or permits to be made, any false or incorrect entry in the register or any copy of it;
- (b) fraudulently procures or attempts to procure the entry on the register of any name or other particulars whether on the person's own behalf or on behalf of any other person;
- (c) fraudulently procures or attempts to procure a certificate of registration or a licence;
- (d) knowingly being unqualified to conduct any construction services;
- (e) knowingly makes any statement which is false in a material particular or misleading, with a view to gaining any advantage under this Act;
- (f) forges or submits any document purporting to be an academic qualification;
- (g) impersonates any person registered under this Act;
- (h) refuses or fails without good excuse to appear, having been duly summoned to appear, at a hearing of the Disciplinary Committee;
- (i) obstructs or hinders a member of the Council or a Committee of the Council in the exercise of the person's

powers or the performance of the person's functions under this Act,

commits an offence and is liable on conviction to a fine of level 4 on the standard scale.

Funds and resources of the Council

47.(1) The funds and resources of the Council shall consist of —

- (a) monies received by the Council in connection with the performance of its functions;
- (b) special grants or other funds as may from time to time be provided by the government or any other entity or agency, whether national or international;
- (c) such amounts as may be appropriated by the National Assembly; and
- (d) all other property and assets duly acquired by the Council.

(2) The funds of the Council shall be applied in defraying the following expenditure —

- (a) the emoluments, remuneration, fees or allowances of the Council, staff of the Council, members of committees and the Appeals Board established by the Council;
- (b) the capital and operating expenses, including maintenance and insurance, of the property of the Council;
- (c) the making and maintenance of investments of the Council; and
- (d) any other expenditure authorised by the Council in the discharge of its functions.

Accounts of the Council

48.(1) The Council shall keep proper accounts and records of the funds of the Council and shall prepare for each financial year a statement of accounts.

(2) The accounts of the Council shall be audited annually by the Auditor General or by an auditor authorised by the Auditor General.

(3) As soon as the accounts and statements of accounts of the Council have been audited under subsection (2), the Council shall send to the Minister a copy of the statement of accounts together with a copy of any report made by the auditor on the statement or on the accounts of the Council.

Protection of action taken in good faith

49. A member of the Council, the Registrar or any person acting under the authority of the Council under this Act shall not be liable to any loss, damage, claim or be subjected to any legal action for any function performed in good faith.

Law inconsistent with this Act

50. Where any provision of any law is in conflict or inconsistent with any provision of this Act, the provision of this Act shall prevail.

Powers to make Regulations

51. The Minister may, in consultation with the Council, make regulations —

- (a) prescribing the form of and the method of keeping the Construction Professional Register;
- (b) prescribing the particulars which the Construction Professional Register shall contain;
- (c) prescribing the form of any application, certificate of registration or other document required for the purposes of this Act;
- (d) prescribing the form of any application, certificate of registration or other document required for the purposes of this Act;
- (e) prescribing the fees payable in respect of the registration of applicants, the issue, renewal and replacement of

certificates of registration, and any alterations or additions to the Construction Professional Register;

- (f) regulating any matters in relation to the grade, class or category of construction professional;
- (g) regulating the proceedings of the Council and any other matter necessary for the efficient discharge of its functions;
- (h) for establishing criteria for the registration of the construction professionals;
- (i) prescribing general standards of conduct for construction professionals;
- (j) regulating all matters in relation to architectural draughtsperson or technician;
- (k) regulating all matters in relation to project managers;
- (l) for any other matter for the better carrying out of the purposes of this Act which may be or is required to be prescribed under this Act.

Transitional provision

52. A person who is practising as a construction professional in Seychelles may continue to do so, without being registered or without holding a certificate of registration or licence issued under this Act —

- (a) for a period of 10 months from the date of commencement of this Act; and
- (b) if before the expiration of the period specified in paragraph (a) the person applies for registration under this Act, until the person is registered and a certificate of registration, as the case may be, is issued or until such application is refused or withdrawn.