

THE QUANTITY SURVEYORS BILL, 2012

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THE QUANTITY SURVEYORS BILL, 2012

A Bill for

An Act of Parliament to provide for the registration of quantity surveyors and for connected purposes

ENACTED by the Parliament of Kenya, as follows-

PART I – PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Quantity Surveyors Act, 2012 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint.

Interpretation.

2. In this Act, unless the context otherwise requires, -
“Accredited” means accredited by the Board

“Approved” means approved by the Board

“Board” means the Quantity Surveyors Registration Board established by section 3;

“Chairperson” means the Chairperson of the Board elected under section 7;

“Minister” means the Minister for the time being responsible for matters relating to public works.

“Prescribed” means prescribed by the Board

“Voluntary association” means any legal voluntary association recognized by the Board.

PART II - ESTABLISHMENT OF THE QUANTITY SURVEYORS REGISTRATION BOARD

Establishment of the Board.

3. (1) There is hereby established a Board to be known as the Quantity Surveyors Registration Board.

(2) The Board shall be a body corporate with perpetual

succession and a common seal and shall, in its corporate name, be capable of-

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing money or making investments;
- (d) charging fees for services rendered by it and requesting for securities for such fees; and
- (e) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

Headquarters.

4. The headquarters of the Board shall be in Nairobi or at such other place as the Board may decide.

Functions of the Board.

5. The functions of the Board shall be to-

- (a) advise the Government on and support such measures as may be necessary for the practise of quantity surveying;
- (b) to register quantity surveyors in accordance with the provisions of this Act;
- (c) to keep a register of persons registered as Consulting Quantity Surveying firms, Consulting Quantity Surveyors, Quantity Surveyors and Assistant Quantity Surveyors to practice as quantity surveyors under this Act;
- (d) consider any matter relating to the practice of quantity surveying as may specifically be referred to it by the Government and recommend such action as may be deemed expedient;
- (e) to hear and determine complaints against

registered quantity surveyors;

- (f) formulate, vary and carry into effect a scheme and curriculum for education in quantity surveying;
- (g) from time to time define and modify what constitutes quantity surveying services and remuneration thereof;
- (h) regulate the practice of quantity surveying including developing, administering, and accrediting quantity surveying continuous professional development;
- (i) publish and disseminate materials produced in connection with its works and activities;
- (j) represent quantity surveyors in regional, national and international issues relating to registration and the practice of quantity surveyors;
- (k) assess, approve or reject quantity surveying qualifications of foreign persons with regards to offering quantity surveying professional services in Kenya;
- (l) accredit and approve programs in universities and other tertiary level educational institutions offering education in quantity surveying acceptable for registration;
- (m) implement the provisions of this Act and regulations made there under.

Powers of the Board.

6. The Board shall have all powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the Board shall have power to –

- (a) control, supervise and administer the assets of the Board in such manner as best promotes the

purpose for which the Board is established;

- (b) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Board;
- (c) receive any grants, gifts, donations or endowments and make legitimate disbursements there from;
- (d) open such banking accounts for its funds as may be necessary;
- (e) invest any funds of the Board not immediately required for its purposes in the manner provided in section 19;
- (f) undertake any activity necessary for the fulfillment of any of its functions.

Composition of the Board.

7. (1) The Board shall consist of -

- (a) four persons appointed by the Minister who shall include:
 - (i) the Chief Quantity Surveyor in the Ministry for the time being responsible for matters related to Public works;
 - (ii) a nominee of a public corporation dealing with quantity surveying matters;
 - (iii) a nominee of a university in Kenya offering an academic program in quantity surveying accredited by the Board.
- (b) four persons nominated by the Institute of Quantity Surveyors of Kenya in accordance with the Institute's constitution and appointed by the Minister.
- (c) the Chief Executive Officer who shall be an ex-

officio member and Secretary to the Board.

(2) No person shall be appointed under subsection 7(1) unless such person is a registered quantity surveyor.

(3) In making the nominations referred to in paragraphs 1 (a), and (b), each nominating body shall ensure that at least one of its nominee is a person of the opposite gender.

(4) A chairperson shall be elected as per the first schedule and shall have a minimum of 10 years post-registration experience.

Conduct of business and affairs of the Board.

8. (1) The conduct and regulation of the business and affairs of the Board shall be as provided in the First Schedule.

(2) Except as provided in the First Schedule, the Board shall regulate its own procedure.

Remuneration of Board members.

9. The Board shall pay its members such remuneration, fees or allowances for expenses as it may determine in consultation with the Minister for the time being responsible for matters relating to finance.

Chief Executive Officer

10. (1) There shall be Chief Executive Officer who shall be appointed by the Board and whose terms and conditions of service shall be determined by the Board in the instrument of appointment or otherwise in writing from time to time.

(2) No person shall be appointed under this section unless such person-

(a) has a university degree in quantity surveying from an accredited university;

(b) has at least five years' post registration working experience.

(3) The Chief Executive Officer shall-

(a) be the secretary to the Board; and

(b) subject to the directions of the Board, be

responsible for the day to day management of the affairs and staff of the Board

Staff of the Board.

11 The Board may appoint such officers and other staff as are necessary for the proper discharge of its functions under this Act, upon such terms and conditions of service as it may determine.

Delegation by the Board.

12. The Board may, by resolution either generally or in any particular case, delegate to any committee or to any member, officer, employee or agent of the Board, the exercise of any of the powers or the performance of any of the functions or duties of the Board under this Act or under any other written law.

Protection from personal liability.

13. (1) No act or omission by any member of the Board or by any officer, employee, agent or servant of the Board shall, if the act or omission was done bona-fide for the purposes of executing a function, power or duty under the Act render such member, officer, employee, agent or servant personally liable for any action, claim or demand whatsoever.

(2) The provisions of subsection (1) shall not relieve the Board of the liability to pay compensation to any person for any injury to him, his property or to any of his interests caused by the exercise of any power conferred by this Act or by failure, whether wholly or partially, of any works.

Common seal.

14. (1) The common seal of the Board shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board.

(2) The affixing of the common seal of the Board shall be authenticated by the signature of the Chairperson and the Chief Executive Officer and any document not required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of both the Chairperson and the Chief Executive Officer.

(3) Notwithstanding the provisions of subparagraph (2) the Board shall, in the absence of either the Chairperson or the Chief Executive Officer in a particular matter, nominate one member to authenticate the seal on behalf of either the Chairperson or the Chief Executive Officer.

(4) The common seal of the Board when affixed to a document and duly authenticated shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorization by the Board under this section shall be presumed to have been duly given.

PART III - FINANCIAL PROVISIONS

Funds of the Board.

15. (1) The funds of the Board shall comprise of –

- (a) such sums as may be granted to the Board by the Minister pursuant to subsection (2);
- (b) such fees, monies or assets as may accrue to or vest in the Board in the course of the exercise of its powers or the performance of its functions under this Act or under any written law; and
- (c) all monies from any other source provided for or donated or lent to the Board.

(2) There shall be made to the Board, out of monies provided by Parliament for that purpose, grants towards the expenditure incurred by the Board in the exercise of its powers or the performance of its functions under this Act.

Financial year.

16. The financial year of the Board shall be the period of twelve months ending on the thirtieth day of June in each year.

Annual estimates.

17. (1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Board for that year.

(2) The annual estimates shall make provision for all estimated expenditure of the Board for the financial year and in particular, the estimates shall provide for –

- (a) the payment of the salaries, allowances and other charges in respect of members and staff of the Board;
- (b) the payment of pensions, gratuities and other charges in respect of members and staff of the Board;

- (c) the proper maintenance of the buildings and grounds of the Board;
- (d) the payments for maintenance, repair and replacement of the equipment and other property of the Board; and
- (e) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Board may deem appropriate.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Minister for approval and after the Minister's approval, the Board shall not increase the annual estimates without the consent of the Minister.

Accounts and audit.

18. (1) The Board shall cause to be kept all proper books and records of accounts of the income, expenditure and assets of the Board.

(2) Within a period of four months from the end of each financial year, the Board shall submit to the Auditor-General or to an auditor appointed under this section, the accounts of the Board together with-

- (a) a statement of the income and expenditure of the Board during that year; and
- (b) a balance sheet of the Board on the last day of that year.

(3) The accounts of the Board shall be audited and reported upon in accordance with the Public Audit Act, 2003.

No.12 of 2003

Investment of funds.

19. The Board may invest any of its funds in securities, in which for the time being trustees may by law invest trust funds, or in any other securities or banks which the Treasury may, from time to time, approve for that purpose.

PART IV - REGISTRATION OF QUANTITY SURVEYORS

Categories of registration

20. (1) The categories in which a person may register in the quantity surveying profession are-

- (a) Consulting Quantity Surveyor
- (b) Quantity Surveyor
- (c) Assistant Quantity Surveyor
- (d) Consulting Quantity Surveying firms
- (e) Specified categories prescribed by the board.

(2) A person may not practice in any of the categories in subsection (1) unless he or she is registered in that category.

(3) A person who is registered in the category of Assistant Quantity Surveyor must perform work in the quantity surveying profession only under the supervision and control of a Consulting Quantity Surveyor.

Qualifications for registration as a consulting quantity surveyor

21. No person shall be registered as a consulting quantity surveyor unless such person-

- (a) Has been a registered quantity surveyor for a minimum period of five years; and
- (b) has demonstrated his or her competence as measured against standards determined by the Board of registration; and
- (c) has applied in the prescribed application form to the Board of registration in a category referred to in section 20(1); and
- (d) has paid the prescribed registration fee which shall not be refundable; and
- (e) is a fellow or corporate member of the Institute of Quantity Surveyors of Kenya.

Qualifications for registration as a quantity surveyor.

22. No person shall be registered as a quantity surveyor unless such person-

- (a) has attained the age of twenty-one years; and
- (b) has demonstrated his or her competence as measured against standards determined by the Board of registration; and
- (c) has passed examinations of a university offering educational programs in quantity surveying and accredited by the Board followed by at least twenty four months of practical experience as an Assistant Quantity Surveyor to the satisfaction of the Board, and has passed a prescribed examination; and
- (d) has had a minimum of one year of professional experience in Kenya to the satisfaction of the Board or has satisfied the Board that he has otherwise acquired an adequate knowledge of Kenya building contract procedures; and
- (e) has applied in the prescribed application form to the Board of registration in a category referred to in section 20(1); and
- (f) has paid the prescribed registration fee which shall not be refundable; and
- (g) is a fellow or corporate member of the Institute of Quantity Surveyors of Kenya.

Qualifications for registration as an assistant quantity surveyor.

23. No person shall be registered as an assistant quantity surveyor unless such person-

- (a) has attained the age of twenty-one years; and
- (b) has demonstrated his or her competence as measured against standards determined by the Board of registration; and
- (c) has passed examinations of a university offering educational programs in quantity surveying and accredited by the Board; and

- (d) is currently engaged under pupilage to gain the mandatory practical experience to the satisfaction of the Board; and
- (e) has applied in the prescribed application form to the Board of registration in a category referred to in section 20(1); and
- (f) has paid the prescribed registration fee which shall not be refundable; and
- (g) is a graduate member of the Institute of Quantity Surveyors of Kenya.

Qualifications for registration as a consulting quantity surveying firm.

24. (1) No firm shall be registered as a consulting quantity surveying firm unless such a firm has:-

- (a) submitted a registration certificate of business name or Certificate of Incorporation of the Firm
- (b) at least one partner/director registered as Consulting Quantity Surveyor
- (c) provided company profile of activities
- (d) provided curriculum vitae of partners/directors
- (e) given consent that the Board may visit to verify availability of equipment/facilities and staff for carrying out consulting works
- (f) has paid the prescribed registration fee which shall not be refundable.

(2) Every consulting quantity surveying firm with more than fifty per centum of its shares held by Kenyan citizens shall upon making application be considered for registration as local Consulting Quantity Surveying Firm.

(3) A consulting quantity surveying firm with more than fifty per centum of its shares belonging to non-citizens shall upon making application be considered for temporary registration as

foreign Consulting Quantity Surveying Firm.

(4) A multi-disciplinary professional practice, that also practices quantity surveying, shall be controlled by a registered member of closely allied built environment professionals, and the quantity surveying division/section shall be under the fulltime supervision of a Consulting Quantity Surveyor.

(5) The Board may require the applicant to furnish such further information or evidence of eligibility for registration as it may deem fit and may require the principal of the firm to attend personally before the Board.

(6) The decision of the Board upon an application shall be final and shall be communicated to the applicant by the Registrar using the address on the application form within fourteen working days from the date of the Board's decision.

Temporary
registration

25. (1) A person or body of persons shall be issued with a temporary registration as Quantity Surveyor or Consulting Quantity Surveyor or Consulting Quantity Surveying firm if the Board is satisfied that such person or body of persons;

(a) is not ordinarily resident in Kenya;

(b) intends to be present in Kenya in the capacity of a Quantity Surveyor or Consulting Quantity Surveyor or Consulting Quantity Surveying firm for the express purpose of carrying out specific work for which he has been engaged;

(c) is, or immediately before entering Kenya was in practice as a Quantity Surveyor or Consulting Quantity Surveyor or Consulting Quantity Surveying firm in such capacity as to satisfy the Board; and

(d) is a fellow member, a corporate member or a consulting firm member of the Institute of Quantity Surveyors of Kenya.

(2) The Board may, if it thinks fit, direct that such person

shall be registered for a period not exceeding one year and renewable every year at the discretion of the Board.

(3) An application for registration under this section shall be in the prescribed form and accompanied by the prescribed fee which is not refundable.

(4) The Board may require an applicant to appear before it for considering his application and shall require every applicant to produce documentary evidence of his work or employment immediately prior to his entering Kenya.

(5) Registration of a person or body of persons under this section shall continue only for the period or for the duration of the work specified by the Board.

(6) A person registered under this section shall, in relation to the period or the duration of work specified and to things done or omitted in respect thereof, be treated as registered under this Act but in relation to other matters shall be treated as not so registered.

(7) Any person or firm to be registered under this section must possess qualifications specified in this Act.

Qualifying
examination.

26. The prescribed examinations referred to in section 22 of this Act may be conducted either by the Board or by such other authority as the Board with the approval of the Minister may select

Certificate of
Registration

27. (1) Upon the completion of the entry of the name of a person or firm in the register a certificate of registration shall be passed under the seal of the Board and such certificate (which shall nevertheless remain the property of the Board) shall be issued to the registered person or firm.

(2) The Board may issue other identification documents valid for a specified period and such documents shall remain the property of the Board.

(3) Where the Chief Executive Officer is satisfied that a certificate of registration or any other document identification has been lost, mutilated or destroyed he may, upon payment of a fee

set by the Board from time to time, furnish a duplicate of the certificate or any other identification document to the person to whom the original certificate or identification document were issued.

Annual Practicing
License

28. (1) Every person or firm who has been registered under this Act as a Consulting Quantity Surveyor or Consulting Quantity Surveying firm require, in addition to such registration, an annual practicing license;

(2) Application for an annual practice license shall be in a prescribed form, and subject to payment of a fee prescribed by the Board in consultation with the Minister.

(3) Every annual practicing license shall bear the date on which it is issued and shall be effective from that date, and shall expire at the end of the license year in which it is issued. Provided that where the name of a Consulting Quantity Surveyor or a Consulting Quantity Surveying firm is removed from the register, the annual practicing license of that person shall expire forthwith.

(4) The license year shall be from the 1st January to the 31st December in each year.

(5) The Chief Executive Officer shall enter on the register the date of issue of every annual practicing license.

Refusal of
registration

29. (1) Despite the provisions of sections 21, 22, 23, 24 and 25, the Board of registration may refuse to register an applicant –

(a) if the applicant has been removed from an office of trust on account of improper conduct;

(b) if the applicant has been convicted of an offence in the Republic of Kenya and was sentenced to imprisonment without an option of a fine, or, in the case of fraud to a fine or imprisonment or both;

(c) if the applicant has been convicted of an offence in a foreign country and was sentenced to imprisonment without an option of a fine, or, in the

case of fraud to a fine or imprisonment or both;

- (d) if the applicant is declared by the High court to be of unsound mind or mentally disordered;
- (e) for as long as an applicant is disqualified from registration as a result of any punishment imposed on her or him under this act;
- (f) if an applicant is declared bankrupt as a result of his or her negligence or incompetence in performing work falling within the scope of the category in respect of which he or she is applying for registration.

(2) For purposes of subsection (1) (b) and (c) of this section, the Board must take cognizance of the prevailing circumstances in the country relating to a conviction.

(3) The Board must provide the applicant with a notice of the refusal referred to in subsection (1) within 90 days of the application for registration.

Scheme and curriculum for education in quantity surveying.

30. Subject to the approval of the Minister, the Board may, from time to time, formulate, vary and carry into effect a scheme and curriculum for education in quantity surveying, and for this purpose the Board may-

- (a) appoint committees as may from time to time be thought expedient;
- (b) apply its funds in making provision for-
 - (i) furthering and developing any such scheme and curriculum;
 - (ii) the teaching and holding of examinations
 - (iii) the awarding of certificates, diplomas and prizes;
- (c) require candidates for admission to final

examination for the purpose of registration to have passed through a course of study under and in accordance with any such scheme and curriculum (including articulated pupilage for a period not exceeding five years) and to have passed such examination or examinations in relation to the subjects comprised in that course of study as shall from time to time be prescribed.

- (d) conduct program accreditation visits to educational institutions which have a department, school or faculty of quantity surveying;
- (e) either conditionally or unconditionally grant, refuse or withdraw accreditation of quantity surveying programs in any educational institution;
- (f) consult with educational institutions regarding matters relevant to education in quantity surveying;
- (g) establish mechanisms for registered persons to gain recognition of their qualifications and professional status in other countries;
- (h) enter into an agreement with any person or body of persons, within or outside Kenya, with regard to the recognition of any examination or qualification for purposes of this Act;
- (i) determine, after consultation with the voluntary associations and registered persons, conditions relating to the nature and extent of continuing education and training.

Register of persons
and firms .

31. (1) The Chief Executive Officer shall keep and maintain a register in which the name of every person and firm, being suitably qualified under this Act, shall be entered as soon as is practicable after he is accepted by the Board for registration, showing against his name such particulars as the Board may from time to time direct.

(2) All changes in the particulars registered under subsection (1) of this section shall be entered in the register by the

Chief Executive Officer as soon as is practicable after he has received notification thereof.

(3) The Board shall from time to time publish all entries and suspensions or deletions from the register in the Gazette and in such other manner as it may deem fit.

(4) The Chief Executive Officer may supply a copy of any entry in the register upon payment of such fee as the Board may prescribe.

Power to remove
from and correct
register.

32. (1) The Board may, at any time, direct that the name of a person be removed from the register where such person:-

- (a) has failed within a period of six months from the date of inquiry sent by the Chief Executive Officer, by prepaid registered letter to the address appearing in the register against his name, to notify the Chief Executive Officer of his address; or
- (b) has ceased to be a Member of the Institute of Quantity Surveyors of Kenya; or
- (c) has requested that his name be removed from the register, in which case such person may be required to satisfy the Board by affidavit lodged with the Chief Executive Officer that no criminal proceedings under this Act are being or are likely to be taken against him; or
- (d) has been found by the Board to be guilty of such professional misconduct as described under section 39 of this Act; or
- (e) has not satisfied the requirements of Continuous Professional Development as prescribed by the Board; or
- (f) has failed to pay the prescribed annual fee or to renew the annual practice license, within 60 days after it becoming due or within a further period as the Board may allow, either before or after expiry of the 60 days.

(2) The Chief Executive Officer shall remove from the register:-

(a) the name of every person who dies;

(b) any entry which has been incorrectly or fraudulently made.

(3) Except in the circumstances specified in paragraph (a) of subsection (1), and in subsection (2) of this section, the removal of a person's name from the register shall be notified by the Chief Executive Officer to that person by prepaid registered letter addressed to the address appearing in the register against the name immediately before the removal.

(4) Subject to the provisions of section 33 of this Act, a person whose name has been removed from the register shall cease from the date of such removal to be registered for the purpose of this Act and must return his or her registration certificate to the Chief Executive Officer with 30 days from the date on which he or she is directed by the Chief Executive Officer to do so.

(5) Despite the cancellation of the registration of a registered person under this section, that person remains liable for any fee, arrears or penalty imposed by the Board for the period that he or she was registered.

(6) In case of a deceased person, the Chief Executive Officer shall endorse the register with a note of death and issued a gazette notice.

(7) Any person who fails to deliver a certificate or any other document as required under subsection (4) of this section shall be guilty of an offence and shall be liable to a fine not exceeding five hundred thousand shillings or to three years imprisonment or to both such fine and imprisonment.

Restoration to register.

33. (1) Where the name of any person has been removed from the register under section 32 of this Act, the name of that person shall not be entered again in the register except by

direction of the Board.

(2) Where the name of any person has been removed from the register or the effect of the registration of any person has been suspended in terms of paragraph (b) of section 34 of this Act, the Board may, either of its own motion or on the application of the person concerned made in the prescribed manner, and in either case after holding such inquiry as the Board thinks fit direct that:-

- (a) the removal from the register be confirmed; or
- (b) the name of that person be restored to the register;
or
- (c) the suspension of the effect of the registration of the person is terminated.

(3) A direction given by the Board under subsection (2) of this section may include provision for the date upon which a restoration to the register or the termination of a suspension shall take effect and for the payment by the person concerned of such fee, not exceeding the fee payable on an application for registration, as the Board may determine.

Orders to suspend registration.

34. If any person registered under this Act is convicted of an offence under this Act, or is, after due inquiry held by the Board, found to have been guilty of any act or omission amounting to improper or disgraceful conduct in a professional respect the Board may-

- (a) caution or censure such person;
- (b) direct that, during such period as the Board may specify, his registration shall not have effect;
- (c) impose a fine not exceeding fifty thousand shillings on that person; or
- (d) direct that his name be removed from the register.

Appeal.

35. (1) Any person aggrieved by a decision of the Board to refuse to register his name, or to remove his name from the register, or to suspend the effect of registration of his name, or to

refuse to restore his name to the register, may appeal to the High Court against the decision of the Board and in any such appeal the High Court may give such directions in the matter as it thinks proper, and any order of the High Court under this section shall be final.

(2) The Board may appear as respondent and be heard at any appeal against its decision and, for the purpose of enabling directions to be given as to costs of any such appeal the Board shall be deemed to be a party thereto, whether or not it appears at the hearing of the appeal.

(3) Until rules of court are made under the Judicature Act for such appeals, and subject to any such rules when made, the provisions of the Civil Procedure Act shall apply as if the decision or direction of the Board appealed against under this section were a decree of a court exercising original jurisdiction.

Restriction on use of title.

36. (1) A person who is registered in any of the categories referred to in section 20(1) may describe himself or herself and use the applicable title: –

- (a) Consulting Quantity Surveyor; or
- (b) Quantity Surveyor; or
- (c) Assistant Quantity Surveyor; or
- (d) Consulting Quantity Surveying firm.

(2) A registered person may use a title prescribed by the Board for the specified category.

(3) The Board may determine abbreviations or acronyms for the titles referred to in subsection (1).

(4) Subject to the provisions of this Act, no person shall practice under any name, title or style containing any of the words or phrases "quantity surveyor" or "quantity surveying" unless he is registered under this Act as a consulting quantity surveyor, quantity surveyor, assistant quantity surveyor or consulting quantity surveying firm.

(5) Any person who contravenes the provisions of

subsection (1) of this section or in any way holds himself out to be a quantity surveyor commits an offence and shall be liable to a fine not exceeding one million shillings or to three years imprisonment or to both such fine and imprisonment.

(6) Without prejudice to the powers of the Attorney-General, proceedings for an offence under this section may be instituted by any person who is authorized in that behalf, whether generally or specially, by the Board in writing.

Quantity Surveyors
professional
services committee

37. (1) There is hereby established a Committee to be known as the Professional Services Committee of the Board and shall report and take direction from the Board.

(2) The Quantity Surveyors Professional Services Committee shall consist of 7 (seven) members who shall be Consulting Quantity Surveyors or Quantity Surveyors registered under this Act and normally resident in Kenya.

(a) The members of the Quantity Surveyors Professional Services Committee shall be:

(i) Chairman appointed by the Board from amongst its members.

(ii) Two members appointed by the Board.

(iii) Three members appointed by Institute of Quantity Surveyors of Kenya.

(iv) One member appointed by a university teaching quantity surveying.

(b) The Board and the Institute of Quantity Surveyors of Kenya in selecting members of the Quantity Surveyors Professional Committee shall follow a procedure which ensures that as far as practicable the distribution of members of the Committee is representative of the broad categories of registration

and employment interests.

(c) A member may resign by giving to the Board notice of his intention to do so.

(3) The Functions and responsibilities of the Committee shall be:

(a) setting regulations and standards for procurement of quantity surveying services in consultation with appropriate authorities in accordance with procurement laws existing for the time being.

(b) setting the conditions of engagement for professional quantity surveying services.

(c) setting the minimum scales of fees for professional quantity surveying services in accordance with the functions and powers conferred upon it by this Act.

(d) undertake analysis and advocate for better conditions of employment and remuneration of Professional Quantity Surveyors in the public and private sectors in Kenya.

(e) promotion of research on procurement methods and procedures and advising public and private organizations on best practices on procurement of professional quantity surveying services.

(4) No member shall remain on the Quantity Surveyors Professional Services Committee for more than two (2) consecutive terms of three (3) years each.

(5) Casual vacancies arising shall be filled by the applicable appointing body referred to in subsection (2)(a) of this section as they arise.

(6) Where a member of the Quantity Surveyors Professional Services Committee is unable to exercise and perform his functions the Board may in consultation with the Institute of Quantity Surveyors of Kenya appoint a person to replace the

member for such period as may be necessary.

(7) All regulations, conditions of engagement, scales of fees set by the Quantity Surveyors Professional Services Committee and approved by Board and in accordance with the existing laws shall be binding on all persons registered under this Act.

(8) The Regulations, condition of Engagement and Scale of Fees shall be as set out in Schedule III of this Bill, and:-

(a) the Board shall publish the scales of fees not later than the 31st day of October of any year shall be applicable for a period of 12 calendar months starting from the first day of January immediately following and the same shall be available for sale to the public at a fee prescribed by the Board.

(b) Any registered member who is found to have contravened the Regulations and scale of fees set under this Act in Schedule III shall be guilty of an offence and liable to removal from the Register of Board in addition to other measures prescribed in the relevant Schedules of this Act.

(c) The Quantity Surveyors Professional Services Committee will gazette from time to time the Conditions of Engagement and Scales of Fees set out in Schedule II of this Bill.

(9) The Quantity Surveyors Professional Services Committee will promote research and set standards and practices on professional quantity surveyors services and advise the public accordingly.

(10) No member of the Quantity Surveyors Professional Services Committee shall be personally liable for any act or default of the Committee done or omitted in good faith in the cause of carrying out the responsibilities and functions of or exercising the powers conferred upon the Committee by this Act.

Exemption of
persons holding
certain

38. Nothing in this Act contained, except the provisions of section 36, shall be construed so as to prevent any person

qualifications.

practicing the profession of civil engineering, structural engineering, mechanical engineering or electrical engineering from performing any function or exercising any power which such person might lawfully have performed or exercised if this Act had not been passed.

PART V - GENERAL PROVISIONS

Rules.

39. (1) The Board, with the approval of the Minister, may make rules generally for the better carrying out of its functions under this Act.

(2) Without prejudice to the generality of sub section (1), the rules shall provide for-

- (a) a definition of unprofessional conduct and for determining the mode of inquiry into and the method of dealing with such conduct and the penalties which may be imposed upon any member found guilty of such conduct;
- (b) the scale of fees and associated costs to be charged by quantity surveyors and for professional advice, services rendered, and work done;
- (c) the fees to be paid for registration under this Act;
- (d) the holding of examinations authorized or permitted under the provisions of this Act and for the carrying into effect of any scheme or curriculum for education in quantity surveying formulated under the provisions of this Act;
- (e) the establishment, maintenance and support of and for subscribing to charitable and public objects and institutions;
- (f) the procedure to be followed by persons applying for the registration;
- (g) the procedure to be followed upon the death of a registered person with regard to outstanding professional works;

- (h) the conditions under which persons registered under this Act may practice as limited liability companies, and for requiring professional indemnity insurance in the case of registered persons, limited and unlimited companies and private firms;
- (i) instructions and orders conducive to the maintenance and improvement of the status of quantity surveyors and the quantity surveying profession in Kenya.

Consequential amendments to Cap 525.

40. The Architects and Quantity Surveyors Act is amended in the manner set out in the Second Schedule.

FIRST SCHEDULE (s.8)

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

Tenure of office.

1. The Chairperson or a member of the Board other than ex-officio members shall, subject to the provisions of this Schedule, hold office for a period of three years, on such terms and conditions as may be specified in the instrument of appointment, but shall be eligible for re-appointment for one further term.

Vacation of office.

2. (1) A member other than an ex-officio member may-

(a) at any time resign from office by notice in writing to the Minister;

(b) be removed from office by the Minister on recommendation of the Board if the member –

(i) has been absent from three consecutive meetings of the Board without its permission;

(ii) is convicted of a criminal offence that amounts to a felony under the Laws of

Kenya;

(iii) is incapacitated by prolonged physical or mental illness for a period exceeding six months;

(iv) ceases to be a registered person under this Act; or

(v) is otherwise unable or unfit to discharge his functions.

Meetings.

3. (1) The Board shall, at its first meeting, elect a Chairperson and Vice-Chairperson from amongst the persons appointed under section 7 (1) (a and b) of the Act.

(2) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(3) Notwithstanding subparagraph (2), the Chairperson may, and upon requisition in writing by at least five members shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.

(4) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.

(5) The quorum for the conduct of the business of the Board shall be half of the total members including the Chairperson or the person presiding.

(6) The Chairperson or in his absence, the Vice-Chairperson, shall preside at every meeting of the Board but the members present shall elect one of their number to preside whenever the Chairperson and Vice-Chairperson are absent, and the person so elected shall have all the powers of the Chairperson with respect to that meeting and the business transacted thereat.

(7) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting, and in case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

(8) Subject to subparagraph (5), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

(9) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of other persons at its meetings and may make standing orders in respect thereof.

Committees
of the Board.

4. (1) The Board may establish such committees as it may deem appropriate to perform such functions and responsibilities as it may determine.

(2) The Board shall appoint the chairperson of a committee established under subparagraph (1) from amongst its members.

(3) The Board may where it deems appropriate, co-opt any person to attend the deliberations of any of its committees.

(4) All decisions by the committees appointed under subsection (1) shall be ratified by the Board.

Disclosure of
interest.

5. (1) A member who has an interest in any contract, or other matter present at a meeting shall at the meeting and as soon as reasonably practicable after the commencement, disclose the fact thereof and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

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

(3) A member of the Board who contravenes subparagraph (1) commits an offence and is liable to a fine not exceeding two hundred thousand shillings.

Contracts and instruments. 6. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board for that purpose.

SECOND SCHEDULE (s.31)

CONSEQUENTIAL AMENDMENTS

Amendment of long title of Cap.525 1. The long title to the Architects and Quantity Surveyors Act (hereinafter referred to as “the principal Act”) is amended by deleting the words “and quantity surveyors”.

Amendment of short title of Cap.525 2. The short title to the principal Act is amended by deleting the words “and quantity surveyors”.

Amendment of section 2 of Cap.525 3. Section 2 of the principal Act is amended-

(a) in the definition of “the Board” by deleting the words “and Quantity Surveyors”;

(b) in the definition of “the Registrar” by deleting the words “and Quantity Surveyors”;

Amendment of section 3 of Cap.525 4. Section 3 of the principal Act is amended by deleting the words “quantity surveyor” and “quantity surveying” wherever they appear in subsection (1).

Amendment of section 4 of Cap.525 5. Section 4 of the principal Act is amended-

(a) in subsection(1) by deleting the words “and Quantity Surveyors”;

(b) in subsection (2) –

(i) by deleting the words “ or quantity surveyors”;

(ii) by deleting the words “at least one of whom shall be a quantity surveyor” wherever it

appears.

Amendment
of section 5
of Cap.525.

6. Section 5 of the principal Act is amended-

(a) by deleting the words “and quantity surveyors”
appearing in paragraph (f);

(b) by deleting the words “or quantity surveying”
appearing in paragraph (h).

Amendment
of section 6
of Cap.525.
Repeal of
section 8 of
Cap 525.

7. Section 6 of the principal Act is amended by deleting the
words “and Quantity Surveyors” appearing in subsection (1);

8. The principal Act is amended by repealing section 8.

Amendment
of section 9
of Cap.525.

9. Section 9 of the principal Act is amended by deleting the
words “and 8”.

Amendment
of section 10
of Cap.525.

10. Section 10 of the principal Act is amended by deleting the
words “and quantity surveying”.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of the Bill is to amend the Architects and Quantity Surveyors Act (Cap 525) so as to provide for the separate registration and regulation of quantity surveyors as is the practice in other commonwealth jurisdictions. It is necessary to separate the professions of architecture and quantity surveying so as to allow for the efficient growth and monitoring of the profession of quantity surveying.

Part I of the Bill contains preliminary provisions.

Part II of the Bill establishes the Quantity Surveyors Registration Board.

Part III of the Bill sets out the financial provisions relating to the Board.

Part IV of the Bill contains provisions relating to the registration of quantity surveyors.

Part V of the Bill sets out general provisions including the consequential amendments to the Architects and Quantity Surveyors Act which are necessary in order to give effect to the provisions of the proposed new Act.

The enactment of this Bill will occasion additional expenditure of public funds which shall be met through the estimates.

Dated the..... 2012

Christopher Obure,
Minister for Public Works.