

THE PROFESSIONAL QUANTITY SURVEYORS' COUNCIL BILL
(No. VII of 2013)

Explanatory Memorandum

The object of this Bill is to provide for the establishment of the Professional Quantity Surveyors' Council and for better regulation of the profession of quantity surveyors. This has been made necessary by a number of factors, including the growth of the construction sector.

2. The Council will, *inter alia* –

- (a) regulate and control the profession of quantity surveyors;
- (b) register professional quantity surveyors;
- (c) exercise and maintain discipline in the profession of quantity surveyors, with the assistance and support of such Professional Conduct Committee as may be set up; and
- (d) promote advancement in the field of quantity surveying.

3. The Bill also provides for the circumstances in which firms of quantity surveyors and foreign firms of quantity surveyors may provide quantity surveying services in Mauritius.

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A BILL

To establish the Professional Quantity Surveyors' Council and to provide for better regulation of the profession of quantity surveyors

ENACTED by the Parliament of Mauritius, as follows –

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Professional Quantity Surveyors' Council Act 2013.

2. Interpretation

In this Act –

“Association” means the Mauritius Association of Quantity Surveyors registered with the Registrar of Associations;

“Chairperson” means the Chairperson of the Council;

“Code of Practice” means such Code of Practice as may be prescribed under section 44(3);

“committee” means a committee set up under section 11;

“competent authority” means an authority in a foreign country authorising a person to practise quantity surveying;

“construction” includes extension, conservation, restoration, repairs or any other alteration;

“Continuous Professional Development programmes” means programmes, courses, lectures, seminars or conferences in relation to new construction techniques, materials and methods of management, or changes in construction law, building regulations and building standards, or any other matter related to the profession of quantity surveyors;

“Council” means the Professional Quantity Surveyors' Council established under section 3;

“delegated power” means the power delegated, under section 89(2)(b)(i) of the Constitution and subject to Part IVA of the Public Service Commission Regulations, to the Council by the Public Service Commission to enquire and report into any complaint of professional misconduct or negligence against a professional quantity surveyor appointed by the Public Service Commission;

“financial year” has the same meaning as in the Finance and Audit Act;

“firm of quantity surveyors” means a firm, body, group, company or partnership which provides quantity surveying services and is under the control of a professional quantity surveyor;

“foreign firm of quantity surveyors” means a firm, body, group, company or partnership which provides quantity surveying services and is under the control of a foreign quantity surveyor;

“foreign quantity surveyor” –

- (a) means a non-citizen who is –
 - (i) authorised by the competent authority in his country to practise quantity surveying; or
 - (ii) a professional member of a recognised institution of his country in the field of quantity surveying; but
- (b) does not include a non-citizen who is a resident of Mauritius and whose name is entered on the Register;

“Government company” means a company registered under the Companies Act and in which the Government of Mauritius directly, or through another corporate body, owns or controls not less than 50 per cent of the entire share capital;

“investigation” means a preliminary investigation under section 26(1);

“licensed auditor” has the same meaning as in the Financial Reporting Act;

“member” –

- (a) means a member of the Council; and
- (b) includes the Chairperson and the Vice-chairperson;

“Minister” means the Minister to whom responsibility for the subject of public infrastructure is assigned;

“officer” –

(a) means an officer appointed under section 15; and

(b) includes the Registrar;

“President” means the President of a Professional Conduct Committee;

“Professional Conduct Committee” means a Professional Conduct Committee set up under section 28;

“professional quantity surveyor” means a person registered as such under section 20;

“quantity surveying” means the range of services in the construction industry consisting of, *inter alia*, 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 costs for insurance purposes, mediation, arbitration and adjudication;

“Register” means the register of professional quantity surveyors, kept under section 21;

“Registrar” means the Registrar of the Council appointed under section 13;

“Registration Board” means the Registration Board set up under section 10;

“supervising officer” means the supervising officer of the Ministry;

“Vice-chairperson” means the Vice-chairperson of the Council.

PART II – THE COUNCIL

3. Establishment of Council

(1) There is established for the purposes of this Act the Professional Quantity Surveyors’ Council.

(2) The Council shall be a body corporate.

(3) The principal place of business of the Council shall be at such place as it may determine.

4. Objects of Council

The Council shall –

- (a) regulate and control the profession of quantity surveyors;
- (b) promote advancement in the field of quantity surveying.

5. Functions of Council

The Council shall –

- (a) register professional quantity surveyors;
- (b) exercise and maintain discipline in the profession of quantity surveyors –
 - (i) in relation to a professional quantity surveyor who is appointed by the Public Service Commission and in respect of whom the Council holds a delegated power, to the extent and within the limits of that delegation of power; and
 - (ii) in relation to any other professional quantity surveyor;
- (c) ensure that the Code of Practice is complied with by professional quantity surveyors;
- (d) disseminate literature, in connection with developments in the field of quantity surveying, new construction techniques, technology and materials, or any other related matter, to professional quantity surveyors;
- (e) provide technical assistance to professional quantity surveyors;
- (f) co-operate with any other institution having objects wholly or partly similar to its objects;

- (g) approve, organise or cause to be organised Continuous Professional Development programmes or any other programmes, courses, lectures, seminars or conferences for the purposes of updating professional knowledge and skills in the field of quantity surveying;
- (h) publish an annual list of professional quantity surveyors;
- (i) keep a record of its proceedings and decisions; and
- (j) advise the Minister on any matter relating to the profession of quantity surveyors.

6. Powers of Council

The Council shall have such powers as may be necessary to discharge its functions most effectively and may, in particular –

- (a) enter into any contract or other agreement;
- (b) set up any committee;
- (c) sell or exchange any property;
- (d) subject to section 37, make or receive any grant or donation;
- (e) borrow money and raise funds;
- (f) collect or receive any fee, rental, interest or other sum which may lawfully accrue to it; and
- (g) generally do such acts and things as may be necessary for the purposes of this Act.

PART III – MANAGEMENT OF COUNCIL

7. Composition of Council

- (1) The Council shall consist of –
 - (a) 4 professional quantity surveyors to be appointed by the Minister, from among quantity surveyors posted at the Ministry, a Municipal City Council or Municipal Town Council, a statutory corporation or a Government company;

- (b) 3 professional quantity surveyors, to be elected in the manner specified in the Schedule;
- (c) a professional quantity surveyor from the Association, to be appointed by the Association;
- (d) the supervising officer or his representative; and
- (e) a representative of the Attorney-General's Office.

(2) The Council shall elect a Chairperson and a Vice-chairperson from among the members referred to in subsection (1)(a), (b) and (c).

(3) A member, other than a member referred to in subsection (1)(d) and (e), shall, subject to section 8, hold office for a period of 2 years and shall be eligible for reappointment or re-election, as the case may be.

(4) Every member shall be paid such fee or allowance as the Council may determine.

8. Vacancy in membership of Council

(1) A member, other than a member referred to in section 7(1)(d) or (e), shall cease to hold office –

- (a) on completion of his term of office;
- (b) on his resignation, by notice in writing given to the Registrar; or
- (c) in the case of a member referred to in section 7(1)(c), where the Association designates another person as its representative.

(2) Where a member resigns under subsection (1)(b), his seat shall become vacant as from the date on which the Registrar receives the notice.

(3) The Council may remove from office any member, other than a member referred to in subsection (1)(d) and (e), who –

- (a) is suspended or deregistered as a professional quantity surveyor under this Act;
- (b) is absent, without leave of the Council, from 3 consecutive meetings of the Council;

- (c) becomes insolvent, assigns his estate for the benefit of his creditors or makes an arrangement with his creditors;
- (d) commits an act of misconduct, malpractice, negligence, fraud or dishonesty, or a breach of the Code of Practice, which, in the opinion of the Council, renders him unfit to be a member;
- (e) is convicted of an offence of such nature as, in the opinion of the Council, renders him unfit to be a member;
- (f) is suffering from such mental or physical impairment as, in the opinion of the Council, renders him unfit to be a member; or
- (g) fails to disclose any pecuniary or other material interest which he has in relation to any matter before the Council.

(4) The Council may suspend from office, for such time as it may determine, any member who is –

- (a) liable to be removed from office under subsection (3);
- (b) guilty of a minor breach of the Code of Practice; or
- (c) the subject of an investigation.

(5) Where a vacancy occurs in the membership of the Council, the vacancy shall be filled, in the case of a member –

- (a) appointed under section 7(1)(a) or (c), by a fresh appointment; or
- (b) elected under section 7(1)(b), by appointing the professional quantity surveyor who obtained the highest number of votes after the elected professional quantity surveyor at the election held immediately before the vacancy arose.

(6) A person appointed under subsection (5) shall hold office for the remainder of the term of office of the person whom he replaces.

9. Meetings of Council

(1) The Council shall meet as often as the Chairperson thinks necessary but at least once every month.

(2) A meeting of the Council shall be held at such time and place as the Chairperson thinks fit.

(3) At a meeting of the Council, 6 members shall constitute a quorum.

(4) (a) The Chairperson or, in his absence, the Vice-chairperson shall preside at a meeting of the Council.

(b) Where the Chairperson and the Vice-chairperson are absent from a meeting of the Council, the members present shall elect one of the members referred to in section 7(1)(a), (b) or (c) to chair the meeting.

(5) (a) A special meeting of the Council –

(i) may be convened by the Chairperson at any time; or

(ii) shall be convened by the Registrar within 21 days of the receipt of a request in writing signed by not less than 5 members.

(b) Any request made under paragraph (a)(ii) shall specify the purpose for which the special meeting is to be convened.

(6) The Council may, where it considers necessary, co-opt such other persons with relevant expertise not already available to the Council, to assist it in relation to any matter before it.

(7) At any meeting of the Council, each member shall have one vote on a matter in issue and in the event of an equality of votes, the person presiding shall have a casting vote.

(8) Subject to this section, the Council shall regulate its meetings and proceedings in such manner as it may determine.

10. Registration Board

(1) The Council shall set up a Registration Board to assist it in the determination of applications for registration as a professional quantity surveyor.

(2) The Registration Board shall consist of –

(a) a chairperson; and

(b) 2 assessors,

to be appointed, subject to subsection (3), by the Council on such terms and conditions as it may determine.

(3) The chairperson and the 2 assessors referred to in subsection (2) shall be professional quantity surveyors –

- (a) with at least 12 years' experience in the field of quantity surveying; and
- (b) who have not been convicted of an offence involving fraud or dishonesty in any country.

11. Committees

(1) The Council may set up such committees as may be necessary to assist it in the discharge of its functions, including the conduct of an investigation.

(2) A committee shall consist of not less than 3 members and such other persons as may be co-opted by the Council.

(3) A committee shall –

- (a) meet as often as is necessary and at such time and place as the chairperson of the committee thinks fit;
- (b) meet as and when required by the Council; and
- (c) regulate its meetings and proceedings in such manner as it may determine.

(4) A committee shall submit its report within such time as the Council may determine.

(5) The report referred to in subsection (4) shall contain the committee's observations, comments, recommendations or findings, if any, on any matter referred to it.

12. Disclosure of interest

(1) Where any member, or any person related to the member by blood or marriage, has a pecuniary or other material interest in relation to any matter before the Council, the Registration Board or a committee, that member –

- (a) shall disclose the nature of the interest before or at the meeting convened to discuss that matter; and
- (b) shall not take part in any deliberations relating to that matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of proceedings of the meeting convened to discuss that matter, the Registration Board or the committee.

13. Registrar

(1) The Council shall appoint, on such terms and conditions as it may determine, a professional quantity surveyor to act as Registrar of the Council.

(2) The Registrar shall be responsible for the proper administration of the Council.

(3) The Registrar shall act as Secretary to the Council and –

- (a) shall, for every meeting of the Council –
 - (i) give notice of the meeting to the members;
 - (ii) prepare and attend the meeting;
 - (iii) keep minutes of proceedings of the meeting; and
- (b) may take part in the deliberations of a meeting of the Council, but shall not have the right to vote.

(4) The Registrar may also act as the Treasurer of the Council.

(5) The Registrar shall have such other functions as may be conferred upon him by the Council.

(6) Where the Registrar is for any reason unable to perform his functions, the Council may appoint another professional quantity surveyor to act as Registrar.

14. Delegation

(1) The Council may, subject to such instructions as it may give, delegate to the Registrar such of its functions and powers as may be necessary for the effective management of the day-to-day business and activities of the Council, other than the power to –

- (a) sell or exchange any property;
- (b) make or receive any grant or donation;
- (c) borrow money and raise funds.

(2) The Registrar may, with the approval of the Council, delegate his functions and powers to such officer as he may designate.

15. Appointment of officers

(1) The Council may appoint such officers as it considers necessary for the proper discharge of its functions under this Act.

(2) Every officer shall be under the administrative control of the Registrar.

16. Conditions of service of officers

The Council may make provision to govern the conditions of service of its officers and, in particular, to deal with –

- (a) the appointment, dismissal, discipline, pay and leave of, and the security to be given to, officers;
- (b) appeals by officers against dismissal and any other disciplinary measure.

17. Protection from liability

No liability, civil or criminal, shall be incurred by the Council, any member or officer, in respect of any act done or omitted by it or him in good faith in the discharge of its or his functions, or exercise of its or his powers, under this Act.

18. Powers of Minister

(1) The Minister may give such directions of a general character to the Council, not inconsistent with this Act, as he considers necessary in the public interest, and the Council shall comply with those directions.

(2) The Minister may require the Council to furnish any information or document in relation to its activities, and the Council shall supply such information or document.

PART IV – PROFESSIONAL QUANTITY SURVEYOR

19. Practice of quantity surveying

(1) No person shall practise quantity surveying in Mauritius unless he is a professional quantity surveyor.

(2) Nothing in this Act shall prevent –

- (a) a person who holds a degree, diploma or an equivalent qualification in quantity surveying, from providing quantity surveying services which do not include final decisions and are done under the direct responsibility and supervision of a professional quantity surveyor;
- (b) a person from working as an employee or subordinate of a professional quantity surveyor where the work is done under the direct responsibility and supervision of that professional quantity surveyor;
- (c) a person from practising his profession, trade or calling as an engineer, land surveyor, valuer, interior decorator or designer, town planner, professional architect, naval architect, marine architect or landscape architect;
- (d) an Assistant Quantity Surveyor, who is posted at the Ministry, to practise quantity surveying in accordance with his scheme of service.

20. Registration of professional quantity surveyor

(1) No person shall be registered as a professional quantity surveyor unless he –

- (a) satisfies the Council that he –
 - (i) has attained the age of 21;
 - (ii) has not been convicted of an offence involving fraud or dishonesty in any country;
 - (iii) has not been disqualified or deregistered from practising quantity surveying on account of professional

misconduct, professional negligence, fraud, dishonesty or breach of a code of practice in any country; and

- (iv) does not suffer from any mental impairment which is likely to hamper the discharge of his duties as professional quantity surveyor;
- (b) holds a degree or an equivalent qualification in quantity surveying from a university or other institution which is approved by the Council;
- (c) satisfies the Council, subject to subsection (3), that he has at least 3 years' approved post-qualification experience in quantity surveying; and
- (d) pays such registration and annual fee as may be prescribed.

(2) (a) A person who wishes to be registered as a professional quantity surveyor shall make a written application to the Registrar in such form and manner as the Council may determine.

(b) An application made under paragraph (a) shall be accompanied by –

- (i) the applicant's birth certificate and National Identity Card, or any other acceptable evidence of his identity, and in the case of a non-citizen, his passport;
- (ii) the original or a certified copy of the applicant's degree or equivalent qualification in quantity surveying;
- (iii) subject to subsection (3), evidence of not less than 3 years' approved post-qualification experience in quantity surveying, together with a report, in such form and manner as the Council may determine, demonstrating the applicant's specific competencies in matters in which he has experience;
- (iv) subject to subsection (3), a report of a project or projects in which the applicant has been involved, in such form and manner as the Council may determine;
- (v) such processing fee as may be prescribed; and

(vi) such additional document or information as the Registrar may require.

(3) An applicant shall not be required to submit particulars under subsection (2)(b)(iii) and (iv), where he satisfies the Council that he is registered as a –

(a) professional member in the field of quantity surveying with the Royal Institution of Chartered Surveyors of the United Kingdom; or

(b) quantity surveyor with such other body as may be prescribed.

(4) (a) On receipt of an application made under subsection (2), the Registrar shall refer the application to the Registration Board for its recommendations.

(b) The Registration Board shall, in assessing the application made under subsection (2), call the applicant for an interview.

(5) (a) The Council may, after due consideration of the recommendations of the Registration Board, grant or reject the application and shall forthwith notify the applicant of its decision.

(b) Where the Council grants an application under paragraph (a), it shall, on payment by the applicant of such registration and annual fee as may be prescribed, register the applicant as a professional quantity surveyor and issue to him a certificate of registration, subject to such terms and conditions as the Council may determine.

(c) Where the Council registers a professional quantity surveyor under paragraph (b), the Registrar shall forthwith enter in the Register the name, address, qualification and other particulars of that professional quantity surveyor.

(6) Where the Council is satisfied that a professional quantity surveyor has damaged or lost his certificate of registration, it may, on payment of such fee as may be prescribed, issue a duplicate certificate of registration to him.

21. Register

(1) The Registrar shall keep a Register of professional quantity surveyors, or such other register as may be necessary, in such form and manner as the Council may determine.

- (2) The Registrar shall enter in the Register –
- (a) the name, address, qualification and other particulars of every professional quantity surveyor;
 - (b) any alteration in the particulars of a professional quantity surveyor;
 - (c) where a professional quantity surveyor has been suspended or deregistered, an annotation to that effect; and
 - (d) such other particulars as the Council considers appropriate.

(3) (a) Subject to subsection (2), where after registration, a professional quantity surveyor obtains any additional qualification in the field of quantity surveying, the Council may, on application by the professional quantity surveyor, add the additional qualification to the professional quantity surveyor's particulars in the Register.

(b) An application made under paragraph (a) shall be accompanied by such fee as may be prescribed.

22. Annual fee

(1) Every professional quantity surveyor shall, on or before 30 November in every year, pay to the Registrar such annual fee as may be prescribed in respect of the year commencing on 1 January of the following year.

(2) Where a professional quantity surveyor fails to comply with subsection (1), he shall be liable to pay the annual fee, together with a surcharge of 50 per cent of the annual fee, by 31 January in the year in respect of which it is due.

(3) Where a professional quantity surveyor fails to pay the annual fee together with the surcharge required under subsection (1), the Council may deregister the professional quantity surveyor.

(4) Where a professional quantity surveyor is deregistered under subsection (3), the Council shall cause the Registrar to remove the name and other particulars of the professional quantity surveyor from the Register.

(5) The Council may, where a professional quantity surveyor has been deregistered, restore the name and other particulars of the professional quantity surveyor on the Register on good cause shown and on payment of the annual fee together with its surcharge.

23. Annual list

(1) The Registrar shall, not later than the end of February in every year, transmit to the Minister a list of all professional quantity surveyors registered for that year.

(2) The Council shall, not later than 1 March in every year, publish in the *Gazette* an annual list of professional quantity surveyors for that year.

PART V – FIRM OF QUANTITY SURVEYORS AND FOREIGN FIRM OF QUANTITY SURVEYORS

24. Firm of quantity surveyors

(1) No firm of quantity surveyors shall provide quantity surveying services in Mauritius unless the firm is registered as a consultant under the Construction Industry Development Board Act.

(2) An application for registration as a consultant shall be made in such form and manner as may be prescribed under the Construction Industry Development Board Act.

25. Foreign firm of quantity surveyors

(1) No foreign firm of quantity surveyors shall provide quantity surveying services in Mauritius unless –

(a) it is registered as a foreign consultant under the Construction Industry Development Board Act; and

(b) the Council is satisfied that –

(i) the services are provided in relation to the construction of a building for any statutory corporation or Government company, and the construction of the building is wholly or partly financed by a foreign Government, a foreign financial or banking institution, or an international financial organisation;

(ii) the services are provided in relation to a project, other than the construction of a building for any statutory corporation or Government company, or the construction of a Government building, and –

- (A) the firm is providing quantity surveying services in relation to not more than one project;
 - (B) the firm has entered, in relation to that project, into a joint venture agreement with a firm of quantity surveyors, and the joint venture agreement has been approved by the Council;
 - (C) the fee payable to the firm of quantity surveyors is not less than 51 per cent of the total fee to be paid for the provision of the quantity surveying services; and
 - (D) the firm pays a fee of 0.05 per cent of the value of the project to the Council; or
- (iii) the services are provided in relation to the construction of a Government building or any other building which is wholly or partly financed by the Government.

(2) An application for registration as a foreign consultant shall be made in such form and manner as may be prescribed under the Construction Industry Development Board Act.

PART VI – DISCIPLINE

26. Preliminary investigation

- (1) The Council may investigate any complaint of –
- (a) professional misconduct, malpractice or negligence;
 - (b) a breach of the Code of Practice,

against a professional quantity surveyor, including a professional quantity surveyor in respect of whom the Council holds a delegated power.

- (2) Where the Council investigates a complaint, it –
- (a) shall notify the professional quantity surveyor, whose conduct, act or omission is under investigation, of the nature of the complaint against him;

- (b) may summon and hear the professional quantity surveyor who shall be given an opportunity of being assisted by a legal representative of his choice;
- (c) may summon and hear witnesses;
- (d) may call for the communication or production of any relevant record, document or article; and
- (e) shall complete its investigation not later than 3 months from the date the investigation starts.

(3) The Council shall, when investigating a complaint, keep a proper record of its proceedings.

(4) (a) Where, in the course of an investigation, any person refuses to communicate or produce any record, document or article on the ground of confidentiality, the Registrar may apply to a Judge in Chambers for an order directing that person to communicate or produce the record, document or article required for the purpose of the investigation.

(b) Where the Judge is satisfied that the record, document or article sought is *bona fide* required for the purpose of the investigation, he may make an order under paragraph (a).

(5) (a) The Council may, for the purpose of an investigation, appoint a committee consisting of not less than 3 members.

- (b) A member who –
 - (i) is closely related to a professional quantity surveyor, including a professional quantity surveyor in respect of whom the Council holds a delegated power, whose conduct, act or omission is under investigation; or
 - (ii) has any pecuniary or other personal interest in the subject-matter of an investigation,

shall disclose his relationship or interest, as the case may be, and refrain from participating in the investigation.

(c) The committee may exercise any of the powers of the Council under subsection (2)(b), (c) or (d).

27. Disciplinary proceedings

(1) Where, after an investigation, the Council considers it necessary to prefer charges against a professional quantity surveyor, it shall forward to the professional quantity surveyor a statement of those charges and call upon him to state in writing, before such date as the Council may specify, any grounds on which he relies to exculpate himself.

(2) Where the professional quantity surveyor does not furnish a reply to any charge forwarded under subsection (1) within the period specified or where, in the opinion of the Council, he fails to exculpate himself, the Council may, subject to section 32, institute disciplinary proceedings against him before a Professional Conduct Committee.

28. Professional Conduct Committee

(1) The Council may, for the purpose of section 27, set up a Professional Conduct Committee which shall consist of –

- (a) a President, who is or has been a Judge or Magistrate, or is a barrister of not less than 10 years' standing; and
- (b) 2 assessors, who shall be professional quantity surveyors with not less than 12 years' experience and who are not members.

(2) The President and assessors of a Professional Conduct Committee shall be appointed by the Council on such terms and conditions as the Council may determine.

(3) The Council shall appoint a Secretary to a Professional Conduct Committee, who shall keep the minutes of proceedings of every meeting of the Professional Conduct Committee.

(4) (a) Where the President or an assessor of a Professional Conduct Committee is related by blood or marriage to a professional quantity surveyor who is the subject of disciplinary proceedings, the President or assessor shall disclose his relationship to the Professional Conduct Committee and shall not take part in those proceedings.

(b) Any disclosure made under paragraph (a) shall be recorded in the minutes of proceedings.

(c) Where the President or an assessor of the Professional Conduct Committee does not take part in the proceedings under paragraph (a), the Council shall appoint another person to replace him.

(d) Any person appointed under paragraph (c) shall satisfy the requirements referred to in subsection (1)(a) or (b), as the case may be.

29. Proceedings of Professional Conduct Committee

(1) A Professional Conduct Committee shall meet at such time and place as the President of the Committee thinks fit.

(2) Where disciplinary proceedings are instituted under section 27, the Professional Conduct Committee shall inquire into the charges preferred against the professional quantity surveyor.

(3) A Professional Conduct Committee may –

(a) summon any person to appear before it to give evidence or produce any record, document or article; or

(b) take evidence on oath, solemn affirmation or declaration and, for that purpose, administer an oath, solemn affirmation or declaration, as the case may be.

(4) (a) Where, in the course of any disciplinary proceedings, a person refuses to communicate or produce any record, document or article, on the ground of confidentiality, the Registrar may apply to a Judge in Chambers for an order directing that person to communicate or produce the record, document or article required for the purpose of the proceedings.

(b) Where the Judge is satisfied that the record, document or article sought is *bona fide* required for the purpose of the proceedings, he may make an order under paragraph (a).

30. Disciplinary measures

(1) A Professional Conduct Committee shall, after having heard any disciplinary proceedings, forward to the Council its report and a copy of its proceedings, including any record, document or article produced, not later than one month after the completion of the proceedings.

(2) The report under subsection (1) shall include –

- (a) a finding as to whether the charge has been proved or not, and the reasons for such finding;
- (b) details of any matter which, in the opinion of the Professional Conduct Committee, aggravates or alleviates the gravity of the charge; and
- (c) a summing up and such comments as will indicate clearly the opinion of the Professional Conduct Committee on the subject matter of the disciplinary proceedings.

(3) A Professional Conduct Committee shall not, in its report, make any recommendation regarding the form of disciplinary measure.

(4) (a) Where the report is in relation to a professional quantity surveyor, other than a professional quantity surveyor in respect of whom the Council holds a delegated power, and states that the charge has been proved, the Council may –

- (i) administer him a reprimand or a severe reprimand;
- (ii) suspend him as a professional quantity surveyor for a period not exceeding 2 years; or
- (iii) deregister him as a professional quantity surveyor.

(b) Where the report is in relation to a professional quantity surveyor in respect of whom the Council holds a delegated power, the Council shall submit its own report to the Public Service Commission, in accordance with regulation 46E of the Public Service Commission Regulations.

(5) Where the punishment inflicted by the Public Service Commission on a professional quantity surveyor, in respect of whom the Council holds a delegated power, is dismissal or retirement in the interest of the public service, the Council shall determine whether or not it shall suspend or deregister the professional quantity surveyor.

(6) A decision of the Council under subsection (4) or (5) shall be communicated to the professional quantity surveyor not later than 14 days from the date of the decision.

31. Other disciplinary measures

Without any of the proceedings provided for in sections 26, 27, 29 and 30 being instituted, the Council shall, where a professional quantity surveyor has been convicted of an offence and is serving a sentence of imprisonment or penal servitude –

- (a) suspend him as a professional quantity surveyor for such time as the Council may determine; or
- (b) deregister him as a professional quantity surveyor.

32. Summary proceedings

Where the Council is satisfied, after having carried out an investigation against a professional quantity surveyor, other than a professional quantity surveyor in respect of whom the Council holds a delegated power, that he has committed an act or omission which, in its opinion, is not considered to be of a serious nature, it may inflict upon him a warning or severe warning.

33. Effect of suspension or deregistration

The Council shall cause the Registrar –

- (a) to remove from the Register the name and other particulars of any professional quantity surveyor who has been deregistered as a professional quantity surveyor under this Act;
- (b) to give notice of any suspension or deregistration under this Act in the *Gazette* and in 2 daily newspapers.

34. Restoration of name and other particulars to Register

(1) Where the name and other particulars of a professional quantity surveyor have been removed from the Register in accordance with this Act, the name and other particulars of that person shall not be restored to the Register except by order of the Council or of the Supreme Court.

(2) The Council may, on its own motion or on application of the person concerned and after holding such inquiry as it may determine, cause his name and other particulars to be restored to the Register.

PART VII – FINANCIAL PROVISIONS AND ACCOUNTS

35. General Fund

The Council shall set up a General Fund –

- (a) into which shall be paid –
 - (i) any grant, donation and contribution received by it;
 - (ii) any fee, rental or interest; and
 - (iii) any other sum which may lawfully accrue to it;
- (b) out of which all payments required to be made by the Council shall be effected.

36. Execution of documents

(1) Subject to subsection (2), no deed, instrument, contract or other document shall be executed or signed by or on behalf of the Council unless it is signed by the Chairperson or, in his absence, by the Vice-chairperson.

(2) No cheque shall be signed by or on behalf of the Council unless it is signed by –

- (a) the Chairperson or, in his absence, by the Vice-chairperson; and
- (b) the Registrar.

37. Donations

Article 910 of the Code Civil Mauricien shall apply to the Council.

38. Audit

(1) The Council shall keep proper accounts of all sums received and paid.

(2) The accounts for each financial year shall be audited by a licensed auditor appointed by the Council.

PART VIII – MISCELLANEOUS

39. Seal of Council

The seal of the Council shall bear such device as the Council may approve.

40. Legal proceedings

(1) The Council shall act, sue and be sued in its corporate name.

(2) Service of process by or on the Council shall be sufficient if made on behalf of or on the Registrar.

41. Confidentiality

(1) No member or officer shall, during or after his relationship with the Council, use or disclose any matter which comes to his knowledge in the performance of his functions, except for the purposes of administering this Act.

(2) Any person who, without lawful excuse, contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 12 months.

42. Review of decision of Council

(1) A person who is aggrieved by the decision of the Council –

(a) not to register him as a professional quantity surveyor; or

(b) to take any disciplinary measure against him,

may apply for judicial review of the decision before the Supreme Court.

(2) On an application under subsection (1), the Supreme Court may make such order or give such directions in the matter as it may determine.

43. Offences

(1) Subject to section 19(2), any person who –

(a) not being registered, or being suspended or deregistered, as a professional quantity surveyor –

(i) practises quantity surveying;

- (ii) takes or uses the name, description or title "Professional Quantity Surveyor", "Chartered Quantity Surveyor", "Authorised Quantity Surveyor", "Authorised Foreign Quantity Surveyor", "Consulting Quantity Surveyor", "Qualified Quantity Surveyor" or "Quantity Surveyor", or any abbreviation thereof in whatever language, either alone or in connection with any other title, name, word or letter;
 - (iii) holds himself out or conducts himself as a professional quantity surveyor;
 - (iv) by any wilful act or omission, causes or induces any person to believe that he is a professional quantity surveyor; or
 - (v) demands, sues for or recovers in any Court any charge by way of claim, counter-claim or otherwise in relation to any quantity surveying services he claims to have provided as a professional quantity surveyor; or
- (b) fraudulently procures or attempts to procure his registration as a professional quantity surveyor,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.

(2) For the purpose of this section, the performance of a single act relating to the practice of quantity surveying may be held to be sufficient evidence of such practice.

(3) Notwithstanding subsection (1)(a)(ii), nothing in this section shall prevent a firm of quantity surveyors or foreign firm of quantity surveyors from using the name or title containing the words "Quantity Surveyor".

(4) Any person who –

- (a) wilfully fails to attend a Professional Conduct Committee after having been summoned;
- (b) refuses to take an oath or make a solemn affirmation or declaration, as the case may be, before a Professional Conduct Committee;

- (c) refuses without reasonable excuse to produce any record, document or article before the Professional Conduct Committee;
- (d) gives false evidence or evidence which he knows to be misleading before a Professional Conduct Committee;
- (e) obstructs the proceedings of a meeting of the Council or a Professional Conduct Committee;
- (f) molests any member of the Council or a Professional Conduct Committee in the course of, or on account of, any investigation or proceedings under this Act; or
- (g) in any other manner contravenes this Act,

shall commit an offence.

(5) Any person who commits an offence under subsection (4) shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 12 months.

44. Regulations

(1) The Minister may for the purposes of this Act make such regulations as he thinks fit.

(2) Any regulations made under subsection (1) shall be made after consultation with the Council.

(3) Any regulations made under subsection (1) may provide, *inter alia* –

- (a) for a Code of Practice;
- (b) for rules and guidelines for Continuous Professional Development programmes;
- (c) for the levying of fees and the taking of charges;
- (d) for the amendment of the Schedule;
- (e) that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding

25,000 rupees and to imprisonment for a term not exceeding 6 months.

45. Savings and transitional provisions

(1) Every person who, at the commencement of this Act, is registered as a –

- (a) professional member in the field of quantity surveying with the Royal Institution of Chartered Surveyors of the United Kingdom; or
- (b) quantity surveyor with such other body as may be prescribed,

and is practising as a quantity surveyor in Mauritius shall, at the commencement of this Act, be deemed to be registered as a professional quantity surveyor under this Act and shall be issued a certificate of registration under this Act.

(2) (a) Notwithstanding section 7, the Minister shall, at the commencement of this Act, appoint –

- (i) 4 quantity surveyors posted at the Ministry;
- (ii) 2 quantity surveyors who are in private practice; and
- (iii) a quantity surveyor from the Association,

as the initial members of the Council.

(b) The members appointed under paragraph (a) shall –

- (i) elect from among themselves a Chairperson and a Vice-chairperson;
- (ii) appoint a quantity surveyor to act as Registrar of the Council for a term not exceeding 6 months; and
- (iii) hold office for a period not exceeding 6 months.

(c) In this subsection, “quantity surveyor” means a person who is registered as a professional member in the field of quantity surveying with the Royal Institution of Chartered Surveyors of the United Kingdom.

(3) The Registrar shall, within 6 months of the commencement of this Act, transmit to the Minister a list of all professional quantity surveyors who are deemed to be so registered or are so registered.

(4) Where this Act does not make provision for any transition, the Minister may make such regulations as may be necessary for such transition.

46. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.

SCHEDULE
[Section 7(1)(b)]

PROCEDURE FOR ELECTION

1. Calling for nominations and appointment of nomination day

Within 5 months of the commencement of this Act and, thereafter, not less than one month before the expiry of the term of office of the members specified in section 7(1)(b), the Registrar shall publish, in the *Gazette* and such newspaper as he may determine, a notice –

- (a) inviting the submission of nominations; and
- (b) appointing a day, time and place for the nominations to be submitted.

2. Eligibility to stand as candidate

No person shall be eligible to stand as candidate for election as a member unless, on nomination day –

- (a) he is a professional quantity surveyor;
- (b)
 - (i) he is not subject to any investigation;
 - (ii) no disciplinary proceedings are being held against him under section 27; and
 - (iii) no disciplinary measure has been taken against him during the last 5 years preceding the nomination.

3. Procedure after nomination

Where the number of persons duly nominated exceeds the number of persons to be elected, the Registrar shall publish, in the *Gazette* and such newspaper as he thinks fit, a notice –

- (a) specifying the names of the persons duly nominated;
- (b) appointing a day, time and place, being not less than 15 days after the publication of the notice, for the holding of an election.

4. Persons entitled to vote

(1) Every person who, on nomination day, is a professional quantity surveyor shall be entitled to vote at an election of the members.

(2) Every professional quantity surveyor shall vote for such number of candidates as there are vacancies available in the membership of the Council.

5. Election

(1) The election of the members shall be conducted under the supervision of the supervising officer, or his representative, who shall submit to the Minister the results of the election forthwith.

(2) The Minister shall, within 21 days of receipt of the results of the election, cause the composition of the Council to be published in the *Gazette*.
