

REPUBLIC OF SOUTH AFRICA

CONSTRUCTION INDUSTRY DEVELOPMENT BOARD AMENDMENT BILL

(As introduced in the National Assembly (proposed section 76); explanatory summary of Bill and prior notice of its introduction published in Government Gazette No. 50608 of 3-5-2024) (The English Text is the official text of the Bill)

(MINISTER OF PUBLIC WORKS AND INFRASTRUCTURE)

[B — 2022]

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- _____ Words underlined with a solid line indicate insertions in existing enactments.
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BILL

To amend the Construction Industry Development Board Act, 2000, so as to insert new and amend certain definitions; to provide a clear delineation between the Board as regulator and its oversight body, the Council; to provide for the qualifications of members of Council; to provide for the enforcement powers of the Board; to provide for transformation and development in the construction industry; to extend the application of the register of contractors to procurement in the private sector; to provide for a register of professional service providers; to further provide for the enforcement of the Act; to empower the Minister to make regulations prescribing the requirements for registration of professional service providers, application fees and categories of registration of service providers; to provide for offences and penalties; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows: —

Deletion of explanatory notes on purpose of Chapter One of Act 38 of 2000

1. Chapter One of the Construction Industry Development Board Act, 2000 (Act No. 38 of 2000) (hereinafter referred to as the “principal Act”) is hereby amended by the deletion of the explanatory notes on the purpose of the Chapter.

Amendment of section 1 of Act 38 of 2000

2. Section 1 of the principal Act is hereby amended—

- (a) by the deletion of the numbering preceding the definitions;
- (b) by the deletion of the definition of “best practice”;
- (c) by the deletion of the definition of “best practice contractor recognition scheme”;
- (d) by the deletion of the definition of “best practice project assessment scheme”;
- (e) by the substitution for the definition of “chairperson” of the following definition:

“**chairperson**’ means the chairperson of the **[Board] Council** appointed in terms of section 6(11)(a);”;

- (f) by the deletion of the definition of “contractor”;
- (g) by the substitution for the definition of “construction industry” of the following definition:

“**‘construction industry**’ means the broad conglomeration of industries and sectors which add value in the **[creation and maintenance of fixed assets within the built environment] life cycle of construction works**;

- (h) by the substitution for the definition of “construction work” of the following definition:

“ **‘construction works’** means the provision of a combination of goods and services arranged for the **[development]** construction, extension, installation, **[repair,]** maintenance, **[renewal, removal, renovation, alteration, dismantling]** refurbishment, rehabilitation, or demolition of a fixed asset **[including building and engineering infrastructure]**”;

- (i) by the insertion after the definition of “construction works” of the following definitions:

“ **‘contractor’** means a person who undertakes to execute construction works;

‘contractor recognition scheme’ means a contractor recognition scheme referred to section 21”;

“ **‘Council’** means a council of the Board appointed by the Minister in terms of section 6”;

- (j) by the deletion of the definition of “emerging enterprise”;
- (k) by the substitution for the definition of “emerging sector” of the following definition:

“ **‘emerging sector’** means that sector of the construction industry which comprises of emerging enterprises that are owned, managed and controlled by previously disadvantaged persons”;

- (l) by the substitution for the definition of “member” of the following definition:

“**‘member’** means a member of the **[Board]** Council appointed in terms of section 6;”

- (m) by the substitution for the definition of ‘Minister’ of the following definition:

“**‘Minister’** means the **[Minister of the National Department]** Cabinet Member responsible for public works and infrastructure”;

(n) by the substitution for the definition of “organ of state” of the following definition:

“ **‘organ of state’** means an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996[(**Act No. 108 of 1996**)];”;

(o) by the deletion of the definition of “policy”;

(p) by the insertion after the definition of “prescribed” of the following definitions:

“ **‘private sector procurement’** means the acquisition of construction works by the private sector;

“ **‘professional service provider’** means a person who plans, designs or supervises construction works;”;

(q) by the insertion after the definition of “project” of the following definition:

“ **‘project assessment scheme’** means the project assessment scheme referred to in section 23;”;

(r) by the deletion of the definition of “register”;

(s) by the insertion after the definition of “register” of the following definitions:

“ **‘register of contractors’** means a register of contractors referred to in Chapter Three;

‘register of professional service providers’ means a register of professional service providers contemplated in section 22;”;

(t) by the deletion of “and” at the end of the definition of “regulation” and the insertion after the definition of “regulation” of the following definitions:

“ **‘scheme’** means a set of best practice and the standards established by the Board; and

“ **‘standards’** means the standards determined by the Board in terms of section 4 and section 5.”

Deletion of explanatory notes on purpose of Chapter Two of Act 38 of 2000

3. Chapter Two of the principal Act is hereby amended by the deletion of the explanatory notes on the purpose of the Chapter.

Amendment of section 4 of Act 38 of 2000

4. Section 4 of the principal Act is hereby amended—

(a) by the substitution in paragraph (a) for subparagraph (iii) of the following subparagraph:

“(iii) **[improved value]** best value for money to clients;”;

(b) by the substitution for paragraph (b) of the following paragraph:

“(b) provide strategic leadership to construction industry stakeholders to stimulate sustainable growth, transformation, reform and improvement of the construction sector;”;

(c) by the substitution in paragraph (c) for the words preceding subparagraph (i) of the following words:

“determine and establish **[best practice]** standards that **[promotes]** promote—”;

(d) by the substitution in paragraph (c) for subparagraphs (iii) and (iv) of the following subparagraphs, respectively:

“(iii) improved procurement and delivery management reform;

(iv) **[improved public sector delivery management]** human resource development in the construction industry;”.

(e) by the substitution for paragraph (d) of the following paragraph:

- “(d) promote **[best practice] standards** through the development and implementation of appropriate programmes and measures aimed at **[best practice] standards** and improved performance of public and private sector clients, contractors and other participants in the construction delivery process;”
- (f) by the substitution for paragraph (f) of the following paragraph:
- “(f) promote, establish or endorse—
- (i) uniform standards; and
 - (ii) ethical standards,
- that regulate the actions, practices and procedures of parties engaged in **[construction contracts] construction works**”.

Amendment of section 5 Act 38 of 2000

- 5.** Section 5 of the principal Act is hereby amended—
- (a) by the substitution for the heading of the following heading:
- “5. Powers, functions and duties of [Board] Council”**
- (b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
- “To provide strategic leadership, the **[Board] Council**—”;
- (c) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
- “(a) must promote and implement policies[. **programmed**], programmes and projects aimed at, amongst others—”;

(d) by the substitution in subsection (1)(a) for subparagraph (i) of the following subparagraph:

“(i) support of the emerging sector;”;

(e) by the substitution for subsection (2) of the following subsection:

“(2) To promote **[best practice] standards**, the **[Board] Council**—

- (a) must, in consultation with the Minister, determine **[best practice] standards** and priorities for the construction industry;
- (b) must, by notice in the *Gazette*, publish **[best practice] standards** and guidelines;
- (c) may develop targets and performance indicators related to those **[best practice] standards** and guidelines and establish mechanisms to monitor their implementation and evaluate their impact;
- (d) must establish and maintain a national register of contractors as contemplated in Chapter Four, which provides for categories of contractors in a manner which facilitates public and private sector procurement, and which integrates other statutory contractor registers;
- (e) must establish and maintain a **[best practice] contractor** recognition scheme as contemplated in section 21, which promotes contractor development and monitors contractor performance;
- (f) must establish and maintain a register of projects **[; the best practice] and a** project assessment scheme contemplated in

Chapter Four, for the promotion, assessment and evaluation of **[best practice] standards** on construction contracts;

- (g) may establish and maintain a register of suppliers[,] and manufacturers **[or service providers]** in the construction industry. The provisions of Chapter **[Four]** Three apply with the necessary changes required by the context, to that register; **[and]**
- (h) may develop and promote other programmes and projects that promote best practice[.]; and
- (i) must establish and maintain a national register of professional service providers as contemplated in Chapter Three-A, which provides for categories of professional service providers in a manner which facilitates public and private sector procurement.”.

- (f) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“To advance the uniform application of policy with regard to construction industry development, the **[Board]** Council—”;

- (g) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

“To promote uniform and ethical standards within the construction industry, the **[Board]** Council—”.

- (h) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:

“To promote sustainable growth of the construction industry and the participation of the emerging sector therein, the **[Board]** Council—”;

- (i) by the substitution in subsection (6) for the words preceding paragraph (a) of the following words:

“To promote appropriate research, the **[Board]** Council—”;

- (j) by the substitution in subsection (7) for the words preceding paragraph (a) of the following words:

“To implement policy, the **[Board]** Council—”;

- (k) by the substitution for subsection (8) of the following subsection:

“(8) The **[Board]** Council may advise the Minister on policy and legislation impacting on the construction industry or propose amendments to this Act to the Minister.”;

- (l) by the substitution for subsection (9) of the following subsection:

“(9) The **[Board]** Council may advise the Minister on the effectiveness of the implementation of policies, programmes or legislation developed by the Minister or by the **[Board]** Council.”;

- (m) by the substitution in subsection (10) for the words preceding paragraph (a) of the following words:

“The **[Board]** Council may—”; and

- (n) by the deletion in subsection (10) of paragraph (b).

Substitution of section 6 of Act 38 of 2000

6. The following section is hereby substituted for section 6 of the principal Act:

“Appointment and composition of Council”

6. (1) The Minister must appoint 11 members of the Council which must consist of the following:

- (a) one person who is an employee of the department,
- (b) one person who is a legal practitioner,
- (c) one person who has a qualification and experience in finance,
- (d) one person who has a qualification and experience in human resources management,
- (e) one person who has a qualification and experience in auditing and risk management, and
- (f) six persons who have a qualification and experience in the built environment.

(2) The members of the Council must be persons—

- (a) who are citizens or permanent residents of the Republic; and
- (b) who are not disqualified as contemplated in section 7(1).

(3) In appointing members of the Council, the Minister must take into account—

- (a) the objects, powers, functions, and duties of the Board and the Council as contemplated in sections 4 and 5, respectively; and
- (b) the need to achieve a reasonable balance of expertise and knowledge of the construction industry, whilst broadly reflecting the race, gender, and geographic composition of the Republic.

(4) Before appointing members of the Council, the Minister must publish a notice in the *Gazette* and three national newspapers, with due regard to the Use of Official Languages Act, 2012 (Act No. 12 of 2012) calling

upon members of the public to submit to the Minister, within a period of at least 30 days from the publication of the notice, nominations of persons as candidates for positions on the Council.

(5) The notice referred to in subsection (4) must set out the—

(a) time commitments reasonably expected from members of the Council;

(b) term of office for which appointments are considered;

(c) criteria for disqualification as members of the Council;

(d) requirements with which nominations must comply, including those listed in subsection (1);

(e) closing date for nominations;

(f) procedure to be adopted regarding nominations; and

(g) the address to which nominations must be delivered.

(6) The Minister must—

(a) appoint a selection panel to shortlist and recommend to the Minister a list of candidates for appointment as members of the Council; and

(b) determine the terms of reference for the selection panel.

(7) The selection panel must, subject to subsection (7), after shortlisting candidates as contemplated in subsection (6)—

(a) compile and submit to the Minister a list of recommended candidates which list must have more than one candidate per position to be filled;

and

(b) must submit a curriculum *vitae* of each recommended candidate.

(8) Before the selection panel compiles a list contemplated in subsection (7), it must ensure that candidates have been subjected to security screening and probity check process.

(9) The Minister must—

(a) upon receipt of a list of recommended candidates contemplated in subsection (7), consider the list;

(b) subject to section 7(4) and (5), appoint the members contemplated in subsection (1) from the list of recommended candidates, after the Cabinet has endorsed the appointment of members of the Council from the list; and

(c) issue each successful candidate with a letter of appointment stating the term and conditions of his or her appointment.

(10) If the panel referred to under subsection (6) is unable to recommend suitably qualified persons or the required number of suitably qualified persons, the Minister must, on the recommendation of the panel re-advertise and follow the procedure set out in this section.

(11) The Minister must, within 30 days after the appointment or reappointment of a member or members of the Council, publish in the Gazette—

(a) the name of every person appointed as a member of the Council;

(b) the date from which the appointment takes effect; and

(c) the duration of the period for which the appointment is made.

(12) The Minister must, from the members contemplated in subsection (9) appoint persons as—

(a) the chairperson of the Council ; and

(b) the deputy chairperson of the Council.

(13) If a person, who is a political office bearer, accepts an appointment in terms of this section, he or she must vacate the political office before the appointment in terms of this section takes effect.

(14) The chief executive officer of the Board is an *ex officio* member of the Council.”.

Substitution of section 7 of Act 38 of 2000

7. The following section is hereby substituted for section 7 of the principal Act:

“Disqualification, removal from office, term of office and filling of vacancies

7. (1) A person may not be appointed as a member of the Council if he or she—

(a) is an unrehabilitated insolvent;

(b) has been declared by a court to be mentally ill;

(c) serves on more than three boards of public entities or private companies;

(d) has been convicted of—

(i) a crime and sentenced to a term of imprisonment without the option of a fine; or

(ii) fraud, corruption or any other crime involving dishonesty, within a period of 10 years preceding the nomination in terms of section 6(1)(a).

(e) is a member of the National Assembly, a provincial legislature or any municipal council, or is a delegate to the National Council of Provinces;

(f) has, as a result of improper conduct, been removed from a position of trust by a competent court of law; or

(g) is not fit and proper to hold office.

(2) The Minister must, in writing, subject to subsection (3), relieve any member of his or her duties—

(a) if that member has failed to attend two consecutive meetings of the Council without leave of the chairperson of the Council, which leave may be granted retrospectively;

(b) if that member has failed to uphold and advance the objects of the Board;

(c) on the grounds of misconduct, incapacity or incompetence;

(e) if the member becomes disqualified as contemplated in subsection (1);

or

(f) for any other reasonable ground.

(3) Before acting in accordance with subsection (2) the Minister must afford the affected member of the Council an opportunity to provide reasons why that member must not be relieved of his or her duties as a member of the Council.

(4) A member of the Council holds office for a period not exceeding three years, on the conditions determined by the Minister.

(5) A member of the Council may not serve for more than two consecutive terms, unless the Minister considers it necessary to reappoint a member, to ensure continuity or on the grounds of the specific expertise of that member.

(6) A third of the Council members must, subject to subsection (1) be reappointed, but if it is not possible to do so, a number as near to a third of the members as possible may be reappointed.

(7) If a member dies or vacates his or her office before the expiry of the period for which he or she was appointed, the Minister may appoint another person in accordance with section 6, to fill the vacancy for the remaining portion of the period for which that member was appointed.

(8) Where a term of office of the Council members has expired before new Council members have been appointed, the Minister may, notwithstanding the provisions of subsections (4) and (5), after consultation with the Council, extend the period of office of any or all the members of the Council for a non-renewable period of not more than 12 months.

(9) The Minister may, on account of misconduct or inability to perform their duties efficiently, relieve all members of the Council of their duties and appoint an interim Council for a period not exceeding 12 months pending the appointment of the Council members in terms of the provisions of section 6.

(10) Before acting in accordance with subsection (9) the Minister must conduct an investigation into the affairs of the Board and afford the Council an opportunity to provide reasons why they should not be relieved of their duties”.

Substitution of section 8 of Act 38 of 2000

8. The following section is hereby substituted for section 8 of the principal Act:

“Remuneration of members of Council”

8. A member of the **[Board]** Council or a committee of the **[Board]** Council receives such remuneration and allowances as determined by the Minister, in consultation with the Minister of Finance.”.

Substitution of section 9 of Act 38 of 2000

9. The following section is hereby substituted for section 9 of the principal Act:

“Disclosure of interest”

9. If a member of the **[Board]** Council or his or her spouse, immediate family member, life partner or business associate, has any direct or indirect financial interest in any matter to be dealt with at any meeting of the **[Board]** Council, that member—

- (a) must disclose that interest and the extent thereof in writing to the chairperson, who must table that statement at the next meeting of the **[Board]** Council;

- (b) may not attend any portion of a meeting of the **[Board] Council** during the consideration of that matter by the **[Board] Council**;
- (c) may not in any manner take part as a member of the **[Board] Council** in the consideration of that matter by the **[Board] Council**; and
- (d) may not in any manner endeavour to influence the opinion or vote of any other member of the **[Board] Council** in connection with that matter.”.

Substitution of section 10 of Act 38 of 2000

10. The following section is hereby substituted for section 10 of the principal Act:

“Chief executive officer

10. (1) The Council must, after following a recruitment and assessment processes, subject to subsection (2), appoint a suitable candidate as the chief executive officer.

(2) The Council must submit the name of a candidate to be appointed as the chief executive officer to the Minister, for the Minister to seek Cabinet endorsement.

(3) The chief executive officer must enter into a written performance agreement with the Council immediately after his or her appointment and thereafter annually within one month of the commencement of each financial year.

(4) The chief executive officer holds office for a period not exceeding five years and is eligible for reappointment, for any number of terms, on expiry of his or her term.

(5) If the chief executive officer—

(a) is absent for a period of more than two months;

(b) is unable to carry out her or his duties; or

(c) ceases to hold office,

the Council may appoint any senior person in the employ of the Board to act as the chief executive officer, until the chief executive officer is able to resume those functions or until the vacant position of chief executive officer is filled, as the case may be.

(6) If the chief executive officer is absent for a period of less than two months he or she must, after consultation with the Council, appoint any senior person in the employ of the Board to act as chief executive officer.

(7) The acting chief executive officer has all the powers and may perform all the functions of the chief executive officer.”.

Insertion of sections 10A and 10B in Act 38 of 2000

11. The following sections are hereby inserted after section 10 of the principal Act:

“Powers and Functions of chief executive officer

10A. (1) The chief executive officer is the head of the Board's administration.

(2) Subject to directives of the Council, the chief executive officer is responsible for and accountable to the Council for—

(a) the effective performance of the functions and objects of the Board;

(b) the day-to-day running of the affairs of the Board;

(c) the development and implementation of a strategic plan and policies of the Board;

(d) the development and formation of an efficient administration for the Board;

(e) the establish of an organisational structure for the Board, including—

(i) the appointment and control of employees; and

(ii) the training of employees.

(f) reporting to the Council on a quarterly basis, or at the request of the Council, on the performance of the Board; and

(g) the performance of any such powers or functions as may, from time to time, be delegated by the Council.

Remuneration and conditions of service of chief executive officer

10B. The chief executive officer is, subject to such terms and conditions and entitled to a remuneration package, as determined by the Council with the concurrence of the Minister and the Minister of Finance.”.

Substitution of section 12 of Act 38 of 2000

12. The following section is hereby substituted for section 12 of the principal Act:

“Meetings

12. (1) The **[Board] Council** must, subject to subsection (12), meet **[at least]** not more than four times a year.

(2) The chairperson of the **[Board] Council** or, in his or her absence, the deputy chairperson, must give each member of the **[Board] Council** 14 days written notice of the time, date and place of the meeting and the matters to be discussed.

(3) The chairperson or, in his or her absence, the deputy chairperson presides at meetings of the **[Board] Council**.

(4) In the absence of both the chairperson and the deputy chairperson, a member of the **[Board] Council**, elected by the members present, presides at meetings of the **[Board] Council**.

(5) The chairperson or, in his or her absence, the deputy chairperson, may at any time call an extraordinary **[meetings] meeting** of the **[Board] Council**.

(6) The **[Board] Council** must keep a register of attendance and minutes of its meetings and must circulate copies thereof to the members of the **[Board] Council** within two weeks after the meeting to which it relates.

(7) The minutes, when confirmed at the next meeting and signed by the person who chairs that meeting, are a true and correct record of the proceedings.

(8) The quorum for a meeting of the **[Board] Council** is a majority of its members.

(9) A decision of the majority of the members of the **[Board] Council** present, at any meeting, constitutes a decision of the **[Board] Council**.

(10) In the event of an equal number of votes, the person presiding at the meeting has a casting vote in addition to that person's deliberative vote.

(11) A decision taken by the **[Board] Council** or an act performed under the authority of the **[Board] Council** is not invalid by reason only of a vacancy on the **[Board] Council** or because a person who is not entitled to sit as a member of the **[Board] Council** sat as a member at the time when the decision was taken or the act was authorised, if the decision was taken or the act was authorised in good faith by the requisite majority of the members of the **[Board] Council** who were present at the time and entitled to vote as members.

(12) The Council may, notwithstanding subsection (1) and subsection (5) and where necessary, hold not more than four extraordinary meetings per year.

(13) The Council may establish a committee or committees to assist it in the performance of its functions and appoint any person as a member of that committee after due consideration of provincial representation.”.

Substitution of section 13 of Act 38 of 2000

13. The following section is hereby substituted for section 13 of the principal Act:

“Stakeholder consultation

13. (1) The **[Board] Council** must constitute a construction industry stakeholders' forum to inform it on matters that affect the development of the construction industry.

(2) The stakeholders' forum comprises individuals who have experience, expertise or skills necessary to enable it to advise the **[Board] Council** appropriately and who represent stakeholders in the construction industry.

(3) In constituting the stakeholders' forum the **[Board] Council** must, once every two years, invite nominations from organised labour, organised business and construction industry related bodies, clients, societies and associations in a manner the **[Board] Council** considers fit.

(4) The **[Board] Council** must establish a stakeholders' forum from the nominations submitted in terms of subsection (3), on the conditions it considers appropriate.

(5) The **[Board] Council** must convene, at least once per year, a meeting of the stakeholders' forum with the Minister to discuss matters raised by the stakeholders' forum or the **[Board] Council** and submitted to the Minister, in writing, two months prior to that meeting.

(6) The chairperson of the **[Board]** Council presides over the meetings of the stakeholders' forum, and section 12 (3) applies to the meetings of the stakeholders' forum, with the changes required by the context.

(7) Subject to section 5(10)(b), the **[Board]** Council may establish a committee or a focus group to address issues of interest to specific sectors or stakeholders.”.

Amendment of section 14 of Act 38 of 2000

14. Section 14 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) A panel drawn from the public sector and the private sector and appointed by the Minister on the basis of expertise in relation to the **[functions]** objects of the Board, must undertake the evaluation.”.

Substitution of section 15 of Act 38 of 2000

15. The following section is hereby substituted for section 15 of the principal Act:

“Delegation of powers

15. (1) The Council may, subject to subsection (2), delegate any of its powers, functions and duties in terms of this Act, to the chief executive officer.

(2) The delegation referred to in subsection (1) excludes the Council's power or duty—

(a) to make rules;

(b) to appointment of the chief executive officer;

(c) to determine the conditions of service of staff members of the Board under section 11;

(d) to determine and establish standards and guidelines under sections 4 and 5; and

(e) to report to the Minister.

(3) The chief executive officer may delegate any of his or her powers in terms of this Act, to a staff member of the Board.

(4) Any delegation under subsection (1) or (3) must be in writing and—

(a) is subject to any limitation or condition imposed in terms of this Act or by the Council or chief executive officer, as the case may be;

(b) does not prevent the exercise of that power in question by the Council or the chief executive officer; and

(c) does not divest the Council or chief executive officer of responsibility for a function or power so delegated.”.

Deletion of explanatory notes on purpose of Chapter Three of Act 38 of 2000

16. Chapter Three of the principal Act is hereby amended by the deletion of the explanatory notes on the purpose of the Chapter.

Amendment of section 16 of Act 38 of 2000

17. Section 16 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) The Board must, **[within the first three years of its establishment]** establish a national register of contractors, which categorises contractors in a manner that facilitates private and public sector procurement and promotes contractor development.”

(b) by the substitution for subsection (4) of the following subsection:

“(4) When an employer appoints an implementing agent to undertake construction work, the implementing agent must apply the register to its procurement process.”

(c) by the substitution for subsection (5) of the following subsection:

“(5) The Minister must prescribe the requirements for registration, renewal, and amendment of contractor grading designation; and for the categories of registration, taking into account the different stages of development of contractors in the construction industry, the development of the emerging sector and the objectives of this Act.”

(d) by the substitution for subsection (6) of the following subsection:

“(6) A contractor may, in writing, apply to the Board for registration and the application must be accompanied by the prescribed particulars and prescribed **[administration]** registration fees, which are not refundable.”

(e) by the substitution for subsection (8) of the following subsection:

“(8) The Minister may, on the recommendation of the **[Board] Council**, prescribe **[a] an administration** fee to be paid annually to the Board by all contractors registered with the Board in terms of subsection (7).”.

(f) by the addition after subsection (8) of the following subsection:

“(9) The private sector employers must procure construction works from a register of contractors established in terms of this section.”.

Amendment of section 18 of Act 38 of 2000

18. Section 18 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) A contractor may not undertake, carry out or complete any construction works or portion thereof for **[public sector contracts, awarded in terms of competitive tender or quotation]** the private sector or the public sector, unless such contractor **[he or she]** is registered with the Board and holds a valid registration certificate issued by the Board.”;

(b) by the substitution for subsection (2) of the following subsection:

“(2) Any contractor who carries out or attempts to carry out any construction works or portion thereof under a public or private sector contract and **[who is not a registered contractor of the Board in terms of this Act is guilty of an offence and liable, on conviction, to a fine]** in contravention of subsection (1) may, following an

investigation and upon a finding that the contractor violated that subsection, be fined by the Board an amount not exceeding ten per cent of the value of the contract so carried out.”; and

(c) by the insertion after subsection (2) of the following subsection:

“(2A) (a) The Minister must prescribe the procedure for the imposition of administrative fines.

(b) The Board may, for the purpose of conducting an investigation contemplated in this section—

(i) subpoena any person to appear in person at an enquiry;

(ii) subpoena any person to produce any documentation relevant to such an enquiry; and

(iii) seize and make copies of the documentation produced in terms of paragraph (b).”.

(d) by the substitution for subsection (3) of the following subsection:

“(3) A contractor referred to in subsection (2) must, upon receipt of a written notice by the Board served on [him or her] the contractor in the prescribed manner, pursuant to the conclusion of an investigation contemplated in section 29, subject to the provisions of subsection (4), cease [to continue] any public or private sector construction work.”; and

(e) by the insertion after subsection (3) of the following subsection:

“(3A) Any person who is aggrieved by the decision of the Board taken in terms of subsection (2) may appeal to the Minister in the prescribed manner.”.

Amendment of section 19 of Act 38 of 2000

19. Section 19 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

“Removal or suspension of names from and restoration thereof to register”

(b) by the substitution for subsection (1) of the following subsection:

“(1) The Board may, after conducting an investigation, **[order the chief executive officer to]** remove the name of any contractor from the register or suspend registration of a contractor, if the Board is satisfied that such contractor has breached the requirements and conditions for registration or any provision of this Act.”;

(c) by the insertion after subsection (1) of the following subsection:

“(1A) The Board may, for the purpose of conducting an investigation contemplated in this section—

(a) subpoena any person to appear in person at an enquiry;

(b) subpoena any person to produce any documentation relevant to such an enquiry; and

(c) seize and make copies of the documentation produced in terms of paragraph (b).”;

(d) by the substitution for subsection (2) of the following subsection:

“(2) Any registration of a contractor which is **[proved]** found **[to the satisfaction of the Board]** to have been made in error or as a result of misrepresentation or in circumstances not authorised by this Act, must, subject to subsection (2A), be removed from the register,

and the reasons **[for the removal]** therefor must be **[made]** recorded in the register.”;

(e) by the insertion after subsection (2) of the following subsection:

“(2A) The removal or suspension of a contractor as contemplated in subsection (1) or (2) must be preceded by an investigation and subject to a contractor affected thereby being afforded an opportunity to provide reasons why its registration must not be removed from the register or suspended, as the case may be.”;

(f) by the substitution for subsection (7) of the following subsection:

“(7) A contractor whose name and particulars are removed from the register or is suspended in terms of this section, during the currency of a public or private sector contract, may be permitted to complete the construction works or portion thereof, as determined by the Board.”; and

(g) by the addition after subsection (7) of the following subsection:

“(7A) Any person who is aggrieved by the decision of the Board taken in terms of subsection (1) or subsection (2) may appeal to the Minister in the prescribed manner.”.

Amendment of section 20 of Act 38 of 2000

20. Section 20 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) **[Registration]** Subject to section 17(5), registration by the Board in term of this Act is valid for a period of three years.”.

Substitution of section 21 of Act 38 of 2000

21. The following section is hereby substituted for section 21 of the principal Act:

“[Best practice contractor] Contractor recognition schemes

21. The Board must, within a reasonable period after the establishment of the register of contractors, establish **[a best practice]** contractor recognition scheme which—

- (a) enables organs of state and the private sector to manage **[risk on complex contracting strategies]** procurement of construction works; and
- (b) promotes contractor development in relation to **[best practice]** standards and guidelines developed by the Board in terms of section 5(2).”.

Insertion of Chapter Three-A in Act 38 of 2000

22. The following Chapter is hereby inserted after Chapter Three of the principal Act:

“CHAPTER THREE-A**REGISTER OF PROFESSIONAL SERVICE PROVIDERS**

Registration of professional service providers

21A. (1) The Board must, subject to subsection (10), establish a national register of professional service providers, which categorises professional service providers in a manner that facilitates public and private sector procurement and promotes development of professional service providers.

(2) The register for professional service providers must—

(a) indicate the size and distribution of professional service providers operating within the construction industry; and

(b) indicate the volume and nature of professional service provider and target groups.

(3) The Minister must prescribe the manner in which public and private sector professional service provider contracts may be invited, awarded, and managed with the framework of the register.

(4) From a date determined by the Minister, by notice in the Gazette, every organ of state must apply the register of professional service providers to its procurement process.

(5) An implementing agent, appointed by an organ of state to undertake construction work, must apply the register of professional service providers to its procurement process.

(6) The Minister must prescribe the requirements for registration and for categories of registration, taking into account the different development stages of professional service providers in the construction industry, the development of designated groups and the objectives of this Act.

(7) A professional service provider may, in the prescribed manner, apply to the Board for registration and the application must be accompanied by the prescribed particulars and a registration fee which is non-refundable.

(8) If the Board is satisfied that the applicant has met the requirements for registration, as prescribed, it must cause the necessary entry to be made in the register and the chief executive officer must issue to the applicant a registration certificate in the prescribed form.

(9) The Minister may, on the recommendation of the Council, prescribe an administrative fee to be paid annually to the Board by all professional service providers registered with the Board in terms of subsection (7).

(10) The Minister must prescribe the date on which a national register of professional service providers is to come into effect.

(11) Any person who is aggrieved by the decision of the Board not to register that person may appeal to the Minister in the prescribed manner.

Keeping of register

21B. (1) The Board must keep and maintain a register of the prescribed particulars of professional service providers who are registered with the Board and a registered professional service provider must, in writing, notify the Board of substantive changes to those particulars within 30 days after such a change.

(2) A professional service provider may apply to the Board to amend its category status.

(3) Any professional service provider who is aggrieved by the decision of the Board not to amend its category status may appeal to the Minister in the prescribed manner.

Unregistered professional service providers

21C. (1) Subject to subsection (7), a professional service provider may not undertake, carry out or complete any construction works or portion thereof for public or private sector contracts, awarded in terms of competitive tender or quotation, unless such professional service provider is registered with the Board and holds a valid registration certificate issued by the Board.

(2) Any professional service provider who carries out or attempts to carry out any construction works or portion thereof under a public or private sector contract and who is not a registered professional service provider in terms of this Act, is guilty of an offence and liable, on conviction, to a fine not exceeding 10 per cent of the value of the contract so awarded.

(3) Upon becoming aware of any professional service provider rendering any construction works without a valid registration in terms of this Act, the Board must issue such a professional service provider a notice calling upon that professional service provider to show cause why the Board should not direct it to cease construction works within the period specified in that notice.

(4) The Board must after consideration any representation by the service provider referred to in subsection (3), and upon being satisfied that such a professional service provider is not registered in relation to the contract, proceed to issue a notice to the service provider to forthwith cease all construction works related thereto.

(5) The Board may, subject to prescribed conditions permit a professional service provider who received a notice contemplated in subsection (3) in the course of executing a contract to complete construction work or portion thereof, as determined by the Board.

(6) Any professional service provider who is aggrieved by the decision of the Board contemplated in subsection (4) may appeal to the Minister in the prescribed manner.

(7) The Minister must prescribe a financial value of construction works or a portion a portion thereof which may be undertaken without registration as a professional service as contemplated in section 21A.

Removal of names from, and restoration to register

21D. (1) The Council may order the chief executive officer to remove the name of any professional service provider from the register, if the Council is satisfied that such professional service provider has breached the requirements or conditions for registration.

(2) Any registration which is proved to the satisfaction of the Board to have been made in error or as a result of misrepresentation or in the

circumstances not authorised by this Act, must be removed from the register, and the reason for that removal must be recorded in the register.

(3) A professional service provider whose name is removed from the register in terms of subsection (1) or (2) must be notified thereof by the chief executive officer by registered post sent to the address appearing in the register.

(4) The effective date of cancellation of a registration is the date on which notice is effected in terms of subsection (3).

(5) As from the date on which notice is given in subsection (3)—

(a) any registration in terms of this Act, of the professional service provider concerned is cancelled; and

(b) that professional service provider may not perform any act which he or she was entitled to perform as a registered professional service provider.

(6) A professional service provider whose name and particulars have been removed from the register in terms of this section, may be restored to the register, if that professional service provider complies with such requirements as the Board may determine.

(7) A professional service provider whose name and particulars are removed from the register in terms of this section, during currency of a public sector contract, may be permitted to complete the professional services or portion thereof, as determined by the Board.

(8) Any professional service provider who is aggrieved by the decision of the Board to remove its name from the register may appeal to the Minister in the prescribed manner.

Duration of registration

21E. Registration in terms of this Act is valid for a period of three years.

Professional service provider recognition scheme

21F. The Board must, within a reasonable period after the establishment of the register of professional service providers, establish a professional service provider recognition scheme which—

- (a) enables organs of state to manage public sector procurement risk; and
- (b) promotes the development of professional service providers.”.

Deletion of explanatory notes on purpose of Chapter Four of Act 38 of 2000

23. Chapter Four of the principal Act is hereby amended by the deletion of the explanatory notes, which follow the heading of the Chapter, on the purpose of the Chapter.

Amendment of section 22 of Act 38 of 2000

24. Section 22 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Board must **[, within the first three years of its establishment, a register of projects to gather information on the nature, value and distribution of projects]** monitor infrastructure spend to [and]

provide the basis for the **[best practice]** project assessment scheme as contemplated in section 23;”.

Substitution of section 23 of Act 38 of 2000

25. The following section is hereby substituted for section 23 of the principal Act:

“[Best practice project] Project assessment scheme

23. (1) The Board must, within a reasonable period after the establishment of the register of projects, establish a **[best practice]** project assessment scheme, based on the standards determined by the Board in terms of section 5.

(2) After a date determined by the Minister in the *Gazette* all construction contracts above a prescribed tender value are subject to an assessment, in the prescribed manner, **[of compliance with best practice standards and guidelines published by the Board in the Gazette,]** and different dates may **[be determined for different practices]** apply to different classes of contracts.

[(3) Every client who engages in the best practice project assessment scheme must pay to the Board a prescribed percentage of the contract sum as determined at the of the awarding of the contract.”;]”

Deletion of explanatory notes on purpose of Chapter Five of Act 38 of 2000

26. Chapter Five of the principal Act is hereby amended by the deletion of the explanatory notes on the purpose of the Chapter, which follows the heading of the Chapter.

Substitution of section 26 of Act 38 of 2000

27. The following section is hereby substituted for section 26 of the principal Act:

“Accounting

26. Subject to the Public Finance Management Act, 1999, the **[Board]** Council is the accounting authority.

Deletion of explanatory notes on purpose of Chapter Six of Act 38 of 2000

28. Chapter Six of the principal Act is hereby amended by the deletion of the explanatory notes on the purpose of the Chapter, which follows the heading of the Chapter.

Repeal of section 29 of the Principal Act

29. Section 29 of the Principal Act is hereby repealed.

Substitution of section 30 of Act 38 of 2000

30. The following section is hereby substituted for section 30 of the principal Act:

“Confidentiality

30.(1) The chief executive officer, staff and all members of the **[Board]** Council may not disclose to any source, outside of the Board, any information classified by the Board [that may be considered] as being confidential, except if—

(a) the other person requires such information in order to perform any function in terms of this Act;

(b) the disclosure is ordered by a court of law; or

(c) the disclosure is in compliance with the provisions of any other law.

(2) The information contemplated in subsection (1)(a) can only be disclosed by the chief executive officer”.

Insertion of section 33A in Act 38 of 2000

31. The following sections are hereby inserted after section 33 of the principal Act:

“Offences and Penalties

33A. Any person who contravenes or fails to comply with the provision of section 18(1), 19(5)(b) or 21C(2), is guilty of an offence and is liable, on

conviction, to a fine or imprisonment for a period not exceeding 15 years, or to both a fine and such imprisonment.”.

Transitional provisions

33B(1) Anything done or deemed to have been done under a provision repealed or amended by the Construction Industry Development Board Amendment Act, 2023-

- (a) remains valid to the extent that it is consistent with this Act as amended until anything done under this Act, as amended, overrides it; and
- (b) subject to paragraph (a), is considered to be an action under the corresponding provision of this Act, as amended.

(2) An application registration as a contractor or professional service provider in terms of Chapter Three and Chapter Two, respectively and that is pending when the Construction Industry Development Board Amendment Act, 2023 takes effect must, despite the amendment of this Act, be dispensed with in terms of Chapter Three or Chapter Two of this Act as if Chapter Three or Chapter Two had not been amended.

(3) The members of the Board appointed in terms of Chapter Two of the this Act shall continue to serve in those positions until such time that members of the Council have been appointed after commencement of the Construction Industry Development Board Amendment Act, 2023.”.

Substitution of long title of Act 38 of 2000

32. The following long title is hereby substituted for the long title of the principal Act:

“To provide for the establishment of the Construction Industry Development Board; to implement an integrated strategy for the reconstruction, growth and development of the construction industry in the private and public sector; and to provide for matters connected therewith.”.

Insertion of arrangement of sections into Act 38 of 2000

33. The arrangement of sections of the principal Act is hereby inserted into the principal Act—

ARRANGEMENT OF SECTIONS

CHAPTER ONE

DEFINITIONS (S1)

1. Definitions

CHAPTER TWO

CONSTRUCTION INDUSTRY DEVELOPMENT BOARD (S2-15)

2. Establishment of Board

3. Independence of Board

4. Objects of Board

- 5. Powers, functions and duties of Council
- 6. Appointment and composition of Council
- 7. Disqualification, removal from office, term of office and filling of vacancies
- 8. Remuneration of members of Council
- 9. Disclosure of interest
- 10. Chief executive officer
- 10A. Powers and functions of chief executive officer
- 10B. Remuneration and conditions of service of chief executive officer
- 11. Staff of Board
- 12. Meetings
- 13. Stakeholder consultation
- 14. Evaluation and review
- 15. Delegation of power

CHAPTER THREE

REGISTER OF CONTRACTORS (S16-21)

- 16. Registration of contractors
- 17. Keeping of register
- 18. Unregistered contractors
- 19. Removal or suspension of names from and restoration thereof to register
- 20. Duration and renewal of registration
- 21. Contractor recognition schemes

CHAPTER THREE A

REGISTRATION OF PROFESSIONAL SERVICE PROVIDERS (s 21A-21F)

21A. Registration of professional service providers

21B. Keeping a register

21C. Unregistered professional service providers

21D. Removal of names from, and restoration to register

21E. Duration of registration

21F. Professional service provider recognition scheme

CHAPTER FOUR**REGISTER OF PROJECTS (22-23A)**

22. Register of projects

23. Project assessment scheme

CHAPTER FIVE**FINANCIAL MANAGEMENT (s24-27)**

24. Funding of Board

25. Loans

26. Accounting

27. Financial year of Board

CHAPTER SIX**GENERAL (s28-34)**

28. Restriction on use of name

29. Confidentiality

31. Personal liability

32. Consultation

33. Regulations

33A. Offences and penalties

33B. Transitional provisions

34. Short title and commencement

Short title and commencement

34. This Act is called the Construction Industry Development Board Amendment Act, 2022, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.