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An Act to establish the Architects' Registration Council; to provide for the registration of architects; to provide for the regulation of the practice of architecture and for matters incidental thereto.

Date of Assent: 18.12.08

Date of Commencement: On Notice

ENACTED by the Parliament of Botswana.

PART I — Preliminary

1. This Act may be cited as the Architects' Registration Act, 2008 and shall come into operation on such date as the Minister may, by Order, appoint. Short title and commencement

2. In this Act, unless the context otherwise requires — Interpretation
“architect” means a person who is registered as an architect under section 24;
“committee” means a committee of the Council;
“Council” means the Architects' Registration Council established under section 3;
“Chairperson” means the Chairperson of the Council;
“member” means a member of the Council;
“register” means the register of architects established and maintained under section 22; and
“Institute” means a body registered under the Societies Act, which Cap. 18:01
adequately demonstrates to the Minister that it is representative of the majority of architects practising in Botswana at any given time.

PART II — Architects' Registration Council

3. (1) There is hereby established a Council to be known as the Architects' Registration Council. Establishment of Council

(2) The Council shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its own name and, subject to the provisions of this Act, of performing such acts as bodies corporate may by law perform.

4. (1) The seal of the Council shall be such device as may be determined by the Council and shall be kept by the Secretary thereof. Seal of Council

(2) The affixing of the seal shall be authenticated by the Chairperson or Vice Chairperson and the Secretary or any other person authorized in that behalf by a resolution of the Council.

(3) Any contract or instrument which, if entered into or executed by a person not being a body corporate would not be required to be under seal, may be entered into or executed without seal on behalf of the Council by the Secretary or any other person generally or specifically authorized by the Council in that behalf.

Membership of
Council

5. (1) The Council shall consist of eight members who shall be resident in Botswana.

(2) Without prejudice to the generality of subsection (1), the Council shall consist of the following members —

- (a) one person eligible for registration under the Act, appointed by the Minister;
- (b) one person from outside the profession of architecture, appointed by the Minister;
- (c) the Director of the Department of Building and Engineering Services or his or her nominated representative, who shall be an ex-officio member;
- (d) four persons eligible for registration under the Act, elected by the Institute, of whom at least two shall be from the private sector; and
- (e) a professor or lecturer in architecture eligible for registration under the Act, from a tertiary institution who shall be elected by the Tertiary Education Council established under the Tertiary Education Act.

Cap. 57:04

(3) The members shall elect a Chairperson and Vice Chairperson in accordance with section 14.

(4) The Minister shall cause the appointment of the members to be published by notice in the Gazette.

Institute to
elect members

6. The Institute shall, within three months of the coming into force of this Act, elect members to the Council in accordance with section 5 (2) (d), and, thereafter, within one month of the expiry of the member's tenure of office.

Powers and
functions of
Council

7. (1) The Council shall regulate the activities and conduct of registered architects in accordance with the functions and powers conferred upon it by this Act.

(2) Without prejudice to the generality of subsection (1), the Council shall —

- (a) protect the interests of members of the public in any dealings which such members of the public may have with registered architects;
- (b) maintain the integrity, improve the standards, and the professional qualifications of architects;
- (c) encourage research by architects into matters relating to the profession of architecture;
- (d) give advice to persons intending to become architects;
- (e) finance, print or circulate publications relating to the profession of architecture;
- (f) make recommendations to the Minister for the further development of the profession of architecture;
- (g) authorize the Registrar to appoint, on behalf of the Council, temporary staff at such remuneration as the Council may determine; and
- (h) generally do all such things as, in the opinion of the Council, are necessary for the better performance of the functions of the Council.

- 8.** (1) A member shall hold office, in the case of an —
- (a) appointed member, for such period, not exceeding three years, as may be specified in the notice appointing him or her; and
 - (b) elected member, for a period of two years:
 - Provided that —
 - (i) a member elected immediately after the commencement of this Act shall hold office for a period of one year, and
 - (ii) on the expiry of his or her term of office he or she shall continue to hold office until a successor has been elected or a period of three months has elapsed, whichever occurs first.
- (2) Notwithstanding the provisions of subsection (1), the Chairperson shall hold office for a period of three years.
- (3) A member whose term of office expires shall be eligible for re-appointment or re-election, as the case may be, as a member.
- 9.** (1) The Minister shall appoint a member where the Institute fails, neglects or refuses to elect a member —
- (a) within 21 days of notification by the Minister to elect a member, in accordance with section 5 (2) (d); or
 - (b) within the period referred to in section 11 (1) to fill a vacancy in terms thereof.
- (2) A member appointed under —
- (a) subsection (1) (a) shall hold office for such period, not exceeding two years, as the Minister may determine; and
 - (b) subsection (1) (b) shall hold office in accordance with section 11, and shall be deemed to have been duly elected to the Council.
- 10.** (1) No person shall be appointed or elected as a member or be qualified to continue to hold office as a member who has —
- (a) in terms of a law in force in any country —
 - (i) been adjudged or otherwise declared bankrupt or insolvent and has not been discharged, or
 - (ii) made an assignment, arrangement or composition with his or her creditors, which has not been rescinded or set aside; or
 - (b) within a period of ten years immediately preceding the date of his or her proposed appointment, been convicted —
 - (i) in Botswana, of a criminal offence,
 - (ii) outside Botswana, of an offence which if committed in Botswana, would have been a criminal offence,
 and sentenced by a court of competent jurisdiction to imprisonment for six months or more without the option of a fine, whether that sentence has been suspended or not, and for which he or she has not received a free pardon.
- (2) The Council may, by notice in writing, remove a member from office where the member —
- (a) is absent without reasonable cause from three consecutive meetings of the Council of which he or she has had notice;
 - (b) is inefficient;

Tenure of office

Minister's power to appoint members required to be elected

Disqualification, removal and resignation

- (c) has been found to be physically or mentally incapable of performing his or her duties efficiently, and his or her medical doctor has issued a certificate to that effect;
 - (d) contravenes a provision of this Act or otherwise misconducts himself or herself to the detriment of the objectives of the Council; or
 - (e) has failed to comply with the provisions of section 17.
- (3) A member may resign from office by giving 30 days notice in writing to the Chairperson.
- (4) The office of a member shall become vacant after —
- (a) a period of 30 days from the date a ruling against the member is made on all appeals made in respect of charges levelled against him or her under subsection (1) (b);
 - (b) a period of 30 days has elapsed from the date the member has given notice in writing to the Chairperson under subsection (3), of his or her intention to resign;
 - (c) a period of 30 days has elapsed from the date the member is given notice in writing by the Chairperson to vacate office; or
 - (d) the member is summarily dismissed by the Council on the grounds of contravening a provision of this Act or for misconduct under subsection (2) (d).
- (5) For purposes of subsection (2), “misconduct” includes any act done without reasonable excuse by a member which —
- (a) amounts to failure to perform in a proper manner any duty imposed on him or her as a member;
 - (b) is prejudicial to the efficient conduct of the Council; or
 - (c) tends to bring the Council into disrepute.

Filling of vacancies

11. (1) The Institute shall, on being notified by the Council in writing of a death or vacation of office of an elected member, elect, within such period as may be specified in the notice, being not less than 60 days from the date of the notification, a member to fill the vacancy, and the member so elected shall hold office for the remainder of the period for which the former member would, but for his or her death or the vacation of his or her office, have continued in office.

(2) On the death or vacation of office of an appointed member, the Minister shall appoint another person to fill the vacancy.

(3) Subsections (1) and (2) shall not apply where the remainder of the period for which the member whose office has been vacated would otherwise have held office is less than six months.

Alternate and co-opted members

12. (1) The Minister shall nominate an alternate member for every appointed member and the Institute shall nominate an alternate member for every elected member and any such alternate member shall attend and take part in the proceedings of the Council whenever the member to whom he or she is alternate is absent from such meeting.

(2) The Council may co-opt an architect to fill a vacancy —

- (a) arising from the absence of a member who has been granted leave of absence by the Council; or

(b) where the Institute is not called upon to fill a vacancy in accordance with section 11 (1).

(3) The provisions of sections 9 (2), 10 and 11 shall with the necessary modifications, apply in respect of a member nominated or co-opted under subsections (1) and (2).

13. (1) The Council may appoint such committees as it considers appropriate, consisting of its members or other suitably qualified persons.

Committees of Council

(2) The Council may delegate any of its powers, functions or duties under this Act, to a committee appointed under subsection (1).

14. (1) At the first meeting of the Council, the members shall elect, from among their number,

Election of Chairperson and Vice Chairperson

(a) a Chairperson, and

(b) a Vice Chairperson who shall hold office for such period, being not less than 12 months, as the Council may from time to time determine unless he or she ceases to be a member;

(2) On the expiry of the term of office of the Chairperson or Vice Chairperson or where the Chairperson or Vice Chairperson vacates his or her office as such, a new Chairperson or Vice Chairperson shall be elected by the members from among their number at the next meeting of the Council or as soon thereafter as may be convenient.

(3) The Chairperson or Vice Chairperson may vacate his or her office as such even though he or she remains a member.

(4) The Vice Chairperson shall, whenever the Chairperson is absent or unable to carry out his or her functions, exercise the functions of the Chairperson during the period that the Chairperson is absent or unable to act as Chairperson.

15. (1) Subject to the provisions of this Act, the Council shall regulate its own proceedings.

Meetings of the Council

(2) The Council shall hold its first meeting on such date and at such place as the Minister may fix and thereafter the Council shall meet at least three times in a year for the transaction of business.

(3) Upon giving notice in writing of not less than 14 days, a meeting of the Council may be called by the Chairperson and shall be called if not less than one half of the members so request in writing.

(4) Where the urgency of any particular matter does not permit the giving of notice in accordance with subparagraph (3), a special meeting may be called upon giving a shorter notice.

(5) The quorum at any meeting of the Council shall be one half of the members.

(6) There shall preside, at any meeting of the Council —

(a) the Chairperson;

(b) in the absence of the Chairperson, the Vice Chairperson; or

(c) in the absence of the Chairperson and Vice Chairperson, such member as the members present may elect from among their number for the purposes of the meeting.

(7) A decision of the Council on any question shall be by a majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding shall have a casting vote in addition to that person's deliberative vote.

(8) The Council may invite any person whose presence it considers necessary, to attend and participate in the deliberations of a meeting of the Council, but such person shall have no vote.

Meetings of committees of Council

16. (1) The Chairperson or a Chairperson of a committee may at any time convene a meeting of the committee.

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

(3) A member of a committee shall be paid out of the funds of the Council, such remuneration and allowances, if any, as the Council may determine.

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

Disclosure of interest

17. (1) Where a member is present at a meeting of the Council or any committee, at which meeting a matter which is the subject of consideration is one in which he or she is directly or indirectly interested in a private capacity, the member shall, as soon as practicable after the commencement of the meeting, disclose such interest and shall not, unless the Council otherwise directs, take part in any consideration or discussion of, or vote on any question touching upon, such matter.

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

(3) Where a member fails to disclose his or her interest in accordance with subsection (1) and a decision by the Council is made benefiting such member, such decision shall be null and void.

(4) A member who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding P2000,00 or to imprisonment for a term not exceeding four months or to both.

Validity of decisions and acts of Council

18. A decision or act of the Council done under the authority of the Council shall not be invalid by reason only of the fact that —

(a) the Council did not consist of the full number of members for which provision is made under section 5;

(b) the various members did not have the qualifications prescribed under section 5; or

(c) a disqualified person acted as a member of the Council.

Reports to the Minister

19. (1) The Chairperson shall from time to time submit, to the Minister, reports with regard to matters relating to the activities of the Council which, in the opinion of the Council, should be brought to the notice of the Minister.

(2) The Council shall, when so requested by the Minister, furnish him or her with advice on matters in connection with the profession of architecture or cognate matters and shall communicate, to the Minister, information acquired by it in the course of its duties on matters regarded by it as being of public importance.

20. A member shall be paid, out of the funds of the Council, such remuneration and allowance, if any, as the Council may from time to time determine.

Remuneration
and allowance

PART III — Registrar, Register and Registration

21. (1) The Council shall appoint a Registrar of Architects and may also appoint one or more Assistant Registrars on such terms and conditions as the Council may determine.

Registrar

(2) No person shall be appointed as Registrar unless the person holds such qualifications and has such experience as the Council may determine.

(3) The Assistant Registrar shall, where the Registrar is absent or unable to carry out any of the functions under this Act, exercise, during the period that the Registrar is so absent or unable to act, such functions of the Registrar as the Chairperson may assign to him or her.

22. (1) Subject to the provisions of this Act, the Council shall establish and maintain a register of architects.

Register

(2) The register shall be kept at the offices of the Council and shall be open to inspection during office hours to any member of the public upon payment of such fee as may be prescribed.

(3) The Registrar shall —

(a) keep the register in such form as may be prescribed;

(b) enter in the register, in relation to an architect —

(i) his or her name,

(ii) his or her address,

(iii) his or her qualification,

(iv) his or her date of first registration, and

(v) such other particulars as the Council may from time to time determine;

(c) make in the register any necessary alterations to the particulars referred to under paragraph (b);

(d) remove, from the register, the name of an architect who dies or ceases to practise as an architect;

(e) when required to do so under this Act or in pursuance of an order of a court —

(i) register an architect or suspend, from practice, an architect, and

(ii) remove, from the register, the name of an architect;

(f) be the Secretary of the Council and of every committee of the Council;

(g) on the instructions of the Chairperson, convene meetings of the Council or committee of the Council;

(h) maintain records and minutes of meetings convened under paragraph (g);

(i) appoint, after consultation with the Council, such other staff of the Council as the Council considers necessary;

(j) carry out any other duties assigned to him or her by the Council; and

(k) cause to be published by notice in the Gazette, at the beginning of each year in January, a list containing the names, addresses and qualifications of all registered architects remaining on the register at the close of the previous year.

Qualification
for registration

- 23.** The following shall qualify for registration, namely, a person who —
- (a) (i) has a professional degree in architecture or such equivalent qualification as may be prescribed by the Council;
 - (ii) has performed the work of an architect under the direction and control of, and in the same office as an architect, for such period as may be prescribed by the Council, and
 - (iii) has passed an examination prescribed by the Council or any examination recognised by the Council as being equivalent to one so prescribed;
- (b) has, for such period as is prescribed by the Council, performed —
- (i) the work of an architect under the direction and control of, and in the same office as, an architect,
 - (ii) architectural work which in the opinion of the Council is of sufficient variety and of a satisfactory nature and standard for the purposes of registration as an architect, or
 - (iii) has passed an examination prescribed by the Council or any examination recognised by the Council as being equivalent to one so prescribed; or
- (c) immediately before the coming into force of this Act, was a duly registered full member of the Institute.

Procedure for
registration

24. (1) A person may apply in such form as may be prescribed to the Registrar to be registered as an architect, and shall submit with his or her application —

- (a) a certificate of any qualification on which he or she relies for registration or a certified copy thereof and where the certificate is not in English, a certified translation thereof;
- (b) such evidence of identity and such other evidence or information as may be required by the Council; and
- (c) such fee as may be prescribed by the Council.

(2) The Registrar may require a statement made in connection with an application under subsection (1) to be supported by a solemn declaration.

(3) Where the Registrar is satisfied that an applicant has satisfied the conditions specified in subsection (1), he or she shall refer the application and any report he or she may make thereon to the Council.

(4) An application made under subsection (1) by a person referred to in section 23 (c) shall be lodged with the Registrar within six months of the coming into force of this Act or within such further period as the Council may allow.

(5) The Council shall direct the Registrar to register an applicant where it is satisfied that the applicant meets the requirements under section 23.

Temporary
registration

25. (1) The Council may, on application in such form as may be prescribed, by a person —

- (a) who is not ordinarily resident in Botswana;
- (b) who intends to be present in Botswana in the capacity of an architect for the express purpose of carrying out specific work for which he or she has been engaged;

(c) who, immediately before entering Botswana, was in practice as an architect in such capacity as to satisfy the Council of his or her fitness to serve the public as an architect; and

(d) after payment of such fee as may be prescribed by the Council, direct that the person be registered either for a period not exceeding one year or for the duration of the specified work.

(2) The Council may require an applicant under subsection (1) to appear before the Council for the purpose of facilitating consideration of the application, including furnishing the Council with documentary evidence of his or her work or employment immediately prior to his or her entering Botswana.

(3) Registration under this section shall be for the duration of specified work and be subject to such conditions as the Council may determine.

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

26. (1) Where the Registrar registers an architect, he or she shall issue the architect with a certificate of registration in such form as may be prescribed by the Council.

Certificate of registration

(2) On application by an architect, the Registrar may issue, to the architect, a duplicate of his or her certificate of registration —

(a) where the Registrar is satisfied as to the identity of the architect;

(b) on production by the architect of an affidavit certifying that the certificate of registration has been lost or destroyed; and

(c) on payment by the architect of the appropriate fee if any, prescribed by the Council.

27. (1) The Council shall refuse the registration of an applicant where it is satisfied that the applicant —

Refusal to register

(a) has at any time, whether within or outside Botswana —

(i) been removed from an office of trust on account of improper conduct, or

(ii) been convicted of extortion, bribery, theft, fraud, forgery or uttering a forged document or perjury and sentenced in respect thereof to imprisonment without the option of a fine; or

(b) notwithstanding that he or she is otherwise qualified, is not a fit person to be registered by reason of —

(i) his or her mental health,

(ii) the fact that he or she is not of good character or reputation, or

(iii) any conduct of his or hers which, if he or she had been registered, would have constituted improper or disgraceful conduct to the profession of architecture.

(2) The Council shall, before refusing registration under subsection (1), hold an inquiry under Part IV, and the provisions of this Part shall, with the necessary modifications, apply as if the applicant were registered.

Suspension of
registration

28. (1) The Council may suspend the registration of an architect where an inquiry under Part IV has found the architect guilty of any allegation referred to in section 35 or 38.

(2) An architect who has been suspended in accordance with subsection (1) shall be disqualified from performing the work of an architect and his or her registration shall be deemed to be cancelled until the period of suspension has expired.

Removal from
the register

29. (1) The Council shall order the removal from the register of —

(a) the name of an architect who —

(i) has failed to notify the Registrar of his or her present address, within 6 months of a notice being sent to him or her by registered letter by the Registrar requesting him or her to so notify the Registrar:

Provided that where such registered letter is returned to the Registrar by reason of it being unclaimed or for any other reason, the Council may, as soon as practicable direct that the name of the architect be removed from the register,

(ii) has requested that his or her name be removed from the register and has lodged an affidavit stating that no disciplinary inquiry under Part IV or criminal proceedings are being or are likely to be instituted against him or her in connection with his or her practice of architecture, or

(iii) has been found guilty by an inquiry under Part IV; or

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

(2) The Registrar shall remove, from the register, the name of an architect who the Council has, in accordance with subsection (1), directed that his or her name be removed.

(3) Where the Registrar removes, from the register, the name of an architect or enters, in the register, the suspension of an architect, he or she shall —

(a) enter, in the register, a record of the reasons therefor; and

(b) notify the architect in writing of the reasons therefor.

(4) A certificate of registration issued to an architect whose name has been removed from the register in terms of this section shall be deemed to have been cancelled on the date of the removal and the architect shall be deemed not to be registered with effect from that date.

Restoration of
name to the
register

30. Where the name of an architect has been removed from the register or the registration of an architect has been suspended, the Council may, either of its own volition, or on the application of the architect concerned made in such form as may be prescribed, and after holding such inquiry as the Council may consider necessary, direct that the name of the architect be restored to the register.

31. A person aggrieved by a decision of the Council to —

- (a) refuse to register him or her as an architect;
- (b) suspend his or her registration; or
- (c) remove his or her name from the register,

may, after giving written notice of his or her intention to appeal to the Council, and within 30 days of the date on which notice is given to him or her by the Registrar of the refusal, suspension or removal, appeal to the High Court.

Appeal against
refusal to
register, etc.

32. (1) An architect whose name has been removed from the register under section 29 shall return, by registered letter to the Registrar, his or her certificate of registration within 30 days of the date upon which he or she is directed in writing by the Registrar to do so.

Return of
registration
certificate to
Registrar

(2) A person who refuses to return a certificate of registration in contravention of subsection (1) shall be guilty of an offence and liable to a fine not exceeding P2000,00 or to imprisonment for a term not exceeding four months, or to both.

33. (1) The register shall be prima facie evidence of the matters set out therein.

Register to be
prima facie
evidence

(2) Notwithstanding the generality of subsection (1), a certificate purporting to be signed by the Registrar to the effect that —

- (a) the name of a person does not appear in the register shall be prima facie evidence that the person is not an architect;
- (b) the name of a person appears in the register shall be prima facie evidence that the person is an architect; or
- (c) an architect has been suspended from practice as such for the period specified in the register shall be prima facie evidence that the person has been suspended from practice for the period.

(3) A copy of an entry in the register, a document in the custody of the Registrar or an extract from the register or from any document purporting to be certified by the Registrar, shall be admitted in evidence in all courts without further proof or production of the original.

34. Any person who —

- (a) makes or causes to be made an unauthorized entry, alteration or deletion in the register;
- (b) procures or attempts to procure for himself or herself or another person, registration or a certificate of registration by means of fraud, false pretence or concealment of a material fact;
- (c) makes or causes to be made in connection with an application for registration, a false declaration in a document used for the purpose of establishing his or her identity;
- (d) willfully destroys or renders illegible an entry in the register;
- (e) without the permission of the holder, willfully destroys or renders illegible a certificate of registration; or
- (f) forges or utters, knowing the same to be forged, a document purporting to be a certificate of registration,

Offences in
connection with
the register

shall be guilty of an offence and liable to a fine not exceeding P3000,00 or to imprisonment for a term not exceeding six months or to both.

PART IV — *Disciplinary and Other Inquiry*

Inquiries by
Council

35. (1) Subject to the provisions of this Act, the Council may hold an inquiry into any allegation made in writing by a member of the public —

- (a) that an architect has acted or omitted to act, and the act or omission amounts to improper or disgraceful conduct; or
- (b) in respect of matters referred to in section 39.

(2) The Council shall cause to be sent, to an architect against whom an allegation has been made under subsection (1), a registered letter to his or her address as shown in the register, containing a notice setting out the allegation against him or her and the Council shall afford the architect an opportunity to be heard either by himself or herself or by a legal representative.

(3) The Council shall invite and have present, during its deliberations under this section, a legal practitioner of their choice, to render legal advice to the Council, during the course of an inquiry under this Part.

(4) For the purposes of an inquiry under this section, the Council shall —

- (a) administer oaths;
- (b) summon persons to attend and give evidence; and
- (c) order the production of documents.

(5) All summonses and orders issued under the hand of the Chairperson or Vice Chairperson shall be deemed to be issued by the Council.

(6) The Chairperson, or in his or her absence the Vice Chairperson, shall record or cause to be recorded a summary of any oral evidence given at an inquiry under this section.

(7) Subject to the provisions of this Act, the Council shall regulate its own procedure at an inquiry held under this Part:

Provided that all parties having an interest in the inquiry shall be advised by the Council of the form of the procedure of such inquiry.

Disregard of
summons, etc.

36. (1) A person to whom a summons or order is issued under section 35 and to whom such summons or order is served, who —

- (a) refuses or omits, without sufficient cause, to attend at the time and place mentioned in the summons;
- (b) refuses, without sufficient cause, to answer fully and satisfactorily, questions put to him or her by or with the concurrence of the Council; or
- (c) refuses or omits, without sufficient cause, to produce any document in his or her possession or under his or her control,

shall be guilty of an offence and liable to a fine not exceeding P1000,00 or to imprisonment for a term not exceeding two months or to both.

(2) A person giving evidence before an inquiry under this Part shall, in respect of evidence given by him or her or documents produced by him or her, be entitled to all the privileges to which he or she would be entitled as a witness before the High Court.

Powers of
Council at
inquiry

37. (1) The Council may, where it finds an architect guilty of any allegation made under section 35 —

- (a) order the Registrar to remove, from the register the name of the architect;

- (b) order the suspension of the architect for a specified period, from performing the work of an architect;
- (c) impose, on the architect, such conditions as it considers appropriate;
- (d) order the architect to pay such fine as the Council may determine;
- (e) order the architect to pay any costs or expenses of, and incidental to, the inquiry; or
- (f) caution, in writing, the architect and set conditions for the conduct of the architect's business, that he or she shall comply with for a period not exceeding three years.

(2) The Council may, after giving reasonable notice in writing to an architect, take further action against the architect where he or she has not complied with an order under subsection (1) (c), (d), (e) or (f).

(3) An inquiry held under this Part shall be deemed to be a judicial proceeding.

38. The Council may institute an inquiry, under this Part, into the conduct of an architect where —

- (a) the architect has been convicted of an offence within or outside Botswana, whether before or after the date of registration; and
- (b) the Council is of the opinion that the offence under paragraph (a) constitutes improper or disgraceful conduct.

39. (1) Where it is alleged, under section 35, that an architect has become mentally disabled to such an extent that it would be contrary to the public interest to allow the architect to continue to practise, the Council shall —

- (a) call for information regarding the allegation;
- (b) cause such investigation to be made as it thinks necessary; and
- (c) seek such legal advice or other assistance as it may require.

(2) The provisions of sections 35, 36 and 37 shall, with the necessary modifications, apply to an architect referred to under subsection (1).

40. (1) An architect aggrieved by a decision of the Council at an inquiry under this Part may, within 30 days of the date of the decision, appeal to the High Court.

(2) A person aggrieved by a decision of the Council at an inquiry refusing to remove the name of an architect from the register, or to suspend an architect may, within 30 days of the date of the decision, appeal to the High Court against such decision.

- (3) The High Court may, on hearing an appeal in terms of subsection (1) —
 - (a) confirm, vary or set aside any decision of the Council; or
 - (b) remit the matter to the Council for a further consideration and may make such other orders as to costs as it considers appropriate.

41. (1) Where the Registrar is directed by the Council, he or she shall cause to be published by notice in the Gazette, the name of any architect whose name has been removed or who has been suspended from practice under this Part.

Disciplinary powers of Council

Architect becoming unfit to practise

Appeal against decision of Council at inquiry

Publication of outcome of proceedings

(2) A notice published in accordance with subsection (1) shall be prima facie evidence that the name of an architect specified in the notice has been removed or the architect so specified has been suspended from practice for the period specified in such notice.

PART V — *Financial Provisions*

Revenues of
Council

42. (1) The revenues of the Council shall consist of —
(a) fees that the Council may charge for services it may render;
(b) grants and donations that the Council may receive; and
(c) income that the Council may receive from rentals or sale of land, building or published materials.

(2) The Council shall use the funds acquired under subsection (1) to meet the costs incurred in its operations and shall use any surplus accrued for such purpose as it may determine.

Financial year

43. The financial year of the Council shall be a period of 12 months ending on the 31st of December of every year.

Accounts and
audit

44. (1) The Council shall keep and maintain proper books of accounts and records of accounts in respect of every financial year relating to the assets, liabilities, income and expenditure of the Council, and shall prepare, in each financial year, a statement of such accounts.

(2) The accounts of the Council in respect of each financial year shall, within three months of the end thereof, be audited by an auditor appointed by the Council.

(3) An auditor appointed under subsection (1) shall report in respect of the accounts for each financial year, in addition to any other matter on which the auditor considers it necessary to comment on, whether or not —

- (a) the auditor has received all information and explanations which, to the best of the auditor's knowledge and belief, were necessary for the performance of the auditor's duties;
- (b) the accounts and related records of the Council have been properly kept;
- (c) the Council has complied with all the financial provisions of this Act with which it is the duty of the Council to comply; and
- (d) the statement of accounts prepared by the Council was prepared on a basis consistent with that of the preceding year and represents a true and fair view of the transactions and financial affairs of the Council.

(4) The report of the auditor and a copy of the audited accounts shall, within 14 days of the completion thereof, be forwarded to the Council by the auditor.

Annual report

45. The Council shall, within a period of six months of the end of the financial year, submit, to the Minister, a comprehensive report on the operations of the Council during that year, together with the auditor's report and the accounts audited under section 44.

PART VI – *General*

46. No matter or thing done or omitted to be done by a member or staff of the Council shall, if the matter or thing is done or omitted to be done bona fide in the course of the operations of the Council, render a member or staff personally liable to an action, claim or demand. Indemnity

47. The Minister may, by Order published in the Gazette, make such transitional arrangements as shall be necessary for the establishment of the Council. Transitional provisions

48. Every person whose name has been entered in the register as an architect shall, as long as his or her name remains on the register, be entitled to adopt and use the word and title “Architect” or “Registered Architect” or such other style or title as may be approved by the Council, and to offer his or her services to the public for gain or reward based on fee scales provided in the conditions of engagement and such accepted fees as may be prescribed by the Council. Effect of registration

49. (1) Any person who is not an architect who — Offence and penalty

- (a) performs the work of an architect for gain;
- (b) practises or carries on business under any name or style which contains the word “Architect” or “architectural”;
- (c) uses by way of advertisement, description, document, drawing or other means, any name, title, addition, description, letters, motto, emblem, symbol, badge, seal or other insignia which indicates or is calculated to lead persons to assume that he or she is an architect;
- (d) pretends or by any means whatsoever, holds himself or herself out to be an architect:

Provided that the provisions of this subsection shall not preclude the use of the designation “Naval Architect”, “Landscape Architect”, or any similar designation as may be prescribed by the Council, shall be guilty of an offence.

(2) An architect who knowingly employs or engages in the capacity of an architect any person who was registered and —

- (a) whose name has been removed from the register and has not been restored; or
- (b) who has been suspended from practise in terms of this Act, during the period of suspension, save with the prior written consent of the Council, which consent may be given for such period and subject to such conditions as the Council may determine,

shall be guilty of an offence.

(3) A person convicted of an offence under subsection (1) or (2) shall be liable on a first conviction to a fine not exceeding P5000,00 or to imprisonment for a term not exceeding ten months or to both and, on a second or subsequent conviction, to a fine not exceeding P10 000,00 or to imprisonment for a term not exceeding two years or to both.

(4) For the purposes of subsection (1), a person shall be deemed to be performing the work of an architect for gain if he or she or a partnership of which he or she is a member or an employee including a director in relation to a company —

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

Exemptions

50. (1) Without prejudice to the generality of section 49, it shall be lawful for —

- (a) a person who is —
 - (i) in the bona fide employment of an architect, to perform the work of an architect under the direction and control of such architect, or
 - (ii) engaged by an architect to provide a specific service for such architect, to perform, in accordance with the instructions of such architect, the work of an architect, other than the supervision of the work of constructing buildings or additions thereto;
- (b) a body corporate, firm or partnership which carries on business which involves the performance of the work of an architect, to perform the work of an architect or to describe or hold itself out to be an architect where —
 - (i) the business of the body corporate, firm or partnership, in so far as it relates to the works of an architect, is under the direct control and management of a principal who is an architect and who does not act at the same time in a similar capacity for any other body corporate, firm or partnership, or
 - (ii) the business referred to in subparagraph (i) is carried on and is not personally conducted by the said principal, such business is being conducted under the direction of the said principal by an assistant who is an architect; or
- (c) a person in the bona fide employment of a body corporate, firm or partnership referred to under paragraph (b) to perform the work of an architect under the direction and control of a principal or assistant referred to under paragraph (b).

(2) It shall be a defence to any charge of contravening subsection (1) (a) for a person to show that he or she performed the work of an architect for his or her employer whilst in the bona fide full time employment of his or her employer and that —

- (a) his or her remuneration was by way of a wage or salary and not a fee or commission; and
- (b) he or she was not employed solely to design or supervise the work of constructing a particular building or buildings or additions thereto.

Regulations

51. (1) The Minister may make regulations prescribing anything under this Act which is to be prescribed or which is necessary or convenient to be prescribed for the better carrying out of the objects and purposes of this Act, or to give force and effect to its provisions.

(2) Without prejudice to the generality of subsection (1), regulations may provide for —

- (a) the fees and fines to be paid under the Act;
- (b) the determination and regulation of the professional conduct and ethics of architects;
- (c) the establishment and administration of a fidelity fund; and
- (d) the establishment of a tariff of fees for the provision of services of architects.

(3) The Council may, in consultation with the Minister, make regulations prescribing —

- (a) the conduct of business of the Council;
- (b) the procedure to be followed at an inquiry under this Act;
- (c) the issuing of certificates;
- (d) the forms to be used under the Act;
- (e) the exemption of any person from all or any provision of the Act; and
- (f) the holding of the examination of any persons wishing to apply under section 23 (a).

PASSED by the National Assembly this 10th day of December, 2008.

E.S. MPOFU,
Clerk of the National Assembly.