

SPECIAL ISSUE

Kenya Gazette Supplement No. 76 (National Assembly Bills No. 25)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2017

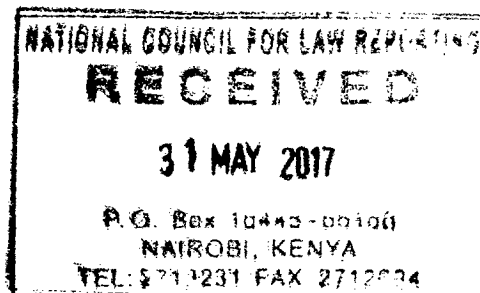
NAIROBI, 19th May , 2017

CONTENT

Bill for Introduction into the National Assembly—

PAGE

The Building Surveyors Bill, 2017 653



THE BUILDING SURVEYORS BILL, 2017

ARRANGEMENT OF CLAUSES

PART—I PRELIMINARY

Clause

1—Short title.

2—Interpretation.

PART—II ESTABLISHMENT OF THE BOARD

3—Establishment of the Board.

4—Functions of the Board.

5—Composition of the Board.

6—Conduct of business and affairs of the Board.

7—Committees of the Board.

8—Tenure of office.

9—Remuneration and allowances.

10—The seal of the Board.

11—Protection from personal liability.

PART III—THE REGISTRAR AND THE REGISTER

12—Appointment of Registrar.

13—Functions of the registrar.

14—Register of Building Surveyors.

15—Certificate of registration.

16—Annual practicing license.

17—Publication of register.

18—Publication prima facie evidence of registration.

19—Inspection of register.

20—Proof of documents.

PART IV—REGISTRATION

21—Conditions and qualifications for registration.

22—Registration of building surveyor.

23—Registration in exceptional circumstances.

- 24—Power to suspend registration.
- 25—Removal of name from register.
- 26—Restoration of name on register.
- 27—Procedure at inquiry.
- 28—Appeals.

PART V—FINANCIAL PROVISIONS

- 29—Funds of the Board.
- 30—Financial year.
- 31—Annual estimates.
- 32—Accounts and audit.
- 33—Annual report.

PART VI— MISCELLANEOUS PROVISIONS

- 34—Use of title.
- 35—Unregistered person not to practice as building surveyors.
- 36—Indemnity requirements.
- 37—Carrying on practice for purpose of winding up, etc.
- 38—Dishonest practices.
- 39—Regulations.

SCHEDULE—CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

THE BUILDING SURVEYORS BILL, 2017

A Bill for

AN ACT of Parliament to provide for the registration of building surveyors and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Building Surveyors Act, 2017. Short title.

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

“Board” means the Building Surveyors Registration Board established under section 3;

“building maintenance” means work undertaken in order to keep, restore or improve a facility or a part of the building, its services and surroundings to a currently acceptable standard and to sustain the utility and value of the facility and includes inspection, testing, servicing, classification to serviceability, repair, refurbishment, re-building, rehabilitation, reclamation, preparation of costed maintenance schedules, planning, budgeting and management of maintenance works;

“building maintenance manual” means a compilation of specific maintenance actions, standards and guidelines for use in the maintenance of a building, building services and its surrounding;

“building surveyor” means a person registered under section 22;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to housing;

“chairperson” means the chairperson of the Board appointed under section 5;

“facilities management” means the integration of multi-disciplinary activities within the built environment and the management of the impact of the activities upon people and the workplace;

“practicing building surveyor” means a person who is registered and licensed under this Act and is carrying out the work of a building surveyor;

“register” means the register required to be maintained under section 14;

“Registrar” means the Registrar of the Board appointed under section 12:

PART II—ESTABLISHMENT OF THE BOARD

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

Establishment of the Board.

(2) The Board shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable or immovable property;
- (c) borrowing money;
- (d) entering into contracts; and
- (e) doing or performing all such other things or acts as may legally be done or performed by a body corporate for the proper discharge of its functions under this Act.

4. The Board shall be responsible for regulating the activities and conduct of building surveyors in accordance with the provisions of this Act.

Functions of the Board.

5. (1) The Board shall consist of the following members, appointed by the Cabinet Secretary—

Composition of the Board.

- (a) a chairperson, who shall be a public officer and a member of the Institution of Surveyors of Kenya (Building Surveyors Chapter);
- (b) one person who shall be a public officer and a member of the Institution of Surveyors of Kenya (Building Surveyors Chapter);
- (c) three persons who are members of the Institution of Surveyors of Kenya (Building Surveyors Chapter) and are in the service of a county government;
- (d) three persons who are members of the Institution of Surveyors of Kenya (Building Surveyors Chapter) appointed from persons nominated by the Institution of Surveyors of Kenya;

- (e) one person who is a member of the Institution of Surveyors of Kenya (Building Surveyors Chapter) and who is a member of a recognized University; and

- (f) the Registrar.

(2) In appointing members of the Board under subsection (1), the Cabinet Secretary shall ensure that no gender exceeds two thirds of the membership of the Board.

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

Conduct of business and affairs of the Board.

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

7. (1) The Board may establish committees which shall consist of such number of members of the Board as the Board may deem appropriate to perform such functions and duties as the Board may determine.

Committees of the Board.

(2) The Board shall appoint the chairpersons of committees established under subsection (1), from among its members.

(3) The Board may where the it considers it appropriate, co-opt any person from outside the Board with knowledge and expertise in specific areas to attend the deliberations of any of its committees..

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

8. (1) The chairperson or member of the Board, except an *ex officio* member, shall hold office for a term of three years on such terms and conditions as may be specified in the instrument of appointment but shall be eligible for re-appointment for one further term.

Tenure of office.

(2) A member, other than an *ex officio* member may—

- (a) at any time resign from office by notice, in writing, to the Cabinet Secretary;

- (b) be removed from office by the Cabinet Secretary on recommendation of the Board if the member—

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

- (ii) is convicted of a criminal offence and sentenced to imprisonment for a term of not less than six months;
- (iii) is incapacitated by prolonged physical or mental illness for a period exceeding six months;
- (iv) ceases to be a registered person under this Act;
- (v) is otherwise unable or unfit to discharge functions of the office;
- (vi) is deceased;
- (vii) has been declared bankrupt; or
- (viii) where a member appointed by virtue of being a public officer, ceases to be one.

(3) Where a vacancy occurs in the membership of the Board under subsection (2), the Cabinet Secretary shall appoint a new member in accordance with the provision of this Act.

9. The chairperson, members and staff of the Board shall be paid such remuneration or allowances as the Public Service Commission shall, on the advice of the Salaries and Remuneration Commission determine.

Remuneration and allowances.

10. (1) The seal of the Board shall be kept in the custody of the Registrar.

The seal of the Board.

(2) The affixing of the seal shall be authenticated by the chairperson of the Board and the Registrar.

(3) Any document purporting to be under the seal of the Board or issued on behalf of the Board shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

(4) Notwithstanding subsection (2), the Board shall, in the absence of the chairperson or the Registrar, nominate one member of the Board to authenticate the seal on behalf of either the chairperson or the Registrar.

(5) A deed, instrument, contract or other document executed in accordance with subsection (2) shall bind the Board.

11. (1) No matter or thing done by a member of the Board or any officer, employee or agent of the Board shall, if the matter or thing is done in good faith for executing the functions, powers or duties of the Board, render the member, officer, employee or agent or any person acting under the directions personally liable to any action, claim or demands whatsoever.

Protection from personal liability.

(2) The provisions of subsection (1) shall not relieve the Board of the liability to pay lawful compensation or damages to any person for injury to the person or property.

PART III—THE REGISTRAR AND REGISTER

12. (1) There shall be a Registrar of the Board who shall be appointed by the Board.

Appointment of Registrar.

(2) The Registrar shall serve on such terms and conditions as the Board may determine.

(3) The Registrar shall be the chief executive officer of the Board and the secretary to the Board.

(4) The Registrar shall be an *ex officio* member of the Board but shall have no right to vote at any meeting of the Board.

13. The Registrar shall—

Functions of the Registrar.

- (a) sign, issue, renew and cancel certificates of registration and licenses as may be directed by the Board;
- (b) keep all documents and records, including records of all assets of the Board;
- (c) prepare all documents due for gazetteement as directed by the Board;
- (d) take and keep minutes of the Board meetings;
- (e) enforce decisions of the Board;
- (f) keep the seal of the Board in such custody as the Board may direct; and
- (g) exercise and perform any other functions which the Board may, from time to time, determine.

14. (1) The Registrar shall keep and maintain a Register of all registered persons under this Act.

Register of building surveyors.

(2) The Registrar shall record the following details against the name of a person or firm whose name is entered in the register—

- (a) date of entry;
- (b) address;
- (c) qualifications;
- (d) nationality; and
- (e) such other particulars as the Board may, from time to time, direct.

(3) All changes in the particulars registered under subsection (2) shall be entered in the register by the Registrar.

15. (1) A person who satisfies the Board that he or she is qualified to be registered as a building surveyor shall upon application be registered.

Certificate of registration.

(2) Where the name of a person has been entered in the register, the Board shall issue that person with a certificate of registration, in the prescribed form, upon payment of the prescribed fee and the certificate shall remain the property of the Board.

(3) Where the name of a person has been removed from the register, the Board shall give notice to that person, requiring the person to surrender the certificate of registration to the Board.

(4) A person who fails to comply with the requirements of a notice given under subsection (3) within twenty-one days after the receipt by of that notice commits an offence and is liable on conviction, to a fine not exceeding five thousand shillings.

(5) In the event of the certificate of registration being lost or destroyed and the loss of destruction being proved to the satisfaction of the Board, the Board shall issue a duplicate registration certificate to the building surveyor on payment of the prescribed fee.

16. (1) Every person who has been registered under this Act shall, if he or she intends to practice in his or her professional capacity, require, in addition to such registration, an annual license in the prescribed form on payment to the Board of the prescribed fee.

Annual practicing licence.

(2) Every annual license shall bear the date on which it is issued, shall be effective from that date and shall expire at the end of the license year in which it is issued.

(3) The license year shall be from the first January to the thirty first December in each year.

(4) The Registrar shall enter in the register, a notice of the date of issue of every license issued under this Act.

(5) For the purposes of this Act, a person shall be deemed to practice in his professional capacity if he engages exclusively in his profession—

- (a) on his own account and is entitled to receive the entire amount of all fees or charges earned for his own financial benefit; or
- (b) in partnership with others and is entitled to receive a share of the profit earned by such partnership for his own financial benefit and is liable to bear a share of any losses incurred by such partnership.

(6) No person shall be deemed to be practicing in his or her personal professional capacity where the person is employed by—

Cap.446

- (a) the Government or any other public body;
- (b) any state corporation as defined by the State Corporations Act; or
- (c) any person or partnership engaged in his or her profession where all fees earned accrue to the benefit of his or her employer, notwithstanding the fact that the person is employed.

17. (1) The Board shall cause to be published in the *Gazette*, as soon as may be practicable after entry in the register, the name, address and qualification of each building surveyor and, subject to the directions of the Board, the Registrar may cause to be published any amendments to the register.

Publication of register.

(2) The Board shall cause to be published in the *Gazette* at the beginning of each year a list containing the names, addresses and qualifications of the building surveyors appearing in the register.

18. Publication of the register under section 19 shall be *prima facie* evidence that the persons named therein are

Publication *prima facie* evidence of registration.

building surveyors and the deletion from the register of the name of any person notified by the publication, or the absence of the name of any person from the publication, shall *be prima facie* evidence that the person is not registered.

19. Any person may, during normal office hours and upon payment of the prescribed fee, inspect the register or any document relating to an entry in the register and may obtain from the Registrar, a copy of an extract from the register or from any such document.

Inspection of register.

20. (1) In any legal proceedings, a document purporting to be a copy of, or an extract from the register, shall be admissible *as prima facie* evidence of the contents of the register or document provided that it is certified by the Registrar.

Proof of documents.

(2) The Registrar shall not, in any legal proceedings to which the Registrar is not a party, be compelled to-

- (a) produce the register or any document if its contents can be proved under subsection (1); or
- (b) appear as a witness to prove an entry in the register or the matters recorded in the register or any document unless the court, for special cause, so orders.

PART IV—REGISTRATION

21. A person may apply to the Board in the prescribed form to be registered under this Act and to have his or her name entered in the register if the person is—

Conditions and qualifications for registration.

- (a) a member of the Institution of Surveyors of Kenya Building Surveyors Chapter; or
- (b) a corporate member of the Royal Institution of Chartered Surveyors and he or she is qualified to be or is a full member of the Institution of Surveyors of Kenya (Building Surveyors Chapter).

22. (1) Upon an application being made to the Board under section 30 and upon payment of the prescribed fee, the Board shall consider the application and if it is satisfied that the person is qualified, shall direct the Registrar to enter the name of the person in the register.

Registration of building surveyor.

(2) The final determination of an application under this section shall be made by the Board.

23. (1) Where a person satisfies the Board that the person—

Registration in exceptional circumstances.

- (a) is not ordinarily resident in Kenya; and
- (b) intends to be present in Kenya and engage in practice as a building surveyor for the specific work for which he has been engaged, the Board may, subject to the provisions of this Act, direct that the person be registered for a period not exceeding one year.

(2) An application for registration under this section shall be in the prescribed form and be accompanied by the prescribed fee.

(3) The Board shall require a person registered under this section to produce documentary evidence of his or her education, work or employment immediately prior to coming to Kenya and may require that person to appear before it for the purpose of considering his or her application.

24. If a building surveyor is convicted of an offence under this Act, or is, after due inquiry held by the Board, found guilty of professional misconduct or activities contrary to the public interest, the Board may —

Power to suspend registration.

- (a) caution or censure the building surveyor;
- (b) direct that, during such period as the Board may specify, the building surveyor's registration shall be suspended; or
- (c) direct that the building surveyors name be removed from the register.

25. (1) The Board may remove the name of the building surveyor from the register at any time after being satisfied that a building surveyor has—

Removal of name from register.

- (a) died;
- (b) failed to comply with Chapter Six of the Constitution;
- (c) failed to pay the prescribed fee;
- (d) failed, within a period of six months from the date of an inquiry sent by the Registrar by prepaid registered letter to the address appearing in the register against his name, to respond to the inquiry

of the registrar;

- (e) requested for his or her name to be removed from the register;
- (f) had his or her name entered in the register by mistake or by reason of any false or misleading information;
- (g) had his or her qualification withdrawn or cancelled by the institution through which it was acquired or by which it was awarded;
- (h) been adjudicated bankrupt;
- (i) been found by the Board to be guilty of an act or omission contrary to the public interest or dishonest practice as specified in section 29; or
- (j) been convicted of an offence under this Act.

(2) Except in the circumstances specified in subsection (1) (a), the removal of a person's name from the register shall be notified by the Board to the registered person by registered post to the last known address of the building surveyor.

(3) The Board shall cause to be published in the *Gazette*, as soon as practicable, the name, address and qualifications of a person whose name is removed from the register under this section.

26. (1) Where the registration of any person has been suspended under paragraph (b) in section 29 or the name of any person has been removed from the register under paragraph (c) in section 29, the Board may, either of its own motion or on the application of any person made in the prescribed form and in either case after holding such inquiry as the Board considers necessary, direct that—

Restoration of
name in register.

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

(2) A direction given by the Board under subsection (1) may include—

- (a) the date upon which restoration in the register or

the termination of a suspension of registration shall take effect; and

- (b) the payment by the person concerned of such fee, not exceeding the fee payable on an application for registration, as the Board may prescribe.

27.(1) Upon an inquiry being held by the Board under this Act, the building surveyor in respect of whom an inquiry is held may appear at the hearing in person or by an advocate.

Procedure at inquiry.

(2) For the purposes of proceedings at an inquiry held by it, the Board shall have power to—

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

(3) Any summons or order issued under the hand of the chairperson or the vice-chairperson shall be deemed to have been issued by the Board.

(4) The chairperson, or in his absence the vice-chairperson of the Board shall cause to be recorded a summary of any oral evidence at an inquiry held by the Board.

(5) Subject to this section and to any regulations made under section 39, the Board shall have power to regulate its own procedure.

(6) For the purposes of an inquiry held under this Act, the Board shall, not less than twenty-one days prior to the date of inquiry, notify by registered post, all the persons concerned.

(7) Any person upon whom summons or an order is served under this section by the chairperson or vice-chairperson of the Board who—

- (a) refuses or neglects without sufficient cause to attend at the inquiry;
- (b) refuses without sufficient cause to answer fully and satisfactorily to the best of his knowledge and belief all questions put to him or her by or with the concurrence of the Board; or
- (c) refuses or omits without sufficient cause to produce

any document in his possession or under his or her control which is specified in the summons or order, commits an offence and is liable, on conviction to a fine not exceeding four thousand shillings or to imprisonment for a term not exceeding six months or to both.

28. Any person aggrieved by a decision of the Board— Appeals.

- (a) not to enter the person's name in the register;
- (b) to remove the person's name from the register;
- (c) to suspend the person's registration under this Act; or
- (d) not to restore the person's name in the register, may, within twenty- eight days of receiving the written decision of the Board , appeal to the High Court.

PART V—FINANCIAL PROVISIONS

29. The funds of the Board shall comprise— Funds of the Board

- (a) such monies as may be appropriated by the National Assembly;
- (b) such monies or assets as may accrue to or vest in the Board in the course of the exercise of its powers or the performance of its functions under this Act;
- (c) such gifts, grants, donations or other endowments given to the Board; and
- (d) monies from any other source donated or lent to the Board.

30. The financial year of the Board shall be the period of twelve months ending on the thirtieth June in every year. Financial year.

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

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

- (a) payment of salaries, allowances and other charges in respect of the staff of the Board;
- (b) payment of allowances and any other emoluments

to the members of the Board.

- (c) payment of pensions, gratuities and other charges in respect of retirement benefits.
- (d) proper maintenance of buildings, other property and grounds of the Board;
- (e) acquisition, maintenance, repair and replacement of the equipment and other movable or immovable property of the Board; and
- (f) creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, where applicable, insurance or replacement of buildings or equipment, or in respect of such other matter as the Board may deem appropriate.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and once approved, the sum provided in the estimates shall be submitted to the Cabinet Secretary for approval.

(4) No expenditure shall be incurred for the purposes of the Board except in accordance with the annual estimates approved under subsection (3), or in pursuance of an authorisation of the Board given with prior written approval of the Cabinet Secretary.

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

Accounts and
audit.

(2) Within a period of three months after the end of a financial year, the Board shall submit to the Auditor-General the accounts of the Board for that year together with –

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

(3) The accounts of the Board shall be audited by the Auditor-General in accordance of the Public Audit Act, 2015.

No. 34 of 2015.

33. The Board shall, within three months after the end

Annual Report.

of each financial year, prepare and submit to the Cabinet Secretary a report of the operations of the Board for the immediate proceeding year.

PART VI—MISCELLANEOUS PROVISIONS

34. Every person whose name has been entered in the register shall, so long as his name remains in the register, be entitled to adopt and use the title "Building Surveyor" and such contraction thereof as the Board may approve.

Use of title.

35. (1) After the expiration of six months from the commencement of this Act or such further period as the Cabinet Secretary may, by notice in the *Gazette* specify, either generally or in respect of any particular person or class of persons—

Unregistered persons not to practice as building surveyors.

- (a) no individual shall carry on business as a practicing building surveyor unless he or she is registered as a building surveyor;
- (b) no partnership shall carry on business as practicing building surveyors unless all the partners whose activities include the doing of acts by way of such practice, are building surveyors;
- (c) no corporate body shall carry on business as building surveyors unless all the directors whose activities include the doing of acts by way of such practice, are building surveyors.

(2) Any person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one year or to both.

36. (1) After the expiration of six months from the commencement of this Act, no person shall carry on business as a practicing building surveyor unless there is in force in relation to his business, a guarantee bond or a policy of insurance entered into or issued by an insurance company approved by the Board guaranteeing that compensation shall be payable to persons suffering monetary loss through the professional negligence of the persons so practicing.

Indemnity requirements.

(2) For the purpose of subsection (1), the minimum guarantee bond or policy of insurance entered into or issued by an insurance company, shall be—

- (a) in the case of business carried on by an individual

building surveyor, a sum of two hundred thousand shillings;

- (b) in the case of a business carried on by two or more individuals, the sum of two hundred thousand shillings multiplied by the number of building surveyors; and
- (c) in the case of business carried on by a body corporate, the sum of two hundred thousand shillings multiplied by the number of directors whose acts include the doing of acts or practice as building surveyors.

(3) Any person who contravenes sub-section (1) commits an offence and is liable on conviction to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding two years or to both.

37. Notwithstanding any other provisions of this Act, where any person ceases to carry on business as a practicing building surveyor by reason of his death or insolvency, or by reason of having been adjudicated as being of unsound mind, the practice may be carried on for the purposes of winding up or being disposed of by a practicing building surveyor appointed in that behalf by the person for the time being authorized bylaw to deal with the property of such person for a period not exceeding twelve months from the date of the death or commencement of the disability.

Carrying on
practice for
purpose of
winding up, etc.

38. Any person who—

- (a) fraudulently makes, causes or permits to be made, any false or incorrect entry in the register or any copy thereof; or
- (b) fraudulently procures or attempts to procure the entry in the register of any name or other particulars whether on his own behalf or on the behalf of any other person; or
- (c) knowingly and willfully makes any statement, oral or written, which is false in a material particular or which is misleading with a view to gaining any advantage to privilege under this Act whether for himself or for any other person, commits an offense and is liable, on conviction, to a fine not exceeding fifty thousand shillings or to imprisonment for a

Dishonest
practices.

term of three years or to both.

39. (1) The Cabinet Secretary may, in consultation with the Board, make regulations generally for the better carrying out of the purposes of this Act. Regulations.

(2) Without prejudice to the generality of subsection (1), Regulations made under this section may prescribe—

- (a) the form and method of keeping records under this Act;
- (b) the procedure for applications for registration under this Act;
- (c) the fees to be charged under this Act;
- (d) the forms to be used for the purposes of this Act;
- (e) the remuneration of building surveyors in respect of services rendered; and
- (f) any other thing required to be prescribed.

SCHEDULE

(S.6 (1))

CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

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

(2) Notwithstanding the provisions of subparagraph (1), the chairperson may, and upon requisition in writing by at least five members shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.

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

(4) The quorum for the conduct of the business of the Board shall be seven and no meeting shall be held or continued, notwithstanding that there is a quorum, unless the Registrar or a person deputed by him is present.

(5) The chairperson shall preside at every meeting of the Board at which he is present but, in the absence of the chairperson, the members present shall elect one of their numbers to preside, who shall, with respect to that meeting and the business transacted, have all the powers of the chairperson.

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

(7) Subject to subparagraph (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

2. (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, that member shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to

Disclosure of
interest by Board
Members.

the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter:

Provided that, if the majority of the members present are of the opinion that the experience or expertise of such member is vital to the deliberations of the meeting, the Board may permit the member to participate in the deliberations subject to such restrictions as it may impose but such member shall not have the right to vote on the matter in question.

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

(3) A member of the Board who contravenes subparagraph (1) commits an offence and is liable to imprisonment for a term not exceeding six months, or to a fine not exceeding one hundred thousand shillings, or both.

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

Execution of
instruments.

4. The Board shall cause minutes of all resolutions and proceedings of meetings of the Board to be entered in books kept for that purpose.

Minutes.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of the Bill is to regulate the activities and conduct of building surveyors.

PART I of the Bill provides for preliminary matters.

PART II provides for the establishment of the Building Surveyors Registration Board, its composition and functions.

PART III provides for the Registrar and the register of building surveyors. The Registrar shall be the chief executive officer of the Board and secretary to the Board. The Board shall keep and maintain a register of building surveyors registered under the Act. The Part also specifies other functions of the Registrar and provides for the issuance of a certificate of registration and an annual practicing license under the Act.

PART IV of the Bill provides for the conditions and qualifications for the registration of building surveyors. The Part also provides for removal of a name from the register where a registered building surveyor has, among other things, died, failed to pay the prescribed fee, requested for his name to be renewed or has been convicted of an offence under the Act. The Part further provides for the restoration of a building surveyor's name in the register, and the carrying out of an inquiry where a building surveyor has been involved in an act that amounts to professional misconduct.

PART V of the Bill provides for financial provisions.

PART VI contains miscellaneous provisions. The Part provides for the effect of registration, indemnity requirements, dishonest practices and includes a provision on the preparation of regulations by the Cabinet Secretary.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

This law when enacted will confer the Cabinet Secretary for the time being responsible for matters relating to Housing the authority to make provisions having the force of law in Kenya.

Under section 39 of this Act, the Cabinet Secretary is given powers to make regulations generally for the better carrying into effect the provisions of this Act.

Limits of the Delegated Authority

The regulations made under this Act by the Cabinet Secretary will be limited to bringing into effect provisions of this Act and in particular the following:

- (a) the form and method of keeping records under this Act;
- (b) the procedure for applications for registration under this Act;
- (c) the fees to be charged under this Act;
- (d) the forms to be used for the purposes of this Act;
- (e) the remuneration of building surveyors in respect of services rendered; and
- (f) any other thing required to be prescribed

Statement that the Bill concerns county governments

The Bill does not concern County Governments in terms of Article 110 (1) (a) of the Constitution as it affects the functions and powers of National Government set out in the Fourth Schedule.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall occasion additional expenditure of public funds to be provided through the estimates.

Dated the 10th May, 2017.

ADEN DUALE,
Leader of the Majority Party.