

THE ENGINEERS BILL, 2011

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THE ENGINEERS BILL, 2011

A Bill for

AN ACT of Parliament to review and update the law relating to the training, registration and licensing of engineers, the regulation of the practice of engineers and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Engineers Act, 2011 and shall come into operation on such date as the Minister may, by the notice in the Gazette, appoint, and different dates may be appointed for different provisions.

Interpretation.

2. In this Act, unless the context otherwise requires—

“accredited checker” means a person qualified and registered as such under section 24;

“Board” means the Engineers Registration Board established under section 3;

“code of ethics” means sets of standards for engineers' obligations to the public, their clients, employers and the profession encompassing right conduct;

“consulting engineer” means an engineer registered as such under section 16 of this Act;

“consulting engineering services” includes consultancy and advisory services relating to independent professional engineering works, services or goods and selling or supplying for gain or reward any plan, sketch, drawing, design, specification or other documents relating to any professional engineering work, service or good with a liability to be sued;

“engineer” means a person registered under this Act as a professional engineer, graduate engineer or consulting engineer and who holds a valid licence;

“engineering” means the creative application of scientific principles to design or develop structures, machines, apparatus, or manufacturing processes, or works utilizing them singly or in combination or to construct or operate the same with full cognizance of their design or to forecast their behavior under specific operating conditions or aspects of intended functions, economics of operation and safety to life and property;

“engineering organization” means organization whose functions involve the planning, designing, processing and the delivery of engineering products and services;

“firm” means engineering consulting firm registered under this Act;

“foreign person” means a person who is not a citizen or a permanent resident of Kenya;

“graduate engineer” means an engineer registered as such under section 18 of this Act;

“licence” means an annual practising licence issued under section 31 of this Act or a licence issued in another country and is recognized in Kenya;

“Minister” means the minister for the time being responsible for matters relating to engineering;

“professional engineer” means a person registered as such under section 16 of this Act;

“professional engineering services” means engineering services and advice in connection with any feasibility study, planning, survey, design, sketch, drawing, specifications, construction, commissioning, operation, maintenance, supply of specialized engineering equipment and management of engineering works or projects and includes any other engineering services approved by the Board;

“professional engineering works” includes professional service, consultation, investigation, evaluation, planning, designing or responsibility for supervision of construction or operation and maintenance in connection with any public or privately owned public utilities, building, machines, equipment, processes, works or projects that requires application of engineering principles and data;

“Register” means the Register of registered persons and firms kept by the Registrar in accordance with section 27 of this Act; and

“Registrar” means the Registrar of the Board appointed under section 13 (1) of this Act.

PART II—THE ENGINEERS REGISTRATION BOARD

Establishment and incorporation of the Board.

3. (1) There is established a board to be known as the Engineers Registration Board.

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

(a) suing and being sued;

(b) taking, purchasing or otherwise acquiring, holding and disposing of movable and immovable property;

(c) borrowing money with the approval of the Minister and the minister for the time being responsible for matters relating to finance;

(d) entering into contracts; and

(e) doing or performing all such other things or acts necessary for the proper discharge of its functions under this Act, which may be lawfully done or performed by a body corporate.

Headquarters.

4. The headquarters of the Board shall be in Nairobi.

Membership of the Board.

5. (1) The Board shall consist of—

(a) the chairman who shall be appointed by the Minister from amongst the members appointed under paragraph (g);

(b) the Permanent Secretary in the ministry for the time being responsible for matters relating to engineering;

(c) the Permanent Secretary in the ministry for the time being responsible for matters relating to finance;

(d) the Permanent Secretary in the ministry for the time being responsible for matters relating to higher education;

(e) the chairman of the Institution of Engineers of Kenya;

(f) the Registrar;

(g) eight persons appointed by the Minister of whom—

(i) three shall be persons representing different engineering disciplines, nominated by the Institution of Engineers of Kenya;

(ii) one shall be a public officer from the ministry responsible for matters relating to engineering;

(iii) one shall be a public officer from a public corporation responsible for matters relating to engineering;

(iv) one shall be a representative of universities nominated by universities offering engineering courses in Kenya; and

(v) two shall be from the private sector.

(2) A person shall not be appointed a member of the Board under subsection (1)

(g) unless that person is a registered professional engineer under this Act.

Object and purpose of the Board.

6. The Board shall be responsible for the registration of engineers and firms, regulation of engineering professional services, setting of standards, development, and general practice of engineering.

Functions and powers of the Board.

7. The functions and powers of the Board shall be to—

- (a) receive, consider, make decisions on applications for registration and register approved applications;
- (b) keep and maintain the Register;
- (c) publish the names of registered and licensed persons under this Act;
- (d) issue licences to qualified persons under the provisions of this Act;
- (e) publish and disseminate materials relating to its work and activities;
- (f) carry out inquiries on matters pertaining to registration of engineers and practice of engineering;
- (g) enter and inspect sites where construction, installation, erection, alteration, renovation, maintenance, processing or manufacturing works are in progress for the purpose of verifying that—
 - (i) professional engineering services and works are undertaken by registered persons under this Act;
 - (ii) standards and professional ethics and relevant health and safety aspects are observed;
- (h) assess, approve or reject engineering qualifications of foreign persons intending to offer professional engineering services or works;
- (i) evaluate other engineering programmes both local and foreign for recognition by the Board;
- (j) enter and inspect business premises for verification purposes or for monitoring professional engineering works services and goods rendered by professional engineers;
- (k) recommend for the suspension of any professional engineering services works, projects, installation process or any other engineering works, which are done without meeting the set out standards;
- (l) approve and accredit engineering programs in public and private universities and other tertiary level educational institutions offering education in engineering for the purposes of registration of graduate engineers;

- (m) set standards for engineers in management, marketing, professional ethics, environmental issues, safety, legal matters or any other relevant field;
- (n) conduct professional examinations for the purposes of registration;
- (o) establish a school of engineering and provide facilities and opportunities for learning, professional exposure and skills acquisition, and cause continuing professional development programmes for engineers to be held;
- (p) plan, arrange, co-ordinate and oversee professional training and facilitate internship of graduate engineers;
- (q) collaborate with engineering training institutions, professional associations, engineering organizations and other relevant bodies in matters relating to training and professional development of engineers;
- (r) determine the fees to be charged by professional engineers and firms for professional engineering services rendered from time to time;
- (s) hear and determine disputes relating to professional conduct or ethics of engineers;
- (t) issue, maintain and enforce the code of ethics for the engineers and regulate the conduct and ethics of engineering profession in general;
- (u) determine disciplines of engineering under this Act; and
- (v) carry out such other functions related to the implementation of this Act.

Committees of the Board.

- 8.** (1) The Board may establish committees which shall consist of such number of members as it may deem appropriate to perform such functions and duties as the Board may determine.
- (2) The Board shall appoint chairpersons of committees established under subsection (1) from among its members.
- (3) The Board may where it considers appropriate, co-opt persons by virtue of their knowledge or expertise in specific areas to be a members of its committees.
- (4) All decisions by the committees established under subsection (1) shall be ratified by the Board.

Delegation by the Board.

- 9.** Subject to this Act, the Board may, by resolution either generally or in any particular case, delegate to any committee of the Board or to any member, officer, employee or an agent of the Board, the exercise of any of the functions or duties of the Board under this Act.

Conduct of business and affairs of the Board.

10. The conduct and regulation of business and the affairs of the Board shall be in accordance with the Schedule.

Tenure and vacation of office.

11. (1) A member of the Board, except an *ex officio* member, shall hold office for a term of three years but shall be eligible for re-appointment for one further term of three years.

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

(a) at any time resign from office by notice, in writing, to the Minister;
(b) be removed from office by the Minister on recommendation of the Board if that member—

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

(ii) is convicted of a criminal offence under the laws of Kenya of which carries a six month imprisonment term or more;

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

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

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

Remuneration of Board members.

12. The Board shall pay its members remuneration or allowances as it may, with approval of the Minister for the time being responsible for matters relating to finance, determine.

Appointment of the Registrar.

13. (1) The Minister shall appoint the Registrar of the Board who shall hold and vacate office in accordance with the terms of the instrument of his appointment to that office.

(2) The Registrar, who shall be a public officer, shall be the chief executive officer and the secretary to the Board.

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

Functions of the Registrar.

14. The Registrar shall—

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

Limitation of liability.

15. (1) A member of the Board shall not be personally liable for any act or default of the Board done or omitted to be done in good faith in the course of carrying on the functions of, or exercising of powers conferred upon the Board under this Act.

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

PART III—PROVISIONS RELATING TO REGISTRATION**Qualifications for registration as Professional or Consulting engineers.**

16. Subject to the provisions of this Act, a person shall be eligible for registration under this Act as a professional or consulting engineer if—

- (a) for a professional engineer, that person—
 - (i) is registered as a graduate engineer and has obtained practical experience as prescribed under this Act;
 - (ii) has passed professional assessment examination conducted by the Board; and
 - (iii) is a corporate member of the Institution of Engineers of Kenya;
- (b) for a consulting engineer, that person—
 - (i) has practised in a specialized engineering field as a professional engineer for a period determined by the Board; and

(ii) has achieved a standard of competence to enable him to practise as a consulting engineer in that particular specialization.

Application for registration.

17. (1) A person eligible to be registered as a professional or consulting engineer under section 16 may apply to the Registrar, in a prescribed form and on payment of prescribed fee, to be registered under this Act.

(2) An application made under subsection (1) shall be accompanied with certified copies of certificates and other documents as are necessary to prove qualification for registration.

Qualifications for registration as graduate engineer.

18. Subject to provisions of this Act, a person shall be eligible for registration under this Act as a graduate engineer if that person—

(a) is a holder of a degree, diploma or its equivalent from a university, college or school of engineering or any other institution recognized by the Board;
and

(b) is a citizen or a permanent resident of Kenya.

Application for registration.

19. (1) A person eligible to be registered as a graduate engineer under section 18, may apply to the Registrar, in prescribed form and on payment of prescribed fee, to be registered under this Act.

(2) An application made under subsection (1) shall be accompanied with certified copies of certificates and other documents as are necessary to prove qualification for registration.

Registration of an engineering consulting firm.

20. (1) Subject to the provisions of this Act, a person may register an engineering consulting firm if—

(a) the firm has a certificate of registration of a business name or a certificate of incorporation;

(b) it has at least one partner or principal shareholder who is registered as consulting engineer and who has a valid licence in a specified discipline;

(c) at least fifty one percent of the shares in the firm are held by a Kenyan citizen;
and

(d) he fulfills any other condition as may be stipulated by the Board.

(2) The Board may register engineering consulting firms in different categories and disciplines based on a criteria as shall be established by the Board.

Application for registration.

21. (1) A person who wishes to register an engineering consulting firm under section 20, may apply to the Registrar, in a prescribed form and on payment of a prescribed fee, to be registered under this Act.

(2) An application made under subsection (1) shall—

(a) be accompanied with such documents as are necessary to prove qualification for registration;

(b) provide the firm's profile of activities;

(c) provide curriculum vitae of partners or directors; and

(d) be accompanied with a written commitment that the Board shall be allowed to verify the suitability of the firm for the purposes of registration.

(3) The Board may require the applicant to furnish such further information or evidence of eligibility for registration as it may consider necessary and may require the applicant to appear in person for an interview before the Board.

Restrictions on registration of foreigners.

22. A foreign person or firm shall not be registered as a professional engineer or consulting engineer or engineering consulting firm unless—

(a) in the case of a natural person—

(i) that person possesses the necessary qualifications recognized for the practice of engineering as a professional engineer in the country where he normally practises and that immediately before entering Kenya he was practising as a professional engineer and holds a valid licence; and

(ii) he is a resident of Kenya with a valid working permit;

(b) in the case of a firm, the firm is incorporated in Kenya and a minimum of fifty one percent of its shares are held by a Kenyan citizen.

Temporary registration.

23. (1) A foreign person may be considered for registration as a temporary professional engineer if that person satisfies the Board that—

(a) he is not ordinarily resident in Kenya;

(b) he intends to be present in Kenya in the capacity of professional engineer for the express purpose of carrying out specific work; and

(c) he possesses the necessary qualifications recognised for the practice of engineering as a professional engineer in the country where he normally practises

and that immediately before entering Kenya, was practising as a professional engineer and holds a valid licence from his country of origin.

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

(3) The Board may require an applicant to appear before it where it is in the process of considering his application and shall require every applicant to produce documentary evidence of his work or employment immediately prior to entering in Kenya.

(4) The registration of a person under this section shall be valid for the period or for the duration of the work specified by the Board.

(5) Where the expertise skills of a person registered under this section are not available in Kenya, the Board shall notify the applicant and the applicant shall provide an undertaking that the locals shall be trained to fill the skills gap.

(6) Subject to subsection (4), the Board may approve temporary registration for such period not exceeding one calendar year.

Accredited checkers.

24. (1) Subject to subsection (2), the Board may, upon application, register a person as an accredited checker with powers to review and verify the work of a professional engineer in ensuring that the work is adequate and complies with safety requirements.

(2) The Board may register a person as an accredited checker under subsection (1) if such person—

(a) is a professional engineer registered in the relevant discipline of engineering approved by the Board;

(b) has at least fifteen years relevant practical experience in design, and construction management; and

(c) satisfies the Board that by virtue of his ability, standing in the profession, special knowledge or practical experience, he is qualified to be registered under the Act.

(3) A person shall not perform functions or duties under this Act as an accredited checker, unless that person is registered by the Board under this section.

Registration by the Board.

25. (1) The Registrar shall, so far as is practicable, bring every application before the Board for consideration at its first meeting after receiving the application.

(2) Where a person has complied with the provisions of this Act and has been accepted by the Board as being eligible for registration, that person shall be registered.

(3) The decision of the Board on an application for registration shall be communicated to the applicant by the Registrar by letter sent to the address stated in the application within twenty one working days from the date of the decision of the Board.

(4) After the name of a person is entered in the register, the Board shall issue a certificate that has been sealed with the seal of the Board to the person.

(5) The Board may issue other identification documents that are valid for a specified period to a person registered under this Act.

(6) A certificate of registration and other identification documents issued under this section shall remain the property of the Board.

(7) Where the Registrar is satisfied that a certificate of registration or any other document has been lost, mutilated or destroyed, he may, upon payment of a fee set by the Board, from time to time, furnish a duplicate of the certificate of registration or any other document to the person to whom the original certificate of registration or documents were issued.

Effect of registration.

26. (1) Every person whose name has been entered in the Register as a professional engineer or consulting engineer shall, for as long as his name remains in the Register, be entitled to adopt and use the style and title 'professional engineer' or 'consulting engineer' after his name or such contraction thereof as the Board may, from time to time, approve and may, subject to section 31, offer his professional engineering services to the public for gain or reward or by way of trade or for employment in the engineering discipline or category in which he is registered.

(2) Professional engineers or consulting engineers may have the sole discretion of using the title 'engineer' before their names.

Register

27. (1) The Registrar shall keep and maintain a Register of all registered persons or firms under this Act in such manner as the Board may prescribe.

(2) The Register shall show 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) category;

(e) engineering discipline;

(f) nationality; and

(g) such other particulars as the Board may, from time to time, direct.

(3) Any person may inspect the Register and obtain from the Registrar a copy of or an extract from the Register, on payment of a prescribed fee.

Alteration of the Register.

28. (1) The Registrar may, from time to time, make changes or corrections in the Register relating to any entry.

(2) Any changes or corrections in the entries made under this section shall be made by the Registrar as soon as it is practical after receipt of notification thereof.

Removal of persons from the Register.

29. The Registrar shall remove from the Register—

(a) the name of every person—

(i) found to be of unsound mind or a firm which has ceased to practise or wound up by a court order;

(ii) convicted of an offence under this Act or any other law;

(iii) whose name the Board has, under section 51

(6) (c) (i), directed that it should be removed from the Register;

(iv) declared bankrupt;

(v) who has failed to satisfy requirements for continuing profession development programme for the time being in force;

(vi) who causes or permits or suffers any sole proprietorship, partnership or body corporate in which he is a sole proprietor, partner, director or shareholder to practise as a firm prior to its registration by the Board or after the Board has suspended or cancelled its registration;

(vii) who has failed within a period of six months from the date of an inquiry sent by the Registrar by prepaid registered letter to the last known address appearing in the Register against his name, to respond to the inquiry of the Registrar; or

(viii) who requests that his name be removed from the Register, in which case that person may be required to satisfy the Board by way of an affidavit lodged with the Registrar that criminal proceedings under this Act are not being or are not likely to be taken against him.

(b) any person whose name has been incorrectly or fraudulently entered.

Publication of registration.

30. (1) The Registrar shall cause to be published in the Kenya Gazette not later than the 31st day of March of every year, particulars of all registered and validly licensed persons or firms and their categories of registration.

(2) A publication made under this section shall be *prima facie* evidence that a person or firm named therein is registered under this Act and the deletion from the register of the name of any person or firm notified by such publication, or the absence of the name of any person or firm from such publication, shall be *prima facie* evidence that such person or firm is not so registered.

PART IV—PROVISIONS RELATING TO LICENSING AND PRACTICE**Practising licence.**

31. (1) A person shall not engage in the practice of engineering unless that person has been issued with a licence and has complied with the requirements of this Act.

(2) A person applying for a licence shall be required to submit a certificate of continuing professional development issued by the Board, a statutory declaration confirming that no professional complaint has been made against him and pay a prescribed fee.

(3) A licence issued under subsection (1) shall be valid for one year from the 1st of January to the 31st December and may, upon expiry, be renewed.

(4) The Registrar shall enter into the Register the date of issuance of a licence of every person licensed under this section.

Renewal of licence.

32. (1) A person whose licence has not been renewed for a year or a longer period and who wishes to have it renewed may apply to the Board.

(2) An application made under subsection (1) shall be accompanied by—

(a) an affidavit in a prescribed form explaining the reasons for non- renewal;

(b) licence fees for the current practising period and at the Board's discretion, any unpaid fees, including penalties as prescribed by the Board;
and

(c) proof of fulfillment of all applicable conditions for renewal of a licence.

(3) The Board may, with sufficient cause, refuse to issue or renew a licence and shall communicate the refusal and give reasons for such refusal to the applicant within twenty-one days of making the decision.

No fees to be charged by unlicensed persons.

33. (1) A person shall not be entitled to recover a charge for professional engineering services unless that person is licensed under this Act.

(2) A person who contravenes the provisions of subsection (1), commits an offence.

Suspension of a licence.

34. The Board may suspend a licence issued under this Act where—

- (a) an offence under this Act in relation to the licensee is being investigated;
- (b) allegations of misconduct have been investigated and proved against a licensee;
- (c) a false declaration was made in an application for a licence; or
- (d) a licensee has contravened any provision of this Act.

Cancellation of a licence.

35. The Board shall cancel a licence where a licensee—

- (a) is convicted of an offence under this Act or the rules made thereunder; or
- (b) ceases to be qualified for the issue of a licence under this Act.

Effect of removal of name, suspension or cancellation of a licence.

36. (1) A person whose name has been removed from the Register or whose licence issued under this Act has been suspended or cancelled shall not engage in the practice of engineering or offer professional engineering services or works during the duration of removal of name, suspension or cancellation of the licence.

(2) Subject to subsection (3), the Registrar shall notify a person whose name has been removed from the Register, by registered mail sent to the address appearing in the Register against his name immediately before the removal.

(3) Subsection (2) shall not apply where a person's name has been removed from the Register at his request or with his consent.

(4) Where a directive has been made by the Board for the removal of a person's name from the Register, or for suspending a person's registration under this Act, or for cancelling or suspending a licence issued to that person under this Act, the Board may, on application in a prescribed manner by the person concerned and after holding such inquiry as the Board may consider necessary—

- (a) cause the removal from the Register to be confirmed and direct the surrender of the licence and certificate of registration within fourteen days after notification to that person by way of registered post;
- (b) cause the name of the person to be restored on the Register;
- (c) terminate the suspension of the registration;
- (d) as the case may be, issue a new licence; or

(e) terminate the suspension of the existing licence –

(i) without a fee; or

(ii) on payment of such fee not exceeding the fee chargeable upon registration or issuance of a licence, as the Board may determine.

Publication upon cancellation, revocation etc of a licence.

37. The cancellation, revocation or withdrawal of a licence under this Act shall be published in the Kenya Gazette and a newspaper with a national circulation.

PART V—FINANCIAL PROVISIONS

Funds of the Board.

38. (1) The Funds of the Board shall comprise of—

(a) monies appropriated by Parliament for the purposes of the Board;

(b) donations, grants, loans or gifts made to the Board and approved by the Minister and the minister for the time being responsible for matters relating to finance;

(c) monies and revenue earned from the activities of the Board under this Act;

(d) licence fees charged in accordance with this Act; and

(e) such sums as may in any manner become payable to or vested in the Board either under the provisions of this Act or any other written law.

(2) There shall be paid out of the funds of the Board any expenditure incurred by the Board in the exercise of its powers or the performance of its functions under this Act.

Financial year.

39. The financial year of the Board shall be the period of twelve months ending on the 30th June in each year.

Annual estimates.

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

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

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

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

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

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

Accounts and audit.
No. 12 of 2003.

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

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

Investment of funds.

42. The Board may, subject to the approval of the minister for the time being responsible for matters relating to finance, invest any funds not immediately required for its purposes, as it may determine.

PART VI—PROVISIONS RELATING TO OFFENCES AND PENALTIES

False registration or licensing.

43. (1) A person who willingly procures or attempts to procure registration or licensing under the provisions of this Act by making or producing or causing to be made or produced any false or fraudulent representation or declaration, either orally or in writing, commits an offence and is liable on conviction to a fine of five hundred thousand shillings or to imprisonment for a term not exceeding two years.

(2) Where an offence under this section is committed by a legal person, that legal person shall be liable on conviction to a fine of one million shillings.

(3) The Registrar shall remove from the Register the name of any person registered or licensed under this Act who is convicted of an offence under this section and cancel the licence held.

Professional misconduct.

44. A person who is licensed as a professional engineer or consulting engineer under this Act commits an offence of professional misconduct if that person—

(a) deliberately fails to follow the standards of conduct and practice of the engineering profession set by the Board;

- (b) commits gross negligence in the conduct of his professional duties;
- (c) allows another person to practise in his name, where that person—
 - (i) is not a holder of a licence;
 - (ii) is not in partnership with him;
 - (iii) takes advantage of a client by abusing position of trust, expertise or authority;
 - (iv) lacks regard or concern for client's needs or rights; or
 - (v) shows incompetence or inability to render professional engineering services or works.

Offences by persons or training institutions.

45. A person who, being in charge of a training institution which is not recognised by the Board as an institution registered or seeking registration under this Act—

- (a) admits to the institution under his charge any person for purposes of training in the engineering profession;
- (b) purports to be conducting a course of training or examining persons seeking registration under this Act; or
- (c) issues any document, statement, certificate or seal implying that—
 - (i) the holder thereof has undergone a course of instruction or has passed an examination recognized by the Board; and
 - (ii) the institution under his charge is recognized by the Board as an institution for training of person seeking registration, commits an offence and is liable on conviction to a fine of five million shillings or to imprisonment for a term not exceeding five years, or both.

Prohibition for the use of the term engineer by unregistered or unlicensed persons.

46. (1) The terms "engineer" and "engineers" are protected under this Act and shall only be applied to persons or bodies fulfilling the requirements of this Act.

(2) A person who, being not registered or licensed under this Act—

- (a) willfully and falsely takes or uses in any way the style or form or title of "engineer" or "engineers" in describing his occupation or his business or any other name, style, title, addition or description implying whether in itself or in the circumstances in which it is used, that such person or body or persons is an 'engineer' or 'engineers'; or

(b) displays any sign, board, card or other device or uses a prescribed stamp representing or implying that he is an engineer, commits an offence.

(3) The Board may grant exemptions upon application to any person or group of persons for the use of the description or use of the term 'engineer' or 'engineers' and such exemptions shall be in accordance with any written International Convention or Treaty ratified by Kenya.

Prohibition on provision of professional engineering services by body of persons.

47. (1) A body of persons shall not carry on the business of engineering unless one of its partners or directors, as the case may be, is a professional engineer.

(2) Where a partner or director of a body of persons mentioned under subsection (1), dies, that body of persons may, despite the provision of subsection (1), continue to carry on the business of engineering until such time as the administration of the estate of the deceased is completed as if the legal representatives were professional engineers.

(3) Any person who contravenes the provisions of this section commits an offence.

Prohibition of employment of unregistered persons.

48. (1) A person shall not employ or continue to employ any person to offer professional engineering services or works if that person is not registered under this Act.

(2) A person shall not take up or continue in any employment as a professional engineer or consulting engineer unless that person is registered as a professional engineer or consulting engineer.

(3) An employer shall not employ or engage a graduate engineer in any work or professional engineering services or works unless that graduate engineer is under the supervision of a professional or consulting engineer.

(4) A person who contravenes any provision of this section commits an offence.

Restriction of the right to submit documents.

49. (1) The right of a registered or licensed person under this Act to submit plans, engineering surveys, drawings, schemes, proposals, reports, design or studies to any person or authority in Kenya is restricted to the right to submit such documents only in relation to the discipline of engineering in which that person including a professional engineer in an engineering consulting firm, is qualified as shown in the entries made in the Register.

(2) A person who is not registered as a professional engineer or firm shall not be entitled to submit engineering plans, surveys, drawings, schemes, proposals, reports, designs or studies to any person or authority in Kenya.

(3) A person who contravenes any provision of this section commits an offence.

Obstruction of officers of the Board.

50. Any person who obstructs or hinders, or knowingly makes false misleading statement to any member, officer, servant or agent of the Board who is carrying out duties under this Act, commits an offence.

PART VII - COMPLAINTS AND DISCIPLINE BY THE BOARD**Complaints and disciplinary proceedings by the Board.**

51. (1) A person who being dissatisfied with any professional engineering services offered or alleging a breach of the standards of conduct, specified by the Board from time to time, by a registered or licensed person under this Act, may make, in a prescribed manner, a written complaint to the Board.

(2) Upon an inquiry held by the Board to determine a complaint made under subsection (1), the person whose conduct is being inquired into shall be afforded an opportunity of being heard, either in person or through a representative of his own choice.

(3) For the purposes of proceedings at any inquiry held under this section, the Board may administer oaths, enforce attendance of persons as witnesses and production of books and documents as evidence.

(4) A person who fails when summoned by the Board to attend as witness or to produce any books or documents which he is required to produce, commits an offence.

(5) Subject to this section and rules of procedure made under this Act, the Board may regulate its own procedure in disciplinary proceedings.

(6) Where the Board is satisfied that any person registered or licensed under this Act has been—

(a) convicted of an offence under this Act or under any other law punishable by imprisonment, the commission of which, in the opinion of the Board, has dishonored him in the public estimation; or

(b) guilty of negligence or malpractice in respect of his profession; or

(c) guilty of impropriety or misconduct in respect of his profession, the Board may, subject to subsection (10)—

(i) direct the removal of such person's name from the Register;

(ii) issue a written warning or reprimand;

(iii) cancel such person's licence; or

(iv) suspend such person's licence or registration for a period not exceeding two years or impose a fine, for a natural person, not exceeding two hundred and fifty thousand shillings and, for a legal person, a fine of three million shillings.

(7) A person whose name has been removed from the Register or whose licence has been cancelled or suspended under the provisions of this Act shall surrender his certificate of registration or the licence to the Registrar.

(8) A person who fails to surrender the licence as required under subsection (7) commits an offence and is liable on conviction, in case of a natural person, to a fine of fifty thousand shillings and, in case of a legal person, to a fine of one hundred thousand shillings.

(9) The power to direct the removal of the name of a person from the Register or to cancel that person's licence shall include the power exercisable in the same manner to direct that during such period as may be specified in the order, the registration of that person's name in the Register or the licence issued to the person shall not have effect.

(10) The provisions of this section, in so far as they relate to cancellation or suspension of licences, shall be in addition to and not in derogation of the provisions of section 29.

(11) Despite any other provisions in this Act, the Board shall not remove the name of a person from the Register, or cancel a licence issued to that person unless—

(a) at least two thirds of the members of the Board so decide;

(b) the Board has given the licensee at least twenty one calendar days notice of its intention to cancel a licence; and

(c) it has provided the licensee with an opportunity to make representation to the Board.

Appeals.

52. A person aggrieved by a decision of the Board under this Act may, within thirty days from the date of the Board's decision, appeal to the High Court and in any appeal the High court may annul or vary the decision as it may consider necessary.

PART VIII—GENERAL PROVISIONS

General provision in relation to exemptions.

53. This Act shall not prohibit or render liable to prosecution any person who is registered in accordance with this Act to—

(a) enter for the purpose of or in the course of practising as an engineer, into partnership with other persons not registered in accordance with this Act;

(b) engage in other professions or trades provided that he is competent to engage in such professions or trades and also provided that he does not contravene the provisions of this Act; or

(c) obtain registration with other professional bodies.

Legal proceedings.

54. (1) In any legal proceedings, a document meant to be a copy of an extract from the Register kept or published by the Registrar, and taken to be certified from the Register to be a true copy or extract, shall be admissible as *prima facie* evidence of the contents of the Register.

(2) The Registrar shall not, in any legal proceedings to which he is not a party, be compellable to—

(a) produce the Register if its contents can be proved under this Act; or

(b) appear as a witness to prove any entry in the Register, of the matters recorded in the Register without a court order.

General penalty.

55. A person who commits an offence under this Act for which no specific penalty is provided for is liable to a fine of two hundred thousand shillings or to imprisonment for a term not exceeding one year, or both.

Rules.

56. The Board may, with approval of the Minister, make rules generally for the better carrying into effect the provisions of this Act, and any such rules without prejudice to the generality of the foregoing may—

(a) prescribe the form and method of keeping the Register under this Act;

(b) prescribe forms, methods and regulations concerning conditions for issuance of licences;

(c) prescribe the manner and subject matter of courses pertaining to training and continuing professional development;

(d) prescribe the standards and conditions of professional practice for persons registered or licensed under this Act;

(e) prescribe the registration procedure and any other powers and duties to be assigned to accredited checkers;

(f) provide for enforcing the attendance of witnesses and the production of books and documents at an inquiry by the Board;

(g) prescribe forms to be used in connection with this Act or fees to be charged under this Act; and

(h) prescribe anything required under this Act to be prescribed.

Repeal of Cap. 530.

57. The Engineers Registration Act is repealed.

Transitional provisions.

58. (1) The rights, assets and liabilities accrued in respect of the properties vested in the Engineers Registration Board established by the repealed Act immediately before the commencement of this Act and the members or persons employed by the former Engineers Registration Board shall be transferred to the Board and accordingly the proceedings taken by or against the former Engineers Registration Board may be continued by or against it as if taken under this Act.

(2) A contract subsisting between the former Engineers Registration Board and another person and the effect immediately before the commencement of this Act shall subsist between the Board established under this Act and that other person.

SCHEDULE (s.10)**PROVISIONS RELATING TO MEETINGS OF
THE BOARD**

- 1.** The Board shall meet at least once every three months for the dispatch of business.
- 2.** The chairman may or upon request call a special meeting of the Board at any time where the chairman considers it expedient for the transaction of the business of the Board.
- 3.** Other than a special meeting, or unless three quarters of members agree, at least twenty one days' written notice of every meeting of the Board shall be given to every member of the Board by the secretary.
- 4.** The quorum at a meeting of the Board is two thirds of the members or a greater number determined by the Board in respect of an important matter.
- 5.** The chairman shall preside at the meetings of the Board and in the absence the members shall elect a chairman from amongst themselves to preside the meeting.
- 6.** The matters of the Board shall be decided by a majority of the members present and voting and in the event of equality of votes, the person presiding shall have a casting vote.
- 7.** The proceedings of the Board shall not be invalidated by reason of a vacancy among the members or a defect in the appointment or qualification of a member.
- 8.** Except as provided by this Schedule, the Board may regulate its own procedures.

MEMORANDUM OF OBJECTS AND REASONS

The main purpose of this Bill is to repeal and replace the Registration of the Engineers Act, Cap. 530, which provides for the training and regulation of activities of engineers in Kenya. This is in response to inadequacy of enforcement provisions in respect of engineering standards in the country and global engineering regulatory trends and changing technologies.

Part I of the Bill contains preliminary provisions.

Part II of the Bill has provisions incorporating and specifying the membership of the Engineers Registration Board. The membership is proposed to include persons with engineering background.

The Part also sets out the functions of the Board, among which is to ensure that high standards are maintained both in training, performance and rendering of engineering professional services.

Part III contains provisions on registration of engineers in the country. It imposes the requirement for registration of engineers and defines the requirements for each category of engineers.

It also sets out the qualifications for registration. Although registration is open to persons who are Kenyan citizens or have permanent resident status, a window is provided for registration of foreigners in specified circumstances.

The Part also provides for effect of registration.

Part IV of the Bill has provisions on licensing and practising of registered engineers.

The Part provides that persons must be licensed to practise as engineers and provides for requirements needed to be fulfilled when applying for a practising licence.

The Part further sets out the circumstances in which registration may be suspended or cancelled.

Part V of the Bill has financial provisions.

Part VI of the Bill has provisions relating to offences and penalties.

The Part creates offences and prescribes penalties. These include fraudulently obtaining registration, employing unregistered persons, professional misconduct or making false entries on the Register.

Part VII of the Bill sets out the disciplinary procedures and the actions the Board may take against offending persons including deregistration, reprimand, imposition of fine etc. It also provides for restoration of names in the Register.

Part VIII of the Bill provides for general provisions. It empowers the Board, with the approval of the Minister, to make rules generally and in specific cases.

It further contains repeals and transitional provisions. Under this Part, the Registration of Engineers Act, Cap. 530, is repealed and transitional provisions are made with regard to the Engineers Registration Board established under that Act. The transitional provision saves the contracts, assets and liabilities of the Board and imposes them on the newly established Board, and also provide for transfer of the employees of the previous Board to the new Board.

The Schedule provides for the meeting procedures of the Board.

Dated the 1st July, 2011.

FRANKLIN BETT,
Minister for Roads.