

Tanzania

## Contractors Registration Act Chapter 235

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# Tanzania

## Contractors Registration Act

### Chapter 235

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*[Note: This legislation has been thoroughly revised and consolidated under the supervision of the Attorney General's Office, in compliance with the Laws Revision Act No. 7 of 1994, the Revised Laws and Annual Revision Act (Chapter 356 (R.L.)), and the Interpretation of Laws and General Clauses Act No. 30 of 1972. This version is up-to-date as at 31st July 2002.]*

*[G.N. No. 317 of 1997; Act No. 17 of 1997]*

**An Act to provide for the registration of contractors and to establish a Board to regulate the conduct of contractors and for related matters.**

### Part I – Preliminary provisions (ss 1-2)

#### 1. Short title

This Act may be cited as the Contractors Registration Act.

#### 2. Interpretation

In this Act, unless the context requires otherwise—

"**Appeals Authority**" means the Appeals Authority referred to in section 19;

"**Board**" means the Contractors Registration Board established under section 3;

"**contractor**" means either:

- (a) any person who for reward or other valuable consideration undertakes the construction, installation or erection, for any other person, of any structure situate below, on or above the ground or other work connected therewith or the execution, for any other person, of any alteration or otherwise to any structure or other work connected therewith, where such person undertakes to do any such work—
  - (i) himself supplies the material necessary for the work or is authorised to exercise control over the type, quality or the use of material supplied by any other person;
  - (ii) himself supplies the labour necessary for the work or is authorized on behalf of the person for whom the work is undertaken or any other person, to employ or select for employment workmen to assist him in the execution of the work; or
- (b) any person who himself as a developer or investor, undertakes the construction, erection, installation or alteration of any structure, for public use or otherwise, situate below, on or above the ground or other work connected therewith or the execution of any alteration or otherwise to any structure, for public use or otherwise, or other work connected therewith, where such person undertaking to do any such work—
  - (i) himself supplies the labour necessary for the work or is authorized to exercise control over the type, quality or the use of material supplied by any other person; or

- (ii) himself is authorised on behalf of the person for whom the work is undertaken or any other person, to employ or select for employment workmen to assist him in the execution of the work:

Provided that a person shall be deemed not to be a contractor for the purposes of this Act if he at no time undertakes or holds himself out as willing to undertake any work the cost of construction, erection, installation, alteration or completion of which does not exceed such a sum as shall be determined by the Board from time to time for different disciplines of the construction industry; or undertakes or holds himself out as willing to undertake construction of a residential house for his own family (not for public use), which does not require an input of structural design;

**"certificate of compliance"** means a certificate of compliance issued by the Registrar of Companies;

**"foreign"** in relation to a firm or company means a firm or company registrable under Part XII of the Companies Ordinance whose majority shares are owned by non-citizens;

**"local"** in relation to a natural person, means a citizen of the United Republic, and in relation to a firm means a contracting firm or company incorporated in Tanzania whose majority shares are owned by the citizens of the United Republic;

**"member"** in relation to the Board or the Appeals Authority includes the Chairman and the Vice-Chairman;

**"Minister"** means the Minister responsible for Works;

**"person"** means a natural person, body of persons whether corporate or unincorporate;

**"Register"** means the Register of Contractors maintained by the Board in accordance with the provisions of this Act;

**"registered"** in relation to any contractor means a contractor whose name is entered in the relevant register;

**"Registrar"** means the Registrar appointed in accordance with the provisions of section 6.

## Part II – The Board (ss 3-6)

### 3. Establishment of the Board

- (1) There is hereby established a Board to be known as the Contractors Registration Board.
- (2) The Board shall—
  - (a) be a body corporate with perpetual succession and a common seal;
  - (b) in its corporate name be capable of suing and being sued;
  - (c) for and in connection with the purpose of this Act, be capable of acquiring, holding and disposing of movable and immovable property in its corporate name;
  - (d) be capable of making by-laws to facilitate the implementation of this Act.
- (3) The provisions of the Schedule to this Act, shall have effect as to the constitution and proceedings of the Board, and otherwise in relation to the Board.
- (4) The Minister may, after consultation with the Board, by order published in the *Gazette*, amend, add to, vary, revoke or replace the provisions of the Schedule.

#### 4. Functions of the Board

Subject to the provisions of this Act and regulations made under it, the functions of the Board shall be to—

- (a) consider and decide upon application for registration, to effect registration of contractors; to maintain a register of contractors, and to prescribe fees for registration and annual subscription;
- (b) regulate the activities and conduct of contractors;
- (c) enter and inspect any site for construction, installation, erection or alteration works for the purpose of verifying and ensuring that the works are being undertaken by registered contractors; and that the works comply with all governing regulations and laws of the country;
- (d) take legal action against unregistered contractors who undertake construction, installation, erection or alteration works;
- (e) verify and ensure that every site for construction, installation, erection or alteration works has a sign board which shows the names and address of the project, client, consultants and the contractors of the project; and to take legal action against defaulters;
- (f) promote and provide opportunities and facilities for the study of, and for the training in pre-contract and post-contract management, construction, erection, installation or alteration of structures and allied subjects connected with them;
- (g) promote and maintain professional conduct and integrity of contractors;
- (h) conduct examination and to grant certificates and other awards of the Board in the subjects referred to in paragraph (f);
- (i) sponsor, arrange and provide facilities for courses, workshops, conferences, seminars, discussion, symposia and consultations on matters relating to the subjects referred to in paragraph (f);
- (j) arrange for the publication and general dissemination of materials produced in connection with the work and activities of the Board;
- (k) furnish managerial, technical and administrative consultancy services to contractors;
- (l) liaise and interact with both local and international professional boards and associations involved in and with the construction industry;
- (m) ensure that all construction sites are hoarded; and labour laws, occupational health and safety regulations in the construction industry are adhered to;
- (n) classify contractors into different types, categories and classes and to set class limits of projects to be executed by contractors;
- (o) set criteria to be met by contractors for registration in different classes;
- (p) review, from time to time, the registration criteria of contractors;
- (q) review registered contractors with a view to ensuring that they meet the registration criteria in force of their respective types, categories and classes;
- (r) consider applications for dispensations for specific contracts by clients or their consultants on behalf of registered contractors;
- (s) take disciplinary action against registered contractors who contravene the provisions of this Act or the by-laws of the Board;
- (t) carry out any other functions which are in the public interest and which the Minister may in writing, direct.

## 5. Limitation of liability

A member of the Board shall not be personally liable for any act or default of the Board done or omitted in good faith in the course of carrying out the responsibilities and functions of, or exercising the power conferred upon him by the Board.

## 6. Appointment of Registrar

- (1) The Board shall appoint a Registrar to the Board who shall be either a registered Engineer, Architect or Quantity Surveyor who shall hold and vacate office in accordance with the terms of his appointment.
- (2) The Registrar shall be responsible and answerable to the Board.

## Part III – Registration (ss 7-12)

## 7. Registers of contractors

- (1) The Registrar shall keep and maintain registers of contractors of different types, categories and classes in which the name of every person entitled to have his name in them as a registered contractor, shall be entered as soon as it is practicable after being accepted by the Board for registration, showing against his name—
  - (a) the date of entry;
  - (b) the name and postal address(es);
  - (c) the registration number;
  - (d) the class registered in;
  - (e) the capital and other financial resources;
  - (f) tools, plants and equipment;
  - (g) physical premises;
  - (h) the key managerial, professional or technical and other personnel;
  - (i) directors or partners, one or more of whom shall be technically qualified and experienced in the relevant works as prescribed by the Board;
  - (j) in the case of an individual, the qualifications and skills as prescribed by the Board necessary to enable him to discharge in satisfactory manner the obligations which he may reasonably be expected or called upon to undertake as a contractor belonging to the category, type and class in respect of which registration is being sought;
  - (k) acceptable security cover;
  - (l) annual turnover of construction activities;
  - (m) category (foreign or local);
  - (n) duration of registration;
  - (o) type of registration; and
  - (p) any other particulars which the Board may, from time to time, direct.
- (2) Registers shall be kept for the following types of contractors namely:
  - (a) building contractors;

- (b) civil works contractors;
  - (c) water works and sewerage contractors;
  - (d) mechanical and electrical works contractors; and
  - (e) specialist contractors such as demolition, roofing, painting, joinery, plumbing and any other specialist contractors specified by the Board.
- (3) Any change in any of the particulars registered under subsection (1), shall be entered in the appropriate register by the Registrar.

## 8. Publication of registers and lists

- (1) The Registrar shall by notice published in the *Gazette*, as soon as may be practicable after registration publish the names, postal addresses, premises, registration number, type, category and class registered in and names and qualifications of partners or directors of the registered contractor.
- (2) Subject to direction of the Board, the Registrar may publish any amendment to or deletion from the register in the *Gazette*.
- (3) The Registrar shall by notice published in the *Gazette*, as soon as practicable after the first day of January in each year, publish a list containing the names, postal address, premises, registration number, type, category and class registered in, and names of partners or directors of all registered contractors remaining on the registers after the thirty first day of December of the previous year.

## 9. Publication *prima facie* evidence of registration

- (1) A publication under the provisions of section 8, shall be *prima facie* evidence that, any person's name in the register is registered under this Act, and the deletion from the register of the name of any person notified by that application, shall be *prima facie* evidence that person is not so registered.
- (2) The registers, lists and all copies or extracts from them which have been duly certified by the Registrar shall be accepted in all courts and tribunals or other bodies authorized to receive evidence of the facts stated in them.
- (3) Any person may inspect the register and any document relating to any entry in it and may obtain from the Registrar a copy or an extract from the register for any document on payment of a prescribed fee.
- (4) No order compelling the production of the register or any document kept by the Registrar shall be issued from any court, unless it bears the seal of the court issuing the order and accompanied by a statement that it is issued by a court of law.
- (5) The Registrar shall, in any legal proceeding to which he is not a party, not be compelled—
- (a) to produce the register or any document the contents of which can be proved under subsection (1);
  - (b) to appear as a witness to prove any entry in the register, any matter recorded in the register or any document, unless the court for special cause, so order.

## 10. Qualifications for registration of contractors

- (1) Subject to the provisions of this Act, a person shall be eligible on making an application to the Board in the prescribed manner and on payment to the Board of the prescribed fees, to be registered under this Act as a contractor if he satisfies the Board—
- (a) that he has the minimum technical qualifications and skills prescribed by the Board for the category, type and class of contractors the registration of which is being sought;

- (b) that he has the necessary experience as prescribed by the Board in works involving construction, erection, installation, alteration or any other activity which is connected with them; and
  - (c) that his professional and general conduct has been such as, in the opinion of the Board, makes him a fit and proper person to be registered under this Act;
  - (d) he has the necessary plants and equipment for the work or works intended to be carried on.
- (2) The Board may refuse to register a person as a contractor if in its opinion—
- (a) that person does not meet the conditions stated in subsection (1);
  - (b) that person is a practising architect, quantity surveyor, engineer or consulting firm providing architectural, quantity surveying or engineering services; or
  - (c) that person is a person whose employment shall result in conflict of interest with his employer by being a contractor.
- (3) Upon registration, the person shall be issued with a certificate of registration indicating the registration number, type, category, class, date of registration and duration of registration.
- (4) The certificate issued under subsection (3), shall be the property of the Board and shall be withdrawn and returned to the Board upon suspension or cancellation of registration.

## 11. Temporary registration

- (1) Where a person satisfies the Board that—
- (a) the principal of the construction firm is not a citizen of Tanzania;
  - (b) the firm has been incorporated outside Tanzania;
  - (c) the firm intends to be present in Tanzania in the capacity of a contractor for the express purpose of carrying out a specific contract for which the firm has been contracted the sum of which is not less than the sum prescribed by the Board for the category, type and class of contractors of which registration is being sought;
  - (d) the firm has a certificate of compliance from the Registrar of Companies showing that the firm is or immediately prior to entering Tanzania was, trading as a contractor in the capacity which satisfies the Board of his fitness to serve the public as a qualified contractor;
  - (e) the firm has in its employment, only those expatriates whose qualification and skills are, not available in Tanzania;
  - (f) the firm has lodged an affidavit with the Board to the effect that, once the contracted works are completed and the period of defects liability or maintenance has elapsed or closed down business as an investor, then it shall wind up business and not engage itself in contracting business, the Board may, if it thinks fit, direct that firm be registered under this section for the duration of the contracted works.
- (2) An application for registration under this section, shall be in the prescribed form, accompanied by the prescribed fee, and the Board may require an applicant to appear before it for the purposes of every firm to produce documentary evidence of its competence in executing construction works immediately prior to its entry in Tanzania.
- (3) Registration of a firm under this section, shall entitle it to undertake work only for the duration or the period of contracted work which is directed by the Board in subsection (1) and on the expiration of the period of the contracted works, that firm shall cease to have been so registered, and shall return the registration certificate to the Board.
- (4) In case of doubt, the decision of the Board as to the completion of the specific assignment shall be conclusive.

- (5) A firm under this section shall, during the duration or the period of the contracted works as is directed by the Board under subsection (1), and in relation to things done or omitted to be done in the course of the contracted work, be treated as being duly registered under this Act as a *bona fide* contractor but in relation to other matters shall be treated as not so registered.
- (6) For the purpose of this section, the word "firm" includes a person or body of persons whether corporate or unincorporate.

## 12. Restriction on registration of non-foreign firms

- (1) No person who is not a citizen of the United Republic shall be allowed to form a local contracting firm unless the majority of its shares are owned by the citizens of United Republic.
- (2) If the conditions referred to in subsection (1) are not fulfilled, the firm or company shall be registered as a foreign firm or company.
- (3) The Board may refuse to register any firm as a contractor, if in its opinion it—
  - (a) does not meet the conditions stipulated in section 10;
  - (b) is a practising registered architect, quantity surveyor, engineer or consulting firm providing architectural, quantity surveying or engineering services;
  - (c) is a person whose resident or work permit does not allow him to carry on business as a contractor;
  - (d) is a person whose general and professional conduct has been such as in the opinion of the Board, makes him an unfit and improper person to be registered under this Act.

## Part IV – Cancellation and suspension of registration (ss 13-20)

### 13. Power to cancel registration

- (1) The Board may at any time direct that the name of a registered contractor be deleted from the relevant register where that person has—
  - (a) within a period of six months from the date of an inquiry sent by the Registrar by a registered letter to the address appearing in the register against his name, failed to notify the Registrar of his current address;
  - (b) requested that his name be deleted from the register, in which case that person may be required to satisfy the Board by affidavit lodged with the Registrar that no criminal proceedings or proceedings under section 15 or section 16 are being, or are likely to be taken against him;
  - (c) failed to pay annual subscription fees for two consecutive years;
  - (d) failed to meet the current registration criteria of the Board;
  - (e) failed to discharge his duties, responsibilities and obligations as a contractor;
  - (f) been found by the Board to be guilty of any contravening of this Act or subsidiary legislation made under this Act or of any such misconduct as is referred to in section 15.
- (2) The Registrar shall strike the name of every deleted contractor off the register and shall also delete therefrom any entry which has been incorrectly or fraudulently made or procured.
- (3) Except in the circumstances specified in paragraph (a) of subsection (1) and in subsection (2), the deletion from the register of the name of any contractor shall be notified by the Registrar to that contractor by a recorded delivery or a registered letter to the address appearing in the register against his name immediately prior to the deletion.

- (4) Subject to the provisions of section 14, a contractor whose name has been deleted from the register under this section, shall cease from the date of the deletion, to be registered for the purpose of this Act and shall be obliged to surrender to the Board immediately the certificate of registration for cancellation.
- (5) A sole proprietor, partners, members of a society or directors of a company shall not be allowed to register a new contracting sole proprietorship, society or company after having been deleted as registered contractors.

#### **14. Restoration to the Register**

- (1) Where the name of any contractor has been deleted from the register under section 13, the name of that contractor shall not be again entered in the register except on the direction of the Board.
- (2) Where the name of any contractor has been deleted from the register or the effect of the registration of any contractor has been suspended in terms of paragraph (b) of section 15, the Board may, either of its own motion or on application in the prescribed manner by the contractor concerned, and in either case after holding such inquiry as the Board may deem fit, direct that—
  - (a) the deletion from the register be confirmed; or
  - (b) the name of that contractor be restored to the register; or
  - (c) the suspension of the effect of the registration of that contractor be lifted.
- (3) A direction given by the Board under subsection (2) may include provision for the date upon which a restoration to the register or the termination or suspension of the effect of registration shall take effect and for the payment by the contractor concerned of the fee, as a penalty, not exceeding the fee payable on an application for registration, as the Board may determine.

#### **15. Powers to suspend registration, etc.**

- (1) The Board shall have power to suspend any registered contractor if such registered contractor including its principals or partners—
  - (a) is convicted of any offence under this Act;
  - (b) is found to have been guilty of any act or omission amounting to improper, disgraceful or gross professional misconduct, after due inquiry held by the Board;
  - (c) has breached the regulations or by-laws of the Board;
  - (d) has a business licence which has not been issued by the Licensing Committee of the Ministry responsible for trade;
  - (e) has procured a business licence without—
    - (i) proof of having submitted annual returns to the Registrar of Companies the previous year;
    - (ii) having submitted a registration certificate of the Board to the licensing authority;
    - (iii) submitting proof of having paid the registration or annual subscription fees to the Board for the year for which the business licence is being sought.
- (2) In addition to the power to suspend registration given under subsection (1) the Board may—
  - (a) caution or censure a registered contractor;
  - (b) direct that during the period as the Board may specify, the registration of his name shall not have effect;
  - (c) direct that his name be deleted from the Register;

- (d) take legal action against the offender.

## 16. Proceedings at an inquiry

- (1) Upon any inquiry held by the Board under section 15, the contractor whose conduct is being inquired into shall be entitled to appear and be heard.
- (2) For the purposes of proceedings at any inquiry held by it the Board shall have power—
  - (a) to administer oaths;
  - (b) to summon persons to attend and give evidence; and
  - (c) to order the production of documents.
- (3) All summonses and orders issued under the hand of the Chairman or the Vice-Chairman of the Board shall be deemed to be issued by the Board.
- (4) The Chairman, or in his absence the Vice-Chairman of the Board shall record or cause to be recorded a summary of any oral or written evidence given at an inquiry held by the Board.
- (5) Subject to the provisions of this section and of any regulations made under section 35, the Board shall have power to regulate its own procedure at an inquiry held by it.
- (6) For the purpose of Chapter XI of the Penal Code<sup>1</sup>, an inquiry held by the Board shall be deemed to be judicial proceedings.

## 17. Disobedience to summons and refusal to give evidence

- (1) Any contractor who, having been served with a summons or an order issued under the provisions of section 16 or omits without sufficient cause—
  - (a) to answer fully and satisfactorily to the best of his knowledge and belief all questions put to him by or with the concurrence of the Board;
  - (b) to produce any document in his possession or under his control which are specified in the order,commits an offence and upon conviction is liable to a fine of not less than one hundred thousand shillings or to imprisonment for a term not exceeding one year but not less than six months or to both that fine and imprisonment.
- (2) Any person giving evidence before the Board shall, in respect of any evidence given by him or any document produced by him, be entitled to all privileges to which he would be entitled as a witness before the High Court.

## 18. Appeals against decision of Board

- (1) Any contractor aggrieved by a decision of the Board—
  - (a) to refuse to register his name;
  - (b) to delete his name from a register; or
  - (c) to suspend the effect of registration of his name,may appeal to the Appeals Authority against the decision of the Board and the Appeal Authority may give such directions in the matter as it thinks proper.

<sup>1</sup>

- (2) The Board may appear as respondent and be heard on any appeal against its decision and, for the purposes of enabling directions to be given as to the costs of any appeal, the Board shall be deemed to be a party thereto, whether or not it shall appear at the hearing of the appeal.
- (3) Any person aggrieved by the decision of the Appeals Authority may appeal to the High Court.

## 19. Appeals Authority

The Appeals Authority shall consist of—

- (a) a chairman to be appointed by the Minister;
- (b) a member of the Attorney-General's Chambers nominated in that behalf by the Attorney-General;
- (c) two members appointed by the Minister who are not employees of the Ministry of Works; and
- (d) four other members appointed by the Minister who shall be—
  - (i) one registered practising architect nominated by the Architectural Association of Tanzania;
  - (ii) one registered practising quantity surveyor nominated by the Tanzania Institute of Quantity Surveyors;
  - (iii) one registered practising engineer nominated by the Association of Consulting Engineers Tanzania;
  - (iv) one registered contractor nominated by the Contractor's Association.

## 20. Rules regulating proceedings before the Appeals Authority

- (1) The Minister may, after consultation with the Attorney-General, make rules regulating appeals to the Appeals Authority and providing for the taking of further evidence, the fees to be paid, the procedure to be followed and the manner of notifying the Board of Appeal.
- (2) Subject to any rules made under subsection (1), the provisions of section 16 and section 17 shall apply, *mutatis mutandis*, in relation to appeals under section 18 and to persons summoned to give evidence before the Appeals Authority.

## Part V – Restriction on trading as contractor (ss 21-24)

### 21. Use of description "registered" and effect of registration

Every contractor 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 style and title "Registered Contractor" or such contraction thereof as the Board may approve, and to offer his services to the public for valuable consideration or reward or by way of trade, as a registered contractor.

### 22. Restrictions on carrying on business as contractor

- (1) Any person who or any firm which not being—
  - (a) a registered contractor falsely pretends to be such; or
  - (b) entitled to do so under section 21, uses a style or title of "Registered Contractor" or any other name, type, title or in the circumstances in which it is used that such person is so registered;
  - (c) a registered contractor, holds himself out other than for the purpose of applying for registration, whether directly or by implication to be a qualified and experienced contractor;

- (d) a registered contractor, trades or carries on business as contractor in Tanzania, commits an offence and upon conviction is liable to a fine not exceeding ten percent of the contract sum or project value but not less than one percent of the contract sum or project value of an executed contract or contract in hand or five million shillings, whichever is higher, or to imprisonment for a term of not less than three years or to both that fine and imprisonment.
- (2) Any person who trades under the name, title or style containing any words or phrases implying "Registered Contractor" unless he is registered under this Act, as contractor, commits an offence and upon conviction is liable to a fine not exceeding ten percent of the contract sum or project value of an executed contract or contract in hand or five million shillings, whichever is higher, or to imprisonment for a term of not less than five years or to both that fine and imprisonment.

### **23. Bodies of persons operating as contractors**

- (1) No body of persons, whether corporate or unincorporate, shall carry on the business of contractors unless at least one of the partners or directors who shall also be a shareholder has, as prescribed by the Board the required technical qualifications, skills and experience necessary to enable him to discharge in satisfactory manner the obligations which he or the firm may reasonably be expected or called upon to undertake as a contractor belonging to the category, type and class in which he or the firm intends to carry on the business of contractors; and that body of persons is duly registered.
- (2) Where the director who is also a shareholder or partner who has the required technical qualifications, skills and experience, of a body of persons whether corporate or unincorporate, carrying on business as a contractor dies, such body or persons may, notwithstanding the provisions of subsection (1) be allowed to complete the project or contracts in hand only, as if such legal representatives were registered contractors.
- (3) Nothing in this Act shall be construed as entitling any body of persons, whether corporate or unincorporate, to be registered as, or as empowering the Registrar to register any body of persons as, registered contractors.
- (4) A body of persons, whether corporate or unincorporate, after fulfilling the conditions for registration, may be registered as contractors and if so registered, may lawfully carry on business as registered contractors and, in the case of such body of persons so registered or applying to be so registered, references in this Act to the required technical qualification, experience, skill or conduct as prescribed by the Board of any contractor or applicant shall be construed as references in this Act to the required technical qualification, experience, skill or conduct of persons who are directors or partners, as the case may be, or are employed by, such body of persons and who are participating or, in the case of an application, shall participate, in the activities of the body of persons in carrying out its business as registered contractors.
- (5) The Board may refuse to register any body of persons as contractors or direct the deletion from the register of the name of any body of persons registered as such if it is satisfied that none of the directors or partners, as the case may be, is a person who, if he had applied to be registered as a contractor in his individual capacity would have been accepted for registration.
- (6) Any body of persons which carries on business as contractors in contravention of any of the provisions of this section, commits an offence and upon conviction is liable to a fine not exceeding five percent of the contract sum or project value but not less than three percent of the contract sum or project value or to an imprisonment for a term of not less than three years or to both that fine and imprisonment.

### **24. Definition of "carrying on business" or "trading as contractor"**

For the purposes of this Act a person shall be deemed to be carrying on business or trading as a contractor if he, for valuable consideration or reward, offers or renders his services as contractor, to another person, whether such services are offered or rendered under a labour contract, contract of service, a contract for services or otherwise.

## **Part VI – Activities of the Board and financial provisions (ss 25-31)**

### **25. Board may delegate its functions**

The Board may delegate its functions under this Act to any officer or committee of the Board.

### **26. Accounts and audit**

- (1) The Board shall cause to be kept proper books of accounts and shall, as soon as practicable after the end of each financial year, cause these accounts relating to that financial year together with—
  - (a) a statement of income and expenditure during such financial year; and
  - (b) a statement of the assets and liabilities of the Board on the last day of that financial year,to be submitted to and audited by duly registered and authorized auditors.
- (2) Copies of the statements referred to in subsection (1) and a copy of the auditors' report shall be forwarded to the Minister.

### **27. Registrar's report**

The Registrar shall, at the end of each financial year, prepare a report on the activities of the Board during that financial year and submit that report to the Minister.

### **28. Funds of the Board**

The funds and resources of the Board shall consist of—

- (a) registration and annual subscription fees paid by registered contractors;
- (b) such sums as the Board may be provided for the purposes of the Board by Parliament in a form of Government subvention;
- (c) such sums as the Board may receive by way of grant or loan from any person or organization;
- (d) such sums as the Board may, from time to time, borrow for the purposes of the Board;
- (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, or incidental to the carrying out of its functions.

### **29. Power to invest**

The Board shall have power to invest its funds in such investments as are authorized by, and subject to such conditions as are prescribed by, the Trustee Investments Act<sup>2</sup>, in relation to investments of funds by a trustee.

### **30. Annual statement of accounts and Registrar's report to be laid before the National Assembly**

The Minister shall cause to be laid before the National Assembly, as soon as may be practicable after he has received—

- (a) copies of the statement referred to in subsection (1) of section 27 together with a copy of the auditors' report; and

- (b) a copy of the Registrar's report.

### **31. Minister may give directions**

The Minister may, by writing under his hand, give the Board directions of a general or specific nature and the Board shall comply with every such direction.

## **Part VII – General provisions (ss 32-38)**

### **32. Offences**

Any person who—

- (a) fraudulently makes, or causes or permits to be made, a false or incorrect entry in the register or any copy thereof; or
- (b) fraudulently procures or attempts to procure, whether for himself or for any other person, registration as a contractor or a trading licence for a contractor; or
- (c) knowingly and wilfully makes any statement which is false in a material particular, or which is misleading with a view to gaining any advantage, concession or privilege under this Act, whether for himself or for any other person,

commits an offence and upon conviction is liable to a fine not exceeding one million shillings but not less than three hundred thousand shillings or to imprisonment for a term of not less than two years or to both that fine and imprisonment.

### **33. Profits**

- (1) Every registered contractor shall be expected and bound to come up with rates whose built in profit margins shall be reasonable notwithstanding any provision to the contrary in any regulation or by-law if any society, organization or association of which he is a member.
- (2) Any provision in any regulation or by-law of any society, organization or association of contractors, incorporated, registered or founded, providing for a minimum profit margin which is bigger than the margin deemed reasonable by the Board for services rendered by a contractor, who is a member thereof, shall not bind that member in relation to any services rendered in Tanzania; and such provision in any regulation or by-law shall not be put forward by any member as a ground for providing or claiming a profit margin at a rate higher than the rate prescribed, authorized, approved or deemed reasonable by the Board or by authorized arbitrators or with the consent of the parties in any dispute in relation to the profit margin.

### **34. Regulations by the Minister**

Subject to the provisions of section 35 the Minister may make regulations generally for the better carrying out of the provisions of this Act and any such regulations may, without prejudice to the generality of the foregoing, provide for—

- (a) the conduct of the business of the Board and the procedure it shall follow in any inquiry under this Act;
- (b) the appointment by the Board from amongst its members of subcommittees, committees and the co-option of persons to them;
- (c) the duties of the Registrar;
- (d) persons who shall be entitled to registration, and anything which is permitted or required by this Act to be prescribed, other than anything which may be prescribed by the Minister;

- (e) providing for and regulating disciplinary proceedings against the Registrar and officers appointed by the Board;
- (f) any other thing or deed which is reasonable and in accordance with the laws and regulations of the country.

### 35. By-laws

- (1) The Board may with the consent of the Minister make by-laws for the better carrying out of its objects and functions, and without prejudice to the generality of the foregoing may make by-laws—
  - (a) prescribing rules for conduct and ethics for contractors;
  - (b) categorizing, classifying and specifying types of contractors;
  - (c) setting class limits for different classes of different types and categories of contractors;
  - (d) prescribing conditions to be met for being eligible to be registered in a given class;
  - (e) prescribing the fees to be paid on application, registration and annual subscription, the issue of certificates of registration and extracts, copies and lists of, or in relation to, entries in the registers;
  - (f) recommending the reasonable profit margins which contractors may build in the contracts for services rendered by them;
  - (g) reconciling parties under dispute failure of which recommending arbitration by authorized arbitrators;
  - (h) prescribing certificates, awards and other qualifications which shall be recognized as entitling the holder to registration under this Act;
  - (i) prescribing certificates and other awards which may be conferred or granted by the Board;
  - (j) prescribing fees for admission to any course, seminar, workshop, conference, symposium or workshop offered or conducted by the Board;
  - (k) conducting arbitration for parties under dispute whose contract of agreements stipulate that the Board shall arbitrate their case;
  - (l) prescribing conditions to be met for upgrading of classes of contractors;
  - (m) evaluating certificates, diplomas, degrees and the attendant academic transcripts for the express purpose of establishing whether or not the certificates, diplomas, degrees and the attendant transcripts meet the minimum acceptable qualification for registration with the board.

### 36. Proceedings of the Board not to be invalid by reason of irregularity

No act or proceeding of the Board shall be invalid by reason only of the number of the members not being complete at the time of such act, or proceedings, or of any defect in the appointment of any member, or of the fact that any member was at the time in question disqualified or disentitled to act as such.

### 37. \*\*\*

*[Repeal of Act No. 35 of 1972]*

*[Repeals the Architects, Quantity Surveyors and Building Contractors (Registration) Act with provision for the making of transitional provisions.]*

### 38. Savings

- (1) Notwithstanding the repeal made under section 37, anything done or any action taken or purported to have been done under the repealed Act shall in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding of this Act.
- (2) All subsidiary legislation made or given under the repealed Act which is in force on the commencement of this Act shall be deemed to have been made or given under the provisions of this Act and shall remain in force until revoked or rescinded by subsidiary legislation made or given under this Act.

## Schedule (Section 3(3))

### 1. Composition of the Board, and tenure of office

- (1) The Board shall consist of the Chairman and not less than six and not more than eight other members appointed by the Minister—
  - (a) a Chairman of the Board who shall be a person who has positively contributed to the construction industry in Tanzania appointed by the Minister;
  - (b) one member from the Contractors Association of Tanzania who shall be a registered architect or a registered quantity surveyor or a registered engineer; besides being a registered contractor;
  - (c) one legally qualified person appointed from the Attorney General's Chambers;
  - (d) one member who shall be a registered architect or a registered quantity surveyor or a registered engineer who shall be appointed from the Ministry responsible for Works;
  - (e) one member who shall be a registered architect who shall be appointed from the Architectural Association of Tanzania;
  - (f) one member who shall be a registered engineer who shall be appointed from the Association of Consulting Engineers Tanzania;
  - (g) one member who shall be a registered quantity surveyor who shall be appointed from the Tanzania Institute of Quantity Surveyors; and
  - (h) one member appointed by the Minister from the business community.
- (2) A member of the Board shall, hold office for a minimum period of three years unless he dies, resigns or otherwise vacates his office or until such a time as his appointment is revoked by the Minister in the national interest.
- (3) One third of the members of the Board shall be phased out upon the expiry of a three year term except when the whole Board is being dissolved.
- (4) The Minister may fill any casual vacancy occurring in the membership, and may revoke the appointment of any member if it is in the national interest so to do, and appoint a replacement.
- (5) A member may resign by giving notice in writing to the appointing authority of his intention to do so.
- (6) The tenure of office of the Board shall be three years and members of the Board shall be eligible for re-appointment.

### 2. Elections of Vice-Chairman

- (1) The members shall elect a Vice-Chairman of the board from amongst their number.

### 3. Meetings of the Board

- (1) Subject to the provisions of subparagraph (2) of this paragraph, the Board shall meet not less than six times in every year and all meetings of the Board shall be convened by the Chairman, or in his absence notified in writing, or incapacity through illness, the Vice-Chairman, who shall appoint a suitable time, place and date for the holding of each meeting.
- (2) The Chairman, or in his absence notified in writing, or incapacity through illness, the Vice-Chairman, shall convene a special meeting of the Board on a request in writing signed by not less than a simple majority of the total number of members of the Board for such a meeting and shall cause the meetings to be held within twenty-one days of the receipt by him of such request.
- (3) The Chairman, or in his absence notified in writing, the Vice-Chairman, shall preside at the meeting of the Board and in the absence of both Chairman and the Vice-Chairman with written apology the members present at the meeting shall elect one of their number to be a chairman for that meeting.

### 4. Quorum and voting at meetings

- (1) A simple majority of the total number of members in office shall constitute a quorum at any meeting of the Board.
- (2) All acts, matters and things authorized to be done by the Board shall be decided by resolution of the members present.
- (3) A decision of the majority of members present and voting at a meeting of the Board shall be deemed to be a decision of the Board.
- (4) Every member of the Board shall have one vote and in the event of an equality of votes the Chairman of the meeting shall have second or casting vote in addition to his deliberative vote.
- (5) Notwithstanding the provisions of subparagraph (1), (2), (3) and (4) where the Chairman so directs, a decision may be made by the Board without a meeting by circulation of the relevant papers among all the members and the expression in writing of their views, but any member shall be entitled to require that any such decision shall be deferred until the subject matter is considered at a meeting of the Board:

Provided that a member of the Board who has a strong objection to the decision of the Board shall have the right and entitlement to have his strong objection recorded in the minutes of the Board.

### 5. Minutes of the meeting of the Board

Minutes in proper form of each meeting of the Board shall be kept and shall be signed by both the Chairman and Secretary of the meeting after adoption by the Board.

### 6. Procedures

Subject to the provisions of this Schedule and of any regulations which may be made under this Act, the Board shall have power to regulate its own procedure.

### 7. The seal of the Board

The seal of the Board shall not be affixed to any instrument except in the presence of the Chairman, the Vice-Chairman, the Secretary, and one other member of the Board.

### 8. Registrar to be Secretary

The Registrar shall act as the Secretary of the Board and shall be entitled to be present and to speak, but not to vote, at the meetings of the Board.

### 9. Staff

The Board may appoint such other officers as it may consider necessary on such terms and conditions as may be prescribed by regulations made under sections 35 and 36 of this Act.