

**THE CONSTRUCTION INDUSTRY DEVELOPMENT
BOARD (AMENDMENT) BILL**
(No. V of 2021)

Explanatory Memorandum

The object of this Bill is to amend the Construction Industry Development Board Act so as to provide for a more appropriate and modern legislative framework in view of the accelerating development in the construction industry.

2. Accordingly, the Bill makes provisions, inter alia –

- (a) for the registration of providers of construction works and construction services, and suppliers of construction materials, equipment, plant and labour for construction purposes;
- (b) to the effect that nothing shall preclude a professional architect, a professional quantity surveyor and a registered professional engineer from taking or using the name, description or title of “consultant” in his respective field;
- (c) for additional powers to be given to the Construction Industry Development Council in determining applications for registration under the Act;
- (d) for empowering the Construction Industry Development Council to issue a compliance notice to a person who offers his services as a consultant, contractor, service provider or supplier without being registered under the Act, ordering that person to make an application for registration;
- (e) for empowering the Construction Industry Development Council to compound, with the consent of the Director of Public Prosecutions, some specific offences committed by a person where the person agrees, in writing, to pay such amount not exceeding the maximum penalty specified for the offence as may be acceptable to the Council;
- (f) for empowering the Construction Industry Development Council to review the registration of every consultant, contractor, service provider and supplier, and the power to collect statistical information in the construction industry; and
- (g) for matters connected, incidental and related thereto.

3. In addition, a foreign architect will be allowed to practise as an architect in Mauritius without the need for him to enter into a joint venture agreement with a local architect or local firm of architects, as is the case for a foreign engineer and a foreign quantity surveyor. This amendment has been rendered necessary with a view to affording the same treatment to all professionals in the construction industry and for ease of doing business.

4. Consequently, the Building Control Act, the Professional Architects' Council Act, the Professional Quantity Surveyors' Council Act and the Registered Professional Engineers Council Act are being amended.

M. S. HURREERAM

*Minister of National Infrastructure and
Community Development*

02 April 2021

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ARRANGEMENT OF CLAUSES

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A BILL

To amend the Construction Industry Development Board Act

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Construction Industry Development Board (Amendment) Act 2021.

2. Interpretation

In this Act –

“principal Act” means the Construction Industry Development Board Act.

3. Section 2 of principal Act amended

Section 2 of the principal Act is amended –

(a) in the definition of “foreign consultant”, in paragraph (b), by deleting the words “with relevant professional qualifications”;

(b) by deleting the definition of “Register” and replacing it by the following definition –

“Register” means the Register of Consultants, the Register of Contractors, the Register of Service Providers or the Register of Suppliers, as the case may be, referred to in section 18;

(c) by inserting, in the appropriate alphabetical order, the following new definitions –

“service provider” means a person referred to in section 20A(1);

“supplier” means a person referred to in section 20A(2).

4. Section 3 of principal Act amended

Section 3 of the principal Act is amended –

(a) in subsection (1)(c), by deleting the words “foreign State” and replacing them by the words “foreign State, or a foreign financial or banking institution, or by an international financial organisation”;

(b) by adding the following new subsection –

(3) (a) Notwithstanding this Act but subject to paragraph (b), nothing shall preclude a person who is registered as –

- (i) a professional architect under the Professional Architects' Council Act from taking or using the name, description or title of "consultant" in his respective field;
- (ii) a professional quantity surveyor under the Professional Quantity Surveyors' Council Act from taking or using the name, description or title of "consultant" in his respective field;
- (iii) a registered professional engineer under the Registered Professional Engineers Council Act from taking or using the name, description or title of "consultant" in his respective field.

(b) Paragraph (a) shall not apply to a person who is employed as a professional architect, professional quantity surveyor or registered professional engineer by any other person.

5. Section 6 of principal Act amended

Section 6 of the principal Act is amended, in paragraph (e), by deleting the words "and contractors" and replacing them by the words ", contractors, service providers and suppliers".

6. Section 7 of principal Act amended

Section 7 of the principal Act is amended, in paragraph (a) –

- (a) in subparagraph (i), by deleting the words "and contractors" and replacing them by the words ", contractors, service providers and suppliers";
- (b) in subparagraph (ii), by deleting the words "or contractor" and replacing them by the words ", contractor, service provider or supplier".

7. Section 8 of principal Act amended

Section 8 of the principal Act is amended –

- (a) in subsection (2) –
- (i) by repealing paragraphs (e), (f) and (g) and replacing them by the following paragraphs –
- (e) a professional architect, being a member of the Professional Architects' Council established under the Professional Architects' Council Act, to be designated by the Council;
- (f) a professional quantity surveyor, being a member of the Professional Quantity Surveyors' Council established under the Professional Quantity Surveyors' Council Act, to be designated by the Council;
- (g) a registered engineer, being a member of the Council of Registered Professional Engineers of Mauritius established under the Registered Professional Engineers Council Act, to be designated by the Council;
- (ii) by adding the following new paragraph, the full stop at the end of paragraph (k) being deleted and replaced by a semicolon –
- (l) a representative of an association of consulting engineers, to be appointed by the Minister.
- (b) by inserting, after subsection (2), the following new subsection –
- (2A) Where a member of a Council referred to in subsection (1)(e) to (g) is to be designated at a specified time, not being less than one month, and at the expiry of the specified time the member has not been designated by his respective Council, the Minister shall appoint another professional architect, professional quantity surveyor or registered engineer, as the case may be, to act as member of the Construction Industry Development Council.

8. Section 9 of principal Act amended

Section 9 of the principal Act is amended, in subsection (3), by deleting the words "Six members" and replacing them by the words "Seven members".

9. Section 15 of principal Act amended

Section 15 of the principal Act is amended, in subsection (3) –

- (a) in paragraph (a), by deleting the words “or contractor” and replacing them by the words “, contractor, service provider or supplier”;
- (b) in paragraph (b), by deleting the words “or a contractor” and replacing them by the words “, contractor, service provider or supplier”;

10. Section 18 of principal Act amended

Section 18 of the principal Act is amended –

- (a) in subsection (1) –
 - (i) by deleting the words “a Register of consultants and a Register of contractors” and replacing them by the words “a Register of Consultants, a Register of Contractors, a Register of Service Providers and a Register of Suppliers”;
 - (ii) in paragraph (a), by deleting the words “or contractor” and replacing them by the words “, contractor, service provider or supplier”;
- (b) in subsection (2), by deleting the words “Register of consultants and the Register of contractors” and replacing them by the words “Register of Consultants, the Register of Contractors, the Register of Service Providers and the Register of Suppliers”;
- (c) by adding the following new subsection –
 - (3) A Register shall be kept in such form and manner as the Council may determine.

11. Section 19 of principal Act amended

Section 19 of the principal Act is amended –

- (a) in subsection (4)(d), by deleting the word “registered” and replacing it by the words “registered, taking into consideration his reputation, character and reliability”;
- (b) in subsection (5), by adding the following new paragraphs, the full stop at the end of paragraph (d) being deleted and replaced by a

semicolon and the word "or" at the end of paragraph (c) being deleted –

- (e) the standard of performance and the track record of the applicant demonstrate that the applicant has been negligent in the provision of his consultancy services or construction works;
- (f) the applicant has, without good cause, abandoned any of his consultancy services or construction works;
- (g) the applicant does not have the necessary resources to undertake construction works corresponding to the class, grade, field or area of specialisation applied for, as the case may be;
- (h) the applicant is suspended or debarred, pursuant to section 53 of the Public Procurement Act, as a bidder or supplier; or
- (i) the applicant appears on the ineligibility list of the African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Bank Group or World Bank, or such other organisation as may be prescribed.

12. Section 20 of principal Act amended

Section 20 of the principal Act is amended –

- (a) in subsection (2), by inserting, after paragraph (a), the following new paragraph –
 - (aa) Notwithstanding paragraph (a), where there has been no bidding exercise and a foreign consultant or foreign contractor has been awarded a contract directly for a project, the consultant or contractor, as the case may be, shall apply for a temporary registration in such form and manner as the Council may determine.
- (b) in subsection (3), by deleting the words "After considering an application under subsection (2)," and replacing them by the words "Subject to section 19(4) to (8),";
- (c) by adding the following new subsection –

(8) This section shall not apply to an individual foreign professional architect, individual foreign quantity surveyor or individual registered engineer appointed as such by the Public Service Commission.

13. New section 20A inserted in principal Act

The principal Act is amended by inserting, after section 20, the following new sections –

20A. Registration of service provider and supplier

(1) No person specified in the Fourth Schedule shall provide construction services other than consultancy services unless he is registered as a service provider with the Council.

(2) No person shall import, manufacture or produce –

- (a) construction materials specified in Part I of the Fifth Schedule; or
- (b) construction plant and equipment specified in Part II of the Fifth Schedule,

unless he is registered as a supplier under this Act.

(3) An application for registration as a service provider or supplier shall be made in such form and manner as the Council may approve and shall be accompanied by such –

- (a) non-refundable processing fee as may be prescribed; and
- (b) information as the Council may determine.

(4) The Council may require from an applicant such information as is necessary to determine –

- (a) his standard of performance and his track record;
- (b) his financial capability to ensure financial commitments for the services he intends to undertake;
- (c) whether he is a fit and proper person to be registered, including his reputation, character and reliability.

(5) The Council shall, within 45 days from the date when all necessary information is obtained, grant or reject the application.

(6) The Council shall, within 7 days of the determination of the application, notify the applicant of its decision.

(7) Where an application is granted –

(a) the applicant shall, within 30 days from the date of notification, pay the such registration fee as may be prescribed; and

(b) the Council shall, on payment of the registration fee, issue to the applicant a certificate of registration, on such terms and conditions as the Council may determine.

(8) Where an applicant fails to pay the registration fee within the delay specified in subsection (7)(a), he shall be liable to a surcharge of 10 per cent of the registration fee.

14. Section 21 of principal Act amended

Section 21 of the principal Act is amended –

(a) by inserting, after subsection (1), the following new subsection –

(1A) A registration under section 20A shall, unless previously suspended or cancelled, be valid for a period of 2 years.

(b) in subsection (2)(a), by deleting the words “section 19” and replacing them by the words “sections 19 and 20A”;

(c) by adding the following new subsection –

(3) The holder of a certificate of registration shall, at least one month prior to the expiry of the certificate, pay such renewable fee as may be prescribed and he shall be issued with a new certificate of registration.

15. New sections 21B, 21C and 21D inserted in principal Act

The principal Act is amended by inserting, after section 21A, the following new sections –

21B. Review of registration

The Council shall, every 3 years or at such time as it may determine, review the registration of every consultant, contractor, service provider and supplier.

21C. Collection of statistical information

The Council may, from time to time, collect statistical information in the field of construction.

21D. Power to obtain information

Notwithstanding any other enactment but subject to this Act, the Council may, in relation to a matter pertaining to the construction industry –

- (a) by notice in writing, require a person to furnish, in such form and manner and within such time as may be specified, such information relating to that matter as may be required;
- (b) by interviewing a person, require the person to furnish such information relating to that matter; and
- (c) by notice in writing, require a person to fill in a form attached to the notice and to return it in such manner and within such time as may be specified.

16. Section 22 of principal Act amended

Section 22 of the principal Act is amended –

- (a) in subsection (1), by deleting the words “or certificate of temporary registration”;
- (b) in subsection (2), by deleting the words “or temporary registration”;
- (c) in subsection (3) –
 - (i) by deleting the words “or contractor” and replacing them by the words “, contractor, service provider or supplier”;
 - (ii) by deleting the words “or certificate of temporary registration”.

17. Section 23 of principal Act amended

Section 23 of the principal Act is amended –

- (a) in subsection (1), in paragraph (a) –
 - (i) by deleting the words “consultant or the contractor” and replacing them by the words “consultant, contractor, service provider or supplier, as the case may be”;
 - (ii) in subparagraph (iii), by deleting the words “consultancy” and “construction”;
 - (iii) in subparagraph (v), by deleting the words “or contractor” and replacing them by the words “, contractor, service provider or supplier, as the case may be”;
 - (iv) by adding the following new subparagraphs, the full stop at the end of subparagraph (vii) being deleted and replaced by a semicolon –
 - (viii) has tampered with a certificate of registration;
 - (ix) is suspended or debarred, pursuant to section 53 of the Public Procurement Act, as a bidder or supplier; or
 - (x) appears on the ineligibility lists of African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank Group or World Bank Group, or such other organisation as may be prescribed.
- (b) in subsection (2), by deleting the words “or contractor” and replacing them by the words “, contractor, service provider or supplier”;
- (c) in subsection (3), by deleting the words “or a contractor” and replacing them by the words “, contractor, service provider or supplier”;
- (d) in subsection (4) –

- (i) in paragraph (a), by deleting the word “contractor” and replacing it by the words “consultant, contractor, service provider and supplier”;
- (ii) in paragraph (b), by deleting the words “or any contractor” and replacing them by the words, contractor, service provider and supplier”;
- (e) in subsections (5) and (6), by deleting the words “or contractor” and replacing them by the words “, contractor, service provider or supplier”.

18. Section 24 of principal Act amended

Section 24 of the principal Act is amended, in subsection (1), by deleting the words “30 June” “and contractors” and replacing them by the words “30 September” and “contractors, service providers and suppliers”.

19. Section 25 of principal Act amended

Section 25 of the principal Act is amended –

- (a) in subsections (1) and (1A), by deleting the words “or contractor” and replacing them by the words “contractor, service provider or supplier”;
- (b) by repealing subsection (4) and replacing it by the following subsection –

(4) (a) The ad hoc Committee shall determine the appeal not later than 60 days after the start of the hearing of the appeal.

(b) The ad hoc Committee may affirm, vary or reverse the decision of the Council, stating its reasons for doing so.

20. New section 25A inserted in principal Act

The principal Act is amended by inserting, after section 25, the following new section –

25A. Compliance notice

(1) Where a person is offering his services as a consultant, contractor, service provider or supplier without being registered under this Act, the Council shall cause to be served on that person a compliance notice ordering that person to make an application for registration.

(2) A compliance notice shall, inter alia –

(a) specify the period, not exceeding 30 days, within which the application for registration shall be made; and

(b) be in such form as may be prescribed.

(3) Where a compliance notice is served on a person, he shall not offer his services unless he is registered under this Act.

(4) Where a person who has been served with a compliance notice under subsection (1) –

(a) fails to make an application for registration, the Council shall forthwith refer the matter to the Police; or

(b) makes an application for registration, that application shall be dealt with in accordance with this Act.

(5) (a) Where the Council grants an application for registration, it shall not issue a certificate of registration unless the applicant pays, in addition to the appropriate registration fee, such penalty fee as may be prescribed not later than 28 days of being notified that his application has been approved.

(b) Where the applicant referred to in paragraph (a) fails to pay the appropriate registration fee and the penalty fee, the approval of the registration shall lapse and the Council shall forthwith refer the matter to the Police.

(6) A person shall not be prosecuted for having offered his services without being registered –

(a) as long as the delay granted in the compliance notice has not lapsed; or

(b) where he has, pursuant to a compliance notice, applied for, and been issued with, a registration certificate.

(7) The Council shall, where a compliance notice sent by registered post returns undelivered and where personal service of the notice could not be effected by an authorised officer, cause substituted service –

- (a) by affixing a new compliance notice at the last known residence or business address of the person offering his services, or by affixing a copy of the new compliance notice where the construction works are being undertaken; and
- (b) by publication of the new compliance notice in 2 newspapers, subject to the publication of the new compliance notice in the second newspaper is effected not later than 15 days after the publication of the new compliance notice in the first newspaper.

(8) Where substituted service has been effected under subsection (7) and the person continues to offer his services without making an application for registration, the Council shall forthwith refer the matter to the Police.

21. Section 26 of principal Act amended

Section 26 of the principal Act is amended –

- (a) by repealing subsection (1) and replacing it by the following subsection –

(1) Any person who contravenes section 19(1), 19(7), 20(1), 20A(1) or 20A(2) shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 5 years.

- (b) by adding the following new subsection –

(3) The Court may, in addition to any penalty imposed under subsection (1) –

- (a) order the forfeiture of any object, machine, plant, vehicle or any article used in, or connected in any way, with the commission of an offence;
- (b) order, or prohibit, the doing of any act to stop a continuing contravention.

22. New section 26A inserted in principal Act

The principal Act is amended by inserting, after section 26, the following new section –

26A. Compounding of offences

(1) The Council may, with the consent of the Director of Public Prosecutions, compound any compoundable offence committed by a person where the person agrees, in writing, to pay such amount not exceeding the maximum penalty specified for the offence as may be acceptable to the Council.

(2) Every agreement to compound shall be final and conclusive and on payment of the agreed amount, no further proceedings in regard to the offence compounded shall be taken against the person who agreed to the compounding.

(3) Where the Council compounds an offence in accordance with this section, no further proceedings shall be initiated in respect of the offence so compounded against the person.

(4) Where the Director of Public Prosecutions does not give his consent to compound the offence or a person does not agree to compound the offence, the Council may, with the consent of the Director of Public Prosecutions, refer the case to the Police for legal proceedings.

(5) The Council may cause to be published, in such form and manner as it may determine, a public notice setting out the particulars of the agreed amount under subsection (1).

(6) In this section –

“compoundable offence” means an offence committed by a person under section 19(1), 19(7), 20(1), 20A(1) or 20A(2), or under such other section as may be prescribed.

23. Section 33 of principal Act amended

Section 33 of the principal Act is amended, in subsection (1), by deleting the words “not later than 6 months after the close of a financial year” and replacing them by the words “in accordance with the Statutory Bodies (Accounts and Audit) Act”.

24. New section 33A inserted in principal Act

The principal Act is amended by inserting, after section 33, the following new section –

33A. Confidentiality

- (1) Every member of the Council shall –
 - (a) before he begins to perform his duties under this Act, take the oath set out in the Sixth Schedule;
 - (b) maintain, and aid in maintaining, the secrecy of any matter which comes to his knowledge in the performance, or as a result, of his duties under this Act.

(2) Any person who, without legal or reasonable excuse, contravenes subsection (1)(b) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding one year.

(3) Notwithstanding subsection (1)(a), where a person is, on the commencement of this section, a member of the Council, he shall, not later than 30 days after the commencement of this section, take the oath set out in the Sixth Schedule.

25. Section 34 of principal Act amended

Section 34 of the principal Act is amended, in subsection (2)(b), by deleting the word "Schedule" and replacing it by the words "any of the Schedules".

26. New section 36A inserted in principal Act

The principal Act is amended by inserting, after section 36, the following new section –

36A. Revocation and saving provisions

- (1) The following enactments are revoked –
 - (a) the Construction Industry Development Board (Registration of Service Providers other than Consultants) Regulations 2018; and
 - (b) the Construction Industry Development Board (Registration of Suppliers) Regulations 2018.

(2) Any person registered as a service provider under the revoked Construction Industry Development Board (Registration of Service Providers other than Consultants) Regulations 2018, or as a

supplier under the revoked Construction Industry Development Board (Registration of Suppliers) Regulations 2018 shall, on the commencement of subsection (1), be deemed to be registered as such under the same terms and conditions as in the revoked regulations, as the case may be.

27. Second Schedule to principal Act amended

The Second Schedule to the principal Act is amended –

- (a) in Part A, by inserting, in the appropriate alphabetical order, the following new item –

Third-party certifier in construction

- (b) in Part B, by inserting, in the appropriate alphabetical order, the following new items –

Electrical works

Mechanical works

28. New Fourth, Fifth and Sixth Schedules added to principal Act

The principal Act is amended by adding the Fourth Schedule, the Fifth Schedule and the Sixth Schedule set out in the Schedule to this Act.

29. Consequential amendments

(1) The Building Control Act is amended, in section 5(1)(l), by deleting the words “Mauritius Association of Quantity Surveyors” and replacing them by the words “Professional Quantity Surveyors’ Council”.

- (2) The Professional Architects’ Council Act is amended –

- (a) in section 2 –

(i) by deleting the definitions of “architect”, “authorised foreign architect”, “firm of architects”, “joint venture agreement” and “joint venture partner”;

(ii) in the definition of “practise architecture”, by deleting the word “building” and replacing it by the words “building, and includes the preparation of bidding documents”;

- (b) in section 5, by repealing paragraph (c);

- (c) in section 18, by repealing subsection (1) and replacing it by the following subsection –
 - (1) No person shall practise architecture in Mauritius unless he is a professional architect.
 - (d) in section 19, in subsection (1)(a), by repealing subparagraph (i);
 - (e) by repealing Parts V and VA;
 - (f) in section 28(1), by deleting the words “an architect” and replacing them by the words “a professional architect”;
 - (g) in section 32(4), by repealing paragraph (b);
 - (h) in section 33(1), by repealing paragraph (b), the semicolon at the end at paragraph (a) being deleted and replaced by a full stop;
 - (i) in section 44(1), by repealing paragraph (b), the word “or” being added at the end of paragraph (a);
 - (j) in section 45(1)(a)(ii), by deleting the words “Authorised Foreign Architect”.
- (3) The Professional Quantity Surveyors Council Act is amended –
- (a) in section 2 –
 - (i) by deleting the definitions of “firm of quantity surveyors” and “foreign firm of quantity surveyors”;
 - (ii) in the definition of “quantity surveying”, by deleting the words “mediation, arbitration and adjudication” and replacing them by the words “cash flow forecasting, due diligence and replacement cost assessment”;
 - (iii) by inserting, in the appropriate alphabetical order, the following new definition –
 - “construction industry” has the same meaning as in the Construction Industry Development Board Act;
 - (b) in section 20, by repealing subsection (3) and replacing it by the following subsection –

(3) An applicant shall not be required to submit particulars under subsection (2)(b)(iii) and (iv) where he satisfies the Council that –

- (a) he is registered as a professional member in the field of quantity surveying with the Royal Institution of Chartered Surveyors of the United Kingdom; or
- (b) he holds professional membership of another body which is recognised by the Royal Institution of Quantity Surveyors of United Kingdom, to be at par with its professional membership.

(c) by repealing Part V;

(d) in section 43, by repealing subsection (3) and replacing it by the following subsection –

(3) Notwithstanding subsection (1)(a)(ii), nothing in this section shall prevent –

- (a) a firm of quantity surveyors or foreign firm of quantity surveyors from using the name or title containing the words “quantity surveyor”;
- (b) the holder of a degree or such equivalent qualification in quantity surveying as the Council may approve in accordance with section 20(1)(b), from using the name or title “Trainee Quantity Surveyor”.

(4) The Registered Professional Engineers Council Act is amended, in section 2, in the definition of “practice of engineering”, by deleting the words “community planning” and replacing them by the words “community planning, bid evaluations, and includes the preparation of bidding documents”.

30. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.

SCHEDULE

[Section 28]

FOURTH SCHEDULE

[Section 20A(1)]

SERVICE PROVIDERS

1. Computer Aided Design (CAD) Operator for construction works, including Draughtsman
2. Technician in construction (holder of at least a diploma in a construction related field from a recognized institution)

FIFTH SCHEDULE

[Section 20A(2)]

SUPPLIERS OTHER THAN HARDWARE SHOPS

PART I – CONSTRUCTION MATERIALS

1. Aggregates
2. Bitumen
3. Cement
4. Ready mix concrete
5. Concrete blocks and bricks
6. Paint and waterproofing materials
7. Reinforcement bars and steels sections
8. Aluminium
9. Timber

PART II – CONSTRUCTION PLANT AND EQUIPMENT

1. Earth moving equipment
2. Materials handling equipment
3. Scaffolding

SIXTH SCHEDULE
[Section 33A]

OATH OF SECRECY

I,, hereby make oath/solemn affirmation as a and declare that in the performance of my duties as a member of the Construction Industry Development Board under the Construction Industry Development Board Act, I will deal with and regard all documents and information relating to the operations of the Construction Industry Development Council and to which I have access as SECRET AND CONFIDENTIAL and refrain from delivering disclosing any such document and information to any unauthorised person.

Sworn/solemnly affirmed by the deponent in Chambers,

This 20.....

.....

Before me,

District Magistrate for
