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ENGINEERING TECHNOLOGY ACT

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PROVISIONS AS TO THE CONDUCT OF
BUSINESS AND AFFAIRS OF THE BOARD

NO. 23 OF 2016
ENGINEERING TECHNOLOGY ACT

[Date of assent: 2nd August, 2016.]

[Date of commencement: 19th August, 2016.]

AN ACT of Parliament to make provision for the regulation, practice and standards of engineering technologists and technicians, and for connected purposes

[Act No. 23 of 2016.]

PART I — PRELIMINARY

1. Short title

This Act may be cited as the Engineering Technology Act, 2016.

2. Interpretation

In this Act, unless the context otherwise requires—

“Board” means the Kenya Engineering Technology Registration Board established under section 3;

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

“candidate” means any person registered in any of the categories under section 15(1)(b);

“certified engineering technician” means a person registered as such under section 15(1)(a)(ii);

“consulting engineering technologist” means an engineering technologist registered as such under this Act;

“consulting engineering technology services” includes consultancy and advisory services relating to independent professional engineering technology 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 technology work, service or good with a liability to be sued;

“continuing professional development” means the planned acquisition of knowledge, experience and skills necessary for the development of an engineering technologist or technician;

“engineering technician” means a person registered under this Act as such, and includes a craft person or artisan;

“engineering technologist” means a person registered under this Act as such;

“engineering technology” means part of the engineering profession in which knowledge of applied mathematical and natural science gained by higher education, experience and practice is devoted to application of engineering principles and the implementation of technology education for the professional focusing primarily on analysing, applying, implementing and improving existing

technologies and is aimed at preparing graduates for the purpose of engineering technology practices closest to the product improvement, manufacturing and engineering operational functions;

“engineering technology consulting firm” means an engineering technology consulting firm registered under section 19;

“engineering technology personnel” means any person registered under section 15 (1) as an engineering technologist or technician;

“foreign national” has the meaning assigned to it under section 2 of Kenya Citizenship and Immigration Act (No. 12 of 2011);

“licence” means an annual practicing licence issued under section 28 of this Act;

“misconduct” means a serious digression from established or recognized standards or rules of the profession or generally the occupation of engineering technology and includes a breach of such codes of ethics or conduct as may be prescribed for the profession from time to time;

“prescriptive standard” means a document that states procedures or criteria for carrying out a design, or a construction or production activity, relating to engineering; and the application of which, to the carrying out of the design, or the construction or production activity, does not require advanced scientifically based calculations;

“professional engineering technologist” means a person registered as such under section 15(1)(a)(i);

“professional engineering technology service” means an engineering technology service that requires, or is based on, the application of engineering principles and data to a development, implementation, construction and production activity, relating to engineering technology and does not include an engineering service that is provided only in accordance with a prescriptive standard;

“professional engineering technology 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 kept in accordance with section 25 of this Act; and

“Registrar” means the person appointed as such under section 9.

PART II — THE KENYA ENGINEERING TECHNOLOGY REGISTRATION BOARD

3. Establishment of the Board

(1) There is established a Board to be known as the Kenya Engineering Technology Registration Board.

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

- (a) suing and being sued;

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

4. Composition of the Board

(1) The Board shall consist of—

- (a) the Chairperson who shall be appointed by the Cabinet Secretary from amongst the members appointed under paragraph (c);
- (b) the Principal Secretary in the Ministry for the time being responsible for matters relating to Engineering Technology;
- (c) seven persons appointed by the Cabinet Secretary as follows—
 - (i) one chairperson from any of the recognized professional institutions responsible for engineering technologists and technicians;
 - (ii) one person representing Technical and Vocational Education and Training Authority;
 - (iii) one person who shall be a public officer from a public corporation responsible for engineering technology curriculum development;
 - (iv) one person who shall be a public officer from a public corporation involved in offering engineering technology services and products;
 - (v) one person who shall be a representative of Technical Universities offering engineering technology programmes in Kenya;
 - (vi) one person who shall be a representative of Technical Training Institutions offering engineering technology programmes in Kenya; and
 - (vii) one person who shall be from the private sector dealing with matters related to engineering technology;
- (d) the Registrar of the Board.

(2) A person appointed as a member of the Board under this Act, other than an *ex officio* member, shall serve for a term of three years and shall be eligible for re-appointment for a further and final term of three years.

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

- (a) at any time resign from office by notice in writing to the Chairperson;
- (b) be removed from office if the member—
 - (i) has been absent from three consecutive meetings of the Board without permission of the Chairperson;
 - (ii) is adjudged bankrupt or enters into a composition scheme or arrangement with his or her creditors;
 - (iii) is convicted of an offence involving dishonesty or fraud;

- (iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings; or
- (v) is incapacitated by prolonged physical or mental illness or is deemed otherwise unfit to discharge his or her duties as a member of the Board.

5. Functions of the Board

The functions of the board shall be to—

- (a) issue licences to qualified persons under the provisions of this Act;
- (b) take disciplinary measures in accordance with the provisions of this Act;
- (c) 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) engineering professional services and works are undertaken by persons registered under this Act;
 - (ii) standards and professional ethics and relevant health and safety aspects are observed, in line with Occupational Safety and Health Act, 2007 (No. 15 of 2007);
- (d) assess, approve or reject engineering technology qualifications of foreign persons intending to offer engineering technology professional services or works in Kenya;
- (e) enter and inspect business premises for verification purposes or for monitoring works, services and goods rendered by professional engineering technologists;
- (f) recommend for the suspension of any engineering technology professional services, works, projects, installation process or any other engineering technology works, which are done without meeting the standards;
- (g) participate, as a stakeholder in formulating engineering technology programmes in public and private universities and other tertiary level educational institutions offering education in engineering technology for the purposes of registration of engineering technologists;
- (h) set standards for engineering technologists in management, marketing, professional ethics, environmental issues, safety, legal matters or any other relevant field;
- (i) conduct professional examinations for the purposes of registration where applicable;
- (j) plan, arrange, co-ordinate and oversee professional training and facilitate internship of engineering technologists;
- (k) collaborate with engineering technology training institutions and organisations, professional associations and other relevant bodies in matters relating to training and professional development of engineering technologists;
- (l) determine the fees to be charged by engineering technologists and firms for professional services rendered from time to time;

- (m) hear and determine such disputes relating to the professional conduct or ethics of engineering technologists;
- (n) issue, maintain and enforce the code of ethics for engineering technologists and technicians and regulate the conduct and ethics of the engineering technology profession in general;
- (o) determine disciplines of engineering technology under this Act; and
- (p) do anything incidental or conducive to the performance of any of the preceding functions.

6. Powers of the Board

The Board shall have all powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the Board shall have power to—

- (a) enter into contracts;
- (b) manage, control and administer its assets in such manner and for such purposes as best promote the purpose for which the Board is established;
- (c) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Board;
- (d) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom;
- (e) enter into association with such other bodies or organizations within or outside Kenya as it may consider desirable or appropriate and in furtherance of the purposes for which the Board is established;
- (f) open such banking accounts for its funds as may be necessary;
- (g) invest any funds of the Board not immediately required for its purposes; and
- (h) undertake any activity necessary for the fulfilment of any of its functions.

7. Conduct of business and affairs of the Board

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

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

8. Remuneration of Board members

The remuneration payable to members of the Board shall be determined by the Salaries and Remuneration Commission.

9. Registrar

(1) There shall be a Registrar who shall be appointed by the Cabinet Secretary on the recommendation of the Board.

(2) The Registrar 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.

10. Functions of the Registrar

(1) The Registrar shall—

- (a) subject to the direction of the Board, be responsible for the day to day management of the affairs and staff of the Board;
- (b) maintain the Register of persons registered in accordance with this Act;
- (c) sign, issue, renew and cancel certificates of registration and licenses as may be directed by the Board;
- (d) keep all documents and records including records of all assets of the Board;
- (e) in consultation with the Board, be responsible for the direction of the affairs and transactions of the Board, the exercise, discharge and performance of its objectives, functions and duties, and the general administration of the Board; and
- (f) be the secretary of the Board.

11. Staff of the Board

The Board may appoint such officers and other staff through a competitive process as are necessary for the proper discharge of its functions under this Act, upon such terms and conditions of service as it may determine.

12. Delegation by the Board

The Board may, by resolution either generally or in any particular case, delegate to any committee or to any member, officer, employee or agent of the Board, the exercise of any of the powers or the performance of any of the functions or duties of the Board under this Act or under any other written law.

13. Protection from personal liability

(1) No act or omission by any member of the Board or by any officer, employee, agent or servant of the Board shall, if the act or omission was done bona-fide for the purposes of executing a function, power or duty under the Act render such member, officer, employee, agent or servant personally liable to any, action, claim or demand whatsoever.

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

14. Common seal

(1) The common seal of the Board shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board.

(2) The affixing of the common seal of the Board shall be authenticated by the signature of the Chairperson and the Registrar and any document not required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of both the Chairperson and the Registrar.

(3) Notwithstanding the provisions of subsection (2) the Board shall, in the absence of either the Chairperson or the Registrar in a particular matter, nominate one member to authenticate the seal on behalf of either the Chairperson or the Registrar.

(4) The common seal of the Board when affixed to a document and duly authenticated shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorization by the Board under this section shall be presumed to have been duly given.

PART III — PROVISIONS RELATING TO REGISTRATION

15. Categorisation of registration

(1) A person may be registered in the engineering technology profession as a—

- (a) professional, which includes—
 - (i) a professional engineering technologist; or
 - (ii) a certified engineering technician.
- (b) candidate, which includes—
 - (i) a candidate engineering technologist; or
 - (ii) a candidate engineering technician.

(2) A person may not practice in any of the categories contemplated in subsection (1), unless he or she is registered in that category.

(3) A person may only practice in a consulting capacity if registered in the category of consulting engineering technologist.

(4) A person who is registered in the category of candidate must perform work in the engineering technology profession only under the supervision and control of a professional of any category as prescribed.

16. Application for registration

(1) A person intending to apply for registration in the engineering technology profession may make such application in the prescribed application form to the Board for registration in any of the categories referred to under section 15(1).

(2) The application form referred to under subsection (1) shall be accompanied by the prescribed fee.

(3) The Board may register the applicant in the relevant category and issue a registration certificate to the successful applicant in the prescribed form if, after consideration of an application, the Board is satisfied that the applicant—

- (a) in the case of a person applying for registration as a professional—
 - (i) has demonstrated his or her competence as measured against standards determined by the Board for the relevant category of registration; and
 - (ii) has passed any additional examinations that may be determined by the Board;
- (b) in the case of a person applying for registration as a candidate or a candidate in a specified category, has satisfied the relevant educational outcomes determined by the Board for this purpose, by—
 - (i) having passed accredited or recognized examinations at any educational institution offering educational programmes in engineering technology; and
 - (ii) having passed any other examination that may be determined by the Board; or
 - (iii) presenting evidence of prior learning in engineering technology.

- (c) in the case of a person applying for registration as a consulting engineering technologist in a specified category—
 - (i) has practised in a specialized engineering technology field as a professional for at least five years or any period determined by the Board; and
 - (ii) has achieved a standard of competence to enable him or her to practice as a consulting engineering technologist personnel in that particular specialization.

17. Refusal of registration

(1) The Board may refuse to register an applicant—

- (a) if the applicant has been removed from an office of trust on account of improper conduct;
- (b) has been convicted of an offence and was sentenced to imprisonment without an option of a fine, or, in the case of fraud, to a fine or imprisonment or both;
- (c) if the applicant has, subject to paragraph (b), been convicted of an offence in a foreign country and was sentenced to imprisonment without an option of a fine, or, in the case of fraud, to a fine or imprisonment or both;
- (d) if the applicant is declared by the High Court to be of unsound mind or a person suffering from a mental disorder, or is detained under the Mental Health Act (Cap. 248);
- (e) if the applicant is an un-rehabilitated insolvent whose insolvency was caused by his or her negligence or incompetence in performing work falling within the scope of the category in respect of which he or she is applying for registration.

(2) For the purposes of subsection (1)(c), the Board shall take cognizance of the prevailing circumstances in a foreign country relating to a conviction.

(3) The Board shall provide the applicant with a notice of refusal.

18. Qualification for registration

(1) Subject to the provisions of this Act, a person shall be eligible for registration—

- (a) as a professional engineering technologist, if that person—
 - (i) is registered as a candidate engineering technologist and has obtained practical experience of at least three years for the degree holder or at least four years for the Higher Diploma holder in the relevant area;
 - (ii) has passed a professional assessment examination conducted by the Board; and
 - (iii) is a full member of a professional society or association recognized by the Board;
- (b) as a consulting engineering technologist, if that person—
 - (i) holds a Master's degree in the relevant discipline from a recognized University or Institute or first degree with outstanding contributions to engineering technology;

- (ii) has practised in a specialized engineering technology field as a professional engineering technologist for a period of at least five years; and
 - (iii) has achieved a standard of competence to enable him or her to practice as a consulting engineering technologist in that particular specialization.
- (c) as a certified engineering technician, if that person—
- (i) is registered as a candidate engineering technician and has obtained practical experience of at least two years in the relevant area;
 - (ii) has passed professional assessment examination conducted by the Board; and
 - (iii) is a full member of a professional society or association recognized by the Board;

(2) Subject to the provisions of this Act, a person shall be eligible for registration—

- (a) as a candidate engineering technologist, if that person is a holder of a bachelor of technology degree or higher diploma or its equivalent from a university, polytechnic, institute, college or school of engineering and technology or any other institution recognized by the Board; and
- (b) as a candidate engineering technician, if that person is a holder of diploma in engineering or its equivalent from a university, polytechnic, institute, college or school of engineering and technology or any other institution recognized by the Board.

(3) The persons referred to in subsections (1) and (2) shall be Kenyan citizens or permanent residents of Kenya.

19. Registration of an engineering technology consulting firm

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

- (a) the firm is a legal person duly registered or incorporated under the written law for the time being in force;
- (b) the firm has at least one partner or principal shareholder who is registered as a consulting engineering technologist and who has a valid license in a specified discipline;
- (c) at least fifty one percent of the shares in the firm are held by Kenya citizens; and
- (d) fulfils any other condition as may be stipulated by the Board.

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

(3) A person intending to register an engineering technology consulting firm under this Act shall apply to the Registrar in the prescribed manner.

(4) An application under subsection (3) shall—

- (a) be accompanied with—
 - (i) such documents as are necessary to prove qualification for registration and any other document that the Board may prescribe;

- (ii) the curriculum vitae of the partners or directors of the firm;
- (iii) a written commitment that the Board shall be allowed to verify the suitability of the firm for the purposes of registration;
- (b) list the firm's profile of activities;
- (c) be accompanied by the prescribed fee.

(5) 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 it.

20. Private practice

(1) For the purposes of this Act, a person shall not be deemed to engage in private practice where the person is employed by—

- (a) the government or any other public body; or
- (b) a state corporation; or
- (c) any person or partnership in which the person is engaged in his or her profession where all fees and charges earned by him or her accrues to the benefit of his or her employer, notwithstanding that he or she is engaged in his or her professional capacity.

(2) A person who engages in private practice contrary to the provisions of this section commits an offence and shall be liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding five years, or to both.

21. Registration of foreigners

(1) A foreign person or body of foreigners shall of not be registered as professionals in any categories under section 15(1)(a) or engineering technology firm under section 19 unless—

- (a) in the case of a natural person—
 - (i) that person possesses the necessary qualifications recognized for the practice of engineering technology as a professional in any category under section 15(1)(a) in the country where he or she normally practices, and that immediately before entering Kenya, he or she was practicing as a professional in any category under section 15(1)(a) and holds a valid license; and
 - (ii) he or she 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 citizen or citizens of Kenya.

(2) If the conditions stipulated in subsection (1) are not fulfilled, the person or firm applying for registration may be considered for temporary registration under section 22.

22. Temporary registration

(1) A foreign person may be considered for registration as a temporary professional engineering technologist or firm if that person satisfies the Board that—

- (a) he or she is not ordinarily resident in Kenya;

- (b) he or she intends to be present in Kenya in the capacity of a professional engineering technologist for the express purpose of carrying out specific work; and
- (c) he or she possesses the necessary qualifications recognized for the practice and that immediately before entering Kenya, was practising as a professional engineering technologist and holds a valid license from his or her country of origin.

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

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

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

(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 Kenya citizens shall be trained to fill the skills gap.

(6) The Board may approve temporary registration for such period not exceeding one calendar year and may renew the registration as it may consider necessary.

23. General provisions as to registration

(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 accordingly.

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

(4) After the name of a person is entered in the register, the Board shall issue a certificate of registration 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 or she 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.

24. Adoption and use of title

Every person whose name has been entered in the Register as a professional engineering technologist or consulting engineering technologist shall, for as long as his or her name remains in the Register, be entitled to adopt and use the style

and title "Professional Engineering Technologist" or "Consulting Engineering Technologist" after his or her name or such contraction thereof as the Board may, from time to time, approve and may, subject to section 33, offer his or her engineering technology professional services to the public for gain or reward or by way of trade or for employment in the engineering technology discipline or category in which he or she is registered.

25. Register

(1) The Registrar shall keep and maintain a register in which the name of every person entitled to have his or her name entered therein shall be entered, as soon as is practicable, after being accepted by the Board for registration.

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

- (a) date of entry;
- (b) postal, physical and email address;
- (c) qualifications;
- (d) category;
- (e) engineering technology discipline in which he or she is registered;
- (f) nationality; and
- (g) such other particulars as the Board may, from time to time, direct.

(3) The register shall be kept and maintained in such a manner as the Board may prescribe, and the details of registration for each registered person on the register shall clearly indicate the discipline of engineering technology in which that person is qualified to practice and particulars or restrictions imposed by the Board, if any.

(4) 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.

26. Removal of name from register

The Registrar shall remove from the register the name of every—

- (a) deceased person or person found to be of unsound mind or a firm which has ceased to practice or has been wound up by a court order;
- (b) person convicted of an offence under this Act or any other law;
- (c) person whose name the Board directs, pursuant to section 44, that it be removed from the register;
- (d) person declared bankrupt;
- (e) person who has failed to satisfy the requirements for the continuing professional development programme for the time being in force;
- (f) person who causes or permits any sole proprietorship, partnership or body corporate in which he or she is a sole proprietor, partner, director or shareholder to practice as a firm prior to its registration by the Board or after the Board has suspended or cancelled its registration;
- (g) person 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 or her name, to respond to the inquiry of the Registrar; or

- (h) person who requests that his or her 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 the Act are not being or are not likely to be taken against him or her.

27. Publication of registration details

(1) The Registrar shall cause to be published in the Kenya *Gazette* not later than the thirty-first 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

28. Practising licence

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

(2) A person applying for a license 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 or her and pay the prescribed fee.

(3) A license issued under subsection (1) shall be valid for one year from the first of January to the thirty-first of December of the year during which it is issued and may, upon expiry, be renewed.

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

29. Renewal of licence

(1) A person whose license 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 explaining the reasons for non-renewal;
- (b) license fees for the current practicing period and, at the Board's discretion, any unpaid fees, including penalties as prescribed by the Board; and
- (c) proof to the Board of fulfilment of all applicable conditions for renewal of a license.

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

30. Cancellation, etc of a licence

(1) The Board shall cancel a license where a licensee—

- (a) is convicted of an offence under this Act or the rules made there under;
- or

(b) ceases to be qualified for the issuance of a license under this Act.

(2) The cancellation, revocation or withdrawal of a licence under this Act shall be published in the Kenya *Gazette* and in at least one newspaper with a national circulation.

31. Recovery of charges

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

(2) A person who contravenes this section commits an offence.

32. Suspension of a licence

The Board may suspend a license 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 license; or
- (d) a licensee has contravened any provision of this Act.

33. Person not to practice if removed from register, etc

(1) A person whose name has been removed from the register or whose license issued under this Act has been suspended or cancelled is not entitled to engage in the practice of engineering technology or offer engineering technology professional services or works during the duration of removal of name, suspension or cancellation of the license.

(2) Subject to subsection (1), 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 or her name immediately before the removal.

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

(4) Where a directive has been made by the Board for the removal of a person's name from the register, for suspension of a person's registration, or for cancellation or suspension of a license issued to that person under this Act, the Board may, on an application in the 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 license 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 in the register;
- (c) terminate the suspension of the registration;
- (d) as the case may be, issue a new license; or
- (e) terminate the suspension of the existing license, without fee or on payment of such fee not exceeding a fee charged upon registration or issuance of a license, as the Board may determine.

PART V — FINANCIAL PROVISIONS

34. Funds of the Board

(1) The funds of the Board shall consist of—

- (a) donations, grants, loans or gifts made to the Board and approved by the Cabinet Secretary; and
- (b) such fees, monies or assets as may accrue to or vest in the Board in the course of the exercise of its powers or the performance of its functions under this Act or under any 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.

35. Financial year

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

36. Annual estimates

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

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

- (a) payment of the salaries, allowances and other charges in respect of staff of the Board;
- (b) payment of pensions, gratuities and other charges in respect of members and staff of the Board;
- (c) proper maintenance of the buildings and grounds of the Board;
- (d) maintenance, repair and replacement of the equipment and other property of the Board; and
- (e) creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Board may deem appropriate.

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

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

37. Accounts and audit

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

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

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

(3) The accounts of the Board shall be audited and reported upon in accordance with the provisions of the Public Audit Act (No. 34 of 2015).

38. Investment of funds

(1) The Board may invest any of its funds in securities in which for the time being trustees may by law invest trust funds, or in any other securities or banks which the Cabinet Secretary for the time being responsible for matters relating to finance may, from time to time, approve for that purpose.

(2) The Board may place on deposit, with such bank or banks as it may determine, any moneys not immediately required for its purposes, as it may determine.

PART VI—OFFENCES AND PENALTIES

39. Procuring registration or licensing through fraud

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 shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years, or both.

(2) 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 license held.

40. Professional misconduct

A person who is licensed as a professional engineering technologist or consulting engineering technologist under this Act shall be guilty of professional misconduct if that person—

- (a) deliberately fails to follow the standards of conduct and practice of the engineering technology profession set by the Board;
- (b) commits gross negligence in the conduct of his or her professional duties;
- (c) allows another person to practice in his or her name, where that person—
 - (i) is not a holder of a license;
 - (ii) is not in partnership with him or her;
 - (iii) takes advantage of a client by abusing the position of trust, expertise or authority;
 - (iv) lacks regard or concern for clients' needs or rights; or
 - (v) shows incompetence or inability to render engineering technology professional services or works.

41. Operating an unaccredited institution

A person who operates a training institution which is not recognized and accredited by the relevant Government body as an institution for training persons

seeking registration under this Act or, being in charge of such institution—

- (a) admits to the institution under his or her charge any person for purposes of training in the engineering technology profession;
- (b) purports to conduct a programme of training or examining persons seeking registration under this Act;
- (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; or
 - (ii) the institution under his or her charge is recognized by the relevant government body 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.

42. Unlawful use of name

(1) A person who, being not registered or licensed within six months after enactment of this Act—

- (a) willfully and falsely takes or uses in any way the style or form or title of "Engineering Technologist" in describing his or her occupation or his or her 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 "Engineering Technologist"; or
- (b) displays any sign, board, card or other device or uses prescribed stamp representing or implying that he or she is an engineering technologist,

commits an offence.

(2) Any person who, prior to the coming into force of this Act, used the title or style "Engineering Technologist" in describing his or her occupation or business shall cease to use such titles unless that person becomes registered or licensed under this Act.

(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 "Engineering Technologists" and such exemptions shall be in accordance with any recognised written international education accords or treaty or convention to which Kenya has ratified.

43. Carrying of business by body of persons

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

(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 technology until such time as the administration of the estate of the deceased is completed as if the legal representative of the deceased partner or director were professional engineer technologists.

PART VII — COMPLAINTS AND DISCIPLINARY PROVISIONS

44. Complaints to the Board

(1) A person who, being dissatisfied with any engineering technology professional 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 the 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 or her 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 or she 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 dishonoured him or her in the public estimation;
- (b) guilty of negligence or malpractice in respect of his or her profession; or
- (c) guilty of impropriety or misconduct in respect of his or her 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 license;
- (iv) suspend such person's license 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 license has been cancelled or suspended under the provisions of this Act shall surrender his or her certificate of registration or the license to the Registrar.

(8) A person who fails to surrender the license 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 removal of a name of a person from the register or to cancel that person's license 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 license issued to the person shall not have effect.

(10) Notwithstanding any other provisions in this Act, the Board shall not remove the name of a person from the register, or cancel a license 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 days notice of its intention to cancel a license; and
- (c) it has provided the licensee with an opportunity to make representation to the Board.

45. Disciplinary Tribunal

There is established a Disciplinary Tribunal which shall be composed of the following persons appointed by the Cabinet Secretary—

- (a) a person who specializes in the professional field relating to the complaint for which the Tribunal is formed;
- (b) a professional who has appropriate experience in engineering technology; and
- (c) a person qualified in law and who has appropriate experience.

46. Appeal against the Board's decision

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 against that decision, and in any such appeal, the High Court may annul or vary the decision as it may consider necessary.

PART VIII — MISCELLANEOUS PROVISIONS

47. Admissibility of documents

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

(2) The Registrar shall not, in any legal proceedings to which he or she is not a party, be compelled 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.

48. General penalty

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

PART IX — PROVISIONS ON DELEGATED POWERS

49. Rules

The Cabinet Secretary may, on the recommendation of the Board, make rules generally for the better carrying into effect the provisions of this Act, and any such rules may, without prejudice to the generality of the foregoing—

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

- (b) prescribe forms, methods and regulations concerning conditions for issuance of licenses;
- (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) provide for enforcing the attendance of witnesses and the production of books and documents at an inquiry by the Board;
- (f) prescribe forms to be used in connection with this Act or fees to be charged under this Act; and
- (g) prescribe anything required under this Act to be prescribed.

SCHEDULE

[Section 7.]

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

1. Meetings

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

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

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

(4) The quorum for the conduct of the business of the Board shall be five members including the chairperson or the person presiding.

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

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

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

2. Disclosure of interest by Board Members

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

consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

(2) Notwithstanding subparagraph (1), if the majority of the members present are of the opinion that the experience or expertise of a member who has an interest in a matter before the Board is vital to the deliberations of the meeting, the Board may permit the member to participate in the deliberations subject to such restrictions as it may impose but such member shall not have the right to vote on the matter in question.

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

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

3. Execution of instruments

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

4. Minutes

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