

Government Gazette 14666

STATE PRESIDENT'S OFFICE

No. 459
19 March 1993

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:

NO. 34 OF 1993: PROFESSIONAL LAND SURVEYORS' AND TECHNICAL SURVEYORS'
AMENDMENT ACT, 1993

GENERAL EXPLANATORY NOTE:

Words in bold type indicate omissions from existing enactments.

Words in italics indicate insertions in existing enactments.

ACT

To amend the Professional Land Surveyors' and Technical Surveyors' Act, 1984, so as to substitute the expression "professional surveyor" for the expression "professional land surveyor"; to delete, define or further define certain expressions; to further regulate the constitution of the South African Council for Professional and Technical Surveyors; to make further provision concerning the qualifications of the members of the said council; to delete the provisions in terms of which the Minister may prescribe a tariff of fees for certain work; to extend the powers of committees of the council; to make further provision concerning the registration of professional surveyors, professional surveyors in training and technical surveyors; to make other provision concerning the prohibition on the practicing of certain professions or callings by unregistered persons; to provide for the practicing of the profession of professional surveyor or the calling of surveyor by a company or close corporation; to make further provision concerning improper conduct; to increase certain punishments in respect of improper conduct; to provide that the council may appoint a person to advise it at an inquiry concerning the imposition of punishment; to make other provision concerning the readmission of persons for registration; and to extend the powers of the council to make rules; and to provide for matters connected therewith.

(Afrikaans text signed by the State President.)

(Assented to 11 March 1993.)

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:-

Amendment of section 1 of Act 40 of 1984, as amended by section 1 of Act 37 of 1986 and section 1 of Act 66 of 1987

1. Section 1 of the Professional Land Surveyors' and Technical Surveyors' Act, 1984 (hereinafter referred to as the principal Act), is hereby amended-

- (a) by the substitution for the definition of "Chief Director" of the following definition:

*"'Chief **Director** Surveyor-General' means the Chief **Director of Surveys and Mapping** Surveyor-General appointed in terms of section 1 of the Land Survey Act, 1927 (Act No. 9 of 1927);"*

- (b) by the substitution for the definition of "council" of the following definition:

*"'council' means the South African Council for Professional **Land Surveyors** and Technical Surveyors established by section 2;"*

- (c) by the substitution for the definitions of "department" and "Director General" of the following definitions, respectively:

*"'department' means the Department of **Public Works** Regional and Land Affairs;*

*'Director-General' means the Director-General **Public Works and Land Affairs** of the department;"*

- (d) by the substitution for the definition of "in the service of the State" of the following definition:

*"'in the service of the State' means in the full-time employment of the Government, including any provincial administration **the South African Transport Services and the Department of Posts and Telecommunications**;*

- (e) by the substitution for the definition of "Minister" of the following definition:

*"'Minister' means the Minister of **Public Works** Regional and Land Affairs;"*

- (f) by the deletion of the definition of "practice";

- (g) by the insertion after the definition of "prescribe" of the following definition:

"'professional company or close corporation' means a company or close corporation referred to in section 27A or 27B, as the case may be;"

- (h) by the substitution for the definition of "professional land surveyor" of the following definition:

*"'professional land surveyor' means a person registered as **such** a professional surveyor in terms of section 20(2) or deemed to be registered as such in terms of subsection (3)(5) of the said section and whose name is entered in the register for professional land surveyors referred to in section 7(4)(a);"*

- (i) by the insertion after the definition of "professional land surveyor" of the following definition:

"'professional surveyor' means a person registered as such in terms of section 20(2) or deemed to be registered as such in terms of subsection (5) of the said section;"; and

- (j) by the substitution for the definition of "professional land surveyor in training" of the following definition:

"'professional **land** surveyor in training' means a person registered as such in terms of section 21;"

Substitution of section 2 of Act 40 of 1984

2. The following section is hereby substituted for section 2 of the principal Act:

Establishment of South African Council for Professional and Technical Surveyors

2. There is hereby established a juristic person to be known as the South African Council for Professional **Land Surveyors** and Technical Surveyors."

Amendment of section 3 of Act 40 of 1984, as amended by section 2 of Act 37 of 1986

3. Section 3 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) After the date so determined the council shall consist of the following members appointed by the Minister, namely-

- (a) one professional **land** surveyor nominated by the Institute of Professional Land Surveyors of the Eastern Cape mentioned in section 40(a);
- (b) one professional **land** surveyor nominated by the Institute of Professional Land Surveyors of the Western Cape mentioned in section 40(b);
- (c) one professional **land** surveyor nominated by the Institute of Professional Land Surveyors of Natal;
- (d) one professional **land** surveyor nominated by the Institute of Professional Land Surveyors of the Orange Free State;
- (e) two professional **land** surveyors nominated by the Institute of Professional Land Surveyors of the Transvaal;
- (f) one professional **land** surveyor nominated by the education advisory committee, who shall be a professor or lecturer in surveying at a university which offers a degree course in surveying;
- (g) two professional **land** surveyors **selected by the Minister from among persons** in the service of the State;
- (h) one professional **land** surveyor nominated by the Association of Air Survey Companies;

- (i) three persons, each of whom shall be a professional **land surveyor** or a technical surveyor, nominated by the Institute of Topographical and Engineering Surveyors of South Africa who ordinarily are resident and practice in the Republic; **land**
- (j) one person nominated, after the election of the president of the council in terms of section 6(1), by the body mentioned in paragraph (a), (b), (c), (d), (e), (f), (h) or (i) of this subsection which had nominated the member so elected as *president*, or, if the president was appointed as a member of the council in terms of paragraph (g) of this subsection, one professional **land** surveyor in the service of the State; and
- (k) *one person appointed by reason of his knowledge and experience concerning public affairs and the practice of surveying."*

Amendment of section 4 of Act 40 of 1984

4. Section 4 of the principal Act is hereby amended-

(a) by the substitution for subsection (1) of the following subsection:

"(1) No person shall be appointed as a member of the council-

(a) in terms of section 3(2), or as an alternate to any such member in terms of section 3(4), unless he is a South African citizen: *Provided that the provisions of this paragraph shall not apply to a member appointed in terms of section 3(2)(f) or an alternate to any such member appointed in terms of section 3(4);*

(b) in terms of section 3(2)(a), (b), (c), (d), (e), (h) or (i), or as an alternate to any such member in terms of section 3(4),

unless

he is a member of the body which nominated him;

(c) in terms of section 3(2) (j), or as an alternate to any such member in terms of section 3(4), unless he is a professional **land** surveyor or, in the case of a person nominated by the body mentioned in section 3(2)(i), a professional **land** **surveyor** or a technical surveyor."; and

(b) by the substitution for paragraphs (i) and (j) of subsection (2) of the following paragraphs, respectively:

"(i) if he ceases to be a professional **land** surveyor or, in the case of a person nominated by the body mentioned in section 3(2)(i), ceases to be a professional **land** **surveyor** or technical surveyor, as the case may be;

(j) if he was appointed by virtue of the fact that he is a professional **land** surveyor in the service of the State and he ceases to be in such service;".

Amendment of section 7 of Act 40 of 1984, as amended by section 2 of Act 66 of 1987

5. Section 7 of the principal Act is hereby amended-

- (a) by the substitution for paragraphs (g) and (h) of subsection (1) of the following paragraphs, respectively:

"(g) determine the manner in which an applicant shall apply for registration as a professional **land** surveyor, a professional **land** surveyor in training, a technical surveyor or a survey technician in training, determine the fees which shall be payable to the council in respect of any such registration and the annual fees which shall be payable to the council by any person as long as he remains registered as a professional **land** surveyor, as a professional **land** surveyor in training, as a technical surveyor or as a survey technician in training, determine the portion of such annual fees which shall be payable in respect of any part of a year and determine the date on which such annual fees or portion thereof shall become due and payable, and grant such exemption from payment of such annual fees or portion thereof as the circumstances of any particular case in the opinion of the council may justify;

(h) subject to the provisions of this Act, consider and decide upon any application for registration as a professional **land** surveyor, as a professional **land** surveyor in training, as a technical surveyor or as a survey technician in training;"

- (b) by the substitution for paragraph (j) of subsection (1) of the following paragraph:

"(j) recommend to the Minister the work of a kind in connection with projects, undertakings or services of a survey nature (excluding cadastral surveys and surveys which may or are required to be performed in terms of any law governing mines and works or surveys which are performed in, on or in relation to a mine) to be reserved for professional **land** surveyors, technical surveyors, or any category of professional **land surveyors** or technical surveyors referred to in subsection (4) (b); ;

- (c) by the deletion of paragraph (k) of subsection (1);

- (d) by the substitution for subsection (2) of the following subsection:

"(2) The Minister may, after consideration of a relevant recommendation made by the council

- (a) under subsection (1)(j), and with the concurrence of the Competition Board established by section 3 of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979),
prescribe
surveys
or
the work of a kind in connection with projects, undertakings or services of a survey nature (excluding cadastral surveys and surveys which may or are required to be performed in terms of any law governing mines and works or surveys which are performed in, on in relation to a mine) which shall be reserved for professional **land** surveyors, technical surveyors, and any category of professional **land surveyors** and technical surveyors referred to in subsection (4)(b) **and**

(b) under subsection (1)(k), prescribe the tariff of fees to which a professional land surveyor or technical surveyor, as the case may be, shall be entitled for services rendered by him in that capacity, in the absence of an agreement between such professional land surveyor or technical surveyor and a particular client in terms of which he shall be entitled in respect of such services to fees according to any other tariff."; and

(e) by the substitution for subsection (4) of the following subsection:

"(4) Subject to the provisions of this Act, the council shall keep and maintain a register of-

(a) professional land surveyors qualified to perform the surveys referred to in section 27(1)(a); and

(b) the other categories of professional land surveyors, of professional land surveyors in training, of technical surveyors and of survey technicians in training as may be prescribed; and

(c) professional land surveyors, professional surveyors and surveyors who are practicing in the form of professional companies or close corporations, and such register shall at all reasonable times be open for inspection by any person upon payment of such fees as the council may determine.".

Amendment of section 10 of Act 40 of 1984

6. Section 10 of the principal Act is hereby amended by the substitution for subsections (2) and (3) of the following subsections, respectively:

"(2) The council may assign to a committee so established such of its powers as it may deem fit, including the power to inquire into any case of alleged improper conduct, to impose a punishment in respect thereof and to make an order regarding the costs of the inquiry in accordance with the provisions of section 29, but shall not be divested of any power which it may have so assigned to such a committee, and may review, amend or withdraw any decision of any such committee **Provided that, if the council has assigned to a committee the power to inquire into any case of alleged improper conduct, to impose a punishment in respect thereof and to make an order regarding the costs of the inquiry in accordance with the provisions of section 29, the council shall not amend or withdraw any decision arrived at or anything done by such committee under the powers so assigned.**

(3) A committee to which the council has assigned the power to inquire into any case of alleged improper conduct and to impose a punishment in respect thereof in accordance with the provisions of section 29 may,

notwithstanding the expiration of the tenure of office of the members of that council, continue to exercise such powers until such inquiry is concluded **and such powers shall for the purposes of the proviso to subsection (2) of this section be deemed to have been assigned to the committee by the newly constituted council.**".

Amendment of section 11 of Act 40 of 1984

7. Section 11 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) There is hereby established a committee to be known as the Education Advisory Committee for Professional **Land Surveyors** and Technical Surveyors.".

Amendment of section 12 of Act 40 of 1984

8. Section 12 of the principal Act is hereby amended-

(a) by the substitution for paragraphs (a) and (b) of subsection (1) of the following paragraphs, respectively:

"(a) one person nominated by the senate of each university which offers a degree course in surveying, who shall be **a professional land surveyor and** a professor or lecturer in surveying at such university;

(b) **one person** *two persons* nominated by the Minister of National Education from persons in the full-time service of every technikon or college providing instruction in surveying;" and

(b) by the substitution for paragraph (g) of subsection (1) of the following paragraph:

"(g) one professional **land surveyor selected by the Minister from among persons** in the service of the State.".

Amendment of section 14 of Act 40 of 1984

9. Section 14 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:

"(a) if he was appointed in terms of section 12(1)(a) and ceases to be a professor or lecturer at the university concerned **or to be a professional land surveyor;**".

Amendment of section 19 of Act 40 of 1984

10. Section 19 of the principal Act is hereby amended by the substitution for the words following upon subparagraph (ii) of paragraph (a) of subsection (1), of the following words:

"comply with the requirements for registration as professional **land** surveyors, as professional **land** surveyors in training, as technical surveyors and as survey technicians in training and for the respective posts, professions or callings for the appointment to or pursuit of which the passing of any such examination is in terms of any law a qualification; and".

Substitution of section 20 of Act 40 of 1984

11. The following section is hereby substituted for section 20 of the principal Act:

"Registration of professional surveyors

20. (1) The requirements for registration as a professional **land** surveyor of any person, other than a person referred to in subsection (3) or (4) or (5), shall be as follows, namely-

- (a) attainment of the age of 21 years;
- (b) the passing of any examination to which the council has granted recognition for the purposes of registration as a professional **land** surveyor as contemplated in section 19(1)(b) or (2);
- (c) the passing of an examination, approved by the Chief **Director Surveyor-General**, regarding laws concerning surveying and related matters;
- (d) training for such period, whether within or outside the Republic, and in such practical **survey** work as may be prescribed in relation to professional **land** surveyors;
- (e) the carrying out, to the satisfaction of the Chief **Director Surveyor-General**, of such trial surveys or practical tests as the Chief **Director Surveyor-General** may, with the concurrence of the council, determine; and
- (f) the making of a professional oath or affirmation in the prescribed form in relation to the practicing of his profession or calling.

(2) The council shall, subject to the provisions of section 24(1), on application in the prescribed form by any person who in the opinion of the council, after consultation with the Chief **Director Surveyor General**, complies with the requirements mentioned in subsection (1), and upon payment of the registration and annual fees, register any such person as a professional **land** surveyor and cause such person's name to be entered in the appropriate register and a certificate of registration in the prescribed form to be issued to him.

(3) Any person who was registered as a land surveyor in terms of the Land Surveyors' Registration Act, 1950 (Act No. 14 of 1950), immediately prior to the commencement of this Act shall be deemed to have been registered as a professional land surveyor in terms of this section, and the council shall cause any such person's name to be entered in the appropriate register and, on application in writing by any such person, a certificate of registration in the prescribed form to be issued to him free of charge.

(5)(3) A professional **land** surveyor shall, if he has paid the annual fee, be entitled-

- (a) to describe himself as a professional **land** surveyor in the category in which he has been registered;
- (b) to carry on his profession or calling in any part of the Republic; and
- (c) to indicate his profession or calling or make it known by using the prescribed title after his name.

(4) Any person to whom a certificate was issued in terms of section 12(2) of the Land Survey Act, 1927 (Act No. 9 of 1927), immediately prior to the commencement of this Act shall be deemed to have complied with the requirements for registration mentioned in this section, and the council shall, subject to the provisions of section 24(1), on application by any such person and upon payment of the registration and annual fees, register such person as a professional **land** surveyor and cause any such person's name to be entered in the appropriate register and a certificate of registration in the prescribed form to be issued to him.

(5) Any person who was registered as a professional land surveyor or was deemed to be so registered in terms of this section as it existed immediately prior to the substitution thereof by the Professional Land Surveyors' and Technical Surveyors' Amendment Act, 1993, shall be deemed to have been registered as a professional surveyor in terms of this section."

Substitution of section 21 of Act 40 of 1984

12. The following section is hereby substituted for section 21 of the principal Act:

"Registration of professional surveyors in training

21. (1) Any person who desires to be registered as a professional **land** surveyor in training and who complies with the requirements of section 20(1) (b), may apply in the prescribed form to the council to be registered as a professional **land** surveyor in training, and the council shall, subject to the provisions of section 24(1), upon payment of the registration and annual fees, register any such person as a professional **land** surveyor in training and cause any such person's name to be entered in the appropriate register.

(2) When any professional **land** surveyor in training complies with the requirements mentioned in section 20(1), the council shall, subject to the provisions of section 24(1), on application in the prescribed form and upon payment of the registration and annual fees, cancel the registration of such person as a professional **land** surveyor in training and register him as a professional **land** surveyor in terms of section 20(2).

(3) Any period of training in practical **survey** work undergone before the commencement of this Act and of the same kind as that prescribed, shall for the purposes of subsection (2) be deemed to be a period of training in practical **survey** work as so prescribed,

provided such former training is continued within three months, or within such further period as the council may allow, after the said commencement, by means of training in practical **survey** work as so prescribed.

(4) Any professional **land** surveyor in training may describe himself as a professional **land** surveyor in training, but he shall not be entitled to perform any survey work, except under the personal supervision of a professional **land** surveyor or in such other circumstances as may be prescribed."

Amendment of section 22 of Act 40 of 1984, as amended by section 4 of Act 37 of 1986

13. Section 22 of the principal Act is hereby amended-

(a) by the substitution for subparagraphs (ii) and (iii) of paragraph (a) of subsection (1) of the following subparagraphs, respectively:

"(ii) training for such period, whether within or outside the Republic, and in such practical **survey** work as may be prescribed in relation to surveyors

(iii) the carrying out, to the satisfaction of the Chief **Director Surveyor-General**, of such trial surveys or *practical tests* as the Chief **Director Surveyor-General** may, with the concurrence of the council, determine; and";

(b) by the substitution for subparagraphs (ii) and (iii) of paragraph (b) of subsection (1) of the following subparagraphs, respectively:

"(ii) training for such period, whether within or outside the Republic, and in such practical **survey** work as may be prescribed in relation to survey technicians;

(iii) the carrying out, to the satisfaction of the Chief **Director Surveyor-General**, or of such trial surveys or *practical tests* as the Chief **Director Surveyor-General** may, with the concurrence of the council, determine; and";

(c) by the substitution for subsection (3) of the following subsection:

"(3) Any person who *wishes to be registered in the register referred to in section 7(4)(b)*-

(a) *in the topographical and engineering category and who-*

(a)(i) has not passed the examination referred to in subsection (1)(a) and who at the commencement of this Act-

(i)(aa) is a full member of the Institute of Topographical and Engineering Surveyors of South Africa and after he has passed the examination for the tenth standard or an equivalent examination or such other examination as the council may accept or determine, has gained at least 10

years' **practical** experience in such **survey practical** work which in the opinion of the council is of sufficient variety and of a satisfactory nature and standard; or

(ii)(bb) is not such a member and after he has passed the examination for the tenth standard or an equivalent examination or such other examination as the council may accept or determine, has gained at least 15 years' **practical** experience in such **surpractical** work which in the opinion of the council is of sufficient variety and of a satisfactory nature and standard; or

(b)(ii) has not passed the examination referred to in subsection (1)(b) and who at the commencement of this Act-

(i)(aa) is a full member or an associate member of the Institute of Topographical and Engineering Surveyors of South Africa and was engaged in the performance of survey **practical** work which in the opinion of the council is of sufficient variety and of a satisfactory nature and standard and had been so engaged for a period of not less than five years, if he has passed the examination for the tenth standard or an equivalent examination, or seven years, if he has passed the examination for the eighth standard or an equivalent examination; or

(ii)(bb) is not such a member and was engaged in the performance of survey **practical** work which in the opinion of the council is of sufficient variety and of a satisfactory nature and standard and had been so engaged for a period of not less than seven years, if he has passed the examination for the tenth standard or an equivalent examination, or nine years, if he has passed the examination for the eighth standard or an equivalent examination; or

(b) in any other category than that referred to in paragraph (a) and who-

after (i) has not passed the examination referred to in subsection (1)(a) and who on a date determined by the Minister, consultation with the council-

has (aa) is a member of a body recognized by the council and after he has passed the examination for the tenth standard or an equivalent examination or such other examination as the council may accept or determine, gained at least 10 years' experience in such practical work which in the opinion of the council is of sufficient variety and of a satisfactory nature and standard; or

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opinion

(bb) *is not such a member and after he has passed the examination for the tenth standard or an equivalent examination or such other examination as the council accept or determine, has gained at least 15 years' experience in such practical work which in the opinion of the council is of sufficient variety and of a satisfactory nature and standard; or*

after

(ii) *has not passed the examination referred to in subsection (1) (b) and who on a date determined by the Minister, after consultation with the council-*

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(aa) *is a member of a body recognized by the council and was engaged in the performance of practical work in the opinion of the council is of sufficient variety and of a satisfactory nature and standard and had been so engaged for a period of not less than five years, if he has passed the examination for the tenth standard or an equivalent examination, or seven years, if he has passed the examination for the eighth standard or an equivalent examination; or*

the
period

(bb) *is not such a member and was engaged in the performance of practical work which in the opinion of the council is of sufficient variety and of a satisfactory nature and standard and had been so engaged for a period of not less than seven years, if he has passed the examination for the tenth standard or an equivalent examination, or nine years, if he has passed the examination for the eighth standard or an equivalent examination,*

the

and who within two years or such further period as the Minister, after consultation with the council, may determine by notice in

paragraph

Gazette, after the commencement of this Act, in the case of a person referred to in paragraph (a), or after the commencement of the Professional Land Surveyors' and Technical Surveyors' Amendment Act, 1993, in the case of a person referred to in

survey

(b), applies to the Chief Director Surveyor-General to carry out a trial survey or practical test contemplated in subsection (1)(a)(iii) or (b)(iii), and who carries out that or test to the satisfaction of the Chief Director Surveyor-General within the period determined by him, and who within six months after the Chief Director Surveyor-General has indicated in writing that such survey or test

has been so carried out, complies with the requirements contemplated in subsection (1)(a)(iv) or (b)(iv), may before the expiry of the said period of six months apply in the prescribed form to the council to be registered as a surveyor or a survey technician, as the case may be, and the council shall, subject to the provisions of section 24(1), register any such person as a surveyor or a survey technician, as the case may be, and cause his name to be entered in the appropriate register and a certificate of registration in the prescribed form to be issued to him free of charge.";

(d) by the substitution for subparagraph (i) of paragraph (a) of subsection (4) of the following subparagraph:

"(i) to describe himself as a surveyor *in the category in which he has been registered*";, and

(e) by the substitution for subparagraph (ii) of paragraph (b) of subsection (4) of the following subparagraph:

"(ii) to carry on his calling in any part of the Republic but only under the personal supervision of such professional land surveyor, surveyor or other suitably qualified person as may be prescribed: Provided that the provisions of this subparagraph relating to personal supervision shall, subject to such conditions as the council may determine, not apply in respect of any person who, within two years or such further period as the Minister, after consultation with the council, may determine by notice in the Gazette, from the commencement of this Act, submits to the council proof that he has, unsupervised, performed for such period as the council may deem sufficient, *survey practical work* which in the opinion of the council is of sufficient variety and of a satisfactory nature and standard; and".

Amendment of section 23 of Act 40 of 1984

14. Section 23 of the principal Act is hereby amended by the substitution for subsections (3) and (4) of the following subsections, respectively:

"(3) Any period of training in practical survey work undergone before the commencement of this Act and of the same kind as that prescribed, shall for the purposes of subsection (2) be deemed to be a period of training in practical survey work as so prescribed, provided such former training is continued within three months, or within such further period as the council may allow, after the said commencement, by means of training in practical survey work as so prescribed.

(4) A survey technician in training may describe himself as a survey technician in training, but shall not be entitled to perform any *survey practical work*, except under the personal supervision of a professional land surveyor, a technical surveyor or such other person as may be prescribed."

Substitution of section 27 of Act 40 of 1984

15. The following section is hereby substituted for section 27 of the principal Act:

"Prohibition of practice as professional land surveyor, professional surveyor or technical surveyor by unregistered person

27. (1) Subject to any exemption granted under this Act, any person-

- (a) whose name is not entered in the register for professional land surveyors referred to in section 7(4)(a) and who-
 - (i) performs any survey for the purpose of preparing a diagram or general plan to be filed or registered in terms of any law governing the registration of any land or rights in land or mentioned in any manner whatsoever in any other document to be so filed or registered, or
 - (ii) performs any survey affecting the delimitation of the boundaries or the location of the beacons of any land so registered;

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- (b) who is not registered as a professional land surveyor and who performs any kind of work reserved for professional land surveyors under section 7(2)(a);
- (c) who is not registered as a professional land surveyor or as a surveyor or as a survey technician and who performs any kind of work reserved for technical surveyors under section 7(2)(a);
- (d) who is not registered as a professional land surveyor or as a surveyor or as a survey technician and pretends to be or by any means whatsoever holds himself out or allows himself to be held out as a professional land surveyor or a surveyor or a survey technician or uses the name of professional land surveyor or technical surveyor or surveyor or survey technician or uses any name, title, description or symbol indicating or calculated to lead persons to infer that he is person who is registered as a professional land surveyor or surveyor or survey technician in terms of this Act, shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000.

(2) Subject to any exemption granted under this Act, any company or other juristic person, *other than a professional company or close corporation incorporated or registered pursuant to the provisions of section 27A or 27B*, which-

- (a) performs or causes to be performed for any other person, whether a natural or juristic person, by any person, whether registered in terms of this Act as a professional land surveyor or as a surveyor or as a survey technician or not, any kind of work reserved for professional land surveyors or technical surveyors, respectively, under section 7(2)(a); or
- (b) pretends to be or by any means whatsoever holds itself out or allows itself to be held out as a company or other juristic person

performing any kind of work reserved for professional land surveyors or technical surveyors under section 7(2)(a), or uses any name, title, description or symbol indicating or calculated to lead persons to infer that it is a company or other juristic person performing any kind of work so reserved for professional land surveyors or technical surveyors, shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000."

Insertion of sections 27A and 27B in Act 40 of 1984

16. The following sections are hereby inserted in the principal Act after section 27:

"Carrying on of profession of professional surveyor or calling of surveyor by company

27A. (1) Notwithstanding any provision of this Act to the contrary, a company may practice as and perform the work of a professional surveyor or surveyor if-

(a) the company has been incorporated and registered as a private company with share capital, under the Companies Act, 1973 (Act No. 61 of 1973), and its memorandum of association provides-

(i) that all present and past directors of the company shall be liable jointly and severally with the company for the debts and liabilities of the company contracted during their periods of office;

(ii) that the main object of the company shall be to perform the work of a professional surveyor or surveyor; and

(b) the articles of the company provide-

(i) that only natural persons who are professional surveyors or surveyors, or other natural persons approved by the council in writing, may be members and shareholders of the Company:

(ii) that every shareholder of the company shall be a director thereof and that only a shareholder of the company shall be a director thereof

(iii) that a shareholder may not transfer any share, or any rights or benefits attaching to a share, to any person other than a person referred to in subparagraph (i);

(iv) that in the event of a shareholder's death or of his ceasing to comply with a requirement of subparagraph (i), his estate or he himself, as the case may be, may continue to hold his shares in the company as from the relevant date for a period of six months or for such longer period as may have been approved by the council, and that during such period any voting rights attaching to such shares may be exercised by any other shareholder of the company whom the first mentioned shareholder may have nominated in writing before his death or disqualification for the purposes of this subparagraph or, failing such nomination, by the chairman of the company.

may (2) (a) The holder of a share referred to in subsection (1) (b)(iv) not act as a director of the company concerned, or directly or indirectly receive any directors' fees or remuneration from that company.

(b) Such shares as are not in accordance with the company's articles transferred within the period referred to in subsection (1)(b)(iv) to any person referred to in subsection (1)(b)(i), may, notwithstanding anything to the contrary contained in any law, be acquired by the company itself, provided-

(i) the purchase price for those shares, including any premium, if any, on those shares, is paid out of profits which otherwise would have been available for payment of dividends; and

(ii) an amount equal to the nominal amount of the shares acquired is transferred to a capital redemption reserve fund.

(b) (c) The acquisition in accordance with the provisions of paragraph (b) by the company itself of shares referred to in that paragraph shall not be deemed to constitute a reduction of the authorized share capital of the company concerned, and the provisions of the Companies Act, 1973, relating to the reduction of the share capital of a company shall apply to such a capital redemption reserve fund as if such fund were share capital of the company concerned.

(d) Shares purchased as contemplated in paragraph (b), shall be available for allotment in terms of the articles of the company.

or (e) Any transfer of shares in a company referred to in this section, of any rights and benefits attaching thereto, in conflict with subsection (1)(b)(iv), shall be void.

(3) Subject to the provisions of section 49(4) of the Companies Act, 1973, the name of a company referred to in this section shall, unless the council in any particular case approves of any other name, consist solely of the name or names of any of the present or past members of the company or of a person or persons who conducted, either for his or their own account or in partnership, any practice which may reasonably be regarded as a predecessor of the practice of the company.

(4) Any-

(a) act performed, with or without a particular intent, by or on instructions or with permission, express or implied, given by a director or employee of a company referred to in this section; and

(b) omission, with or without a particular intent, of any act which ought to have been but was not performed by or on instructions given by a director or employee of a company, in the exercise of his powers or in the performance of his duties as such director or employee or in furthering or endeavouring to further the interests

of that company, and which would have constituted improper conduct if it had been performed or omitted by a professional surveyor or surveyor carrying on his profession or calling as a natural person in practice shall, for the purpose of this Act, be deemed to have been performed or omitted by every member, shareholder, director or employee of such company practicing as a professional surveyor or surveyor, unless it is proved that such professional surveyor or surveyor did not take part in the performance of the act or the omission and that he could not have prevented it.

(5) A company referred to in this section which, otherwise than under an exemption granted in terms of this Act, entrusts work reserved under section 7 for professional and technical surveyors to any person, whether
a
member, shareholder, director or employee of the company or not, other
than
a professional or technical surveyor, shall be guilty of an offence and liable on conviction to a fine not exceeding R10 000.

(6) Any person who-

- (a) not being a nominee or chairman referred to in subsection (1)(b)(iv), exercises any voting rights contemplated in that subsection during the period referred to therein; or
- (b) contravenes a provision of subsection (2)(a), shall be guilty of an offence and liable on conviction to a fine not exceeding R1 000.

(7) (a) The provisions of section 7(2) and (5) shall apply mutatis mutandis in respect of a company referred to in this section.

(b) The payment in accordance with the provisions of this Act by a company referred to in this section on behalf of a professional or technical surveyor who carries on his profession as a member,
shareholder,
director or employee of that company, of any annual fee or levy, shall
for
the purposes of this Act be deemed to be a payment by such professional
or
technical surveyor.

(8) The council may cancel the registration as a professional
surveyor
or surveyor of any shareholder, director or member of a company referred
to
in this section, if the company is liquidated or placed under provisional or voluntary liquidation or judicial management.

Carrying on of profession of professional surveyor or calling of surveyor by close corporation

27B. (1) Notwithstanding any provision of this Act to the contrary, a close corporation may perform the work of a professional surveyor or surveyor if the close corporation has been registered under the Close Corporations Act, 1984 (Act No. 69 of 1984), and its founding statement provides that-

- (a) all present and past members of the close corporation shall be

liable jointly and severally with the close corporation for the debts and liabilities of the said close corporation contracted during the period of their membership of the close corporation concerned;

- (b) the principal business to be carried on by the close corporation shall be to perform the work of a professional surveyor or surveyor;
- (c) only natural persons who are registered professional surveyors or surveyors, or other natural persons approved by the council in writing, may be members of the close corporation;
- (d) every member shall be the beneficiary of the interest held by such member;
- (e) a member may not transfer any interest, or any rights or benefits attaching to such interest, to any person other than a person referred to in paragraph (c);
- (f) in the event of a member's death or of his ceasing to comply with a requirement of paragraph (c), his estate or he himself, as the case may be, may continue to hold his interest in the close corporation as from the relevant date for a period of six months or for such longer period as may be approved by the council, and that during such period any voting rights attaching to such interest may be exercised by any other member of the close corporation whom the first-mentioned member may have nominated in writing before his death or disqualification for the purposes of this subparagraph or, failing such nomination, by a member nominated by a majority of members of the close corporation.

(2) The holder of an interest referred to in subsection (1)(e) may not participate in the decisions of the close corporation or directly or indirectly receive any remuneration as a result of such interest in the close corporation.

(3) Subject to the provisions of the said Close Corporations Act, 1984, the name of a close corporation referred to in this section shall, unless the council in any particular case approves of any other name, consist solely of the name or names of any of the present or past members of the close corporation or of a person or persons who conducted, either for his or their own account or in partnership, any practice which may reasonably be regarded as a predecessor of the practice of the close corporation.

(4) Any-

- (a) act performed, with or without a particular intent, by or on instructions or with permission, express or implied, given by a member or employee of a close corporation referred to in this section; and
- (b) omission, with or without a particular intent, of any act which ought to have been but was not performed by or on instructions given by a member or employee of a close corporation, in the exercise of his powers or in the performance of his duties as such member or employee or in furthering or endeavouring to further the interests

of that close corporation, and which would have constituted improper conduct if it had been performed or omitted by a professional surveyor or surveyor carrying on his profession or calling as a natural person in practice shall, for the purpose of this Act, be deemed to have been performed or omitted by every member or employee of such close corporation practicing as a professional surveyor or surveyor, unless it is proved that such professional surveyor or surveyor did not take part in the performance of the act or the omission and that he could not have prevented it.

(5) A close corporation referred to in this section which, otherwise than under an exemption granted in terms of this Act, entrusts work reserved under section 7 for professional and technical surveyors to any person, whether a member or employee of the close corporation or not, other than a professional or technical surveyor, shall be guilty of an offence and liable on conviction to a fine not exceeding R10 000.

(6) Any person who-

- (a) not being a nominee referred to in subsection (1) (f), exercises any voting rights contemplated in that subsection during the period referred to therein; or
- (b) contravenes a provision of subsection (2), shall be guilty of an offence and liable on conviction to a fine not exceeding R1 000.

(7) (a) The provisions of section 7(2) and (5) shall apply mutatis mutandis in respect of a close corporation referred to in this section.

(b) The payment in accordance with the provisions of this Act by a close corporation referred to in this section on behalf of a professional or technical surveyor who carries on his profession as a member or employee of that close corporation, of any annual fee or levy, shall for the purposes of this Act be deemed to be a payment by such professional or technical surveyor.

(8) The council may cancel the registration as a professional surveyor or surveyor of any member of a close corporation referred to in this section, if the close corporation is liquidated or placed under provisional or voluntary liquidation or judicial management."

Substitution of section 28 of Act 40 of 1984

17. The following section is hereby substituted for section 28 of the principal Act:

"Improper conduct

28. (1) Any professional land surveyor shall be guilty of improper conduct if he-

- (a) except with the consent of the council or in terms of any exemption granted under this Act knowingly entrusts to any person other than a professional land surveyor work of a kind reserved for

professional land surveyors under section 7(2);(a); or

- (b) performs work of a kind reserved for professional land surveyors under section 7(2)(a) in connection with any matter which is the subject of a dispute or litigation, on condition that payment for such work will be made only if such dispute or litigation ends favourably for the party for whom such work is performed; or
- (c)(b) accepts remuneration from any person other than his client or employer for the performance of work of a kind reserved for professional land surveyors under section 7(2)(a);
or;
- (d)(c) performs work of a kind reserved for professional land surveyors under section 7(2)(a) during any period in respect of which he has been suspended under this Act;
- (d) carries on his profession as a member, shareholder, director or employee of a company referred to in section 27A, or as a member or employee of a close corporation referred to in section 27B, which company or close corporation does not comply with any requirement of section 27A or 27B, as the case may be, or any other applicable provision of this Act; or
- (e) in his capacity as a member, shareholder, director or employee of a company referred to in section 27A, or as a member or employee of a close corporation referred to in section 27B, performs any act or commits any omission which would under any provision of this Act have constituted improper conduct if it had been performed or committed by a professional or technical surveyor in the carrying on of his profession as a natural person in practice.

(2) Any surveyor shall be guilty of improper conduct if he-

- (a) except with the consent of the council or in terms of any exemption granted under this Act knowingly entrusts to any person other than a surveyor work of a kind reserved for surveyors under section 7(2)(a), or
- (b) performs work of a kind reserved for surveyors under section 7(2)(a) in connection with any matter which is the subject of a dispute or litigation, on condition that payment for such work will be made only if such dispute or litigation ends favourably for the party for whom such work is performed; or
- (c)(b) accepts remuneration from any person other than his client or employer, for performing work of a kind reserved for surveyors under section 7(2)(a); or;
- (d)(c) performs work of a kind reserved for surveyors under section 7(2)(a) during any period in respect of which he has been suspended under this Act;
- (d) carries on his calling as a member, shareholder, director or employee of a company referred to in section 27A, or as a member or employee of a close corporation referred to in section 27B, which company or close corporation does not comply with any requirement of section 27A or 27B, as the case may be, or any other applicable

provision of this Act; or

(e) in his capacity as a member, shareholder, director or employee of a company referred to in section 27A, or as a member or employee of a close corporation referred to in section 27B, performs any act or commits any omission which would under any provision of this Act have constituted improper conduct if it had been performed or committed by a professional or technical surveyor in the carrying on of his profession as a natural person in practice.

(3) Any professional **land** surveyor or surveyor or survey technician shall be guilty of improper conduct if he-

(a) commits an offence in the exercise of his profession or calling; or
(b) contravenes or fails to comply with any rule made under section 34(1)(e); or

(c) brings his profession or calling or the council, or any of its members or persons in its employment, into disrepute; or

(d) conducts himself in a manner which, when regard is had to his profession or calling, is improper.

(4) The acquittal or conviction of a professional **land** surveyor or surveyor or survey technician by a court of law upon a criminal charge shall not be a bar to proceedings against him under this Act on a charge of improper conduct, even if the facts set forth in the charge of improper conduct would, if proved, constitute the offence set forth in the criminal charge on which he was so acquitted or convicted or any other offence of which he might have been convicted at his trial on the said criminal charge.

(5) If the improper conduct with which the professional **land** surveyor or surveyor or survey technician is charged amounts to an offence of which he has been convicted by a court of law, a certified copy of the record of his trial and conviction by that court shall, upon the identification of such professional **land** surveyor or surveyor or survey technician as the person referred to in the record, be sufficient proof of the commission by him of such offence, unless the conviction has been set aside by a superior court: Provided that it shall be competent for the professional **land** surveyor or surveyor or survey technician charged to adduce evidence that he was in fact wrongly convicted.

(6) When in the course of any proceedings before any court of law or in the course of an investigation in terms of any law it appears to the court or to the person in charge of the investigation, as the case may be, that there is prima facie evidence of improper conduct on the part of a professional **land** surveyor or surveyor or survey technician, or conduct which, regard being had to the profession or calling of a professional **land** surveyor or surveyor or survey technician, is improper, the court or the person in charge of the investigation, as the case may be, shall direct that a copy of the record of the proceedings or

the investigation or such part thereof as is material to the issue, be transmitted to the council."

(a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) a fine not exceeding **R500 R5 000**; or";

(b) by the substitution for paragraph (c) of subsection (1) of the following paragraph:

"(c) suspension from practicing in the Republic for a specified period not exceeding **one year three years**; or"; and

(c) by the substitution for paragraph (e) of subsection (1) of the following paragraph:

"(e) *in addition to the punishment imposed under paragraph (d),* disqualification for registration in terms of this Act for a specified **or an indefinite** period:".

Amendment of section 30 of Act 40 of 1984

19. Section 30 of the principal Act is hereby amended by the substitution for paragraph (c) of subsection (1) of the following paragraph:

"(c) appoint any person to advise the council at such inquiry on matters relating to law, procedure, **or** evidence *or the imposition of punishment*."

Amendment of section 31 of Act 40 of 1984

20. Section 31 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

"(1) When it appears to the council from information on oath that a professional **land surveyor** or a technical surveyor is mentally ill to such an extent that it would be contrary to the public interest to allow him to continue to practice, the council may, if it deems fit, hold an inquiry *mutatis mutandis* in accordance with the provisions of section 30 in respect of such person.

(2) If the council finds that such professional **land surveyor** or technical surveyor has so become mentally ill, it may order his suspension for a specified period from practicing his profession or calling. "

Amendment of section 32 of Act 40 of 1984

21. Section 32 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Any person aggrieved at any decision of the council in terms of section 29 or 31 or any penalty imposed by it under section 29, may within 30 days after the council has given its decision or imposed the penalty, appeal against that decision or penalty by way of notice of

motion to the provincial or local division of the Supreme Court of South Africa having jurisdiction in the area in which any such person ordinarily practices or works as a professional **land** surveyor or technical surveyor."

Substitution of section 33 of Act 40 of 1984

22. The following section is hereby substituted for section 33 of the principal Act:

"Council may readmit person

33. *The council may on application by any person who has in terms of section 29(1) been suspended from practicing or whose name has been removed*

from the register or who has been disqualified from registration for a specified period, terminate such suspension or notwithstanding the provisions of section 24(1)(d) but subject to section 24(1)(a), (b) and (c), register such person in terms of section 20, 21, 22 or 23 on such conditions as the council may determine."

Amendment of section 34 of Act 40 of 1984

23. Section 34 of the principal Act is hereby amended-

(a) by the substitution for paragraph (g) of subsection (1) of the following paragraph:

"(g) prescribing the manner and circumstances in which a professional **land surveyor** or a technical surveyor may form a partnership with any member of a related profession or calling;"

(b) by the substitution for paragraphs (i), (j) and (k) of subsection (1) of the following paragraphs, respectively:

"(i) prescribing the nature, form and period (not exceeding two years) of training in practical **survey** work to be undergone by a professional **land** surveyor in training;"

(j) prescribing the nature, form and period (not exceeding two years) of training in practical **survey** work to be undergone by a survey technician in training;

(k) prescribing the form of the contract of training between any person and a professional **land** surveyor in training or a survey technician in training who wishes to undergo practical training with such person, before qualifying for registration as a professional **land** surveyor or a survey technician, and the manner in which such a contract shall be registered;"

(c) by the insertion after paragraph (k) of subsection (1) of the following paragraph:

"(kA) *prescribing the manner and circumstances in which a professional company or close corporation may form a partnership with any member of a related profession or calling;*" and

(d) by the substitution for subsection (2) of the following subsection:

"(2) Different rules may be made in relation to different categories of professional **land** surveyors, **of** professional **land** surveyors in training, **of** technical surveyors and **of** survey technicians in training."

Substitution of expression "Chief Director" in Act 40 of 1984

24. The principal Act is hereby amended by the substitution for the expression "Chief Director", wherever it occurs, of the expression "Chief Surveyor General".

Amendment of section 44 of Act 40 of 1984

25. Section 44 of the principal Act is hereby amended by the deletion in subsection (1) of the expression "Land Surveyors' ".

Substitution of long title of Act 40 of 1984

26. The following long title is hereby substituted for the long title of the principal Act:

"ACT

To provide for the establishment of a South African Council for Professional **Land Surveyors** and Technical Surveyors, for the registration of professional **land** surveyors, professional **land** surveyors in training, surveyors, survey technicians and survey technicians in training, and for matters connected therewith."

Short title

27. This Act shall be called the Professional Land Surveyors' and Technical Surveyors' Amendment Act, 1993.