

# **INSTITUTION OF SURVEYORS OF KENYA BILL**

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**INSTITUTION OF SURVEYORS OF KENYA BILL 2014**  
**Commencement by ..... notice,**

A Bill for

An Act of Parliament to provide for the establishment, powers and functions of the Institution of Surveyors of Kenya; to provide for the examination and registration of surveyors and for connected purposes.

**PART 1 – PRELIMINARY**

Short title. 1. This Act may be cited as the Institution of Surveyors of Kenya Act

Interpretation. 2. In this Act unless the context otherwise requires;

“annual general meeting” means the meeting convened in accordance with the provisions in section 28; of this Act;

“branch” means a branch established by the Institution;

“board” means a board established by an Act of parliament to regulate a chapter of the Institution;

“chapter” means any discipline or group of disciplines established by the Institution;

“certificate of good standing” refers to a certificate issued to a member by the Institution;

“company” means a limited liability company incorporated by members in practice

“Council” means the Council established under section 20 of this Act;

“firm” means a sole proprietorship or partnership established by members in practice.

“Institution” means the Institution of Surveyors of Kenya established under section 3 of this Act.

“register” means the register kept pursuant to section 15 of this Act.

“practicing certificate” means a practicing certificate issued by a board.

“prescribed” means prescribed by the Council with the approval of the General Assembly.

“special resolution” means a resolution passed by not less than two thirds of such members of the Institution as may be present and vote thereon at a general meeting of the Institution duly convened with notice of the intention to propose such resolution, or, in the case of a postal ballot, not less than two thirds of those effectively participating therein.

“surveyor” means a person with requisite academic and professional qualifications to measure, assemble and assess land, buildings, natural resources and geographic related information and use that information for the purpose of efficient planning, management and implementing the efficient administration of the land, the sea and structures thereon: Carry out valuation in respect of any types of movable or immovable property; sell, purchase, let land and buildings erected thereon; carry out maintenance, conservation and management of the same:

“unqualified person” means a person not qualified to act as a surveyor.

## PART II – ESTABLISHMENT

Establishment of Institution of Surveyors of Kenya 3. (1) There is hereby established a body corporate to be known as the Institution of Surveyors of Kenya.

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

- a. suing and being sued;
- b. taking, purchasing, charging and disposing of movable and immovable property;
- c. borrowing money;
- d. entering into contracts; and
- e. doing or performing all such other things or acts for the proper administration of this Act, which may lawfully be performed by a body corporate.

Objects of the Institution

4. The objects for which the Institution is established are-
- a. to secure the advancement and facilitate the acquisition of that knowledge which constitutes the profession of a Surveyor;
  - b. to promote the general interest of the members of the profession;
  - c. to promote ethical performance of the obligations of the members of the profession for the benefit of the public;
  - d. to contribute to the development of international and national policies and legal frameworks, strategies and plans in land management in a manner that facilitates sustainable development;
  - e. to represent the interests of the members of the profession in relevant local, national, regional and international fora;
  - f. to work with and or promote local, national, regional and international organizations on matters of mutual interest;
  - g. to establish such institutions, institutes or other bodies as may be necessary for the achievement of its objects;

- h. to engage in the provision of such services as may be necessary for the benefit of the members or the sustainability of the Institution;
- i. to conduct such examinations, tests or other assessments as may be necessary to determine an applicant's eligibility for membership.
- j. advise the government, governmental agencies and the public on matters relating to land, the administration of land and the practice of survey in Kenya.
- k. do all such things as are incidental to the foregoing objects.

### **PART III – MEMBERSHIP**

Membership. 5. (1) The membership of the Institution shall consist of persons whose names are for the time being entered in the register kept under section 15.

Categories of Membership. (2). a. There shall be the following categories of membership in the Institution;

- i. honorary members
- ii. fellows
- iii. full members
- iv. graduate members
- v. technician members
- vi. student members
- vii. affiliate members
- viii. corporate members

b. Honorary members shall be persons;

- i. of eminence in the arts and sciences or of position or experience whose

membership would in the opinion of the Council, further the aims of the Institution and

- ii. who are not engaged in professional practice.
  
- c. Fellows shall be full members who;
  - i. have made invaluable contribution to the surveying profession or the Institution and
  - ii. have satisfied such requirements as may be prescribed by the Council, and
  - iii. are recommended by the Council to the general assembly for admission into fellowship
  
- d. Full members shall be persons who have;
  - i. had practical experience in the surveying profession of such a nature and for such period of time as the Council may approve, and
  - ii. passed such examination(s) approved by Council for such membership.
  
- e. Graduate members shall be persons who have;
  - i. a degree or higher national diploma in the surveying profession from a recognized university or its equivalent or attained such other training as may be approved by the Council or
  - ii. passed such examination(s) as may be approved by the Council for such membership.
  
- f. Technician members shall be persons who have;
  - i. attained such qualification as may be prescribed by the Council, or
  - ii. passed such examination(s) as may be approved by Council for such membership.

- g. Student members shall be persons who are undergoing a full-time or part-time course of instruction approved by the Council.
- h. Affiliate members shall be persons who hold a qualification in the relevant field from an institution recognized by the Council.
- i. Corporate members shall be limited liability companies incorporated by members in practice.
- j. such other categories as the Council may establish.

Membership  
fees

- 6. The members of the Institution as specified in section 5(1) shall pay such membership fees, subscriptions and penalties as the General Assembly may on recommendation to the Council from time to time determine

#### **PART IV – CERTIFICATE OF GOOD STANDING**

Requirements for  
certificate of good  
standing

- 7. (1) No person shall be issued with a practicing certificate unless he is the holder of a valid certificate of good standing.
- (2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a period not exceeding three years or to both.

Practicing as a  
Surveyor

- 8. (1) Subject to this section, a person practices as surveyor for the purposes of this Act if, in consideration of remuneration or other benefits received or to be received, and whether by himself, partnership or company with any person, such person engages in one or more of the following activities;
  - i. determines, measures and represents land, three-dimensional objects, point-fields and trajectories
  - ii. assembles and interprets land and geographically related information
  - iii. uses that information for the planning and efficient administration of land, the sea and any structures thereon

- iv. assesses the value of property
- v. manages property
- vi. plans, measures and manages construction works
- vii. analyzes, interprets and integrates spatial objects and phenomena in Geographical Information System, including the visualization and communication of such data in maps models and mobile digital devices.
- viii. manages, repairs and maintains built environments and slum/ urban renewal
- ix. manages housing and infrastructure development projects
- x. sells and lets property
- xi. Prepares and co-ordinates building and structural surveys.
- xii. conducts research into the above practices and to develop them
- xiii. and engages in any other activity that may be recognized by the profession.

Applying for a certificate of good standing

- 9 (1) A person wishing to practice as a surveyor shall apply to the Council for a certificate of good standing.
- (2) An application for a certificate of good standing shall be in the prescribed form.
- (3) A certificate of good standing shall be issued annually.

Issue of certificate of good standing

- 10 (1) Where an application is made by a person in accordance with section 9, the Council shall issue to such person, certificate of good standing if it is satisfied that the person :-
- a) meets the requirements prescribed under this Act
  - b) is a member of the Institution in good standing

- (2) A board shall not issue a person with a practicing certificate unless that person is the holder of a certificate of good standing issued by the Institution.
- (3) The Council may on the recommendation of the General Assembly, prescribe regulations for the issuance of certificate of good standing.

Certificate of good standing to remain the property of the Institution 11 (1) A certificate of good standing issued to any person shall remain the property of the Institution.

- (2) Where a certificate of good standing issued to any person ceases to be in force, the practicing certificate and annual license issued by a board shall immediately cease to be in force.

Application for registration 12 (1) A person wishing to be registered as a surveyor shall apply to the Council.

- (2) An application to be registered as a surveyor shall be in the prescribed form and shall be accompanied by the prescribed fees.
- (3) Where an application is made by a person in accordance with this section, the Council shall approve the application if it is satisfied that the person –
  - a) is qualified to be registered; and
  - b) is not disqualified from being registered, and if not satisfied, shall refuse the application

Qualification for registration 13 (1) Subject to this section, a person is qualified to be registered if the person -

- a) has passed the prescribed examinations
- b) holds a qualification approved by the Council

- (2) The Council may from time to time, by notice in the Gazette, approve qualification which it considers sufficient to allow a person to be registered as a member, and may, in like manner, withdraw such approval.
- (3) Notwithstanding, subsection (1) or (2), the Council may require a person making an application for registration to satisfy it in such manner as it may direct, that a person has –
- a) adequate knowledge of local law and practice
  - b) adequate experience in surveying; and
  - c) acceptable professional conduct and general character which, in the opinion of the Council, make such person a fit and proper person to be registered, and unless the person satisfies the Council, he shall not be treated as being qualified to be registered.

Disqualification from registration 14 (1) Subject to this section, a person is disqualified from being registered –

- a) if such person is convicted by a court of competent jurisdiction in Kenya or elsewhere of an offence involving fraud or dishonesty;
- b) if such person is an undischarged bankrupt;
- c) if such person is of unsound mind and has been certified to be so by a medical practitioner; or
- d) during any period when the person is serving sentence for professional misconduct;

(2) A person shall not be treated as disqualified under subsection (1) (a) of this section if the Institution, having regard to-

- a) the period which has elapsed since the conviction concerned; or
- b) the circumstances of the offence, determines that it would be unreasonable to so treat him.

(3) A person shall not be treated as disqualified under subsection (1)

(b) of this section if the Institution is satisfied that the bankruptcy of the person concerned arose as a result of unavoidable losses or misfortunes.

Register

- 15 (1) The Secretary to the Council shall cause to be kept a register in which shall be recorded-
- a) the name of any person whose application under section 13 of this Act is approved;
  - b) the fact that certificate of good standing is issued to any person or that any such certificate has ceased to be in force under this Act;
  - c) particulars of the cancellation of the registration of any person;
  - d) the fact that the registration of any person is restored under this Act;
  - e) details of firms engaged in the public practice of surveying, including their proprietors;
  - f) details of companies engaged in the public practice of surveying, including the directors; and
  - g) such other matters as the Council may determine.
- (2) The Secretary to the Council may with the approval of the Council, cause to be made such alterations in the register as are necessary to ensure that the matters recorded therein are accurate.
- (3) The register may at all reasonable hours, be inspected and copies of all or any part of any entry in the register taken-
- a) without payment by
    - i) any member of the police force or any public servant acting in the course of his duty; or
    - ii) any person authorized by the Secretary to the Council; or
    - iii) any other person on payment of such fee as may be prescribed

- (4) The register shall be received in proceedings before any court or tribunal as evidence of the matters recorded therein which are required by or under this Act to be so recorded.
- (5) A document purporting to be certified by the Secretary to the Council –
  - (a) to be a true copy of an entry in the register;
  - (b) stating that a person is not, or was not on a date specified in the document, registered; or
  - (c) stating that a person is not, or was not on a date specified in the document, the holder of a certificate of good standing shall be received in proceedings before a court or tribunal as prima facie evidence of any such matters contained in the entry or of that fact, as the case may be.

- Cancellation of registration
- 16 (1) Subject to this section, the Council shall cancel the registration of a member –
    - a) if determination that the registration of the member be cancelled is made upon recommendation after inquiry
    - b) if any circumstance arises which, if the member were then a person applying for registration, would disqualify him from being registered; or
    - c) if it is appropriate under subsection (3) of this section to do so.
  - (2) The Council shall not cancel the registration of a member under subsection (1) (b) unless it has afforded to the member an opportunity to show cause why his registration should not be cancelled.
  - (3) The Council may cancel the registration of a member of the Institution who fails to comply with the requirements of section 7.
  - (4) A person aggrieved by a determination of the Council under sections 14(1), and 16(1) may appeal to an arbitrator against such determination within twenty-one days of being notified of the determination.
  - (5) A person dissatisfied by a decision under subsection (5) may appeal to the High Court, which may affirm the determination of the Council or allow the appeal.

- Restoration 17 (1) When the registration of a member of the Institution is cancelled under section 16(1) (a), the Council shall restore the registration if on an appeal, the High Court allows the appeal.
- (2) The Council shall upon request restore the registration of a person whose registration is cancelled under section 16(1) (c).
- (3) The registration of a member shall be restored by recording in the register particulars of the restoration.
- (4) The registration of a member shall be cancelled by recording in the register particulars of the cancellation.

- Unqualified person not to act as a surveyor 18 (1) No unqualified person shall, either directly or indirectly, take instructions or draw or prepare any documents or instrument-
- a) relating to the determination, measurement and representation of land, three-dimensional objects, point fields and trajectories; or
- b) for assembling and interpreting land and geographically related information
- c) for the purpose of using information for the planning and efficient administration of land, sea and any structures thereon
- d) to assess the value and the management of property
- e) to plan, measure and manage construction works and any other work relating to the surveying profession.
- (2) Any money received by an unqualified person in contravention of this section may be recovered by the person by whom the same was paid as a civil debt recoverable summarily.
- (3) Any person who contravenes subsection (1) shall be guilty of an offence and is liable on conviction to a fine of one hundred thousand shillings or to imprisonment for a period not exceeding three years or to both.

Employment as in-house surveyor 19 (1) A person who is qualified to act as a surveyor under this Act may be employed as an in-house surveyor.

(2) A person who is employed as an in-house surveyor shall-

a) be an independent professional advisor to his employer;

Prohibition of employment of unregistered persons 20 (1) A person shall not employ or continue to employ any person to offer professional surveying services or works if that person is not registered under this Act.

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

(3) A person who contravenes any provision of this section commits an offence and is liable on conviction to a fine of one hundred thousand shillings or to imprisonment for a period not exceeding three years or to both.

## **PART V – COUNCIL**

Constitution of Council 21. (1) For the proper management of the affairs of the Institution there shall be a Council.

(2) The Council shall be composed of;

i. The Chairperson

ii. Deputy Chairperson

iii. The Chairpersons of the Standing Committees, who shall be designated vice- chairpersons of the Institution.

iv. The Chairperson and Secretary of each chapter of the Institution.

v. The Chairperson and Secretary of the branches of the Institution.

vi. The Chief Executive Officer of the Institution as an ex-officio member, who

shall be its Secretary.

- (3) Only full members shall be eligible for elections as members of the Council, except in respect of the Young Surveyors Committee, where Graduate, Technician and Student Members who shall have the right to vote and be elected.
- (4) The Chair and Deputy Chair of the Institution and the Chair of each Council committee mentioned in subsection (2) shall be elected by the General Assembly at its Annual General Meeting in respect of which elections have been notified.
- (5) No member of the Institution shall be eligible for election as Chair or Deputy Chair, and no member of the Institution shall put himself forward for such election, unless he is at the time of the election, or has at any time previously, been a member of the Council.
- (6) The Chair, the Deputy Chair and the other members of the Council shall take office immediately after the annual general meeting of the Institution.
- (7) All officials of the Institution shall serve a term of two years and be eligible for re-election, but shall not serve for more than two terms in the same

Provided that, in the event of the death, resignation, removal or disqualification of the Chair, the Deputy Chair or any other member of the Council during his term of office, the vacancy so created may be filled by the Institution.

- i. In the case of the Chair or Deputy Chair, from persons who are then, or have at any time previously been, members of the Council;
- ii. In the case of any other member, from among the members of the Institution.

Powers of Council 22 (1) Except as otherwise expressly provided by this Act or by any regulations made under this Act, the Council may exercise all the powers of the Institution; and no regulations made under this Act shall invalidate any prior act of the Council which would have been valid if the regulations

had not been made.

- (2) Subject to this Act, all acts and things done in the name of, or on behalf of the Institution, by the Council or with the authority of the Council shall be deemed to have been done by the Institution.
- (3) The Council shall issue standards of professional practice which shall form the basis of practice for members of the Institution.
- (4) The Council may issue by-laws, regulations and guidelines to govern matters affecting the operations of the Institution and practice by members of the Institution.

Chapters of the Institution 23. (1) The Council may on its own volition, or on request in writing by a chapter or member(s) recommend to the General Assembly the establishment of such chapters as are necessary for the performance of the functions of the Institution and may, subject to the provisions of this Act, delegate powers conferred on it to such chapters.

- (2) The Council may on its own volition or on request in writing by a chapter or member(s), create, split, amalgamate or abolish a chapter(s).
- (3) In deciding on the merit for creation, splitting, amalgamation or abolishing of a chapter(s), the Council shall consider;
  - i. the divergence of the discipline from the existing disciplines in various chapters and its relevance to surveying profession.
  - ii. the prospects for growth of that discipline.
  - iii. the number of members practicing the discipline.
  - iv. requirements and or qualifications of practitioners of that discipline.
- (4) Each chapter shall elect its Chair and Secretary and any other official necessary for the proper functioning of the chapter, at a meeting of the chapter in respect of which elections have been notified.

(5) Elections within the chapter shall follow as appropriate the provisions of this Act and regulations on elections.

- Committee's of  
Council 24. (1) The Council may on its own volition, or on request in writing by a chapter or member(s) recommend to the General Assembly the establishment of such committees as are necessary for the performance of the functions of the Institution and may subject to the provisions of this Act, delegate powers conferred on it to such committees.
- (2) Any committee established under subsection (1) may with the prior approval of the Council, co-opt additional members, and any such additional member, may, but need not, be a member of the Institution.
- (3) The Council may on its own volition, or on request in writing by a chapter or member(s) establish an ad hoc committee or committees as are necessary

Branches 25. (1) The Council may on its own volition, or on request in writing by a chapter(s) or member(s) recommend to the General Assembly the establish such branches as are necessary for the proper management of the affairs of the Institution and may subject to the provisions of this Act, delegate powers conferred on it to such branches.

Procedure 26. The procedure of the Council, branches and of every committee established under sections 22, 23 and 24 shall be as may be prescribed from time to time.

Secretary to the  
Council 27 (1) There shall be a Secretary to the Council who shall be appointed by the Council.

(2) The Secretary to the Council shall be the Chief Executive Officer of the Institution.

(3) The Secretary to the Council shall hold and vacate the office of Secretary in accordance with the terms of the instrument of appointment to that office.

- (4) In addition to the functions which he is required to exercise and perform by or under this Act, the Secretary to the Council shall exercise and perform such other functions as the Council may from time to time determine.

- Examinations 28. (1) The Council shall administer such examinations as it may deem necessary for qualification of the various categories of membership.
- (2) Curricular for such examination shall be formulated by each chapter of the Institution and approved by the Council.
- (3) The Council in consultation with the regulatory boards may appoint such examiners and officials as it deems necessary for the holding of any examinations for membership of the Institution.
- (4) In performing its functions under this section, the Council shall consult regulatory boards and any other appropriate stakeholders, as often as it considers necessary to do so for the purpose of exercising and performing its functions.

## **PART VI – GENERAL MEETINGS**

- Annual general meeting 29. An annual general meeting shall be held every year at intervals of not more than 14 months.

Provided that there shall be an annual general meeting in every calendar year.

- Special general meetings 30.(1) The Council may at any time at its own discretion convene a special general meeting of the Institution.

- (2) The Council may call a special general meeting for any specific purpose.
- (3) Notice in writing of such meeting accompanied by the agenda for the

meeting shall be sent to all eligible members not less than fourteen days before the date of the meeting, and no matter shall be discussed other than that stated in the agenda.

- (4) A special general meeting may also be requisitioned by not less than ten per cent of the members in a notice in writing to the chair.
- (5) Such meeting shall be held within twenty-one days of the requisition.
- (6) Notice in writing of such meeting accompanied by the agenda for the meeting shall be sent to all eligible members not less than twenty-one days before the date of the meeting and no matter shall be discussed other than that stated in the requisition.

- |  |   |
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| Quorum   | <p>31 (1) The quorum for any annual or special general meeting shall be one-fifth of the eligible members of the Institution.</p> <p>(2) In the event that no quorum is attained a subsequent meeting shall be held not less than twenty-one and not more than thirty days from the date of the aborted annual or special general meeting as the case may be.</p> <p>(3) Such subsequent meeting shall be held whether or not the requisite quorum is attained.</p> |
| General meeting to act by simple majority vote | <p>32 . Except for any purpose for which a special resolution is expressly required by this Act or by any regulations made under this Act, all resolutions of the Institution in general meeting shall be by simple majority vote.</p>  |
| Alteration of resolutions                      | <p>33. No resolution of the Institution in general meeting shall be altered or rescinded within nine months after the passing thereof otherwise than by a special resolution of the special general meeting.</p>  |

- Convening and procedure 34. The manner of convening general meetings of the Institution and the procedure and voting thereat shall subject to any express provision of this Act, be as may be prescribed from time to time.

### **PART VII – COMMON SEAL**

- Common seal 35. The common seal of the Institution shall be kept in such custody and used in such manner as may be prescribed from time to time.

### **PART VIII – MISCELLANEOUS**

- Staff of the Institution 36. (1) The Institution may engage and employ such persons as are necessary for the discharge of their respective functions under this Act, on such terms and conditions as may be specified in the instruments of appointment.

(2) The terms and conditions of employment of staff employed under this section shall be as may be determined by the Council.

(3) For the purposes of subsection (2) “terms and conditions” includes conditions with respect to the duration of employment or with respect to dismissal from employment.

- Protection from liability 37. No liability shall attach to the Institution or to any of its members, employees or agents for any loss or damage sustained by any person as a result of any act or omission done or made in good faith and without negligence in the performance or exercise or the intended performance or exercise of any duty or power imposed or conferred by or under this Act.

- Accounts to be kept 38. (1) The Council shall cause proper accounts of all funds, property, assets and liabilities of the Institution to be kept and to be audited as on the 31<sup>st</sup> December, in every year.

- (2) The audited accounts shall be presented by the Council to the annual general meeting.

Annual report	39. The Council shall present to the annual general meeting a full report of the activities of the Institution.
Vacancy in membership	40. Council may exercise and perform its functions notwithstanding any vacancy among the members and the validity of any proceedings of the Council shall not be affected by any such vacancy or any defect in the appointment of a member.
Appointment of interim managers	41. (1) Where a member in private practice suffers incapacitation, the Council may appoint a person, in this section referred to as an interim manager, to conduct the professional affairs of that member for a duration not exceeding two years in accordance with the regulations. (2) The interim manager appointed under subsection (1) shall be the holder of a practicing certificate issued in accordance with the provisions of the relevant Act.
Rules and Regulations	42. The Council may make relevant rules and regulations prescribing anything which is required to be prescribed under the provisions of this Act.
References to surveyor	43. Where in any written law, any reference is made (in whatsoever terms) or is implied as referring to a surveyor, such reference or implied reference shall be deemed to refer to the holder of a practicing certificate or to the holders of practicing certificates.