

REPUBLIC OF SOUTH AFRICA

AGRÉMENT SOUTH AFRICA BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 38396 of 16 January 2015)
(The English text is the official text of the Bill)*

(MINISTER OF PUBLIC WORKS)

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BILL

To provide for the establishment of Agrément South Africa as a juristic person; to determine its objects, powers and duties; to prescribe the manner in which it is managed and governed; to provide for transitional arrangements; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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Definitions

1. (1) In this Act, unless the context indicates otherwise—
- “**Agrément Certificate**” means a certificate issued by Agrément South Africa in terms of this Act;
- “**Board**” means the Board contemplated in section 10; 5
- “**certificate holder**” means the person or entity in whose name an Agrément Certificate is issued;
- “**certified**” means certified in terms of this Act;
- “**committee**” means a committee of the Board established under or in terms of this Act; 10
- “**competent person**” means a person who is qualified by virtue of his or her experience and training;
- “**construction industry**” means the broad conglomeration of industries and sectors which add value in the creation and maintenance of fixed assets within the built environment; 15
- “**construction related product or system**” means a product, material, component, element, system, method, assembly, process or procedure intended for use in the construction of a building or infrastructure within the built environment;
- “**fit-for-purpose**” means a construction related product or system’s ability to be consistently developed, manufactured, applied and installed such that it fulfills its intended purpose; and “**fitness-for-purpose**” has a corresponding meaning; 20
- “**Minister**” means the Minister responsible for public works;
- “**non-standardised construction related product**” means a construction related product or system, which may not necessarily be regarded as innovative and for which no SABS standard specification exists or which falls outside the scope and requirements of an existing SABS standard specification; 25
- “**organ of state**” means an organ of state as defined in section 239 of the Constitution, 1996;
- “**PFMA**” means the Public Finance Management Act, 1999 (Act No.1 of 1999), as amended; 30
- “**prescribe**” means to prescribe by—
- (i) rules issued by Agrément South Africa; or
- (ii) regulations issued by the Minister in terms of this Act;
- “**quality management systems**” means the systems developed for the control or quality of production and installation or erection of certified construction related products or systems based on the general principles and requirements of any relevant approved SABS standard; 35
- “**SABS**” refers to the South African Bureau of Standards, whose continued existence is provided for in the Standards Act, 2008 (Act No. 8 of 2008); and
- “**this Act**” includes a rule or regulation issued in terms of this Act. 40

Administrative justice

2. (1) Any administrative process conducted or decision taken in terms of this Act must be conducted or taken in accordance with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), unless otherwise provided for in this Act.
- (2) All notices required in terms of this Act shall be submitted in writing. 45

Agrément South Africa

3. (1) Agrément South Africa, which was established by the Minister and which exists when this Act takes effect continues so to exist and is a juristic person.
- (2) The PFMA applies to Agrément South Africa.

Objects 50

4. The objects of Agrément South Africa are to—
- (a) provide assurance to specifiers and users of the fitness-for-purpose of non-standardised construction related products or systems;
- (b) support and promote the process of integrated socio-economic development in the Republic as it relates to the construction industry; 55

- (c) support and promote the introduction and use of certified non-standardised construction related products or systems in the local or international market;
- (d) support policy makers to minimize the risk associated with the use of a non-standardised construction related product or system; and
- (e) be an impartial and internationally acknowledged South African centre for the assessment and confirmation of fitness-for-purpose of non-standardised construction related products or systems. 5

Powers and duties

5. (1) In order to achieve its objects, Agrément South Africa may exercise the power to— 10
- (a) assess and, if satisfied, certify the fitness-for-purpose of a non-standardised construction related product or system;
 - (b) issue, amend, suspend, reinstate, withdraw or renew an Agrément Certificate;
 - (c) enter into an agreement with a person, entity or organ of state, whose services are required to achieve an object or perform a function of Agrément South Africa or the Board; 15
 - (d) provide services in relation to the objects of Agrément South Africa to a person, entity or organ of state; and
 - (e) exercise any other power as may be prescribed or necessary to achieve the objects of Agrément South Africa. 20
- (2) In order to achieve its objects Agrément South Africa has the duty to—
- (a) create appropriate structures to execute its executive and operational functions;
 - (b) develop any rules, processes, procedures, criteria or guidelines necessary to achieve the objects of Agrément South Africa and the execution of its duties; 25
 - (c) monitor and evaluate the quality management systems of a certified construction related product or system, in its manufacture, application, installation or erection processes;
 - (d) communicate relevant information to stakeholders in respect of the technical, socio-economic and regulatory aspects of a non-standardised construction related product or system certified by Agrément South Africa; 30
 - (e) support and promote the introduction and use of certified non-standardised construction related products or systems in the local or international market;
 - (f) establish and maintain international links with peer organizations;
 - (g) open and operate a banking account in the name of Agrément South Africa; 35
 - and
 - (h) encourage research and development of non-standardised construction related products or systems.
- (3) Agrément South Africa may—
- (a) acquire or dispose of property or a right in respect thereof, but immovable property may only be acquired or disposed of with the prior written consent of the Minister; 40
 - (b) invest its funds not immediately required;
 - (c) insure Agrément South Africa against any— 45
 - (i) loss, damage or risk; or
 - (ii) liability it may incur in the application of this Act;
 - (d) institute or defend legal action;
 - (e) determine, charge and collect fees for any services rendered and product and document produced;
 - (f) charge interest in respect of money due to it from the day after such money becomes due and payable; and 50
 - (g) grant a person, entity or organ of state an exemption from the payment of any fee, or a portion thereof.
- (4) The powers and duties of Agrément South Africa must be exercised and performed impartially and without undue influence. 55

Certification

6. (1) Agrément South Africa must make rules in terms of section 28 to determine the processes, procedures and forms for and relating to the—
- (a) issuing;

- (b) amendment;
 - (c) suspension;
 - (d) reinstatement;
 - (e) withdrawal; or
 - (f) renewal, 5
- of an Agrément Certificate.
- (2) Subject to the payment of the required fees, Agrément South Africa must issue a certificate in the prescribed form, if it is satisfied that a non-standardised construction related product or system is fit-for-purpose.
- (3) An Agrément Certificate is valid for three years from the date of issue thereof, 10 subject to—
- (a) there being no changes to the subject matter for which such certificate is issued;
 - (b) the conditions of certification as stipulated thereon;
 - (c) changes in the law or national standard. 15
- (4) Agrément South Africa may, by notice to a certificate holder stipulating the reasons therefor and the effective date thereof—
- (a) amend, suspend or withdraw a condition stipulated in the Agrément Certificate or impose a new condition; or
 - (b) amend, suspend or withdraw the Agrément Certificate. 20
- (5) It is an offence for a person to falsely represent that a construction related product or system is certified by Agrément South Africa, if an Agrément Certificate has not been issued for such product or system or if such certificate has been suspended or withdrawn in terms of subsection (4).
- (6) A person who commits an offence in terms of subsection (5) is liable on conviction 25 to a fine or to imprisonment for a period not exceeding three years.

Renewal of certificate

7. (1) A certificate holder must, at least three months prior to the expiry of the existing Agrément Certificate, apply to Agrément South Africa for the renewal of such certificate. 30
- (2) Agrément South Africa may condone the late application for the renewal of the certificate referred to in subsection (1).
- (3) An application for renewal referred to in subsection (1) must be in the prescribed form and accompanied by the prescribed fee.

Keeping of register 35

8. (1) Agrément South Africa must establish and maintain a register of the applications rejected and certificates issued, amended, suspended, reinstated, withdrawn and renewed.
- (2) Agrément South Africa must make the register available to the public on its website. 40
- (3) Agrément South Africa must by notice in the *Gazette* publish the details to be recorded in the register.
- (4) A certificate holder must, in writing, notify Agrément South Africa of changes to its details recorded in such register within 30 days after such a change.

Board of Agrément South Africa 45

9. (1) Agrément South Africa is governed by the Board.
- (2) The Board is the accounting authority of Agrément South Africa and consists of—
- (a) a minimum of seven members, but not more than eleven members appointed by the Minister; and
 - (b) the Chief Executive Officer by virtue of his or her office. 50
- (3) The Chief Executive Officer is a non-voting member on the Board.

Appointment of members of Board

10. (1) The members of the Board referred to in section 9(2)(a) must be competent persons with—
- (a) experience and expertise in one or more of the following— 55

- (i) facets of construction, particularly as it relates to innovation, infrastructure development, housing, quality assurance and certification;
 - (ii) business management, finance, law or marketing;
 - (iii) international or foreign standardization and technical infrastructure matters; or
 - (iv) the application of the construction regulations and the enforcement thereof; and
- (b) specialist knowledge about the needs and functions in one or more of the following sectors of the construction industry—
- (i) organs of state regulating the construction industry;
 - (ii) providers of buildings and infrastructure, including materials and products;
 - (iii) relevant technical, scientific and professional institutions and associations; and
 - (iv) relevant community based structures, including non-governmental organisations.
- (2) When members for a new term of office on the Board are to be appointed, the Minister must, not less than three months prior to the expiry of the term of office of the sitting Board, appoint a selection committee to select the members of the Board in accordance with the procedure contemplated in subsection (3).
- (3) The selection committee must—
- (a) publish a notice in at least two official languages in—
 - (i) the *Gazette*; and
 - (ii) two nationally circulated newspapers, calling for applications, on the prescribed form, of persons as candidates for membership on the Board;
 - (b) compile a shortlist of candidates for appointment;
 - (c) screen and interview shortlisted candidates;
 - (d) recommend candidates for appointment by the Minister within 60 days from the closing date for applications; and
 - (e) compile a list of eligible candidates which were not shortlisted.
- (4) The notice referred to in subsection (3)(a) must include—
- (a) an explanation of the selection process;
 - (b) the criteria to qualify for selection; and
 - (c) the closing date for submission of applications.
- (5) The Minister must, within 30 days from the date of receipt of the recommendations of the selection committee, appoint the members of the Board.
- (6) Notwithstanding subsections (2), (3), (4) and (5), in the event where no applications or insufficient qualifying applications are received to fill all seats on the Board, the Minister may, subject to section 9(2)(a), appoint any number of members of his or her choice who comply with the requirements of this Act.
- (7) The Minister must designate one member of the Board as chairperson.
- (8) The members of the Board are appointed in their personal capacity.
- (9) The names of the members of the Board and the date of commencement of their term of office must be published by the Minister in the *Gazette* and in at least two nationally circulated newspapers within 60 days after the members are appointed.

Term of office of members of Board

- 11.** (1) The appointed members of the Board hold office for a period not exceeding three years, but members continue in office until the new members of the Board take office.
- (2) A member of the Board may not serve for more than two consecutive terms of office.

Disqualification from membership

- 12.** A person may not be appointed or continue to serve as a member of the Board if he or she—
- (a) is not a South African citizen and ordinarily resident in the Republic;
 - (b) is an unrehabilitated insolvent, whose insolvency was caused by his or her negligence or incompetence;

- (c) has been employed by Agrément South Africa as a consultant in the past three financial years;
- (d) is a supplier or customer, has a contractual relationship with or is a professional advisor to Agrément South Africa;
- (e) is a person who has been removed from an office of trust on account of misconduct; 5
- (f) is a person who has been convicted—
 - (i) in South Africa of an offence other than an offence committed prior to 27 April 1994, associated with political objectives, and was sentenced to imprisonment without the option of a fine, or, in the case of fraud or corruption, to a fine or imprisonment or both; 10
 - (ii) in a foreign country of an offence, which is also an offence in South Africa, and was sentenced to imprisonment without an option of a fine or, in the case of fraud or corruption, to a fine or imprisonment or both;
- (g) is declared by a court to be mentally ill or unfit; or 15
- (h) has, in terms of this Act or any Act regulating his or her profession, been found guilty of unprofessional conduct.

Vacation of office

13. (1) The Minister may, on reasonable grounds, at any time after consulting the Board, terminate the term of office of a member of the Board contemplated in section 9(2)(a). 20

(2) The Minister may terminate membership of a member of the Board if the member—

- (a) fails to perform his or her functions as a member of the Board;
 - (b) obstructs, impedes or unduly influences a member of the Board, the Chief Executive Officer or a staff member of Agrément South Africa in the exercise of a power or the performance of his or her duties in terms of this Act; 25
 - (c) fails to declare a conflict between his or her interests and those of Agrément South Africa;
 - (d) acts in a manner that is likely to bring Agrément South Africa and the Board into disrepute; 30
 - (e) misuses or misappropriates Agrément South Africa funds or resources; or
 - (f) approves or engages in unauthorised or irregular expenditure or fruitless and wasteful expenditure.
- (3) A member of the Board must vacate his or her office if he or she— 35
- (a) becomes disqualified in terms of section 14;
 - (b) resigns by giving at least two months' written notice to the Minister;
 - (c) has been absent without leave of the chairperson of the Board from more than two consecutive meetings of the Board;
 - (d) is removed by the Minister in terms of subsection (1); or 40
 - (e) is a member of the Board and the Minister dissolves the Board in terms of section 14(6).

(5) The Minister must, within 60 days from the date on which a vacancy on the Board arose, appoint a person to fill such vacancy, and a member so appointed holds office for the remainder of the term. 45

Dissolution of Board

14. (1) If the Minister, on reasonable grounds, believes that the Board is not performing its obligations under this Act or the PFMA, the Minister may, in writing, request copies of the records, including minutes of meetings and financial statements of Agrément South Africa in order to ascertain the extent of the Board's compliance or non-compliance with this Act or the PFMA. 50

(2) The Chief Executive Officer must furnish the copies of the records requested by the Minister in terms of subsection (1) within 15 days from the date of the Minister's request.

(3) The Minister may appoint an investigator to— 55

- (a) investigate the affairs of the Board; and
- (b) prepare a report in respect of such investigation for the Minister.

(4) An investigator shall be given access to all documentation or information relevant to the investigation held by or on behalf of Agrément South Africa.

(5) A member of the Board, the Board, the Chief Executive Officer, staff of Agrément South Africa or a person appointed by Agrément South Africa must co-operate fully with an investigation conducted by the investigator.

(6) The Minister may dissolve the Board by notice in the *Gazette*, after consultation with the members of the Board on an enquiry contemplated in subsection (1) or an investigation contemplated in subsection (3). 5

(7) If the Board is dissolved in terms of subsection (6), the Minister shall exercise the powers and perform the duties of the Board in terms of this Act and the PFMA until a new Board is appointed.

Remuneration and allowances of members of Board 10

15. (1) A member of the Board, other than a person who is in the employ of an organ of state and in receipt of a salary from public funds, shall receive such remuneration and allowances as the Minister, with the concurrence of the Minister responsible for finance, may determine.

(2) Members of the Board who are employed by an organ of state must be reimbursed for out-of-pocket expenses. 15

Chairperson

16. (1) The chairperson designated in terms of section 10(7) holds office during his or her term of office as a member of the Board.

(2) The chairperson may designate another member of the Board to perform his or her functions during the chairperson's absence. 20

(3) If the chairperson is absent or unable to perform his or her functions in terms of the Act and has not, for whatever reason, made a designation in terms of subsection (2), the members of the Board must elect one of the members to act as chairperson until the chairperson resumes duty or vacates office. 25

(4) A chairperson may, after giving 30 days' notice to the Minister, vacate office as chairperson of the Board.

Meetings of Board

17. (1) The Board must meet at least four times a year.

(2) Subject to section 29(3), the Minister must, within 30 days of the appointment of members to a new term of office on the Board, determine the time and place of the first meeting of the Board. 30

(3) The Board must determine the time and place of any future meeting.

(4) (a) The chairperson may, at any time, convene a special meeting of the Board, to be held on such a date and at such place as he or she may determine. 35

(b) The chairperson must, upon a written request by the Minister, convene a special meeting to be held on such a date and at such place as determined by the Minister.

(c) The chairperson must, upon a written request by a majority of the members of the Board, convene a special meeting to be held, within 30 days after the date of receipt of the request, on such date and at such place as the chairperson may determine. 40

(d) The request referred to in paragraphs (b) and (c) must clearly state the purpose of the special meeting.

(5) Subject to the approval of the chairperson, a person may attend or take part, but may not vote, in a meeting of the Board.

(6) A majority of the members constitutes a quorum for a meeting of the Board. 45

(7) Decisions of the Board require the supporting vote of a majority of members present at a meeting.

(8) In the event of an equality of votes, the member presiding has a casting vote in addition to a deliberative vote.

(9) The Board may take a decision without a meeting of the Board, provided that a written consent, detailing the decision taken, is signed by all voting members of the Board. 50

(10) The Board must keep minutes of its proceedings and decisions.

(11) (a) Members of the Board may participate in and act at any meeting through telephone or video conference or any other electronic communication equipment by means of which all persons participating in the meeting can communicate with each other. 55

(b) Participation in a meeting through methods referred to in paragraph (a) shall constitute attendance and presence in person at the meeting of the person or persons so participating.

(12) The Board may regulate the proceedings at its meetings as it may deem fit.

Conflict of interest of member of Board

5

18. (1) A member of the Board may not have a conflict of interest with Agrément South Africa.

(2) A member of the Board may not, during and for a period of two years following the lapse or termination of his or her term of office, directly or indirectly enter into a contractual relationship with Agrément South Africa for the supply of any goods or services.

(3) A member of the Board who has a direct or indirect financial, personal or other interest in any matter which is to be discussed at a meeting and which entails or may entail a conflict or possible conflict of interest must, before or during such meeting, declare the interest.

(4) A person may, in writing, inform the chairperson of a meeting, before a meeting, of a conflict or possible conflict of interest of a member of the Board of which such person may be aware.

(5) A member of the Board referred to in subsections (3) and (4) is obliged to recuse himself or herself from the meeting during the discussion and voting of the matter in which he or she has an interest.

Committees

19. (1) The Board may establish one or more committees, which must perform the functions determined by the Board.

(2) The Board must determine the composition, processes and procedures of such committees.

(3) A committee established under subsection (1) performs the relevant functions subject to the instructions of the Board.

(4) The Board may, from time to time, dissolve or reconstitute a committee established in terms of subsection (1).

(5) If a committee consists of more than one member, the Board must designate a member of that committee to act as chairperson.

Chief Executive Officer

20. (1) Subject to section 29(4), the Board must appoint a suitably qualified, experienced and competent person as the Chief Executive Officer.

(2) The Chief Executive Officer holds office for a period not exceeding five years and may be reappointed upon the expiry of his or her term of office.

(3) The appointment of the Chief Executive Officer is subject to such conditions as the Board determines, which includes the determination of remuneration and allowances in accordance with a system approved by the Minister in consultation with the Minister responsible for finance.

(4) The Chief Executive Officer must enter into a performance agreement with the Board on acceptance of the appointment.

(5) The Chief Executive Officer—

(a) is accountable to the Board with regard to the functions assigned or delegated to him or her in terms of this Act or by the Board;

(b) must manage and control the daily activities of Agrément South Africa, in accordance with the business and financial plans of the Board; and

(c) may not, during and for a period of two years following the lapse or termination of his or her period of appointment, directly or indirectly enter into a contractual relationship with Agrément South Africa for the supply of any goods or services.

Staff

21. (1) The Chief Executive Officer must, after consulting the Board, appoint staff to enable Agrément South Africa to effectively execute its functions.

(2) Agrément South Africa pays its staff out of its funds such remuneration, allowances, subsidies and other benefits as the Board determines in accordance with a system approved for that purpose by the Minister, with the concurrence of the Minister responsible for finance. 5

(3) An employee of an organ of state may, subject to the Public Service Act, 1994 (Act No. 103 of 1994), or any other Act, be seconded to Agrément South Africa.

Delegation

10

22. (1) The Board may delegate any of its powers in terms of this Act, except the power to make rules under section 27, to the Chief Executive Officer, a committee, a staff member or a member of the Board.

(2) The Chief Executive Officer may delegate any of his or her powers in terms of this Act, to a staff member. 15

(3) Any delegation under subsections (1) and (2) must be in writing and—

(a) is subject to any limitation or condition imposed in terms of this Act or by the Board or Chief Executive Officer, as the case may be;

(b) does not prevent the exercise of that power in question by the Board or the Chief Executive Officer; and 20

(c) does not divest the Board or Chief Executive Officer of responsibility for a function or power so delegated.

Funding and investments

23. (1) The funds of Agrément South Africa consist of—

(a) moneys appropriated by Parliament for the achievement of the objectives of Agrément South Africa; 25

(b) income derived by virtue of the exercise and performance of its powers and duties;

(c) donations or contributions received by Agrément South Africa from any source with the approval of the Minister; and 30

(d) any other income, including interest earned on any investment made in terms of this section.

(2) Agrément South Africa must—

(a) use its funds to defray expenses incurred by it in the exercise of its powers and the performance of its duties; and 35

(b) use donations or contributions contemplated in subsection (1)(c) for such purposes and in accordance with such conditions, if any, as are specified by the donor or contributor concerned, with the approval of the Minister.

(3) Agrément South Africa may invest any of its funds not immediately required—

(a) subject to any investment policy that may be prescribed in terms of section 7(4) of the PFMA; and 40

(b) in such manner as may be prescribed by the Minister.

(4) The Board may, with the approval of the Minister and the Minister responsible for finance, authorise the establishment of such reserve funds and deposit such amounts therein as the Board deems necessary and desirable. 45

(5) The Board must in each financial year, at such time as determined by the Minister, submit a statement of the Board's estimated income and expenditure for the following year to the Minister for his or her approval.

(6) The Board must comply with the applicable provisions of the PFMA.

Financial year and accounting

24. The financial year of Agrément South Africa is from 1 April in any year to 31 March in the following year, but the first financial year is from the date of the coming into operation of this Act to 31 March of the following year.

Breach of confidence 5

25. (1) A person who is or was involved in the exercise of a power or performance of a duty in terms of this Act, may not disclose any information which he or she obtained in the exercise of such power or performance of such function.

(2) Subsection (1) does not apply to information disclosed—

- (a) to the Minister, chairperson of the Board or Chief Executive Officer; 10
- (b) for the purpose of proper administration or enforcement of this Act;
- (c) in terms of a law or as evidence in a court of law; or
- (d) for the purpose of the administration of justice.

Limitation of liability

26. Neither Agrément South Africa nor any of its employees is liable for any damages or loss caused by—

- (a) the exercise of a power or performance of a duty under this Act; or
 - (b) the failure to exercise a power, or perform a duty under this Act,
- unless the exercise of or failure to exercise the power, or performance or failure to perform the duty was unlawful, grossly negligent or in bad faith. 20

Rules

27. Agrément South Africa may, by notice in the *Gazette*, make rules with regard to—

- (a) any matter that it is required or permitted to be prescribed in terms of this Act; and
- (b) any other matter for the better execution of this Act or in relation to any power granted to or duty imposed on it by this Act. 25

Regulations

28. (1) The Minister may make regulations regarding any ancillary or incidental administrative or procedural matter that is necessary to prescribe for the proper implementation or administration of this Act. 30

(2) (a) Before the Minister makes a regulation, the Minister must publish a draft regulation in the *Gazette* together with a notice calling on interested persons to comment in writing within a period stated in the notice, but the period may not be less than 30 days from the date of publication of the notice.

(b) If the Minister alters the draft regulations as a result of any comment, the Minister need not publish those alterations before making the regulations. 35

(3) The Minister may, if circumstances necessitate the immediate publication of a regulation, publish that regulation without consultation as contemplated in subsection (2).

Transitional provisions 40

29. (1) For purposes of this section—

“**current Board**” means the Board of Agrément South Africa appointed by the Minister prior to the commencement date; and

“**current CEO**” means the Chief Executive Officer of Agrément South Africa, who is in office prior to the commencement date. 45

- (2) From the commencement date—
- (a) all notices, designations and certificates issued by the current Board remain in effect as though they were issued in terms of this Act;
 - (b) all assets, liabilities, rights and obligations of the current Board remain the assets, liabilities, rights and obligations of Agrément South Africa; 5
 - (c) the members of the current Board are deemed to be members of the Board of Agrément South Africa, established in terms of this Act, and will remain in office for the unexpired period of their term of office; and
 - (d) any criteria set and document issued by the current Board remain in effect as though they were set and issued in terms of this Act. 10
- (3) The Chairperson of the current Board shall, within 30 days of the commencement date, convene a meeting of the Board.
- (4) The current Chief Executive Officer will remain in office for the duration of his or her contract.
- (5) Any action taken by Agrément South Africa prior to the commencement of this Act is deemed to have been taken in terms of this Act. 15

Short title and commencement

30. (1) This Act is called the Agrément South Africa Act, 2015, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE AGRÉMENT SOUTH AFRICA BILL, 2015

1. BACKGROUND

- 1.1 The Board of Agrément South Africa was established through a delegated authority by the Minister of Public Works in 1969. The delegation to the Board of Agrément South Africa was subsequently revised and updated in 1999 by the then Minister of Public Works, the Hon. JT Radebe, MP. The Board of Agrément South Africa is mandated to, among others, evaluate the fitness-for-purpose of non-standardised construction related products or systems for use in the construction industry, and for which a national standard does not exist.
- 1.2 The Board of Agrément South Africa serves a national interest by being internationally acknowledged as an independent South African centre serving the building and engineering communities by providing assurance to specifiers and users through technical approvals of the fitness-for-purpose of such non-standardised construction related products or systems.
- 1.3 A review of the performance of the Board of Agrément South Africa has revealed that its lack of legal status, as well as it reporting to two Ministries (that of Public Works and of Science and Technology), has negatively impacted on the effective discharge of its mandate. The Board of Agrément South Africa's lack of legal status has, in addition, created ongoing audit challenges regarding the classification of the financial transfers made to it, through the Department of Public Works. Due to the Board's current lack of legal status, transfers made by the Department of Public Works to Agrément South Africa, under transfers and subsidies, are being classified by the Auditor-General as irregular.

2. PURPOSE OF THE BILL

- 2.1 The Bill seeks to establish Agrément South Africa as a juristic person and make the Public Finance Management Act, 1999 (Act No 1 of 1999), as amended, applicable to it. The objects of Agrément South Africa are reaffirmed in the Bill, as follows:
 - (a) To provide assurance to specifiers and users of the quality and value for money of non-standardised construction related products or systems. Agrément South Africa assesses the fitness-for-purpose of such products or systems, and if satisfied with the quality thereof, Agrément South Africa may certify fitness-for-purpose through the issuing of an Agrément Certificate. Agrément South Africa provides continued assurance by monitoring and evaluating, on an ongoing basis, the quality management systems of a certified product or system, in its manufacture, application, installation or erection processes;
 - (b) to support and promote the process of integrated socio-economic development in the Republic as it relates to the construction industry, encouraging research and development of non-standardised construction related products or systems to support socio-economic development;
 - (c) to support the introduction and use of a certified non-standardised construction related product or system in the local or international market. Agrément South Africa must establish and maintain liaison with similar international organizations to promote the export or facilitate the import of certified products or systems, for use in the construction industry;
 - (d) to support policy makers to minimize the risk associated with the use of a non-standardised construction related product or system. Agrément South Africa will communicate relevant information to stakeholders in respect of the technical, socio-economic and regulatory aspects of a product or system it certifies; and
 - (e) to be an impartial and internationally acknowledged South African centre for the assessment and confirmation of fitness-for-purpose of

non-standardised construction related products or systems. The Bill requires Agrément South Africa to maintain existing and to establish and maintain new international links with peer organizations.

2.2 The Bill further—

- (a) empowers Agrément South Africa to determine and charge fees for the rendering of services and for products and documents produced. Agrément South Africa may grant a person or entity exemption from fees or any portion thereof. The aim is to ensure that a certification is not rejected purely on a person's inability to pay the prescribed fee or charge;
- (b) details the general operation and administrative powers granted to Agrément South Africa, such as the power to open and operate a bank account, to invest funds, to institute and defend legal actions and to create appropriate structures to execute its executive and operational functions. The Bill also empowers Agrément South Africa to acquire and dispose of property, but its power to dispose of immovable property is subject to the consent of the Minister of Public Works;
- (c) provides for an Agrément Certificate to be valid for a period of three years, subject to the conditions specified therein. Agrément South Africa is empowered to amend or withdraw a condition stipulated in a Certificate or to impose a new condition and to renew, suspend or withdraw a Certificate. The Bill makes it an offence for such certificate holder, after the suspension or withdrawal of a certification, to falsely represent that the product or system is certified by Agrément South Africa;
- (d) requires Agrément South Africa to keep and maintain a register of certificates issued, suspended or withdrawn by it. The register is to be made available to the public on its website;
- (e) provides for the establishment of a Board to govern Agrément South Africa. The Board will be the accounting authority of Agrément South Africa. The Bill empowers the Board to appoint any number of committees to perform functions determined by the Board for the achievement of the objects of Agrément South Africa;
- (f) provides for the appointment of a Chief Executive Officer, to perform functions entrusted to him or her therein and to manage and control the daily activities of the Board; and
- (g) provides, on the commencement date, for the current Board to continue in office until expiry of its term of office and for all assets, liabilities, rights and obligations of the current Board to devolve to Agrément South Africa. The Board is obliged to convene a meeting within 30 days of commencement of the Act. The Bill also provides for the current Chief Executive Officer to remain in office for the duration of his contract.

3. BODIES AND ORGANISATIONS CONSULTED

3.1 The Department of Public Works identified and consulted the following key industry stakeholders :

- (a) South African Bureau of Standards;
- (b) National Regulator of Compulsory Standards;
- (c) Department of Trade and Industry;
- (d) Council for the Built Environment;
- (e) Construction Industry Development Board;
- (f) National Home Builders Registration Council;
- (g) Department of Human Settlements;
- (h) South African Local Government Association;
- (i) Department of Cooperative Governance and Traditional Affairs;
- (j) Council for Scientific and Industrial Research;
- (k) Department of Science and Technology;
- (l) Board of Agrément South Africa;
- (m) Technology Innovation Agency;
- (n) South African Revenue Services; and
- (o) National Treasury.

4. ORGANISATIONAL AND PERSONNEL ISSUES

- 4.1 The operational arm of the Board of Agrément South Africa is its Technical Agency. As the Board of Agrément South Africa has no legal status, the Technical Agency forms part of the CSIR Built Environment unit. It is envisaged that the Chief Executive Officer of the Technical Agency will become the Chief Executive Officer of Agrément South Africa until the expiry of his existing contract.

5. IMPLICATIONS FOR PROVINCES

- 5.1 None

6. FINANCIAL IMPLICATIONS

- 6.1 Agrément South Africa will receive moneys appropriated by Parliament and will generate funds through, *inter alia*, fees, donations, grants, contributions and interest on investments.

7. PARLIAMENTARY PROCEDURE

- 7.1 The tagging of Bills is dealt with in sections 75 and 76 of the Constitution of the Republic of South Africa, 1996 (the “Constitution”). Section 75 provides for the procedure to be followed regarding ordinary Bills which are not affecting provinces, whilst section 76 provides for the procedure to be followed regarding ordinary Bills which are affecting provinces. [See in this regard also the Constitutional Court cases of *Ex parte the President: In re Constitutionality of the Liquor Bill 2000 (1) BCLR 1 (CC)* and *Tongoane and Others v National Minister for Agriculture and Land Affairs and Others 2010 (8) BCLR 741 (CC)*]
- 7.2 The draft Bill is concerned with the establishment of Agrément South Africa as a juristic person. The objects of Agrément South Africa as contained in clause 4 of the Bill, are to—
- (a) provide assurance to specifiers and users of the fitness-for-purpose of non-standardised construction related products or systems;
 - (b) support and promote the process of integrated socio-economic development in the Republic as it relates to the construction industry;
 - (c) support and promote the introduction and use of certified non-standardised construction related products or systems in the local or international market;
 - (d) support policy makers to minimize the risk associated with the use of a non-standardised construction related product or system; and
 - (e) be an impartial and internationally acknowledged South African centre for the assessment and confirmation of fitness-for-purpose of non-standardised construction related products or systems.
- 7.3 The main function of Agrément South Africa is assessment and certification of non-standard construction related products or systems.
- 7.4 Schedules 4 and 5 of the Constitution, which list the functional areas of concurrent national and provincial legislative competence and exclusive provincial legislative competence, respectively, do not contain any item involving these matters. The Office of the Chief State Law Adviser and the Department of Public Works are therefore of the opinion that the Bill should be dealt with in accordance with section 75 of the Constitution, as it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

- 7.5 The Department of Public Works and the Office of the Chief State Law Adviser are further of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Amendment Act, 2003 (Act No 41 of 2003) since it does not contain provisions pertaining to customary law or customs of traditional communities.