

BOARD NOTICES RAADSKENNISGEWINGS

BOARD NOTICE 29 OF 2005

Engineering Profession Act, 2000 (Act 46 of 2000)

Rules In Terms of Section 36(1) Requirements for Recognition as a Voluntary Association

The Engineering Council of South Africa, has in terms of section 36(1) of the Engineering Profession Act, 2000 (Act 46 of 2000) made the rules, as set out in the Schedule, in relation to the recognition of voluntary associations as contemplated in Sections 14(d) and 25 of the Act.

This Board Notice comes into effect on the day of publication in the Government Gazette.

SCHEDULE

DEFINITIONS

1. In these rules, and unless the context otherwise indicates, any expression or word to which a meaning has been assigned in the Engineering Profession Act, 2000, (Act No 46 of 2000), bears the same meaning and -
 - (i) **“association”** for purposes of these rules means an institute, institution, association, society or federation established by engineering practitioners to promote their collective professional and/ or business interests;
 - (ii) **“annual fees”** means the fees determined by the Council in terms of section 12(1)(c) of the Act;
 - (iii) **“built environment councils”** means a council referred to in section 1(iv) of the Council for the Built Environment Act, 2000 (Act No. 43 of 2000);
 - (iv) **“corporate member”** means a member of an association contemplated in Category C which is eligible to vote at any meeting of such association;
 - (v) **“code of professional conduct”** means the code of conduct drawn up by the Council in terms of section 27(1) of the Act;
 - (vi) **“Council”** means Engineering Council of South Africa established by section 2 of the Act;
 - (vii) **“governing body”** means the highest authority of an association charged with controlling the affairs of an association;
 - (viii) **“In good standing”** means that a member of an association who is not regarded by such association as being in default of its constitution or by-laws;
 - (ix) **“Minister”** means the Minister responsible for Public Works;

- (x) “**registered persons**” means persons registered in any of the categories of registration referred to section 18(1) of the Act;
- (xi) “**the Act**” means the Engineering Profession Act, 2000 (Act 46 of 2000);
- (xii) “**voluntary association**” means an association recognised by the Council as a voluntary association in terms of section 25(3) of the Act, and
- (xiii) “**voting member**” means a member of an association contemplated in Category A and B, who is entitled to vote in terms of its constitution.

CATEGORIES OF VOLUNTARY ASSOCIATIONS

2. The following categories of voluntary associations are hereby established:

Category A

- (1) Associations whose membership consists of natural persons who, subject to the applicable provisions of Rule 4, are –
 - (a) practising in any particular discipline or sub-discipline of engineering; or
 - (b) practising in any particular category of registration contemplated in section 18 of the Act.

Category B

- (2) Associations whose membership consists of natural persons who, subject to the applicable provisions of rule 5, are –
 - (a) practising in engineering or in any of the professions in the built environment contemplated in section 1(iv) of the Council for the Built Environment Act, 2000; or
 - (b) practising in engineering or in any of the scientific professions contemplated in Section A and B of Schedule I of the Natural Scientific Professions Act, 1093 (Act No. 106 of 1993).

Category C

- (3) *Associations* whose membership consists of juristic persons, including sole proprietors, who, subject to the applicable provisions of rule 6, are engaged in carrying out work of an engineering nature.

REQUIREMENTS WITH WHICH AN ASSOCIATION MUST COMPLY TO QUALIFY FOR RECOGNITION AS A VOLUNTARY ASSOCIATION

Category A and B

- 3. Any association wishing to be recognised as a voluntary association contemplated in **Category A** or **Category B** referred to in **rule 2** must comply with the following requirements:

- (1) The *association* must be governed by a formally accepted constitution which –
- (a) is not in conflict with the Constitution of the Republic of South Africa;
 - (b) is not in conflict with the Act or any policies and rules of the Council; and
 - (c) does not obligate its members to adhere to a code of conduct, which is in conflict with the Council's code of professional conduct, or any applicable code of practice published by the Council.
- (2) The *association* must be of South African origin and its *governing body* must be independent of direct influence by any foreign body.
- (3) The *association* must adhere strictly to its constitution, and be able to satisfy the Council of such adherence.

Category A

4. In addition to the requirements referred to in rule 3, an *association* wishing to be recognised as a **voluntary association** contemplated in rule 2(1) must also comply with the following requirements:
- (1) The *association* must have as one of its core missions the promotion of the interests of its members and the engineering profession.
 - (2) The *association* must have at least 100 **voting members**, who are **in good standing** with the *association*.
 - (3) A majority of its **voting members** must be **registered persons**: Provided that if an *association* does not comply with this requirement, the Council may condone such failure on condition that-
 - (a) at the time of application, which may not be later than 30 June 2006, the *association* must prove that at least 30% of its **voting members** are **registered persons**; and that
 - (b) by no later than 31 December 2006, the *association* must prove that at least 40% of its **voting members** are **registered persons**, and that
 - (c) by no later than 31 December 2007, the *association* must prove that a majority of its **voting members** are **registered persons**.
 - (4) Rule 4(3) does not apply in respect of an *association* whose membership exceeds 250 **registered persons**.
 - (5) A majority of the members of its **governing body** must be **registered persons**.

Category B

5. In addition to the requirements referred to in rule 3, an *association* wishing to be recognised as a **voluntary association** contemplated in rule 2(2) must also comply with the following requirements:
- (1) The *association* must have as one of its core missions the promotion of the interests of its members and the interests of the professions referred to in rule 2(2)(a) or (b).
 - (2) The *association* must have at least 250 **voting members**, who are **in good standing** with the *association*, of whom at least 10% must be **registered persons**.

- (3) A majority of its voting members must **be** registered with any of the built environment councils or with the South African Council for the Natural Scientific Professions (SACNAP), as the case may **be**. Provided that if an association does not comply with this requirement, the council may condone such failure, on condition that -
- (a) at the time of application, which may not **be** later than 30 June 2006, the association **must** prove that at least 30% of its voting members are persons registered with any of the built environment councils or with the South African Council for the Natural Scientific Professions, as the **case** may **be**; and that
 - (b) by no later than 31 December 2006, the association must prove that at least 40% of its voting members are persons registered with any of the built environment councils or with the South African Council for the Natural Scientific Professions, as the **case** may **be**, and that
 - (c) by no later than 31 December 2007, the association must prove that a majority of its voting members are persons registered with any of the built environment councils or with the South African Council for the Natural Scientific Professions, as the case may **be**.
- (4) Rule 5(3) does not apply in respect of an association whose membership exceeds 250 registered persons.
- (5) A majority of the members of its governing body must be registered with any of the built environment councils or with the South African Council for the Natural Scientific Professions, as the case may be, provided that at least 20% of such governing body must be registered persons;

Category C

6. An association wishing to be recognised as a *voluntary* association contemplated in rule 2(3) must comply with the following requirements:
- (1) The association must be governed by a formally accepted constitution which -
 - (a) is not in conflict with the Constitution of the Republic of South Africa;
 - (b) is not in conflict with the Act;
 - (c) does not obligate its corporate members to adhere to a code of conduct which is in conflict with the principles of the Council's code of professional conduct, or to permit conduct by an employee of a *corporate* member which **is** in conflict with the Council's code of professional conduct or any applicable code of practice published by the Council;
 - (d) contains objectives to the effect that -
 - (i) the common interests of its *corporate members* in the pursuit of excellence in an engineering environment are to be promoted, encouraged and protected; and
 - (ii) the technical competence of its *corporate members* and their employees within the particular industry in which the *association* is active, is promoted.
 - (2) An association must declare, in writing, a commitment to promote registration with ECSA among its *corporate members* and undertake to solicit a commitment by its *corporate members* to promote registration among their employees.

- (3) *An association must adhere strictly to its constitution, and be able to satisfy the Council of such adherence.*"

EXEMPTIONS

7. (1) Notwithstanding the provisions of rules 3 to 6, the Council may exempt an *association* from having to comply with any of the requirements prescribed therein if the Council is satisfied that such condonation is in the interest of achieving the objectives contemplated in the Act and these rules.
- (2) The Council may impose such conditions as it deems appropriate on an *association* who has been exempted in terms of rule 7(1), and rule 10(8) will apply if such *association* fails to comply with any condition so imposed.

APPLICATION FOR RECOGNITION

8. Any *association* wishing to be recognised as a *voluntary association* must submit an application, in the format prescribed in Appendix A of these rules, to the Council and provide all the information required therein, and such additional information as the Council may determine in each particular case.

RECOGNITION AS A VOLUNTARY ASSOCIATION AND DURATION OF RECOGNITION

9. (1) If, after consideration of an application referred to in rule 8, the Council is satisfied that the *association* meets the relevant requirements for recognition as set out in these rules, the Council must recognise such *association* as a *voluntary association* in the appropriate category and issue it with a certificate of recognition in terms of section 25(3) of the Act.
- (2) The certificate of recognition is valid for a period of five years from the date of issue, which date is deemed to be the date on which the Council resolves to recognise the *voluntary association*.
- (3) The *voluntary association* must display its certificate of recognition in a prominent place at its head office and may display Council's logo on its stationery as an indication of its recognition status.
- (4) The Council must, within 30 days from the date on which it recognises a *voluntary association*, publish the name of such *voluntary association* on its website, and thereafter make it known in such other manner as it may deem appropriate.

RENEWAL AND LAPSING OF RECOGNITION

10. (1) The recognition of a *voluntary association* remains in effect for as long as it meets the requirements for recognition in terms of these rules.
- (2) The recognition of a *voluntary association* lapses in terms of section 25(6)(a) of the Act—
- (a) if that *voluntary association* no longer complies with the requirements set out in these rules; or
- (b) at the expiry of the five-year period referred to in rule 9(2).

- (3) A **voluntary association** must at least three months prior to the expiry of its recognition, apply in the prescribed manner to the Council for the renewal thereof.
- (4) Every **voluntary association** must provide the Council, by no later than 30 months prior to the expiry date contemplated in rule 9(2), with information on its membership profile to enable the Council to monitor whether the requirements for recognition are still being met.
- (5) (a) Notwithstanding rule 10(4), a **voluntary association** who is required to comply with the relevant ratios specified in rules 4(3) or 5(3), must annually submit the required information by no later than the appropriate deadline specified therein.
(b) A **voluntary association** who does not comply with a deadline specified in rules 4(3) or 5(3), as the case may be, will be deemed to have failed to comply with the requirements for recognition and the provisions of rule 10(7) will apply.
- (6) Every **voluntary association** must advise Council of any changes to its constitution and/or by-laws, within 60 days of the date on which the changes were approved.
- (7) If at any time during the period of five years referred to in rule 10(2)(b), a **voluntary association** becomes aware that it no longer complies with the requirements, it must notify the Council forthwith in writing of such fact and provide the reasons for it.
- (8) If the Council is satisfied that a **voluntary association** has ceased to comply with the requirements specified in these rules, the recognition of such **voluntary association** lapses in terms of section 25(6)(a) of the Act on the date on which the Council resolves that the **voluntary association** ceased to comply.

AMENDMENT OF THE REQUIREMENTS FOR RECOGNITION

11. If the Council at any stage decides to amend the requirements for recognition referred to in rules 3 to 6, the Council must:
 - (a) inform all **voluntary associations** of this decision and provide them with the proposed amendments;
 - (b) call for comment on the amendments from the **voluntary associations**; and
 - (c) prescribe such amendments in terms of section 36 of the Act.
12. (1) If an amendment of the requirements so prescribed results in a **voluntary association** ceasing to comply with the requirements, that **voluntary association** must, within twelve months from the date on which the amended requirements have been prescribed, take the necessary steps to comply with the amended requirements, and provide the Council with **proof** that it does comply.
(2) The Council may at its discretion extend the period of 12 months by an additional period not exceeding 12 months, if the Council is satisfied that the **voluntary association** in question has taken definite steps to comply with the requirements, but has nevertheless not succeeded in the time allowed.
(3) If a **voluntary association** fails or refuses to comply with any of the amended requirements within the period allowed, its recognition as a **voluntary association** lapses on the day when the Council resolves that the **voluntary association** ceased to comply with the requirements.

RETURN OF RECOGNITION CERTIFICATE

13. A *voluntary association* whose recognition has lapsed must, within 30 days from the date on which it is so directed in writing by the Council, return its certificate of recognition.

RIGHTS AND OBLIGATIONS OF COUNCIL AND VOLUNTARY ASSOCIATIONS

14. The Council is obliged to consult with the *voluntary association* in terms of the following sections of the Act:

Section 3(1)(a)(i)	-	Nominating persons as members of Council
Section 4(1)	-	Nominating persons as members of Council
Section 13(d)	-	Determining Competency Standards
Section 13(k)	-	Determining Continuing Professional Development (CPD) requirements
Section 26(1)(a)	-	Identification of work
Section 27(1)	-	Drafting of Code of Professional Conduct
Section 34(1) & (2)	-	Determining Professional Fees
Section 38(2) & (3)	-	Minister consults: Rules of Exemption

15. The Council undertakes to -

- (1) Give preference to persons nominated by *voluntary associations* for purposes of appointment as members of the Council and any of its committees: Provided that this provision may not be construed as precluding Council from engaging in constructive co-operation with any other *association*, institute, society or interested group in sourcing persons with the necessary expertise in fulfilling its functions under the Act.
- (2) Promote a greater awareness among *registered persons* of the advantages of membership of *voluntary associations*.
- (3) Grant, in terms of section 12(2) of the Act, a reduction in annual fees payable by *registered persons* who are members in good standing of a *voluntary association*: Provided that any *de facto* reduction granted by the Council to an *association* prior to the coming into operation of these rules, will remain in effect until 31 March 2006, regardless of whether or not such *association* qualifies for recognition in terms of these rules.

Appendix A

APPLICATION FORM
Recognition as a Voluntary Association
in terms of Section 25(2) of the Engineering Profession Act, 2000

Name of Association:

Domicilium (physical address):

Name of CEO / Executive Director / National Secretary:

Telephone:

Fax:

E-mail:

Website:

I,

in my capacity as

of the

and on behalf of the

hereby make application for recognition as a Voluntary Association in terms of Section 25(2) of the Engineering Profession Act, 2000 (Act No. 46 of 2000), and specifically for recognition as a

Category **A** **B** **C** * Voluntary Association.

* Tick (✓) in appropriate block.

I enclose the required information in substantiation of the application and confirm that the information, to my best knowledge, is accurate and complete.

I confirm that the Association has consistently complied in all respects with its Constitution and Bylaws, since its establishment, or 1 December 2000, whichever is the earlier.

I confirm that the Association is aware that any recognition previously granted by ECSA has lapsed with effect from 1 March 2005, being the date on which the Rules published under Board Notice ?????? came into operation.

I confirm that the Association is aware that any reduction in respect of annual fees payable to ECSA by members of this Association, granted by the Council prior to 1 March 2005, will remain in effect until 31 March 2006, regardless of whether or not this Association is recognised as a Voluntary Association in terms of the Rules published under Board Notice ????

I confirm that the Association has committed itself to adhere to the applicable provisions of Section 25 of the Act as well as the applicable provisions of the Rules published under Board Notice/?????, once recognised as a Voluntary Association.

Signed on this day of month & year.

Capacity

Date

Information & Supporting Documents:

1. Current Serving President / Chalrperson:	
(a) Date of Inauguration	
(b) Date of Termination of Term	

2. Constitution and Bylaws: (Must be submitted)	
(a) Date formally adopted (most recent amendments)	
(b) Quote most recent resolution of adoption	
(c) Please attach a copy of the Minutes of the Association's most recent Annual General Meeting	

3. Code of Conduct:	Yes	No	(If "Yes", submit) (* Tick ✓)
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4. Membership Profile: (Detailed analysis must be submitted)	
<u>Category A</u>	
(a) Number of Voting Members (Rule 1(xiii))	
(b) Number of Persons Registered with ECSA (Rule 1(x))	
<u>Category B</u>	
(a) Number of Voting Members (Rule 1(xiii))	
(b) Number of Persons Registered with ECSA (Rule 1(x))	
(c) Number of Persons Registered with other BE Councils (Rule 1(iii) & 5(3))	
(d) Number of Persons Registered with SACNAP (Rule 5(3))	
<u>Category C</u>	
(a) Number of Corporate Members (Rule 1(iv))	
(b) Number of Corporate Members involved in Engineering related activities	

5. Council (Governing Body) Profile: (Detailed analysis must be submitted)	
Category A	
(a) Number of Members (Rule 4(5))	
(b) Number of Persons Registered with ECSA (Rule 1(x))	
Category B	
(a) Number of Members (Rule 5(5))	
(b) Number of Persons Registered with ECSA (Rule 1(x))	
(c) Number of Persons Registered with other BE Councils (Rule 1(iii) & 5(5))	
(d) Number of Persons Registered with SACNAP (Rule 5(5))	
Category C (optional)	
(a) Number of Corporate Members (Rule 1(iv))	
(b) Number of Corporate Members involved in Engineering related activities	

6. Relationship with Foreign Bodies and Proof of Autonomy: (Rule 3(2)) (Describe relationship and provide confirmation of autonomy from direct foreign influence on policy. – optional for Category C)

7. Statements of Commitment:
Categories A + B:
If not complying with the principal requirement set out in the preamble of Rules 4(3) or 5(3), please provide proof that the Association complies with Rules 4(3)(a) or 5(3)(a), as the case may be, as well as a detailed, and motivated, analysis of how the Association plans to meet the requirements of sub-rules (b) and (c) of Rules 4 or 5.
Category C
Please provide the Declaration contemplated in Rule 6(3), quoted as follows:
"An association must declare, in writing, a commitment to promote registration with ECSA among its corporate members and undertake to solicit a commitment by its corporate members to promote registration among their employees."
Declaration: