



## **THE BUILDERS BILL, 2006**

### **MEMORANDUM OF OBJECTS AND REASONS**

This Bill will establish the Builders Board to help safeguard and promote high standards of workmanship in the building industry in the Islands. The Board will have responsibility for registering business entities involved in the building industry and qualifying individuals who will actually perform the work.

Part I has the preliminary provisions

Clause 1 provides the short title and commencement.

Clause 2 has the definitions.

Part II deals with the establishment of the Builders Board.

Clause 3 establishes the Builders Board.

Part III provides for the registration of business entities

Clause 4 provides for the registration of business entities.

Clause 5 sets out the criteria for the registration of business entities as contractors.

Clause 6 provides for the issuance and expiry of the registration of business entities.

Clause 7 provides for the disciplining of business entities in the circumstances specified there, as well as provides for related matters such as conferring a right of appeal.

Part IV provides for the registration of qualified individuals.

Clause 8 provides for the registration of qualified individuals.

Clause 9 sets out the criteria for the registration of qualified individuals.

Clause 10 provides for the issuance and expiry of the registration of qualified individuals.

Clause 11 provides for the disciplining of qualified individuals in the circumstances specified there, as well as for related matters such as conferring a right of appeal.

Part V provides for offences and legal proceedings.

Clause 12 makes it an offence for any person (that is, an individual, group of persons, whether incorporated or not) who is not registered as a builder to hold himself out as being so registered.

Clause 13 makes it an offence to carry out work when one is not registered at all or not registered for that particular type of work.

Clause 14 makes it an offence to make fraudulent entries in the register.

Clause 15 makes provision for the appointment of enforcement officers who have power to enter business premises to ensure that the law is being complied with.

Clause 16 creates the offence of obstructing any person acting in the execution of powers conferred under the Law.

Clause 17 empowers the Board to issue non-compliance notices, which require breaches to be remedied.

Clause 18 provides for the powers of the courts in relation to non-compliance notices.

Clause 19 stipulates the criminal liability of business entities, their directors, partners or managers.

Clause 20 sets out a number of provisions relating to the filing of appeals with respect to certain actions taken under the Law.

Part VI has a miscellany of provisions.

Clause 21 protects the information that is provided to the Board by stipulating that it may be used only in proceedings for an offence under the Law or a report of those proceedings.

Clause 22 provides for the service of documents.

Clause 23 empowers the Governor to give directions to the Board with regard to matters of policy.

Clause 24 empowers the Governor to make regulations.

Clause 25 provides for a transitional provision whereby the recognition of business entities and qualified individuals who may not meet the qualifications prescribed in this Law can be registered.

The Schedule contains a number of provisions relating principally to the internal organisation of the Board.

# **THE BUILDERS BILL, 2006**

## **ARRANGEMENT OF CLAUSES**

### **PART I PRELIMINARY**

1. Short title and commencement.
2. Interpretation.

### **PART II THE BUILDERS BOARD**

3. Builders Board.

### **PART III REGISTRATION OF BUSINESS ENTITIES**

4. Registration of business entities.
5. Criteria for registration as a business entity.
6. Issuance and expiry of registration as a business entity.
7. Removal, suspension, etc., of business entities from register, etc.

### **PART IV REGISTRATION OF QUALIFIED INDIVIDUALS**

8. Registration of qualified individuals.
9. Criteria for registration as a qualified individual.
10. Issuance and expiry of registration as a qualified individual.
11. Removal, suspension, etc., of qualified individuals from register, suspension, etc.

### **PART V OFFENCES AND PROCEEDINGS**

12. Holding out as being registered.
13. Offences relating to registration.
14. Fraudulent entries in the register.
15. Appointment and powers of enforcement officers.
16. Obstruction, etc., of officers or the Board.
17. Non-compliance notices and appeals against them.
18. Powers of court in relation to non-compliance notices.
19. Application of offences to business entities.
20. Appeals.

**PART VI**  
**MISCELLANEOUS**

21. Confidentiality.
22. Service of documents.
23. Directions.
24. Regulations.
25. Transitional.

Schedule -The Builders Board

**A BILL FOR A LAW TO ESTABLISH A BODY TO BE KNOWN AS THE BUILDERS BOARD; TO PROVIDE FOR THE REGISTRATION OF BUSINESS ENTITIES AND QUALIFIED INDIVIDUALS; AND FOR INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

**PART I  
PRELIMINARY**

1. (1) This Law may be cited as the Builders Law, 2006. Short title and commencement  
  
(2) This Law shall come into force on such date as the Governor may by Order appoint and different dates may be appointed for the coming into force of different provisions of this Law.
  
2. In this Law - Interpretation  
  
“ancillary building” has the meaning assigned thereto in regulation 2 of the Development and Planning Regulations (2005 Revision); (2005 Revision)  
  
“Appeals Tribunal” means the Appeals Tribunal established under section 46 of the Development and Planning Law (2005 Revision); (2005 Revision)

“Board” means the Builders Board established by section 3;

“building contractor” means a business entity which -

- (a) constructs commercial, industrial, institutional, residential or other buildings, including their ancillary buildings, none of which buildings exceed three storeys in height; or
- (b) repairs, improves, extends or renovates buildings of any size where such work does not affect the structural integrity of the building,

and building construction shall be construed accordingly;

“building work” means the carrying out of any building, engineering or other operations in, on, over or under land, but does not include -

- (a) the carrying out of agricultural or landscaping operations;
- (b) the carrying out of work to one’s own dwelling or its ancillary buildings or facilities by an individual or by the beneficial owner of a body corporate which owns the dwelling except in so far as such work forms part of a course of conduct that amounts to a trade or business;

“business entity” means an individual, group of persons or company that carries on business, and includes a charitable organisation or other non-governmental organisation;

“business premises” means a place registered as a place of business for purposes of section 12 of the Trade and Business Licence Law (2003 Revision);

(2003 Revision)

“Caymanian” means a person who possesses Caymanian status under the Immigration Law, 2003 or any earlier law providing for the same or similar rights and includes a person who acquired that status under Part III of that Law;

(Law 24 of 2003)

“civil contractor” means a business entity which builds roads, bridges, docks, utilities infrastructure and other similar constructions as the Board may under section 5 (4) determine, and “civil construction” shall be construed accordingly;

“days” means working days;

“enforcement officer” means a natural person appointed under section 15;

“general contractor” means a business entity which performs any type or description of construction work other than civil construction, and “general construction” shall be construed accordingly;

“Governor” means the Governor in Cabinet;

“joint venture” means any building work undertaken by more than one business entity;

“proper address” means -

- (a) for an individual, his business premises or last known place of business;
- (b) for a body corporate, the registered office or, in the case of a statutory corporation, its business premises; and
- (c) for an unincorporated body, its business premises;

“qualified individual” means an individual registered as such under section 8;

“record” means any means by which information may be stored and retrieved;

“register” means the register established under section 3 (8);

“registered” means -

- (a) in relation to a business entity, registered in one of the categories specified in section 5 (4) or other category determined thereunder; and
- (b) in relation to a qualified individual, registered as such under section 8 (1),

to undertake work in relation to which the registration relates and includes temporary registration under section 4 (2) and re-registration by way of re-categorisation under section 4 (3) or otherwise;

“residential contractor” means a business entity which constructs, repairs, renovates, extends or improves any building comprising up to four dwelling units, not exceeding two storeys in height, and their ancillary buildings, and “residential construction” shall be construed accordingly;

“storey” has the meaning assigned thereto in regulation 2 of the Development Planning Regulations (2005 Revision);

(2005 Revision)

“sub-trade contractor” means a business entity that does not fall under the purview of a general contractor, residential contractor, building contractor or civil contractor, but which includes other construction work such as tiling, drywalling, welding, painting, roofing, masonry, mechanical work (that is, heating, ventilation and air-conditioning), cabinet making, glazing, swimming pool construction, building of prefabricated building systems and such other works as

may be determined by the Board under section 5 (4), and “sub-trade construction” shall be construed accordingly; and

(2003 Revision)

“Trade and Business Licensing Board” means the Trade and Business Licensing Board established under the Trade and Business Licensing Law (2003 Revision).

**PART II**  
**THE BUILDERS BOARD**

Builders Board

3. (1) There is hereby established a body to be known as the Builders Board, which shall register business entities and qualified individuals and otherwise exercise the powers and perform the duties conferred or imposed on it by or under this Law.

(2) The Board may delegate any of its functions conferred under this Law or regulations made hereunder.

(3) The Board shall consist of -

- (a) eight voting members appointed by the Governor comprising -
  - (i) one person who is registered as a building contractor, but in the case of the first Board the Governor shall appoint a person who, in his opinion, would qualify for registration as such;
  - (ii) one person who is registered as a residential contractor, but in the case of the first Board the Governor shall appoint a person who, in its opinion, would qualify for registration as such;
  - (iii) one person who is registered as a general contractor, but in the case of the first Board the Governor shall appoint a person who, in his opinion, would qualify for registration as such;
  - (iv) two persons who are registered by recognised bodies as professionals in architecture, engineering, quantity surveying or any other profession relevant to the work of the Board;
  - (v) two other persons;
  - (vi) one person qualified to practise law,and no two persons appointed under subparagraphs (iv) or (v) shall be from the same profession; and
- (b) the three members referred to in subsection (4), who shall have no vote and shall not be counted for purposes of a quorum.

(4) In addition to the members specified in subsection (3), the Board shall also comprise -

- (a) the Executive Secretary of the Trade and Business Licensing Board;
- (b) the Director of Planning; and
- (c) the Director of Labour.

(5) A member referred to in subsection (4) may depute a person from his board or department, as the case may be, to attend in his stead and such person shall, subject to the general or specific directives of the substantive member, exercise all the rights and be subject to all the obligations of the substantive member at that meeting.

(6) The Governor shall appoint -

- (a) one member to be Chairman and another to be Deputy Chairman; and
- (b) a full-time Secretary of the Builders Board, who shall be nominated by the chief officer of the relevant ministry under the general powers conferred by the Public Service Management Law, 2005, and who shall keep all minutes of the meetings, proceedings and decisions of the Board.

(Law 27 of 2005)

(7) The provisions of the Schedule shall apply to the Board.

Schedule

(8) The Board shall establish and maintain a Register of Business Entities and Qualified Individuals, which shall be maintained in such a way as to conveniently reflect the registration of business entities and qualified individuals.

(9) Subject to appropriation by the Legislative Assembly of the requisite funds, the cost of the administration and giving effect to this Law shall be a charge on the Treasury.

### **PART III REGISTRATION OF BUSINESS ENTITIES**

4. (1) The register shall indicate which business entities are -

Registration of business entities

- (a) individuals (sole or as a group) operating as business entities;
- (b) partnerships;
- (c) bodies corporate; and
- (d) such other categories or sub-categories of the categories in paragraphs (a) to (c) as the Board may determine.

(2) The Board may register business entities temporarily under such terms and conditions as it may determine.

(3) The Board shall enter in the register the name and prescribed particulars of every business entity which, being qualified for registration under

section 5, has applied in the prescribed manner for registration or registration by way of re-categorization, has paid the prescribed fee and has satisfied the Board as to its suitability for registration; and the Board may in like manner register a business entity under a different category.

(4) Where a business entity is applying for registration having been registered before (whether or not it is applying for registration in the same category as that in which it was previously registered) it shall not be registered unless, in addition to paying the registration fee and meeting all the other requirements of this Law relating to registration, it pays all the fees that it would have paid had it been registered during the period when its registration had lapsed.

(5) The register shall be available for public inspection at reasonable times upon payment of such fees as the Governor may by regulation prescribe.

Criteria for registration  
as a contractor

5. (1) Subject to the other provisions of this section, a business entity shall, on application made to the Board in the prescribed manner and on payment of the prescribed fee, be entitled, subject to regulations made under section 24 (2) (g), to be registered if the entity satisfies the other requirements for registration under this Part.

(2) Without limiting the other requirements of this Part, the Board shall not register a business entity unless it is satisfied that such business entity has under its control a sufficient number of persons who are qualified to carry out the work in the category for which the entity is applying and the entity is otherwise suitable for registration in that category.

(3) The Board may grant the application subject to such terms and conditions as it thinks fit.

(4) A business entity may be registered in the category of -

- (a) general contractor;
- (b) residential contractor;
- (c) building contractor;
- (d) civil contractor; or
- (e) sub-trade contractor,

and the Board may, without derogating from the provisions of this Law, determine from time to time, the categories of works that shall comprise any of the categories in paragraphs (a) to (d) or the respective sub-trades.

(5) In addition to the need to comply with the Trade and Business

Licensing Law (2003 Revision) and the Local Companies (Control) Law (1999 Revision), a partnership or body corporate shall be registered under this section only if -

2003 Revision  
1999 Revision

- (a) at least sixty per cent of the business is Caymanian-owned; and
- (b) at least sixty per cent of the voting power in the firm is unconditionally Caymanian-controlled.

(6) For purposes of clarification, it is declared that the holding of a licence under the Local Companies (Control) Law (1999 Revision) does not entitle a business entity to registration under this Law.

(1999 Revision)

6. (1) When the Board has registered a business entity under section 5, it shall issue to the entity a certificate of registration in the prescribed form.

Issuance and expiry of registration as a business entity

(2) Every certificate of registration shall -

- (a) indicate the category under which it is registered;
- (b) bear the date on which it is issued;
- (c) take effect from the date of issue;
- (d) bear the date on which it expires; and
- (e) contain such other details as may be prescribed.

(3) The Board shall enter in the register the date on which each certificate of registration is issued.

(4) Every certificate of registration shall expire twelve months after its date of issue, unless at the time of issue the Board specifies a shorter time.

7. (1) The Board may remove from the register, suspend (with or without conditions), re-categorize or reprimand a business entity for any of the following -

Removal, suspension, etc., of business entities from register, suspension, etc

- (a) where the business entity has performed building work in a manner which does not display the level of competence expected from a registered business entity;
- (b) where the business entity fails to comply with any condition of registration; or
- (c) where the business entity ceases to be engaged in the business of performing building work.

(2) The Board shall remove a name of a business entity from the register where -

- (a) a court has ordered that the name be removed from the register on the grounds of contravention of this Law or regulations made hereunder;

- (b) the business entity has not renewed its registration;
  - (c) the business entity has persistently carried on building work in a manner which does not display the level of competence expected from a registered business entity;
  - (d) the business entity ceases to hold the qualifications specified by or under section 5;
  - (e) the Superintendent of Health Insurance appointed under the Health Insurance Commission Law, 2003 informs the Board in writing (on his own initiative or upon inquiry by the Board), which power and duty are hereby conferred, that the business entity concerned is not up-to-date with health insurance contributions;
  - (f) the Superintendent of Pensions referred to in section 79 of the National Pensions Law (2000 Revision) informs the Board in writing (on his own initiative or upon inquiry by the Board), which power and duty are hereby conferred, that the business entity concerned is not up-to-date with pension contributions; or
  - (g) the business entity has applied to have its name removed from the register.
- (3) Where a business entity -
- (a) is adjudicated bankrupt;
  - (b) has been, or one of its directors or partners has been, convicted of a criminal offence (of such a nature as to render the business entity, or the director or partner concerned unsuitable to be involved in the building industry) for which the maximum penalty of imprisonment is one year or more whether or not he is in fact sentenced to that term; or
  - (c) is a person in respect of whom a certificate has been issued under section 7 of the Mental Health Law (1997 Revision) ;
  - (d) is in receivership; or
  - (e) is in liquidation,

the Board shall take such decisions, including decisions referred to in subsection (1), (2) and (3) but not limited thereto, to protect, to the extent possible or necessary, the interests of the business entity, directors, partners, employees, investors, creditors and any other persons who have not been involved in any untoward conduct.

(4) Where the Board makes, in relation to a business entity, a decision under subsection (1), (2) or (3) (other than a removal upon request), notice in writing of that decision and of the reasons for it shall be served on that business entity, which may appeal under section 20.

(5) For purposes of clarification it is declared that no appeal shall lie where a name has been removed upon request of the business entity concerned.

(6) A decision made under this section to remove the name of a business entity from the register shall not take effect before the expiration of the period allowed for appealing against it, and where an appeal is lodged, the decision shall not take effect before the appeal is disposed of or withdrawn or fails for want of prosecution.

(7) A business entity whose name is removed from the register under this section shall not be entitled to be restored thereto except where, upon its application, the Board decides that it be so restored and the Board shall not so decide unless the reason that led to the removal no longer exists.

(8) Where the Board receives an application for registration from a business entity in which a person who was culpable in an entity that was disciplined by the Board in the past is involved, the Board shall take into account that fact and may refuse to register or renew the registration of that entity on that account.

(9) Except where a business entity is removed upon the request of a qualified individual or for non-payment of renewal fees, a decision or order under this section for the removal of the business entity's name from the register may prohibit an application under subsection (7) by the individual concerned until the expiration of a period not exceeding twelve months.

#### **PART IV REGISTRATION OF QUALIFIED INDIVIDUALS**

8. (1) The Board shall enter in the register, in the appropriate category of qualified individuals, the name and prescribed particulars of every person who has applied in the prescribed manner for registration as such under this Law, has satisfied the Board as to his suitability for registration and has paid the prescribed fee.

Registration of qualified individuals

(2) The register shall be available for public inspection at reasonable times upon payment of such fees as the Governor may prescribe.

9. No person may be registered as a qualified individual under this Law unless he -

Criteria for registration as a qualified individual

- (a) has passed an examination set and administered by the Board;
- (b) has passed an examination set by the Board but administered by an institution in the Islands that is recognized for that purpose;

- (c) has passed an examination set and administered by an institution outside the Islands which is recognised by the Board; or
- (d) otherwise satisfies the Board that he is capable of undertaking the kind of work for which he is applying.

Issuance of a certificate of registration as a qualified individual

10. (1) When the Board has registered a qualified individual under section 8, it shall issue to that person a certificate of registration in the prescribed form.

- (2) Every certificate of registration shall -
  - (a) indicate the category under which the qualified individual is licensed;
  - (b) bear the date on which it is issued;
  - (c) take effect from that date;
  - (d) bear the date on which it expires; and
  - (e) contain such other details as may be prescribed.

(3) The Board shall enter in the register the date on which each certificate of registration is issued.

(4) Every certificate of registration shall expire twelve months after its date of issue, unless at the time of issue the Board specifies a shorter time.

Removal, suspension, etc., of qualified individuals from register, suspension, etc

11. (1) The Board may remove a name from the register, suspend (with or without conditions), re-categorize or reprimand a qualified individual for any of the following -

- (a) where the qualified individual ceases to hold the qualifications specified by or under section 9;
- (b) where the qualified individual has performed building work in a manner which does not display the level of competence expected from a qualified individual;
- (c) where the qualified individual fails to comply with any condition of registration; or
- (d) where the qualified individual ceases to be engaged in the business of performing building work,

- (2) The Board shall be removed from the register where -
  - (e) a court has ordered that the name be removed from the register on the grounds of contravention of this Law or regulations made hereunder;
  - (f) the qualified individual has not renewed his registration;
  - (g) the qualified individual has persistently carried on building work in a manner which does not display the level of competence expected from a qualified individual; or

- (h) the qualified individual has applied to have his name removed from the register.
- (3) Where the qualified individual -
  - (a) is adjudicated bankrupt;
  - (b) has been convicted of a criminal offence of such a nature as to render him unsuitable to continue in the category in which he is registered or at all for which the maximum penalty of imprisonment is one year or more whether or not he is in fact sentenced to that term; or
  - (c) is a person in respect of whom a certificate has been issued under section 7 of the Mental Health Law (1997 Revision),

(1997 Revision)

the Board shall take such decisions, including decisions referred to in subsections (1) and (2) but not limited thereto, to protect, to the extent possible or necessary, the interests of contractors, directors, partners, employees, investors, creditors and any other persons who have not been involved in any untoward conduct.

(4) Where the Board makes a decision, in relation to an individual, under subsection (1) or (2), notice in writing of that decision and of the reasons for it shall be served on that person, who may appeal under section 20.

(5) For purposes of clarification it is declared that no appeal shall lie where a name has been removed upon request of the qualified individual concerned.

(6) A decision made under this section to remove a qualified individual's name from the register and revoke his certificate shall not take effect before the expiration of the period allowed for appealing against it, and where an appeal is lodged the decision shall not take effect before the appeal is disposed of or withdrawn or fails for want of prosecution.

(7) A person whose name is removed from the register under this section shall not be entitled to be restored thereto except where, upon his application, the Board decides that he be so restored and the Board shall not so decide unless the reason that led to the removal no longer exists.

(8) Except where a name is removed upon the request of a qualified individual or for non-payment of renewal fees, a decision or order under this section for the removal of a person's name from the register, may prohibit an application under subsection (7) by the individual concerned until the expiration of a period not exceeding twelve months.

**PART V**  
**OFFENCES AND PROCEEDINGS**

Holding out as being registered

12. (1) Except as provided in subsection (2), any person who, not being registered under this Law, uses or adopts any style, title or description which implies that such person is so registered commits an offence and is liable on summary conviction to a fine of two thousand dollars and, in addition, to a mandatory fine of two hundred and fifty dollars for every day on which the offence continues and on a second conviction to a like fine or imprisonment for three months, or both.

(2) Subsection (1) does not apply to a person -

- (a) who, having had his name removed from the register, has not yet been given notice in writing by the Board of its removal; or
- (b) in respect of whom a decision under section 7 or 11 has been taken by the Board and such decision has not taken effect.

Offences relating to registration

13. (1) Except as provided in subsection (2), any person who -

- (a) not registered under this Law carries out any building work; or
- (b) being registered in a particular category carries out building work which is in breach of a condition of his registration,

commits an offence and is liable on summary conviction to a fine of two thousand dollars and, in addition, to a mandatory fine of two hundred and fifty dollars for every day on which the offence continues after the person has been convicted of that offence, and on a second conviction to a like fine, or imprisonment for three months, or both.

(2) Subsection (1) does not apply to a person who, having had his name removed from the register or been suspended, has not yet been given notice in writing by the Board of the decision.

Fraudulent entries in the register

14. A person who wilfully procures or attempts to procure the entry of his name in the register by making or producing or causing to be made or produced any false or fraudulent representation or declaration either orally or in writing commits an offence and is liable on summary conviction to a fine of two thousand dollars.

15. (1) The chief officer responsible for physical planning shall, under the general powers conferred on him by the Public Service Management Law, 2005, appoint in writing enforcement officers for the purposes of this Law.

Appointment and powers of enforcement officers

Law 27 of 2005

(2) Subject to subsection (3), an enforcement officer shall, on producing, if so required, a duly authenticated document showing his authority, have a right, at all reasonable hours, to enter any business premises for the purposes of ascertaining whether there is on the premises any evidence of any contravention of the provisions of this Law or of regulations made under it; but this section shall not be construed as allowing entry onto residential premises without a warrant unless such premises are used as business premises.

(3) If a magistrate, on sworn information in writing, is satisfied that there are reasonable grounds for entry into any business premises for the purpose mentioned in subsection (1) and either -

- (a) that an enforcement officer has been refused admission to the business premises or the enforcement officer reasonably believes that entry is unlikely to be granted, and that the enforcement officer has given notice in writing to the owner or occupier of the intention to apply for such a warrant; or
- (b) that an application or the giving of such a notice in writing, would defeat the object of the entry,

the magistrate may by warrant signed by him authorise the enforcement officer to enter the business premises, if need be, by use of reasonable force but shall not allow entry into unoccupied premises.

(4) A warrant granted under this section shall continue in force for a period of one month.

(5) An enforcement officer entering any business premises by virtue of this section, or of a warrant issued under it, may take with him such other persons as he considers necessary or expedient, and on leaving any business premises which he has entered by virtue of such a warrant shall, to the extent that it is reasonably practicable, leave them in the same condition as he found them.

(6) An enforcement officer entering any business premises by virtue of this section, or of a warrant issued under it, may inspect any records (in whatever form they are held) relating to a business of a contractor and, where any such records are kept by means of the computer -

- (a) may have access to, and inspect and check the operation of, any computer and associated apparatus or material which is or has been in use in connection with the records; and
- (b) may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford him such assistance as he may reasonably require.

- (7) Any officer exercising any power conferred by subsection (5) may -
- (a) seize and detain any records, or take copies of them, which he has reason to believe may be required as evidence in proceedings under any of the provisions of this Law; and
  - (b) where the records are kept by means of a computer, may require the records to be produced in a form in which they may be taken away.

(8) A business entity shall keep at the business premises all records relating to its business for at least twelve months, but where the records relate to a project that runs for two years or more, the records shall be kept for at least twenty-four months after the end of the project.

Obstruction, etc., of  
officers or the Board

16. (1) Any person who -
- (a) intentionally obstructs any person acting in the execution of his duties under this Law; or
  - (b) without reasonable cause fails to give to the Board, or to any person acting in the execution of his duties under this Law, any assistance or information which the Board or that person may reasonably require of him for the performance of their respective functions under this Law,

commits an offence and is liable on summary conviction to a fine of two thousand dollars or to imprisonment for three months, or to both.

(2) Any person who, in purported compliance with a requirement mentioned in subsection (1)(b) -

- (a) furnishes information which he knows to be false or misleading in a material particular; or
- (b) recklessly furnishes information which is false or misleading in a material particular,

commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for six months, or to both.

(3) Nothing in subsection (1) (b) shall be construed as requiring any person to answer any question or to give information if to do so might incriminate him.

Non-compliance notices  
and appeals against them

17. (1) Where -
- (a) the Board has reasonable grounds for believing that a person is carrying out building work in breach of section 13; and

- (b) the Board considers it is expedient to do so having regard to all the circumstances,

the Board may issue a non-compliance notice requiring the breach to be remedied.

(2) A non-compliance notice shall specify -

- (a) the matters alleged to constitute a breach of section 13;
- (b) the building work which the person named in the notice is prohibited from carrying out;
- (c) any steps which the Board requires to be taken by the person alleged to be in breach in order to remedy the breach, including steps enabling him to comply with the conditions of his registration or to become registered; and
- (d) the period within which any such steps are to be taken.

(3) A non-compliance notice shall take effect seven days after the date of service of the notice on the person named in it as being in breach of this section.

(4) As soon as practicable after the Board has issued a non-compliance notice a copy of the notice shall be served -

- (a) on the person named in it as being in breach of section 13; and
- (b) on any person who has an interest in any land or business premises on or in relation to which the breach has occurred.

(5) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars and, in addition, to a mandatory fine of two hundred and fifty dollars for every day on which the offence continues after the person has been convicted of that offence, and on a second conviction to a like fine or imprisonment for three months or both.

(6) The person named in a non-compliance notice may within twenty days of notification of the decision appeal to the summary court against the notice, whether or not a copy of the notice has been or is deemed to have been served on him.

(7) A non-compliance notice shall cease to have effect on the issuance by the Board of a certificate to the effect that it is satisfied that the person named in the notice -

- (a) is no longer in breach of section 13(1) (a); or
- (b) has taken sufficient steps to ensure that he will no longer be in breach of section 13(1)(b).

- (8) A certificate referred to in subsection (7) may be issued by the Board -
  - (a) on its own initiative; or
  - (b) on the application of the person named in the non-compliance notice,

and in either case shall be issued as soon as reasonably practicable after the decision is made but in any case within five days.

(9) If the Board determines that a certificate referred to in subsection (7) must not be issued, it shall in five days give notice in writing to the person named in the notice, giving therein reasons for that determination.

Powers of court in relation to non-compliance notices

18. (1) Subsection (2) applies where, in any proceedings for an offence under this Law, a non-compliance notice has taken effect against the person charged with the offence.

(2) In proceedings referred to in subsection (1), the summary court may, whether or not the person charged with the offence is convicted of that offence, cancel or affirm the notice and, if it affirms the notice, it may do so either in its original form or with such modifications as the court may think fit.

(3) If a person is convicted of an offence under this Law, the summary court may, in addition to or in place of any other sentence imposed on that person, make an order requiring the Board to remove his name from the register.

(4) For purposes of clarification it is declared that even in cases where the summary court has ordered the removal of a name from the register and revocation of a certificate of registration, the Board shall retain the power to restore the registration and certificate where the reason for the revoking of the certificate no longer exists or there is sufficient reason to do so under this Law but this power shall be exercised subject to the restriction contained in sections 7 (9) and 11 (8).

Application of offences to business entities

19. Whenever a business entity is found guilty of an offence under this Law, -

- (a) the business entity shall be liable on summary conviction to a fine of ten thousand dollars, and to a further fine of two thousand five hundred dollars for every day on which the offence continues after it has been convicted of that offence; and
- (b) a director, partner or manager of the business entity shall also be guilty of an offence and liable on summary conviction to a fine not exceeding two thousand five hundred dollars, and, in addition, to a mandatory fine of two hundred and fifty dollars for every day on which the offence continues after he has been

convicted of that offence unless violation took place without the knowledge or consent of the director, partner or manager concerned

20. (1) Any person aggrieved by any decision of the Board (other than in relation to a non-compliance notice, in respect of which an appeal may be lodged under section 17 (6)) may, within twenty days from the date on which the notice is issued or decision notified, or such period as the Appeals Tribunal may allow in a particular case, appeal to the Appeals Tribunal, subject to further appeals, but only on points of law, to the Grand Court and Court of Appeal; and the decision of the Court of Appeal shall be final.

Appeals

(2) The procedure on an appeal to the Appeals Tribunal under subsection (1) shall be by way of notice of appeal and be by way of re-hearing.

(3) In any case where an appeal under subsection (1) lies from a decision of the Board, the document notifying the decision of the Board to the person concerned shall state -

- (a) the right of appeal to the Appeals Tribunal; and
- (b) the period within which the appeal may be brought.

(4) In subsection (1) the relevant date is -

- (a) in the case of a non-compliance notice, the date on which the notice takes effect under section 17; and
- (b) in the case of any decision of the Board other than a decision to issue a non-compliance notice, the date on which notice of the decision was given to the person desiring to appeal.

(5) On an appeal against a non-compliance notice, the Appeals Tribunal may either cancel or affirm the notice and, if it affirms the notice, it may do so either in its original form or with such modifications as the Tribunal may think fit.

## **PART VI MISCELLANEOUS**

21. (1) No information relating to any person that is obtained under or for the purposes of this Law by a member of the Board or any public officer shall be disclosed, except for the purposes of any proceedings for an offence against the Law or a report of those proceedings.

Confidentiality

(2) Any person who discloses any such information in contravention of this section commits an offence and is liable on summary conviction to a fine not exceeding two thousand five hundred dollars.

- Service of documents
22. Any document required or authorised under this Law to be served shall be served -
- (a) for an individual, by delivering it to him or by leaving it at his proper address or by sending it by registered post to him at that address; or
  - (b) if the person is a body corporate, by serving it in the manner specified in paragraph (a) but with service being effected on, or sent to, the secretary of that body;
  - (c) if the person is an unincorporated body, by serving it in the manner specified in paragraph (a) on a partner or other person having control or management of the business of that unincorporated body,
- and in each case the person shall require a person who appears to be authorised to receive mail or other responsible person to sign acknowledging receipt and if there is no responsible person willing to sign, the document may be left at the business premises and the person serving shall record why the document was not signed for.
- Directives
23. (1) The Governor may give policy directives to the Board in writing but such directives shall not derogate from this Law or any regulations made under this Law.
- (2) In the exercise of the functions conferred on the Board by or under this Law, the Board shall comply with any such directives.
- Regulations
24. (1) The Governor may make regulations generally for giving effect to this Law and for prescribing any matter which under this Law may be prescribed.
- (2) Without limiting the generality of subsection (1), regulations under this section may prescribe -
- (a) the fees payable by applicants for registration under this Law and the particulars of applicants to be registered;
  - (b) the forms to be used and the procedure -
    - (i) for making applications for registration and issuing certificates of registration under the Law; and
    - (ii) for the issuing of non-compliance notices under the Law;
  - (c) conditions of registration, including conditions as to registration applicable to any class or description of building work;
  - (d) qualifications that may be approved or recognised for the purposes of this Law;

- (e) relevant experience for the purposes of this Law, being experience in such description of building work as may be prescribed;
- (f) categories for qualified individuals and the pre-requisite for each category; and
- (g) the procedures for ensuring that a business entity does not begin operating until it has been registered under this Law and has obtained -
  - (i) a trade and business licence under section 16 of the trade and Business Licensing Law (2003 Revision); or
  - (ii) a licence under section 11 of the Local Companies (Control) Law (1999 Revision).

(3) The power of the Governor to make regulations under this section includes power -

- (a) to make different provision in relation to different cases or classes of case (including different provision for different classes of person); and
- (b) to provide for such exceptions, limitations and conditions, and to make such supplementary incidental, consequential or transitional provisions, as the Governor considers necessary or expedient.

25. (1) Except as provided in subsection (2), where a business entity or individual does not meet the formal requirements for registration under this Law, the Board may register such entity or individual if that business entity or individual proves to the Board by written submission, as may be permitted or allowed by the Board, that the entity or individual was, immediately before the entry into force of this Law, engaged, or had the capacity to engage, in the same activity as that in which it or he requires registration and its or his record in that regard is satisfactory.

Transitional

(2) The Board may determine that a business entity or individual who is to be registered under subsection (1) shall, on the basis of its or his own quality of work, upon application, be registered in a category less onerous than one in which it or he has been engaged.

**SCHEDULE**  
**THE BUILDERS BOARD**

**Section 3 (7)**

1. The Builders Board shall be a body corporate with perpetual succession and a common seal.

2. (1) A member of the Board shall, subject to the provisions of this Law, hold office for a period not exceeding two years and such member shall be eligible for re-appointment, and the Governor shall, making appointments, ensure that two members retire every two years.

(2) The Governor may appoint any person to act temporarily in the place of the Chairman or a member of the Board in the case of the absence or inability to act of the Chairman or of such member on account of conflict of interest or for any other cause, as the case may be.

(3) If the Chairman or Deputy Chairman ceases to be a Chairman or Deputy Chairman, he shall automatically cease to be a member of the Board unless the Governor directs otherwise.

(4) A member may at any time, by notice in writing addressed to the Governor, resign his membership.

(5) The Governor shall terminate the appointment of a voting member who -

- (a) resigns his office;
- (b) becomes incapable of performing his duties due to mental or physical illness;
- (c) has been adjudged to be bankrupt, suspends payment to or compounds with his creditors;
- (d) is convicted in the Islands or in any other jurisdiction of an offence involving dishonesty, fraud or any indictable offence;
- (e) is guilty of serious misconduct in relation to his duties; or
- (f) is otherwise unable or unfit (through ill-health, failure to attend meetings or otherwise) to discharge the functions of member.

(6) Where a member ceases to be a member before the normal expiration of his term, the Governor may appoint another person to hold that office for the remainder of the term.

3. (1) Where a member of the Board is in any way directly or indirectly interested in an application for registration made to the Board or in any other matter which is to be determined by the Board, he shall disclose the nature of his interest at a meeting of the Board as soon as reasonably practicable after the relevant circumstances have come to his knowledge.

(2) Any disclosure so made by such a member shall be recorded in the minutes of the Board and that member shall not, after disclosure, take part in the deliberations or decision of the Board with respect to the application or matter.

(3) For purposes of clarification it is declared that after a disclosure is made, or the Chairman determines that a member has an interest that should have been disclosed, the member making the disclosure or the member affected by the Chairman's determination, as the case may be, shall not be in the place where the deliberations are being held.

4. (1) The Board may co-opt any person whom it considers able to assist it in the performance of its functions.

(2) Any person co-opted may attend and participate in meetings of the Board, but shall not be entitled to vote and shall not be counted for the purpose of constituting a quorum.

5. (1) Except as otherwise specified in this Law, the Board may determine their own procedure.

(2) The quorum of the Board is five.

(3) The Board shall meet at least once in every month.

(4) The Chairman shall call a meeting of the Board if so directed by the Governor or if requested to do so in writing by three voting members of the Board; and such a direction or request must include a statement of the agenda proposed for the meeting.

(5) The Board shall reach its decisions by a majority of the votes of the members present and voting at the meeting.

(6) At meetings of the Board, the Chairman shall preside and -

(a) in the absence of the Chairman, the Deputy Chairman shall preside;

(b) in the absence of both the Chairman and the Deputy Chairman, the members present shall elect one of their number to preside at that meeting.

6. The Board shall provide the Governor with such information as he may from time to time require with respect to the activities or proposed activities of the Board; but a requirement imposed under this paragraph shall not impose upon the Board the duty of providing the Governor with information which the Board does not possess and cannot reasonably be expected to obtain.

7. The validity of any proceedings of the Board shall not be affected by any vacancy in its membership or by any defect in the appointment, or any

disqualification of, any of the members of the Board, so long as a quorum is present.

8. Members of the Board shall be paid such sitting allowances as the Governor may determine and be reimbursed for expenditure reasonably incurred in the performance of their duties.

9. (1) The application of the seal of the Board shall be authenticated by the signature of the Chairman or the Deputy Chairman and the secretary.

(2) All documents issued by the Board, other than those required by law to be under seal, and all decisions of the Board, shall be signed by the Chairman, the Deputy Chairman or the secretary.

(3) Any document purporting to be one issued by the Board, and to be sealed or signed on behalf of the Board in accordance with this paragraph, shall be received in evidence and shall be deemed to be such a document without further proof unless the contrary is shown.

10. In carrying out its functions under this Law the Board may, with the approval of the Governor, enter into arrangements with any department of the Government for the use of the personnel, facilities and services of the department to any extent compatible with the department's operations.

Passed by the Legislative Assembly the            day of            , 2006.

Speaker.

Clerk of the Legislative Assembly.

**(17 March, 2006)**