

**MEMORANDUM ON THE OBJECTS OF THE**  
**AGRÉMENT SOUTH AFRICA BILL, 2014**

**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, furthermore, is 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.

Department of Public Works

05 September 2014