

BUILDING CONTROL ACT

Act 9 of 2012 – 15 March 2013

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BUILDING CONTROL ACT

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Building Control Act.

2. Interpretation

In this Act—

“architect” has the same meaning as in the Professional Architects’ Council Act;

“authorised officer” has the same meaning as in the Local Government Act;

“builder” means a person who uses his own human and material resources or those of third parties to execute development works;

“building” has the same meaning as in the Local Government Act;

“Chairperson” means the Chairperson of the Council referred to in section 5;

“Chief Executive” has the same meaning as in the Local Government Act;

“committee” means a committee set up under section 9;

“Construction Industry Development Board” means the Construction Industry Development Board established under the Construction Industry Development Board Act;

“Council” means the Building Control Advisory Council established under section 5;

“design team” means the architect and the engineer hired by a developer for the preparation of plans and drawings;

“developer” means a person who, individually or collectively, decides on, promotes, plans and finances development works, with his own resources or those of third parties, for himself or for the subsequent disposal, delivery, transfer, sale or letting of the building to third parties;

“development works” has the same meaning as in the Local Government Act;

“Energy Efficiency Management Office” has the same meaning as in the Energy Efficiency Act;

“engineer” means a professional engineer registered under the Registered Professional Engineers Council Act;

“local authority” has the same meaning as in the Local Government Act;

“member”—

(a) means a member of the Council; and

(b) includes the Chairperson;

“minimum building standards” means such building standards as may be prescribed;

“Minister” means the Minister to whom responsibility for the subject of public infrastructure is assigned;

“Ministry” means the Ministry responsible for the subject of public infrastructure;

“occupier”, in relation to any premises—

- (a) means every person in actual occupation of the premises; and
- (b) includes the owner when in actual occupation or a tenant, and the agent or representative of the owner or tenant;

“owner”, in relation to any premises, means—

- (a) the person receiving or entitled to receive the rent of the premises let, whether on his own behalf or that of any other person; or
- (b) where the owner cannot be ascertained, its occupier;

“permit” means a Building and Land Use Permit issued under the Local Government Act;

“premises” means—

- (a) a building of any description and its appurtenances;
- (b) a manufactured home on a moveable dwelling and its associated structure;
- (c) land, whether built on or not;
- (d) a tent;
- (e) a swimming pool; or
- (f) a vessel of any description, including a houseboat;

“principal agent” means the architect or engineer, or the firm of architects or engineers, registered under the Construction and Industry Development Board Act appointed by a developer for the supervision of development works;

“project” means the set of documents which define and determine the technical requirements of the development works;

“supervising officer” means the supervising officer of the Ministry.

[S. 2 amended by s. 4 (a) of Act 27 of 2012 w.e.f. 22 December 2012; s. 4 (a) of Act 18 of 2016 w.e.f. 7 September 2016; s. 7 (1) (a) of Act 10 of 2018 w.e.f. 10 October 2018.]

3. Basic requirements for buildings

Every building shall be designed, constructed and maintained in such a way as to guarantee people’s safety, society’s well-being, the protection of the environment, and aesthetic value, and satisfy the following—

- (a) functional requirements—
 - (i) utility, to ensure that the arrangement and dimensions of the space and the fitting out of the services allow the building to be used for its intended purpose;

- (ii) accessibility, to ensure that persons with impaired mobility and communication, elderly persons and pregnant women are able to access and use the building and the facilities within the building comfortably;
 - (iii) access to telecommunication, audio-visual and information services; and
 - (iv) gender compliance, to ensure that gender-specific requirements are integrated in the building;
- (b) safety requirements—
- (i) structural safety, to insure against damage, due to design and construction, to the building originating in or affecting the foundation, including supporting columns, load bearing walls, beams and floor slabs of the superstructure or other structural elements which could directly jeopardise the building's structural soundness and stability required normally for its use;
 - (ii) safety in case of fire, to ensure that—
 - (A) a person may evacuate the building safely in a specified time;
 - (B) the fire may be stopped from spreading inside the building and to neighbouring buildings; and
 - (C) facilities, such as means of escape in case of fire, means of giving warning in case of fire and means of firefighting, are incorporated in the building so as to allow the Mauritius Fire and Rescue Service and other emergency services to operate properly at all times;
 - (iii) safety of use, to ensure that the use of the building poses no risk of accident to any person;
- (c) sustainability requirements—
- (i) by providing indoor air quality in the building, to ensure the well-being, comfort and productivity of the occupants of the building;
 - (ii) by ensuring—
 - (A) water tightness of the building and water management within its premises;
 - (B) waste management from the construction site;
 - (C) noise protection so that noise levels do not affect the health of any person and allow any person to carry out his activities normally;
 - (D) energy savings and optimum energy consumption for the proper running of the building; and
 - (E) reduction of heat island effect in urban areas.

4. Requirements for permits

- (1) No permit shall be issued by a local authority unless—
- (a) the following enactments, as the case may be, are complied with—
 - (i) this Act;
 - (ii) the Environment Protection Act;
 - (iii) the Local Government Act;
 - (iv) the Planning and Development Act; and
 - (v) the Town and Country Planning Act;
 - (b) the requirements specified in section 3 and the minimum building standards are complied with;
 - (c) the prescribed minimum energy efficiency requirements, if any, are complied with; and
 - (d) plans and drawings for the proposed building works are drawn up and signed in accordance with subsection (2) and such guidelines as may be issued by a local authority.
- (2) Where a building has a floor area of—
- (a) more than 150 square metres, the plans and drawings for the proposed building works shall be—
 - (i) drawn up and signed electronically by an architect;
 - (ii) where required under guidelines issued or regulations made under the Local Government Act, certified by an engineer; and
 - (iii) forwarded by the architect or engineer, as the case may be, by such electronic or other technological means as the relevant local authority may direct;
 - (b) 150 square metres or less, the plans and drawings for the proposed building works—
 - (i) may be drawn up by a person other than an architect; and
 - (ii) where required under guidelines issued or regulations made under the Local Government Act, shall be certified by an engineer.

[S. 4 amended by s. 7 of Act 10 of 2017 w.e.f. 24 July 2017; s. 7 (1) (b) of Act 10 of 2018 w.e.f. 10 October 2018.]

PART II – BUILDING CONTROL ADVISORY COUNCIL

5. Building Control Advisory Council

- (1) There is established a Building Control Advisory Council which shall consist of—
- (a) a Chairperson, having experience in the field of architecture or engineering, to be appointed by the Minister;

- (b) 2 representatives of the Ministry;
- (c) a representative of the Ministry responsible for the subject of energy;
- (d) a representative of the Ministry responsible for the subject of environment;
- (e) a representative of the Ministry responsible for the subject of housing and lands;
- (f) a representative of the Ministry responsible for the subject of local government;
- (g) a representative of the Mauritius Fire and Rescue Service;
- (h) a representative of the Energy Efficiency Management Office;
- (i) a representative of the Construction Industry Development Board;
- (j) an architect, who shall be designated by and from the Professional Architects' Council;
- (k) an engineer, who shall be designated by and from the Registered Professional Engineers Council;
- (l) a quantity surveyor, who shall be designated by and from the Mauritius Association of Quantity Surveyors;
- (m) a suitable person, who shall represent a registered association of contractors and who shall be appointed by the Minister; and
- (n) a suitable person, who shall be designated by and from the Mauritius Association of Insurance Companies.

(2) A member, other than a member referred to in subsection (1) (b) to (i), shall hold office for a period of 3 years and shall be eligible for reappointment.

(3) Every member shall be paid such fee or allowance as the Minister may determine.

6. Functions of Council

(1) The Council shall—

- (a) advise the Minister on any regulations to be made under this Act;
- (b) examine and comment on any guidelines referred to in Sub-part F of Part VIII of the Local Government Act, having regard to this Act and international norms and standards;
- (c) be responsible for formulating policies for a more effective, safe, efficient and sustainable construction of buildings; and
- (d) perform such other function as may be conferred on it by this Act or as may be prescribed.

(2) In the exercise of its functions, the Council shall have regard to and aim to promote the public interest, and shall, where it considers appropriate—

- (a) consult any other person;
- (b) commission research and surveys; or
- (c) require a local authority to furnish information, particulars and statistics.

[S. 6 amended by s. 7 (1) (c) of Act 10 of 2018 w.e.f. 10 October 2018.]

7. Vacancy in membership of Council

(1) A member, other than a member referred to in section 5 (1) (b) to (i), shall cease to hold office—

- (a) on completion of his term of office;
- (b) on his resignation, by notice in writing given to the Secretary; or
- (c) where the body that he represents on the Council designates another person as its representative.

(2) Where a member resigns under subsection (1) (b), his seat shall become vacant as from the date on which the Secretary receives the notice.

(3) Any member, other than a member referred to in section 5 (1) (b) to (i), may be removed for any reason specified in section 37 (3) (b) of the Interpretation and General Clauses Act.

(4) Where a vacancy occurs in the membership of the Council pursuant to subsection (1) (b) or (3), the person appointed in replacement shall hold office for the remainder of the term of office of the person whom he replaces.

8. Meetings of Council

(1) The Council shall meet as often as the Chairperson thinks necessary but at least once every month.

(2) A meeting of the Council shall be held at such time and place as the Chairperson thinks fit.

(3) (a) At a meeting of the Council, 9 members shall constitute a quorum.

(b) Any decision of the Council shall be by a resolution of the majority of the members present.

(4) The Chairperson shall chair every meeting and, in the absence of the Chairperson, the members present shall elect one of the members to chair the meeting.

(5) A special meeting of the Council shall be convened by the Secretary within 21 days of the receipt of a request in writing signed by not less than 5 members and specifying the purpose of the request.

(6) The Council may, where it considers necessary, co-opt such other persons with relevant expertise not already available to the Council, to assist it in relation to any matter before it.

(7) Subject to this section, the Council shall regulate its meetings and proceedings in such manner as it may determine.

9. Committees

(1) The Council may set up such committees as it considers necessary to assist it in the discharge of its functions.

(2) A committee shall consist of not less than 5 members of the Council and such other persons as may be co-opted by the Council.

(3) A committee shall—

- (a) meet as often as is necessary and at such time and place as the chairperson of the committee thinks fit;
- (b) meet as and when required by the Council; and
- (c) regulate its meetings and proceedings in such manner as it may determine.

(4) A committee shall submit a report within such time as the Council may require, containing its comments on any matter referred to it by the Council.

10. Disclosure of interest

(1) Where any member, or any person related to him by blood or marriage, has a pecuniary or other material interest in relation to any matter before the Council or a committee, that member shall—

- (a) disclose the nature of the interest before or at the meeting of the Council or the committee convened to discuss that matter; and
- (b) not take part in any deliberations of the Council or the committee relating to that matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of proceedings of the meeting of the Council or the committee, as the case may be.

11. Secretary

(1) There shall be a Secretary to the Council who shall be a public officer.

(2) The Secretary shall be responsible for the proper administration of the Council.

(3) The Secretary—

- (a) shall, for every meeting of the Council—
 - (i) give notice of the meeting to the members;
 - (ii) prepare and attend the meeting; and
 - (iii) keep minutes of proceedings of the meeting; and
- (b) may take part in the deliberations of a meeting of the Council, but shall not have the right to vote.

(4) The Secretary shall have such other functions as may be conferred upon him by the Council.

12. Protection from liability

No liability, civil or criminal, shall be incurred by the Council or any member, in respect of any act done or omitted by it or him in good faith in the discharge of its or his functions, or exercise of its or his powers, under this Act.

13. Confidentiality

(1) No member or the Secretary shall, during or after his relationship with the Council, use or disclose any matter which comes to his knowledge in the performance of his functions, except for the purposes of administering this Act.

(2) Any person who, without lawful excuse, contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding 12 months.

14. Powers of Minister

(1) The Minister may give such directions of a general character to the Council, not inconsistent with this Act, as he considers necessary in the public interest, and the Council shall comply with those directions.

(2) The Minister may require the Council to furnish any information or document in relation to its activities, and the Council shall supply such information or document.

PART III

[Part III repealed by s. 7 (1) (d) of Act 10 of 2018 w.e.f. 10 October 2018.]

15. —

[S. 15 amended by s. 4 (b) of Act 27 of 2012 w.e.f. 22 December 2012; s. 4 (b) of Act 18 of 2016 w.e.f. 7 September 2016; repealed by s. 7 (1) (d) of Act 10 of 2018 w.e.f. 10 October 2018.]

16. —

[S. 16 repealed by s. 7 (1) (d) of Act 10 of 2018 w.e.f. 10 October 2018.]

17. —

[S. 17 repealed by s. 7 (1) (d) of Act 10 of 2018 w.e.f. 10 October 2018.]

18. —

[S. 18 repealed by s. 7 (1) (d) of Act 10 of 2018 w.e.f. 10 October 2018.]

19. —

[S. 19 amended by s. 4 (c) of Act 18 of 2016 w.e.f. 7 September 2016; repealed by s. 7 (1) (d) of Act 10 of 2018 w.e.f. 10 October 2018.]

PART IV – DUTIES AND RESPONSIBILITIES FOR DEVELOPMENT WORKS

[Part IV amended by s. 7 (1) (e) of Act 10 of 2018 w.e.f. 10 October 2018.]

20. Duties of developer, design team and principal agent

(1) Every developer shall—

- (a) apply for and obtain a permit and any authorisation required under any enactment;

- (b) where applicable, appoint a design team, an architect or another person, or an engineer for the preparation of plans and drawings in accordance with section 4;
- (c) where applicable, appoint a principal agent;
- (d) provide all proper documentation and information needed for his project;
- (e) arrange for the insurance policies referred to in section 21; and
- (f) provide any buyer with necessary documentation on the development works.

(2) Every member of a design team shall—

- (a) prepare a project in accordance with this Act and any other enactment, and the terms of the contract entered into between him and the developer;
- (b) ensure that plans and drawings made by him are in compliance with this Act and any other enactment; and
- (c) be responsible for the veracity and accuracy of any information provided.

(3) Every principal agent shall—

- (a) supervise the development works at all stages until completion;
- (aa) conduct risk-based inspections of the building at such intervals as he or it may determine;
- (b) ensure that the development works are carried out in accordance with the permit;
- (c) issue, in case a building has a floor area of 150 square metres or more, a clearance certificate to the holder of a permit certifying that development works in respect of the building have been carried out in accordance with the permit; and
- (d) be responsible for the veracity and accuracy of any information provided.

(4) A local authority may, at any stage of building works, *proprio motu* or on the recommendation of the principal agent, issue, in accordance with the Local Government Act, an enforcement notice where it is necessary to do so for public safety or where the development works are not being carried out according to the permit issued.

[S. 20 amended by s. 4 (d) of Act 18 of 2016 w.e.f. 7 September 2016; s. 7 (1) (f) of Act 10 of 2018 w.e.f. 10 October 2018.]

21. Mandatory guarantees

(1) Every builder shall subscribe, in relation to such building as may be prescribed, a property damage insurance policy in favour of a developer or an eventual buyer to guarantee for a period of one year, the payment of compensation for any property damages due to execution faults or defects which affect the finish works or elements, failing which the developer shall withhold 5 per cent of the contractual price of the building works.

(2) Every developer shall subscribe, in relation to such building as may be prescribed—

- (a) a property damage insurance policy in favour of eventual or subsequent buyers or lessees to guarantee, for a period of 2 years, the payment of compensation for any property damage resulting from faults or defects in non-structural elements or services resulting in the non-compliance with the requirements under section 3 (c);
- (b) a property damage insurance policy in favour of eventual or subsequent buyers or lessees to guarantee, for a period of 10 years, the payment of compensation for any property damage caused to a building by faults or defects originating in or affecting the structural elements including the foundation, supports, beams, framework, load-bearing walls, or other structural elements and which could directly jeopardise the building's structural soundness and stability; and
- (c) a property damage insurance policy in favour of eventual or subsequent buyers or lessees to guarantee the payment of compensation for any property damage caused during a cyclonic season.

PART V – DANGEROUS BUILDINGS

22. Dangerous building to be surveyed

(1) Where it is made known to, or considered by, a local authority, the supervising officer or the Commissioner of Police, that any building, including any structure or wall, constitutes a danger to passers-by, occupiers, or neighbouring buildings, the local authority shall, on receiving the report or information, or on an application from the supervising officer or Commissioner of Police, appoint an engineer to survey the building.

(2) The engineer appointed under subsection (1) shall, after surveying the building or wall, submit a report to the local authority.

(3) Where a report submitted under subsection (2) is to the effect that the building or wall is in a dangerous state, the local authority shall cause a notice to be served on its owner or occupier, ordering that, within such time as may be specified in the notice—

- (a) the building or wall be shored up or otherwise secured, and proper hoardings or fence be put up for the protection of passers-by;
- (b) the building or wall be forthwith taken down or repaired; or
- (c) the building be vacated.

(4) Where an owner, or occupier, on whom a notice has been served under this section fails to comply with the notice, the local authority shall take down, secure or repair the building to the satisfaction of the engineer who issued the report under subsection (2).

(5) Any person who fails to comply with a notice served under subsection (3) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees and to imprisonment for a term not exceeding 4 years.

23. Occupier to recover expenses from owner

(1) Subject to subsection (3), where an occupier who is not liable for the costs of any repairs has, following a notice served under section 22, complied with the order in default of the owner, he shall, where he has given previous notice to the owner, recover from the owner the cost of the repairs and collateral expenses.

(2) A notice under section 22 shall constitute evidence before any Court that the building was in a dangerous state and that repairs were required.

(3) The cost and collateral expenses of the repairs to the dangerous building shall be claimed from the owner and may be recovered from the rent payable.

24. Sale of materials

(1) Where a building is pulled down pursuant to a notice served under section 22, the local authority may—

- (a) sell, by public auction, the materials of the pulled down building; and
- (b) apply the proceeds of the sale in payment of the expenses incurred in respect of the building.

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(2) The local authority shall, on demand, give any surplus arising from the sale to the owner of the building.

(3) The owner shall remain liable for the payment of the expenses that may remain due after the application of the proceeds of the sale.

25. Ruinous buildings

(1) Where any building—

- (a) has become waste and ruinous;
- (b) has become the receptacle for filth and other nuisances;
- (c) has become unsafe and unfit for use and occupation;
- (d) cannot be rebuilt or disposed of without the consent of the owner; or
- (e) is allowed to remain in a waste and ruinous or unsafe state in consequence of the owner being unable, unwilling or delaying to agree as to the sale or rebuilding of the building,

the local authority may, after issuing a notice to the owner to make the necessary repairs and where the order is not complied with, and after the expiry of the delay specified in the notice, apply to a Judge in Chambers for an order for the sale of the building.

(2) The Judge shall issue an order calling all interested parties to appear before him, and if the parties have not, within a period not exceeding one month to be fixed by the Judge, agreed to sell or repair the building, the Judge shall authorise the local authority to prosecute the sale before the Master and Registrar of the Supreme Court.

(3) (a) The sale shall be carried on at the suit of the local authority, in the same manner and form as for the sale of any small immovable property belonging to a bankrupt and sold by public auction before the Master and Registrar.

(b) One of the conditions of the sale shall be that the purchaser shall—

- (i) pull down, rebuild or repair the building; or
- (ii) make it fit for use and occupation,

to the satisfaction of the local authority, and within the time fixed in the said conditions.

26. Fees to survey dangerous buildings

There shall be paid such fees as may be prescribed in respect of the services of an engineer employed to survey a building deemed dangerous, and such fees shall accrue to the local authority and shall be chargeable to the owner or occupier of the building.

PART VI – HAZARDOUS BUILDINGS

27. Restriction on hazardous buildings

Any building used to accommodate a forge, a furnace or an oven, or used for storing, processing or handling of any materials that—

- (a) produce explosive dust or that result in the disintegration of matter into fine particles;
- (b) are subject to spontaneous ignition;
- (c) can be solids or substances that ignite or produce flammable gases on contact with water; or
- (d) constitute a high fire hazard or any other health hazard in view of its form, character or volume,

shall be a hazardous building.

28. Permit for hazardous building

(1) No hazardous building shall be built, erected or established in any part of Mauritius—

- (a) except where a permit has been issued by the local authority; and
- (b) under such conditions as the local authority may consider appropriate, including the prevention of fire, protection of the environment or public health, public convenience, or for the protection of the health, or for the safety, of any worker employed in or about such hazardous building.

(2) A local authority may cause a hazardous building to be pulled down or removed as the local authority may think fit, at the expense of the offender.

29. Exception in special cases

Notwithstanding section 28, a local authority may authorise, in special cases, a hazardous building to be built, erected or established in such prohibited part of Mauritius as may be prescribed.

30. Chimneys

(1) Where exhaust fumes are being produced from an industrial building or where a forge, fireplace, oven or furnace is established in the industrial building, the local authority may issue a notice requiring the owner of the industrial building to erect in connection with the building, and within the time specified in the notice, a proper chimney to be designed in such manner as may be prescribed.

(2) Where the owner of an industrial building fails to comply with a notice under subsection (1), the local authority may, at the expiration of the time specified in the notice, order the use of the industrial building to be discontinued.

(3) Where the owner of a building fails to comply with an order made under subsection (2), that owner shall commit an offence.

31. Petroleum, electric or internal combustion engine

(1) No petroleum, electric or internal combustion engine shall be used in a building without a special authorisation from the local authority.

(2) Sections 28 and 30 shall apply to every authorisation issued under this section.

PART VII – MISCELLANEOUS

32. Service of orders or notices

(1) Where, under this Act, any order or notice is required to be served on the owner or occupier of any premises or on any other party under this Act, such order or notice, addressed to the owner, occupier or party, shall be signed by the Chief Executive, and shall be served by an officer of the local authority personally on, or sent by registered post to, the owner or occupier.

(2) Every order or notice referred to in subsection (1) shall—

- (a) specify the section of this Act under which the order or notice is given;
- (b) clearly and explicitly specify—
 - (i) the work to be executed;
 - (ii) the building or part thereof to be secured, repaired, pulled down or removed; or
 - (iii) the infringement of this Act to be discontinued;
- (c) contain an injunction to the person to whom the order or notice is addressed, to execute the work and shall specify the building or part thereof to be secured, repaired, pulled down or removed, or the infringement of this Act to be discontinued; and
- (d) fix a reasonable time within which the works are to be executed, specifying the building or part thereof to be secured, repaired, pulled down or removed, or the infringement of this Act to be discontinued.

33. Offences

(1) Any person who contravenes this Act shall commit an offence.

(2) Any person who commits an offence under this Act, for which no specific penalty is provided, shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.

(3) The Court may, in addition to any penalty, order the pulling down or removal of any building at the expense of the offender where the offender

has not complied, within such reasonable period fixed by a local authority, with the notice served upon him to pull down any building erected or made in contravention of this Act.

34. Regulations

(1) The Minister may, for the purposes of this Act, make such regulations as he thinks fit.

(2) Any regulations made under subsection (1) shall be made on the advice of the Council.

(3) Any regulations made under subsection (1) may provide—

- (a) for the form, time, manner and mode of giving notices and orders under this Act;
- (b) for minimum building standards;
- (c) for minimum energy efficiency requirements for buildings;
- (d) for anything that is required to be prescribed;
- (e) that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 12 months.

35. – 38. —
