



Advisory Note on Improper Conduct

1. The intent of this Advisory Note is to serve as a reminder to Registered Persons of the critical importance of adhering to The Engineering Council of South Africa's ("ECOSA") enforcement mechanisms. It also provides an overview of ECOSA's mandates, along with an outline of the potential sanctions that may be imposed if a Registered Person is found to have engaged in improper conduct.
2. The Engineering Council of South Africa ("ECOSA") is a statutory professional regulatory body established in terms of Section 2 of the Engineering Profession Act No. 46 of 2000 ("the Act"). ECOSA operates within the ambit of the Built Environment Profession. ECOSA is therefore a creature of statute, with its mandate anchored in the Engineering Profession Act ("the Act").
3. ECOSA has a myriad of mandates embedded in the Act. Amongst these mandates, is a multi-faceted investigative legal mandate founded on the following legislative provisions:
 - Section 14 (g): taking any steps considered necessary for the protection of the public in their dealings with Registered Persons for the maintenance, integrity, and enhancement of the status of the engineering profession;
 - Section 14 (j): taking any steps considered necessary, where, as a result of engineering-related undertakings, public health and safety is prejudiced;
 - Section 28: investigation of alleged improper conduct by Registered Persons;
 - Section 29: preferring charge(s) against Registered Persons, if sufficient grounds exist;
 - Section 30: appointing a Disciplinary Tribunal to hear a charge(s) of improper conduct;
 - Section 31: to conduct a Disciplinary Hearing;
 - Section 33: managing grievances (appeals) in relation to the decisions of the Disciplinary Tribunal; and
 - Section 35: managing appeals against certain decisions of the Council.

4. Any member of the public, an association, or an organization may lodge a complaint against a Registered Person with ECSA if there are reasonable grounds to suspect that a Registered Person has committed an act of improper conduct. This process is not intended to account for or replace civil or criminal litigation.
5. The enforcement mandate of ECSA is operationalized through, inter alia, the following instruments:
 - The Act;
 - The Investigating Committee (IC) Terms of Reference;
 - Council's Delegations of Authority Framework;
 - The Code of Conduct for Registered Persons;
 - The Overarching Code of Practice for the Performance of Engineering Work; and
 - The Rules of Inquiry into Alleged Improper Conduct.¹
6. ECSA only has jurisdiction over individuals who were Registered Persons at the time the alleged improper conduct occurred. ECSA has jurisdiction irrespective of whether the individual is a Registered Person at the time of lodging the complaint affidavit/sworn statement. Therefore, the test is whether the individual was a Registered Person at the time the alleged improper conduct occurred.
7. ECSA's jurisdiction includes, inter alia:
 - 7.1 Ethical and technical complaints - against Registered Persons in the execution of engineering work as defined in the Code of Conduct for Registered Persons and/or the Overarching Code of Practice for Engineering Work.
 - 7.2 Criminal Complaints - against persons who unlawfully practice in any of the professional categories for Registered Persons as listed in Section 18(2) of the Engineering Profession Act 46 of 2000.

¹ Code of Conduct for Registered Persons published in Government Gazette number 40691 on 17 March 2017 under Board Notice 41 of 2017 and promulgated in terms of the Engineering Profession Act, (Act 46 of 2000, as amended) and/or in terms of the Overarching Code of Practice for the Performance of Engineering Work published in the Government Gazette number 44333 on 26 March 2021 under Board Notice 20 of 2021.

- 7.3 Third-party investigations - complaints or matters that have been brought to the attention of ECSA by Registered Persons and/or members of the public that address potential issues that may arise as a result of engineering work that could pose a risk to the health and safety of the public and which does not necessarily relate to a complaint of alleged improper conduct by a specific Registered Person.
8. ECSA's jurisdiction excludes, inter alia:
- 8.1 ECSA is not in a position to assist with the recovery of monies as it is neither a Court of Law nor an alternative to the normal debt collection procedures. Furthermore, ECSA does not value property and therefore a valuation dispute as it relates to quantum, i.e., the valuation of the property is not a function of ECSA.
 - 8.2 Commercial/Civil Complaints. ECSA does not have jurisdiction to hand down rulings for the payment of damages, specific performance, breach of contract, and/or giving of general legal advice. The purpose of the mandate of ECSA is to investigate allegations of improper conduct by Registered Persons, enforce the Overarching Code of Practice for Engineering Work and/or the Code of Conduct for Registered Persons, and give effect to contraventions of the above-mentioned Codes in the form of, amongst others, sanctions imposed on the Registered Person.
 - 8.3 Complaints of alleged improper conduct that occurred when an individual was not a Registered Person.
 - 8.4 Complaints that are objectively evaluated as frivolous, vexatious, or driven by malicious intent.
9. A "Registered Person" is a person registered in terms of Section 18(1) of the Act.

The categories in which a person may register in the engineering profession are:

- (a) Professional, which is divided into —*
 - (i) Professional Engineer;*
 - (ii) Professional Engineering Technologist;*
 - (iii) Professional Certificated Engineer; or*
 - (iv) Professional Engineering Technician; or*

(b) Candidate, which is divided into —

- (i) Candidate Engineer;*
- (ii) Candidate Engineering Technologist;*
- (iii) Candidate Certificated Engineer; or*
- (v) Candidate Engineering Technician; or*

(c) Specified categories prescribed by the Council, which are divided into —

- (i) Registered Lifting Machine Inspectors;*
- (ii) Registered Lift Inspectors;*
- (iii) Medical Equipment Maintainers.*

10. A person not registered by ECSA in any of the above categories is referred to as a non-registered person.
11. A complaint is lodged by a complainant through an affidavit/affirmation, which is available on ECSA's website: (www.ecsa.co.za). The affidavit/affirmation must include detailed allegations brought against the Registered Person and any documentation to corroborate those allegations.
12. If a finding of guilty is made, the Disciplinary Tribunal may impose the sanctions prescribed in Sections 32(3) (a) and (b) of the Act. These include:

(3) (a) If the registered person charged is found guilty of improper conduct, or if he or she admits that he or she is guilty of the charge, the disciplinary tribunal must either:-

- (i) caution or reprimand the registered person;*
- (ii) impose on him or her a fine not exceeding the amount calculated according to the ratio for one year imprisonment determined in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991);*

(iii) suspend the registration of the registered person concerned for a period not exceeding one year; or

(iv) cancel the registration of the registered person concerned and remove his or her name from the register referred to in section 11(c) of the EPA.

(b) The disciplinary tribunal may take decisions under more than one of the subparagraphs of paragraph (a).

13. The findings of a Disciplinary Tribunal and sanctions imposed must be published in the Government Gazette 30 (thirty) days after the sanction was imposed on the Respondent and will also be published on the ECOSA website.

14. Any questions and queries can be directed to carla@ecsa.co.za

This document is advisory only and is not intended as specific professional advice, legal or otherwise. The merits of every situation should be considered separately and specific professional advice.

