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THE NATIONAL CONSTRUCTION AUTHORITY ACT

*(No. 41 of 2011)*

THE NATIONAL CONSTRUCTION AUTHORITY (DEFECTS  
LIABILITY) REGULATIONS, 2020

*Arrangement of Regulations*

PART I—PRELIMINARY

1. Citation.
2. Interpretation.

PART II—DEFECTS LIABILITY

3. Patents Defect Liability period.
4. Obligations of parties during the patent defects liability period.
5. Latent defects liability period.
6. Insurance cover for latent defects.
7. Insurance by owner

## THE NATIONAL CONSTRUCTION AUTHORITY ACT

(No. 41 of 2011)

IN EXERCISE of the powers conferred under section 42 of the National Construction Authority Act, 2011, the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works, makes the following Regulations—

## THE NATIONAL CONSTRUCTION AUTHORITY (DEFECTS LIABILITY) REGULATIONS, 2020

## PART I—PRELIMINARY

1. These Regulations may be cited as the National Construction Authority (Defects Liability) Regulations, 2020. Citation.

2. In these Regulations, unless the context otherwise requires— Interpretation.

“commercial building” means premises occupied wholly or partially for the purposes of trade or business or for the purposes of rendering services for money or money’s worth;

“contractor” means a person registered under section 15 of the Act;

“defects liability period” means a period after the construction of a commercial building has been completed, from practical completion to hand-over of the commercial building during which a contractor may return to the commercial building to remedy any patent defects;

“latent defect” means a concealed structural flaw in a commercial building or fixed installation that exists but is not apparent or readily detectable during the latent defects liability period;

“owner” means a person who enters into a contract with a contractor for the construction of a commercial building;

“patent defect” means a defect which is detectable upon reasonable inspection during the construction period and can be notified to the contractor either before practical completion or during the defects liability period;

“practical completion” means the completion of a commercial building upon which the relevant county government issues a certificate of occupation;

“relevant professional” means a person who is registered—

(a) as an engineer under the Engineers Act, 2011; or No. 43 of 2011.

(b) as an architect or quantity surveyor under the Architects and Quantity Surveyors Act; and Cap. 525.

“sub-contractor” means a person who is not named in the main contract as a subcontractor, but is appointed by an owner as a subcontractor for the construction of the commercial building that is the subject of the main contract.

## PART II—DEFECTS LIABILITY

3. (1) Every contract for the construction of a commercial building shall prescribe a patent defects liability period. Patent defects liability period.

(2) The patent defects liability period under sub regulation (1) shall be a minimum period of twelve months after practical completion.

(3) A contractor shall be liable for the rectification of patent defects that become apparent during the patent defects liability period.

(4) A relevant professional shall be liable for the rectification of patent defects that become apparent during the patent defects liability period.

(5) A sub-contractor shall be liable for the rectification of patent defects that become apparent during the patent defects liability period.

4. (1) During the patent defects liability period, the owner and the contractor, relevant professional or sub-contractor, shall jointly prepare a schedule specifying the patent defects identified. Obligations of parties during the patent defects liability period.

(2) The contractor, relevant professional or sub-contractor, shall rectify the respective defects specified in the schedule made under sub regulation (1) after which the owner shall certify that the contractor, relevant professional or sub-contractor, has made good the defects identified.

5. (1) Every contract for the construction of a commercial building shall prescribe a latent defects liability period. Latent defects liability period.

(2) The latent defects liability period under sub regulation (1) shall be a minimum period of six years from completion of the patent defects liability period.

(3) A contractor shall be liable for the rectification of patent defects that become apparent during the latent defects liability period.

(4) A relevant professional shall be liable for the rectification of patent defects that become apparent during the latent defects liability period.

(5) A sub-contractor shall be liable for the rectification of patent defects that become apparent during the latent defects liability period.

6. (1) A contractor shall obtain insurance cover for latent defects that may become apparent during the latent defects liability period. Insurance cover for latent defects.

(2) A relevant professional shall obtain a professional indemnity cover for latent defects that may become apparent during the latent defects liability period.

(3) A sub-contractor shall obtain insurance cover for latent defects that may become apparent during the latent defects liability period.

7. Every owner of a commercial building shall at all times insure the commercial building against structural damage attributable to the owner. Insurance by owner.

Dated the 8th April, 2020.

**JAMES MACHARIA,**  
*Cabinet Secretary for Ministry of Transport, Infrastructure,  
Housing, Urban Development and Public Works.*