



Construction Industry Associations Regulatory Policy 2016

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ANNEXURE

Schedule 1 - Specimen for Industry Associations Constitutions

Interpretations

In these regulations unless the context otherwise requires -

“Act” means the Construction Industry Council Act, 2013;

“Artisan” means a person trained in a technical skill especially one that involves undertaking functions by hand;

“Company” means a company incorporated in Swaziland according to the Companies Act of 2009;

“Council” means the Construction Industry Council established in terms of Section 3 of the Act;

“Contractor” means a person or company involved in construction works as stated in the Act;

“Construction Industry Association” means an association formed by members who are contractors in the construction industry, recognized by the Act;

“Joint venture” means a business in which two or more parties agree to pull their resources for the purpose of executing a specific project.

“Firm” includes a partnership or similar legal entity as prescribed by the Companies Act of 2009.

“Firm” and “Company” shall be used interchangeably and may include the other where applicable in the regulatory policy;

“Foreign company” means

- a) A company incorporated outside Swaziland; or
- b) a company incorporated in Swaziland in which 60% or more of the shares are held by a non-Swazi citizen

“Member” means a member of an industry association in good standing with the association in accordance with the constitution of the industry association;

“Misconduct” means professional or business misconduct which includes behavior which violates the code of conduct outlined in Schedule V of the Industry Council Regulations 2016.

1. Background

The Government of the Kingdom of Swaziland enacted the Construction Industry Act No 14 of 2013 that provides for the establishment of the Construction Industry Council and outlines its functions. The Council is now operational and implementation of the provisions of the legislation is underway. All companies and persons involved in construction are required by law among other things, to be registered with the Council.

The CIC has 4 industry affiliated associations, namely the Swaziland Contractors Association (SCA), Swaziland Association of Architects, Engineers and Surveyors (SAAES), Swaziland Association of Indigenous Engineers (SAIE) and the Building Material and Suppliers Association (BMSA).

According to the Act, the objectives of the Construction Industry Council are to:

- (a) Promote the construction industry in meeting national construction demand;
- (b) Provide strategic leadership to construction industry stakeholders to stimulate sustainable growth, reform and improvement of the construction sector;
- (c) Determine and establish best practice that promotes:
 - (i) improved industrial sustainability;
 - (ii) improved industry performance, efficiency and effectiveness;
 - (iii) procurement and delivery management reform;
 - (iv) improved public and private sector delivery management;
 - (v) national social and economic objectives, including-
 - growth of the emerging enterprises;
 - labour absorption in the construction industry;
 - improved labour relations;
 - positive safety, health and environmental outcomes;
 - (vi) human resource development in the construction industry;
- (d) Promote best practice through the development and implementation of appropriate programmes and measures aimed at best practice and improved performance of public and private sector clients, contractors and other participants in the construction delivery process;
- (e) Promote uniform application of policy with regard to the construction industry throughout all spheres of the industry including Government, parastatals and the private sector;
- (f) Promote establish or endorse uniform and ethical standards that regulate the actions, practices and procedures of parties engaged in construction contracts;
- (g) Promote sustainable growth of the construction industry and the participation of the emerging enterprises;
- (h) Promote appropriate research on any matter related to the construction industry and its development;
- (i) Implement policy on construction industry development;

- (j) advise the Ministry of policy and programmes which impact on construction industry growth and development; and
- (k) Promote any other related objective.

Some of the regulatory challenges facing the construction industry in Swaziland include clarifying the role of the four (4) construction industry associations mentioned above, as well as ensuring that they operate within a framework that is commonly agreed and shared within the construction industry. Consultations with various industry stakeholders, including the leadership of the industry associations and a selection of its membership revealed that the industry has a number of challenges some of which this regulatory policy should address.

Beginning with the policy objectives, this policy document specifically addresses the functions of the industry associations, the governance of the industry associations (including issues around the constitutions and code of conduct), fees charged to membership, conflict resolution, the interaction of the Construction Industry Council and the industry associations, as well as funding of industry associations.

2. Policy objectives

The broader objectives of the Construction Industry Associations Regulatory Policy are as follows:

- a) Facilitate effective collaboration and engagement of industry players with the Council through Industry Associations in order to create a vibrant construction industry in the country;
- b) Ensure members of the industry associations get value (benefits) from membership including getting a platform for engaging and voicing out concerns, making input into how the industry could improve and benefit the entire country;
- c) To ensure effective participation of industry players in industry dialogues and matters affecting their work;
- d) To ensure that industry associations operate professionally to the benefit of its membership, following best practices in democratic governance and coordination;
- e) To introduce and drive an agenda of self-regulation within Industry Associations as part of the broader mandate of industry regulation of the Council;
- f) To systematically structure the entrance to, participation in and exit out of the construction industry in Swaziland, weeding out unfruitful and unproductive participation detrimental to the economy of Swaziland;
- g) To continuously obtain input and feedback from industry participants through the Industry Association structures thereby improving chances of dealing with regulatory issues affecting industry participants;
- h) To regulate the fees paid by participants in the construction industry.

3. Functions of Industry Associations

The functions of industry associations, in additions to those in their constitutions are set out below:

- a) Providing a platform for industry players to engage on issues affecting the different sectors within the industry in a bid to ensure that the ground is level for participation. This could be through meetings, social media, and other available and viable platforms;
- b) To provide mechanisms for discouraging and dealing with malpractices within the industry, including dispute management;
- c) To lobby on behalf of members on matters that negatively affect their membership with all stakeholders, including the government, the Construction Industry Council, the Private Sector, regulatory agencies, and other relevant stakeholders;
- d) To facilitate the sound entrance into and exit out of the industry in a less harmful way, encouraging fair trade benefit the local economy and due diligence on entrance;
- e) To facilitate improvements in local companies' capacity to bid for construction projects otherwise taken by 'qualifying' foreign contractors;
- f) To promote quality products and services in the industry to ensure client satisfaction, public safety, and a positive contribution to the country's economy by the industry.
- g) To ensure the development of capacity building programmes for members and ensure their continued existence and effective implementation.

4. Industry Associations – Membership

4.1 Membership criteria

- 4.1.1 Industry associations shall open membership to all contractors and construction professional firms as prescribed by the Act through a clearly outlined membership criteria that is not discriminatory in nature. The criteria shall also specify the different categories of membership and shall not be in conflict with any categorization stipulated by the Construction Industry Council. Changes in the membership criteria and categories shall be authorized by members in a general meeting and approved by the Construction Industry Council.
- 4.1.2 Whereas the Construction Industry Act refers to a contractor as “a person or body of persons who undertakes to execute and complete construction works”, the Council will expand on the definition of a contractor for regulatory purposes and in order to set boundaries to what a contractor means for purposes of registration. Such definition expansion will be done in consultation with the industry associations and will be a guide to accepting members into the industry associations.
- 4.1.3 The membership of individuals shall be restricted to artisans. Other professionals such as quantity surveyors, architects, engineers and others shall be registered with the

Architects, Engineers, Surveyors and Allied Professionals Registration Council and only their firms or companies can register with the relevant industry associations.

- 4.1.4 Industry associations have the responsibility to verify facts regarding the application for membership, including inspecting the place of business for the prospective member.

4.2 Joining, subscription and other membership fees

- 4.2.1 Joining fees for the industry associations shall be prescribed by the associations in consultation with its membership, with the majority of members endorsing the prescribed fees. However, associations shall ensure that minority interests are not ignored and as such, evidence shall be produced when required by the Council, that minority interests were given due regard when joining fees were prescribed. The constitutions of the respective industry associations shall specify how membership petitions the executive committee towards change of joining and/or subscription fees.
- 4.2.2 Subscription fees shall be prescribed with the state of the economy in mind in order to avoid the economic exclusion of members and would-be-members of the association.
- 4.2.3 Other fees paid by the members of the association shall be reasonable and should there be a legitimate outcry from members regarding fees demanded, the Council shall respond to such outcries through the issuance of necessary directives, after consultations with the affected association(s) to ensure that fees are not used as barriers to entry in the construction industry.
- 4.2.4 Penalties charged by industry associations for late payment and other defaults on payment of membership and/or subscription fees shall not exceed 50% of the originally due amount.

4.3 Changes in membership status

- 4.3.1 Construction industry associations are permitted by their constitutions to determine from time to time if a member should retain or lose their membership status especially where the association's code of conduct has been violated or subscription fees have not been paid. Loss of membership with the industry association shall be communicated to the Council immediately or within two weeks of such loss of membership status through a letter recommending the deregistration of such a member from the Council's register. Suspension or expulsion by an industry association shall automatically result in the deregistration of a firm by the Council provided all available appeal structures have been duly exhausted.
- 4.3.2 A member of an industry association suspended or expelled by an industry association upon violation of the industry association constitution and/or code of conduct shall appeal such a decision by the industry association within a 30 calendar days of the communication of such expulsion or follow the internally stipulated appeal process.
- 4.3.3 Construction industry associations are expected to have and follow disciplinary codes and structures when dealing with members' prohibited conduct which leads to suspension or expulsion. Such disciplinary structures shall naturally include appeal structures.
- 4.3.4 In the case of a member of a construction industry association deregistered by the Council due to misconduct or malpractice, the Council shall inform the industry association in

writing. The industry association will consider the matter and determine the appropriate course of action which may include suspension, penalties, or expulsion, depending on the nature of violation done by the members. Upon reinstatement through the industry association's procedures, the industry associations shall recommend re-registration with the Council within 30 calendar days of such reinstatement, stating the reasons behind the reinstatement and action taken against the member.

- 4.3.5 Should a member of an association cease to operate as a business, such member shall inform the association immediately, indicating the reasons for cessation of business. The industry association will, in turn, inform the Council in writing within 30 days. In accordance with the Act, the Council will de-register the concerned company. On resumption of business, the member shall pay association's membership fees due as is the case with the Council on re-registration. The member shall not be charged fees for a period the member was not in business and had requested prior to have membership suspended for reasons of not being economically active.

4.4 Professional misconduct

- 4.4.1 As part of a regulatory perspective, each industry association shall, as part of its code of conduct, stipulate actions and/or behaviors which are deemed professional misconduct in the industry. All members of the industry association shall sign the code of conduct that binds them to the industry ethics contained therein. The Industry association's code of conduct shall not be in conflict with the Act and other related pieces of legislation and regulations, as well as the Council's similar instruments.

4.5 Business misconduct

- 4.5.1 Industry associations shall stipulate acts deemed business misconduct for members of each of the industry associations. Such may include elements of anti-competitive behavior, dodging or short-changing clients (including non-completion of or failure to deliver a project or products), fronting, collusion, price-fixing and other similar acts which have the potential to derail the industry.
- 4.5.2 In addition to reporting to the Council where necessary, punitive action to be taken in the event a member is found to have committed business misconduct shall be specified by each of the industry associations in their code of conduct documents.

5. Constitutions of industry Associations

- 5.1 All industry associations are expected to submit their constitutions and membership code of conduct documents to the Construction Industry Council. Amendments to these documents shall be communicated to the Council in writing within 30 calendar days of the adoption of such amendments.
- 5.2 The constitutions of the industry associations shall conform to generally acceptable formats and shall contain, at minimum, all the basics of an association's constitution including provisions on membership, membership fees, disciplinary codes and structures, general and executive meetings, management of funds, elections, dissolution of executive, winding up, and others. A specimen for constitutions of industry associations is attached in Schedule I and shall be followed by industry associations in reviewing their constitutions as a minimum standard.
- 5.3 For any dispute arising out of the constitution of an industry association, the Council will be an arbitrator to such a dispute and as such, the latest copy of the association's constitution lodged with the Council will be recognized by the Council as the legitimate constitution.

6. Meetings

6.1 Industry associations meetings

- 6.1.1 At minimum, the executive committee of the industry association shall ensure that one annual general meeting (AGM) where all members of the associations are invited is held at least once a year and for such meetings, sufficient evidence shall be kept showing that effort directed at ensuring maximum attendance was made by the executive committee. Another extraordinary general meeting shall be organized for members apart from the AGM to discuss industry issues affecting members since such may not be discussed in detail and exhaustively within an AGM. The Council shall penalize the executive committee should this policy be violated, including removing the executive committee from office. The Associations are free to hold other extraordinary general meetings should a need arise and the number of these shall be limited by the association's constitution.
- 6.1.2 Measures aimed at discouraging members from not attending general meetings shall be put in place by the industry association in order to maximize participation by members in industry matters.
- 6.1.3 Minutes of general meetings, including the attendance register proving that there was quorum, shall be kept safe and made available for inspection by members on demand, as well as the Council should a need arise.
- 6.1.4 The Council may send a representative to attend a general meeting of an industry association as an observer and the presence of the representative shall be made known to

members present in that meeting. This will help the Council to get first-hand knowledge and information about industry issues affecting members of the association.

- 6.1.5 Whereas the executive committee of an industry association may determine the appropriate frequency for its meetings, at minimum, the executive committee is expected to meet at least four times a year (quarterly). The executive committee shall guard against too frequent and expensive meetings. The number of meetings per annum shall be regulated by the industry association's constitution and the number of meetings held each year shall be reported to members at the annual general meeting.

6.2 Meetings with CIC

- 6.2.1 In an effort to enhance a healthy interface between the Council and industry associations, the Council will schedule at least one meeting per annum with the executive committee of the industry association to deliberate on industry-specific issues that require the attention and action of both parties. More meetings can be held at the request of either party should a need arise.
- 6.2.2 Sufficient notice or request for a meeting shall be sent by the requesting party or the Council in the case of the mandatory meeting. Sufficient notice in this case may be any reasonable amount of time generally not less than 14 calendar days for the mandatory meeting, and anything from a day for emergency meetings depending on the circumstances.

6.3 Meetings with stakeholders

- 6.3.1 Industry associations may request meetings with various industry stakeholders depending on the need, including information and knowledge sharing. Such meetings may be on the instance of the industry association or stakeholders. Effort shall be made to meet stakeholders who have requested a meeting with the industry association, especially on matters affecting the membership provided a notice of less than seven (7) calendar days has been given. Should there be concerns from the industry associations about meeting with certain stakeholders, advice shall be sought with the Council instead of simply refusing to meet the stakeholder, particularly when there is enough evidence to suggest that the agenda for the meeting is in the interest of the members of the industry association.

7. Council Requirements from Industry Associations

- 7.1 The industry associations are expected to submit their constitutions and Code of Conduct documents to the Council. On an annual basis, the industry association shall submit the following documents to the Construction Industry Council:

a) Updated membership list

This is meant to ensure the synchronization of the Council's register of construction industry firms and those of the industry associations' membership. Further, this will improve transparency between players in the industry, including the CIC, industry associations and others. Monitoring of the changes in membership can be done by the Council from year to year and take the necessary steps towards enhancing the growth and competitiveness of the industry.

b) Annual Programme of Action or strategic plan

Whereas a strategic plan of the industry association would be ideal, at minimum, the industry association shall develop and submit to the Council a programme of action each year directed at systematically taking care of the top priority concerns of the membership in order to develop the industry. The involvement of the Council in the development of the industry association strategic plan, although not mandatory, is encouraged in order to ensure alignment of the association's and the Council's strategic direction. It is the Council's expectation that associations will implement their strategic plans and/or annual programmes of action, and as such, and upon request, the Council could assist associations in ensuring that such plans are implemented and accordingly reviewed.

c) Audited Financial Statements

From a regulatory perspective, it is in the interest of the Council and the entire membership of the construction industry associations to ensure that use of funds of the associations, which are contributed by the members, is audited annually and presented to the membership and the Council. This is a compliance issue for the Council and failure to submit audited financial statements attracts punitive action towards the executive committee of the industry association. However, industry associations with annual revenues not exceeding E200,000 (Two hundred thousand Emalangeni) may submit unaudited financial statements provided that they are prepared by an accountant registered with the Swaziland Institute of Accountants. The ceiling of E200,000 will be escalated by inflation on an annual basis in order to remain relevant and such shall be communicated to the industry associations by the Council. To this end, the financial year end of the associations shall be aligned to that of the Council and it is expected that audited financial statements shall be submitted to the Council within 30 calendar days after presentation to and adoption by the general meeting.

d) Constitution (only if revised)

This shall be submitted once at the beginning to the Council. However, in the event of amendments, a revised version of the constitution and an addendum showing the changes shall be submitted to the Council.

e) Code of Conduct (only if revised)

In some cases, the code of conduct could be part of the industry association's constitution. Where this is not the case, the industry association shall submit this to the Council and any other revisions shall be reported to the Council together with revised copies of the Code of Conduct.

7.2 The Council will issue a directive on when the submission of these documents is due. Failure to submit these documents to the Council will attract penalties which will be communicated by the Council to industry associations. Notices for the intention to level penalties and other punitive measures against an industry association as indicated in this section and others, shall be communicated to the association as a warning before the actual action is taken against the association.

8. Complaints from clients against contractors

- 8.1 The Council has put in place mechanisms for reporting complaints against contractors. The Council may investigate such cases, including the use of collaborative processes with the Industry Associations.
- 8.2 The Council shall inform Industry Associations about complaints lodged against their members, in order to ensure that there is constant programming aimed at minimizing the occurrence of such complaints.

9. Malpractices by Industry Associations

- 9.1 Malpractice and/or misconduct may occur at industry association level other than at the level of the individual members of the industry association. In such cases, the Council will take appropriate punitive action against the executive committee of the industry association concerned. The Council will guard against any activity that has the potential to bring the industry into disrepute.
- 9.2 In the case of violation of constitution of association by members of the executive committee, members of the association shall be encouraged to report such violation to the Council and as such, the constitution of the industry association shall pronounce the encouragement to members to report such violations to the Council.
- 9.3 Malpractices may transcend beyond the violation of the constitution or sections of the constitution of the industry association, possibly to include violation of principles, procedures, laws, regulations (including this policy) and codes of conduct by leadership of the industry associations or the membership of the industry association collectively through a vote or other means. Any member of the association shall be free to report such actions to the Council.

- 9.4 Industry associations are not expected to encourage their members to willfully violate industry laws, regulations and policies.
- 9.5 The Council is not only expected to wait for members of an industry association to report malpractice by the industry association or its leadership but can obtain related information through many sources, including its own investigations propelled by certain observations and reports (including media reports).

10. Promotion of membership interest

- 10.1 The major expectation of the industry from industry associations is the protection of the interests of the membership of such industry associations and to this end, industry associations shall create platforms for the membership to articulate their interests. Such forums could be meetings, virtual space (online submissions, suggestion boxes, call centres, toll-free call-ins), walk-ins and other means. Ultimately, the industry association shall have a database of concerns and/or contributions from members that are programmed for action. It is recognized that some of the concerns from members may require the intervention of the Council. In such cases, the Executive Committee shall communicate those concerns to the Council in writing. Council shall acknowledge communication within 7 calendar days and accordingly respond to the concerns in writing.
- 10.2 For purposes of strengthening the associations' ability to respond to members concerns and interests, associations shall, as practicable as possible, develop sub-structures or groups such as sub-industry and specialists interest groups within the associations which shall be responsible for deliberating sub-industry specific issues before cascading them to the Executive Committee and ultimately the general meeting. For instance, Architects could form a sub-group, builders could form a sub-group and civil contractors could form a sub-group, etc. However, these shall work to further the interest of the sub-group without working against the broader interest of the association and shall be subject to laid out procedures and rules of the association.
- 10.3 An annual programme of action for the industry association, clearly articulating how membership concerns will be *addressed* shall be developed by the industry association, a copy of which shall be made available to the Council at a stipulated or agreed timeline. The industry association's strategic plan or annual programme of action shall be characterized by the strong involvement of the membership of the association, and shall contain, among other things, clear capacity building programmes. Such plans shall be subjected to annual performance reviews and reported about to the annual general meeting.
- 10.4 The executive committee of the industry association shall schedule and hold meetings with stakeholders in a bid to lobby for specific industry policies and practices which are deemed detrimental to the members of the industry association. The executive committee shall report, at least annually, to the entire membership during a general meeting on the progress of lobbying efforts by the executive committee on behalf of the membership.

- 10.5 Apart from lobbying on behalf of members, industry associations can and shall pursue litigation on behalf of membership, particularly on issues where lobbying has not delivered the results. However, this shall be on a collective front as opposed to cases of individual firms and internal procedures shall be followed in this regard. It is hereby emphasized that the industry prefers mitigation processes in the cases of misunderstanding and disputes ahead of or in the stead of litigation, making litigation to be the last resort.
- 10.6 On an annual basis, industry associations shall contribute towards the Council's annual capacity building programme through needs identification and industry strategic direction. The Council will stipulate deadlines for the submission of such programmes. This is important for ensuring that there is no duplication of efforts in this regard by the Council and the industry associations.

11. Relationship with the CIC

- 11.1 The Construction Industry Council Act constitutes the Council through members coming from the four existing industry associations namely BMSA, SCA SAAES and SAICC. However, the Act does not prescribe the selection of these members and as such, industry associations shall determine the procedure for nominating the members to sit in the Council. Whatever the nomination procedure selected, it shall be consultative and involving in nature, ensuring that members of the industry association contribute towards, and know the members who will sit in the Council from the industry association.
- 11.2 In order to reduce elements of conflict of interest, it is prudent for the four recognized industry associations to nominate members who are not necessarily in the executive committee of the association but to nominate ordinary members who will in turn become ex-officio members of the executive committee.
- 11.3 Procedure for recalling and/or replacing a member representing an industry association in the Council shall be developed and endorsed by the membership of the industry association, and such procedure shall not be in violation of the Act. It is important to note though that the industry association can only recommend to the Minister the recall and replacement of a Council representative.

12. Procurement

- 12.1 Procurement in the construction industry is of critical importance and as such, efforts shall be made to safeguard the interests of the industry and the country at large when it comes to procurement activities including procedures

- 12.2 The Council will publish construction projects registered with the Council for firms to know and tender for. The published list of projects will be copied to Industry Associations which will be expected to put in place mechanisms to make these lists accessible in good time to members. Such mechanisms will include known notice boards, websites accessible to members, and other broadcast means to be determined by the industry association.
- 12.3 Industry Associations are expected to encourage members to adhere to existing procurement laws, regulations and procedures in the country through their constitutions, code of conduct and other internal instruments with repercussions for deviations. To this end, industry associations shall occasionally facilitate training programmes aimed at improving adherence to national and industry laws, regulations and procedures on construction procurement.
- 12.4 It is Government's policy to support the use of locally manufactured and traded material in the construction industry and as such, the Council promotes this policy position through encouraging the sourcing of construction material from local suppliers unless it can be proven that such material is not available in Swaziland. To this end, the industry associations are expected to discourage their members from importing material that is available in Swaziland through various means, including reporting the practice to the Council where noticed. Instead, industry associations are expected to support local sourcing of building materials, contractors and expertise over the importation of those for construction projects. The Construction Industry Council Act Regulations shall be consulted by associations and their membership in this regard.
- 12.5 Industry associations shall further encourage members to create joint ventures in order to enhance their ability to bid for larger construction projects that would otherwise be awarded to foreign contractors over local contractors. This shall be the case even when it comes to manufacturers and suppliers of construction material.

13. Funding of Industry Associations

- 13.1 The funding of industry association activities and administration remain the responsibility of the membership of the associations through joining fees and subscriptions. However, the Council adopts the position of minimizing the cost of obtaining and maintaining membership in an industry association. Since registration with the Council requires membership in an industry association, the cost of obtaining and maintaining membership in an association shall not be prohibitive and there shall be no differential across industry associations.
- 13.2 Members joining fees, subscription fees and other agreed fees shall be used for the administration requirements of the industry association, as well as advancing the agenda of the industry association particularly with regards to the protection of the interests of members. Good stewardship is a natural expectation from the executive committees of industry associations by the membership and the Council.

- 13.3 Industry associations are free to look for other means of raising funds for purposes of funding industry association programmes but such means shall be lawful and in accordance with the constitutions of the industry associations. Fundraising or generation methods could include, but not limited to, charging for specific services and/or products provided by the association to members, training, penalties, donations and grants.
- 13.4 For purposes of enhancing access to finance for members, industry associations may establish savings and credit institutions parallel to the industry associations purely for such purposes and membership to such institutions shall be voluntary.
- 13.5 The Council shall determine effective ways to assist Industry Associations in the funding of capacity building programmes from time to time.
- 13.6 The Council shall make grant funding available to Industry Associations through a clearly defined funding framework in order for the Industry Associations to effectively carry out its functions especially towards improving the construction industry in Swaziland.

14. Dispute resolution

- 14.1 Whereas all industry associations are expected to put in place dispute resolution mechanisms for its members, the associations shall also ensure that the impartiality and independence of dispute resolution structures are maintained.
- 14.2 Members of industry associations shall direct their complaints against the associations to the Executive Committee of the association before directing their complaints to the Council, in which case, proof that such complaint was made to and not dealt with satisfactorily or at all shall be provided.
- 14.3 Should industry associations internal dispute resolutions mechanisms fail to resolve a dispute, the dispute shall be escalated to the Council;
- 14.4 The Council shall use its dispute resolution structures, including the dispute resolution tribunal to deal with disputes from industry associations.



CONSTRUCTION INDUSTRY ASSOCIATIONS REGULATORY POLICY 2016

SCHEDULE I

Specimen for Industry Associations Constitutions

Specimen for Industry Associations Constitutions

Construction Industry Associations should endeavor to follow this specimen in developing or reviewing their constitutions in order to align them to the Construction Industry Associations Regulatory Policy of 2016. These are minimum standards to be followed but the associations are free to improve their constitution beyond this to better serve their membership and the industry at large.

1. Name of Association, acronyms and legal status

State the name of the association in full, including its shortened version and acronyms where applicable. This section should also state whether the association has been or will be lawfully registered and whether is a corporate body, able to sue, and to be sued.

2. Definition of terms/Interpretation

All relevant, peculiar and likely to be ambiguous terms should be fined in the context of the constitution, including relevant pieces of legislations and associated bodies, as well acronyms to be used throughout the constitution

3. Objectives of the Association

Clearly indicate what the association purports to achieve or do for its membership, the very intention for formation and opportunities it intends to pursue in the long-term or on a continuous basis

4. Membership of the Association

This section should clearly define who is eligible to join as a member and the different categories of membership. Membership criteria should be clear, demarcating and indicative of who should objectively associate. The Construction Industry Council Act should be consulted to ensure alignment.

In addition, the procedure for applying and acceptance for membership, as well as resigning from being a member should be outlined. The section should also describe how membership is lost including appeal procedures pertaining loss of membership particularly in cases of misconduct and non-compliance issues.

5. Membership fees

Membership fees should be stipulated. At minimum, the section should state how they are fixed, when they are due, penalties for non-payment and late payment. Categories of fees should be clarified, including joining fee (or initial membership fee), annual subscription fees and other fees, ensuring that fees are reasonable to members and prospective members, not prohibitive to enterprising in the industry.

6. Executive Committee

6.1 Election of Executive Committee

Describe the association's chosen way of electing members of the Executive Committee, including how they may be removed from office. Further, this section should specify the election time for Executive Committee members (e.g. AGM every three years, etc.). The section should spell whether a secret ballot, show of hands or any other method will be used to vote for members, and how the electoral officer will be nominated or promulgated. The process should be described from preliminary nominations to the final elections, including how each position will be voted for.

Tenure of office should be specified, including the number of terms a member can serve in the Executive Committee. As a general rule, a member should not serve more than three consecutive terms but may be re-elected after a term break from serving in Executive Committee. Each term of office should not be less than two years, but not more than four years.

6.2 Composition and number of members

This section should spell out how many members should compose the Executive Committee and such number should not be less than seven (7) members

Secondly, this section should deal with any technical and general requirements for members to be elected into the Executive Committee

It should also indicate the positions to be found in the executive committee, using terms that are generally acceptable and easy to understand by both members of the industry association and the industry in general, including the following:

- a) The Chairperson/President
- b) Vice Chairperson/Vice President
- c) Secretary/Secretary General
- d) Vice Secretary/Vice Secretary General
- e) Treasurer
- f) Additional members (could be any number from 1 to 5)

6.3 Duties and responsibilities of Office Bearers

Duties and responsibilities of each of the office bearers (as indicated in 6.2 above) should be spelt out here. It is advisable to share or spread responsibilities across the office bearers. In particular, there is need to clearly spell out what the offices of the Vice Chairperson and Vice Secretary (or equivalent) do apart from acting in the absence of the substantive chairperson or secretary.

6.4 Ex-Officio members

The association should indicate who will be ex-officio members of the Executive Committee and the rationale behind them being regarded as ex-officio. At bare minimum, the association's Administrator/Manager should be an ex-officio member, as well as the association's representative to the Construction Industry Council (BMSA, SAAES, SAICC, SCA) and other similar bodies.

For association's representatives to the Construction Industry Council (BMSA, SAAES, SAICC, SCA), the association should indicate how these are nominated or elected for recommendation to the Minister of Public Works and Transport for appointment into the Council as the per dictates of the Construction Industry Council Act No. 14 of 2013. It would also be important to indicate how a recommendation to recall such representatives, if so desired, may be made.

6.5 Powers of the Executive Committee

All powers of the Executive Committee should be spelt out here including the power to act in certain circumstances such as administration of funds, decision-making, and others. This section should clearly demarcate what the Executive Committee is allowed to do and what it is not allowed to do

6.6 Loss of executive committee membership status

It is important to spell out all instances that lead to a member of the executive committee losing their position or status in the executive committee. These could include violation of the constitution and/or code of conduct of the association, resignation, death or other specific circumstances.

The constitution of the association should also provide for how a vote of no confidence in the executive committee or a member of the executive committee should be passed by the members and under what circumstances.

6.7 Committee meetings

The major points here should include how often should the Executive Committee meet and how the meetings are conducted. As a basic rule, at least four (4) Executive Committee meetings should be held per annum but should not exceed ten (10) meetings per annum. Meetings should be chaired by the Chairperson or Vice Chairperson or any other appointed member in the absence of the chairperson. Clauses relating to the attendance or non-attendance of meetings and actions in tandem with such should be spelt out here. Such issues will include quorum during meetings, notices for meetings, voting during meetings, recording of proceedings, setting of agenda, keeping attendance register and other relevant matters.

Quorum for meetings should not be less than half the supposed meeting attendees.

7. General Meetings

The association should detail the number and nature of general meetings that should be held by the association's membership per annum. At minimum, an annual general meeting (AGM) should be held, followed by at least one other general meeting to discuss special business interests for the membership for the association. In essence, an industry association should not hold less than 2 general meetings per annum.

The section should also provide for how the general meetings should be conducted including the standard agenda items for the AGM. General meetings issues such as quorum during meetings, notices for meetings, voting during meetings, postponement of meetings, recording of proceedings, keeping attendance register, action for non-attendance and other relevant matters should be presented under this section.

As a general rule, quorum for general meetings should not be less than half the membership of the association. A meeting not forming a quorum should be postponed by seven (7) calendar days where, in the absence of a quorum, the meeting shall continue provided sufficient notice has been given to members as per the constitution of the association.

8. Finances

The association should indicate how it will raise funds apart from membership fees. Secondly, it should be stated how funds will be managed, indicating who is responsible for what, approval and authorization protocols, as well as banking and spending arrangements. Other matters relating to the association's finances should be described here, including borrowing, investing, and reporting.

9. Amendment of Constitution

Likely circumstances calling for the review or amendment of the constitution could be stated here, including the procedure to be followed in cases of a need for constitutional review or amendment.

10. Conduct of Members

How the wayward conduct of members will be dealt with by the association should be detailed in this section including how to lodge a complaint concerning a conduct of a member, disciplinary hearings and other pertinent procedures.

Alternatively, a separate Code of Conduct for members can be developed as an addendum to the constitution, spelling out the items considered misconduct by the associations and how they will be dealt with, including procedures for appealing.

11. Liquidation

This section deals with how the association will be liquidated in the event liquidation becomes necessary. The section should spell out who will be the liquidator or how the liquidator will be appointed and how the liquidation process should go. If possible, circumstances calling for liquidation can be included here.

12. Dispute Management

The constitution of the associations should indicate how disputes will be handled. It should also indicate the Construction Industry Council as a party to the dispute resolution mechanism of the association (as a last resort should internal processes and structures fail).