

S22

THE CONSTRUCTION INDUSTRY COUNCIL ACT, 2013

(Act No. 14 of 2013)



I ASSENT

MSWATI III
KING OF SWAZILAND

31st July, 2013

ARRANGEMENT OF SECTIONS

PART I
PRELIMINARY

1. Short title and commencement
2. Interpretation.

PART II
THE CONSTRUCTION INDUSTRY COUNCIL

3. Establishment of Council
4. Independence of Council
5. Objects of the Council
6. Composition of Council
7. Membership of Council
8. Functions of Council
9. Powers of Council
10. Seal of Council
11. Tenure of office
12. Proceedings of Council
13. Committees of Council

18. Chief Executive Officer and other staff

19. Stakeholder consultation

PART III
FINANCIAL PROVISIONS

20. Funds of Council

21. Levy

22. Borrowing powers

23. Investment of funds

24. Financial year

25. Accounts

26. Annual report

PART IV
REGISTRATION OF CONTRACTORS

27. Application for registration

28. Contractor to operate under registered category

29. Register of contractors and affiliated bodies

30. Cancellation of registration

31. Appeal against refusal to register contractor or cancellation of registration

32. Affiliation to Council by professional bodies

33. Publication of list of registered contractors

34. Annual registration fee

PART V
REGISTER OF PROJECTS

35. Register of projects

36. Best practice project assessment scheme

37. Best practice contractor recognition scheme

PART VI
GENERAL PROVISIONS

38. Unregistered contractors

39. Prohibition in respect of award of tender unless registered
40. Award of contract to foreign company or foreign firm
41. Partnership with Swazi company or Swazi firm
42. Prohibition of use of sub standard construction materials
43. Manufacture or sale of substandard construction materials
44. Restriction on use of name
45. Enforcement of code of conduct
46. Confidentiality
47. Regulations

**AN ACT
ENTITLED**

AN ACT to provide for the establishment of the Construction Industry Council and to outline its functions; to provide for the promotion and development of the Construction Industry in Swaziland; to provide for the registration of contractors; to provide for the affiliation to the Council of professional bodies or organisation whose members are engaged in activities related to the construction industry; to provide for the regulation of the Construction industry; to provide for the training of persons engaged in construction or in activities related to construction; and to provide for matters connected with or incidental to the foregoing.

ENACTED by the King and Parliament of Swaziland.

**PART I
PRELIMINARY**

Short title and commencement

1. (1) This Act may be cited as the Construction Industry Council Act, 2013.
- (2) This Act shall come into operation on the date of publication in the Gazette.

Interpretation

2. In this Act, unless the context otherwise requires-

“affiliated body” means a professional body or trade association that is affiliated to the Council;

“architect” means a person qualified as an architect and recognized by the Council to be

“best practice project assessment scheme” means the best practice project assessment scheme referred to in section 35;

“citizen” means a citizen of Swaziland as set out in the Constitution of the Kingdom of Swaziland Act, 2005;

Chairperson” means the person appointed Chairperson of the Council;

“Chief Executive Officer” means the Chief Executive Officer of the Council appointed in terms of section 17;

“Committee” means a committee of the Council;

“contractor” means a person, or body of persons who undertakes to execute and complete construction works;

“construction manager” means a person qualified as such and who is responsible for the management of the physical construction process within the built environment and includes the coordination, administration and management of resources;

“construction project manager” means a person qualified as such and who is responsible for the management of projects within the built environment from conception to completion, including management of related professional services;

“construction works” means the provision of goods and or services for the development, extension, installation, repair, maintenance, renewal, removal, renovation, alteration, dismantling or demolition of a fixed asset including building and engineering infrastructure;

“Council” means the Construction Industry Council” established under section 3;

“emerging sector” means that sector of the construction industry which comprises emerging enterprises;

“engineer” means a person qualified as a civil, structural, services or building engineer and recognized by the Council to be practicing as such;

“foreign company” means a body corporate incorporated under the laws of a foreign country;

“indigenous citizen” means a citizen by descent;

“member” means a member of the Council appointed under section 6;

“Minister” means the Minister responsible for construction;

“person” includes a company;

“project” means a construction works contract or a series of related construction works contracts;

“register” means the register of contractors and affiliated bodies referred to in section 28;

“register of projects” means the national register referred to in section 34;

“surveyor” includes a surveyor, a land surveyor and a quantity surveyor qualified and practicing as such;

“Swazi company” means a company which is registered under the Companies Act and is controlled from within Swaziland and in which 60 percent or more of the shares are owned by a Swazi citizen or citizens;

“Swazi firm” means a firm which is registered in Swaziland and whose partners are Swazi citizens; and

“Vice-Chairperson means the Vice-Chairperson of the Council elected under section 6;

PART II

THE CONSTRUCTION INDUSTRY COUNCIL

Establishment of Council

3. There is hereby established the Construction Industry Council which shall be a body corporate having perpetual succession and a common seal, and shall under its name, be capable of suing and being sued and of purchasing or otherwise acquiring, holding and alienating movable and immovable property and with power, subject to this Act, to do all such acts and things as a body corporate may, by law, do or perform.

Independence of the Council

4. The Council shall, subject to any necessary direction by the Minister, perform its functions free from any undue influence

Objects of the Council

5. The objects of the 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;

- (dd) 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;
- (h) facilitate the attachment on internship basis of persons who have completed training in construction or activities related to construction;
- (k) advise the Minister on policy and programmes which impact on construction industry growth and development; and
- (l) promote any other related objective.

Composition of the Council

6. (1) The Council shall consist of the following members to be appointed by the Minister-
 - (a) one representative nominated by the Swaziland Association of Indigenous Construction Consultants (SAICC);
 - (b) one representative nominated by the Swaziland Association of Architects, Engineers and Surveyors;(SAAES)
 - (c) three representatives nominated by the Swaziland Contractors Association;
 - (d) a member nominated by the construction materials manufacturers and suppliers;
 - (e) the Principal Secretary in the Ministry responsible for construction matters or a representative of the Principal Secretary; and

(f) two representatives of relevant Government Ministries nominated by the Minister.

(2) A member of the Council shall be a citizen of and ordinarily resident in the Kingdom and may not be-

- (a) an un-rehabilitated insolvent whose insolvency was caused by negligence or incompetence;
- (b) a person who has been removed from an office of trust on account of misconduct; and
- (c) a person with a criminal record emanating from an act of fraud committed within the construction industry.

(3) Members of Council shall recommend for appointment by the Minister a person, who in the opinion of the members has academic qualifications related to construction, experience and expertise in matters pertaining to the construction industry and its development objectives as the Chairperson and the members shall elect the Vice-Chairperson from among their number.

(4) The person appointed as Chairman by the Minister in terms of subsection (3) shall come from the private sector.

(5) The Minister shall as soon as practicable, after the appointment of members of the Council, publish by notice in the Gazette the name of every member appointed, the date on which the appointment takes effect and the period of the appointment.

Membership of Council

7. A member of the Council shall be an indigenous citizen of and ordinarily resident in Swaziland and may not be-

- (a) an unrehabilitated insolvent whose insolvency was caused by negligence or incompetence;
- (b) a person who has been removed from an office of trust on account of misconduct; or
- (c) a person with a criminal record emanating from an act of fraud committed within the construction industry.

Functions of the Council

8. The functions of the Council shall be to-

- (a) promote and develop the construction industry in Swaziland, and give priority to Swazi firms and Swazi companies;
- (b) facilitate Swazi firms and Swazi companies to have access to resources for the

- (e) provide data on the size and distribution of contractors operating within the industry;
- (f) promote, in liaison with other bodies in construction related fields in Swaziland and elsewhere, developmental issues relating to the construction industry;
- (g) promote research, development and use of competitive local materials and appropriate construction materials;
- (h) in consultation with the Ministry of Housing, promote and facilitate the construction of affordable low cost housing;
- (i) set and promote safety standards in the construction industry;
- (j) prescribe and vary the categories for the registration of persons engaged in the construction industry;
- (k) conduct training within Swaziland and co-ordinate the training conducted by others of persons engaged in the construction industry;
- (l) offer assistance to persons engaged in the construction industry, published information, advice and assistance in relation to the construction industry;
- (m) publish, from time to time, technical and commercial information as it considers necessary or expedient for the benefit of persons engaged in the construction industry;
- (n) monitor and evaluate, from time to time, the capacity and progress of persons engaged in the construction industry;
- (o) promote and maintain competition among the professionals or other persons engaged in the construction industry and promote efficiency and economy on the part of the professionals and the persons so engaged;
- (p) regulate activities in the construction industry through the appropriate institutions, Boards and other authorities, as the case may be;
- (q) co-ordinate construction related activities;
- (r) recommend to the Minister the conditions under which a foreign firm or foreign company may be registered and permitted to operate in Swaziland;
- (s) review, from time to time the process of awarding contracts;
- (t) standardize quality control, contract documentation, codes of practice, procurement processes, legal and contractual processes in liaison with other relevant bodies or organisations and in accordance with other written laws;
- (u) facilitate communication between construction industry stakeholders, all spheres of Government, statutory bodies and the private sector;

- (v) provide information to stakeholders on best practice, industry performance and improvement and generally on matters affecting the construction industry and to publish best practice standards and guidelines;
- (w) to keep and maintain a register for each category of persons engaged in the construction industry;
- (x) exercise disciplinary control over the conduct of any person engaged in the construction industry and practicing in Swaziland;
- (y) establish structures for dispute and conflict resolution; and
- (z) do all such acts or things as are connected with or incidental to the functions of the Council under this Act.

Powers of the Council

9. The Council shall have power to-

- (a) direct any contractor or person providing services in the construction industry to deliver its services in a manner that ensures compliance with this Act;
- (b) require any person or contractor to provide any necessary records and information that will enable the Council to monitor the performance of the contractor;
- (c) consider any matter affecting the construction industry and make the necessary recommendations to the Minister;
- (d) obtain information related to the industry from any person engaged in the construction industry in Swaziland;
- (e) obtain and collate information concerning any existing or proposed project and where necessary, advise persons engaged in the construction industry on the project;
- (f) to work together with other bodies in Swaziland and elsewhere on matters affecting the construction industry;
- (g) to recommend the approval of institutions in Swaziland and outside for the training of persons engaged in the construction industry;
- (h) to employ professional, technical and administrative staff as it may consider requisite and lay down conditions of service for the employees;
- (i) pay any person in its employ such salary, wages or other remuneration as it may consider adequate; and
- (j) generally, to do such things as the Council may consider necessary or expedient for the performance of its functions under this Act.

(5) Any document purporting to be a document executed under the seal of the Council shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

Tenure of office

11. (1) A member shall hold office for a period of four years and may be re-appointed for a further single term of four years.

(2) Any member may resign upon giving one month's notice to the Chairperson of the Council or organization which that member represents.

(3) The office of a member shall become vacant-

- (a) on the death of the member;
- (b) when a member is declared to be of unsound mind;
- (c) when a member is declared bankrupt;
- (d) when a member is convicted of an offence involving dishonesty;
- (e) when a member is sentenced to imprisonment for a period exceeding six months;
- (f) when a member resigns under subsection (2);
- (g) when a member ceases to hold the office by virtue of which the member was appointed to the Council;
- (h) when a member is absent without reasonable cause from three consecutive meetings of the Council of which the member has had notice;
- (i) when a member fails to disclose an interest; and
- (j) when a member, without authorization, discloses or improperly acts on information gained as a result of being a member of the Council.

(4) If the office of a member falls vacant, a new member shall be appointed within 30 days from the date the office falls vacant and that member shall hold office only for the unexpired part of the term.

Proceedings of Council

12. (1) Subject to the other provisions of this Act, the Council may regulate its own procedure.

(2) The Council shall meet for the transaction of its business at least once in every three months at such places and times as the Chairperson may determine, but the first meeting of the Council shall be called by the Minister not later than one month after the commencement of this Act.

(3) An extraordinary meeting of the Council-

- (a) may be convened by the Chairperson at any time;
- (b) shall be convened by the Chairperson within 14 days of the receipt by the Chairperson of a request in writing signed by not less than 7 members of the Council and specifying the purpose for which the meeting is to be convened.

(4) If the urgency of any particular matter does not permit the giving of notice, a special meeting may be called upon giving a shorter notice.

(5) Eight members shall form a quorum at any meeting of the Council.

(6) There shall preside at any meeting of the Council-

- (a) the Chairperson;
- (b) in the absence of the Chairperson, the Vice-Chairperson; or
- (c) in the absence of both the Chairperson and the Vice-Chairperson, such member as the members present shall elect as Chairperson for the purposes of the meeting.

(7) A decision of the Council on any question shall be by a majority present and voting at the meeting and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to the deliberative vote.

(8) The Council may invite any person whose presence is in its opinion, desirable to attend and participate in the deliberations of a meeting but that person shall have no vote.

(9) The validity of any proceedings, act or decision of the Councils affected by any vacancy in its membership or by any defect in the appointment because a person not entitled to do so took part in the proceedings.

(10) The Council shall cause to be kept minutes of the proceedings of every meeting of the Council and of every meeting of any committee constituted by the Council.

Committees of the Council

13. (1) The Council may, for the purpose of performing its functions under this Act constitute any committee, the chairperson of which shall be a member of the Council, and may delegate to that committee any of its functions.

(2) The Council may appoint as members of a committee established under subsection (1), persons who are or are not members of the Council and such persons shall hold office for such period as the Council may determine.

(3) Subject to any specific or general direction of the Council any committee established under subsection (1) may regulate its own procedure.

Disclosure of interest

14. (1) If any person is present at a meeting of the Council or a committee at which any matter, in which that person or any member of the immediate family of that person is directly or indirectly interested in a private capacity, is the subject of consideration, the person shall, as soon as practicable after the commencement of the meeting, disclose that interest and shall not, unless the Council or the committee otherwise directs, take part in any consideration or discussion of, or vote on any question relating to that matter.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

Immunity of members and staff

15. No action or any other proceedings shall be instituted against a member of the Council, a member of any committee of the Council or a member of the staff of the Council for anything done in good faith in the exercise or purported exercise of the functions under this Act.

Prohibition of publication or disclosure of information to unauthorized persons

16. (1) A person shall not, without the consent in writing given by or on behalf of the Council, publish or disclose to any person otherwise than in the course of the duties of that person, the contents of any document, communication or information whatsoever which relates to, and which has come to the knowledge of that person in the course of the duties of that person under this Act.

(2) A person who contravenes subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding 50 000 Emalangeni or to imprisonment for a period not exceeding ten years or to both.

(3) If any person having information which to the knowledge of that person has been published or disclosed in contravention of subsection (1), unlawfully publishes or communicates any such information to any other person, that person commits an offence and shall be liable, on conviction to a fine not exceeding 50 000 Emalangeni or to imprisonment for a period not exceeding ten years or to both.

Remuneration and expenses of members of the Council

17. There shall be paid to a member of the Council or a committee such allowances as the Minister, with the approval of the Minister responsible for Finance may determine and in prescribing the allowances, the Council may make provision for the reimbursement of any reasonable expenses incurred by a member of the Council or a committee in connection with the business of the Council or the committee.

Chief Executive Officer and other staff

18. (1) There shall be a Chief Executive Officer of the Council who shall be appointed by the Council, on such terms and conditions as the Council may, with the approval of the Minister determine.

(2) The Chief Executive Officer shall, subject to the direction and control of the Council, be responsible for the day to day administration of the Council.

(3) The Council may delegate to the Chief Executive Officer any of its functions as it may consider necessary.

(4) The Chief Executive Officer shall-

(a) attend meetings of the Council and of any committee of the Council, but shall have no vote; and

(b) be the secretary to the Council.

(5) The Council may appoint other staff of the Council as it considers necessary on such terms and conditions as it may determine.

Stakeholder Consultation

19. (1) The Council shall constitute a construction industry stakeholders forum to inform it on matters that affect the development of the construction industry.

(2) The stakeholders' forum shall comprise of individuals who have experience, expertise or skills necessary to advise the Council appropriately and who represent stakeholders in the construction industry.

(3) The Council shall invite nominations from organized labour, organized business and construction industry related bodies, clients, societies, consumer association and associations to constitute the stakeholders forum.

(4) The Council shall convene, at least once a year, a meeting of the stakeholders' forum with the Minister to discuss matters raised by the stakeholders' forum or the Council.

PART III FINANCIAL PROVISIONS

Funds of Council

20. (1) The funds of the Council shall consist of-

(a) income derived by virtue of the exercise and performance of its powers, functions and duties; and

(b) donations or contributions received by the Council from any source, with the approval of the Minister;

(c) levies imposed under section 21; and

(d) any other income, including interest earned on any investment made in terms of this

(b) with the approval of the Minister, raise by way of loans or otherwise, such monies as it may require for the discharge of its functions; and

(c) charge and collect fees in respect of programmes and seminars conducted by the Council.

(3) There shall be paid from the funds of the Council-

(a) the salaries, allowances and loans of the staff of the Council;

(b) any reasonable traveling and other allowances for members or members of any committee when engaged on the business of the Council at rates that the Council may, with the approval of the Minister, determine; and

(c) any other expenses incurred by the Council in the performance of its functions.

Levy

21. The Council may from time to time, by notice published in the Gazette, impose a levy on any person or class of persons engaged in the construction industry and that levy shall be appropriated for the general operations of the Council.

Investment of funds

22. The Council may invest in a manner as it considers necessary any of its funds which it does not immediately require for the performance of its functions.

Borrowing powers

23. The Council may borrow, either temporarily or by way of overdraft or otherwise, such sums as it may require for meeting its obligations or discharging its functions under this Act.

Financial year

24. The financial year of the Council shall be a period commencing on the date of commencement of this Act and ending on the following 31st March and thereafter it shall be a period of 12 months ending on the 31st March every year.

Accounts

25. (1) The Council shall cause to be kept proper books of the accounts and other records relating to its accounts.

(2) The accounts of the Council shall be audited annually by independent auditors appointed by the Council.

(3) The fees of the auditors shall be paid by the Council.

Annual report

26. (1) As soon as is practicable, but not later than three months after the financial year, the Council shall submit to the Minister a report concerning its activities during the financial year.

(2) The report referred to in subsection (1) shall include information on the financial affairs of the Council and there shall be appended onto the report-

- (a) an audited balance sheet;
- (b) an audited statement of income and expenditure; and
- (c) such other information regarding activities undertaken during the year, as the Minister may require.

(3) The report referred to in subsection (2) shall specifically record the extent to which the objectives defined in the annual work plan and budgets have been attained.

(4) The Minister shall, not later than thirty days after receipt of the report referred to in subsection (1) or so soon thereafter as Parliament may be sitting, lay it before Parliament.

**PART IV
REGISTRATION OF CONTRACTORS**

Application for registration

27. (1) A contractor shall not carry on business in the construction industry in Swaziland unless the contractor is registered under this Act.

(2) An application for registration as a contractor shall be made to the Council in the prescribed form and shall be accompanied by the prescribed fee.

(3) The application referred to in subsection (2) shall state-

- (a) the name of the applicant;
- (b) the principal place of business;
- (c) the qualifications and experience of the applicant;
- (d) the names and qualifications of the professional staff employed by the applicant;
- (e) the areas of construction in which the applicant is involved;
- (f) the capital and other financial resources available to the applicant; .
- (g) any other details which the Minister, may, on the recommendation of the Council prescribe.

(b) different requirements for the registration of a foreign company or foreign firm.

(5) The Council shall, within sixty days of the date of receipt of an application for registration, consider the application.

(6) Where the Council is satisfied that the applicant has complied with the requirements for registration under this Act, the Council shall register the applicant and may refuse to register where the Council is not satisfied.

(7) The Council shall, upon registration, issue the applicant with a certificate of registration.

(8) Where the Council refuses to register an applicant as a contractor, the Council shall, in writing, furnish the applicant concerned with the reasons for the refusal within fourteen days of taking the decision.

(9) A certificate of registration issued under subsection (7) shall be valid for one year.

(10) A registered contractor may apply for renewal of registration three months before the expiration of the existing registration and shall pay the prescribed renewal fee.

(11) A person registered under this Act shall not obtain a commission or a contract before the payment of the annual subscription fees.

Contractor to operate under registered category

28. A contractor registered under this Act shall not undertake construction work in a category in respect of which that person is not registered.

Register of contractors and affiliated bodies

29. (1) The Council shall establish, keep and maintain, in the prescribed form, a national register of contractors who are registered with the Council and a registered contractor shall, in writing, notify the Council of substantive changes of those particulars within 30 days after the change.

(2) The register shall be in the custody of an officer employed by the Council and shall be kept at the offices of the Council.

(3) The register referred to in subsection (1) shall-

(a) indicate the size and distribution of contractors operating within the construction industry;

(b) indicate the number, nature and performance of contractors and target groups; and

(c) contain other particulars as the Council may prescribe.

(4) An affiliated body shall provide a list of its members to the Council for purposes of the register.

(5) The Minister shall prescribe the manner in which public sector construction contracts may be invited, awarded and managed within the framework of the register.

(6) The Council shall, once in every year publish in the Gazette the names, addresses, qualifications, dates of registration, category and other particulars of all persons registered under the Act.

Cancellation of registration

30. (1) Subject to subsection (2), the Council may cancel the certificate of registration of any contractor if the Council is satisfied that-

- (a) the contractor has failed to pay the annual registration fee;
- (b) the certificate of registration has been obtained by fraud or mistake;
- (c) the contractor has willfully violated any of the provisions of this Act;
- (d) the contractor has ceased to carry on business in the construction industry in Swaziland; or
- (f) the contractor is guilty of professional misconduct.

(2) Where the Council intends to cancel the certificate of registration under subsection (1) the Council shall, at least three months before canceling the certificate, give notice, in writing, to the contractor of the intention to cancel the registration of that contractor.

(3) The notice referred to in subsection (2) shall state the reasons for the intended cancellation and require the contractor to show cause, within a period as the Council shall specify, why the registration should not be so cancelled.

(4) If the Council is not satisfied with the explanation given by the contractor, the Council shall cancel the certificate of registration and notify the contractor accordingly.

(5) A contractor whose names and particulars have been removed from the register in terms of this section may be restored to the register, if the contractor complies with the requirements that the Council may determine.

(6) A contractor whose name and particulars have been removed from the register in terms of this section during the currency of a public sector contract, may be permitted to complete the construction works or a portion of the works as determined by the Council.

Appeal against refusal to register contractor or cancellation of registration

31. (1) Any person aggrieved by any refusal of the Council to register that person as a contractor or by the cancellation of a certificate of registration may appeal to the Minister not later than thirty days after the notification of the refusal or cancellation, as the case may be.

Affiliation to Council

32. (1) Professional associations which regulate the following professions shall be affiliated to the Council-

- (a) architects;
- (b) engineers;
- (c) surveyors;
- (d) construction project managers;
- (e) environmentalists;
- (f) contractors;
- (g) material manufacturers;
- (h) building suppliers;
- (i) property developers;
- (j) property valuers; and
- (k) any other professional associations that may be added from time to time by notice in the gazette.

(2) An affiliated association referred to in subsection (1) shall pay such affiliation fees and other fees as the Minister may, on the advice of the Council, prescribe.

Publication of list of registered contractors

33. The Council shall at regular intervals, but not less than once in every year, cause to be published in the gazette a list of all contractors registered under this Part.

Annual registration fee

34. (1) Every registered contractor shall on or before the fourteenth day of April of each year, pay such annual registration fee as the Council may determine.

(2) The Council shall, on the payment of the annual registration fee under subsection (1), issue a certificate of registration to the paid up contractor.

PART V
REGISTER OF PROJECTS

Register of projects

35. (1) The Council shall establish a register of projects to gather information on the nature, value and distribution of projects and provide the basis for a best practice project assessment scheme provided for under this Act.

(2) The Minister may, in consultation with the Council, prescribe the requirements for the registration of projects taking into account the emerging sector and the different sizes and characteristics of projects in the construction industry.

(3) All construction contracts above a value prescribed by the Minister upon the recommendation of the Council, shall be recorded in the register of projects.

(4) The Minister, on the recommendation of the Council, may prescribe a fee to be paid to the Council for the registration of a project by persons undertaking construction works.

Best practice project assessment scheme

36. (1) The Council shall establish a best practice project assessment scheme based on best practices identified by the Council.

(2) After a date determined by the Minister, all construction contracts above a prescribed tender value shall be subject to an assessment of compliance with best practice standards and guidelines published by the Council.

(3) Every client who engages in the best practice project assessment scheme shall pay to the Council such fee as may be prescribed by the Minister, on the advice of the Council.

Best practice contractor recognition scheme

37. The Council shall establish a best practice contractor recognition scheme which shall-

- (a) enable the Government to manage risk on complex contracting strategies; and
- (b) promote the development of contractors in relation to best practice standards and guidelines developed by the Council.

PART VI
GENERAL PROVISIONS

Unregistered contractors

38. (1) A contractor shall not undertake, carry out or complete any construction works or portion of such works for either a public or a private sector contract, awarded in terms of competitive tender or quotation, unless the contractor is registered with the Council and holds a valid certificate issued by the Council according to categorization of contractors.

(4) Any contractor who carries out or attempts to carry out any construction works or portion of such works under a public or private sector contract and who is not a registered contractor or after being notified in writing that the certificate of registration has been cancelled commits an offence and shall be liable, on conviction to a fine equivalent to 10% of the gross estimated value of the project or to imprisonment for a period not exceeding ten years or to both.

(5) In this section "public sector contract" means a contract in respect of construction works for the Government, a parastatal or a statutory body and "private sector contract" means a contract in respect of construction works for a private individual or company.

Prohibition in respect of award of tender unless registered

39. (1) A person shall not award a contract for any construction works of such value as the Minister, upon the recommendation of the Council, may determine, to another person unless that other person is registered under this Act.

(2) A person who contravenes subsection (1) commits an offence and shall be liable, on conviction to a fine not exceeding 100 000 Emalangeni or to imprisonment for a period not exceeding ten years or to both.

Award of contract to foreign company or firm

40. (1) A person shall not award a contract for construction works to a foreign company or foreign firm without the approval of the Council.

(2) Where an award for a contract is referred to the Council for approval and the Council determines that the construction work to be awarded can be undertaken by a Swazi company or a Swazi firm, the Council shall not endorse its approval and the person shall not award the contract to the foreign company or foreign firm.

(3) A person who contravenes subsection (1) or (2) commits an offence and shall be liable, on conviction, to a penalty not exceeding 10% of the gross estimated value of the project or to imprisonment for a period not exceeding ten years or to both.

Partnership with Swazi company or Swazi firm

41. (1) A person shall not award a contract for any construction works to a foreign company or foreign firm unless the foreign company or foreign firm undertakes the construction works in partnership or jointly with a Swazi company or Swazi firm.

(2) A person who contravenes subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding 20% of the gross estimated value of the project or to imprisonment for a period not exceeding ten years or to both.

Prohibition against use of substandard construction materials

42. (1) A contractor shall not use-

- (a) construction materials and equipment; or
- (b) other materials used in the construction industry or construction related activities that do not conform to the standards set by the Swaziland Standards Authority or that are of a sub-standard quality.

(2) A person who contravenes subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding 100 000 Emalangeni or to imprisonment for a period not exceeding ten years or to both.

Manufacture or sale of substandard construction materials

43. (1) A person shall not manufacture or sell-

- (a) construction materials; or
- (b) other materials used in the construction industry or construction related activities

that do not conform to the standards set by the Standards Authority or that are of a substandard quality.

(2) A person who contravenes subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding 100 000 Emalangeni or to imprisonment for a period not exceeding ten years or to both.

Restriction on use of name

44. A person may not, under a name containing the words "Swaziland National Construction Industry Council" or its translation in any other official language, conduct business or trade or falsely claim to be acting on behalf of the Council.

Enforcement of Code of conduct

45. (1) The Council may, for purposes of enforcing the code of conduct, convene an inquiry into any breach of the code of conduct and shall conduct any inquiry in the prescribed manner.

(2) The Council may-

- (a) subpoena any person to appear in person at an inquiry;
- (b) subpoena any person to produce any documentation relevant to the inquiry; and
- (c) seize and make copies of the documentation produced in terms of paragraph (b).

Confidentiality

45. (1) The Chief Executive Officer, staff and all members of the Council may not disclose to any source, outside of the Council, information that may be considered confidential.

better carrying out of the provisions of this Act.

- (2) Without prejudice to the generality of subsection (1) the regulations made under subsection (1) may provide for-
- (a) the registration of contractors or other persons engaged in construction or construction related activities, and the information to be supplied to the Council in connection with applications for registration;
 - (b) the registration of an affiliated body;
 - (c) the fees payable under the Act;
 - (d) the exemption of any person or institution from any of the provisions of this Act;
 - (e) a code of conduct and penalties in respect of professional misconduct or other offences committed through a breach of the code of conduct;
 - (f) the forms required under this Act;
 - (g) the safety requirements on construction sites;
 - (h) the safety apparel to be worn by persons on construction sites;
 - (i) prescribing the procedure to be adopted and the conditions to be observed in connection with the approval of international qualifications and certificates, degrees and diplomas obtained both inside and outside Swaziland; and
 - (j) such other things as are incidental to the attainment of the functions of the Council.