

CONSTRUCTION INDUSTRY COUNCIL BILL, 2024

(Bill No.....of 2024)

(To be presented by the Minister for Public Works and Transport)

MEMORANDUM OF OBJECTS AND REASONS

The object of this Bill is to provide for –

- (a) the continuation of the Construction Industry Council and to outline its functions;
- (b) the regulation, promotion and development of the Construction Industry in Eswatini;
- (c) the registration of contractors, manufacturers, suppliers and associations affiliated to the Council whose members are engaged in activities related to the construction industry;
- (d) the rights and obligations of parties involved in the construction industry;
- (e) the appointment and the powers of inspectors of the Council;
- (f) the repeal of the Construction Industry Council Act, No. 14 of 2013; and
- (g) incidental matters.

ARRANGEMENT OF SECTIONS

PART I PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Application of the Act

PART II
THE CONSTRUCTION INDUSTRY COUNCIL

4. Continuation of Council
5. Seal of Council
6. Independence of Council
7. Objects of the Council
8. Functions of Council
9. Powers of Council

PART III
ADMINISTRATION

10. Appointment of Board
11. Disqualification from Membership of Board
12. Membership of Board
13. Tenure of office
14. Proceedings of Board
15. Committees of Board
17. Remuneration and expenses of members of the Council
18. Chief Executive Officer
19. Function of the Chief Executive Officer
20. Chief Financial Officer and other staff
21. Immunity of members and staff
22. Prohibition of publication or disclosure of information to unauthorized persons
23. Stakeholder consultation

PART IV
FINANCIAL PROVISIONS

24. Funds of Council

- 25. Levy
- 26. Borrowing powers
- 27. Investment of funds
- 28. Financial year
- 29. Accounts
- 30. Annual report

PART V
REGISTRATION OF CONTRACTORS

- 31. Application for registration
- 32. Contractor to operate under registered category
- 33. Register of contractors and affiliated bodies
- 34. Cancellation of registration
- 35. Appeal against refusal to register contractor or cancellation of registration
- 36. Affiliation to Council
- 37. Publication of list of registered contractors
- 38. Annual registration fee

PART VI
REGISTER OF PROJECTS

- 39. Register of projects
- 40. Best practice project assessment scheme
- 41. Best practice contractor recognition scheme

PART VII
APPOINTMENT OF INSPECTORS

- 42. Appointment of Inspectors.
- 43. Obstructing an inspector.

PART VIII
GENERAL PROVISIONS

44. Unregistered contractors
45. Written contract
46. Prohibition in respect of award of tender unless registered
47. Award of contract to foreign company or foreign firm
48. Partnership with Eswatini company or Eswatini firm
49. Prohibition of use of sub standard construction materials
50. Manufacture or sale of substandard construction materials
51. Restriction on use of name
52. General Offence
53. Dispute Resolution Tribunal
54. Appeals Board
55. Client Rights
56. Record Keeping
57. Enforcement of code of conduct
58. Confidentiality
59. Repeal and Savings
60. Regulations

An Act
entitled

An Act to provide for the continuation of the Construction Industry Council and to outline its functions; to provide for the promotion and development of the Construction Industry in Eswatini; to provide for the registration of contractors, manufacturers, suppliers and associations affiliated to the Council whose members are engaged in activities related to the construction industry; to provide for the regulation of the Construction industry; to provide for the appointment and powers of inspectors of the Council; to provide for the training of persons engaged in construction or in activities related to construction; to repeal the Construction Industry Council Act, No. 14 of 2013; and to provide for incidental matters.

ENACTED by the King and Parliament of Eswatini.

PART I
PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Construction Industry Council Act, 2024.
- (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 whose members are involved in construction works, that is allied to the Council;

“architect” means a person qualified as an architect and registered as such under the Registration of Architects, Engineers, Surveyors and Allied Professions Act No. 15 of 2013 or its successor;

“best practice” means a desirable and appropriate standard, process, procedure, method or system in relation to the delivery process and the life cycle of fixed assets;

“best practice contractor recognition scheme” means the best practice contractor recognition scheme established by the Council under section 40;

“best practice project assessment scheme” means the best practice project assessment scheme referred to in section 39;

“Board” means the Board established in section of the Act;

“citizen” means a citizen of Eswatini as set out in the Constitution of the Kingdom of Eswatini Act No.001 of 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;

“Chief Financial Officer” means the officer appointed in terms of section 19;

“client” means a person, body or organ of state that enters into a contract to procure construction works;

“Committee” means a committee of the Council;

“contractor” means a person, or body of persons who undertakes to execute the physical 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;

“consultant” means a person or body of persons who are experts in providing consultancy services in the built environment in accordance with the construction laws and recognized professional associations;

“Council” means the Construction Industry Council” continued under section 4;

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

“engineer” means a person qualified as a civil, structural, services or building engineer and recognized as such under the Registration of Architects, Engineers, Surveyors and Allied Professions Act No. 15 of 2013 or its successor;

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

“indigenous citizen” means a citizen by descent;

“manufacturer” means any individual, company, corporation or other legal entity that is engaged in the production or fabrication of construction materials, components, equipment or systems intended for use in construction projects;

“member” means a member of the Board appointed under section 8;

“Minister” means the Minister responsible for construction;

“person” includes -

- (a) a local authority;
- (b) a company incorporated or registered as such under any law; and
- (c) any body of persons corporate or unincorporate;

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

“register” means the register of contractors, manufacturers, suppliers and affiliated bodies referred to in section 33;

“register of projects” means the national register referred to in section 39;

“supplier” means any individual, company, corporation, or other legal entity that is engaged in the procurement, distribution, and supply of construction materials, products, equipment or systems to contracts, builders, developers, owners or other stakeholders;

“surveyor” includes a surveyor, a land surveyor and a quantity surveyor recognised as such under the Registration of Architects, Engineers, Surveyors and Allied Professions Act No.15 of 2013 or its successor;

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

“Vice-Chairperson means the Vice-Chairperson of the Board elected under section 8;

Application of the Act

3. This Act applies to and binds all persons undertaking construction works in Eswatini under this Act or under any enactment related to construction in Eswatini.

PART II THE CONSTRUCTION INDUSTRY COUNCIL

Continuation of Council

4. The Construction Industry Council established under the repealed Construction Industry Council Act, No.14 of 2013, shall continue to existence as 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.

Seal of Council

5. (1) The seal of the Council shall be such device as may be determined by the Council and shall be kept by the Secretary.

(2) The affixing of the seal shall be authenticated by the Chairperson or the Vice Chairperson and the Secretary or one other person authorized in that behalf by a resolution of the Council.

(3) 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.

Independence of the Council

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

Objects of the Council

7. 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;
 - (v) national social and economic objectives, including-
 - (aa) growth of the emerging enterprises;
 - (bb) labour absorption in the construction industry;
 - (cc) improved labour relations;
 - (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;
- (j) 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.

Functions of the Council

8. The functions of the Council shall be to-

- (a) promote and develop the construction industry in Eswatini, and give priority to Eswatini firms and Eswatini companies;
- (b) cause Eswatini firms and companies to have access to resources for the development of their operations;
- (c) cause the assessment of the performance of contractors in the execution of contracts and thus provide a performance record for contractors;
- (d) regulate the behaviour and promote minimum standards and best practice of contractors;
- (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 Eswatini and elsewhere, developmental issues relating to the construction industry;
- (g) promote research , development and use of competitive local materials and appropriate construction materials;
- (h) set and promote safety standards in the construction industry;
- (i) prescribe and vary the categories for the registration of persons engaged in the construction industry;
- (j) conduct training within Eswatini, co-ordinate the training conducted by others of persons engaged in the construction industry and provide assistance in reviewing curriculum for local institutions;
- (k) enter into co-operation agreements with recognised professional associations to clearly define the scope of co-operation;
- (l) 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;
- (m) monitor and evaluate, from time to time, the capacity and progress of persons engaged in the construction industry;
- (n) regulate activities in the construction industry through the appropriate institutions, Boards and other authorities, as the case may be;
- (o) co-ordinate construction related activities;
- (p) recommend to the Minister the conditions under which a foreign firm or foreign company may be registered and permitted to operate in Eswatini;
- (q) review, from time to time the process of awarding contracts;
- (r) facilitate 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;
- (s) facilitate communication between construction industry stakeholders, all spheres of Government, statutory bodies and the private sector;

- (t) 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;
- (u) to keep and maintain a register for each category of persons engaged in the construction industry;
- (v) exercise disciplinary control over the conduct of any person engaged in the construction industry and practicing in Eswatini;
- (w) establish structures for dispute and conflict resolution; and
- (x) 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 Eswatini;
- (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) work with other bodies in Eswatini and elsewhere on matters affecting the construction industry;
- (g) recommend the approval of institutions in Eswatini and outside for the training of persons engaged in the construction industry;
- (h) 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;
- (j) make rules, codes, practice directives with the approval of the Minister; and
- (k) generally, do such things as the Council may consider necessary or expedient for the performance of its functions under this Act.

PART III ADMINISTRATION

Composition of the Board

10. (1) The Minister shall by notice in a newspaper circulating in Eswatini call for applications for appointment as a member of the Board.

(2) A person appointment as a member of the Board shall-

- (a) be of high moral character, proven integrity and experience in the construction industry;
- (b) possess at least five (5) years' experience in a relevant field and must have demonstrated competence in any discipline in the built environment, or any of law, project management, accounting, academia, micro small and medium enterprise development, contract management, or any field deemed relevant to the operations of the Council, and may be a member of an association recognized by the Council;

(3) The Board shall consist of the following members to be appointed by the Minister-

- (a) the Principal Secretary in the Ministry responsible for construction matters or a representative of the Principal Secretary;
- (b) the Principal Secretary or a representative of the Ministry responsible for housing and urban development;
- (c) a representative of the entity responsible for environmental affairs;
- (d) 6 other members selected from the applications made under subsection (1); and
- (e) the Chief Executive Officer who shall be an ex officio member.

(4) Members of the Board 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.

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

(6) The Minister shall as soon as practicable, after the appointment of members of the Board, 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 Board

11. (1) A member of the Board shall be a citizen of and ordinarily resident in Eswatini 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.

Tenure of office

12. (1) A member shall hold office for a period of three (3) years and may be re-appointed for a further single term of three (3) years.

(2) Any member may resign upon giving one (1) month notice to the Chairperson of the Board or organization which that member represents.

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

- (a) has died;
- (b) is declared to be of unsound mind;
- (c) is declared bankrupt;
- (d) is convicted of an offence involving dishonesty;
- (e) is sentenced to imprisonment for a period exceeding six (6) months;

- (f) resigns under subsection (2);
- (g) ceases to hold the office by virtue of which the member was appointed to the Board;
- (h) is absent without reasonable cause from three (3) consecutive meetings of the Board of which the member has had notice;
- (i) fails to disclose an interest; and
- (j) discloses or improperly acts on information gained as a result of being a member of the Board, without authorisation.

(4) If the office of a member falls vacant, a new member shall be appointed within sixty (60) days from the date the office falls vacant and that member shall hold office only for the unexpired part of the term.

Proceedings of Board

13. (1) Subject to the other provisions of this Act, the Board shall regulate its own procedure.

(2) The Board shall meet for the transaction of its business at least once in every three (3) months at such places and times as the Chairperson may determine, and the first meeting of the Board shall be called by the Minister not later than sixty (60) after the commencement of this Act.

(3) An extra-ordinary meeting of the Board-

- (a) may be convened by the Chairperson at any time;
- (b) shall be convened by the Chairperson within fourteen (14) days of the receipt by the Chairperson of a request in writing signed by not less than seven (7) members of the Board 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) The Chairperson may convene two (2) special meetings per year.

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

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

- (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 Board on any question shall be by a majority of the members 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 Board may invite any person whose presence is in its opinion, desirable to attend and participate in the deliberations of a meeting who shall not have a vote.

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

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

(11) A meeting of the Board may be virtual, in person a hybrid.

Committees of the Board

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

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

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

(4) A committee shall keep minutes of its meetings and shall inform the Board of its proceedings in a manner that the Board may direct.

Disclosure of interest

15. (1) If a person is present at a meeting of the Board 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, that person shall, as soon as practicable after the commencement of the meeting, disclose that interest and shall not, unless the Board 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.

Remuneration and expenses of members of the Board

16. There shall be paid to a member of the Board 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 Board or of a committee in connection with the business of the Board or committee.

Chief Executive Officer

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

(2) The Chief Executive Officer may have a degree related to the built environment.

Functions of the Chief Executive Officer

18. (1) 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.

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

(3) The Chief Executive Officer shall-

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

(b) be the secretary to the Board.

Chief Financial Officer and Other Staff

19. (1) The Board shall appoint the Chief Financial Officer of the Council.

(2) The Chief Financial Officer shall be appointed for a term not exceeding three (3) years and shall be eligible for re-appointment for another term of three (3) years.

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

Immunity of members and staff

20. An action or any other proceedings shall not be instituted against a member of the Board, a member of any committee of the Board 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

21. (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 fifty thousand Emalangeni (E50, 000) or to imprisonment for a period not exceeding two (2) 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 fifty thousand Emalangeni, (E50 000) or to imprisonment for a period not exceeding two (2) years or to both.

Stakeholder Consultation

22. The Council in consultation with the Minister, shall convene at least once a year, a construction industry stakeholders' forum to inform it on matters that affect the development of the construction industry.

**PART IV
FINANCIAL PROVISIONS**

Funds of Council

23. (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 24; and
- (d) any other income, including interest earned on any investment made in terms of this section.

- (2) The Council may-
- (a) accept monies by way of grants or donations from any source in Eswatini and, subject to the approval of the Minister, from any source outside Eswatini;
 - (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 programs and seminars conducted by the Council.
- (3) There shall be paid from the funds of the Council-
- (a) the salaries and allowances of the staff of the Council;
 - (d) 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

24. (1) 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
 - (b) a one percent (1%) levy on imported building material,
- appropriated for the general operations of the Council.

(2) The levy collected under this section shall be paid out as a sub-vention to other recognised construction regulatory bodies including those responsible for registration of professionals in the construction industry, in a manner to be prescribed.

Investment of funds

25. The Council may invest in a manner as it considers necessary any of its funds which are not immediately required for the performance of the functions of the Council.

Borrowing powers

26. The Council may borrow with the approval of the Minister and Minister responsible for finance, either temporarily or by way of overdraft or otherwise, such sums as it may require for meeting the obligations or discharging the functions of the Council under this Act.

Financial year

27. 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

28. (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 Board.

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

Annual report

29. (1) As soon as is practicable, but not later than three (3) months after the financial year, the Council shall submit to the Minister a report concerning Council 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 (30) 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 V
REGISTRATION OF CONTRACTORS

Application for registration

30. (1) A person shall not carry on business in the construction industry in Eswatini 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 and nationality 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.

(4) The Minister may, on the recommendation of the Council prescribe-

- (a) different requirements for the registration of different categories of contractors taking into account the emerging sector and different stages of development of contractors in the construction industry; or
- (b) different requirements for the registration of a foreign company or foreign firm.

(5) The Council shall, within five (5) working 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) a certificate of registration; and
- (b) a practicing licence valid for one (1) year financial year.

(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 (14) days of taking the decision.

(9) A registered contractor may apply for renewal of practicing license three (3) months before the expiration of the existing license and shall pay the prescribed renewal fee.

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

(11) A person who contravenes this provisions commits an offence and shall on conviction be liable to a fine of ten thousand Emalangeni (E10, 000) or two (2) years imprisonment. (20% of total value of the cost)

Contractor to operate under registered category

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

(2) A person who procures construction services from a person not registered in the category classified for those services commits an offence and shall be liable to a fine equivalent to 20% of the total cost of the contract.

Register of contractors and affiliated bodies

32. (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 thirty (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;
- (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

33. (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 licence fee;
- (b) the contractor's certificate of registration has been obtained by fraud or mistake;
- (c) has willfully violated any of the provisions of this Act;
- (e) has failed to pay licence fees or remit any levies due;
- (f) the contractor's association registration has been cancelled;
- (f) the contractor has ceased to carry on business in the construction industry in Eswatini; or
- (e) 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 one (1) month 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 contract, may not be permitted to complete the construction works or a portion of the works as determined by the Council.

(7) A contractor who has ceased to operate shall notify the Council.

Appeal against refusal to register contractor or cancellation of registration

34. (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 Tribunal established under section 51 not later than thirty (30) days after the notification of the refusal or cancellation, as the case may be.

(2) The Tribunal may confirm, vary or set aside the decision of the Council.

(4) Any person who is aggrieved by the decision of the Tribunal may appeal to the Minister within thirty (30) days of becoming aware of the decision of the Tribunal.

Affiliation to Council

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

- (a) contractors;
- (b) material manufacturers;
- (c) building suppliers;
- (d) property developers; and
- (e) 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

36. The Council shall at least less than once in every year, cause to be published in the gazette a list of all contractors registered under this Part.

Annual licence fee

37. (1) A registered contractor shall on or before the fourteenth (14) 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 licence fee under subsection (1), issue a certificate of registration to the paid up contractor.

PART VI
REGISTER OF PROJECTS

Register of projects

38. (1) The Council shall, in consultation with affiliated associations, 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.

Best practice project assessment scheme

39. (1) The Council shall establish a best practice project assessment scheme which shall incorporate the latest best practices identified by the Council such as innovative, green and sustainable practices related to the construction industry.

(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.

Best practice contractor recognition panel

40. (1) The Council shall establish a best practice panel which shall consist of not more than five (5) members from affiliated associations which shall implement a contractor recognition scheme that -

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

(2) A person who wishes to be a member of the best practice panel shall make an application to the Minister who shall appoint the best candidates based on skills, experience and qualifications.

**PART VII
APPOINTMENT OF INSPECTORS**

Appointment of inspectors

42. (1) The Council shall appoint construction industry inspectors who shall hold a built environment related qualification.

(2) An inspector appointed in terms of subsection (1) shall have power to enter any construction site or any establishment involved in the construction industry at any reasonable time and conduct an inspection.

(3) In carrying out an inspection an inspector may demand any information necessary and approvals to establish if the construction works are carried out in compliance with all legal requirements.

(4) During site inspection, an inspector may demand any document necessary to prove that the person to whom the demand is made is entitled to carry out the construction works being executed in compliance with the Act.

Obstructing an inspector

43. (1) A person who unlawfully obstructs an inspector from carrying out duties by-
- (a) refusing such inspector an entry into any place where construction works are undertaken;
 - (b) deliberately refusing to produce any document lawfully demanded by the inspector; or
 - (c) interfering with the work of the inspector in any other manner,

commits an offence and shall be liable on conviction to imprisonment for a period not exceeding one (1) year or a fine not exceeding five thousand Emalangeneni (E5 000.00) or both such imprisonment and fine.

(2) The Council may order the stoppage of construction works or the closure of any construction site after giving due notice where the Council is satisfied that, -

- (a) the contractor has not complied with legal requirements for the execution of the construction works; or
- (b) safety measures for the personnel engaged in the construction works and members of the public are not in place.

(3) A person shall not enter a construction site or carry out construction works at a site where the Council has issued an order in terms of subsection (2).

(4) A person who contravenes subsections (1) and (3), commits an offence and shall be liable on conviction to a term of imprisonment of 3 years or a fine not exceeding hundred thousand Emalangeneni (E100 000).

**PART VIII
GENERAL PROVISIONS**

Unregistered contractors

44. (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, unless the contractor is registered with the Council and holds a valid certificate issued by the Council according to categorization of contractors.

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

(3) An employee of a contractor registered under the Act shall not be deemed to carry on business within the meaning of this section by reason only of the performance of the functions of that person as an employee.

(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 two (2) years or to both.

Written contract

45. A contractor shall not undertake or carry out construction work without a written contract with a client.

Prohibition in respect of award of tender unless registered

46. (1) A person shall not award a contract for any construction works to another person unless that other person is registered under this Act or other related regulatory enactment.

(2) A person who contravenes subsection (1) commits an offence and shall be liable, on conviction to a fine not exceeding hundred Emalangeni (E100, 000.00) or to imprisonment for a period not exceeding two (2) years or to both.

Award of contract to foreign company or firm

47. (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 an Eswatini company or an Eswatini 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 two (2) years or to both.

Partnership with Eswatini company or Eswatini firm

48. (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 an Eswatini company or an Eswatini firm.

(2) A person undertaking construction works in partnership or jointly in terms of subsection (1) shall –

- (a) award the Eswatini company or firm at least 30% of the estimated contract value;
- (b) not undertake construction works without applying for the registration of the joint venture or partnership for each project undertaken.

(3) A registration certificate issued under subsection (2) (b) shall be valid for one year.

(4) 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

49. (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 Eswatini Standards Authority.

(2) A person who contravenes subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding Emalangenani (E100 000) or to imprisonment for a period not exceeding two (2) years or to both.

Manufacture or sale of substandard construction materials

50. (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 shall not manufacture or sell construction material without registering with the relevant association affiliated to the Council.

(3) A person to whom this section applies shall have effective measures in place to ensure that information given in connection with construction material is accurate and complete.

(4) A person who contravenes this section commits an offence and shall be liable, on conviction, to a fine not exceeding hundred Emalangeni (E100, 000.00) or to imprisonment for a period not exceeding two (2) years or to both.

Restriction on use of name

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

General Offence

52. A person who contravenes a provision of this Act, for which a penalty has not been provided, commits an offence and shall be liable on conviction to a fine not exceeding hundred thousand Emalangeni, (E100,000), or two (2) years imprisonment or both.

Dispute Resolution Tribunal

53. (1) There is established a Dispute Resolution Tribunal for the purpose of hearing disputes within the construction industry.

(2) The Tribunal shall consist of three (3) members to be appointed by the Minister.

(3) A member of the Tribunal shall, -

- (a) hold office for a term of three (3) years and shall be eligible for another term of three (3) years; and
- (b) shall be paid a sitting allowance to be determined in accordance with the relevant Finance Circulars.

(4) The Tribunal shall regulate its own procedures.

Appeals Board

54. (1) There is established an Appeals Board whose members shall be appointed by the Minister.

(2) The Board shall be comprised of three (3) members as follows –

- (a) a person who qualifies to be appointed as a principal magistrate; and
- (b) two (2) members who have experience in the construction industry.

- (3) The Appeals Board shall consider appeals brought to the Board by persons who are aggrieved by the decision of the Dispute Resolution Tribunal.

Client Rights

55. (1) A client has a right to –
- (a) receive quality construction services that comply with the relevant standards prescribed by the Eswatini Standards Authority Act or its successor and other relevant laws related to construction works;
 - (b) obtain clear and accurate information about the terms and conditions of the construction contract including costs, timelines and specifications;
 - (c) be informed of changes to the construction project including delays, modifications or additional costs;
 - (d) access warranties and guarantees for construction work and materials as specified in the contract; and
 - (e) seek redress for defect, delays or any breach of the construction works contract.
- (2) A client who believes their rights have been violated may file a complaint with the Dispute Resolution Tribunal established under section 52.

Record Keeping

56. (1) A contractor, manufacturer, supplier shall keep and maintain accurate and detailed records of all contracts, communications and transactions undertaken with clients.
- (2) The Council shall maintain a public record of all complaints and enforcement actions or the decisions taken about those complaints while safeguarding the privacy of clients.

Enforcement of Code of conduct

57. (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

58. (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.

- (2) A person who contravenes subsection (1) shall be subject to disciplinary action.

Repeals and savings

59. (1) The Construction Industry Council Act No. 14 of 2013 is repealed.

(3) A notice, register, permit, or other document which was valid immediately prior to the commencement of this Act and-

- (a) that was issued, made, granted or given under the repealed law ; or
- (b) the effect of which was preserved under the repealed law,

shall be given effect as if issued, made, granted or given under this Act.

Regulations

60. (1) The Minister may, on the recommendation of the Council, make regulations for the 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;
- (g) the fees payable under the Act;
- (h) the levy on to be prescribed for importing locally available construction material;
- (e) the exemption of any person or institution from any of the provisions of this Act;

- (f) a code of conduct and penalties in respect of professional misconduct or other offences committed through a breach of the code of conduct;
- (i) 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 Eswatini; and
- (j) such other things as are incidental to the attainment of the functions of the Council.

DRAFT