

SUPPLEMENT TO

THE

SWAZILAND GOVERNMENT

GAZETTE

VOL. LI]

MBABANE, Friday, AUGUST 9th, 2013

[No. 103

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THE CENTRAL TRANSPORT ORGANIZATION ACT, 2013

(Act No. 13 of 2013)

**I ASSENT****MSWATI III**
KING OF SWAZILAND01st August, 2013

AN ACT
ENTITLED

AN ACT to provide for the establishment of the Central Transport Organization as a body corporate and a category A enterprise in terms of the Public Enterprises (Control and Monitoring) Act, 1989 and for matters incidental thereto.

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PART I PRELIMINARY

Short title and commencement

1. This Act may be cited as the Central Transport Organisation Act, 2013, and shall come into force on a date to be determined by the Minister by notice in the Gazette.

Interpretation

2. In this Act unless the context otherwise requires-

“Organisation” means the Central Transport Organisation established in terms of section 3;

“Board” means the Central Transport Organisation Board appointed in terms of section 6;

“Chief Executive Officer” means the Chief Executive Officer of the Central Transport Organisation appointed in terms of section 17;

“Chief Financial Officer” means the person designated as Chief Financial Officer of the Central Transport Organisation in terms of section 21;

“employee” means a person appointed in a post on the approved staff establishment and includes the Chief Executive Officer and Chief Financial Officer;

“financial statements” means statements consisting of at least-

- (a) balance sheet;
- (b) an income statement;
- (c) a cash flow statement;
- (d) any other statements that may be prescribed; and
- (e) any notes to these statements;

“Minister responsible” means the Minister responsible for transport matters;

“prescribed” means prescribed by regulation in terms of section 43;

“Public Enterprises Act” means the Public Enterprise (Control and Monitoring) Act, 1989;

“Public Enterprises Unit” means the Public Enterprise Unit established under section 3 of the Public Enterprises (Control and Monitoring) Act, 1989;

“Standing Committee” means the Cabinet Standing Committee on Public Enterprises.

PART II

ESTABLISHMENT OF THE CENTRAL TRANSPORT ORGANISATION

Establishment of the Central Transport Organisation

3. (1) There is hereby established a body to be known as the Central Transport Organisation.

(2) The Organisation shall be and a category A public enterprise in terms of the Public Enterprises Act.

(3) The Organisation shall be a body corporate having perpetual succession and a common seal and capable of suing and being sued in its name.

Constitution of the Organisation

4. The Organisation shall be composed of -

- (a) the Board; and
- (b) the Chief Executive Officer, the Chief Financial Officer and other professional, technical, administrative and support staff as may be required for the proper performance of its functions.

Functions of the Organisation

5. The functions of the Organisation are to-

- (a) advise the Government in determining the transport requirements for each respective Ministry per financial year;
- (b) ensure the effective and efficient procurement and supply of required vehicles;

- (c) facilitate and carry out the maintenance and repair of Government vehicles;
- (d) advise the Government in determining the life cycle of vehicles and the disposal of vehicles when the useful lifecycle of a vehicle has expired in a process which is efficient and transparent;
- (e) ensure efficient supply and management of fuel for Government vehicles and plants and equipment;
- (f) to administer and operate all vehicle testing stations; and
- (g) to provide all necessary vehicles for national functions or activities.

PART III

APPOINTMENT OF THE BOARD

Appointment of the Board

6. The Minister responsible shall appoint members of the Board in terms of the Public Enterprises Act.

Composition of the Board

7. (1) The Minister responsible shall appoint a Board of not less than 7 and not more than 9 members.

(2) The Board shall be comprised of the following members-

- (a) the Principal Secretary of the Ministry of Finance or a representative;
- (b) the Principal Secretary of the Ministry responsible for Transport or a representative;
- (c) the Chief Executive Officer of the Central Transport Organisation who shall be the Secretary of the Board and shall not have a vote in the Board;
- (d) and at least four other members who shall not be public officers but shall possess a qualification in law, fleet management or business management with three years experience or any other person with at least five years relevant experience; and
- (e) two people of high moral character and integrity in the conduct of public affairs.

Disqualification for appointment to the Board

8. A person shall not be eligible for appointment as a member of the Board if that person -

- (a) has any interest whether monetary or otherwise in any related enterprise which conflicts or may conflict with his duties as a Board member;
- (b) has at any time been convicted in Swaziland or elsewhere of theft, fraud, perjury, corruption or an act of terrorism and sentenced to imprisonment without an option of a fine; and

- (c) is employed by Government, with the exception of the persons stated in section 7 (a) and (b).

Functions of the Board

9. (1) The Board shall be responsible for ensuring that the Organisation performs its functions in a proper, efficient and effective manner.

(2) The Board shall-

- (a) appoint the Staff of the Organisation;
- (b) approve the conditions of service of employees;
- (c) acquire or dispose of any right in or to property, but ownership and disposal of property or a capital asset may be acquired or disposed of only with the written consent of the Minister responsible and the Minister of Finance;
- (d) open a bank account in the name of the Organisation;
- (e) insure the Organisation against any loss, damage or risk;
- (f) perform legal acts, including acts in association with or on behalf of any other person;
- (g) institute or defend any legal action on behalf or against the Organisation;
- (h) advise the Minister in regard to any matter within the Minister's purview as it relates to the Organisation;
- (i) ensure that the Organisation has effective, efficient and transparent systems of financial and risk management including internal controls;
- (j) ensure that there is effective and efficient use of resources within the Organisation;
- (k) ensure that the funds and assets of the Organisation are well managed and controlled;
- (l) ensure efficient and improved service delivery by the Organisation;
- (m) ensure that, within four months after the end of each financial year, an annual report on its operations is prepared and together with its annual audited financial statements is submitted to the Minister responsible who shall forward it to the Minister of Finance.
- (n) approve the procurement system of the Organisation;
- (o) determine disciplinary proceedings for employees;
- (p) approve the fleet management systems of the Organization; and
- (q) do anything that is incidental to the exercise of any of its powers.

Allowances of members of the Board

10. The members of the Board shall be paid remuneration to be determined by the Minister in consultation with the Minister of Finance.

Conduct of members of the Board

11. A member of the Board shall-

- (a) perform the functions of office in good faith and without fear, favour or prejudice;
- (b) disclose any personal or private business interests that the member or any spouse, partner or business associate of that member may have in any matter before the Board and shall withdraw from the proceedings of the Board where that matter is considered by the Board;
- (c) not use the position or privileges of a member for private benefit or to improperly benefit another person; and
- (d) not act in any other way that compromises the credibility, impartiality or integrity of the Board.

Termination of membership of the Board

12. (1) A person shall cease to be a member of the Board where that person-

- (a) tenders his resignation in writing to the Minister responsible;
- (b) is removed from the Board;
- (c) becomes insolvent under any law relating to the insolvency of persons in Swaziland.

(2) A member of the Board shall be deemed to have resigned where that member becomes a Member of Parliament or Senate or a member of a municipal council and fails to resign from the Board within 30 days of having been appointed or elected as a Member of Parliament or a municipal council.

(3) The Minister responsible may remove a member from office on the grounds of misconduct, incapacity or incompetence or if that member has been absent from three consecutive meetings of the Board without leave of the Chairperson.

(4) A decision to remove a member of the Board on the ground of misconduct or incompetence shall be based on a finding to that effect by an investigating tribunal appointed by the Minister.

Board vacancies

13. Where a vacancy occurs in the Board, the Minister responsible shall within (3) months, appoint another person to fill the vacancy in accordance with the provisions of this Act and that person shall serve the unexpired portion of the term.

Meetings and procedures of the Board

14. (1) The Board shall hold at least (4) meetings per financial year.

(2) The Chairperson shall convene a meeting by giving (14) days written notice to the members of the board, save that, the (14) days time period may be reduced in the event of an emergency.

(3) The Chairperson shall convene a meeting if at least three of the members of the Board request the Chairperson in writing to convene a meeting.

(4) A quorum for any meeting of the Board shall be five members including the Chairperson.

(5) All decisions of the Board shall be taken by a majority of the members present and voting.

(6) In the event of an equality of votes the Chairperson shall have the casting vote in addition to the deliberative vote.

(7) The Board shall determine its own procedures.

(8) A member of the Board who is in any way directly or indirectly interested in a matter which falls to be considered by the Board shall, disclose the nature of the interest to the Board and shall not take part in the deliberations on that matter.

(9) Whenever the need arise a member of the Board shall declare any conflict of interest and shall complete and sign a “declaration of interest” document.

Delegation of authority by the Board

15. (1) For the proper performance of its functions, the Board may delegate any of its powers to a member of the Board or a committee of the Board.

(2) A delegation in terms of subsection (1)-

(a) shall be subject to any conditions and directions that the Board may impose; and

(b) shall not divest the Board of the responsibility concerning the exercise of the power or the performance of that duty.

(3) The Board may confirm, vary or revoke any decision taken by a member of the Board or committee, in consequence of a delegation.

Committees of the Board

16. (1) The Board may establish one or more committees to assist it in the performance of its functions.

(2) The Board shall appoint a finance and audit committee and a remunerations committee which shall be standing committees.

(3) The Board may, with the exception of the finance and audit committee and the remunerations committees, dissolve a committee at any time.

(4) A committee of the Board may consist of persons who are members of the Board or non- members of the Board or both members and non-members of the Board.

(5) The Board-

- (a) shall determine the terms of reference of a committee;
- (b) shall appoint the chairperson and other members of a committee;
- (c) may authorise a committee to co-opt advisory members within limits determined by the Board;
- (d) may remove a member of a committee from office at any time; and
- (e) shall ensure that a committee has documented procedure.

(6) The Board with the concurrence of the Minister, shall determine the remuneration, allowances and other conditions of office of members of a committee who are not members of the Board and not employees of the Organisation.

PART IV

CHIEF EXECUTIVE OFFICER, THE CHIEF FINANCIAL OFFICER AND OTHER STAFF OF THE ORGANISATION

Appointment of the Chief Executive Officer

17. (1) The Minister responsible shall appoint the Chief Executive Officer on the recommendation of the Board in terms of the Public Enterprises Act, 1989.

(2) The Chief Executive Officer shall be appointed for a term not exceeding five years and shall be eligible for re-appointment.

Qualifications of the Chief Executive Officer

18. (1) In determining the fitness of the Chief Executive Officer, the minimum qualification of the Chief Executive Officer shall be a degree in fleet management or business management.

(2) The Chief Executive Officer shall have at least five years relevant experience in a senior management position.

(3) The Chief Executive Officer shall have no monetary interest in any other business, vocation or employment which is likely to create a conflict of interest with the position.

Powers and Duties of the Chief Executive Officer

19. (1) The Chief Executive Officer shall-

- (a) be responsible for the exercise of the powers and the discharge of the duties of the Organisation subject to the overall supervision of the Board.
- (b) be in charge of the overall operations of the Organisation.

- (c) be responsible for developing appropriate systems and procedures to ensure fair, efficient, effective and transparent personal administration of the Central Transport Organisation.
- (d) perform such acts conduct investigations, issue and amend orders and directives, make and amend general or special rules and procedures pursuant to and in accordance with the provisions of this Act as the Chief Executive Officer shall deem necessary.

(2) The Chief Executive Officer shall not commit the Organisation to any liability for which money has not been appropriated.

Delegation of responsibilities of the Chief Executive Officer

20. (1) The Chief Executive Officer (a) shall for the proper administration of this Act, develop an appropriate system of delegation that shall both maximise administrative and operational efficiency and provide adequate checks and balances in the Organisation's operation.

(2) The Chief Executive officer may in accordance with the system developed in subsection (1) delegate in writing to an employee -

- (a) any of the powers or duties assigned to the Chief Executive Officer in terms of this Act; or
- (b) any powers or duties reasonably necessary to assist the Chief Executive Officer in complying with a duty which requires the Chief Executive Officer to take reasonable or appropriate steps to ensure the achievement of the aims of a specific provision of this Act.

(3) The Chief Executive Officer shall confirm, vary or revoke any decision taken by an employee as a result of a delegation or instruction in terms of subsection 1 (b), taking into consideration the rights that may have become vested as a consequence of the decision.

(4) The Chief Executive Officer shall not delegate to a member of the Board any of the powers or duties assigned to the Chief Executive Officer in terms of this Act.

(5) The Chief Executive Officer shall regularly review delegations issued in terms of subsection 2 (a) and (b) and, if necessary, amend or withdraw any of those delegations.

(6) A delegation does not divest the Chief Executive Officer of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.

Appointment of the Chief Financial Officer

21. (1) The Board shall, in consultation with the Minister responsible, the Public Enterprises Unit and the Standing Committee appoint the Chief Financial Officer of the Organisation.

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

Qualifications of the Chief Financial Officer

22. (1) The Chief Financial Officer shall be appointed with due regard to the fitness for the efficient discharge of the powers and duties imposed by this Act.

(2) The minimum qualification of the Chief Financial Officer shall be a financial degree.

(3) At the time of appointment the Chief Financial Officer shall have at least five years management experience.

(4) The Chief Financial Officer shall have no monetary interest in any other business, vocation or employment which is likely to create a conflict of interest with his position without the prior approval of the Board.

PART V

FINANCIAL ASPECTS OF THE CENTRAL TRANSPORT ORGANISATION

Financial Year

23. The financial year of the Organisation shall be from the 1st April to 31st March of the following year.

Funds and Assets

24. (1) The funds of the Organisation shall consist of-

- (a) money appropriated annually by Parliament to enable the Organisation to perform its functions effectively;
- (b) all investments acquired by or invested in the Organisation and any money earned or accruing from the investments;
- (c) any monies raised or borrowed by the Organisation with the approval of the Minister responsible given with the concurrence of the Minister of Finance;
- (d) money received from any other source.

(2) The assets of the Organisation shall consist of -

- (a) all property that may be donated, lent or otherwise granted to it by the Government or any other Government, person or organisation;
- (b) all property acquired by the Central Transport Organisation.

Financial Reporting

25. (1) The Board shall submit to the Minister responsible and the Minister of Finance-

- (a) during each financial year, estimates of the Organisation's income and expenditure for the next financial year; and
- (b) at any time during a financial year, estimates of the Organisation's income and expenditure supplementary to those mentioned in paragraph (a).

(2) When submitting the estimates, the Board shall disclose full particulars of any income that has accrued or is expected to accrue to the Organisation from a source other than an appropriation by Parliament.

(3) An up to date asset register shall be kept and shall state which Ministry is responsible for the safe keeping of the various vehicles owned by the Organisation.

Asset and liability management

26. (1) The Chief Executive Officer shall be accountable and the Chief Financial Officer shall be responsible for the management of -

- (a) the assets of the Organisation, including the safeguarding and the maintenance of those assets; and
- (b) the liabilities of the Organisation.

(2) The Chief Executive Officer shall be accountable for ensuring that the Chief Financial Officer -

- (a) implements and maintains a management, accounting and information system that accounts for the assets and liabilities of the Organisation;
- (b) ensures that the Organisation's assets and liabilities are valued in accordance with standards of generally recognised accounting practice; and
- (c) ensures that the Organisation has and maintains a system of internal control of assets and liabilities, including an asset and liability register, as may be prescribed.

Borrowing Powers

27. (1) The Organisation may, on such conditions as the Minister responsible acting with the concurrence of the Minister of Finance determine-

- (a) borrow temporarily by way of bank overdraft or otherwise such sums as it may require for meeting its obligations or exercising or performing its functions; or
- (b) raise money by way of loans.

(2) The repayment of monies borrowed by the Organisation and the interest thereon and all charges connected with the borrowing shall be a liability of the Organisation and shall be discharged on its revenue.

Accountability

28. (1) The Chief Executive Officer shall be accountable and the Chief Financial Officer shall be responsible for ensuring that the Organisation -

- (a) keeps full and proper records of-
 - (i) all income and expenditure of the Organisation; and
 - (ii) all assets, liabilities and financial transactions of the Organisation;

- (b) has available resources properly safeguarded and used in the most efficient way;
- (c) has a bank account opened in the name of the Organisation with a recognised financial institution;
- (d) has an effective, efficient and transparent system of financial and risk management and internal control;
- (e) has complied with the financial reporting provisions as set out in the Public Enterprises Act;
- (f) complies with all finance related statutory measures applicable to the Organisation;
- (g) prepares annual financial statements in accordance with generally accepted accounting practice;
- (h) submits financial statements within three months after the end of each financial year to -
 - (i) the Auditor appointed by the Board; and
 - (ii) the Accountant-General.
- (i) presents financial statements to the Cabinet Standing Committee.

Appointment of financial auditor

29. (1) The Board shall appoint external auditors in accordance with the Public Enterprises Act.

(2) The financial statements of the Organisation shall be audited by the external auditors.

(3) The auditors shall audit the financial statements and submit an audit report on those statements to the Chief Executive Officer within two months of receipt of those statements.

Finance and Audit committee

30. (1) The Board shall establish a finance and audit committee as an independent advisory body to the Board.

(2) The finance and audit committee shall perform the following functions -

- (a) advise the Board and the Chief Executive Officer, on matters relating to-
 - (i) internal financial control and internal audits;
 - (ii) risk management;
 - (iii) accounting policies;
 - (iv) the adequacy, reliability and accuracy of financial reporting and information;
 - (v) performance management;

- (vi) effective governance;
 - (vii) compliance with this Act and any other applicable legislation;
 - (viii) performance evaluation; and
 - (ix) any other issues referred to it by the Board;
- (b) review the annual financial statements to provide the Board with an authoritative and credible view of the financial position of the Organisation, its efficiency and effectiveness and its overall level of compliance with this Act and any other applicable legislation;
 - (c) respond to the Board on any issues raised by the financial auditor in the audit report;
 - (d) carry out such investigations into the financial affairs of the Organisation as the Board may request; and
 - (e) perform such other functions as may be prescribed.

(3) In performing its functions, the finance and audit committee shall have access to all financial records and other relevant information of the Organisation.

Appointment of the Finance and Audit Committee

31. (1) The finance and audit committee shall consist of at least three persons with appropriate experience who shall not be employees of the Organisation.

(2) The members of the finance and audit committee shall be appointed by the Board and the committee shall appoint a chairperson.

(3) A Board member may not be a member of the finance and audit committee.

(4) The finance and audit committee shall meet at least four times a year.

(5) The remuneration of the finance and audit committee shall be determined by the Board at the commencement of each financial year.

Annual report

32. The Board shall prepare an annual report to be submitted to the Minister responsible for onward submission to Parliament which shall contain particulars of -

- (a) any material losses through criminal conduct;
- (b) any unauthorised, irregular and fruitless and wasteful expenditure;
- (c) the Organisation's strategic objectives and outcomes as identified and agreed on by the Board;
- (d) the key performance measures and indicators for assessing the Central Transport Organisation's performance in delivering the desired outcomes and objectives; and

- (e) the Organisation's actual performance against the strategic objectives and outcomes.

PART VI

SUPPLY CHAIN MANAGEMENT

Supply Chain Management

33. (1) This section applies to-

- (a) the procurement of goods and services;
- (b) the disposal and letting of goods and assets, including the disposal of goods no longer required; and
- (c) the selection of contractors to provide assistance in the execution of the powers and functions of the Organisation.

(2) The Board shall ensure that a supply chain management system is put in place immediately upon its appointment into office.

(3) The supply chain management system shall be fair, equitable, transparent, competitive and cost-effective, and shall cover at least -

- (a) the range of supply chain management processes that may be used, including tenders, quotations, auctions and other types of competitive bidding;
- (b) when a particular type of process may or shall be used;
- (c) procedures and mechanisms for each type of process;
- (d) procedures and mechanisms for more flexible processes where the value of a contract is below a prescribed amount;
- (e) open and transparent pre-qualification processes for tenders or other bids;
- (f) competitive bidding processes in which only pre-qualified persons may participate;
- (g) bid documentation, advertising of and invitations for contracts;
- (h) procedures and mechanisms for-
 - (i) the opening, registering and recording of bids in the presence of interested persons;
 - (ii) the evaluation of bids to ensure best value for money;
 - (iii) negotiating the final terms of contracts; and
 - (iv) the approval of bids;
- (i) screening processes and security clearances for prospective contractors on tenders or other bids above a prescribed value;

- (j) compulsory disclosure of any conflicts of interest prospective contractors may have in specific tenders and the exclusion of such prospective contractors from those tenders or bids;
 - (k) participation in the supply chain management system of persons who are not employees, subject to the provisions of this Act;
 - (l) the barring of persons from participating in tendering or other bidding processes, including persons-
 - (i) who were convicted for fraud or corruption during the past five years;
 - (ii) who wilfully neglected, reneged on or failed to comply with a contract with the Organisation or a Government contract during the past five years; or
 - (iii) whose tax matters are not cleared by the Swaziland Revenue Organisation;
 - (m) measures for combating fraud, corruption, favouritism and unfair and irregular practices in supply chain management;
 - (n) measures for promoting ethics of officials and other role players involved in supply chain management;
 - (o) the invalidation of recommendations or decisions that were unlawfully or improperly made, taken or influenced.
 - (p) contract management and dispute settling procedures; and
 - (q) the delegation of supply chain management powers and duties, including to employees.
- (4) The Central Transport Organisation shall not be obliged to consider an unsolicited bid received outside its nonnal bidding process.

Approval of tenders not recommended in the normal cause

34. (1) Where a tender other than the one recommended in the nonnal course of implementing the supply chain management system is approved by the Board, the Chief Executive Officer shall, in writing seek the approval of the Minister responsible and the Minister of Finance stating the reasons for deviating from such recommendation.

(2) Subsection (1) does not apply where a different tender was approved in order to rectify an irregularity.

Implementation of system

35. (1) The Chief Executive Officer shall-

- (a) implement the supply chain management system as approved by the Board; and
- (b) take all reasonable steps to ensure that proper mechanisms and separation of duties in the supply chain management system are in place to minimise the likelihood of fraud, corruption, favouritism and unfair and irregular practices.

(2) A person shall not impede the accounting officer in fulfilling this responsibility.

(3) A person who contravenes subsection 2 commits an offence and shall be liable on conviction to a term of imprisonment not exceeding five years or a fine of ten thousand (10,000) or both.

Contracts and contract management

36. (1) A contract or agreement procured through the supply chain management system shall -

- (a) be in writing;
- (b) stipulate the terms and conditions of the contract or agreement, which shall include provisions providing for-
 - (i) the termination of the contract or agreement in the case of none or underperformance;
 - (ii) dispute resolution mechanisms to settle disputes between the parties;
 - (iii) a periodic review of the contract or agreement once every three years in the case of a contract or agreement that is longer than three years; and
 - (iv) any other matters that may be prescribed.

(2) The Chief Executive Officer shall-

- (a) take all reasonable steps to ensure that a contract or agreement procured through the supply chain management system is properly enforced;
- (b) monitor on a monthly basis the performance of the contractor under the contract or agreement;
- (c) establish capacity in the administration of the Organisation to assist the Chief Executive Officer in carrying out the duties set out in paragraphs (a) and (b) and to oversee the day-to-day management of the contract or agreement; and
- (d) regularly report to the Board, on the management of the contract or agreement and the performance of the contractor.

(3) A contract or agreement procured through the supply chain management system may be amended by the parties, but only after the reasons for the proposed amendment have been approved by the Board.

Board members barred from serving on tender committees

37. A member of the Board shall not be a member of a bid committee or any other committee evaluating or approving tenders, quotations, contracts or other bids, nor attend any such meeting as an observer.

Interference

38. A person who interferes with the supply chain management system of the Organisation or amend or tamper with any tenders, quotations, contracts or bids after their submission commits an offence and is liable on conviction to a term of imprisonment not exceeding ten (10) years or a fine of twenty thousand (20, 000) Emalangeni or both.

Competency levels of officials involved in supply chain management

39. (1) The Chief Executive Officer and all other employees involved in the implementation of the supply chain management system shall meet the prescribed competency levels.

(2) The Board shall for purposes of subsection (1) provide resources and opportunities for the training of employees referred to in that subsection to meet the prescribed competency levels.

PART VII MISCELLANEOUS

Offences

40. (1) The Chief Executive Officer commits an offence if that Chief Executive Officer-

- (a) deliberately or in a grossly negligent way-
 - (i) fails to take reasonable steps to implement the Organisation's supply chain management system referred to in section 33;
 - (ii) fails to take all reasonable steps to prevent unauthorised, irregular or fruitless and wasteful expenditure; or
 - (iii) fails to take all reasonable steps to prevent corrupt practices in the management of the Organisation's assets or receipt of money or in the implementation of the supply chain management policy;
- (b) deliberately misleads or withholds information from the Auditor on any bank accounts or on money received or spent; or
- (c) deliberately provides false or misleading information in any document which in terms of a requirement of this Act shall be submitted to the Financial Auditor, Minister, Minister of Finance or any other state institution.

(2) An employee to whom a power or duty was delegated commits an offence if that employee deliberately or in a grossly negligent way contravenes or fails to comply with a condition of the delegation.

(3) A member of the Board commits an offence if that member-

- (a) deliberately influences or attempts to influence the Chief Executive Officer, Chief Financial Officer, or any employee to contravene a provision of this Act or to refrain from complying with a requirement of this Act; or

- (b) interferes in the financial management responsibilities or functions assigned in terms of this Act to the Chief Executive Officer or delegated to the Chief Financial Officer in terms of this Act;

(4) A member of the Board, or, an employee or any other person commits an offence if that person deliberately or in a grossly negligent way-

- (a) obstructs the Chief Executive Officer from complying with a provision of this Act;
- (b) gives incorrect, untrue or misleading information material to an investment decision relating to borrowing; or
- (c) provides false or misleading information in any document which in terms of a requirement of this Act shall be submitted to the Financial Auditor, Minister, Minister of Finance or any other state institution.

Regulations

41. The Minister may make regulations providing for-

- (a) any matter that may be prescribed in terms of this Act;
- (b) financial management and internal control;
- (c) the alienation, letting or disposal of assets;
- (d) an internal audit unit and its functioning;
- (e) the circumstances in which the Minister may direct that disciplinary steps be taken or criminal charges be laid against a person for misconduct;
- (f) criteria for the composition and functioning of a disciplinary tribunal which hears a charge of financial misconduct;
- (g) the circumstances under which the findings of a disciplinary tribunal and any sanction imposed by the tribunal shall be reported to the Minister; and
- (h) any other matter that may facilitate the application and enforcement of this Act.

PART VIII

TRANSITIONAL PROVISIONS AND REPEAL

Transfer of certain assets and obligations of State to CTO

42. (1) All assets utilised by the Organisation which are currently owned by the Government are to be transferred to the Organisation at zero value.

(2) The assets and rights of the Government which -

- (a) immediately before the date of commencement of this Act, were used or otherwise connected with the functions of the CTA; and

- (b) are specified by the Minister responsible with the approval of the Minister of Finance;

shall, together with any liabilities attached to them, be transferred to the CTO with effect from such date and terms and conditions, whether relating to payment or otherwise, as the Minister may specify by written notice to the organisation:

Provided that -

- (i) the Minister may specify different dates for the transfer of different assets and rights;
- (ii) this subsection shall not be construed as preventing the Government from leasing any State assets to the organisation or otherwise permitting the State to use any such assets, on such terms and conditions as may be agreed between the parties concerned.

(3) On the relevant transfer date, every asset and right of the Government which the Minister has directed shall be transferred to the Organization, together with any liability or obligation attaching to it, shall vest in the organisation, subject to any terms and conditions specified by the Minister in terms of subsection (1).

(4) All bonds, deeds, contracts, instruments, documents and working arrangements which subsisted immediately before the relevant transfer date in relation to any assets, right, liability or obligation transferred to the organisation under this section and to which the State was a party shall, on and after that date, be as fully effective and enforceable against or in favour of the organisation as if, instead of the State, the organisation had been named therein.

(5) Any cause of action or proceeding which existed or was pending by or against the State immediately before the relevant transfer date in respect of any asset, right, liability or obligation which vests in the organisation under this section, may be enforced or continued, as the case may be, by or against the organisation in the same way it might have been enforced or continued, as the case may be, by or against the State had this Act not been passed.

Employees

43. (1) Subject to the provisions of subsisting labour laws and to the consent of the employees concerned, the organisation shall engage a civil servant employed by the Central Transport Administration on a date to be decided by the Minister responsible and published in the Government Gazette.

(2) The terms and conditions of employment shall be determined by the Board in consultation with the Minister responsible and the Minister of Finance.

(3) Any employee offered employment in terms of subsection (1) shall sign a new employment contract with the Organization on the date of Transfer.

(4) Notwithstanding any other provision of this Act, a person who -

- (a) as a member of the Civil Service, was afforded an opportunity of engagement by the Organisation in terms of this section and declined to avail himself of the opportunity; and
- (b) subsequently left the Civil Service and as a consequence became entitled to pension in respect of the abolition of his post,

shall not be engaged in any capacity by the organisation for a period often (10) years from the date on which he left the Civil Service, unless the Minister responsible and the Civil Service Commission consent to his engagement.

Current financial deficit

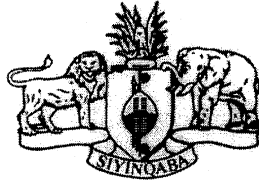
44. The current financial deficit shall not be transferred to the Organisation and the Organisation shall not be regarded to have debt and owing to the Government as at the date of transfer.

Repeal

45. The Administration of the Central Transport Board Special Fund Regulations, 1975 under the Finance Management and Audit Act No.18 of 1967, are repealed. I

THE CONSTRUCTION INDUSTRY COUNCIL ACT, 2013

(Act No. 14 of 2013)



I ASSENT

MSWATI III
KING OF SWAZILAND

31st July, 2013

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-

**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 practicing as such;

“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 referred to in section 35;

“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;
 - (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;
- (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 development of their operations;
- (c) assess 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 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.

Seal of Council

10. (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.

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.

(4) The Chairman of the Council shall, by reason of his office be a member of every committee of the Council.

(5) Every committee shall keep minutes of its meetings and shall inform the Council of its proceedings in a manner that the Council may direct.

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 of 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 section.

(2) The Council may-

- (a) accept monies by way of grants or donations from any source in Swaziland and, subject to the approval of the Minister, from any source outside Swaziland;
 - (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.

(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 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.

(2) Where an appeal is made under subsection (1), the Minister may give such directions to the Council as the Minister considers necessary to enable the Minister to determine the appeal.

(3) The Minister in determining the appeal may confirm, vary or set aside the decision of the Council.

(4) Any person who is aggrieved by the decision of the Minister may appeal to the High Court within thirty days of the decision of the Minister.

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.

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

A ward 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.

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

Regulations

46. (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;
 - (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.

LEGAL NOTICE NO. 106 OF 2013**THE CONSTITUTION OF SWAZILAND ACT, 2005
(Act No. 001 of 2005)****THE APPOINTMENT OF ASSISTANT REGISTRAR II
OF THE HIGH COURT NOTICE, 2013
(Under Section 160)**

In exercise of the powers conferred by Section 160 of the Constitution of Swaziland Act, 2005, the Judicial Service Commission makes the following notice-

Citation and Commencement

1. (1) This Notice may be cited as the Appointment of Assistant Registrar II of the High Court Notice, 2013.

(2) This Notice shall come into force on date of publication in the Gazette.

Appointment of Assistant Registrar II of the High Court

2. The Judicial Service Commission appoints-

BONGANI SAMUEL MAVUSO

as Assistant Registrar II of the High Court with effect from 1st April, 2013.

M. M. RAMODIBEDI

CHAIRMAN - JUDICIAL SERVICE COMMISSION

LEGAL NOTICE NO. 108 OF 2013

THE URBAN GOVERNMENT ACT, 1969
(Act No. 8 of 1969)

TERMS AND CONDITIONS OF SERVICE FOR COUNCILLORS
(AMENDMENT) NOTICE, 2013
(Under Section 8)

In exercise of the powers conferred by Section 8 of the Urban Government Act, 1969, the Minister for Housing and Urban Development issues the following Notice -

Citation and Commencement

1. (1) This Notice may be cited as the Terms and Conditions for Councillors (Amendment) Notice, 2013 and shall be read as one with amended Legal Notice No. 74 of 2008, and Legal Notice No. of 2012.

(2) This Notice shall come into force on the date of publication in the Gazette.

Amendment

2. Subsection 3 and 4 of Legal Notice no 74 of 2008 is amended as such:

Payment of retainer fees shall be as follows:

Chairperson	-	E3, 650.00
Vice chairperson	-	E3, 280.00 and
Ordinary Member	-	E2, 920.00

Payment of sitting allowances shall be as follows:

Chairperson	-	E510.00
Vice Chairperson	-	E440 and
Ordinary Member	-	E365

LINDIWE T. DLAMINI
MINISTER FOR HOUSING AND URBAN DEVELOPMENT