

Malawi

## National Construction Industry Act

### Chapter 53:05

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# National Construction Industry Act

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# Malawi

## National Construction Industry Act

### Chapter 53:05

Commenced on 20 January 1997

*[This is the version of this document at 31 December 2014.]*

*[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]*

**An Act to provide for the establishment of the National Construction Industry Council of Malawi, for the promotion and development of the construction industry in Malawi, for the registration of persons engaged in the construction industry, for the co-ordination of training of persons engaged in the construction industry and generally for matters incidental thereto or connected therewith**

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the National Construction Industry Act.

#### 2. Interpretation

In this Act, unless the context otherwise requires—

“**Council**” means the National Construction Industry Council of Malawi established under [section 3](#);

“**financial institution**” has the meaning ascribed thereto in section 2 of the Banking Act;

*[Cap. 44:01]*

“**foreign firm**” means a firm operating in Malawi but belonging to a person who is not a Malawian national and having fifty-one per cent or more of its capital originating from outside Malawi;

“**local firm**” means a firm operating in Malawi having fifty-one per cent or more of its capital originating from within Malawi but belonging to a person who is not a Malawian national;

“**Malawian firm**” means a firm operating in Malawi and having fifty-one per cent or more of its capital belonging to a Malawian national;

“**member**” in relation to the Council means a member thereof appointed or elected under [section 4\(1\)](#);

“**person engaged in construction industry**” means a contractor, consultant, material manufacturer and material supplier.

### Part II – The National Construction Industry Council of Malawi

#### 3. Establishment of the Council

There is hereby established a Council to be known as the National Construction Industry Council of Malawi which shall be a body corporate having perpetual succession and a common seal and shall, under that name, be capable of suing and being sued and of purchasing or otherwise acquiring, holding and alienating movable or immovable property and, subject to the provisions of this Act, of performing all such acts as bodies corporate may by law perform.

#### 4. Composition of the Council

- (1) The Council shall consist of the following members appointed by the Minister three quarters of whom shall, save in the case of an *ex officio* member, be citizens of Malawi—
  - (a) three members who shall be contractors nominated by the Master Builders' Association and the Malawian Building Contractors and Allied Trades Association;
  - (b) one specialized sub-contractor nominated by the Master Builders' Association and the Malawi Building Contractors and Allied Trades Association;
  - (c) one quantity surveyor nominated by the Board of Architects and Quantity Surveyors;
  - (d) one architect nominated by the Board of Architects and Quantity Surveyors;
  - (e) one engineer nominated by the Board of Engineers;
  - (f) one consulting engineer nominated by the Association of Consulting Engineers;
  - (g) two members representing material manufacturers;
  - (h) one member nominated by the Board of Registration of Land Economy Surveyors, Valuers, Estate Agents and Auctioneers;
  - (i) two members from financial institutions;
  - (j) the General Manager of the Malawi Investment Promotion Agency or his representative;
  - (k) the Executive Director of the Malawi Chamber of Commerce and Industry or his representative;
  - (l) the Secretary for Works and Supplies or his representative;
  - (m) the Secretary for Economic Planning and Development or his representative;
  - (n) the Solicitor General or his representative;
  - (o) one person nominated by the University of Malawi; and
  - (p) one person of good character and good standing in the community.
- (2) Members of the Council, not being members *ex officio* shall hold office for a period of three years from the date of their appointment.
- (3) Upon the appointment of any member to the Council, the Minister shall cause notice of such appointment to be published in the *Gazette* and shall in such notice specify the current membership of the Council resulting upon such appointment.

#### 5. Disqualification from appointment to the Council

Any person who—

- (a) is declared bankrupt under any law in force in Malawi;
- (b) is, under any law in force in Malawi, adjudged or otherwise declared to be of unsound mind;
- (c) has, within the past seven years, been convicted of an offence under any written law punishable by a term of imprisonment of six months without the option of a fine,

shall be disqualified from being appointed as a member of the Council.

## 6. Vacation, etc., of members from office

- (1) The Council shall require a member to vacate his office if the Council is satisfied that the member—
  - (a) has become insolvent or has assigned his estate for the benefit of, or made a composition or other arrangement with his creditors; or
  - (b) has been absent from three consecutive meetings of the Council, of which he has had notice, without leave of the Council; or
  - (c) has been disqualified under this Act or any other written law from carrying on his profession or trade; or
  - (d) has been convicted of an offence under this Act or any other written law relating to the construction industry;
  - (e) has been convicted—
    - (i) within Malawi of a criminal offence; or
    - (ii) outside Malawi of an offence by whatever name called which, if committed within Malawi, would have been a criminal offence, and sentenced to imprisonment for a term of six months or more without the option of a fine, whether or not such sentence has been suspended, and has not received a free pardon; or
  - (f) is mentally or physically incapable of efficiently performing his duties as a member of the Council; or
  - (g) has had a penalty imposed upon him under this Act by the Council with the approval of the Minister.
- (2) The Minister may—
  - (a) ask a member of the Council to temporarily resign if criminal proceedings have been instituted against the member for an offence in respect of which a sentence of imprisonment for a term of six months or more without the option of a fine may be imposed;
  - (b) suspend from office a member of the Council against whom the Council has instituted an inquiry into his professional conduct and while that member is so suspended he shall not carry out any duties as a member.
- (3) Where a member against whom criminal proceedings have been instituted is acquitted by a court of law, the Minister may re-appoint such a member to hold office in the Council.
- (4) A member of the Council may resign his office by giving one month notice in writing to the Chairman of the Council.

## 7. Filling of vacancies of the Council

- (1) On vacation of office by a member of the Council, the vacancy shall be filled by a person appointed in accordance with [section 4](#) (1):

Provided that if the remaining period is less than six months the Minister may decide not to have the vacancy filled until the expiry of the period.
- (2) If any member of the Council is granted leave of absence by the Minister, the Minister may, if he sees fit, co-opt a person who belongs to the same profession or calling as the member who has been granted leave to fill the vacancy during the absence of the member.

## 8. Invited persons

- (1) The Council may invite any person to attend any particular meeting or series of meetings of the Council for the purpose of assisting or advising the Council in respect of any matter under consideration by the Council.
- (2) Any person invited pursuant to subsection (1) shall take part in the deliberations of the Council at any meeting he attends but shall not be entitled to vote.

## 9. Chairman and Vice-Chairman

- (1) The Council shall, from amongst its members, elect two members, who are not members *ex officio*, to be Chairman and Vice-Chairman.
- (2) The office of the Chairman or Vice-Chairman shall become vacant—
  - (a) if the holder resigns his office by giving one month notice in writing to the Council; or
  - (b) if the holder of the office ceases to be a member of the Council; or
  - (c) if the Minister, at the recommendation of the Council, so directs.
- (3) Whenever the Chairman is absent or is for any reason unable to discharge the functions of his office, the Vice-Chairman shall discharge the functions of the Chairman.

## Part III – Meetings of the Council

### 10. Meetings of the Council

- (1) Subject to this Act, the Council shall hold ordinary meetings for the dispatch of business at least four times in each year.
- (2) An extraordinary meeting of the Council—
  - (a) may be convened by the Chairman at any time;
  - (b) shall be convened by the Chairman within twenty-one days of the receipt by him of a request in writing signed by not less than five members of the Council and specifying the purpose for which the meeting is to be convened.
- (3) At any meeting of the Council—
  - (a) the Chairman or, in his absence the Vice-Chairman, shall preside;
  - (b) in the absence of both the Chairman and Vice-Chairman the members present and forming the quorum shall elect one of their number to preside;
  - (c) the quorum shall be formed by any ten members.
- (4) At any meeting—
  - (a) the decision of the Council on any matter shall be that of the majority of the members present and voting at the meeting, and in the event of an equality of votes, the Chairman or the person presiding shall have a casting vote in addition to his deliberative vote;
  - (b) a decision of the Council on policy matters shall be approved by the Minister.
- (5) Subject to this Act, the Council may make rules for the regulation of its proceedings and business and may vary, suspend or revoke any such rules.



- (6) The record of any meeting of the Council shall be made available to any person engaged in the construction industry and registered under this Act at all reasonable times at the offices of the Council.
- (7) No person shall have access to records of—
  - (a) a meeting of the Disciplinary Committee or any other committee of the Council; or
  - (b) the Council where the Council has resolved that it shall sit as a Committee.
- (8) If a member of the Council has an interest, direct or indirect, in any matter before the Council and is present at a meeting of the Council at which the matter is under consideration, he shall as soon as practicable, disclose the fact and shall not take part in the consideration or discussion of or vote on any question with respect to the determination of the matter.
- (9) Minutes of every meeting of the Council shall be taken and kept by such officer of the Council as may be designated in that behalf by the Council and shall be subject to confirmation by the Council at the succeeding meeting.

## **Part IV – Functions and powers of the Council**

### **11. Functions of the Council**

The Council shall regulate the construction industry in Malawi and shall have the following further functions—

- (a) to promote and develop the construction industry in Malawi by giving priority to Malawian firms;
- (b) to facilitate Malawian firms to have access to resources for the development of their operations;
- (c) to promote, in liaison with other bodies, both within Malawi and elsewhere, proper developmental issues relating to the construction industry;
- (d) to promote research, development and use of competitive local materials;
- (e) to promote and facilitate, where possible, the construction of affordable low-cost and medium-density housing;
- (f) to promote safety standards in the construction industry;
- (g) to prescribe and vary the categories for the registration of persons engaged in the construction industry;
- (h) to recommend to the Minister conditions under which a foreign firm may register and operate in Malawi;
- (i) to keep and maintain a register for each category of persons engaged in the construction industry;
- (j) to conduct training, within Malawi and co-ordinate the training conducted by others, of persons engaged in the construction industry;
- (k) to make available, from time to time, to persons engaged in the construction industry published information, advice and assistance in relation to the construction industry;
- (l) to publish, from time to time, such technical and commercial information as it deems necessary or expedient for the benefit of persons engaged in the construction industry;
- (m) to review, from time to time, the process of awarding contracts;
- (n) to monitor and evaluate, from time to time, the capacity and progress of persons engaged in the construction industry;

- (o) to encourage competition in the professions or trades of persons engaged in the construction industry;
- (p) to regulate the activities of the construction industry in Malawi through the concerned Boards and Associations;
- (q) to co-ordinate construction industry councils within or outside the region;
- (r) to standardize quality control, contract documentation, codes of practice, procurement processes, legal and contractual procedures in liaison with other organizations;
- (s) to exercise disciplinary control over the conduct of any person engaged in the construction industry and practising in Malawi; and
- (t) generally, to perform such other functions as the Council deems necessary or expedient to achieve the objects of this Act.

## 12. Powers of the Council

For the better performance of its functions, the Council shall, subject to the provisions of this Act, have power—

- (a) to consider any matter affecting the construction industry and make representations thereon to the Minister;
- (b) to work together with other bodies in Malawi and elsewhere on matters affecting the construction industry;
- (c) to recommend the approval of institutions in Malawi and outside for the training of persons engaged in the construction industry;
- (d) to obtain information related to the industry from any person engaged in the construction industry in Malawi;
- (e) to obtain and collate all available information concerning existing and proposed projects and advise persons engaged in the construction industry thereon;
- (f) to employ such professional, technical and administrative officers, clerks and other servants as it may deem requisite and lay down conditions of service for such employees;
- (g) to pay any person in its employ such salary, wages or other remuneration as it may deem fit, and to grant him such leave as it may deem fit; and
- (h) generally, to do such things as the Council may deem necessary or expedient to achieve its objects under this Act.

## 13. Committees of the Council

- (1) The Council may establish any number of committees to carry out any special or general functions determined by the Council and may delegate to any such committee such of the functions of the Council as the Council may consider expedient.
- (2) The Chairman of the Council shall by reason of his office be a member of every committee established under subsection (1).
- (3) The Chairman of each committee shall be elected by the Council from amongst the members of the Council.
- (4) (a) Each committee may, with the consent of the Council, invite any person to attend any particular meeting or series of meetings for the purpose of assisting or advising the committee in respect of any matter under consideration by the committee.

- (5) Any person invited pursuant to subsection (4) shall take part in the deliberations of the committee at any meeting he attends but shall not be entitled to vote.
- (6) The Chairman of the committee may, with the approval of the Chairman of the Council convene, at any time and place, a meeting of the committee of which he is chairman.
- (7) The Council may, at any time, direct the Chairman of any committee to convene a meeting of such committee and such chairman shall, as soon as is practicable, comply with such direction.
- (8) Every committee shall keep minutes of its meetings and shall inform the Council of its proceedings in such manner as the Council may direct.

## Part V – Financial provisions

### 14. Funds, accounts and audit

- (1) The funds of the Council shall consist of—
  - (a) such sums as may be appropriated by Parliament for the purposes of the Council;
  - (b) any fees payable under this Act;
  - (c) such other moneys and assets as may vest in or accrue to the Council in the course of its functions;
  - (d) the levy imposed under [section 15](#);
  - (e) such moneys or other assets as may accrue to, or vest in, the Council by way of grants, subsidies, bequests, donations, gifts, subscriptions, rents, interest or royalties, from any person.
- (2) The Council shall keep proper accounts and other records relating thereto in respect of its funds and shall in every respect comply with the provisions of the Finance and Audit Act.  
*[Cap. 37:01]*
- (3) The accounts of the Council shall be examined and audited annually by auditors appointed by the Council and approved by the Minister.

### 15. Levy

The Council may, from time to time, by order published in the *Gazette*, impose a levy on any person or class of persons engaged in the construction industry under this Act and such levy shall be appropriated for the general operations of the Council.

### 16. Remuneration and expenses of members of the Council

A member of the Council or of a committee shall be paid from the funds of the Council such allowances as the Minister may approve 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 connexion with the business of the Council or the committee.

### 17. Investment of surplus sums

The Council may invest any sums which are not immediately required for its objects.

## 18. Borrowing powers

Subject to the provisions of section 32 (1) of the Finance and Audit Act, the Council may borrow either temporarily by way of overdraft or otherwise, such sums as it may require, for meeting its obligations or discharging its functions under this Act.

[Cap. 37:01]

## 19. Financial year of the Council

The financial year of the Council shall be the 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 twelve months ending on 31st March every year.

# Part VI – Registration

## 20. Prohibition of carrying on business, etc.

- (1) No person shall carry on business in the construction industry in Malawi unless he is registered under this Act.
- (2) No person being registered under this Act shall carry on business of a category in respect of which he is not registered.
- (3) An employee of any person registered under this Act shall not be deemed to carry on business within the meaning of subsection (1) or (2) by reason only of his performance of his functions as an employee.

## 21. Council to maintain a register

- (1) The Council shall, for the purpose of this Act, keep and maintain, in the appropriate prescribed form, a register of persons engaged in the construction industry.
- (2) The register shall be in the custody of such officer employed by the Council as the Council may designate and shall be kept at the offices of the Council:  
Provided that a copy of the register shall be kept at the Ministry Headquarters.
- (3) Every person registered under this Act shall, after 31st March each year, pay to the Council such annual fees as may be prescribed.
- (4) No person registered under this Act shall obtain a commission or a contract before the payment of the annual subscription fees.
- (5) The Council shall, once in every year and as soon as may be convenient after 1st April, each year, publish in the *Gazette* the names, addresses, qualifications, dates of registration, category and other particulars of all persons registered under this Act.

## 22. Application for registration

An application for registration shall be made to the Council in such form as may be prescribed and shall be accompanied by the prescribed fee.

## 23. Qualifications for registration

- (1) The Council shall, before registering a person pursuant to an application made under [section 22](#), take into consideration the following—
  - (a) his capital and other financial resources;

- (b) whether he owns land, buildings and machinery;
  - (c) his managerial, professional, technical and other personnel; and
  - (d) in the case of an individual, his qualifications and skill;
  - (e) whether he has vehicles, plant, implements, tools, instruments, fuels and other goods and supplies for the unlimited categories;
  - (f) any other requirements which the Council may determine for each category necessary to enable him to discharge in a satisfactory manner, the obligations which may reasonably be expected of or undertaken by a person belonging to the category in respect of which registration is sought.
- (2) (a) The Council may require the attendance of any party to, or any person interested in or affected by, any matter before the Council and may demand the production of any document or evidence to support the matter.
- (b) Where any person whose presence is required is not present, or any document the production of which has been demanded, is not produced, the Council may postpone hearing the matter to give a reasonable opportunity for the appearance of such person or the production of such document.

#### **24. Certificate of registration**

- (1) The Council shall issue a certificate to every person registered under this Act.
- (2) The certificate issued under subsection (1) shall be valid from 1st April to 31st March of the following year.

#### **25. Council to decide applications for registration**

After considering an application the Council shall decide whether the application should be granted or refused.

#### **26. Appeals against refusal to register or removal from register**

- (1) A person aggrieved by—
- (a) the refusal of the Council to register him under this Act for any reason; or
  - (b) the removal by the Council of his name from the register; may, after filing written notice to the Council and within three months after the date on which notice is given to him by the Council of the refusal or removal as the case may be, appeal to the Minister in such a manner as may be prescribed.
- (2) On hearing an appeal under subsection (1), the Minister may—
- (a) dismiss the appeal; or
  - (b) if he is of the opinion that the Council has not acted in accordance with this Act, make an order that the name of the appellant be entered in or retained on the register; or
  - (c) refer the matter back to the Council for further consideration, and may make such other order as he may deem fit.
- (3) Any person aggrieved by the decision of the Minister may apply to the High Court for review of such decision.

## 27. Striking off from the register

- (1) When a person registered under this Act has—
  - (a) failed to renew his annual licence; or
  - (b) ceased to carry on business in the construction industry in Malawi; or
  - (c) failed or ceased to have any of the things specified in [section 23](#) (1) (a) to (f) inclusive; or
  - (d) undertaken work in a category other than that in respect of which he is registered; or
  - (e) been declared bankrupt; or
  - (f) become a person of unsound mind; or
  - (g) been found guilty of professional misconduct; or
  - (h) been found guilty of an offence involving dishonesty,the Council may call upon such person to show cause why he should not be struck off the register.
- (2) Where a person who has been called upon to show cause why he should not be struck off the register fails to show such cause to the satisfaction of the Council, he shall be struck off the register.

## Part VII – Miscellaneous provisions

### 28. Offences

Any person who contravenes the provisions of this Act shall be guilty of an offence and be liable to a fine of K20,000 and to imprisonment for a term of two years, and in the case of a continuing offence to a further fine of K2,000 for each day during which the offence continues.

### 29. Regulations

The Minister may, with the advice of the Council, make regulations for carrying out or giving effect to the provisions of this Act, and without prejudice to the generality of the foregoing such regulations may—

- (a) prescribe the fees payable—
  - (i) upon application for registration or renewal of registration;
  - (ii) for restoration to a register;
  - (iii) for any other matter under this Act;
- (b) prescribe the forms required to be prescribed under this Act; and
- (c) prescribe allowances to be paid to members of the Council and committees thereof in respect of honorarium, travelling and subsistence allowances;
- (d) make provisions for the registration, control and regulation of foreign firms carrying on business in the construction industry in Malawi;
- (e) make provision for the regulation and disciplining of persons engaged in the construction industry in Malawi.

## Part VIII – Repeal and savings

### 30. Repeal and savings

- (1) The Consultants and Contractors Act is hereby repealed.
- (2) Any subsidiary legislation made under the Act repealed under subsection (1) in force immediately before the commencement of this Act—
  - (a) shall remain in force unless in conflict with this Act and be deemed to be subsidiary legislation made under this Act;
  - (b) may be replaced, amended or repealed by subsidiary legislation made under this Act.