

MEMORANDUM OF UNDERSTANDING

BETWEEN

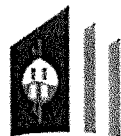


**Eswatini
Competition Commission**

**ESWATINI COMPETITION COMMISSION
(COMMISSION)**

AND

**CONSTRUCTION INDUSTRY COUNCIL
(CIC)**



**CONSTRUCTION
INDUSTRY COUNCIL**

Your Partner in Infrastructure Development

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1. PREAMBLE

This Memorandum of Understanding (MOU) is entered into between the Eswatini Competition Commission (hereinafter referred to as the "Commission") and the Construction Industry Council (hereinafter referred to as CIC) for mutual exchange and sharing of information concerning co-operation in matters of mutual interest.

AND WHEREAS the **Construction Industry Council (CIC)** is an organization established in terms of the Construction Industry Council Act No. 14 of 2013 for the purpose of regulating the construction industry in Eswatini and promote the construction industry in meeting national construction demands while providing strategic leadership to industry stakeholders for the stimulation of sustainable growth, reform and improvement in the country's construction sector.

AND WHEREAS the general objectives of the organization 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 a best practice that promotes-
 - I. Improved industry performance, efficiency and effectiveness;
 - II. Procurement and delivery management reform;
 - III. Improved public and private sector delivery management;
- d) promote uniform application of policy with regard to the construction industry throughout all spheres of the industry including Government, parastatals and the private sector;
- e) promote, establish or endorse uniform and ethical standards that regulate the actions, practices and procedures of parties engaged in construction contracts;
- f) promote sustainable growth of the construction industry and the participation of the emerging enterprise; and
- g) implement policy on construction industry development.

AND WHEREAS the specific functions of the Construction Industry Council include:

- a) to promote and develop the construction industry in Eswatini and give priority to Eswatini firms and/ or Eswatini companies;

- b) assess the performance of contractors in the execution of contracts and thus provide a performance record for contractors;
- c) regulate the behaviour and promote minimum standards and best practice of contractors;
- d) 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; and
- e) exercise disciplinary control over the conduct of any person engaged in the construction industry and practicing in Eswatini.

AND WHEREAS the Eswatini Competition Commission was established in 2007, by the Eswatini Competition Act of 2007 (hereinafter referred to as the "Competition Act"), to provide for the encouragement of competition in Eswatini's economy by controlling anti-competitive trade practices, mergers and acquisitions, protecting consumer welfare and providing for an institutional mechanism for implementing these objectives.

AND WHEREAS the specific functions of the Commission amongst others, in terms of Section 11 of the Competition Act are to-

- (a) carry out investigations in relation to the conduct of business to ensure compliance with the Act;
- (b) regulate the creation of a merger and/or prevent and provide redress to the abuse of a dominant position;
- (c) provide persons engaged in business with information regarding their rights under the Act;
- (d) undertake studies and make available to the public reports regarding the operation of the Act;
- (e) co-operate with and assist any association or body of persons to develop and promote the observance of the standards of conduct to ensure compliance with the provisions of the Act;
- (f) advise the Minister on such matters relating to the operation of the Act;
- (g) review the Act and any other legislation which inhibit fair competition;
- (h) co-operate with regional and international bodies engaged in the enforcement of competition law and the promotion of a competition culture; and
- (i) co-operate with and assist any association or body of persons to develop and promote the observance of the standards of conduct to ensure compliance with the Competition Act;

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- (j) review the Competition Act and any other legislation which inhibit fair competition and make proposals to the Minister for the amendment of such legislation; and
- (k) enter into discussions on contentious issues with any regulatory authority in order to harmonise and ensure consistent application of the competition principles.

AND WHEREAS the Parties recognise the critical importance of mutual co-operation and information sharing in order to ensure the fulfilment of their respective mandates;

AND WHEREAS the Parties also recognise the constant need for mutual monitoring, supervision, and reporting in matters of mutual interest which facilitate the effective performance of their respective duties and achievement of their respective mandates;

REALISING THAT while the Commission is mandated to regulate the entire spectrum of any economic activity within Eswatini, the CIC is empowered by sections 28, 29(5), 39, 40, 41, 42, and 43 of the Construction Industry Council Act, 2013, to: ensure that contractors do not undertake construction work in a category in which they are not registered; prohibit award of tenders to unregistered tenderers; approve the award of contracts to foreign companies; enforce partnership with Swazi companies by foreign companies participating in public contracts; and prohibit use or manufacture of sub-standard construction material, respectively;

Hence a need to leverage scarce resources and establish mechanisms for cooperation and information sharing; and

NOW THEREFORE the Parties have reached the following understanding:

2. DEFINITIONS

“CIC” means the Construction Industry Council;

“CEO” means Chief Executive Officer;

“Commission” means Eswatini Competition Commission;

“Competition Act” means The Competition Act No.8 of 2007;

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“Construction Act” means The Construction Industry Council Act of 2013;

“Parties” mean the Eswatini Competition Commission and the Construction Industry Council respectively;

“Laws or regulations” mean any binding laws or regulations in force in the jurisdiction of the Parties;

“MOU” means Memorandum of Understanding;

“Person” means a natural person, body corporate, partnership, unincorporated association, agency or instrumentality of a government;

“Requested Party” means the Party to whom a request is made pursuant to this Memorandum of Understanding; and

“Requesting Party” means the Party making a request pursuant to this Memorandum of Understanding;

3. SCOPE OF THE MOU

3.1 The purpose of this MOU is to provide the Parties with a framework for cooperation in:

3.1.1 information sharing;

3.1.2 providing the fullest mutual assistance possible in investigations or enforcement proceedings pertaining to violation of any laws or regulations under the scope of this MOU;

3.1.3 providing mutual consultancy, information, and expert support on current issues on the economic and social agenda;

3.1.4 development of shared communications platforms at a national level to stimulate interaction in various spheres as well as exchange of information on matters of cooperation;

3.1.5 promoting efficiency and effectiveness in the management of tenders and ensuring that tender bidding processes are in line with the provisions of the Competition Act;

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- 3.1.6 promoting efficiency in the formation and management of mergers and acquisitions in the construction sector;
 - 3.1.7 joint capacity building and training;
 - 3.1.8 cooperate and collaborate on initiatives aimed at promoting consumer protection including, but not limited to, joint education initiatives and identification of vulnerable groups consumer protection and education joint enforcement mechanisms;
 - 3.1.9 collaborate on studies relating to the competitiveness of the construction industry as well as consumer issues;
 - 3.1.10 investigating and prosecuting persons involved in bid-rigging and collusive tendering and limiting the formation of construction sector cartels.
 - 3.1.11 encouraging fair competition with the construction industry of Eswatini by sharing knowledge and educating its members about the values, principles and application of the Competition Act; and
 - 3.1.12 any other area of mutual interest as may be agreed upon by the Parties.
- 3.2 Over and above cooperation on information sharing and other matters of mutual interest, this MOU will serve to promote the integrity, efficiency and compliance of persons serviced by the Parties and serve to ensure compliance with the Competition and the Construction Industry Acts.

4. PRINCIPLES OF CO-OPERATION

- 4.1 This MOU recognizes the following broad principles:
- 4.1.1 the Parties will use their best endeavours to fulfil the terms of this MOU;
 - 4.1.2 the Parties intend to assist each other under this MOU to the full extent permitted by the laws, regulations and rules of their enabling legislation to facilitate the fulfilment of their statutory mandate and responsibilities;
 - 4.1.3 this MOU shall not create any binding legal obligations between or amongst the Parties;
 - 4.1.4 this MOU does not amount to a delegation of any of the powers, duties or obligations of the Parties given to them by their respective enabling legislation;

*N.S.D. / M.P.
Q.M. S.W.*

- 4.1.5 this MOU does not create, directly or indirectly any rights, obligations or liabilities enforceable by the Parties or any third party;
- 4.1.6 this MOU does not affect any arrangement under any other MOU that any Parties have entered into;
- 4.1.7 each Party retains all rights and obligations under the legislation that it administers and this MOU will not restrict the mandates and responsibilities of any of the Parties;
- 4.2 Nothing in this MOU restricts, enlarges, or otherwise modifies the respective supervisory mandates of the Parties.

5. COMMENCEMENT AND DURATION

This MOU will commence on the date of signature by both parties and will remain valid indefinitely unless it is terminated in accordance with the provisions of Clause 15 herein below.

6. INFORMATION SHARING AND EXCHANGE

- 6.1 The Parties shall use best endeavors in accordance with their statutory powers to share the following information, which includes, but is not limited to:-

6.1.1 General Information

The Parties shall regularly and periodically share, on a reciprocal basis, information on applicable legislation, construction activities, competition compliance and reports of investigations. This will apply where such information is relevant to a party's mandate, corruption intelligence, statistical data, emerging trends, any material changes and new developments in the above areas or any area related to the MOU.

6.1.2 Supervisory Information

The Parties shall in accordance with agreed procedure share information, as and when received or obtained in the process of fulfilling their mandate and responsibilities, which will likely affect or assist the other Party in administering or enforcing the Laws, Regulations or Standards for which it is responsible. The

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Requested Party will endeavor to notify the other Party of the information expeditiously and with as much detail as is reasonably possible to enable the receiving Party to act on same.

6.1.3 Request for Assistance

Any Party may request for assistance or information on a specific issue which is necessary for the fulfillment of their statutory mandate and responsibilities. The request shall be made in writing (either through a letter or email). The requested information shall directly relate to matters within the statutory mandate and responsibility of the Party concerned.

6.2 Requests for assistance shall be executed as follows:

- 6.2.1 To the extent permitted by law, the Requested Party will take all reasonable steps to obtain and provide the information sought.
- 6.2.2 The Requested Party will use the relevant means at its disposal for the execution of the request.
- 6.2.3 To the extent permitted by law, the Requesting Party will provide the Requested Party with such further assistance as may reasonably be required for the efficient execution of the request including the provision of further information as to the circumstances surrounding the request, staff or other resources.
- 6.2.4 Without prejudice to the provisions set forth by the Parties' respective enabling legislation relating to the inspection of persons, the Parties will consider (to the extent permitted by law) conducting joint investigations in cases where the request for assistance concerns violations of laws or regulations and where it would assist in the judicious investigation of the alleged violations. The Parties shall consult to define the procedures to be adopted for conducting any joint investigation, the sharing of work and responsibilities and actions to be taken post such investigations.

7. PERMISSIBLE USES OF INFORMATION

7.1 Any assistance or information provided in terms of this MOU will be used by the recipient only for the purpose of performing its statutory mandate and responsibilities which may be - .

- (a) securing compliance with or enforcement of domestic laws or regulations specified in the request;
- (b) initiating, conducting or assisting in criminal, administrative, civil or disciplinary proceedings resulting from the violation of the laws or regulations specified in the request; or
- (c) any of the particular purposes specified in Clause 3 .

7.1.1 The Party to which information is supplied will use this information solely for the purposes stated in the request for assistance.

7.1.2 To the extent permitted by law, each Party will keep confidential any request for assistance made under this MOU, the contents of such requests and the information received under this MOU as well as any matter arising in the course of its operation, as well as consultations between the Parties.

7.1.3 To the extent permitted by law, if a Party intends to use or disclose information furnished under this MOU for any purposes other than those stated in this MOU or stated in the request, it must obtain the prior written consent of the Party which provided the information. If the Requested Party consents to the use of information for purposes other than those stated, it may subject it to certain conditions.

7.1.4 If a Party decides to make public an administrative or a disciplinary sanction within the course of its duties it may, with the consent of the Party providing the information, indicate that a successful outcome of the case has been achieved with the aid of the cooperation mechanisms provided for in this MOU.

8. CONFIDENTIALITY

8.1 The Parties will, to the full extent permitted by their enabling laws, regulations and rules, keep confidential;

- (a) any request for assistance or information pursuant to this MOU;
- (b) any information received pursuant to this MOU; and
- (c) any matter arising during the operation of this MOU, including consultations and unsolicited assistance.

8.2 Notwithstanding the provisions of Clause 8.1 above, the confidentiality provisions of this MOU will not prevent the Parties from informing the law enforcement agencies or regulatory bodies upon obtaining prior written authority from the Requested Party provided that -

- (a) such agencies or bodies have responsibility for prosecuting, regulating or enforcing laws, regulations and rules falling within the scope of this MOU;
- (b) the purpose of passing on such information to such an agency or body falls within the scope of this MOU; and
- (c) an undertaking has been obtained by the Requested Party from the recipient agency or body that; it will maintain the confidentiality of the information, except when disclosure is required pursuant to a legally superseding enforceable instruction or legal responsibility to disclose.

8.3 If a Party becomes aware that information passed under this MOU may be subject to a legally superseding enforceable instruction to disclose, it will to the extent permitted by laws, regulations and rules inform the other Party of that instruction. The Parties will then consult on the appropriate course of action.

8.4 The Parties' confidential treatment of assistance and information will continue beyond the duration of this MOU.

8.5 The Parties understand that the laws, regulations and rules of their enabling legislation place inherent and implied limitations on use and disclosure of non-public information obtained pursuant to this MOU.

8.6 The provisions of Clause 8 shall not apply in respect of information that becomes public knowledge without the involvement of either Party.

9. RIGHTS AND OBLIGATIONS OF THE PARTIES

9.1 The Requested Party may deny requests for assistance -

(a) where the request would require the Requested Party to act in a way that would violate its governing laws, regulations and rules; and

(b) on the grounds of public interest.

9.2 Where the Requested Party denies or opposes a request for assistance, it will provide the reasons for not granting the assistance. The two Parties may then be required to consult pursuant to Clause 10 of this MOU.

9.3 The Parties recognise that they intend nothing in this MOU to either limit or enhance the powers of the Parties under their respective enabling legislation to investigate or gather information concerning a request or to take measures otherwise than as provided in this MOU to obtain information.

10. CO-ORDINATION AND IMPLEMENTATION OF THE MOU

10.1 The Parties are committed to implementing the MOU and in ensuring its smooth functioning they shall:

10.1.1 appoint a focal person from each Party who shall report on a quarterly basis and be responsible for coordinating the implementation of the MOU, monitoring and evaluation of the MOU, and identifying from time to time priority areas for cooperation;

10.1.2 provide leadership on key strategic issues of mutual interest to the Parties and necessary for the implementation of this MOU;

10.1.3 identify the specific areas of interest to the Parties for the development of co-operation and collaboration including activities that need to be executed, methodology and the time periods for such execution;

10.1.4 to the extent possible, pursue opportunities for joint capacity building, staff exchanges, consumer protection and education initiatives and other measures that contribute to the implementation of this MOU;

10.1.5 avail necessary resources for the implementation of this MOU;

10.1.6 review the implementation of this MOU at least once every year and conduct consultations in order to improve its operation and to resolve possible inadequacies.

11. CAPACITY TO ENTER MOU

The Parties hereby give express assurance that under the applicable laws, they have the legal capacity to enter into and implement the MOU.

12. FINANCIAL OBLIGATIONS

The parties shall, with regard to the implementation of this MOU and any activities arising from it, bear its own expenses and or share the costs, unless otherwise agreed upon by the parties.

13. DISPUTE RESOLUTION

Any dispute or controversy arising from the implementation or application of this MOU will be settled by negotiation, with a view to an amicable resolution.

14. AMENDMENTS TO THE MOU

The Parties may by consent make amendments by way of an addendum and add Annexes to this MOU which they consider necessary.

15. TERMINATION OF THE MOU

15.1 This MOU shall remain valid indefinitely unless it is terminated by either party upon giving the other party two (2) months' written notice of its intention to terminate it.

15.2 Upon giving the required notice, the requests for assistance made by the Parties prior to the notification will continue to have effect until they have been fully executed.

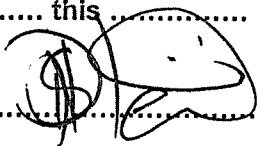
15.3 Without prejudice to the rights of the parties, any right, action performed or information obtained by the party prior to termination of the MOU shall be governed in accordance with this MOU.

16. EFFECTIVE DATE

This MOU shall come into effect on the date of its signature by representatives of both Parties being the CEO in the case of the Commission and the CEO in the case of the CIC.

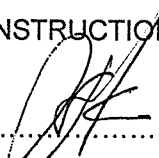
NOW THEREFORE each person, whose signature appears in the appropriate space, by placing that signature on the MOU, warrants the person's authority and legal competence to sign the MOU as authorized representative for and on behalf of the Party concerned; and acknowledges that the Party concerned has full knowledge and understanding of the provisions of the MOU.

Signed at 24th this day of 2021


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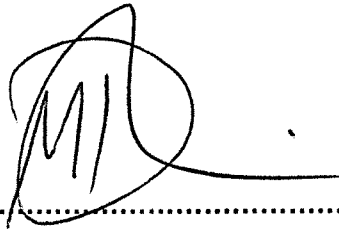
For: CIC

CHIEF EXECUTIVE OFFICER OF THE CONSTRUCTION INDUSTRY COUNCIL (CIC)

In the presence of.....Donald Maseko..........

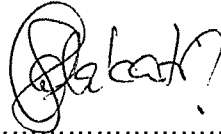
(WITNESS)

MP S.V.

A handwritten signature in black ink, consisting of a large, stylized 'M' or 'MI' followed by a horizontal line extending to the right. The signature is positioned above a horizontal dotted line.

For: Commission

CHIEF EXECUTIVE OFFICER OF THE ESWATINI COMPETITION COMMISSION
(Commission)

A handwritten signature in black ink, appearing to be 'S. Mkh...' with a question mark at the end. The signature is positioned above a horizontal dotted line.

In the presence of.....

(WITNESS)

