

NATIONAL CONSTRUCTION INDUSTRY ACT

(CAP.53:05)

NATIONAL CONSTRUCTION INDUSTRY (COMPLIANCE) REGULATIONS,
2018

IN EXERCISE of the powers conferred by Section 29 of the National Construction Industry Act, I, JAPPIE MHANGO, Minister of Transport and Public Works, with the advice of the Council, make the following Regulations—

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| Citation | 1. These Regulations may be cited as the National Construction Industry (Compliance) Regulations, 2018. |
| Interpretation | 2. In these Regulations, unless the context otherwise requires— “enforcement notice” means a notice issued pursuant to regulation 15. |
| Operating within category for registration | 3. Upon registration, a person engaged in the construction industry shall operate within the category or field in which they are registered, and shall not accept or be awarded work outside their category of registration, as determined by the Council. |
| Foreign contractor and consultant | 4. A foreign contractor or consultant shall undertake construction works in accordance with the relevant regulations governing the operations of foreign contractors and consultants. |
| Display of project information | 5. A construction site shall have the relevant information of the project displayed in an appropriate manner as determined by the Council. |
| Operating using an invalid license. | 6. A person engaged in the construction industry shall not be engaged on any work or accept any work during the time when his license has expired or has been suspended or revoked or is invalid for whatever reason. |
| Client to engage registered persons | 7. A client, whether public or private, seeking to undertake construction works shall only engage registered contractors and consultants— (a) in their respective fields and categories as determined by the Council; and |

(b) through a fair and transparent process.

8. A professional work shall be done under the supervision of relevant certified professionals with full professional indemnity as determined by the Council and relevant professional Boards.

Supervision
of pro
fessional
work

9.—(1) A client shall withhold, from a contractor or a consultant, and remit to the Council, such levies as stipulated under the National Construction Industry (Levy) Order.

Levy
Compliance
G.N. 1/2013

(2) Notwithstanding subsection (1), every client shall provide the Council with the relevant information concerning payments made to a contractor or a consultant as shall be requested by the Council for the purposes of levy determination.

(3) A contractor or consultant shall pay to the Council the appropriate levy where the levy was not withheld by a client for whatever reason.

10.—(1) A contractor or consultant shall submit to the Council such information related to the construction industry in Malawi in such a format and period as prescribed by the Council in accordance with the Act.

Submission
of prescribed
information

(2) Notwithstanding subsection (1), the Council may, at any point considered necessary, request a contractor or consultant to submit such information.

11.—(1) An organization, agency, department, institution or non-governmental organization that participates in coordination of construction related activities or is involved in the development of the scope of work, solicitation of documents, contractual instruments or technical specifications shall not participate as a contractor to perform any work on that particular project or on any other project that would constitute an organizational conflict of interest or would give other contractors an unfair advantage over other bidders on that project.

Conflict of
interest

(2) A person employed in the public service shall not tender for, or be awarded, public contracts which are directly connected with that person's employment in the public service.

12. A person involved in construction projects shall comply with all the relevant regulations and codes of ethics developed under the Act or by other professional and regulatory bodies.

Compliance
with other
regulations
and Codes of
Ethics

13.—(1) An officer authorized by the Council shall have the right to enter any construction or business site or premises, for the purposes of enforcing the provisions of the Act, without having to seek prior authorization from the client or any other person:

Right of entry

Provided that the aforementioned site or premises has not been designated as a protected area, where prior authority of entry is required, under any written law.

(2) An officer authorized by the Council shall have the right to inspect any record or document for the purposes of conducting the business of the

Council within the precincts of the Act.

(3) An officer executing the powers of the Council under this regulation—

(a) shall be in possession of an identification card; and

(b) may show the identification card to any person who requests to see it if that officer is really authorized by the Council to do so.

Obstruction of
officers of the
Council

14. A person shall not, willfully—

(a) hinder or obstruct an authorized officer in the execution of his or her duties under the Act;

(b) prevent an authorized officer from gaining entry upon or into any premises which he or she is empowered under the Act to enter; or

(c) prevent an authorized officer from having access to any record or document required by the officer for purposes of the Act.

Issuance of
enforcement
notices

15. An authorized officer shall issue an enforcement notice on a site where he or she is satisfied that there has been a breach of the Act or regulation or code of ethics enforced by the Council and that, in his or her opinion, it is expedient to issue that notice, taking into account the nature of the breach and any other material considerations.

Right to
suspend works
or activities

16. The Council reserves the right to suspend any works or activities that are being carried out in contravention to the Act or any regulation thereto.

Non-
compliance

17. A person who fails to comply with these regulations commits an offence and be liable to a penalty as prescribed by the Council or to imprisonment for a term of two years or to both.

Revocation
G.N. 28/2014

18. The National Construction Industry (Compliance) Regulations, 2014, are revoked.

Made this 19th day of December, 2017.

(FILE NO. ADM/2/1)

J. MHANGO
*Minister of Transport and
Public Works.*