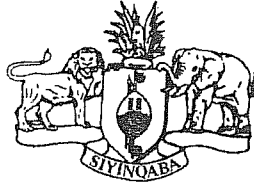


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SWAZILAND
GOVERNMENT GAZETTE
EXTRAORDINARY

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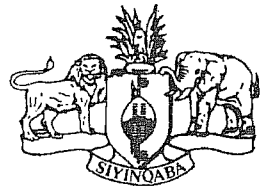
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PART B

S1

THE INDUSTRIAL RELATIONS ACT, 2000

(Act No. 1 of 2000)



I ASSENT
 MSWATI III
 KING OF SWAZILAND

6th June, 2000

AN ACT
 entitled

An Act to provide for the collective negotiation of terms and conditions of employment and for the provision of dispute resolution mechanisms and for matters incidental thereto.

ENACTED by the King and the Parliament of Swaziland.

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PART I: PRELIMINARY

Short title and commencement

1. This Act may be cited as the Industrial Relations Act, 2000 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint:
Provided that different dates may be appointed for coming into operation of different provisions of the Act.

Interpretation.

2. In this Act, unless the context otherwise requires -

“arbitration” means the process of settling a dispute provided under Part VIII;

“arbitrator” means a person who arbitrates under this Act;

“auditor” means an auditor registered and practicing as such under the Accountants Act, 1985 or such other applicable law;

“automatically unfair dismissal” means a dismissal where the reason for the dismissal is-

- (a) that the employee participated in or supported, or indicated an intention to participate in or support, a strike or protest action that complies with the provisions of Part VIII;
- (b) that the employee refused, or indicated an intention to refuse, to do any work normally done by an employee who at the time was taking part in a strike that complies with the provisions of Part VIII or was locked out, unless that work is necessary to prevent an actual danger to life, personal safety or health;
- (c) to compel the employee to accept a demand in respect of any matter of mutual interest between the employer and employee;
- (d) that the employee took action, or indicated an intention to take action, against the employer by -
 - (i) exercising any right conferred by this Act; or
 - (ii) participating in any proceedings in terms of this Act;
- (e) the employee’s pregnancy, intended pregnancy, or any reason related to her pregnancy;
- (f) that the employer unfairly discriminated against an employee, directly or indirectly, on any arbitrary ground, including, but not limited to race, gender, sex, ethnic or social origin, colour, age, disability, religion, conscience, belief, political opinion, culture, language, marital status or family responsibility;

(g) Despite sub-section (f) a dismissal may be fair if the reason for dismissal is based on an inherent requirement of the particular job;

“certificate of registration” means a certificate issued under Section 27;

“collective agreement” means an agreement in writing covering terms and conditions of employment and procedures for the settlement of disputes and grievances, concluded by a Joint Negotiation Council, or by an employer, a group of employers, or an employers’ association on the one hand and a trade union or staff association on the other hand;

“collective employee representative” means a trade union or staff association which collectively represents employees or categories of employees in a particular industry or undertaking or which has been recognized as such under section 42;

“collective employer representative” means an employers association which collectively represents employers in the industry or area;

“collective representative” means collective employee representative or collective employer representative as the context may require;

“Commission” means the Conciliation, Mediation and Arbitration Commission established under Part VIII;

“Commissioner” means a person recruited or appointed under section 66;

“Commissioner of Labour” means any person appointed Commissioner of Labour or any other person acting in the capacity of the Commissioner of Labour;

“company” means a body corporate and includes a partnership;

“conciliation” means the process of settling disputes under Part VIII;

“conciliating officer” means an officer or person conciliating between two or more parties in a dispute under this Act whether from the office of the Commissioner of Labour or the Commission;

“Court” means the Industrial Court established under section 6;

“dispute” includes a grievance, a grievance over a practice, trade dispute and means any dispute over the -

- (a) entitlement of any person or group of persons to any benefit under an existing collective agreement, Joint Negotiation Council agreements or Works Council agreements;
- (b) existence or non-existence of a collective agreement or Works Council agreement and Joint Negotiation Council agreement;
- (c) disciplinary action, dismissal, employment, suspension from employment or re-engagement or reinstatement of any person or group of persons;
- (d) recognition or non-recognition of an organization seeking to represent employees in the determination of their terms and conditions of employment;
- (e) application or the interpretation of any law relating to employment; or

(f) terms and conditions of employment of any employee or the physical conditions under which such employee may be required to work;

“employee” means a person, whether or not the person is an employee at common law, who works for pay or other remuneration under a contract of service or under any other arrangement involving control by, or sustained dependence for the provision of work upon, another person;

“employer” means a person who employs another person as an employee or any person so acting on behalf of an employer;

“employers association” means an association of employers which seeks to provide collective representation for employers in the negotiation and regulation of relations between employers and employees or between employers and employers;

“essential service” means –

(a) a service whose interruption would endanger the life, personal safety or health of the whole or part of the population;

(b) a service determined as such by the Essential Services Committee which service is not inconsistent with a service referred to in paragraph (a);

“Essential Services Committee” means the Committee established under Section 92;

“federation” means a body registered in terms of this Act which is wholly comprised of employers and/or a combination of employers’ associations, trade unions or staff associations as the case may be;

“immediate family” means, in relation to a person, such person’s father, mother, grand-father, grand-mother, step-mother, step-father, son, daughter, grand-son, grand-daughter, step-son, step-daughter, brother, sister, half-brother, half-sister, wife, husband, common law wife or common law husband;

“industry” means a sector of economic activity where the employers provide a similar service, or are engaged in the production, manufacture, processing, purchase or sale of a similar product or similar products;

“Industrial Court of Appeal” means the Industrial Court of Appeal established under Section 20;

“Joint Negotiations Council” means a body constituted for an industry under section 45 and having the duty of negotiating terms and conditions of employment for all employees in that industry;

“Labour Advisory Board” means the Board established in terms of Section 23;

“lockout” means a total or partial refusal by an employer or group of employers to allow his or their employees to work, if such refusal is done with a view to inducing compliance with any demand or with a view to inducing the abandonment or modification of any demand;

“mediation” means the process of settling a dispute through mediation as provided for in section 85;

“mediator” means a person who mediates in a dispute between two or more parties in a dispute under this Act;

- “Minimum maintenance service” means a service whose interruption or cessation shall or is likely to result in a material physical destruction of the working area, plant or machinery;
- “Minister” means the Minister responsible for Labour;
- “national interest” means a matter which shall have or is likely to have the effect of endangering the life, health or personal safety of the whole or part of the population;
- “office” means an official position or post in a trade union, staff association, employers association or federation as the case may be;
- “officer” means a person who holds an office in a federation, a trade union, staff association, employers association and includes a member of a committee of a trade union, staff association or employers association, federation or a person employed by such a body in a full time or part time capacity;
- “organization” means a trade union, staff association or employers association in good standing as the context may require;
- “peaceful protest action” means the partial or complete concerted refusal to work, or the retardation of work, for the purpose of promoting or defending the socio-economic interests of workers, but not for a purpose referred to in the definition of strike;
- “President” means the President of the Court;
- “public policy and public administration” refers to matters of public interest but shall exclude matters of a purely political nature;
- “re-engagement” means an action or situation whereby the employee is engaged or re-engaged by the employer in the same or comparable or identical work to that which the employee was engaged in before the termination or purported termination of the employee’s work or service or employment, or such other reasonably suitable work or employment, from such date and on such terms of employment as may be agreed upon by mutual consent or by order of the Court or of an arbitrator;
- “recognition” means recognition as collective employee representative as provided by section 42;
- “Registrar” means the Registrar of the Industrial Court appointed in terms of section 7;
- “reinstatement” means an action or situation whereby an employee’s services or employment are treated as if the services or employment have never been terminated, including the payment of wages, salary and any remuneration payable by virtue of the services or employment;
- “repealed Act” means the Industrial Relations Act No.1 of 1996;
- “remuneration” means wages or salary and any additional payments payable in cash or in kind directly or indirectly by the employer in connection with the employment of an employee;
- “sector” means an area of economic activity;
- “socio-economic interest” includes solutions to economic and social policy questions and problems which are of direct concern to the workers but shall not include matters of a purely political nature.

“staff association” means any combination of staff, the principal purpose of which is the regulation of relations between staff and an employer or employers;

“staff” means an employee who-

- (a) has authority on behalf of the employer to employ, transfer, suspend, lay off, recall, promote, dismiss, reward, discipline other employees or authorize such action, when the exercise thereof is not solely of a routine or clerical nature, but requires the use of independent judgement;
- (b) participates in the making of general company policy; or
- (c) works in a capacity which requires the employee to have full knowledge of the financial position of the employer; or
- (d) has free personal access to other confidential information substantially affecting the conduct of the business of the employer;

“strike” means a complete or partial stoppage of work or slow down of work carried out in concert by two or more employees or any other concerted action on their part designed to restrict their output of work against their employer, if such action is done with a view to inducing compliance with any demand or with a view to inducing the abandonment or modification of any demand concerned with the employer -employee relationship;

“trade union” means a combination of employees, the principal purpose of which is the regulation of relations between employees and employers;

“undertaking” means -

- (a) mines, quarries or other works for the extraction of minerals from the earth;
- (b) undertakings in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed, including undertakings engaged in the generation, transformation or transmission of electricity or motive power of any kind;
- (c) undertakings engaged in building and civil engineering work, including constructional repair, maintenance, alteration and demolition work;
- (d) undertakings engaged in the transport of passengers or goods by road, rail or air including the handling of goods at warehouses or airports;
- (e) any establishment or office, including establishments engaged wholly or mainly in the sale, purchase, distribution, insurance, negotiation, loan or administration of goods or services of any kind;
- (f) any establishment or administrative service in which the persons employed are mainly engaged in clerical work;
- (g) any newspaper undertaking;
- (h) any establishment for the treatment or care of children or aged, destitute, infirm, mentally unfit or sick persons;
- (i) any broadcasting, postal or telecommunication service or establishment for the production of cinematographic films;

- (j) any boarding house, cafe, club, hotel, restaurant, or other establishment for public refreshment or public entertainment;
- (k) any undertaking employing persons engaged in
 - (i) the clearing, felling or stripping of trees, or the construction of roads, bridges or tunnels;
 - (ii) the cultivation of land and the use of land for the purpose of husbandry, horticulture, fruit growing, seed growing, dairy farming, livestock or poultry keeping, or breeding, grazing of livestock and the preparation of food for livestock, but shall not include-
 - (aa) any undertaking, other than an undertaking in which any harmful or dangerous trade or occupation is carried on, in which only members of the immediate family of the proprietors are employed, or
 - (bb) domestic service in a private house;

“Works Council” means a body established under section 52;

“Works Council agreement” means an agreement reached by a works council under the provisions of Part VI;

“Workplace Forum” means a committee comprising representatives of an employer and employees established at a workplace for the purpose of facilitating consultations and the exchange of information on work related issues and for promoting the participation of employees in decision making;

Application

3. This Act shall apply to employment by or under the Government in the same way and to the same extent as if the Government were a private person but shall not apply to -

- (a) any person serving the Umbutfo Swaziland Defence Force established by the Umbutfo Defence Force Order, 1977;
- (b) the Royal Swaziland Police Force; and
- (c) His Majesty’s Correctional Services established by Prison Act No.40 of 1964;.

Purpose

4. (1) The purpose and objective of this Act is to-

- (a) promote harmonious industrial relations;
- (b) promote fairness and equity in labour relations;
- (c) promote freedom of association and expression in labour relations;
- (d) provide mechanisms and procedures for speedy resolution of conflicts in labour relations;
- (e) protect the right to collective bargaining;

- (f) provide a healthy and legally sound environment for the creation of smart partnerships between the government, labour and capital;
- (g) promote and create employment and investment;
- (h) stimulate economic growth, development and competitiveness;
- (i) stimulate a self regulatory system of industrial and labour relations and self governance;
- (j) ensure adherence to international labour standards; and
- (k) provide a friendly environment for both small and big business development.

(2) Any person applying or interpreting any provision of this shall take into account and give meaning and effect to the purposes and objectives referred to in sub-section (1) and to the other provisions of this Act.

Power of Minister to exempt

5. (1) Subject to subsection (2), the Minister after consulting the Labour Advisory Board and having earlier advised Parliament, may by notice published in the Gazette exempt any person or public authority or class of persons or a class of public authorities from the operation of all or any of the provisions of this Act or any regulation or rule made thereunder.

(2) The Minister shall not make any exemption incompatible with any international labour Convention to which Swaziland is a party.

PART II: THE ADMINISTRATION OF THE INDUSTRIAL COURT

Establishment and composition of Industrial Court

6. (1) An Industrial Court is hereby established with all the powers and rights set out in this Act or any other law, for the furtherance, securing and maintenance of good industrial or labour relations and employment conditions in Swaziland.

(2) The Court shall consist of -

- (a) a Judge, who shall be called the President;
- (b) as many judges as the President may consider necessary; and
- (c) two or more members or their alternates -
 - (i) who possess special skills and knowledge in industrial relations matters and
 - (ii) who are nominated and appointed in terms of subsection (4).

(3) The President and Judges shall be qualified to be appointed judges of the High Court, and shall be appointed in the same manner as judges of the High Court.

(4) The nominated members or alternate members referred to in subsection (2)(c) shall, prior to appointment, be chosen by the President from a panel of six names nominated by employers federation and from a panel of six names nominated by employees federation.

(5) The President and any Judge of the Court shall not enter upon the duties of office unless such President or Judge of the Court has taken and subscribed the oath of allegiance for the due execution of office which oath shall be as near as possible to the oath set out in Schedule 2 of the Constitution of Swaziland, 1968.

(6) The Court shall be constituted before a judge and two members, one member nominated by the employees' federations and the other member nominated by the employers' federation.

(7) Notwithstanding sub-section (6), a judge alone may hear and decide on a matter before the court if the parties to the dispute so agree.

(8) Nominated members and alternate members shall be -

(a) appointed by the President on such terms and conditions as approved by the Minister and shall hold office for a term of three years after which they may be eligible for re-nomination; and

(b) entitled to such fees as may be prescribed by regulation.

(9) Notwithstanding sub-section (8), a nominated member or alternate member may be appointed for a remaining term of office left vacant by an appointed member or alternate member as the case may be.

(10) The Registrar shall at least three months before the expiration of the term of office of a member or an alternate member invite the nominating federations to either review or replace their nominees.

(11) The employer of the member referred to in sub-section (8) shall permit such member during working hours to perform any of the duties of such a member, and the Court may make such order as it deems necessary to ensure compliance with this subsection.

Recruitment and Appointment of the Registrar

7. (1) There shall be appointed a Registrar in accordance with the law relating to the recruitment and appointment of judicial officers.

(2) The Registrar shall be a senior official and appointed by reason of that person's knowledge of the law relating to labour and of administration and shall be in charge of the administrative functions of the Industrial Court and the Industrial Court of Appeal.

(3) The Registrar shall for all purposes be the Registrar of the Industrial Court of Appeal.

(4) The Registrar shall be assisted by -

(a) one or more deputy Registrars; and

(b) so many other officers as the administration of justice requires.

(5) The officers, under the supervision of the Registrar, shall perform the administrative functions of the Court.

(6) A deputy Registrar may perform any of the functions of the Registrar that have been delegated generally or specifically by the Registrar.

(7) A deputy Registrar, or where there is more than one, the most senior, shall act as the Registrar whenever -

- (a) the Registrar is absent from the country, duty, or for any reason is temporarily unable to perform the functions of the office; or
- (b) the office is vacant.

Jurisdiction

8. (1) The Court shall, subject to sections 17 and 65, have exclusive jurisdiction to hear, determine and grant any appropriate relief in respect of an application, claim or complaint or infringement of any of the provisions of this, the Employment Act, the Workmen's Compensation Act, or any other legislation which extends jurisdiction to the Court, or in respect of any matter which may arise at common law between an employer and employee in the course of employment or between an employer or employers' association and a trade union, or staff association or between an employees' association, a trade union, a staff association, a federation and a member thereof.

(2) (a) An application, claim or complaint may be lodged with the court by or against an employee, an employer, a trade union, staff association, an employers' association, an employees' association, a federation, the Commissioner of Labour or the Minister;

(b) The Court may consolidate claims for the purpose of hearing witnesses, as appropriate.

(3) In the discharge of its functions under this Act, the Court shall have all the powers of the High Court, including the power to grant injunctive relief.

(4) In deciding a matter, the Court may make any other order it deems reasonable which will promote the purpose and objects of this Act.

(5) Any decision or order by the Court shall have the same force and effect as a judgement of the High Court and a certificate signed by the Registrar shall be conclusive evidence of the existence of such decision or order.

(6) Any matter of law arising for decision at a sitting of the Court and any question as to whether a matter for decision is a matter of law or a matter of fact shall be decided by the presiding judge of the Court provided that on all other issues, the decision of the majority of the members shall be the decision of the Court.

(7) In the exercise of its powers under this, the Court shall take into consideration any guidelines relating to wage and salary levels and other terms and conditions of employment that may from time to time be prevailing in Government and other related or relevant industries or enterprises.

Court practice and procedure

9. The President, after consulting the Attorney-General and the Chief Justice shall, by notice in the Gazette, make rules, including rules in relation to the service of any court process, to govern the Court's practice and procedure.

Representation of the parties.

10. Subject to any rules made under section 9, any party to any proceedings brought under this Act before the Court may represent itself or be represented by a legal practitioner or any other person authorized by such party.

Evidence on technical irregularities

11. (1) The Court shall not be strictly bound by the rules of evidence or procedure which apply in civil proceedings and may disregard any technical irregularity which does not or is not likely to result in a miscarriage of justice.

(2) Without restricting the generality of sub-section (1), the Court may admit as prima facie evidence a report filed under this Act, or a written report prepared by the office of the Commissioner of Labour or the Commission.

Power of Court to remit matters to parties, order parties to attend, etc.

12. (1) Where in the Court's opinion the points at issue in any matter before it are not clearly defined to allow the matter to be heard or determined, the Court may remit the matter to the parties, with such directions and advice as it may deem appropriate.

(2) For the purpose of considering any matter before it, the Court may require a person to -

- (a) furnish, in writing or otherwise, such particulars as the Court may require in relation to any matter before it;
- (b) attend before it;
- (c) give evidence on oath or affirmation;
- (d) produce any relevant document.

(3) A person who, without reasonable cause, fails to comply with an order given under sub-section (2), commits an offence.

(4) Any person who -

- (a) furnishes information, provides documents or particulars; or
- (b) gives evidence which he or she knows or has reasonable cause to believe is false or misleading;

commits an offence and shall, upon conviction, be liable to such penalties prescribed by this Act or to such penalties as the Court may determine.

(5) The witness fees and any rules laid down by the High Court in connection with such fees payable to any person subpoenaed to give evidence in a criminal case before the High Court shall, with the necessary modifications, apply to any person ordered to attend the Court in terms of sub-section (2) (b).

Costs.

13. (1) The Court may make an order for payment of costs, according to the requirements of the law and fairness and in so doing, the Court may take into account the fact that a party acted frivolously, vexatiously or with deliberate delay bringing or defending a proceeding.

(2) Where the Court awards costs under this section, the Court may use the tariff of costs laid down under the Rules of the High Court with such modifications as the Court pleases or it may award any costs which the Court believes are just.

Enforcement of Court orders.

14. An order of the Court -

- (a) made under this Act and directing the payment of money or the delivery of any property shall be enforceable by execution in the same manner as an order of the High Court.
- (b) directing the performance or non-performance of any Act shall be enforceable by contempt proceedings in the Court in the same manner as an order of the High Court.

Fine may be ordered to be paid to persons suffering loss

15. If the Court imposes a fine under this Act, and if the Court is satisfied that any person, federation or organization has suffered monetary loss as a result of the breach which led to the fine, the Court may order the whole or any part of the fine to be paid to that person, federation or organization.

Remedial powers of the Court in cases of dismissal, discipline or other unlawful disadvantage

16. (1) If the Court finds that a dismissal is unfair, the Court may -

- (a) order the employer to reinstate the employee from any date not earlier than the date of dismissal; or
- (b) order the employer to re-engage the employee, either in the work in which the employee was employed before the dismissal or in other reasonably suitable work on any terms and from any date not earlier than the date of dismissal; or
- (c) order the employer to pay compensation to the employee.

(2) The Court shall require the employer to reinstate or re-engage the employee unless -

- (a) the employee does not wish to be reinstated or re-engaged;
- (b) the circumstances surrounding the dismissal are such that a continued employment relationship would be intolerable;
- (c) it is not reasonably practicable for the employer to re-instate or re-engage the employee; or
- (d) the dismissal is unfair only because the employer did not follow a fair procedure.

(3) Where the Court finds that the dismissal was automatically unfair, the Court shall, in deciding which remedy to award, first consider the possibility of making an award of re-instatement.

(4) If a dismissal is unfair only because the employer did not follow a fair procedure, compensation payable may be varied as the court deems just and equitable and be calculated at the employee's rate of remuneration on the date of dismissal.

(5) Compensation may however not be awarded in respect of any unreasonable period of delay that was caused by the employee in initiating or prosecuting a claim.

(6) The compensation awarded to an employee whose dismissal is found to be unfair because the employer did not prove that the reason for dismissal was a fair reason related to the employee's conduct, capacity or based on the employer's operational requirements, must be just and equitable in all the circumstances, and not more than the equivalent of 12 months' remuneration calculated at the employee's rate of remuneration on the date of dismissal.

(7) The compensation awarded to an employee whose dismissal is automatically unfair must be just and equitable in all the circumstances, but not more than the equivalent of twenty four (24) months' remuneration calculated at the employee's rate of remuneration on the date of dismissal.

(8) Where the Court, in settling any dispute or grievance, finds that the employee has been disciplined or otherwise disadvantaged or prejudiced contrary to a registered collective agreement or any other law relating to employment, the Court shall make an order granting such remedy as it may deem just.

9) Compensation awarded under this section is in addition to, and not in substitution for, any severance allowance or other payment payable to an employee under any law, including any payment to which an employee is entitled under his or her contract of employment or an applicable collective agreement.

Extension of remedial powers of the Court.

17. In hearing and determining any matter of dispute, an arbitrator shall have all the remedial powers of the Court referred to in Section 16.

Housing and compensation.

18. (1) Where an employee's normal place of residence is provided by the employer, or is otherwise associated with the employment, an employee and the employee's family shall not be compelled to leave such residence until one calendar month from the day of the termination has elapsed.

(2) Where the Court or arbitrator awards compensation under section 16 to an employee covered by sub-section (1) and whose services have been terminated, such award shall include compensation for loss of residence.

(3) Where an employee fails or refuses to leave the residence as stipulated in subsection (1), the employer shall be entitled to refer the matter for arbitration or adjudication and apply for compensation.

Right of appeal or review.

19. (1) There shall be a right of appeal against the decision of the Court on a question of law to the Industrial Court of Appeal.

(2) The Industrial Court of Appeal, in considering an appeal under this section, shall have regard to the fact that the Court is not strictly bound by the rules of evidence or procedure which apply in civil proceedings.

(3) An appeal against the decision of the Court to the Industrial Court of Appeal shall be lodged within three (3) months of the date of the decision.

(4) The noting of an appeal under sub-section (1), shall not stay the execution of the Court's order unless the Court on application, directs otherwise.

(5) A decision or order of the Court or arbitrator shall, at the request of any interested party, be subject to review by the High Court on grounds permissible at common law.

Establishment and composition of the Industrial Court of Appeal

20. (1) There is established an Industrial Court of Appeal which shall have the same powers and functions as the Court of Appeal but shall only deal with appeals from the Industrial Court.

(2) The Industrial Court of Appeal shall consist of a Judge President and two Justices of Appeal, all of whom shall have the same qualifications as judges of the Court of Appeal and shall be appointed in the same manner as the Judges of the Court of Appeal.

(3) The tenure of office of the Judge President and the Justices of Appeal of the Industrial Court of Appeal shall be similar to the tenure of the Judge President and Justices of Appeal of the Court of Appeal.

(4) The Judge President of the Industrial Court of Appeal and any Justice of Appeal shall not enter upon the duties of office unless such President or Justice has taken and subscribed to the oath of allegiance for the due execution of office which oath shall be as near as possible to the oath set out in Schedule 2 of the Constitution of Swaziland, 1968.

Jurisdiction of the Industrial Court of Appeal.

21. (1) Subject to section 19(1), the Industrial Court of Appeal shall have power to hear and determine any appeal from the Industrial Court.

(2) The Industrial Court of Appeal shall where possible, endeavour to determine an appeal referred to in sub-section (1) within three (3) months from the date on which it was noted.

(3) After hearing an appeal, the Industrial Court of Appeal may confirm, amend or set aside the decision or order against which the appeal has been noted or make any other decision or order including an order as to costs, according to law and fairness.

(4) The decision of the majority of the judges hearing an appeal shall be the decision of the Court and such decision shall be final.

Rules and Procedure of the Industrial Court of Appeal

22. The Judge President of the Industrial Court of Appeal in consultation with the Chief Justice and the Attorney -General shall, by notice in the Gazette, make rules to govern the court's practice and procedure.

PART III: LABOUR ADVISORY BOARD

Establishment and composition of the Labour Advisory Board.

23. (1) There is hereby established a Labour, Advisory Board which shall consist of the following persons -

- (a) the Commissioner of Labour who shall be the chairperson and in the absence of the Commissioner of Labour, the Deputy Commissioner of Labour or one of the Vice Chairpersons shall act as Chairperson;
- (b) four members or their alternates who shall represent the interests of employees one of whom shall be a Vice Chairperson and shall be appointed by the Minister from a panel of names submitted by the employees' federations;
- (c) four members or their alternates who shall represent the interests of employers one of whom shall be a Vice Chairperson and shall be appointed by the Minister from a panel of names submitted by the employer's federation; and
- (d) five senior Government officials or their alternates including the chairperson appointed by the Minister.

(2) There shall be a Secretary to the Board who shall be designated from the Department of Labour by the Commissioner of Labour.

(3) The members of the Board shall be appointed by the Minister by notice in the Gazette for such period, not exceeding three years, and on such terms and conditions as the Minister shall determine and shall be eligible for reappointment in accordance with the procedure specified in sub-section (1) (b), (c) or (d).

(4) The Minister may terminate the appointment of a member under the following circumstances-

- (a) the member's physical or mental incapacity;
- (b) due to the member's absence, from three consecutive meetings of the Board without notifying the chairperson;
- (c) a recommendation by the organisation that nominated the member that one of their nominees should be replaced;
- (d) in the case of a Government representative, at the instance of the Government.

(5) A member of the Board may, at any time resign from the Board by giving one month's notice in writing to the Minister.

(6) Where the Minister terminates the appointment of a member of the Board in terms of sub-section (4) or a member resigns, the Minister shall appoint a person to replace that member in accordance with sub-section (1) and (3).

(7) The employer of a person who is a member of the Board shall release that person from work to attend meetings of the Board and the Court may make such order as it deems necessary to ensure compliance with this section.

(8) Members of the Board, including the Secretary, shall receive such fees as may be established by the Minister by notice in the Gazette.

Duties of the Board.

24. (1) The duties of the Board shall be to consider and advise the Minister on any matter affecting employment initiative and without prejudice to the generality of the foregoing, such matters shall include -

- (a) proposals for any new legislation relating to employment or industrial relations;
- (b) amendments to this Act or any other law relating to employment or industrial relations, including the penalties for any offences contained therein;
- (c) proposed action in regard to:
 - (i) agenda items or texts to be discussed by International Labour Conference;
 - (ii) the submission of international conventions or recommendations to the authorities empowered to enact legislation;
 - (iii) measures to provide for the implementation or recommendations or ratification of international labour conventions;

- (iv) questions arising out of reports submitted under articles 19 and 22 of the Constitution of the International Labour Organization;
- (v) the denunciation of ratified international labour conventions;
- (vi) the monitoring of implementation of occupational health and safety standards.

(2) The Minister shall consult the Board on all proposed new legislation or amendment to any legislation before such proposed legislation referred to in sub-section (1) or amendment is brought before Parliament.

(3) The Board shall -

- (a) receive notice in terms of section 40;
- (b) in consultation with the Commission, set out rules of procedure for the Commission;
- (c) have power to set up sub committees.

Meetings of the Board

25. (1) A quorum for the Board shall be -

- (a) the Chairperson who shall only have a casting vote if that Chairperson is the Commissioner of Labour or the Deputy Commissioner of Labour;
- (b) two of the members representing employees' interests or their alternates;
- (c) two of the members representing employers' interests or their alternates;
- (d) two of the members representing the Government or their alternates.

(2) In the absence of an agreement, the Board shall carry out its decisions by the vote of the majority: Provided that in the case of the Government representatives, each one of them shall carry 2 votes.

(3) The Board shall have the power to co-opt other persons as members for any particular purpose approved by the Minister and such persons shall have all the rights and privileges accorded to Board members except the right to vote.

(4) The Board shall meet -

- (a) at the initiative of the Chairperson of the Board at least four times in a calendar year;
- (b) upon the petition of any six members and within ten working days from receipt of the petition by the Secretary.

(5) Subject to this section, the Board shall regulate its own procedure.

**PART IV: EMPLOYEE, STAFF AND EMPLOYER ORGANIZATIONS,
FEDERATIONS AND INTERNATIONAL ORGANIZATIONS**

Qualification for registration.

26. (1) An organization shall subject to Section 34, prepare and adopt a written constitution within three months of its formation, which shall be submitted to the Commissioner of Labour for registration.

(2) An organization of employers shall be deemed to have been formed on the date on which two or more employers agree in writing to form such organization.

(3) An organization of employees shall be deemed to have been formed on the date on which six or more employees agree in writing to form such organization.

Registration of organizations.

27. (1) Any organization seeking registration shall apply by submitting to the Commissioner of Labour -

- (a) a prescribed form that has been properly completed;
- (b) a copy of its constitution; and
- (c) any other information that may assist the Commissioner of Labour to determine whether or not the organization meets the requirements for registration.

(2) The Commissioner of Labour may require further information in support of the application.

(3) The Commissioner of Labour -

- (a) shall consider the application and any further information provided by the applicant; and
- (b) if satisfied that the applicant meets the requirements for registration, shall register the applicant by entering the applicant's name in the register of organizations.

(4) Where the Commissioner of Labour is not satisfied that the applicant meets the requirements for registration, the Commissioner of Labour shall send the applicant a written notice of the decision and reasons for the decision and in that notice, shall inform the applicant that it has thirty days from the date of the notice to meet those requirements.

(5) If, within that thirty (30) day period, the applicant meets the requirements for registration, the Commissioner of Labour shall register the applicant by entering the applicant's name in the appropriate register.

(6) If, within the thirty day period or any reasonable period thereafter, an applicant has attempted to meet the requirements for registration but the Commissioner of Labour concludes that the applicant has failed to do so, the Commissioner of Labour shall -

- (a) refuse to register the applicant; and
- (b) notify the applicant in writing of that decision.

(7) After registering the applicant, the Commissioner of Labour shall -

- (a) issue a certificate of registration in the applicant's name; and

(c) send the certificate and a certified copy of the registered constitution to the applicant.

(8) Any person who is aggrieved by the decision of the Commissioner of Labour under this section may make an application to the Court for the review of that decision.

Effect of registration of organizations.

28. (1) A certificate of registration is sufficient proof that a registered organization is a body corporate.

(2) On registration, no civil proceedings except those expressly allowed by this Act may be brought against an organization or against any officer, representative or member thereof, in respect of any bona fide act done by or on behalf of such an organization or in furtherance or purported furtherance of the interests of its members or of any one whose interests are substantially similar to those of its members.

(3) Subsection (2) shall not be construed to exempt an organization or any of its officers, representatives or members from contractual liability for goods or services, from obligations incurred in respect of property, from any civil liability for any criminal, malicious, negligent or omission.

(4) Service of any document directed to a registered organization at the address most recently provided to the Commissioner of Labour shall be for all purpose service of that document on that organization

Constitutions

29. (1) The constitution of an organization shall include the following -

- (a) the name of the organization and the undertaking or industry or trade in which its activities, on behalf of its members, will be carried on;
- (b) the offices in the organization among which shall be the offices of Chairperson, Secretary and Treasurer;
- (c) provision for an election by secret ballot to all offices at least once every four years, and for the naming of a temporary replacement if an office holder is disqualified or incapacitated from holding office;
- (d) provision for a general meeting open to all members at least once a year and for the giving of at least twenty one days notice of that meeting to all members:

Provided that an extra ordinary general meeting may be called giving at least 7 days notice of that meeting to all members.

- (e) the number of terms a member is eligible for re-election into office;
- (f) a provision that any member may propose a resolution or question an officer at a general meeting;
- (g) a provision that -
 - (i) the general meeting shall be the forum for deciding the policies of the organization and for reviewing the officers' conduct and the organization's affairs;
 - (ii) the organization's officers and representatives are to be bound by decisions of a general meeting;

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- (iii) a general meeting may authorize a Committee of its members to on its behalf on all or any of the matters referred to in this paragraph for a specific period;
- (h) the fees and other subscriptions payable, and the maximum period of arrears permitted before a member loses his good financial standing;
- (i) provision that subject to the terms of this Act and to the constitution of the organization, only a fully paid up member may vote in the election of officers, nominate a candidate for any office, be nominated for, or be elected to any office, or express views on candidates and other issues;
- (j) the grounds on which an officer or member may be suspended or expelled from office or from membership, each ground being specific;
- (k) the procedure for suspension or expulsion from office or from membership, including provision that the affected officer or member be fully informed in writing of the allegations against him, that the member shall have a reasonable opportunity to respond to those allegations; and that the member shall have a right of appeal to a special or general meeting of the organization;
- (l) provision for the keeping of full and accurate accounts by the treasurer or other appropriate officer, for the annual audit of those accounts by a competent auditor appointed by the organization who shall not be a member of that organization, and for the availability to all members of a fully audited annual statement of account;
- (m) provision for the banking and investment of the organization's funds;
- (n) provision for the paying out of the organization's funds; including the authority to sign cheques;
- (o) provision for terms and conditions of service including the payment of the expenses;
- (p) the conditions under which a member may become entitled to any financial benefit provided by the organization;
- (q) provision for amending the constitution;
- (r) the duration of its financial year;
- (s) provision for the appointment of trustees, if any;
- (t) the inspection of the register of members and other books of the organization by any member;
- (u) provision for informing members of the progress and result of any negotiations entered into by the organization aimed at the conclusion, alteration, amendment or abandonment of any collective agreement, such other agreements or other matters or issues to which the organization is, or is to be, a party;
- (v) the manner of dissolving the organization.

(2) The treasurer or other officer responsible for the custody of the organization's funds and property shall hand over such funds and property to the organization when such treasurer leaves office, or earlier, if so directed by the Chairperson and Secretary of the organization or a general meeting.

Right to be or not to be a member and prohibited practices

30. (1) A person eligible for membership in an organization under this Act has a right to membership in that organization if that person pays any fees that are properly payable to it, and has a right to remain a member as long as the person complies with the rules of the organization.

(2) A person eligible for membership of an organization has the right not to join such an organization.

(3) An employer shall not infringe on an employee's right to belong or not to belong to an organization of the employees' choice.

(4) An employer shall not require membership of any organization as a condition of employment or offer any form of inducement or deterrent to any employee or prospective employee designed to influence the employees' decision to join or not to join an organization.

(5) The constitution of an organization shall not impose any condition, obligation or restriction which is oppressive, unreasonable or unjust.

(6) Without restricting the generality of sub-section (4), no organization shall discriminate, in its constitution, against any person on the grounds of race, colour, creed, marital status, sex, pregnancy, tribal, ethnic or clan extraction, political opinion or affiliation, or social status.

Annual returns from organizations.

31. (1) Within six calendar months after the end of each financial year, every registered organization shall submit to the Commissioner of Labour a return which shall include -

- (a) the organization's current postal address;
- (b) the names and postal addresses of its current officers;
- (c) the number of members;
- (d) the details of any amendments made to its constitution since the preceding return; and
- (e) a statement from a competent auditor that the organization's accounts were financially audited for the preceding financial year.

(2) A copy of the return shall be kept in the office of the organization and shall be made available for inspection at the annual general meeting.

(3) The Commissioner of Labour may apply to the Court for the suspension or withdrawal of registration of any organization which fails or refuses to submit a return in accordance with sub-section (1) and after the directive referred to in section 33 has not been complied with.

Regulation of federations.

32. (1) Organizations and employers may form, participate in, be affiliated to or join a federation which has as its principal objects the functions of advice, consultation, collective bargaining, defence and promotion of the collective interest of members or any other issue that may be of interest to its members including matters of public policy and public administration.

(2) A federation referred to in sub-section (1), shall provide to the Commissioner of Labour -

- (a) within three (3) months of its formation and after that within three months after the end of that federation's financial year, the names and addresses of its members and (the number of persons each member) in the federation represents;
- (b) within three (3) months of its formation, and after that within thirty days of any appointment or election of its national office bearers, the names and work addresses of those office bearers, even if their appointment or election did not result in any changes to its office bearers;
- (c) within three (3) months of its formation, a certified copy of its constitution and an address in Swaziland at which it shall accept service of any document that is directed to it;
- (d) within thirty (30) days of any change to its constitution, or of the address provided to the Commissioner of Labour as required in paragraph (c), notice of those changes; and
- (e) within fourteen (14) days after it has resolved to wind up, a copy of that resolution.

(3) Service of any document directed to a federation at the address most recently provided to the Commissioner of Labour shall be, for all purposes, service on the federation.

(4) The Commissioner of Labour shall apply to Court whenever the Commissioner of Labour intends to de-register a federation for non-compliance with the provisions of this section or if the Commissioner of Labour reasonably believes that the federation is wound up or sequestrated.

Powers of the Commissioner of Labour concerning constitutions and returns of organizations and federations

33. (1) If the Commissioner of Labour is of the bona fide opinion that a registered organization's or federations' constitution, or any amendment thereto, or any return required by it under this Act does not comply with this Act, the Commissioner of Labour shall forthwith and in writing advise the organization or federation concerned of the Commissioner's opinion and direct the organization or federation to have the matter rectified in the manner indicated.

(2) Subject to sub-section (3), in the event of the organization concerned failing to comply with the Commissioner of Labour's directive in terms of subsection (1) within the terms prescribed to the Commissioner of Labour's satisfaction, the Commissioner of Labour may refer the matter to Court for its determination.

(3) Before acting under sub-section (2), the Commissioner of Labour shall give consideration to any representations, including counter proposals to the directive, made to the Commissioner of Labour by the organization.

Powers of the Court in regard to constitutions and returns etc.

34. (1) Upon application by an affected party or by the Commissioner of Labour, the Court may -

- (a) strike out any provision in the constitution of an organization or federation which violates any requirement of this Act, or amend the provision to bring it into compliance with this Act; or
- (b) alter or amend the constitution to provide any of the particulars required by Section 29 which may be lacking.

(2) Notwithstanding sub-section (1), an organization or federation registered under the repealed Act, on the date of coming into force of this Act shall have six months within which to bring its constitution into conformity with this Act, after the expiry of which period sub-section (1) shall apply.

(3) Any alteration on or amendment of an organization's or federation's constitution ordered by the Court under sub-section (1) shall take effect on a date specified by the Court.

Compliance with constitutions.

35. (1) Subject to sections 33 and 34 and to any other provisions of this Act, an officer, member or employee of an organization or federation shall comply with the constitution of the organization or federation, and a former officer, member or employee of an organization or federation who is required to do or refrain from doing anything by such constitution shall comply with such requirement.

(2) Upon application by an affected party or by the Commissioner of Labour, the Court may make any order which it deems necessary to prevent or stop a violation of any provision of the constitution of an organization or federation.

Improper practices in election of officers.

36. (1) A person shall not attempt to affect the outcome of an election for any office in an organization or federation by fraud, threats, bribery or other improper means.

(2) Upon application by any member of the organization or federation affected by any unlawful conduct referred to in sub-section (1), or by the Commissioner of Labour, the Court may declare such election null and void, determine a date for the holding of a fresh election and make provision for the filling of the office concerned, pending the outcome of such fresh election, or make such other order relating to such election or fresh election as it may deem fit.

Criminal conviction a disqualification from office.

37. (1) A person shall not hold office in an organization or federation if that person has been convicted, within two years prior to the date of that person's election, of a crime involving dishonesty for which the person was sentenced to imprisonment with or without the option of a fine, including a suspended sentence or imprisonment.

(2) A person who is convicted of an offence involving dishonesty while holding office in an organization or federation shall cease to hold office at the time of conviction.

Defunct organizations or federations.

38. (1) Upon application by an aggrieved person or by the Commissioner of Labour, the Court may, after making such enquiries as it may consider necessary, declare an organization or federation to be defunct where the Court is satisfied that the organization or federation is no longer carrying on any of the activities of the organization or federation.

(2) A declaration made under this section shall include such directions for the disposal of the organization's or federation's assets, if any, as the Court may deem just, having regard to the constitution of the organization or federation.

No compulsion to join or not to join and to support or not to support an organization

39. Without prejudice to any other section of this Act, no person shall seek, by the use of any threat or intimidation, to compel or coerce any other person to join or not to join, or to support or not to support any organization.

Protest action to promote or defend socio economic interests.

40. (1) An employee who is not engaged in an essential service has a right to take part in a peaceful protest action to promote socio-economic interests of workers if -

- (a) the protest action has been authorized by a registered organization or federation; and
- (b) the organisation or federation has served notice to the Labour Advisory Board of its authorization in terms of paragraph (a) which notice shall contain or state -
 - (i) the reason for the protest;
 - (ii) the nature of the intended action;
 - (iii) the steps taken to resolve the issues giving rise to the protest action;
 - (iv) measures taken to ensure the safety of protesters and any other persons as well as property; and
- (c) the notice has been given at least twenty-one (21) days before the commencement of the protest action.

(2) The Labour Advisory Board, shall within the twenty one (21) days referred to in subsection (1), put in place mechanisms to resolve the issues giving rise to the protest action, which issues shall not include purely political matters.

(3) Where the matter is not resolved within the 21 day period, the party intending to take part in the protest action shall give written notice to the Labour Advisory Board of its intention to engage in such an action and the notice shall be served on the employer or employers' organisation concerned and the Commission. The Commission shall, within seven (7) days on receipt of the notice arrange and supervise a secret ballot to determine whether the majority of employees whom it is proposed should take part in the protest action are in favour or not of taking such action.

(4) The Commission shall take all reasonable steps to ensure that all employees who are within the terms of subsection (3) have an opportunity to vote in the ballot.

(5) There shall be a duty upon any employer within the terms of subsection (3) to supply the Commission on request with the names of relevant employees, and any other information which the Commission may require, in order to conduct a ballot for the purposes of subsection (3).

(6) The Commission shall notify the result of the ballot to the parties within forty-eight hours of the holding of the ballot and failure by the Commission to organise a ballot in conformity with this section shall not deprive an otherwise lawful protest action of the protection under this Act.

(7) Where a majority of employees voting in the ballot have voted in favour of the protest action, or where the Commission has failed to conduct or notify the result of the ballot under subsections (3) and (6) respectively, the protest action shall be deemed to be in conformity with this Act.

(8) For a protest action to be lawful under subsection (7) a new written notice shall be given by the party intending to engage in protest action to the Labour Advisory Board and the Commission at least 48 hours before the commencement of such action.

(9) Any interested party aggrieved by the decision to take protest action may refer the matter to the Court for an order which may be granted by the Court under subsection (10).

(10) The Court shall have exclusive jurisdiction -

- (a) to restrain an organisation or federation or any person from participating in a protest action or in any conduct in contemplation or in furtherance of protest action that does not comply with subsection (1); and
- (b) in respect of protest action that complies with subsection (1), to grant a declaratory order after having considered -
 - (i) the nature and duration of the protest action;
 - (ii) the steps taken by the registered trade union or federation to minimize the harm caused by the protest action; and
 - (iii) the conduct of the participants in the protest action.

(11) A person who, and an organisation or federation which, takes part in protest action or in any conduct in contemplation or in furtherance of a protest action that complies with subsection (1) enjoys the protection conferred in the case of a lawful strike.

(12) Notwithstanding the provision of sub-section (11), an employee forfeits the protection against dismissal conferred by that sub-section, if the employee -

- (a) takes part in a protest action or any conduct in contemplation or in furtherance of a protest action in breach of an order of the Court;
- (b) otherwise acts in contempt of an order of the Court made in terms of this section.

(13) Notwithstanding any other provision in this Act, if as a result of any protest action whether or not in conformity with this Section, any person suffers any loss or damage to property, such person may institute any civil action in any appropriate court to seek redress from any person, organisation or federation responsible for causing such protest action as the court deems necessary including an order for sequestration. If the organisation's or federation assets do not satisfy the liability, the liability shall extend to the affiliates and individual who were members at the time of the protest action.

(14) For purposes of this section -

- (a) a decision whether a protest action should be embarked upon or not shall be by majority of all the members of the organisation or federation referred to in subsection (1);
- (b) "loss" means loss suffered as a result of deprivation of any property during a protest action.

Amalgamation and affiliation of organisations and federations.

41. (1) (a) An organization or a federation may affiliate with and or participate in the affairs of international workers' or employers' organizations, make financial and other contributions to such organizations, and receive financial and other assistance from them;
- (b) An organisation which is registered under this Act may, in the manner provided for in its constitution and subject to the provisions of this Act, amalgamate with any other organisation

(c) In the event of amalgamation, the newly constituted organisation shall assume all the rights and duties of its predecessor organisations unless the Court on good cause shown upon the application of an interested party directs otherwise.

(2) A person shall not interfere with or impede the exercise of any right recognized by this subsection.

(3) On application by an aggrieved party, the Court may make such order as it deems necessary to prevent a breach of any provision of this section.

Recognition as collective employee representatives.

42. (1) A trade union or staff association which has been issued with a certificate under section 27, may apply in writing to an employer for recognition as the employee representative for such categories of employees as are named in the application concerning all terms and conditions of employment including wages and hours of work.

(2) A trade union or staff association shall serve a copy of the application referred to in subsection (1) to the Commissioner of Labour.

(3) If less than fifty percent of the employees in respect of which the trade union or staff association seeks recognition are fully paid up members of the organization concerned, recognition shall be at the discretion of the employer and the employer shall, within thirty (30) days of the receipt of the application, reply in writing to the organization.

(4) Where an employer decides to recognize a trade union or staff association in terms of subsection (3), the conditions under which the employer agrees to recognize the organization shall form part of the reply to be given to the organization.

(5) If not less than fifty percent of the employees in respect of which the trade union or staff association seeks recognition are fully paid up members of the organization concerned, the employer shall, within thirty (30) days of the receipt of the application and in writing -

(a) grant recognition to the organization; or

(b) if the employer is in doubt, and advises the applicant so in writing, the parties shall go for a verification count.

(c) if the employer decides not to grant such recognition, the employer shall lodge with the Court the reasons for the refusal to grant recognition and serve a copy thereof on the industry union or industry staff association, as the case may be.

(6) Where the thirty days of receipt of an application under sub-section (5) has elapsed and the employer does not recognize the trade union or staff association, the trade union or staff association may lodge an application with the Court for an order that the employer recognize it.

(7) The Court, may on receipt of the application referred to in sub-section (5) (c) and any submissions made to it by the parties concerned, make such order as it deems fit.

(8) Where for a continuous period of more than three months in any calendar year, the percentage of fully paid up members of an organization which has been granted recognition under sub-section (5) falls below fifty percent of the employees concerned, the employer or the organisation may apply to the Court for the withdrawal of such recognition, and the Court may -

- (a) make such order as it deems fit, including an order containing terms of such withdrawal; and
- (b) adjudicate on the validity and duration of any collective agreement existing between the employer and the organisation affected by such withdrawal.

(9) Where an organisation has been granted recognition as the employee representative it shall be the duty of the organisation to provide full and proper representation of the interest of all employees covered by the recognition agreement whether or not they are fully paid up members of the organization.

Dues deduction.

43. (1) An employee may deliver to an organization of which that employee is a member or of which the employee is eligible for membership, and which has been

recognized under section 42, a written authorization for the periodic deduction from the employee's wages of fees duly payable by the employee to the organization, and such authorisation shall be renewable annually from the date first granted.

(2) An organization which has received an authorization under sub-section may request the employer in writing to make the authorized deduction and remit it to the organization.

(3) An employer who has received a request under subsection (2) may demand proof of the authorization referred to in sub-section (1) in its original form or a certified copy thereof.

(4) An employer who receives a request in accordance with sub-section (2) shall make the authorized deductions and shall promptly remit to the organization the funds so collected.

(5) Any dispute over the authenticity of a written authorization under this section may be determined by the Court.

(6) An employer shall not be required at any time to make deductions from the wages of any employee with respect to the fees to more than one organization.

(7) An employee may revoke that employee's authorization under this section by giving written notice to the organization and to the employer concerned and on the receipt of such notice, the employer shall make the deduction at the end of the month in which such notice is received but shall thereafter cease to make any deduction.

(8) The employer may retain a collection fee for purposes of operating administrative costs not exceeding five percent of the amount collected.

(9) With each remittance, the employer shall give the organization a full written account of the amounts collected and remitted.

(10) Upon application by an affected party, the Court may make such order as it deems necessary to ensure compliance with this section.

Agency shop agreements.

44. (1) A representative trade union, staff association and an employer or employers' organisation may conclude a collective agreement to be known as an agency shop agreement requiring the employer to deduct an agreed agency fee from the wages of its employees who are identified in the agreement and who are not members of the trade union.

(2) For the purposes of this section, "representative trade union" means a registered trade union, or two or more registered trade unions acting jointly, whose members are a majority of the employees employed -

- (a) by an employer in a workplace; or
- (b) by the members of an employers' organisation in a sector and area in respect of which the agency shop agreement applies.

(3) An agency shop agreement is binding only if it provides that -

- (a) employees who are not members of the representative trade union or staff association are not compelled to become members of that trade union;
- (d) the agreed agency fee must be equivalent to, or less than -
 - (i) the amount of the subscription payable by the members of the representative trade union;
 - (ii) if the subscription of the representative trade union is calculated as a percentage of an employee's salary, that percentage; or
 - (iii) if there are two or more registered trade unions party to the agreement, the highest amount of the subscription that would apply to an employee;
- (c) the amount deducted must be paid into a separate account administered by the representative trade union; and
- (d) no part of the amount deducted may be -
 - (i) paid to a political party as an affiliation fee;
 - (ii) contributed in cash or kind to a political party or a person standing for election to any political office; or
 - (iii) used for any expenditure that does not advance or protect the socio economic interests of employees.

(4) An employee shall not be bound by an Agency Agreement and no amount of that employee's wages shall be deducted under this section unless that employee has consented in writing.

PART V: NEGOTIATING MACHINERY

Joint Negotiation Councils.

45. (1) Subject to the provisions of this section, a Joint Negotiation Council may be formed, by a combination of employers, an employees' organization or a combination of employers and an employers organisation on the one hand and on the other hand with one or more trade unions or one or more staff associations, by -

- (a) drawing and signing an agreed upon constitution which shall govern the operations of the proposed Joint Negotiation Council; and

(b) after satisfying the provisions of paragraph (a), applying in writing to, and obtaining the approval of, the Minister for the registration of the proposed Joint Negotiation Council.

(2) On receipt of the application for registration for a Council, which shall include a copy of the proposed constitution of the Council, the Minister, after consulting any interested party and, after being satisfied -

(a) that the parties to the Council are sufficiently representative of employees and employers within the industry or area for which it seeks registration;

(b) that it is desirable and practicable to establish a Council in the circumstances;

(c) that the proposed constitution is suitable, with particular reference to the provisions of section 46, shall publish a notice in the Gazette of the establishment of a Joint Negotiation Council for the industry or area concerned within sixty days of the submission of the application under sub-section (1).

(3) If the Minister is not satisfied that the requirements in sub-sections (1) and (2) had been complied with or that the establishment of a Joint Negotiation Council is desirable or practicable, the Minister shall within thirty days of receiving the application so inform the applicant in writing, stating the reason for the Minister's decision, provided that where the reason for the decision is that the constitution is not suitable, the Minister shall indicate the amendments which, in the Minister's opinion, would make the constitution suitable and invite the parties to submit a fresh application which incorporates the amendments.

(4) If the Minister has taken action as provided in subsection (3) or the Minister has failed to publish the notice referred to in subsection (2) within sixty (60) days of the submission of the application under subsection (1) the party or parties which submitted the application may refer the matter to court.

(5) Upon receiving reference made to it under subsection (4) the court, after hearing any interested party and if it is satisfied that the requirement of subsection (1) and (2) have been complied with and that the establishment of a Joint Negotiation Council in the industry or area named in the reference is desirable and practicable, shall direct the Minister to establish a Joint Negotiation Council for the industry or area subject to any amendment the court may make and the Minister shall thereupon establish such a Joint Negotiation Council by notice published in the Gazette.

(6) Any dispute or ambiguity over a Joint Negotiation Council's scope of registration and its applicability to any employer of ground of employers or industry may be referred by an affected party to the court for determination.

Amendment of Joint Negotiation Councils

46. (1) The constitution of a Joint Negotiation Council shall provide for the following matters -

(a) the industrial and territorial scope of the Council;

(b) the appointment, number and method of selection of employer, staff association and trade union representatives, provided that there shall be a parity of employer and trade union votes on the Council;

(c) the appointment and method of selection of a chairperson and deputy chairperson;

(d) the appointment and method of selection of a secretary or joint secretaries of the Council;

- (e) the procedure for the appointment of alternate members of the Council;
- (f) the number of members required to form a quorum;
- (g) the procedure for the replacement of members;
- (h) the term of office of members appointed to the Council;
- (i) the procedure to be followed in the event of a dispute or deadlock in the Council;
- (j) the method by which persons affected by any collective agreement made or amended by the Council shall be informed thereof;
- (k) provision for the amendment of the constitution; and
- (l) such other matters as may be included in the constitution by the applicants to establish the Council and which may be approved by the Minister or the Court as the case may be.

(2) Subject to section 45, any amendment to the constitution of a registered Joint Negotiation Council shall take effect upon approval of the amendment by the Minister after the Minister is satisfied of the matter specified in paragraphs (a) to (c) of section 45(2).

(3) Where the Minister fails to give the approval mentioned in subsection (2) within thirty (30) days of the submission of the amendment, the party making the application may refer the matter to the Court.

Admission to Joint Negotiation Council of new party

47. (1) If an organization applies for admission to a Joint Negotiation Council and such organization is not admitted within sixty days of the application, it may bring an application to the Court for admission to that Council.

(2) Upon receiving an application under sub-section (1) the Court, after hearing any aggrieved party and any other affected party, may refuse to admit the applicant organization or may admit it on such terms and conditions as the Court sees fit and the constitution of the Council shall be amended accordingly.

Change to representation or voting rights of parties to Joint Negotiation Council.

48. (1) If at any stage a party to a Joint Negotiation Council believes that a provision of such Council's constitution relating to representation or voting rights is detrimental to effective collective bargaining it may apply to the Court for variation of that provision.

(2) Upon receiving an application under sub-section (1) the Court, after hearing any aggrieved party and any other affected party, may dismiss the application or order the variation of the Joint Negotiation Council's constitution as it sees fit.

Joint Negotiation Council constitution and agreements to take precedence.

A registered collective agreement concluded by a Joint Negotiation Council shall take precedence within its registered scope over any other collective agreement, which taken as a whole, provides less favourable terms and conditions of employment than those contained in the Council's registered collective agreement.