

EMPLOYMENT RELATIONS ACT
Act 32 of 2008 – 2 February 2009

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EMPLOYMENT RELATIONS ACT

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Employment Relations Act.

2. Interpretation

In this Act, unless the context otherwise requires—

“accounting date”, in relation to a registered trade union, means the closing date of its accounting period;

“accounting period” means the period specified under section 24 (2);

“agency shop order” means an order made under section 47;

“auditor” means any person appointed as such at a general assembly of a trade union;

“award” means an award made by the Tribunal;

“bargaining agent” means any trade union, or where there is a joint negotiating panel, such joint negotiating panel having negotiating rights to bargain collectively on behalf of the workers in a bargaining unit;

“bargaining unit” means workers or classes of workers, whether or not employed by the same employer, on whose behalf a collective agreement may be made;

“Board” means the National Remuneration Board deemed to have been established under section 90;

“branch” means a branch of a trade union;

“check-off agreement” means an agreement between an employer and a trade union for trade union fees to be deducted from the wages of a worker by the employer and paid to the trade union;

“civil service union” means a trade union of workers, membership of which is confined to public officers;

“collective agreement” means an agreement which relates to terms and conditions of employment, made between a recognised trade union of workers or a joint negotiating panel and an employer;

“collective bargaining” means negotiations relating to terms and conditions of employment or to the subject-matter of a procedure agreement;

“Commission” means the Commission for Conciliation and Mediation deemed to have been established under section 87 or the Rodrigues Commission for Conciliation and Mediation established under section 99, as the case may be;

“confederation” means an association of federations;

“contract of employment” means a contract of service or of apprenticeship, whether express or implied;

“disciplined force” has the same meaning as in section 111 of the Constitution;

“employer” includes a person, an enterprise, the State, a statutory corporation, a body of persons employing a worker, or a group of employers or a trade union of employers;

“enterprise” includes a unit of production;

“federation” means an association of trade unions;

“Fire Services” has the same meaning as in the Fire Services Act;

“industry” includes a business or part of an industry;

“joint negotiating panel” means the representatives of 2 or more trade unions of workers having negotiating rights;

“labour dispute” —

- (a) means a dispute between a worker, or a recognised trade union of workers, or a joint negotiating panel, and an employer which relates wholly or mainly to wages, terms and conditions of

employment, promotion, allocation of work between workers and groups of workers, reinstatement or suspension of employment of a worker;

- (b) does not, notwithstanding any other enactment, include a dispute by a worker made as a result of the exercise by him of an option to be governed by the recommendations made in a report of the Pay Research Bureau or a salary commission, by whatever name called, in relation to remuneration or allowances of any kind;
- (c) does not include a dispute that is reported more than 3 years after the act or omission that gave rise to the dispute;

“local authority” has the same meaning as in the Local Government Act;

“local government officer” has the same meaning as in section 111 of the Constitution;

“lock-out” means any action taken by an employer, whether or not in contemplation or furtherance of a labour dispute and whether or not the employer is a party to a dispute, which consists in—

- (a) the exclusion of a group of workers from a place of employment;
- (b) the suspension of work in a place of employment; or
- (c) the collective, simultaneous or otherwise connected termination or suspension of employment of a group of workers;

“managing committee” means the managing committee entrusted with the management of a trade union;

“member” means a member of a trade union;

“Minister” means the Minister to whom responsibility for the subject of labour and employment relations is assigned;

“negotiating rights” means the right to participate in collective bargaining;

“negotiator” means a person appointed as such under section 14 (2);

“office bearer” means an officer who is assigned a specific office in the managing committee;

“officer”, in relation to a trade union, means—

- (a) a member of the managing committee;
- (b) a member of the managing committee of a branch;
- (c) a workplace representative designated by the managing committee to represent the trade union;

“president” means the president of a trade union and includes any officer who acts or purports to act as the president of the trade union;

“procedure agreement” means an agreement which relates to—

- (a) machinery for negotiation with regard to, or for, the settlement of terms and conditions of employment;
- (b) negotiating rights;
- (c) facilities for officers in relation to trade union activities;
- (d) the establishment of a minimum service under section 81;
- (e) procedures relating to disciplinary matters; or
- (f) procedures relating to grievances of individual workers;

“public officer” has the same meaning as in section 111 of the Constitution;

“public service” has the same meaning as in section 111 of the Constitution;

“recognition” means the recognition of a trade union of workers, or a joint negotiating panel, by an employer for the purpose of collective bargaining;

“register” means the register required to be kept by the Registrar under section 8;

“registered” means registered under this Act;

“registered office” means the registered place of business of a trade union;

“Registrar” means the Registrar of Associations under the Registration of Associations Act;

“Remuneration Regulations” means any regulations made by the Minister under section 93 and includes any Remuneration Order, made under the repealed Industrial Relations Act, which is still in operation;

“secretary” means the secretary of a trade union and includes any officer who acts or purports to act as secretary of the trade union;

“sole bargaining agent” means a trade union of workers or a joint negotiating panel which has exclusive negotiating rights in respect of a bargaining unit;

“special fund” means a fund of a trade union to which the members of the trade union are free not to contribute;

“strike” means any action taken by a group of workers whether or not in furtherance of a labour dispute, and whether or not they are parties to the dispute, which consists in—

- (a) a concerted stoppage of work; or

- (b) a concerted course of conduct, including going slow or working to rule, which is carried on—
 - (i) with the intention of preventing, reducing or otherwise interfering with the production or distribution of goods, or the provision of services; and
 - (ii) in the case of some or all of the workers involved, in breach of their obligations to their employer or in disregard of the normal arrangements between them and their employer;

“supervising officer” means the Senior Chief Executive or the Permanent Secretary, as the case may be, of the Ministry;

“trade union” —

- (a) means an association of persons, whether registered or not, having as one of its objects the regulation of employment relations between workers and employers;
- (b) includes a federation or a confederation, except in relation to sections 5 (1) (e) and (f), 7 (1) (c) and (e), 13, 16 (1) and (2), 29, 32 (1), (2) and (3) and 43 to 50;

“trade union fee” means a regular subscription payable to a trade union by a member as a condition of his membership, but does not include any other subscription or levy;

“treasurer” means the treasurer of a trade union and includes any officer who acts or purports to act as the treasurer of the trade union;

“Tribunal” means the Employment Relations Tribunal established under section 85;

“wages” means all the emoluments payable to a worker under a contract of employment;

“worker” —

- (a) means a person who has entered into or who works under a contract of employment, or a contract of apprenticeship with an employer, other than a contract of apprenticeship regulated under the Mauritius Institute of Training and Development Act, whether by way of casual work, manual labour, clerical work or otherwise and however remunerated;
- (b) includes—
 - (i) a former worker;
 - (ii) a person who has accepted an offer of employment.

[S. 2 amended by s. 11 (a) of Act 14 of 2009 w.e.f. 1 July 2009; s. 3 of Act 5 of 2013 w.e.f. 11 June 2013.]

3. Application of Act

- (1) Subject to subsections (2) and (3), this Act shall bind the State.

(2) This Act shall not apply to a member of a disciplined force, except the Mauritius Prisons Service and the fire services.

(3) Sub-Part C of Part VIII shall not apply to the public service.

PART II – REGISTRATION OF TRADE UNIONS

4. Application for registration

(1) Any trade union shall, not later than 30 days after the date of its formation, apply to the Registrar for registration.

(2) An application for registration of a trade union shall be in the approved form and shall be accompanied by—

- (a) the prescribed fee;
- (b) 2 copies of the rules of the trade union;
- (c) a certified copy of the minutes of proceedings of the meeting approving the formation of the trade union; and
- (d) a statement of particulars, which shall include the address of the registered office of the trade union.

(3) The Registrar may, by written notice, within 14 days of the receipt of an application under subsection (1), require the applicant trade union to provide any additional information which he may reasonably require for the purpose of considering the application.

(4) The Registrar may, where the applicant trade union fails to comply with the requirements of subsection (3), reject the application.

5. Registration of trade unions

(1) The Registrar may register a trade union where—

- (a) the requirements of section 4 have been complied with;
- (b) the rules of the trade union comply with this Act and the Constitution of Mauritius;
- (c) the name of the trade union is not the same as that of a registered trade union or does not bear close resemblance to that of a registered trade union;
- (d) in the case of a trade union of workers that has public officers as members, membership is limited to public officers;
- (e) in the case of a trade union of workers, it has a minimum of 30 members;
- (f) in the case of a trade union of employers, it has a minimum of 5 members.

(2) The Registrar shall, not later than 30 days—

- (a) after receipt of an application for registration; or
- (b) after receipt of information required under section 4 (3),

register or refuse to register the trade union.

(3) —

(4) Subsection (1) (d) shall not apply in relation to the registration of a federation or confederation comprising civil service unions and other trade unions.

(5) Where the Registrar registers a trade union under subsection (2), he shall publish a notice of registration in the *Gazette* and in 2 daily newspapers, specifying, *inter alia*, the address of the registered office.

(6) Where the Registrar refuses to register a trade union, he shall, within 7 days of his decision, give written notice to the applicant trade union, stating the grounds of the refusal.

(7) An applicant trade union aggrieved by a decision not to register the trade union under subsection (2) may, within 21 days of the giving of the written notice under subsection (6), appeal to the Tribunal against that decision.

(8) Any other registered trade union aggrieved by a decision of the Registrar to register a trade union may, within 21 days of the publication of the notice in the *Gazette*, appeal to the Tribunal against that decision.

(9) The Tribunal shall hear and determine an appeal made under subsection (7) or (8) within 90 days of the date of lodging of the appeal.

(9A) An appeal under subsection (8) shall be heard in the presence of the trade union registered under subsection (2).

(10) A trade union which has not obtained its registration, whether by the Registrar or on appeal, shall be dissolved forthwith and be wound up within 30 days of the decision of the Registrar, or the decision on appeal, as the case may be.

(11) Where a trade union is not wound up within the time specified in subsection (10), every officer of the trade union shall commit an offence and the trade union shall be wound up by the Registrar in the prescribed manner.

[S. 5 amended by s. 4 of Act 5 of 2013 w.e.f. 11 June 2013.]

6. Certificate of registration

(1) The Registrar shall, within 7 days of the registration of a trade union, issue a certificate of registration to the trade union.

(2) A certificate of registration shall be in the approved form and shall, unless the registration is cancelled under section 7, be conclusive evidence that the trade union is registered.

7. Cancellation of registration

(1) The registration of a trade union may be cancelled on the ground that—

- (a) the trade union has ceased to exist or function;
- (b) the registration was obtained by fraud or misrepresentation;

- (c) the membership of the trade union has fallen below the required minimum specified in section 5 (1) (e) or (f);
- (d) the trade union has persistently been infringing the requirements of its rules or Parts II and III and has failed to remedy the default, within such time limit as may be specified in a notice of default issued by the Registrar; or
- (e) in the case of a trade union that has public officers as members, membership has not been limited to public officers.

(2) Where the Registrar—

- (a) receives an application from a registered trade union for the cancellation of another trade union on any of the grounds specified in subsection (1); or
- (b) after examination of returns submitted under section 25, has reasonable cause to believe that the registration of a trade union should be cancelled,

he shall, by written notice, require the trade union to show cause, within such time limit as may be specified in the notice, why the registration should not be cancelled.

(3) Where the Registrar is of the opinion that the registration of a trade union should be cancelled on any of the grounds under subsection (1), or where the trade union fails to show cause, or objects to the application for cancellation as required under subsection (2), the Registrar shall apply to the Tribunal for cancellation.

(4) Where, on an application under subsection (3), the Tribunal is satisfied that the registration of a trade union should be cancelled, the Tribunal may adjourn the hearing so as to allow the trade union to remedy the default or failure, or may direct the Registrar to cancel the registration of the trade union.

(5) Where, after an adjourned hearing, the Tribunal finds that the trade union has not taken adequate steps to remedy the default or failure, it shall direct the Registrar to cancel the registration of the trade union.

(6) The Tribunal shall complete its proceedings within 90 days of the date of application for cancellation under subsection (3).

(7) Where the Tribunal directs the cancellation of the registration of a trade union, the order shall also provide for the disposal of the assets of the trade union as provided for in the rules of that trade union or, in the absence of such rules, as the Tribunal may order.

(8) Where the registration of a trade union is cancelled—

- (a) the Registrar shall publish a notice of the cancellation in the *Gazette* and in at least 2 daily newspapers;
- (b) the trade union shall forthwith cease to engage in any trade union activity; and

- (c) the trade union shall be wound up within 30 days or such longer period as the Registrar may allow, after the date of publication of the notice in the *Gazette* under paragraph (a) or, where there is an application for judicial review, within 30 days of the judgment of the Supreme Court confirming the order of the Tribunal, as the case may be.

(9) Where a trade union is not wound up within the time specified in subsection (8) (c), every officer of that union shall commit an offence and the trade union shall be wound up by the Registrar in the prescribed manner.

(10) Any party aggrieved by the decision of the Tribunal may apply for a judicial review and the Supreme Court may stay execution of the decision of the Tribunal pending the determination of the application.

[S. 7 amended by s. 5 of Act 5 of 2013 w.e.f. 11 June 2013.]

8. Register of trade unions

(1) The Registrar shall keep a register of trade unions, including federations and confederations, in the approved manner.

(2) Any interested person may, on written application to the Registrar and against payment of the prescribed fee, at all reasonable times, inspect the register.

PART III – CONSTITUTION AND ADMINISTRATION OF TRADE UNIONS

Sub-Part A – Status, Rules, Membership and Dissolution

9. Trade union to be body corporate

(1) A registered trade union shall be a body corporate.

(2) Every notice or other document required to be served on or sent to a trade union or an officer shall be deemed to have been duly served or sent, if forwarded by registered post to the address of the registered office of the trade union.

10. Registered office

(1) Every trade union shall have a registered office to which all communications and notices may be addressed.

(2) All the books and documents relating to a trade union shall be available for inspection by the Registrar, or by any member or any interested person, at its registered office.

(3) A trade union shall give notice to the Registrar, within 7 days, of any change of address of its registered office.

11. Rules of trade unions

(1) The matters specified in the First Schedule shall provide practical guidance for the rules of a trade union.

(2) The secretary of a trade union shall, on request made to him, provide to any member a copy of the rules of the trade union—

- (a) free of charge, for a first copy; and
- (b) on payment of a prescribed fee, for subsequent copies.

12. Amendment of rules or change of name

(1) Subject to subsection (2), a trade union may, in accordance with its rules, amend its rules or change its name by a resolution approved at a general assembly.

(2) An amendment to the rules or change of the name of a trade union shall not have effect until it is registered with the Registrar.

(3) An application for registration pursuant to subsection (2) shall be made in the approved form to the Registrar within 30 days of the date of the resolution approving the amendment or change and shall be accompanied by—

- (a) 2 certified copies of the amendment of rules;
- (b) a certified copy of the minutes of proceedings of the general assembly where such resolution was approved; and
- (c) the prescribed fee.

(4) The Registrar may, by written notice, within 14 days of the receipt of an application under subsection (3), require the applicant trade union to provide any additional information which he may reasonably require for the purpose of considering the application.

(5) The Registrar shall, within 21 days of—

- (a) the receipt of the application for a change of name; or
- (b) the receipt of the information required under subsection (4),

register the change of name, where the name of the trade union is not the same as that of any other registered trade union or does not bear close resemblance to that of a registered trade union, or refuse to register the change of name.

(6) The Registrar shall, within 21 days of—

- (a) the receipt of the application for amendment of the rules of the trade union; or
- (b) the receipt of the information requested for under subsection (4),

register or refuse to register such amendment.

(7) The Registrar shall, within 14 days of the registration of the change of name under subsection (5), publish in the *Gazette* and in 2 daily newspapers a notice of the change of name of the trade union.

(8) Any trade union aggrieved by the decision of the Registrar to register a change of name under subsection (5) may appeal against the decision to

the Tribunal within 21 days of the publication of the notice under subsection (7) and on hearing the parties, the Tribunal may confirm or order the revocation of the decision of the Registrar.

(8A) An appeal under subsection (8) shall be heard in the presence of the trade union of which the change of name has been registered under subsection (5).

(9) The Registrar shall, on registering an amendment of the rules or a change of the name of a trade union, issue to the trade union a certificate in the approved form.

(10) Where the Registrar refuses to register an amendment of the rules or a change of the name of a trade union, he shall, within 14 days of his decision, give written notice thereof to the applicant trade union, stating the grounds for his refusal.

(11) Any applicant trade union aggrieved by the decision of the Registrar under subsection (10) may appeal against the decision of the Registrar to the Tribunal within 21 days of the receipt of the notice under subsection (10) and, on hearing the parties, the Tribunal may confirm or order the revocation of the decision of the Registrar.

(12) The Tribunal shall hear and determine an appeal made under subsection (8) or (11) within 90 days of the date of lodging of the appeal.

[S. 12 amended by s. 6 of Act 5 of 2013 w.e.f. 11 June 2013.]

13. Membership

(1) A person shall be entitled to be a member of a trade union where—

- (a) he is a citizen of Mauritius or, in the case of a non-citizen, he holds a work permit; and
- (b) he is engaged, whether full-time, part-time, temporarily or permanently, in any undertaking, business, or occupation, the workers of which the trade union purports to represent; or
- (c) he has been a worker at any time.

(2) The minimum age for membership of a trade union shall be 16 years or such greater age as may be specified in the rules of the trade union.

14. Officers and negotiators

(1) No member shall be qualified to become or, having been so appointed or elected, continue to be an officer of a trade union where he—

- (a) is under the age of 18;
- (b) has, within the 3 preceding years, been convicted of an offence involving fraud or dishonesty; or
- (c) is not a member of that trade union.

(2) No person shall act as—

- (a) negotiator of a trade union unless he has been appointed by the managing committee of the trade union; or
- (b) an officer unless he is qualified under subsection (1).

(3) A person who is not a member may be appointed as negotiator of a trade union.

(4) Where a person, who is not a member, is appointed negotiator, he shall not, by that fact, become a member of that trade union.

(5) A trade union shall communicate the name and address of the negotiator appointed under subsection (2) to the Registrar within 14 days of the appointment.

(6) Every trade union shall cause the name and title of every officer to be prominently exhibited in its registered office and all of its branches within 7 days of the appointment.

(7) Every trade union shall, not later than 7 days after the appointment or election of its officers, office bearers and auditors and of every change among its officers, office bearers, negotiators and auditors or in their titles, give written notice to the Registrar of the appointment, election or change.

15. Amalgamation of trade unions

(1) Two or more trade unions may amalgamate to form one trade union, where a resolution for amalgamation is approved in accordance with the rules of each trade union concerned.

(2) Where the Registrar registers a trade union formed by an amalgamation of 2 or more trade unions, he shall cancel the registration of those trade unions forthwith.

(3) An amalgamation of trade unions shall have no effect unless the trade union formed by the amalgamation is registered.

(4) All property belonging to the trade unions which have amalgamated shall belong to the newly formed trade union on its registration.

16. Federations and confederations

(1) Two or more trade unions may form a federation where a resolution to that effect is approved in accordance with the rules of each trade union concerned.

(2) A trade union may join or leave a federation where a resolution to that effect is approved in accordance with the rules of the trade union.

(3) Two or more federations may form a confederation where a resolution to that effect is approved in accordance with the rules of each federation concerned.

(4) A federation may join or leave a confederation where a resolution to that effect is approved in accordance with the rules of the federation.

(5) A federation or confederation formed under subsection (1) or (3) shall have no effect unless the federation or confederation is registered.

17. Affiliation to international workers' organisations

A trade union of workers may affiliate to and participate in the activities of international workers' organisations, make financial and other contributions to such organisations and receive from them financial and other assistance which relate to its objects.

18. Meetings of trade unions

(1) Every trade union shall hold an annual general assembly not later than 3 months after its accounting date.

(2) The notice convening an annual general assembly shall be published, not later than 21 days before the date of the assembly, in 2 daily newspapers, and shall specify—

- (a) that the assembly is convened as an annual general assembly; and
- (b) the matters to be considered at the assembly.

(3) Every trade union shall, at its annual general assembly, consider—

- (a) the statement of accounts of the trade union for the preceding accounting period;
- (b) the election of officers in accordance with its rules; and
- (c) the appointment of auditors in accordance with its rules.

19. Taking of ballots

(1) Where a trade union proposes to take a ballot for any of the purposes specified in this Act, other than section 78, or in its rules, it shall, not later than 21 days before the date of the ballot, cause a notice to be published in 2 daily newspapers.

(2) Any person appointed as scrutineer of a ballot by a trade union shall, after the counting of the votes—

- (a) secure the ballot papers which have been counted and those which have been rejected, in separate sealed parcels;
- (b) certify the result in the approved form to the Registrar within 7 days of the counting; and
- (c) return the sealed ballot papers to the trade union.

(3) A trade union shall keep ballot papers returned to it under subsection (2) for a period of at least 6 months from the date of the ballot.

20. Voluntary dissolution of trade unions

(1) Subject to subsection (2), a trade union may be dissolved if a resolution for its dissolution is approved in accordance with its rules.

(2) Where under the rules of the trade union, provision is made for a special fund, the dissolution of the trade union shall not have effect until a majority of the members who contribute to the special fund have, at a general assembly held in accordance with its rules, approved the manner in which any asset of the fund is to be disposed of.

(3) Where a trade union resolves that it shall be dissolved, it shall, not later than 14 days after the date on which the resolution for the dissolution is approved in accordance with subsection (1), give written notice of the resolution to the Registrar.

(4) On receipt of a notice under subsection (3), and on being satisfied that the resolution to dissolve the trade union has been approved in accordance with subsection (1), the Registrar shall publish a notice of the dissolution in the *Gazette* and in 2 daily newspapers.

(5) The dissolution of a trade union shall take effect from the date of the publication in the *Gazette*.

(6) Where, on the dissolution of a trade union, the Registrar is of the opinion that the rules of the trade union for the disposal of its funds and other property are not being properly applied, the trade union shall be wound up in such manner as may be prescribed.

[S. 20 amended by s. 7 of Act 5 of 2013 w.e.f. 11 June 2013.]

Sub-Part B – Property and Funds

21. Application of funds

(1) Every trade union shall apply its funds for purposes consistent with its rules.

(2) Where, under the rules of a trade union, provision is made for any special fund, the rules applicable to that special fund—

- (a) shall specify, *inter alia*, the expenses and benefits which may be paid out of that fund;
- (b) shall not be altered except by a resolution approved by a majority of the members present and voting at a general assembly.

[S. 21 amended by s. 8 of Act 5 of 2013 w.e.f. 11 June 2013.]

22. Disposal of property

(1) No immovable property belonging to a trade union shall be disposed of, pledged, mortgaged or charged, unless a majority of the members present and voting at a general assembly has consented to the transaction.

(2) No movable property belonging to a trade union shall be disposed of or pledged without the approval of the managing committee of the trade union.

Sub-Part C – Accounts and Returns

23. Keeping of records

(1) Every treasurer shall keep a register of members in the approved manner and a record of all monies received and paid by him for or on behalf of the trade union and shall—

- (a) in respect of each accounting period;
- (b) on his resignation;
- (c) on the expiry of his term of office; or
- (d) whenever required to do so by the rules of the trade union,

render to the trade union a true account of all monies received and paid by him since his appointment or since he last rendered an account, whichever is the later.

(2) The books and accounts kept under subsection (1) shall be audited by the auditor at least once a year.

(3) Where an office bearer leaves office, he shall hand over to his successor or to the trade union any funds or property of the trade union in his possession, custody or under his control, failing which the trade union may sue the office bearer before a District Court to recover such funds or property.

(4) Every secretary shall keep minutes of all meetings including branch meetings of a trade union.

24. Statements to annual general assembly

(1) The treasurer of a trade union shall prepare, in the approved manner, statements of all receipts and payments of the trade union in respect of every accounting period and of the assets and liabilities of the trade union including any special fund existing as at each accounting date.

(2) For the purposes of subsection (1), the rules of every trade union shall specify the period of 12 months which shall constitute its accounting period.

(3) The statements prepared under subsection (1) shall be certified by the auditor of the trade union.

(4) The certified statements under subsection (3) shall be submitted for approval at the annual general assembly.

(5) On the application of a member of the trade union, the treasurer shall deliver to him, free of charge, a copy of the certified statements prepared under subsection (1).

(6) Every trade union shall, for a period of 12 months beginning not later than one week before the annual general meeting, cause a copy of the certified statements referred to in subsection (3) to be prominently exhibited in the registered office of the trade union and in all of its branches.

25. Annual return to Registrar

(1) Every trade union shall, not later than 4 months after its accounting date, submit to the Registrar an annual return in the approved form which shall include—

- (a) certified copies of the statements of receipts and payments and of the assets and liabilities referred to in section 24; and
- (b) a list of members of the managing committee, including its office bearers and the auditors and the appointed negotiators for the accounting period in respect of which the return is submitted.

(2) Every trade union shall submit to the Registrar, not later than the end of February of each year, a return containing the names of its president, secretary and treasurer and the number of its members as at 31 December of the preceding year.

(3) The Registrar shall publish in the *Gazette* and in 2 daily newspapers the return submitted under subsection (2), together with information on the name, registration number, year of registration and address of the registered office of every registered trade union.

(4) The Registrar shall, at all reasonable times, issue to any interested party, against payment of a prescribed fee, a copy of all returns sent to him under this section.

26. Duty to make records available for inspection

(1) Every trade union shall make available for inspection by the Registrar for a period of at least 3 years of—

- (a) the last date to which they relate, all books, statements of accounts, auditors' reports, register of members and records of money paid by members to the trade union;
- (b) the dates on which they have been drawn up, all minutes of meetings, including branch meetings, vouchers, receipts, correspondence and other documents relating to the affairs of the trade union.

(2) A trade union shall allow any member, whether accompanied by an accountant or not, to—

- (a) inspect the books and accounts of the trade union and the register of its members on his giving reasonable notice to the trade union; and
- (b) take copies or extracts from those records.

(3) Any inspection under this section shall be made at a reasonable time and at the place where the records are normally kept, unless the parties agree otherwise.

27. Request for inspection

(1) Any member who claims that a trade union has failed to comply with any request made by him under section 26 may apply to the Registrar for remedial action regarding the inspection.

(2) Where the Registrar is satisfied that the application is founded, he shall require the trade union to allow the member to inspect the records and to be supplied with such copies of, or extracts from, the records as the member may require.

(3) The Registrar shall ensure that an application made to him under this section is determined within 21 days of the request.

(4) Every trade union shall comply with a requirement of the Registrar under subsection (2).

28. Powers of Registrar

(1) Where the Registrar has reasonable grounds to believe that the trade union is contravening its rules or any provision of this Act or where he has received a complaint made by not less than one per cent of the members of a trade union, the Registrar may—

- (a) inspect the books, accounts and records of the trade union to investigate into the affairs of the trade union;
- (b) require any officer or former officer of the trade union to produce the books of accounts or such document as he may deem necessary;
- (c) require such officer to provide other relevant details relating to the trade union's funds or other property.

(2) The Registrar may, once a year, verify that every trade union is still compliant with section 5 (1) (e) or (f).

(3) The secretary or treasurer of a trade union shall, not later than 21 days after the receipt of a written request from the Registrar under subsection (1) (b), provide him with such information relating to the trade union, including detailed accounts of the funds or other property of the trade union or of its branches, as may be specified in the notice.

(4) Where the Registrar, after carrying out the investigation under subsection (1), has reason to believe that—

- (a) the trade union has contravened its rules or any provision of this Act, he may require the trade union to remedy the default;
- (b) there has been a misappropriation of funds or property of a trade union, he may refer the matter to the police for appropriate action.

[S. 28 amended by s. 9 of Act 5 of 2013 w.e.f. 11 June 2013.]

PART IV – PROTECTION OF FUNDAMENTAL RIGHTS

Sub-Part A – Basic Workers’ Rights to Freedom of Association

29. Right of workers to freedom of association

(1) Every worker shall have the right—

- (a) subject to subsection (1A), to establish or join, as a member, a trade union of his own choice, without previous authorisation and without distinction whatsoever or discrimination of any kind including discrimination as to occupation, age, marital status, sex, sexual orientation, colour, race, religion, HIV status, national extraction, social origin, political opinion or affiliation;
- (b) not to be a member, or to refuse to be a member, of a trade union;
- (c) subject to section 42, to take part, outside working hours or with the consent of the employer within working hours, in the lawful activities of a trade union of which he is a member;
- (d) to seek, subject to the rules of the trade union of which he is a member, appointment or election as an officer of that trade union.

(1A) A worker shall have the right to join only one trade union, of his own choice, in the enterprise where he is employed or his bargaining unit.

(2) Any provision of a contract of employment or a collective agreement, which seeks to restrain a worker from exercising any right under this Act, shall be null and void.

(3) No employer shall restrain a worker from exercising his rights under this section.

[S. 29 amended by s. 10 of Act 5 of 2013 w.e.f. 11 June 2013.]

30. Protection of trade union of workers against acts of interference

No person shall—

- (a) interfere with the establishment, functioning or administration of a trade union of workers;
- (b) promote or give assistance to a trade union of workers with the object of placing or maintaining the trade union under his control.

31. Protection against discrimination and victimisation

(1) No person shall—

- (a) require another person—
 - (i) seeking employment not to join a trade union of his own choice;
 - (ii) to give up membership of a trade union;
 - (iii) not to exercise any right under this Act; or

- (iv) not to participate in any proceedings taken or held for the purposes of this Act;
- (b) discriminate against, victimise or otherwise prejudice—
 - (i) a person seeking employment because of his past, present or anticipated membership of a trade union, or his participation in the formation of a trade union;
 - (ii) a worker for his failure or refusal to perform an act which he may not lawfully require that worker to do, or for disclosing any information that the worker is lawfully entitled or required to disclose to another person, or for his involvement in trade union activities.

(2) (a) A person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees.

(b) In a prosecution under subsection (1) (b)—

- (i) a person or a worker who alleges that he has been discriminated against, victimised or otherwise prejudiced by a prospective employer or employer, as the case may be, shall prove the facts of the conduct; and
- (ii) the prospective employer or employer, as the case may be, shall then prove that he did not engage in such conduct.

(3) In this section—

“involvement in trade union activities” means that the worker—

- (a) is a member or an officer of a trade union;
- (b) has acted as negotiator or representative of workers in collective bargaining;
- (c) has participated in a lawful strike;
- (d) was involved in the formation or proposed formation of a trade union;
- (e) has made or caused to be made a claim for some benefit for a worker or has supported any such claim, whether by giving evidence or otherwise;
- (f) has expressed grievance on behalf of another worker to an employer;
- (g) has been allocated or has applied to take any employment-related education leave;
- (h) has been a representative of other workers in dealing with an employer on matters relating to the employment of those workers; or
- (i) has represented workers under the Occupational Safety and Health Act, whether as a health and safety representative or otherwise.

[S. 31 amended by s. 11 of Act 5 of 2013 w.e.f. 11 June 2013.]

Sub-Part B – Basic Employers’ Rights to Freedom of Association

32. Rights of employers

(1) Every employer shall have the right to—

- (a) establish or join, as a member, a trade union of employers of his own choice, without previous authorisation and without distinction whatsoever or discrimination of any kind;
- (b) be, or not to be, a member of a trade union of employers;
- (c) take part in the lawful activities of his trade union; and
- (d) hold office in his trade union in accordance with its rules.

(2) Two or more trade unions of employers may form a federation of employers.

(3) A trade union of employers may join a federation of employers.

(4) Two or more federations of employers may form a confederation of employers.

(5) An employers’ federation may join a confederation of employers.

(6) Every trade union of employers may affiliate to or participate in the activities of any international employers’ organisation, make financial and other contributions to such organisation and receive financial and other assistance from them.

33. Protection of trade union of employers against acts of interference

No trade union of workers or its representatives shall interfere in the establishment, functioning or administration of a trade union of employers.

Sub-Part C – Prohibition of Closed Shop

34. Closed shop agreement to be void

(1) No employer shall enter into an agreement with a trade union of workers which purports to—

- (a) preclude the employer from engaging a person who is not a member of such trade union;
- (b) preclude the employer from engaging a person who has not been recommended or approved by such trade union;
- (c) require that one of the terms and conditions of employment of a worker shall be that the worker has to become a member of such trade union.

(2) Any person who has been refused employment and who claims that the refusal was attributed wholly or partly to a provision in an agreement referred to in subsection (1), may apply to the Industrial Court for an order under subsection (3).

(3) Where, on an application made under subsection (2), the Industrial Court finds that—

- (a) a provision in an agreement referred to in subsection (1) is or was in force; and
- (b) the refusal to employ the applicant was wholly or partly attributable to that provision,

the Court may order the employer to pay to the applicant such sum by way of compensation as the Industrial Court thinks fit.

PART V – COLLECTIVE BARGAINING

Sub-Part A – Code of Practice

35. Promotion of good employment relations

(1) The Code of Practice set out in the Fourth Schedule shall—

- (a) provide practical guidance for the promotion of good employment relations;
- (b) provide practical guidance for the grant of negotiating rights; and
- (c) assist employers and trade unions in bargaining effectively.

(2) A failure on the part of any person to observe the Code of Practice shall not of itself render that person liable to proceedings of any kind.

(3) In any proceedings under this Act, any provision of the Code of Practice which appears to the Tribunal, the Commission or the Industrial Court to be relevant to any question arising in the proceedings shall be taken into account for the purposes of determining that question.

Sub-Part B – Negotiating Rights

36. Application for recognition

(1) A trade union or a group of trade unions of workers acting jointly may apply in writing to an employer for recognition as a bargaining agent, or as a joint negotiating panel, or as a sole bargaining agent, for a bargaining unit.

(2) An application under subsection (1) shall be accompanied by—

- (a) a copy of the certificate of registration of each trade union;
- (b) a copy of the agreement between or among the trade unions in the case of a group of trade unions acting jointly; and
- (c) the number and category of members that each of the trade unions has in the bargaining unit.

(3) An employer shall, within 60 days of receipt of the application, inform the trade union or group of trade unions in writing whether he—

- (a) recognises the trade union or the group of trade unions as a bargaining agent; or

- (b) refuses to recognise the trade union or group of trade unions as a bargaining agent and state the reasons thereof.

[S. 36 amended by s. 12 of Act 5 of 2013 w.e.f. 11 June 2013.]

37. Criteria for recognition of trade union of workers

(1) Subject to subsections (2) and (3), a trade union shall be entitled to recognition as a bargaining agent for a bargaining unit in an enterprise or industry, where it has the support of not less than 30 per cent and not more than 50 per cent of the workers in the bargaining unit of the enterprise or industry.

(2) Subject to subsection (3)—

- (a) a trade union which has the support of more than 50 per cent of the workers in a bargaining unit in an enterprise or industry shall be entitled to recognition as the sole bargaining agent of the bargaining unit of the enterprise or industry;
- (b) 2 or more trade unions which have each the support of not less than 30 per cent and not more than 50 per cent of the workers in a bargaining unit in an enterprise or industry shall be entitled to be recognised as a joint negotiating panel of the bargaining unit of the enterprise or industry.

(3) Where a trade union or group of trade unions has been granted recognition as a sole bargaining agent or joint negotiating panel, respectively, for a bargaining unit in an enterprise or industry, no other trade union shall be entitled to recognition for the bargaining unit except by virtue of an order or determination of the Tribunal under section 38.

(4) Where a trade union has been granted recognition under subsection (1) and—

- (a) one or more new trade unions, having the support of not less than 30 per cent and not more than 50 per cent of the workers in the bargaining unit, apply to the employer for recognition—
 - (i) the employer may grant recognition to the trade unions altogether as a joint negotiating panel of that bargaining unit;
 - (ii) the employer may not grant recognition to any of the new trade unions which refuses to form part of a joint negotiating panel; or
 - (iii) the employer or one or more of the new trade unions may, where the existing trade union refuses to form part of a joint negotiating panel, apply to the Tribunal for an order directing the existing trade union to form part of the joint negotiating panel;
- (b) a new trade union which has the support of more than 50 per cent of the workers in the bargaining unit, applies to the employer for recognition in respect of that bargaining unit, the employer or the new trade union may apply to the Tribunal for its determination as to which trade union is to be recognised, and the Tribunal shall make an order to that effect.

(5) Where there is no recognised trade union in an enterprise or industry and a trade union or group of trade unions, which is not entitled to recognition under subsection (1) or (2) (b), applies for recognition to an employer, the employer may voluntarily grant recognition to the trade union or group of trade unions having obtained the highest percentage of support from the workers in the bargaining unit of the enterprise or industry.

[S. 37 repealed and replaced by s. 13 of Act 5 of 2013 w.e.f. 11 June 2013.]

38. Order for recognition of trade union of workers

(1) Where an employer refuses to grant recognition to a trade union or group of trade unions in accordance with section 37, the trade union or group of trade unions may apply to the Tribunal for an order directing the employer to recognise the trade union or group of trade unions.

(2) On an application made under subsection (1), the Tribunal shall—

- (a) subject to subsection (3), issue an order that the trade union or group of trade unions be granted recognition where the Tribunal is satisfied that that trade union or group of trade unions has produced evidence that it is eligible for recognition in accordance with section 37;
- (b) organise and supervise a secret ballot in a bargaining unit in an enterprise or industry, in order to determine which trade union the workers in the bargaining unit wish to be their bargaining agent in accordance with section 37, where—
 - (i) a trade union or group of trade unions already has recognition in respect of that bargaining unit; and
 - (ii) the Tribunal is satisfied that the applicant trade union or group of trade unions, has produced evidence that it is eligible for recognition in accordance with section 37;
- (c) organise and supervise a secret ballot in a bargaining unit, in order to determine which trade union the workers in the bargaining unit wish to be their bargaining agent in accordance with section 37, where—
 - (i) no other trade union or group of trade unions has been granted recognition in respect of the bargaining unit; and
 - (ii) the Tribunal is satisfied that 2 or more of the applicant trade unions have each the support of more than 50 per cent of the workers in the bargaining unit;
- (d) set aside the application where it is satisfied that a trade union or group of trade unions has not produced evidence that it is eligible for recognition in accordance with section 37.

(3) The Tribunal may organise and supervise a secret ballot in the bargaining unit before—

- (a) making an order under subsection (2) (a); and
- (b) setting aside an application under subsection (2) (d).

(4) Where an application is made to the Tribunal under section 37 (4) (a) (iii) or (b), the Tribunal shall organise and supervise a secret ballot in the bargaining unit in order to determine which trade union the workers in the bargaining unit wish to be their bargaining agent.

(5) In a situation not covered in subsections (1) to (4), where an application is made to the Tribunal in a matter relating to recognition of a trade union or group of trade unions, the Tribunal may organise and supervise a secret ballot in a bargaining unit in order to determine which trade union the workers in the bargaining unit wish to be their bargaining agent in accordance with section 37.

(6) Where a secret ballot takes place under this section, a worker shall not vote for more than one trade union or group of trade unions.

(7) (a) The Tribunal shall determine an application under section 37 and under this section within 30 days of the receipt of the application.

(b) The Tribunal may, in exceptional circumstances, extend the delay specified in paragraph (a) for another period of 30 days.

(8) Where the Tribunal makes an order or determination granting recognition, the order or determination shall—

- (a) specify the employer and the trade union to which it relates;
- (b) specify the bargaining unit;
- (c) declare whether the trade union shall be recognised as a bargaining agent or a sole bargaining agent, or whether there shall be a joint negotiating panel; and
- (d) require the trade union or the joint negotiating panel and the employer concerned to meet at specified intervals or at such time and on such occasions as the circumstances may reasonably require, for the purposes of collective bargaining.

(9) Where a trade union has been recognised as a sole bargaining agent, or a group of trade unions has been recognised as a joint negotiating panel, it shall replace any other trade union or group of trade unions as the bargaining agent of the workers.

(10) Where recognition has been ordered or determined under this section, no claim for recognition or revocation or variation of recognition in the same bargaining unit shall be entertained before the expiry of a period of 12 months commencing on the date of the order or determination, as the case may be.

(11) The Tribunal may, where the recognition of a new trade union gives rise to the revocation of the recognition of another trade union, enquire into the independence of the trade unions in relation to the employer.

(12) Where an employer fails to comply with an order or determination under this section, the aggrieved party may apply to the Tribunal for compensation and the Tribunal shall make an order for the payment of a compensation

which shall not be less than 500 rupees per day so long as the order or determination is not complied with.

[S. 38 repealed and replaced by s. 14 of Act 5 of 2013 w.e.f. 11 June 2013.]

39. Revocation or variation of recognition of trade union of workers

(1) Subject to section 38 (10), the Tribunal may—

- (a) on an application made by a trade union or a group of trade unions, make an order to revoke or vary the recognition of another trade union where it is satisfied that there has been a change in representativeness; or
- (b) on an application by an employer, make an order to revoke the recognition of a trade union or a joint negotiating panel for any default or failure to comply with any provisions of a procedure agreement.

(2) Where an application is made under subsection (1), the recognition of the trade union or joint negotiating panel shall remain in force until the Tribunal makes an order.

(3) (a) An application to revoke or vary shall be determined by the Tribunal within 30 days of the receipt of the application.

(b) The Tribunal may, in exceptional circumstances, extend the delay specified in this subsection for another period of 30 days.

[S. 39 amended by s. 15 of Act 5 of 2013 w.e.f. 11 June 2013.]

40. Access to workplace

(1) Subject to prior notice and authorisation as to the time, place and purpose of his visit, any officer or negotiator of a recognised trade union, or joint negotiating panel in an enterprise, shall be entitled to enter the employer's premises to—

- (a) participate in collective bargaining or otherwise serve members' interests;
- (b) deal with matters concerning the health and safety of workers;
- (c) monitor compliance with a collective agreement;
- (d) communicate, hold meetings and discuss trade union business.

(2) The activities under subsection (1) shall be subject to necessary safeguards for the preservation of life and property and prevention of disruption of work.

(3) An officer or a negotiator referred to in subsection (1) shall, before entering the workplace—

- (a) disclose the purpose of his entry; and
- (b) produce evidence of his authority to represent the trade union.

(4) Subject to prior notice as to the time and purpose of his visit, any officer or negotiator of a registered trade union may enter a workplace to represent a worker who is a member of the trade union in respect of his legal rights.

(5) A trade union may apply to the Tribunal for an order where its officer or negotiator has been unreasonably denied entry to a workplace by an employer or his representative.

(6) An application made under subsection (5) shall be determined within 30 days of the receipt of the application.

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(7) Where the Tribunal is satisfied that an employer or his representative has unreasonably denied entry referred to in subsection (5), it may order that such entry be granted, subject to such conditions as it may impose.

(8) An employer shall comply with an order of the Tribunal under subsection (7) within 7 days from the date of the order.

41. Access to information

(1) Where an employer is engaged in collective bargaining with a recognised trade union or a joint negotiating panel, either party shall provide to the other party all relevant information required for the purposes of collective bargaining.

(2) A request made for the purposes of subsection (1) shall—

- (a) be in writing;
- (b) specify the nature of the information requested in sufficient detail to enable the information to be identified;
- (c) specify a reasonable time within which the information is to be provided.

(3) No party shall be required to disclose information that—

- (a) is prohibited to be released by law or by order of any court;
- (b) may cause prejudice to the interests of the enterprise or to a worker;
- (c) is personal information relating to the privacy of a worker, unless the worker consents to the disclosure of that information.

(4) Where any party refuses to provide information under this section, the other party may apply to the Tribunal for an order and the Tribunal shall, where it is satisfied that the information requested does not fall within the purview of subsection (3), make such order requiring that the information be provided.

(5) An application made under subsection (4) shall be determined within 30 days of the date of receipt of the application.

(6) Any information provided under this section shall be used only for the purposes of collective bargaining, unless otherwise agreed by the parties.

(7) Any party shall comply with an order of the Tribunal under subsection (4) within 14 days of the date of the order.

42. Time-off facilities

(1) An officer or a negotiator shall be granted reasonable time-off without loss of pay for the purposes of performing his trade union functions and activities, subject to the exigencies of his employment and in a manner which does not impair the smooth operation of his workplace.

(2) A procedure agreement shall, as far as possible, stipulate the extent, duration and conditions of paid time-off, taking into consideration—

- (a) the size of the trade union to which the officer or the negotiator belongs and the type and volume of activities carried out by the trade union;
- (b) the additional responsibilities of an officer or negotiator of trade union at the level of a federation or a confederation.

(3) The agreement for a time-off facility shall be for a period of not less than 24 months.

(4) Subject to subsection (2), an application for time-off under this section shall be made to the employer within a reasonable time and approval by the employer shall not be unreasonably withheld.

Sub-Part C – Check-off Agreements and Agency Shop Orders

43. Check-off agreements

(1) No trade union shall claim or receive any trade union fee, unless it is registered.

(2) An employer whose workers are members of a registered trade union shall not refuse to enter into a check-off agreement with the registered trade union.

44. Order for check-off agreements

(1) Where an employer refuses to enter into a check-off agreement under section 43, a trade union of workers may make an application to the Tribunal for an order that a check-off agreement shall have effect between the trade union and the employer and, on hearing the application, the Tribunal may make such order as it deems fit.

(2) Any application made under subsection (1) shall be determined by the Tribunal within 30 days of the date of receipt of the application.

(3) An employer shall comply with an order made under subsection (1) within 2 months of the date of the order.

45. Provisions relating to check-off agreements

Where a check-off agreement is in force—

- (a) a deduction of trade union fees from the wages of a worker shall only be made if the worker consents thereto in writing;
- (b) the first deduction made pursuant to paragraph (a) shall be made from the wages earned for the month following the month in which the consent has been given or, where there is an order of the Tribunal under section 44, the month following the making of such order;

- (c) any consent given under paragraph (a) shall cease to have effect as provided in the rules of the trade union;
- (d) the employer shall, not later than the fourteenth day of every month, submit to the trade union—
 - (i) a list of the names of the workers from whose wages he has made deductions;
 - (ii) a list of names of workers who have ceased to be employed by him or who have notified him of their intention to cease to pay the trade union fees; and
 - (iii) particulars of the amount deducted and remitted and the period in respect of which the deduction was made;
- (e) where the trade union fees have been altered—
 - (i) the trade union shall give written notice of such alteration to the employer; and
 - (ii) the employer shall deduct the amount of the trade union fees as altered from the wages earned by a worker for the month following the month in which the notice of the alteration is received by him.

46. Agency shop agreements

(1) Where a check-off agreement and a collective agreement are in force, a recognised trade union of workers or a joint negotiating panel may enter into an agreement with an employer for a deduction of an agency fee from the wages of workers in a bargaining unit who are not members of the trade union.

(2) A deduction under subsection (1) shall only be made if the worker consents thereto in writing.

47. Application for agency shop orders

(1) Where an employer refuses to enter into an agreement for an agency fee under section 46, a recognised trade union of workers or a joint negotiating panel may make an application to the Tribunal for an order in its favour requiring the employer to deduct an agency fee from the wages of workers in a bargaining unit who are not members of the trade union.

(2) The Tribunal shall, before making an agency shop order, have regard to the material circumstances surrounding the application and shall make such order as it deems fit.

(3) The order under subsection (2) shall specify—

- (a) the bargaining unit;
- (b) the duration of the payment of the agency fee;
- (c) the name and address of the trade union or the joint negotiating panel and the employer against whom the application is made; and

- (d) the total amount deductible monthly as agency fees, being an amount which shall not exceed the monthly trade union fees.

(4) In the case of a joint negotiating panel, the agency fees shall be shared equally among the trade unions.

(5) Any application made under subsection (1) shall be determined within 30 days of the date of receipt of the application.

(6) The Tribunal may extend the period specified in subsection (5), where the circumstances so require, at the request of the applicant.

48. Effect of agency shop orders or agency shop agreements

(1) Notwithstanding any other enactment, where an agency shop agreement or order is in force—

- (a) all workers in the employment of the employer against whom the application is made, shall pay the agency fee specified in the agreement or order;
- (b) the agency shop agreement or order shall be binding on the employer who shall—
 - (i) deduct the agency fee specified in the agency shop agreement or order from the wages of his workers comprised in the bargaining unit specified in the agreement or order; and
 - (ii) pay to the trade union concerned the union's share specified in the agreement or order.

(2) Where an agency shop order or agreement is in force, the trade union or the joint negotiating panel shall represent every worker comprised in the bargaining unit specified in the agency shop order or agreement in any dispute in which the worker is concerned, whether or not the worker is a member of the trade union.

49. Operation of agency shop agreements or orders

Where a trade union of workers or a joint negotiating panel ceases to be recognised, an agreement under section 46 or an agency shop order shall cease to have effect.

50. Payments in accordance with check-off agreements or agency shop agreements or orders

(1) Where a deduction is made from the wages of a worker in accordance with a check-off agreement or an agency shop agreement or order—

- (a) the amount of the deduction shall not be recoverable by the worker from his employer;
- (b) not more than one deduction shall be made in respect of any month, and the deduction shall not exceed in amount the trade union fees payable by any member of the trade union in respect of that month;

- (c) a deduction shall only be made after all deductions required or permitted to be made by or under any other law in force have been made.

(2) An employer shall credit the whole amount of the deductions made under subsection (1) to the trade union's account not later than the fourteenth day of the month following the month in which the deduction was made.

(3) No employer shall make a deduction from the wages of a worker for the purposes of making a payment to a trade union unless that deduction is made in accordance with a check-off agreement or in accordance with an agency shop agreement or order.

(4) An employer shall repay the worker the amount of any deduction of wages made in contravention of subsection (3) within 14 days of a request for such repayment by the worker.

Sub-Part D – Bargaining Process

51. Procedure agreements

(1) Where recognition has been obtained under section 36 (3), 37 (5) or 38, the trade union or group of trade unions or joint negotiating panel and the employer shall draw up and sign a procedure agreement to regulate their relations within 30 days from the date of recognition or such longer period as may be agreed.

(2) Where any party referred to in subsection (1) refuses to draw up and sign a procedure agreement within the specified period, the other party may apply to the Tribunal for the making of a procedure agreement by way of an award.

(3) Where an application is referred to the Tribunal under subsection (2), the Tribunal shall, in the first instance, endeavour to secure a settlement between the parties with a view to drawing up and signing a procedure agreement.

(4) Where no settlement is reached under subsection (3), the Tribunal shall make an award for a procedure agreement.

(5) The application made under subsection (2) shall be determined within 60 days of the date of receipt of the application.

(6) A procedure agreement shall bind the parties to the agreement.

(7) (a) A procedure agreement may be varied by both parties and where there is no agreement on a variation, any party may refer the matter to the Tribunal which shall make such order as it thinks fit, within 30 days of the date of the referral.

(b) No claim for a variation of a procedure agreement shall be entertained by the Tribunal before the expiry of a period of 12 months commencing on the date of the coming into force of the procedure agreement, unless there is a change in circumstances that warrants such variation.

(8) Where a party fails to comply with a provision of a procedure agreement, the other party may apply to the Tribunal for an order requiring the other party to comply with the provision of the procedure agreement.

(9) An application made under subsection (8) shall be determined within 30 days of the date of receipt of the application.

(10) The Tribunal may extend the period specified in subsection (9), where the circumstances so require, at the request of the applicant.

(11) A party shall comply with an order made under subsection (8) within 14 days of the date of the order.

[S. 51 amended by s. 16 of Act 5 of 2013 w.e.f. 11 June 2013.]

52. Terms of procedure agreements

Notwithstanding section 42 (2), a procedure agreement shall include provisions—

- (a) for the establishment in an enterprise of a negotiating body which shall cover—
 - (i) the matters to be bargained and the levels at which bargaining shall take place;
 - (ii) arrangements for negotiating terms and conditions of employment and the circumstances in which either party can give notice of its wish to renegotiate them; and
 - (iii) procedures for settling collective labour disputes;
- (b) requiring an employer to consult a recognised trade union, a group of recognised trade unions, a joint negotiating panel where a reduction of workforce, or the transfer of ownership of an enterprise, or cessation of business is contemplated; and
- (c) for the establishment of a minimum service as specified in section 81.

53. Bargaining procedure

(1) A recognised trade union, a group of recognised trade unions, a joint negotiating panel or an employer may initiate negotiations with a view to reaching a collective agreement, by giving to the other party notice in accordance with subsection (3).

(2) Where there exists a collective agreement, the parties to the agreement may initiate negotiations with a view to renewing or revising it, by giving the other party notice in accordance with subsection (3).

(3) The notice shall—

- (a) be in writing and signed by the party giving the notice;
- (b) specify each of the parties to be involved in the negotiations;
- (c) set out a summary of the issues to be discussed; and
- (d) specify the bargaining unit.

(4) Any party served with a notice under subsection (1) or (2) shall be under the duty to start negotiations within 30 days of the date of receipt of the notice or such longer period as may be agreed by the parties.

(5) Where any party refuses to start negotiations within the delay specified in this section, the other party may apply to the Tribunal for an order directing the other party to start negotiations and the Tribunal, on hearing the parties, shall, within 30 days of the date of receipt of the application, make such order as it thinks fit.

(6) A party shall comply with an order made under subsection (5) within 14 days of the date of the order.

54. Unfair labour practices

(1) No party shall have recourse to any form of unfair labour practice during collective bargaining.

(2) Where any party considers that there has been any form of unfair labour practice during collective bargaining, the aggrieved party may apply to the Tribunal for an order directing the other party to refrain from having recourse to such practice and the Tribunal, on hearing the parties, shall, within 30 days of the date of receipt of the application, make such order as it thinks fit.

(3) A party shall comply with an order made under subsection (2) within 14 days of the date of the order.

(4) For the purposes of this section, "unfair labour practice" means any act or omission on the part of any party which undermines the bargaining process.

Sub-Part E – Collective Agreement

55. Duration of collective agreement

(1) Where a recognised trade union, a group of recognised trade unions, a joint negotiating panel and an employer reach an agreement on the terms and conditions of work and employment, they shall draw up in writing a collective agreement and shall sign it.

(2) A collective agreement or any provision thereof shall become effective—

- (a) on such date as is specified in the agreement; or
- (b) on the date of the signing of the agreement, where no such date is specified.

(3) Subject to subsection (3A) and to any award made under section 56 (5), a collective agreement shall remain in force for a period of not less than 24 months from the date of its coming into force.

(3A) Negotiation for the renewal of a collective agreement shall start—

- (a) not later than 3 months before its expiry;

- (b) where the agreement specifies a date for the start of renegotiation, on such date; or
- (c) where the agreement specifies an event on the occurrence of which renegotiation shall start, on the date on which that event occurs.

[S. 55 amended by s. 17 of Act 5 of 2013 w.e.f. 11 June 2013.]

56. Application of collective agreement

(1) A collective agreement shall bind—

- (a) the parties to the agreement; and
- (b) all the workers in the bargaining unit to which the agreement applies.

(2) Where there is a joint negotiating panel or a group of recognised trade unions, a collective agreement signed by one or more trade unions representing more than 50 per cent of the workers in a bargaining unit shall bind any other trade union in the joint negotiating panel, or a group of recognised trade unions, which refuses to sign the agreement.

(3) Where there is a joint negotiating panel or a group of recognised trade unions and one or more trade unions signing a collective agreement represents less than 50 per cent of the workers in the bargaining unit, the trade union or the employer concerned in the bargaining unit may apply to the Tribunal for the making of an award enforcing the collective agreement.

(4) Where an application is made to the Tribunal under subsection (3), the Tribunal shall, in the first instance, endeavour to secure a settlement between the parties with a view to signing the collective agreement.

(5) Where no settlement is reached under subsection (4), the Tribunal shall make such award as it thinks fit.

(6) An application made under subsection (3) shall be determined within 60 days of the date of the receipt of the application.

(7) The terms of the collective agreement made under section 55 or under this section shall become implied terms and conditions of the contract of employment of the workers covered by the agreement.

(8) An employer shall comply with the provisions of a collective agreement.

57. Scope of collective agreement

(1) A collective agreement shall not contain any provision inconsistent with—

- (a) this Act;
- (b) any other enactment, other than Remuneration Regulations; and
- (c) sections 4, 6, 12, 20, 22, 30, 31, Parts VIII, IX, X and XI of the Employment Rights Act,

and any such provision shall, to the extent of the inconsistency, be null and void.

(2) Notwithstanding subsection (1) (b), a collective agreement shall not contain a provision reducing the wages provided in the Remuneration Regulations.

[S. 57 amended by s. 18 of Act 5 of 2013 w.e.f. 11 June 2013.]

58. Variation of collective agreement

(1) A collective agreement may be varied—

- (a) in such manner and as a result of the occurrence of such circumstances as are provided in the agreement;
- (b) where there is a substantial change of circumstances which warrants such variation.

(2) (a) Where a party to a collective agreement which is in force refuses a variation of the agreement, any party may apply to the Tribunal for a variation of the agreement and the Tribunal, on hearing the parties, shall vary the agreement where it is satisfied that the variation is warranted in accordance with subsection (1).

(b) An application made under paragraph (a) shall be determined by the Tribunal within 60 days of the date of receipt of the application.

[S. 58 amended by s. 19 of Act 5 of 2013 w.e.f. 11 June 2013.]

59. Extension of collective agreement to another employer

(1) Where a collective agreement is in force in respect of an employer in an industry, any trade union may apply to the Tribunal for an order to extend the agreement or part thereof to another employer in that industry by whom the trade union is recognised and, on hearing the application, the Tribunal may grant or refuse the order.

(2) No order shall be made under subsection (1), unless the Tribunal is satisfied that—

- (a) the employer and workers to whom the collective agreement is to be extended are engaged in the same activity as that carried out by those covered by the collective agreement;
- (b) the extension of the collective agreement is desirable in the interest of uniformity of terms and conditions of employment;
- (c) the terms of the collective agreement are not prejudicial to the viability of the enterprise concerned in the industry.

(3) Any application made under subsection (1) shall be determined within 60 days of the date of receipt of the application.

60. Extension of collective agreement to the whole of the industry

(1) Subject to subsection (2), where a collective agreement which governs the terms and conditions of employment in a part of an industry is in force, an employer or a trade union of workers to whom the agreement

applies may make an application to the Tribunal for an order to extend the agreement to the whole of the industry and, on hearing the application, the Tribunal may grant or refuse the order.

(2) No order shall be made under subsection (1) unless the Tribunal is satisfied that—

- (a) the parties to the agreement are or represent a substantial proportion of the workers or of the employers in the industry, the workers being workers of the description to which the agreement applies;
- (b) the employers engaged in the industry are not bound by the agreement;
- (c) the extension of the agreement is necessary or desirable in the interest of uniformity of terms and conditions of employment in the industry.

(3) An order under subsection (1) may be subject to such conditions as the Tribunal thinks fit and, in particular, the order may provide that where an employer is observing terms and conditions of employment which are more favourable than the terms and conditions of employment specified in the agreement, the employer shall continue to be bound by the more favourable terms and conditions of employment.

(4) Where an employer, not a party to the original collective agreement and to whom the extension of the collective agreement would apply, has reasonable grounds to believe that coverage by the collective agreement would be prejudicial to the viability of, or employment, in his enterprise, he may apply to the Tribunal for an order to have his enterprise exempted from all or part of its provisions and, on hearing the application, the Tribunal may grant or refuse the order.

(5) Any application made under subsections (1) and (4) shall be determined within 60 days of the date of receipt of the application.

61. Registration of collective agreement

Any collective agreement concluded under this Sub-part shall be registered with the Tribunal and the Ministry by all the parties signing the agreement within 30 days of the date of signing of agreement.

62. Procedure for interpretation of collective agreement

(1) Every collective agreement shall provide for procedures to resolve any dispute which relates to the interpretation of any provision of the collective agreement.

(2) Where a matter relating to the interpretation of a collective agreement is unresolved by the procedures provided for in the collective agreement, any party may apply to the Tribunal for a declaration on the matter and the Tribunal shall, on hearing the parties, make such declaration as it thinks fit.

(3) Any application made under subsection (2) shall be determined within 60 days of the date of receipt of the application.

PART VI – LABOUR DISPUTES AND DISPUTE SETTLEMENT PROCEDURES

Sub-Part A – Labour Disputes

63. Voluntary arbitration

The parties to a labour dispute may jointly refer such dispute for voluntary arbitration to the Tribunal or to an arbitrator appointed by them.

64. Reporting of labour disputes

(1) Subject to section 63 and subsections (2) and (3), any labour dispute, whether existing or apprehended, may be reported to the President of the Commission—

- (a) by any party to the dispute; or
- (b) by a recognised trade union on behalf of any party to the dispute.

(2) No dispute referred to in subsection (1) shall be reported except after meaningful negotiations have taken place between the parties and a stage of deadlock has been reached.

(3) The period of negotiations shall not exceed 90 days from the start of negotiations or such longer period as may be agreed in writing between the parties.

(4) During the period when negotiations are being held between parties as specified in subsections (2) and (3), any party may seek the assistance of the conciliation service provided by the supervising officer under section 68 with a view to conciliating the parties.

(5) Any request for assistance under subsection (4) shall be made not later than 20 days before the expiry of the period of 90 days or such longer period as may be agreed between the parties as specified in subsection (3).

(6) Every report of a labour dispute shall be made in such form as the Commission may approve.

(7) Where a labour dispute is reported to the Commission, a copy of the report of the dispute shall be served by or on behalf of the party making the report upon every other party to the dispute.

[S. 64 amended by s. 20 of Act 5 of 2013 w.e.f. 11 June 2013.]

65. Rejection of labour disputes

(1) The President of the Commission may reject a report of a labour dispute made under section 64 where he is of the opinion that—

- (a) the dispute is not a labour dispute or does not comply with section 67;
- (b) the report is made by or on behalf of a party who is not entitled to be a party to the labour dispute;

- (c) the report does not contain sufficient particulars of the issues giving rise to the labour dispute;
- (d) the party reporting the dispute has failed to comply with the dispute procedures specified in this Act or provided for in a procedure agreement;
- (e) —
- (f) the dispute relates to any issue within the exclusive jurisdiction of the Industrial Court.

(2) Notwithstanding subsection (1), the President of the Commission may—

- (a) reject only that part of a dispute which is not a labour dispute;
- (b) in the case of a labour dispute which includes a party which is not entitled to be a party to the labour dispute, strike out the name of such party from the report of the dispute.

(3) The President of the Commission shall give written notice of any rejection within 14 days of receipt of the report of the dispute to all the parties to the dispute.

[S. 65 amended by s. 11 (b) of Act 14 of 2009 w.e.f. 1 July 2009; s. 21 of Act 5 of 2013 w.e.f. 11 June 2013.]

66. Appeal to Tribunal

(1) Any party aggrieved by a rejection of the dispute under section 65 may, within 21 days of the date of the notice under section 65 (3), appeal against the rejection to the Tribunal and the Tribunal shall, on hearing the appeal, confirm or revoke the decision of the President of the Commission.

(2) The Tribunal shall make an order under subsection (1) within 60 days of receipt of the application of the appeal.

67. Limitation on report of labour disputes

Where a labour dispute is reported to the President of the Commission under section 64, no party to the dispute may report—

- (a) any other labour dispute between the same parties within a period of 6 months immediately following the date on which the original report was made;
- (b) a labour dispute on the same issue between the same parties within a period of 24 months following the date of the determination of the dispute; or
- (c) while a collective agreement is in force, a labour dispute on matters relating to wages, and terms and conditions of employment which—
 - (i) are contained in the collective agreement;

- (ii) have been canvassed but not agreed upon during the negotiation process leading to the collective agreement; or
- (iii) have not been canvassed during the negotiation process leading to the collective agreement, except during a period of negotiation for renewal of the collective agreement starting from a date specified in section 55 (3A).

[S. 67 amended by s. 22 of Act 5 of 2013 w.e.f. 11 June 2013.]

Sub-Part B – Conciliation, Mediation and Arbitration

68. Conciliation service by supervising officer

(1) Notwithstanding this Act, the supervising officer may provide a conciliation service with a view to conciliating the parties to a dispute not yet reported to the President of the Commission.

(2) Where the dispute is resolved by an agreement under subsection (1), the agreement shall—

- (a) be recorded in writing;
- (b) be signed by the parties;
- (c) be registered with the supervising officer and the Tribunal; and
- (d) have the effect of a collective agreement as specified in sections 55 and 56.

(3) Where no agreement is reached under subsection (1), the supervising officer may advise the parties to refer the labour dispute for voluntary arbitration under section 63.

(4) In the case of the public service, the conciliation service shall be headed by a suitable independent person appointed by the Minister.

(5) Notwithstanding this section, any labour dispute may be reported to the President of the Commission under section 64.

[S. 68 amended by s. 11 (c) of Act 14 of 2009 w.e.f. 1 July 2009.]

69. Conciliation and mediation

(1) Where a labour dispute has been reported to the President of the Commission under section 64, and the report has not been rejected by the President of the Commission under section 65 or where it has been rejected and the rejection has been revoked on an appeal to the Tribunal under section 66, the Commission may, with a view to promoting a settlement of the dispute—

- (a) make proposals to the parties for the settlement of the dispute;
- (b) conciliate the parties;
- (c) mediate and make recommendations to the parties; or
- (d) make such investigation as he thinks fit.

(2) Where an agreement has been reached following conciliation or mediation under subsection (1), the agreement shall—

- (a) be recorded in writing;
- (b) be signed by the parties;

- (c) be registered with the supervising officer of the Ministry and the Tribunal; and
- (d) have the effect of a collective agreement as specified in sections 55 and 56.

(3) The Commission shall complete its proceedings within 30 days of the date of receipt of the labour dispute under section 64.

(4) The Commission may extend the period specified in subsection (3), where the circumstances so require, at the request of the parties to the labour dispute.

(5) Where no agreement is reached after 30 days of the date of the receipt of the labour dispute under section 64 or after the expiry of such extended period as may be agreed under subsection (4), the Commission shall—

- (a) within 7 days submit a report to the parties to that effect to the parties to the dispute; and
- (b) advise the parties to refer the labour dispute for voluntary arbitration under section 63.

(Subsec. (5) (a) not in operation.)

(6) Subject to subsection (7) and sections 76 to 79, where the parties decline to refer the labour dispute for voluntary arbitration, the party having reported the labour dispute may have recourse to strike or lock-out, as the case may be, within 45 days of the submission of the report by the President of the Commission under subsection (5) (a).

(7) Where no agreement is reached in the case of a labour dispute reported by an individual worker, the Commission may, within 7 days, with the consent of the worker, refer the labour dispute to the Tribunal for arbitration.

[S. 69 amended by s. 23 of Act 5 of 2013 w.e.f. 11 June 2013.]

70. Arbitration

(1) Where a labour dispute is referred to the Tribunal under section 63 or 69 (7), the Tribunal shall enquire into the dispute and make an award thereon within 90 days of the referral.

(2) The Tribunal may extend the period specified in subsection (1), where the circumstances so require, with the consent of the parties to the dispute.

(3) Subject to section 65 and notwithstanding section 69 (1), where a labour dispute relating to the Fire Services and the Mauritius Prisons Service is reported to the President of the Commission, the President shall forthwith refer the dispute to the Tribunal and the Tribunal shall, within 30 days of the referral, enquire into the dispute and make an award thereon.

71. Exclusion of jurisdiction of Tribunal

The Tribunal shall not enquire into any labour dispute where the dispute relates to any issue—

- (a) within the exclusive jurisdiction of the Industrial Court;

- (b) which is the subject of pending proceedings before the Commission or any Court of law.

Sub-Part C – Award of Tribunal

72. Award and its effects

- (1) An award of the Tribunal shall be published in the *Gazette* and shall—
 - (a) state the parties to whom the award applies;
 - (b) state the reasons for the award;
 - (c) be binding on all the parties to whom the award applies;
 - (d) take effect—
 - (i) on the date of its publication in the *Gazette*; or
 - (ii) if it is expressed to have retrospective effect, on the date specified in the award; and
 - (e) in respect of an award under sections 56 (5) and 70 (1) and (3), be an implied term of every contract of employment between workers and employers to whom the award applies.

(2) An award, other than an award under Part VIII A of the Employment Rights Act, which is in force may be varied through negotiations between parties when there is a change in circumstances.

(3) Where a party to an award which is in force refuses a variation of the award, the other party may apply to the Tribunal for a variation of the award and the Tribunal, on hearing the parties, shall vary the award if it is satisfied that there has been, since the making of the award, a change in circumstances justifying the variation.

(4) An application made under subsection (3) shall be determined within 60 days of the date of receipt of the application.

(5) An award under sections 56 (5) and 70 (1) shall not contain any provision inconsistent with any enactment, other than Remuneration Regulations, relating to the terms or conditions of, or affecting, employment, and any such provision shall, to the extent of the inconsistency, be void.

[S. 72 amended by s. 24 of Act 5 of 2013 w.e.f. 11 June 2013.]

73. Extension of award to another employer

(1) Subject to subsection (2), where an award which governs the terms and conditions of employment in respect of an employer in an industry is in force, a trade union party to the award may make an application to the Tribunal for an order to extend the award or part thereof to another employer in that industry by whom the trade union is recognised and, on hearing the application, the Tribunal may grant or refuse the order.

(2) The Tribunal shall not make an order under subsection (1), unless it is satisfied that—

- (a) the employer and workers to whom the award is to be extended are engaged in the same activity as that carried out by those parties to the award;

- (b) the extension of the award is necessary or desirable in the interest of uniformity of terms and conditions of employment;
- (c) the terms of the award are not prejudicial to the viability of the enterprise concerned.

(3) Any application made under subsection (1) shall be determined within 60 days of the date of receipt of the application.

74. Extension of award to the whole of the industry

(1) Subject to subsection (2), where an award which governs the terms and conditions of employment in a part of an industry is in force, an employer or a trade union of workers to whom the award applies may make an application to the Tribunal for an order to extend the award to the whole of the industry and, on hearing the application, the Tribunal may grant or refuse the order.

(2) No order shall be made under subsection (1) unless the Tribunal is satisfied that—

- (a) the parties to the award are or represent a substantial proportion of the workers or of the employers in the industry, the workers being workers of the description to which the award applies;
- (b) the employers engaged in the industry are not bound by the award;
- (c) the extension of the award is necessary or desirable in the interest of uniformity of terms and conditions of employment in the industry.

(3) An order under subsection (1) may be subject to such conditions as the Tribunal thinks fit and, in particular, the order may provide that where an employer is observing terms and conditions of employment which are more favourable than the terms and conditions of employment specified in the award, the employer shall continue to be bound by the more favourable terms and conditions of employment.

(4) Where an employer, not a party to the original award and to whom the extension of the award would apply, has reasonable grounds to believe that coverage by the award would be prejudicial to the viability of, or employment, in his enterprise, he may apply to the Tribunal for an order to have his enterprise exempted from all or part of its provisions and, on hearing the application, the Tribunal may grant or refuse the order.

(5) Any application made under subsections (1) and (4) shall be determined within 60 days of the date of receipt of the application.

75. Interpretation of award

(1) Where any question arises as to the interpretation of any order or award made by the Tribunal, or the consistency of an order or an award with any enactment, any party to whom the order or award relates, may apply to the Tribunal for a declaration on the question.

(2) The Tribunal shall, after hearing the parties concerned, make a declaration on the question under subsection (1) within 60 days of the date of receipt of the application.

(3) A declaration made by the Tribunal under subsection (2) shall form part of the original award.

(4) Notwithstanding subsection (1), where a question arises out of a clerical mistake, incidental error or omission, the Tribunal may, on its own motion and without hearing the parties, make a declaration to rectify the mistake, error or omission.

PART VII – STRIKES AND LOCK-OUTS

76. Right to strike and recourse to lock-out

(1) Subject to section 77, every worker has the right to strike and every employer may have recourse to a lock-out, where—

- (a) a labour dispute has been reported under section 64 and no agreement has been reached;
- (b) the parties to the labour dispute have not elected to refer the dispute for voluntary arbitration under section 63;
- (c) a strike ballot has been successfully taken in accordance with section 78; and
- (d) a notice of the strike or lock-out has been given to the Minister in accordance with section 79.

(2) Notwithstanding subsection (1), a worker shall have the right to strike where—

- (a) the strike relates to a major health and safety issue that may jeopardise the life and security of any worker, unless the worker has been transferred forthwith to another workplace which is safe and without risks to health; or
- (b) more than 50 per cent of the workers of an enterprise have not been paid remuneration within the prescribed period,

and the Minister has been notified and remedial action has not been taken by the employer within a reasonable delay fixed by the Minister.

77. Limitation on right to strike or recourse to lock-out

(1) Subject to section 76 (2), a person shall not take part in a strike or a lock-out where the—

- (a) conditions and procedures applicable in pursuance of section 76 (1) have not been followed;
- (b) strike or lock-out occurs whilst—
 - (i) a collective agreement or an award relating to wages and terms and conditions of employment is in force; or
 - (ii) a report of the Pay Research Bureau or a salary commission, by whatever name called, by which the person has opted to be governed, is in force in relation to remuneration or allowances of any kind;

- (c) labour dispute is one which is governed by section 70 (3);
- (d) labour dispute is reported by an individual worker;
- (e) minimum service required under section 81 has not been organised and put into effect;
- (f) Supreme Court makes an order under section 82 (3); or
- (g) Tribunal makes an order under section 86 (3).

(2) Any strike or lock-out in contravention of subsection (1) shall be unlawful.

[S. 77 amended by 78. Strike ballot

(1) Where a decision to have recourse to a strike has been taken under section 69 (6), the trade union of workers party to the dispute shall organise a strike ballot and notify the supervising officer accordingly.

(2) The vote shall be taken by secret ballot and in the presence of the supervising officer.

s. 25 of Act 5 of 2013 w.e.f. 11 June 2013.]

(3) A ballot shall be successful where it obtains an absolute majority of the workers concerned by the dispute in the bargaining unit.

(4) —

(5) The trade union shall keep the ballot papers and election documents in sealed envelopes and in safe custody for a period of at least 6 months from the date of the ballot.

(6) No person shall tamper with a ballot paper, an election document or the seals of any envelope containing such papers.

[S. 78 amended by s. 26 of Act 5 of 2013 w.e.f. 11 June 2013.]

79. Notice of strike or lock-out

Where a strike ballot has been successful or an employer proposes to have recourse to a lock-out, as the case may be, the trade union of workers or the employer shall give not less than 10 days' notice in writing of the commencement of the strike or lock-out to the Minister and to the other party.

79A. Conciliation service by Minister

(1) Notwithstanding the other provisions of this Act, the Minister may, at the request of parties to a labour dispute, provide a conciliation service with a view to conciliating the parties—

- (a) where the dispute has remained unresolved at the level of the Commission and the parties have declined to refer it for voluntary arbitration;
- (b) at any time before or after a lawful strike takes place.

(2) Where the dispute is resolved by an agreement under subsection (1), the agreement shall—

- (a) be recorded in writing;
- (b) be signed by the parties;
- (c) be registered with the supervising officer and the Tribunal; and
- (d) have the effect of a collective agreement as specified in sections 55 and 56.

[S. 79A inserted by s. 27 of Act 5 of 2013 w.e.f. 11 June 2013.]

80. Picketing

(1) Any worker or a group of workers or an officer or a negotiator may, in furtherance of a lawful strike, be present at the entrance of a workplace or near a workplace for the purpose of peacefully communicating information or peacefully persuading any worker to participate in the strike.

(2) No employer shall deny any worker or a group of workers or an officer or a negotiator the right to picketing under subsection (1).

81. Minimum service

(1) Every procedure agreement shall establish, for services specified in the Third Schedule, the number of workers, their occupations and their departments in respect of which a minimum service shall be maintained during any period of strike or lock-out.

(2) Before proceeding on a strike or a lock-out, every trade union or employer concerned, as the case may be, shall ensure that the minimum service specified in the procedure agreement has been organised and put into effect.

82. Acute national crisis

(1) Where the duration of a strike or lock-out which is not unlawful is such that an industry or a service is likely to be seriously affected, or employment is threatened, or where the Prime Minister is of opinion that the continuance of the strike or lock-out may result in a real danger to life, health or personal safety of the whole or part of the population, the Prime Minister may—

- (a) apply to the Tribunal for an order for the establishment of a minimum service unless it is provided for under section 81; or
- (b) apply to the Supreme Court for an order prohibiting the continuation of the strike or lock-out.

(2) Where the Prime Minister makes an application under subsection (1) (a), the Tribunal shall, within 48 hours, make an order on the number and occupations and departments necessary for the maintenance of the minimum service and the order shall be complied with forthwith.

(3) Where the Supreme Court makes an order under subsection (1) (b), it shall refer the parties to the labour dispute giving rise to the strike or lock-out to the Tribunal for arbitration.

(4) Where a labour dispute is referred to the Tribunal under subsection (3), the Tribunal shall hear the case *de die in diem* and make an award within 30 days of the referral.

83. Legal effect of strike on contract of employment

(1) The contract of employment of a worker shall not be deemed to be broken by reason of his participation in a strike which is not unlawful.

(2) A worker shall not be entitled to any remuneration while he is on strike unless otherwise agreed by the parties.

84. Civil and criminal immunity

Any act done by a person in furtherance of a labour dispute in conformity with this Act shall not render that person criminally or civilly liable on the ground only that the act—

- (a) may prevent or has prevented any other person from performing a contract;
- (b) is an interference with the trade or employment of any other person; or
- (c) is an interference with the right of another person to dispose of his capital or labour as he so wishes.

PART VIII – EMPLOYMENT RELATIONS INSTITUTIONS

Sub-Part A – Employment Relations Tribunal

85. Establishment of Employment Relations Tribunal

(1) The Permanent Arbitration Tribunal established under section 39 of the repealed Industrial Relations Act is deemed to have been established under this Act and is renamed as the Employment Relations Tribunal.

(2) The Tribunal shall be reconstituted and shall consist of—

- (a) a President and 2 Vice-presidents whose offices shall be public offices;
- (b) not more than 10 other members, to be appointed for a period of 3 years by the Minister, after consultation with the most representative organisations of workers and employers;
- (c) not more than 6 independent members, to be appointed for a period of 3 years by the Minister.

(3) A person shall not be appointed President or Vice-president of the Tribunal unless he is qualified for appointment as a Judge of the Supreme Court.

(4) Part I and, where appropriate, Part IV of the Second Schedule shall apply to the Tribunal and its members.

[S. 85 amended by s. 28 of Act 5 of 2013 w.e.f. 11 June 2013.]

86. Functions of Tribunal

(1) The Tribunal shall have such functions as are specified in this Act and the Employment Rights Act or as may be prescribed.

(2) Without prejudice to the generality of subsection (1), the Tribunal shall—

- (a) make awards;
- (b) make orders in relation to recognition, check-off agreement, agency shop order, minimum service and any other issues under this Act;
- (ba) make awards and orders under the Employment Rights Act in relation to the reduction of workforce or closing down of enterprise;
- (c) interpret collective agreements, awards and orders; and
- (d) publish, on or before 31 March of every year, an annual report providing summaries of cases and rulings.

(3) Where any party to a matter relating to terms and conditions of employment fails to follow the procedures and remedies available under a procedure agreement or under this Act with regard to an existing or threatened strike or lock-out arising out of a labour dispute whether or not reported under section 64 and if the dispute has been so reported, whether or not the report has been rejected under section 65, the other party may apply to the Tribunal and the Tribunal may make an order—

- (a) requiring the parties to make use of the procedures and remedies available under the procedure agreement or under this Act; and
- (b) declaring any existing or threatened strike or lock-out to be unlawful.

(4) A party shall comply with an order under subsection (3) forthwith.

[S. 86 amended by s. 29 of Act 5 of 2013 w.e.f. 11 June 2013.]

Sub-Part B – Commission for Conciliation and Mediation

87. Establishment of Commission

(1) The Industrial Relations Commission established under section 41 of the repealed Industrial Relations Act is deemed to have been established under this Act and is renamed as the Commission for Conciliation and Mediation.

(2) The Commission shall be reconstituted and shall consist of—

- (a) a President;
- (b) a Vice-president; and
- (c) not more than 6 other members, to be appointed by the Minister for such period as he may determine, after consultation with the most representative organisations of workers and employers; and

(d) not more than 2 independent members, to be appointed by the Minister for such period as he may determine.

(3) The President and the Vice-president shall be appointed by the Minister on such terms and for such period as he may determine.

(4) Part II and, where appropriate, Part IV of the Second Schedule shall apply to the Commission and its members.

88. Functions of Commission

(1) The Commission shall have such functions as are specified in this Act or as may be prescribed.

(2) Without prejudice to the generality of subsection (1), the Commission shall—

- (a) provide a conciliation or mediation service on any labour dispute referred to it under this Act;
- (b) investigate into any labour dispute reported to it;
- (c) enquire into and report on any question referred to it under section 89; and
- (d) provide a conciliation or mediation service for the assistance of workers, trade unions and employers.

(3) The Commission may—

- (a) advise a party to a labour dispute on procedures to be followed in accordance with this Act;
- (b) publish guidelines in relation to any matter dealt with in this Act; and
- (c) conduct research into matters relevant to its functions and publish reports on such research.

(4) The Commission may provide workers, trade unions, group of trade unions, joint negotiating panels or employers with advice relating to the primary objects of this Act, which includes—

- (a) establishing collective bargaining structures;
- (b) creating deadlock-breaking mechanisms;
- (c) designing, establishing and functioning of workplace councils;
- (d) preventing and resolving disputes and grievances;
- (e) setting up of disciplinary procedures;
- (f) addressing industrial relations issues relating to the restructuring of organisations.

89. Reference by Minister

(1) The Minister may refer to the Commission any question relating to employment relations generally or to employment relations in any particular industry, and the Commission shall enquire into and report upon any question so referred.

(2) The report of the Commission on any question referred to it under subsection (1) may be published in such manner as the Minister may, after consultation with the Commission, determine.

Sub-Part C – National Remuneration Board

90. Establishment and functions of National Remuneration Board

(1) The National Remuneration Board established under section 45 of the repealed Industrial Relations Act shall be deemed to have been established under this Act.

(2) The Board shall be reconstituted and shall consist of—

- (a) a Chairperson;
- (b) a Vice-chairperson;
- (c) a representative of the Ministry responsible for the subject of economic development;
- (d) a representative of the Ministry responsible for the subject of industry;
- (e) 2 representatives of workers;
- (f) 2 representatives of employers;
- (g) 2 independent members.

(3) The Chairperson and the Vice-chairperson shall be public officers.

(4) The independent members shall be appointed by the Minister on such terms and for such period as he may determine.

(5) The representatives of workers and employers shall be appointed by the Minister for such period, after consultation with the most representative organisations of workers and employers.

(6) Part III and, where appropriate, Part IV of the Second Schedule shall apply to the Board and its members.

(7) The Board shall have such functions as are specified in this Act or as may be prescribed.

(8) This Sub-part shall not apply to the public service.

91. Reference to Board

(1) Where the Minister is satisfied that no arrangements exist in an industry for the effective regulation of wages and conditions of employment by collective agreements or otherwise, he may refer that matter to the Board.

(2) Without prejudice to subsection (1), the Minister may, on request made by a joint consultative or negotiating body composed of representatives of a substantial number of workers and of employers in an industry not covered by a collective agreement, refer any matter concerning minimum remuneration and conditions of employment in that industry to the Board.

(3) Upon a reference under this section, the Board shall submit to the Minister a recommendation on the minimum remuneration and specific terms and conditions of employment.

92. Procedure of Board

(1) Before submitting any recommendation to the Minister, the Board shall—

- (a) make such investigations as it thinks fit;
- (b) publish in the *Gazette* and in at least 3 daily newspapers a notice specifying that copies of the recommendation it proposes to make may be obtained at the office of the Board and the time, which shall not be more than 14 days from the date of the last publication, within which written representations with respect to the proposed recommendation may be sent to the Board;
- (c) consider any written representations made within the time specified in the notice;
- (d) make such further enquiries or give such further consideration to the matter as it thinks fit.

(2) The Board shall, not later than 28 days after the last publication of the notice under subsection (1) (b), submit its recommendation to the Minister, either with or without amendments to the proposed recommendation as it thinks fit.

93. Remuneration Regulations

(1) Where the Minister receives a recommendation under section 92, he may—

- (a) make regulations for implementing the recommendation;
- (b) reject the recommendation and—
 - (i) make no regulations; or
 - (ii) make such regulations as he thinks fit; or
- (c) refer the recommendation back to the Board with a request to reconsider the recommendation in the light of any observations he may make.

(2) Where the Minister refers a recommendation back to the Board under subsection (1), the Board shall reconsider the recommendation and make a fresh recommendation to the Minister and, on submission of a fresh recommendation by the Board, the Minister may—

- (a) make regulations for implementing the recommendation; or
- (b) reject the fresh recommendation and—
 - (i) make no regulations; or
 - (ii) make such regulations as he thinks fit.

(3) The Minister shall cause regulations made under this section to be published in the *Gazette* and in at least 3 daily newspapers.

(4) Any regulations made under this section shall take effect from a date which shall be specified in the regulations and different dates may be fixed.

94. Power to make regulations to reflect payment of additional remuneration

(1) Notwithstanding sections 91 to 93, the Minister may, following the enactment of any law providing for the payment of additional remuneration, make such regulations as may be necessary in order to reflect any such additional remuneration in the salary, wage or other remuneration payable under any Remuneration Regulations governing any category of employees, to whom the additional remuneration is payable.

(2) Regulations made under subsection (1) may be by way of regulations amending regulations made to implement any Remuneration Regulations.

95. Effect of Remuneration Regulations

(1) Remuneration Regulations shall be binding on the employers and workers and shall not be subject to abatement by them by individual agreement, except by collective agreement under conditions expressly provided for under this Act.

(1A) Notwithstanding subsection (1), where, in an enterprise or industry, there is a collective agreement which covers or refers to matters specified in the relevant Remuneration Regulations, those Remuneration Regulations shall not apply to that enterprise or industry, except for provisions in relation to matters not covered or referred to in the collective agreement.

(2) An employer who contravenes any Remuneration Regulation shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees.

(3) Any prosecution for an offence under subsection (2) shall take place before the Industrial Court which shall have jurisdiction to hear and determine any charge laid under that subsection.

(4) It shall be a defence in any proceedings under subsection (2) for an employer to satisfy the Industrial Court that—

- (a) he has used every diligence to ensure compliance with this Subpart;
- (b) the offence was committed—
 - (i) without his knowledge or consent; or
 - (ii) by reason of a *bona fide* mistake in the keeping of his records; and
- (c) the consequences of the ignorance or mistake have been rectified.

(5) Where an employer is convicted of an offence under subsection (2) which consists in the payment to a worker of a lesser remuneration than the minimum remuneration specified in Remuneration Regulations, the Industrial

Court may, without prejudice to any penalty which may be imposed under subsection (2), order the employer to pay to the worker the difference between the amount which ought to have been paid as remuneration and the amount actually paid.

(6) Notwithstanding subsection (5), the Industrial Court shall have jurisdiction to hear and determine any civil claim arising out of any Remuneration Regulations.

[S. 95 amended by s. 30 of Act 5 of 2013 w.e.f. 11 June 2013.]

96. Employment of disabled or incapacitated person

(1) The supervising officer may, on application made to him, grant a permit, subject to such conditions as he thinks fit, authorising the employment of a person at less than the minimum remuneration prescribed in Remuneration Regulations or under a collective agreement where that person, by reason of infirmity or physical incapacity, is incapable of earning the minimum remuneration specified in those regulations or collective agreement.

(2) Where a permit under subsection (1) is in force, the remuneration authorised to be paid to the worker under the permit shall, subject to compliance with the conditions under which the permit is granted, be deemed to be the minimum remuneration in relation to the worker.

(3) Any person who is aggrieved by the decision of the supervising officer to grant or to refuse to grant a permit under subsection (1) may make an application to the Tribunal to reverse the decision and, on hearing the application, the Tribunal may make such order as it thinks fit.

Sub-Part D – General

97. Principles to be applied by Tribunal, Commission and Board

The Tribunal, the Commission or the Board may, in the exercise of their functions in relation to a matter before them under this Act have regard, *inter alia*, to the—

- (a) interests of the persons immediately concerned and the community as a whole;
- (b) need to promote decent work and decent living;
- (c) need to promote gender equality and to fix wages on the basis of job content;
- (d) principles of natural justice;
- (e) need for Mauritius to maintain a favourable balance of trade and balance of payments;
- (f) need to ensure the continued ability of the Government to finance development programmes and recurrent expenditure in the public sector;
- (g) need to increase the rate of economic growth and to protect employment and to provide greater employment opportunities;

- (h) need to preserve and promote the competitive position of local products in overseas market;
- (i) capacity to pay of enterprises;
- (j) need to develop schemes for payment by results and, as far as possible, to relate increased remuneration to increased labour productivity;
- (k) need to prevent gains in the wages of workers from being adversely affected by price increases;
- (l) need to establish and maintain reasonable differentials in rewards between different categories of skills and levels of responsibility;
- (m) need to maintain a fair relation between the incomes of different sectors in the community; and
- (n) principles and best practices of good employment relations.

Sub-Part E – Intervention by Attorney-General

98. Intervention by Attorney-General

(1) The Attorney-General may intervene in any matter before the Tribunal, the Commission or the Board—

- (a) for the purposes of giving such assistance as he thinks fit, if it appears to him that some question of public importance or affecting the public interest is at issue;
- (b) at the request of any of them in respect of a question referred to in paragraph (a).

(2) The Attorney-General may, on intervention made under this section, tender such evidence and make such submissions as he thinks fit with respect to the matter before the Tribunal, the Commission or the Board.

(3) No intervention of the Attorney-General shall be taken to cause the Attorney-General to become a party to the matter before the Tribunal and, accordingly, no order or award shall be made against the Attorney-General in any matter.

PART IX – APPLICATION OF ACT TO RODRIGUES

99. Establishment of Rodrigues Commission for Conciliation and Mediation

(1) There is established for the purposes of this Act a Rodrigues Commission for Conciliation and Mediation which shall consist of—

- (a) a President, who shall be appointed by the Commissioner responsible for labour and employment;
- (b) one representative of workers' organisation and one representative of employers' organisation who shall be appointed by the Commissioner responsible for the subject of labour and employment for such period as he may determine, after consultation with the most representative organisation of workers and employers, as the case may be;

- (c) one independent member who shall be appointed by the Commissioner responsible for the subject of labour and employment for such period as he may determine.

(2) Parts VI, VII and VIII and Part IV of the Second Schedule shall apply, where appropriate, to the Rodrigues Commission for Conciliation and Mediation in relation to any labour dispute arising in Rodrigues.

(3) The functions of the President of the Commission under Part VI shall, in Rodrigues, be exercised by the President of the Rodrigues Commission for Conciliation and Mediation.

(4) Subject to subsection (5), the functions exercised by the supervising officer responsible for the subject of labour and industrial relations under Part VI shall, where appropriate, be exercised by the Departmental Head of the Commission responsible for the subject of labour and employment.

(5) The functions of the supervising officer of the Ministry responsible for the subject of civil service affairs under Part VI shall, where appropriate, be exercised by the Departmental Head of the Commission responsible for the subject of civil service affairs.

[S. 99 amended by s. 31 of Act 5 of 2013 w.e.f. 11 June 2013.]

PART X – OFFENCES AND PENALTIES

100. Prevention of intimidation

(1) Without prejudice to the provisions of the Public Gatherings Act, but subject to section 101, any person acting on his own behalf or on behalf of a trade union may, in contemplation or furtherance of an industrial dispute, attend at or near a place where a person works or carries on business, either alone or in reasonable numbers and at a reasonable time for the purposes of peacefully obtaining or communicating information, or of peacefully persuading any other person to work or abstain from working.

(2) Any person who, without lawful excuse, attends at or near a place where a person works or carries on business, otherwise than in accordance with the conditions specified in subsection (1) or for a purpose other than one that is specified in subsection (1), shall commit an offence.

(3) Any person who, with a view to compelling any worker to abstain from doing or to do any act which that worker has a legal right to do or abstain from doing, without lawful authority or excuse—

- (a) uses violence on or intimidates that worker or his wife or children or damages his property;
- (b) persistently follows that worker about from place to place;
- (c) hides any tools, clothes or other property owned or used by that worker or deprives him of, or hinders him in, the use thereof;
- (d) watches or besets the house or other place where that worker resides, or works or carries on business, or happens to be, or the approach to such house or place; or

- (e) follows that worker with 2 or more persons in a disorderly manner in or through any street or road,

shall commit an offence, and shall, on conviction, be liable to a fine not exceeding 1,000 rupees and to imprisonment for a term not exceeding 3 months.

[S. 100 amended by s. 32 of Act 5 of 2013 w.e.f. 11 June 2013.]

101. Calling and financially assisting unlawful strikes or lock outs

(1) Any person who in connection with any unlawful strike or lock-out calls, institutes, organises, carries on, procures or incites other persons to take part in the strike or lock-out shall commit an offence.

(2) Any person who, for the purposes of promoting or maintaining an unlawful strike or lock-out, directly or indirectly gives financial assistance—

- (a) to a trade union of workers which calls, organises or carries on the strike or to any worker who takes part in or assists in the strike; or
- (b) to an employer who institutes, takes part in or assists in the lock-out,

shall commit an offence.

(3) Any trade union, worker, employer or other person who receives financial assistance for the purpose of promoting or supporting an unlawful strike or lock-out, shall commit an offence.

(4) Where an officer of a trade union commits an offence with the authority of the trade union, every person who at the time of the offence was an officer of the trade union shall likewise commit that offence, unless he proves that the offence was committed without his knowledge or consent and that he exercised all reasonable diligence to prevent the commission of the offence.

(5) Where a person who commits an offence under this section was at the time of the offence, an officer of a trade union, it shall be presumed, until the contrary is proved, that he committed the offence with the authority of the trade union.

(6) Any person who commits an offence under this section shall, on conviction be liable to a fine not exceeding 25,000 rupees.

102. Offences by trade unions and officers

(1) Any trade union which, or person other than the employer who, contravenes sections 10, 14 (2), (5), (6), (7), 18 (1), 19 (1), (3), 20 (3), 21 (1), 22, 24 (6), 25 (1), (2), 26 (1), (2), 27 (4) or 43 (1) shall commit an offence.

(2) Any officer who contravenes section 5 (11), 7 (9), 11 (2), 23 (1), (4), 24 (1), (5) or 28 (3) shall commit an offence.

(3) Where a trade union commits an offence under subsection (1), the officer responsible under the rules of the trade union for complying with the provision of this Act or of the Second Schedule or of the regulation which has been contravened by the trade union shall commit an offence, unless he proves that the offence was committed without his knowledge or consent and that he exercised all reasonable diligence to prevent the commission of the offence.

(4) A worker who participates in an unlawful strike in breach of section 77 shall commit an offence.

(5) Any trade union, any officer or person who commits an offence under this section shall, on conviction, be liable to a fine not exceeding 10,000 rupees.

[S. 102 amended by s. 33 of Act 5 of 2013 w.e.f. 11 June 2013.]

103. Other offences

(1) Any person who contravenes section 19 (2), 30, 41 (7), 51 (11), 53 (6), 54 (3), 78 (6) or 86 (4) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 25,000 rupees.

(2) Any person who commits an offence specified in the Second Schedule shall, on conviction, be liable to a fine not exceeding 25,000 rupees.

[S. 103 amended by s. 34 of Act 5 of 2013 w.e.f. 11 June 2013.]

104. Offence by employers

Any employer who contravenes section 29 (3), 30, 40 (8), 43 (2), 44 (3), 45 (b), (d), (e) (ii), 50 (2), (3), (4), 56 (8) or 80 (2) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees.

[S. 104 amended by s. 35 of Act 5 of 2013 w.e.f. 11 June 2013.]

PART XI – MISCELLANEOUS

105. Jurisdiction

(1) Notwithstanding section 114 of the Courts Act and section 72 of the District and Intermediate Courts (Criminal Jurisdiction) Act, but subject to section 95, a Magistrate—

- (a) shall have jurisdiction to try any offence under this Act; and
- (b) may impose any penalty provided by this Act.

(2) Subject to section 95, the Intermediate Court shall have jurisdiction to try an offence under this Act.

(3) No order, award, recommendation or other decision made by the Tribunal, Commission or the Board, outside the delays provided for in this Act, may be challenged or declared invalid for such reason.

106. Regulations

(1) The Minister may make such regulations as he thinks fit for the purposes of this Act.

(2) Any regulations made under subsection (1) may provide for the—

- (a) inspection of registers and documents kept by the Registrar and the making of copies of any entries therein;
- (b) records to be kept by trade unions;
- (c) levying of fees and charges; and
- (d) amendment of the Schedules.

107. —

108. Savings and transitional provisions

(1) Subject to subsection (2), every trade union registered under the repealed Industrial Relations Act immediately before the commencement of this Act shall be deemed to have been registered under this Act.

(2) —

(3) Any trade union of workers which had recognition immediately before the commencement of this Act shall be deemed to have obtained recognition under this Act.

(4) Any of the following agreements entered into or orders made immediately before the commencement of this Act shall be deemed to have been made for the purposes of this Act—

- (a) a check-off agreement or order;
- (b) an agency shop agreement or order;
- (c) a procedure agreement; or
- (d) a collective agreement.

(5) —

(6) Where a trade union or a joint negotiating panel has obtained recognition from an employer before the commencement of this Act and no procedure agreement is in force, the employer and the trade union or the joint negotiating panel, as the case may be, shall, within 90 days of the commencement of this Act, draw up and sign a procedure agreement.

(7) Every federation comprising trade unions and federations of trade unions existing before the commencement of this Act shall, on application made by it, be entitled to be registered as a confederation.

(8) Any application, complaint or appeal made under the repealed Act before the commencement of this Act shall be dealt with in accordance with this Act.

(9) Any industrial dispute reported under the repealed Act shall—

- (a) where the Minister has not yet considered the dispute, be taken to be a labour dispute under this Act and be referred to the President of the Commission under section 64;
- (b) where it has been rejected by the Minister, be deemed to have been rejected by the President of the Commission under this Act, and the parties may lodge an appeal to the Tribunal under section 66 of this Act, and the dispute shall be dealt with as if it were a labour dispute made under this Act;
- (c) where the dispute has not been rejected, be dealt with by the Commission under section 69 of this Act;
- (d) where the Minister has made proposals or recommendations to the parties, or referred the parties or the disputes to the Industrial Relations Commission under the repealed Act, the dispute shall be dealt with by the Commission under section 69 of this Act.

(10) Any proceedings pending immediately before the commencement of this Act before the Permanent Arbitration Tribunal and the Civil Service Arbitration Tribunal shall be deemed to be proceedings pending under this Act and may be proceeded with before the Tribunal.

(11) Any investigation, inquiry or other proceedings pending immediately before the commencement of this Act before the Industrial Relations Commission and the Civil Service Industrial Relations Commission shall be dealt with by the Commission in accordance with this Act.

(12) For the smooth transition from the repealed enactment to the operation of this Act, the delay of 30 days mentioned in section 69 (3) and (5) of this Act shall be 90 days instead of 30 days.

(13) Any investigation, inquiry or other proceedings pending immediately before the commencement of this Act before the National Remuneration Board shall, as from the date of commencement of this Act, be taken up and determined by the Board established under this Act, as if the investigation, inquiry or other proceedings had been started under this Act.

(14) Any application relating to a claim for negotiating rights pending before the Commission immediately before the commencement of this Act shall be transferred to the Tribunal to be dealt with under section 38 as if it were an application made under that section, and the Tribunal shall notwithstanding section 38 (4), determine the application within 90 days of the commencement of this Act, unless the Tribunal, for exceptional circumstances, extends the delay.

(15) (a) Any person appointed President and Vice-President of the Permanent Arbitration Tribunal and in post immediately before the commencement of this Act, shall be deemed to have been appointed President and Vice-President of the Tribunal on the same terms and conditions as obtained before the commencement of this Act and without any break in his service.

(b) The President of the Tribunal established under this Act shall be entitled to such allowances as he may have been drawing where he has been appointed President of the Civil Service Arbitration Tribunal under section 100 (2) of the repealed Act.

(16) Any person appointed Chairman of the Industrial Relations Commission and in post immediately before the commencement of this Act, shall be deemed to have been appointed President of the Commission on the same terms and conditions as obtained before the commencement of this Act and without any break in his contract of service.

(17) Any person appointed Chairman or Vice-Chairman of the National Remuneration Board and in post immediately before the commencement of this Act, shall, notwithstanding section 90 (3), continue to be Chairperson or Vice-Chairperson, as the case may be, of the Board on the same terms and conditions until the appointment of the Chairperson and Vice-Chairperson under section 90 (3), following which appointment the Chairman and Vice-Chairman of the Board immediately before the commencement of this Act shall be entitled to such compensation as provided in their contract of employment.

(18) Parties to a procedure agreement shall, within a period of 3 months from the commencement of this Act, amend such agreement to provide for matters specified in section 52.

(19) Any application made to an employer for recognition of a trade union or group of trade unions before the commencement of this Act shall be dealt with in accordance with this Act.

(20) Any proceedings pending before the Tribunal before the commencement of this Act, in relation to an application for the recognition of a trade union or group of trade unions, shall be dealt with in accordance with this Act.

(21) Subject to subsection (4), the validity of the recognition of a trade union of workers which obtained recognition before the commencement of this Act shall remain unaffected.

(22) (a) (i) Where 2 or more trade unions are already recognised in an enterprise or industry as bargaining agents only and the trade unions refuse to form a joint negotiating panel, the employer or any of the trade unions may make an application to the Tribunal, within 12 months of the commencement of this Act, for a determination as to which trade union the workers in the bargaining unit wish to be their bargaining agent.

(ii) Where 2 or more trade unions are already recognised in an enterprise or industry, and one of the trade unions has recognition as a sole bargaining agent, the employer or any of the trade unions may make an application to the Tribunal, within 12 months of the commencement of this Act, for a determination as to which trade union the workers in the bargaining unit wish to be their bargaining agent.

(b) For the purpose of determining an application under paragraph (a), the Tribunal shall organise and supervise a secret ballot in the bargaining unit in order to determine which trade union the workers in that bargaining unit wish to be their bargaining agent.

(23) Where this Act does not make provision for the necessary transition from the repealed Act to this Act, the Minister may make necessary regulations for such transition.

109. —

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FIRST SCHEDULE

[Section 11]

**GUIDELINES FOR MATTERS TO BE PROVIDED FOR IN
THE RULES OF A TRADE UNION**

CONSTITUTION AND MANAGEMENT

1. The name of the trade union and the address of its registered office.
2. The objects of the trade union.
3. The election and the re-election of the Managing Committee at intervals to be determined, the function of the office bearers and the manner in which its members may be removed, including the provision for appeals.
4. The election or appointment of the officers of the trade union and the manner in which they may be removed, including the provision for appeals.
5. The powers and duties of the Managing Committee and of each of the officers of the trade union.
6. (a) The manner in which any branch of the trade union shall be formed.
(b) The management of the branch and the convening and conduct of meetings for the transaction of the business of the branch.
7. (a) The convening and conduct of meetings for the transaction of the business of the trade union, including the quorum required and the keeping of the minutes thereof.
(b) The manner in which decisions shall be taken.
8. The circumstances in which and the persons by whom instructions may be given to members of the trade union for any kind of industrial action (including a strike or lock-out).
9. The eligibility of members to vote in any election or ballot.
10. (a) The manner in which elections shall be held or ballots shall be taken for any purpose, including provision for vote by proxy.
(b) The procedure for the counting and scrutiny of votes and ballot papers and the procedure for the declaration or notification of the result thereof.
11. In the case of a federation or a confederation, the circumstances in which the federation or confederation may negotiate and may enter into agreements on behalf of its members.
12. The procedure to be followed for the amendment of the rules and change of name.
13. The circumstances and the manner in which the trade union may be amalgamated or dissolved.

MEMBERS OF THE TRADE UNION

14. The conditions of eligibility for membership and the procedure for dealing with applications for membership, which shall include provision for appeals against decisions of the persons responsible for determining such applications.
15. (a) Any contribution to be paid in respect of admission or re-admission and the amount of trade union fees or any other fees payable.

- (b) The procedure and penalties in case of non-payment of trade union fees and other fees.

16 (a) The descriptions of conduct in respect of which disciplinary action may be taken against any of its members or officers.

- (b) The procedure for taking disciplinary action, including provision for appeals.

- (c) The nature of the disciplinary sanction (whether suspension, expulsion or otherwise) which can be taken in respect of each such conduct.

17. The circumstances in which and the procedure, other than expulsion by way of disciplinary action, membership may be terminated and the procedure to be followed.

18. The procedure for inquiring into any complaint made by a member in relation to the non-compliance with the rules.

PROPERTY AND FUNDS OF THE TRADE UNION

19. Provisions for bank transactions and investment of funds.

20. The purposes for which and the manner in which funds shall be applied.

21. Provisions for acquiring, controlling and disposal of assets, including the circumstances in which any financial benefits arising out of the disposal of assets, shall be made available to members and the amounts of those benefits.

22. (a) The keeping of a register of members showing the names, ID number, addresses and payments made by the members.

- (b) The keeping and preparation of proper accounting records.

- (c) The inspection of the register of members and of the accounts.

23. The amount of the security to be furnished by officers whose office is connected with the collection, receipt and management of money on behalf of the trade union.

24. The procedure for the distribution of property and funds in the event of dissolution.

25. The rules governing special fund, if any.

[First Sch. amended by GN 26 of 2009 w.e.f. 2 February 2009.]

SECOND SCHEDULE

[Sections 85, 87, and 90]

EMPLOYMENT RELATIONS TRIBUNAL, COMMISSION FOR CONCILIATION AND MEDIATION AND NATIONAL REMUNERATION BOARD

PART I

EMPLOYMENT RELATIONS TRIBUNAL ORGANISATION AND SITTINGS OF THE TRIBUNAL

1. The Tribunal shall have an official seal.

2. The Tribunal may sit—

- (a) in one or more divisions, as may be necessary;
- (b) at any time and at any place in Mauritius.

3. (1) (a) Subject to paragraph (aa), the jurisdiction of the Tribunal shall be exercised by any division of the Tribunal.

(aa) In a matter relating to reduction of workforce or closing down of enterprise, the jurisdiction of the Employment Promotion and Protection Division established under section 39A of the Employment Rights Act shall be exercised by the Tribunal.

(b) Subject to section 39A of the Employment Rights Act, each division of the Tribunal shall—

- (i) be presided over by the President or Vice-president of the Tribunal; and
- (ii) consist of the presiding member and 3 other members, namely a representative from workers' organisation, a representative from employers' organisation and an independent member.

(2) Where, in the course of any proceedings before the Tribunal, a vacancy arises in relation to one of the members, other than the President or the Vice-president, the remaining 2 members of the Tribunal may, where the parties to the proceedings agree, continue and conclude those proceedings notwithstanding the vacancy.

(3) Where the Tribunal proceeds in accordance with subparagraph (2), no act, proceedings or determination of the Tribunal shall be called in question or invalidated by a Court of law by reason of the vacancy.

4. (1) Where it appears to the President or Vice-president to be expedient to do so, he may appoint 2 assessors to assist the members of the Tribunal in the determination of any particular reference or appeal before the Tribunal, one from a panel of not less than 6 persons appointed by the Minister after consultation with representatives of employers as he considers appropriate, and one from a panel of not less than 6 persons appointed by the Minister after consultation with representatives of workers as he considers appropriate.

(2) Where, in the course of any proceedings before the Tribunal, an assessor appointed under subparagraph (1) is absent, the Tribunal may continue and conclude those proceedings notwithstanding the absence of the assessor.

5. Any award or decision of the Tribunal shall be that of the members of the Tribunal and, in the event of any disagreement—

- (a) of the majority of such members, if there are 3; and
- (b) of the President or Vice-president, as the case may be, where there are only 2 members.

PRACTICE AND PROCEDURE OF THE TRIBUNAL

6. (1) The Tribunal shall exercise its jurisdiction in any proceedings, except for proceedings relating to a reduction of workforce or closing down of enterprise under the Employment Rights Act, in such manner as to enable the parties to the proceedings to avail themselves of the conciliation and mediation services of the Commission for Conciliation and Mediation, or of other possibilities for conciliation and mediation.

- (2) The Tribunal may in relation to any dispute or other matter before it—
- (a) remit the matter, subject to such conditions as it may determine, to the parties for further consideration by them with a view to settling or limiting the several issues in dispute;
 - (b) dismiss any matter or refrain from further hearing or from determining the matter, if it appears to the Tribunal that the matter is trivial, or that further proceedings are unnecessary, or undesirable in the public interest;
 - (c) hear and determine the matter in the absence of any party who has been duly summoned to appear before the Tribunal and has failed to do so;
 - (d) order any person to be joined as a party to the proceedings who, in the opinion of the Tribunal—
 - (i) may be affected by an order or award; or
 - (ii) ought in the interests of justice to be joined as a party,and to do so on such terms and conditions as the Tribunal may decide;
 - (e) generally give all such directions and make all such orders, whether interim or permanent, conditional or unconditional, and do all such things as are necessary or expedient for the expeditious determination of that matter.

7. (1) Subject to subparagraph (2), the Tribunal may not order the payment of costs or expenses by any party to proceedings before the Tribunal.

(2) Where, in the opinion of the Tribunal—

- (a) any proceedings before the Tribunal were unnecessary, improper or vexatious; or
- (b) there has been unreasonable delay or other unreasonable conduct in bringing or conducting the proceedings,

the Tribunal may order a party to the proceedings to pay to any other party thereto such amount as it may specify towards the costs or expenses incurred by the other party in connection with the proceedings.

7A. (1) The Tribunal shall have the power to issue execution of its orders.

(2) Every order of the Tribunal shall be enforced in the same manner as an order of the Industrial Court.

PART II

COMMISSION FOR CONCILIATION AND MEDIATION

ORGANISATION AND SITTINGS OF THE COMMISSION

8. (1) The Commission may sit—

- (a) in one or more divisions as may be necessary;
- (b) at any time and at any place in Mauritius.

(2) The jurisdiction of the Commission shall be exercised by a division of the Commission.

(3) Every division of the Commission shall—

- (a) be presided over by the President or Vice-president; and
- (b) consist of the presiding member and 3 other members, namely a representative from a workers' organisation, a representative from an employers' organisation and an independent member.

PART III

NATIONAL REMUNERATION BOARD

ORGANISATION AND SITTING OF THE BOARD

9. (1) The Board may sit—

- (a) in one or 2 divisions as may be necessary;
- (b) at any time and at any place in Mauritius.

(2) The jurisdiction of the Board shall be exercised by a division of the Board.

(3) Every division of the Board shall—

- (a) be presided over by the Chairperson or Vice-chairperson of the Board; and
- (b) consist of the presiding member and 4 other members.

PART IV

PROVISIONS APPLICABLE TO TRIBUNAL, COMMISSION AND BOARD MEMBERSHIP

10. (1) A member, other than the President or Vice-president of the Tribunal or the Chairperson or Vice-chairperson of the Board—

- (a) shall be appointed from among persons with proven experience in the field of human resource management, employment relations, labour economics, industry, commerce and finance; and
- (b) shall hold and vacate office in accordance with the terms of his letter of appointment.

(2) A person shall not be qualified to be appointed as a member—

- (a) where he is a member of, or a candidate for election to, the National Assembly or any local authority; or
- (b) in the case of the Tribunal established under section 85 or the Commission established under section 87, where he is a public officer, a local government officer or an officer of a trade union.

(3) Previous membership shall not affect eligibility for re-appointment.

11. A member may, at any time, resign from his office by notice in writing addressed to the Minister.

12. The Minister may remove a member, other than the President or Vice-president of the Tribunal or the Chairperson or Vice-chairperson of the Board, from office.

13. The appointment of office of every member shall be notified in the *Gazette*.

14. (1) Notwithstanding that the term of his office has expired, a member may, with permission given in accordance with subparagraph (2), continue in office for so long after the end of his term as may be necessary to enable him to complete the performance of any duty that was commenced before his term of office expired.

(2) For the purposes of this paragraph, permission may be given—

- (a) in the case of the President or Vice-president of the Tribunal or the Chairperson or Vice-chairperson of the Board, by the Public Service Commission;
- (b) in the case of the President or Vice-president of the Commission, by the Minister;
- (c) in the case of any other member, by the President or Vice-president of the Tribunal, the President or Vice-president of the Commission, or the Chairperson or Vice-chairperson of the Board, as the case may be.

PROCEEDINGS OF TRIBUNAL, COMMISSION AND BOARD

15. The Tribunal, the Commission or the Board may conduct its proceedings in a manner it deems appropriate in order to determine any matter before it fairly and promptly and may deal with the substantial merits of such matter with a minimum of legal formalities.

16. A member of the Tribunal, the Commission or the Board who has a direct or indirect interest in any matter, which is the subject of proceedings before it, shall not take part in those proceedings.

17. The Tribunal, the Commission or the Board may appoint committees from amongst its members to examine and report on any matter connected with its functions under this Act.

18. (1) In any conciliation or mediation proceedings at the Commission, a party to a labour dispute may, in the case of a worker, be assisted by a co-worker or by an officer of the trade union of workers or a negotiator or in the case of management, by a representative of management or by such other persons at the discretion of the Commission.

(2) In any proceedings before the Tribunal, a party to a dispute may be assisted or represented by a law practitioner or an officer of his trade union or by such other persons at the discretion of the Tribunal.

19. Where a party fails to appear in person or to be represented at a conciliation, mediation or arbitration proceedings, the President or Vice-president—

- (a) may dismiss the matter;
- (b) continue with the proceedings in the absence of that party; or
- (c) adjourn the proceedings to a later date.

20. (1) The Tribunal, the Commission and the Board shall not be bound by the law of evidence in force in Mauritius.

(2) Where any witness objects to answering any question or to producing any relevant document on the ground that it will tend to incriminate him or on any other grounds which he can lawfully raise in civil or criminal proceedings,

he shall not be required to answer the question or to produce the document, and shall not be liable to any penalty for refusing to do so.

(3) For the purpose of dealing with any matter before it, the Tribunal, the Commission or the Board may, by order, require any person to—

- (a) furnish, in writing or otherwise, such particulars in relation to any matter as may be required;
- (b) attend before it and to give evidence on oath or otherwise; or
- (c) attend before it and produce any document.

(4) Any order made under subparagraph (3) may include a requirement as to the date on which or the time within which the order is to be complied with.

(5) Any order purporting to be signed by or under the authority of the President or Vice-president of the Tribunal, the President or Vice-president of the Commission, the Chairperson or Vice-chairperson of the Board shall be presumed, until the contrary is proved, to have been given by the Tribunal, the Commission or the Board, as the case may be.

(6) Any person who, without lawful excuse, fails to obey an order given under subparagraph (3) shall commit an offence.

(7) Any person who, being required by an order made under subparagraph (3) to furnish information, makes a statement or furnishes any information which he knows, or has reasonable cause to believe, to be false or misleading in a material particular shall commit an offence.

(8) Any witness who is required to attend before the Tribunal, the Commission or the Board shall be entitled to the fees or allowances prescribed in the Witnesses' Attendance Allowances Act for witnesses in civil cases.

21. The President or Vice-president of the Tribunal or of the Commission shall not be called upon to give evidence relating to proceedings held before them in any other proceedings.

22. (1) There shall not be included in any publication relating to any order, award, report, recommendation or other statement made or authorised by the Tribunal, the Commission, the Board, or by the Minister, any information disclosed during the course of proceedings under this Act by any party or witness in proceedings before the Tribunal, the Commission or the Board which was made known to the Tribunal, the Commission or the Board only by the disclosure, and in respect of which the party or witness has made a request during the proceedings that the information be withheld from publication, and no person concerned in or present at any proceedings of the Tribunal, the Commission or the Board shall publish or disclose the information to any person not concerned in or present at those proceedings, except with the consent of the party or witness.

(2) Any person who publishes or discloses any information in breach of subparagraph (1) shall commit an offence.

(3) Subparagraphs (1) and (2) shall be without prejudice to the power of the Tribunal, the Commission or the Board to take such other steps as they may consider necessary or desirable to safeguard national or industrial secrets or other information appearing to the Tribunal, the Commission or the Board to be deserving of confidential treatment.

23. Subject to any other enactment, it shall be at the discretion of the Tribunal, the Commission or the Board to admit or exclude the public or representatives of the press from any of their proceedings.

24. (1) In relation to proceedings before the Tribunal, the Commission or the Board—

- (a) where the public or representatives of the press are excluded, no report or summary of the proceedings shall be published; and
- (b) where the public or representatives of the press are permitted to be present, a fair and accurate report or summary of the proceedings may be published.

(2) Until the order, award, report or other result of the proceedings has been published in accordance with this Act, no comments shall be published in respect of the proceedings or any evidence adduced in the course of those proceedings.

(3) Any person who, before any award, order or other result of any proceedings before the Tribunal, the Commission or the Board has been published in accordance with this Act, publishes—

- (a) the terms of the order, award or report of other result; or
- (b) any comment on the proceedings or any evidence adduced thereat,

shall commit an offence.

POWERS OF TRIBUNAL, COMMISSION AND BOARD

25. At any sitting of the Tribunal, the Commission or the Board, any person who—

- (a) subject to paragraph 20 (2), refuses to answer any question to the best of his ability;
- (b) insults any member thereof;
- (c) wilfully interrupts the proceedings or misbehaves in any other manner; or
- (d) commits any contempt of the Tribunal, the Commission or the Board,

shall commit an offence.

MISCELLANEOUS

26. The Tribunal, the Commission or the Board shall be assisted in the performance of their functions by such public officers as the Minister may determine.

27. Proceedings before the Tribunal, the Commission or the Board shall be exempt from stamp duty and registration dues.

[Second Sch. amended by GN 26 of 2009 w.e.f. 2 February 2009; s. 36 of Act 5 of 2013 w.e.f. 11 June 2013.]

THIRD SCHEDULE

[Section 81]

SERVICES REQUIRING A MINIMUM SERVICE

Air traffic control

Civil aviation and airport

Customs
Electricity
Health
Hotel services
Hospital
Port
Radio and television
Refuse disposal
Telephone
Transport of passengers and goods
Water supply

FOURTH SCHEDULE

[Section 35]

CODE OF PRACTICE

PART I – INTRODUCTION

1. This Code is founded on the following 4 main principles—

- (a) the employer and his workers have a common interest in the success of the undertaking;
- (b) good employment relations are the joint responsibility of management and workers and the trade unions representing them;
- (c) collective bargaining, carried out in a reasonable and constructive manner between employers and strong representative trade unions, is the best method of conducting employment relations;
- (d) good human relations between employers and workers are essential to good employment relations.

2. The standards set by this Code are not intended to be exhaustive or to prevent, by any person or authority concerned, the introduction of, or recommendation for, any additions or improvements.

PART II – BASIC EMPLOYMENT RELATIONS PRINCIPLES

HARMONIOUS EMPLOYMENT RELATIONS

3. Neither management nor trade unions can alone promote and maintain a harmonious employment relations climate.

4. Management and trade unions shall be engaged constructively and be committed to develop the necessary conditions conducive to harmonious employment relations at the workplace.

5. Management and trade unions shall address employment relations and human resources management issues in a spirit of openness, trust, honesty, mutual respect and understanding.

6. Management and trade unions shall adopt the right mindset to address conflict with a view to reaching a win-win situation through compromise or consensus, wherever possible.

7. Management and trade unions shall be recognised as social partners on the same footing.

8. A balance of power between management and trade unions is essential for harmonious workplace relations.

BUILDING UP SHARED VALUES

9. Management and trade unions both recognise that they have legitimate, different and also common interests.

10. It is when they accept their differences that management and trade unions can be in a better position to develop a more structured, practical and proactive approach to employment relations issues, address conflicts, manage change in a more constructive manner and build upon areas of co-operation where the interests of labour and the organisation can converge and be eventually reconciled.

11. Management and trade unions shall build up shared values around the improvement of the quality of working life (QWL) of the workers and the enhancement of productivity.

12. Management, workers and trade unions shall be committed to the improvement of productivity. Productivity improvement contributes to enhance enterprises' competitiveness and increase job opportunities, job security, wages and improve quality of jobs.

13. Enhancing productivity shall not be understood as working harder, but rather as working smarter.

14. It is management's responsibility to provide the appropriate conditions for productivity enhancement by—

- (a) improving the working conditions and the workplace environment;
- (b) recognising the creative ability of workers and their potential to develop various skills and involving them in the decision making process at different levels;
- (c) empowering workers to enable them to participate effectively in the decision making process;
- (d) enhancing the self-image and self-esteem of workers;
- (e) considering trade unions as parties to the process;
- (f) rewarding workers for creativity, skill acquisition and productivity gains;
- (g) addressing concomitantly issues such as innovative work organisation methods and practices including team work and flexible work arrangements, flat organisation, quality circles, autonomous work group, marketing, purchasing, design, warehousing, distribution, administration and investment in technology.

SOCIALLY RESPONSIBLE MANAGEMENT

15. Management shall reconcile its objective of profitability with protection of employment and job creation.

16. Management shall be committed to the concepts of good governance, such as transparency, accountability, responsibility, fairness and social responsibility.

17. Management shall provide a safe workplace and decent work in conditions of freedom, equity, security and human dignity to workers.

18. Management shall provide a work environment which enables workers to balance work with family commitments.

19. Management shall ensure that enterprise restructuring, including merger and closure, takes place in conditions of fairness and equity.

PROACTIVE TRADE UNIONISM

20. Trade unions shall approach employment relations issues in a proactive manner with a view to improving the conditions of employment of workers whilst preserving jobs and supporting job creation.

21. Trade unions shall broaden their scope and place new issues, such as occupational safety and health, performance related pay schemes, productivity, technological and organisational innovation, flexibility, training, employability and enterprise competitiveness, on their agenda.

22. Trade unions shall take a broader economic perspective when negotiating at industry level.

23. Trade unions shall favour social dialogue and avoid confrontation.

24. Trade unions shall be proactive in addressing labour problems and endeavour to pre-empt conflicts at the workplace.

25. Trade unions shall consider industrial action as a last resort.

26. Trade unions shall be engaged in the capacity building of their members for more effective participation in discussions at the workplace and in national social dialogue forum.

PART III – RESPONSIBILITIES MANAGEMENT

27. While good employment relations are a joint responsibility, the primary responsibility for their promotion rests with management.

28. Management at all levels shall pay regular attention to employment relations and managers shall, wherever possible, receive training in the employment relations implications of their jobs.

29. Where a trade union has negotiating rights, management shall –

- (a) jointly with the trade union maintain effective arrangements for negotiation, consultation, communication, and for settling grievances and disputes;
- (b) take all reasonable steps to ensure that managers abide by collective agreements and use agreed procedures; and
- (c) make clear to workers that it welcomes their membership of the recognised trade union and their participation in the trade union's activities.

30. Where a trade union represents its members on legal issues, management shall—

- (a) maintain effective arrangements for consultation, communication and settling of individual grievances of members of the trade union, and ensure that those arrangements fully satisfy the rights of representation of the trade union, whether established by law or by agreement;
- (b) take all reasonable steps to ensure that managers comply with those arrangements; and
- (c) make clear to workers that it respects their rights to join a registered trade union and to take part in its activities, which include seeking recognition for negotiating purposes.

31. Effective organisation of work is an important factor in good employment relations. Management shall, therefore, ensure that—

- (a) responsibility for each group of workers is clearly defined in the organisational structure;
- (b) each manager understands his responsibilities and has the necessary authority and training to do his job; and
- (c) individual workers or work groups know their objectives and priorities and are kept informed of progress towards achieving them.

32. Every enterprise having more than 100 workers shall set up a Human Resources Management Department.

33. Where an enterprise has less than 100 workers, the manager or his representative shall be appropriately trained in basic Human Resources Management principles.

TRADE UNIONS OF WORKERS

34. The principal aim of trade unions of workers is to promote their members' interests. They can do this only if the undertakings in which their members are employed prosper. They, therefore, have an interest in co-operating in measures taken to promote efficiency. They also share with management the responsibility for good employment relations.

35. Trade unions of workers shall, therefore—

- (a) where appropriate, jointly with individual management, maintain effective arrangements for negotiation, consultation, communication and settling of grievances and disputes;
- (b) where appropriate, jointly with employers' organisations and others concerned, maintain effective arrangements at industry or other levels for settling disputes and for negotiating terms and conditions of employment;
- (c) take all reasonable steps to ensure that their officers and members abide by collective agreements and agreed procedures; and
- (d) maintain effective procedures for resolving particular issues with other trade unions and make full use of any procedures established for settling inter-union disputes.

36. Trade unions of workers shall ensure that their officers—

- (a) understand the organisation, policies and rules of their trade union;

- (b) understand their rights and obligations; and
- (c) are adequately trained to look after their members' interests in an efficient and responsible way.

37. To ensure that their organisation is effective, trade unions of workers shall also—

- (a) employ sufficient number of full-time officers to maintain adequate contact with management and with their members in every establishment where these trade unions have negotiating rights, and with any employers' organisation concerned;
- (b) encourage their members to attend trade union meetings and to take part fully in trade union activities by holding branch meetings at times and places convenient to the majority; and
- (c) maintain effective procedures for settling disputes within the trade union.

TRADE UNION OF EMPLOYERS

38. The principal aim of a trade union of employers is to promote those interests of their members which can best be served by co-operation at industry or other appropriate levels.

39. A trade union of employers shall, therefore—

- (a) where appropriate, jointly with the trade unions of workers concerned, maintain effective arrangements at industry or other levels for settling disputes and for negotiating terms and conditions of employment;
- (b) encourage its members to develop effective arrangements for settling grievances and disputes at the level of the establishment or undertaking;
- (c) take all reasonable steps to ensure that its members abide by collective agreements and agreed procedures;
- (d) identify trends in employment relations to help its members to anticipate and keep abreast of changes;
- (e) collect and analyse information about employment relations and disseminate it among its members; and
- (f) provide an advisory service to its members on all aspects of employment relations.

THE INDIVIDUAL WORKER

40. The individual worker has obligations towards his employer, towards the trade union to which he belongs and towards his fellow workers. He shares responsibility for the state of employment relations in the establishment where he works and his attitudes and conduct can have a decisive influence on them.

41. Every worker shall—

- (a) satisfy himself that he understands the terms of his contract of employment and abide by them; and
- (b) make himself familiar with any arrangements for dealing with grievances and other questions which may arise out of his contract of employment, and make use of them as and when the need arises.

42. Some workers have special obligations arising from membership of a profession and are liable to incur penalties if they disregard them. These may include obligations, for example with regard to health, safety and welfare, over and above those which are shared by the community as a whole.

43. A professional worker who belongs to a trade union shall fulfil the obligations which he has voluntarily undertaken on joining the trade union. He shall not, when acting in his professional capacity, be called upon by his trade union to take action which would conflict with the standards of work or conduct laid down for his profession and, in particular, if that action would endanger—

- (a) public health or safety;
- (b) the health of an individual needing medical or other treatment; or
- (c) the well-being of an individual needing care through personal social services.

44. Professional associations, employers and trade unions shall co-operate in preventing and resolving any conflicts which may occur between obligations arising from membership of a profession and those which the professional worker owes to his employer and to his trade union, where he belongs to one.

PART IV – EMPLOYMENT POLICIES

GENERAL

45. Clear and comprehensive employment policies are essential to good employment relations. Management shall initiate these policies which shall be developed in consultation or following negotiations, as appropriate, with trade unions of workers.

46. Employment policies shall be positive to—

- (a) avoid discrimination of any kind as to occupation, age, marital status, sex, sexual orientation, colour, race, religion, HIV status, national extraction, social origin, political opinion or affiliation; and
- (b) promote equal opportunity in employment.

PLANNING AND USE OF MANPOWER

47. Manpower planning such as taking stock, calculating future requirements, identifying the action necessary, shall be carried out in a manner appropriate to the size and nature of the undertaking.

48. In operating its manpower policies, management shall—

- (a) avoid unnecessary fluctuation in manpower;
- (b) where changes become necessary, make them, as far as practicable, with little disruption to the workers concerned;
- (c) maintain arrangements for staff redeployment within the undertaking; and
- (d) record information with a view to identifying the cause of, and to controlling, absenteeism and labour turnover.

RECRUITMENT AND SELECTION

49. In recruiting and selecting workers, management shall—

- (a) decide on the qualifications and experience required for the job;

- (b) consider filling vacancies by transfer or promotion within the undertaking;
- (c) obtain as much information about applicants as is relevant to selection for the job, but avoid inquiries which are unnecessary for that purpose;
- (d) base selection on suitability for the job; and
- (e) explain the main terms and conditions of employment and give any relevant information about existing trade union arrangements before an applicant is engaged.

TRAINING

50. Management shall ensure that new recruits are given—

- (a) induction training; and
- (b) training needed to supplement previous education, training and experience.

51. Management shall ensure that young recruits are, in addition, given broader initial instruction covering—

- (a) a general introduction to their working life, including the importance of health and safety precautions; and
- (b) basic training in related skills, where appropriate, as well as specific training in their particular jobs.

52. Management shall—

- (a) ensure that any necessary further education and training is provided when there is a significant change in the nature or level of the job; and
- (b) encourage workers to take advantage of relevant further education and training opportunities at all stages of their careers.

PAYMENT SYSTEMS

53. Payment systems vary according to the nature and organisation of the work, local conditions and other related factors.

54. Payment systems shall be—

- (a) kept as simple as possible and be consistent with their purpose so that workers can understand them;
- (b) based, wherever applicable, on some form of work measurement under which payment is linked to performance; and
- (c) jointly negotiated where trade unions have negotiating rights.

55. Differences in remuneration shall be related to the requirements of the job, which shall, wherever possible, be assessed in a rational and systematic way in consultation with the trade unions concerned.

56. Payment systems shall be periodically reviewed to make sure that they suit current circumstances and take account of any substantial changes in the organisation of work or the requirements of the job.

STATUS AND SECURITY OF WORKERS

57. As far as is consistent with operational efficiency and success of the undertaking, management shall—

- (a) provide stable employment, including reasonable job security for workers who are absent due to illness or other causes beyond their control; and
- (b) avoid unnecessary fluctuations in the level of earnings of workers.

58. Differences in the conditions of employment and status of different categories of workers and in the facilities available to them shall be based on the requirements of the job. The aim shall be to reduce progressively and remove ultimately differences which are not so based. Management, workers and trade unions shall co-operate in working towards this objective.

REDUCTION OF WORKFORCE

59. Management shall anticipate and manage changes and avoid crisis management.

60. Management shall introduce training programmes to prepare workers for—

- (a) different approaches to their work as a result of technological, organisational or economic changes;
- (b) multi-skilling;
- (c) adapting to the needs of the labour market, should they be forced to leave the enterprise.

61. A policy for dealing with reductions in the workforce, if they become necessary, shall be worked out in advance as far as practicable and shall form part of the undertaking's employment policies. As far as is consistent with operational efficiency and the success of the undertaking, management shall, in consultation with the trade unions concerned, seek to avoid redundancies by such means as—

- (a) restrictions on recruitment;
- (b) retirement of workers who are beyond the normal retiring age;
- (c) reduction in overtime;
- (d) shorter working hours to cover temporary fluctuations in manpower needs; or
- (e) re-training or transfer to other work.

62. Where redundancy becomes inevitable, management shall—

- (a) give reasonable or prescribed notice to the workers, to the Ministry responsible for labour and industrial relations and to the trade unions concerned;
- (b) consider introducing schemes for voluntary redundancy, retirement, transfer to other departments within the undertaking, and a phased rundown of employment;
- (c) establish which workers are to be made redundant and the order of discharge;
- (d) offer help to workers in finding other jobs, in co-operation with the Ministry responsible for employment; and

- (e) decide how and when to make the facts public, ensuring that no announcement is made before the Ministry, the workers and their trade unions have been informed.

WORKING CONDITIONS

63. Management shall, in consultation and co-operation with workers and their trade unions, aim at improving the minimum standards of working conditions specified in any enactment.

64. Management and trade unions shall—

- (a) take all reasonable steps to ensure that workers understand and observe all health and safety precautions, whether established by law or by agreement and, in particular, make use of appropriate protective equipment; and
- (b) maintain regular consultation on matters relating to health and safety.

PART V – COMMUNICATION AND CONSULTATION

GENERAL

65. Management and trade unions shall co-operate to ensure that effective communication and consultation take place so as to promote efficiency, understanding and the individual worker's sense of satisfaction and involvement in his job.

66. Communication and consultation are particularly important in times of change. The achievement of change is a joint concern of management and workers and shall be carried out in a way which has regard both for the efficiency of the undertaking and the interests of the workers. Major changes in working arrangements shall not be made by management without prior discussions with workers and their trade unions, if any.

67. When changes in management take place following, for example, a merger or take-over, the new managers shall make prompt contact with the trade unions concerned and take steps to explain any changes in policies affecting workers.

COMMUNICATION

68. The most important method of communication is through personal contact between each manager and his immediate work group or individual workers and between managers and workers' representatives.

69. Personal contact shall, where appropriate, be supplemented by written information and additionally by training and induction lectures or courses and special meetings.

70. Management shall, as far as is reasonably possible, regularly provide workers with information on—

- (a) the performance and plans of the establishment in which they work and, so far as they affect it, of the whole undertaking;
- (b) working environment and conditions; and
- (c) any changes in organisation and management affecting workers.

71. It is the duty of managers at all levels to explain clearly to those responsible to them management policies and working instructions.

WORKER'S HANDBOOK

72. Every enterprise of 100 or more workers shall issue to every worker a handbook, which shall be in a simple and clear language. The handbook may include the following—

- (a) the mission statement of the organisation;
- (b) the goals and objectives of the organisation;
- (c) the corporate culture of the organisation;
- (d) the organisation's performance and prospects;
- (e) the organisational charts and its communication flow charts;
- (f) the contractual terms and conditions of employment of the workers;
- (g) the organisation policies and procedures;
- (h) the training policy and career development prospects; and
- (i) the disciplinary, grievance and dispute procedures.

73. Management shall avoid impersonal forms of communication, especially when dealing with important and sensitive issues.

CONSULTATION

74. Consultation means jointly examining and discussing problems of concern to both management and workers. Consultation between management and workers or their trade union representatives about operational and other day-to-day matters is necessary in all establishments, whatever their size. Large establishments shall have systematic arrangements for management and trade union representatives to meet regularly.

75. Management shall, after consultation with the trade unions concerned, set up and maintain appropriate consultative arrangements. The arrangements shall not be used to bypass or discourage trade unions.

76. Consultation and negotiation are closely related but distinct processes. Management and trade unions shall consider carefully how to link the two. It may often be advantageous for the same committee to cover both. Where there are separate bodies, systematic communication between those involved in the 2 processes is essential.

PART VI – WORKERS' PARTICIPATION

77. Workers' participation is essential to create an environment of openness and to manage workplace changes.

WORKERS' PARTICIPATION IN DECISION-MAKING

78. Management shall establish mechanisms, such as a Joint Consultative Committee, for effective consultation with workers and their trade union representatives.

79. A Joint Consultative Committee shall be established through agreement between employers, workers and their recognised trade unions, if any, and shall aim at improving—

- (a) quality of working life;
- (b) employment relations; and
- (c) productivity and efficiency.

80. Every enterprise having a labour force of 50 or more workers shall establish a Joint Consultative Committee.

81. Any established Joint Consultative Committee shall lay down the rules and procedures of the Committee, which shall include—

- (a) the title and objectives of the Committee;
- (b) the terms of reference of the Committee and subjects to be discussed;
- (c) the size and composition of the Committee;
- (d) procedure for electing workers' representatives;
- (e) a provision that workers will not be penalised for their participation in the activities of the Committee;
- (f) meeting arrangements and intervals of meetings;
- (g) rules of confidentiality;
- (h) facilities for committee members, such as time-off facilities;
- (i) arrangements for reporting back; and
- (j) training facilities for Committee members.

82. Management shall nominate senior managers with authority and standing in the Joint Consultative Committee.

83. The subjects to be discussed in the Joint Consultative Committee may include—

- (a) the overall business situation;
- (b) the business prospects;
- (c) the business strategy;
- (d) the improvement of labour processes, introduction of new technologies and new systems of working;
- (e) output, quality, productivity and performance enhancement programmes;
- (f) review of existing incentives and introduction of new one;
- (g) workers' financial participation schemes;
- (h) training; and
- (i) welfare.

WORKERS' FINANCIAL PARTICIPATION

84. Management may set up workers' financial schemes so as to ensure a fair distribution of profits and productivity gains to workers.

85. Where there is a recognised trade union, the modalities of any workers' participation scheme shall be subject to discussions and agreement between management and the recognised trade union.

86. Workers' financial participation schemes may include—

- (a) cash-based gain sharing, such as sharing profit or productivity gains;
- (b) deferred profit-sharing; or
- (c) workers' shared ownership.

PART VII – COLLECTIVE BARGAINING GENERAL

87. Collective bargaining may take place at various levels, ranging from a group of workers within an enterprise to an industry. Negotiations for the same group of workers may be conducted at different levels about different issues.

88. Where negotiations take place at more than one level, the matters to be bargained about at each level shall be defined by agreement. The aim shall be to assign to each level the matters which can be realistically settled at that level. Whatever the level at which an agreement is reached, its terms shall be applied effectively at the place of work.

BARGAINING UNITS

89. Collective bargaining in an enterprise is conducted in relation to defined groups of workers which can appropriately be covered by one negotiating process.

90. A bargaining unit shall cover as wide a group of workers as practicable. Too many small units make it difficult to ensure that related groups of workers are treated consistently. The number of separate units can often be reduced by the formation of a joint negotiating panel representing a number of trade unions.

91. The interests of workers covered by a bargaining unit need not be identical, but there shall be a substantial degree of common interest. In deciding the pattern of bargaining arrangements, the need to take into account the distinct interests of professional or other workers who form a minority group shall be balanced against the need to avoid unduly small bargaining units.

92. Factors which shall be taken into account in establishing a bargaining unit include—

- (a) the nature of the work;
- (b) the training, experience and professional or other qualifications of the workers concerned;
- (c) the extent to which they have common interests;
- (d) the general wishes of the workers concerned;
- (e) the organisation and location of the work;
- (f) hours of work, working arrangements and payment systems;
- (g) the matters to be bargained about;
- (h) the need to fit the bargaining unit into the pattern of trade union and management organisation;
- (i) the need to avoid disruption of adequate existing collective bargaining arrangements which are working well; and
- (j) whether separate bargaining arrangements are needed for particular categories of workers, such as supervisors or workers who represent management in negotiations.

93. (1) Where proposals are made for establishing or varying a bargaining unit, the first aim of management and trade unions shall be to reach agreement.

(2) Where there is no agreement, parties shall, jointly or separately, consider referring the matter to—

- (a) an employers' organisation;
- (b) a higher level within the trade union; or

- (c) the Commission for examination and advice.

RECOGNITION – GENERAL CONSIDERATION

94. The interests of workers are best served by strong and effective trade unions.

95. The competition among separate trade unions for the right to negotiate for the same category of workers leads to friction and weakens the trade unions.

96. Recognition agreements applying to an industry and made between federations or groups of trade unions and employers shall be concluded whenever appropriate.

CLAIMS FOR RECOGNITION

97. A claim for recognition by a trade union shall not be entertained insofar as that claim is based on discrimination of any kind including discrimination as to occupation, age, marital status, sex, sexual orientation, colour, race, religion, HIV status, national extraction, social origin, political opinion or affiliation.

98. Claims by trade unions for recognition for negotiating purposes shall, as far as possible, be settled voluntarily between the parties.

99. In the case of any claim, management is entitled to know the number, but not the identities of the workers in the proposed bargaining unit who are members of the union making the claim.

100. In general, it is in the interest of workers and of the industry that any given category of workers in an undertaking shall be represented by a single trade union.

101. The fact that conflicting claims are made by trade unions to represent a given category of workers is not in itself a justification for the employer to refuse negotiating rights to a trade union.

102. Where 2 or more trade unions seek recognition in respect of the same category of workers in an industry, those unions shall examine the possibilities of an amalgamation, or of the formation of a joint negotiating panel, or of some other appropriate variation in the trade union structure in the industry in question.

103. The responsibility to avoid disputes on recognition matters between trade unions rests principally with the trade unions themselves. Employers shall endeavour to observe a position of neutrality where rival claims are concerned, and a position of neutrality must include the honouring of all existing collective bargaining commitments.

104. The responsibility of a trade union for the failure of an existing joint negotiating panel, or for the failure of a proposed panel to gain acceptance, shall weigh heavily against any claim by that trade union for individual recognition.

105. Where there is any uncertainty as to the prospect of a joint negotiating panel acting as a single entity and behaving responsibly towards the employer, the formation of that panel may be recommended or agreed upon for a trial period, or for more than one trial period.

AFTER RECOGNITION

106. Management and recognised trade unions shall facilitate and encourage personal contact and discussions between managers and officers of the trade unions at all appropriate levels.

COLLECTIVE AGREEMENTS

107. Collective agreements deal with matters of procedures and matters of substance which are of joint concern to management and workers. A single agreement may contain provisions of both kinds or they may be dealt with in separate agreements. In either case, the agreement shall be in writing and shall contain provisions for checking that procedural provisions have not become out of date.

108. Collective agreements shall contain substantive provisions relating to terms and conditions of employment and shall indicate the duration for which they are to apply. Collective agreements shall *inter alia*, cover—

- (a) wages or salaries as appropriate, overtime rates, bonuses, piecework rates and other systems relating earnings to performance;
- (b) hours of work, and, where appropriate, provisions for hours of overtime and shift work; and
- (c) leave entitlement and pay.

109. Collective agreements may also cover such matters as—

- (a) techniques for determining levels of performance and job grading, such as work measurement and job evaluation;
- (b) procedures for handling redundancy and temporary lay-offs; and
- (c) the deduction by management of trade union dues from the pay of members.

110. It is advantageous for collective agreement to be made at industry level to cover as many aspects as possible relating to—

- (a) terms and conditions of employment suitable for general application;
- (b) general guidelines for negotiating at a lower level matters which cannot be decided satisfactorily at industry level; and
- (c) a procedure for settling disputes, either for the industry as a whole or as a model for individual undertakings to adopt by agreement.

111. To maintain fair and stable pay structures, an agreement reached at the level of the enterprise shall define—

- (a) how and within what limits any negotiations at a lower level shall be conducted; and
- (b) how it relates to any relevant industry-wide agreement.

BARGAINING IN GOOD FAITH

112. Where a trade union or a group of trade unions has been recognised as a bargaining agent, the trade union or the group of trade unions and the employer shall bargain in good faith.

113. Bargaining in good faith requires the trade union or the group of trade unions and the employer to—

- (a) meet and discuss meaningfully—
 - (i) a collective agreement or any variation of a collective agreement, including matters relating to the initiation of the bargaining or for the renewal of a collective agreement;
 - (ii) any matter arising out of or in relation to a collective agreement while the agreement is in force; and
 - (iii) any proposal by an employer that may affect the workers' terms and conditions of employment, including a proposal to contract out work otherwise done by the workers or to sell or transfer all or part of the employer's business.
- (b) do their best to enter into a procedure agreement as soon as possible;
- (c) do their best to find mutually acceptable solutions and to enter into an agreement, as soon as possible;
- (d) recognise the role and the authority of any person chosen by each party to be its representative or advocate;
- (e) negotiate in a reasonable, fair and honest manner;
- (f) refrain from doing any act that is likely to undermine the bargaining process or the authority of the other party;
- (g) provide the other party information that is reasonably necessary to support or substantiate their respective position;
- (h) respond and give consideration to proposals made by the other party;
- (i) consider the proposals of the other party within a reasonable period and, where the proposal is not accepted, offer an explanation for the non-acceptance;
- (j) identify the barriers to agreement and give further consideration to their respective position in the light of any alternative options put forward;
- (k) conclude a collective agreement, unless there is a valid reason not to do so; and
- (l) sign the collective agreement.

114. Bargaining in good faith does not require a trade union or a group of trade unions and an employer bargaining for a collective agreement to—

- (a) agree on all matters to be included in a collective agreement; and
- (b) enter into a collective agreement.

115. Notwithstanding paragraph 114, bargaining in good faith implies that the parties shall continue to bargain on other issues even if they have come to a dead-lock on any issue and to conclude an agreement, unless there is a reasonable ground not to do so.

116. Bargaining in good faith does not prevent the parties from expressing their respective opinions.

117. Collective bargaining shall be deemed to be in bad faith where a trade union or an employer without entering into discussion—

- (a) rejects a claim without any valid reason or explanation;

- (b) uses delaying tactics;
- (c) adopts a take-it or leave-it attitude; or
- (d) threatens and uses intimidating language with a view to endangering the harmonious industrial relations at the workplace.

118. Where a party has reasonable grounds to believe that there has been a breach of good faith during the negotiations, the party shall, wherever practicable, raise the matter at an early stage to enable the other party to remedy the situation.

PART VIII – WORKER REPRESENTATION AT THE PLACE OF WORK

119. Workers need representatives to put forward their collective views to management and to safeguard their interests. It is also easier for management to deal with representatives who can speak for their fellow workers.

120. A workplace representative represents the members of his trade union at the place of work, but the trade union of which he is an officer is responsible for his actions. Accordingly, trade unions shall clearly define the powers and duties of workplace representatives, and the circumstances and manner in which they can be removed from office.

121. Trade unions and management shall seek agreement on—

- (a) the number of workplace representatives needed in the workplace; and
- (b) the work groups for which each representative is responsible.

122. Management shall make available facilities to the trade unions to conduct elections at the workplace.

123. Trade unions shall notify management promptly in writing when officials are appointed and when changes are made.

124. Trade unions shall—

- (a) give each workplace representative written credentials setting out his powers and duties within the trade union, the work group he represents and his term of office; and
- (b) seek agreement with management on the issue of joint written credentials setting out the relevant rights and obligations of such representatives.

125. Where more than one trade union is recognised but each trade union has only a small number of members, the trade unions shall seek to agree on the election of a common representative to represent all their members at the workplace.

126. Where there are a number of representatives of different trade unions which negotiate jointly, the trade unions shall seek to agree on the election of a common representative to co-ordinate their activities at the workplace.

127. In each of these cases, trade unions shall seek agreement with management on the co-ordinating functions of the representative concerned.

128. Management shall make available facilities appropriate to the circumstances, such as—

- (a) lists of new workers;

- (b) accommodation for meetings with, the workers whom they represent, other representatives and officers;
- (c) access to a telephone and the provision of notice boards; and
- (d) the use of office facilities where the volume of the representative's work justifies it.

129. Each trade union shall ensure that its representatives are adequately informed about its policies, organisation and agreements to which it is a party. Management shall ensure that the representatives are adequately informed about its objectives and employment policies.

PART IX – GRIEVANCE AND DISPUTE PROCEDURES

GENERAL

130. All workers have a right to seek redress for grievances relating to their employment. Each worker must be told how he can do so.

131. Management shall establish, with the trade unions of workers concerned, arrangements under which individual workers can raise grievances and have them settled fairly and promptly. There shall be a formal procedure, except in very small enterprises where there is close personal contact between the employer and his workers.

132. Where trade unions are recognised, management shall establish with them a procedure for settling collective disputes.

133. Individual grievances and collective disputes are often dealt with through the same procedure. Where there are separate procedures, they shall be linked so that an issue can, if necessary, pass from one to the other, since a grievance may develop into a dispute.

INDIVIDUAL GRIEVANCE PROCEDURE

134. The aim of the procedure shall be to settle the grievance fairly and as near as possible to the point of origin. It shall be simple and rapid in operation.

135. The procedure shall be in writing and provide that—

- (a) the grievance shall normally be discussed first between the worker and his immediate superior;
- (b) the worker shall be accompanied at the next stage of discussion with management by his workplace representative if he so wishes;
- (c) there shall be a right of appeal.

COLLECTIVE DISPUTE PROCEDURES

136. Disputes are broadly of 2 kinds—

- (a) disputes of rights (i.e. as to legal rights), which relate to application of existing collective agreements or contracts of employment; and
- (b) disputes of interests (i.e. economic disputes), which relate to claims by workers or proposals by management about terms and conditions of employment.

137. A procedure for settling collective disputes shall be in writing and shall—

- (a) state the level at which an issue shall first be raised;

- (b) lay down time limits for each stage of the procedure, with provision for extension by agreement; and
- (c) preclude a strike, lock-out, or other form of industrial action until all stages of the procedure have been completed and a failure to agree formally recorded.

138. The procedure shall have the following stages—

- (a) workplace representatives shall raise the issue in dispute with management at the level directly concerned;
- (b) failing settlement, it shall be referred to a higher level within the establishment; and
- (c) if still unsettled, it shall be referred to further agreed stages, for example, to a stage of an industry-wide procedure, or to a higher level within the establishment.

139. The procedure shall include agreement to make use of the conciliation service provided by the Commission, and of the arbitration service provided by the Tribunal, and to take claims to the Court, as appropriate, before considering resort to any industrial action.

PART X – DISCIPLINARY PROCEDURES

140. Management shall ensure that fair and effective arrangements exist for dealing with disciplinary matters. These shall be agreed upon with the trade unions concerned and shall provide for full and speedy consideration by management of all the relevant facts. There shall be a formal procedure, except in very small establishments where there is close personal contact between the employer and his workers.

141. Management shall make known to every worker—

- (a) disciplinary rules and the agreed procedures; and
- (b) the type of circumstances which can lead to suspension or dismissal.

142. Disciplinary rules shall not be perceived as a means of imposing sanctions or a dismissal procedure but rather aiming at encouraging workers to conform to acceptable and reasonable standards at the workplace.

143. Management shall apply progressive discipline on the understanding that discipline shall be corrective rather than coercive.

144. In defining the rules and procedures, management shall consult and seek the agreement of the workers' representatives or the recognised trade unions, where workers are unionised.

145. The rules shall be set out clearly and concisely in writing and shall be communicated to all workers.

146. The rules shall make a distinction between minor and serious cases of misconduct.

147. When a disciplinary matter arises, the relevant supervisor or manager shall first establish the facts and, where appropriate, obtain statements from the witnesses before deciding to drop the matter, arrange for informal counselling or initiate formal disciplinary proceedings.

148. Minor cases of misconduct and cases of sub-standard performance shall be dealt with by informal advice and counselling with the objective to help the workers to improve.

149. Formal hearing shall be held in cases of alleged misconduct.

150. Where a formal hearing is held, the person presiding over the hearing shall be a person who is able to make an independent decision and shall not have been involved in the investigation of the case.

151. The person presiding over the hearing shall consider among other factors whether—

- (a) the worker broke a rule of conduct;
- (b) the rule was valid or reasonable;
- (c) the worker knew the rule or shall have known about the rule; and
- (d) the employer had been consistent in applying the rule.

152. In any case, incidents related to gross misconduct shall be subject to investigation and or disciplinary proceedings before a decision is taken.

153. Gross misconduct may include theft, fraud and deliberate falsification of records, physical violence, serious bullying and harassment, deliberate damage to property, serious insubordination, misuse of the enterprise's property or name, bringing the employer into serious disrepute, serious incapacity due to alcohol or illegal drug abuse, serious negligence which may cause unacceptable loss, damage, or injury, serious infringement of health and safety rules, serious breach of confidence.

154. The disciplinary procedures shall, without distinction or discrimination of any kind as to occupation, age, marital status, sex, sexual orientation, colour, race, religion, HIV status, national extraction, social origin, political opinion or affiliation—

- (a) specify the level of management which has the authority to take disciplinary actions;
- (b) provide for the worker to be informed of the charges levelled against him;
- (c) give the worker an opportunity to state his case;
- (d) give the worker the right to be accompanied in a hearing by his trade union representative or an officer of the Ministry responsible for labour relations or his legal adviser;
- (e) provide for proceedings, witness statements and records to be kept confidential;
- (f) provide for the matters to be dealt with without undue delay;
- (g) indicate the disciplinary actions which may be taken;
- (h) ensure that disciplinary actions are not taken until the case has been fully investigated into;
- (i) ensure that workers are given an explanation for any sanction taken;
- (j) provide procedures for right of appeal and for the appeal to be heard by a senior manager not involved in the initial disciplinary proceedings;
- (k) set a time limit not exceeding one fortnight for an appeal to be lodged;
- (l) provide for independent arbitration where the parties so wish.

155. Where an appeal is given, the worker shall be informed of the results of the appeal in writing and if the decision constitutes the final stage of the appeal procedure, the worker shall be informed accordingly.

156. Where the worker objects, on reasonable grounds, to the disciplinary proceedings being presided over by the person designated to do so, it may be appropriate to bring another person to chair the meeting.

157. Management may have recourse to an oral warning in case of minor infringement, where the worker fails to meet the required standards in spite of counselling. Where the worker receives a warning, he shall be informed of the reason for it and of his right of appeal. The warning shall be disregarded after three months if the worker improves his conduct or his performance.

158. Management may have recourse to a written warning for more serious infringement. The worker shall be informed of the reason for the warning and notified that a final warning would be given if there is no improvement after 6 months. He shall be informed of his right of appeal. The warning shall be disregarded after 6 months if the worker improves his conduct or performance.

159. Management may have recourse to a final written warning where there has been no improvement despite previous warnings or where the infringement is sufficiently serious that management has no alternative than to issue a final warning. The worker shall be informed of the reason for the warning and of his right of appeal and of the possibility that failure on his part to improve his conduct or performance may lead to his dismissal. The warning shall be disregarded after 12 months if the worker has improved his conduct or his performance.

160. Any suspension without pay shall be limited to a period of not more than 4 days.

161. As a last resort, management may consider dismissal where the worker still fails to improve his conduct or performance or where there is a case of gross misconduct.

162. No disciplinary action shall be contemplated against an officer until the case is discussed with a senior officer.

[Fourth Sch. amended by GN 26 of 2009 w.e.f. 2 February 2009.]