

- (ii) if there is no agreement, make that selection on the principle of last in first out or on some other principle considered by the Tribunal to have been established and reasonable; and
- (d) take all reasonable steps to secure that an offer of re-engagement or of suitable alternative employment within not more than six months of the date of dismissal is made in writing before the dismissal or as soon as reasonably practicable after the dismissal and, in the case of an apprenticeship, that suitable provision for continuation of the apprenticeship or for employment as a journeyman has been made.
- (3) An alternative employment is not considered suitable under subsection (2) if it involves work which-
- (a) the employee is not qualified to perform, or work of a substantially inferior grade to that which the employee was previously performing; or
- (b) provides a significantly lower level of remuneration than that previously received by the employee.
- (4) The provisions of subsections (1) and (2) do not apply to an employer-
- (a) of five or less employees in aggregate in all his or her establishments; or

- (b) who has agreed with a trade union with which he or she habitually negotiates in respect of the employees affected, a method of selection for dismissal and the terms of compensation for dismissal and who has honoured that agreement.
- (5) An employer who -
- (a) has delivered to an employee a written undertaking to re-engage the employee within not more than six months from the date of dismissal;
- (b) has agreed to pay to the employee a retainer in accordance with subsection (6) during the whole of the interval between dismissal and re-engagement; and
- (c) continuously honours the agreement, is deemed to have satisfied the provisions of subsection (2).
- (6) The minimum amount of the retainer mentioned in subsection (5) shall be-
- (a) fixed by each Joint Industrial Council as soon as possible after the coming into operation of this Act, and may be amended, from time to time; or
- (b) established by agreement with a trade union representing the employee in question, if the employment in question is not covered by the agreement of a Joint Industrial Council; or

(c) ten per cent of the employee's basic pay, where no rate is fixed as specified by paragraph (a) or (b).

(7) An employer who has agreed to pay a retainer to a temporarily laid off employee may set off against his or her undertaking any amount of wages received by the employee from another employer during the period covered by the retainer, but if the employee does not disclose to the employer the total amount of any alternative remuneration received during the period covered by the retainer, the employer is deemed to have satisfied the whole of his or her agreement without further payment.

(8) Notwithstanding the requirements for the giving of notice for termination of a contract of employment under this Act, an employee dismissed by an employer for reasons set out in this section shall, notwithstanding an employer's compliance with the requirements of this section, receive a redundancy allowance of six months regular remuneration.

94. (1) The Commissioner shall send a copy of all complaints received under section 91 to the Tribunal, endorsed with a note stating whether or not he or she intends to take steps to effect a settlement of the matter.

(2) Where the Commissioner attempts to effect a settlement, he or she shall do so within one month of his or her receipt of the complaint and, at least before the end of that period, notify the Tribunal that a settlement has been effected or that settlement efforts have ceased.

Agreed  
settlement

(3) A communication made by either party to the complaint in the course of settlement discussions undertaken by the Commissioner is not admissible as evidence in any proceedings in the Tribunal or any Court without the consent of the party who made the communication.

(4) No settlement effected by any means, other than that specified in subsection (2), is binding on either party to the complaint.

(5) If a settlement is effected, the Commissioner shall record its terms in writing and notify the Tribunal.

95. The Secretary of State may, by Order published in the Gazette, exempt an employer or employers from the application of sections 82 to 94, on condition that -

(a) the employer or employers so exempted have agreed, in writing, with a trade union or trade unions whose members are his or her employees to provide rights and mechanisms which, in the opinion of the Secretary of State, are at least as favourable to the employees as those provided in sections 82 to 94;

(b) the agreement makes provision for final resort to independent binding arbitration;

(c) that a joint application for exemption has been made by the parties to the agreement, indicating those groups or classes of employees covered by the agreement; and

(d) the exemption applies only to groups or class of employees of the employer or employers concerned that are covered by the agreement.

Exemption

## PART XII - REGISTRATION OF EMPLOYERS' ORGANISATIONS AND TRADE UNIONS

Registers of employers' organisations and trade unions

96. (1) The Registrar General (in this Part referred to as "the Registrar") is the Registrar of Trade Unions and Employers' Organisations.

(2) The Registrar shall maintain separate registers of employers' organisations and trade unions.

(3) The Registrar shall enter on the register of employers' organisations any employers' association which-

- (a) applies to be so registered;
  - (b) has, among its principal objects, the regulation of terms and conditions of employment of workers or the conduct of industrial relations with workers; and
  - (c) satisfies the conditions for registration under this Part.
- (4) The Registrar shall enter on the register of trade unions any organisation which, immediately before the coming into force of this Part, was registered as a trade union, and any other organisation -
- (a) of not less than fifty workers applying to be so registered and having among its principal objects -
    - (i) the regulation of terms and conditions of employment of workers, or
    - (ii) the conduct of industrial relations with employers; or

(b) composed entirely of organisations of workers having among their principal objects -

- (i) the regulation of terms and conditions of employment of workers, or
- (ii) the conduct of industrial relations with employers; and
- (c) which satisfies the conditions for registration under this Part.

Obligation to apply for registration

97. (1) The managing committee of an employers' association or a trade union within the meaning of section 96 shall, within thirty days of the founding of the organisation, make an application in writing to the Registrar for the registration of the organisation, accompanied by a copy of the rules of the organisation.

(2) Where the provision of subsection (1) are not complied with, the members of the managing committee of the organisation commit an offence and are liable on conviction before a Magistrate to a fine not exceeding one thousand dalasis for each day the non compliance continues.

(3) The Registrar shall, within one month of the receipt of the application and rules under section 97, cause notice of the application, together with the rules of the organisation, to be published in the *Gazette*.

Conditions for registration

98. (1) The Registrar shall not register an organisation unless he or she is satisfied that -

- (a) the rules of the organisation have been submitted in writing and satisfactorily disclose the objects of the organisation;
- (b) one of the principal objects of the organisation is an object specified in subsection (3) or (4) of section 96, as the case may be;
- (c) in the case of an organisation consisting of persons engaged in, or engaged in working in, more than one trade or occupation, the rules of the organisation contain provision adequate to protect the sectional interests of those persons; and
- (d) no objection received to the registration shows that the organisation conducts its affairs in contradiction of the laws or Constitution of The Gambia.
- (2) Before making a decision to deny an application for registration, the Registrar shall give the managing committee of the organisation the right to make such oral or written submissions in support of its application, as the managing committee considers appropriate.
- (3) Within three months after the date of publication of the notice of receipt of the application under section 97, the Registrar shall notify the organisation-
- (a) that it has or has not, been registered; and
- (b) if it has not been registered, the reasons for non-registration.
- (4) A member of an organisation whose application for registration has been denied may appeal against the decision to the High Court within three months from the date of the denial.

(5) On an appeal under subsection (4), the High Court may make such order as it thinks proper, including an order that the organisation be registered, and a direction as to the cost of the appeal.

#### Registration

99. (1) Within two months of the date of publication of the notice referred to in section 97, the Registrar, on being satisfied that the organisation has complied with any regulations for registration in force under this Part and subject to the provisions of section 98, register the organisation and its rules either as an employers' organisation or as a trade union.

(2) On registration, the Registrar shall issue a certificate, which, unless revoked or cancelled, is conclusive evidence that the provisions of this Act as to registration have been complied with.

#### Legal personality

100. An organisation registered under this Part has legal personality, with the right to sue and be sued, enter into contracts, own and dispose of property, real and personal, and is subject in all other ways to the laws of The Gambia in accord with its status under this section.

#### Maintenance of registration

101. An employers' organisation or trade union that is or has been registered immediately before the commencement of this Act is deemed to be registered under this Act.

#### Initial returns

102. (1) Within three months of receipt of notification from the Registrar that the organisation has been registered, the secretary of the organisation shall deposit with the Registrar -

- (a) a note of the name and address of the registered office of the organisation;

- (b) a copy of the rules of the organisation showing any difference, if any, between them and those submitted in support of the application for registration;
- (c) a list of the names and addresses of all the national officers of the organisation whether or not they are wholly or partially remunerated by the organisation;
- (d) the names and addresses of the members of the governing body of the organisation;
- (e) a statement of the current financial position of the organisation containing a note of the date on which the financial year of the organisation is due to end; and
- (f) in the case of a trade union, a statement of the number of members of the organisation at a specified date not earlier than one month before the date of the return.
- (2) While the organisation remains registered, the secretary of the organisation shall notify the Registrar within one month of any change of a matter notified under paragraph (a), (b), (d) or (f) of subsection (1).
- (3) On notification by a registered organisation of its change of name, the Registrar shall register the new name and delete the former name, unless the new name so closely resembles the name of an existing registered organisation as to be likely to cause confusion.
- (4) A registered organisation that fails to give the information required by this section commits an offence and is liable on conviction to a fine of not exceeding twenty thousand dalasis.

103. (1) Subject to subsection (2), an organisation registered under this Part shall, not later than the thirty-first day of January in every year, furnish to the Registrar an annual return containing the information specified in this section.
- (2) An organisation is not required to furnish an annual return under this section until at least twelve months after the date of its registration.
- (3) The annual return shall include -
- (a) a general statement of the receipts, funds, effects and expenditure of the organisation showing -
- (i) fully the assets and liabilities at that date, and the receipts and expenditure during the year preceding the date of the return,
- (ii) separately the expenditure in respect of the several objects of the organisation, the expenditure for remuneration of officers and the expenditure for training officers and officials of the organisation;
- (b) a note of the number of members of the organisation at the commencement of that year; and
- (c) a note of any alteration in the rules of the organisation which came into operation in the year preceding that year.

(4) A registered organisation that fails to provide an annual return commits an offence and is liable on conviction to a fine of not less than twenty thousand dalasis.

Inspection and  
audit of accounts

104. (1) Where the Registrar, on the basis of an annual return, is unable to -

(a) determine with accuracy the receipt or expenditure of the organisation or the present financial position of the organisation; or

(b) ascertain with certainty the absence of irregularity or fraud,

he or she may, call for any book, record or other document kept by the organisation and relating to the account for his or her examination, or for examination by an auditor qualified as an accountant, appointed by him or her.

(2) Without derogating from the generality of subsection (1), an organisation shall disclose the following matters in its accounts -

(a) the authority for all expenditure by the organisation;

(b) the state of arrears of a payment due to the organisation including a statement of the estimated arrears of dues from members and a note of the steps taken to collect or write-off any arrears of more than three months' standing;

(c) the state of the organisation's investments and of deposits or loans made by or on behalf of the organisation, and of any obligation of the organisation in respect of any guarantee for an advance, loan or mortgage to any person; and

(d) a statement of the estimated value of the property of the organisation.

(3) Where the Registrar appoints an auditor under subsection (1), the organisation shall pay the reasonable expenses of the audit.

(4) An auditor has the power to require the production of all books, papers and documents relating to the accounts to be audited and to inspect them, but the auditor shall not enter the premises of an organisation without the consent of the organisation.

(5) A person who -

(a) fails to furnish any book, record or other document called for by the Registrar under subsection (1);

(b) fails to provide the auditor with any book, paper, or document to which the auditor requires; or

(c) otherwise hinders or molests the Registrar or the auditor in the exercise of the powers granted to them by this section,

commits an offence and is liable on conviction to a fine of not less than twenty thousand dalasis or imprisonment for a term not exceeding two years or to both the fine and imprisonment.

(6) Where a person fails to comply with a requirement specified in subsection (1) or hinders the Registrar or an auditor in the exercise of their powers under this section, the Registrar may apply to the High Court, and the Court shall, if satisfied that the failure or hindrance has occurred, order the person concerned to comply with the requirement or cease the hindrance.

(7) Where an examination or audit of any account under the provisions of this section reveals that -

- (a) a criminal offence may have been committed;
- (b) a failure to satisfy any provision of this Act may have occurred; or
- (c) the organisation has failed to take adequate steps to secure payment of outstanding monies due to it,

the Registrar may, if it appears expedient to do so for the benefit of the members of the organisation, institute appropriate criminal or civil proceedings against the person concerned.

(8) The proceedings under subsection (7) shall be instituted on behalf of and in the name of the organisation but shall be conducted at the expense of the Registrar.

(9) Once the Registrar has certified the copy of the accounts submitted under the provisions of this section as acceptable, the organisation shall make it available at its registered office for inspection by any member of the organisation on reasonable request.

Cancellation of registration

105. (1) The Registrar may cancel the registration of an organisation if, after notification to the organisation at the last known address of its registered office and consideration of any representation made to him or her by any person acting on behalf of the organisation, he or she is satisfied that -

(a) the organisation has ceased to exist;

(b) the organisation does not satisfy, or has ceased to satisfy the requirements of section 98;

(c) any one of the purposes of the organisation is unlawful; or

(d) the organisation has requested that its registration be cancelled.

(2) The Registrar shall notify an organisation of the cancellation of its registration at the last known address of its registered office.

(3) Any one or more members of an organisation whose registration has been cancelled may, within sixty days of their notification of the cancellation, appeal against the cancellation to the High Court.

(4) On an appeal under subsection (3), the High Court may make such order as it thinks proper, including an order to register the organisation and a direction as to costs.

(5) The Registrar shall not give effect to a cancellation of registration, when the final outcome of an appeal is pending.

Regulations for the operation of this Part

106. The Registrar may make rules to facilitate the operation of this Part and shall publish those rules in the Gazette.

**PART XIII – FREEDOM OF ASSOCIATION,  
RIGHT TO COLLECTIVE BARGAINING, AND  
INDUSTRIAL RELATION**

Freedom to  
associate

107. Workers and employers have the right to establish and join workers' and employers' organisations of their own choice in accordance with the Constitution and laws of The Gambia.

Organisations'  
rights

108. (1) Workers' and employers' organisations have the right to draw up their constitutions and rules, to elect their representatives, to organise their administration and activities, and to formulate their programmes in full freedom, subject only to the Constitution and laws of The Gambia.

(2) Workers' and employers' organisations have the right to establish and join federations and confederations, and any organisation, federation or confederation has the right to affiliate with international organisations of workers and employers, subject only to the Constitution and laws of The Gambia.

Prohibition of  
domination

109. (1) An employer who does an act designed to promote the establishment of a workers' organisation under its domination, or to support a workers' organisation by financial or other means, with the object of placing the organisation under his or her control, commits an offence and is liable on conviction to a fine of not less than fifty thousand dalasis.

(2) A person who has an interest in the matter may bring an action before the High Court alleging the offence specified in subsection (1).

Joint Industrial  
Councils

(3) A Court that finds an employer guilty of an offence specified in subsection (1) may also order the cancellation of the registration of the dominated workers' organisation.

(4) The powers given by this section for remedying an employer's domination of a workers' organisation does not prevent any court from fashioning a remedy which it deems adequate in the circumstances.

110. (1) There are hereby established Joint Industrial Councils for the following industries, which shall be constituted in accordance with the provisions of this Act-

- (a) commerce;
- (b) artisans;
- (c) transport;
- (d) the port industry; and
- (e) agriculture and fisheries.

(2) The Secretary of State may-

- (a) on the advice of the Labour Advisory Board, by Order published in the *Gazette*, constitute other Joint Industrial Councils; and
- (b) assign to the Joint Industrial Councils supervision over the terms and conditions of employment of such categories of industry and of workers as, on the advice of the Labour Advisory Board, he or she deems fit.

(3) The Secretary of State may, on the advice of the Labour Advisory Board-



(a) revise the assignment of categories of industry and of workers in respect of any Joint Industrial Council; and

(b) terminate the operation of any Joint Industrial Council,

if he or she believes that adequate terms and conditions of employment will be maintained for all grades of workers for whom the Council operates.

(4) The Secretary of State shall appoint to each Joint Industrial Council-

(a) equal number of representatives of employers' organisations and of registered trade unions; and

(b) two independent members.

(5) A trade union which satisfies the Secretary of State that it has in membership not less than twenty-five per cent of the employees in any three or more categories of employees for which the Joint Industrial Council operates is entitled to have at least one representative on the relevant Joint Industrial Council.

(6) No registered trade union shall have more than three times the number of members of a Joint Industrial Council and of workers as any other single registered trade union which is a member of that Joint Industrial Council.

111. (1) A Joint Industrial Council shall, by agreement of a majority of representatives of employers and of trade unions, fix the minimum terms and conditions of employment of any employee or category of employees within the industries or job categories for which it operates, whether or not the employees are in management grades or are pensionable.

Responsibility and power of Joint Industrial Councils

(2) A Joint Industrial Council shall fix minimum terms and conditions of employment for apprentices and, separately, for trained categories of workers possessing trade certificates.

(3) A provision of a Joint Industrial Council agreement, which is contrary to a valid direction of the Authority, is invalid.

(4) A Joint Industrial Council has the power to fix, amend or revoke any classification of trades within the industry in which it operates but shall act on the recommendation of the Labour Advisory Board in accordance with section 43.

(5) Nothing in this section permits a Joint Industrial Council to make any agreement which contravenes or derogates from any provision of this Act or of any other legislative provision whatsoever.

112. (1) The members of a Joint Industrial Council shall, at the first meeting in each calendar year, elect, to a twelve-month term, a chairperson and deputy chairperson from among their number.

(2) An outgoing chairperson and deputy chairperson are eligible for re-election under subsection (1).

113. A Joint Industrial Council may adopt, replace or amend its rules of procedure, but the rules must not contravene or revoke any provision of this Act.

114. (1) The chairperson, or if he or she is for any reason incapable of acting or fails or declines to, the deputy chairperson of a Joint

Officers of Joint Industrial Councils

Rules of Joint Industrial Council

Meetings of Joint Industrial Councils

Industrial Council shall convene a meeting of that Council at least once in every six months and, in any event, on the request of any three members of the Council and shall cause all members to be notified of the time and place of the meeting.

(2) If both the chairperson and the deputy chairperson are incapable of acting or fail or decline to act in accordance with subsection (1), any three members of the Joint Industrial Council may convene a meeting of the Council and those members shall cause all members to be notified of the time and place of the meeting.

(3) If the chairperson or the deputy chairperson willfully fails or declines to convene a meeting of the relevant Joint Industrial Council as required by subsection (1) he or she shall, on the application of any member of that Council to the Tribunal, be removed from office, in which case the Secretary of State shall appoint a replacement within three months of the removal.

(4) If a meeting of a Joint Industrial Council properly convened under subsection (1) or subsection (2) is postponed, or is not attended by a quorum as established in its rules of procedure or is, for any other reason, ineffective, the person convening the meeting shall reconvene the meeting after a reasonable interval and shall notify the members of the time and place of the meeting.

(5) If, at a meeting reconvened under subsection (4) because—

(a) at the first meeting there was no quorum on one side of the membership; or

(b) the first meeting was postponed at the request of one side of its membership,

there is no quorum on the same side, the reconvened meeting shall, notwithstanding anything in the Council's rules of procedure, be conclusively deemed to have a quorum and competent to conduct the business of the Council.

(6) A meeting reconvened under subsection (5) shall not be postponed again on the request of the same side and shall, if necessary, appoint an acting chairperson for the meeting.

(7) A Joint Industrial Council shall not meet jointly with another except with the agreement of the employer and trade union representatives and the independent members of all the Councils concerned.

(8) The Commissioner, or such person as he or she shall appoint for the purpose, may attend a meeting of a Joint Industrial Council in an advisory capacity.

115. (1) A Joint Industrial Council shall request the Secretary of State to publish by Notice, in the Gazette, such minimum terms and conditions of employment on which it has agreed.

(2) The Secretary of State shall, within one month of receipt of a request under subsection (1), either —

(a) publish, in the Gazette, Notice of the agreement which constitutes the minimum terms and conditions of employ-

Publication of  
agreement

ment for employees or group of employees within the industry for which the Joint Industry Council operates; or

(b) refer any matter back to the Joint Industrial Council for reconsideration, and delay publication until the Joint Industrial Council again requests publication of the agreement in the same or an amended form.

(3) The Secretary of State shall not refer any matter back to a Joint Industrial Council for reconsideration a second time, but shall publish the Notice in the Gazette.

Effect of publication

116. (1) Within the expiration of one month of the publication of Notice of a Joint Industrial Council agreement, all employers of employees or groups of employees specified in the agreement shall observe terms and conditions of employment not less favourable than those set out in the Notice.

(2) On the coming into operation of the obligation specified in subsection (1), the terms and conditions of employment specified in the Notice shall be implied into the contract of employment of each employee to whom they apply and any provision less favourable in the contract is null and void.

(3) Nothing in this section or in any provision of this Act prevents the formation of a valid contract of employment setting terms and conditions more beneficial than those provided by an agreement of a Joint Industrial Council.

Penalties for failure to apply terms and conditions of employment

117. (1) An employer who applies terms and conditions of employment, that are less favourable than those specified in the relevant published Joint Industrial Council agreement, commits an offence and is liable on conviction to a fine not exceeding five hundred dalasis for each day of the offence.

(2) A Court that finds an employer guilty of the offence specified in subsection (1) may order the employer to pay to each affected employee such sum as the Court shall assess as the appropriate monetary compensation for the benefit he or she has actually received and the benefit he or she would have received by reason of compliance with section 116.

(3) The powers given by this section for the recovery of sums due from an employer are not in derogation from any right to recover those sums by civil proceedings, but in the civil proceedings a sum recovered by reason of subsection (2) shall be taken into account and set off against the amount of damages awarded in those proceedings.

Special terms for disabled persons

118. (1) An employee or other person desiring to be employed who is affected by an infirmity or physical incapacity, which renders him or her incapable of performing work of a quantity and quality that justified payment of the minimum remuneration specified in a Joint Industrial Council agreement, may apply for a permit authorising his or her employment at a specified rate less than the minimum remuneration set by the agreement.

(2) An application under subsection (1) shall be made to the chairperson of the relevant Joint Industrial Council, who shall grant the application subject to such conditions as he or she may determine.

(3) Whenever the chairperson of a Joint Industrial Council receives an application under this section, he or she shall report the fact of the application and the action taken on it to the next meeting of the Joint Industrial Council.

(4) On receiving the information in subsection (3), a Joint Industrial Council may withdraw the permit or amend, impose, or revoke any condition attached to it, and any action taken shall come into force immediately.

119. (1) The employer of the employees to whom a Joint Industrial Council agreement applies shall-

(a) keep, for not less than three years, records showing compliance with section 116, as in respect of those employees; and

(b) post in a prominent place at the workplace a notice containing the terms of the agreement in a language that all the employees understand.

(2) An employer who fails to comply with any provision of this section commits an offence and is liable on conviction to a fine not exceeding five hundred dalasis for each day the offence continues.

Records and notices

(3) An employer who -

(a) keeps a false or misleading record, or willfully makes a false or misleading entry in a record; or

(b) with intent to mislead, produces a false record or gives a false information, commits an offence and is liable on conviction to a fine of five hundred dalasis for every false or misleading record or statement.

Employment of dock workers, etc

120. (1) The Gambia Ports Authority is responsible for the recruitment of dockworkers on such terms and conditions as it may determine as appropriate.

(2) In this section, "dock workers" include transit shed labour and tally clerks.

Exemption from collective bargaining

121 (1) The Secretary of State shall, on the joint application of an employer and a trade union, exempt any category of workers, industry or establishment from the operation of the relevant Joint Industrial Council agreement, if he or she is satisfied that there exists a machinery for voluntary collective bargaining sufficient to maintain adequate terms and conditions of employment in that category, industry, or establishment.

(2) An exemption under subsection (1) shall be made by Notice published in the *Gazette*.

(3) The Secretary of State may, by Notice published in the *Gazette*, revoke or amend the exemption granted pursuant to subsection (1), if he or she is satisfied that -

(a) the machinery in question has wholly or partially ceased to exist; or

(b) the terms or conditions of employment have fallen below the minimum level established by the relevant Joint Industrial Council agreement without satisfactory compensatory terms or conditions.

(4) On the revocation of an exemption under subsection (3), the relevant Joint Industrial Council agreement shall apply, but any term or condition previously applied to an employee that-

(a) is more beneficial than the corresponding term or condition in the Joint Industrial Council agreement, shall continue to apply and be incorporated in the employees' contract of employment as a minimum condition; and

(b) is less beneficial than the corresponding term or condition in the Joint Industrial Council agreement, shall become invalid and be replaced by the corresponding term of the Joint Industrial Council agreement.

Enforceability of  
voluntary agree-  
ments

122 (1) Notwithstanding anything in section 123, a collective agreement made between an employer and a trade union, in circumstances to which section 121 applies, is enforceable as a contract between the parties to the agreement.

(2) A copy of an agreement falling within section 121 shall be reduced to writing and sent to the Commissioner who shall register the agreement, unless he or she is not satisfied that the writing adequately represents the terms of the agreement between the parties.

Registration of  
voluntary  
agreements

123. (1) The Commissioner shall register a written voluntary collective agreement, which is not exempted under section 121, on the application of both parties to the agreement and notify the parties of the registration.

(2) On receipt by both parties of notification of registration of a voluntary agreement under subsection (1), the agreement becomes enforceable as a contract between the parties to the agreement.

Enforcement as  
part of the  
contract of  
employment

124. The provisions of a collective agreement registered under section 122 or 123 which, on their face, are to be applied to a class or group of employees-

(a) is applicable to all employees in the class or group employed by a party to the agreement, irrespective of whether the employee is a member of the trade union which is party to the agreement; and

(b) is deemed to be incorporated into the contract of employment of each employee in the class or group.

Binding effect of  
procedural  
agreements

125. Where a collective agreement registered under section 122 or 123, which contains clauses directly applicable to the terms and conditions of employment of an employee or class of employees, those clauses are deemed to be incorporated as terms and conditions of the contracts of employment of the employee or class of employees.

Effect of procedural agreements on industrial action

126. A party to a collective agreement registered under section 122 or 123 shall not take any form of industrial action or impose any other sanction, including a withdrawal of labour or lockout in pursuit of an industrial dispute, if the agreement sets procedures for the settlement of disputes during the duration of the agreement, unless the dispute relates to a provision of an agreement which-

(a) has fallen below the minimum standard set by the relevant Joint Industrial Council; or

(b) would have been set by a Joint Industrial Council but for the operation of section 121.

Time limit on binding agreements

127. (1) When a Joint Industrial Council agreement or an agreement falling within section 121, 122 or 123 specifies a period of time during which a substantive provision shall operate without review, the substantive provision is binding on the parties and not subject to revision, alteration or cancellation during the period specified, but if the period specified exceeds three years it is deemed to be three years.

(2) Where an agreement referred to in subsection (1) specifies no period of time during which it shall remain binding, it is deemed to remain binding for one year.

Commissioner as adviser

(3) A party to an agreement may, not earlier than three months before the termination of the agreement, demand negotiation of a new agreement to take effect on or after termination of the agreement, and the other party to the agreement shall participate in good faith in the negotiation.

128 The Commissioner or a person acceptable to the parties nominated by him or her, may, if jointly invited by the parties involved, attend a Works Committee or a voluntary negotiation as an adviser, mediator or conciliator.

Works Committee

129. (1) An employer who employs one hundred or more employees at a single establishment for a continuous period of three months shall set up a Works Committee on the request of a trade union which has, in membership, an employee at that establishment, unless a Works Committee applicable to the employee already exists.

(2) A Works Committee established in accordance with subsection (1) shall-

(a) not be disbanded if the number of employees at that establishment exceeds ten, whether or not any employee remains a member of a trade union; and

(b) operate in respect of all members of management or of all other workers as appropriate to the membership of the trade union which requested its establishment.

(3) A Works Committee shall compose of employees of the establishment, elected by secret ballot at intervals determined by the employer but at least once in every three years.

(4) The members of the Works Committee shall be elected by the employees represented by the Committee as a whole, or by the employees voting by categories, as defined by the constitution of the Committee.

(5) Voting for members of a Works Committee shall be readily accessible to all members of the electorate, and candidates shall be afforded not less than one reasonable opportunity to address a meeting of all the electorate.

(6) Nothing in this section prevents the voluntary establishment of a Works Committee and the Committee when established is subject to the provisions of this section.

(7) The management of an establishment shall consult a Works Committee, whether established under this section or voluntarily, on any proposal, which may affect the employment or the terms and conditions of employment of an employee represented by that Committee.

130. (1) An employer may grant a trade union sole bargaining rights for a category of employees if the trade union has, in membership, at least thirty per cent of the employees in that category at his or her establishment or group of establishments.

Requirements for  
sole bargaining  
agency

(2) An employer shall not grant sole bargaining rights to a trade union if another trade union has more employees in membership among that category of employees at the establishment or group of establishments.

(3) Subject to the provisions of subsections (1) and (2), if one or more trade unions have an aggregate membership of not less than forty-five per cent of the employees in a category of employees at an establishment where more than one hundred employees in total are habitually employed, the union or unions may request the employer to constitute it or them as the sole bargaining agent for that category of employees.

(4) Subject to the provisions of subsection (1) and (2), if one or more unions have in aggregate membership fifty per cent plus one of the employees in a category of employees at an establishment where more than one hundred employees in total are habitually employed, the employer shall grant that union or those unions the sole bargaining right for that category of employees within three months from the date of a request by the union or unions.

(5) If an employer requested to grant sole bargaining rights by reason of subsection (4) fails to do so within three months from the date of the request, a trade union party to that request may at any time after the expiration of the three months complain to the Tribunal.

(6) The Tribunal may, if satisfied that the request has been duly made and the conditions specified in subsection (4) have been satisfied, order the employer to constitute the union or unions as the sole bargaining agent.

(7) If an employer fails to implement an order made under subsection (6) within a reasonable period after it has been made, each director, member of the board, proprietor, partner or other person the Tribunal determines to be an employer, commits an offence and is liable on conviction to a fine not exceeding five hundred dalasis for every day of the failure to comply with the Tribunal's order.

## Balloting

## Third Schedule

131. (1) An employer may, on receiving an application to establish a sole bargaining agency, organise a secret ballot among the employees in the specified category in order to determine the matters referred to in the Third Schedule.

(2) An employer may, at the request in writing of not less than twenty *per cent* of the employees in a category of employees subject to sole bargaining agreements, organise a secret ballot to determine whether sufficient support remains for continuation of the sole bargaining agency.

(3) An employer shall not organise a secret ballot under subsection (2) within twelve months of a proceeding ballot organised under subsection (1).

(4) The ballots mentioned in subsections (1) and (2) shall give one vote to each employee in the sole bargaining category and ask only those questions specified in the Third Schedule.

## Third Schedule

(5) If a ballot discloses that-

(a) the sole bargaining agent or the trade union applying for sole bargaining agency has in membership less than thirty *per cent* of the employees in the relevant category, the agency shall not be granted or shall be withdrawn, as the case may be, and

(b) the trade union has in membership less than forty-five *per cent* of the employees in that category, the employer shall be free to decide whether to grant or withdraw the agency, as the case may be.

(6) Where, on a ballot as to continuation of a sole bargaining agency, the answers to the optional questions disclose that the union having the sole agency has, in membership, less than forty-five *per cent* of the employees in the category and another trade union registered as efficient has, in membership, a higher percentage of the employees in that category, the employer shall withdraw the bargaining agency agreement with the first mentioned trade union.

(7) Where a sole bargaining agency is withdrawn as a result of the provisions of subsection (5) or (6), the employer-

(a) may, if he or she wishes, withdraw check-off arrangements; and



(b) shall withdraw check-off arrangements with the former sole bargaining agent, if a sole bargaining agency in respect of the same category of employees is subsequently granted to another trade union,

Negotiation in good faith

132. (1) An employer shall-

(a) bargain in good faith with a sole bargaining agent on all matters in respect of the relevant category of employees which might give rise to a trade dispute; and

(b) not negotiate a matter with any other trade union, organisation or person in respect of that category of employees.

(2) A sole bargaining agent shall negotiate in good faith on behalf of all the employees within the category of employees to which the agency relates, whether or not they are members of the union or unions.

Check-off

133. (1) Where a trade union or a group of trade unions has been constituted a sole bargaining agent, the union or group may request the employer to deduct union membership dues from the wages of union members and the employer shall comply with the request in the case of an employee who gives written consent to the deduction.

(2) An employer shall remit the amount so deducted to the relevant trade union or group, but may retain a sum, not exceeding five per cent of the amount so deducted, to meet the cost of collecting and remitting the amount.

Conspiracy in trade disputes

134. (1) An agreement or a combination by two or more persons to do or procure to be done an act in contemplation or furtherance of a trade dispute does not constitute a criminal conspiracy if the act committed by one person would not be punishable as a crime.

(2) An act done in pursuance of an agreement or a combination by two or more persons is, if done in contemplation or furtherance of a trade dispute, not actionable unless the act if done without the agreement or combination would be actionable.

Immunity from liability for interference with contract

135. An act done by a person in contemplation or furtherance of a trade dispute is not actionable on the ground only that it-

- (a) induces some other person to break a contract of employment or to interfere with a contract of employment of some other person or with the rights of some other person to dispose of his or her capital or his or her labour; or
- (b) constitutes a threat to do any of the things mentioned in this section.

Immunity from action in tort against trade unions

136. An act done by or on behalf of a registered trade union in contemplation or furtherance of a trade dispute is not actionable in tort against the trade union or against a person in a representative capacity for the trade union.

Picketing

137. It is lawful for one or more persons, acting on their own behalf or on behalf of a trade union or of an individual employer in contemplation or furtherance of a trade dispute, to assemble-

- (a) at or near their own place of employment; or
- (b) if the persons are officials of the registered trade union, at or near the place of employment of employees whom they represent,
- if they so assemble for the purpose of peacefully persuading a person to work or abstain from working or to communicate information.

## Secondary action

138. (1) An employee who is subject to disciplinary action by his or her employer shall not take industrial action against the employer, unless his or her employer is a party to a trade dispute, or deemed to be a party to a trade dispute as specified in subsection (2).

(2) For the purposes of subsection (1), the following employers are deemed to be a party to a trade dispute-

- (a) an employer who controlled by the same company, person or group of persons, one of which is party a to the trade dispute in contemplation or furtherance of which the industrial action in question is taken; or
- (b) an employer who is supplying goods or services, or at any time, during the trade dispute against the employer who is party to a trade dispute, in contemplation or furtherance of which the action in question is taken, has supplied to the employer who is party to the dispute, goods or services in place of goods or

services, the supply of which has been adversely affected by the industrial action taken directly against the employer who is party to the dispute.

(3) An industrial action, or incitement or inducement to undertake industrial action, in breach of subsection (1), is deemed unlawful and may be prohibited by order of the High Court on the application of an employer affected by the action.

(4) The immunity granted by any provision of this Part does not apply to improper industrial action under this section or section 139.

139. (1) The following industrial actions are deemed improper industrial actions and may be prohibited by order of the High Court, on the application of an employer affected by the action-

- (a) subject to the provisions of subsection (2), action of which fourteen days' notice has not been given in writing to the Commissioner; or
- (b) action which is in breach of a collectively agreed procedure for the settlement of trade disputes applicable to the trade dispute in question and which provides expressly or impliedly in accordance with section 127 that the procedure shall be exhausted before industrial action is taken; or

## Political action and action in breach of procedure

(c) action which is primarily in pursuit of a political object, where a trade dispute is either no part of the purpose of the action or only an insignificant part of that purpose.

(2) Where the taking of industrial action is likely to affect the continuation of a service, the interruption of which would endanger the life, personal safety or health of the whole or part of the population, the Commissioner shall be given twenty-eight days notice of the action.

Emergency provisions

140. (1) Where, in the opinion of the President of the Republic of The Gambia, the existence of an industrial action threatens the continuation of a service, the interruption of which would endanger the life, personal safety or health of the whole or part of the population, he or she may –

(a) appoint a Court of Inquiry to report to him or her the facts of the dispute within one week of its appointment; or

(b) order a return to work and immediately appoint a Board of Arbitration in accordance with subsection (3).

(2) The report of the Court of Inquiry shall be published in the *Gazette* within seven days of its submission to the President.

(3) If the dispute has not been settled within seven days of the publication of the report of the Court of Inquiry, the President shall immediately appoint a Board of Arbitration whose award shall –

(a) be made within seven days of its appointment;

(b) be published in the *Gazette* within three days of its making;

(c) be final and binding on the parties; and

(d) where appropriate to individual terms and conditions of employment, be deemed to be incorporated as terms and conditions of employment of the employees to whom it applies.

(4) An industrial action in contemplation or in furtherance of the same trade dispute as gave rise to the action referred to in subsection (1), taken after the appointment of the Court of Inquiry and before the award of the Board of Arbitration –

(a) is deemed an unlawful industrial action; and

(b) is prohibited without further order of any court and may be penalised as if it were a contempt of the High Court, but this prohibition does not apply if the Court of Inquiry or the Board of Arbitration fails to report within the specified time or the report of either body is not published in the *Gazette* within the times specified.

(5) A Judge of the High Court, nominated by the Chief Justice, shall be the chairperson of the Court of Inquiry and an independent person who has experience of industry or of trade unions or of industrial relations, nominated by the Chief Justice, shall be the chairperson of the Board of Arbitration.

(6) The Court of Inquiry and the Board of Arbitration shall have, in addition to the Chairperson;

(a) a member nominated by the Chief Justice, after consultation with trade unions not party to the dispute in question; and

(b) a member nominated by the Chief Justice, after consultation with employers or organisations of employers not party to the dispute in question.

(7) A party to the industrial action may appeal to the High Court on the ground that the industrial action does not fall within subsection (1), and if there is an appeal, none of the provisions of this section shall apply until the decision of the High Court is announced.

#### PART XIV - MISCELLANEOUS

Discrimination on the basis of HIV/AIDS

141. (1) An employer shall not discriminate in any way in employment, including in hiring, remuneration, promotion or assignment, and termination, based on the actual, perceived or suspected HIV/AIDS status of a person.

(2) A complaint of discrimination on the basis of HIV/AIDS status may be made to the Commissioner and shall, in any case, be within the jurisdiction of the Tribunal.

(3) An employer who discriminates on the basis of HIV/AIDS status of a person commits an offence and is liable on conviction to a fine of not less than five thousand dalasis and not more than twenty-five thousand dalasis, in addition to any other remedy available to the person or persons involved

Enforceability of illegal contracts

142. No provision of a contract of employment or a right or an obligation granted or imposed by this Act or any other rule of law is unenforceable by reason of illegality of the contract on the grounds of public policy, if-

(a) the person seeking to enforce the contract did not know of the illegality when the contract was made; and

(b) the Tribunal is satisfied that the absence of that knowledge is not due to that person's willful neglect or default.

Continuity of employment

143. (1) The following provisions apply whenever continuity of employment is to be ascertained for the purpose of any provision of this Act or any other law-

(a) a period of continuous employment begins from and includes the first day of which an employee begins to work for an employer and continues up to and includes the date of termination of employment;

(b) where an employee is engaged in a seasonal occupation and is employed in two successive seasons but is not employed by the same employer during an intervening period, the employee is deemed to have been continuously employed for the aggregate of all the time he or she has actually been working for the same employer in successive seasons;

(c) periods of employment with the same employer, not falling within paragraph (b) where the employment has been temporarily interrupted by weather, the suspension of a project, a period of maternity leave or for any other reason, are deemed to be periods of continuous employment for the aggregate of all the time covered by those periods of employment;

(d) consecutive periods of employment with two or more successive employers, where a successor has taken over the business of the former employer either as receiver or liquidator, personal representative or heir, or on transfer of the whole or part of the business, or otherwise, is deemed a single period of continuous employment with the successor.

(2) The payment of a retainer during a period of interruption of employment is not, of itself, regarded as implying either that the contract continues during that period or has been terminated at the commencement of that period.

144. (1) An employer or a class of employers may be required, by order of the Commissioner and at the employer's expense, to display in a prominent position at any work-place, a notice explaining any provision, or Part, or the whole of this Act, in such terms and languages as the Commissioner may decide.

Display of  
explanatory  
notices

(2) The Commissioner may cause to be printed and sold, at a reasonable price, a model copy of any notice required to be displayed under subsection (1).

Regulations  
145. The Secretary of State may make regulations for the better carrying into effect of the provisions of this Act.

Repeal and  
saving of regu-  
lations, orders,  
awards and  
agreements  
Cap 56:01  
146. (1) The Labour Act is hereby repealed.

(2) All regulations, orders, awards or agreements made by or in relation to any Joint Industrial Council, or affecting the composition or functions of the Department of Labour made before the commencement of this Act shall, on the commencement of this Act, be deemed to remain effective and in force in so far as they do not contravene this Act.

## SCHEDULES

### FIRST SCHEDULE (sections 32 and 91(5))

#### INDUSTRIAL TRIBUNAL RULES

##### Arrangement of Rules

##### Rule

1. Content of claims
2. Limitation
3. Service of claim and notice of hearing
4. Promotion of conciliation
5. Chair to prevent prejudicial delay
6. Place of hearing
7. Public hearing unless otherwise ordered
8. Summary of evidence
9. Hearing to be informal
10. Hearing in the absence of defendant
11. Decision announced at conclusion of hearing, if possible
12. Right to be heard
13. Consolidation of claims
14. Representative claims
15. Joint defendants
16. Costs
17. Frivolous claims
18. Adjournment
19. Review of awards or orders
20. Leave to appeal on point of law
21. Power of High Court
22. Procedure on appeal

23. Stay of execution on review or appeal
24. Registration of awards in the High Court
25. Interest on claims and awards
26. Payment of award in joint or representative claims
27. Defendant not liable for allocation of award
28. Chair to exercise powers of Magistrate
29. Registrar of the Tribunal
30. Amendment of Rules
31. Power of the Chair to enforce payment of fine, etc.
32. Procedure generally

## INDUSTRIAL TRIBUNAL RULES

Content of claims

1. (1) A proceedings in the Tribunal shall be commenced by filing a claim with the Tribunal.
- (2) A claim shall be in writing in the prescribed form, be signed, by each claimant and person represented, as being correct to the best of his or her knowledge, and shall contain -
- (a) the name and address of each claimant, and, in the case of a representative claim, the name and address of each person represented;
  - (b) the name and address of each defendant;
  - (c) the sum of money claimed by each claimant or person represented; and
  - (d) such particulars of the claim as is reasonably sufficient to inform the defendant of the grounds for the claim and of the manner in which the amount claimed by each claimant or person represented has been calculated.
2. (1) The following periods of limitation apply to the filing of claims before the Tribunal -
- (a) a claim arising from a contract of employment shall be made within two years of the date of the breach leading to the claim;
  - (b) a claim arising in respect of an unfair dismissal under the Act shall be made within six months of the date of the dismissal;

Limitation

(c) any other claim arising under the provisions of this Act shall be made within two years of the date of the cause of action.

(2) The Tribunal may in any case extend the period of limitation wherever it considers it just and equitable to do so, having regard to the interests of both parties.

Service of claim and notice of hearing

3. When a claim has been filed, the Chairperson shall -

(a) fix a place and date for hearing of the claim which shall, unless the parties otherwise agree, be not later than thirty days from the filing of the claim, and

(b) cause a copy of the claim, together with a notice in the prescribed form of the date and place of hearing, to be served on every defendant to the claim.

Promotion of conciliation

4. (1) The Tribunal may adjourn proceedings at any stage if it appears possible that the claim can be settled through conciliation.

(2) An order of adjournment under sub-rule (1) shall -

(a) direct that the parties, together with a conciliator appointed by the Tribunal and mutually agreeable to the parties, attempt to effect a settlement; and

(b) set a date, time and place for reconvening proceedings in the absence of settlement.

(3) The Tribunal shall not hear a claim until a certificate in the prescribed form signed by the conciliator appointed under sub-rule (2) is filed, or produced, to the effect that-

- (a) one or more of the parties had refused to take part in conciliation;
  - (b) conciliation had been attempted but no settlement was reached;
  - (c) conciliation was unlikely to result in a settlement being reached; or
  - (d) conciliation may prejudice the interests of a party.
- (4) A certificate under sub-rule (3) shall be filed with or produced to the Tribunal not later than twenty-four hours before the date fixed for the hearing of the claim.

Chair to prevent  
prejudicial delay

5. A Chairperson and other Tribunal officers shall-

- (a) ensure that there is no avoidable delay in the determination of a claim; and
- (b) have regard to any proceedings in any other court which may result in judgments to the prejudice of the claimant.

Place of hearing

6. A Chairperson shall convene the Tribunal at such places and times as, having regard to the convenience of the parties and witnesses, he or she thinks fit.

Public hearing  
unless otherwise

7. (1) The hearing of a claim shall be conducted in public.

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(2) Notwithstanding sub-rule (1), a Chairperson may order, in the interest of justice, that all or part of a hearing be conducted in private.

Summary of  
evidence

8. A Chairperson shall make notation of the evidence, submissions or statements made or given and of any point of law raised at the hearing and of his or her decision on such point of law.

Hearing to be  
informal

9. (1) The Tribunal shall determine claims heard by it in a summary manner in accordance with these Rules.

(2) The Tribunal shall investigate any matter it considers relevant to a claim, whether or not a party has raised it.

(3) Subject to the Act, the hearing before the Tribunal shall be conducted without due regard for the rules of evidence, and the Tribunal may receive any evidence which it considers relevant.

Hearing in the  
absence of  
defendant

10. If a defendant who has been duly served with a copy of the claim and a notice of hearing fails to appear at the hearing, by himself or herself or by a person authorized by the Tribunal or defendant to appear on his or her behalf, the Tribunal may, if it is of the opinion that the facts relating to the claim are sufficiently established-

(a) hear and determine the claim; and

(b) make such award or order as it thinks fit, notwithstanding the absence of the defendant.



Decision announced at conclusion of hearing, if possible

11. (1) The Tribunal shall deliver its determination of a claim and make such award or order on the claim at the conclusion of the hearing or within a reasonable time after the hearing, as it thinks fit.
- (2) The reasons for an award or order shall be given, either orally or in writing, as the Chairperson thinks fit.
- (3) A Chairperson shall, when the Tribunal has made an award or order orally, reduce it to writing before he or she rises.
- (4) Every party to the proceedings is entitled to a copy of the written award or order.

Right to be heard

12. The following persons have a right to be heard before the Tribunal –
- (a) a claimant or defendant;
- (b) an authorized officer;
- (c) an officer or servant of an incorporated or unincorporated company or a member of a partnership, if the company or partnership is a party; and
- (d) with the leave of the Tribunal, an officer of a registered trade union or of an association of employers who is authorized in writing by a claimant or defendant to appear as his representative.

Consolidation of claims

13. (1) If two or more claims are filed and it appears to the Tribunal that –
- (a) a common question of law or fact arises in both or all of them;

- (b) the claims arise out of the same cause of action; or
- (c) it would be in the interest of justice to consolidate the claims,
- the Tribunal may order that the claims be consolidated.

(2) The power conferred by this section may be exercised notwithstanding that proceedings have begun on one or more of the claims.

Representative claims

14. (1) If two or more persons have claims against the same defendant, those claims may be brought in the name of one of those persons as the representative of some or all of them.

(2) Notwithstanding sub-rule (1), the Tribunal may at any time order that the claims of all or any of the persons represented be heard separately, if it considers that bringing a representative claim may prejudice the defendant.

(3) A person represented in a representative claim is deemed to have authorized the representative on his or her behalf to –

- (a) call and give evidence and make submissions to the Tribunal on any matter arising during the inquiry into the claim;
- (b) file affidavits, statements or other documents;
- (c) agree to an adjournment or change of venue;
- (d) agree to the holding of and to take part in conciliation;

- (e) agree to a settlement of the claim on such terms as he thinks fit;
  - (f) consent to the Tribunal having jurisdiction over a claim pursuant to the limitations set out in rule 2;
  - (g) amend the claim in respect of all or any of the individual claims or to abandon the claim; and
  - (h) act generally in as full and free a manner as the claimant could act himself or herself.
- (4) The authority deemed to be given to a representative by sub-rule (3) may be withdrawn only by leave of the Tribunal.
- (5) In making an award in respect of a representative claim, the Tribunal may allocate such part of the award to each person represented as it thinks fit.
- (6) The Tribunal may, at any time before making an award, grant leave to any person to join as a person represented in a claim on such terms as it thinks fit.
- (7) The Tribunal may cause public notice to be given of the particulars of a representative claim which has been filed and of the date and place fixed for hearing of the claim.

Joint defendants

15. (1) If two or more persons are defendants to a claim, it is sufficient to serve any one of them with process, and an award may be obtained and execution issued against any person so served, notwithstanding that any other person jointly liable may not be within the jurisdiction of the Tribunal.

- (2) If an award made against a person in accordance with sub-rule (1) is certified by that person, he or she is entitled to recover in the Tribunal contribution from any other person jointly liable with him or her.
- (3) An award obtained against a person in respect of his or her liability jointly with another person does not release the other person from liability under the award.
- (4) A person against whom a claim has been made in respect of his or her liability jointly with another person, may set up any defence or counter claim which he or she would have been entitled to set up if all the persons liable had been made defendants.
- (5) If two or more persons are joined as defendants, the claimant may-
- (a) obtain an award against any one or more of them; and
  - (b) enforce the award without prejudice to his or her right to proceed with the action against any other defendant.

Costs

16. (1) The Tribunal may award to a party costs and expenses, which may include -
- (a) any reasonable expenses necessarily incurred and any loss of salary or wages suffered by that party; and
  - (b) any reasonable sum paid to a witness for the expenses necessarily incurred and any loss of salary or wages suffered by him in attending a hearing of the Tribunal.

- (2) In making an award of costs, the Tribunal shall include a direction as to the amount to be paid by each party who is liable to pay costs.
- (3) An award of costs is enforceable in the same way as any other award made by the Tribunal.

## Fivolous claims

17. The Tribunal may at any time dismiss a claim that it considers to be frivolous or vexatious on such terms as to payment of costs as it thinks fit.

## Adjournment

18. If the Tribunal is of the opinion that the adjournment of a hearing may prejudice a party because of the disposal or loss of control of assets by a defendant, it may grant an adjournment on payment, into the Tribunal, of such sum of money, or the giving of such other security for the payment of the amount of any award, as the Tribunal thinks sufficient.

## Review of awards or orders

19. (1) The Tribunal may, within fourteen days from the date of an award or order made by it, review its award or order –
- (a) on its own motion, on notice in the prescribed form to all parties; or
- (b) on the application of a party within seven days, on notice in the prescribed form to all other parties.
- (2) On a review under sub-rule (1), the Tribunal may –
- (a) reopen and rehear the claim in whole or in part;
- (b) call or hear fresh evidence; and

- (c) confirm, vary or reverse its previous award or order.
- (3) The power conferred by sub-rule (1) may not be exercised if an application for leave to appeal has been made.

- (4) On the application of a party for a review, the Tribunal may, having regard to the possibility of assets which may be available to satisfy an award being disposed of to the prejudice of any party, make such order regarding payment into the Tribunal, giving of security or otherwise, as it thinks fit.

## Leave to appeal on point of law

20. (1) A party who is aggrieved by an award, order or determination of the Tribunal may appeal to the High Court on point of law.

- (2) An appeal under this section shall be in the prescribed form and set out the grounds of appeal.

## Power of High Court

21. (1) On an appeal under these Rules, the High Court may –
- (a) order a new inquiry by the Tribunal on such terms as it thinks fit;
- (b) confirm, vary or set aside the award or order; or
- (c) make such award or order in substitution for the award or order made by the Tribunal as it thinks fit.
- (2) A decision of the High Court on an appeal is final.

Procedure on appeal

22. Subject to these Rules, an appeal from the Tribunal shall be brought in such manner and be subject to such condition as shall be prescribed.

Stay of execution on review or appeal

23. (1) A decision by a Tribunal to exercise its power of review under rule 19 or the filing of an appeal under rule 20 does not operate as a stay of execution of an award or order, unless the Chairperson or High Court, as the case may be, otherwise orders.

(2) A stay of execution may be subject to such conditions as to costs, payments into the Tribunal, the giving of security or otherwise, as the Chairperson or High Court thinks fit.

Registration of awards and orders in the High Court

24. (1) Subject to an appeal made under these Rules, a final award or order of the Tribunal may be registered in the High Court.

(2) On registration, the award or order becomes for all purposes a judgment of the High Court and may be enforced accordingly.

Interest on claims and awards

25. (1) The Tribunal may include in the amount of an award, interest on the whole or part of the amount claimed for the period, beginning on the date on which the cause of action arose and ending on the date of the award.

(2) The powers conferred by sub-rule (1) may be exercised -

(a) whether or not interest is expressly claimed;

(b) at any time after the date of the award, if it appears to the Tribunal that the failure to claim or to award interest was through inadvertence; and

(c) if an award is made *ex parte* against the defendant.

(3) An award shall carry interest at such rate as ordered by the Tribunal on the aggregate amount of the award, from the time beginning on the date of the award until satisfaction.

Payment of award in joint or representative claims

26. In a joint or representative claim, the amount of an award or order shall be paid into the Tribunal and be allocated amongst such parties to the claim and in such amounts as the Tribunal thinks fit.

Defendant not liable for allocation of award

27. When a defendant pays money into the Tribunal in full or part discharge of an award or order, he or she-

(a) is deemed to have satisfied his or her liability under the award or order to the extent of the amount so paid; and

(b) is not liable to any claimant as to the manner in which the money may be allocated by the Tribunal.

Chairperson to exercise powers of Magistrate

28. In proceedings in the Tribunal, its Chairperson may, subject to this Act and these Rules, exercise all such powers as are conferred on him or her as a Magistrate by the Courts Act and the Subordinate Courts (Civil Proceedings) Act in respect of proceedings in a Magistrate's Court.

Cap.6:01  
Cap.8:02

Registrar of the Tribunal

29. A Registrar of the Tribunal, or other person, shall be appointed and designated as the person who shall receive and register with the Tribunal all communications, including costs and deposits of awards.

### THIRD SCHEDULE (section 131)

#### BALLOTS IN RESPECT OF SOLE BARGAINING AGENCIES

Questions to be asked on the establishment of a sole bargaining agency

1. The following questions may be asked in a ballot on the establishment of a sole bargaining agency-

(a) Are you at present a member of the (XY) trade union?

(b) Whether you are or not a member of the (XY) trade union, do you wish the (XY) trade union to be the only organisation to represent you in negotiations with your employer on terms and conditions of employment?

Questions to be asked on the continuation of a sole bargaining agency

2. The following questions may be asked in a ballot on the continuation of a sole bargaining agency-

(a) Are you at present a member of the (XY) trade union?

(b) If you are not now a member of the (XY) trade union, have you ceased to be a member of the (XY) trade union during the past twelve months?

(c) Whether you are or are not a member of the (XY) trade union, do you wish the (XY) trade union to continue to be the only organisation to represent you in negotiations with your employer on terms and conditions of employment?

Additional questions to be asked in certain cases on the continuation of sole bargaining agency

3. If the employer has reason to suspect that any other union has developed a substantial membership among employees in the category of employees for which a bargaining agency exists, he or she may add the following questions to a ballot on the continuation of a sole bargaining agency-

(a) Are you at present a member of a trade union other than (XY) trade union? If so, specify which union.

(b) Whether you are or are not a member of any other trade union other than the (XY) trade union, do you wish a trade union to be your only representative in negotiations with your employer on terms and conditions of employment?

PASSED in the National Assembly this Third day of September  
in the year of Our Lord Two Thousand and Seven

D. C. M. Kebbeh

*Clerk of the National Assembly.*

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill  
which has passed in the National Assembly, and found by me to be a true and correct  
copy of the said Bill.

D. C. M. Kebbeh

*Clerk of the National Assembly.*