

GOVERNMENT OF ZAMBIA

ACT

No. 36 of 1990

Date of Assent: 23rd January, 1991

An Act to revise the law relating to trade unions, the Zambia Congress of Trade Unions, employers' associations, the Zambia Federation of Employers, the Industrial Relations Court, recognition of collective agreements, settlement of collective disputes, strikes and lockouts, essential services and works councils; to provide for the establishment of the tripartite labour consultative council; to repeal and replace the Industrial Relations Act, 1971; and to provide for matters connected with or incidental to the foregoing.

[1st February, 1991

ENACTED by the Parliament of Zambia.

Enactment

PART I

PRELIMINARY

1 (1) This Act may be cited as the Industrial Relations Act, 1990, and shall come into operation on such date as the Minister may, by statutory instrument, appoint.

Short title and commencement)

(2) Different dates may be appointed by the Minister for the coming into operation of different parts or sections of this Act.

2. (1) Subject to the provisions of subsection (2), the provisions of this Act shall not apply to—

Application and power of exemption

- (i) the Zambia Defence Force;
- (ii) the Judicial Service;
- (iii) the Zambia Police Force

(iv) the Zambia Prison Service; and

(v) the Zambia Security Intelligence Service.

(2) The Minister may by statutory instrument and, subject to such conditions as he may prescribe, exempt any person or class of persons or any trade, industry or undertaking from the operation of all or any of the provisions of this Act, or any regulation or order made or any direction given in pursuance of this Act.

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(3) The Companies Act, the Societies Act and the Co-operative Societies Act shall not apply to any trade union or association.

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(4) Any organisation which is intended to carry out activities of a trade union or an employers' association shall be registered only under this Act and any registration under the Companies Act, the Societies Act and the Co-operative Societies Act shall be void.

Inter-
pretation

3. (1) In this Act, unless the context otherwise requires—
“association” means an employers' association as defined in section *thirty-seven*;

“bargaining unit” means—

(a) in relation to collective bargaining at the level of an undertaking other than an industry, the negotiating team representing the management of the undertaking together with the trade union representatives of employees in such undertaking; and

(b) in relation to collective bargaining at the level of an industry, a joint council;

“Chairman” means the person appointed Chairman of the Court under section *sixty-four*;

“collective agreement” means an agreement negotiated by an appropriate bargaining unit in which the terms and conditions of or affecting the employment and remuneration of employees are laid down;

“collective bargaining” means the carrying on of negotiations by an appropriate bargaining unit for the purpose of concluding a collective agreement;

“collective dispute” shall be construed in accordance with section *ninety-one*;

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of 1981

“Commission” means the Prices and Incomes Commission established by section *four* of the Prices and Incomes Commission Act, 1981;

“Commissioner” means the Labour Commissioner;

“Congress” means the Zambia Congress of Trade Unions;

- “ council ” means a works council established under Part XI;
- “Court” means the Industrial Relations Court established by section *sixty-four*;
- “ deadlock ” means a situation arising out of a collective dispute where the parties to the dispute have exhausted the existing procedure, whether formal or otherwise, mutually agreed to by the parties for the settlement of the dispute, where conciliation in terms of section *ninety-two* has proved unsuccessful, and where either or both parties are of the opinion that further negotiations are unlikely to lead to the settlement of the dispute;
- “Deputy Chairman ” means the person appointed Deputy Chairman of the Court under section *sixty-four*;
- “eligible employee ” means any employee other than an employee serving a probationary period of employment, a casual employee, an employee specifically engaged on a temporary basis for work of an intermittent or seasonal nature, or a member of the management of an undertaking;
- “ employee ” means any person who has entered into, or works under, a contract of employment with an employer whether such contract is express or implied, oral or written;
- “ employer ” means any person who or body of persons, firm, company, corporation or public authority which, has entered into a contract to employ any person and includes any agent, representative or manager of such person, body of persons, firm, corporation, company or public authority who is placed in authority over the persons employed;
- “ essential service ” shall be construed in accordance with the provisions of section *one hundred and twenty-eight*;
- “ executive officer ” means the secretary-general of a trade union, Congress, association or federation;
- “ Federation ” means the Zambia Federation of Employers established under section *fifty-six*;
- “ joint council ” means a joint council established under section *eighty-four*;
- “ lock-out ” means the closing down of a place of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him, as a result of a dispute, and done with a view of compelling those persons, or to aid another employer in compelling those persons, or to aid him, to accept terms or conditions of or affecting employment;

- “officer of a trade union” means a duly elected or appointed office holder of a trade union including a trustee, but does not include its employees;
- “officer of an association” means a duly elected or appointed officer holder of an association, but does not include its employees;
- Cap. 512 “proper officer” means a labour officer as defined in section *three* of the Employment Act;
- “recognition agreement” means an agreement described in Part VII;
- “Registrar” means the person appointed Registrar of the Court under section *sixty-five*;
- ActNo. 9 of 1981 “Secretary” means the person appointed Secretary to the Commission under section *thirteen* of the Prices and Incomes Commission Act, 1981;
- “strike” means the cessation of work or withdrawal of labour contrary to the terms and conditions of a contract by a body of persons employed in any undertaking acting in combination, or a concerted refusal or a refusal under a common understanding of any number of persons who are so employed to continue to work or provide their labour;
- “trade union” shall be construed in accordance with section *four*;
- “undertaking” means any company, firm, trade, business, industry or any other kind of enterprise, any statutory board or corporation or any local or public authority or any branch or autonomous division thereof.

PART II

TRADE UNIONS

Definition of trade union

4. (1) In this Act the expression “trade union” means an organisation of employees which is registered as a trade union under this Act and whose principal objects regulate collective relations between employees and employers, or between employees and organisations of employers, or between employees and employees:

Provided that—

- (i) a trade union may include in its constitution objects other than principal objects and, subject to the provisions of this Act, any such trade union shall have power to apply its funds for any lawful objects for the time being authorised under its constitution;

- (ii) no objects of any trade union shall by reason that they are in restraint of trade, be unlawful so as to render any member of the trade union liable to criminal prosecution for conspiracy or otherwise;
- (iii) the objects of any trade union shall not, by reason that they are in restraint of trade, be unlawful so as to render void or voidable any agreement or trust.

(2) In this Act, the level at which an employee ceases to be an eligible employee and becomes a member of the management shall be decided by agreement between the management and the trade union concerned, where such trade union exists.

5. (1) Notwithstanding anything to the contrary contained in any written law, but subject to the provisions of this Act, every employee shall, as between himself and his employer, have the following rights:

Rights of employees in respect of trade union membership and its activities

- (a) the right, if he so desires, to take part in the formation of a trade union;
 - (b) the right, if he so desires, to be a member of any trade union as he may choose;
 - (c) where he is a member of a trade union, the right, at any appropriate time, to take part in the activities of the trade union (including any activities as, or with a view to becoming, an officer of the trade union) and the right to seek election or accept appointment, and (if elected or appointed) to hold office, as such officer.
- (2) No employer, or any person acting on his behalf, shall—
- (a) prevent or deter an employee from exercising any of the rights conferred on him by subsection (1); or
 - (b) dismiss, penalise or otherwise discriminate against any employee by reason of his exercising any such right; or
 - (c) refuse to engage a person, or dismiss, penalise or otherwise discriminate against any employee on the ground that, at the time of applying for an engagement, he was or was not a member of a trade union or of a particular trade union or other organisation of employees or other such organisation;
 - (d) dismiss, penalise or otherwise discriminate against an employee on the grounds that such employee—
 - (i) has been or is a complainant or a witness or has given evidence in any proceedings, whether instituted against the employer or otherwise, before the Court or any other court;
 - (ii) has become entitled to a reward, benefit or compensation against the association or the class of employers to which such employer

belongs or against any other person, in consequence of a decision made by a Court in his favour or in favour of a trade union or the class of employees to which such employee belongs;

- (iii) has absented himself from work without leave of the employer for the sole purpose of taking part, and has in fact taken part, in the activities of the trade union (including any activities as, or with a view to becoming an officer of the trade union), and the leave of absence (though applied for) was unreasonably refused or withheld by the employer.

(3) No employer or organisation of, or representing, employers, or any person acting on his or its behalf, shall render financial or other assistance to any trade union or any officer thereof with the object of exercising any control over or influence in the activities of such trade union.

(4) Any employee who has reasonable cause to believe that his services have been terminated or that he has suffered any other penalty or disadvantage for exercising his rights specified in this section may—

- (a) within thirty days after exhausting administrative channels available to him in his institution; or
- (b) where administrative channels are not available, within thirty days of knowing that his services have been so terminated or that he has been so disadvantaged or penalised;

lay a complaint before the Court and the provisions of subsection (3) of section *one hundred and twenty-nine* shall apply to such a complaint.

(5) Any person who contravenes any of the provisions of this section shall be guilty of an offence, and liable upon conviction, to a fine not exceeding ten thousand kwacha and may be prohibited from holding office in an association for such period as the Court may determine.

(6) In this section, "appropriate time", in relation to an employee taking part in any activity of a trade union, means any time which—

- (a) is outside his working hours; or
- (b) is a time within his working hours at which, in accordance with arrangements agreed with, or consent given by or on behalf of, his employer, it is permissible for him to take part in those activities;

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THE INDUSTRIAL RELATIONS ACT, 1990

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6. (1) Every trade union shall be registered under this Act with the Commissioner within six months from the date of formation.

Registration and consequences of non-registration

(2) If the Commissioner refuses to register a trade union, it shall be dissolved within six months from the date of notification by the Commissioner to the trade union of such refusal.

(3) Every trade union which is not registered or dissolved, as the case may be, within the period prescribed in subsection (1) or (2), and every officer of such trade union, shall be guilty of an offence and liable upon conviction to a fine not exceeding one hundred kwacha for every day that it remains, unregistered or, undissolved as the case may be, after the expiration of such period, and every such officer may in addition be prohibited from holding office in any other trade union for a period of three years.

7. (1) No trade union or officer shall perform any act in furtherance of the objects for which it has been formed unless such trade union is registered under this Act.

Acts of un-registered trade unions and their officers

(2) Any trade union which, or officer thereof who, contravenes subsection (1) shall be guilty of an offence and liable upon conviction to a fine not exceeding one thousand kwacha, and every such officer may in addition be prohibited from holding office in any other trade union for a period of three years.

8. (1) Subject to subsection (8), a trade union shall not be registered with the Commissioner unless it has a membership of not less than one hundred persons.

Application for registration of trade union

(2) An application to register a trade union shall be in the prescribed form, signed by one hundred members of the trade union and shall be accompanied by a copy of the constitution.

(3) The application and the constitution referred to in subsection (2) shall be submitted to the Commissioner for registration.

(4) Notice of every application for registration as a trade union shall be published in three consecutive issues of the *Gazette*.

(5) Objections to the registration of any trade union shall be in writing and shall be lodged with the Commissioner not later than ninety days of the last notice appearing in the *Gazette*.

(6) Subject to subsection (8) the Commissioner—

(a) after considering the objections submitted under subsection (5); and

(b) on being satisfied that a trade union has complied with the provisions of registration under this Act, and that the constitution of the trade union provides for matters prescribed by section *fifteen*;

shall, unless the trade union is incapable of implementing any of its principal objects, register such trade union and issue a certificate of registration in the prescribed form to the trade union.

(7) A certificate of registration issued under subsection (6) unless proved to have been withdrawn or cancelled shall be *prima facie* evidence that the provisions of this Act relating to registration have been complied with.

(8) No trade union shall be registered—

- (a) under a name identical to that by which any other trade union has been registered or so nearly resembling such name as to be likely to deceive its own members or members of the public;
- (b) if it does not comply with the conditions of registration which the Minister may by statutory instrument prescribe.

Cancellation
of certificate
of registra-
tion of trade
union

9. (1) The certificate of registration of a trade union shall be cancelled by the Commissioner with the approval of the Minister—

- (a) at the request of the trade union which has resolved to be dissolved and an application is made in the prescribed form;
- (b) if the certificate of registration has been obtained by fraud or mistake;
- (c) if the trade union has ceased to pursue the principal objects for which it was formed and registered; or
- (d) if the trade union has wilfully violated any of the provisions of this Act.

(2) Where the Commissioner intends to cancel the certificate of registration under paragraph (b), (c) or (d) of subsection (1), he shall, at least three months before cancelling the certificate give notice in writing to the union and the union may make representations within that period of notice.

(3) The Commissioner may, after receipt from the trade union of representations, if any, and after the expiration of the three months notice, cancel the certificate of registration and shall notify the trade union accordingly.

(4) A trade union whose registration is cancelled shall have a right of appeal to the Court in accordance with the provisions of section ten.

(5) A trade union whose certificate of registration has been cancelled under this section shall, from the time of such cancellation, cease to operate as a trade union and shall be dissolved forthwith unless an appeal against such cancellation is preferred under section ten to the Court.

Provided that in the case of any cancellation, other than a cancellation made under paragraph (a) of subsection (1), in respect of which no appeal is preferred to the Court, the cancellation shall not have effect until the Court confirms the cancellation.

10. (1) Any person aggrieved by any refusal of the Commissioner to register a trade union, or by any decision to register an organisation as a trade union, or by the cancellation of a certificate of registration, may appeal, to the Court not later than thirty days after the notification of such refusal, decision or cancellation, as the case may be.

Appeal from
decisions of
Commissioner

(2) The Commissioner shall have the right to be heard on any appeal preferred under subsection (1).

(3) The Chairman may make rules governing such appeals providing for the method of tendering evidence, prescribing the procedure to be followed, the fees to be paid, and notices to be given to the Commissioner.

11. (1) Subject to subsection (8) of section eight, a trade union may, in accordance with the provisions of its constitution, change its name.

Change of
name of
address of
trade union

(2) Notice in writing of every change of name, signed by seven members, and counter-signed by the executive officer of the executive committee of a trade union, shall be sent to the Commissioner within thirty days of the change, and the Commissioner shall register the change of name if he is satisfied that the change complies with subsection (1).

(3) No change of name shall affect any right or obligation of a trade union or of any member thereof, and any legal proceedings in respect of such right or obligation may be commenced or, if pending continued by, or against, the trustees of the trade union or any other officer who may sue or be sued on behalf of such trade union, notwithstanding its new name.

(4) Notice in writing of every change in the address of the registered office of a trade union shall be sent by the executive officer of the trade union to the Commissioner within thirty days of the change, and the Commissioner shall register the change of address.

(5) Failure to send a notice as required by subsection (2) or (4), as the case may be, shall render the executive officer of a trade union liable upon conviction to a fine not exceeding one hundred kwacha for every day during which the failure continues.

12. (1) Two or more trade unions may, in accordance with the provisions of their respective constitutions, amalgamate as one trade union and the new trade union so formed shall be registered in accordance with the provisions of this Act.

Amalgama-
tion of trade
unions

(2) Any legal proceedings in respect of any rights or obligations of a trade union which has amalgamated with another trade union may be commenced, be continued if pending, by, or against, the trade union formed as a result of the amalgamation.

Voluntary
dissolution
of trade
union

13. (1) When it is intended to dissolve a trade union voluntarily, notice of such intention, signed by the members of the executive committee of the trade union and a copy of the resolution to dissolve the trade union, shall be sent to the Commissioner with a copy thereof to the Congress, if the trade union is affiliated to it, which may comment on the intended dissolution within fourteen days of the receipt of the notice.

(2) If the Commissioner is satisfied that the intended dissolution of a trade union is in accordance with its constitution, he shall approve the dissolution of such trade union and—

(a) shall notify his approval to the trade union, the Congress if the trade union is affiliated to it, and the Federation; and

(b) the dissolution shall become effective from the date the Commissioner accords his approval thereto.

(3) Upon the dissolution of a trade union under subsection (2) or on its being dissolved under subsection (4) of section *nine*—

(a) the property of the trade union shall forthwith vest in the liquidator appointed by the Commissioner who shall have all the powers to recover, realise and sell such property as a trustee in bankruptcy has in relation to a bankrupt's property under the Bankruptcy Act and Part V of the Bankruptcy Act relating to remuneration and costs shall with necessary modifications apply to such liquidator;

(b) the liquidator shall forthwith proceed to wind up the affairs of the trade union and, after satisfying and providing for all the debts or other liabilities of the trade union, prepare a scheme for the application of its remaining assets or property to purposes likely to benefit the former members of the dissolved trade union, or distribute the assets or property or the proceeds thereof among such of its former members as the Commissioner may determine.

(4) No action or other proceedings shall lie or be instituted against the liquidator in respect of anything done or omitted to be done in good faith in the exercise of purported exercise of his functions under this Act.

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14. (1) From the commencement of this Act—

Affiliation of
trade unions
to Congress

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- (a) every trade union which is the holder of a valid certificate of registration issued under the Industrial Relations Act, 1971, shall be deemed to have been duly registered under this Act;
- (b) every trade union which is the holder of a valid certificate of registration issued under the Industrial Relations Act, 1971, and affiliated to the Congress under that Act, shall, subject to paragraph (c), not be affiliated to the Congress under this Act; and
- (c) a trade union referred to in paragraph (a) and (b) or which is a holder of a valid certificate of registration issued under this Act may, by a two-thirds majority decision passed by the members of the trade union, affiliate to the Congress.

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(2) A trade union which affiliates to the Congress under paragraph (c) of subsection (1) may, by a two-thirds majority passed by the members of the trade union disaffiliate itself from the Congress.

(3) A trade union affiliated to the Congress under paragraph (c) of subsection (1) shall, upon such affiliation, be entitled to the rights and privileges, and be subject to the obligations, specified in the constitution of the Congress.

15. (1) The constitution of every trade union shall include—

Constitution
of trade
union

- (a) the name of the trade union and the address of its registered office in Zambia;
- (b) the principal objects for which the trade union is established and the class or classes of employees which the trade union shall represent;
- (c) the purposes to which the funds of the trade union may be applied, and that one of the purposes to which such funds shall be applied shall be the training of trade union leaders at all levels for responsible and effective leadership, advancement of workers' education and imparting skills to the workers in preparation for their retrenchment or retirement;
- (d) a provision for the establishment of a voluntary political fund in accordance with section *sixty-two*;
- (e) the organisational structure of the trade union, the mode of appointment and removal of the officers responsible for the administration of the trade union and the powers and duties of such officers;
- (f) the payment of subscriptions and fees by the members and the method of collection and the grounds for disqualifying a member from voting on any matter concerning the trade union;

- (g) the vesting and safe custody of the funds and property of the trade union, the banking and investment of its funds, and the maintenance, inspection and periodic auditing of its accounts and all other financial records;
- (h) the disqualifications for election or appointment to any office in the trade union which has the function of dealing with the funds of the trade union;
- (i) the election of the officers within six months after registration of a trade union, and thereafter at regular intervals of not more than four years;
- (j) the appointment or election of not less than two and not more than four trustees of the trade union who shall not be members of the trade union;
- (k) the making of decisions by secret ballot, supervised by a proper officer—
 - (i) for the election of delegates, trustees, or other officers; and
 - (ii) on any proposal to dissolve the trade union with a view to its amalgamation with one or more other trade unions or to reconstitute the trade union so as to split it into two or more trade unions; and

(1) the procedure for amending the constitution of the trade union.

(2) Every registered trade union shall, upon request, supply a copy of its current constitution to every person who becomes a member of that trade union.

(3) Any person who, with intent to mislead or defraud—

- (a) gives to any member of a registered trade union or to any person intending or applying to become a member of such trade union, a copy of a constitution or any amendment thereto other than the current version thereof purporting that it is the current constitution of such trade union or a current amendment thereto, as the case may be; or
- (b) gives to any person a copy of any constitution purporting to be a constitution of a registered trade union when it is not so registered;

shall be guilty of an offence and shall be liable, upon conviction—

- (i) for misleading, to a fine not exceeding one thousand kwacha; or
- (ii) to a fine not exceeding two thousand kwacha where there was an intention to defraud; and

in addition, may be prohibited from holding office in a trade union for such period as the Court may determine.

16. (1) Any alteration or addition to any of the provisions of the constitution of a trade union shall be registered with the Commissioner and shall take effect only from the date of registration unless some later date for that purpose is specified in its constitution.

Registration of amendments to constitution of trade union

(2) An application for registration of an alteration or addition to any provision of the constitution shall be made in such manner as may be prescribed.

(3) The constitution of a trade union shall not be altered or added to so that it fails in any material way to provide for the matters specified in section *fifteen*.

17. (1) No person shall be qualified for election or appointment as an officer of a trade union if he—

Disqualification from election or appointment as officer of trade union

- (a) has not been engaged or employed for a period of twelve months or more in the trade, occupation or industry with which the trade union is directly concerned:

Provided that the Commissioner may, if satisfied as to the suitability of a particular candidate, allow him to stand for such election, or be appointed, notwithstanding that he has been so engaged or employed for a period of less than twelve months;

- (b) having been an officer (or a member of the executive) of a trade union the certificate of registration of which has been cancelled under section *nine*, fails to satisfy the Commissioner that he did not contribute to the circumstances leading to such cancellation;
- (c) has been convicted of an offence involving dishonesty within a period of five years preceding the election or appointment;
- (d) is an undischarged bankrupt;
- (e) is of unsound mind; or
- (f) has been suspended, under its constitution or under this Act, from holding office in the trade union and his suspension has not been revoked, or the period for which he was suspended has not expired;
- (g) he has been expelled from trade union or has resigned from a trade union to avoid expulsion and a period of three years has not expired since the expulsion or resignation as the case may be.

(2) An officer of a trade union shall cease to hold office if any circumstances arise which, were he not an officer, would disqualify him under subsection (1) for election as an officer.

(3) No officer of a trade union shall be a full-time officer of any other trade union or of the Congress unless he resigns from his first office.

(4) The Commissioner may, call for such documentation and information as he may think necessary from the executive

committee or any officer of a trade union in order to ensure that the provisions of the section are being complied with.

(5) Any person who, being disqualified under this section to hold office in a trade union, acts or purports to act as an officer of that trade union shall be guilty of an offence and liable upon conviction to a fine not exceeding two thousand kwacha and in addition may be prohibited from holding office in any trade union for a period not exceeding twelve months.

Information about elections of trade union, etc.

18. (1) Whenever a trade union holds an election to fill any office in the trade union or makes an appointment to any such office, the secretary of the trade union shall, within thirty days of the election or appointment, notify in writing, the Commissioner, and the Congress, if the trade union is affiliated to it, of the result of the election or appointment, as the case may be.

(2) Failure to comply with the provisions of subsection (1) shall render such secretary guilty of an offence and liable, upon conviction, to a fine not exceeding fifty kwacha for every day during which such failure continues.

(3) The name and office of every office holder and trustee of the trade union shall be exhibited in a prominent position at the registered office, and at every branch office, of the trade union.

Injunction against officer of trade union

19. (1) Any member or officer of a trade union, any officer of the Congress if the trade union is affiliated to it or the Commissioner may apply to the Court for any injunction prohibiting an officer of the trade union from holding office or dealing with funds of the trade union.

(2) On an application made under subsection (1) the Court may, if it is satisfied that such officer is disqualified under section *seventeen* from holding office in that trade union, or that there is a reasonable case against such officer for the fraudulent misuse of the trade union funds, grant such application and make necessary order.

Suspension of officer of trade union

20. (1) The Commissioner, without prejudice to any of his other powers, where he is satisfied—

(a) that the funds of a trade union have been or are being expended for purposes or for an object not authorised under this Act; or

(b) that the accounts of a trade union are not being kept in accordance with the provisions of this Act or in accordance with any regulations, rules or orders made under this Act;

- (c) that an officer of a trade union has continued in breach of, or failed to comply with, any provision or requirement of this Act or any regulation, rule or order made under this Act for a period of more than one month after his attention has been drawn in writing by the Commissioner to such breach or failure;

he shall request the officer concerned to take remedial action within a period of thirty days.

(2) If at the end of the period of the thirty days there has been no remedial action or the Commissioner is not satisfied with the remedial action taken the Commissioner may by order suspend from office the officer concerned for such period as the Commissioner may determine.

(3) An order made under subsection (2) shall be served at the registered office of the trade union concerned and from the date of service and for as long as the order remains in force the officer suspended in the order shall not—

- (a) do or purport to do any act as an officer of the trade union;
- (b) draw or receive or be credited with full salary, allowance or expense payable to him as an officer of the trade union:

Provided that such officer may draw or receive or be credited with half salary.

(4) Any officer suspended under subsection (2) who contravenes any of the provisions of subsection (3) shall be guilty of an offence and liable, upon conviction, to a fine not exceeding ten thousand kwacha and in addition may be prohibited from holding office of a trade union for a period not exceeding two years.

(5) Subject to subsection (7) during any period when an officer of a trade union is suspended under subsection (2) his functions shall be performed by such person as the trade union may designate for the purpose.

(6) The person designated under subsection (5) shall receive such salary, allowance or expense as shall be determined by the union which shall not be less than was payable to the suspended officer.

(7) A person designated under subsection (5) shall cease to perform the functions of a suspended officer when that officer resumes his office or upon due election to that office of another officer.

21. (1) As soon as practicable, but not later than six months after the expiry of each financial year of the trade union, the secretary of every trade union shall submit to the Commissioner a report concerning the financial affairs of the trade union during the financial year.

Annual
report of
accounts of
trade union

(2) The report referred to in subsection (1) shall include information on the financial affairs of the trade union and there shall be appended thereto---

(a) an audited balance sheet;

(b) an audited statement of revenue and expenditure; and

(c) such other information as the Commissioner may require.

(3) A secretary of a trade union who fails to comply with the provisions of this section shall be guilty of an offence and liable upon conviction, to a fine not exceeding one thousand kwacha and may be prohibited from holding office in any trade union for a period not exceeding five years.

Deduction of
subscription
by agree-
ment

22. (1) An employer may, by agreement with the employee, deduct the amount of subscription prescribed by the constitution of a trade union from the wages of such employee if the employee is a member of such trade union.

(2) An employee or employer may, at any time, withdraw the agreement referred to in subsection (1), by delivering a notice of one month in writing.

Remittance
of subscri-
ption

23. An employer who makes any deduction under section *twenty-two*, shall at the end of each month but not later than fourteen days after making the deduction, remit the amount so deducted to the union referred to in the agreement.

Acquisition
of land by
trade unions

24. A trade union may purchase or take on lease in the name of the trustee for the time being of the trade union any land and to sell, exchange, mortgage or let the land, and no purchaser, assignee, mortgagee or tenant shall be bound to inquire whether the trustee have authority for the sale, exchange, mortgage or letting, and the receipt of the trustees shall be a valid discharge for the moneys arising therefrom.

Property of
trade union
to vest in
trustees

25. All real and personal property whatsoever belonging to any trade union shall vest in the trustees of the trade union, for the use and benefit of the trade union and the members thereof.

Actions by
or against
trustees of
trade unions

26. The trustees of a trade union, or any other officer of the trade union who may be authorised so to do by the constitution shall have power to bring or defend, or cause to be brought or defended, any action, suit or proceedings, whether civil or criminal, in any court of law, touching or concerning the property, or any right or claim to property of the trade union and shall have power, in all cases concerning the real or personal property of the trade union to sue and be sued in court, in their proper names, without other description than the title of their office.

27. A trustee of a trade union shall not be liable to make good any deficiency occurring in the funds of the trade union unless such deficiency occurred due to neglect or wilful default.

Limitation of liability of trustees of trade union

PART III

ZAMBIA CONGRESS OF TRADE UNIONS

28. The Zambia Congress of Trade Unions established by, and registered in accordance with section *twenty-six* of the Industrial Relations Act, 1971, is hereby continued as if established and registered under this Act.

Continuation of Congress
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29. (1) The constitution of the Congress in force immediately before the commencement of this Act shall continue in force until replaced or amended under this section.

Constitution of Congress

(2) The constitution of the Congress shall be registered with the Commissioner and shall include—

- (a) the principal objects of the Congress and the purposes for which its funds may be applied;
- (b) provision for the establishment of a voluntary political fund in accordance with section *sixty-two*;
- (c) provision for the training of Congress leaders for responsible and effective trade union leadership and the advancement of workers education and their participation in the national development programmes and projects;
- (d) the organisational structure of the Congress, the mode of appointment and removal of the officers responsible for its administration and the functions of the officers;
- (e) provision for prescribing the entrance fees and subscriptions payable to the Congress;
- (f) provision for the vesting and safe custody of the funds and the property of the Congress and the banking and investment of its funds and the maintenance, inspection and periodic auditing of its accounts and other financial records;
- (g) provision for disqualification from election or appointment to any office in the Congress involving responsibility for the management of its funds;
- (h) provision for the election of the officers at regular intervals of not more than five years;
- (i) provision for the appointment of not less than two and not more than three trustees of the Congress;
- (j) the rights, privileges, duties and obligations conferred or imposed upon trade unions by virtue of their affiliation to the Congress;
- (k) provision for the taking of decisions by secret ballot, supervised in every case by a proper officer—

- (i) for the election of trustees, delegates or other officers;
- (ii) on any proposal to alter materially the constitution of the Congress; and
- (iii) on any proposal to affiliate with any organisation or body outside Zambia.

Disqualifi-
cation from
election or
appoint-
ment as
officer of
Congress

30. (1) No person shall be qualified for election or appointment as an officer of the Congress if—

- (a) he has been an officer (or a member of the executive) of a trade union the certificate of registration of which has been cancelled under section *nine* and he fails to satisfy the Commissioner that he did not contribute to the circumstances leading to such cancellation or dissolution;
- (b) he has been convicted of an offence involving dishonesty within five years preceding the election or appointment;
- (c) he is an undischarged bankrupt;
- (d) he is of unsound mind;
- (e) his freedom of movement is restricted under any law in force in Zambia for a period in excess of six months;
- (f) he has been suspended, under the constitution of the Congress or under this Act, from holding office in the Congress and his suspension has not been revoked, or the period for which he was suspended has not expired; or
- (g) he is not nominated by the trade union of which he is a full member and supported by one-third of the total number of trade unions affiliated to the Congress.

(3) An officer of the Congress shall cease to hold office if any circumstances arise which, were he not an officer, would disqualify him under subsection (2) for election as an officer.

(4) No person who is a full-time officer of the Congress shall be an officer of any trade union.

(5) The Commissioner may, call for such documentation and information as he may think necessary from the executive committee or any officer of the Congress to ensure that the provisions of this section are being complied with.

(6) Any person who being disqualified under this section to hold office in the Congress, acts or purports to act as an officer of the Congress, shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding two thousand kwacha and may be prohibited from holding office of a trade union for a period not exceeding twelve months.

31. (1) Whenever the Congress holds an election to fill any office in the Congress or makes an appointment to any office, the Secretary-General of the Congress shall, within thirty days of such election or appointment, notify the Commissioner, in writing, of such appointment or of the result of such election as the case may be.

Information about elections of Congress, etc.

(2) Failure to comply with the provisions of subsection (1) shall render the Secretary-General of the Congress guilty of an offence and liable upon conviction, to a fine not exceeding fifty kwacha for every day during which such failure continues.

(3) The name and office of every office holder and trustee of the Congress shall be exhibited in a prominent position at the registered office, and at every branch office, of the affiliates of the Congress.

32. Any member or officer of a trade union or the Commissioner may apply to the Court for an injunction prohibiting an officer of the Congress from holding office or dealing with the funds of the Congress, and the Court may, if it is satisfied that such officer is disqualified under section *thirty* from holding office in the Congress or that there is a reasonable case against such officer for the fraudulent misuse of the funds of the Congress, grant such application and make the necessary order.

Injunction against officer of Congress

33. Section *twenty* shall apply, with necessary modifications to the Congress and any officer of the Congress.

Suspension of officer of Congress

34. Section *twenty-one* shall apply, with necessary modifications, to the Congress and its Secretary-General.

Annual report of Congress

35. (1) Notwithstanding the provisions of this Act relating to the affiliation of trade unions to the Congress, each trade union shall maintain its separate status and shall have the right to organise itself as it considers fit in accordance with its constitution and the right to decide whether or not to affiliate to any political party.

Relations between Congress and trade unions

(2) The Congress shall have no jurisdiction over any trade union affiliated to it in any domestic matter relating to the management or any other matter of a domestic character unless such matter has been referred to the Congress by the trade union.

(3) A trade union may affiliate to a trade union or association outside Zambia by a two-thirds majority decision passed by the members of the trade union and shall inform the Commissioner within fourteen days of such affiliation.

(4) A trade union desirous of receiving outside technical and financial assistance shall apply to the Minister for approval

(5) The Minister may, if satisfied that such outside technical and financial assistance is not prejudicial to public security, approve the application made under subsection (4).

(6) Subject to the other provisions of this Act, Congress shall have general jurisdiction over trade unions affiliated to it on—

- (i) any issue requiring adoption of a common policy position affecting the trade unions;
- (ii) the provision of professional and technical advisers to trade unions involved in negotiations with employers associations or litigation; and
- (iii) the submission of such information, data, documentation annual reports and financial statements as Congress may stipulate from time to time.

Dispute
between
trade unions

36. Where a dispute arises between two or more trade unions as to which of them has or shall have the exclusive right to represent employees of a particular class or category, or employees in a particular trade, industry or occupation, the parties to such dispute shall refer the dispute to the Court for its decision.

PART IV

EMPLOYERS' ASSOCIATIONS

Employers'
association

37. In this Act the expression "association" means an organisation of employers registered as an association under this Act, whose principal objects are the regulation of collective relations between employers and employees, or between employers and trade unions, or between employees and employers:

Provided that—

- (i) the fact that an association has objects other than the principal objects shall not prevent it from being an association and, subject to the provisions of this Act, any association shall have the power to apply its funds for any lawful objects for the time being authorised under its constitution;
- (ii) the objects of an association shall not, by reason that they are in restraint of trade, be unlawful so as to render any member or officer of the association liable to criminal prosecution for conspiracy or otherwise;
- (iii) the objects of an association shall not, by reason that they are in restraint of trade, be unlawful so as to render void or voidable any agreement or trust.

38. (1) Subject to this Act—

Rights of
employers

- (a) employers shall have the right to participate in the formation of, and to join, or not to join, an association and to participate in the lawful activities of such association;
- (b) nothing contained in any law shall prohibit any employer from being or becoming a member of any association lawfully in being or subject the employer to any penalty by reason of the employer's membership of any such association;
- (c) no person shall impede, interfere with or coerce an employer in the exercise of his rights under this Act;
- (d) no person shall subject an employer to any form of discrimination on the ground that the employer is or is not a member of any association;
- (e) no person shall subject another person to any form of discrimination on the ground that the person holds office in an association;
- (f) no person shall impede or interfere with the lawful establishment, administration or functioning of an association;

(2) No employee shall cease or suspend doing work for his employer on the ground that the employer—

- (a) is or is not a member of or holds or does not hold office, in an association;
- (b) participates in the lawful activities of an association;
- (c) has appeared as a complainant or as a witness or has given evidence in any proceedings before the Court or any other court; or
- (d) is or has become entitled to any advantage, award, benefit or compensation in consequence of a decision made by the Court or any other court in favour of the employer, or in favour of an association or class or category of employers to which such employer belongs, either against such employee or against the trade union or class or category of employees to which such employee belongs or against any other person.

(3) Any person who contravenes any provision of this section shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding two thousand kwacha and may be prohibited from holding office in a trade union for such period as the court may determine.

39. (1) Every association shall be registered with the Commissioner under this Act within six months from the date of its formation.

Registration
and conse-
quences of
non-regis-
tration

(2) If the Commissioner refuses to register an association, it shall be dissolved within six months from the date of notification of the refusal by the Commissioner to the association.

(3) Every association which is not registered or dissolved, as the case may be, within the period prescribed in subsection (1) or (2), and every officer of the association, shall be guilty of an offence and liable upon conviction, to a fine not exceeding one hundred kwacha for every day that it remains unregistered or, undissolved, as the case may be, after the expiration of such period; and in addition, every such officer may be prohibited from holding office of any association for a period of one year.

Acts of un-registered associations and their officers

40. (1) No association shall perform any act in furtherance of the objects for which it has been formed unless the association is registered under this Act:

Provided that an association and its constitution registered under the Industrial Relations Act, 1971, shall be deemed to be registered under this Act.

(2) Any association which, or officer thereof who, contravenes subsection (1) shall be guilty of an offence and liable, upon conviction, to a fine not exceeding ten thousand kwacha; and the officer may in addition be prohibited from holding office in any association for a period of five years.

Application for registration of association

41. (1) Subject to subsection (7), an application by not less than five members of an association may be made to the Commissioner for the registration of the association:

Provided that if the Commissioner is satisfied that there are only five employers or less in any class of employers desiring to form an association, he may accept an application by less than five members.

(2) Every application to register an association and its constitution shall be—

(a) submitted to the Commissioner in the prescribed form; and

(b) accompanied by a copy of the constitution.

(3) Notice of every application for registration by an association shall be published in three consecutive issues of the *Gazette*.

(4) Objections to the registration of any association shall be in writing and shall be lodged with the Commissioner not later than ninety days from the last notice appearing in the *Gazette*.

(5) Subject to subsection (7) the Commissioner, upon being satisfied that an association has complied with the provisions relating to registration under this Act, and that the constitution

of the association provides for the matters prescribed under section *forty-two*, shall register the association and its constitution and issue a certificate of registration in the prescribed form to the association, unless, in his opinion, any of the principal objects of the constitution of the association is unlawful or the association is incapable of implementing any of its principal objects.

(6) A certificate of registration issued under subsection (5), unless proved to have been withdrawn or cancelled, shall be *prima facie* evidence that the provisions of this Act relating to registration have been complied with.

(7) No association shall be registered—

- (a) under a name identical to that by which any other association has been registered or so nearly resembling that name as to be likely to deceive members of the public;
- (b) if it does not comply with the conditions of registration which the Minister may by statutory instrument prescribe.

42. The constitution of every association shall provide, inter alia, for the following matters:

Constitution
of association

- (a) the name of the association and address of its registered office in Zambia;
- (b) the principal objects for which the association is established and the class of employers which the association shall represent;
- (c) the purposes to which the funds of the association may be applied and that one of the purposes to which such funds shall be applied shall be the holding of employers industrial relations seminars aimed at educating employers on the methods of maintaining harmonious and productive industrial relations between employers and trade unions;
- (d) provision for the establishment of a voluntary political fund in accordance with section *sixty-two*;
- (e) the organisational structure of the association, the mode of appointment and removal of the officers responsible for the administration of the association and the powers and duties of such officers;
- (f) the payment of subscriptions and fees by the members and the method of collection thereof;
- (g) the grounds for disqualifying a member from voting on any matter concerning the association;
- (h) the disqualification for election to any office in the association involving responsibility for dealing with the funds of the association;

- (i) the vesting and safe custody of the funds and property of the association, the banking and investment of its funds, and the maintenance, inspection and periodic auditing of its accounts and all other financial records;
- (j) the election of the officers within six months of the registration of an association, and thereafter at regular intervals of not more than four years;
- (k) the appointment of not less than two and not more than three trustees of the association who are not members of the association;
- (l) the taking of decisions by secret ballot supervised by a proper officer—
 - (i) for the election of trustees and other officers;
 - (ii) on any proposal to dissolve the association with a view to its amalgamation with one or more other associations or to reconstitute the association so as to split it into two or more associations;
 - (iii) on a proposal for a lock-out;
- (m) the procedure for amending the constitution of the association.

Registration of amendments to constitution of association

43. (1) An alteration or addition to the constitution of an association shall be registered with the Commissioner and shall take effect from the date of registration unless a later date for that purpose is specified in its constitution.

(2) An application for registration of an alteration or addition to any provision of the constitution shall be made in such manner as may be prescribed and shall be accompanied an authenticated copy of the resolution made to alter or add any proviso of the Constitution.

(3) The constitution of an association shall not be altered or added to so that it fails in any material way to provide for the matters specified in section *forty-two*.

Disqualification from election or appointment as officer of association

44. (1) No person shall be qualified for election as an officer of an association if—

- (a) he, having been an officer (or a member of the executive) of an association the certificate of registration of which has been cancelled under the provisions of this Act, fails to satisfy the Commissioner that he did not contribute to the circumstances leading to the cancellation;
- (b) he has been convicted of an offence involving dishonesty within a period of five years preceding such election;
- (c) he is of unsound mind;
- (d) he is an undischarged bankrupt; or

(e) he has been suspended, under the constitution of the association or under this Act, from holding office in the association and his suspension has not been revoked, or the period for which he was suspended has not expired.

(2) An officer of an association shall cease to hold office if any circumstances arise which, were he not an officer, would disqualify him under subsection (1) for election as an officer.

(3) No person who is a full-time officer of an association shall be an officer of any other association or Federation unless he resigns from his first office.

(4) The Commissioner shall call for any documentation and information which he considers necessary from the executive committee or any officer of an association to ensure that this section is being complied with.

(5) Any person who being disqualified under this section to hold office in an association, acts or purports to act as an officer of that association shall be guilty of an offence and liable upon conviction, to a fine not exceeding five hundred kwacha and may be prohibited from holding office in any association for such period as the court may determine.

45. (1) Whenever an association holds an election to fill any office in the association or makes an appointment to any office, the secretary of the association shall, within thirty days of the election or appointment, notify the Commissioner, in writing, of the result of the election, or of the appointment, as the case may be.

Information about elections of association, etc.

(2) A secretary who fails to comply with the provisions of subsection (1) shall be guilty of an offence and liable, upon conviction, to a fine not exceeding fifty kwacha for every day during which the failure continues.

(3) The name and office of every office holder and trustee of the association shall be exhibited in a prominent position at the registered office, and at every branch office, of the association.

46. (1) Any member or officer, of an association, or any officer of the Federation if the association is affiliated to it or the Commissioner may apply to the Court for an injunction prohibiting an officer of the association from holding or continuing to hold office or dealing or continuing to deal with the funds of the association.

Injunction against officer of association

(2) On an application made under subsection (1), the Court may, if it is satisfied that the officer is disqualified under section *forty-four* from holding office in that association, or that there is a reasonable case against the officer for the fraudulent misuse of the association's funds, grant the application and make the necessary order.

Cancellation of certificate of registration

47. (1) The certificate of registration of an association may be cancelled by the Commissioner with the approval of the Minister—

- (a) on the request of the association which has resolved to be dissolved and an application is to be made in the prescribed form;
- (b) if the certificate of registration has been obtained by fraud or mistake;
- (c) if any of the principal objects of the association is, or has become, unlawful;
- (d) if he is of the opinion that the association has ceased to exist or has ceased truly and effectively to represent the interest of its members;
- (e) if the association has wilfully violated any of the provisions of this Act.

(2) Where the Commissioner intends to cancel the certificate of registration of an association under paragraphs (b), (c), (d) or (e) of subsection (1), he shall at least three months before cancelling the certificate, give notice to the association concerned, specifying the grounds upon which he intends to rely for the intended cancellation.

(3) The association referred to in subsection (2) may make representations to the Commissioner in opposition to the grounds contained in the notice.

(4) The Commissioner may, after the receipt from the association of representations if any, and after the expiration of the three months notice, cancel the certificate of registration and shall notify the association accordingly.

(5) An association whose certificate of registration is cancelled may appeal to the Court.

(6) An association whose certificate of registration is cancelled shall from the time of the cancellation cease to operate as an association and shall be dissolved unless an appeal against the cancellation is preferred:

Provided that in the case of any cancellation other than a cancellation made under paragraph (a), of subsection (1), in respect of which no appeal is preferred to the Court, the cancellation shall not have effect until it is referred to the Court for confirmation.

Appeals from decisions of Commissioner

48. (1) Any person aggrieved by a refusal of the Commissioner to register an employers association, or by any decision to register an association, or by the cancellation of a certificate of registration, may appeal to the Court within thirty days of the notification of refusal, decision or cancellation, as the case may be.

(2) The Commissioner shall be entitled to appear and to be heard on any appeal made under subsection (1).

(3) The Chairman may make rules governing appeals, provide for the method of tendering evidence, prescribe the procedure to be followed, the fees to be paid, and notices to be given to the Commissioner.

49. (1) Subject to subsection (7) of section *forty-one* an association may, in accordance with the provisions of its constitution, change its name.

Change of
name or
address of
association

(2) Notice in writing of every change of name, signed by all the members of the executive committee of an association shall be submitted to the Commissioner within thirty days of the change and the Commissioner shall register the change of name if he is satisfied that the change complies with subsection (1).

(3) No change of name shall affect any right or obligation of an association or of any member of the association, and any legal proceedings in respect of the right or obligation of the association may be commenced or, continued, if pending, by or against the trustees of the association or any other officer who may sue or be sued on behalf of the association, notwithstanding its new name.

(4) Notice in writing of every change in the address of the registered office of an association shall be sent by its executive officer or secretary to the Commissioner for registration within thirty days of the change of address.

(5) Failure to send a notice as required by subsection (2) or (4), shall render the association and its executive officer liable, upon conviction, to a fine not exceeding one hundred kwacha each for every day during which the failure continues.

50. (1) Two or more associations may amalgamate as one association and the new association shall be registered in accordance with the provisions of this Act.

Amalga-
tion of
associations

(2) Any legal proceedings in respect of any rights or obligations of an association which has amalgamated with another association may be commenced or, be continued, if pending, by or against the association formed as a result of the amalgamation.

51. (1) When it is intended to dissolve an association voluntarily, notice of intention signed by all the members of the executive committee of the association and by an authenticated copy of the minutes and resolution passed making the decision shall be submitted to the Commissioner with a copy to the Federation if the association is affiliated to it which may comment on the intended dissolution within fourteen days of receipt of the notice.

Voluntary
dissolution
of
associations

(2) If the Commissioner is satisfied that the intended dissolution of an association is in accordance with its constitution

he may approve the dissolution of the association and—

- (a) the dissolution shall be effective from the date the Commissioner accords his approval; and
- (b) the Commissioner shall notify his approval to the association and Federation, if the association is affiliated to it.

(3) Upon the dissolution of an association under subsection (2) or on its being dissolved under section *forty-seven*—

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- (a) the property of the association shall vest in the liquidator appointed by the Commissioner who shall have all the powers to recover, realise and sale the property as a trustee in bankruptcy has in relation to a bankrupt's property under the Bankruptcy Act and Part V of the Bankruptcy Act relating to remuneration and costs shall with necessary modification apply to such liquidator;
- (b) the liquidator shall proceed to wind up the affairs of the association and, after satisfying and providing for all the debts or other liabilities, prepare a scheme for the application of its remaining assets or property to purposes likely to benefit the former members of the dissolved association, or distribute the assets or property or the proceeds thereof among such of its former members as the Commissioner may determine.

(4) No suit or proceeding shall be instituted against the liquidator appointed by the Commissioner for or in respect of anything done or omitted to be done by him in the performance of his functions under this Act.

Affiliation
of
association
to
Federation
Cap. 517

52. (1) From the commencement of this Act—

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- (a) an association which is the holder of a valid certificate of registration issued under the Industrial Relations Act, 1971, shall be deemed to have been duly registered under this Act;
- (b) an association which is the holder of a valid certificate of registration issued under the Industrial Relations Act, 1971, and affiliated to the Federation under that Act, shall, subject to paragraph (c) not be affiliated to the Federation under this Act; and
- (c) an association referred to in paragraph (a) and (b) or which is the holder of a valid certificate of registration under this Act may, by a two-thirds majority decision made by the members of the association affiliate to the Federation.

(2) An association which affiliates to the Federation under paragraph (c) of subsection (1) may by a two-thirds majority decision passed by the members of the association disaffiliate itself from the Federation.

(3) An association affiliated to the Federation under paragraph (c) of subsection (1) shall, upon such affiliation be entitled to the rights and privileges, and subject to the obligations specified in the Constitution of the Federation.

(4) An association may affiliate to an association or organisation outside Zambia by a two-thirds majority decision passed by the members of the association and shall inform the Commissioner within fourteen days of such affiliation.

53. The provisions of section *twenty-one* shall apply, with necessary modification to an association, its secretary or executive officer as they apply to a trade union and its secretary.

Annual report of accounts of association.

54. The provisions of section *twenty-five* shall apply, with necessary modifications, to an association and its trustees as they apply to a trade union and its trustees.

Acquisition of land by association and vesting of property

55. The provisions of sections *twenty-six* and *twenty-seven* shall apply, with necessary modifications to an association and its trustees as they apply to a trade union and its trustees.

Actions by or against trustees of association and limitation of their liability

PART V

ZAMBIA FEDERATION OF EMPLOYERS

56. The Zambia Federation of Employers established by, and registered in accordance with section *fifty-two* of the Industrial Relations Act, 1971, is hereby continued as if established and registered under this Act.

Continuation of Federation
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57. (1) The constitution of the federation in force immediately before the commencement of this Act shall continue in force until replaced or amended under this section.

Constitution of Federation

(2) The constitution of the Federation and every alteration or addition to the constitution shall be registered with the Commissioner, and shall include—

- (a) the principal objects of the Federation and the purposes for which its funds may be applied;
- (b) a provision for the establishment of a voluntary political fund in accordance with section *sixty-two*;
- (c) the organisational structure of the Federation, the mode of election, appointment and removal of the officers responsible for its administration and the powers and duties of such officers;

- (d) provision for prescribing the entrance fees and subscriptions payable to the Federation, the vesting and safe custody of its funds or property, the banking and investment of its funds and the maintenance, inspection and annual auditing of its accounts and other financial records;
- (e) provision for disqualification from election to any office in the Federation involving responsibility for the management of its funds;
- (f) provision for the election of the officers at regular intervals of not more than four years;
- (g) provision for the appointment of not less two and not more than four trustees of the Federation;
- (h) the rights, privileges, duties and obligations conferred or imposed upon employers by virtue of their membership of and upon the association by virtue of their affiliation to the Federation;
- (i) provision for the taking of decisions, by secret ballot supervised by a proper officer—
 - (i) for the election of trustees, delegates or other officers;
 - (ii) on any proposal to alter materially the constitution of the Federation; and
 - (iii) on any proposal to affiliate with any organisation or body outside Zambia.

Relations
between
Federation
and
employers
associations

58. The provisions of section *thirty-five* shall apply to the relationship between the Federation and associations as that section applies to the Congress and trade unions.

Disqualifi-
cation from
election or
appoint-
ment as
officer of
Federation

59. (1) No person shall be qualified for election as an officer of the Federation if—

- (a) he has not, for three years or more, been an officer of an association or engaged in a managerial capacity or in the field of personnel management or industrial relations;

Provided that the Federation may, if it is satisfied as to the suitability of a particular candidate, allow him to stand for such election, notwithstanding that he does not qualify under this paragraph;

- (b) he is not nominated by the association of which he is a full member and supported by one-third of the total number of registered associations affiliated to the Federation.

- (c) he having been an officer (or a member of the executive) of any association the registration of which has been cancelled under the provisions of this Act, fails to satisfy the Commissioner that he did not contribute to the circumstances leading to the cancellation;
- (d) he has been convicted of an offence involving dishonesty within five years preceding the election or appointment;
- (e) he is an undischarged bankrupt;
- (f) he is of unsound mind; or
- (g) his freedom of movement is restricted under any law in force in Zambia for a period in excess of six months; or
- (h) he has been suspended, under the constitution of the Federation from holding office in the Federation and his suspension has not been revoked, or the period for which he was suspended has not expired.

(2) An officer of the Federation shall cease to hold office if any circumstances arise which were he not an officer, would disqualify him under subsection (1) for election as an officer.

(3) The Commissioner shall for the purpose of satisfying himself that the provisions of this section are being complied with shall call for such documentation of information as he may think necessary from the executive director of the Federation.

(4) Any person who being disqualified under this section to hold office in the Federation, acts or purports to act as an officer of the Federation shall be guilty of an offence and shall be liable upon conviction, to a fine not exceeding two thousand kwacha and may be prohibited from holding office in any association for a period not exceeding twelve months.

60. (1) Whenever the Federation holds an election to fill any office in the Federation or makes an appointment to any office, the executive director of the Federation shall, within thirty days of the election or appointment, notify the Commissioner and the Congress in writing, of the appointment or of the result of the election, as the case may be.

Notification
of results
of election
Federation

(2) Any executive director who fails to comply with the provisions of subsection (1) shall be guilty of an offence and liable upon conviction, to a fine not exceeding fifty kwacha or every day during which the failure continues.

(3) The name and office of every office holder and trustee of the Federation shall be exhibited in a prominent position at the registered office, and at every branch office of the affiliates of, the Federation.

61. The provisions of section twenty-one shall apply, with necessary modifications to the Federation and its executive director as they apply to a trade union and its secretary.

Annual
report or
accounts of
Federation

PART VI

FUNDS OF TRADE UNIONS, CONGRESS, ASSOCIATION AND
FEDERATION

Objectives
for which
funds shall
not be
expended

62. (1) Notwithstanding anything contained in the constitution of a trade union, Congress, association or Federation, the funds of a trade union, Congress, association or Federation shall not be expended on anything which is not directly related to the welfare of the members of the trade union, Congress, association or Federation.

(2) Subject to subsection (3), the funds of a trade union, Congress, association or Federation shall not be used for political objectives.

(3) Where a trade union, Congress, association or Federation intends to pursue political objectives or support any political party or organisation, it shall by a two-thirds majority of its members establish and administer a separate voluntary political fund for such purposes in accordance with such rules as the Minister may by statutory instrument, prescribe.

(4) Any member of a trade union, Congress, association or Federation may apply to the Court for a declaration to stop the trade union, Congress, association or Federation from applying its funds to objects which in his opinion have not been authorised by its constitution.

Control of
funds

63. (1) Subject to subsection (3), every treasurer, former treasurer, or other officer of a trade union, Congress, association or Federation shall, at such times as he is required by the constitution of the trade union, Congress, association or Federation or upon being requested to do so, submit to the trustees or the members of the trade union, Congress, association or Federation at a meeting of the trade union, Congress, association or Federation, a true account of—

- (a) all monies received and disbursed by him; and
- (b) balance of monies in hand:

Provided that in case the of a former treasurer—

- (i) the duty to submit an account of monies received and disbursed by him shall only apply to him within thirty days of his ceasing to hold office; and
- (ii) paragraph (b) shall not apply to him.

(2) The trustees of a trade union, Congress, association, or Federation shall on receipt of the account submitted under subsection (1) cause the account to be audited by an auditor appointed by them.

(3) Notwithstanding subsection (1) or the constitution of a trade union, Congress, association or Federation, a trade union, Congress, association or Federation may appoint an auditor and the name and address of the person so appointed shall as soon as practicable thereafter be published in the *Gazette*.

(4) Where an auditor has been appointed under subsection (1)—

(a) no treasurer, financial secretary, member or employee of the trade union, Congress, association, or Federation shall at any time thereafter deal with any financial matter of the trade union, Congress, association or Federation except with specific approval of the auditor to the extent and in the manner approved by him in writing; and any person who contravenes the provisions of this paragraph shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding one thousand kwacha or to imprisonment for a term not exceeding six months, or to both;

(b) the auditor shall—

(i) have access at all reasonable times to all books of account, records, returns, reports and other documents relating to the accounts of the trade union, Congress, association or Federation;

(ii) submit the accounts for audit or inspection if so required by the Commissioner and furnish all other information relating to the transactions of the trade union, Congress, association or Federation;

(iii) debit the accounts of the trade union, Congress, association or Federation with his professional fees and expenses reasonably incurred in the performance of his functions.

(5) In the event of the auditor ceasing to hold office, he shall hand over all monies, securities, books, documents, papers and other things in his possession and belonging to, or held by him on behalf of, the trade union, Congress, association or Federation.

(6) Any person who wilfully obstructs the auditor in the performance of his functions under this section shall be guilty of an offence and liable, upon conviction, to a fine not exceeding one thousand kwacha or to imprisonment for a term not exceeding three months, or to both.

PART VII

INDUSTRIAL RELATIONS COURT

64. (1) The Industrial Relations Court established by section *ninety-six* of the Industrial Relations Act, 1971, is hereby continued as if established under this Act.

(2) The Court shall consist of the following members:

(a) a Chairman;

(b) a Deputy Chairman;

(c) not more than seven members as the Minister may appoint.

The Court
and its
composition
Cap. 517

(3) A person shall not be qualified for appointment as—

(a) Chairman, unless he holds or has held high judicial office;

(b) Deputy Chairman, unless he is a legal practitioner with experience for a continuous period of not less than seven years;

(c) as a member of the Court other than the Chairman and Deputy Chairman, unless that person has had experience in the field of industrial relations.

(4) The Chairman and Deputy Chairman shall be appointed by the President on the recommendation of the Judicial Service Commission.

(5) The members other than the Chairman and Deputy Chairman shall hold office for a period of five years on such terms and conditions as the Minister may determine and shall be eligible for re-appointment.

Registrar
of Court

65. (1) There shall be a Registrar and Deputy Registrar who shall be public officers and who shall be appointed by the Judicial Service Commission.

(2) The Public Service Commission may appoint such other officers of the Court, as may be necessary.

Assessors

66. (1) The Minister shall nominate an even number of persons, not exceeding fourteen, of whom one-half shall be representatives of employers and the other half of employees; and shall submit to the Chairman a list containing the addresses of such persons and indicating in each case whether the person is a representative of the employers or of the employees.

(2) The Minister shall cause the list of persons and their addresses referred to in subsection (1) to be published in the *Gazette*.

(3) From the list referred to in subsection (1), the Chairman may select one person who is a representative of the employers and one person who is a representative of the employees to sit as assessors with the Court in the hearing of any matter before it.

(4) The Court shall give due consideration to, but shall not be bound by, the opinion of the assessors.

Proceedings
of Court

67. (1) The Chairman or in his absence the Deputy Chairman, shall preside over the Court.

(2) Except in matters referred to in paragraph (a) of section *seventy-eight*, the Court, when hearing any matter, shall be duly constituted if it consists of three members or such uneven number as the Chairman may direct:

Provided that the Chairman or the Deputy Chairman may deal with interlocutory matters and deliver a ruling or make any order in chambers and may deliver any ruling or judgement made by the Court duly constituted.

(3) Subject to subsection (2) the determination of any matter before the Court shall be according to the opinion of the majority of the members of the Court considering or hearing the matter:

Provided that on a point of law the decision of the Chairman shall prevail.

(4) A person shall not sit or act as a member of the Court, or sit as an assessor with the Court, if he has any interest, direct or indirect, personal or pecuniary, in any matter before the Court.

(5) The sittings of the Court shall be held in Lusaka, Ndola or such other place as the Chairman may direct.

68. (1) The Court shall have the jurisdiction—

Jurisdiction
of Court

- (a) to inquire into and make awards and decisions in collective disputes and any other matters under this Act;
- (b) to interpret the terms of awards, collective agreements and recognition agreements;
- (c) generally to inquire into and adjudicate upon any matter affecting the collective rights, obligations and privileges of employees, employers and representative organisations thereof or any matter relating to industrial relations;
- (d) to commit and punish for contempt any person who disobeys or unlawfully refuses to carry out or to be bound by an order made against him by the Court under this Act;
- (e) to perform such acts and carry out such duties as may be prescribed under this Act or any other written law.

(2) In this section "dispute" shall include differences concerning employment contracts between an employer and an employee arising from terms and conditions of service of employees.

(3) The Court shall have the jurisdiction to hear and determine any dispute between an employer and an employee notwithstanding that such dispute is not connected with a collective agreement or other trade union matter.

(4) The Court shall not be bound by the rules of evidence in civil or criminal proceedings, and the main object of the Court shall be to do substantial justice between the parties before it.

(5) In reaching any decision or in making any award relating to wages and conditions of employment, the Court shall have regard to the Government's declared policy on prices and incomes.

(6) An award, declaration, decision or judgement of the Court on any matter referred to it for its decision or on any matter falling within its exclusive jurisdiction shall, subject to section *seventy-seven*, be final and binding upon the parties to the matter and on any parties affected thereby.

(7) It shall be within the exclusive jurisdiction of the Court to resolve any ambiguity brought to its notice by any of the parties concerned in any collective or recognition agreement.

(8) No person shall take part in a lock-out or a strike against or in defiance of any award, declaration, decision or judgement of the Court and any person who contravenes the provisions of this subsection shall be liable, upon conviction, to a fine of not exceeding ten thousand kwacha or to imprisonment for a term not exceeding twelve months, or to both.

**Declarations
by Court**

69. (1) The Court may, on application, declare who is or should be the holder of any office in a trade union, the Congress, an association or the Federation.

(2) The Chairman may make rules providing for the procedure to be followed on an application for a declaration under this section and prescribing any fees which shall be payable on any application.

(3) Without prejudice to the power to the Court to punish for contempt of court, where it has been declared under subsection (1) that any person is or should be the holder of an office, any other person who acts or purports to act as the holder of the office contrary to the terms of the declaration, shall be liable upon conviction, to a fine not exceeding two thousand kwacha or to imprisonment for a term not exceeding three months, or to both.

**Representa-
tion of
parties**

70. (1) At any hearing before the Court, any party may appear in person or be represented—

- (a) by any officer of a trade union or of an association;
- (b) by an officer of the Congress or of the Federation; or
- (c) by a legal practitioner.

(2) Where the Government is a party to any proceedings before the Court, the Government may be represented by the Attorney-General or by any other person authorised by him for that purpose.

71. (1) The Court may summon witnesses, call for the production and inspection of, books, documents, records and other things, and to examine witnesses under oath, and for such purpose the Chairman may administer oaths.

Power to
summon
witnesses

(2) A summons for the attendance of a witness or for the production of books, documents, records or other things, shall be signed by the Registrar and served in the same manner as if it were a subpoena for the attendance of a witness at a civil trial in the High Court.

(3) Any person giving evidence or summoned to give evidence or to produce any book, document, record or other thing before the Court, shall be entitled to the same privileges and immunities as if he were summoned to attend or were giving evidence in civil proceedings before the High Court.

(4) A person summoned under this section, other than a public officer or a person having an interest in the proceedings for which he is summoned, may on the order of the Court be paid from moneys appropriated by Parliament such allowances as may be prescribed by the Chairman.

72. (1) If any person who has been summoned under section *seventy-one*, having reasonable notice of the time and place at which he is required to attend, fails to attend, or fails to remain in attendance until duly excused by the Court from further attendance, the Chairman may, upon being satisfied on oath or by the return of the person charged with the service of the summons that the summons was duly served upon such person issue a warrant signed by him for the apprehension of the person.

Power to
obtain
evidence

(2) A person against whom a warrant has been issued under subsection (1) shall be apprehended by any police officer to whom the warrant is delivered and shall be brought before the Court to give evidence or to produce a book, document, record or other thing.

(3) If any person who has been summoned under section *seventy one*—

- (a) refuses to be sworn or affirmed as a witness;
- (b) having been sworn or affirmed refuses to answer fully and satisfactorily any question he is lawfully required to answer;
- (c) refuses or fails to produce any book, document, record or other thing and does not excuse his refusal or failure to the satisfaction of the Court;

the Chairman may order that that person be detained in custody, as if he were a prisoner awaiting trial, for any period not exceeding eight days unless he sooner consents to do what is required of him.

(4) If the person referred to in subsection (3) upon being brought before the Court at adjourned hearing further refuses or fails to do what is required of him, the Chairman may, if he sees fit, adjourn the proceedings and order that

person to be detained for a like period until the person consents to do what is required of him.

Power to
exclude
press or
public from
proceedings

73. In any proceedings before the Court, the Chairman may exclude from the proceedings any member of the public or any representative of the press if he considers it necessary or expedient in circumstances where publicity would be prejudicial to the interest of justice, defence, public safety, public order or public morality.

Penalty for
false
testimony

74. (1) Any person who knowingly gives false testimony touching any matter which is material to any question then pending in any proceedings before the Court or intended to be raised in such proceedings shall be guilty of any offence and liable, upon conviction, to imprisonment for a term not exceeding three years.

(2) For the purpose of this section, it shall be immaterial whether the testimony is given on oath or under any other sanction authorised by law.

Penalty for
wilful insult

75. If any person wilfully insults the Court or any member thereof during any sitting of the Court, or wilfully interrupts the proceedings of the Court, or otherwise wilfully disturbs the peace or order of the proceedings, the Chairman may order that person to be removed and detained in custody until the rising of the Court, and that person shall be liable, in addition to the removal and detention, to a fine, not exceeding two thousand kwacha, as the Chairman may determine.

Publication
of judge-
ments of
Court

76. (1) The Registrar shall cause every award, decision and judgement of the Court to be communicated to the parties concerned and to the Commissioner.

(2) The Chairman may cause to be published in the *Gazette* any award, decision or judgement of the Court which, in his opinion, is of general interest

Appeals to
Supreme
Court

77. (1) Any person aggrieved by any award, declaration decision or judgement of the Court may appeal to the Supreme Court on any point of law or any point of mixed law and fact, but not on a point of fact.

(2) The Chief Justice may, by statutory instrument, make rules regulating appeals under this section.

Rules of
Court

78. The Chairman, by statutory instrument, shall make rules regulating the procedure of the Court and, without prejudice to the generality of the foregoing, the rules may provide—

- (a) for reference of matters in certain cases to be made to the Chairman, Deputy Chairman, Registrar, Deputy Registrar or the Assistant Registrar; or
- (b) for the procedure in cases where the Court having been constituted of the Chairman or the Deputy Chairman and members, a vacancy occurs.

PART VIII

RECOGNITION AGREEMENTS

79. (1) Every employer employing twenty-five or more eligible employees, or such lesser number as may be prescribed by the Minister, shall register himself with the Commissioner within a period not exceeding three months from the date of coming into operation of this section or, from the date upon which this section becomes applicable to the employer, as the case may be.

Registration
of
employers

(2) The registration shall be in the manner and in the form as may be prescribed:

Provided that an employer registered under the Industrial Relations Act, 1971, shall be deemed to be registered under this Act.

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(3) An employer to whom this section applies and who fails, without reasonable cause or excuse (the onus of proof whereof shall lie on the employer), to register in accordance with the provisions of this section shall be guilty of an offence and liable, upon conviction, to a fine not exceeding ten thousand kwacha.

80. (1) Not later than three months from the date of coming into operation of this part or from the date upon which this section becomes applicable to any employer, the employer registered under section *seventy-nine* and the trade union, if any, to which the employees employed by the employer belong, shall enter into a recognition agreement.

Duty to
enter into
recognition
agreement

(2) Not later than three months from the date of coming into operation of this part or from the date upon which an association and a trade union have become established in an industry, the association and trade union shall enter into a recognition agreement.

(3) The Minister may, for good cause, extend the period laid down in subsection (1) or (2).

(4) A recognition agreement registered under the Industrial Relations Act, 1971, shall be deemed to be registered under this Act.

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(5) If the parties referred to in subsection (1) or (2), fail to conclude a recognition agreement under this Part, the failure shall be deemed to be a collective dispute and Part X shall apply thereto with necessary modifications.

81. (1) Every recognition agreement shall be in writing, signed by the representatives of the parties to it and shall provide—

Essentials
of
recognition
agreement

(a) that the employer or association has duly recognised the trade union as the sole representative of, and exclusive bargaining agent for, employees belonging to

that trade union for the purpose of regulating the collective relationship of the employers and employees;

- (b) for the methods, remedies and rules relating to procedure or otherwise, and for the settling of disputes or the remedying of grievances by means of collective bargaining or otherwise between the employers and employees; and
- (c) for the methods, procedures and rules under which the agreement may be reviewed, amended, replaced or terminated.

(2) Three copies of a recognition agreement and of any alteration to the agreement shall be delivered to the Commissioner by the parties to the agreement.

PART IX

JOINT COUNCILS AND COLLECTIVE AGREEMENTS

Establishment of joint council

82. (1) Within three months from the date of coming into operation of this section or the formation of an association, whichever is the later, every association and trade union shall cause to be established a joint council within and for the industry with which the association is concerned:

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Provided that every joint council established under the Industrial Relations Act, 1971, shall be deemed to be a joint council established under this Act.

(2) If the association and trade union concerned fail or neglect, without reasonable cause or excuse (the onus of proof whereof shall lie on the association and trade union) to establish a joint council in the manner and within the period specified in subsection (1), every officer of the association and trade union shall be liable upon conviction, to a fine not exceeding one thousand kwacha.

Constitution of joint council

83. (1) The constitution of a joint council shall include provisions—

- (a) for the composition of its membership;
- (b) for the rules governing the joint council; and
- (c) that the joint council shall hold its meetings at least once in three months.

(2) Every joint council shall, within fifteen days of its establishment, deliver a copy of its constitution to the Commissioner.

84. Every collective agreement shall contain clauses, in this part referred to as statutory clauses, stipulating—

Collective agreements

- (a) the date on which the agreement is to come into effect and the period for which it is to remain in force; and
- (b) the methods, procedures and rules for reviewing, amending, replacing or terminating the collective agreement.

85. (1) The bargaining unit shall—

Obligations of bargaining unit

- (a) commence negotiations for the purpose of concluding a new collective agreement at least three months before the date of expiry of the current collective agreement;
- (b) notify the Commissioner and the Secretary in writing within fifteen days after the commencement of the negotiations of the date on which the negotiations were commenced; and
- (c) conclude and sign the collective agreement within three months after the commencement of the negotiations.

(2) If the bargaining unit fails, or neglects without reasonable cause or excuse (the onus of proof shall lie on the bargaining unit), to commence negotiations or conclude the collective agreement in the manner and within the period specified in paragraph (a) of subsection (1), or to notify the Commissioner and the Secretary in the manner and within the period specified in paragraph (a) of subsection (1) every member of the bargaining unit shall be liable, upon conviction, to a fine not exceeding one thousand kwacha and may be prohibited from holding a position in the bargaining unit for a period not exceeding three months.

86. (1) The parties to a collective agreement shall, within fourteen days of signing thereof, lodge fourteen signed copies of the collective agreement with the Commissioner.

Lodging of collective agreements

(2) The Commissioner shall, within fourteen days of the receipt of the copies referred to in subsection (1), submit one copy to the Commission.

87. (1) The Commission may after considering a collective agreement lodged in accordance with section *eighty-six*, together with the comments thereon of the Commissioner and objections or comments, if any, received under subsection (1)—

Approval of collective agreement

- (a) direct that a copy of the collective agreement be returned by the Secretary to the parties thereto together with its reasons for not registering it and give instruction as to the re-submission of the collective agreement to the Secretary; or

(2) The working party formed under subsection (1) shall do all such things as may be necessary to facilitate the establishment of a council for the undertaking and shall—

- (a) explain to the employees in the undertaking the purpose and effect of the provisions contained in this Part and the nature and functions of the council;
- (b) classify the employees as to who shall be members of management and who shall be eligible employees;
- (c) determine, having regard to the total number of eligible employees in the undertaking, the number of members of which the council shall consist;
- (d) call for and receive nominations of candidates for election or appointment to the council; and
- (e) organise, hold and supervise elections for members of the council.

(3) The working party shall be dissolved, and the council established, when the members of the council have been duly elected or appointed, as the case may be.

Composition
of
councils

98. Every council shall consist of not more than twelve members, of whom one-third shall be elected by the eligible employees, one-third shall be appointed by the management of the undertaking and one-third shall be elected jointly by the eligible employees and the management of the undertaking.

Nomi-
nations for
elections

99. (1) The eligible employees shall nominate candidates for election to the Council.

(2) Only eligible employees in the undertaking shall be entitled to be elected and to vote in an election for the council.

Election of
members of
councils

100. Election of members of a council shall be by secret ballot, and shall be supervised—

- (a) in the case of the first elections, by the working party; and
- (b) in the case of subsequent elections, by the proper officer of the area or the person appointed for that purpose by the proper officer.

Tenure of
office of
members of
council

101. (1) A member of a council shall hold office for a term of three years and shall be eligible for re-election or appointment.

(2) A member of a council shall cease to hold office if—

- (a) his term of office expires;
- (b) he dies;
- (c) he resigns from the membership of the council

- (d) he becomes of unsound mind;
- (e) he absents himself without reasonable excuse from four consecutive meetings of the council;
- (f) he ceases to be an eligible employee in the undertaking in which the council is established; or
- (g) he is withdrawn by management, in case of a nominated councillor.

102. (1) The members of a council shall be afforded reasonable time and facilities during working hours for the performance of their duties as members of the council without suffering any loss or disadvantage in their employment.

(2) No employee shall be discriminated against or made to suffer any penalty or disadvantage by reason of his membership of a council.

(3) The councillor so discriminated against or made to suffer may be awarded such remedy as the Court may consider fit.

(4) Any person who does or omits to do any act in contravention of the provisions of this section shall be guilty of an offence and liable upon conviction to a fine not exceeding one thousand kwacha or to imprisonment for a period not exceeding twelve months or to both.

103. (1) Every council shall hold its first meeting within one month of its establishment and thereafter it shall meet at least once every four months.

(2) The council shall elect a chairman from one of their number to preside at meetings of the council.

(3) The management of an undertaking shall appoint a secretary to the council and if the secretary is unable to attend any meeting, the members present may appoint one of their number as secretary for the purpose of that meeting.

(4) No person other than a member of a council shall attend any of its meetings unless he is invited by the council and such a person shall have no vote.

(5) At every meeting of a council a record shall be kept by the secretary of all decisions, recommendations and resolutions passed by the council and a copy of the record shall be submitted to the Commissioner.

(6) Management information supplied to the council for the purpose and in the course of meetings shall be confidential and shall not be made available except where authorised to any person outside the undertaking.

Rights of members of council

and

Council to be informed

Approval by councils of certain decision of management

Chairman and meetings of council

Secretary of Information acquired by any person under this Act

Provided that nothing in this section shall absolve any party from any criminal or civil liability arising under any written law out of any contravention or infringement.

111. If any person, in the performance of his functions under this Act, acquires any information relating to the financial affairs of any undertaking or to any manufacturing or commercial secrets of working process thereof, he shall not disclose the information to any other person except—

- (a) for the purpose of any proceedings under this Act;
- (b) to a court or to any person who by law is invested with the power to compel the disclosure of the information;
- (c) to the Minister or any other person administering this Act in so far as such information may be necessary for such administration.

Offences

112. Any person who does or omits to do any act in contravention of any of the provisions contained in this Part, shall be guilty of an offence and liable, upon conviction, to a fine not exceeding two thousand kwacha or to imprisonment for a term not exceeding twelve months, or to both.

Regulations by Minister relating to works councils

113. The Minister may, by statutory instrument, make regulations for the better carrying out of the provisions of this Part.

PART XII

Consultative Labour Council

TRIPARTITE CONSULTATIVE LABOUR COUNCIL

114. (1) There is hereby constituted the Tripartite Consultative Labour Council, in this part referred to as the Council which shall consist of the Minister and such equal number of members representing the trade unions, the employers and the Government, as the Minister may determine and the members shall not be less than twenty-one.

- (2) The members representing—
 - (a) the trade unions shall be nominated proportionately by the Congress and the trade unions, which are not affiliated to it;
 - (b) the employers shall be nominated proportionately by the Federation and the associations not affiliated to it; and
 - (c) the Government shall be nominated by the Minister.

(3) The Commissioner shall act as the secretary to the Council and to any committee which may be formed by the Council.

115. (1) The Council shall be chaired by the Minister, or in his absence the junior Minister responsible for labour.

Chairman
and Vice-
Chairman
of Council

(2) There shall be two Vice-Chairmen of the council one nominated by the Trade Unions and the other nominated by the associations.

116. (1) Subject to the other provisions of this Part, the council may regulate its own procedure.

Proceedings
of
Consulta-
tive Council

(2) For the transaction of its business, the Council shall meet at least twice annually at such places and at such times, as the Chairman, in consultation with the trade unions and the associations, may determine.

(3) A meeting of the Council may be called by giving notice of not less than fourteen days.

Provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon giving shorter notice

(4) At any meeting of the Council, one-half of the members shall form a quorum.

(5) Decisions of the Council on any question shall be by a majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his deliberative vote.

(6) The Council may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of a meeting of the Council but such person shall have no vote.

(7) The validity of any proceedings, act or decision of the Council or any committee of the Council shall not be affected by any vacancy in the membership of the Council or committee of the Council, as the case may be, or by any defect in the appointment of any member or member of such committee or by reason that any person not entitled to do so took part in the proceedings.

(8) The Government, trade unions and the associations shall be responsible for paying allowances for the attendance of meetings of the Council to their respective representatives.

117. (1) The Council may establish any number of standing or adhoc committees to assist the Council in the performance of its functions.

Committee
of Council

(2) The Council may appoint as members or a committee established under subsection (1), persons who are or are not members of the Council and such persons shall hold office for such period as the Council may determine.

(3) Subject to any specific or general direction of the Council, a committee established under this section may regulate its own procedure.

Functions
of Council

118. The functions of the Council shall be to advise the Government on all issues relating to labour matters, industrial participatory democracy, manpower development and utilisation and any other matter referred to the Council by the Government.

PART XIII

GENERAL

Unenforce-
ability of
certain
agreements

119. Nothing in this Act shall enable any court to entertain any legal proceedings instituted with the object of directly enforcing or recovering damages for the breach of any of the following agreements—

- (a) any agreement between members of a trade union concerning the conditions of which any member of the trade union shall or shall not sell his goods, transact business or be employed;
- (b) any agreement for the payment by any person of any subscription or penalty to a trade union;
- (c) any agreement for the application of the funds of the trade union—
 - (i) to provide benefits to members;
 - (ii) to pay monies to any employee who is not a member of the trade union, in consideration of the employee or his employer acting in conformity with the constitution or resolutions of the trade union; or
 - (iii) to discharge any fine imposed upon any person by a court.
- (d) any agreement made between one trade union and another; or
- (e) any bond to secure the performance of any of the agreements referred to in this section;

Provided that nothing in this section shall be deemed to constitute unlawful any of the agreements referred to in this section.

Immunity
of officials
of trade
unions,
Congress,
associations
and Federa-
tion

120. (1) No action or other proceedings shall lie or be instituted against an officer of a trade union, Congress, association or Federation for any acts done or omitted to be done relating to industrial relations in good faith by or on behalf of, a trade union, Congress, association, Federation or by any member or officer in the exercise or purported exercise of functions specified in this Act.

(2) An act done by a person in contemplation or furtherance of a collective dispute shall not be actionable on the ground that it induces some other person to break a contract of employment, or that it interferes with the trade, business or employment of some other person, or with the right of some other person to dispose of his capital or labour as he wishes.

121. (1) An agreement by two or more persons to do, or procure to be done, any act in contemplation or furtherance of a collective dispute shall not be punishable as a conspiracy if such act when committed by one person would not be punishable as a crime.

Conspiracy
in
collective
disputes

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

(3) Nothing in this section shall—

(a) affect the law relating to conspiracy for which a punishment is prescribed by any law in force in the Republic;

(b) affect the law relating to riot, unlawful assembly, breach of the peace, sedition or any offence against the President or the Government as by law established.

122. (1) Where any person wilfully breaks a contract of service or of hiring, knowing or having reasonable cause to believe that the probable consequence of his so doing either alone or in combination with others will be to endanger human life or cause serious bodily injury or to expose any property, whether real or personal, to destruction or serious injury, he shall be guilty of an offence and liable, upon conviction, to a fine not exceeding five thousand kwacha or to imprisonment for a term not exceeding six months, or to both.

Breach of
contract
involving
injury to
persons or
property

(2) No prosecution under this section shall be brought except by, or with the written consent of, the Director of Public Prosecutions.

123. (1) No employer or other person shall take part in a lock-out which:—

(a) is not in contemplation or furtherance of a collective dispute to which the employer or person in a party; or

(b) is in furtherance of a collective dispute in which conciliation is in progress or which has been referred to the Court for decision.

Prohibition
from
parti-
cipation
in lock-outs
or strikos

(2) No employee, trade union or other person shall take part in a strike which:—

(a) has not been authorised by a strike ballot taken in the manner provided by the constitution of a trade union under this Act;

(d) is not in contemplation or furtherance of a collective dispute to which the employee or trade union is a party; or

(c) is in furtherance of a collective dispute in which conciliation is in progress or which has been referred to the Court for its decision.

(3) Any employer or other person, who does any act in contravention of subsection (1), shall be liable, upon conviction—

(a) in the case of a body corporate, to a fine not exceeding ten thousand kwacha;

(b) in any other case to a fine not exceeding two thousand kwacha.

(4) Any employee, trade union or other person who does any act or incites any person to do any act in contravention of subsection (2), shall be guilty of an offence and shall be liable upon conviction—

(a) in the case of the trade union, to a fine not exceeding five thousand kwacha;

(b) in the case of an employee or other person, to a fine not exceeding one thousand kwacha and may be prohibited from holding office in a trade union for a such period as the Court may determine.

Attendance
at or near
place of
residence,
business or
employment
for certain
purposes

124. (1) Any person acting on behalf of a trade union or the Congress in contemplation of furtherance of the settlement of a collective dispute may attend at or near a place not being a dwelling house, where a person works or carries on business, for the purpose of peacefully persuading an employee or an employer involved in the collective dispute to take part in a lawful demonstration

(2) No person shall, while acting in contemplation or furtherance of the settlement of a collective dispute, attend at or near a dwelling house or place where another person resides or works or carries on business or happens to be, for the purpose of obtaining or communicating information or of persuading or inducing the other person to take part in a strike or a demonstration, if the attendance is likely, having regard to the manner thereof to intimidate that other person or any other person in that dwelling house or place, or to obstruct the approach thereto or egress therefrom, or is likely to lead to any breach of the peace.

(3) Any person who contravenes the provisions of subsection (2) shall be charged with the offence of watching and besetting such house or place wrongfully and without legal authority within the meaning of subsection (2) of section one hundred and seventy-three of the Penal Code, and shall be liable, upon conviction, to a fine not exceeding two thousand kwacha or imprisonment for a term not exceeding six months or both.

(4) Any person who, for the purpose of persuading or inducing any other person to take part in a strike, lock-out or demonstration, attends at or near a dwelling house where the person resides shall be liable, upon conviction to a fine not exceeding one thousand kwacha and may be prohibited from holding office of a trade union or association for such period as the Court may determine

125. Any person who wilfully obstructs or hinders the Commissioner, or any other person, in the exercise of any of his powers under this Act shall be liable upon conviction to a fine not exceeding two thousand kwacha and may be prohibited from holding office in a trade union or, association for a such period as the Court may determine.

Obstructing
Commis-
sioner, etc.

126. All offences under this Act other than that falling under section *seventy-four* may be prosecuted before a subordinate court of the first or second class.

Prosecution
of offences

127. Any person who does any act prohibited by this Act or who omits to do any act which he is required to do under this Act shall be charged with an offence and, where no specific penalty is provided by this Act in respect of such act or omission, he shall be liable, upon conviction, to a fine not exceeding ten thousand kwacha and, in the case of an individual, he may also be barred from holding office of a trade union or association for such period as the Court may determine.

General
penalty

128. (1) Every employee engaged or employed in an essential service shall be issued by his employer with an essential service certificate in such form and in such manner as may be prescribed and such certificate shall be *prima facie* evidence for the purpose of any inquiry or proceedings under this section that the person to whom such certificate has been issued is engaged or employed in an essential service and that the attention of such employee has been drawn to the provisions of this section.

Essential
service
certificates

(2) Any person engaged or employed in an essential service who, without just cause or excuse (the onus of proof whereof shall lie on him), does any act, or omits to do any act, the doing or the omission of which is likely to hinder or interfere with the carrying on of an essential service, shall be guilty of an offence.

(3) No employee or other person shall take part in a lock-out and no employee, trade union or other person shall take part in a strike which is likely to hinder or interfere with the carrying on of any essential service.

(4) Any person who incites or encourages a person engaged or employed in essential service to do any act, or omit to do any act, the doing or the omission of which is likely to hinder or interfere with the carrying on of an essential service, shall be guilty of an offence.

(5) A police officer may arrest without warrant any person whom he has reasonable grounds to believe is acting in contravention of this section, and any person who obstructs a police officer in the execution of his duties under this subsection shall be guilty of an offence.

(6) Any person who contravenes subsection (2), (4), or (5) shall be liable, upon conviction, to a fine not exceeding one thousand kwacha and may be prohibited from holding office in a trade union for such period as the Court may determine.

(7) Any employer or other person who contravenes subsection (3) shall be guilty of an offence and shall be liable, upon conviction—

(a) in the case of a body corporate, to a fine not exceeding ten thousand kwacha;

(b) in any other case to a fine not exceeding two thousand kwacha.

(8) Any employee, trade union or other person who contravenes subsection (3) shall be guilty of an offence and shall be liable, upon conviction—

(a) in the case of the trade union, to a fine not exceeding five thousand kwacha;

(b) in the case of the employee or other person, to a fine not exceeding one thousand kwacha.

(9) For the purpose of this section, "essential service" means—

(a) any service relating to the generation, supply or distribution of electricity;

(b) any hospital or medical service;

(c) any service relating to the supply and distribution of water;

(d) any sewerage service;

(e) any fire brigade;

(f) any service for the maintenance in safe and sound conditions in a mine of—

(i) underground working and drainage;

(ii) shafts and shaft installations; or

(iii) machinery and plant;

(g) any other service declared to be "essential" under subsection (10).

(10) Where the Minister considers that any strike or threatened strike in any service poses or would pose an immediate and real danger to life, personal safety or the health of the whole or part of the population, the Minister may apply to the Court for a declaration that the service is an essential service for the purposes of this section.

129. (1) No employer shall terminate the services of an employee or impose any other penalty or disadvantage on any employee, on grounds of race, colour, sex marital status religion political opinion or affiliation, tribal extraction or social status of the employee.

Restriction
on
discrimi-
nation in
employment

(2) Any employee who has reasonable cause to believe that his services have been terminated or that he has suffered any other penalty or disadvantage, or any prospective employee who has reasonable cause to believe that he has been discriminated against, on any of the grounds set out in subsection (1) may, within thirty days of the occurrence which give rise to such belief, lay a complaint before the Court.

(3) The Court shall, if it finds in favour of the complainant—

- (a) grant to him damages or compensation for loss of employment;
- (b) make an order for re-employment or reinstatement in accordance with the gravity of the circumstances of each case.

130 (1) The Minister may, by statutory instrument, make regulations governing the conduct of ballots for any representative body, and such regulations may include provisions relating to the giving of notices to any persons qualified to vote in such ballots.

Conduct of
ballots

(2) Where any secret ballot is to be held in more than one place in connection with any one matter, it shall be held in all such places on the same day or days and between the same hours.

131. (1) Any interested person who has reasonable grounds to believe that the election of any person to any office in a representative body have been conducted in an irregular manner may, not later than seven days after the holding of such election, lay a complaint before the Court.

Complaints
against
irregula-
rities in
elections

(2) The Court may, if it is satisfied that an irregularity has occurred in the conduct of any election, declare the election to be null and void and order fresh elections to be conducted under the supervision of such person and on such conditions as the Court may determine.

(3) In this Part "representative body" means any representative body under this Act, and includes a trade union, Congress, and association and the Federation.

132. The Minister shall each year lay before the National Assembly a report on the working of this Act.

Report to
National
Assembly

133. Except as provided in Part XI the Minister may, by statutory instrument make regulations for the purpose of giving effect to the provisions of this Act.

Regulations
by
Minister

Repeal of
Cap. 517
and savings
Cap. 517

134. (1) Subject to subsection (2) the Industrial Relations Act, 1971, is hereby repealed.

(2) Notwithstanding the repeal of the Industrial Relations Act, 1971, any statutory instrument or directive issued or made under that Act shall remain in force, so far as it is not inconsistent with this Act until revoked or cancelled under this Act.