

THE EMPLOYMENT RELATIONS (AMENDMENT) ACT 2019**Act No. 21 of 2019***I assent***PARAMASIVUM PILLAY VYAPOORY***23 August 2019**Acting President of the Republic*

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SCHEDULE

An Act

To amend the Employment Relations Act with a view to promoting harmonious industrial relations between workers, trade unions and employers

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Employment Relations (Amendment) Act 2019.

2. Interpretation

In this Act –

“principal Act” means the Employment Relations Act.

3. Section 2 of principal Act amended

Section 2 of the principal Act is amended –

- (a) by deleting the definitions “collective agreement”, “confederation”, “federation”, “Remuneration Regulations” and “supervising officer” and replacing them by the following definitions –

“collective agreement” means an agreement which relates to terms and conditions of employment, made between –

- (a) a recognised trade union, a group of recognised trade unions or a joint negotiating panel; and
(b) an employer or a group of employers;

“confederation” means an association of federations having as one of its objects the regulation of employment relations between workers and employers;

“federation” means an association of trade unions having as one of its objects the regulation of employment relations between workers and employers;

“Remuneration Regulations” or “Wages Regulations” –

- (a) means any regulations made by the Minister under section 93; and
(b) includes any Remuneration Order, made under the repealed Industrial Relations Act, which is still in operation;

“supervising officer” means the supervising officer of the Ministry;

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- (b) in the definition of “labour dispute”, by repealing paragraph (a) and replacing it by the following paragraph –
- (a) means a dispute between a worker, a recognised trade union of workers or a joint negotiating panel, and an employer which relates wholly or mainly to –
- (i) the wages, terms and conditions of employment of, promotion of, or allocation of work to, a worker or group of workers;
- (ii) the reinstatement of a worker, other than a worker who is appointed by, or under delegated powers by, the Judicial and Legal Service Commission, the Public Service Commission or the Local Government Service Commission –
- (A) where the worker is suspended from employment, except where the alleged misconduct of the worker is subject to criminal proceedings; or
- (B) where the employment of the worker is terminated on the grounds specified in section 64(1A);
- (c) in the definition of “trade union” –
- (i) in paragraph (a), by deleting the words “an association of persons, whether registered or not,” and replacing them by the words “a registered association of persons”;
- (ii) in paragraph (b), by deleting the words “16(1) and (2)” and replacing them by the words “16(1), (1A), (2) and (2A)”;
- (d) in the definition of “worker”, in paragraph (b), by repealing subparagraph (i) and replacing it by the following subparagraph –
- (i) a part-time worker, a former worker or an atypical worker;

- (e) by inserting, in the appropriate alphabetical order, the following new definitions –
- “atypical worker” has the meaning assigned to it in the Workers’ Rights Act 2019;
- “cluster” means a concentration of enterprises and institutions which are interrelated in a particular field of economic activity;
- “part-time worker” has the same meaning as in the Workers’ Rights Act 2019;
- “reinstatement”, in relation to a worker, means the reinstatement of the worker, by his employer, back to the worker’s former position prevailing before his suspension and on the same terms and conditions of employment in that former position;

4. Section 3 of principal Act amended

Section 3 of the principal Act is amended, in subsection (1), by deleting the words “subsections (2) and (3)” and replacing them by the words “subsections (2), (2A) and (3)”.

5. Section 16 of principal Act amended

Section 16 of the principal Act is amended –

- (a) by inserting, after subsection (2), the following new subsection –
- (2A) A trade union may join one or more federations of its choice but, for the purpose of determining the representativeness and strength of any federation, the affiliation of the trade union to only one federation shall be taken into consideration.
- (b) by inserting, after subsection (4), the following new subsection –
- (4A) A federation may join one or more confederations of its choice but, for the purpose of determining the representativeness and strength of any confederation, the affiliation of the federation to only one confederation shall be taken into consideration.

6. Part IV of principal Act amended

Part IV of the principal Act is amended –

- (a) in section 31(1)(b), by adding the following new subparagraph, the full stop at the end of subparagraph (ii) being deleted and replaced by a semicolon –
 - (iii) a worker or an accredited workplace representative on any employment issue on the ground of his trade union activities.
- (b) by inserting, after Sub-part A, the following new Sub-part –

**Sub-Part AA – Workers’ Rights to be Represented
at Workplace**

31A. Right of workers to be represented at workplace

(1) A worker shall have the right to be represented at his workplace by an officer or a negotiator of a trade union of which he is a member, to assist him in any disagreement arising between him and his employer with respect to his legal rights.

(2) Subject to prior notice as to the time and purpose of his visit, any officer or negotiator of a trade union may, following any representation from a member of the trade union, enter a workplace to represent the member in respect of his legal rights with a view to seeking compliance with the relevant legal requirements, as applicable.

7. Section 35 of principal Act amended

Section 35 of the principal Act is amended by repealing subsection (2) and replacing it by the following subsection –

(2) A failure on the part of any person to observe any provision of the Code of Practice shall not result in that person being subject to proceedings of any kind.

8. Section 36 of principal Act amended

Section 36 of the principal Act is amended –

- (a) by repealing subsection (1) and replacing it by the following subsection –

(1) A trade union or a group of trade unions of workers acting jointly may, subject to the criteria for recognition specified in section 37(1) and (2), apply in writing to an employer for recognition as a bargaining agent, joint negotiating panel or sole bargaining agent, as the case may be, for a bargaining unit.

- (b) in subsection (2), by inserting, after the words “shall be”, the words “made in the form set out in the Fifth Schedule and shall be”;

- (c) in subsection (3) –

(i) by deleting the words “60 days” and replacing them by the words “45 days”;

(ii) by inserting, after the words “in writing”, the words “in the form set out in the Sixth Schedule”;

- (d) by adding the following new subsections –

(4) Where an employer recognises a trade union or group of trade unions as a bargaining agent under subsection (3)(a), he shall, within 10 days of the date he issues the certificate of recognition to the trade union or group of trade unions, submit a copy of the certificate to the supervising officer.

- (5) Where –

(a) an employer fails to respond to an application under subsection (3);

(b) an employer refuses to recognise a trade union or group of trade unions as a bargaining agent;

- (c) an employer fails to state the reasons for refusing to recognise a trade union or group of trade unions as a bargaining agent; or
- (d) a trade union or a group of trade unions is not satisfied with the reasons for refusal given under subsection (3)(b),

the applicant trade union or group of trade unions may apply to the Tribunal for an order directing the employer to recognise the trade union or group of trade unions as a bargaining agent, in accordance with the criteria specified in section 37.

9. Section 37 of principal Act amended

Section 37 of the principal Act is amended –

- (a) in subsections (1) and (2) –
 - (i) by deleting the words “or industry” wherever they appear and replacing them by the words “, an industry or a cluster”;
 - (ii) by deleting the words “30 per cent” and replacing them by the words “20 per cent”;
- (b) in subsection (3) –
 - (i) by inserting, after the words “group of trade unions”, the words “, having the support of more than 50 per cent of the workers in the bargaining unit,”;
 - (ii) by deleting the words “or industry” and replacing them by the words “, an industry or a cluster”;
- (c) by repealing subsection (4) and replacing it by the following subsection –
 - (4) (a) Where a trade union is granted recognition under subsection (1), one or more new trade unions, having the support of not less than 20 per cent nor more than 50 per cent of the workers in the bargaining unit, may apply to the employer for recognition.

- (b) Where an application is made under paragraph (a) –
- (i) the employer shall grant recognition to the new trade unions subject to those trade unions agreeing in writing to –
 - (A) enter into arrangements with the existing recognised trade union to form a joint negotiating panel to conduct collective bargaining together on behalf of the workers constituting the relevant bargaining unit; and
 - (B) collaborate with the existing trade union to secure and maintain stable and effective collective bargaining;
 - (ii) the employer may grant recognition to the trade unions altogether as a joint negotiating panel of that bargaining unit;
 - (iii) the employer may refuse to grant recognition to any of the new trade unions which refuses to form part of a joint negotiating panel;
 - (iv) the employer may apply to the Tribunal for an order directing an existing trade union which refuses to form part of a joint negotiating panel to form part of the joint negotiating panel; or
 - (v) any of the trade unions may apply to the Tribunal to organise

and supervise a secret ballot in the bargaining unit concerned to determine which trade union the workers in that bargaining unit wish to be their bargaining agent to conduct collective bargaining on their behalf.

- (c) Subject to section 38(18), where –
- (i) one or more trade unions, having each the support of not less than 20 per cent nor more than 50 per cent of the workers in a bargaining unit is or are granted recognition as bargaining agent or a joint negotiating panel, respectively; and
 - (ii) a new trade union which has the support of more than 50 per cent of the workers in the bargaining unit applies to the employer for recognition as a sole bargaining agent in respect of that bargaining unit,

the employer or the new trade union may apply to the Tribunal for its determination as to which trade union shall have negotiating rights in respect of the bargaining unit and the Tribunal shall make an order accordingly.

10. Section 38 of principal Act amended

Section 38 of the principal Act is repealed and replaced by the following section –

38. Order for recognition of trade union of workers

(1) The Tribunal shall, on an application made under section 36(5), determine whether the trade union or group of trade

unions, as the case may be, has the support of at least 20 per cent of the workers forming part of the bargaining unit, or where the application is for recognition as a sole bargaining agent, has the support of more than 50 per cent of the workers in the bargaining unit, or otherwise.

(2) For the purpose of an application made under section 36(5), the Tribunal may require –

- (a) the applicant trade union or group of trade unions to produce evidence that it fulfills the criteria for recognition as specified in section 37;
- (b) the employer to submit to the Tribunal and, where appropriate, to the applicant trade union, within 10 days of the receipt of the application –
 - (i) a list of the category or grade of workers in the proposed bargaining unit;
 - (ii) a list of the workplaces, where applicable, where the workers of the bargaining unit are posted; and
 - (iii) the number of workers employed in each category at each workplace.

(3) At the time of an application for recognition, any document signed by a worker of a prospective bargaining unit and submitted by an employer to show that the worker is not interested in joining the trade union or has ceased to be a member of the trade union, except where the worker has withdrawn from the trade union in accordance with its rules, shall not be admissible before the Tribunal.

(4) Where the Tribunal is satisfied that the employer has failed to comply with subsection (2)(b), the Tribunal shall order the employer to remedy the failure within such period as may be specified in the order.

(5) Where an employer fails to comply with a remedial order made under subsection (4), the Tribunal may make an order for the employer to grant recognition to the trade union provided that the trade union satisfies the criteria for recognition specified in section 37.

(6) Where a trade union and an employer agree on a bargaining unit and the trade union produces evidence that it has the support of not less than 20 per cent of the workers in the bargaining unit, the Tribunal shall make an order directing the employer to grant recognition to the trade union for the purpose of conducting collective bargaining in the bargaining unit as a bargaining agent or joint negotiating panel, as appropriate.

(7) On an application made under section 36(5), the Tribunal may organise and supervise a secret ballot in a bargaining unit in an enterprise, an industry or a cluster, in order to determine which trade union the workers in the bargaining unit wish to be their bargaining agent, where –

- (a) a trade union or group of trade unions already has recognition in respect of that bargaining unit and the Tribunal is satisfied that the applicant trade union or group of trade unions has produced evidence that it is eligible for recognition in accordance with section 37;
- (b) the Tribunal has evidence from a majority of workers within the bargaining unit that they do not want the trade union or group of trade unions to conduct collective bargaining on their behalf;
- (c) the Tribunal considers that the membership evidence produced by the trade union or group of trade unions may not be reliable; or
- (d) the Tribunal is satisfied that a secret ballot should be held in the interest of good industrial relations.

(8) Where the Tribunal decides to hold a secret ballot pursuant to subsection (7), the secret ballot shall be conducted at the workplace or workplaces, as appropriate, or such other place as the Tribunal may determine.

(9) Where a secret ballot takes place under this section, a worker shall vote for one trade union only.

(10) Where the Tribunal gives notice to an employer to organise a secret ballot, the employer shall –

- (a) grant such facilities as may be necessary to the Tribunal to conduct and supervise the secret ballot;
- (b) grant such facilities as may be necessary to the workers forming part of the bargaining unit to participate in the secret ballot;
- (c) give the trade union, as far as reasonably practicable, access to the workplace to meet and inform the workers forming part of the bargaining unit of the object of the secret ballot;
- (d) inform the Tribunal, as soon as reasonably practicable, of the name of any worker who has ceased to form part of the bargaining unit;
- (e) refrain from inducing any worker forming part of the bargaining unit not to attend any meeting of the trade union or group of trade unions;
- (f) refrain from taking or threatening to take any action against a worker on the ground that the worker attended or took part in activities of the trade union or group of trade unions seeking recognition.

(11) Where the Tribunal is satisfied that an employer has failed, without any reasonable excuse, to comply with any of the requirements of subsection (10), and as a result of which the secret ballot is not held, the Tribunal may order the employer to take remedial action within such period as may be specified in the order.

(12) Where the Tribunal is satisfied that the employer has failed to comply with an order made under subsection (11), and as a result of which the secret ballot is not held, the Tribunal may, subject to section 37, order that the trade union be granted recognition to conduct collective bargaining on behalf of the bargaining unit.

(13) Subject to section 37, where an application is made under section 36(5) or 37(4), the Tribunal shall –

- (a) make an order granting recognition to the trade union as a bargaining agent, joint negotiating panel or sole bargaining agent, as the case may be;
- (b) where the application is for recognition as a sole bargaining agent, make an order granting recognition to the trade union as a bargaining agent where the Tribunal finds that the applicant trade union does not have the support of more than 50 per cent of the workers in the bargaining unit but has the support of not less than 20 per cent of the workers in the bargaining unit; or
- (c) set aside the application where the trade union fails to produce evidence that it fulfills the eligibility criteria for recognition.

(14) (a) The Tribunal shall determine an application made under section 36(5) or 37(4) not later than 30 days after the date of receipt of the application.

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

(15) (a) Where the Tribunal makes an order granting recognition to a trade union, the order shall –

- (i) specify the name of the employer and the trade union to which it relates;
- (ii) specify the composition of the bargaining unit;

- (iii) state whether the trade union shall be recognised as a bargaining agent, sole bargaining agent or joint negotiating panel, as the case may be; and
- (iv) require the trade union or the joint negotiating panel and the employer concerned to meet at specified intervals or at such time and on such occasions as the circumstances may reasonably require, for the purpose of collective bargaining.

(b) The Tribunal shall submit a copy of an order made under paragraph (a) to the supervising officer for record purposes.

(16) Where a trade union is recognised as a sole bargaining agent, or a group of trade unions is recognised as a joint negotiating panel, in respect of a bargaining unit, the trade union or group of trade unions, as the case may be, shall supersede any other trade union recognised as the bargaining agent of the workers in the bargaining unit.

(17) Where recognition is granted under this section, no application for recognition or revocation or variation of recognition in the same bargaining unit shall be entertained by the Tribunal before the expiry of a period of 12 months from the date of the order granting the recognition.

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

(19) (a) Where an employer fails to comply with an order for recognition made by the Tribunal under this section –

- (i) the trade union or group of trade unions may apply to the Tribunal for compensation and the Tribunal shall make an order for

the payment of a compensation which shall not be less than 500 rupees per day so long as the order is not complied with;

- (ii) the trade union may apply, on behalf of the workers forming part of the bargaining unit, to the Tribunal for an award setting out the conditions of employment of the workers as proposed by the union.

(b) Where the conditions of employment are specified in an award of the Tribunal made under paragraph (a), the conditions shall become the implied terms of the contract of employment of the workers.

(20) In circumstances other than those provided in this section, where an application is made to the Tribunal in a matter relating to the recognition of a trade union or group of trade unions, the Tribunal may organise and supervise a secret ballot in a bargaining unit in order to determine, subject to section 37, which trade union the workers in the bargaining unit wish to be their bargaining agent.

11. New section 38A inserted in principal Act

The principal Act is amended by inserting, after section 38, the following new section –

38A. Successor rights and obligations

Where an employer sells, leases, transfers or otherwise disposes of a business or where there is a business merger or a change in the name or trading name of the business –

- (a) any trade union which was granted recognition by the outgoing employer as the bargaining agent for workers employed in the business shall continue to be their bargaining agent;
- (b) any application made by a trade union for the recognition of the trade union in respect of the workers employed in the business before the date on which the

business is sold, leased, transferred, or there has been a business merger or a change in the name or trading name of the business, and which is pending before the Tribunal shall, subject to section 37, be deemed to be an application made against the new employer and may be proceeded with before the Tribunal;

- (c) any collective agreement entered into by the outgoing employer and any recognised trade unions shall bind the new employer.

12. Section 39 of principal Act amended

Section 39 of the principal Act is amended, in subsection (1), by deleting the words “section 38(10)” and replacing them by the words “section 38(17)”.

13. Section 40 of principal Act amended

Section 40 of the principal Act is amended –

- (a) by repealing subsection (1) and replacing it by the following subsection –

(1) (a) Subject to prior notice and authorisation as to the time, place and purpose of his visit and to necessary safeguards for the preservation of life and property and prevention of disruption of work, any officer or negotiator of a recognised trade union may enter an employer’s premises for purposes related to –

- (i) employment issues in respect of its members; or
- (ii) industrial relations issues or the trade union’s business.

- (b) In this subsection –

“purposes related to employment issues in respect of its members” includes –

- (a) participating in collective bargaining or otherwise serving members’ interests;

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- (b) dealing with matters concerning the health and safety of workers;
 - (c) ensuring compliance with this Act or any other enactment dealing with employment matters and any collective agreement;
 - (d) dealing, with the consent of a worker, with matters relating to the terms and conditions of employment of the worker;

“purposes related to industrial relations issues or the trade union’s business” includes –

- (a) communicating with trade union members and holding of meetings and discussion in relation to union business;
- (b) seeking to recruit new members and communicating with workers who are not trade union members about union matters;
- (c) providing information to workers on the trade union’s activities;
- (d) organising strike ballots.

(b) by repealing subsection (2);

(c) by repealing subsection (4) and replacing it by the following subsection –

(4) Subject to necessary safeguards for the preservation of life and property and prevention of disruption of work, an officer or negotiator of a trade union may, in the exercise of his right to enter a workplace, enter the workplace at a reasonable time having regard to the normal hours of the business operations.

- (d) in subsection (5), by deleting the words “A trade union” and replacing them by the words “Any trade union”.

14. Section 51 of principal Act amended

Section 51 of the principal Act is amended –

- (a) by repealing subsections (1) to (4) and replacing them by the following subsections –

(1) Where recognition has been obtained under sections 36(3), 37(4) or 38, the relationship between a trade union or group of trade unions and an employer or a group of employers, as the case may be, shall, subject to subsection (2), be regulated by the procedure agreement set out in the Seventh Schedule, with such modifications and adaptations as may be necessary.

(2) (a) The procedure agreement referred to in subsection (1) –

- (i) shall be binding on an employer and any trade union which is granted recognition by the employer; and
- (ii) may, in addition to the terms of the agreement set out in the Seventh Schedule, with such modifications and adaptations as may be necessary, contain such other terms as may be agreed between the employer and the recognised trade union.

(b) Notwithstanding paragraph (a), where the employer and the recognised trade union have not yet reached an agreement on the terms which are in addition to the terms of the agreement set out in the Seventh Schedule, the relationship between the parties shall, pending any agreement, be regulated by the terms of the agreement in the Seventh Schedule, with such modifications and adaptations as may be necessary.

(3) Notwithstanding subsection (2), the procedure agreement may, without any prejudice to the commencement of any negotiation or signing of any collective agreement, be varied by both parties and where there is no agreement on the variation, any party may apply to the Tribunal for a variation order or such other order as the Tribunal may, in the circumstances, deem fit.

(4) The Tribunal shall, not later than 60 days after the date of receipt of the application made under subsection (3), determine the application and the parties shall comply with the order of the Tribunal not later than 14 days after that order.

(b) by repealing subsections (5) to (7).

15. Section 57 of principal Act amended

Section 57 of the principal Act is amended –

(a) in subsection (1), by repealing paragraph (c) and replacing it by the following paragraph –

(c) sections 5, 8, 9, 10, 26, 34, 52, 53 and 55 and Parts VI, VII, VIII and XI of the Workers' Rights Act;

(b) in subsection (2), by deleting the words “Remuneration Regulations” and replacing them by the words “Remuneration Regulations or Wages Regulations or such other regulations made under section 93”.

16. Section 58 of principal Act amended

Section 58 of the principal Act is amended –

(a) in subsection (1), by deleting the words “may be varied” and replacing them by the words “may jointly be varied by the parties”;

- (b) in subsection (2) –
 - (i) by repealing subparagraph (a) and replacing it by the following subparagraph –
 - (a) Subject to subsection (1), where a party to a collective agreement which is in force refuses a variation of the agreement, any party to the agreement may apply to the Tribunal for a variation of the agreement and the Tribunal, on hearing the parties, may –
 - (i) where it is satisfied that the variation is warranted in accordance with subsection (1), make an order for the variation; or
 - (ii) make such other order at it may deem fit.
 - (ii) by adding the following new paragraph –
 - (c) An order made by the Tribunal under this section shall be binding on the parties to the collective agreement.

17. New section 62A inserted in principal Act

The principal Act is amended by inserting, after section 62, the following new section –

62A. Review of wages and conditions of employment by Salary Commissioner

(1) An employer may appoint a Salary Commissioner to review the wages and other terms and conditions of employment of the workers in his enterprise and to submit his recommendations within such time as may be agreed between the employer and the Salary Commissioner.

(2) The recommendations of the Salary Commissioner shall, where there is a trade union which has been granted recognition in the enterprise, be subject to collective bargaining between the employer and the recognised trade union with a view to signing a collective agreement.

(3) Where the recommendations of the Salary Commissioner are not agreed by the trade union, the trade union or the employer may report a labour dispute to the Commission for conciliation or mediation or the trade union and the employer may jointly refer the dispute to the Tribunal under section 63.

(4) Where there is no recognised trade union in the enterprise, the employer may request the workers to exercise an option, in writing, as to whether they wish to be governed by the recommendations made in the report of the Salary Commissioner.

18. Section 64 of principal Act amended

Section 64 of the principal Act is amended –

- (a) in subsection (1), by inserting, after the word “subsections”, the words “(1A),”;
- (b) by inserting, after subsection (1), the following new subsection –
 - (1A) No dispute on the reinstatement of a worker in relation to the termination of his employment shall be reported except where the termination is effected by reason of –
 - (a) discrimination on the ground of a worker’s race, colour, caste, national extraction, social origin, pregnancy, religion, political opinion, sex, sexual orientation, HIV status, marital status, disability or family responsibilities;
 - (b) a worker being on maternity leave or by reason of the worker’s absence for the purpose of nursing her unweaned child;

- (c) a worker's temporary absence from work because of injury sustained at work or sickness duly notified to the employer and certified by a medical practitioner;
 - (d) a worker becoming or being a member of a trade union, seeking or holding of trade union office, or participating in trade union activities;
 - (e) the worker filing, in good faith, a complaint, or participating in proceedings against an employer involving alleged breach of any terms and conditions of employment; or
 - (f) a worker's exercise of any of the rights provided for in this Act or other enactment, or in such agreement, or collective agreement or award.
- (c) by repealing subsection (2) and replacing it by the following subsection –
- (2) (a) No dispute shall be reported to the Commission under subsection (1) unless –
 - (i) the procedures provided in the procedure agreement if any have been followed;
 - (ii) meaningful negotiations have taken place between the parties; and
 - (iii) a deadlock has been reached.
 - (b) In this section –
 - “meaningful negotiation”–
 - (a) means meeting, discussing or bargaining in good faith between parties with a view to finding mutually acceptable solutions; and
 - (b) includes access to information, within a reasonable time at the request of either party.

- (d) by repealing subsections (4) and (5).

19. Section 65 of principal Act amended

Section 65 of the principal Act is amended, in subsection (1), by inserting, after paragraph (d), the following new paragraph –

- (e) the dispute is in relation to a collective agreement to be concluded with the employer in an enterprise where no trade union is recognised as a sole bargaining agent and the trade union reporting the dispute has refused to form part of a joint negotiating panel;

20. Section 67 of principal Act repealed and replaced

Section 67 is repealed and replaced by the following section –

67. Limitation on report of labour disputes

(1) Where a labour dispute is reported to the President of the Commission under section 64, no party to the dispute may report –

- (a) any other labour dispute between the same parties within a period of 6 months immediately following the date on which the original report was made;
- (b) a labour dispute on the same issue between the same parties within a period of 24 months following the date of the determination of the dispute.

(2) Subject to subsection (3), while a collective agreement is in force, no party shall report a labour dispute under section 64 on matters relating to wages, and terms and conditions of employment, which –

- (a) are contained in the collective agreement;
- (b) have been canvassed but not agreed upon during the negotiation process leading to the collective agreement; or

- (c) have not been canvassed during the negotiation process leading to the collective agreement.

(3) Nothing shall preclude a party from reporting a labour dispute under section 64 on matters relating to wages, and terms and conditions of employment, in respect of the matters which are canvassed during a period of negotiation for the renewal of the collective agreement as from any of the period or date specified in section 55(3A).

21. Section 69 of principal Act repealed and replaced

Section 69 of the principal Act is repealed and replaced by the following section –

69. Conciliation and mediation

(1) Where a labour dispute is reported to the President of the Commission under section 64 and the report –

- (a) has not been rejected; or
- (b) has been rejected and the rejection has been revoked on an appeal to the Tribunal under section 66,

the Commission may, with a view to promoting a settlement of the dispute –

- (i) make proposals to the parties for the settlement of the dispute;
- (ii) conciliate the parties;
- (iii) mediate and make written recommendations to the parties; or
- (iv) make such investigation as it may, in the circumstances, deem appropriate.

(2) The Commission shall not entertain a dispute unless the conditions specified in section 64(2) are fulfilled.

(3) The recommendations made under subsection (1) shall not be binding on the parties to the labour dispute unless the parties agree in writing –

- (a) to confer upon the President of the Commission the power to make such recommendations as the President of the Commission may determine;
- (b) on the date on which the recommendations of the President of the Commission shall become final; and
- (c) to comply with the recommendations.

(4) Where the parties do not agree to confer upon the Commission the power to make recommendations under subsection (3) –

- (a) the Commission may continue to investigate and conciliate the parties with a view to resolving the dispute; and
- (b) where the labour dispute still remains unresolved, the Commission may, at the request of any of the parties, further investigate into the matter with a view to reaching a settlement.

(5) (a) Where a settlement is reached between the parties following conciliation or mediation under subsection (4)(a), an agreement shall be drawn up in writing, signed by the parties and registered with the supervising officer and the Tribunal.

(b) The agreement referred to in paragraph (a) shall have the effect of a collective agreement as specified in sections 55 and 56.

(6) The Commission shall complete its proceedings not later than 45 days after the date of receipt of the labour dispute under section 64.

(7) The Commission may, at the request of the parties to the labour dispute, extend the period specified in subsection (6), where the circumstances so require.

(8) Where no agreement is reached and the parties have reached a deadlock after the delay specified in subsection (6) or (7), as the case may be, the Commission may, where it deems fit, within a period not exceeding 15 days, explore other avenues of settlement.

(9) Where no agreement is reached under subsection (8), the Commission shall declare that a deadlock has been reached and the Commission shall –

- (a) not later than 7 days after the date of the deadlock submit a report to that effect to the parties; and
- (b) unless the parties jointly refer the dispute for voluntary arbitration under section 63, refer the labour dispute to the Tribunal at the request of the party reporting the dispute.

(10) The request made by a party to refer a labour dispute to the Tribunal shall be made in such manner as the Commission may approve.

(11) Notwithstanding subsection (9) –

- (a) where no agreement is reached in a labour dispute, other than a labour dispute reported by or on behalf of an individual worker; and
- (b) the parties to the labour dispute do not opt for voluntary arbitration under section 63 or the party reporting the dispute does not make a request to the Commission to refer the dispute to the Tribunal,

the party reporting the dispute may, within 45 days of the submission of the report by the Commission have, subject to sections 76 to 82, recourse to strike.

(12) In the discharge of its functions under this section, the Commission shall –

- (a) in the first instance, consider the likelihood of the dispute being settled by conciliation between the parties;

- (b) encourage the parties to use any appropriate procedures for negotiation;
- (c) endeavour to promote good industrial relations.

22. Section 70 of principal Act amended

Section 70 of the principal Act is amended –

- (a) in subsection (1), by deleting the words “or 69(7)” and replacing them by the words “or 69(9)”;
- (b) by inserting, after subsection (2), the following new subsections –

(2A) (a) Where the Tribunal finds that the claim for reinstatement of a worker in relation to his suspension from work is justified, the Tribunal shall, subject to the consent of the worker, make an award for the reinstatement of the worker.

(b) The Tribunal shall not make an award for the reinstatement in relation to the suspension from work of a worker where the Tribunal, after having heard the case, is of opinion that the bond of trust between the worker and the employer may have been broken.

(2B) Subject to subsection (2A), where the Tribunal finds that the claim for reinstatement of a worker in relation to the termination of his employment on any of the grounds specified in section 64(1A) is justified, the Tribunal shall –

- (a) subject to the consent of the worker; and
- (b) where it has reason to believe that the relationship between the employer and the worker has not irretrievably been broken,

make an award for the reinstatement of the worker and, where it deems appropriate, make an order for the payment of remuneration to the worker from the date of the termination to the date of his reinstatement.

(2C) Where the Tribunal does not give an award for the reinstatement of a worker, the worker may institute proceedings before the Court for unjustified termination of employment.

23. Section 72 of principal Act amended

Section 72 of the principal Act is amended –

- (a) in subsection (2), by deleting the words “, other than an award under Part VIIIA of the Employment Rights Act,”;
- (b) in subsection (5), by inserting, after the words “Remuneration Regulations”, the words “or Wages Regulations”.

24. Section 76 of principal Act amended

Section 76 of the principal Act is amended, in subsection (1) –

- (a) by repealing paragraph (a) and replacing it by the following paragraph –
 - (a) a labour dispute has been reported under section 64 and no agreement has been reached;
- (b) by inserting, after paragraph (b), the following new paragraph –
 - (ba) the party reporting the dispute has not made a request to the Commission to refer the labour dispute to the Tribunal under section 69;

25. Section 77 of principal Act amended

Section 77 of the principal Act is amended, in subsection (1)(d), by inserting, after the words “labour dispute is reported by”, the words “or on behalf of”.

26. Section 78 of principal Act amended

Section 78 of the principal Act is amended –

- (a) by repealing subsections (1) to (3) and replacing them by the following subsections –
 - (1) Where a decision to have recourse to a strike is taken under section 69(11), the trade union of workers, party to the dispute, shall, at least 7 working days before organising

a strike ballot, notify the supervising officer, the President of the Commission and the employer of its intention to hold the strike ballot and the date, time and place where the strike ballot is to take place.

(2) The vote shall be taken by secret ballot in the presence of such officer of the Commission as the President of the Commission may determine.

(3) (a) The secret ballot may be conducted at the workplace or such other place as the trade union may determine.

(b) The secret ballot shall be successful where it obtains the support of a majority of the workers in the bargaining unit concerned by the labour dispute.

(b) by inserting, after subsection (3), the following subsection –

(4) Any employer to whom a notification of a strike ballot is given under subsection (1) shall grant such facilities as may be necessary to, and collaborate with, the trade union and the officer of the Commission in the conduct of the strike ballot.

27. Section 79A of principal Act amended

Section 79A of the principal Act is amended –

(a) by repealing subsection (1) and replacing it by the following subsection –

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

(a) where the dispute has remained unresolved at the level of the Commission and the dispute has not been referred to the Tribunal under section 63 or 69(11), as the case may be; or

- (b) at any time before or during a lawful strike takes place.
- (b) by inserting, after subsection (1), the following subsection –
 - (1A) Where the labour dispute referred to in subsection (1) still remains unresolved –
 - (a) the Minister may, with the consent of the parties, refer the dispute to the Tribunal; or
 - (b) the parties may elect to jointly refer the dispute to an arbitrator of their choice.

28. Part VIII of principal Act amended

Part VIII of the principal Act is amended –

- (a) in section 86 –
 - (i) in subsection (1), by deleting the words “Employment Rights Act” and replacing them by the words “Workers’ Rights Act 2019”;
 - (ii) in subsection (2), by repealing paragraph (ba);
- (b) in section 87 –
 - (i) by repealing subsection (2) and replacing it by the following subsection –
 - (2) The Commission shall consist of –
 - (a) a President and 3 Vice-presidents, to be appointed by the Minister;
 - (b) 12 conciliators or mediators who shall be public officers having experience in the field of industrial relations; and
 - (c) not more than 12 members, to be appointed by the Minister for such period as he may determine.
 - (ii) by repealing subsection (3);

-
- (c) in section 88(4)(e), by inserting, after the words “disciplinary”, the words “or dispute resolution”;
 - (d) in section 89, by deleting the word “Commission” wherever it appears and replacing it by the words “President of the Commission”;
 - (e) in section 90(2), by adding the following new paragraph, the full stop at the end of paragraph (g) being deleted and replaced by a semicolon –
 - (h) a representative of Statistics Mauritius.
 - (f) by repealing section 91 and replacing it by the following section –

91. Reference to Board

- (1) The Board shall –
 - (a) at the request of the Minister, make recommendations on wages of workers on an occupational basis; and
 - (b) make recommendations for the review of the wages every 5 years.
- (2) Where the Minister considers that there is no mechanism for the regulation of conditions of employment in an industry or a sector of activity, by collective agreements or otherwise, the Minister may refer the matter to the Board.
- (3) Without prejudice to subsection (2), the Minister may, on request made by a joint consultative or negotiating body composed of representatives of a substantial number of workers and of employers in an industry not covered by a collective agreement, refer any matter concerning conditions of employment related to that industry to the Board.
- (4) The Board shall, upon a reference under subsection (2) or (3), submit its recommendations to the Minister not later than 180 days after the date of referral.

(5) The Board may, with the approval of the Minister, extend, where the circumstances so require, the period specified in subsection (4).

(6) In this section –

“worker” has the same meaning as in the Workers’ Rights Act 2019.

(g) in section 93 –

(i) by deleting the heading and replacing it by the following heading –

Remuneration Regulations or Wages Regulations

(ii) by inserting, after subsection (2), the following new subsection –

(2A) Where, under subsection (1)(b) or (2)(b), the Minister rejects a recommendation and makes no regulations or, makes such other regulations as he thinks fit, he shall lay a report in the National Assembly containing a statement of the reasons for his decision.

(h) in section 94, by inserting, after the words “Remuneration Regulations”, wherever they appear, the words “or Wages Regulations”;

(i) in section 95 –

(i) in the heading, by deleting the words “**Remuneration Regulations**” and replacing them by the words “**Remuneration Regulations or Wages Regulations**”;

(ii) in subsections (1) and (1A), by inserting, after the words “Remuneration Regulations”, the words “or Wages Regulations”;

(iii) in subsection (2), by deleting the words “Remuneration Regulation” and replacing them by the words “Remuneration Regulations or Wages Regulations”;

-
- (iv) in subsections (5) and (6), by inserting, after the words “Remuneration Regulations”, the words “or Wages Regulations”;
- (j) by adding the following new Sub-part –

Sub-Part F – National Tripartite Council

98A. Establishment of Council

There is established for the purposes of this Act a Council to be known as the National Tripartite Council.

98B. Objects of Council

The objects of the Council shall be to promote social dialogue and consensus building on labour, industrial relations or socio-economic issues of national importance and other related labour and industrial relations issues.

98C. Functions of Council

(1) The Council shall, at the request of the Minister or on its own initiative, make recommendations to the Government on issues relating, inter alia, to –

- (a) standards, principles, policies and programmes in labour, industrial relations and health and safety issues, including the review of the operation and enforcement of the labour legislation;
- (b) international relations with the International Labour Organisation (ILO), the African Union (AU) and the Southern African Development Community (SADC);
- (c) the administration of issues concerning items on the agenda of international labour conferences and regarding the examination of issues pertaining to ratified or unratified labour conventions and recommendations;

- (d) social and economic policies in the light of changes in the world of work;
 - (e) employment policies and job creation;
 - (f) skills training and upgrading for greater employability;
 - (g) productivity, competitiveness and efficiency at the workplace;
 - (h) decent work at the workplace and the evaluation and monitoring of the ILO Decent Work Country Programme.
- (2) The Council shall, in the discharge of its functions –
- (a) collect and analyse data and information on wages and related matters;
 - (b) conduct research on labour market and socio-economic issues for policy formulation.

98D. Composition of Council

- (1) The Council shall be presided by the Minister who shall be the Chairperson and shall consist of –
- (a) 2 Vice-chairpersons, to be appointed by the Minister;
 - (b) a representative of the Ministry;
 - (c) a representative of the Ministry responsible for the subject of agriculture;
 - (d) a representative of the Ministry responsible for the subject of business;
 - (e) a representative of the Ministry responsible for the subject of civil service;
 - (f) a representative of the Ministry responsible for the subject of finance;

-
- (g) a representative of the Ministry responsible for the subject of industry;
 - (h) a representative of the Ministry responsible for the subject of tourism;
 - (i) a representative of the Ministry responsible for the subject of human resources;
 - (j) 7 members representing organisations of employers, to be appointed by the Minister after consultation with the most representative organisations of employers;
 - (k) 7 members representing organisations of workers, to be appointed by the Minister after consultation with the most representative organisations of workers;
 - (l) one academic and one professional having wide knowledge in the field of labour market, industrial relations or economy, to be appointed by the Minister.

(2) The members referred to in subsection (1)(a), (i), (j), (k) and (l) shall hold office for a period of 2 years and shall be eligible for reappointment for a further period of 2 years.

(3) In the absence of the Chairperson, any of the Vice-chairpersons as designated by the Chairperson may act on his behalf.

- (4) In this section –
“organisations of workers” means a registered trade union, federation or confederation.

98E. Meetings of Council

The Council shall meet at quarterly intervals or as often as the Chairperson may determine.

98F. Commissions

(1) The Council may set up such commissions as may be necessary to assist it in the discharge of its functions.

(2) The Council shall appoint a chairperson to chair each Commission.

(3) Each Commission shall consist of such number of members as the Council may determine, taking into account their expertise in the appropriate field and adequate representation of each of the different groups in the Council.

(4) The Council may co-opt any person, who is not a member of the Council, in view of his expertise, to assist a Commission in its work and deliberation.

(5) Each Commission shall meet as often as necessary or at such intervals as the Chairperson may determine.

(6) The members of the Commissions shall hold office for a period of 12 months and may be eligible for reappointment for a further period of 12 months.

(7) Each Commission shall be subject to the direction and control of the Council.

98G. Functions of Commissions

(1) A Commission shall –

(a) undertake such studies and prepare such reports and recommendations as the Council may require;

(b) advise the Council on any matter referred to it.

(2) A Commission shall submit its report and its recommendations to the Council on any matter referred to it by the Council within such time as the Council may determine.

98H. Staff of Council

(1) The Secretary to Cabinet and Head of the Civil Service may, subject to the Public Service Commission Regulations, designate such public officers as may be necessary to assist the Council.

(2) Every officer so designated shall be under the administrative control of the Council.

98J. Annual report

The Council shall, not later than 3 months after the end of every financial year ending on 30 June, submit to Cabinet its annual report.

29. Section 108 of principal Act repealed and replaced

Section 108 of the principal Act is repealed and replaced by the following section –

108. Savings and transitional provisions

(1) (a) Where a procedure agreement which is in force before the commencement of the Employment Relations (Amendment) Act 2019 does not contain any of the provisions specified in the procedure agreement set out in the Seventh Schedule, the parties to the procedure agreement shall, within 30 days of the commencement of the Employment Relations (Amendment) Act 2019, include such provisions in the procedure agreement.

(b) Where the parties fail to comply with paragraph (a), they shall, after the delay of 30 days, be bound by the procedure agreement in the Seventh Schedule.

(2) Where a trade union or a joint negotiating panel has obtained recognition from an employer before the commencement of the Employment Relations (Amendment) Act 2019 and no procedure agreement is in force, the employer

and the trade union or the joint negotiating panel, as the case may be, shall be regulated in accordance with the procedure agreement set out in the Seventh Schedule.

(3) Any application relating to the making of a procedure agreement or variation of a procedure agreement which is pending before the Tribunal immediately before the commencement of the Employment Relations (Amendment) Act 2019 shall be dealt with in accordance with that Act.

(4) Any application made to an employer for recognition of a trade union or group of trade unions before the commencement of the Employment Relations (Amendment) Act 2019 and which is still pending shall be dealt with in accordance with that Act.

(5) Any application for recognition of a trade union pending before the Tribunal before the commencement of the Employment Relations (Amendment) Act 2019 shall be dealt with under section 38 as if it were an application made under that section and the Tribunal shall, notwithstanding section 38(14), determine the application within 60 days of the commencement of the Employment Relations (Amendment) Act 2019, unless the Tribunal, for exceptional circumstances, extends the delay.

(6) Subject to subsection (7), the validity of the recognition of a trade union of workers which obtained recognition before the commencement of the Employment Relations (Amendment) Act 2019 shall remain unaffected.

(7) Where 2 or more trade unions are already recognised in an enterprise or industry as bargaining agents only and the trade unions refuse to form a joint negotiating panel, the employer or any of the trade unions may make an application to the Tribunal, within 12 months of the commencement of the Employment Relations (Amendment) Act 2019, for a determination as to which trade union the workers in the bargaining unit wish to be their bargaining agent.

(8) Any labour dispute which is reported to the President of the Commission before the commencement of the Employment Relations (Amendment) Act 2019 and which –

- (a) has not been rejected by the President of the Commission or where it has been rejected, the rejection has been revoked on an appeal to the Tribunal under section 66; or
- (b) is referred to the Tribunal,

shall be dealt with in accordance with Part VI as if sections 64, 65, 69, 70, 76, 78 and 88 have not been amended or repealed and replaced.

(9) Any labour dispute pending immediately before the commencement of the Employment Relations (Amendment) Act 2019 before the Tribunal shall be dealt with in accordance with Part VI as if the definition of “labour dispute” in section 2 and sections 64, 65, 69, 70, 76, 78 and 88 have not been amended or repealed and replaced.

(10) Any labour dispute reported before the commencement of the Employment Relations (Amendment) Act 2019 or an appeal made under section 66 in relation to a labour dispute reported before the commencement of the Employment Relations (Amendment) Act 2019 shall be dealt with in accordance with Part VI as if the definition of “labour dispute” in section 2 and sections 64, 65, 69, 70, 76, 78 and 88 have not been amended or repealed and replaced.

(11) A reference in any enactment to the repealed Remuneration Regulations shall be construed as a reference to the Remuneration Regulations or Wages Regulations or any such regulations made under section 93.

(12) Where this Act does not make provision for any saving and transition, the Minister may make such regulations as may be necessary for such saving and transition.

30. Second Schedule to principal Act amended

The Second Schedule to the principal Act is amended –

- (a) in Part I –
 - (i) in paragraph 3(1) –
 - (A) by repealing sub subparagraph (aa);
 - (B) in sub subparagraph (b), by deleting the words “Subject to section 39A of the Employment Rights Act, each division of the Tribunal shall –” and replacing them by the words “Each Division of the Tribunal shall –”;
 - (ii) in paragraph 6(1), by deleting the words “, except for proceedings relating to a reduction of workforce or closing down of enterprise under the Employment Rights Act,”;
- (b) in Part II, in paragraph 8, by adding the following new subparagraph –
 - (4) In the discharge of his functions, the President of the Commission may –
 - (a) refer a labour dispute, in the first instance, to a conciliator with a view to promoting a settlement of the dispute; or
 - (b) refer a labour dispute to one of its divisions for conciliation or mediation.
- (c) in Part IV –
 - (i) in paragraph 20(3), by adding the following new sub subparagraphs, the full stop at the end of sub subparagraph (c) being deleted and replaced by a semicolon and the word “or” at the end of sub subparagraph (b) being deleted –
 - (d) interview any of the parties or any person at any time before, during, or after a hearing;

-
- (e) follow whatever procedure the Commission considers appropriate.
 - (ii) by inserting, after paragraph 21, the following new paragraph –
 - 21A. The Chairperson or Vice-chairperson of the Board shall not be called upon to give evidence in any proceedings in relation to any recommendations made by the Board.

31. Fifth, Sixth and Seventh Schedules added to principal Act

The principal Act is amended by adding the Fifth, Sixth and Seventh Schedule set out in the Schedule to this Act.

32. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.

Passed by the National Assembly on the thirteenth day of August two thousand and nineteen.

Bibi Safeena Lotun (Mrs)
Clerk of the National Assembly

SCHEDULE

[Section 31]

FIFTH SCHEDULE

[Section 36(2)]

APPLICATION FOR RECOGNITION

Union(s) making the application

Name of union(s)

Name of contact person

Address for correspondence

Registration no.(s)

Telephone no.

Fax no.

Email address

Employer to whom application is made

Name of employer/company*

Name of contact person

Address for correspondence

Telephone no.

Fax no.

Email address

Tick the appropriate box

Application for recognition as –

- Bargaining agent
- Joint Negotiating Panel
- Sole bargaining agent

Percentage of representativeness in the bargaining unit –

Less than 20

Not less than 20 nor more than 50

More than 50

Enclose supporting documents

Certificate of registration

Copy of agreement between or among trade unions (where applicable)

.....
Name in full

.....
Position

.....
Signature

.....
Date

** Delete as appropriate*

SIXTH SCHEDULE

[Section 36(3)]

CERTIFICATE OF RECOGNITION

This is to certify that (*name of trade union*) has been granted recognition as (*bargaining agent/joint negotiating panel/sole bargaining agent**) in respect of the bargaining unit composed of the following categories/grades* of employees.

List of category/grade*

.....
.....
.....
.....

.....
Name of employer/Company

.....
Seal of employer/Company
(*where applicable*)

.....
Name in full

.....
Position

.....
Signature

.....
Date

*Delete as appropriate



SEVENTH SCHEDULE

[Sections 51 and 108]

PROCEDURE AGREEMENT**Preamble**

The spirit and intention of this Agreement is to further consolidate relations between employers and workers represented by the recognised union or unions and to provide methods and procedures to resolve labour disputes by collective bargaining or joint consultation in relation to matters within the scope of this Agreement.

Article 1 – Recognition and scope

The employer shall negotiate with the recognised union as the bargaining agent representing the interests of the categories of workers mentioned in the bargaining unit for the purpose of collective bargaining with regard to –

- (a) wages, hours of work and other conditions of employment;
- (b) equal opportunity;
- (c) job classification and job content;
- (d) safety and health;
- (e) promotion;
- (f) welfare of staff;
- (g) facilities for trade union office bearers in relation to trade union activities;
- (h) access to workplace;
- (i) access to information;
- (j) establishment of a minimum service as provided under section 81 of the Employment Relations Act;
- (k) any such other matter as may be agreed upon by parties to this Agreement.

Article 2 – Powers of employer (extent and limitations)

(1) The union recognises the prerogatives of the employer to conduct its business and manage its operations, including –

- (a) planning, directing and controlling of the operations of the business including methods, standards and manner of working;
- (b) hiring, controlling and directing the workforce and determining the number of workers required;
- (c) controlling and regulating the use of all equipment and other properties of the employer and determining technological improvements required;
- (d) determining the time, methods, manner of working and type of work to be done;
- (e) modifying, extending, curtailing or ceasing operations and determining the number of workers required;
- (f) selecting, appointing, transferring, promoting and laying off workers;
- (g) disciplining and terminating the employment of workers for good cause;
- (h) making such rules and regulations as the employer may consider necessary and advisable for the orderly, efficient and safe conduct of the business;
- (i) deciding all other matters connected with its business.

(2) The union may, where the employer makes an abuse of his prerogatives, contest any of the decisions made in connection therewith.

(3) (a) The employer and the union shall endeavour to ensure that the rights of the other party as specified in the labour legislation, this Agreement or any Collective Agreement are respected.

(b) The parties agree that the rights of the employer, union and the workers include democratic and other rights as protected by the Constitution and laws of Mauritius, and the International Labour Organisation (ILO) conventions, where applicable.

(4) (a) The employer will ensure that there are relevant consultation with the recognised union in any matter concerning reduction in workforce, substantive changes to contractual terms and conditions of employment, transfer of ownership or contemplated cessation of business.

(b) The employer undertakes to comply with the laws of Mauritius and retains the right to operate his business without any interference.

(5) The employer shall, in his administrative and human resource policies –

(a) cater for the general welfare of workers, in particular insofar as mess room, working tools and equipment, transport facilities, health and safety at work and communication are concerned;

(b) maintain regular, formal and informal consultations with the recognised unions concerning terms and conditions of employment,

with a view to promoting good industrial relations.

(6) (a) The employer agrees that, before bringing any substantial change to the terms and conditions of employment, he will consult the workers to explain the nature and reasons of such changes.

(b) The workers are free to make representations, as appropriate, through their union's or workplace representatives.

Article 3 – Union security and functions

(1) (a) The employer agrees not to discriminate against, victimise or otherwise prejudice any worker because of his union membership or union activity.

(b) The representatives of the union shall be free to express their views in good faith and in so doing the relations between the employer and the union or its representatives shall, in no manner, be adversely affected.

(2) The employer and the union agree that no worker shall be intimidated, coerced or threatened in any manner in the course of his employment.

(3) The employer and the union agree that the workers shall not engage in any union activities whilst on the employer's premises during working hours, except –

- (a) with the express permission of the employer; or
- (b) where such activities are conducted by the workers in their mess room during their meal time.

(4) (a) The employer agrees to afford reasonable facilities, as far as practicable, to the union to carry out its legitimate functions provided it does not disrupt the smooth functioning of the employer's activities.

(b) The facilities referred to in subparagraph (a) shall include access to sites of work and time off facilities.

Article 4 – Time off facilities

(1) The employer agrees to grant to the accredited representatives of the recognised union reasonable time-off without loss of pay for the purpose of performing their trade union functions and activities, subject to the exigencies of their employment and in a manner which does not impair the smooth operation of the workplace.

(2) When deciding on the extent, duration and conditions of paid time off, the employer may take into consideration –

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

(3) Subject to paragraph (2), an application for time off shall be made to the employer by the accredited representatives within a reasonable time and approval by the employer shall not be unreasonably withheld.

(4) The employer agrees to grant time off facilities to the accredited representatives of the union as follows –

.....
.....
.....

Article 5 – Check off

(1) The employer shall implement a check off system for deduction of the unions’ fees from the salaries of its members where written authority is received from individual workers.

(2) A worker may withdraw this authority by notifying the employer in writing, with a copy of any written withdrawal being sent to the union.

(3) The deductions shall be stopped 2 months after the date the union has been notified.

(4) Any written authority received from the individual worker before the coming into force of the present Agreement shall continue to be valid.

Article 6 – Communication

Communication from union

The recognised union shall notify the employer, in writing, of the names of its workplace representatives, officers of its executive committee, negotiators, legal representatives, if any, and accredited representatives and update these information accordingly.

Communication from employer

(1) The employer agrees, as far as is reasonable, to send a copy of circular letters addressed to members of the staff concerning matters covered by this Agreement and any Collective Agreement.

(2) The employer also agrees to send to the recognised union a copy of letters exchanged with individual workers who are members of the Union subject to the written consent of the individual worker.

Article 7 – Collective bargaining

(1) The employer and the union both agree to conduct collective bargaining and, for this purpose, to set up a Staff Negotiating Committee (SNC) to discuss any matter concerning work related issues and other issues contained in this Agreement.

(2) (a) The SNC shall be composed of such number of representatives of the employer and of the recognised union, as may be agreed by both parties.

(b) The employer shall be represented by members of his management and the union by its accredited officers.

(3) Every party shall have the right to be assisted by its negotiators and counsels.

(4) The SNC shall meet once every 2 months or as often as may be required.

(5) The SNC shall meet under the chairpersonship of the General Manager or his accredited representative.

(6) The SNC shall consider any grievance and dispute, whether individual or collective and whether of right or interest, issues related to collective bargaining, enforcement of Agreements and enactments.

(7) Either party may request a meeting of the SNC by giving written notice to the other party, stating the reasons thereof and specifying the issues to be discussed at the meeting.

(8) The parties shall, within 2 weeks of receipt of the notice, mutually agree on the date and time of the meeting.

(9) The meetings of the SNC shall be held on the employer's premises and the employer shall provide suitable accommodation for that purpose.

(10) Draft minutes of proceedings shall be prepared by the employer and submitted to the union representatives at least one week prior to the next meeting, for approval at the subsequent meeting.

(11) Any Agreement reached at the level of the SNC shall be binding and shall be implemented without undue delay on such date as agreed between the parties, and in any way not beyond one month of the date of the Agreement.

Article 8 – Procedure in case of individual grievance

Stage 1 – Immediate superior

A worker who has a grievance shall, with or without the assistance of his union, raise the matter, in the first instance, with his immediate superior who shall do his utmost to resolve the grievance within a mutually agreed period of time.

Stage 2 – Management

Where no settlement is reached at the level of the immediate superior, the worker shall, with or without the assistance of the union, raise the matter with the line manager/supervising officer or the Human Resource Manager.

Stage 3 – Apprehended dispute

Where the worker is not satisfied with the decision of the Human Resource Manager, the worker may, through his union, refer the dispute to the SNC.

Article 9 – Procedure for settling of disputes

Where a dispute is not resolved at the level of the SNC, the employer and the union, acting jointly, may –

- (a) in a case of a dispute of right, refer the dispute to the Ministry of Labour, Industrial Relations, Employment and Training;
- (b) in a case of a dispute of interest, refer the dispute to the Employment Relations Tribunal or to an arbitrator appointed by them; or
- (c) report the dispute to the President of the Commission for Conciliation and Mediation under the Employment Relations Act.

Article 10 – Collective disputes during the duration of collective agreement

(1) A collective dispute (dispute of interest), on terms and conditions of employment, which arises during the duration of a Collective Agreement, shall not be subject to negotiation, unless both parties agree to re-open negotiations.

(2) A collective dispute which arises during the duration of a Collective Agreement, shall, in the case of a substantial change, be subject to negotiation.

Article 11 – Minimum service

The employer and the recognised trade union agree that, pursuant to section 81 of the Employment Relations Act, a minimum service shall be maintained during a strike or lockout as set out hereunder –

Number of workers	Occupation	Department
.....
.....
.....

Article 12 – Disciplinary procedure

General principles

(1) The employer and the union recognise that it is the duty of either party to prevent any undisciplined behaviour from disturbing the smooth running of the employer's activities.

(2) The employer shall, as appropriate, inform his workers about standards regarding work, conduct, obligations, responsibilities and their legal rights.

Unsatisfactory performance at work

(1) Every supervising officer shall be responsible to give guidance to workers for their performance at work.

(2) Where the work of a worker is reported to be unsatisfactory, the supervising officer shall inform the worker of his weaknesses and the expected standards of work required of him.

(3) The employer shall assess the worker on his workmanship and the assessment shall be recorded.

(4) Where the worker cannot fulfill his obligations within the terms of his contract of employment, the employer may reprimand the worker in the first instance before initiating disciplinary actions in accordance with the Workers' Rights Act 2019.

(5) The worker may initially be sanctioned by way of a verbal warning followed by a documented verbal warning and a written warning.

(6) Where no improvement is noted after a period of 6 months, the employer may, following disciplinary proceedings against the worker, take such disciplinary action which may be commensurate with the degree of gravity of the case.

(7) Any sanction imposed under paragraphs (4) and (5) shall lapse after a period of one year where there has been no recurrence.

Minor misconduct

(1) No worker shall be dismissed for reasons related to minor misconduct.

(2) Where a worker is charged with a minor misconduct –

- (a) he may be interviewed by his responsible officer;
- (b) the responsible officer may require the worker to give written explanations where his oral explanations are not satisfactory;
- (c) he may be warned in the presence of his union representative and the warning may be recorded as a verbal warning;
- (d) he may receive a written warning where he fails to improve his conduct following the verbal warning;

- (e) he may be issued a severe written warning in case of recurrence of similar conduct within a period of 3 months;
- (f) the employer may initiate such disciplinary action as he considers appropriate against the worker where the worker still fails to improve his conduct or performance, as the case may be, within a period of 6 months.

Serious acts of misconduct

(1) Serious acts of misconduct include refusal to obey orders, any physical aggression, theft, fraud, act of bullying and harassment, deliberate damage to property and belongings and serious criminal offences.

(2) An employer shall follow the following procedures when he becomes aware of a case of serious misconduct –

- (a) the immediate superior of the worker shall carry out a preliminary investigation and submit his report to the relevant Head of Department;
- (b) the worker shall be notified of the charges levelled against him and he shall be afforded an opportunity to give his explanations.
- (c) after the worker has submitted his explanations, the employer shall decide whether to administer any sanction or otherwise and inform the worker accordingly.

Article 13 – Temporary suspension

(1) A worker suspected of any act of serious misconduct may be forthwith suspended, pending investigation, as a precautionary measure.

(2) A worker shall be entitled to his basic wage during the period of suspension.

(3) The worker shall be reinstated without prejudice and without loss of pay or other privileges if the alleged act of misconduct is not proved.

Article 14 – Disciplinary committee

(1) Any disciplinary committee set up to provide an opportunity to a worker charged with an act of misconduct to give his explanations shall, in its proceedings, be guided by the principles of natural justice.

(2) Where the employer considers that the worker may have to answer a charge of misconduct which may lead to his summary dismissal, the employer shall appoint a disciplinary committee, consisting of at least one independent person, to hear the worker and make its recommendations.

(3) The worker or the union may contest any person forming part of the disciplinary committee and shall submit his or its objections together with the grounds for such objections to the employer not later than 24 hours after having been informed of the name of the persons appointed to hear the matter.

(4) Where a witness is called to testify before a disciplinary committee, the worker or his representative shall be given the opportunity to put questions to the witness.

(5) As far as practicable, no documentary evidence shall be used against a worker unless the worker has been provided with a copy of the document or has been given prior access to it.

(6) The onus to prove the charge rests on the employer while the worker shall be given the opportunity to rebut the charges as he deems appropriate.

(7) The disciplinary committee shall, at the end of the proceedings, submit a written report to the employer stating its findings.

(8) The employer may, in making its decision following the disciplinary committee, consider the past records of the worker. The employer shall envisage termination as a last resort only.

Article 15 – Appeal

(1) A worker against whom any disciplinary sanction is taken may appeal to the Management or any person so appointed by the employer to review any sanction administered to him.

(2) Where there is a possibility of appeal, the appeal shall be submitted in writing within one month of the date the worker becomes aware of the decision of his employer.

(3) An Appeal Board consisting of 3 persons who have not been involved in the disciplinary proceedings may be appointed by the Management to hear the appeal.

(4) The Appeal Board shall hear the worker not later than 2 weeks after the date of the appeal and submit its report not later than one week after the date of the hearing.

Article 16 – Dismissal

Any dismissal shall be effected in compliance with the relevant provisions of the law.

Article 17 – Criminal matters

(1) Where a worker is charged with an alleged misconduct which is the subject matter of criminal proceedings, the worker may be suspended from work with pay until such time as the Court of first instance delivers its judgment.

(2) Where the worker is found not guilty, he may be reinstated by the employer.

(3) Where a worker is suspended pending criminal proceedings, he shall inform his employer of the judgment delivered by the Court of first instance not later than 7 working days after the date of judgment. The worker shall also provide a copy of the judgment to the employer.

(4) Where the misconduct, subject matter of criminal proceedings, has been committed to the prejudice of the employer, the employer may conduct an enquiry into the matter and take such action as he may deem fit.

Article 18 – Union’s right to be informed

(1) The employer may, subject to the consent of the worker concerned and where practicable, provide the union with a copy of the following documents concerning its members –

- (a) any written warning;
- (b) any letter of suspension;
- (c) any written notification of gross misconduct;
- (d) any letter of dismissal;
- (e) any internal circular relating to conditions of employment;
- (f) minutes of proceedings of meetings between the union and the employer;
- (g) any documented verbal warnings where such warnings are recorded in the worker’s personal file;
- (h) any vacancy circular; and
- (i) any information related to appointments and promotions effected.

(2) The employer agrees to inform the union of any business projects likely to affect the conditions of employment of its members.

Article 19 – Appointment and promotion

General Considerations

(1) The employer shall seek guidance from the Code of Practice found in the Fourth Schedule to the Employment Relations Act regarding principles and procedures relating to employment policies.

(2) The employment policies shall include policies prohibiting discrimination on the grounds specified in the employment legislation and the Equal Opportunities Act.

Article 20 – Effect of procedure agreement

(1) This Agreement shall apply to an employer and a trade union as from the date the trade union is granted recognition by the employer.

(2) This Agreement shall constitute the basis for the conduct of collective bargaining with a view to reaching a Collective Agreement.
