

CHAPTER 48:01
TRADE UNIONS AND EMPLOYERS' ORGANIZATIONS

ARRANGEMENT OF SECTIONS

PART I

Preliminary

SECTION

1. Short title
2. Interpretation

PART II

Administration

3. Registrar of Trade Unions and Employers' Organizations
4. Register of trade unions, federations of trade unions and employers' organizations

PART III

*Registration of Trade Unions, Federations of Trade Unions
and Employers' Organizations*

5. Registration under Act
6. Application for registration
7. Notice of application for registration to be published
8. Penalty for failure to apply for registration
9. Issue of certificate of registration
10. Refusal of registration
11. Notification of refusal of registration
12. Cancellation of registration
13. Appeals
14. Consequences of cancellation of registration
15. Unregistered trade unions, etc. prohibited from carrying on business
16. Rights of trade union pending registration

PART IV

*Rights and Liabilities of Trade Unions, Federations of
Trade Unions and Employers' Organizations*

17. Benefits of registration for trade union
18. Liability in contract
19. Proceedings by or against

PART V

Membership, Officers, Employees and Trustees

20. Membership of trade union or employers' organization by children and young persons
21. Restrictions on membership of trade union
22. ...
23. Notice of officers of registered trade union, federation of trade unions or employers' organization to be exhibited
24. Trustees of registered trade union or federation of trade unions
25. Property of registered trade union or federation of trade unions to vest in trustees
26. Effect of change of officers

PART VI

Meetings

27. Annual general meeting of registered trade union
28. Extraordinary general meetings of registered trade union
29. Records of meetings

30. Custody of records of minutes

PART VII

Registered Office and Postal Address

31. Registered office and postal address

PART VIII

Constitution and Notification of Certain Matters

32. Constitution of registered trade union, federation of trade unions or employers' organization

33. Effect of change of name

34. Delivery of copies of constitution to members or potential members

35. Certain matters to be notified to Registrar

36. Notification to Registrar of dissolution

PART IX

Finance

37. Application of funds

38. Prohibition of payment of certain fines and other penalties

39. Interdict to restrain unauthorized or unlawful expenditure of funds, etc.

40. Books of account

41. Circulation, furnishing and auditing of accounts

42. Annual return

43. Inspection of accounts and list of members

44. Interdict against officers

PART X

Amalgamations and Federations of Registered Trade Unions

45. Amalgamation or federation of registered trade unions

46. Registration of amalgamation of registered trade unions

47. Amalgamation not to prejudice rights

PART XI

Recognition of Registered Trade Unions as Negotiating Bodies

48. Recognition at the workplace

48A. Recognition at level of industry

48B. Organisational rights of recognised trade unions

48C. Disclosure of information to a recognised trade union

PART XII

Investigations

49. Enquiries by Minister, etc.

50. Appointment of investigator

51. ...

52. Application of Part of federations of trade unions

PART XIII

Picketing, Intimidation, Disputes, etc.

53. Peaceful picketing and prevention of intimidation

54. Intimidation and annoyance

55. Conspiracy in trade disputes

56. Freedom of association of employees

PART XIV

Offences and Penalties

- 57. Penalty for misuse of money or other property
- 58. Penalty for false entries in documents
- 59. Limitation of prosecutions

PART XV
Miscellaneous

- 60. ...
- 61. Inspection of records in custody of Registrar
- 62. ...
- 63. Receipt of funds
- 64. Service of legal process
- 65. Certain facts to be notified in *Gazette*
- 66. Power of Minister to require certain information
- 67. Power of Minister to make regulations
- 68. Inapplicability of certain laws
- 69. Matters not affected by Act

Schedule

Act 23, 1983,
S.I. 123, 1984,
Act 24, 1992,
Act 16, 2004,
Act 14, 2005.

An Act to re-enact with amendments the law relating to trade unions to make better provision therefor and for federations of trade unions and employers' organizations and for matters connected therewith and incidental thereto.

[Date of Commencement: 1st September, 1984]

PART I
Preliminary (ss 1-2)

1. Short title

This Act may be cited as the Trade Unions and Employers' Organizations Act.

2. Interpretation

(1) In this Act, unless the context otherwise requires-

"branch" includes a sub-branch;

"Commissioner of Labour" means the person for the time being holding, acting in or lawfully performing the functions of the public office of Commissioner of Labour;

"constitution" includes rules;

"contract of employment" means an agreement, whether oral or in writing, expressed or implied, whereby one person agrees for a wage or other benefit or both to let his labour to and perform it under the orders of another person who agrees to hire it, including a contract of apprenticeship and an indenture to learn;

"employee" means any individual who has entered into a contract of employment for the hire of his labour:

Provided that the expression does not include members of the-

- (i) Botswana Defence Force,
- (ii) Botswana Police Service,
- (iii) Local Police, and
- (iv) Prison Service;

"employer" means any person who has entered into a contract of employment to hire

the labour of any person and includes-

- (a) the Government in respect of all its officers except members of the-
 - (i) Botswana Defence Force,
 - (ii) Botswana Police Service,
 - (iii) Local Police, and
 - (iv) Prison Service;
- (b) a public authority; and
- (c) the person who owns or is carrying on, for the time being or is responsible for the management of the undertaking, business or enterprise of whatever kind in which the employee is engaged;

"employers' organization" means an association consisting, wholly or mainly, of employers the principal objects of which include the regulation of relations between employers and employees or trade unions;

"executive committee", in relation to a trade union, federation of trade unions or employers' organization or any branch thereof, means the subordinate body thereof, by whatever name known, that has the management of the affairs of the trade union, federation of trade unions or employers' organization or branch thereof as a whole between meetings of the body in which the ultimate authority of the trade union, federation of trade unions or employers' organization or branch thereof is vested; and, where there are more than one such subordinate body, the expression includes all those subordinate bodies;

"federation of trade unions" means a federation, congress or other association, by whatever name known, of autonomous registered trade unions;

"financial year" means the period of 12 months ending on 31st December in every year;

"injury" means any actionable wrong or any injury to a person in respect of his business, occupation, employment or other source of income;

"intimidate" means to cause in the mind of a person reasonable apprehension of injury to him or to any member of his family or to any of his dependants or of violence or damage to any person or property;

"officer", in relation to a trade union, federation of trade unions or employers' organization, includes any member of its executive committee or the executive committee of a branch thereof but does not include a trustee or an auditor;

"public authority" includes a local authority and a land board;

"registered employers' organization" means an employers' organization for the time being registered as such under this Act;

"registered federation of trade unions" means a federation of trade unions for the time being registered as such under this Act;

"registered office", in relation to a registered trade union, federation of trade unions or employers' organization, means the office of the trade union, federation of trade unions or employers' organization for the time being registered as its principal office under this Act;

"registered postal address", in relation to a trade union, federation of trade unions or employers' organization, means the postal address of the trade union, federation of trade unions or employers' organization for the time being registered as its postal address under this Act;

"registered trade union" means a trade union for the time being registered as such under this Act or an amalgamation of registered trade unions deemed, by virtue of section 46(6), to be registered as a trade union in accordance with this Act;

"Registrar" means the person appointed to be the Registrar of Trade Unions and Employers' Organizations in accordance with section 3;

"trade dispute" means any dispute or difference between an employer or employers and employees or between employees and employees in any trade or industry that is connected with the employment of those employees in that trade or industry or with the terms and

conditions of or affecting that employment;

"trade union" means an organization the principal objects of which include the regulation of relations between employees and employers or employers' organizations or between employees and employees;

"unlawful industrial action" means any industrial action declared under the Trade Disputes Act or by the Minister under that Act to be unlawful or any lock-out, strike or action short of a strike deemed, by virtue of that Act, to be unlawful industrial action; and the words and expressions used in this definition have the meanings assigned to them respectively by that Act.

(2) ...

PART II

Administration (ss 3-4)

3. Registrar of Trade Unions and Employers' Organizations

(1) The Minister shall appoint a public officer, to be the Registrar of Trade Unions and Employers' Organizations.

(2) The Registrar shall, subject to any directions given by the Minister, be charged with the general administration of this Act.

(3) The Minister may designate such other public officers as he thinks necessary to assist the Registrar in the administration of this Act.

(4) No suit shall lie against the Registrar for anything done or omitted to be done by him in good faith, without negligence and in the intended exercise or performance of any function conferred or imposed by this Act.

4. Register of trade unions, federations of trade unions and employers' organizations

(1) The Registrar shall keep and maintain in such manner as the Minister may direct a register of trade unions, federations of trade unions and employers' organizations, in which shall be recorded such particulars as the Minister may direct, and such other books and documents as the Minister may direct.

(2) A copy of an entry in or excerpt from the register or from any other book or document kept and maintained by the Registrar in accordance with this section, purporting to be certified under the hand of the Registrar to be a true copy, shall be *prima facie* evidence of the facts stated therein.

PART III

Registration of Trade Unions, Federations of Trade Unions and Employers' Organizations (ss 5-16)

5. Registration under Act

Subject to the other provisions of this Act, every trade union, federation of trade unions or employers' organization formed in Botswana shall be registered in accordance with this Act.

6. Application for registration

(1) Every trade union, federation of trade unions or employers' organization formed in Botswana shall, within 28 days immediately after its formation, apply to the Registrar for registration as a trade union, federation of trade unions or employers' organization, as the case may be, under this Act.

(2) Every application for registration under this Act by a trade union, federation of trade unions or employers' organization shall be made in the prescribed form which shall be accompanied by-

- (a) the prescribed fee;
- (b) three printed or typed copies of the constitution of the trade union, federation of trade unions or employers' organization, each copy authenticated under the hand of the principal secretary of the trade union, federation of trade unions or employers' organization;
- (c) in the case of an application by-

- (i) a trade union or employers' organization, one copy of the resolution by which it was formed authenticated under the hand of the principal secretary of the trade union or employers' organization; or
- (ii) a federation of trade unions, one copy of each of the resolutions by which the members of the federation were authorized to enter into the federation authenticated under the hand of the principal secretary of the trade union in question;
- (d) a list of the full names of all the members of the trade union, federation of trade unions or employers' organization; and
- (e) a written statement setting out, in respect of the trade union, federation of trade unions or employers' organization-
 - (i) its name and postal address and the location of its principal office;
 - (ii) the date of its formation; and
 - (iii) the titles, full names, ages, postal and residential addresses and occupations of those of its officers who are signatories to the application.

(3) In the case of an application for registration under this Act by a trade union, the written statement referred to in subsection (2)(e) shall also set out the name of every employer or industry that the union claims will be bound to deal with it in terms of section 48 and particulars of every negotiating body, whether of the parent trade union or a branch thereof, to be concerned with the conclusion of collective labour agreements.

7. Notice of application for registration to be published

(1) The Registrar shall cause a notice of every application for registration made in accordance with section 6 to be published in the *Gazette* and in such other manner as the Minister may direct.

(2) Every notice such as is referred to in subsection (1) shall set out the particulars that have been provided by virtue of section 6(2)(e) and shall call upon any person who objects to the registration of the trade union, federation of trade unions or employers' organization to notify the Registrar of the objection, together with the grounds thereof, within such reasonable time as shall be specified in the notice.

8. Penalty for failure to apply for registration

Where a trade union, federation of trade unions or employers' organization fails to apply for registration in accordance with section 6, every officer of the trade union, federation of trade unions or employers' organization and every person acting or purporting to act as such an officer shall be guilty of an offence and liable to a fine not exceeding P100.

9. Issue of certificate of registration

(1) Subject to section 10, the Registrar shall, after considering every objection to the registration of a trade union, federation of trade unions or employers' organization notified to him within the time specified in accordance with section 7 and after making such inquiries in the matter as he thinks fit, register the trade union, federation of trade unions or employers' organization in such manner as the Minister may direct and issue to it a certificate of registration in such form as the Minister may approve.

(2) A certificate of registration issued under this Act shall, for all purposes, unless the registration of the trade union, federation of trade unions or employers' organization to which the certificate relates is proved to have been cancelled in terms of section 12, be conclusive evidence that that trade union, federation of trade unions or employers' organization is duly registered in accordance with this Act.

(3) When and as often as the Registrar issues a certificate of registration under this Act, he shall forthwith inform the Commissioner of Labour that he has done so.

10. Refusal of registration

(1) The Registrar shall refuse to register a trade union, federation of trade unions or employers' organization under this Act if it appears to him that its name is identical with that by

which some other trade union, federation of trade unions or employers' organization has been registered or so nearly resembles that other name as to be likely to deceive or mislead any person or is otherwise misleading or undesirable, until such time as the name is altered to one acceptable to the Registrar.

(2) The Registrar shall refuse to register a trade union, federation of trade unions or employers' organization under this Act if he is satisfied that-

- (a) it has not complied with the provisions of this Act or with any regulations made thereunder or with any requirement made of it by the Registrar in respect of its registration under this Act;
 - (b) ...
 - (c) any of its principal objects or any other provision of its constitution is unlawful;
 - (d) it is used or has been used for an unlawful purpose;
 - (e) its funds or other property are being or have been applied in an unlawful manner or for an unlawful object or an object not authorized by this Act or its constitution;
 - (f) its accounts are not being kept in accordance with this Act; or
 - (g) its principal objects are not in accordance with those of a trade union or employers' organization, as the case may be, as the same is defined by section 2.
- (3) ...
(4) ...

11. Notification of refusal of registration

(1) Where the Registrar refuses in accordance with section 10 to register a trade union, federation of trade unions or employers' organization, he shall notify the applicants in writing of the refusal and the grounds thereof and the trade union, federation of trade unions or employers' organization shall be deemed to be dissolved from the date of the notification:

Provided that, where an appeal is lodged against the refusal, the trade union, federation of trade unions or employers' organization shall be deemed to be dissolved from the date on which the appeal is dismissed or abandoned.

(2) Any person who takes part in the management or organization of a trade union, federation of trade unions or employers' organization deemed to be dissolved by virtue of this section or acts or purports to act on its behalf or as its officer shall be guilty of an offence and liable to a fine not exceeding P60 and, in the case of a continuing offence, to a further fine not exceeding P20 for every day the offence continues:

Provided that it shall not be an offence under this section for a person to take part in the management or organization of a trade union, federation of trade unions or employers' organization deemed to be dissolved by virtue of this section or to act on its behalf or as its officer for the purposes of-

- (i) any proceedings brought by or against the trade union, federation of trade unions or employers' organization; or
- (ii) dissolving the trade union, federation of trade unions or employers' organization and disposing of its assets in accordance with its constitution.

12. Cancellation of registration

(1) The Registrar shall cancel the registration of a trade union, federation of trade unions or employers' organization registered under this Act-

- (a) at its own request upon its dissolution being verified in such manner as the Registrar may require; or
- (b) if he is directed by the Minister under section 50 to do so.

(2) The Registrar shall cancel the registration of a trade union, federation of trade unions or employers' organization registered under this Act if he is satisfied that-

- (a) it has ceased to exist;
- (b) its registration was obtained by fraud, misrepresentation or mistake;
- (c) it has wilfully contravened this Act or any regulations made thereunder;

- (d) it has wilfully, and after notice from the Registrar, allowed any provision of its constitution to continue in force which is inconsistent with this Act or any regulations made thereunder;
- (e) ...
- (f) any of its principal objects or any other provision of its constitution is unlawful;
- (g) it is used or has been used for an unlawful purpose;
- (h) its funds or other property are being or have been applied in an unlawful manner or for an unlawful object or an object not authorized by this Act or its constitution; or
- (i) ...

(3) ...

(4) The Registrar may cancel the registration of a trade union, federation of trade unions or employers' organization registered under this Act if he is satisfied that its accounts are not being kept in accordance with this Act.

(5) ...

(6) The Registrar shall not proceed under subsection (4) to cancel the registration of a trade union, federation of trade unions or employers' organization registered under this Act or proceed under subsection (5) to cancel the registration of a trade union registered under this Act unless he has first caused to be served on it notice in writing that he proposes to do so and such notice shall specify the ground on which he proposes to do so.

(7) A registered trade union, federation of trade unions or employers' organization served with a notice under subsection (6) may, within two months immediately following the day on which service of the notice was effected, show cause in writing lodged with the Registrar against the proposal to cancel its registration and, if such cause is shown, the Registrar may hold such inquiry as he considers necessary in the particular circumstances.

(8) Where a registered trade union, federation of trade unions or employers' organization fails to show cause under subsection (7), the Registrar may, after the expiry of the period of two months prescribed by that subsection but no earlier, proceed to cancel its registration.

(9) Where a registered trade union, federation of trade unions or employers' organization shows cause under subsection (7) but fails to satisfy the Registrar that its registration ought not to be cancelled, the Registrar may, after the expiry of the period of two months prescribed by that subsection or the expiry of the period of one month immediately following the day on which such cause was shown, whichever is later, but no earlier, proceed to cancel its registration.

(10) The Registrar shall effect the cancellation of the registration of a trade union, federation of trade unions or employers' organization registered under this Act by means of a written order which shall specify briefly the ground for the cancellation of the registration and forthwith be served on the trade union, federation of trade unions or employers' organization.

(11) Upon the cancellation of the registration of a trade union, federation of trade unions or employers' organization registered under this Act, the certificate of registration issued to it shall cease to have effect and shall be delivered to the Registrar within one month immediately following the day on which the order cancelling the registration of the trade union, federation of trade unions or employers' organization was served on it in accordance with subsection (10):

Provided that, in the event of an appeal under section 13 against the order cancelling the registration of the trade union, federation of trade unions or employers' organization, the certificate shall cease to have effect on the dismissal or abandonment of the appeal and shall be delivered to the Registrar within one month immediately following the day on which the appeal was dismissed or abandoned.

(12) Where the certificate of registration is not delivered to the Registrar in accordance with subsection (11), every officer of the trade union, federation of trade unions or employers' organization in question immediately before the cancellation of its registration shall be guilty of an offence and liable to a fine not exceeding P100.

(13) When and as often as the Registrar cancels the registration of a trade union,

federation of trade unions or employers' organization registered under this Act, he shall forthwith inform the Commissioner of Labour that he has done so.

13. Appeals

(1) Where any person is aggrieved by the refusal of the Registrar in accordance with section 10 to register a trade union, federation of trade unions or employers' organization or by an order of the Registrar in terms of section 12 cancelling the registration of a trade union, federation of trade unions or employers' organization, that person may appeal against the refusal or order to the High Court.

(2) The High Court may, on an appeal under this section, make such order as it thinks proper, including any directions as to the costs of the appeal.

(3) The decision of the High Court on appeal under this section shall be final.

(4) The Chief Justice may make rules of court governing appeals under this section, providing for the method of giving evidence and prescribing the time within which such appeals shall be brought, the fees to be paid, the procedure to be followed and the manner of notifying the Registrar of the appeal.

(5) The Registrar shall be entitled to be heard on any appeal under this section.

14. Consequences of cancellation of registration

(1) Where the registration of a trade union under this Act is cancelled in terms of section 12-

- (a) it shall thereupon cease to enjoy the rights, immunities and privileges of a registered trade union and any liabilities incurred by the trade union may be enforced against it and its assets; and
- (b) its officers and members shall thereupon cease to enjoy the rights, immunities and privileges accorded to the officers and members of a registered trade union.

(2) Where the registration of a trade union, federation of trade unions or employers' organization under this Act is cancelled in terms of section 12-

- (a) it shall be dissolved and its assets shall be disposed of in accordance with its constitution; and
- (b) any person who takes any part in its management or organization or acts or purports to act on its behalf or as its officer shall be guilty of an offence and liable to a fine not exceeding P60 and, in the case of a continuing offence, to a further fine not exceeding P20 for every day the offence continues:

Provided that it shall not be an offence under this paragraph for a person to take part in the management or organization of the trade union, federation of trade unions or employers' organization or to act on its behalf or as its officer for the purposes of-

- (i) any proceedings brought by or against the trade union, federation of trade unions or employers' organization; or
- (ii) dissolving the trade union, federation of trade unions or employers' organization and disposing of its assets in accordance with its constitution.

(3) If any trade union, federation of trade unions or employers' organization whose registration is cancelled under this Act, is not dissolved-

- (a) immediately following the day on which the order cancelling its registration was served on it;
- (b) on the day on which the appeal was dismissed or abandoned, in the event of an appeal against the order cancelling its registration; or
- (c) within three months or within such longer period as the Registrar may allow,

the trade union, federation of trade unions or employers' organization, every officer thereof and every person acting or purporting to act as an officer thereof, commits an offence and is liable to a fine not exceeding P100.

15. Unregistered trade unions, etc. prohibited from carrying on business

(1) No trade union, federation of trade unions or employers' organization or any officer or

member thereof shall perform any act in furtherance of the objects for which it has been formed unless it is duly registered in accordance with this Act:

Provided that this subsection shall not apply in the case of a person taking part in the management or organization of a trade union, federation of trade unions or employers' organization or acting on its behalf or as its officer for the purposes of-

- (i) any proceedings brought by or against the trade union, federation of trade unions or employers' organization; or
- (ii) dissolving the trade union, federation of trade unions or employers' organization and disposing of its assets in accordance with its constitution.

(2) Any trade union, federation of trade unions or employers' organization or officer or member thereof which or who contravenes this section and any person who is knowingly a party to the contravention shall be guilty of an offence and liable to a fine not exceeding P60 and, in the case of a continuing offence, to a further fine not exceeding P20 for every day the offence continues.

16. Rights of trade union pending registration

Until a trade union is registered in accordance with this Act-

- (a) it shall not enjoy the rights, immunities and privileges of a registered trade union and any liabilities incurred by the trade union may be enforced against it and its assets; and
- (b) none of its officers or members shall enjoy the rights, immunities and privileges accorded to the officers and members of a registered trade union.

PART IV

Rights and Liabilities of Trade Unions, Federations of Trade Unions and Employers' Organizations (ss 17-19)

17. Benefits of registration for trade union

On the registration of a trade union in accordance with this Act, the registered trade union and its officers and members shall enjoy the following rights, immunities and privileges-

- (a) no suit or other legal proceedings shall be maintainable in any civil court against the registered trade union or any officer or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the trade union is a party on the grounds only that such act induces some other person to break a contract of employment or that it is in interference with the trade, business or employment of some other person or with the rights of some other person to dispose of his capital or labour as he wills;
- (b) no suit against the registered trade union or any officer or member thereof on behalf of himself and all other members of the trade union in respect of any delictual act alleged to have been committed by or on behalf of the trade union shall be entertained by any court; and
- (c) the objects of the registered trade union shall not, by reason only that they are in restraint of trade, be unlawful so as to render-
 - (i) any member of the trade union liable to criminal prosecution; or
 - (ii) void or voidable any agreement or trust.

18. Liability in contract

Every trade union, federation of trade unions or employers' organization shall be liable on any contract, not being a contract that is void or unenforceable at law, entered into by it or by a duly authorized agent on its behalf.

19. Proceedings by or against

(1) A registered trade union, federation of trade unions or employers' organization may sue or be sued under its registered name.

(2) A trade union, federation of trade unions or employers' organization not registered under this Act may sue or be sued under the name by which it has been operating or is generally known.

(3) A trade union, federation of trade unions or employers' organization whose registration under this Act has been cancelled in terms of section 12 may sue or be sued under the name by which it was registered.

(4) Execution for any moneys recovered from a trade union, federation of trade unions or employers' organization in civil proceedings may issue against any property belonging to or held in trust for the trade union, federation of trade unions or employers' organization, other than its provident, welfare or pension fund.

(5) Subject to subsection (6), any fine ordered to be paid by a trade union, federation of trade unions or employers' organization may be recovered by attachment and sale of any property belonging to or held in trust for the trade union, federation of trade unions or employers' organization in accordance with the Criminal Procedure and Evidence Act.

(6) No attachment shall be made of any provident, welfare or pension fund kept apart by a trade union, federation of trade unions or employers' organization unless the court so orders.

PART V

Membership, Officers, Employees and Trustees (ss 20-26)

20. Membership of trade union or employers' organization by children and young persons

(1) No individual under the age of 15 years shall be a member of a registered trade union or employers' organization.

(2) The constitution of a registered trade union or employers' organization may exclude young persons from membership thereof.

(3) Subject to the constitution of a registered trade union or employers' organization, where a young person is a member thereof, he shall enjoy all the rights of a member:

Provided that a young person shall not be an officer or trustee of the trade union or employers' organization of which he is a member.

(4) A young person shall have the capacity to execute all instruments and give all acquittances necessary to be executed or given under the constitution of the registered trade union or employers' organization of which he is a member.

(5) For the purposes of this section, "young person" means an individual who has attained the age of 15 years but is under the age of 18 years.

21. Restrictions on membership of trade union

(1) No person shall be admitted to membership of a trade union unless he is an employee in an industry with which the trade union is directly concerned.

(2) ...

(3) No employee of a trade union shall be admitted to membership of the trade union.

(4) Upon a member of a trade union becoming an employee of the trade union, he shall immediately cease to be a member of the trade union.

22. 23. Notice of officers of registered trade union, federation of trade unions or employers' organization to be exhibited

(1) Every registered trade union, federation of trade unions or employers' organization shall at all times prominently exhibit at its registered office and at the principal office of every branch thereof a notice clearly setting out the full names of all the officers for the time being of the trade union, federation of trade unions or employers' organization, together with their respective titles.

(2) Any registered trade union, federation of trade unions or employers' organization that fails to comply with this section and every officer thereof who is knowingly a party to the failure shall be guilty of an offence and liable to a fine not exceeding P50 and, in the case of a continuing offence, to a further fine not exceeding P10 for every day the offence continues.

24. Trustees of registered trade union or federation of trade unions

(1) The constitution of every registered trade union or federation of trade unions shall provide for the appointment or election and removal of trustees and for the filling of vacancies in

the offices of trustees so that, as far as may be, there shall at all times be at least three trustees of the trade union or federation of trade unions,

(2) No officer of a registered trade union or federation of trade unions shall be a trustee of the trade union or federation of trade unions.

(3) No person shall be a trustee of a registered trade union unless he is a member of the trade union and no person shall be a trustee of a registered federation of trade unions unless he is a member of a trade union belonging to the federation of trade unions:

Provided that a bank approved by the Registrar may be a trustee of a registered trade union or federation of trade unions.

(4) No person shall be a trustee of a registered trade union or federation of trade unions if he has at any time been finally convicted of an offence involving dishonesty.

25. Property of registered trade union or federation of trade unions to vest in trustees

(1) All property belonging to a registered trade union or federation of trade unions shall vest in and be under the control of the trustees for the time being of the trade union or federation of trade unions for the use and benefit of the trade union or federation of trade unions and of its members.

(2) In all actions or suits or prosecutions before any court touching or concerning any property belonging to a registered trade union or federation of trade unions, the same shall be stated to be the property of the persons who are the trustees for the time being of the trade union or federation of trade unions in their proper names as such trustees without any further description.

(3) The trustees of a registered trade union shall deal with all property vested in them by virtue of this section in such manner as the executive committee of the trade union shall direct:

Provided that no disposal of any such property shall be made unless the trustees are satisfied that the executive committee has acted lawfully and in accordance with the constitution of the trade union.

(4) The trustees of a registered federation of trade unions shall deal with all property vested in them by virtue of this section in such manner as the body designated by the constitution of the federation of trade unions for this purpose shall direct:

Provided that no disposal of any such property shall be made unless the trustees are satisfied that the directing body has acted lawfully and in accordance with the constitution of the federation of trade unions.

26. Effect of change of officers

No change in the officers or trustees of a registered trade union, federation of trade unions or employers' organization shall have effect unless the change is registered by the Registrar.

PART VI

Meetings (ss 27-30)

27. Annual general meeting of registered trade union

(1) Every registered trade union shall hold a general meeting, to be called the annual general meeting, in every year ending on 31st December and shall, in the notice calling the meeting, specify the meeting as the annual general meeting of the trade union.

(2) Not more than 15 months shall elapse between the end of one annual general meeting of a registered trade union and the beginning of the next following annual general meeting of the trade union.

(3)-(6) ...

28. Extraordinary general meetings of registered trade union

(1) Notwithstanding anything contained in the constitution of a registered trade union, its executive committee shall, on the written requisition of not less than one-tenth of its members for the time being qualified to vote, forthwith proceed duly to convene an extraordinary general

meeting of the trade union.

(2) A requisition such as is referred to in subsection (1) shall clearly set out the objects of the required meeting and shall be signed by the persons making the requisition and deposited at the registered office of the trade union in question.

(3) If the executive committee of the trade union in question does not, within 21 days immediately following the deposit of a requisition at its registered office in accordance with subsection (2), convene an extraordinary general meeting to be held not later than 40 days immediately after such deposit, any two or more of the persons who made the requisition convene an extraordinary general meeting; but no meeting so convened shall be held later than three months immediately after such deposit.

(4) If default is made in holding an extraordinary general meeting in accordance with this section, every officer of the trade union in question who is knowingly a party to the default shall be guilty of an offence and liable to a fine not exceeding P50.

29. Records of meetings

(1) Every registered trade union and every branch thereof shall cause minutes of all proceedings of general meetings and of meetings of the executive committees of the trade union and its branches to be entered in books kept for that purpose alone and shall retain each such book in safe custody for not less than five years immediately after the date of the last entry therein.

(2) Subsection (1) shall apply, with all necessary modifications, to a registered federation of trade unions in respect of proceedings of meetings of the body in which the ultimate authority of the federation is vested and of the federation's executive committee.

(3) Every minute such as is contemplated by subsections (1) and (2) shall, if purported to be signed by the person presiding at the meeting at which it was recorded or by the person presiding at the next succeeding meeting of the same body, be *prima facie* evidence of the facts therein recorded.

(4) Where minutes have been recorded in accordance with this section, the meeting in question shall be deemed, unless the contrary is shown, to have been duly held and convened and all proceedings thereof to have been duly taken; and all appointments, elections or dismissals arising therefrom of officers or trustees shall be deemed, unless the contrary is shown, to be valid.

(5) Any registered trade union or branch thereof or any registered federation of trade unions that fails to comply with this section and every officer of the trade union or federation of trade unions who is knowingly a party to the failure shall be guilty of an offence and liable to a fine not exceeding P50.

30. Custody of records of minutes

(1) The books containing the minutes of proceedings of-

- (a) general meetings of a registered trade union; or
- (b) meetings of the body in which the ultimate authority of a registered federation of trade unions is vested,

shall be kept at the registered office of the trade union or federation of trade unions and shall be open to inspection without charge by any member of the trade union or of a trade union belonging to the federation of trade unions, or by any person authorized in that behalf by the Registrar, for not less than one hour in each working day:

Provided that, where the trade union or federation of trade unions does not exhibit a notice at its registered office specifying the time for such inspection, any person entitled to inspect the books in terms of this section shall be entitled to do so forthwith on application at any time during ordinary office hours on a working day.

(2) Any member of a registered trade union or of a trade union belonging to a registered federation of trade unions shall be entitled to be furnished, not later than 14 days immediately after he has made a request in that behalf to the trade union or federation of trade unions, with a

copy of any minutes such as are referred to in subsection (1).

(3) If any inspection to which a person is entitled in terms of this section is refused or unreasonably delayed or if any copy with which a person is entitled to be furnished fails to be provided within the prescribed time, every officer of the trade union or federation of trade unions in question who is knowingly a party to the refusal, delay or failure shall be guilty of an offence and liable to a fine not exceeding P10.

PART VII

Registered Office and Postal Address (s 31)

31. Registered office and postal address

(1) Every registered trade union, federation of trade unions or employers' organization shall have a registered office, which shall be its principal office, and a registered postal address at or to which all communications and notices may be delivered or addressed.

(2) Notice in writing of any change in the location of the principal office of a registered trade union, federation of trade unions or employers' organization or in its postal address shall forthwith be given by the trade union, federation of trade unions or employers' organization to the Registrar who shall register the same in place of the existing particulars.

(3) Any registered trade union, federation of trade unions or employers' organization that fails to comply with subsection (2) and every officer thereof who is knowingly a party to the failure shall be guilty of an offence and liable to a fine not exceeding P50.

PART VIII

Constitution and Notification of Certain Matters (ss 32-36)

32. Constitution of registered trade union, federation of trade unions or employers' organization

(1) Subject to the other provisions of this section and to its constitution, a registered trade union, federation of trade unions or employers' organization may amend its constitution, including its name or objects:

Provided that no change of its name or objects shall be valid unless notice in writing containing particulars of the proposed change has first been given to the Registrar and he has signified in writing that he has no objection to the proposed change.

(2) ...

(3) The Minister may, by order published in the *Gazette*, amend the Schedule.

(4) A copy of every amendment made to the constitution of a registered trade union, federation of trade unions or employers' organization, signed by at least two-thirds of the members of its executive committee, shall be sent by the trade union, federation of trade unions or employers' organization to the Registrar within 30 days immediately after the making thereof and the Registrar shall register the same, upon payment of the prescribed fee, if he is satisfied that such amendment has been validly made and is not unlawful or inconsistent with this Act, with any regulations made thereunder or with the other provisions of the constitution.

(5) Every amendment to the constitution of a registered trade union, federation of trade unions or employers' organization shall take effect from the date of registration thereof by the Registrar unless some later date is specified by the constitution or by the amendment itself.

(6) Any registered trade union, federation of trade unions or employers' organization that fails to comply with this section and every officer thereof who is knowingly a party to the failure shall be guilty of an offence and liable to a fine not exceeding P50 and, in the case of a continuing offence, to a further fine not exceeding P10 for every day the offence continues; and the court before which the prosecution is brought may order a copy of the amendment in question to be sent by the trade union, federation of trade unions or employers' organization to the Registrar within such time as shall be specified in the order.

33. Effect of change of name

A change in the name of a registered trade union, federation of trade unions or employers' organization shall not affect any right or obligation of the trade union, federation of

trade unions or employers' organization or render defective any legal proceeding by or against the trade union, federation of trade unions or employers' organization or any legal proceeding that might have been continued or commenced by or against it under its new name.

34. Delivery of copies of constitution to members or potential members

(1) A registered trade union or employers' organization shall forthwith deliver a copy of its constitution to any person requiring the same who is or appears to be qualified to be a member thereof on payment of a charge not exceeding 50 thebe.

(2) Subsection (1) shall apply, with all necessary modifications, to a federation of trade unions in respect of a requirement made by an officer of a trade union that belongs or appears to be qualified to belong to the federation of trade unions.

(3) Any registered trade union, federation of trade unions or employers' organization that fails to comply with this section and every officer thereof who is knowingly a party to the failure shall be guilty of an offence and liable to a fine not exceeding P50 and, in the case of a continuing offence, to a further fine not exceeding P10 for every day the offence continues; and the court before which the prosecution is brought may order a copy of the constitution to be delivered forthwith by the trade union, federation of trade unions or employers' organization to the person who required the same.

35. Certain matters to be notified to Registrar

(1) Notice in writing of any change in the officers or trustees of a registered trade union, federation of trade unions or employers' organization shall, within 30 days immediately after the change, be given by the trade union, federation of trade unions or employers' organization to the Registrar, together with the prescribed fee, and the Registrar shall, subject to subsections (4) and (5), register the change accordingly.

(2) A registered trade union shall give notice to the Registrar setting out-

- (a) the name of every employer or industry that the trade union claims, subsequent to its application for registration under this Act, is bound to deal with it in terms of section 48(1);
 - (b) the name and postal address of every one of its branches with which the trade union claims an employer or industry is bound to deal in terms of section 48(2); and
 - (c) any change relating to its negotiating powers or those of any of its branches,
- within 30 days immediately after first making the claim or after the change in question, and the Registrar shall, subject to subsections (4) and (5), register the information or the change accordingly.

(3) Any registered trade union, federation of trade unions or employers' organization that fails to comply with this section and every officer thereof who is knowingly a party to the failure shall be guilty of an offence and liable to a fine not exceeding P50 and, in the case of a continuing offence, to a further fine not exceeding P10 for every day the offence continues.

(4) Before registering any change of officers or trustees or any other change and before registering any new information or making any correction or alteration to a register, the Registrar may require the production of such evidence as he thinks necessary to satisfy him of the validity of the change, the accuracy thereof or of any new information or the propriety of the proposed correction or alteration.

(5) If, after such inquiry as he thinks necessary, the Registrar is not satisfied of the validity of the change of officers or trustees or other change, the accuracy thereof or of any new information or the propriety of the proposed correction or alteration to a register, he may refer the matter to a tribunal consisting of one or more independent persons appointed by the Minister and the tribunal shall inquire into the matter and make its findings thereon known to the Registrar who shall thereupon act in accordance with those findings.

36. Notification to Registrar of dissolution

When a registered trade union, federation of trade unions or employers' organization is dissolved, notice containing such particulars as may be prescribed of the dissolution, signed-

- (a) in the case of a trade union or employers' organization, by seven members thereof and the principal secretary of the trade union or employers' organization; or
- (b) in the case of a federation of trade unions, by the principal secretary of each of the trade unions belonging to the federation of trade unions and the principal secretary of the federation,

shall, within 14 days immediately after the dissolution, be sent to the Registrar and the Registrar shall register the same if he is satisfied that the dissolution has been effected in accordance with the constitution of the trade union, federation of trade unions or employers' organization; and the dissolution shall have effect from the date of registration thereof.

PART IX **Finance (ss 37-44)**

37. Application of funds

No funds of a registered trade union, federation of trade unions or employers' organization shall be expended otherwise than as provided by their constitutions.

38. Prohibition of payment of certain fines and other penalties

The funds of a registered trade union, federation of trade unions or employers' organization shall not be applied, either directly or indirectly, in payment of the whole or any part of any fine or other penalty imposed upon any person by sentence or order of a court, other than a fine or other penalty imposed upon the trade union, federation of trade unions or employers' organization itself.

39. Interdict to restrain unauthorized or unlawful expenditure of funds, etc.

An interdict restraining any unauthorized or unlawful expenditure of the funds or use of any property of a registered trade union, federation of trade unions or employers' organization may be granted on the application of five or more persons having sufficient interest in the relief sought or of the Registrar or Attorney-General.

40. Books of account

(1) Every registered trade union, federation of trade unions or employers' organization shall cause to be kept such proper books of account as are necessary to give a true and fair view of its financial position and more particularly with respect to-

- (a) all sums of money received or expended by it and the matters in respect of which such receipt or expenditure takes place; and
- (b) its assets and liabilities.

(2) The books of account required to be kept under subsection (1) shall be kept by the trade union, federation of trade unions or employers' organization at its registered office or at such other place in Botswana as its executive committee thinks fit and shall be open at all reasonable times to inspection by members of the executive committee.

(3) Any officer of a registered trade union, federation of trade unions or employers' organization who fails to take every reasonable step open to him to secure compliance by the trade union, federation of trade unions or employers' organization with this section or has, by his own wilful act, been the cause of any failure by the trade union, federation of trade unions or employers' organization to comply with this section shall be guilty of an offence and liable to a fine not exceeding P200 or to imprisonment for a term not exceeding 12 months, or to both:

Provided that no person shall be sentenced to imprisonment under this section unless the court is satisfied that the offence was committed wilfully.

41. Circulation, furnishing and auditing of accounts

(1) The principal treasurer of a registered trade union or employers' organization shall, not later than 18 months immediately after its registration under this Act and subsequently in every financial year, prepare and prominently exhibit at the registered office of the trade union or employers' organization and send to every branch thereof, for similar exhibition at the branch's principal office, a balance sheet in such form as the Minister may require giving a true and fair view of the state of the financial affairs of the trade union or employers' organization at

the end of the immediately preceding financial year.

(2) Subsection (1) shall apply, with all necessary modifications, to the principal treasurer of a registered federation of trade unions.

(3) Every treasurer of a registered trade union or employers' organization and every other officer thereof who is responsible for its accounts or for the collection, disbursement, custody or control of any of its funds or moneys shall, upon resigning or otherwise vacating his office or at any other time when required to do so by the Registrar or by a resolution passed by a general meeting of the trade union or employers' organization, furnish the members of the trade union or employers' organization and the Registrar or, where a requirement is made by the Registrar, the Registrar alone, with a just and true account of all moneys received or disbursed by him during the period that has elapsed since the date of his last assuming office as a treasurer or such other period as the Registrar or the general meeting, as the case may be, may specify.

(4) A treasurer or other officer furnishing an account such as is referred to in subsection (3), shall include therein the balance of any moneys remaining in his hands and of all bonds, securities and other property of the trade union or employers' organization entrusted to his hands or custody or otherwise under his control.

(5) Subsections (3) and (4) shall apply, with all necessary modifications, to every treasurer and every other officer such as is referred therein to of a registered federation of trade unions as if the references therein to a general meeting were references to a meeting of the body in which the ultimate authority of the federation is vested.

(6) Every balance sheet prepared in accordance with subsection (1) and every account such as is referred to in subsection (3) shall be audited at the expense of the registered trade union, federation of trade unions or employers' organization by an auditor approved by an independent and impartial auditing body and, for these purposes, the auditor shall have and be given free access to all books and other documents relating to the accounts of the trade union, federation of trade unions or employers' organization.

(7) After the auditing of an account such as is referred to in subsection (3), the treasurer or other officer concerned of a trade union, federation of trade unions or employers' organization shall forthwith hand over to the trustees of the trade union, federation of trade unions or employers' organization such balance as is due from him of all bonds, securities, effects, books, papers and other property of the trade union, federation of trade unions or employers' organization in his hands or custody or otherwise under his control:

Provided that, in the case of a registered employers' organization that has no trustees in whom all its property is vested, the items specified in this section shall be handed over to the executive committee of the employers' organization.

(8) Any person who obstructs or in any other manner whatsoever hinders an auditor in carrying out his functions in terms of subsection (6) and any person who fails to comply with this section shall be guilty of an offence and liable to a fine not exceeding P100 or to imprisonment for a term not exceeding six months, or to both.

42. Annual return

(1) Every registered trade union, federation of trade unions or employers' organization shall furnish the Registrar, on or before the prescribed date in every financial year, with a copy of the balance sheet prepared and audited in accordance with section 41, together with a copy of the auditor's report thereon.

(2) In addition to furnishing the Registrar with a copy of the balance sheet in accordance with subsection (1), a registered trade union, federation of trade unions or employers' organization shall also furnish the Registrar with-

- (a) a copy of its constitution in force at the end of the immediately preceding financial year;
- (b) a copy of all amendments to its constitution and a written statement setting out all changes in its officers and trustees made during the immediately preceding financial

- year; and
- (c) a written statement setting out, in the case of a-
- (i) registered trade union, the number of its members;
 - (ii) registered federation of trade unions, the name and registered postal address of each of the trade unions belonging to the federation; or
 - (iii) registered employers' organization, the name and postal address of each of its members,
- at the end of the immediately preceding financial year.

(3) Any registered trade union, federation of trade unions or employers' organization that fails to comply with subsection (1) or (2) and every officer thereof who is knowingly a party to the failure shall be guilty of an offence and liable to a fine not exceeding P200.

(4) Any person who makes or causes to be made any entry in a document, with which the Registrar is required to be furnished in accordance with this section, that he knows to be false or does not believe to be true or omits or causes to be omitted from any such document any fact which he knows or suspects to be a material fact shall be guilty of an offence and liable to imprisonment for a term not exceeding three years.

43. Inspection of accounts and list of members

(1) The books of account of a registered trade union, federation of trade unions or employers' organization, together with its list of current members, shall be open to inspection by any officer or member of the trade union or employers' organization or of a trade union belonging to the federation of trade unions, at such times as shall be provided by its constitution, or by the Registrar or by any person authorized in that behalf by the Registrar, at any reasonable time.

(2) If any inspection to which a person is entitled in terms of this section is refused or unreasonably delayed, every officer of the trade union, federation of trade unions or employers' organization in question who is knowingly a party to the refusal or delay shall be guilty of an offence and liable to a fine not exceeding P100 or to imprisonment for a term not exceeding six months, or to both.

44. Interdict against officers

(1) A member of a registered trade union or employers' organization or of a trade union belonging to a registered federation of trade unions or the Registrar may apply to the High Court for an interdict prohibiting an officer of the trade union, federation of trade unions or employers' organization from holding office in or controlling the funds of the trade union, federation of trade unions or employers' organization.

(2) Where, on an application under this section, the High Court is satisfied that there is a *prima facie* case against the officer in question for fraudulent misuse of the funds of the trade union, federation of trade unions or employers' organization or that the officer is disqualified from holding office in the trade union, federation of trade unions or employers' organization, whether by virtue of this Act or otherwise, the High Court may grant the interdict for which the application is made.

PART X

Amalgamations and Federations of Registered Trade Unions (ss 45-47)

45. Amalgamation or federation of registered trade unions

(1) Subject to the other provisions of this section, any two or more registered trade unions may, in accordance with their respective constitutions, amalgamate together as one trade union, with or without dissolution of their funds, or form a federation of trade unions.

(2) Trade unions that have formed an amalgamation in terms of subsection (1), shall inform the Registrar, in writing, of such amalgamation within 14 days of it taking place.

(3) No registered trade unions shall amalgamate together as one trade union or form a federation of trade unions unless a general meeting of each of the trade unions resolves, by secret ballot conducted in the prescribed manner, that the trade union be authorized to do so

and the resolution receives the affirmative votes of at least-

- (a) two-thirds of the members of the trade union for the time being qualified to vote; and
- (b) half of the members of the trade union for the time being qualified to vote who are less than three consecutive months in arrears in payment of their dues to the trade union as required by its constitution.

(4) If any question arises whether, for the purposes of this section, a member of the trade union is or is not for the time being qualified to vote or is or is not less than three consecutive months in arrears in payment of his dues to the trade union as required by its constitution, the question shall be determined by the executive committee of the trade union.

46. Registration of amalgamation of registered trade unions

(1) Every amalgamation of registered trade unions shall be registered in accordance with this Act.

(2) Notwithstanding section 45, no resolutions of general meetings of registered trade unions authorizing the trade unions to amalgamate together as one trade union shall be acted upon unless the proposed amalgamation has been registered under this Act.

(3) Except as provided by this section, the provisions of this Act in respect of the registration of a trade union shall apply to an amalgamation or proposed amalgamation of registered trade unions.

(4) Following resolutions such as are referred to in subsection (2), an application shall forthwith be made to the Registrar for the registration of the proposed amalgamation under this Act.

(5) Every application such as is referred to in subsection (4) shall be-

- (a) in writing containing such particulars as may be prescribed;
- (b) signed by the principal secretary and 10 members of each of the registered trade unions proposing to amalgamate; and
- (c) accompanied by one copy of each of the resolutions by which the registered trade unions in question were authorized to amalgamate authenticated under the hand of the principal secretary of the trade union in question.

(6) If the Registrar is satisfied that section 45 has been complied with and that the proposed amalgamation of registered trade unions is entitled to registration under this Act, he shall register the proposed amalgamation in such manner as the Minister may direct and the amalgamation thereafter formed in conformity therewith shall be deemed to be registered as a trade union in accordance with this Act and to have effect from the date of such registration.

(7) Where any person is aggrieved by the refusal of the Registrar to register a proposed amalgamation of registered trade unions, that person may appeal against the refusal to the High Court and section 13 shall apply, with all necessary modifications, to the appeal.

47. Amalgamation not to prejudice rights

An amalgamation of two or more registered trade unions shall not prejudice any right of either or any of the trade unions or any right of a creditor of either or any of them.

PART XI

Recognition of Registered Trade Unions as Negotiating Bodies (s 48)

48. Recognition of registered trade union as negotiating body

(1) If a trade union represents at least one third of the employees of an employer, that trade union may apply for recognition under section 32 of the Trade Disputes Act.

(2) Notwithstanding any other provision of this Act, no member of management in any undertaking or enterprise shall be represented by a negotiating body, whether the same is or is not a registered trade union or branch thereof, in respect of matters bearing upon relations between his employer or the industry in which the member of management is employed and those employees thereof or therein who are members of management unless the negotiating body represents only members of management in the same undertaking, enterprise or industry and no other employees.

(3) In this section, "member of management" means an employee who has authority, on behalf of his employer, to employ, transfer, suspend, lay off, recall, promote terminate the employment of, reward, discipline or deal with the grievances relating to the employment any fellow employees or effectively to recommend any such action or the manner in which such grievances ought to be dealt with, if the exercise by him of that authority is not merely of a routine or clerical nature but require the use of his discretion.

(4) An employer who has granted recognition to a trade union, in terms of section 32 of the Trade Disputes Act, shall bargain in good faith with the union on the following matters-

- (a) remuneration and other terms and conditions of employment, including the physical conditions under which employees are required to work;
- (b) employment benefits;
- (c) employment policies concerning, inter alia, the recruitment, appointment, training, transfer, promotion, suspension, discipline and dismissal of employees;
- (d) the collective bargaining relationship including-
 - (i) organizational rights,
 - (ii) negotiation and dispute procedures, and
 - (iii) grievance, disciplinary and termination of employment procedures; and
- (e) any other agreed matter.

(5) A trade union that has been granted recognition shall bargain in good faith with the employer who recognises it in respect of any of the matters referred to in subsection (2).

(6) Any dispute concerning the duty to bargain in good faith shall be referred to the Commissioner for mediation in accordance with section 7 of the Trade Disputes Act.

(7) If the dispute is not settled, the dispute may be referred to the Industrial Court for determination.

(8) An employer may apply to the Industrial Court for an order withdrawing recognition on the following grounds, that:

- (a) the trade union no longer represents one third of the employers' employees;
- (b) the trade union refuses to negotiate in good faith with the employer;
- (c) the trade union refuses or fails to comply with an arbitration award or an order of the Industrial Court; or
- (d) the trade union has materially breached a collective agreement concluded with the employer.

48A. Recognition at level of industry (1) For the purposes of this section, a trade union includes two or more trade unions acting jointly.

(2) If a trade union has, as its members, at least one third of the employees in an industry, the trade union may apply to the Commissioner for the establishment of a joint industrial council under section 36 of the Trade Disputes Act.

(3) If a trade union has been granted recognition in an industry in terms of section 34 of the Trade Disputes Act-

- (a) any employers' organization representing employers in the industry shall bargain in good faith with the union on the matters listed in subsection (4); and
- (b) any employer in the industry, not belonging to an employers' organization, shall bargain in good faith with the union on the matters listed in subsection (4).

(4) The matters referred to in subsection (3) include-

- (a) remuneration and other terms and conditions of employment, including the physical conditions under which employees are required to work;
- (b) employment benefits;
- (c) employment policies concerning the recruitment, appointment, training, transfer, promotion, suspension, discipline and dismissal of employees;
- (d) the collective bargaining relationship including-

- (i) organizational rights,
- (ii) negotiation and dispute procedures, and
- (iii) grievance, disciplinary and termination of employment procedures; and
- (e) any other agreed matter.

(5) A trade union that has been granted recognition shall bargain in good faith with an employer or employers' organization that recognizes it in respect of any of the matters referred to in subsection (4).

(6) Any dispute concerning a duty to bargain in good faith shall be referred to the Commissioner for mediation in accordance with section 7 of the Trade Disputes Act.

(7) If any dispute referred to in subsection (6) is not settled, the dispute may be referred to the Industrial Court for determination.

48B. Organisational rights of recognised trade unions (1) Subject to the provisions of this section, a trade union granted recognition in terms of section 32 or 34 of the Trade Disputes Act, shall be entitled to-

- (a) have authorized representatives of the union granted access to an employer's premises for purposes of recruiting members, holding meetings or representing members;
- (b) have trade union dues and levies deducted from employees' wages on the written authorization of the employees; and
- (c) have trade union representatives appointed by the union from among its employees, recognized by employers for purposes of representing members of the union in respect of-
 - (i) grievances,
 - (ii) discipline, and
 - (iii) termination of employment.

(2) An employer may impose-

- (a) reasonable limits as to frequency, time and place, on the access of authorised representatives to the employer's premises;
- (b) no more than a five percent (5%) levy on a trade union for deducting trade union dues and levies from employees on behalf of the trade union; or
- (c) reasonable limits on the number of trade union representatives to be appointed to represent its members.

(3) An employee who authorizes a deduction of trade union dues and levies may withdraw that authorization in writing.

(4) If the constitution of a trade union requires the election of trade union representation at the workplace, the employer shall, subject to reasonable limitations as to place and time, permit the elections during working hours.

(5) Unless there is a collective agreement providing otherwise, any dispute concerning the provisions of this section shall be referred to the Commissioner under section 7 of the Trade Disputes Act for mediation.

(6) If the dispute is not settled within 30 days of the referral, any party may refer the dispute to the Industrial Court for determination.

48C. Disclosure of information to a recognised trade union (1) Subject to the provisions of subsections (2) to (8), an employer shall, on request, disclose all relevant information to a recognized trade union that is reasonably required to allow the trade union to consult or bargain collectively.

(2) An employer shall notify the recognized trade union, in writing, if any of the information requested by the union is information which may not be disclosed in terms of subsection (3).

(3) An employer shall not disclose information-

- (a) that is legally privileged;

- (b) that the employer cannot disclose without contravening a prohibition imposed on the employer by any law or order of court; or
- (c) subject to subsection (7), that is confidential and which, if disclosed, may cause material harm to an employee or the employer;
- (d) subject to subsection (7), that is private personal information relating to an employee, unless that employee consents to the disclosure of that information.

(4) Unless there is a collective agreement providing otherwise, any dispute concerning the provisions of this section shall be referred to the Commissioner for mediation in accordance with section 7 of the Trade Disputes Act.

(5) If the dispute is not settled within 30 days of the referral, any party may refer the dispute to the Industrial Court for determination.

(6) In any dispute about the disclosure of information, the Industrial Court shall first decide whether or not the information is relevant.

(7) If the Industrial Court decides that the information is relevant and if it is information referred to in subsection (3)(c) or (d), the court shall balance the harm that the disclosure is likely to cause, against the harm that the failure to disclose is likely to cause to the ability of the recognised trade union to engage effectively in consultation or collective bargaining.

(8) If the Industrial Court decides that the balance of harm favours disclosure, the Court may order disclosure on terms designed to limit the harm likely to be caused to the employee or employer.

(9) When making an order, the Court shall take into account any breach of confidentiality in respect of information disclosed to the trade union in terms of this section and may refuse to order the disclosure of the information for a period specified in the award.

(10) In any dispute about an alleged breach of confidentiality, the Industrial Court may order that the right of disclosure of information in that workplace be withdrawn for such period as may be specified in the award.

PART XII

Investigations (ss 49-52) 49. Enquiries by Minister, etc. (1) The Minister may, whenever he considers it necessary in the public interest so to do, by notice in the *Gazette*, call on any registered trade union to produce for his inspection, or for the inspection of any other person so authorized in the notice, all or any of the books or documents of the trade union.

(2) Where, in relation to any registered trade union, it appears to the Minister that-

- (a) ...
- (b) ...
- (c) that the affairs of the trade union are being conducted in a manner prejudicial to the financial interests of the members thereof, he may, by notice published in the *Gazette*, call on the trade union to produce for his inspection, or the inspection of any person so authorized in the notice, all or any of the books and documents of the union, or to furnish in writing such information or explanation as may be specified in the notice.

(3) Where a notice is published in the *Gazette* under subsection (1) or subsection (2), the trade union concerned shall comply with the terms thereof within such time as may be specified in the notice, and all persons who are or have been officers of the union shall, so far as it lies within their power, produce such books or documents, or furnish such information or explanation.

(4) Where a trade union fails to comply with any requirement under subsection (3) the union and any officer of the union who is in default shall be guilty of an offence and liable to a fine of P500, and where any officer or former officer of the union fails to comply with any requirement imposed on him as an individual under the said subsection, he shall also be guilty of an offence and liable to a fine of P500.

(5) If, after the receipt and consideration of such books, documents, information or explanations as are required under the provisions of this section, the Minister considers such

action to be necessary or desirable, he may appoint an investigator and proceed in accordance with the provisions of section 50, but whether or not he appoints an investigator, where it appears to him, as a result of such investigation or otherwise, that-

- (a) any person may have committed an offence for which he is criminally liable, the Minister may refer the matter to the Director of Public Prosecutions for such further action as the Director of Public Prosecutions considers necessary;
- (b) the registration of any trade union ought to be cancelled, the Minister may direct the Registrar to cancel the registration of that union; or
- (c) proceedings ought, in the public interest, to be brought by any trade union against any officer or former officer of such union, or any other person, or against any person to recover property, damages or compensation to which any trade union or member of a trade union is entitled, the Minister may direct the Registrar to bring proceedings for that purpose in the name of that trade union or member.

50. Appointment of investigator (1) The Minister may appoint an investigator to investigate and report to him, in such manner as he may direct, on the financial affairs of any trade union, in accordance with the provisions of section 49(5), or he may appoint such an investigator upon application being made therefor by the Registrar, or upon application being made therefor by not less than six members of such trade union:

Provided that-

- (a) the Minister shall not entertain an application under this subsection unless at least fourteen days prior notice thereof has been given to the trade union concerned, which shall be entitled to be represented at the hearing and to give evidence and call witnesses; and
- (b) in the case of an application being brought by members of a trade union, the application shall be supported by such evidence as may be necessary to show that the applicants have good reason to require an investigation, and at least fourteen days prior notice of the application has been given to the Registrar, who shall be entitled to be represented at the hearing, and to give evidence and call witnesses.

(2) The Minister may, on the recommendation of an investigator appointed under subsection (1), order the investigation of any other trade union or person which or who is, or has at any time been associated with the trade union under investigation, and the investigator shall thereafter investigate and report on the financial affairs of such other trade union so far as he considers that they are relevant to the investigation into the affairs of the trade union under investigation.

(3) It shall be the duty of all officers and agents of any trade union or of any other person whose financial affairs are investigated under the provisions of the previous subsections, to produce to the investigator all books or documents of or relating to the trade union or other person, as the case may be, which are in their custody or power, and otherwise to give to the investigator all assistance in connection with the investigation which they are reasonably able to give.

(4) The investigator may examine on oath the officers or agents of the trade union concerned, or the other person concerned, as the case may be, in relation to the constitution of the union, its administration, financial affairs or activities, and may administer an oath accordingly.

(5) If an officer or agent of the trade union or other person concerned destroys or refuses to produce to the investigator any book or document which it is his duty to produce under this section, or who refuses to answer any question put to him by the investigator in respect of the constitution, administration, financial affairs or other activities of the trade union or other person, as the case may be, he shall be guilty of an offence and liable to a fine of P1 000 and to imprisonment for one year.

(6)(a) If the investigator considers it necessary for the purposes of an investigation under

this Act that a person whom he has no power to examine on oath should be so examined, he may apply to the High Court, and the High Court may thereupon order that person to attend before it and be examined on oath on any matter relevant to the investigation.

(b) On an examination under this subsection the investigator may take part therein, either personally or by an advocate, and any person examined shall answer all questions that are put or allowed to be put to him by the High Court.

(c) Such person may, by a statement made by him personally, or in answer to questions put to him, with the approval of the Court, by an advocate employed by him at his own cost, explain or qualify any answers given by him under paragraph (b).

(d) Notes of the examination and any explanations or qualifications made by the person examined shall be taken down in writing and shall be read over to and signed by him, and may thereafter be used in evidence against him.

(7) Notwithstanding the provisions of subsection (6)(c), the High Court may allow the person examined such costs as it considers just in all the circumstances, and any such costs allowed shall be paid as part of the expenses of the investigation.

(8) The investigator shall, at the conclusion of the investigation, make a final report to the Minister, and the Minister, shall, unless in his opinion it is not in the public interest so to do-

- (a) forward a copy of the report to the trade union concerned;
- (b) forward a copy of the report, on request, to any member of the trade union concerned who was one of the applicants as a result of whose application the investigation was undertaken;
- (c) forward a copy of the report, on request and on payment of any reasonable fee therefor, to any member of the trade union concerned, or to any other person whose affairs are investigated in the report; and
- (d) cause a copy of the report to be published in the *Gazette*.

(9) A copy of the report as published in the *Gazette* shall be admissible, in any legal proceedings, as evidence of the opinion of the investigator in relation to any matter contained in the report.

(10) For the purposes of this section, any reference to officers or to agents of a trade union shall be deemed to include past as well as present officers or agents, as the case may be, of the trade union.

51. ... 52. Application of Part of federations of trade unions The provisions of this Part relating to the financial investigation of trade unions shall apply, *mutatis mutandis*, to the investigation of federations of trade unions.

PART XIII

Picketing, Intimidation, Disputes, etc. (ss 53-56)

53. Peaceful picketing and prevention of intimidation

(1) Notwithstanding anything contained in this Act or any other law-

- (a) it shall be lawful for one or more persons, acting on their own or on behalf of a registered trade union or employers' organization or of an individual employer or a firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information or of peacefully persuading or inducing any person to work or to abstain from working; and
- (b) it shall not be lawful for one or more persons, whether acting on their own behalf or on behalf of a registered trade union or employers' organization or of an individual employer or a firm and notwithstanding that they may be acting in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a 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 any person to work or to

abstain from working, if they so attend in such numbers or otherwise in such manner as to be likely-

- (i) ...
- (ii) to lead to a breach of the peace.

(2) Any person who acts in a way declared unlawful by subsection (1) (b) shall be guilty of an offence and liable to a fine not exceeding P100 or to imprisonment for a term not exceeding six months, or to both.

54. Intimidation and annoyance

Any person who, with a view to compelling any other person to abstain from doing or to do any act which that other person has a legal right to do or to abstain from doing, wrongfully and without legal authority-

- (a) uses violence or intimidates that other person or that person's spouse or children or injures his property;
- (b) persistently follows that other person about from place to place;
- (c) hides any tools, clothes or other property owned or used by that other person or deprives him of the same or hinders him in the use thereof;
- (d) watches or besets the house or place where the other person resides or works or carries on business or happens to be or the approach to such house or place; or
- (e) follows that person in a disorderly manner in or through any street or road,

shall be guilty of an offence and liable to a fine not exceeding P100 or to imprisonment for a term not exceeding six months, or to both.

55. Conspiracy in trade disputes

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

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

(3) Nothing in this section shall exempt from punishment any person guilty of a conspiracy for which a punishment is awarded by any enactment.

(4) Nothing in this section shall affect the law relating to riot, unlawful assembly, breach of the peace or sedition or any offence against the President or in contravention of Part II, Division I, of the Penal Code.

(5) For the purposes of this section, a crime means an offence the commission of which renders the offender liable to be imprisoned either absolutely or at the discretion of the court as an alternative to some other punishment.

56. Freedom of association of employees

(1) No employer shall make it a condition of employment of any employee that the employee shall not be or become a member of any registered trade union or other organization representing employees in any industry or of a particular registered trade union or other such organization or participate in the activities of a registered trade union or other such organization.

(2) Notwithstanding anything to the contrary in any enactment, no employer shall prohibit an employee from being or becoming a member of any registered trade union or other organization such as is referred to in subsection (1) or of a particular registered trade union or other such organization or subject him to any penalty by reason of his membership or participation in the activities of a registered trade union or other such organization.

(3) Any employer who contravenes this section and any other person who is knowingly a party to the contravention shall be guilty of an offence and liable to a fine not exceeding P200 or to imprisonment for a term not exceeding 12 months, or to both.

PART XIV

Offences and Penalties (ss 57-59)

57. Penalty for misuse of money or other property

(1) Where, on complaint made by a member of a registered trade union or employers' organization or by an officer or member of a trade union belonging to a registered federation of trade unions or by the Registrar, it is shown to the satisfaction of a court of a Magistrate Grade I or over that any person-

- (a) has in his possession or control any property of the trade union, federation of trade unions or employers' organization otherwise than in accordance with its constitution; or
- (b) has unlawfully expended or withheld any money of the trade union, federation of trade unions or employers' organization,

the court may, if it considers that the justice of the case so requires, order that person to deliver all such property or pay the money so unlawfully expended or withheld to the trustees of the trade union or federation of trade unions or of the employers' organization, if such exist, or, if such do not exist, to the executive committee of the employers' organization.

(2) A complaint under subsection (1), not being a complaint made by the Registrar, shall not be entertained unless the court is satisfied that the complainant is or was, on the date of the complaint, a member of the trade union or employers' organization or an officer or member of a trade union that belongs or belonged, on that date, to the federation of trade unions, in respect of whose money or other property the complaint is made.

(3) Any person to whom an order under subsection (1) is addressed who fails to comply therewith, within such time as shall be specified therein, shall be guilty of an offence and liable to a fine not exceeding P100.

58. Penalty for false entries in documents

Any person who makes or causes to be made any entry in a document required by or for the purposes of this Act that he knows to be false or does not believe to be true in a material particular or omits or causes to be omitted from any such document any fact which he knows or suspects to be a material fact shall be guilty of an offence and liable, unless some other punishment is prescribed therefor, to a fine not exceeding P1 000 or to imprisonment for a term not exceeding two years, or to both.

59. Limitation of prosecutions No prosecution shall be instituted for an offence under section 53 or 54 or for an offence of attempting or conspiring with another person to commit such an offence unless the prosecution is instituted by or at the instance of or with the consent in writing of the Director of Public Prosecutions:

Provided that a person may be arrested for and charged with any such offence and remanded in custody or on bail notwithstanding that the consent of the Director of Public Prosecutions to the institution of a prosecution for the offence has not been obtained; but no further or other proceedings shall be taken unless that consent has been obtained.

PART XV

Miscellaneous (ss 60-69)

60. ... 61. Inspection of records in custody of Registrar

All registers, books and other documents in the custody of the Registrar by virtue of this Act shall be open for inspection by members of the public during such hours, on payment of such fees and subject to such conditions as may be prescribed.

62. ... 63. Restriction on receipt of funds

(1) A registered trade union, federation of the trade unions or employers' organization may, subject to the provisions of any other law in force, accept funds originating from outside Botswana.

(2) In this section, "funds" includes all donations, loans or other assistance having pecuniary value, other than air, road or sea passages, or scholarships.

64. Service of legal process

Every summons, notice or other document required to be served on a registered trade union, federation of trade unions or employers' organization in any civil or criminal proceedings

shall be deemed, for the purposes or those proceedings, to be duly served if it is delivered at its registered office or posted to its registered postal address or served personally on its president, principal secretary or treasurer or any other of its officers, in so far as that service is otherwise in compliance with the requirements of any other law relating to the service of documents.

65. Certain facts to be notified in Gazette

The Registrar shall, by notice published in the *Gazette*, notify-

- (a) every registration of a trade union, federation of trade unions or employers' organization under this Act or refusal of such registration;
- (b) every cancellation of the registration of a trade union, federation of trade unions or employers' organization registered under this Act;
- (c) every registration of a change of name by a registered trade union, federation of trade unions or employers' organization;
- (d) every registration of a proposed amalgamation of registered trade unions under this Act or refusal of such registration; and
- (e) every dissolution of a registered trade union, federation of trade unions or employers' organization.

66. Power of Minister to require certain information

(1) The Minister may, by notice published in the *Gazette*, require-

- (a) any trade union or employers' organization or the officials thereof;
- (b) any federation or other association or organization of or to which trade unions or employers' organizations are members or otherwise affiliated or any body of or to which any such federation or other association or organization is itself a member or otherwise affiliated or the officials thereof;
- (c) the representatives of any class of workers or any industry; or
- (d) any person or body of persons who or which represents more than one registered trade union or represents any trade or workers' movement or is concerned with and devoted to trade unionism, labour relations or other such matters,

to notify his, their or its existence in writing lodged with the Registrar.

(2) Any person or body of persons of whom a requirement is made under subsection (1) shall forthwith comply therewith and any person or body of persons who fails knowingly to do so and any other person who is knowingly a party to the failure shall be guilty of an offence and liable to a fine not exceeding P100 or to imprisonment for a term not exceeding three months, or to both; and where, in any proceedings for an offence under this subsection, it is proved that a person or body of persons failed to comply with such a requirement, the court shall presume that he failed knowingly to do so unless the contrary is proved.

(3) The Minister may, by notice in writing served on any person or body of persons such as is referred to in subsection (1), require him to provide the Minister, within such reasonable time as shall be specified in the notice, with such particulars as appear to the Minister necessary to have for the purpose of ascertaining whether this Act (including any regulations made thereunder) is or is not being or has or has not been complied with.

(4) Any person or body of persons on whom a notice has been served under subsection (3) who fails, without reasonable excuse, to comply therewith or, in compliance or purported compliance therewith, provides particulars that he knows to be false or does not believe to be true or omits particulars that he knows or suspects to be material particular and any other person who is knowingly a party to the failure, provision or omission shall be guilty of an offence and liable to a fine not exceeding P100 or to imprisonment for a term not exceeding three months, or to both; and where, in any proceedings for an offence under this subsection, it is proved that a person or body of persons failed to comply with such notice, the court shall presume that the failure was without reasonable excuse unless the contrary is proved.

67. Power of Minister to make regulations

The Minister may make regulations for the better carrying into effect of the purposes and

provisions of this Act and, without prejudice to the generality of the foregoing, such regulations may-

- (a) prescribe the fees payable in connection with registration under this Act;
- (b) prescribe the hours during which and the conditions subject to which documents in the custody of the Registrar shall be open to inspection by members of the public and the fees to be paid in respect thereof;
- (c) ...
- (d) ...
- (e) prescribe the basic agreements and arrangements in respect of the system commonly known as "check-off" and the subscriptions to trade unions, federations of trade unions and employers' organizations; and
- (f) provide generally for all matters connected with or incidental to the matters referred to in this section.

68. Inapplicability of certain laws

The Companies Act and the Co-operative Societies Act shall not apply to a trade union, federation of trade unions or employers' organization and the registration of a trade union, federation of trade unions or employers' organization under either of those Acts shall be void.

69. Matters not affected by Act

Nothing in this Act shall-

- (a) affect any agreement-
 - (i) between partners as to their own business;
 - (ii) between an employer and those employed by him as to their employment by him;
or
 - (iii) in consideration of the sum of the goodwill of a business or of instruction in a profession, trade or handicraft; or
- (b) preclude any registered trade union, federation of trade unions or employers' organization from providing benefits for its members or any registered federation of trade unions from providing benefits for members of a trade union belonging to the federation.

SCHEDULE [*repealed*]