

# Industrial Organizations Act 1962

Chapter 173.

*Industrial Organizations Act 1962.*

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.

Chapter 173.

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## ARRANGEMENT OF SECTIONS.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

AN ACT

entitled

*Industrial Organizations Act 1962,*

Being an Act to provide for the registration and control of industrial organizations, and for related purposes.

## PART I. – PRELIMINARY.

### 1. INTERPRETATION.

(1) In this Act, unless the contrary intention appears–

“**branch**”, in relation to an industrial organization, means any number of the members of the organization who–

(a) in accordance with the constitution of the organization, have appointed their own management committee; and

(b) remain under the control of the executive committee of the organization; and

(c) continue to be bound under the constitution of the organization to contribute to its general funds;

“**certificate of registration**” means a certificate of registration as an industrial organization issued under Section 21(1);

“**Deputy Registrar**” means a Deputy Industrial Registrar appointed under Section 3(b);

“**employee**” means a person who has entered into or works under a contract of service or apprenticeship–

(a) whether by way of manual labour, clerical work or otherwise; and

(b) whether the contract is express or implied, oral or in writing; and

(c) whether on wages or piece-work rates, or as a member of a buttygang,

other than a member of the Defence Force, and includes a person whose usual occupation is that of such an employee;

**“employer”** means a person, firm or association employing one or more employees, whether on behalf of himself or itself or any other person, and includes—

(a) the State; and

(b) an authority established by or under a law; and

(c) a managing director or manager of a company, firm or association; and

(d) a manager for an employer; and

(e) a club;

**“executive committee”**, in relation to an industrial organization, means the person or body of persons to whom or to which the management of the affairs of the organization is entrusted;

**“federation”** means an association of two or more industrial organizations formed under Section 42;

**“industrial dispute”** means a dispute or difference between—

(a) an employer and an employee or employees; or

(b) employers and employees; or

(c) employees and employees; or

(d) employers and employers,

connected with an industrial matter, and includes—

(e) a threatened, impending or probable dispute; and

(f) a situation likely to give rise to a dispute; and

(g) a dispute arising from a contract of employment the particulars of which are contested by either party to the contract within three months after the termination of the contract;

**“industrial matters”** means all matters pertaining to the relations of employers and employees and, without limiting the generality of that statement, includes—

(a) all matters or things affecting or relating to work done or to be done; and

(b) the privileges, rights and duties of employers and employees; and

(c) the wages, allowances and remuneration of persons employed or to be employed; and

(d) the piece-work, contract or other reward paid or to be paid in respect of employment; and

(e) a question, whether piece-work or contract work or any other system of payment by results is to be allowed, forbidden or exclusively prescribed; and

(f) a question, whether monetary allowances are to be made by employers in respect of any time when

an employee is not actually working; and

(g) the hours of employment, sex, age, qualifications and status of employees; and

(h) the mode, terms and conditions of employment; and

(i) the employment of children or young persons, or of any persons or class of persons; and

(j) the preferential employment or the non-employment of—

(i) any particular person or class of persons; or

(ii) persons being or not being members of an industrial organization; and

(k) the right to dismiss or to refuse to employ, or the duty to reinstate in employment, a particular person or class of persons; and

(l) any custom or usage in an industry, whether general or in a particular locality; and

(m) any shop, factory or industry dispute, including any matter that may be a contributory cause of such a dispute; and

(n) any question arising between two or more industrial organizations, or within an industrial organization, as to the rights, status or functions of the members of those organizations or of that organization, or otherwise, in relation to the employment of those members; and

(o) any claim that the same wage shall be paid to persons of either sex performing the same work or producing the same return or profit or value to their employer; and

(p) any question as to the demarcation of functions of employees or classes of employees, whether as between employers and employees, or as between members of different organizations; and

(q) the provision of first aid equipment, medical attendance, ambulance facilities, restrooms, sanitary and washing facilities, canteens, cafeterias, dining rooms and other amenities for employees; and

(r) the fixing of standards of normal temperatures and atmospheric purity in working places below or above ground; and

(s) the prescribing of shorter hours, higher wages or other conditions in respect of persons employed under abnormal conditions or in abnormal working places, and the determination of what are abnormal conditions or abnormal working places,

and includes all questions, what is right and fair in relation to an industrial matter having regard to the interests of the persons immediately concerned and of Papua New Guinea as a whole;

**“industrial organization”** means a trade or other union, or branch of a union, or an organization or body—

(a) that is composed of, or is representative of, employers or employees; and

(b) one of the objects of which is, under its constitution, the regulation, in respect of industrial matters, of the relations between—

(i) employees and employers; or

(ii) employees and employees; or

(iii) employers and employees,

or for taking part in or in the settlement of industrial disputes on behalf of its members,

whether it would or would not, if this Act had not been passed, have been deemed to be unlawful by reason of some one or more of its objects being in restraint of trade;

**“Inspector”** means an Inspector appointed under Section 3(c);

**“objector”** means a person who has lodged, under Section 14, a notice of objection to the registration of an industrial organization;

**“officer”** means—

(a) in relation to an industrial organization—

(i) the secretary of the organization; or

(ii) a member, other than a trustee or auditor, of the executive committee; and

(b) in relation to a branch—a member, other than a trustee or auditor, of the management committee of the branch;

**“the Register”** means the Register of Industrial Organizations kept under Section 7;

**“registered”** means registered under this Act;

**“registered office”** means the office of an industrial organization registered under Section 47;

**“the Registrar”** means the Industrial Registrar appointed under Section 3(a);

**“registration”** means registration as an industrial organization under Section 20;

**“the regulations”** means any regulations made under this Act;

**“secretary”**, in relation to an industrial organization, includes a manager or other principal executive officer of the organization;

**“this Act”** includes the regulations.

(2) For the purposes of the definition of “employee” in Subsection (1), the fact that a person is working—

(a) under a contract for labour only, or substantially for labour only; or

(b) as lessee of—

(i) any tools or other implements of production; or

(ii) a vehicle used in the delivery of goods; or

(c) as the owner, whether wholly or partly, of a vehicle used in the transport of goods or passengers,

does not in itself prevent him from being held to be an employee within the meaning of that definition.

(3) Without affecting any restrictions imposed by any other provision of this Act, the question

whether—

(a) an employer should be obliged to employ only—

(i) members of; or

(ii) persons who are willing to become, or do become, members of,

a specified or any industrial organization; or

(b) an employee should be obliged to restrict his entry into employment to, or to remain in employment with, only an employer who—

(i) is a member of; or

(ii) is willing to become, or does become, a member of,

a specified or any industrial organization,

is not, for the purposes of this Act, an industrial matter, nor is a dispute as to any such matter an industrial dispute for those purposes.

## **2. APPLICATION TO THE STATE, ETC.**

This Act applies to and in relation to the State and an authority constituted by or under a law.

## **PART II. – REGISTRAR AND OTHER OFFICERS.**

### **3. APPOINTMENT OF INDUSTRIAL REGISTRAR, DEPUTY INDUSTRIAL REGISTRAR, INSPECTORS AND OFFICERS.**

The Minister may, by notice in the National Gazette—

(a) appoint a person to be the Industrial Registrar; and

(b) appoint a person to be a Deputy Industrial Registrar; and

(c) appoint Inspectors and such other officers as he thinks necessary for the purposes of this Act.

### **4. DUTIES OF REGISTRAR, ETC.**

(1) Subject to this Act, the powers, functions, duties and responsibilities of the Registrar, a Deputy Registrar, an Inspector and an officer appointed under Section 3(c) are as prescribed or as the Minister directs.

(2) The Departmental Head and the Registrar have all the powers of an Inspector.

### **5. DUTIES, ETC., OF INSPECTORS.**

(1) An Inspector has such duties, and shall make such investigations and reports in relation to the observance of this Act, as the Departmental Head directs.

(2) Subject to Subsection (3), for the purpose of carrying out his duty under this section an Inspector may, during working hours, enter any building, mine, mine working, ship, vessel, place or premises in which, or in respect of which—

(a) an industry is carried on or work is being, or has been, done or commenced; or

(b) any matter or thing is taking place, or has taken place,

in relation to which—

(c) an industrial dispute is pending; or

(d) an award has been made; or

(e) an offence against this Act is suspected,

and may—

(f) inspect any work, material, machinery, appliances, articles, book or document in it or them; and

(g) interview any employee engaged in it or them.

(3) A mine shall not be entered or inspected under Subsection (2) by a person other than a qualified inspector of mines or mining engineer except in the presence of a qualified inspector of mines or mining engineer.

## **6. PROTECTION OF OFFICERS.**

Proceedings do not lie against a person appointed under Section 3 for anything done or omitted to be done by him in good faith and without negligence and in intended exercise of a power or performance of a duty conferred or imposed by this Act.

## **PART III. – REGISTRATION.**

### **7. REGISTER OF INDUSTRIAL ORGANIZATIONS.**

(1) The Registrar shall keep, in the prescribed form, a Register of Industrial Organizations.

(2) The Register shall contain such particulars of and in relation to a registered industrial organization as are prescribed.

(3) A copy of an entry in the Register, certified under the hand of the Registrar, is, until the contrary is shown, proof of the facts specified in the copy, as at the date of the copy.

### **8. REQUIREMENT OF REGISTRATION OF INDUSTRIAL ORGANIZATIONS.**

(1) The members of the executive committee or the secretary of an industrial organization that consists of not less than 20 employees or four employers shall, within a period of three months from the date of formation of the organization—

(a) make application to the Registrar for the registration of the organization as an industrial organization; or

(b) dissolve and dispose of the funds of the organization in accordance with its rules and this Act.

(2) If he thinks fit, the Registrar may grant an extension of the period specified in Subsection (1) for a period or periods not exceeding six months in the aggregate.

(3) The members of the executive committee or the secretary of an industrial organization, other than an industrial organization referred to in Subsection (1) may make application to the Registrar for the registration of the organization as an industrial organization.

## **9. APPLICATION FOR REGISTRATION.**

An application for the registration of an industrial organization shall—

- (a) be in the prescribed form; and
- (b) be accompanied by the prescribed particulars; and
- (c) subject to Section 68, be signed by—
  - (i) in the case of an organization of employers—at least four members or officers of the organization; or
  - (ii) in the case of an organization of employees—at least 20 members or officers of the organization.

## **10. FURTHER PARTICULARS.**

In considering an application for registration of an industrial organization, the Registrar may require such further information to be furnished to him as he thinks necessary for the purpose of satisfying himself that—

- (a) the application complies with this Act; and
- (b) there is no objection to the registration of the organization.

## **11. SIMILARITY OF NAME.**

Where the name by which an industrial organization is proposed to be registered—

- (a) is identical with the name by which any other existing industrial organization is registered; or
  - (b) in the opinion of the Registrar—
    - (i) so nearly resembles a name of a kind referred to in Paragraph (a) as to be likely to deceive or mislead; or
    - (ii) is itself misleading or undesirable,
- the Registrar shall—
- (c) require the persons applying for registration to alter the name of the organization proposed in the application; and
  - (d) refuse to register the organization until the alteration has been made.

## **12. ORDER OF DEALING WITH APPLICATIONS.**

Applications for registration shall be dealt with, as far as practicable, in the order in which they are received.

## **13. ADVERTISEMENT OF APPLICATION.**

- (1) The Registrar shall cause a notice of the receipt of an application for registration to be advertised in the National Gazette.
- (2) Where an organization that has applied for registration alters its rules before registration, the alterations shall be lodged with the Registrar, who shall cause notice of them to be published in the

National Gazette.

#### **14. OBJECTION TO REGISTRATION.**

(1) An organization or person may, within 35 days after the advertisement of a notice under Section 13, lodge with the Registrar a notice of objection, in the prescribed form, to the registration of the industrial organization concerned.

(2) The grounds of objection shall be set out in the notice, and particulars of each ground of objection shall be given.

(3) The objector shall be restricted to the grounds specified in the notice of objection unless the Registrar, on application and for reasons shown by the objector, permits otherwise.

#### **15. EVIDENCE IN SUPPORT OF OBJECTION.**

An objector shall—

(a) lodge with the notice of objection under Section 14 a statutory declaration in support setting out shortly the facts on which the objector relies in respect of each ground of objection; and

(b) within seven days after the notice of objection is lodged with the Registrar, serve copies of the notice of objection and of the statutory declaration on the applicants.

#### **16. EVIDENCE IN REPLY.**

Within 35 days after service under Section 15 of a notice of objection, the applicants may lodge with the Registrar a statutory declaration in answer to the objection, and shall serve copies of the declaration on the objector within seven days after it is lodged with the Registrar.

#### **17. DATE OF HEARING.**

The Registrar shall fix a day for hearing the application and the objection, and shall give notice of the date to the objector and to the applicants.

#### **18. HEARING.**

(1) The application and the objection shall be heard by the Registrar.

(2) On the hearing, the Registrar shall hear the parties if they are present and desire to be heard, and shall, subject to this Act, decide the matter.

(3) The Registrar may, in his discretion, permit a party to call oral evidence.

#### **19. RIGHT OF APPLICANTS TO BE HEARD.**

The Registrar shall not refuse to grant an application for registration until he has given the applicants an opportunity of being heard in support of it.

#### **20. REGISTRATION.**

(1) Subject to this Act, where the Registrar is satisfied that—

(a) an industrial organization complies with this Act; and

(b) in all the circumstances there is no objection to the registration of the organization,



he may, in the prescribed manner, register an industrial organization as a registered industrial organization under this Act.

(2) The Registrar shall cause notice of the registration of an industrial organization to be published in the National Gazette.

## **21. CERTIFICATE OF REGISTRATION.**

(1) On registering an industrial organization under Section 20, the Registrar shall issue to the organization a certificate of registration in the prescribed form as a registered industrial organization.

(2) A certificate of registration is, unless proved to have been cancelled, conclusive evidence for all purposes that the industrial organization in respect of which it is issued is duly registered under this Act.

## **22. REFUSAL OF REGISTRATION.**

(1) If the Registrar is satisfied that—

(a) an industrial organization has not complied with this Act; or

(b) any of the objects or the constitution of an industrial organization is unlawful or conflicts with a provision of this Act; or

(c) an industrial organization is being used for an unlawful purpose; or

(d) the funds of an industrial organization are being applied—

(i) in an unlawful manner; or

(ii) towards an unlawful object; or

(iii) towards an object not authorized by this Act; or

(e) the accounts of an industrial organization are not being kept in accordance with this Act; or

(f) an industrial organization is a branch of an industrial organization in the country that is not a registered industrial organization; or

(g) some other industrial organization, whether registered or the subject of an application for registration, is sufficiently representative of the whole or of a substantial proportion of the interests in respect of which the applicants seek registration of an industrial organization; or

(h) an industrial organization is wholly or partly formed, organized, supported, maintained or conducted, directly or indirectly, for the purpose of, or with a view to, opposing, injuring or prejudicing the interests of employers or employees, as the case may be, whose interests it purports to represent, further or protect,

the Registrar may refuse to register the organization.

(2) Where the Registrar refuses to register an industrial organization, he shall notify the applicants, in writing, of the ground of the refusal, and the industrial organization is dissolved with effect from—

(a) the date of the notification; or

(b) where the industrial organization appeals under Section 70 to the National Court against the

decision of the Registrar and the appeal is dismissed—the date of the dismissal of the appeal.

### 23. CANCELLATION OF REGISTRATION.

(1) The Registrar may, by written order, cancel the registration and the certificate of registration of a registered industrial organization—

(a) at the request of the organization on its dissolution, which request shall be verified in such manner as the Registrar requires; or

(b) if he is satisfied that the organization has—

(i) ceased to exist; or

(ii) amalgamated with another registered industrial organization.

(2) Subject to this Act, where the Registrar is satisfied that—

(a) the registration of an industrial organization was obtained by fraud, misrepresentation or mistake; or

(b) any of the objects of an industrial organization is unlawful; or

(c) the constitution of an industrial organization or of its executive committee is unlawful; or

(d) an industrial organization is being used for an unlawful purpose; or

(e) an industrial organization has, after notice from the Registrar—

(i) contravened a provision of this Act; or

(ii) allowed a rule to continue in force that is inconsistent with a provision of this Act; or

(iii) rescinded a rule providing for any matter for which provision is required by Section 48 to be made; or

(f) the funds of an industrial organization have been or are being expended on an object not authorized by this Act; or

(g) the accounts of an industrial organization are not being kept in accordance with this Act; or

(h) an industrial organization was at the time of its registration, or has subsequently become, a branch of an industrial organization in the country that is not a registered industrial organization; or

(i) an industrial organization is wholly or partly formed, organized, supported, maintained or conducted, directly or indirectly, for the purpose of, or with a view to, opposing, injuring or prejudicing the interests of employers or employees, as the case may be, whose interests it purports to represent, further or protect,

the Registrar may cancel the registration, and the certificate of registration, of the organization.

(3) The registration and the certificate of registration of an industrial organization shall not be cancelled under Subsection (2) unless—

(a) the Registrar has given to the organization not less than two months' written notice of the proposed cancellation—

(i) specifying the grounds on which it is proposed to cancel the registration and the certificate of registration; and

(ii) requiring the organization to show cause, in writing, against the proposed cancellation within a period of two months after receipt of the notice; and

(b) the organization has—

(i) within the period of two months referred to in Paragraph (a), failed to show cause in writing against the proposed cancellation; or

(ii) shown cause within that period, but has failed to satisfy the Registrar, after such enquiry as he thinks necessary in the circumstances, that its registration should not be cancelled.

(4) An order made by the Registrar under this section cancelling the registration and the certificate of registration of an industrial organization shall—

(a) specify briefly the grounds for the cancellation; and

(b) be served promptly on the organization.

(5) The Registrar shall cause notice of the cancellation of the registration of an industrial organization to be published in the National Gazette.

#### **24. CONSEQUENCES OF CANCELLATION OF REGISTRATION.**

(1) Where—

(a) the registration and certificate of registration of an industrial organization are cancelled under Section 23; and

(b) in the case of a cancellation under Subsection (2) of that section, either—

(i) no appeal is made under this Act to the National Court; or

(ii) any such appeal is dismissed,

then—

(c) the organization, its officers and its members cease to enjoy—

(i) in the case of a cancellation under Section 23(1)—as from the date of cancellation; or

(ii) in the case of a cancellation under Section 23(2)—as from the date of expiration of the time for appeal or of dismissal of the appeal,

the rights, immunities and privileges of a registered industrial organization, and of officers and members of a registered industrial organization, respectively; and

(d) as from the applicable date referred to in Paragraph (c)—

(i) the organization is dissolved; and

(ii) its funds shall be disposed of in accordance with this Act; and

(e) the certificate of registration of the organization shall be delivered to the Registrar by the organization for cancellation.

(2) The operation of Subsection (1)(a) is without prejudice to any liabilities incurred or to be incurred by the industrial organization that may be enforced against the organization and its assets.

## **25. ACTING ON BEHALF OF UNREGISTERED INDUSTRIAL ORGANIZATION, ETC.**

A person who, except for the purpose of—

- (a) the formation of the organization; or
- (b) applying for and obtaining registration of the organization; or
- (c) dissolving the organization and disposing of its funds in accordance with its rules; or
- (d) bringing or defending legal proceedings,

takes any part in the management of, or acts or purports to act on behalf of or as an officer of, an unregistered industrial organization to which Section 8(1) applies, is guilty of an offence.

Penalty: A fine not exceeding K200.00 and, in addition, in the case of a continuing offence a fine not exceeding K10.00 for each day for which the offence continues.

## **26. SURRENDER OF CANCELLED CERTIFICATE.**

On the cancellation under this Act of the certificate of registration of an industrial organization, an officer or member of the organization who has the certificate in his possession or under his control must deliver the certificate to the Registrar.

Penalty: A fine not exceeding K100.00 and, in addition, in the case of a continuing offence a fine not exceeding K10.00 for each day for which the offence continues.

## **PART IV. – RIGHTS AND LIABILITIES OF REGISTERED INDUSTRIAL ORGANIZATIONS.**

### **27. INCORPORATION.**

(1) For the purposes of this Act, a registered industrial organization—

- (a) is a corporation by the name by which it is registered; and
- (b) has perpetual succession; and
- (c) shall have a seal.

(2) All courts, Judges and persons acting judicially shall take judicial notice of the seal of a registered industrial organization affixed to any document, and shall presume that it was duly affixed.

### **28. POWERS OF REGISTERED INDUSTRIAL ORGANIZATIONS.**

(1) Subject to this Act and to the rules of the organization, a registered industrial organization has power—

- (a) to invest its funds; and
- (b) to purchase, take on lease or acquire by gift, devise, exchange or otherwise, property in the country; and

(c) to sell its property or any part of it, together or in parcels, by public auction or private contract, for cash or on credit, on such terms and subject to such conditions as it thinks proper; and

(d) to exchange the property or any part of it for other property; and

(e) to transfer and assure the property when sold or exchanged to the purchaser or purchasers or to the person taking the exchange, freed and discharged from any trusts affecting it; and

(f) for all or any of the purposes referred to in Paragraphs (a), (b), (c), (d) and (e), to sign, seal and execute all such contracts, transfers and other deeds, documents and instruments as are necessary; and

(g) to raise sums of money when and on such terms as it thinks proper, by deposit of the deeds or by mortgage, with or without power of sale, of its property or any part of it, and to execute all proper assurances for that purpose; and

(h) to demise and lease its property or any part of it for such periods at such rents and on such terms and subject to such conditions as it thinks proper; and

(i) to appoint by instrument under its seal any person as its attorney, either generally or in respect of specified matters, and to act in any place.

(2) All deeds signed by an attorney appointed under Subsection (1)(i) on behalf of the industrial organization and under his seal are binding on the organization and have the same effect as if they were under its seal.

## **29. IMMUNITY FROM CIVIL SUIT.**

No civil legal proceedings are maintainable against a registered industrial organization or an officer or member of a registered industrial organization in respect of an act done in contemplation or in furtherance of an industrial dispute to which a member of a registered industrial organization is a party on the ground only that the act—

(a) induces some other person to break a contract of employment; or

(b) interferes with—

(i) the trade, business or employment of some other person; or

(ii) the right of some other person to dispose of his capital or of his labour as he wishes.

## **30. OBJECTS IN RESTRAINT OF TRADE.**

The objects of a registered industrial organization are not, by reason only of the fact that they are in restraint of trade, unlawful so as—

(a) to make a member of the organization liable to criminal prosecution for conspiracy or otherwise; or

(b) to make void or voidable any agreement or trust.

## **31. PROCEEDINGS BY AND AGAINST UNREGISTERED INDUSTRIAL ORGANIZATIONS.**

(1) An unregistered industrial organization may sue or be sued under the name by which it has been operating or is generally known.

(2) In any proceedings by or against an unregistered industrial organization, the court may—

(a) require to be joined in the proceedings such persons (if any) as it thinks necessary; and

(b) make such order against the person referred to in Paragraph (a) as, in the circumstances, it thinks just.

### **32. EXECUTION, ETC., AGAINST CERTAIN FUNDS OF INDUSTRIAL ORGANIZATIONS.**

Execution or distress shall not be levied on a provident, benevolent or other similar fund kept separate by an industrial organization, whether registered or not, for the benefit of its members, except by order of the court giving the judgement in respect of which execution or distress is sought to be levied.

## **PART V. – CONSTITUTIONS OF INDUSTRIAL ORGANIZATIONS.**

### **33. QUALIFICATIONS FOR MEMBERSHIP GENERALLY.**

A person who is—

(a) engaged or usually engaged in an industry or occupation within the country; or

(b) qualified to be engaged in an industry or occupation within the country and wishes to be engaged in it,

and is—

(c) a resident of the country; and

(d) not otherwise disqualified,

is qualified for admission as a member of an industrial organization representative of his interests in the industry or occupation.

### **34. MEMBERSHIP OF MINORS.**

A person who is under the age of 21 but is above the age of 16 years (or, in the case of an apprentice, 15 years) may, subject to this Part—

(a) unless there is provision to the contrary in the rules of the organization, be a member of a registered industrial organization; and

(b) subject to those rules and to Section 39, when a member—

(i) enjoy all the rights of a member; and

(ii) execute all instruments and give all acquittances necessary to be executed or given by him under those rules.

### **35. DISQUALIFICATIONS FROM MEMBERSHIP.**

(1) In this section, “**unlawful association**” means—

(a) any body of persons, incorporated or unincorporated, that by its constitution or propaganda or otherwise advocates or encourages—

(i) the overthrow of the *Constitution* by revolution or sabotage; or

(ii) the overthrow by force or violence of the established government of Papua New Guinea or of any civilized country, or of organized government; or

(iii) the destruction or injury of property of the State or of property used in trade or commerce with other countries,

or that is, or purports to be, affiliated with an organization that advocates or encourages any of the doctrines or practices specified in this paragraph; or

(b) any body of persons, incorporated or unincorporated, that by its constitution or propaganda or otherwise advocates or encourages the doing of any act having, or purporting to have, as an object the carrying out of a seditious intention.

(2) A person who—

(a) except as provided by Section 34—is a minor; or

(b) is of general bad character; or

(c) is a member of an unlawful association; or

(d) advocates or encourages or has, within one year immediately before seeking to become a member of the organization, advocated or encouraged, any of the matters referred to in Subsection (1),

is not qualified for admission as a member of an industrial organization.

### **36. MEMBERSHIP.**

(1) A person qualified under this Act for admission as a member of the organization is entitled, subject to payment of any moneys properly payable in respect of membership —

(a) to become a member of an industrial organization representative of his interests in the industry or occupation in which he is or is usually engaged, or wishes to become engaged; and

(b) to remain a member of the organization so long as he continues usually to engage in the industry or occupation and complies with the rules of the organization.

(2) Subsection (1) has effect notwithstanding the rules of the industrial organization concerned.

### **37. EX OFFICIO MEMBERSHIP OF SECRETARY.**

Subject to the rules of the organization, the secretary of an industrial organization shall be deemed to be *ex officio* a member of the organization.

### **38. DISPUTES AS TO MEMBERSHIP.**

(1) Where a question or dispute arises as to the entitlement under this Act of a person to be admitted as, or to remain, a member of an industrial organization—

(a) the person; or

(b) a person who is or desires to become the employer of the person; or

(c) the organization; or

(d) the Registrar; or

(e) any other interested person,

may apply to the National Court for a declaration as to his entitlement to membership of the organization.

(2) The National Court—

(a) has jurisdiction to hear and determine a question or dispute arising under Subsection (1); and

(b) may, after hearing all interested parties and notwithstanding anything in the rules of the industrial organization concerned, make such declarations or orders as it thinks proper in relation to the question or dispute.

(3) The orders that the National Court may make under Subsection (2) include an order requiring the industrial organization concerned to treat the person concerned as a member of the organization.

(4) On the making of an order under Subsection (3) or as otherwise specified in the order, the person concerned is, by force of this Act, a member of the organization, subject to payment of any moneys properly payable in respect of membership.

### **39. OFFICERS.**

(1) Subject to this section and to Section 37, a person who—

(a) is an officer of another industrial organization; or

(b) is not actually engaged in an industry or occupation with which the organization is directly concerned, unless the Registrar, in his discretion, so permits; or

(c) is not over the age of 21 years; or

(d) is not a member of the organization; or

(e) is not ordinarily resident in the country,

is not entitled to be an officer of an industrial organization.

(2) Subsection (1) does not prevent an officer of an industrial organization from being an officer of another industrial organization—

(a) that is a federation of which that first-mentioned industrial organization is a member; or

(b) with the consent of the Registrar.

(3) Subject to Subsection (4), the office of secretary of an industrial organization may be filled by a person not actually engaged in an industry or occupation with which the organization is directly concerned, unless the Registrar otherwise directs.

(4) The Registrar may, by order, remove from office the secretary or treasurer of an industrial organization who is, in his opinion, not capable of performing effectively the duties of his office.

### **40. REQUIREMENT OF INFORMATION.**

(1) For the purpose of satisfying himself that the provisions of this Part are being complied with, the



Registrar may require the executive committee or an officer of an industrial organization to furnish such information as the Registrar thinks necessary for that purpose.

(2) An officer of an industrial organization who refuses or fails, without reasonable excuse (proof of which is on him), to comply with a requirement by the Registrar under Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K200.00.

#### **41. AMALGAMATION.**

(1) Any two or more registered industrial organizations may become amalgamated as an industrial organization, with or without dissolution or division of the funds of the organizations or any of them.

(2) An industrial organization shall not amalgamate with an industrial organization other than a registered industrial organization.

(3) Within one month after an industrial organization amalgamates with another industrial organization under this section, written notice of the amalgamation containing the prescribed particulars shall be given to the Registrar by each organization that is a party to the amalgamation.

(4) A notice under Subsection (3) shall be signed by the secretary and, subject to Section 68, by—

(a) in the case of an organization of employees—at least six members of the organization; or

(b) in the case of an organization of employers—at least two members of the organization.

(5) Subject to Subsection (7), where the Registrar is satisfied that—

(a) the provisions of this Act with respect to the amalgamation of industrial organizations have been complied with; and

(b) the industrial organization formed by the amalgamation would be entitled to be registered as an industrial organization under this Act,

he shall register the industrial organization in the prescribed manner.

(6) An amalgamation has effect from the date of the registration of the industrial organization formed by the amalgamation.

(7) Where, in the opinion of the Registrar, the amalgamation of any industrial organizations materially affects, or may materially affect, the rights of the members of, or the objects of, any of the organizations (otherwise than by virtue of the mere fact of amalgamation), the Registrar may direct that notice of the amalgamation be advertised.

(8) On advertisement under Subsection (7), Sections 13 to 19, with the necessary modifications, apply to and in relation to the registration of the industrial organization formed by the amalgamation.

#### **42. FEDERATION.**

(1) Subject to Subsection (3)—

(a) any two or more registered industrial organizations may form a federation of industrial organizations; and

(b) a registered industrial organization may join a federation of registered industrial organizations.

(2) Subject to Subsection (3), a registered industrial organization shall not become a member of a federation of industrial organizations, any of whose members is not a registered industrial organization.

(3) Subsections (1) and (2) do not operate to prevent the federation of an industrial organization with an industrial organization outside the country.

(4) Within one month after—

(a) the formation under this section of a federation of registered industrial organizations; or

(b) an industrial organization joins such a federation,

written notice of the fact containing the prescribed particulars shall be given to the Registrar by each organization concerned in the formation of the federation or by the organization so joining, as the case may be.

(5) A notice under Subsection (4) shall be signed by the secretary and, subject to Section 68, by—

(a) in the case of an organization of employees—at least six members of the organization; or

(b) in the case of an organization of employers—at least two members of the organization.

(6) Where the Registrar is satisfied that—

(a) the provisions of this Act with respect to the formation of a federation have been complied with; and

(b) the federation is an industrial organization within the meaning of this Act; and

(c) the industrial organization is entitled to be registered under this Act,

he shall register the federation as an industrial organization in the prescribed manner.

(7) Subject to Subsection (10), an act of federation has effect from the date of the registration of the federation.

(8) Where, in the opinion of the Registrar, the federation of any industrial organizations materially affects, or may materially affect, the rights of the members of, or the objects of, any of the organizations (otherwise than by virtue of the mere fact of federation), the Registrar may direct that notice of the federation be advertised.

(9) On advertisement under Subsection (8), Sections 13 to 19(inclusive), with the necessary modifications, apply to and in relation to the registration of the federation as an industrial organization.

(10) Where a federation is not an industrial organization within the meaning of this Act, the act of federation has effect from the time when the federation was formed.

(11) For the purposes of this section, a federation is not disentitled to registration as an industrial organization merely by reason of the fact that its rules include a provision approved by the Departmental Head for the election of officers of the federation by the executive committees of the industrial organizations that are the members of the federation.

#### 43. AFFILIATION.

(1) A registered industrial organization may become affiliated to another registered industrial organization or to a federation.

(2) Subject to Subsection (3), an industrial organization shall not become affiliated to—

(a) an unregistered industrial organization; or

(b) a federation of industrial organizations, any of whose members is not a registered organization.

(3) Subsection (2) does not prevent the affiliation of an industrial organization with an industrial organization outside the country.

(4) Within one month after an industrial organization becomes affiliated in accordance with this section to another industrial organization or to a federation, written notice of the affiliation containing the prescribed particulars shall be given to the Registrar by the first-mentioned organization.

(5) A notice under Subsection (4) shall be signed by the secretary and, subject to Section 68, by—

(a) in the case of an organization of employees—at least six members of the organization; or

(b) in the case of an organization of employers—at least two members of the organization.

(6) For the purposes of this Act, an industrial organization shall not be deemed to have become a member of a federation by reason only of its becoming affiliated to the federation or to an industrial organization that is a member of the federation.

#### **44. BRANCHES.**

(1) An industrial organization may establish or permit the establishment of branches of the organization, but shall not establish or permit the establishment of a branch any rule of which is inconsistent with, or contravenes or does not comply with, a provision of this Act.

(2) Within one month after the establishment of a branch of an industrial organization, written notice of the establishment of the branch containing the prescribed particulars shall be given, in the prescribed manner, to the Registrar by the organization.

#### **45. CHANGE OF NAME.**

(1) Subject to this section, a registered industrial organization or a federation may change its name.

(2) Within one month after an industrial organization or a federation changes its name under this section, written notice of the change containing the prescribed particulars shall be given to the Registrar by the organization or the federation, as the case may be.

(3) A notice under Subsection (2) shall be signed by the secretary and, subject to Section 68, by—

(a) in the case of an organization of employees—at least six members of the organization; or

(b) in the case of an organization of employers—at least two members of the organization; or

(c) in the case of a federation—at least two members of the federation.

(4) If the Registrar is satisfied that the provisions of this Act with respect to the change of name of an industrial organization or federation have been complied with, he shall, subject to Subsections (6) and (7), register the change of name in the prescribed manner.

(5) The change of name has effect from the date of the registration of it.

(6) The Registrar shall refuse to register a change of name under this section if the proposed name—

(a) is identical with the name by which any other existing industrial organization or federation is registered; or

(b) in the opinion of the Registrar—

(i) so nearly resembles a name of a kind referred to in Paragraph (a) as to be likely to deceive or mislead; or

(ii) is itself misleading or undesirable.

(7) Section 13(1) and Sections 14 to 19, with the necessary modifications, apply to and in relation to an application for the registration of a change of name under this section.

#### **46. EFFECT OF AMALGAMATION OR CHANGE OF NAME.**

(1) An amalgamation or federation of two or more registered industrial organizations does not prejudice—

(a) any right of any of the organizations; or

(b) any right of a creditor of any of the organizations.

(2) A change in the name of an industrial organization (including a federation) does not—

(a) affect any right or obligation of the organization; or

(b) make defective any legal proceedings by or against the organization,

and any legal proceeding that might have been continued or commenced by or against the organization under its former name may be continued or commenced by or against it under its new name.

#### **47. REGISTERED OFFICE.**

(1) An industrial organization shall have a registered office to which all communications and notices may be addressed, and, if the organization has more than one office, the principal office of the organization shall be the registered office.

(2) Notice of the situation of the registered office and of any change in the situation or particulars of that office shall—

(a) be given in the prescribed manner to the Registrar by the industrial organization; and

(b) be registered by the Registrar.

(3) A document required to be served at the registered office of an industrial organization may be served—

(a) by leaving the document at that office; or

(b) by post.

(4) An industrial organization shall not—

(a) operate without having given notice of the situation of its registered office as required by Subsection (2); or

(b) operate at a place to which its registered office has been removed without having given notice of the change in the situation or particulars of that office as required by that subsection.

#### 48. REQUIREMENTS AS TO RULES.

(1) Subject to Subsection (2), the rules of an industrial organization—

(a) shall provide for all the matters specified in Schedule 1; and

(b) shall not be altered or amended in such a way as to cease to provide for all those matters.

(2) Notwithstanding Item 9 of Schedule 1, with the approval of the Registrar if in his opinion it is warranted—

(a) because of expense; or

(b) for some reason in the interests of members of the organization or the public,

the rules of an industrial organization may provide that elections of officers after the first election following the date of registration of the organization may take place every two years rather than annually.

(3) A rule of an industrial organization shall not—

(a) be contrary to this Act or otherwise contrary to law, or be such as to cause the rules of the organization to fail to comply with this Act or an award; or

(b) prevent or hinder members of the organization from observing the law or the provisions of an award; or

(c) impose on applicants for membership of the organization or on its members, conditions, obligations or restrictions that are oppressive, unreasonable or unjust.

(4) An industrial organization shall send a copy of each new rule and each alteration made in the rules of the organization to the Registrar within 21 days after the making of the rule or alteration, or within such further period as the Registrar allows.

(5) Subject to Subsection (6), the Registrar shall register a new rule, or an alteration in the rules, of an industrial organization—

(a) on receipt of the copy referred to in Subsection (4); and

(b) on payment of the prescribed fee.

(6) The Registrar may refuse to register a new rule, or an alteration in the rules, of an industrial organization if he is of the opinion that the rule or alteration conflicts or does not comply with this Act, and notice of the refusal shall be immediately given to the organization.

(7) Unless some later date is specified in the rule or alteration, a new rule, or an alteration in the rules, of an industrial organization takes effect from the date of registration of the rule or alteration by the Registrar.

#### **49. DETERMINATION OR VALIDITY OF RULES.**

(1) A member of an industrial organization or the Registrar may apply to the National Court for an order declaring that the whole or a part of a rule of the organization contravenes Section 48(3).

(2) The National Court may—

(a) require to be joined in proceedings under Subsection (1) such person as it thinks necessary; and

(b) without prejudice to any other power to adjourn proceedings, adjourn any such proceedings—

(i) for such period; and

(ii) on such terms and conditions,

as it thinks proper for the purpose of giving to the organization an opportunity to alter its rules.

#### **50. DIRECTION FOR PERFORMANCE OF RULES.**

On complaint by a member of an industrial organization, the Registrar or any other interested party, the National Court may, after giving any person against whom an order is sought an opportunity of being heard, make an order giving directions for the performance or observance of any of the rules of the organization by a person who is under obligation to perform or observe the rules.

#### **51. COPIES OF RULES.**

A copy of the rules of an industrial organization shall be delivered on demand by the organization to a person requiring it, on payment of a sum not exceeding K0.50.

#### **52. NOTIFICATION OF OFFICERS.**

(1) A notice giving the names and titles of all officers and trustees of an industrial organization shall be prominently exhibited—

(a) in the registered office of the organization and in the office (if any) of each branch of the organization; or

(b) at the District Offices of the Subdistricts within which the offices of the organization and of each of its branches are situated.

(2) Notice of a change of officers of an industrial organization shall, within 21 days after the change, be sent to the Registrar by the organization, together with the prescribed fee, and the Registrar shall promptly correct the Register accordingly.

#### **53. NOTIFICATION OF DISSOLUTION.**

(1) Where an industrial organization is dissolved under this Act, a written notice of the dissolution containing the prescribed particulars shall be sent by the organization to the Registrar within 21 days after the dissolution.

(2) A notice under Subsection (1) shall be signed by the secretary and, subject to Section 68, by—

(a) in the case of an organization of employees—at least six members of the organization; or

(b) in the case of an organization of employers—at least two members of the organization.

(3) If he is satisfied that the dissolution of an industrial organization has been effected in accordance with the rules of the organization, the Registrar—

(a) may record particulars of the dissolution in the Register; and

(b) shall cause notice of the dissolution to be published in the National Gazette.

## **PART VI. – FUNDS AND ACCOUNTS.**

### **54. APPLICATION OF FUNDS.**

(1) Subject to the rules of the organization and to this Act, the funds of an industrial organization may be expended only for—

(a) the payment of salaries, allowances and expenses to officers of the organization; and

(b) the payment of expenses of the administration of the organization, including the audit of the accounts of the funds of the organization; and

(c) the prosecution or defence of any legal proceedings to which the organization or a member of the organization is a party, when the prosecution or defence is undertaken for the purpose of securing or protecting—

(i) any rights of the organization as such; or

(ii) any rights arising out of the relations of a member with his employer or with a person whom the member employs; and

(d) legal advice for the purpose of securing or protecting—

(i) any rights of the organization as such; or

(ii) any rights arising out of the relations of a member with his employer or with a person whom the member employs; or

(iii) any rights of a member or his dependants arising out of a civil cause; and

(e) the conduct of industrial disputes on behalf of the organization or any member of the organization; and

(f) the compensation of members of the organization for loss arising out of industrial disputes; and

(g) allowances to members or their dependants on account of death, old age, sickness, accidents or unemployment of the members; and

(h) allowances to members in distress; and

(i) social insurance, medical aid and the supply of medicaments and drugs to members or their dependants, and incidental expenses; and

(j) expenses incurred on the business of the organization by the elected representatives of employees; and

(k) the purchase or lease of any building or land required for the purposes of the organization, and for its rent, upkeep and furnishing; and

(l) federation or affiliation fees or contributions; and

(m) contributions to a charitable, educational or cultural institution or society approved by the Departmental Head; and

(n) contributions to any registered industrial organization in financial difficulties for the purpose of assisting that organization; and

(o) the educational, cultural or vocational training, as approved by the Departmental Head, of members of the organization, and incidental expenses; and

(p) the organization of theatrical performances, concerts, receptions, dances, sports meetings and excursions; and

(q) the purchase of books, newspapers and other literature and the upkeep of a reading room for the use of members of the organization; and

(r) the editing, printing, publication and circulation of any book, newspaper or other periodical, bulletin, pamphlet or other printed matter for—

(i) the advancement of the objects of the organization; or

(ii) the promotion of the interests of its members as such; and

(s) interest on loans, income tax and other legally imposed taxes and fees; and

(t) assistance, whether by way of loans or grants or otherwise, to producer or distributor co-operative companies or co-operative housing schemes for the benefit of members of the organization; and

(u) assistance to members of the organization in the education of dependants; and

(v) any other object that, on the application of an industrial organization and subject to any directions given by the Departmental Head, the Registrar declares to be an object for which the funds of an industrial organization may be expended.

(2) Expenditure under Subsection (1)(v) may be incurred only subject to such conditions as the Registrar, by notice in the National Gazette, directs.

(3) Subsections (1) and (2) do not prevent an industrial organization from accepting and expending for a special purpose donations made voluntarily for that purpose.

## **55. PROHIBITED PAYMENTS.**

(1) The funds of an industrial organization shall not be applied directly or indirectly in payment of the whole or any part of a fine or penalty imposed by a court on any other person.

(2) An injunction restraining any unauthorized or unlawful expenditure of the funds of an industrial organization may be granted by the National Court on the application of—

(a) any person having, in the opinion of the Court, a sufficient interest in the relief sought; or

(b) the Registrar; or

(c) the Attorney-General.

(3) In granting an injunction under Subsection (2), the National Court may order that, on the



cancellation of the registration of the organization, the funds of the organization be paid over to the Public Curator for disposal in accordance with the rules of the organization.

#### **56. BOOKS AND ACCOUNTS.**

(1) A registered industrial organization shall cause the prescribed books of account to be kept in a manner sufficient to exhibit and explain the transactions and financial position of the organization.

(2) The books of account referred to in Subsection (1) shall include a book or books containing entries made from day to day, in sufficient detail of all cash received and cash paid by or to the organization, or as the Registrar in a particular case directs.

#### **57. GIVING OF ACCOUNTS.**

(1) The treasurer of an industrial organization, and each other officer of the organization who is responsible for—

(a) the accounts of the organization; or

(b) the collection, disbursement, custody or control of the funds or moneys of the organization, shall—

(c) on resigning or vacating his office; and

(d) as at and within one month after 31 December in each year, or such other date as is approved by the Registrar in accordance with Subsection (3); and

(e) at such other times as he is required to do so by—

(i) a resolution of the members of the organization; or

(ii) the rules of the organization; or

(iii) the Registrar,

give to the organization a just and true account of—

(f) all moneys received and paid by him during the period that has elapsed since—

(i) the date of his assuming office; or

(ii) if he has previously given an account—the date on which he last gave an account; and

(g) the balance remaining in his hands at the time of giving the account; and

(h) all bonds, securities or other property of the organization entrusted to his custody or under his control.

(2) The form of account to be given under this section is as prescribed.

(3) An industrial organization shall cause an account given under this section to be audited by a fit and proper person approved by the Registrar, and the audit of the annual account as at 31 December or such other date as is approved by the Registrar shall be completed before 31 March in the following year or before such other date as the Registrar approves.

(4) An account rendered under Subsection (1), and a copy of a report of an auditor under Subsection

(3)–

(a) shall immediately on its receipt by an industrial organization be forwarded to the members of the organization and to the Registrar; and

(b) shall be made available for inspection by a member of the organization during such periods as the Registrar specifies during the usual office hours observed at the registered office of the organization.

#### 58. REQUIREMENT OF DETAILED ACCOUNTS.

(1) The Registrar may call on an industrial organization, or the executive committee, the treasurer or an officer of an industrial organization, to give detailed accounts, vouched in such manner as the Registrar requires, of the funds of the organization or a branch in respect of any particular period, and the accounts shall show in particular such information as the Registrar requires.

(2) An industrial organization or an officer of an organization who, without reasonable excuse (proof of which is on it or him), refuses or fails to comply with a request made by the Registrar under Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding six months, or both.

#### 59. RECORDS.

(1) In this section–

“**membership ticket**” includes a receipt or other document acknowledging or certifying that a person–

(a) is a member of an industrial organization, or has renewed his membership of an industrial organization; or

(b) has paid any dues or other moneys payable in respect of his membership of an industrial organization;

“**quarter day**” means the last day of March, June, September or December.

(2) An industrial organization must keep in the prescribed manner or form–

(a) a register of its members, showing the name and postal address of each member; and

(b) a list of the names, postal addresses and occupations of the officers and trustees of the organization and of each branch; and

(c) an account of the receipts, payments, funds and effects of the organization and of each branch; and

(d) such other records as are prescribed.

Penalty: A fine not exceeding K20.00 for each week of default.

(3) An industrial organization must, within one month after the quarter day after the date of its registration, or within such further time as the Registrar allows, file with the Registrar a copy of the register of its members as at that quarter day.

Penalty: A fine not exceeding K20.00 for each week of default.

(4) An industrial organization must file with the Registrar once in each year, at such time as is

prescribed, a copy of the records required to be kept under Subsection (2)(b), (c) and (d), certified by statutory declaration by the secretary or another prescribed officer of the organization to be a correct statement of the information contained in those records.

Penalty: A fine not exceeding K20.00 for each week of default.

(5) At all times during which a person is a member of an industrial organization, the organization must keep a duplicate or butt of the latest membership ticket issued to him, showing—

(a) his name and usual place of residence; and

(b) if he is temporarily living away from his usual place of residence on the date when the ticket is issued to him, the place where he is so living at that date.

Penalty: A fine not exceeding K40.00.

(6) The National Court may at any time order such corrections of—

(a) the register of members of an industrial organization; and

(b) the copy of the register kept by the Registrar,

as it thinks necessary.

(7) All documents filed with the Registrar under this section shall, as prescribed, be made available for inspection at the office of the Registrar.

(8) Subject to this section, the records required by Subsection (2) to be kept by an industrial organization shall be kept at the registered office of the organization.

(9) A record referred to in Subsection (8) may, so far as it relates to a branch, be kept in a separate part or section at the office of the branch.

(10) An industrial organization may apply to the Registrar for permission to keep a record referred to in Subsection (8), wholly or to an extent specified in the application, at specified premises of the organization or of a branch instead of the registered office of the organization or the office of a branch.

(11) The Registrar may, in his discretion, by writing under his hand, grant an application under Subsection (10), if he is satisfied that, to the extent that it is kept at the premises specified in the application, the record—

(a) will be under the effective control of the organization or branch; and

(b) will, in the case of a register of members, be available for inspection in accordance with this section.

(12) While a permission under Subsection (11) is in force, a record referred to in the permission may, to the extent specified in the permission, be kept at the premises so specified.

(13) During such periods as are specified by the Registrar, the Registrar, a member of the organization or a person authorized by the Registrar may inspect and make copies of or take extracts from the register of members of an industrial organization or a part or section of that register during the usual office hours observed at the office or premises at which the register, or the part or section of the records, is kept in accordance with this Act.

(14) An organization must cause—

(a) its register of members; and

(b) each part or section of the register,

to be at all relevant times available for the purpose of Subsection (13)—

(c) to members of the organization; or

(d) to persons authorized by the Registrar,

at the office or premises where the register, or the part or section of the register, is kept.

Penalty: A fine not exceeding K40.00.

## **60. INSPECTION OF ACCOUNTS, ETC.**

(1) The account books and register of members of an industrial organization shall be open to inspection—

(a) by an officer or member of the industrial organization—at such times as is provided for in the rules of the organization; and

(b) by the Registrar or a person authorized in writing by the Registrar for the purpose—at any reasonable time.

(2) A person who hinders or obstructs a person in carrying out an inspection under Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding six months, or both.

## **PART VII. – MISCELLANEOUS.**

### **61. SECRET BALLOTS.**

Where, in accordance with this Act, a matter is required to be decided by secret ballot, the ballot shall be conducted—

(a) by the Electoral Commissioner and in such manner as he directs; and

(b) under the supervision of the Registrar,

and shall, subject to the rules of the industrial organization concerned, be decided by a majority of votes.

### **62. PROVISION OF COPIES OF RULES.**

(1) If a member of an industrial organization requests the secretary, or a person performing in whole or in part the duties of secretary, of the organization or a branch of the organization to provide to the member a copy of the rules of the organization or branch, the secretary or other person must, within seven days after the request is made and on payment or tender by the member of such amount, not exceeding K0.50, as the secretary or person requires, provide the member with a copy of the rules of the organization or branch, as the case may be, as in force at the time of the request.

Penalty: A fine not exceeding K20.00.

(2) It is a sufficient compliance with Subsection (1) if the member is provided with a copy of the rules made at an earlier time, together with a copy of each amendment of the rules made since that time and up to the time of the request.

### **63. INJURING EMPLOYEE OR EMPLOYER ON ACCOUNT OF INDUSTRIAL ACTION.**

(1) An employer who—

(a) refuses to engage a person; or

(b) dismisses an employee; or

(c) injures an employee in his employment; or

(d) alters an employee's position to his prejudice,

because the person or employee—

(e) is an officer, delegate or member of an industrial organization; or

(f) has appeared as a witness, or has given evidence, in proceedings under this Act; or

(g) has absented himself from work without leave if—

(i) his absence was for the purpose of carrying out his duties or exercising his rights as an officer or delegate of an industrial organization; and

(ii) he applied for leave before he absented himself and leave was unreasonably refused or withheld, is guilty of an offence.

Penalty: A fine not exceeding K100.00.

(2) An employer who—

(a) refuses to engage a person; or

(b) threatens to—

(i) dismiss an employee; or

(ii) injure an employee; or

(iii) alter an employee's position to his prejudice,

because—

(c) the person or the employee is or proposes to become an officer, delegate or member of an industrial organization; or

(d) the person or employee proposes to appear or to give evidence in a proceeding under this Act,

with intent to dissuade or prevent the person or the employee from becoming such an officer, delegate or member, is guilty of an offence.

Penalty: A fine not exceeding K100.00.

(3) An employee who ceases work in the service of his employer because the employer–

(a) is an officer, delegate or member of an industrial organization; or

(b) has appeared as a witness, or has given evidence in proceedings under this Act,

is guilty of an offence.

Penalty: A fine not exceeding K50.00.

(4) In any proceedings for an offence against this section, if all the facts and circumstances constituting the offence, other than the reason for the defendant's action, are proved the onus is on the defendant to prove that he was not actuated by the reason alleged in the charge.

(5) Where an employer has been convicted of an offence against this section in relation to an employee, the court by which he is convicted may–

(a) order that the employee be reimbursed any wages lost by him; and

(b) direct that the employee be reinstated in his old position or in a similar position.

(6) Where the court making a direction under Subsection (5)(b) is a District Court, it may, at the time of making the direction or on subsequent application to it by the Registrar or the employee concerned, order that in default of compliance with the direction the employer–

(a) if a natural person–be imprisoned for such time as the Court thinks proper or, in the case of a continuing default, until he complies with the direction; or

(b) if a corporation–be liable to a fine not exceeding K200.00 and in addition, in the case of a continuing offence, a fine not exceeding K20.00 for each day for which the default continues.

### **63A. COLLECTION OF UNION CONTRIBUTIONS BY EMPLOYERS.**

11(1) An employer must, as from the date of receipt of a notice in the prescribed form signed by an employee, deduct from any moneys from time to time payable by the employer to that employee contributions payable by that employee to the industrial organization named in the notice.

Penalty: A fine not exceeding K200.00.

Default penalty: A fine not exceeding K50.00.

(2) An employer making a deduction in accordance with Subsection (1) shall, subject to Subsection (3), pay the amount deducted to the industrial organization named in the notice within 35 days of making the deduction.

(3) An amount not paid by an employer to an industrial organization in accordance with Subsection (2) may be sued for by the industrial organization as a debt due to that industrial organization.

(4) Nothing in this section authorizes–

(a) an industrial organization or its agents or its members to coerce or otherwise require any person who is not a member of an industrial organization to sign a notice for the purposes of Subsection (1); or

(b) an employee to sign a notice permitting deductions for payment to any industrial organization of which he is not a member.

(5) This section does not apply to an employer employing nine or less persons.

#### **64. INCITEMENT TO BOYCOTT AWARDS.**

(1) In this section, “**award**” includes—

(a) an award, common rule or other prescribing, directly or indirectly, terms and conditions of employment and made under any law other than this Act; and

(b) any provisions in force by virtue of such an award, rule or order.

(2) An officer, servant or agent, or a member of an executive committee or other committee, of an industrial organization or branch who, during the currency of an award—

(a) advises, encourages or incites a member of an industrial organization that is bound by the award to refrain from, or prevents or hinders such a member from—

(i) entering into a written agreement; or

(ii) accepting employment; or

(iii) offering for work, or working, in accordance with the award or with an employer who is bound by the award; or

(b) advises, encourages or incites any such member to make default in compliance with the award; or

(c) prevents or hinders any such member from complying with the award; or

(d) advises, encourages or incites any such member to retard, obstruct or limit the progress of work to which the award applies by “go slow” methods; or

(e) advises, encourages or incites any such member—

(i) to perform work to which the award applies in a manner different from that customarily applicable to the work; or

(ii) to adopt a practice in relation to the work,

where the result would be a limitation or restriction of output or production or a tendency to limit or restrict output or production,

is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(3) Subsection (2) extends to advice, encouragement, incitement, prevention or hindrance in relation to employment or work with or for a particular employer or of a particular kind.

(4) In a prosecution for a contravention of this section, it is a defence to prove that there were reasonable grounds for the conduct charged, being grounds—

(a) unrelated to the terms and conditions of employment prescribed by the award; or

(b) arising out of a failure or proposed failure by an employer to observe the award.

#### **65. PROCEEDINGS BY AND AGAINST CLUBS.**

(1) For the purposes of this Act, the secretary of a club, or some other person nominated by the club for the purpose, shall be deemed to be the employer of all persons employed for the purposes of, or on behalf of, the club.

(2) Any proceedings that under this Act may be taken by or against the club may be taken by or against the secretary or the other person on behalf of the club.

(3) The secretary or other person nominated under Subsection (1) is authorized to retain out of the funds of the club sufficient money to meet any payments made by him on behalf of the club under this section.

#### **66. OBSTRUCTION OF INSPECTORS.**

A person who—

(a) hinders or obstructs an Inspector in the exercise of his duties; or

(b) makes to an Inspector, in the course of his duties, a statement, whether orally or in writing, that is false or misleading in any particular,

is guilty of an offence.

Penalty: A fine not exceeding K100.00.

#### **67. DISSOLUTION.**

(1) Where—

(a) an industrial organization is dissolved under Section 8; or

(b) a registered organization is dissolved,

the National Court may, on application by the organization, the Registrar or any interested person, appoint a liquidator of the organization.

(2) A liquidator appointed under Subsection (1) shall carry out the dissolution and disposal of the funds of the organization in accordance with its rules, subject to any directions given by the National Court.

#### **68. SMALL ORGANIZATIONS.**

Where under this or any other law relating to industrial relations it is required that any application or other document or instrument be signed or executed by a specified number of officers, trustees or members of an industrial organization, it is a sufficient compliance with that law if the application, document or instrument is signed or executed by all of the officers, trustees or members, as the case may be, of the organization.

#### **69. LIABILITY FOR OFFENCES BY INDUSTRIAL ORGANIZATIONS.**

Where an industrial organization contravenes or refuses or fails to comply with a provision of this Act, the organisation and the officers of the organization are each guilty of an offence and where no other penalty is provided, are each liable to a fine not exceeding K200.00 and, in addition, in the case of a continuing offence, a fine not exceeding K10.00 for each day for which the offence continues.

#### **70. APPEAL.**



(1) A person aggrieved by a decision of the Registrar under this Act may, within 30 days after the decision or within such further time as the National Court in a particular case allows, appeal to the National Court, the decision of which is final.

(2) On an appeal under Subsection (1)–

(a) all interested parties are entitled to be heard; and

(b) the National Court may make such order, including an order as to the costs of the appeal, as it thinks proper.

#### **71. REGULATIONS.**

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular for prescribing–

(a) the duties of the Registrar; and

(b) the records to be kept and returns to be made under this Act; and

(c) the forms to be used and the fees to be paid to the Registrar in connection with a matter arising under this Act; and

(d) penalties of fines not exceeding K100.00 or imprisonment for terms not exceeding six months, or both, for offences against the regulations.

#### **SCHEDULE 1 – MATTERS FOR WHICH PROVISION MUST BE MADE IN THE RULES OF AN INDUSTRIAL ORGANIZATION.**

Sec. 48.

**1.** The name of the industrial organization.

**2.** The principal objects for which the industrial organization is to be established.

**3.** All other objects ancillary to the principal objects that may be pursued by the industrial organization.

**4.** The objects for which the funds of the industrial organization are applicable.

**5.** The rates of contribution and the conditions under which any member of the industrial organization may become entitled to any benefits assured thereby.

**6.** The fines or forfeitures that may be imposed on a member of the industrial organization.

**7.** The manner of making, altering, amending and rescinding rules.

**8.** The admission to, resignation and expulsion from, and cancellation of, membership of the industrial organization.

**9.** Subject to Section 48(2), the annual election of officers (other than the secretary) of the industrial organization and the appointment from time to time of a secretary for a period not exceeding four years.

**10.** The taking of decisions by secret ballot in respect of–

- (a) election of officers; and
- (b) amendment of rules; and
- (c) strikes or lock-outs; and
- (d) federation or affiliation; and
- (e) amalgamation or dissolution.

**11.** The keeping of duly authenticated minutes of meetings of–

- (a) the industrial organization and its branches; and
- (b) the executive committee and the management committees of the branches.

**12.** The keeping of full and accurate accounts by the treasurer.

**13.** The keeping in a separate fund of all moneys received or paid by the industrial organization in respect of any contributory provident fund or pensions fund scheme.

**14.** The investment of the funds or their deposit in a bank and the audit of accounts at intervals not greater than one year.

**15.** The inspection of the books and names of members of the industrial organization by any person having an interest in the funds of the industrial organization.

**16.** The manner of the dissolution of the industrial organization and the disposal of its funds that are available at the time of such dissolution.

**17.** The right of any member to a reasonable opportunity to vote.

**18.** The refund to a person on ceasing to be a member of the industrial organization of all moneys paid by him by way of contribution to a provident, benevolent or other similar fund kept by the organization for the benefit of its members.

**19.** In the case of organizations of employees (other than federations), the encouragement and development of group social and welfare activities amongst the members of the industrial organization.

Office of Legislative Counsel, PNG

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1. [\[1\]](#)Section 63A Added by No. 25 of 1978.