

MODEL HARMONISATION ACT REGARDING REGISTRATION, STATUS AND RECOGNITION OF TRADE UNIONS AND EMPLOYERS' ORGANISATIONS

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PART 1 - PRELIMINARY

Objectives

1. The objectives of this Act are:

(1) to give effect to the provisions of National Constitutions on freedom of association, the ILO Conventions on Freedom of Association, No. 87 (1948), and on the Right to Organise and to Collective Bargaining, No. 98 (1949);

(2) to establish procedures for the registration and status of trade unions and employers' organisations;

(3) to promote and protect the recognition of trade unions; and

(4) to encourage orderly and effective collective bargaining.

Interpretation

2. Under this Act -

"bargaining agent" means a trade union that acts on behalf of employees;

"bargaining unit" means a group of employees on whose behalf collective bargaining may take place;

"collective agreement" means a written agreement between an employer, or an employers organisation authorised by the employer, and a trade union concerning terms and conditions of employment of any other matter of mutual interest;

"commission agent" means an agent or employee who is remunerated by commission;

"dependent contractor" means a person, whether or not employed under a contract of employment, who performs work or services for another person for compensation or reward on such terms and conditions that he or she is in relation to that person in a position of economic dependence on, and under an obligation to perform duties for that person more closely resembling the relationship of employee than that of an independent contractor;

"employee" means a person who offers his or her services under contract of employment and includes a dependent contractor, a managerial employee and a former employee, where appropriate;

"employer" means any person or undertaking, corporation, company, public authority or body of persons who or which employs any person to work under a contract of employment or uses the services of a dependent contractor, commission agent, or contract worker and includes the heirs, successors and assigns of an employer;

"employers' organisation or association" means any combination established by employers, the principal purposes of which are the representation and promotion of employers' interests and the regulation of relations between employers and employees;

"managerial employee" means an individual who has managerial responsibilities and who works under a contract of employment;

"Minister" means the Minister of the country for the time being responsible for labour matters or any person authorised to act on his or her behalf;

"Registrar" means the Registrar of the country which is authorised to register trade unions and employers organisations;

"trade union" means any combination of persons, whether temporary or permanent, the principal purposes of which are the representation and promotion of workers interests and the regulation of relations between employees and employers, and includes a federation a trade unions, but not an organisation or association that is dominated or influenced by an employer or an employers' organisation.

Exemption

3. Members of the disciplined forces may be exempted from provisions of this Act, but national regulations should make provision for rights of association of police, fire and prison forces.

PART II - FREEDOM OF ASSOCIATION

Basic employee rights

4. Every employee has the right to:
- (a) take part in the formation of any trade union or federation of trade unions;
 - (b) be or not to be a member of any trade union or federation of trade unions;
 - (c) take part in lawful trade union activities;
 - (d) hold office in any trade union or federation;
 - (e) take part in the election of shop stewards or safety representatives;
 - (f) be elected a shop steward or safety representative or be a candidate for such election;
 - (g) act in the capacity of a shop steward or safety representative;
 - (h) exercise any right conferred or recognised by this Act or any any national law and assist any employee, shop steward, safety representative or trade union in the exercise of such rights.

Freedom of association protection for employees

5 (1) No employer or employers' organisation, and no person acting on behalf of an employer or an employers' organisation, shall, with respect to any employee or any person seeking employment -

- (a) require that he or she not join a trade union or relinquish trade union membership;

(b) discriminate or take any prejudicial action, including discipline or dismissal against such employee or person by reason of trade union membership or because of participation in lawful trade union activities;

(c) discriminate or take any prejudicial action, including discipline or dismissal, against such employee or person because of his or her exercise or anticipated exercise of any right conferred or recognised under this Act or under any national law on employment or labour relations;

(d) threaten such employee or person that he or she will suffer any disadvantage from exercising any right conferred or recognised under this Act or under any national law or under any collective agreement;

(e) promise such employee or person any benefit or advantage for not exercising any right conferred or recognised under this Act or under any national law on employment or labour relations;

(f) restrain or seek to restrain such an employee or person, by a contract of employment or otherwise, from exercising any right conferred or recognised under this Act or under any national law on employment or labour relations, and any such contractual term which purports to exert any such restraint shall be void, whether agreed to before or after the coming into force of this Act;

(2) Nothing in this section shall be interpreted as preventing an employer from dismissing or other wise disciplining an employee for a valid reason, in accordance with national law.

Protection of trade union from employer interference

(3) No person shall commit an act which is designed to promote the establishment of an employees' organisation under the domination of an employer or employers' organisation, or to support employees' organisations by financial or other means with the object of placing such organisations under the control of employers or employers' organisations.

Basic employer rights

6 (1) Every employer has the right to -

- (a) take part in the formation of any employers' organisation or association;
- (b) be a member of any such organisation or association, and take part in its lawful activities;
- (c) hold office in any such organisation or association;
- (d) be free from obligation to employ members of a trade union;
- (e) exercise any and all rights conferred or recognised by this Act or national law on employment or labour relations, and assist any employer or employers' association in the exercise of such rigors.

No compulsion to join or not to join an organisation

7. No person shall seek by the use of any threat or intimidation, to compel or coerce any other person to join or not to join, or to support or not to support, any employees' or employers' organisation or union.

Membership

8 (1) Any person eligible for membership in a trade union or employers' organisation or federation under its constitution has the right to membership in that organisation if he or she pays any fees that are properly payable to it, and such person has the right to remain a member as long as he or she complies with the rules of the organisation.

(2) No trade union or employers' organisation shall discriminate in its constitution or through its actions against any person on the grounds of race, sex, religion, ethnic origin, national extraction, colour, indigenous population, social origin, political opinion, disability, age, pregnancy, marital status or family responsibilities. [or violate in any manner the provisions in the Harmonisation Act on Equality of Opportunity and Treatment in Employment and Occupation].

Federations

9 Trade unions and employers' organisations may for, participate in, be affiliated to, contribute to or join any national or international federations of trade unions or employers' organisations.

Remedies

10 (1) Any complaint with respect to infringement of the rights and protection contained in the provisions of this Part II may be presented to the appropriate national judicial authority in accordance with national law which shall provide in appropriate judicial authority with jurisdiction over such matters.

(2) Where it is alleged in such complaint that an employee or person seeking employment was dismissed or denied employment was dismissed or denied employment contrary to section 5 of this Part II, the burden is on the employer to prove that the dismissal or denial had no connection to the employee's or applicant's trade union membership or activities.

(3) Subject to subsection (4), where the judicial authority finds that the complaint is well founded, it shall make such order as it deems necessary to secure compliance with the provisions of this Part II, including an order for the reinstatement of an employee, if requested and deemed appropriate, the restoration to him or her of any benefit, entitlement or advantage, and an order for the payment of compensation.

(4) Where an employee is dismissed contrary to Section 5 of this Part II, he or she shall be entitled to reinstatement, along with any other remedy the national court deems appropriate, unless reinstatement is not reasonably practicable.

PART III - REGISTRATION AND STATUS

Trade Union defined

11. The fact that a combination of persons has, under its constitution, objects or powers other than those objects defined within the meaning of this Act does not prevent it being a trade union for the purposes of this Act as long as it is a trade union as defined by section 2, and any trade union shall have power to apply the funds of the union for any lawful objects or purposes for the time being authorised under its constitution.

Registrar

12. (1) The appropriate national authority may appoint any person or body he or she thinks fit to be the Registrar of Trade Unions and Employers' Organisations, in consultation with the representatives of trade unions and employers' organisations.

(2) The registrar shall keep a register of all trade unions and employers' organisations registered under this Act in the form required by national regulations, and shall discharge all the duties required by this Act and by the national regulations.

Registration

13. (1) Every trade union and employers' organisation to which this Act applies shall be registered in accordance with this Act.

(2) The rights and benefits conferred by this Act upon trade unions and employers' organisations and their members may be exercised only if those organisations are registered in accordance with the provisions of this Part.

(3) Any 7 members or more of a trade union or 3 [or other minimum as may be deemed appropriate at the national level] members or more of an employers' organisation may by subscribing their names to the rules of the union or organisation and otherwise complying with the provisions of this Act, apply to the registrar for registration as a trade union or employers' organisation.

(4) The applicants shall transmit 3 copies of the constitution of the trade union or employers' organisation, duly authenticated by signature of the president or chairperson and secretary, to the registrar along with the application for registration.

- (5) If the registrar is satisfied in respect of any application that -
- (a) the requirements of this section have been met;
 - (b) the constitution is consistent with this Act and the Constitution of the country and does not contain provisions which are contrary to the provisions of any national law;
 - (c) the name of the trade union or organisation is not identical to that of any existing trade union organisation or so closely resembling such name as to be likely to deceive its own members or the members of the public

he or she shall forthwith register the trade union or employers' organisation and furnish it with a certificate of registration.

(6) Any trade union or employers' organisation which was registered prior to the commencement of this Act under the existing national provisions shall automatically be deemed registered under this Act and shall be furnished by the registrar with a certificate of registration.

(7) Any person aggrieved by any refusal or failure to register the trade union or employers' organisation shall be entitled to apply to the national court within the time and in the manner and on the conditions directed by the rules of Court.

Constitution

14. The constitution of every trade union and employers' organisation shall include the information contained in Schedule I to this Act.

Alterations in constitution or name

15. (1) A trade union or employers' organisation may alter its constitution, in accordance with the procedures set out in its own constitution.

(2) The trade union or employers' organisation shall transmit the proposed alterations to the constitution or the new constitution to the registrar, and if the registrar is satisfied that said alterations are consistent with section 13 of this Act, the registrar shall certify the alterations to the constitution and shall issue a written certificate stating the approval and the date on which it was given; and as from that date the new or altered constitution shall have effect.

(3) Subject to section 13 (5)(c) of the Act any trade union or employers' organisation may change the name under which it is registered in the same manner as an alteration of the constitution, and if the provisions of this section have been complied with, the registrar shall issue a new certificate and make the necessary alterations in the register.

Annual return to registrar

16. (1) Within 6 calendar months after the end of each financial year, every trade union and employers' organisation shall submit to the registrar a return which shall include -

- (a) the trade union's or employers' organisation' address;
- (b) the names and addresses of its current office holders;
- (c) the number of fully paid up members of the trade union or employers' organisation;
- (d) an audited annual financial statement.

(2) The registrar shall suspend or withdraw registration of any trade union or employers' organisation which fails to submit a return in accordance with subsection (1).

(3) Any trade union or employers' organisation subject to such a suspension or withdrawal under subsection (2) has the right to make representations to the court for an order to re-establish any suspension or withdrawal of registration.

Legal status

17. (1) A registered trade union and employers' organisation shall be deemed to be a body corporate with the capacity to contract and to hold property, and to sue and to be sued.

(2) Notwithstanding subsection (1), no civil proceedings except those expressly allowed by this Act or national law may be brought against a trade union or employers' organisation issued with a certificate under section 13 or against any officer, representative or member thereof, in respect of any act done in good faith, done by or on behalf of such an organisation in the furtherance or purported furtherance of the objects of the constitution.

(3) Subsection (2) shall not be construed as exempting a trade union or employers' organisation or any of its officers, representative or members from contractual liability for goods or services, from obligations incurred in respect of property, or from liability for any criminal malicious or negligent act.

Amalgamation

18. (1) A trade union or employers' organisation may, in accordance with its constitution and subject to the provisions of this Act, amalgamate with any other trade union or organisation.

(2) In the event of amalgamation, the newly constituted trade union or organisation shall assume all the rights and duties of its predecessor organisations unless the court on good cause shown upon the application of some interested party directs otherwise.

Defunct organisations

19. (1) Upon application by a member of the trade union or employers' organisation in question, the registrar may, after making such inquiries as it may consider necessary, declare a trade union or an employers' organisation to be defunct if the registrar is satisfied that it is no longer carrying on any of its activities for a period of over two years.

(2) Any declaration made under this section shall include the winding up to the trade union or employers' organisation and such direction for the disposal of the trade unions' or employers' organisations' assets, as the registrar may deem just, having regard to the objects and the constitution of the trade union or the organisation or a resolution of the majority of the trade union members in good standing.

(3) A trade union or employers' organisation subject to a declaration made under this section may appeal to an appropriate national judicial authority.

PART IV - SAFEGUARDS FOR MEMBERS OF ORGANISATIONS

Compliance with constitution

20. Subject to the provisions of this Act, every former and current officer, member or employee of a trade union or employers' organisation shall comply with the constitution of their organisation.

Improper election practices

21. (1) No person shall attempt to influence the outcome of an election for any office in an organisation by fraud, threat, bribery or other improper means.

(2) Upon application by any member of the trade union or employers' organisation, or by the registrar, claiming upon reasonable grounds a violation of subsection (1), the national court may declare such election void, determine a date for the holding of fresh election and make provision for the filling of the offices concerned, pending the outcome of such fresh election, or make such other order relating to such election or fresh election as it may deem fit.

Deposit and safeguard of funds

22. (1) All funds received by or on behalf of a trade union or an employers' organisation shall be deposited to the organisation's bank account.

(2) Every expenditure of funds by or on behalf of a trade union or employers' organisation shall be evidenced by a written receipt or voucher, which shall be kept with the organisation's accounts.

(3) The treasurer or other officer responsible for the custody of the trade union or employers' organisation's funds and property, including the records, shall hand over such funds and property to the organisation when he or she leaves office, or earlier if so directed by the governing body of the organisation.

(4) Upon the application of a member or officer of the trade union or employers' organisation, the national court may make such order as it deems necessary to secure compliance with this section of the Act.

PART V - RECOGNITION OF BARGAINING RIGHTS

Tripartite Body for Certification

23. The competent authority, in consultation with the representatives of trade unions and employers' organisations, shall appoint a tripartite body to be responsible for and carry out recognition and certification of trade unions and employers' organisations. The body shall operate in accordance with national regulations which shall be enacted at the national level and shall include the provisions contained in Schedule III.

Application procedures

24. (1) A trade union claiming to have as members in good standing a majority of the employees of an employer in a bargaining unit may, subject to the provisions of this Part, make application to the tripartite body designated by the competent authority to be certified as the exclusive bargaining agent of the employees in the unit.

(2) All existing trade unions which were certified as bargaining agents immediately before the coming into force of this Act shall be deemed to be certified.

(3) Where no collective agreement is in force and no trade union has been certified under this Part for the bargaining unit, the application may be made at any time.

(4) Where no collective agreement is in force but a bargaining agent has been certified under this Part for the bargaining unit, the application may be made after the expiry of 12 months from the date of certification of the bargaining agent.

(5) Where a collective agreement is in force the application may be made during the last three months of the term of the collective agreement or any renewal of it.

Certification particulars

25. (1) The application referred to in section 24 shall be in writing and shall include the following:

- (a) a description of the proposed bargaining unit; and
- (b) facts upon which the trade union relies to demonstrate that the majority of employees in the bargaining unit wish to have the trade union certified as their exclusive bargaining agent.

(2) A copy of the application shall be served on the employer.

(3) The application shall be determined as soon as possible, but not later than 6 months from the date of receipt by the tripartite body vested with recognition and certification authority in accordance with the provisions of this Part.

Appropriateness of bargaining unit

26. (1) The tripartite body vested with recognition and certification authority shall on any application for certification under section 24 first determine the bargaining unit it considers appropriate in the circumstances and in so doing shall have regard to -

- (a) the community of interest among the employees in the proposed bargaining unit;
- (b) the nature and scope of the duties of the employees in the proposed unit;
- (c) the views of the employer and the trade unions concerned as to the appropriateness of the bargaining unit; and
- (d) the historical development, if any, of collective bargaining in the employer's undertaking.

(2) After making a determination under subsection (1), the tripartite body vested with recognition and certification authority may before certification include additional employees in or exclude employees from the bargaining unit.

Employer recognition or notice

27. (1) Once receiving notice of the application for certification by a trade union, an employer may within fourteen days of receiving such notice -

- (a) indicate its agreement to recognise the trade union as the bargaining agent for that bargaining unit; or
- (b) indicate that he or she doubts that the trade union is entitled to be recognised as the bargaining agent for that bargaining unit.

(2) A notice from an employer under subsection (1) shall be made in writing to the tripartite body with the recognition and certification authority and shall specify the employer's reasons for doubting that the trade union is entitled to be so recognised.

Certification following employer recognition

28. (1) Where only one trade union has applied for certification under section 24, and the employer has indicated in writing his or her agreement to recognise the trade union as the bargaining agent and it appears to the satisfaction of the tripartite body vested with recognition and certification authority that the other conditions of this Act have been fulfilled, said body may carry out a membership survey to determine the extent of support which the union enjoys among the employees in the appropriate bargaining unit on the date such application was made.

(2) Where it appears to the tripartite body vested with recognition and certification authority from the results of the survey that the union is supported on the date of the application by more than 50% of the bargaining unit, said body shall certify the union as the recognised bargaining agent for that unit.

(3) The Minister, in consultation with the tripartite body vested with recognition and certification authority, shall make regulations governing the organisation and conduct of the survey.

The majority trade union determined by poll

29. (1) Where two or more trade unions have applied under section 24 in relation to the same bargaining unit, or where the one trade union has applied and the employer has contested certification under section 27, the tripartite body vested with recognition and certification authority shall carry out a secret poll among employees in the bargaining unit and shall certify as the recognised bargaining agent for the unit the trade union which is shown by the poll to have the greatest support among the employees, provided however that no union will be certified which has received less than 50% of the votes of those employees in the bargaining unit.

(2) Where the results of the poll show a tie, a second poll shall be carried out within 7 days (unless extended for good cause in accordance with national regulations).

Poll regulations

30. The Minister, in consultation with the tripartite body vested with recognition and certification authority, may make regulations respecting the organisation and conduct of the secret poll on matters contained in Schedule Ii.

Employer duties in conduct of poll

31. In relation to the conducting of the poll, every employer shall -

- (a) take all necessary steps to ensure that his or her employees who are eligible to vote in a poll are given the opportunity to do so; and
- (b) permit each such employee to be absent from work, for a reasonable period of time not to exceed 2 hours, without pay deduction for the purpose of voting.

Restrictions in conduct of poll

32. In relation to the conducting of the poll, no person or organisation shall -
- (a) seek, in any premises on the day on which the poll is being held or within one hundred yards of such premises, to influence an employee to vote or refrain from voting for a trade union;
 - (b) wilfully obstruct any person from voting or carrying out any functions imposed on that person under this Act.

Employee duties in conduct of poll

33. In relation to the conducting of the poll, no employee shall -
- (a) receive, or agree to receive any money, loan, reward, office or place of employment for voting or agreeing to vote or for refraining or agreeing to refrain from voting for a trade union; or
 - (b) accept or take any food or drink or provision from any person where the intent is to induce the employee to vote or refrain from voting or to reward the employee for having voted or refrained from voting.

Granting or refusing certification

34. (1) The tripartite body vested with recognition and certification authority shall in writing within a reasonable period of time not to exceed 6 months of the receipt of the application under section 24 -
- (a) certify the trade union as the recognised bargaining agent for the bargaining unit;
 - (b) refuse to certify the trade union on the grounds that it has not satisfied the requirement that a majority of employees in the proposed unit wish to have the trade union certified as their exclusive bargaining agent; or
 - (c) refuse to certify the trade union on the grounds that the bargaining unit identified by the trade union is not appropriate under section 27.

Compulsory recognition and duty to negotiate in good faith

35. (1) Where a trade union has been certified as a recognised bargaining agent for the bargaining unit in accordance with this Part, the employer shall recognise the union, and the union and the employer shall meet and engage in bargaining.

(2) Where certification is granted pursuant to this Part, a trade union, employer or employers' organisations shall not fail or refuse to bargain collectively in good faith and shall make every reasonable effort to conclude a collective agreement.

(3) Any person affected by a violation of subsections (1) and (2) may apply to the appropriate national judicial authority and that judicial authority may make any order it deems necessary to ensure compliance with this section.

(4) A recognised union which fails to comply with the provisions of subsections (1) and (2) shall be guilty of an offense and liable to summary conviction to a fine of [\$].

(5) An employer who fails to comply with the provisions of subsections (1) and (2) shall be guilty of an offense and be liable to summary conviction to a fine of [\$] for every day the breach continues until the employer has complied with such provisions.

Duty of fair representation

36. (1) Where a trade union has been certified as the exclusive bargaining agent for a bargaining unit, it shall be the duty of that trade union to provide full and proper representation of the interest of all its members in the bargaining unit with respect to their rights under the collective agreement whether or not they are fully paid-up members of the organisation.

(2) Any member of the union in the bargaining unit may apply to the appropriate national authority for an order directing the trade union to cease a violation of subsection (1) and to comply with the provisions of this section.

Closing of undertaking

37. (1) Where a trade union has been certified under section 30, or has made application of certification under section 24, an employer who decides to close an undertaking must give the tripartite body vested with recognition and certification authority and the union concerned -

- (a) reasonable notice of intention;
- (b) reason for closure decision; and,
- (c) the number and categories of workers to be affected.

(2) An employer who closes an undertaking without complying with subsection (1) shall be guilty of an offence and shall be liable on summary conviction to fine of [\$].

(3) In any prosecution under subsection (2) the onus shall be on the employer to prove that he or she gave the tripartite body and the union concerned the

reasonable notice and good reasons.

Effect of certification as the recognised majority union

38. (1) Where a trade union is certified under this Act as the exclusive bargaining agent for the employees in the bargaining unit -

- (a) the trade union shall replace any other trade union that before such certification was the bargaining agent for the employees in the bargaining unit and, shall have exclusive authority to bargain collectively on behalf of the employees in the bargaining unit and to bind them by a collective agreement so long as such certification remains in force;
- (b) if another trade union had previously been certified or was deemed to have been certified in respect of employees in the bargaining unit, the certification of the last mentioned trade union shall be deemed to be revoked in respect of such employees; and
- (c) the certified trade union is substituted as a party to any collective agreement applicable to any employees in the bargaining unit in the place of the bargaining agent named in the collective agreement.

New collective agreement

39. Where a certified trade union is substituted as a party to a collective agreement in accordance with section 38 (1) (c), the union so substituted as a party to the collective agreement may submit to the employer proposals for the revision of the collective agreement or for a new collective agreement and the parties shall bring into effect the revised or new collective agreement within [90] days/months of the date on which substitution of the recognised majority union took place. The original collective agreement shall remain in force until a new agreement is signed.

Revocation of exclusive bargaining rights

40. (1) Any time after one year from the certification of a trade union as the majority union, any employee in that bargaining unit may apply to the tripartite body with recognition of certification authority for the withdrawal of the certification on the basis that the majority of employees in the bargaining unit no longer wish to have the trade union as their exclusive bargaining agent.

(2) An application under subsection (1) shall be accompanied by evidence that a substantial number of employees in the bargaining unit do not wish to have the trade union as their exclusive bargaining agent.

(3) Within 90 days of receiving an application under subsection (1) accompanied by sufficient evidence as required by subsection (2) the tripartite body vested with recognition and certification authority shall conduct a representation vote of the employees in the bargaining unit by secret ballot.

(4) After a representation vote under subsection (3), the said body shall grant the application if more than 50% of those employees in the bargaining unit cast ballots against having the trade union represent the bargaining unit as the exclusive bargaining agent, in which case the said body vested with recognition and certification authority shall cancel the certification of the trade union.

(5) If the certification of a trade union is canceled under subsection (4), the body vested with recognition and certification authority may make any appropriate order, including the terms of cancellation, and may decide on the validity and duration of any existing collective agreement covering the bargaining unit.

(6) If the certification of a trade union is canceled under subsection (4), no trade union shall apply for certification as bargaining agent for the employees in the bargaining unit until a period of 6 months has elapsed.

(7) If the application for cancellation of the certification is refused, no one may bring a further application for decertification until a period of 12 months has elapsed.

Right of appeal

41. (1) If certification of a trade union as bargaining agent is refused, withdrawn, terminated or modified by the body with recognition and certification authority, either the trade union or the employer may refer this matter to the appropriate national judicial authority for determination.

(2) In making a determination under subsection (1), the national judicial body shall endeavour in its decision to promote over time a system of orderly and effective collective bargaining.

Right to choose representative

42. Nothing in this Part of the Act prevents an employee from being assisted by a representative of his or her choice, including an officer of a trade union which has not been registered or certified under this Act, in an individual grievance or disciplinary matter.

Access to employer's premises

43. (1) No employer shall deny to an officer or authorised representative of any trade union certified under this Act such access to the employer's premises as is reasonable and necessary for the lawful activities of the trade union.

(2) In granting the access required by subsection (1), an employer may impose such restrictions as to time and place which are reasonable and necessary to

avoid undue disruption of operations and in the interest of safety.

PART VI - COLLECTIVE AGREEMENTS

Collective agreements

44. (1) A collective agreement shall -

- (a) be committed to writing and signed by the parties to the agreement;
- (b) contain the date on which it is to become effective;
- (c) contain effective procedures for the avoidance and settlement of rights and interests disputes which procedures may include a reference of any dispute to conciliation, mediation or arbitration;
- (d) contain provisions for the settlement of all differences arising out of the interpretation, application and administration of the agreement;
- (e) provide for such other matters as may be agreed between the parties to the agreement;
- (f) be lodged with the Minister or his or her designate.

(2) Nothing in this section shall affect the validity of a collective agreement which is valid and existing immediately before the coming into force of this Act and such agreement shall remain in force until it expires or is replaced by another collective agreement.

Enforceability of collective agreements

45. (1) A collective agreement is binding, unless stated otherwise, on a trade union and an employer that have entered into it and every employee who is a member of the signatory trade union or a member of the bargaining unit for whom that trade union has been certified.

(2) The terms of the collective agreement are deemed to be incorporated into the employment contract of each employee who is a member of the signatory trade union or a member of the bargaining unit for whom that trade union has been certified.

(3) Any party to a binding collective agreement may apply to the appropriate national judicial authority to enforce the provisions of the agreement.

Successor rights and obligations

46. (1) If a business or a part of it is sold, leased, transferred, or otherwise disposed or -

- (a) the purchaser, lessee or transferee is bound by all the proceedings under this Act that were commenced before the date of the disposition and the proceedings shall continue as if no change had occurred; and

(b) if a collective agreement is in force, it continues to bind the purchaser, lessee, or transferee to the same extent as if it had been signed by the purchaser, lessee or transferee.

(2) Where a dispute arises regarding the applicability of this section, an affected party may apply to the national court for a determination of the matter in accordance with this Act.

SCHEDULE I

The constitution of every trade union and employers' organisation shall include the following information:

- 1) the name of the trade union or organisation;
- 2) the objects of the trade union or organisation;
- 3) the qualifications for membership;
- 4) provision for the office-bearers in the trade union or organisation among whom shall be the president or chairperson, a secretary or general secretary and treasurer;
- 5) provision for periodic elections to all offices and for the appointment of a temporary replacement if an office-holder becomes disqualified or incapacitated from holding office;
- 6) provision for a general meeting open to all members, at least once every [two] years;
- 7) a provision that any member or delegate may propose a resolution at a general meeting;
- 8) the fees and other subscriptions payable, and the maximum period of arrears permitted before a member loses his or her good standing;
- 9) the grounds on which an officer or member may be suspended or expelled from office or from membership, each ground being specified;
- 10) the procedure for suspension or expulsion from office or from membership, including provision that the affected officer or member be fully informed in writing of the allegations against him or her, that he or she shall have a reasonable opportunity to meet those allegations and shall have the right of appeal;
- 11) provision for the keeping of full and accurate records by the treasurer or other appropriate officer, for the annual audit of those accounts by an auditor appointed by the trade union or organisation who shall not be a member of that trade union or organisation, and for the availability to all members on request of full, audited annual statements of account;
- 12) provision for the banking and investment of the trade union's or organisation's funds;
- 13) provision for the paying out of the trade union's or organisation's funds, including the authority to sign cheques;
- 14) the conditions under which a member may become entitled to any financial benefit provided by the organisation;

- 15) provision for the amending of the constitution;
- 16) the duration of its financial year;
- 17) the inspection of the register of members and other books of the trade union or organisation by its members;
- 18) the manner of amalgamating with other trade unions or organisations;
- 19) the manner of dissolving the trade union or organisation.