

THE LABOUR INSTITUTIONS ACT, 2004
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SCHEDULE

THE UNITED REPUBLIC OF TANZANIA



No. 7 OF 2004

I ASSENT,
Benjamin W. Mkapa
President
4th June, 2004

An Act to provide for the establishment of Labour Institutions, to provide for their functions, powers and duties, and to provide for other matters related to them.

[.....]

ENACTED by the Parliament of the United Republic of Tanzania.

PART I
PRELIMINARY PROVISIONS

1. This Act may be cited as the Labour Institutions Act, 2004 and shall come into operation on such date as the Minister may, by notice published in the Gazette, appoint.

Short title and commencement

2. In this Act, unless the context otherwise requires -

Interpretation

- “Commission” means the Commission for Mediation and Arbitration established under section 12;
“Council” means the Labour, Economic and Social Council established under section 3;
“ELRA” means the Employment and Labour Relations Act, 2004;
“Labour Commissioner” means the Labour Commissioner appointed in terms of section 43(1) and in the absence of the Labour Commissioner, the Deputy Labour Commissioner;

- “Labour Court” means the Labour Division of the High Court established in accordance with the provisions of section 50;
- “labour laws” includes this Act and any other written law in respect of which the Minister is responsible;
- “labour officer” means a labour officer stipulated in section 43(3) and includes the Labour Commissioner or the Deputy Labour Commissioner;
- “Minister” means subject to section 34(a), the Minister for the time being responsible for labour matters;
- “Permanent Secretary” means unless otherwise expressed in this Act, the Permanent Secretary of the Ministry responsible for Labour matters;
- “Registrar of the Labour Court” means the Registrar appointed in terms of section 54;
- “Registrar of Organisations” means the Registrar appointed in terms of section 43(2) and in the absence of the Registrar, the Deputy Registrar appointed in terms of subsection (2);
- “Sector” means an industry or a service or part of an industry or a service.

PART II

LABOUR, ECONOMIC AND SOCIAL COUNCIL

Establi-
shment of
the
Council

3. There is hereby established a Council for Labour, Economic and Social matters.

Compo-
sition of
Council

4.-(1) The Council shall consist the following members to be appointed by the Minister in accordance with this section:

- (a) a Chairperson who shall not be -
- (i) a member, official or office bearer of a trade union, employers association or federation; or
 - (ii) an employee in the public service of the Government of the United Republic;
- (b) sixteen other members, comprising -
- (i) the Permanent Secretary and three other members to represent the interests of the Government;

- (ii) four members to represent the interests of employers;
- (iii) four members to represent the interests of employees; and
- (iv) four members appointed because of their expertise in labour, economic, and social policy formulation.

(2) Prior to appointing a member of the Council, the Minister shall by notice in writing, invite nominations from -

- (a) registered trade unions and federations of trade unions, if the member is to represent employees; or
- (b) registered employers' associations and federations of employers' associations, if the member is to represent employers;
- (c) those members of the Council representing the interests of employers and employees in respect of the members contemplated in subsection (1)(b)(iv).

(3) With the approval of the Minister, the Council may co-opt other members to assist it in the performance of its functions, and such members shall not vote at meetings of the Council.

5.-(1) The functions of the Council shall be-

Functions and powers of Council

- (a) to advise the Government through the Ministry on any of the following matters -
 - (i) measure to promote economic growth and social equity;
 - (ii) economic and social policy;
 - (iii) any significant changes to social and economic policy before it is submitted to cabinet;
 - (iv) the promotion of a co-ordinated policy on labour, economic and social matters;
- (b) to advise the Minister on -
 - (i) national labour market policy;

- (ii) any proposed labour law before it is submitted to cabinet;
 - (iii) the prevention and reduction of unemployment;
 - (iv) any issue arising from the International Labour Organisation;
 - (v) any issue raised by any international or regional association of states of which the United Republic of Tanzania is a member;
 - (vi) codes of good practice;
 - (vii) collection and compilation of information and statistics relating to the administration of the labour laws;
 - (viii) any other labour matter referred to the Council by the Minister or the Council considers useful to achieve the objects of the labour laws;
- (c) to ensure that employers and employees each nominate -
- (i) assessors for appointment of the panels of assessors referred to in section 53;
 - (ii) individuals for appointment as members of the governing body of the Commission in terms of section 16;
 - (iii) individuals for appointment as members of the Essential Services Committee in terms of section 29;
- (d) to survey and analyse social and economic affairs;
- (e) to keep abreast of international developments in social and economic policy;
- (f) to evaluate the effectiveness of legislation and policy affecting social and economic policy;
- (g) to work in close cooperation with different ministries, statutory bodies, programmes and other forums or non-governmental agencies engaged in the formulation and the implementation of labour, economic, and social policy.

(2) In the performance of its functions, the Council may conduct -

- (a) an investigation as it may consider necessary;
- (b) research into labour, economic, and social policy.

(3) The Council may determine its own rules for the performance of its functions.

6.-(1) A member of the Council -

- (a) shall be appointed for three years; and
- (b) may be re-appointed at the end of the term of office.

Tenure of office and terms and conditions of membership

(2) A member of the Council shall be paid allowances for attending meetings, travel and subsistence at a rate to be determined by the Minister on the recommendations of the Permanent Secretary after consultation with the Permanent Secretary of the Office of Public Service Management.

7.-(1) The Minister shall remove a member from office if the member -

- (a) has resigned in writing and delivered the resignation to the Permanent Secretary;
- (b) no longer represents the interest in respect of which the member was appointed in terms of section 5 (1)(b)(i), (ii) or (iii);

provided that, removal of a member on this ground shall be done only if requested by the constituency whose interests that member represents ;

- (c) is guilty of serious misconduct relating to the performance of the member's functions;
- (d) is not able to perform the functions of a member (due to illness or any other reason);
- (e) is absent from three meetings of the Council without permission or good cause;
- (f) is declared bankrupt; or

Removal of members and filling of vacancies

- (g) is convicted of a criminal offence and sentenced to imprisonment without an option of a fine.

(2) Whenever a vacancy occurs on the Council, the Minister shall appoint a member to fill that vacancy for the unexpired term of office while making such an appointment they shall comply with the provisions of section 4.

Committees of the Council

8.-(1) The Council may, for the purpose of performing its functions -

- (a) establish committees to perform specific functions of the Council; and
- (b) subject to the approval of the Minister, assign any of its functions to a committee on conditions it may deem necessary to impose.

(2) A committee appointed by the Council -

- (a) shall be tripartite;
- (b) comprise at least three of its own members; and
- (c) may include any number of other committee members, but such members shall not vote in meetings of the committee if that committee has been assigned functions in terms of subsection (1)(b).

(3) Any function performed by a committee in terms of this section shall be deemed to be performed by the Council.

Meetings of the Council

9.-(1) The Chairperson shall call -

- (a) at least three meetings of the Council in a calendar year;
- (b) meetings of the Council in accordance with its rules;
- (c) a special meeting of the Council -
 - (i) at the written and motivated request of four members; or
 - (ii) at the request of the Minister.

(2) The chairperson shall preside over all meetings of the Council at which the chairperson is present.

(3) If the chairperson is not present, the members may elect a chairperson from among their number to chair the meeting.

(4) The majority of the members of the Council constitute a quorum provided that there is at least one member representing each of the following interests -

- (a) the government;
- (b) employers; and
- (c) employees.

(5) A decision of the majority of the members of the Council present at the meeting shall be the decision of the Council.

(6) In the case of a tied vote, the member presiding at the meeting shall have a casting vote in addition to that member's deliberative vote.

(7) The Council shall keep a written record of its meetings.

10.-(1) The Permanent Secretary -

- (a) shall provide members of staff in the Ministry available to be a Secretariat of the Council in the performance of its functions; and
- (b) may designate an officer in the Ministry to serve as a Secretary to the Council.

Admini-
stration of
the
Council

(2) The Council may contract with persons to assist it in the performance of its functions -

- (a) after consultation with the Permanent Secretary; and
- (b) with the approval of the Permanent Secretary as to the conditions of the contract.

11. The Council shall submit an annual report of its activities in each calendar year to the Minister before 30 June of the next year.

Annual
report of
the
Council

PART III

COMMISSION FOR MEDIATION AND ARBITRATION

12. There is hereby establishment a Commission for Mediation and Arbitration.

Establi-
shment of
Commi-
ssion

Inde-
pendence
and status
of the
Commis-
sion

13.-(1) The Commission shall be -

- (a) an independent department of Government;
- (b) shall not, in the performance of its functions, be subjected to the direction or control of any person or authority; and
- (c) independent of any political party, trade union, employers' association, federation of trade unions or employers' associations.

(2) The Government, public authorities and other registered organisations and federations shall provide such assistance and cooperation as may be required to ensure the effectiveness of the provisions of subsection (1).

(3) Subject to the provisions of this Act, the provisions of any written law relating to public departments shall apply to the Commission and the office of the Commission and any office established under the Commission shall be a public office.

Functions
of the
Commis-
sion

14.-(1) The functions of the Commission shall be to-

- (a) mediate any dispute referred to it in terms of any labour law;
- (b) determine any dispute referred to it by arbitration if-
 - (i) a labour law requires the dispute to be determined by arbitration;
 - (ii) the parties to the dispute agree to it being determined by arbitration;
 - (iii) the Labour Court refers the dispute to the Commission to be determined by arbitration in terms of section 94(3)(a)(ii) of the Employment and Labour Relations Act, 2004;
- (c) facilitate the establishment of a forum for workers participation, if requested to do so in terms of section 72 of the Employment and Labour Relations Act.

(2) The Commission may -

- (a) upon request, provide employees, employers and registered organisations and federations with advice and training relating to the prevention and settlement of disputes;

- (b) offer to mediate a dispute that has not been referred to it;
- (c) conduct or scrutinise any election or ballot of a registered trade union or employers' association if-
 - (i) required to do so by the Labour Court; or
 - (ii) at the request of the union or association concerned.

15.-(1) In the performance of its functions, the Commission may-

Powers of
Commi-
ssion

- (a) appoint a director, mediators and arbitrators;
- (b) assign mediators and arbitrators to mediate and arbitrate disputes in accordance with the provisions of any labour law;
- (c) establish offices in areas and at administrative levels as it may determine;
- (d) establish divisions of the Commission and assign particular responsibilities to them;
- (e) make rules to regulate -
 - (i) its internal administration;
 - (ii) the practice and procedure for mediating disputes;
 - (iii) the practice and procedure for arbitrating disputes;
 - (iv) the practice and procedure of the essential services committee;
- (f) publish guidelines;
- (g) publish a code of ethics for mediators and arbitrators.

(2) The Commission shall, by notice in the *Gazette*, publish any rules or guidelines prescribed in subsection (1)(e) and (f),

16.-(1) The Commission shall consist of -

- (a) a chairperson, who shall not be -
 - (i) a member, official or office bearer of a trade union, employers association or federation; or
 - (ii) an employee in the public service;

Compo-
sition of
the
Commi-
ssion

(b) six other commissioners.

(2) The chairperson shall be appointed from among persons who have knowledge, experience and a considerable degree of involvement in labour matters.

(3) The President shall appoint -

(a) the Chairperson, from a list of three persons recommended by the Council;

(b) two Commissioners proposed by members of the Council representing the interests of employees;

(c) two Commissioners proposed by members of the Council representing the interests of employers;

(d) two Commissioners to represent the Government.

(4) The appointment referred to in subsection (3) shall be made on the recommendation of the Minister after the Minister has consulted with the Council.

Tenure
and conditions
of
services of
Commissioners

17.-(1) A Commissioner shall hold office for a period of three years and shall be eligible for re-appointment at the end of the term of office.

(2) The office of Commissioner shall not be a full time office and a commissioner shall not be paid a salary but shall be paid allowances for attending meetings, travel and subsistence at a rate determined by the Minister on the recommendation of the Permanent Secretary after consultation with the Permanent Secretary of the Office of Public Service Management.

(3) The office of a Commissioner shall become vacant if the Commissioner-

(a) resigns; or

(b) is removed from office in terms of subsection (4).

(4) The President, on the recommendations of the Minister, shall

remove a Commissioner from office if the Commissioner -

- (a) no longer represents the interest in respect of which the member was appointed in terms of section 16(3); provided that, removal of a Commissioner on this ground shall be done only if requested by the constituency whose interests that Commissioner represents;
- (b) is guilty of serious misconduct relating to the performance of the Commissioner's functions;
- (c) is not able to perform the functions of a Commissioner (due to illness or any other reason);
- (d) is absent from three consecutive meetings of the Commission without permission or good cause;
- (e) is declared bankrupt; or
- (f) is convicted of a criminal offence and sentenced to imprisonment without an option of a fine.

(5) The Minister shall consult with the Council before making a recommendation to the President to remove a Commissioner from office.

(6) Whenever an office of a Commissioner becomes vacant, the President, shall appoint a commissioner to fill that vacancy for the un-expired term of office and while making such an appointment, he shall comply with the provisions of section 16(3).

18.-(1) There shall be appointed a Director and a Deputy Director of the Commission.

Director
of the
Commis-
sion

(2) The Commission, after consultation with the Minister shall, appoint a Director and a Deputy Director from among persons who are knowledgeable, skilled and experienced in labour relations and dispute prevention and resolution.

(3) The Director shall be the chief executive of the Commission and subject to the general directions and control of the Commission-

- (a) be responsible for carrying out the policy decisions of the Commission and the day to day administration and

management of the affairs of the Commission;

(b) perform the functions that are conferred on the Director by any labour law or delegated to the Director by the Commission;

(c) may mediate and arbitrate disputes referred to the Commission under the Employment and Labour Relations Act.

(4) The Director shall, unless in any particular case the Commission otherwise directs in writing, attend all meetings of the Commission but shall have no vote.

(5) The Director, in consultation with the Commission, may delegate any of his functions or the function of the Commission to any mediator, arbitrator or member of staff.

(6) Notwithstanding any provisions in this Act, the Director may refer any dispute referred to the Commission to the Labour Court for its decision if it is in the public interest to do so.

Mediators
and arbit-
rators

19.-(1) The Commission shall appoint as many mediators and arbitrators as it considers necessary to perform the functions of the Commission.

(2) The Commission may appoint mediators and arbitrators on either a full-time or part-time basis and on terms and conditions determined by it, in consultation with the Office of the Public Service Management.

(3) When appointing a mediator or arbitrator, the Commission shall have due regard to the need to constitute an independent and professional Commission.

(4) The Commission shall prepare a code of conduct for mediators and arbitrators and ensure that they comply with the code of conduct in performing their functions.

(5) The Commission shall be responsible for the control and discipline of mediators and arbitrators provided that the control or discipline does not amount to interference with the independence of the

mediator or arbitrator in any dispute.

(6) The Commission may remove a mediator or arbitrator from office only for-

- (a) serious misconduct relating to the functions of a mediator or arbitrator;
- (b) incapacity relating to the functions of a mediator or arbitrator;
- (c) a material violation of the code of conduct referred to in subsection (4).

(7) Nothing in this Act or the Employment Labour Relations Act precludes-

- (a) a person being appointed as both a mediator and an arbitrator under this section;
- (b) such a person from being assigned to perform both capacities in respect of a dispute.

(8) An assignment of a person in terms of subsection (7)(b) shall only take place where there are published rules and guidelines regulating the performance of such persons.

20.-(1) Mediators and arbitrators appointed in terms of this Act may-

- (a) summon any person for questioning or to attend a mediation or arbitration hearing if the mediator or arbitrator considers that, that person's attendance shall assist in the resolution of the dispute;
- (b) summon any person who is believed to have possession or control of any book, document or object relevant to the resolution of the dispute, to appear before the mediator or arbitrator to be questioned and to produce the book, document or object;
- (c) administer an oath or accept an affirmation from any person called to give evidence; and

Powers of
mediators
and arbi-
trators

(d) question any person about any matter relevant to the dispute.

(2) The Commission shall pay the prescribed witness fee to each person who appears before a mediator or arbitrator in response to a summons issued in terms of this section.

(3) Any person, who does or omits to do any of the acts provided for in paragraphs (a) to (i) of this subsection, commits contempt of the Commission:

- (a) if, after having been summoned to appear before a mediator or arbitrator, the person, without good cause, fails to appear at the place, date and time stated in the summons;
- (b) if, after having appeared in response to a summons, the person fails to remain in attendance until excused by the mediator or arbitrator;
- (c) by refusing to take the oath or to make an affirmation as a witness when a mediator or arbitrator so requires;
- (d) by refusing to answer any question fully or to the best of that person's knowledge and belief subject to any law entitling that person to refuse to do so;
- (e) if the person, without good cause, fails to produce any book, document or object specified in the summons;
- (f) if the person wilfully hinders a mediator or arbitrator in performing any function conferred by or in terms of any labour law;
- (g) if the person insults, disparages or belittles a mediator or arbitrator, or prejudices or improperly influences proceedings or improperly anticipates a mediator's or arbitrator's decision;
- (h) by wilfully interrupting the mediation or arbitration proceedings or misbehaving in any other manner during those proceedings;
- (i) by doing anything else in relation to the Commission which, if done in relation to a court of law, would have been contempt of court.

Oaths

21. A Commissioner, the Director, mediator and arbitrator shall, before entering upon the duties of office, take and subscribe to an oath for the due performance of the functions of office as set out in the Schedule to this Act.

22.-(1) The Director may appoint staff after consulting the Commission.

Staff of
the
Commi-
ssion

(2) The Commission, in consultation with the Office of the Public Service Management, shall determine the remuneration of staff members.

(3) The Director shall be responsible for the control and discipline of the staff.

Finance of
the
Commi-
ssion

23.-(1) The funds and resources of the Commission shall consist of-

(a) moneys appropriated by Parliament;

(b) donations, grants or bequests as the Commission may from time to time receive without compromising the independence of the Commission;

(c) such other moneys or property accruing to the Commission-

(i) under any written law; or

(ii) in any other manner in the performance of its functions.

(2) The Commission shall be responsible to the National Assembly in accounting for its revenue and expenditure.

(3) The financial year of the Commission begins on first July in each year and ends on thirtieth June of the next year.

(4) In each financial year, at a time determined by the Minister, the Commission shall submit to the Minister a detailed annual budget for the next financial year including the Commission's estimated income and expenditure and the requested appropriation from Parliament.

(5) In preparing its estimates under subsection (4), the Commission shall have regard to the advice of the Minister and the Minister

responsible for Finance.

(6) The Minister shall, upon receipt of an annual budget, table the budget before the National Assembly.

Accounts
and audits

24.-(1) The Commission shall -

- (a) keep proper books of accounts and records of its income, expenditure, assets and liabilities;
- (b) take all reasonable measures to ensure that the resources of the Commission are safeguarded and utilised in the most economic, efficient and effective manner;
- (c) prepare appropriation accounts in accordance with the Public Finance Act, 2001;
- (d) prepare annual accounts in accordance with generally accepted accounting practice in respect of all its transactions.

Act No. 6
of 2001

(2) The accounts of the Commission shall be audited by the Controller and Auditor General in respect of each financial year.

(3) After the audit, the Controller and the Auditor General shall certify the accounts of the Commission and submit the report to the Commission.

Power to
contract

25.-(1) The Commission may contract with any person to -

- (a) do work for the Commission;
- (b) perform any function on behalf of the Commission.

(2) Any person with whom the Commission contracts shall be bound by the requirements of independence that binds the Commission under section 13.

Delegati-
on of
Commis-
sion's
powers

26.-(1) The Commission may delegate in writing any of its functions, other than the functions prescribed below, to any member of the Commission, the director, a committee of the Commission, and a mediator or arbitrator appointed in terms of section 19. The functions that the Commission shall not delegate are:

- (a) appointing the director;

- (b) appointing mediators and arbitrators under section 19;
- (c) approving the annual or supplementary budget for submission to the Minister in terms of section 23;

(2) The Commission may attach conditions to a delegation and may amend or revoke a delegation at any time.

(3) The Commission may vary or set aside any decision made by a person acting in terms of a delegation made in terms of subsection (1).

Limitation of liability and limitation of disclosure

27.-(1) The Commission shall be liable for any loss suffered by any person as a result of any act performed or omitted in good faith in the course of exercising the functions of the Commission.

(2) The Commission may not disclose to any person, or in any court, any information or document acquired on a confidential basis or without prejudice in the course of mediation.

(3) In this section, "Commission" includes the Commission, a Commissioner and any person employed, appointed or contracted by the Commission.

Annual report of the Commission

28.-(1) Within six months after the end of the financial year, the Commission shall prepare and submit to the National Assembly through the Minister an annual report in respect of that year containing-

- (a) a copy of the audited accounts of the Commission;
- (b) the auditor's report on those accounts;
- (c) a report on the operations of the Commission; and
- (d) any other information that the Minister may require.

(2) The Minister shall table the report with the National Assembly as soon as reasonably practicable.

PART IV

ESSENTIAL SERVICES COMMITTEE

29. There is hereby established an Essential Services Committee within the Commission.

Establishment of Essential Services Committee

Functions
of Es-
sential
Service
Commi-
tee

Act No. 6
of 2004

Appoint-
ment of
Essential
Service
Commi-
tee

30. The functions of the Essential Services Committee shall be -

- (a) to designate essential services in terms of section 76(3) of Employment and Labour Relations Act; and
- (b) to determine disputes about whether or not an employee or employer is engaged in a designated essential service.

31.-(1) The Minister shall in consultation with the Council-

- (a) appoint five members with knowledge and experience of labour law and labour relations as members of the Essential Services Committee; and
- (b) appoint one of such members to be a Chairperson of the Committee.

(2) The Chairperson and members of the Essential Services Committee -

- (a) shall be appointed for three years; and
- (b) may be re-appointed at the end of the term of office.

(3) The Minister, on the recommendations of the Permanent Secretary may determine the allowances to be paid to members of the Essential Services Committee for attending meetings, travel and subsistence.

(4) The Permanent Secretary shall consult with the Permanent Secretary of the Office for Public Service Management prior to the or making a recommendation stipulated in sub-section (3).

(5) The Minister shall remove a member from office if the member-

- (a) has resigned in writing and delivered the resignation to the Permanent Secretary;
- (b) is guilty of serious misconduct relating to the performance of the member's functions;

- (c) is not able to perform the functions of a member (due to illness or any other reason); or
- (d) is absent from three consecutive meetings of the Essential Services Committee without permission or good cause;
- (e) is declared bankrupt;
- (f) is convicted of a criminal offence and sentenced to imprisonment without an option of a fine.

(6) Whenever a vacancy occurs on the Essential Services Committee, the Minister shall appoint a member to fill that vacancy for the un-expired term of office and while making such an appointment he shall comply with the provisions of subsection (1).

Powers of
Essential
Services
Committee

32.-(1) The Essential Services Committee may-

- (a) summon for questioning any person to attend a hearing if the Committee considers that, that person's attendance will assist in the performance of its functions;
- (b) summon any person, who is believed to have in his possession or control of any book, document or object relevant to the performance of its functions, to appear before the Committee to be questioned and to produce the book, document or object;
- (c) administer an oath or accept an affirmation from any person called to give evidence; and
- (d) question any person about any matter relevant to the performance of its functions.

(2) Nothing in subsection (1) shall require any person to answer any question or furnish any information, book, document or object if there is a lawful ground for not doing so.

(3) The Commission shall pay the prescribed witness fee to each person who appears before a mediator or arbitrator in response to a subpoena issued in terms of this section.

33.-(1) The Essential Services Committee may make rules for the conduct of its meetings.

(2) The Commission shall provide staff available to be a Secretariat

Admini-
stration of
Essential
Services
Committee

of the Essential Services Committee to assist it in the performance of its functions.

PART V
WAGE BOARDS

Interpre-
tation

34. For the purpose of this Part, 'Minister' means-

- (a) the Minister for the time being responsible for the public service if the sector in respect of which the provisions of this Part are to apply is the whole or part of the public service; or
- (b) the Minister for the time being responsible for labour matters in respect of any other sector.

Appoint-
ment of
wage
boards

35.-(1) The Minister may appoint a wage board in respect of a sector and area to investigate remuneration and terms and conditions of employment in any sector and area and shall report to the Minister on its findings and recommendations.

(2) The Minister shall publish a notice in the *Gazette* prescribing-

- (a) the names of the individuals appointed as members of the wage board;
- (b) the terms of reference of the investigation including-
 - (i) the sector and area to be investigated;
 - (ii) the categories and classes of employees to be included in the investigation;
 - (iii) the matters to be investigated; and
- (c) an invitation to members of the public to make written representations within a period prescribed in the notice;

(3) A wage board shall consist of the following members to be appointed by the Minister-

- (a) a Chairperson;
 - (b) a member nominated by the members of the Council who represents the interests of employees;
 - (c) a member nominated by the members of the Council who represents the interest of employers.
- (4) A member of a wage board shall hold office until-
- (a) the Minister discharges the wage board;
 - (b) the Minister has removed the member in terms of subsection (5);
- (5) The Minister-
- (a) may remove a member from office at any time;
 - (b) shall remove a member from office if the member-
 - (i) has resigned in writing and delivered the resignation to the Permanent Secretary;
 - (ii) is guilty of serious misconduct relating to the performance of a member's functions;
 - (iii) is not able to perform the functions of a member (due to illness or any other reason);
 - (iv) is absent from three consecutive meetings of the wage board without permission or good cause;
 - (v) is declared bankrupt;
 - (vi) is convicted of a criminal offence and sentenced to imprisonment without the option of a fine.
- (6) Whenever a vacancy occurs on a wage board, the Minister shall appoint a member to fill that vacancy in accordance with subsections (2) and (3).
- (7) The Minister, upon the recommendation of the Permanent Secretary may determine the allowances to be paid to a member of a

wage board for attending meetings, travel and subsistence.

(8) The Permanent Secretary shall consult with the Permanent Secretary of the Office for Public Service Management prior to making a recommendation stipulated in subsection (7).

Functions
and
powers of
a wage
board

36.-(1) The functions of a wage board shall be within its terms of reference that is -

- (a) to conduct an investigation on a minimum remuneration and other conditions of employment;
- (b) to promote collective bargaining between registered trade unions, employers and registered employers' associations;
- (c) to make recommendations to the Minister on a minimum wage and conditions of employment.

(2) In the performance of its functions within its terms of reference, a wage board may-

- (a) question any person who may be able to provide information relevant to any investigation;
- (b) require, in writing, any person to furnish any information, book, document or object that is material to the investigation;
- (c) conduct public hearings;
- (d) facilitate negotiations on a minimum remuneration and conditions of employment between registered trade unions, employers and registered employers' associations in the sector.

(3) It shall be an offence to refuse to answer any question or furnish any information, book, document or object without a lawful ground for that refusal.

(4) At the request of a wage board, the Commission shall provide a mediator to facilitate the negotiations stipulated in subsection (2)(d).

Report of
wage
board

37. In any investigation, a wage board shall take into account-

- (a) articles 22 and 23 of the Constitution of the United Republic of Tanzania;
- (b) any applicable Convention or recommendation of the International Labour Organisation, whether or not the United Republic of Tanzania is a signatory to the convention;
- (c) all representations and other information submitted to it;
- (d) all relevant factors including-
 - (i) the ability of employers to carry on their businesses successfully;
 - (ii) the operation of small, medium and micro-enterprises;
 - (iii) the operation of new enterprises;
 - (iv) the cost of living;
 - (v) the alleviation of poverty;
 - (vi) the minimum subsistence level;
 - (vii) the remuneration and terms and conditions of employment of employees employed in the East African Community in the sector;
 - (viii) any collective agreements providing for remuneration and terms and conditions of employment in the sector;
 - (ix) the likely impact of any proposed condition of employment on current employment or the creation of employment;
 - (x) any other relevant matter.

Report of
wage
board

38.-(1) On completion of an investigation and after considering all representations made to it , a wage board shall prepare and submit a report to the Minister, which shall consist of-

- (a) the board's findings;
- (b) its recommendations on-
 - (i) minimum wage for the sector and area;
 - (ii) any term and condition of employment particular to the

sector or area, including any variation of a basic employment condition referred to in section 9 of the Employment and Labour Relations Act.

(2) If as a result of any facilitation on the part of a wage board, the registered trade unions, employer organisations and employers in the sector conclude a collective agreement on the matters referred to in subsection (1)(b), the Board-

- (a) shall recommend the extension of that agreement to all employers and employees in the sector and area if the parties to the agreement are sufficiently representative of employers and employees in the sector and area; or
- (b) may recommend the extension of the agreement or provisions of the agreement to all employers and employees in the sector and area if the parties to the agreement are not sufficiently representative of employers and employees in the sector and area.

(3) If a member of a wage board does not agree with a board's report or any part thereof, he shall submit a minority report which shall be accompanied with the board's report.

Making of
a wage
order

39.-(1) After considering a report and recommendations of a wage board appointed in terms of section 35, the Minister may make a wage order determining the minimum wage and other conditions of employment for employees in any sector and area of the economy-

- (a) in accordance with the recommendations;
- (b) by notice in the *Gazette*; and
- (c) with effect from a date specified in the *Gazette*.

(2) A wage order may, in respect of a sector and area-

- (a) set minimum rates of remuneration;
- (b) provide for the adjustment of minimum rates of remuneration;

- (c) set minimum terms and conditions of employment including any variation of basic conditions of employment referred to in section 13 of the Employment and Labour Relations Act;
 - (d) regulate task based work, piece work, home work and contract work;
 - (e) set minimum standards for housing and sanitation for employees who reside on the premises of the employer;
 - (f) specify minimum conditions for trainees;
 - (g) regulate workplace training and education;
 - (h) regulate any other matter concerning remuneration or other terms and conditions of employment.
- (3) Any provision of a wage order may apply to all or some of the employers and employees in the sector and area concerned.
- (4) If the Minister does not accept a recommendation of a wage board, the Minister may refer the recommendations back to the board for its reconsideration indicating the matters on which the Minister disagrees with the board.
- (5) If the Minister does not make a wage order within sixty days after receipt of the board's report, or decides not to make a wage order on the basis of the recommendations by the wage board, then the Minister shall within fourteen days table the report and recommendations to the National Assembly, and if applicable he shall attach reasons for not making an order -
- (a) after the decision, if the National Assembly is in Session;
 - (b) if the National Assembly is not in Session, after the commencement of the next Session of the National Assembly.
- (6) Every employer shall keep workers informed of the minimum wage rates in force by posting notices at the workplace or by any other more effective means.

Period of
operation
of wage
order

40.-(1) The provisions of a wage order shall remain binding until they are-

- (a) suspended or cancelled by the Minister in accordance with subsection (2);
- (b) amended or superseded by a new wage order; or
- (c) superseded by a collective agreement.

Legal effect of wage order

(2) The Minister, after consulting the Wage Board and the parties to a wage order, may suspend or cancel all or part of the order by publishing a notice in the *Gazette*.

Act No. 6 of 2004

41.-(1) A wage order shall be binding on all employers and employees described in the notice.

(2) If a matter regulated in Part III of the Employment and Labour Relations Act, is also regulated by a wage order, the provisions in the order shall prevail.

Administration of wage board

(3) Any worker who has been paid wages below the prescribed minimum wage may apply to the District Court or Resident Magistrate's Court for the recovery of the amount by which the worker was underpaid.

42.-(1) The Labour Commissioner -

- (a) shall provide staff members of the Ministry available to assist a wage board in the performance of its functions;
- (b) may designate an officer in the Ministry to serve as a secretary to a wage board.

(2) A wage board may contract persons to assist it in the performance of its functions-

- (a) after consultation with the Labour Commissioner; and
- (b) with the approval of the Permanent Secretary as to the contractual conditions of employment.

Appointment of Labour Commissioner and other officers

PART VI

LABOUR ADMINISTRATION AND INSPECTION

43.-(1) The President, shall appoint a Labour Commissioner and a Deputy Labour Commissioner, who shall be responsible for the administration of the labour laws.

Act No. 6
of 2004

(2) The Minister, shall appoint a Registrar of Organisations and a Deputy Registrar, who shall be responsible for the regulation of trade unions, employer organisations and federations under Part IV of the Employment and Labour Relations Act.

(3) The Minister shall appoint Assistant Labour Commissioners to head the sections of Labour Relations, Labour Inspection and Social Security.

(4) There shall be as many labour officers as are necessary to administer and enforce the labour laws.

Delegation

44.-(1) The Labour Commissioner, in writing, may delegate to the Deputy Labour Commissioner, Assistant Labour Commissioners or any labour officer, any of the Commissioner's powers, functions and duties.

(2) The Registrar of Organisations, in writing, may delegate to the Deputy Registrar any of the Registrar's powers, functions or duties.

(3) The Labour Commissioner or Registrar of Organisations, as the case may be, may-

(a) attach conditions to a delegation and may amend or revoke a delegation at any time;

(b) vary or set aside any decision made by a person acting in terms of a delegation made in terms of subsections (1) or (2).

Power of
Labour
Officers

45.-(1) For the purposes of the administration of labour laws, a labour officer may-

(a) at any reasonable time enter any premises with a prescribed certificate of authorisation and-

(i) require that the premises or any part of it shall not be disturbed during an inspection as long as it is reasonably necessary to search the premises;

(ii) search for and examine any information book,

- document or object;
- (iii) seize, make a copy of any information, book, document or object;
 - (iv) take a sample of any object found;
 - (v) take measurements, readings, recordings or photographs; and
 - (vi) question any person on the premises;
- (b) order, in the prescribed form, any person to appear before him at a specified date, time and place and to question that person;
 - (c) require any person who has control over any information, book, document or object to furnish it and explain any entry in the information, book or document or on the object;
 - (d) examine, make a copy or seize any book, document or object produced in terms of paragraph (c);
 - (e) take a sample of any object produced in terms of paragraph (c);
 - (f) give directions on where notices required in terms of this Act are to be posted;
 - (g) request a member of the Police Force to assist in the exercise of the powers referred to in this subsection;
 - (h) request any person to assist as an interpreter or otherwise in the exercise of the powers referred to in this subsection; and
 - (i) institute proceedings in the Resident's or District Court in respect of any contravention of any labour law and may appear and prosecute in the name of the Labour Commissioner.
- (2) Any information, book, document, sample or object referred to in this section shall be relevant to the enforcement and administration of the labour laws.
- (3) A labour officer shall issue a receipt for any book, document or

object seized in terms of this section.

(4) If asked, a labour officer shall produce the certificate referred to in subsection (1)(a).

(5) Any police officer requested to assist in terms of subsection (1), or any person requested to assist in terms of subsection (1), may accompany the labour officer as if that member or person were a labour officer.

(6) Any individual in charge of any premises on which individuals are employed shall provide facilities as may be reasonably required in order for a labour officer to exercise the powers referred to in subsection (1).

Compli-
ance order

46.-(1) A labour officer who has reasonable grounds to believe that an employer has not complied with a provision of the labour laws, he may issue a compliance order in the prescribed form.

(2) The labour officer shall serve the compliance order on-

(a) the employer;

(b) any registered trade union with members among the employees affected by the order;

(c) each employee affected by it.

(3) The failure to serve the stipulated order on the persons stipulated in subsection (2)(b) shall not invalidate the order.

(4) The employer shall display a copy of the order prominently at a place accessible to the affected employees at each workplace named in the order.

(5) An employer shall comply with a compliance order issued in terms of subsection (1) within the time period stated in the order.

(6) The Labour Commissioner may apply to the Labour Court to enforce the compliance order if the employer has not complied with the

Objections
to compli-
ance order

order and has not objected to the order in terms of section 47(1).

47.-(1) An employer may object in writing to a compliance order issued in terms of section 46 within 30 days of receipt of that order.

(2) The employer shall-

- (a) serve the objection on the Labour Commissioner;
- (b) serve a copy of the objection on any registered trade union with members among the employees;
- (c) display a copy of the objection in a prominent place accessible to the employees affected by the order.

(3) The Labour Commissioner, on good cause, may condone a late objection made in terms of subsection (1).

(4) After considering any representations by the employer, the employees or a registered trade union, the Labour Commissioner-

- (a) may confirm, modify or cancel an order;
- (b) shall specify the period within which the employer shall comply with any confirmed or modified order.

(5) The Labour Commissioner shall serve a copy of the order made under subsection (4) on-

- (a) the employer;
- (b) any registered trade union with members among the employees affected by the order;
- (c) the employees affected by the order.

(6) The failure to serve a copy of the order on the persons stipulated in subsection (5)(b) and (c) shall not invalidate the order.

(7) If the Labour Commissioner confirms or modifies an order made under subsection (4), the employer shall comply with that order within the time period specified in that order.

(8) The Labour Commissioner may apply to the Labour Court to enforce the compliance order if the employer has not complied with the order and has not lodged an appeal in terms of section 48.

48.-(1) An employer may appeal to the Labour Court against an order of the Labour Commissioner within 30 days of receipt of the order.

(2) Upon an application by the employer, the Labour Court may, on such terms and such conditions as it may impose, suspend the order of the Labour Commissioner pending the final order of the Labour Court or any other appeal against the decision of the Labour Court.

(3) The Labour Court, on good cause, may condone any appeal made after the 30 days has expired.

(4) The Labour Court may confirm, modify or cancel an order, and the order in respect of which is confirmed, modified or cancelled shall specify the period within which the employer shall comply with the confirmed or modified order.

49.-(1) Subject to subsection (2), any person who commits any of the following acts shall be guilty of an offence -

- (a) hindering or obstructing a labour officer in the performance of the officer's functions or the exercise of the officer's powers;
- (b) refusing or failing to answer, without good reason, any question put by a labour officer in terms of section 45 (1)(a)(vi) or (1)(c);
- (c) refusing or failing to appear in terms of section 45 (1)(b);
- (d) refusing or failing to furnish any information, book, document or object after being required to do so in terms of section 45 (1)(c);
- (e) wilfully furnishing false and misleading information to a labour officer;

- (f) refusing or failing to comply with any lawful request of, or lawful order by, a labour officer or any other person performing a function in terms of this Act or any other labour law;
- (g) falsely claiming to be a labour officer.

(2) It shall not be an offence to refuse to answer a question or produce any information, book, document or object if there is a lawful ground for the refusal.

Establishment and constitution of a Labour Court

PART VII LABOUR COURT

50.-(1) There shall be established a Labour Division of the High Court.

(2) The Labour Division of the High Court shall consist of:-

- (a) such number of Judges as the Chief Justice may consider necessary;
- (b) two panels of assessors appointed in terms of section 53.

(3) The Labour Division of the High Court shall be constituted by a Judge sitting with at least two assessors nominated by the presiding Judge from each of the panels appointed in terms of sub section (2) (b) of this section, provided that, it shall not be necessary for the Judge to sit with assessors:-

- (a) in application proceedings;
- (b) if the parties to the dispute agree; or
- (c) if it is necessary for the expeditious resolution of proceedings.

(4) The decision of the Labour Court shall be made by the Judge after taking into account the opinions of the assessors, if any. If the Judge does not agree with such opinions, the Judge shall give reasons.

(5) No proceedings of the Labour Division of the High Court shall be invalid for the reasons only that:-

- (a) the appointment of an assessor was defective;
- (b) after the commencement of the proceedings, the Court proceeds without an assessor because-
 - (i) an assessor is unable to sit; or
 - (ii) the Judge of the Labour Court removes the assessor from the proceedings in the interest of the administration of justice.

(6) The Chief Justice may exempt the Labour Court from the requirement of filing fees in any labour matter filed before it.

Jurisdiction of the Labour Court

51. Subject to the Constitution and the labour laws, the Labour Court has exclusive civil jurisdiction over any matter reserved for its decision by the labour laws.

Powers of the Labour Court

52.-(1) In the performance of its functions, the Labour Court shall have all the powers of the High Court.

(2) Subject to the provisions of subsection (1), on application of any of the parties and after hearing such parties as desired to be heard or on its own motion without such notice, the Labour Court may at any stage transfer any matter submitted and pending before it for trial or disposal,

provided that, the matter is not resolved for the exclusive jurisdiction of the Labour Court by labour laws to another Court of competent jurisdiction.

Assessors

(3) Where any matter has been transferred under subsection (2), the competent Court shall proceed to retry it or proceed from the state at which it was transferred.

53.-(1) The panels of assessors referred to in section 50(2)(c) shall be constituted as follows:

- (a) an employer panel drawn from a list of names nominated by the members of the Council representing the interests of employers; and
- (b) an employee panel drawn from a list of names nominated by

the members of the Council representing the interests of employees.

(2) The Judge in charge may remove a person from a panel referred to in subsection (1) only-

- (a) if that person has resigned in writing and delivered the resignation to the Registrar of the Labour Court;
- (b) for misconduct inconsistent with the ethics of an assessor;
- (c) for inability to perform the functions of an assessor (due to illness or any other reason);
- (d) because that person fails to attend a hearing without permission of the presiding judge or good cause;
- (e) because that person is declared bankrupt;
- (f) because that person is convicted of a criminal offence and sentenced to imprisonment without the option of a fine.

Registrar
and
Deputy
Registrar
of the
Labour
Court

Rules of
the Labour
Court

54. There shall be a Registrar and Deputy Registrar of the Labour Court appointed in terms of the High Court Registries Rules, 1984.

Representa-
tion in
the Labour

55.-(1) The Chief Justice, after consultation with the Minister, shall make rules to govern the practice and procedure of the Labour Court.

(2) The rules shall by notice be published in the *Gazette*.

56. In any proceedings before the Labour Court, a party to the proceedings may appear in person or be represented by-

- (a) an official of a registered trade union or employers' organisation; or
- (b) a personal representative of the party's own choice;
- (c) an advocate.

Appeals
from the
decisions
of the
Labour
Court

57. Any party to the proceedings in the Labour Court may appeal

against the decision of that Court to the Court of Appeal of Tanzania on a point of law only.

References by Labour Commissioner to the Labour Court and of Appeal of Tanzania

58. The Labour Commissioner may-

(1) refer any point of law, other than the point of law referred to in subsection (2), to the Labour Court;

(2) refer a point of law to the Court of Appeal if-

(a) there are conflicting decisions of the Labour Court in respect of the same point of law; and

(b) the parties to the proceedings in those decisions have not appealed.

(3) The Labour Commissioner shall serve any reference under subsections (1) and (2) on the Council.

(4) Any registered organisation or registered federation with an interest in the subject matter of any reference under subsection (1) or subsection (2) may apply to the Court to which the reference is made to be joined as parties to the proceedings.

Confidentiality

PART VIII

GENERAL

59.-(1) Subject to provisions of subsection (2), it shall be an offence for any person to disclose any information relating to the financial or business affairs of another person if that information was acquired in the performance of any function or the exercise of any power under this Act.

(2) Subsection (1) shall not apply if the information is disclosed in compliance with this Act-

(a) to enable a person to perform a function or exercise a power under this Act;

(b) in accordance with any written law;

(c) for the purpose of the proper administration of this Act;

(d) for the purposes of the administration of justice.

Burden of proof

60.-(1) In any proceedings concerning a contravention of any labour law, it shall be for the employer -

- (a) to prove that a record maintained by or for that employer is valid and accurate;
- (b) who has failed to keep a record required by any labour law, to prove compliance with any provision of those laws.

(2) In any civil proceedings concerning a contravention of a labour law-

- (a) the person who alleges that a right or protection conferred by any labour law has been contravened shall prove the facts of the conduct said to constitute the contravention unless the provisions of subsection (1)(b) apply; and
- (b) the party who is alleged to have engaged in the conduct in question shall then prove that the conduct does not constitute a contravention.

Presump-
tion as to
who is an
employee

61. For the purposes of a labour law, a person who works for, or renders services to, any other person is presumed, until the contrary is proved, to be an employee, regardless of the form of the contract, if any one or more of the following factors is present:

- (a) the manner in which the person works is subject to the control or direction of another person;
- (b) the person's hours of work are subject to the control or direction of another person;
- (c) in the case of a person who works for an organisation, the person is a part of that organisation;
- (d) the person has worked for that other person for an average of at least 45 hours per month over the last three months;
- (e) the person is economically dependent on the other person for whom that person works or renders services;
- (f) the person is provided with tools of trade or work equipment by the other person; or

Guidelines

(g) the person only works for or renders services to one person.

62.-(1) The Minister, after consultation with the Council, may-

- (a) issue guidelines for the proper administration of this Act;
- (b) change or replace a guideline.

(2) Any guideline or any change to, or replacement of, a code or guideline shall be published in the *Gazette*.

(3) Any person interpreting or applying this Act shall take into account any guideline published under this section.

(4) If a person departs from the guideline, that person shall justify the departure.

Offences

63.-(1) It shall be an offence to contravene sections 36, 49 and 59 of this Act.

(2) It is an offence to -

- (a) attempt to influence improperly a person who is performing a function in terms of this law or any other labour law;
- (b) obtain or attempt to obtain any document by means of fraud, false pretences, or by presenting or submitting a false or forged document;
- (c) pretend to be any person appointed in terms of this Act or any other labour law;
- (d) furnish false information knowing that the information is false;
- (e) hinder or obstruct any person performing a function in terms of this Act or any other labour law.

Penalties

64.-(1) A District Court which includes a Resident Magistrate's Court shall have jurisdiction to impose a penalty for an offence under this Act.

(2) Any person convicted of any of the offences referred to in section 63 (1) shall be liable to-

- (a) a fine not exceeding five million shillings;
- (b) imprisonment for a period of 3 months;
- (c) both a fine and imprisonment.

(3) Any person convicted of any of the offences referred to in subsection (2) of section 63 shall be liable to-

- (a) a fine not exceeding ten million shillings;
- (b) imprisonment for a period of 6 months;
- (c) both a fine and imprisonment.

Regulations

65.-(1) The Minister, after consultation with the Council, may make regulations and prescribe forms for the purpose of carrying out or giving effect to the principles and provisions of this Act.

(2) In particular and without prejudice to the generality of the powers conferred by subsection (1) of this section, the Minister may make regulations for or in respect of all or any of the following matters -

- (a) all matters stated or required in this Act to be prescribed;
- (b) conduct of investigations by the Council;
- (c) procedure for appointing members of the Council to represent the interests of employers and employees;
- (d) regulate the establishment and conduct of committees of the Council;
- (e) appointment and discharge of wage boards;
- (f) regulate investigations, public hearings and facilitation of negotiations by wage boards;
- (g) procedure for the suspension, cancellation, amendment or

suspension of a wage order;

(h) regulate the exercise of labour 'officers' powers of investigation and prosecution;

(i) regulate the issuing of compliance orders and objections to those orders;

(j) regulate the removal of members, commissioners, mediators and arbitrators from office;

(k) regulate annual reports of the Council and the Commission.

Savings and Transitional provisions

66.-(1) For the purpose of this section "repealed laws" means the laws repealed under section 103 of the Employment and Labour Relations Act.

(2) The Labour Commissioner, Registrar of Trade Union, Deputy Registrar of a Trade Union and labour officers appointed under the repealed laws are deemed to be appointed under this Act as the Labour Registrar of Organizations, Deputy Registrar of Organisations and labour officers respectively.

SCHEDULE

OATHS OF OFFICE.

(Made under section 21)

OATH FOR COMMISSIONERS

I,....., having been appointed a Commissioner of the Commission for Mediation and Arbitration, do swear/affirm that I will discharge my functions without bias and will not directly or indirectly reveal any information that comes into my possession without the authorisation of the Commission or the Labour Court.

SO HELP ME GOD

Sworn/Affirmed before me on thisday of20...

.....
President

OATH FOR DIRECTOR, MEDIATOR OR ARBITRATOR

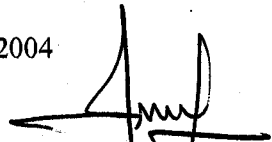
I,....., having been appointed a Director /Mediator /Arbitrator of the Commission for Mediation and Arbitration, do swear/affirm that I will discharge my functions without bias and will not directly or indirectly reveal any information that comes into my possession without the authorisation of the Commission or the Labour Court.

SO HELP ME GOD

Sworn/Affirmed before me on thisday of20...

.....
Judge of the High Court

Passed in the National Assembly on the 15th April, 2004



KIPENKA M. MUSSA
Clerk of the National Assembly