

**THE INDUSTRIAL AND LABOUR RELATIONS (AMENDMENT)
BILL, 2008**

MEMORANDUM

The object of this Bill is to amend the Industrial and Labour Relations Act so as to —

- (a) revise the law relating to industrial and labour relations; and
- (b) provide for matters connected with or incidental to the foregoing.

M. MALILA,
Attorney-General

A BILL

ENTITLED

An Act to amend the Industrial and Labour Relations Act.

ENACTED by the Parliament of Zambia

Enactment

1. (1) This Act may be cited as the Industrial and Labour Relations (Amendment) Act, 2008, and shall be read as one with the Industrial and Labour Relations Act, in this Act referred to as the principal Act.

Short title

Cap. 269

2. Section *three* of the principal Act is amended—

Amendment

of section 3

(a) by the deletion of the definition of “ bargaining unit ” and the substitution therefor of the following:

“ bargaining unit ” means—

(a) the management of the undertaking and the most representative trade union representing employees in the undertaking where collective bargaining is at the level of an undertaking, other than an industry; or

(b) the negotiating team representing the employers’ organisation and the negotiating team representing the most representative trade union in the industry concerned where collective bargaining is at the level of an undertaking or industry;

(b) by the insertion in the appropriate places of the following new definitions:

“ dispute ” means a disagreement on any matter of opinion by the parties to a recognition or collective agreement;

“management” in relation to an employee, means a person—

- (a) who is the head of an institution or undertaking and has authority to hire, suspend, promote or demote an employee of the institution or undertaking;
- (b) who is the head of a department in an institution or undertaking and has authority in the financial, operational, human resource, security or policy matters of the institution or undertaking;
- (c) with decision-making authority in the financial, operational, personnel or policy matters of an institution or undertaking and who represents and negotiates on behalf of the institution or undertaking in collective bargaining or negotiations with any trade union; or
- (d) with written institutional authority to perform the functions referred to in paragraphs (a), (b) or (c);

“most representative” in relation to an organisation, means—

- (a) a national centre with the most number of affiliates; or
- (b) at sector, trade, undertaking, establishment or industry level, a body with the majority of members:

Provided that where in the sector, trade, undertaking, establishment or industry, there are employees who offer specialised services requiring specific representation, the most representative body shall be considered to be between the competing representation;

“national centre” means an organisation to which any group of trade unions is affiliated and whose principal objective is to represent and promote the interests of the trade unions; and

“ strike ” means—

- (a) the cessation of work or withdrawal of labour by a body of persons employed in any undertaking or institution acting in combination; or
- (b) a concerted refusal or a refusal under a common understanding, of any number of employees, to continue to work or provide their labour.

3. The principal Act is amended by the repeal of section *four* and the substitution therefor of the following:

Repeal and replacement of section 4

4. (1) An employee shall cease to be an eligible employee if the employee becomes a member of management.

When employee ceases to be eligible employee

(2) Where there is a disagreement as to whether or not an employee is a member of management, either party to the disagreement may refer the matter to the Commissioner for determination.

(3) Any party aggrieved by the decision of the Commissioner, may, within fourteen days of such decision, appeal to the Court.

4. Section *five* of the principal Act is amended in paragraph (b) by the deletion of the words “ a trade union of the employee’s choice ” and the substitution therefor of the words “ a trade union within the sector, trade, undertaking establishment or industry in which that employee is engaged ”

Amendment of section 5

5. Section *seven* of the principal Act is amended in subsection (3) by the deletion of the words “ for such period as may be determined by the Court ” and the substitution therefor of the words “ for a period of one year ”

Amendment of section 7

6. Section *nine* of the principal Act is amended—

Amendment of section 9

(a) in subsection (3) by the insertion immediately after the words “ the Commissioner shall ” of the words “ within a period of six months from the date of the application for registration, ”;

(b) in subsection (5) by—

- (i) the deletion of the word “ or ” at the end of paragraph (a);
- (ii) the deletion of the full stop at the end of paragraph (b) and the substitution therefor of a semi-colon and the word “or” ; and
- (iii) the insertion immediately after subsection (b) of the following new paragraph:

(c) if —

- (i) the registration will be prejudicial to national security; or
- (ii) the objects of the trade union are contrary to the purposes for which the trade union was formed.; and

(c) by the insertion immediately after subsection (5) of the following new subsection:

(6) The Commissioner shall, where the Commissioner rejects an application under subsection (5), inform the applicant of the reasons therefor.

Amendment
of section 12

7. Section *twelve* of the principal Act is amended in subsection (2) by the deletion of the words “ three months ” and the substitution therefor of the words “ one month ”.

Amendment
of section 13

8. Section *thirteen* of the principal Act is amended in subsection (1) by the deletion of the words “ thirty days ” and the substitution therefor of the words “ ninety days ”

Amendment
of section 16

9. Section *sixteen* of the principal Act is amended in subsection (5)—

(a) by the insertion immediately after paragraph (a) of the following new paragraph:

(b) the Commissioner shall, within thirty days of the appointment of a liquidator under paragraph (a), notify the national centre to which the trade union is affiliated, of the appointment of the liquidator; and; and

(b) by the renumbering of paragraph (b) as paragraph (c).

Amendment
of section 18

10. Section *eighteen* of the principal Act is amended in subsection (1) by—

(a) the deletion of the word “ or ” at the end of the paragraph (e);

- (b) the deletion of the full stop at the end of paragraph (f) and the substitution therefor of a semicolon and the word “or”; and
- (c) the insertion immediately after paragraph (g) of the following new paragraph:
 - (h) is an officer of a trade union and -
 - (i) is employed or serving, on secondment, in the secretariat of the trade union; and
 - (ii) has ceased to be an employee by virtue of retirement, misconduct or any other cause, in the sector, trade, undertaking, establishment or industry in which the trade union is operating.

11. Section *twenty-one* of the principal Act is amended—

Amendment
of section 21

- (a) by the insertion immediately after subsection (2) of the following new subsections:

(3) The Commissioner shall, where the Commissioner has reasonable grounds to believe that the officers of a trade union have misused, misapplied or misappropriated the funds of the trade union or used the funds for purposes contrary to the objects of the constitution of the trade union, appoint an independent auditor to audit the books of account of the trade union.

(4) The auditor appointed under subsection (3)—

(a) shall conduct a preliminary investigation into the books of account of the trade union; and

(b) may for purposes of auditing the books of account of a trade union, recommend to the Commissioner that the officers of the trade union be suspended.

(5) The Commissioner shall, where the auditor makes a recommendation under paragraph (b) of section (4)—

(a) suspend the executive board of the trade union for a period not exceeding ninety days pending the conclusion of the audit report;

(b) request the membership to nominate from amongst themselves the members to constitute an interim committee of the trade union; and

(c) appoint from among the nominations submitted under paragraph (b), an interim committee to oversee the operations of the trade union.

(6) Where the report of an auditor appointed under subsection (3) establishes that the officers of a trade union have misused, misapplied or misappropriated the funds or used the funds for purposes contrary to the objects of the constitution of the trade union, the Commissioner shall dissolve the executive board of the trade union and request the membership to elect a new executive board.;

(b) in subsection (3), by the deletion of the words “two hundred” and the substitution therefor of the words “two hundred thousand”; and

(c) by the renumbering of subsection (3) as subsection (7).

Amendment
of section 34

12. Section *thirty-four* of the principal Act is amended in subsection (4) by the deletion of the word “Minister” and the substitution therefor of the word “Commissioner”.

Amendment
of section 46

13. Section *forty-six* of the principal Act is amended in subsection (4) by the insertion immediately after the words “The Commissioner may,” of the words “with the approval of the Minister.”

Amendment
of section 63

14. Section *sixty-three* of the principal Act is amended in subsection (3) by the deletion of the words “two hundred” and the substitution therefor of the words “one hundred thousand”.

Amendment
of section 64

15. Section *sixty-four* of the principal Act is amended—

(a) in subsection (1) by the insertion of the words “at sector, trade, undertaking, establishment or industry level as the case may be” after the words “recognition agreement”; and

(b) by the insertion immediately after subsection (5) of the following new subsection:

(6) An employer who contravenes subsection (1) or (2), commits an offence and is liable, upon conviction, to a fine not exceeding twenty-seven thousand eight hundred penalty units or to imprisonment for a term not exceeding two years, or to both.

16. Section *sixty-five* of the principal Act is amended in paragraph (a) of subsection (1) by the insertion of the word “ a ” after the words “trade union as”.
- Amendment
of section 65
17. The principal Act is amended by the insertion immediately after section *sixty-five* of the following new section:
- Insertion of
new section
65A
- 65A. (1) A party to a recognition agreement may apply to the Commissioner for the termination of the recognition agreement, stating the reasons therefor.
- Termination
of
recognition
agreement
- (2) The Commissioner shall, where the Commissioner receives an application under subsection (1), inform the other party to the recognition agreement in respect of which the application is made and set a date on which the application shall be heard.
- (3) The Commissioner may, where the Commissioner hears the parties pursuant to subsection (2)—
- (a) approve the termination of the agreement; or
- (b) reject the application and give the applicant the reasons therefor.
18. Section *sixty-nine* of the principal Act is amended in paragraph (a) of subsection (1) by—
- Amendment
of section 69
- (a) the deletion of the semi colon at the end of that paragraph and the substitution therefor of a colon; and
- (b) the insertion immediately after the colon of the following new proviso:
- Provided that the most representative trade union shall ensure the participation of any minority trade unions in the sector, trade, undertaking, establishment or industry by forming an alliance with the minority trade unions led by the most representative trade union.
19. Section *seventy-six* of the principal Act is amended—
- Amendment
of section 76
- (a) by the insertion immediately after subsection (5) of the following new subsections:
- (6) A conciliator or board of conciliators appointed under this section shall conclude a dispute within thirty days from the date of the appointment.

(7) Where a conciliator or board of conciliators fails to settle a dispute within the period stipulated in subsection (6), the settlement of the dispute shall be deemed to have failed and section *seventy-eight* shall apply.; and

(b) by the renumbering of subsections (6) and (7) as (8) and (9) respectively.

Amendment
of section 78

20. Section *seventy-eight* of the principal Act is amended-

(a) in subsection (1)—

(i) by the deletion of the words “ the parties” and the substitution therefor of the words “either party”;

(ii) by the deletion of the word ‘or’ in paragraph (a);

(iii) by the deletion of the full stop at the end of paragraph (b) and the substitution therefor of a semi-colon and the word “or”; and

(iv) by the insertion immediately after paragraph (b) of the following new paragraph:

(c) refer it to arbitration and the provisions of the Arbitration Act shall apply accordingly.;

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of 2000

(b) in subsection (4), by the deletion of the words “ may continue for an indefinite period during which the dispute remains unresolved” and the substitution therefor of the words “ shall continue for a period of fourteen days after which the dispute shall if it remains unresolved, be referred to the Court”; and

(c) in subsection (5), by the insertion of the words “or after” after the word “before”.

Amendment
of section 85

21. Section *eighty-five* of the principal Act is amended by the deletion of subsection (3) and the substitution therefor of the following:

(3) The Court shall not consider a complaint or an application unless the complainant or applicant presents the complaint or application to the Court—

(a) within ninety days of exhausting the administrative channels available to the complainant or applicant; or

(b) where there are no administrative channels available to the complainant or applicant, within ninety days of the occurrence of the event which gave rise to the complaint or application:

Provided that—

- (i) upon application by the complainant or applicant, the Court may extend the period in which the complaint or application may be presented before it; and
- (ii) the Court shall dispose of the matter within a period of one year from the day on which the complaint or application is presented to it.”

22. Section *eighty-six* of the principal Act is amended in subsection (1) by the deletion of paragraph (c) and the substitution therefor of the following paragraph: Amendment of section 86

(c) not more than ten members appointed by the Judicial Service Commission.

23. Section *one hundred and four* of the principal Act is amended by the deletion of the words “four hundred” and the substitution therefor of the words “two hundred thousand”. Amendment of section 104

24. Section *one hundred and seven* of the principal Act is amended in subsection (10) by the deletion of paragraph (g) and the substitution therefor of the following: Amendment of section 107

(g) such other service which the Minister may prescribe, by statutory instrument, as an essential service.