

# THE TRADE UNIONS ACT, 1969

No. 24



of 1969

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**SCHEDULE**

**MATTERS FOR WHICH PROVISION SHALL BE MADE IN THE RULES OR  
CONSTITUTION OF EVERY TRADE UNION**

**AN ACT TO AMEND AND CONSOLIDATE THE LAW RELATING TO THE REGISTRATION OF TRADE UNIONS, AND OTHER PURPOSES CONNECTED THEREWITH**

Date of Assent: 28.7.69.

Date of Commencement: 8.8.69.

ENACTED by the Parliament of Botswana

**PART I**  
**INTRODUCTORY**

**Short Title**

1. This Act may be cited as the Trade Unions Act, 1969.

**Interpretation**

2. (1) In this Act, unless the context otherwise requires —

“branch union” includes the branch of a registered trade union registered under section 13, and a sub-branch thereof;

“employee” means subject to the provisions of subsection (2) any person who has entered into or works under contract with an employer, whether the contract is a contract for manual labour, clerical work or otherwise, is expressed or implied, oral or in writing, and whether it be a contract of service or apprenticeship or a contract personally to execute any work;

“employees’ association” means any combination or association of employees whether or not such combination or association is capable of registration as a trade union which has been registered as an employees’ association under the provisions of section 49;

“executive committee” includes the body, by whatever name called, to which the management of the affairs of a registered trade union is entrusted and the president, the secretary, and the treasurer of any registered trade union;

“financial year” means a period of twelve months ending on the thirty-first day of December;

“injury” includes any actionable wrong and an injury to a person in respect of his business, occupation, employment or other source of income;

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

- “investigator” means a person appointed to investigate the affairs of a registered trade union under section 54 or section 59;
- “lock-out” means the closing of a place of employment or the suspension of work or the refusal by an employer to continue to employ or to re-engage any number of persons employed by him in consequence of a dispute, done with a view to compelling those persons, or to aid another employer in compelling persons employed by him, to accept terms or conditions of or affecting employment;
- “office-expense fund” means a fund used solely for the purposes of defraying office rent, the salaries of menial or part-time office staff, the cost of stationery and postage and other office expenses;
- “officer” when used with reference to a trade union, includes any member of the executive committee thereof and any officer of a branch thereof, but does not include a trustee or an auditor;
- “property” means any movable or immovable property;
- “register” means the register of trade unions maintained by the Registrar under section 4;
- “registered office” means the office of a trade union which is registered under the provisions of section 29 as the head office of the trade union;
- “registered postal address” means the address of a trade union registered under the provisions of section 29;
- “registered trade union” means a trade union registered as a trade union under the provisions of this Act;
- “Registrar” includes the person for the time being appointed by the Minister under the provisions of section 3 to be or to act as Registrar of trade unions;
- “strike” means the cessation or reduction in the amounts of work by a body of persons employed in any trade or industry acting in combination, or a concerted refusal or a refusal under a common understanding of any number of persons who are, or have been so employed, to continue to work or accept employment and includes the forms of strike known as “go-slow”, “work to rule” and “ban on overtime”;
- “trade dispute” means any dispute or difference between employers and employees or between employees and employees, connected with the employment or non-employment, or the terms of the employment, or with the conditions of labour, of any person;
- “trade union” means any combination of more than thirty persons, other than an employees’ association not deemed to be a trade union under the provisions of section 49, associated together primarily for the purpose of regulating relations between employees and employers or between employees and employees in any industry, trade, or occupation, whether such combination would

or would not, if the Act had not been enacted, have been an unlawful combination by reason of some one or more of its objects being in restraint of trade;

“welfare fund” means a fund used for welfare purposes subject to such restrictions or conditions as may be prescribed by the Minister.

(2) For the purposes of this Act a public officer shall not be deemed an employee, but the provisions of this Act relating to employees and combinations and associations thereof shall apply to other employees of the State in the same manner as if they were employed by or under a private person.

## PART II ADMINISTRATIVE

### Registrars, etc.

3. (1) The Minister shall, for the purposes of this Act, appoint a Registrar of trade unions who shall be responsible for the due performance of the functions conferred upon the Registrar by this Act.

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

### Register of Trade Unions

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

(2) A copy of an entry in, or an excerpt from the register of trade unions or other book or document maintained under this section, certified under the hand of the Registrar, shall be *prima facie* evidence of the facts stated therein, as at the date of the certified copy.

### Application for Registration

5. (1) An application for the registration of a trade union shall be made within twenty-eight days of the formation of the trade union to the Registrar in the prescribed form and shall be signed by at least ten members of the trade union.

(2) The application shall be accompanied by a fee of R2, and shall contain or be accompanied by a copy of the constitution and the rules of the trade union or the proposed trade union, and a statement of the following particulars, namely —

- (a) the names, occupations and addresses of the members making the application;
- (b) the name of the trade union or proposed trade union and the address of its registered office, and its postal registered address; and

(c) the titles, names, ages and addresses and occupations of the officers and trustees of the trade union or proposed trade union.

(3) For the avoidance of doubts it is hereby declared that on the coming into operation of this Act, a trade union registered under the law repealed by section 68 shall submit an application within twenty-eight days of the coming into operation of this Act for registration of the trade union under the provisions of this Act:

Provided that the application of any such registered trade union shall not be accompanied by the fee referred to in the immediately preceding subsection.

(4) The Registrar may, if he thinks fit, grant, on an application being made in that behalf, an extension of the period specified in the immediately preceding subsection for a further period not exceeding two months.

(5) For the purposes of this Act, a trade union shall be deemed to be formed on the first date on which more than thirty employees or employers, as the case may be, agree in writing to become or form a trade union.

(6) Any trade union which fails to apply for registration within twenty-eight days in accordance with the provisions of this section, and every officer thereof or other person acting as an officer thereof, or purporting so to act, commits an offence and the trade union and every such person shall be liable on conviction to a fine of R100 or to imprisonment for a period of six months' or to both such fine and such imprisonment.

#### **Advertisement of Applications**

6. (1) The Registrar shall notify the receipt by him of any application for the registration of a trade union in accordance with the provisions of section 5 in the Gazette and in such other manner as may be prescribed.

(2) The notice published in the Gazette under the provisions of subsection (1) shall set forth the matters required to be specified under the provisions of section 5(2) and shall further call upon any person who objects to the registration of the union to notify the Registrar of his objection within such reasonable time as may be specified in the notice together with the grounds for his objection.

#### **Certificate of Registration**

7. (1) Subject to the provisions of this section and of section 8, the Registrar shall after considering any objection which may have been lodged under the provisions of section 6 (2) and making such inquiries in the matter as he may think fit, register a trade union in the prescribed manner and issue to the trade union a certificate of registration in the prescribed form.

(2) A certificate issued under this section shall, for all purposes, unless proved to have been cancelled or withdrawn, be conclusive evidence that the trade union has been duly registered under this Act.

(3) The Registrar may, before the registration of a trade union, require further information for the purposes of satisfying himself that an application for registration complies with the provisions of this Act.

(4) No trade union shall be registered by a name which, in the opinion of the Registrar, is undesirable.

(5) Where, on the registration of a trade union, it appears to the Registrar that the proposed name of the trade union is identical with that by which any other registered trade union has been registered, or the proposed name so nearly resembles that name as to be likely to deceive or mislead the public, or the members of either of the trade unions concerned, the Registrar shall require the persons applying for registration to alter the name of the trade union stated in the application.

### **Refusal of Registration**

8. (1) The Registrar shall refuse to register any trade union if he is satisfied that —

- (a) the union has not complied with the provisions of this Act, or of any regulations made thereunder or of any request or order made by the Registrar in respect of the registration of the trade union ;
- (b) any one of the principal objects or the rules and constitution of the trade union is unlawful or conflicts with the provisions of this Act, or regulations made thereunder ;
- (c) the trade union is used for unlawful purposes ;
- (d) any other trade union or employees' association registered under this Act is sufficiently representative of the interests in respect of which the application for registration is made ;
- (e) any of the proposed officers of the trade union is a person who has been convicted of an offence involving fraud or dishonesty ;
- (f) the principal objects of the combination seeking registration are not in accordance with those of a trade union as defined under section 2 ;
- (g) the combination seeking registration is an organisation consisting of persons engaged in or working at more than one trade or calling, and that its constitution and rules do not contain suitable provision for the protection and promotion of their respective sectional industrial interests ;
- (h) the funds of the trade union are being applied in an unlawful manner, or for an unlawful object or any object not authorized by this Act ;
- (i) the accounts of the trade union are not being kept in accordance with the provisions of this Act.
- (j) any of the proposed officers of the trade union or any other committee member thereof is a person who is not a citizen of Botswana.

(2) The Registrar shall, by notice in the *Gazette*, notify any registered trade union which appears to him to represent the same interests as the applicants for the registration of a trade union under this Act of the receipt of such application, and shall invite the registered trade union concerned to submit in writing within a period to be specified in the notice, any objections which the registered trade union may wish to make against the registration.

(3) Subject to the provisions of subsection (4), whenever the Registrar refuses to register a trade union, he shall notify the applicants in writing of the grounds of the refusal and the trade union shall be deemed to be dissolved with effect from the date of the notification.

(4) Where a trade union appeals against the decision of the Registrar under the provisions of section 10, and the appeal is dismissed, the trade union shall be deemed to be dissolved with effect from the date of the dismissal of the appeal.

(5) Any person acting as an official of a trade union which is deemed to be dissolved under the provisions of this section or any person purporting so to act, commits an offence and shall be liable on conviction to a fine of R60, and in the case of a continuing offence to a fine of R20 for every day during which the offence continues.

(6) It shall not be an offence under this section for any person to act on behalf of a trade union deemed to be dissolved under this section for purposes of —

- (a) any proceedings brought by or against any such trade union ; or
- (b) dissolving such trade union and disposing of its funds in accordance with its rules.

### **Cancellation of Registration**

9. (1) The Registrar shall cancel the registration of a registered trade union —

- (a) at the request of the trade union upon its dissolution to be verified in such manner as the Registrar may require ;
- (b) if he is satisfied that —
  - (i) the trade union has ceased to exist ;
  - (ii) the registration of the trade union was obtained by fraud, misrepresentation or mistake ;
  - (iii) any of the principal objects of the trade union is unlawful ;
  - (iv) the constitution of the trade union or of its executive committee is unlawful ;
  - (v) the funds of the trade union have been or are being expended in an unlawful manner or on an unlawful object, or on an object not authorised by this Act ;

(vi) the trade union has wilfully and after notice from him, contravened any provision of this Act or allowed any rule to continue in force which is inconsistent with any provision of this Act, or has rescinded any rule providing for any matter for which provision is required by section 30;

(vii) any of the officers of the trade union or any other committee member thereof is a person who is not a citizen of Botswana.

(2) Upon the cancellation of the registration of a registered trade union, the certificate of registration shall cease to have effect, and shall be forwarded to the Registrar within one month of the cancellation of the registration.

(3) The registration of a registered trade union, may be cancelled by the Registrar if he is satisfied that —

(a) the accounts of the trade union are not being kept in accordance with the provisions of this Act;

(b) the trade union, being an organisation consisting of persons engaged in or working at more than one trade or calling, and having a constitution and rules providing for the protection and promotion of the respective sectional industrial interests of its members, has failed to carry out those provisions of its constitution and rules.

(4) Except in a case falling within subsection (1) of this section, not less than two months' previous notice in writing specifying the ground on which it is proposed to cancel its registration shall be given by the Registrar to the registered trade union before the registration is cancelled.

(5) A registered trade union served with a notice under subsection (4) may, at any time within a period of two months from the date of the notice of cancellation, show cause in writing against the proposal to cancel its registration, and, if such cause is shown the Registrar may hold such inquiry as he may consider necessary in the circumstances.

(6) The Registrar may, after the expiration of the period of two months referred to in subsection (4), cancel the registration of any registered trade union which has failed to show cause under subsection (5) or which, having so shown cause, has failed to satisfy him that its registration should not be cancelled.

(7) An order made by the Registrar under this section cancelling the registration of any registered trade union shall specify briefly the grounds for the cancellation of the registration and shall forthwith be served on the trade union affected thereby.

### **Appeals**

10. (1) Any person aggrieved by the refusal of the Registrar to register a trade union or by an order made by the Registrar under section 9, may appeal against such refusal or order to the High Court.

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

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

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

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

### **Consequences of Cancellation of Registration**

11. (1) Whenever registration of any registered trade union is cancelled under the provisions of section 9 —

- (a) the trade union, its officers and members shall cease to enjoy any of the rights, immunities or privileges of a registered trade union, and any liabilities incurred or to be incurred by the trade union may be enforced against the union and its assets ;
- (b) the trade union shall be dissolved and its funds shall be disposed of in accordance with the rules of the trade union ; and
- (c) no person shall, except for the purpose of defending or bringing legal proceedings or dissolving the union and disposing of its funds in accordance with the rules, take any part in its management or organisation, or act or purport to act on behalf of the trade union or as an officer of the trade union.

(2) If any registered trade union whose registration is cancelled is not dissolved within three months, or such extended time as the Registrar may in any particular case allow, after the date of the cancellation or the date of the dismissal of an appeal against the cancellation, the trade union, any officer thereof, and any person acting as an officer thereof commits an offence and shall be liable on conviction to a fine of R100.

(3) Whenever the registration of a registered trade union is cancelled, the certificate of registration shall, within one month of the cancellation, be sent to the Registrar and if the provisions of this subsection are not complied with every officer of the trade union commits an offence and shall be liable on conviction to a fine of R100.

### **Unregistered Trade Unions Prohibited From Carrying on Business**

12. (1) No trade union or any member thereof shall perform any act in furtherance of the objects for which it has been formed unless the trade union has been registered in accordance with the provisions of this Act.

(2) The provisions of the preceding subsection shall not apply to a person taking part in the management or organisation of the trade union or acting on behalf of or as an officer of the trade union for the purpose of —

- (a) any proceedings brought by or against the union; or
- (b) dissolving the union and disposing of its funds in accordance with its rules.

(3) Any trade union which fails to apply for registration under and in accordance with the provisions of this Act shall not enjoy any of the rights, immunities or privileges of a registered trade union nor shall its officers or members enjoy any of the rights immunities or privileges accorded to the officers and members of a registered trade union.

(4) Any trade union, any officer thereof, and any person acting as an officer thereof or purporting so to act, who contravenes the provisions of subsection (1) of this section, commits an offence and shall be liable on conviction to a fine of R50 and in the case of a continuing offence to a fine of R20 for each day during which the offence continues.

#### **Registration of Branch Unions**

13. (1) An application for the registration of a branch of a registered trade union shall be made by the secretary of the registered trade union within twenty-eight days from the date of its formation.

(2) The application shall be signed by the secretary, and accompanied by the prescribed fee and shall contain the following particulars, that is to say —

- (a) the name of the registered trade union, the name of the branch, the postal address of the branch office or of the place of meeting for carrying out the business of the branch; and
- (b) the titles, names, ages, addresses and occupations of all of the officers of the branch.

(3) Whenever any branch of a registered trade union is dissolved, notice of the dissolution shall be given by the secretary of the branch union to the Registrar who shall, subject to the provisions of subsections (4) and (5) of this section, cancel the registration of the branch union.

(4) Before registering a branch of a registered trade union, or cancelling the registration of a branch union the Registrar may require the production of such evidence relating to the formation or dissolution of the branch union as he deems necessary.

(5) If, after such inquiry as he deems necessary, the Registrar is not satisfied as to the validity or propriety of the purported formation or dissolution of a branch of a trade union, he may refer the matter to a Trade Unions Tribunal composed of one or more independent persons appointed by the Minister, and that Tribunal shall inquire into the matter and make its recommendations to the Regis-

trar, who shall register, or refuse to register the branch, or cancel the registration of the branch union in accordance with such recommendations.

(6) Whenever the Registrar has reason to believe that a branch union has been dissolved, or that it has ceased to function, he may refer the matter to a Trade Unions Tribunal composed of one or more independent persons appointed by the Minister, and that Tribunal shall inquire into the matter and send its report together with its recommendations to the Registrar who shall, if the Tribunal so recommends, cancel the registration of the branch union.

(7) Any person acting or purporting to act as an officer of a branch of a trade union which has not been registered or of which the registration has been cancelled commits an offence and shall be liable on conviction to a fine of R200.

#### **Information Required by Minister**

14. (1) The Minister may, by notice in the *Gazette*, order any person or body of persons, namely —

- (a) any association or organisation of trade unions or officials of any such trade unions or representatives of any classes of workers or industry;
- (b) any association or organisation to which registered trade unions are affiliated; and
- (c) any association or organisation or person which or who represents more than one registered trade union or represents any trade or workers movement or is concerned with and devoted to trade unionism, labour relations or other such activities;

to notify his existence or its establishment to the Registrar, and the provisions of this section shall apply to any such person or body already in existence or established.

(2) For the purposes of subsection (1) of this section, the Minister may require any person, or body of persons specified in the preceding subsection to furnish, within a stated time, such particulars as appear to him necessary, and any such person or body of persons who fails when so required to supply such particulars as it is in his or their power to give or furnishes particulars which are false, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding three months or to a fine not exceeding R100 or to both such imprisonment and fine.

(3) A notice published under subsection (1) of this section shall specify, with such modifications as the Minister may deem necessary, the provisions of this Act which shall apply to such person or body of persons.

**PART III**  
**RIGHTS AND LIABILITIES**

**Benefits of Registration**

15. On the registration of a trade union under this Act, the registered trade union shall enjoy any of the rights, immunities or privileges of a registered trade union as conferred by this Act.

**Rights, Immunities, etc.**

16. (1) The rights, immunities or privileges conferred by this Act on a registered trade union, shall be as follows, that is to say —

- (a) no suit or other legal proceedings shall be maintainable in any civil court against any registered trade union or any officer or member thereof in respect of any act done in contemplation or in furtherance of a trade union dispute to which a member of the trade union is a party on the grounds only that such an act induces some other person to break a contract of employment, or that it is in interference with the trade, business, or employment of some other person or with the rights of some other person to dispose of his capital or of his labour as he wills ;
- (b) a suit against a registered trade union or against any member or officer thereof on behalf of themselves and all other members of the trade union in respect of any delictual act alleged to have been committed by or on behalf of the trade union shall not be entertained by any court ;
- (c) the objects of a registered trade union shall not, by reason only that they are in restraint of trade —
  - (i) be deemed to be unlawful so as to render any member of the trade union liable to criminal prosecution for conspiracy or otherwise ; or
  - (ii) be unlawful so as to render void or voidable any agreement or trust ;
- (d) a registered trade union may sue or be sued under its registered name ;
- (e) a registered trade union of which at least 25 per centum of his employees who fall within the scope of membership of such union are members shall be the negotiating body with which that employer shall be bound to deal in respect of all matters relating to the relations between that employer and those of his employees who are members of that union.

(2) For the purpose of paragraph (e) of the preceding subsection whenever an employer refuses to deal with a registered trade union as therein provided, the trade union shall report the facts to the Minister who shall call upon the employer to show cause in writing why a registered trade union is not being so recognised.

(3) Where the Minister is not satisfied with the cause shown by the employer under the provisions of the immediately preceding subsection or where the Minister considers that the public interest so requires he may by notice in the *Gazette*

declare that the registered trade union shall be the trade union with which the said employer shall deal in respect of all matters relating to the relations of the employer with those of his employees who are members of that union.

(4) Any employer who fails to deal with a registered trade union in contravention of the provisions of subsection (1)(e) after the publication of a notice under subsection (3) shall be guilty of an offence and shall be liable, on conviction, to a fine of R2,000 or in default thereof to imprisonment for a period of five years, and in the case of continuing offence, to a fine of R10 for every day during which the offence continues.

### **Liability in Contract**

17. (1) Every trade union shall be liable on any contract not being a contract which is void or unenforceable at law, entered into by it or by an agent acting on its behalf.

(2) Nothing in this Act shall be deemed to constitute any of the following agreements unlawful, nor shall a court refuse to entertain any legal proceeding instituted with the object of directly enforcing or recovering damages for the breach of any such agreement, namely —

- (a) any agreement between members of a registered trade union as such, concerning the conditions on which any members for the time being of the trade union shall or shall not sell their goods, transact business, employ or be employed;
- (b) any agreement for the payment by any person of any subscription or penalty to a registered trade union;
- (c) any agreement for the application of the funds of a registered trade union —
  - (i) to provide benefits to members, other than a benefit under a contributory provident fund or pensions scheme; or
  - (ii) to furnish contributions to any employer or employee not a member of the trade union, in consideration of the employer or employee acting in conformity with the rules or regulations of the trade union; or
- (d) any agreement made between one registered trade union and another; or
- (e) any bond to secure the performance of any of the above-mentioned agreements.

### **Proceedings by and against Trade Unions**

18. (1) A trade union or an employees' association not registered under this Act may sue or be sued, under the name by which it has been operating or is generally known.

(2) A trade union whose registration has been cancelled may sue or be sued under the name by which it was registered.

(3) Execution for any money recovered from any employees' association or trade union in civil proceedings may issue against any property belonging to or held in trust for the employees' association or trade union other than the benevolent fund of a registered trade union.

(4) Any fine ordered to be paid by any employees' association or trade union may be recovered by attachment and sale of any property belonging to or held in trust for such association or trade union in accordance with the provisions of the Criminal Procedure and Evidence Proclamation (Chapter 18).

(5) No attachment shall be made of any provident or benevolent fund kept apart by a trade union unless the court so orders.

## **PART IV**

### **CONSTITUTION AND RULES**

#### **Membership of Young Persons**

19. (1) Subject to the rules thereof, a young person

(a) may be a member of an employees' association or a registered trade union ;  
and

(b) shall enjoy all the rights of a member save as otherwise provided in this Act.

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

(3) A young person shall not be a member of the executive or a trustee of a registered trade union.

(4) For the purposes of this section "young person" means a person under the age of twenty-one and above the age of sixteen.

#### **Officers of a Registered Trade Union**

20. (1) Subject to the provisions of this section all officers of a registered trade union shall be persons who have been and still are engaged or employed for a period of not less than one year in an industry or occupation with which the trade union is directly concerned; and no officer of any such trade union shall be an officer of any other union:

Provided that the Registrar may grant permission in writing to any trade union authorising a departure from the provisions of this subsection subject to such conditions, and for such period as may be determined by the Registrar.

(2) Notwithstanding the provisions of subsection (1) an officer of a registered trade union who prior to his ceasing to be employed in the industry or occupation with which the trade union is directly concerned was lawfully holding

office in such union shall not be required to relinquish his office for a period of six months following such cessation.

(3) No person shall hold the post of treasurer to a registered trade union who in the Registrar's opinion is incapable of carrying out his duties.

(4) The Registrar shall give notice in writing to the registered trade union and to its treasurer where he is of the opinion that the treasurer is so incapable and, failing his earlier resignation, the treasurer on receiving such notice shall be deemed to have resigned at the expiry of one month from the date of posting of the notice of the Registrar and may not be reappointed as treasurer of registered trade union within a period of twelve months without the permission of the Registrar.

(5) No person shall hold office in a registered trade union who has been convicted of any offence involving dishonesty, or who has been convicted of any contravention of the provisions of this Act or of the Trade Disputes Act, 1969, and has been sentenced therefor to a period of not less than six months' imprisonment without the option of a fine.

#### **Voting Members of Registered Trade Union**

21. (1) No person shall vote for the purpose of taking any decision relating to the conduct of the business of a registered trade union unless he is a voting member of such union and is employed and resident in Botswana.

(2) Without prejudice to any shorter period specified in the rules or constitution of a registered trade union, no person shall be a voting member of that trade union if his monthly subscription is more than thirteen weeks in arrear.

#### **Annual General Meetings**

22. (1) Every registered trade union shall in each calendar year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notice calling it.

(2) Not more than fifteen months shall elapse between the date of one general meeting of a registered trade union and that of the next.

(3) In the case of the first annual general meeting of a registered trade union the period of fifteen months specified in subsection (2) of this section shall be calculated from the date of its formation.

(4) If default is made in holding an annual general meeting in accordance with the preceding subsections of this section, the Registrar shall call or direct the calling of a general meeting of the trade union and give such ancillary or consequential directions modifying or supplementing with immediate effect, in relation to the calling, holding and conducting of the meeting, the operation of the trade union, its rules or constitution.

(5) Directions given by the Registrar under the immediately preceding subsection shall include a direction that a certain number of members of the trade

union present in person shall be deemed to constitute the annual general meeting for the year notwithstanding the terms of the rules of constitution of the trade union, unless a meeting so held is not held in the year in which the default in holding the trade union's annual general meeting occurred.

(6) An annual general meeting held in pursuance of the provisions of subsections (4) and (5) of this section shall not be adjourned for any reason without the permission of the Registrar.

(7) If default is made in holding an annual general meeting in accordance with the provisions of subsection (1) of this section or in complying with any directions of the Registrar under subsections (4) and (5) of this section, every officer of the trade union who is knowingly and wilfully in default commits an offence and shall be liable on conviction to a fine of R100.

### **Extraordinary General Meetings**

23. (1) The executive committee of a registered trade union, notwithstanding anything in its rules or constitution, shall, on the requisition of not less than one-tenth of its voting members forthwith proceed duly to convene an extraordinary general meeting of the trade union.

(2) The requisition shall state the objects of the meeting, and shall be signed by the requisitionists and deposited at the registered office of the trade union.

(3) If the executive committee does not within twenty-one days from the date of the deposit of the requisition proceed duly to convene a meeting to be held not later than forty days after the date of the said deposit the requisitionists or any of them representing more than one of their number may themselves convene a meeting but any meeting so convened shall not be held after the expiration of three months of the date of the said deposit.

(4) If default is made in holding a meeting in accordance with subsection (1) of this section every officer of the trade union who is knowingly and wilfully in default commits an offence and shall be liable on conviction to a fine of R50.

### **Record of Meetings, etc.**

24. (1) Every registered trade union shall cause minutes of all proceedings of general meetings and of all proceedings at meetings of its executive committee to be entered in books kept for that purpose, and shall retain the same in safe custody for not less than five years.

(2) Any such minute if purporting to be signed by the chairman of the meeting at which it was recorded or by the chairman of the next succeeding meeting or meeting of the executive committee, as the case may be, shall be *prima facie* evidence of the facts therein contained.

(3) Where minutes have been recorded in accordance with the provisions of this section, the meeting shall, until the contrary is shown, be deemed to have

been duly held and convened and all proceedings thereof to have been duly taken ; and all appointments or dismissals of officers arising therefrom shall be deemed to be valid.

(4) If a registered trade union fails to comply with subsection (1) of this section the trade union and every officer thereof who is in default commits an offence and shall be liable on conviction to a fine of R50.

#### **Custody of Records of Minutes**

25. (1) The books containing the minutes of proceedings of any general meeting of a registered trade union and proceedings of its executive committee shall be kept at the registered office of the trade union and shall be open to the inspection of any member or the Registrar or anyone authorised in that behalf by the Registrar for not less than one hour in each day without charge ; and where the trade union does not exhibit a notice at the registered office specifying the time for such inspection then any person entitled to inspect the books under this section shall be entitled to do so forthwith on application.

(2) Any member of a registered trade union shall be entitled to be furnished, within fourteen days after he has made a request in that behalf to the trade union, with a copy of any such minutes as aforesaid at a charge not exceeding 10 cents for every hundred words.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent or delivered within the proper time every officer of the union who is in default commits an offence and shall be liable on conviction in respect of each offence to a fine of R10.

#### **Amalgamations and Federations, etc., of Registered Trade Unions**

26. (1) Subject to the provisions of the next succeeding subsection any two or more registered trade unions may, with the prior consent in writing of the Registrar and subject to any conditions as may be specified by him, amalgamate together as one trade union or form a federation or congress of registered trade unions by whatever name called, with or without the dissolution of the funds of the trade unions, in any case in which the voting members of each such registered trade union at a secret ballot taken in the manner prescribed by the votes of at least fifty *per centum* of the members thereof, agree that the trade union concerned may enter into any such amalgamation, federation or congress.

(2) The ballot referred to in the preceding subsection shall not be held to have been taken unless the votes recorded in favour of the proposed amalgamation or the formation of the federation or congress exceed by twenty *per centum* or more the votes against any such proposal.

(3) The provisions of this Act in respect of the registration of a trade union, save as otherwise provided in sections 27 and 28, shall apply to an amalgamation, federation or congress of registered trade unions under this section.

### **Registration of Amalgamations, Federations, etc.**

27. (1) Notice in writing containing such particulars as may be prescribed shall be given forthwith to the Registrar of every amalgamation, federation or congress, as the case may be, signed by the secretary and by ten members of each registered trade union which is a party thereto.

(2) If the Registrar is satisfied that the provisions of section 26 have been complied with and that the trade union, federation or congress formed thereby would be entitled to be registered under this Act, he shall register the trade union, federation or congress in the prescribed manner and the amalgamation, federation or congress, as the case may be, shall have effect from the date of the registration.

(3) Any person aggrieved by the refusal of the Registrar either to signify his approval to a proposed amalgamation, federation or congress of any two or more registered trade unions may appeal against such a refusal in the manner provided by section 10.

### **Effect of Change of Name**

28. (1) A change in the name of a registered trade union shall not affect any right or obligation of the trade union or render defective any legal proceeding by or against a registered trade union, and any legal proceeding which might have been continued or commenced by or against it under its new name.

(2) An amalgamation of two or more registered trade unions shall not prejudice any right of either or any of such trade unions or any right of a creditor of any of them.

### **Registered Office and Postal Address**

29. (1) Every trade union shall have a registered office and a registered postal address, to which all communications and notices may be addressed.

(2) Notice of the situation of the registered office and the registered postal address, and of any change therein, shall be given to the Registrar and shall be registered by him; and the trade union shall not be deemed to have complied with the provisions of this Act until such notice has been given.

(3) If any trade union —

- (a) operates without having a registered office and a registered postal address, or without giving notice of the situation of its registered office as required under this section; or
- (b) operates at any place to which its registered office may have been removed, without having given notice of the change in the situation thereof to the Registrar;

the trade union and every officer thereof in default commits an offence and shall be liable on conviction to a fine of R50.

### **Constitution and Rules – Schedule**

30. (1) Subject to the provisions of this section and to the rules contained in its rules or constitution a registered trade union may alter or add to its objects or to its rules or constitution:

Provided that no alteration or additions to the name or objects of a trade union shall be valid unless notice in writing containing particulars of the proposed alteration or additions has first been given to the Registrar and he has signified in writing that he approves the proposed change.

(2) The rules or constitution of every trade union shall provide for all the matters specified in the Schedule and shall not be so altered or amended as to cease to contain provision in respect of all such matters.

(3) A copy of every new rule and of every amendment made to the constitution or rules of a registered trade union signed by the executive committee of the trade union shall be sent to the Registrar within fourteen days of the making of such rule or amendment and shall be registered by the Registrar upon payment of the prescribed fee if he is satisfied that the requirements of this Act concerning such amendment of the rules or constitution have been complied with.

(4) Every amendment of the rules or constitution of a registered trade union shall take effect from the date of registration thereof by the Registrar unless some later date is specified in the rules.

(5) If a trade union fails to comply with the provisions of this section every officer thereof who is in default commits an offence and shall be liable on conviction to a fine of R50; and the court before which the prosecution is brought shall order particulars of the amendment to be furnished in writing to the Registrar within such time as may be specified in the order.

### **Copies of Rules**

31. A copy of the rules and constitution of a registered trade union shall be delivered by the trade union to any person becoming a member of the trade union and to any person entitled to apply to become a member of the trade union on demand on payment of a sum of money not exceeding 10 cents.

### **Notification of Officers, etc.**

32. (1) A notice giving the names of all officers and trustees and their titles shall be prominently exhibited in the registered office of every registered trade union and of every branch union.

(2) Notice of all changes of officers or trustees shall within fourteen days after the change be sent to the Registrar by the registered trade union together with the prescribed fee and the Registrar shall, subject to the provisions of subsections (4) and (5), register the change accordingly.

(3) If default is made in complying with this section, every officer of the trade union who is in default commits an offence and shall be liable on convict-

ion to a fine of R50 or in the case of a continuing offence to a fine of R10 for every day during which the offence continues.

(4) Before registering any change of officers or trustees or correcting any register the Registrar may require the production of such evidence in relation to the change of officers or trustees or the correction asked for as he deems necessary to satisfy him as to the validity or propriety of the change.

(5) If, after such inquiry as he deems necessary, the Registrar is not satisfied as to the validity of any appointment, or the propriety of any proposed correction to the register, he may refer the matter to a Trade Union Tribunal composed of one or more independent persons appointed by the Minister, and the Tribunal shall inquire into the matter and make its recommendations thereon to the Registrar who shall thereupon register or refuse to register the change of officers or trustees or correct or refuse to correct the register in accordance with such recommendations.

(6) No change of officers trustees shall have effect until registered by the Registrar.

#### **Notification of Dissolution**

33. When a registered trade union is dissolved, notice containing such particulars as may be prescribed of the dissolution signed by seven members and by the secretary of the registered trade union shall within fourteen days of the dissolution, be sent to the Registrar and shall be registered by him if he is satisfied that the dissolution has been effected in accordance with the rules and constitution of the trade union; and the dissolution shall have effect from the date of the registration.

#### **Trustees**

34. (1) The rules of a registered trade union shall provide for the appointment or election of trustees and for the filling of vacancies in the office of trustees so that, as far as may be, there shall always be at least three trustees of the trade union.

(2) No officer of a registered trade union shall be a trustee, and no person shall be elected or appointed a trustee of a registered trade union unless he is a member of the registered trade union.

(3) A bank approved by the Registrar may be appointed a trustee.

(4) No person shall hold office as a trustee who has been convicted of an offence involving dishonesty,

### **PART V**

#### **PROPERTY**

##### **Property of Registered Trade Unions Vests in Trustees**

35. (1) Any property belonging to a registered trade union shall —

(a) be vested in the trustees for the time being of the trade union for the use and benefit of the trade union and the members thereof; and

(b) be under the control of the trustees.

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

(3) The trustees shall deal with any property held by them for or on behalf of a registered trade union in such manner as the executive committee shall order.

(4) No disposal of any property of a registered trade union shall be made unless the trustees are satisfied that the executive committee has acted lawfully and in accordance with the rules and constitution of the registered trade union.

## **PART VI**

### **FINANCE**

#### **Application of Funds**

36. The funds of a registered trade union may, subject to the provisions of this Act and to the constitution and rules thereof, be expended only for the following objects, that is to say —

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

(b) the payment of expenses for the administration of the trade union, including audit of the accounts of the funds of the trade union;

(c) the prosecution or defence of any legal proceedings to which the trade union or any member thereof is a party, when such prosecution or defence is undertaken for the purpose of securing or protecting any rights arising out of the relations of any member with his employer or with a person whom the member employs;

(d) the conduct of any trade dispute not being an illegal strike on behalf of the trade union or any member thereof;

(e) the compensation of members for loss arising out of a trade dispute not being an illegal strike;

(f) allowances to members or their dependants on account of death, old age, sickness, accidents or unemployment of such members;

(g) the payment of subscription and fees to any federation or congress of trade unions to which the trade union may be affiliated; and

(h) any other object which the Minister may, on the application of any trade union, by statutory instrument, declare to be an object for which such

funds may be expended, subject to such conditions as the Minister may by the same or any subsequent instrument, direct.

### **Prohibition of Payment of Fines or Penalties**

37. (1) The funds of a registered trade union shall not be applied either directly or indirectly in payment of the whole or any part of any fine or penalty imposed upon any person by sentence or order of a court of competent jurisdiction other than a fine or penalty imposed upon the trade union under this Act.

(2) An interdict restraining any unauthorised or unlawful expenditure of the funds of a registered trade union may be granted on the application of five or more persons having a sufficient interest in the relief sought or of the Registrar, or of the Attorney-General.

### **Books of Account, etc.**

38. (1) Every registered trade union shall cause to be kept proper books of account as are necessary to give a true and fair view of the financial position of the trade union and explain its transactions and more particularly, with respect to —

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

(2) The books of account shall be kept at the registered office of the trade union or at such other place in Botswana as the executive committee thinks fit and shall at all times be open to inspection by the members of the executive committee.

(3) Any person being an officer of a registered trade union who fails to take all reasonable steps to secure compliance by the trade union with the requirements of this section, or has by his own wilful act been the cause of any default by the trade union under this section commits an offence and shall be liable on conviction to imprisonment for a period of twelve months or to a fine of R200.

(4) No person shall be sentenced to imprisonment under this section unless, in the opinion of the court, the offence was committed wilfully.

### **Circulation of accounts**

39. (1) The treasurer of a registered trade union shall, at some date not later than eighteen months after the registration of the trade union, and subsequently once at least in every calendar year at intervals of not more than fifteen months, cause to be prepared and sent to every member of the trade union, a balance-sheet in such form as the Minister may prescribe, which shall give a true and fair view of the state of the financial affairs of the trade union as at the end of the financial year.

(2) The balance sheet prepared under the preceding subsection shall be audited at the expense of the trade union by an auditor approved by the Minister and for this purpose the auditor shall have access to all books and documents relating to the accounts of the union, and shall be given access thereto.

(3) Any person who obstructs or in any manner hinders an auditor in the discharge of his functions under the immediately preceding subsection, commits an offence and shall be liable on conviction to a fine of R100 or to imprisonment for a period of six months.

(4) Notwithstanding the provisions of the preceding subsections, every treasurer of a trade union and every other officer thereof who is responsible for the accounts of the registered trade union or for the collection, disbursement, custody or control of the funds or moneys thereof, shall upon resigning or vacating his office, or at any other time when required so to do by a resolution of the members of the trade union, or the Registrar, as the case may be, furnish a just and true account of all moneys received and paid by him during the period which has elapsed since the date of his assuming office.

(5) The statement of account referred to in the immediately preceding subsection shall include the balance of any moneys remaining in his hands and of all bonds, securities or other property of the registered trade union entrusted to his custody or under his control.

(6) An account prepared by the treasurer of a registered trade union or other officer who is responsible for the accounts of the trade union, on resignation or vacation of office, shall also be audited at the expense of the trade union by an auditor approved by the Minister, and the provisions of this section relating to the powers of an auditor appointed under this section shall apply.

(7) After the auditing of the accounts as provided for by the immediately preceding subsection, the treasurer or other officer concerned shall forthwith hand over to the trustees of the trade union such balance as appears to be due from him and all bonds, securities, effects, books and papers and property of the union in his hands or custody or otherwise under his control.

#### **Annual Returns**

40. (1) Every registered trade union shall furnish annually to the Registrar on or before the prescribed date in each year a copy of the balance-sheet prepared and audited under the provisions of section 39 together with a copy of the auditor's report thereon.

(2) Together with the balance-sheet referred to in subsection (1) of this section, the registered trade union shall furnish to the Registrar a copy of all amendments to its constitution and rules, and a list of all changes of officers or trustees made by the trade union during the period of twelve months preceding the previous 31st day of December, a statement of the number of the union on that 31st day of December, and a copy of the rules of the trade union in force on that day.

(3) If any registered trade union fails to comply with this section, the trade union and every officer thereof who is knowingly and willingly in default commits an offence and shall be liable on conviction to a fine of R200.

(4) Any person who wilfully or knowingly makes or orders or causes or procures to be made any false entry in or omission from any document delivered to the Registrar under this section commits an offence and shall be liable on conviction to imprisonment for three years.

#### **Inspection of Accounts and Documents**

41. The books of account of a registered trade union and a list of the members thereof shall be open to inspection by any officer or member of the trade union at such times as may be provided for in the rules of the trade union, and by the Registrar or any person authorised in that behalf in writing by the Registrar, at any reasonable time.

#### **Obstructing Inspection by Registrar**

42. Any person who opposes, obstructs or in any other manner whatsoever hinders the Registrar, or any person authorised by him under section 41, in the carrying out of an inspection under the provisions of that section commits an offence and shall be liable on conviction to a fine of R100 or to imprisonment for a period of six months or to both such fine and imprisonment.

#### **Power to Call for Detailed Accounts**

43. (1) In addition to any other provisions of this Act relating to the tendering of accounts, the Registrar may, at any time, call upon the treasurer, the committee management or other proper officer of a registered trade union to render detailed accounts, vouched in such manner as he may require, of the funds of the trade union or any branch union in respect of any particular period, and such accounts shall show in particular such information as the Registrar may require.

(2) Any officer of a registered trade union who fails to comply with a request made by the Registrar under the provisions of subsection (1) commits an offence and shall be liable on conviction to a fine of R100 or to imprisonment for a period of six months or to both such fine and imprisonment.

(3) For the purposes of this section, the officers referred to in the preceding subsections shall include any person who has held any such office whether or not any such person is or is not at the relevant time a member of the registered trade union.

#### **Interdict Against Officers**

44. A member of a registered trade union or the Registrar may apply to the High Court for an interdict prohibiting an officer of the trade union from holding office or controlling the funds of the trade union, and the High Court, if it is satisfied that there is a *prima facie* case against the officer for the fraudulent misuse of the trade union's funds, or that such an officer is disqualified under

the provisions of section 20(5) of this Act from holding office in a trade union, may grant the interdict.

## PART VII

### PICKETING, INTIMIDATION, DISPUTES, ETC.

#### Peaceful Picketing and Prevention of Intimidation

45. (1) Notwithstanding anything contained in this Act —

(a) it shall be lawful for one or more persons acting on their own behalf or on behalf of a registered trade union or of an individual employer or firm in contemplation or furtherance of a trade dispute to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working;

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

(i) to intimidate any person in that house or place, or to obstruct the approach thereto or egress therefrom; or

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

(2) Any person who acts in contravention of the provisions of paragraph (b) of subsection (1) commits an offence and shall be liable on conviction to a fine of R50 or to imprisonment for a period of three months or to both such fine and imprisonment.

#### Intimidation or Annoyance

46. (1) Any person who, with a view to compelling any other person to abstain from doing or to do any act which the other person has a legal right to do or abstain from doing, wrongfully and without legal authority —

(a) use violence to or intimidates such other person or his wife or children, or injures his property; or

(b) persistently follows such other person about from place to place; or

(c) hides any tools, clothes or other property owned or used by such other person, or deprives him of or hinders him in the use thereof; or

- (d) watches or besets the house or other place where such person resides or works or carries on business or happens to be or the approach to such house or place ; or
- (e) follows such other person in a disorderly manner in or through any street or road ;

commits an offence and shall be liable on conviction to a fine of R100 or to imprisonment for a period of six months.

(2) For the purposes of this section, attending at or near any house or place in such numbers or in such manner as is, by paragraph (b) of section 45 of this Act, declared to be unlawful, shall be deemed to be a watching and besetting of that house or place within the meaning of this section.

### **Conspiracy in Trade Disputes**

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

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

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

(4) Nothing in this section shall affect the law relating to riot, unlawful assembly, breach of the peace, or sedition, or any offence against the President or in contravention of Chapters VII, VIII or IX of the Penal Code.

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

### **Freedom of Association of Employees**

48. (1) No employer shall make it a condition of employment of any employee that that employee shall neither be nor become a member of a registered trade union or other organisation representing employees in any industry nor participate in the activities of a registered trade union.

(2) Nothing contained in any law shall prohibit any employee from being or becoming a member of any registered trade union or organisation as aforesaid, or subject him to any penalty by reason of his membership or participation in the activities of any such trade union or organisation.

(3) Any employer who contravenes the provisions of subsection (1) of this section commits an offence and shall be liable on conviction to a fine of R200 or to imprisonment for a period of one year or to both such fine and imprisonment.

**PART VIII**  
**EMPLOYEES' ASSOCIATIONS**

**Employees' Associations**

49. (1) Any combination or association whether temporary or permanent of thirty or more persons in the same type of employment, or in the same trade or industry, whether agricultural or otherwise, the principal object of which is the regulation of the relations between the employees and their employers or between themselves, may apply to the Registrar for registration as an employees' association.

(2) The Registrar shall, if satisfied that the objects for which the combination or association is formed are lawful, register the association as an employees' association.

(3) An employees' association or any person on its behalf, shall not collect from its members or from any other person any subscription or pecuniary contribution to its funds, other than an annual contribution to an office expense fund or welfare fund, nor shall it create any fund other than an office expense fund or welfare fund.

(4) An employees' association may at any time apply to the Registrar under the provisions of section 5(1) for registration as a trade union and on such registration as a trade union, the association shall cease forthwith to be an employees' association.

(5) Whenever the Minister is satisfied that an employees' association is conducting its affairs in such a manner that it should be regarded as a trade union he may order the association to apply for registration as a trade union; and upon such application being made the provisions of subsection (4) of this section shall apply to such association.

(6) Where any employees' association contravenes any of the provisions of this section, or fails to comply with an order made by the Minister by virtue of the provisions of subsection (5) of this section, any person who is responsible for such disobedience or contravention commits an offence and shall be liable on conviction to a fine of R100.

(7) Where an employees' association is an association of teachers the functions of the Minister shall be performed in consultation with the Minister responsible for education.

(8) Subject to the provisions of subsection (5) an employees' association shall not be a trade union for the purposes of this Act.

**Accounts and Books of Employees' Associations**

50. (1) The Registrar may advise employees' associations as to the manner in which they shall keep their accounts and books and may request any such association to furnish him with copies of its constitution, rules and balance-sheet.

(2) If any employees' association fails to comply with any request under the provisions of subsection (1) of this section the association and any officer or member acting or purporting to act as an officer thereof commits an offence and shall be liable on conviction to a fine of R200.

## **PART IX**

### **OFFENCES AND PENALTIES**

#### **Penalty of or Misuse of Money or Property of a Trade Union**

51. (1) Where on complaint, made by a member of a registered trade union or the Registrar, it is shown to the satisfaction of a court that any person —

(a) has in his possession or control any property of the trade union except in accordance with the constitution and rules of the trade union; or

(b) has unlawfully expended or withheld any money of the trade union;

the court shall, if it considers the justice of the case so requires, order such person to deliver all such property to the trustees of the trade union and to pay to them the money so unlawfully expended or withheld.

(2) A complaint under subsection (1), not being a complaint made by the Registrar, shall not be entertained unless the court is satisfied that the complainant is, or was, on the date of the complaint, a member of the registered trade union in respect of whose property the complaint was made.

(3) Any person bound by an order made under subsection (1) who fails to comply with the terms thereof and the directions given therein within the time specified in the order commits an offence and shall be liable on conviction to a fine of R100.

(4) Any person who, in any return, minute, report, certificate, balance-sheet or other document required by or for the purposes of this Act, wilfully makes or is privy to the making of a statement in respect of any such document which is false in any material particular, knowing it to be false, commits an offence and shall be liable on conviction to a fine of R1,000 or to imprisonment for a period of two years or to both such fine and imprisonment.

#### **Limitation of Prosecutions**

52. No prosecution shall be instituted under sections 45 and 46 of this Act except by, or at the instance of, or with the written consent of, the Attorney-General.

**PART X**  
**INVESTIGATIONS**

**Enquiries by Minister, etc.**

53. (1) The Minister may, whenever he considers it necessary in the public interest so to do, by notice in the *Gazette*, call on any registered trade union to produce for his inspection or for the inspection of any other person authorised in that behalf in the notice, all or any of the books or documents of the trade union.

(2) Where it appears to the Minister that there are circumstances suggesting, in relation to a registered trade union —

- (a) that the affairs of the trade union are being conducted or the powers of the officers thereof are being exercised in a manner oppressive to one or more members of the trade union, or in disregard of his or their proper interests as a member or members of the trade union;
- (b) that any book or document which the trade union is required to send to him or to a person so authorised under the provisions of the preceding subsection does not disclose a full and fair statement of the matters to which it purports to relate; or
- (c) that the affairs of the trade union are being conducted in a manner prejudicial to the interests of the members thereof;

the Minister may, by notice in the *Gazette*, call on the trade union to produce for his inspection, or the inspection of any person authorised in that behalf in the notice, all or any of the books and documents of the trade union, or to furnish in writing such information or explanation as the Minister may specify in the notice.

(3) Where a notice is published under the preceding subsections, the trade union shall comply with the same within such time as may be specified in the notice, and all persons who are or have been officers of the trade union shall, so far as lies within their power, produce such books, documents or furnish such information or explanation.

(4) Where a registered trade union makes default in complying with the provisions of the immediately preceding subsection, the trade union and any officer of the trade union who is in default, commits an offence and shall be liable on conviction to a fine of R200, and if any officer or former officer of the trade union makes default in complying with the said subsection, he shall likewise be liable to a fine of R200.

(5) Unless the books, documents, information or explanations produced or given to the Minister or a person so authorised in accordance with the provisions of this section satisfy the Minister or the person so authorised, that further action is not needed the Minister shall either —

- (a) proceed in accordance with the provisions of section 58 of this Act; or
- (b) act in accordance with the provisions of the next succeeding section.

### **Appointment of Investigator**

54. (1) The Minister may appoint a person to investigate the affairs of a registered trade union, and to report thereon to the Minister in such manner as he directs —

- (a) upon a report by the person so authorised after enquiries have been made in accordance with the provisions of section 53 of this Act;
- (b) upon the application of the Registrar;
- (c) upon the application of not less than six members of a registered trade union.

(2) When an application is made under paragraph (c) of the preceding subsection —

- (a) the application shall be supported by such evidence as the investigator may require for the purpose of showing that the applicants have good reason for requiring the investigation;
- (b) at least fourteen days previous notice of the application shall be given to the Registrar who shall be entitled to be represented at the hearing and to give evidence and call witnesses.

(3) An application under this section shall not be entertained unless at least fourteen days previous notice thereof shall have been given to the registered trade union which shall be entitled to be represented at the hearing and to give evidence and call witnesses.

### **Investigation Into Other Trade Unions, etc.**

55. If the Minister, upon the recommendation of the investigator, thinks it necessary for the purposes of an investigation under section 54, that there should be an investigation into the affairs of any other trade union or person which or who is, or has at any relevant time been associated in any manner with the trade union concerned, he shall order such investigation and the investigator shall report on the affairs of any such other trade union or person so far as he thinks the result of his investigation thereof is relevant to the investigation of the affairs of the first mentioned trade union.

### **Production of Books, Documents, Evidence, etc.**

56. (1) It shall be the duty of all officers and agents of a trade union and of all officers and agents of any other person whose affairs are investigated by virtue of the provisions of the immediately preceding section, to produce to the investigator all books or documents of or relating to the trade union, or as the case may be, the other person, which are in their custody or power and otherwise to give to the investigator, all assistance in connection with the investigation which they are reasonably able to give.

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

(3) If an officer or agent of the trade union, or other person destroys or refuses to produce to the investigator any book or document which it is his duty under this section so to produce or refuses to answer any question put to him by the investigator with respect to the constitution, administration, affairs or other activities of the trade union or other person as the case may be, the investigator may certify the facts in writing to the High Court and the High Court may thereby enquire into the case, and after hearing all witnesses who may be produced against or on behalf of the alleged offender, and after hearing any statement which may be offered in defence, punish the offender in like manner as if he had been guilty of contempt of the High Court.

(4) If the investigator thinks it necessary for the purposes of an investigation under this Act, that a person whom he has no power to examine on oath should be so examined, he may apply to the High Court and the High Court may, if it sees fit, order that person to attend and be examined on oath before it on any matter relevant to the investigation.

(5) On an examination under the provisions of the immediately preceding subsection —

- (a) the investigator may take part therein, either personally or by an advocate;
- (b) the High Court may put such questions to the persons examined as the High Court thinks fit;
- (c) the person examined shall answer all such questions as the High Court may put or allow to be put to him, but may at his own cost, employ an advocate who shall be at liberty to put to him such questions as the High Court may deem just, for the purposes of enabling him to explain or qualify any answers given by him;

and notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined and may thereafter be used in evidence against him.

(6) Notwithstanding anything contained in paragraph (c) of the immediately preceding subsection, the High Court may allow the person examined such costs as in its discretion it may think fit, and any costs so allowed shall be paid as part of the expenses of the investigation.

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

#### **Report of Investigator**

57. (1) The investigator shall, on the conclusion of the investigation, make a final report to the Minister.

(2) The Minister shall, unless in his opinion it is not desirable in the public interest so to do —

- (a) forward a copy of any report made to him under this Act to the trade union concerned;
- (b) forward a copy thereof on request and on payment of a reasonable charge to any other person who is a member of the trade union or any other person dealt with in the report, by virtue of the provisions of section 55;
- (c) where the investigator was appointed by virtue of section 54(1) (c) of this Act, furnish, at the request of the applicants for the investigation, a copy to them;

and may also cause the report to be published in the *Gazette*.

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

#### **Proceedings After Investigations**

58. (1) If, as a result of any information obtained in accordance with the provisions of section 53 of this Act, or as a result of any report made under the immediately preceding section, it appears to the Minister that —

- (a) any person may have committed an offence for which he is criminally liable, the Minister may refer the matter to the Attorney-General who, if he considers that the case is one in which a prosecution ought to be instituted, shall institute proceedings accordingly;
- (b) the registration of any trade union ought to be cancelled, the Minister may direct the Registrar to cancel the registration of that trade union;
- (c) proceedings ought, in the public interest, to be brought by any registered trade union against any officer or former officer of any trade union, or any other person or against any person to recover property, damages or compensation to which any person or registered trade union is entitled, the Minister may direct the Registrar to bring proceedings for that purpose in the name of the trade union or person.

#### **Information as Regards Membership, etc.**

59. (1) Where it appears to the Minister that there is good reason to investigate the membership of any registered trade union, he may himself carry out such investigation or by notice in the *Gazette*, appoint an investigator to carry out such investigation as provided in this section.

(2) The Minister, or the investigator may require any person whom he has reasonable cause to believe —

- (a) to be or to have been a member of the trade union or to be or to have been interested in the affairs or activities of the trade union; or

(b) to act or to have acted in relation to the affairs and activities of the trade union, as an agent or adviser of someone interested therein;

to give him any information which such person has or could reasonably be expected to obtain, as to the present and past activities or interests of the members of the trade union and the names and addresses of any other persons interested, or of any persons who act or have acted on their behalf in relation to the membership, affairs or activities of the trade union.

(3) For the purposes of this section, a person shall be deemed to have an interest in the membership, affairs or activities of a trade union if he has done anything in relation to the membership, activities or affairs thereof.

(4) Any person who fails to give any information required of him under this section, or who in giving any such information, makes any statement which is false in any material particular, commits an offence and shall be liable on conviction to imprisonment for a period of twelve months or to a fine of R500 or to both such imprisonment and fine, unless in the case of a false statement, he proves that he believed on reasonable grounds that the statement was true.

(5) Where it appears to the Minister that there is difficulty in finding out the relevant facts about any such membership, affairs and activities and that the difficulty is due wholly or mainly to the unwillingness of the persons concerned or any of them, to give accurate information as required by this section, the Minister may, by notice in the *Gazette*, direct that the registration of the trade union be cancelled and the Registrar shall comply therewith.

## PART XI

### MISCELLANEOUS

#### **Inspection of Records in the Custody of the Registrar**

60. All registers, books and documents in the custody of the Registrar in accordance with the provisions of this Act shall be open for inspection by the public during such hours and on payment of such fees as may be prescribed.

#### **Prohibition of Affiliation**

61. No trade union shall be affiliated to any association or organisation outside Botswana except with the approval of the Minister.

#### **Receipt of Funds from Outside Botswana**

62. (1) No trade union shall accept any funds originating from outside Botswana without the consent in writing of the Minister.

(2) For the purposes of this section "funds" shall include all donations, loans and other assistance (including assistance in kind, air and sea passages, travel vouchers and scholarships) having pecuniary value.

### **Service of Legal Process**

63. Every summons, notice or other document required to be served on a registered trade union in any civil or criminal proceedings shall be deemed to be duly served if it is delivered at the registered office of the trade union or posted to its registered postal address, or if it is served personally on the president or the treasurer or the secretary or on any officer of the trade union in so far as that service is otherwise in compliance with the requirements of any relevant law.

### **Facts to be Notified in the Gazette**

64. The Registrar shall notify the following facts in the *Gazette*, namely —
- (a) the fact that any trade union has been registered or that registration has been refused;
  - (b) the fact that the registration of any registered trade union has been cancelled;
  - (c) the fact that a change of name or amalgamation or federation or congress affecting any registered trade union has been registered; and
  - (d) the fact that any registered trade union has been dissolved.

### **Regulations**

65. (1) The Minister may make regulations 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), the Minister may make regulations for or in respect of all or any of the following matters, that is to say —

- (a) all matters stated or required in this Act to be prescribed;
- (b) the books and registers to be kept for the purposes of this Act and the forms thereof;
- (c) the manner in which trade unions and the rules of the trade unions shall be registered and the fees payable on registration;
- (d) the conditions subject to which inspection of documents kept by the Registrar shall be allowed and the fees which shall be chargeable in respect of such inspection;
- (e) the due disposal and safe custody of the funds and moneys of a registered trade union;
- (f) the creation, administration, protection, control and disposal of the benevolent funds of registered trade unions and all matters connected therewith or incidental thereto;

- (g) the basic agreements and arrangements in respect of the system known as "check-off" and trade union subscriptions;
- (h) generally for all matters incidental to or connected with the matters or subjects specifically mentioned in this subsection.

#### **Inapplicability of Certain Laws**

66. The Companies Proclamation, 1959, and the Co-operative Societies Law, 1962, shall not apply to any trade union and the registration of any trade union under either of those Laws shall be void.

#### **Matters Not Affected by the Act**

67. Nothing in this Act —
- (a) shall affect any agreement —
    - (i) between partners as to their own business;
    - (ii) between an employer and those employed by him as to such employment;
    - (iii) in consideration of the sum of the goodwill of a business or of instruction in a profession, trade or handicraft; or
  - (b) shall preclude any registered trade union from providing benefits for its members.

#### **Repeals**

68. The Trade Unions and Trade Disputes Proclamation (Chapter 151) is repealed.

### **SCHEDULE**

#### **MATTERS FOR WHICH PROVISION SHALL BE MADE IN THE RULES OR CONSTITUTION OF EVERY TRADE UNION**

1. The name of the trade union and the place of meeting for the business of the trade union.
2. The whole of the objects for which the trade union is to be established, the purposes for which the funds thereof shall be applicable, the conditions under which any member thereof may become entitled to any benefit issued thereby, and the fines and forfeitures to be imposed on any member thereof.
3. The manner of making, altering, amending, and rescinding rules or constitutions.
4. The appointment or election and removal of an executive and of trustees, secretaries, treasurers, and other officers of the trade union.
5. The custody and investment of the funds of the trade union, the designation of the officer or officers responsible therefor, and the annual or periodical audit of its accounts.

6. The inspection of the books and names of the members of the trade union by any person having an interest in the funds of the trade union.

7. The manner of the dissolution of the trade union and the disposal of the funds thereof available at the time of such dissolution,

8. The taking of all decisions in respect of the election of officers, the amendment of rules, constitution, strikes, lock-outs, dissolution, and any other matter affecting members of the union generally, by secret ballot if required by the members.

9. The right of any member to a reasonable opportunity to vote.

10. The amount of subscription and fees payable by members and the disqualifications of a member from voting on any matter concerning the union and from receiving benefits if his subscription is in arrear.

11. Provision for keeping in a separate fund all moneys received or paid by the union in respect of any contributory provident fund or pensions fund scheme.

12. In the case of a trade union consisting of persons engaged or working at more than one trade or calling, suitable provision for the protection and promotion of each trade or calling's respective industrial interests.

Passed by the National Assembly this day of 13th May, 1969.

G.T. MATENGE,  
Clerk of the National Assembly.