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CHAPTER 161

TRADE UNIONS

Act 2 of 1983

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TRADE UNIONS

To make provision for the formation, registration and regulation of trade unions and matters incidental thereto.

PART 1 – PRELIMINARY

1. Interpretation

In this Act, unless the context otherwise requires –

"register" means the register of trade unions kept by the Registrar under section 3;

"registered office" and "registered postal address" mean the office and address, respectively, of a trade union referred to in section 30;

"registered trade union" means a trade union registered under this Act;

"Registrar" means the Registrar of Trade Unions;

"registration" means registration under this Act and cognate expressions shall be construed accordingly;

"trade dispute" has the meaning assigned to it in section 1 of the Trade Disputes Act [Cap. 162];

"trade union" means an organisation which either –

(a) consists of not less than twenty workers whose principal objects include the regulation of relations between workers and employers; or

(b) is a federation of registered trade unions;

"worker" means a person who works or normally works or seeks to work –

(a) under a contract of employment; or

(b) under any other contract (whether express or implied, and, if express, whether oral or in writing) whereby he undertakes to perform personally any work or services for another party to the contract who is not a professional client of his.

PART 2 – REGISTRATION OF TRADE UNIONS

2. The Registrar of Trade Unions

The person holding the office of Registrar and Receiver General for the time being shall be the Registrar of Trade Unions for the purposes of this Act.

3. Register of trade unions

(1) The Registrar shall keep in such form as may be prescribed, a register of trade unions in which shall be contained the prescribed particulars relating to any registered trade union and any alterations in the name, rules, officers, registered postal address, the situation of the registered office and any branch thereof and all such other matters as are required to be contained therein under this Act.

(2) A copy of any entry in the register certified under the hand of the Registrar shall, until the contrary is shown, be proof of the facts stated therein as on the date of such certified copy.

4. Conditions for registration

(1) Upon the formation of a trade union, the persons being the members of the committee of management (by whatever name called) of that union, may apply for registration under this Act.

(2) For the purposes of subsection (1) a trade union is deemed to be formed on the first date on which not less than twenty persons shall have agreed in writing to become or to form a trade union.

5. Application for registration

(1) Every application for registration as a trade union shall be made to the Registrar in the prescribed form and shall be signed by at least seven members of the union, any of whom may be officers thereof.

(2) Every such application shall be accompanied by 2 copies of the rules of the trade union and a statement of the following particulars namely –

(a) the names, occupations and addresses of persons making application;

(b) the names of the trade union and the address of its office and any branch thereof and its postal address; and

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

6. Registrar may call for further particulars

The Registrar may call for further information for the purpose of satisfying himself that any application for registration complies with the provisions of this Act or that the trade union or proposed trade union is entitled to registration under this Act.

7. Examination and approval of rules by Registrar

(1) If, on the examination of the rules submitted to him under section 5 it appears to the Registrar that the rules are defective in that they are in any way inconsistent with the principles set out in section 23 or do not comply with the requirements set out in the Schedule to this Act, the Registrar shall serve notice on the persons applying for registration, indicating what alterations are needed in the rules for the purpose of remedying the defect.

(2) Where the Registrar serves notice under subsection (1) he shall fix a reasonable period for the persons applying for registration to alter the rules in accordance with the notice and to submit them as altered for his approval.

(3) If the persons applying for registration submit the rules to the Registrar before the end of the period mentioned in subsection (2), but it appears to the Registrar that the rules have not been altered so as to comply with the requirements of the notice, the Registrar may, if he thinks fit, allow a further reasonable period for such persons to make the required alterations and to submit the rules to him as further altered.

8. Registrar may require alteration of name

If the name under which a trade union is proposed to be registered is identical with that by which any other trade union has been registered or, in the opinion of the Registrar, so nearly resembles such name as to be likely to deceive or mislead the public or is in any other respect undesirable, the Registrar may require the persons applying for registration to alter the name of the trade union stated in the application, and may refuse to register the trade union until such alteration has been made to his satisfaction.

9. Refusal of registration

(1) The Registrar may refuse to register any trade union if he is satisfied that –

(a) the trade union has not complied with the provisions of this Act;

(b) any of the objects in the rules of the trade union is unlawful;

(c) the trade union is formed or likely to be used for unlawful purposes;

(d) some other trade union already registered is adequately representative of the whole or of a substantial proportion of the interests in respect of which the applicants seek registration:

Provided that the Registrar shall notify any registered trade union which appears to him to represent the same interests as the applicants of the receipt of such application, and shall invite the registered trade union concerned to submit in writing within a period of 28 days any objections which any such trade union may wish to make against registration;

(e) proper arrangements for the custody, distribution, investment of and payments from the funds of the trade union are not contained in the rules thereof.

(2) If the Registrar refuses to register a trade union, he shall notify the applicants in writing of the grounds of his refusal within 2 months of the date of receipt of the application and the trade union shall be deemed to be dissolved:

Provided that such dissolution shall not take effect prior to the expiry of the period for the bringing of an appeal under section 11 and then –

(a) if no appeal is brought under the said section within that period, the dissolution shall take effect on the day following the day on which that period expired; and

(b) if an appeal is brought within that period, the dissolution shall not take effect prior to the determination or abandonment of the appeal.

10. Certificate of registration

(1) If the Registrar is satisfied as to the matters mentioned in sections 7, 8 and 9 he shall register the trade union and its rules and shall issue a certificate of registration in the prescribed form.

(2) A certificate of registration shall, unless proved to have been withdrawn or cancelled, be conclusive evidence that the provisions of this Act relating to registration have been complied with in respect of the matters shown in the certificate.

11. Appeal against refusal to register or cancellation or suspension of registration

(1) Any person aggrieved by the refusal of the Registrar to register a trade union, or by an order cancelling or suspending registration, may within 1 month of the date of the refusal or order, as the case may be, appeal against such refusal or order to the Supreme Court.

(2) The Supreme Court in hearing any such appeal shall have all the powers which it may exercise in the hearing of a civil suit.

12. Effect of registration

Upon registration, a trade union shall become a body corporate by the name under which it is registered, and, subject to the provisions of this Act, with perpetual succession and with power to hold property movable or immovable and to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purposes of its registered rules.

13. Cancellation or suspension of registration

(1) The registration and the certificate of registration of a registered trade union shall be cancelled by the Registrar at the request of the trade union upon its dissolution in accordance with its rules, to be verified in such manner as the Registrar may require.

(2) The registration and the certificate of registration of a registered trade union shall be cancelled or suspended by the Registrar if he is satisfied that –

(a) the registration was obtained by fraud or misrepresentation;

(b) any of the objects of the trade union has become unlawful;

(c) the trade union has wilfully and after notice from the Registrar contravened any provision of this Act or its registered rules;

(d) the trade union has ceased to exist.

(3) The registration and the certificate of registration of a registered trade union may be cancelled or suspended by the Registrar if he is satisfied that –

(a) 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 its registered rules;

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

(c) its registration was obtained by mistake;

(d) the trade union has been or is being used for any unlawful purpose or for any purpose inconsistent with its objects or registered rules:

Provided that where the registration is suspended under this subsection the Registrar shall, before the expiration of 4 months from the date of such suspension, either restore the registration or cancel the registration and certificate.

(4) Except in cases falling within subsection (1) or 2(c) not less than 2 months' previous notice in writing specifying the grounds on which it is proposed to cancel or to suspend its registration shall be given by the Registrar to the trade union concerned.

(5) A trade union served with a notice under subsection (4) may, at any time within a period of 2 months from the date of the service of the notice, show cause in writing against the proposal to cancel or suspend its registration, as the case may be; and, if such cause is shown the Registrar may hold such inquiry as he may consider necessary in the circumstances.

(6) An order made by the Registrar cancelling or suspending the registration of any trade union shall specify briefly the grounds for the cancellation or suspension of the registration and shall forthwith be served on the trade union concerned.

14. Effects of suspension of registration

If the registration of a trade union is suspended, then during the period of the suspension, the trade union shall cease to enjoy the rights, immunities or privileges of a registered trade union and any liability incurred by it may be enforced against the trade union and its assets, and its officers and members shall cease to enjoy any of the rights or privileges accorded to the officers and members of a registered trade union.

15. Effects of cancellation of registration

(1) Subject to subsection (2) a trade union whose registration has been cancelled shall –

(a) cease to exist as a body corporate, and the Registrar may, notwithstanding anything contained in the rules of such trade union, forthwith appoint one or more persons to be liquidators thereof;

(b) cease to enjoy any of the rights, immunities or privileges of a registered trade union, but without prejudice to any liability incurred by it which may be

enforced against the trade union and its assets, whether such liability is incurred before, on, or after the date of the cancellation or registration;

and the officers and members shall cease to enjoy the rights or privileges accorded to the officers and members of a registered trade union.

(2) Where the registration of a trade union is cancelled, the cancellation shall not take effect for the purposes of subsection (1) prior to the expiry of the period for the bringing of an appeal under section 11 and then –

(a) if no appeal is brought under the said section within that period, the cancellation shall take effect for those purposes on the day following the day on which that period expired; and

(b) if an appeal is brought within that period, the cancellation shall not take effect prior to the determination or abandonment of the appeal.

PART 3 – TRADE UNIONS AND GENERAL LAW

16. Unregistered trade unions, etc., not to enjoy rights, immunities or privileges

No trade union shall enjoy any of the rights, immunities or privileges of a registered trade union, nor shall its officers or members enjoy any of the rights or privileges accorded to the officers and members of a registered trade union, until the trade union is registered.

17. Rules as to restraint of trade not to apply

The purposes of any registered trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful so as to render –

(a) any member of such trade union liable to prosecution for conspiracy or otherwise;

(b) any agreement or trust void or voidable.

18. Immunity for acts in contemplation or furtherance of trade disputes

(1) Subject to section 54 an act done by a person in contemplation or furtherance of a trade dispute shall not be actionable in tort on the ground only –

(a) that it induces another person to break a contract of employment; or

(b) that it consists in his threatening that a contract of employment (whether he is a party thereto or not) will be broken or that it will induce another person to break a contract of employment to which that other person is a party.

(2) For the avoidance of doubt it is hereby declared that an act done by a person in contemplation or furtherance of a trade dispute shall not be actionable in tort on the ground only that it is an interference with the trade, business or employment of another person, or with the rights of another person to dispose of his capital or labour as he wills.

(3) An agreement or combination of two or more persons to do or procure the doing of an act in contemplation or furtherance of a trade dispute shall not be actionable in tort if the act is one which, if done without such agreement or combination, would not be actionable in tort.

19. Immunity of registered trade unions to actions in tort

(1) Subject to subsection (2) below and to section 54 no action in tort shall lie in respect of any act alleged to have been or to be threatened or intended to be done by or on behalf of a registered trade union, against the union in its own name, or against any officers or members of the union on behalf of themselves and all other members of the union.

(2) The immunity conferred by subsection (1) shall not apply in respect of any act which consists in –

(a) any negligence, nuisance or breach of duty resulting in personal injury, whether physical or mental, to any person; or

(b) any breach of duty imposed in connection with the ownership, occupation, possession, control or use of any property, whether movable or immovable.

20. Liability in contract

No suit or other legal proceedings shall be entertained in any court with the object of enforcing or recovering damages for the breach of any of the following agreements, namely –

(a) any agreement between members of a registered trade union as such, concerning the conditions on which any member for the time being of such trade union shall or shall not 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 or their dependents other than benefits under a provident, benevolent or pension fund;

(ii) to furnish contributions to any person who is not a member of such trade union, in consideration of such person acting in conformity with the rules or resolutions of the trade union;

(d) any agreement made between 1 registered trade union and another; or

(e) any bond to secure the performance of any of the above-mentioned agreements,

but nothing in this section shall be deemed to render any such agreement unlawful.

21. Enforcement of court orders

(1) Execution for any money recovered from a registered trade union in civil proceedings may issue against any property belonging to the trade union other than any provident, benevolent or pension fund of such union.

(2) Any fine ordered to be paid by a registered trade union may be recovered by distress and sale of any property belonging to such union in like manner as an order of a criminal court:

Provided that no distress shall be levied on any provident, benevolent or pension fund of the union unless the court expressly so orders.

22. Combination of trade unions

Registered trade unions may freely combine for the study and defence of their economic, industrial, commercial or agricultural interests. Except as provided in this Act no restriction shall be placed on the manner in which they may combine.

PART 4 – RULES OF TRADE UNIONS

23. Guiding principles for trade unions

(1) The principles set out in the following subsections shall be the guiding principles in the conduct of every registered trade union, other than a federation of trade unions.

(2) Any person who applies for membership of a registered trade union and who–

(a) is a worker of a description of which that trade union, in accordance with its rules, is intended to consist, or of which it wholly or mainly consists, and

(b) is properly qualified for employment as a worker of that description,

shall not, by way of any arbitrary or unreasonable discrimination, be excluded from membership of the trade union.

(3) Every member of a registered trade union shall have the right, on giving reasonable notice and complying with any reasonable conditions, to terminate his membership of the trade union at any time.

(4) No member of a registered trade union shall, by way of any arbitrary or unreasonable discrimination, be excluded from –

(a) being a candidate for, or holding any office in, the trade union;

(b) nominating candidates for any such office;

(c) voting in any election for any such office or in any ballot of members of the trade union;

(d) attending and taking part in meetings of the trade union.

(5) The voting in any ballot of members of a registered trade union shall be kept secret.

(6) In any ballot, and on any motion, in respect of which he is entitled to vote, every member of a registered trade union shall have a fair and reasonable opportunity of voting without interference or constraint.

(7) No member of a registered trade union shall be subjected by or on behalf of the trade union to any unfair or unreasonable disciplinary action; and in particular (but without prejudice to the generality of this subsection) no disciplinary action shall be taken against any member by reason of his refusing or failing –

(a) to take any action which would constitute an unfair industrial practice on his part;

(b) to take part in a strike which the registered trade union, or any other person, has called, organised, procured or financed otherwise than in contemplation of a trade dispute, or in such circumstances as to constitute an unfair industrial practice on the part of that trade union or of that person;

(c) to take part in any irregular industrial action short of a strike which the registered trade union, or any other person has called, organised, procured or financed as mentioned in paragraph (b) of this subsection.

In this subsection the expressions “strike” and “irregular industrial action short of a strike” shall have the meanings assigned to them respectively in section 1 of the Trade Disputes Act [Cap. 162].

(8) No member of a registered trade union shall be subjected to any disciplinary action by or on behalf of the trade union unless –

(a) he has had written notice of the charges brought against him and has been given reasonable time to prepare his defence;

(b) he is afforded a full and fair hearing;

(c) a written statement of the findings resulting from the hearing is given to him; and

(d) where, under the rules of the trade union he has a right of appeal, his appeal has been heard or the time for appealing has expired without his having exercised that right or he has abandoned his appeal.

(9) A person's membership of a registered trade union shall not be terminated unless reasonable notice of the proposal to terminate his membership, and of the reasons for it, has been given to him.

(10) No restriction shall, whether by the rules of the registered trade union or otherwise, be placed on any member in respect of his instituting, prosecuting or defending proceedings before any Court or giving evidence in any such proceedings.

24. Unfair industrial practices in connection with guiding principles

It shall be an unfair industrial practice for any trade union, or any official, or person acting on behalf of such trade union, to take or threaten to take any action against any member of the trade union or other person in contravention of the principles set out in section 23.

25. Voting members of trade union

(1) No person shall be a voting member of a registered trade union unless he is normally employed and ordinarily resident within Vanuatu.

(2) No person shall be a voting member in more than 1 registered trade union.

26. Membership of minors

(1) A person under the age of 16 years may be a member of a registered trade union, unless –

(a) provision is made to the contrary in the rules of the trade union; or

(b) a parent or the guardian of such person objects to such membership.

(2) A member of a registered trade union who is under the age of 18 years shall not have the right to vote in, or be a member of the committee of, the trade union.

27. Officers of a trade union

(1) All the officers of a registered trade union shall be persons who are or have been engaged for a period of not less than 1 year in the profession or trade with which the union is directly concerned, and no officer of any such union shall be an officer of any other trade union:

Provided that –

(a) the office of secretary may be filled by a person not actually engaged in the profession or trade with which the trade union is directly concerned; and

(b) the Registrar may, in his discretion, permit the office of president to be filled by a person not actually engaged in the profession or trade with which the trade union is directly concerned.

(2) No person shall hold the post of secretary or treasurer of a registered trade union who, in the Registrar's opinion, has not acquired a sufficient standard of literacy so as to enable him to perform his duties effectively.

(3) No person who has been convicted of any offence involving fraud or dishonesty or who is an undischarged bankrupt shall within 5 years of the date of such conviction or until he is discharged, as the case may be, be an officer or a person employed in administering or collecting funds of a registered trade union and any such officer or person who is convicted or who is an undischarged bankrupt shall forthwith vacate his office or cease to be so employed, as the case may be.

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

(5) Notice of any change of officers shall, within 14 days after such change, be sent to the Registrar by the trade union and the Registrar shall thereupon correct the register accordingly.

28. Change of rules

(1) The rules of every registered trade union shall provide for all the matters specified in the Schedule to this Act, and shall not be so altered as to cease to contain provisions in respect of all such matters.

(2) Two copies of every new rule and of every alteration made in the rules of a registered trade union shall be sent to the Registrar within 14 days of the making of such rule or alteration and shall be registered:

Provided that no new rule or alteration in the rules of a trade union shall be registered if such new rule or alteration is in conflict with the provisions of this Act or any other law.

(3) Every alteration of the rules of a registered trade union shall take effect from the date of registration thereof unless some later date is specified in the rules.

(4) In any case in which proceedings may be instituted by a member of a trade union for the purpose of restraining the trade union or an officer thereof from being in breach of its rules, such proceedings may be instituted by the Registrar if he shall think it fit or expedient so to do.

29. Change of name

(1) Every registered trade union may, with the consent of not less than two-thirds of the total number of its members entitled to vote and subject to the provisions of this section, change its name.

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

(3) Notice in writing containing such particulars as may be prescribed shall be given to the Registrar of every change of name, signed by the secretary and by seven members of the registered trade union changing its name.

(4) If the proposed name is identical with that by which any other trade union has been registered or, in the opinion of the Registrar, so nearly resembles such name as to be likely to deceive or mislead the public or is in any other respect undesirable, the Registrar shall refuse to register the change of name.

(5) Except as provided in subsection (4) the Registrar shall if he is satisfied that the provisions of this Act in respect of change of name have been complied with, register the change of name and the change of name shall have effect from the date of the registration.

(6) Any person aggrieved by the refusal of the Registrar to register a change of name of a registered trade union may appeal against such refusal in the manner provided by section 11.

30. Registered office and postal address

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

(2) Notice of the situation of such registered office and registered postal address, and of any change thereof shall be given to the Registrar and shall be registered by him.

(3) If any registered trade union –

(a) operates without having a registered office and registered postal address, or without giving notice of the situation of its registered office or its registered postal address as required by subsection (2); 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 or other person bound by its rules to give such notice shall be guilty of an offence.

Penalty: a fine of VT 1,000 for each day on which the offence continues.

31. Copies of rules

(1) A copy of the rules of a registered trade union shall be prominently displayed in the registered office and in every branch office of the trade union.

(2) A copy of the rules of a registered trade union shall be supplied free of charge by the secretary to any person who becomes a member of the trade union, within 7 days of the date of joining, and a copy of the rules shall be supplied by the secretary to any other member on demand on payment of such sum not exceeding VT 50 as may be prescribed in the rules of the trade union.

PART 5 – ACCOUNTS AND APPLICATION OF FUNDS

32. Purposes for which funds may be used

Subject to the provisions of this Act, the funds of a registered trade union may be expended only for the following objects –

(a) salaries and allowances of officers of the trade union;

(b) administration, including audit of the accounts 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 of the trade union or any rights arising out of the relations of any member with his employer;

(d) the conduct of trade disputes on behalf of the trade union or any member thereof;

(e) the compensation of any member for loss arising out of a trade dispute;

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

(g) allowances to members in distress due to circumstances beyond their control;

(h) social insurance, medical aid, and the supply of medicaments and drugs to members or their dependents, and any incidental expenses thereof;

(i) expenses incurred on trade union business by officers and members of the trade union;

(j) the erection of any building or the purchase or lease of any building or land required for the purposes of the trade union, and for the rent, upkeep and furnishing thereof;

(k) affiliation fees or contributions payable to a federation of trade unions to which the union is affiliated or to any other organization of which the union is a member;

(l) contributions to a charitable, educational or cultural institution or society approved by the Minister;

(m) contributions or loans, with the approval of the Minister, to any registered trade union for the purpose of assisting such trade union in financial difficulties;

(n) the educational, cultural and vocational training of members as approved by the Minister and any incidental expenses thereof;

(o) the organisation of any theatrical performance, concert, reception, dance, sports meeting or similar entertainment;

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

(q) the editing, printing, publication and circulation of any book, newspaper, or other printed literature for the advancement of the lawful objects of the trade union or the promotion of the interests of its members as such;

(r) interest on loans and payment of taxes;

(s) any other object which, the Minister may, on the application of any trade union, declare to be an object for which such funds may be expended by that trade union or by any trade union, such expenditure to be subject to such conditions, if any, as the Minister may determine.

33. Restriction on application of funds for certain political purposes

(1) The funds of a trade union shall not be applied, either directly or indirectly, in the furtherance of the political objects to which this section applies.

(2) The political objects to which this section applies are -

(a) the payment of any expenses incurred, directly or indirectly, by a candidate or a prospective candidate for election to Parliament or to any public office in Vanuatu or in any other country before, during, or after the election in connection with his candidature for election;

(b) holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate;

(c) the maintenance of any person, other than an officer of a trade union, who is a member of Parliament or who holds a public office in Vanuatu or in any other country;

(d) registration of electors or the selection of a candidate for Parliament or any public office in Vanuatu or in any other country;

(e) holding of political meetings of any kind, or distribution of political literature or political documents of any kind, unless the main purpose of a meeting or of the distribution of the literature or documents is the furtherance of lawful objects of the trade union.

34. Prohibition of payment of fines or penalties

The funds of a trade union shall not be applied, 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 other than a fine or penalty imposed upon the trade union.

35. Injunctions to restrain unlawful use of funds

An injunction restraining any unauthorised or unlawful expenditure of the funds of a trade union may be granted on the application of the Registrar or any person having a sufficient interest in the relief sought.

36. Books to be kept

The officers of every registered trade union shall keep or cause to be kept such books of account as may be prescribed.

37. Safeguarding of union funds and property

(1) Every officer of a registered trade union who is responsible for the accounts of the trade union or for the collection, disbursement, custody or control of the funds or moneys thereof, shall, upon resigning or vacating his office, and at least once in every year, at such time as may be specified by the rules of the trade union, and at any other times at which he may be required to do so by the executive committee or a general meeting of the trade union or by the Registrar, render to the trade union or to the Registrar, as the case may be, a true account of all moneys received and paid by him during the period which has elapsed since the date of his assuming office, or if he has previously rendered an account, since the last date upon which he rendered such account, and of the balance remaining in his hands at the time of rendering such account and of all bonds, securities, or other property of the trade union in his custody or under his control.

(2) The trade union shall cause the account to be audited by some fit and proper person approved by the Registrar.

(3) Every officer or member of a registered trade union, shall, upon resigning or vacating his office or membership, or at such time as may be specified by the rules of the trade union, and at any other time at which he may be required to do so by the executive committee or a general meeting of the trade union, or by the Registrar, forthwith hand over to the trade union all bonds, securities, effects, books, and property of the trade union in his custody or under his control.

(4) Where any money or thing is directed to be handed over to a trade union under subsection (3) such money or thing may be handed to such person as may be specified in the rules of the union or in any resolution of the executive committee or general meeting or as may be ordered by the Registrar.

38. Misuse of money or property of a trade union

(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 has in his possession or control any property of the trade union except in accordance with its rules or has unlawfully expended or withheld any money of the trade union, the Court may order such person to deliver all such property to the trade union and to pay to it the money so expended or withheld.

(2) When the complainant is some other person than the Registrar, a complaint made under subsection (1) shall not be entertained, unless the Court is satisfied that the complainant is or was, on the date of the complaint, an officer or a member of the trade union in respect of whose property the complaint was made.

(3) Any person who fails to comply with an order made under subsection (1) within a time specified in such order shall be guilty of an offence.

39. Annual returns

(1) The secretary of every registered trade union shall furnish to the Registrar on or before the 30th day of April in every year a properly audited statement of all receipts and expenditure during the period of 12 months ending on the 31st day of December of the preceding year and of the assets and liabilities of the trade union as at such 31st day of December. The statement shall be accompanied by a copy of the auditor's report and shall be prepared in such form and shall comprise such particulars as may be prescribed.

(2) Together with the statement referred to in subsection (1), the secretary of every registered trade union shall furnish to the Registrar a list of officers of the trade union and 2 copies of all alterations of the rules and of all new rules made by the trade union during the period of 12 months preceding the said 31st day of December, and 2 copies of the rules of the trade union in force on that day.

(3) Every member of a registered trade union shall be entitled to receive free of charge a copy of the statement referred to in subsection (1) and the secretary of each such trade union shall supply a copy of such statement to every member of the union at or before the annual general meeting and thereafter on application within 1 month of the receipt of such application.

(4) The secretary of a registered trade union who fails to comply with any of the requirements of this section shall be guilty of an offence.

(5) Every person who with intent to defraud makes or causes or procures to be made any false entry in, or omission from, any statement, copy or list delivered to the Registrar under this section shall be guilty of an offence.

Penalty: a fine not exceeding VT 100,000 and imprisonment for a term not exceeding 3 years.

40. Falsification of accounts, etc.

Any officer or member of a trade union who does any of the following acts with intent to deceive or defraud –

(a) destroys, alters, mutilates or falsifies any book, document, account or valuable security which belongs to the trade union or has been received by him on account of the trade union, or any entry in any such book, document or account; or

(b) makes any false entry in any such book, document or account; or

(c) omits any material particular from any such book, document or account,

shall be guilty of an offence.

Penalty: a fine not exceeding VT 100,000 and imprisonment for a term not exceeding 3 years

41. Inspection of accounts and documents

(1) The account books, receipt books and receipts for expenditure of a 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 shall be provided for in the rules of the trade union, and by the Registrar or any person authorised by him in writing in that behalf, at any reasonable time.

(2) Any person who opposes or obstructs the Registrar or any person authorised by him under subsection (1) in the carrying out of an inspection shall be guilty of an offence.

PART 6 – AMALGAMATION AND DISSOLUTION

42. Consent of Registrar required to amalgamation of trade unions

Except with the consent of the Registrar, no registered trade union shall amalgamate as one trade union.

43. Application for consent to amalgamation

(1) Where 2 or more registered trade unions desire to amalgamate as 1 trade union, an application shall be made to the Registrar for his consent to the amalgamation.

(2) Every application under subsection (1) shall be made in the prescribed form and shall be signed by the chairman and one other officer of each trade union and shall be accompanied by 2 copies of the proposed rules of the trade union to be formed by the intended amalgamation.

44. Ballot on amalgamation

No application under section 43 for the consent of the Registrar to the amalgamation of any registered trade unions shall be made unless in the case of each trade union desiring amalgamation –

(a) a secret ballot is taken in such manner as may be prescribed; and

(b) the votes of at least one-half of the total number of members entitled to vote are cast and recorded; and

(c) of such votes cast and recorded, those in favour of the proposal exceed by one-fifth or more the votes against the proposal.

45. Grounds for refusal to consent to amalgamation and procedure in such cases

(1) The Registrar may refuse to give his consent to an intended amalgamation of registered trade unions where –

(a) any of the provisions of this Act in respect of the making of the application for his consent have not been complied with;

(b) the proposed rules of the trade union to be formed by the amalgamation would not make adequate provision for all the matters specified in the Schedule to this Act;

(c) any of the purposes of such trade union would be unlawful;

(d) the name by which it is proposed that such trade union will be known is identical with that by which any other trade union has been registered or, in the opinion of the Registrar, so nearly resembles such name as to be likely to deceive or mislead the public or is in any other respect undesirable.

(2) If the Registrar refuses to give his consent to the amalgamation of any registered trade union, he shall, in writing, notify the trade unions of his refusal and shall specify therein the grounds for the refusal.

(3) Any person who considers that the Registrar was wrong in refusing to give his consent to an intended amalgamation of registered trade unions may, within 14 days after the Registrar has given notice of refusal, appeal to the Supreme Court, and, if upon any such appeal, the Supreme Court finds that the refusal was wrong it may so declare and thereupon the Registrar shall give his consent to the amalgamation.

46. Notice to be given of consent to amalgamation

Where the Registrar gives his consent to the amalgamation of any registered trade unions, he shall send to each of the trade unions a notice in writing thereof.

47. Procedure for amalgamation, etc.

(1) No registered trade unions shall be amalgamated as 1 trade union unless the notice in writing of the consent of the Registrar to the amalgamation or a copy thereof has been prominently exhibited in the registered office of each of the trade unions being a party to the amalgamation and in every branch thereof for a period of not less than 14 days.

(2) An amalgamation of registered trade unions may take place with or without a division of the funds of the trade unions concerned.

48. Transfer of liabilities, etc., to trade union formed by amalgamation

(1) All deeds, bonds, agreements and instruments to which any of the amalgamated registered trade unions was a party that are subsisting at the time of the amalgamation shall be of as full force and effect against, or in favour of, the trade union formed by the amalgamation as if, instead of such registered trade union, the trade union so formed had been named therein or had been a party thereto.

(2) If, in respect of any of the amalgamated registered trade unions, any proceedings or cause of action was pending or existed at the time of the amalgamation, the same may be continued or enforced by or against the trade union formed by the amalgamation as it might have been continued or enforced by or against the registered trade union if the amalgamation had not taken place.

49. Notification of dissolution

When a registered trade union is dissolved in the manner provided in its rules, notice of the dissolution thereof, signed by the secretary of the trade union and seven persons who were voting members thereof at the date of the dissolution, shall, within 14 days after the dissolution, be given to the Registrar, and upon the registration by the Registrar of such dissolution the trade union shall cease to be a body corporate.

PART 7 – MISCELLANEOUS

50. Trade unions not to affiliate, etc., to outside bodies without Minister's consent

(1) No trade union shall affiliate to, or become a member of, or otherwise enter into an association with, any organisation or body of persons, the principal office or the governing body whereof (by whatever name called) is situated outside Vanuatu, except with and subject to the conditions, if any, of a written consent of the Minister.

(2) No trade union shall, directly or indirectly, receive moneys or money's worth from any organisation or body of persons referred to in subsection (1) except with, and subject to the conditions, if any, of a written consent of the Minister.

(3) Nothing in subsections (1) and (2) shall apply in relation to any form of cooperation whatsoever with, or to receipt of any moneys or other things from, the International Labour Office, by any trade union.

(4) Any trade union and any officer or member thereof who knowingly contravenes any provision of subsections (1) or (2), or fails to comply with any conditions referred to therein, shall be guilty of an offence.

51. Employers to provide certain facilities

If not less than one-half of the number of workers employed at any one time at any one undertaking are members of a particular registered trade union, the employer shall, if requested to do so by that trade union, provide at the premises of such undertaking such reasonable facilities for holding meetings and carrying on trade union functions, as shall be practicable in the circumstances of that undertaking. The employer shall allow the workers reasonable time off work to attend training courses with or without pay as may be agreed between him and the registered trade union concerned.

52. Attempts to coerce membership, etc.

Any person who, by the use of violence, intimidation or other unlawful means attempts, directly or indirectly, to coerce or induce another to become or not become a member or to terminate his membership of a trade union shall be guilty of an offence.

Penalty: a fine not exceeding VT 100,000 and imprisonment for a term not exceeding 3 years.

53. Freedom of association

(1) No employer shall make it a condition of employment of any worker that the worker shall not be or shall become a member of a trade union and any such condition in any contract of employment entered into whether before or after the commencement of this Act shall be void.

(2) Any employer who contravenes the provisions of subsection (1) shall be guilty of an offence.

(3) No prosecution shall be instituted in respect of any offence under this section except by, or at the instance of, or with the written consent of the Attorney General.

54. Acts to compel trade union membership

The immunity conferred by sections 18 and 19 shall not apply where a person induces a worker employed by an employer to break his contract of employment in order to compel workers of another employer to join a particular trade union unless they are working at the same place.

55. Application of the Act to public service

(1) Except as provided in subsection (3) and subject to the modification provided in subsection (2), the provisions of this Act shall apply in relation to any trade union, the majority or a substantial number of members of which consists of members of the public service of Vanuatu, as they apply to any other trade union.

(2) The modification mentioned in subsection (1) is that the powers vested in the Minister under the following provisions of this Act shall be vested in and exercised by the Minister responsible for matters relating to public service –

(a) section 32(l), (m), (n) and (s);

(b) section 50;

(c) section 58(3).

(3) Nothing contained in this Act shall apply in relation to members of the armed forces, police force or prison service.

56. Penalty for failure to give notice or produce documents

A trade union which fails to give any notice, or to send or to produce any document which it is required by this Act to give, send or produce, and every officer or other person bound by the rules of the trade union to give, send or produce the same, or, if there is no such officer, then every member of the executive committee of the trade union, unless such officer, person or member shall prove, that he was ignorant of, or that he attempted to prevent, the omission to give, send or produce the same, shall be guilty of an offence.

57. Nomination by members

(1) A member of a registered trade union not being under the age of 16 years may, by writing under his hand delivered at, or sent to, the registered office of the trade union, nominate a person not being an officer or servant of the trade union (unless such officer or servant is the spouse or a close relative) to whom any moneys payable (not exceeding VT 30,000) on the death of such member shall be paid on his death, and may from time to time revoke or vary such nomination by writing under his hand similarly delivered or sent; and on receiving satisfactory proof of the death of such member, the trade union shall pay to the nominee any benefits (up to VT 30,000) due to the deceased member.

(2) Any instrument required to be made to carry out the provisions of subsection (1) shall be exempt from stamp duty.

58. Regulations

(1) The Minister may make regulations for the purpose of carrying out or giving effect to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations for or in respect of all or any of the following matters –

(a) the books and registers to be kept for the purposes of this Act and the forms thereof;

(b) the manner in which trade unions and the rules of trade unions shall be registered and the fees, if any, payable on registration;

(c) the manner in which, and the qualifications of persons by whom, the accounts of registered trade unions or of any class of such trade unions shall be audited;

(d) the conditions subject to which inspection of documents kept by the Registrar shall be allowed;

(e) the due disposal and safe custody of the funds and moneys of a trade union;

(f) the creation, administration, protection, control and disposal of the funds of trade unions and any matters connected therewith or incidental thereto;

(g) prescribing anything required to be prescribed under this Act;

(h) generally for all matters incidental to or connected with the matters mentioned in this subsection.

(3) The Minister may by Order declare that any regulations made under subsection (2) shall apply to a particular trade union only, or that any particular trade union or class of trade unions shall be exempted from the operation of such regulations.

SCHEDULE

(Sections 7 and 28)

MATTERS FOR WHICH PROVISION MUST BE MADE IN THE RULES OF EVERY REGISTERED TRADE UNION

1. The name of the trade union and the address of its registered office and postal address.
2. A list of the officers in the trade union and their functions.
3. 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 may become entitled to any benefit assured thereby, and the fines and forfeitures to be imposed on any member.
4. The description of persons eligible for membership of the trade union.
5. The manner of making, altering, and rescinding rules.
6. The keeping of a register of members of the trade union.
7. The maintenance of discipline within the trade union including provision for appeal to the voting members at a general meeting of the trade union against any decision of the executive committee cancelling the membership of any member or dismissing any officer.
8. The appointment or election and removal of the executive committee and the secretary, treasurer, and other officers of the trade union.
9. The method of convening and conducting annual general meetings and extraordinary general meetings, and the matters to be presented to the members of the trade union at such meetings, including in the case of annual general meetings the presentation of audited accounts.
10. The custody and investment of the funds of the trade union, the designation of the officer responsible therefor, and the audit of its accounts.
11. The inspection of the books and of the list of names of members of the trade union by any person having an interest in the funds of the trade union.

12. The manner of the dissolution of the trade union and the disposal of the funds thereof.

13. The taking of decisions by voting members of the trade union by secret ballot on the following matters –

    (a) the election of officers of the union;

    (b) the alteration of the rules of the union;

    (c) all matters relating to strikes and lockouts;

    (d) dissolution of the union;

    (e) the amalgamation of the trade union with any other trade union;

    (f) the affiliation of the trade union to any other trade union or to a federation of trade unions;

    (g) imposition of levies.

14. The right of members who are not disqualified from voting, to a reasonable opportunity to vote.

15. The amount of subscription and fees payable by members and the disqualification of a member from voting on any matter concerning the trade union and from receiving benefits if his subscription is more than 13 weeks in arrears.

16. If provision is made for the appointment or election of honorary members, the conditions under which a person may become an honorary member.

17. Provision for keeping in a separate fund all moneys received or paid by the trade union in respect of any provident, benevolent or pension fund.

18. Provision whereby members of a trade union shall cease to be members of such trade union if their subscriptions are more than 12 months in arrears.

19. Provision whereby a member of a trade union becomes a voting member.

20. A requirement that at any meeting of the union or branch thereof a quorum shall consist of not less than 20 per cent of the members of the union or branch, as the case may be, entitled to vote.

21. A requirement that at any meeting of the executive committee of the trade union or branch thereof a quorum shall consist of not less than one-third of the number of members of the executive committee where the total number of such executive committee consists of twenty-one persons or more, and of not less than one-half of the number of members of the executive committee where the total number of such executive committee consists of twenty persons or less, but that in any case the quorum shall not consist of fewer than five persons.