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LEGAL NOTICE NO. 194 OF 2001

**Labour Code (Directorate of Disputes Prevention
And Resolution) Regulations 2001**

Pursuant to section 240 of the Labour Code Order 1992¹, I,

CLEMENT SELLO MACHAKELA

make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Labour Code (Directorate of Dispute Prevention and Resolution) Regulations 2001 and shall come into operation on the date of publication in the Gazette.

Interpretation

2. Unless the context otherwise requires –

“day” means any day including a Saturday, Sunday or public holiday but excludes the days in the period from 16 December to 7 January;

“Director” has the same meaning as in the Labour Code Order, 1992;

“Directorate” has the same meaning as in the Labour Code Order, 1992;

“Code” means the Labour Code Order, 1992;

“Labour Court” means the Labour Court established under section 22 of the Labour Code, 1992;

“party” means any party to proceedings before the Directorate of Dispute Prevention and Resolution;

“public holiday” means the public holiday referred to in section 117 of the Labour Code Order, 1992.

Referral of disputes

3. (1) A party to a dispute of interest or dispute of right as defined in the Code may refer such a dispute to the Directortate.

(2) A dispute may be referred only if the referral is –

- (a) in writing and in accordance with the form prescribed in Schedule I; and
- (b) accompanied by proof of service on the other parties to the dispute.

(3) If the dispute is referred late; the referral shall be accompanied by a written application for condonation in accordance with Regulation 4.

(4) A referral that does not comply with this Regulation shall not constitute a referral for the purposes of the Code.

Condonation for late filing of referral

4. (1) A late referral of a dispute shall be accompanied by an application for condonation and be served on the other parties to the dispute.

(2) The application for condonation shall be in writing.

(3) Where a party to the dispute opposes the application for condonation such application shall –

- (a) be in writing; and
- (b) state the reasons for opposing the application.

(4) The opposing statement shall be served on the other parties to the dispute and be filed with the Senior Case Management officer within 7 days of the service of the referral.

(5) The conciliator or arbitrator shall, on good cause shown, determine the application for condonation taking into account the conciliation and arbitration guidelines.

Filing of documents with the Directorate

5. (1) Documents for referral of disputes shall be filed with the Senior Case Management officer in the following ways:

- (a) by handing the documents to the head office or to a regional office;
 - (b) by sending a copy of the documents by registered post to the head office;
 - (c) by faxing the documents to the head office or regional office; or
 - (d) by e-mailing the documents to the electronic address of the Directorate.
- (2) Where the documents are faxed or e-mailed, the Director may request that the original documents be lodged in writing within 5 days of the request.

Office hours of the Directorate

6. (1) The offices of the Directorate shall be opened to the public every Monday to Friday, from 08h00 to 12h45 and from 14h00 to 16h30.

(2) Notwithstanding subregulation (1), the Directorate may accept documents for filing on any day and at any time.

(3) The Directorate shall, where the Labour Court so directs, accept documents for filing on any day and at any time.

Service on an employee

7. (1) Where a document is served on an employee, the document shall be served by –

- (a) handing a copy of the document to the employee or to the employee's union representative;
- (b) leaving a copy of the document at the employee's place of work with any person who is at least 16 years old and in charge of

the premises at the time.

- (c) leaving a copy at the employee's residence with any person who is at least 16 years old and in charge of the premises at the time; or
- (d) sending a copy to the employee by registered post, fax or electronic mail if the employee has a postal address, fax number or e-mail address.

Service on a trade union

8. (1) Where a document is served on a trade union, the document may be served by –
- (a) leaving a copy of the document at any of its offices with any person who is at least 16 years old and in charge of the premises at the time;
 - (b) sending a copy to the trade union by –
 - (i) registered post to its registered address;
 - (ii) fax to its fax number if it has a fax number; or
 - (iii) electronic mail if it has an e-mail address.

Service on the employer

9. Where a document is served on an employer, the document may be served by –
- (a) handing a copy of the document to the employer;
 - (b) leaving a copy of the document at the employer's registered office or principal place of business with any person who is at least 16 years old and in charge of the premises at the time;
 - (c) sending a copy to the employer by registered post, fax or electronic mail if it has a postal address, fax number or e-mail

address.

Service on an employers' organisation

10. (1) Where a document is served on an employers' organisation, the document may be served –

- (a) by leaving copy of the document at any of its offices with any person who is 16 years old and in charge of the premises at the time;
- (b) by sending a copy to the employer's organisation –
 - (i) registered post to its registered address;
 - (ii) fax to its fax number if it has a fax number, or
 - (iii) electronic mail if it has an e-mail address.

Service on the parties

11. (1) Where a document is served on a person, the document may be served by –

- (a) handing a copy of the document to the person;
 - (b) leaving a copy of the document at the person's place of work or registered office with any person who is 16 years old and in charge of the premises at the time;
 - (c) leaving copy at the person's residence with any person who is at least 16 years old and in charge of the premises at the time;
 - (d) sending a copy to the person by registered post, fax or electronic mail if that person has a postal address, fax number or e-mail address
- (2) Where a person is –
- (a) the State, the document may be served by handing a copy to a

responsible employee at the head office of the Ministry or statutory body involved or to a responsible employee at any office of the State Attorney;

- (b) a municipality, the document may be served by handing a copy on the town clerk, assistant town clerk or any person acting on behalf of the person.

Other forms of service

12. A person who is a party to the dispute may apply to the Director for an order of substituted service if it is impossible to serve the document in terms of these Regulations.

Service of documents by registered post, fax and electronic mail

- 13. (1) Where a document is served by registered post to the last-known address of the person concerned, it will be presumed, unless the contrary is proved, that service was effected on the seventh day following the day on which the document was posted.
- (2) A document served by fax shall include a cover page and a document served by electronic mail shall include a cover message. The page or message shall set out –
 - (a) the name, address and telephone number of the sender;
 - (b) the name, address and telephone number of the person to whom it is addressed;
 - (c) the date and time of transmission;
 - (d) the total number of pages sent including the cover page or message;
 - (e) the name and telephone number of the person to contact if the transmission appears to be incomplete or otherwise unsuccessful.

Proof of service

14. (1) In order to satisfy the Director that service has been made on the other parties to a dispute, the applicant shall provide the Senior Case Management Officer with –

- (a) a copy of a receipt signed by the person who received the document;
- (b) a statement, confirming service, signed by the person who served the document;
- (c) proof of receipt that the document was served by registered post;
- (d) the fax and the transmission slip if the document was faxed; or
- (e) the e-mail and a signed statement that the e-mail was successfully transmitted.

(2) The date of filing for the purposes of the time limits contained in the Code –

- (a) is the date and time that the document is handed to the head or regional office;
- (b) is 7 days after the document is sent by registered post;
- (c) is the date and time of the receipt of the document by fax or electronic mail.

(3) The receipt referred to in paragraph (a) of subregulation (1) shall state the name of the person receiving the document and the date, time and place of service

(4) The statement referred to in paragraph (b) of subregulation (1) shall state the name of the person receiving the document and the date, time and place of service.

(5) Proof of service in terms of Regulation 13(1) shall be proof that the

person on whom the document was served has knowledge of its contents.

Conciliation proceedings

15. (1) The Directorate shall give the parties at least 10 days' notice of a conciliation hearing unless the parties to the dispute agree to less.

(2) The conciliator shall conduct the conciliation proceedings taking into account the provisions of the Labour code and the Conciliation Guidelines.

(3) The conciliator may adjourn the proceedings if it is in the interest of settlement to do so.

Jurisdiction of the conciliator

16. (1) If at any stage during the proceedings, a party challenges the jurisdiction of the Directorate to conciliate the dispute, the conciliator shall determine whether the Directorate has jurisdiction before continuing with the proceedings.

(2) The burden of proving that the Directorate has jurisdiction lies with the party disputing jurisdiction.

Failure to attend conciliation hearing

17. (1) If a party fails to attend a conciliation meeting concerning a dispute of interest contemplated in terms of section 225 of the code, the provisions of that section shall apply.

(2) If a party fails to attend a conciliation meeting in respect of any other dispute, the conciliator shall note that failure in any report of an unresolved dispute issued.

Arbitration Proceedings

18. (1) The Directorate shall give the parties at least 15 days' notice of an arbitration hearing unless the parties to the dispute agree to less.

(2) The arbitrator shall conduct the proceedings taking into account the provisions of the code and Conciliation and Arbitration Guidelines made

under the Order.

(3) The arbitrator may adjourn the proceedings if it is in the interest of justice or a settlement to do so.

Failure to attend arbitration hearing

19. (1) If a party to a dispute fails to attend the arbitration hearing, the arbitrator may –

- (a) Postpone the hearing;
- (b) dismiss the referral; or
- (c) grant an award by default.

Jurisdiction of the arbitrator

20. (1) If at any stage during the proceedings, a party challenges the jurisdiction of the Directorate to arbitrate the dispute, the arbitrator shall determine whether the Directorate has jurisdiction before continuing with the proceedings.

(2) The burden of proving that the Directorate has jurisdiction lies with the party disputing jurisdiction.

Dispute that must be conciliated by the arbitrator

21. (1) The arbitrator shall determine how the pre-arbitration proceedings are to be conducted taking into account the conciliation Guidelines made under the Order.

(2) If the arbitrator decides that there is no immediate prospect of settlement, the arbitrator may determine the conciliation hearing and commence arbitration proceedings.

Pre-arbitration conferences

22. (1) The parties to the proceedings shall, by agreement or when so directed by the Director, hold a pre-arbitration conference dealing with the matters

referred to in sub-regulation (2).

(2) In a pre-arbitration conference, the parties shall attempt to reach consensus on the following:

- (a) any means by which the dispute may be settled;
- (b) facts that are common cause;
- (c) facts that are in dispute;
- (d) the precise relief claimed and if compensation is claimed, the amount of the compensation and how it is calculated;
- (e) the sharing and exchange of relevant documents, and the preparation of a bundle of documents in chronological order with each page numbered;
- (f) the manner in which documentary evidence is to be dealt with, including any agreement on the status of documents and whether documents, or part of documents, will serve as evidence of what they appear to be;
- (g) whether evidence on affidavit will be admitted with or without the right of any party to cross-examine the person who made the affidavit;
- (h) which party must begin;
- (i) the necessity for any on-the-spot inspection;
- (j) securing the presence at the Directorate of any witness;
- (k) the resolution of any preliminary points that are intended to be taken;
- (l) the exchange of witness statements;
- (m) expert evidence;

- (n) any other means by which the proceedings may be shortened;
- (o) an estimate of the time required for the hearing;
- (p) the right of representation; and
- (q) whether an interpreter is required and, if so, for how long and for which languages.

(3) Where a matter has not been settled in pre-arbitration conference, the parties shall draw up and sign a minute dealing with the matter set out in sub-regulation (2).

(4) The party who referred the dispute shall ensure that a copy of the pre-arbitration conference minute is filed with the directorate within 5 days of the conclusion of the pre-arbitration conference.

Production of documents

23. The parties may, in respect of the production of documents relevant to the issues in dispute, come to an agreement over the production of the documents or make application for an appropriate order.

Joinder, substitution of parties, changes to citation etc.

24. (1) The Director may combine cases or join parties in proceedings, if the right to relief depends on the determination of the same question of law or fact.

(2) The Director may make an order joining any person as a party in the proceedings if the party to be joined has a substantial interest in the subject matter of the proceedings. The Director may only do this after notifying the parties of the intention to do so.

(3) The Director may, when making an order in terms of sub-regulation (1) or (2), give such directions as to the further procedure in the proceedings as he may deem fit.

(4) A person entitled to join as a party to any proceedings may, at any stage of the proceedings and on notice to all parties, apply for leave to join as a party.

(5) The Director may make an order or give such directions as to the further procedure in the proceedings referred to in sub-regulation (4) as he deems fit.

(6) If a party to any proceedings has been incorrectly or defectively cited, the Director or arbitrator may, on application and on notice to the party concerned, correct the error or defect.

(7) If in any proceedings it becomes necessary to substitute a person for an existing party, any party to such proceedings may, on application and on notice to every party, apply to the Director for an order substituting that party for an existing party and the Director may make such order or give such direction as to the further procedure in the proceedings as it deems fit.

(8) If an arbitration has been appointed to arbitrate a dispute in terms of section 226 of the Code, in respect of more than one dispute involving the same parties, the Director may consolidate the arbitration proceedings so that all disputes concerned may be dealt with in the same proceedings.

Postponement of proceedings

25. (1) Postponement may be granted without the need for the parties to appear if the following conditions are met:

- (a) if all the parties to the dispute agree in writing to the postponement; and
- (b) if the request for the postponement is received by the Directorate more than 10 days prior to the scheduled date of the arbitration.

(2) A formal application in writing for postponement shall be made if –

- (a) the parties cannot agree whether or not an arbitration is to be postponed; or
- (b) the request for a postponement is made within 10 days of the scheduled date of arbitration.

(3) The application referred to in sub-regulation (2) shall be served

before the scheduled date for the arbitration.

- (4) The Director may decide whether –
 - (a) to grant the request for a postponement on the written document presented; or
 - (b) to convene a formal hearing.

Application

26. (1) An application shall be brought on notice to all persons who have an interest in the application.

(2) The party bringing the application shall sign the notice of application.

(3) The application referred to in sub-regulation (1) shall be served on the other parties to the dispute and contain the following information:

- (a) the title of the matter;
- (b) the case number assigned to the matter by the Directorate;
- (c) the relief sought;
- (d) an address of the party delivering the document at which the party will accept notices and services for all documents and proceedings;
- (e) a notice advising the other party that if it intends opposing the matter, the party shall deliver an affidavit within 5 days of serving the application being served, failing which the matter may be heard in the party's absence; and
- (f) a schedule listing the documents that are material and relevant to the application;
- (g) the application shall be supported by affidavit which clearly and concisely sets out the following;

- (i) the names, description and addresses of the parties;
- (ii) a statement of the material facts, in chronological order, on which the application is based, which statement must be in sufficient detail to enable any person opposing the application to reply to the document;
- (iii) a statement of legal issues that arise from the material facts, which statement shall be in sufficient detail to enable any party to reply to the document; and
- (iv) the relief sought.

(3) A party opposing the application shall file and serve a notice of opposition and an answering affidavit within 5 days from the day on which the application was served.

(4) A notice of opposition and an answering affidavit shall respectively contain, with the changes required by the context, the information required by sub-regulations (2) and (3).

(5) The party initiating the proceedings may lodge a replying affidavit within 5 days from the day on which any notice of opposition and answering affidavit are delivered.

(6) The replying affidavit shall address only those issues raised in the answering affidavit and shall not introduce new issues of fact or law.

(7) Subject to the discretion of Director, the affidavit referred to in this sub-regulation may be submitted by written statements.

(8) The Directorate shall allocate a date for the hearing of the application once a replying affidavit is delivered, or once the time limit for delivering a replying affidavit has lapsed, whichever occurs first.

(9) The Directorate shall notify the parties of the date, time and place of the hearing of the application.

Representation

27. (1) Only persons contemplated by section 228A of the Code may repre-

sent a party to dispute.

(2) An arbitrator may, on application or on the arbitrator's own accord, refuse to permit any person to represent a party to a dispute.

(3) The arbitrator shall give the person referred to in subregulation (2) an opportunity to state why he is to be admitted as a representative including the opportunity to lead evidence.

Motion roll

28. The Directorate may determine that preliminary matters such as applications for condonation, jurisdictional disputes, and other interlocutory matters be heard on a motion roll.

Variation or rescission of awards or rulings

29. (1) An application for the variation or rescission of an arbitration award or ruling be in writing in accordance with Regulation 26.

(2) The application shall be made within 10 days of the date on which the applicant became aware of –

- (a) the arbitration award or ruling; or
- (b) the mistake common to the parties to the proceedings.

(3) Subject to sub-regulation (4), the arbitrator who issued the arbitration award or ruling shall hear the application for variation or rescission.

(4) The Director may, on good cause shown, appoint another arbitrator to hear the application.

Record of proceedings

30. (1) The Directorate shall keep a record of –

- (a) any evidence given in an arbitration hearing; and
- (b) any arbitration award or ruling made by an arbitrator.

(2) The record kept may be by hand-written notes or by means of an electronic recording.

(3) After the person who made the hand-written notes or electronic recording has certified it as correct, it shall be filed with the Directorate.

(4) A party to the arbitration proceedings may request a copy of the transcript of the hand-written notes, the record or a portion of the record, upon payment of the costs of transcribing the notes, electronic record or portion of the record.

(5) After the person who makes the transcript of the hand-written notes, record or portion of the record has certified that they are correct, the transcript of the hand-written notes or the electronic record shall be returned to the Directorate.

(6) The transcript of the hand-written notes or electronic record so certified as correct shall serve as proof of its correctness unless the Labour Court decides otherwise.

Clement Sello Machakela
Minister Responsible for Labour and
Employment

NOTE

1. Order No. 24 of 1992 as amended by Act No. 3 of 2000.

SCHEDULE 1

Regulation 3

DDPR Form A
Referral Form**DIRECTORATE OF DISPUTE PREVENTION AND RESOLUTION****REFERRAL OF DISPUTE IN TERMS OF S225 (DISPUTE OF
INTEREST) AND S227 (DISPUTE OF RIGHT)****ADDRESS**

DDPR OFFICES - ADDRESSES, TELEPHONE NOS AND FAX NOS AND OPENING HOURS

CENTRAL REGION8th Floor Post Office Building
Kingsway Road
Private Bag a160
MaseruTel: (+266) 327099
Fax: (+266) 311253**NORTHERN REGION**TEBA Complex, Hlotse
Private Bag C 0005
Hlotse, LeribeTel: 401685
Fax: 400032**SOUTHERN REGION**Mohale's Hoek Town
Opposite Race course
Private Bag F 0023
Mohale's Hoek
Tel: 780610
Fax: 780611**HOURS OF WORK****Monday - Friday: 0800HR - 12H45
1400HR - 16H30**

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WHAT IS THE PURPOSE OF THIS FORM?

This form enables a person or organization to refer a dispute to the DDPR for conciliation and/or arbitration depending on the issue (see pages 2-5)

WHO FILLS IN THIS FORM?

The applicant referring the dispute to the DDPR fills in this Form. This may be an employee, employer union or employer's organization.

WHERE DOES THIS FORM GO?

A copy of this form must be sent to the other party and proof that a copy has been sent must accompany the form to the DDPR offices in the region where the dispute arose. Proof that a copy of this form has been sent could be:

- A copy of a registered slip from the Post Office;
- A copy of a signed receipt if hand delivered;
- A signed statement confirming service by the person receiving the form;
- A copy of a fax transmission slip or

WHAT WILL HAPPEN WHEN THIS FORM IS SUBMITTED?

When you refer the dispute to the DDPR, a conciliator/arbitrator will be appointed to resolve the dispute within 30 days, if it is referred under S225 and as soon as practically possible if it is referred under S 227. At the hearing the conciliator/arbitrator will give both parties an opportunity to fully state their case. At the arbitration, the arbitrator will then make a decision, which must be followed by both parties.

1. DETAILS OF PARTY REFERRING THE DISPUTE

- An employee
- An employer

A union official or representative
An employers' organization official or representative

(a) If the referring party is an employee:

Name:

Postal Address:

Tel.: Cell:

Fax: E-mail:

Alternate contact details of employee:

Name:

Postal Address:

Tel.: Cell:

Fax: E-mail:

- (b) If the referring party is an **employer, an employer's organization union:**

Organization name:

Contact person:

Postal address:

Tel.: Cell:

Fax: E-mail:

2. **DETAILS TO THE OTHER PARTY (PARTY WITH WHOM YOU ARE IN DISPUTE):**

- An employee

A union official or representative

- An employer

An employers' organization official or Representative

Name:

Postal Address:

Tel.: Cell:

Fax: E-mail:

3. **NATURE OF THE DISPUTE:**

What is the dispute about:

.....

.....

.....

.....

.....

The dispute arose on: (date)

The dispute arose where: (place)

4. **DETAILS OF DISPUTE PROCEDURES FOLLOWED:**

Have you followed all internal procedures (grievance/disciplinary, etc)?

Yes	No
-----	----

Describe the procedures followed:

.....

.....

.....

.....

5. **OUTCOME DESIRED**

what outcome do you require:

.....

.....

.....

.....

6. **INDUSTRY:**

Indicate the sector or service in which the dispute arose:

7. **SPECIAL FEATURES/ADDITIONAL INFORMATION:**

- (a) Do you require an interpreter at the hearing?
If yes, please indicate for what language:

Yes	No
-----	----

- (b) Briefly outline any special features/additional information:

.....

.....

.....

.....

.....

.....

8. **INFORMING THE OTHER PARTY:**

I confirm that a copy of this form has been sent to the other party/parties to the dispute and proof of this is attached to this form

Signed:

9. **CONFIRMATION OF ABOVE DETAILS:**

Signature of party referring the dispute:

Signed at (place) on (date)

FOR DISMISSAL DISPUTES ONLY

1. **COMMENCEMENT OF EMPLOYMENT:**

When did you start working at the company:

2. **NOTICE OF DISMISSAL:**

Please give the date of your dismissal:

Wage/salary at date of dismissal:

How were you informed of your dismissal:

- By written statement
- At/after a disciplinary hearing
- Other (please explain)

Verbally
Constructive

3. **REASON FOR DISMISSAL**

Why were you dismissed?

- Misconduct
- Operational requirements

Incapacity

Unknown

(retrenchment)

- Other (please explain)

4. FAIRNESS/UNFAIRNESS OF DISMISSAL:

Do you think that the dismissal was procedurally unfair?

Yes	No
-----	----

If yes, why

.....

.....

.....