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MINISTRY OF LABOUR, INDUSTRIAL RELATIONS AND EMPLOYMENT CREATION

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CODE OF ETHICS FOR CONCILIATORS AND ARBITRATORS: LABOUR ACT, 2007

In terms of section 137(1)(c) of the Labour Act, 2007 (Act No. 11 of 2007) I, after consultation with the Labour Advisory Council, issue the Code of Ethics for Conciliators and Arbitrators appointed in terms of the Act as set out in the Schedule.

U. NUJOMA
MINISTER OF LABOUR,
INDUSTRIAL RELATIONS
AND EMPLOYMENT CREATION

Windhoek, 24 July 2020

SCHEDULE

CODE OF ETHICS FOR CONCILIATORS AND ARBITRATORS

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Scope of code

1. This Code -
 - (a) sets out the standards of ethics and other obligations that govern the professional and ethical responsibilities of conciliators and arbitrators tasked with the systematic resolution of labour disputes;
 - (b) is intended to supplement and is read in conjunction with other sources such as the agreements between the parties, arbitration rules other applicable laws; and
 - (c) must be applied consistently with the Constitution of the Republic of Namibia, the Labour Act, 2007 and the common law giving due consideration to the relevant circumstances.

Application of code

2. This code applies to all conciliators and arbitrators appointed under the Labour Act, 2007 (Act No. 11 of 2007).

Fundamental Principles

3. (1) The standards of conduct and other obligations set out in this code are based on these fundamental principles -
 - (a) the observation and enhancement of public confidence and trust in the integrity, objectivity and impartiality of the conciliators and arbitrators;
 - (b) to enhance public respect in the dispute resolution process; and
 - (c) to protect the reputation of conciliators and arbitrators and as well as that of the dispute resolution process.
- (2) This code requires the dedication of conciliators and arbitrators to the values enshrined in honesty, fairness, accountability, dignity, respect and transparency.

Independence

4. A conciliator or arbitrator must -
 - (a) uphold the independence and integrity of the Office of the Labour Commissioner;
 - (b) act fearlessly and with accountability only to the law;

- (c) be independent-minded in executing his or her duties;
- (d) reasonably ensure that no person interferes with the functioning and execution of the dispute resolution process; and
- (e) not accept any bribe or special favour, in his or her capacity, offered by any person in relation to any hearing.

Transparency

- 5.** A conciliator or arbitrator must -
- (a) ensure that he or she conducts himself or herself in a manner that enhances and maintains the confidence of the public in the transparency of the dispute resolution process; and
 - (b) except if special circumstances exist, conduct arbitration hearings and make known his or her decisions, and provide reasons to the parties to enhance public understanding and confidence in the transparency of the dispute resolution process.

Equality

- 6.** A conciliator or arbitrator must -
- (a) carry out his or her duties with appropriate consideration for all persons and dissociate himself or herself from discriminatory comments that are racist or sexist and in violation of the Constitution of the Republic of Namibia;
 - (b) take reasonable measures to accommodate all parties and give them opportunities to participate in the proceedings equally and fairly;
 - (c) refrain from conducting himself or herself in a manner that is bias or prejudice to any party; and
 - (d) refrain from discussing, remarking or commenting inappropriate remarks to any party about any dispute that he or she is working on.

Impartiality

- 7.** (1) A conciliator or arbitrator -
- (a) must conduct his or her personal and business affairs in a manner that prevents conflict of interest in order to minimise the occasions on which it will be necessary to be disqualified from hearing cases; and
 - (b) may not involve himself or herself in any business undertaking, fundraising or other activities that has the potential to affect his or her status, independence or impartiality.
- (2) The appearance of impartiality is measured by the test of reasonable apprehension of bias in the mind of a reasonable, fair minded and informed person.

Integrity

- 8.** A conciliator or arbitrator must -

- (a) uphold the integrity of the dispute resolution process;
- (b) in his or her private dealings, conduct himself or herself in a manner that may not cast doubt on his or her ability to be perform his or her functions objectively;
- (c) promote fair administration of justice and the independence of the dispute resolution process; and
- (d) respect the law and conduct himself or herself with honour and avoid impropriety or the appearance of impropriety in their dispute resolution process and related activities.

Confidentiality

- 9.** A conciliator or arbitrator must -
- (a) ensure that formal deliberations and private consultations between parties remain confidential;
 - (b) handle confidential information disclosed by a party during the dispute resolution process in the strictest confidence, and he or she must not disclose such information to the other party or to third parties, unless consent from the relevant party is obtained for that disclosure or required by law;
 - (c) not disclose an arbitration ruling or part of such ruling to any party before the issuing of the award; and
 - (d) not at any time disclose the deliberations of a dispute resolution process, or his or her views regarding the deliberations of that process.

Conduct and diligence of conciliators and arbitrators

- 10.** A conciliator or arbitrator must -
- (a) carry out all duties diligently, properly, timeously and in an orderly manner;
 - (b) investigate the matter at hand carefully;
 - (c) give his or her ruling in a case with reasonable promptness and within the specified time frames;
 - (d) not conduct himself or herself in a manner that is detrimental to the effective and expeditious administration of justice or to the image of the Office of the Labour Commissioner;
 - (e) respect and comply with administrative requests of the Labour Commissioner; and
 - (f) take reasonable steps to maintain and enhance his or her knowledge, professional skills and personal qualities necessary for a high level of professional competence in the law and expertise required to exercise and perform his or her powers and functions.

Fair hearing

- 11.** (1) In the collection and evaluation of facts, applying the appropriate law and resolving of disputes, a conciliator or arbitrator must -

- (a) comply with all procedural fairness and natural justice requirement;
 - (b) give adequate reasons for any decisions made; and
 - (c) observe the spirit of the law.
- (2) A conciliator or arbitrator must, in conducting proceedings -
- (a) maintain order between parties;
 - (b) act in accordance with commonly accepted decorum; and
 - (c) be respectful and courteous towards the parties and their representatives and require them to act accordingly.
- (3) A conciliator or arbitrator must manage the proceedings in such a way to -
- (a) expedite the conclusion of the proceedings as cost effectively as possible;
 - (b) ensure that the responsibility to hear the matter is not shifted to another conciliator or arbitrator; and
 - (c) not exert undue influence on the parties to the proceedings in order to promote a settlement or to obtain a concession from a party.

Public expression and association

12. A conciliator or arbitrator may not express views that may undermine the standing and integrity of the dispute resolution process.

Misconduct

13. A conciliator or arbitrator who contravenes or fails to comply with any provision of this Code commits a breach of a code and is liable to disciplinary action as defined by section 25 of the Public Service Act, 1995 (Act No. 13 of 1995) and must be dealt with in accordance with that Act.
