A CRITICAL COMMENTARY ON THE LABOUR AMENDMENT ACT No 11 of 2023 presented at IPMZ Briefing on 19th July 2023

Rodgers Matsikidze LLBS(Hons), MPhil Law, University of Zimbabwe, PhD Law(waiting graduation), Wits University, South Africa.

Chairman, Attorney, Notary Public & Conveyancer-Matlaw-Matsikidze Attorneys-at-Law, Director & Deputy Dean of Law, University of Zimbabwe, Chairman-NEC Harare Municipal Undertaking, Masvingo Mirror, National Blood Service Zimbabwe, Examiner-REIZ & EAC, Board Member-CWGH, Council For Legal Education, Research and Innovation & Quality Assurance Committees of the University of Zimbabwe, Judicial Service Commission Rules Committee, academic of many articles, monographs and books, labour and business consultant.

rmatsikidze@matsikidzelaw.com rodgersmatsikidzem@gmail.com.

0775583333.

MATLAW
Matsikidze Attorneys-At-Law

Introduction

- At least there is progress in terms of labour reform.
- Admittedly there are teething issues and outstanding issues from both an employer and an employee perspective.
- The journey of labour reform is far from being over.
- There is a lot of work around fine-tuning the current provisions and a lot of work on outstanding issues not included in the Labour Act.
- In this presentation, the Labour Amendment Act No 11 of 2023 is referred to as LAA and the Labour Act as the LA.

IPM

MATLAW
Matsikidze Attorneys-At-Law

Introduction

- The journey for full labour reform remains unchartered, and the social partners will soon need to meet.
- The labour law reform has been a see-saw, with good law replaced by bad law and bad law replaced by good law.
- What is clear is that for the next few coming years, Zimbabwe will still be embroiled in Labour refom.

IPM

MATLAW
Matsikidze Attorneys-At-Law

The Key Amendments

- Termination of employment methods.
- New retrenchment laws.
- Maternity leave provisions improved- no more one-year qualifying year.
- Hourly contracts
- Formation of employment councils and admissions of new players in employment councils.
- New dispute resolution system- repeal of the bizarre confirmation proce

MATLAW
Matsikidze Attorneys-At-Law

Key Amendments

- Submissions of collective bargaining agreements for approval or registration.
- Registration and review of codes of conduct.
- Liability of persons involved in unlawful collective job actions.
- Investigations of trade unions and employers organisations.
- Transitional provisons.
- Gender based violence.

MATLAW
Matsikidze Attorneys-At-Law

Key Amendments

- Equal remuneration for work of equal value.
- Definition of forced labour.
- Paid education leave.
- Registration of trade unions or employers organisations-additional requirements.
- Consideration relating to variation, suspension, rescission of registration of trade unions or employers organisations

MATLAW
Matsikidze Attorneys-At-Law

Gender based violence

- The Amendment has now an insertion of the definition of gender based violence as violence and harassment directed at persons because of their sex or gender or affecting persons because of their sex or affecting persons of a particular sex or gender disproportionately and includes sexual harassment.
- See section 2 of the LAA.

MATLAW
Matsikidze Attorneys-At-Law

Violence and harassment

- Violence and harassment have extended meaning to a range of unacceptable behaviours and practices or threats, whether a single occurrence or repeated, that result in physical, psychological, sexual or economic harm and include gender-based violence and harassment. See section 2 of the LAA.

MATLAW
Matsikidze Attorneys-At-Law

Violence and harassment

- There is a new section 6(3) of LA which is an addition of an unfair labour practice. See section 5 of the LAA.
- Violence and harassment thus become unfair labour practices.
- Section 6(3) of the LA extend the culpability to being involved directly or indirectly acting in a manner that amounts to violence and harassment towards another person at the workplace.
- Such act or conduct must have occurred or linked to workplace, including public and private spaces where they are a place of work.

MATLAW
Matsikidze Attorneys-At-Law

Violence and harassment

, in places where the worker is paid, takes a rest break or a meal, or uses sanitary, washing and changing facilities, during work-related trips, travel, training, events or workplace-organized social activities, through work-related communications, including those enabled by information and communications technologies, in employer-provided accommodation and when commuting to and from work. An employee can also be disciplined under a code of conduct. See section 6(5) of the LA.

- Section 6(3) refers to penalties for this unfair labour practice, while section 8 of the Labour Act classifies it as an unfair list of unfair labour practices. See section 5 of LAA. Also, see section 6 of LAA amending section 8 of LA by inserting section 8(i) of the LA.

MATLAW
Matsikidze Attorneys-At-Law

Forced Labour

- Section 4A (2)(3) of LA is repealed ad replaced by new sections (2) and (3) of the LA.
- Section 2 sets the list of 'forced work' that is deemed to be not forced labour.
- Section 3 then criminalises the conduct of forced labour.
- The amendment is meant to align our labour laws with the ILO convention on Forced Labour No 29.

MATLAW
Matsikidze Attorneys-At-Law

Equal pay for work of equal value

- Under section 5 of the Labour Act, there is discrimination; there is now an addition.
- Employers must pay equal remuneration to male and female employees for work to which equal value is attributed without discrimination.
- See 5(2a) of the LA and section 4 of the LAA.

MATLAW
Matsikidze Attorneys-At-Law

Termination of Employment Methods

- The old section (4a) of the Labour Act is repealed and substituted by a new section.
- Under the new section (4a) of the LAA, a contract of employment may be terminated only on the part of the employee by his or her resignation or retirement.
- The employer can terminate only an employment contract by:

(a) By mutual agreement, (b) for breach of an express or implied term of the contract upon such breach being verified after a due inquiry under an applicable code of conduct or (c) in any other manner agreed in advance by the employer and employee concerned. See sec

MATLAW
Matsikidze Attorneys-At-Law

The implications of section new section 4a of the LAA.

- It means the termination of a contract of employment can only be done either by the employee as per the provisions of the new section 4a of the LAA.
- The question is whether that is true that an employee can only be terminated by the stated methods under section 4a of the LAA.
- Clearly, that is not correct.
- Firstly in the Act itself, there are other termination methods stated and secondly, there are other common law methods that are not expressly ousted by the statute.

IPM

MATLAW
Matsikidze Attorneys-At-Law

The implications of section new section 4a of the LAA.

- Section 12 (4) of the LA still applies.
- Section 12(4) of the LA allows the termination of fixed contracts on notice.
- Employees can still be terminated on notice during probation; see section 12(5) of the LA.
- Employees can be terminated through the expiry of the contract of employment subject to provisions of section 3a of the LA.

MATLAW
Matsikidze Attorneys-At-Law

The implications of section new section 4a of the LAA.

- Termination on notice through retrenchment under section 12C of the LA.
- Under common law still, death, repudiation, and novation remain some of the methods of termination that are acceptable.
- What is apparent is that common law is not outlawed, particularly on other termination methods.
- Further, what is apparent is that notice termination remains a method available to terminate a fixed-term employment contract.

MATLAW
Matsikidze Attorneys-At-Law

Vague provisions on termination methods

- Section 4a (b) of the LAA is vaguely worded, particularly the last part of 4a(b)- 'Or any other manner agreed upon in advance by the employer and employee concerned'.
- The above provision ought to have been a stand-alone clause to allow other methods not stated under 4a of the LAA; however, as it stands, the proper statutory interpretation would mean that parties can agree in advance on how to carry out a termination in the event of a breach of an employment contract by an employee.

New retrenchment laws.

- The old section on retrenchment is repealed.
- The retrenchment process commences from section 3 of section 12 of the LAA.
- Under s3(a) of LAA, an employer who intends to retrench one or more employees or has negotiated with his or her employees a retrenchment package better than minimum retrenchment package is required to do the following:

MATLAW
Matsikidze Attorneys-At-Law

New retrenchment laws.
Section 12C

1. Give 14 days written notice. Section 12C(2) of the LAA
2. The 14 written day notice must be of intention to retrench.
3. In the absence of an agreed retrenchment package, the notice must be given to the works council if there is no such works council or if the majority of employees being retrenched agree to such to the employment council.
4. The 14-day written notice or agreed retrenchment package must also be given to the Retrenchment Board.

MATLAW
Matsikidze Attorneys-At-Law

New retrenchment laws
Section 12C

- The 14-day notice of intention to retrench in the absence of an agreed retrenchment package to the employee or employers concerned.
- In addition, in the absence of an agreed retrenchment package, together with the notice of intention to retrench, the employer will be required to provide the works council or employment council (subject to if notice was served to either) and the Retrenchment Board, the employer must provide details of every employee intended to be retrenched and the reasons for the proposed retrenchment.

MATLAW
Matsikidze Attorneys-At-Law

New retrenchment laws
Section 12C

- Within 14 days when an employee is retrenched, the employer is required to notify the retrenchment board of the following:

1. The fact and the particulars of any agreed retrenchment package.
2. The retrenchment board must issue a notification certificate, which signifies its satisfaction that the agreed package is better than the minimum retrenchment package, within 14 days from the date when the employer notifies it (the retrenchment board) of its intention to retrench.

MATLAW
Matsikidze Attorneys-At-Law

New retrenchment laws
Section 12C

- The employer and employee/s, after the notice to retrench, may discuss a package better than the minimum package.
- If an agreement for an agreed package is made, it must be signed for.
- If an agreement is secured, including the date or dates when the agreed package is to be paid to the employees, the agreed retrenchment package is supposed to be paid to the employees on the agreed day or days.
- The agreed package must be notified to the retrenchment board no later than the end of the notice period or within seven days after the expiry of the notice.

IPM

MATLAW
Matsikidze Attorneys-At-Law

New retrenchment laws
Section 12C

- If the employer and employees do not agree on an agreed retrenchment package, the employer must inform the retrenchment board within 14 days from the date when the employee/s is retrenched of the fact that the minimum retrenchment package is being or is to be paid and also the details of every retrenched employee.
- Within those 14 days of being notified of the retrenchment, the retrenchment board is required to issue a notification certificate to the effect that a minimum retrenchment has been paid.

MATLAW
Matsikidze Attorneys-At-Law

New retrenchment laws
Section 12C

- It is now a requirement for the retrenchment board to issue a certificate of notification on its retrenchment notice board or virtually for seven consecutive days.
- Further, the if there is a question in any judicial or other proceedings whether the Retrenchment Board issued a notification certificate to the employer, an affidavit by the employer to the effect that he or she notified the retrenchment board shall be a prima facie proof of such.

MATLAW
Matsikidze Attorneys-At-Law

New retrenchment laws
Section 12C

- There are consequences for failing to notify the retrenchment board of payment of the minimum or agreed package.
- If the employer fails to notify the retrenchment board of the minimum or agreed package on the 21st day after the employee or employees are retrenched, the employees or their representative may enforce payment of their package as per provisions of s12C (6 and (7) of LA.

MATLAW
Matsikidze Attorneys-At-Law

New retrenchment laws- Failure to Pay retrenchment within the stipulated times or agreed times. Section 12C

- If the employer fails to pay the employees the agreed or minimum retrenchment package, the employees or their representative must satisfy the retrenchment board through an affidavit that the employer has delayed paying the minimum or agreed retrenchment package, lay the extent of the non-compliance.
- On receipt of the affidavit stated above, the Retrenchment Board must notify the employer of the allegation by the employees.

IPM

MATLAW
Matsikidze Attorneys-At-Law

New retrenchment laws- Failure to Pay retrenchment within the stipulated times or agreed times Section 12C

- The employer must be given an opportunity to be heard before the retrenchment board. (there is a need for a hearing here).
- If no representations are received, or the retrenchment board is satisfied that compliance has not been made, the Retrenchment board must issue a certificate of compliance and state the extent of non-compliance.
- This is important in that it allows the employees to proceed with the enforcement of the retrenchment package.

MATLAW
Matsikidze Attorneys-At-Law

Enforcement of the retrenchment package Section 12C

- Once a notification certificate is issued, the retrenchment package shall be binding on the employer and the employees.
- If the employer fails to pay the package and a notification certificate and a non-compliance certificate had been issued, the employee or employees or their representative shall apply to the Labour Court for an order enforcing the package on the basis of a non-compliance certificate (liquid document).
- The application for registration or enforcement is a default judgment, and the same procedure for liquid claims in the Magistrates Court or High Court is used

MATLAW
Matsikidze Attorneys-At-Law

Enforcement of the retrenchment package Section 12C

- Upon obtaining such an order of registration, apply for registration again, depending on monetary jurisdiction, to the Magistrate Court or the High Court.
- Once the retrenchment decision is registered, it becomes a civil judgment and enforceable like any normal civil judgment.

MATLAW
Matsikidze Attorneys-At-Law

Allegations of Lack of Capacity to Pay any part of the minimum package

- If the employer alleges incapacity to pay, they must, within 14 days of retrenchment the employee notify the retrenchment board of the amount it is able to pay, which must not be less than 25% of the total package.
- Failure to pay the 25% plus as certified in the notification certificate by the retrenchment board will result in the employee being entitled to invoke the procedure for enforcement of the retrenchment procedure in respect of the portion they agreed or mandated to pay.

IPM

MATLAW
Matsikidze Attorneys-At-Law

Applications for exemption where there is no capacity to pay minimum retrenchment package

- The employer must apply to the employment council or retrenchment board for exemption of the portion of the retrenchment package it cannot pay. (incapacity).
- There must be evidence of incapacity to pay.
- The employment council or retrenchment board has the power to request additional information in determining the incapacity.
- The application for exemption, together with its supporting documents, must be served on employees or employees.

MATLAW
Matsikidze Attorneys-At-Law

Determination of the application for exemption by the employment council or retrenchment board.

- There must be an oral hearing, which presupposes parties must first file written submissions.
- The application for exemption must be disposed of within 30 days of the date of receipt of the application.

Non-issuance of determination by the retrenchment board/employment council and appeals

- A party aggrieved by the failure of the retrenchment board or employment council to issue a determination within thirty days may appeal to the Labour Court.
- After the expiry of thirty days, if no determination is made, an appeal shall be made within 21 days to the Labour Court.
- If the decision is made an appeal must be made within twenty-one days to the Labour Court.

MATLAW
Matsikidze Attorneys-At-Law

Criminalisation of failure to give a retrenchment notice

- Under s12C of the LA, an employer who purports to retrench any employee without giving notice of the retrenchment board is guilty of an offence and liable to a level 12 fine or if failed to pay a fine within six months, to be imprisoned.
- Imprisonment can happen to any member of the governing body of a corporate employer.

MATLAW
Matsikidze Attorneys-At-Law

Determination of appeal for the enhanced package by the employment council or retrenchment board.

- The employment council or retrenchment board is mandated to make its decision within thirty days of receipt of the application for exemption.
- The employment council or the retrenchment board is required to call for a hearing.
- The employer is required to disclose its audited financial statements.
- The retrenchment board may call the employer to answer for specific allegation concerning its ability to pay an enhanced retrenchment package made by any employee or group of employees or representative.

MATLAW
Matsikidze Attorneys-At-Law

Appeal against minimum retrenchment package.

- Where the employer indicates that they intend to pay a minimum package or part thereof to the employees or any trade union representing retrenched employees or employee or employees being retrenched not later than sixty days from the date of issuance of the notification certificate, write to the retrenchment board alleging that the employer has the capacity to pay an enhanced retrenchment package giving particulars of any proof to that effect and specifying the amount of the enhanced package sought.

MATLAW
Matsikidze Attorneys-At-Law

Contempt of Court for failure to comply with the determination of the employment council or retrenchment board.

- Any employer may be found guilty of contempt of court if they do not disclose audited financial statements or fail to respond to specific allegation concerning their ability to pay an enhanced retrenchment package.

MATLAW
Matsikidze Attorneys-At-Law

Non-payment of retrenchment package due to fraudulent, reckless or grossly negligent conduct by the employer.

- If an employer alleges partial or total incapacity to pay minimum retrenchment and it emerges that there are indications prompting a reasonable suspicion that the employer deliberately stripped the assets of the business or otherwise degraded it in contemplation of retrenchment, the business of the employer was or is being carried on recklessly or with gross negligence or with intent to defraud any person or a fraudulent purpose; the retrenchment board or employment council has powers to commence an inquiry.

IPM

MATLAW
Matsikidze Attorneys-At-Law

Non-payment of retrenchment package due to fraudulent, reckless or grossly negligent conduct by the employer.

- The employer is required by affidavit to answer such allegations.
- The EC or RB can issue a provisional statement setting forth its grounds for believing that the employer's business was being done in contravention of section 12C(1) of LA.
- Such a provisional statement must be served on the employee and employer concerned.
- After receiving the statement, a trade union representing retrenched employees with written authority or any of the retrenched employees may on notice, the employer apply to the Labour Court.

IPM

MATLAW
Matsikidze Attorneys-At-Law

Application to the Labour Court to hold liable employer or directors for reckless conduct.

- The application to the Labour Court is specifically to seek a general declaration confirming the statement (any allegation of which the employer may rebut on a balance of probabilities and specific declaration to the effect that any one or more of the following the employer or named person who is or was an owner, director or partner of the business or any other named persons who were knowingly parties to carrying on of the business in such a manner or in such circumstances.

MATLAW
Matsikidze Attorneys-At-Law

Application to the Labour Court to hold liable employer or directors for reckless conduct

- The whole purpose of naming persons in the declaration is to ensure that the persons so named must be personally responsible, without limitation of liability for the total amount of the minimum retrenchment package on the basis of joint or several liabilities, or as the court may direct and the court may give such further orders as it considers proper for the purpose of giving effect to the declaration and enforcing liability including an order.
- The person named in the declaration application must be afforded an opportunity by the Labour Court to rebut any allegations against him or her on a balance of probabilities.

MATLAW
Matsikidze Attorneys-At-Law

Application to the Labour Court to hold liable employer or directors for reckless conduct

- If the application is confirmed, the Labour Court may order payment of the minimum retrenchment package to every retrenched employee and for the payments of the application by the employer or any named person.
- The order granted by the Labour Court depending on the monetary jurisdiction may be registered by the Magistrate Court or High Court.

MATLAW
Matsikidze Attorneys-At-Law

Maternity Leave

- There is no requirement for a qualifying service anymore. One year is no longer there.
- There is no longer a requirement for a two-year interval and a maximum of three pregnancies while employed by one employer.
- The challenge is that the Labour Act does not put then mechanisms to protect the young-bearing women from apparent likely discrimination emanating from the above provisions.

IPM

MATLAW
Matsikidze Attorneys-At-Law

Contracts for hourly work

- This a new provision, section 18A of the LAA.
- The employer can now employ an employee to work for specific hours and have the same employee working for another on unpaid hours. The UK is upon us.
- If the employee is only employed by a single employer and is being paid hourly rates, their remuneration in two consecutive months must not be less than the minimum wage or remuneration as fixed in a CBA for the undertaking.

MATLAW
Matsikidze Attorneys-At-Law

Contracts for Hourly Rates

- Employers are prohibited from employing employees on an hourly rate if a collective bargaining agreement prohibits such.
- The good part of these provisions is that employers who require less hourly input from certain employees may share the burden with the other employer.
- However, the limitation is that if that employee is not taken on board by another employer, the employer who has the employee on an hourly rate bears the burden to pay the differences.

MATLAW
Matsikidze Attorneys-At-Law

New dispute resolution mechanism Conciliation

- Bye-bye to the bizarre confirmation procedure.
- The old section 93 is back with modifications.
- The labour officer can conciliate a dispute or unfair labour practice and if agreed by the parties, refer the same to arbitration.
- If the dispute is settled through conciliation, the labour officer must record the settlement.
- A certificate of settlement can now be registered for enforcement as a civil judgment.

MATLAW
Matsikidze Attorneys-At-Law

Certificate of no settlement and referral to arbitration.

- If there is no settlement within 30 days after the Labour Officer has begun to attempt to settle a dispute of an unfair labour practice, he/she shall issue a certificate of no settlement to the parties.
- However, parties to dispute may agree to extend the conciliation period.
- After issuance of a certificate of no settlement, the labour officer is required to consult any senior labour officer who is senior to them and who is responsible for the area, and may do the following:

IPM

MATLAW
Matsikidze Attorneys-At-Law

Referrals to arbitration

1. Refer the dispute to compulsory arbitration if the dispute is a dispute of interest, and the parties are engaged in essential services.
2. With the agreement of the parties, refer the dispute or unfair labour practice to voluntary arbitration.
3. May refer the dispute or unfair labour practice to compulsory arbitration if the dispute or unfair labour practice is a dispute of right.
4. The arbitration procedure set under section 98 of the LA applies to compulsory arbitration, while the Arbitration Act applies to voluntary arbitration.

IPM

MATLAW
Matsikidze Attorneys-At-Law

Arbitration procedure under section 98 of LA

- The arbitration process under section 98 of LA remains as it was before.

See section 98 of LA.

Role of Designated Agents

- Section 3b of section 63 of the Labour Act is repealed and replaced by a new section 63(3b).
- Can redress any dispute or unfair labour practice, same as the labour officer-s63(3b).
- A labour officer can only have jurisdiction and exercise the same in relation to a dispute or unfair labour practice after the expiry of 30 days after the date when the dispute or unfair labour practice first arose, without it being redressed by a designated agent.

MATLAW
Matsikidze Attorneys-At-Law

Complaints against Designated Agents

- A Registrar now has powers to deal with complaints against Designated agents. S63(3c)(a)(b).
- Any interested party or a labour officer may file a complaint against a designated agent if they are improperly conducting themselves, are unduly delaying proceedings, or fail to exercise their mandate. S63(3c)(a)(b).
- The Registrar must carry out an inquiry and give the designated agent an opportunity to be heard. S63(3c)(a)(b).
- She may find the DA guilty or innocent. S63(3c)(a)(b).
- She has the power to withdraw the appointment of a Designated Agent or direct that the employment council allocate the matter to another designated agent or refer to a labour officer. S63(3c)(a)(b).

IPM

MATLAW
Matsikidze Attorneys-At-Law

Resolution of dispute or unfair labour practice by the Labour Court under section 98(2)(b)(c).

- If for whatever reason, after a labour officer has issued a certificate of no settlement in relationship to the dispute or unfair labour practice and it is not possible for any reason to refer the dispute or unfair labour practice to compulsory arbitration or a labour officer refuses for any reason to issue a certificate of no settlement in relations to any dispute or unfair labour practice after the expiry of the period allowed for conciliation or any extension, any party may apply to the Labour Court under section 98 (2) (b) (c) of the LA.

MATLAW
Matsikidze Attorneys-At-Law

Resolution of dispute or unfair labour practice by the Labour Court under section 98(2)(b)(c).

- If the dispute is a dispute of interest, the Labour Court can remit a matter with directions/guidelines that it be heard before the same or a different labour officer.
- If it's a dispute of right, order payment of backpay, in case of unfair labour practice involving a failure or delay to pay or grant anything due to any employee, the payment by the employer concerned or someone acting on his behalf such amount wither a lump sum or instalments ad in the opinion of the court adequately compensate the employee.
- Order reinstatement or payment of damages.

MATLAW
Matsikidze Attorneys-At-Law

Disputes involving a statutory corporation or statutory body or wholly controlled by the State.

- The Minister responsible for that body, corporation or entity shall be deemed to be a party on an equal footing with such employer and accordingly a party to such dispute or unfair labour practice.

Education Leave

- The negotiation basket menu has been enlarged.
- Parties can now negotiate for paid education leave at the employment council or works council. See section 74(3) (o) of the Labour Act and s26 (a) of the LAA. See also 25A (g) of the Labour Act (28:01) or section 14 of the LAA.
- Implications- The legislature left this for parties to agree but the bottom line it is a negotiable variable.

MATLAW
Matsikidze Attorneys-At-Law

Employment Codes of Conduct

- There is an automatic right to appeal now for any proceedings under an employment code to a labour officer within 30 days of the conclusion of the proceedings, whereupon the labour officer shall attempt to conciliate the dispute or refer it to arbitration as per section 93 of the LAA.
- All registered codes are now reviewable every five years.
- In review, the code must comply with the requirement of section 101 of the LA.
- After the expiry of the five years, a registered employment code of conduct which has not been reviewed within three months from the date of expiry is deemed deregistered.

IPM

MATLAW
Matsikidze Attorneys-At-Law

Collective bargaining Agreements

- If collective bargaining is negotiated by the worker's committee or at the employment council level, and the employer is a statutory corporation or statutory body, or an entity wholly or predominantly controlled by the State, the Minister responsible for that body corporate, corporation or entity shall be deemed to be a party on an equal footing with such an employer and accordingly is a party to the negotiation of such a collective bargaining agreement. See section 13 of LAA, new section 25 (2) and section 74 (7) of the LAA.

MATLAW
Matsikidze Attorneys-At-Law

Requirements for formation of trade unions and employers organisation

- There is now a maximum time frame of sixty days for the registrar to register a trade union or employer organisation.
- A registrar may be compelled to issue a certificate of registration.

Duty to Provide information to the Registrar

- Every trade union, employer organisation, or federation shall be required to give the Registrar the certified copy of that report and the financial statements within 30 days of receipt of its auditor's report. See section 34A (1) (a) of the Labour Act (28:01) or section 18 of the LAA.
- by 31st of every year, number of members as of 31 December of the previous year. See section 34A (1) (b) of the Labour Act (28:01) or section 18 of the LAA.
- Within 30 days, explain with respect to financials, audit reports, or financial statements as requested by Registrar. See section 34A (1) (c) of the Labour Act (28:01) or section 18 of the LAA.
- Within thirty days of an appointment or re-appointment or election of office bearers, address for the service of documents, new address, return of names and workplace of office bearers. See section 34A (1) (d) (e) of the Labour Act (28:01) or section 18 of the LAA.

MATLAW
Matsikidze Attorneys-At-Law

The consequence of failure to comply with the Duty to provide information

- The Registrar issues a notice for the trade union/employers organisation or federation to comply within sixty days from the date of issuance. See section 34A (2) (a) of the Labour Act (28:01) or section 18 of the LAA.
- Suppose the trade union/employers organisation or federation fails to comply, the registrar issues a notification of suspension from operating as a registered entity for a period not exceeding sixty days. See section 34A (2) (a) of the Labour Act (28:01) or section 18 of the LAA.
- It is therefore prohibited from collecting dues, benefitting from any check-off schemes or enjoying other privileges of an entity registered under the Act.
- See section 34A (2) (a) of the Labour Act (28:01) or section 18 of the LAA.

IPM

MATLAW
Matsikidze Attorneys-At-Law

Penalties for failure to Provide information to the Registrar and Remedy for compliance

- The trade union, employers organisation or federation must comply with the order. See section 34A (2) (b) of the Labour Act (28:01) or section 18 of the LAA.
- Once complied with, the Registrar will uplift the suspension. See section 34A (2) (b) of the Labour Act (28:01) or section 18 of the LAA.
- If not complied with, the registrar has the power to cancel the certificate of registration of the trade union, employers organisation, or federation and remove the name from the register. See section 34A (2) (b) of the Labour Act (28:01) or section 18 of the LAA.

MATLAW
Matsikidze Attorneys-At-Law

Consideration relating to variation, suspension, or rescission of registration of trade unions or employers organization.

- In any determination of the variation, suspension or rescission of registration of a trade union or employer orgnisation, the registrar must take into account the following:
- Representations by employers and employees who might be affected, the Minister, any member of the public or any section likely to be affected, and the desirability of affording the majority of employees and employers within an undertaking or industry effective representation in negotiations affecting their rights and interests. See section 45 (a) (i) (ii) (iii) and (b) of the Labour Act (28:01) or section 19 of the LAA.

IPM

MATLAW
Matsikidze Attorneys-At-Law

Consideration relating to variation, suspension, or rescission of registration of trade unions or employers organization

- In considering the variation, rescission, or suspension, the Registrar must ensure compliance with the following:

1. A trade union must not represent employers.
2. An employers organisation shall not represent employees other than managerial employees.
3. The constitution of a trade union or employers organisation shall not be inconsistent with this Act. See section 45 (b) of the Labour Act (28:01) or section 19 of the LAA.

MATLAW
Matsikidze Attorneys-At-Law

Supervision of elections of trade unions or federation or employers organisations.

- Section 51(1), the old is repealed and replaced by a new section 51 (1).
- There is now a provision that a person involved directly in the election for any office or post in a registered trade union or employers organisation may complain in writing to the Minister transmitted through the Registrar. See section 51(1) of the Labour Act (28:01) or section 20 of the LAA.
- The grounds for such a complaint are that the election was tainted by fraud, unfairness or coercion, giving the same details in the notice. See section 51(1) of the Labour Act (28:01) or section 20 of the LAA.

IPM

MATLAW
Matsikidze Attorneys-At-Law

Remedy where the complaint has been lodged against elections.

- The old first part of section 51(2) is repealed and replaced as follows, "Upon due inquiry by the Registrar of a complaint, the Minister may on the advice of the Registrar…….
- This means the Minister will now be required to hold a hearing to inquire into the complaint before making any decision under section 51 (2) of the Labour Act (28:01). See section 51(1) (b) of the Labour Act (28:01) or section 20 of the LAA.

IPM

MATLAW
Matsikidze Attorneys-At-Law

Regulations of Trade Union/Employers Organisation dues by Minister

- Also, the provision of regulation of union dues or employers orgnisation dues by the Minister is repealed. S55 of the Labour Act is repealed. See section 22 of the LAA.

Collection of trade union or employers organization dues

- Sections 54 (2)(3(4 (5a) of the Labour Act are repealed.
- These provisions were deemed by ILO excess, allowing Minister unfettered powers in issues relating to a trade union or employers organisation dues collections.
- The remedy lies in the interested parties approaching the High Court for such reliefs the Minister used to issue under Sections 54 (2)(3(4 (5a) of the Labour Act.

MATLAW
Matsikidze Attorneys-At-Law

Formation of Employment Councils otherwise than under section 57 and admissions of new parties to employment councils.

- The old section 56 of the Labour Act is repealed and replaced by a new section 56 of the Labour Act.
- All employment councils are now statutory employment councils. See section 56(2) of the Labour Act (28:01) or section 23 of the LAA.
- There is an express right to form any employment council for any registered trade union or federation of such trade unions together with employer, registered employers organisations or federation of such organisations. 56(3) of the Labour Act (28:01) or section 23 of the LAA.
- A constitution for such an employment council is mandatory and must be registered under section 59 of the Labour Act.

IPM

MATLAW
Matsikidze Attorneys-At-Law

Formation of Employment Councils otherwise than under section 57 and admissions of new parties to employment councils.

- It's a requirement for parity of votes between employment council parties(employers and employees institutions.) 56(4) of the Labour Act (28:01) or section 23 of the LAA.
- In the allocation of seats, the employer party and employee party are allocated in proportionate to the numbers of their membership viz total membership of member party, ie employee party total membership or employer party membership. 56(5) of the Labour Act (28:01) or section 23 of the LAA.

MATLAW
Matsikidze Attorneys-At-Law

Formation of Employment Councils otherwise than under section 57 and admissions of new parties to employment councils.

- If the membership of the employee party or employer party member is less than the percentage of all membership of the employer membership or employee membership as stipulated in the Constitution, the employment council must in its constitution allocate a specified. Fraction of a vote to the employee or employer member concerned. 56(5)(b) (i) (ii) of the Labour Act (28:01) or section 23 of the LAA.
- This does not mean automatic admission but recognition of existence and effort towards working to get a seat. See See s56(9) of the Labour Act (28:01) or section 23 of the LAA.

MATLAW
Matsikidze Attorneys-At-Law

Formation of Employment Councils otherwise than under section 57 and admissions of new parties to employment councils.

- It is now a must that the distribution of votes allocated to a trade union or employers organisation is reviewed every twelve months. See s56(6) of the Labour Act (28:01) or section 23 of the LAA.
- The Registrar has powers to determine a dispute on the number of votes allocated. See s56(7) of the Labour Act (28:01) or section 23 of the LAA.
- A party aggrieved by the Registrar's decision has the power to appeal to the Labour Court of Zimbabwe. See s56(8) of the Labour Act (28:01) or section 23 of the LAA.

IPM

MATLAW
Matsikidze Attorneys-At-Law

What happens if a member has no sufficient numbers to get a seat?

- At its discretion, the employment council may admit a member as an observer if such member has no adequate membership to be allocated a seat.
- Of importance also is the fact that an NEC constitution must include the provision on the admission of new parties to the employment council in accordance with s56 of the Labour Act. See s58(g) of the Labour Act (28:01) or section 24 of the LAA.

IPM

MATLAW
Matsikidze Attorneys-At-Law

Submission of collective bargaining Agreements for approval or registration

- Section 79 is repealed and substituted with a new section 79 of the Labour Act.
- After negotiating, a collective bargaining agreement must be submitted for registration to the Registrar. S79 (1) of the Labour Act. (28:01) or section 27 of the LAA.
- The Minster can refuse to register collective bargaining inconsistent with the Act or any other enactment or contrary to the public policy until parties have attended to those issues. S79 (2) of the Labour Act. (28:01) or section 27 of the LAA.
- However, the Minister must state the reasons for such refusal to the parties. S79 (2) of the Labour Act. (28:01) or section 27 of the LAA.

IPM

MATLAW
Matsikidze Attorneys-At-Law

Submission of collective bargaining Agreements for approval or registration

- Section 79 is amended by repeal of section 79(2) (c) of the Labour Act, which relates to unreasonable or unfair having regard to the respective rights of parties.
- This provision was infringing the parties' right to collective bargaining. S79 (2) of the Labour Act. (28:01) or section 27 of the LAA.

Conclusion

- In our next segment, we will deal with wins for employers.
- Wins for employees.
- Losses for the employers.
- Losses for the employee.
- For now, we will work on what is there.

THANK YOU.

MATLAW
Matsikidze Attorneys-At-Law