

# PREFACE

The Labour Act, 2007 embodies the conclusion of several years of intensive deliberations and meticulous drafting by a team of experts in consultation with the social partners. The initial process of probing and brainstorming began back in 1997 some months after a protracted, devastating strike at a major base metal mine at Tsumeb, in the northern regions of Namibia.

Concerned citizens at the time were in agreement that the labour relations system, and more particularly, the then prevailing statutory industrial relations framework, was in need of a drastic overhaul. It was recognized that future socio-economic development in the country depended much on an equitable, stable employment environment in which individuals and enterprises alike could unfold their full productive potential.

The Ministry, then still with the designation of Ministry of Labour, approached the International Labour Office for assistance, which in turn secured the necessary financing from the Swiss Government. Thus the establishment of what came to be known as the ILO Swiss Project, which eventually played an important role in revising not only Namibia's labour legislation, but also that of other sub-continental countries such as Botswana, Lesotho, Mozambique and Swaziland.

A tripartite task force consisting of representatives of the Ministry, the Namibian Employers' Federation (NEF) and the National Union of Namibian Workers (NUNW) was assembled to guide the experts' drafting initiative. Early in the process the group decided on a set of benchmark principles, which were to steer the ensuing drafting initiative. These included the requirements that the new labour law must be efficient yet simple, be impartial, have high quality outcomes, be user friendly, cost effective and accountable.

In addition, the statute had to reflect Namibia's commitment to international labour standards and the quest to launch its young economy on a steady path of entrepreneurial expansionism. The initial draft was eventually submitted to the Labour Advisory Council and from there followed the normal course of legislation through Cabinet, Parliament, Presidential approval and final promulgation in the *Government Gazette*.

The new Labour Code emerging from this painstaking process in its initial format as the Labour Act, 2004 succeeded, in large measure, to capture all the aforementioned vital elements. In it, Namibia now had a highly focussed labour statute capable of efficiently addressing the multiple demands of modern employment relations.

Seizing the opportunity to assist in its successful operation the Konrad Adenauer Foundation in conjunction with the Namibian Institute for Democracy published a book on the new statute in December of that year. The publication formed the second in a series and was titled *Namibian Labour Lexicon Volume 2 The Labour Act, 2004 A to Z*.

Launched by the Minister of Labour on 10 December 2004, the book was very well received and in big demand. It was used as a manual for guidance on the new Labour Act and played an important part in training the role players in employment relations, including Government officials in the Labour Inspectorate and the Office of the Labour Commissioner.

Unfortunately, however, the Labour Act, 2004 (Act No. 15 of 2004), could not be comprehensively implemented due to some unintended anomalies and various technical inadequacies brought about, inter alia, by a redrafting of the text into plain language.<sup>1</sup>

The Ministry of Labour and Social Welfare consequently embarked upon a revision of the entire Statute. In the course of doing so, it was decided to submit an entirely new Bill rather than only correcting the Act. The required changes were found to be simply too many to be dealt with effectively in the form of a normal legislative amendment.

Hence, the promulgation of the Labour Act, 2007 (Act No. 11 of 2007), on 31 December 2007. The Act came into operation on 1 November 2008, through Government Notice No. 260 of 2008 issued by the Minister of Labour and Social Welfare, the Honourable Immanuel Ngatjizeko, in terms of section 143 of the Labour Act, 2007.

Promulgation of the Labour Act, 2007 and repeal of the Labour Act, 2004 required the revision and updating of the previous Labour Lexicon Volume 2. That has now been accomplished with the publication of this edition as the *Namibian Labour Lexicon Volume 2 (Revised Edition) The Labour Act, 2007*

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<sup>1</sup> As a result, the Labour Act, 1992 (Act No.6 of 1992), continued to remain in force until 31 October 2008, with only limited administrative sections having been replaced by the interim Labour Act, 2004.

*A to Z.* Besides the summarised discussion of the Act itself, the volume also contains the full texts of the Labour General Regulations: Labour Act, 2007; and the Rules Relating to the Conduct of Conciliation and Arbitration before the Labour Commissioner: Labour Act, 2007 promulgated by the Minister on 31 October 2008.

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Finally, a more general comment in closing: While not all provisions of the Act have been equally enthusiastically embraced by all affected stakeholders, it must be remembered that ours is a multifarious society which needs to sensitively reconcile the sometimes still widely differing views and values of its diverse inhabitants. Besides, no law is cast in stone. In this respect labour law is a good example of a particularly fluid area of constant legislative flux and refinement. That applies to virtually all progressive democratic societies constituting the developed and the developing nations of the World – Namibia is no exception.