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PART A
DEFINITIONS AND INTERPRETATIONS

1. Short title and commencement

- (1) These rules may be cited as the Rules for the Practice and the Conduct of Proceedings before the Conciliation, Mediation and Arbitration Commission made under Section 64(2)(g) of the Industrial Relations Act Number 1 of 2000, as amended.
- (2) They shall come into operation on such date as determined by the Minister and published in the Government Gazette.

2. Interpretation

- (1) In these rules, unless the context otherwise requires-

“**Act**” means the Industrial Relations Act Number 1 of 2000, as amended;

“**arbitration**” means the process provided for under Section 17 and Part VIII of the Act;

“**arbitrator**” means a person who is appointed to arbitrate a dispute under the Act and these rules;

“**Commission**” means the Conciliation, Mediation and Arbitration Commission established under section 62 of the Act;

“**commissioner**” means a person who is recruited or appointed under the Act to resolve a dispute;

“**conciliation**” means the process of settling disputes under Part VIII of the Act and Part C of these rules;

“**Court**” means the Industrial Court established under section 6 of the Act including any Judge of the Industrial Court;

“**CMAC Day**” means any day other than a Saturday, Sunday or Public Holiday, and only CMAC days shall be included in the computation of any time expressed in days by these rules or fixed by any order of court.

“**dispute**” means a dispute as defined in section 2 of the Act;

“**deliver**” means serve on other parties and file with the Commission;

“**Executive Director**” means the Executive Director of the Commission appointed in terms of section 67 of the Act, and includes any person delegated by the Executive Director to perform any of the functions of the Executive Director;

“**file**” means to lodge with the Commission in terms of rule 10;

“**month**” means a period commencing on any day in a calendar month and expiring on the day preceding the corresponding date in the succeeding calendar month;

“**party**” means any party to proceedings before the Commission;

“public holiday” means any day declared as such by publication in the Government Gazette;

“rules” means these rules;

“serve” means to serve in accordance with rule 8 and “service” has a corresponding meaning.

- (2) Unless defined in these rules, any expression in these rules that is defined in the Act has the same meaning as in that Act.

Rule 3. Application of the rules

These Rules shall apply to any matter or proceedings which are brought before the Commission under the Act or any other law which gives the Commission the jurisdiction to deal with that matter or proceedings.

Rule 4. Purposes

- (1) The purposes and objectives of these Rules are to-
- (a) promote fairness and equity in the practice and conduct of proceedings before the Commission;
 - (b) provide a mechanism and procedure for the speedy resolution of conflicts in labour relations;
 - (c) ensure compliance with the provisions of the Act;
 - (d) ensure uniformity in the practice and conduct of proceedings before the Commission;
 - (e) provide a clear procedure of dealing with the Commission;
 - (f) provide for a clear procedure of dealing with matters and proceedings before the Commission.

PART B SERVING AND FILING DOCUMENTS

Rule 5. How to contact the Commission

- (1) The addresses, telephone and telefax numbers of the offices of the Commission are listed in the First Schedule hereto.
- (2) Documents may only be filed with the Commission at those addresses or telefax numbers.

Rule 6. When are the offices of the Commission open?

- (1) The head office in Mbabane and all the regional offices of the Commission in Nhlanguano, Mbabane and Manzini will be open every day from Monday to Friday, excluding public holidays, between the hours of 08h00 and 16h45, or as determined by the Commission, except that on Fridays they shall close at 16h30.
- (2) The offices of the Commission in Siteki will be open every day from Monday to Friday, excluding Wednesday and public holidays, between the hours of 08h00 and

16h45, or as determined by the Commission, except that on Fridays they shall close at 16h30.

- (3) The offices of the Commission in Piggs Peak and Matsapha will be open every Tuesday and Thursday excluding public holidays, between the hours of 08h00 and 15h00, or as determined by the Commission.
- (4) The dispute reporting offices of the Commission in Mbabane and Manzini will be open every day from Monday to Friday, excluding public holidays, between the hours of 08h00 and 16h45, or as determined by the Commission, except that on Fridays they shall close at 16h30.
- (5) Documents may only be filed with the Commission during the hours referred to in sub-rules (1), (2), (3) and (4).
- (6) Notwithstanding sub-rule (5), documents may be telefaxed at any time to the Commission.

Rule 7. How to calculate time periods

- (1) For the purpose of calculating any period of time in terms of these rules –
 - (a) a day means any day of the week excluding Saturdays, Sundays, public holidays and the period during the month of December of the current year and January in the following year during which period all the offices of the Commission will be officially closed as determined by the Commission for the end of the year save for a standby team to attend to emergency issues.
 - (b) the first day is excluded and the last day is included, subject to sub-rule (2)
- (2) The last day of any period must be excluded if it falls on a Saturday, Sunday, public holiday or any day during the month of December in the current year and January in the following year during which period the offices of the Commission will be officially closed as determined by the Commission for the end of the year.

Rule 8. How to serve documents on other parties

- (1) A party must serve a document on the other party or parties to the dispute –
 - (a) by handing a copy of the document to -
 - (i) the person if that person is a party to the dispute;
 - (ii) a person authorized in writing to accept service on behalf of a party to the dispute;
 - (iii) a person who appears to be at least sixteen (16) years old and in charge of a party's place of residence, business or employment;
 - (b) by telefaxing a copy of the document to that party;
 - (c) by sending a copy of the document by registered post or telegram to the last-known address of the party or to an address chosen by the party to receive service.
- (2) Notwithstanding rule (1) above the Commission may order service in a

manner other than provided for in these rules.

9. Proof of service

Rule 9. Proof of service

- (1) A party must prove to the Commission or a commissioner that a document was served in terms of these rules, by providing the Commission or a commissioner:
 - (a) with a copy of proof of mailing the document by registered post to the other party;
 - (b) with a copy of the telegram communicating the document to the other party;
 - (c) with a copy of the telefax transmission report indicating the successful transmission to the other party of the whole document; or
 - (d) if a document was served by hand-
 - (i) with a copy of a receipt signed by, or on behalf of, the other party clearly indicating the name and designation of the recipient and the place, time and date of service. This receipt may be in the form of the completed relevant section of the report of dispute form **CMAC Form 1**; or
 - (ii) with a statement confirming service made under oath and signed by the person who delivered a copy of the document to the other party or left it at any premises.
- (2) If proof of service is provided in accordance with sub-rule (1), it is presumed that the party on whom it was served has knowledge of the contents of the document.
- (3) The Commission or a commissioner may accept proof of service in a manner other than prescribed in these rules, as sufficient if in the opinion of the Commission or commissioner it meets the requirements of proof of service.

Rule 10. How to file documents with the Commission

- (1) A party must file documents with the Commission -
 - (a) by handing the document in at any office of the Commission;
 - (b) by sending a copy of the document by registered post to the Commission; or
 - (c) by telefaxing the document to the Commission.
- (2) A document is filed with the Commission when –
 - (a) the document is handed to the office of the Commission and the official stamp of the Commission affixed thereon confirming receipt of the document;
 - (b) a document sent by registered post is received by the Commission; or
 - (c) the transmission of a telefax is completed.

Rule 11. Documents and notices sent by registered post

Any document sent by registered post is presumed to have been received by the person to whom it was sent ten days after it was posted, unless the contrary is proved.

PART C CONCILIATING DISPUTES

Rule 12. How to report a dispute to the Commission for conciliation

- (1) A party must report a dispute to the Commission for conciliation by completing the prescribed report of dispute form and serving it on the Commission. The report of dispute form is **CMAC Form 1** in the First Schedule hereto. In the case of organizations under essential services **CMAC form 16**.
- (2) The Commission may assist a party to complete the form.
- (3) The referring party must –
 - (a) sign the report of dispute form;
 - (b) attach written proof, that the report of dispute form was served on the other party or parties to the dispute in accordance with Rule 8;
 - (c) attach written proof of the dispute where such exists
- (4) If there is more than one party to the dispute the details of the other parties must be attached to the report of dispute form on a separate sheet stating their full names, addresses, contact numbers and the capacity upon which they are cited in the report of dispute.
- (5) The Commission must refuse to accept a referral until sub-rule (3) has been complied with

Rule 13. What the Commission does upon receipt of a report of dispute

- (1) Upon receipt of a report of dispute by a party the Commission may:-
 - (a) request further particulars of any of the matters referred to in the report of dispute;
 - (b) in so far as suitable internal procedures for settling the disputes which exist between the parties have not been followed, refer the dispute back to the parties for those procedures to be followed; or
 - (c) reject the report if it is frivolous, vexatious or time wasting.
 - (d) acknowledge and accept the report of dispute.

- (2) If the Commission requests further particulars under sub-rule (1)(a):-
- (a) the further particulars must be supplied by the party reporting the dispute within a period of fourteen (14) days after being so requested by the Commission, provided that the Commission may extend such a period if reasonable circumstances exist for the party not being able to provide such further particulars within the stipulated period.
 - (b) the dispute shall be treated as reported only on the date on which the particulars are supplied;
 - (c) the particulars shall be read as one with the matters reported under rule 12.
- (3) If the Commission refers the dispute back to the parties under sub-rule (1)(b) the dispute shall only be treated as reported on the date that either of the parties again reports the dispute to the Commission.
- (4) The Commission may again refer a dispute back to the parties if it is still convinced that internal procedures for settling the dispute as exist between the parties have still not been followed. The dispute may not be referred to the Commission until such procedures have been followed or reasonable steps have been taken by the party reporting the dispute to follow these procedures.
- (5) If the Commission acknowledges and accepts a report of dispute under sub-rule (1)(d) from a party reporting a dispute the Commission shall:
- (a) appoint a commissioner within a period of four (4) days of receipt of the report of dispute who shall attempt to resolve the dispute through conciliation;
 - (b) the appointed commissioner must attempt to resolve the dispute within a period of twenty-one (21) days from the date of appointment.
 - (c) Notwithstanding sub-rule (5)(b) parties to a dispute may, if they agree, extend the 21 days conciliation period for any reasonable period agreed between them by completing the prescribed form extending the conciliation period. The agreement extending the conciliation period is **CMAC Form 3** in the Second Schedule.
 - (d) The extension referred to in sub-rule (5)(c) shall be limited to two extensions at the instance of any one party to the dispute and that if more than two extensions are to be granted such will be at the discretion of the commissioner considering all the circumstances of the case.

Rule 14. What notice must the Commission give of a conciliation hearing?

The Commission must give the parties at least seven (7) days notice in writing of a conciliation hearing, unless the parties agree to a shorter period of notice. The notification to attend a conciliation hearing is **CMAC Form 2** in the Second Schedule.

Rule 15. How to postpone a conciliation

- (1) The Commission must postpone a conciliation without the parties appearing if

- (a) all the parties to the dispute agree in writing to the postponement; and
 - (b) the written agreement for the postponement is received by the Commission more than four (4) days prior to the scheduled date of the conciliation; and
- (2) Any party may apply to postpone a conciliation by completing the prescribed application for postponement form and serving it on the other party or parties to the dispute and filing the original copy with the Commission at least four (4) days before the scheduled date of the conciliation. The application for postponement form is **CMAC Form 21** in the Second Schedule.
- (3) The conciliator should only postpone a conciliation in special circumstances such as:
- (a) if there is good reason to do so;
 - (b) the parties to the dispute are not unduly prejudiced as a result; or
 - (c) there are prospects that the dispute may be settled as a result of the postponement.
- (4) Notwithstanding sub-rule rule (1), (2) and (3), the Commission or commissioner shall not allow more than two postponements at the instance of any one party to the dispute.

Rule 16. Commission may seek to resolve dispute before and after a conciliation hearing

- (1) The Commission or a commissioner may contact the parties by telephone or by other means, prior to the commencement of the conciliation in order to seek to resolve the dispute.
- (2) The commissioner appointed to resolve the dispute may contact the parties by telephone or by other means, after a certificate has been issued indicating that the dispute is not resolved, in order to assist in resolving the dispute.

Rule 17. Representation at conciliation

- (1) It is mandatory that a party be personally present at the conciliation of a dispute involving that party irrespective of whether that party is represented or not.
- (2) A party to a dispute may appear in person or be represented only by:-
 - (a) a member(s), office bearer(s) or official (s) of that party's organization; or
 - (b) a co-employee if the party to the dispute is an employee; or
 - (c) a director or employee of a juristic person, if the party to the dispute is such a body.
- (3) Notwithstanding sub-rule (2), a party may be represented by any other person in a conciliation if this is agreed between the parties to the dispute.
- (4) If a party to the dispute objects to the representation of another party to the dispute or the commissioner suspects that the representative of a party does not qualify in terms of this rule, the commissioner must determine the issue.

- (5) The commissioner may call upon the representative to establish why the representative should be permitted to appear in terms of this rule.
- (6) A representative must tender any documents requested by the commissioner in terms of sub-rule (5), including constitutions, payslips, contracts of employment, documents and forms, recognition agreements and proof of membership of a trade union or employers' organization.

Rule 18. What happens if a party fails to attend or is not represented at conciliation

- (1) If a party is not present at the date and time advised by the Commission for the commencement of the conciliation, the commissioner should satisfy him/herself that the party was properly notified of the conciliation.
- (2) Once the commissioner has satisfied him/herself that the party was properly notified, the commissioner should wait for at least a period of 30 minutes from the scheduled time for the conciliation to give the absent party an opportunity to arrive.
- (3) If the party does not arrive after this period and the dispute concerns the application to any employee of existing terms and conditions of employment or the denial of any right applicable to any employee in respect of dismissal, employment reinstatement or re-engagement, the commissioner may:
 - (a) by completing the prescribed rejection of dispute form which is **CMAC form 11**.
 - (b) at the request of the applicant may automatically refer the matter to arbitration, prescribe over it and grant a default judgment against any other party that fails to attend by completing the prescribed default judgment form which is **CMAC Form 6** in the Second Schedule.
- (4) If the party does not arrive after this period and the dispute concerns matters other than those referred to in sub-rule (3), the commissioner may, at the request of a party in attendance:
 - (a) issue a certificate stating that the dispute has not been resolved; or
 - (b) extend the period contemplated for conciliation by up to twenty-one (21) days.

Rule 19 What should happen at the end of the conciliation

- (1) At the end of any conciliation, the commissioner must:
 - a) Issue a certificate of outcome of the conciliation stating whether the dispute was rejected, resolved, unresolved or referred to arbitration, whichever the case may be, irrespective whether both parties attend or not. The certificate of outcome of conciliation is **CMAC Form 12** in the Second Schedule.
 - (b) Where the dispute is rejected the Commissioner must give precise reasons stating why the dispute was rejected by completing **CMAC Form 11** in the Second Schedule and lodging the original thereof with the Commission soon after the conciliation.
 - (c) If at the end of the conciliation the dispute between the parties is resolved the commissioner has to assist the parties prepare a memorandum of agreement

which must set out the terms upon which the agreement was reached. The memorandum of agreement is **CMAC Form 4** in the Second Schedule;

- (2) The memorandum of agreement must be signed by all the parties to the dispute or their authorized representatives and witnessed by the commissioner immediately after the agreement is reached and the commissioner must then lodge the original of the memorandum of agreement with the Commission;
- (3) The Commission must lodge the memorandum of agreement with the Court at least within a period of thirty (30) days after it was lodged with the Commission by the commissioner through any procedure which may be agreed between the Commission and the Court for lodging such memorandums of agreement;
- (4) If the dispute remains unresolved after conciliation the commissioner must issue a certificate of unresolved dispute within seven days after the dispute is declared an unresolved dispute stating that the dispute was not resolved after conciliation. The certificate of unresolved dispute is **CMAC Form 5** in the Second Schedule.
- (5) The commissioner must give a copy of the certificate of unresolved dispute to each of the parties to the dispute and lodge the original of the certificate with the Commission.

Rule 20. Conciliation proceedings may not be disclosed

- (1) Conciliation proceedings are private and confidential and are conducted on a without prejudice basis. No person may refer to anything said at conciliation proceedings during any subsequent proceedings, unless the parties agree in writing.
- (2) No person, including a commissioner, may be called as a witness during any subsequent proceedings in the Commission or any court to give evidence about what transpired during conciliation.
- (3) Notwithstanding sub-rule (2), any person, including a commissioner, may be called as a witness during any subsequent proceedings in the Commission to give evidence strictly into any question regarding the manner in which the conciliation was conducted and not the merits of the dispute. For the purpose of this sub-rule subsequent proceedings shall not include any subsequent conciliation proceedings of the dispute.

PART D

ARBITRATING DISPUTES

Rule 21. Referral of disputes to arbitration

- (1) If a dispute remains unresolved after conciliation, and a certificate of unresolved dispute has been issued by the commissioner under rule 19(4), the parties to the dispute may, if they agree, request the Commission to arbitrate the dispute.
- (2) If the parties agree to have the dispute arbitrated by the Commission the parties must -
 - (a) complete the prescribed request for arbitration form which must be signed by all the parties to the dispute or their authorized representatives. The request for arbitration form is **CMAC Form 8** in the Second Schedule; and

- (b) The parties must then submit the request for arbitration form to the office of the Commission where the dispute was conciliated.
- (3) The Commission must appoint a Commissioner to arbitrate the dispute within a period of four (4) days of receipt of the request for arbitration form.
- (4) The commissioner who is appointed by the Commission to arbitrate the dispute should complete the arbitration within a period of forty-five (45) days of his appointment and his arbitration award must be issued within a period of thirty (30) days after the arbitration proceedings were completed, provided that the parties may agree to a longer period.
- (5) The Commission must refuse to accept a request for arbitration until sub-rule (2) has been fully complied with.

Rule 22. When parties may be directed to file statements

- (1) The Commission or a commissioner may direct –
 - (a) the referring party in an arbitration to file a statement of case within a specified time period; and
 - (b) the other parties to file an answering statement within a specified time period.
- (2) A statement in terms of sub-rule (1) must –
 - (a) set out the material facts upon which the party relies and the legal issues that arise from the material facts;
 - (b) be filed within the time-period specified by the Commission or commissioner.

Rule 23. When the parties may be directed to hold a pre-arbitration conference

- (1) The parties to an arbitration may, at the discretion of the commissioner, be directed to hold a pre-arbitration conference dealing with the matters referred to in sub-rule (2) if directed to do so by the commissioner who is appointed to arbitrate the dispute.
- (2) In a pre-arbitration conference, the parties must attempt to reach consensus on the following:-
 - (a) any means by which the dispute may be settled;
 - (b) the facts which are agreed between the parties;
 - (c) the facts which are in dispute between the parties;
 - (d) the issues that the Commission is required to decide;
 - (e) the precise relief claimed and if compensation is claimed, the amount of the compensation and how it is calculated;
 - (f) the sharing and exchange of relevant documents, and the preparation of a bundle of documents in chronological order with each page numbered;

- (g) the manner in which documentary evidence is to be dealt with, including any agreement on the status of the documents and whether documents, or parts of documents, will serve as evidence of what they appear to be;
 - (h) whether evidence on affidavit will be admitted with or without the right of any party to cross-examine the person who made the affidavit;
 - (i) which party must begin;
 - (j) the necessity of any on the spot inspection;
 - (k) securing the presence at the Commission of any witness;
 - (l) the resolution of any preliminary points that are intended to be taken;
 - (m) the exchange of witness statements;
 - (n) expert evidence;
 - (o) any other means by which proceedings may be shortened;
 - (p) an estimate of the time required for the hearing;
 - (q) the right of representation;
 - (r) whether an interpreter is required and, if so, for how long and for which languages.
- (3) Unless a dispute is settled, the parties must, with the assistance of the Commission where such is required, draw up and sign a minute setting out the facts on which the parties agree or disagree.
- (4) A minute in sub-rule (3) may also deal with any other matter listed in sub-rule (2)
- (5) Unless the pre-arbitration conference was facilitated by the Commission, the referring party must ensure that a copy of the pre-arbitration conference minute is delivered to the appointed commissioner as soon as possible after the pre-arbitration conference but not later than five (5) days after the conclusion of the pre-arbitration conference.
- (6) The commissioner may, after receiving the pre-arbitration minute:-
- (a) enroll the matter for arbitration;
 - (b) direct the parties to hold a further pre-arbitration conference; or
 - (c) make any other direction to the parties concerning the conduct of the arbitration.

Rule 24. What notice must the Commission give of an arbitration?

The Commission must give the parties at least fourteen (14) days notice in writing of an arbitration hearing, unless the parties agree to a shorter period. The notification to attend an arbitration hearing is **CMAC Form 9** in the Second Schedule.

Rule 25. How to postpone an arbitration

- (1) The Commission must postpone an arbitration without the parties appearing if
 - (a) all the parties to the dispute agree in writing to the postponement; and
 - (b) the written agreement for the postponement is received by the Commission more than seven (7) days prior to the scheduled date of the arbitration; and
 - (c) there are compelling reasons to postpone.
- (2) Any party may apply to postpone an arbitration, by completing the prescribed application for postponement form and serving a copy on the other party or parties to the dispute and filing the original copy with the Commission at least seven (7) days before the scheduled date of the arbitration. The application for postponement form is **CMAC Form 14** in the Second Schedule.
- (3) The arbitrator should only postpone a hearing in special circumstances such as:
 - (a) there is good reason to do so; or
 - (b) the parties to the dispute are not unduly prejudiced as a result.

Rule 26. Representation at arbitration

In any arbitration proceedings, a party to a dispute should appear in person and/or be represented by any person of that party's choice.

Rule 27. What happens if a party fails to attend or is not represented at an arbitration hearing

- (1) If a party to a dispute fails to attend an arbitration hearing or is not represented at an arbitration, and the commissioner is satisfied that the party not in attendance or not represented was properly notified of the arbitration hearing, and that there is no just and reasonable explanation for that party's failure to attend or non-representation, the commissioner may:-
 - (a) if the party who referred the dispute to the Commission fails to attend the hearing or is not represented, dismiss the matter.
 - (b) If the party against whom relief is sought fails to attend the hearing or is not represented, proceed to arbitrate the dispute in the absence of that party.

Rule 28. Conciliation during arbitration

An arbitrator may conciliate the dispute at any time during the arbitration proceedings, provided the parties to the dispute agree.

PART E

RULES THAT APPLY TO CONCILIATIONS AND ARBITRATIONS

Rule 29. How to bring an application

- (1) This rule applies to the following applications brought in terms of these rules.
 - (a) applications for joinder
 - (b) applications for substitution
 - (c) applications to correct the citation of a party
 - (d) applications for rescission or variation
 - (e) applications to consolidate disputes.
 - (f) application for the reversal of a decision to reject a dispute
- (2) An application must be brought on notice to all persons who have an interest in the application, using the prescribed form, **CMAC form 7**, including affidavits.
- (3) The party bringing the application must:
 - (a) sign the application;
 - (b) serve a copy of the application, including any attachments on all persons who have an interest in the application;
 - (c) file the original application with the Commission within fourteen (14) days of knowledge of the issue giving rise to the application;
 - (d) attach written proof that the application was served on the other party or parties to the dispute in accordance with rule 9.
- (4) Any parties opposing the application must:
 - (a) complete the relevant sections of the prescribed form, including answering affidavits;
 - (b) serve a copy of the completed form on the party bringing the application;
 - (c) file the original completed form with the Commission within seven (7) days of receipt of the copy of the application;
 - (d) attach written proof that the answering affidavit was served on the other party or parties to the dispute in accordance with rule 9.
- (5) On receipt of the copy of the application completed by the party opposing the application, the party bringing the application may file a replying affidavit, on the prescribed form with the Commission within four (4) days. _
- (6) The replying affidavit must address only issues raised in the answering affidavit and may not introduce new issues of fact or law.
- (7) The affidavit on the prescribed form must clearly and concisely set out-

- (a) the names, description and addresses of the parties;
 - (b) a statement of the material facts, in chronological order, on which the application is based, in sufficient detail to enable any person opposing the application to reply to the facts;
 - (c) a statement of legal issues that arise from the material facts, in sufficient detail to enable any party to reply to the document;
 - (d) if the application is filed outside the relevant time period, grounds for condonation; and
 - (e) if the application is brought urgently, the circumstances why the matter is urgent and the reasons why it cannot be dealt with in accordance with the time frames prescribed in these rules.
- (8) The Commission may permit the affidavits referred to in this rule to be substituted by a written statement.
- (9) In an urgent application, the Commission may -
- (a) dispense with the requirements of this rule; and
 - (b) only grant an order against a party that has had reasonable notice of the application.
- (10)
- (a) The Commission may allocate a date for a 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;
 - (b) The Commission must notify the parties of the date, time and place of the hearing of the application.
- (11) Despite this rule, the Commission may determine an application in any manner it deems fit.

Rule 30. How to join or substitute parties to proceedings

- (1) The Commission or a commissioner may join any number of persons as parties in proceedings, if the right to relief depends on substantially the same question of law or fact.
- (2) A commissioner 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.
- (3) A commissioner may make an order in terms of sub-rule (2) -
 - (a) of the commissioner's own accord;
 - (b) on application by a party in terms of rule 29; or
 - (c) if a person entitled to join the proceedings applies at any time during the proceedings to intervene as a party.

- (4) An application to join any person as a party to proceedings or to be substituted for an existing party must be accompanied by copies of all documents previously delivered, unless the person concerned or that persons representative is already in possession of the documents.
- (5) Subject to any order made in terms of sub-rules (2) and (3), a joinder or substitution in terms of this rule does not affect any steps already taken in the proceedings.

Rule 31. How to correct the citation of a party

Any party to proceedings in which a party has been incorrectly or defectively cited, may make application to the Commission to correct the error or defect by using rule 29.

Rule 32. When the Commission may consolidate disputes

The Commission or a commissioner, of its own accord or on application, may consolidate more than one dispute so that the disputes may be dealt with in the same proceedings. Such application must be made in terms of rule 29.

Rule 33. Disclosure of documents

Any party may request a commissioner to make an order requiring any other party to the dispute to disclose all relevant documents.

PART F

RECISSION AND VARIATION

Rule 34. How to apply to rescind default judgments and the rejection of disputes

- (1) A party whose dispute has been rejected or against whom a default judgment has been awarded, may apply to the Executive Director of the Commission to have the rejection or default judgment rescinded by using rule 29.
- (2) The Commission may not accept an application for rescission and or application for the reversal of a decision to reject a dispute until the provisions of rule 29 have been complied with.
- (3) The Commission may upon receipt of an application for rescission:
 - (a) rescind or not rescind the rejection or default judgment without inviting the parties to appear before the Commission; or
 - (b) invite the parties by notification to appear before it on a date to be determined by the Commission to make representations as to why the rejection or default judgment should or should not be rescinded.
- (4) In event that the Commission invites the parties to appear before it to make representations in terms of sub-rule (3)(b), the Commission shall give the parties at least seven (7) days notice.
- (5) If a party fails to appear before the Commission when invited to do so in terms of sub-rule (4), the Commission may proceed and make any decision which it deems

appropriate under the circumstances provided it is satisfied that the party who fails to appear before it was properly notified of the application.

- (6) The decision of the Commission to rescind or not to rescind a rejection or a default judgement, shall be final.
- (7) If the rejection or default judgment is rescinded the Commission shall proceed and conciliate or arbitrate the dispute as the case may be. If the dispute proceeds to conciliation, the twenty-one (21) day conciliation period stipulated under section 81(1) of the Act shall be calculated from the date the rejection or default judgment was rescinded.

35. How to

Rule 35. How to apply to vary or rescind arbitration awards

- (1) An arbitration award may be varied or rescinded if:
 - (a) the award was erroneously sought or erroneously made in the absence of any party affected by the award;
 - (b) it is ambiguous or contains an obvious error or omission, but only to the extent of that ambiguity, error, or omission; or
 - (c) it was made as a result of a mistake common to the parties to the proceedings
- (2) A party to a dispute who wants to have an arbitration award varied or rescinded may make an application to have the award varied or rescinded within a period of fourteen (14) days after the that party has knowledge of the arbitration award using the provisions of rule 29.
- (3) The Commission may refuse to accept an application for variation or rescission until sub-rule (2) has been complied with.
- (4) The Commission may upon receipt of an application for variation or rescission:
 - (a) vary or rescind the award, or not vary or rescind the award without inviting the parties to appear before the Commission; or
 - (b) invite the parties by notification to appear before it on a date to be determined by the Commission to make representations as to why the award should or should not be varied or rescinded.
- (5) In event that the Commission invites the parties to appear before it to make representations in terms of sub-rule (4)(b), the Commission shall give the parties at least seven (7) days notice.
- (6) If a party fails to appear before the Commission when invited to do so in terms of sub-rule (4), the Commission may proceed and make any decision which it deems appropriate under the circumstances provided it is satisfied that the party who fails to appear before it was properly notified of the application.
 - (7) The decision of the Commission to vary or rescind or not to vary or rescind an arbitration award, shall be final.
- (7) The decision of the Commission to vary or rescind or not to vary or rescind an arbitration award, shall be final.

**PART G
GENERAL**

Rule 36. Applicants without postal addresses and telefax numbers

- (1) An applicant who intends to refer a dispute to the Commission and who does not have a postal address or telefax number must hand deliver the report of dispute form to the Commission.
- (2) If a report of dispute form is hand delivered by an applicant without a postal address or telefax number, the Commission must provide the applicant with a case number and written instructions to contact the Commission by telephone or in person, within seven days of the date of referral, in order for the Commission to notify the applicant of the details of the hearing.
- (3) The administrator who notifies the applicant of the hearing in terms of sub-rule (2) must record on the case file and on the case management system that the applicant has been notified of the details of the hearing.
- (4) The record made in terms of sub-rule (3) will constitute proof that the applicant was notified of the hearing.

Rule 37. Condonation for failure to comply with the rules

- (1) The Commission or a commissioner may condone any failure to comply with the time frames in these rules, on good cause shown.
- (2) The Commission will consider the following factors in determining whether condonation should be granted:
 - (a) the degree of lateness;
 - (b) the reasons for the late application;
 - (c) the prospects of success of the application; and
 - (d) the prejudice to the parties.

Rule 38. Recordings of Commission proceedings

- (1) The Commission must keep a record of –
 - (a) any evidence given in an arbitration hearing;
 - (b) any sworn testimony given in any proceedings before the Commission; and
 - (c) any arbitration award or ruling made by a commissioner.
- (2) The record may be kept by legible hand-written notes or by means of an electronic recording.
- (3) A party may request a copy of the transcript of a record or a portion of a record kept in terms of sub-rule (2), on payment of the costs of the transcription. The commission will arrange for the transcript to be made.

- (4) After the person who makes the transcript of the record has certified that it is correct, the record must be returned to the Commission.
- (5) The transcript of a record certified as correct in terms of sub-rule (4) is presumed to be correct, unless the Industrial Court decides otherwise.

Rule 39. How to have a subpoena issued

- (1) Any party who requires the Commission or a commissioner to subpoena a person in terms of section 64(5)(a) or section 64(5)(b) of the Act, must file a completed subpoena form, requesting a subpoena together with a written motivation setting out why the evidence of the person to be subpoenaed is necessary. The subpoena is **CMAC Form 13** in the Second Schedule.

Rule 40. Issues of protest action

- (1) Where the Commission is chosen as the mechanism to assist parties to resolve issues of protest action it may dispense with any of the relevant rules to ensure that the matter is handled in a manner that fits its magnitude and urgency.

Rule 41. Intervention by the Commissioner of Labour.

Where the Labor Commissioner intervenes in a matter between parties in terms of the Industrial Relations Act and refers the dispute to the Commission, this matter would be treated in accordance with the rules and procedures for conciliating disputes by the Commission as provided in part C of these rules, and or any other rules stated in these rules which apply after the stage of conciliation.

SCHEDULE 1

HEAD OFFICE

1st Floor Mbabane House
P.O. Box 3942
Mbabane
Tel : 4048877/8
Fax : 4048875
e-mail: @cmac.org.sz

Mbabane (Reporting Section)

1st Floor Asakhe House
P.O. Box 3942
Mbabane
Tel : 4050454/5
Fax : 4050456

Piggs Peak

New Town Council Building, next to
Piggs Peak Library
Tel : 4371030
Fax : 4371032

MANZINI REGION

Manzini Office

4th Floor SNAT Co-ops Building
P.O. Box 4530
Manzini
Tel : 5058141/2
Fax : 5058153
e-mail: khozam@cmac.org.sz

Manzini (Reporting Section)

1st Floor Enguleni Building
Tel : 5055020/1
Fax : 5055569

LUBOMBO REGION

Siteki

1st Floor Government Building

P.O. Box 316

Siteki

Tel : 3435405

Fax : 3435405

Simunye

Simunye Plaza

Shop number 28A

Tel : 3838513

Fax : 3838515

SHISELWENI REGION

Nhlangano

Skonkwane Building

P. O. Box 1520

Nhlangano

Tel : 2078537

Fax : 2078537

SCHEDULE 2

| | |
|---------------------|--|
| CMAC FORM 1 | -Report of dispute |
| CMAC FORM 2 | -Invitation to conciliation |
| CMAC FORM 3 | -Agreement to extend conciliation period |
| CMAC FORM 4 | -Memorandum of agreement |
| CMAC FORM 5 | -Certificate of unresolved dispute |
| CMAC FORM 6 | -Default judgement |
| CMAC FORM 7 | -Application for rescission |
| CMAC FORM 8 | -Request for arbitration |
| CMAC FORM 9 | -Invitation to arbitration |
| CMAC FORM 10 | -Acknowledgment of dispute referred to arbitration by court |
| CMAC FORM 11 | -Rejection of dispute at conciliation |
| CMAC FORM 12 | -Certificate of outcome |
| CMAC FORM 13 | -Subpoena |
| CMAC FORM 14 | -Application for postponement |
| CMAC FORM 15 | -Application to rescind\vary arbitration awards |
| CMAC FORM 16 | Report of dispute – Essential services |
| CMAC FORM 17 | Acknowledgment of receipt – DJ |
| CMAC FORM 18 | Certificate of Perusal |
| CMAC FORM 19 | Confirmation of Receipt of notice of set down/ collection of invitation |

| | |
|---------------------|--|
| CMAC FORM 20 | Proof of service – Hand delivery |
| CMAC FORM 21 | Agreement to postpone conciliation\ arbitration |
| CMAC FORM 22 | Invitation to rescind\ vary arbitration award |