

**RULES FOR THE CONDUCT OF PROCEEDINGS BEFORE TOKISO FOR REFERRALS UNDER
THE LABOUR RELATIONS ACT 66 of 1995 (as amended)
("Tokiso LRA Rules" / "these Rules")
Effective: 01 June 2021**

PREAMBLE

The Commission for Conciliation Mediation and Arbitration ("CCMA") has accredited Tokiso Dispute Settlement ("Tokiso") as a private agency in terms of section 127 of the Labour Relations Act 66 of 1995 ("the LRA").

These Tokiso LRA Rules govern the conduct of proceedings before Tokiso for referrals under the LRA in Tokiso's capacity as a private agency. The Tokiso LRA Rules follow the CCMA's Rules flow, rule headings and format for ease of reference, and provide for the efficient use of Tokiso as a private agency.

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TOKISO LRA FORMS

Form Number	Title of Form	Relevant Rule / LRA Section
Form 1	LRA Conciliation Referral Form	Rule 10
Form 2	LRA Certificate of Outcome	Rule 15
Form 3	LRA Arbitration Referral Form	Rule 18
Form 4	IBA Referral Form & Consent Form	Rule 34
Form 5	Request for LRA 189A Operational Requirements Facilitation	Section 189A(4)
Form 6	Subpoena Request Form	Rule 37
Form 7	Application for the extension of the 14-day period to submit award	Section 138(8)
Form 8	Application for extension of the 30-day period	Rule 14A(2)

PART ONE: SERVING AND FILING DOCUMENTS

1. How to contact Tokiso

Tokiso is to be contacted:

Telephonically: 011 853 6300

Email: info@tokiso.com;

Tokiso's online platform: www.tokiso.com ("*Tokiso Online*")

Postal/courier service: Suite #30, Private Bag x12, Cresta 2118.

2. Tokiso Online access

- (1) Tokiso has an online platform called *Tokiso Online* where parties may refer a case to Tokiso and file documents.
- (2) To access *Tokiso Online* for purposes set out in subrule (1), a person must register and follow the required security process.

3. How to calculate time periods in these Rules

- (1) To calculate any period of time in terms of these Rules:
 - (a) day means a calendar day; and
 - (b) the first day is excluded and the last day is included, subject to subrule (2).
- (2) The last day of any period must be excluded if it falls on a Saturday, Sunday, public holiday or a day during the period between 16 December to 7 January. This Rule does not apply to timelines regulated by the LRA, which timelines shall be governed by the provisions of the relevant legislation, alternatively, the Interpretation Act.

4. Who must sign documents

- (1) A document that a party must sign in terms of the Act or these Rules may be signed by the party or by a person entitled in terms of the Act or these Rules to represent that party in the proceedings.
- (2) If proceedings are jointly instituted or opposed by more than one employee, documents may be signed by an employee who is mandated by the other employees to sign documents. A list in writing of the employees who have mandated the employee to sign on their behalf must be attached to the referral document.

5. How to serve documents on other parties

- (1) Unless otherwise provided for in these Rules, a party must serve a document on the other parties:
 - (a) by handing a copy of the document to:
 - (i) the person concerned;
 - (ii) a representative authorised in writing to accept service on behalf of the person;
 - (iii) a person who appears to be at least 16 years old and apparently in charge of the person's place of residence, business or place of employment at the time; or
 - (iv) a person identified in sub-rule (2);
 - (b) by leaving a copy of the document at:
 - (i) an address chosen by the person to receive service; or
 - (ii) any premises in accordance with sub-rule (3);
 - (c) by e-mailing a copy of the document to the person's e-mail or an e-mail address chosen by that person to receive service;

- (d) by sending a copy of the document by registered post or telegram to the last known address of the party or an address chosen by the party to receive service; or
 - (e) by filing the document on *Tokiso Online* and providing the other parties' email address for purposes of *Tokiso Online* notifying the person by automated email that the document has been served.
- (2) A document may also be served:
- (a) on a company or other body corporate by handing a copy of the document to a responsible employee of the company or body at its registered office, its principal place of business within the Republic or its main place of business within the magisterial district in which the dispute first arose;
 - (b) on an employer by handing a copy of the document to a responsible employee of the employer at the workplace where the employee(s) involved in the dispute ordinarily work or worked;
 - (c) on a trade union or employers' organisation by handing a copy of the document to a responsible employee or official at the main office of the union or employers' organisation or its office in the magisterial district in which the dispute arose;
 - (d) on a partnership, firm or association by handing a copy of the document to a responsible employee or official at the place of business of the partnership, firm or association or, if it has no place of business, by serving a copy of the document on a partner, the owner of the firm or the chairman or secretary of the managing or other controlling body of the partnership, firm or association, as the case may be;
 - (e) on a municipality, by serving a copy of the document on the municipal manager or any person acting on behalf of that person;
 - (f) on a statutory body, by handing a copy to the secretary or similar officer or member of the board or committee of that body, or any person acting on behalf of that body; or
 - (g) on the State or a province, a state department or a provincial department, a minister, premier or a member of the executive committee of a province by handing a copy to a responsible employee at the head office of the party or to a responsible employee at any office of the State Attorney.
- (3) If no person identified in sub-rule (2) is willing to accept service, service may be effected by affixing a copy of the document to:
- (a) the main door of the premises concerned; or
 - (b) if this is not accessible, a post-box or other place to which the public has access.
- (4) Tokiso or a Commissioner may order service in a manner other than prescribed in this Rule.

5A. Notice of proceedings before Tokiso

Tokiso may provide notice of a conciliation or arbitration hearing, or any other proceedings before it, using any of the methods prescribed in Rule 5 and/or by means of short message service ("SMS").

6. How to prove that a document was served in terms of these Rules

- (1) A party must prove to Tokiso or a Commissioner that a document was served in terms of these Rules, by providing Tokiso or a Commissioner:
- (a) with a copy of proof that the document has been mailed by registered post to the other party;
 - (b) If a document was served by hand:
 - (i) with a copy of a receipt signed by, or on behalf of, the other party indicating the name and designation of the recipient and the place, time and date of service; or
 - (ii) with a statement confirming service signed by the person who delivered a copy of the document to the other party or left it at any premises;

- (c) If a document was served by e-mail, with a copy of the sent e-mail indicating the successful dispatch to the other party of the e-mail and any attachments concerned; or
 - (d) If a document was served on *Tokiso Online*, by providing the automated email confirming that the document was served on *Tokiso Online* or demonstrating on *Tokiso Online* that the document was served.
- (2) If proof of service in accordance with sub-rule (1) is provided, it is presumed, until the contrary is proved, that the party on whom it was served has knowledge of the contents of the document. The relevant provisions of the *Electronic Communications and Transactions Act 25 of 2002* are applicable in respect of any issue concerning service by e-mail or the service of a notice of proceedings by short message service as permitted by rule 5A.
- (3) Tokiso may accept proof of service in a manner other than prescribed in this Rule, as sufficient.

7. How to file documents with Tokiso

- (1) A party must file documents with Tokiso by:
- (a) filing the document on *Tokiso Online*;
 - (b) sending a copy of the document by registered post to the postal address provided in rule 1; or
 - (c) e-mailing the document to the email address provided in rule 1; or
 - (d) by contacting Tokiso to arrange delivery or collection of the document.
- (2) A document is filed with Tokiso when:
- (a) the document has been successfully uploaded on *Tokiso Online* under the correct unique case referral number and an automated email has been received confirming the document has been filed;
 - (b) a document sent by registered post is received, or presumed to be received as provided for in Rule 8, at the postal address provided in rule 1;
 - (c) the e-mail is received at Tokiso at the email provided in Rule 1, as provided for in the *Electronics Communications and Transactions Act 25 of 2002*;
 - (d) Tokiso confirms in writing delivery or collection of the document.
- (3) A party must only file the original of a document if requested to do so by Tokiso or a Commissioner. A party must comply with a request to file an original document within seven (7) days of the request.

8. Documents and notices sent by registered post

Any document or notice sent by registered post by a party or Tokiso is presumed, until the contrary is proved, to have been received by the person to whom it was sent seven (7) days after it was posted.

9. How to seek condonation for documents delivered late

- (1) This Rule applies to any referral document or application delivered outside of the applicable time period prescribed in the Act or these Rules.
- (2) A party must apply for condonation, in terms of Rule 31, when delivering the document or application late to Tokiso.
- (3) An application for condonation must set out the grounds for seeking condonation and must include details of the following:
- (a) the degree of lateness;

- (b) the reasons for the lateness;
 - (c) the referring parties' prospects of succeeding with the referral or application and obtaining the relief sought against the other party;
 - (d) any prejudice to the other party; and
 - (e) any other relevant factors.
- (4) Tokiso may assist a referring party to comply with this Rule.

PART TWO: CONCILIATION OF DISPUTES

10. How to refer a dispute to Tokiso for conciliation

- (1) A party must refer a dispute to Tokiso for conciliation by delivering a completed prescribed Tokiso LRA Conciliation Referral Form ("the referral document") or filing the referral on *Tokiso Online*.
- (2) If the referral document is not filed on *Tokiso Online*, the referring party must:
 - (a) sign the referral document in accordance with Rule 4;
 - (b) attach proof that Tokiso has jurisdiction by agreement of the parties;
 - (c) if a Tokiso panellist is selected, attach proof of the agreement between the parties on the appointment of the Tokiso panellist;
 - (d) if a date of the conciliation, venue and/or dispensing of any timeframes in terms of these Rules are agreed to by the parties, attach proof of agreement thereof;
 - (d) attach to the referral document, written proof, in accordance with Rule 6, that the referral document was served on the other parties to the dispute; and
 - (e) if the referral document is filed out of time, attach an application for condonation in accordance with Rule 9(3) read with Rule 31.
- (3) Tokiso must accept, but may refuse to process, a referral document until the referral is successfully completed on *Tokiso Online* or the provisions of sub-rule (2) has been complied with and payment has been received from the employer party in terms of *Tokiso's Schedule of Costs*.

11. When must Tokiso notify parties of a conciliation

- (1) Tokiso must notify the parties in writing of a conciliation hearing at least:
 - (a) seven (7) days prior to the scheduled date in matters relating to Section 189A(8) of the Act;
 - (b) fourteen (14) days prior to the scheduled date, in the case of any other matter.
- (2) Despite sub-rule (1), Tokiso may give the parties a shorter period of notice if the parties have agreed or reasonable circumstances require a shorter period.
- (3) An additional seven (7) days must be provided if a notice of conciliation in terms of this rule is sent by registered mail only.

12. Tokiso may seek to resolve dispute before conciliation

Tokiso or a Commissioner may contact the parties by telephone or other means, prior to the commencement of the conciliation, to seek to resolve the dispute.

13. What happens if a party fails to attend at conciliation

- (1) If a party who has referred a dispute fails to attend or to be represented as contemplated in Rule 25(1)(a), the Commissioner may:
 - (a) continue with the proceedings;
 - (b) adjourn the conciliation to a later date within the 30-day period; or
 - (c) conclude the proceedings by issuing a certificate that the dispute remains unresolved.
- (2) In exercising a discretion in terms of sub-rule (1), a Commissioner should take into account, amongst other things:
 - (a) whether the party has previously failed to attend a conciliation in respect of that dispute;
 - (b) any reason given for that party's failure to attend;
 - (c) whether conciliation can take place effectively in the absence of one or more of the parties;
 - (d) the likely prejudice to the other party of the Commissioner's ruling; and
 - (e) any other relevant factors.

14. How to determine whether a Commissioner may conciliate a dispute

If it appears during conciliation proceedings that a jurisdictional issue has not been determined, the Commissioner must require the referring party to prove that Tokiso has the jurisdiction to conciliate the dispute.

14A. How to extend the conciliation period in terms of Section 135(2A) of the Act

- (1) The conciliating Commissioner or a party to a conciliation process may request an extension of the conciliation period referred to in Section 135.
- (2) The request must be made on the prescribed form and before the expiry of the conciliation period as determined in terms of Section 135.
- (3) A Tokiso Director must within two (2) days of receipt of the request:
 - (a) consider whether:
 - (i) An extension is necessary to ensure a meaningful conciliation process;
 - (ii) The refusal to agree to the extension is unreasonable; and
 - (iii) There are reasonable prospects of reaching agreement; and
 - (b) Advise the parties on whether or not the extension is granted and where the extension is granted, the period of such extension.
- (4) A Tokiso Director may not extend the conciliation period if the State is the employer party.

15. Issuing of a certificate in terms of Section 135(5)

A certificate issued in terms of Section 135(5) that the dispute has or has not been resolved, must identify the nature of the dispute and the parties as described in the referral document or as identified by the Commissioner during the conciliation proceedings.

16. 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 or as ordered otherwise by a court of law.

- (2) No person, including a Commissioner, may be called as a witness during any subsequent proceedings at Tokiso or in any court to give evidence about what transpired during conciliation unless as ordered by a court of law or a Commissioner conducting an arbitration.

PART THREE: CON-ARB IN TERMS OF SECTION 191(5A)

17. Conduct of con-arb in terms of s 191(5A)

- (1) Tokiso must notify the parties in writing of a con-arb hearing at least fourteen (14) days before the scheduled date unless the parties agree to a shorter period or reasonable circumstances require a shorter period. If a notification is sent by registered mail an additional seven (7) days must be allowed.
- (2) A party that intends to object to a dispute being dealt with in terms of Section 191(5A), must deliver a written notice to Tokiso and the other party, at least seven (7) days before the scheduled date in terms of sub-rule (1).
- (3) Sub-rule (2) does not apply to a dispute relating to the dismissal of an employee for any reason related to probation or an unfair labour practice relating to probation.
- (4) If a party fails to appear or be represented at a hearing scheduled in terms of sub-rule (1):
 - (a) the Commissioner must conduct the conciliation on the date specified in the notification issued in terms of sub-rule (1), irrespective of whether a party has lodged a notice of objection in terms of sub-rule (2).
 - (b) where the provisions of sub-rule (3) are applicable or no notice of objection has been lodged in terms of sub-rule (2), the Commissioner must commence with the arbitration immediately after certifying that the dispute remains unresolved.
 - (c) notwithstanding sub-rule (4)(b), if the arbitration has commenced, the Commissioner retains a discretion, as contemplated in Section 138(5) of the Act, to adjourn the proceedings to a later date.
- (5) The provisions of these Rules that are applicable to conciliation and arbitration respectively, including rules on representation, apply with the changes required by the context, to the conciliation and arbitration parts of con-arb proceedings, respectively.
- (6) If the arbitration does not proceed or is not concluded on the date specified in terms of the notice in sub-rule (1), Tokiso must schedule the matter for arbitration either in the presence of the parties or by notifying the parties in terms of Rule 21.

PART FOUR: ARBITRATIONS

18. How to request arbitration

- (1) A party may request Tokiso to arbitrate a dispute by delivering a duly completed Tokiso LRA Arbitration Referral Form, completing the relevant referral section on the certificate of outcome, or filing the referral on *Tokiso Online*.
- (2) If the referral document is not completed on *Tokiso Online*, the requesting party must:
 - (a) sign the request in accordance with Rule 4;
 - (b) attach proof that Tokiso has jurisdiction by agreement of the parties;
 - (c) where a Tokiso Panellist is selected by the parties, attach proof of agreement to that panellist's appointment;
 - (e) if a date of the arbitration, venue and/or dispensing of any timeframes in terms of these Rules are agreed to by the parties, proof of agreement thereof;

- (d) attach proof that the request was served on the other parties to the dispute in accordance with Rule 6; and
 - (e) if the request is served out of time, attach an application for condonation in accordance with Rule 9(3).
- (3) Tokiso must accept but may refuse to process a request until the referral is successfully completed on *Tokiso Online* or the provisions of sub-rules (1) and (2) have been complied with and payment has been received from the employer party in terms of *Tokiso's Schedule of Costs*.
- (4) This Rule does not apply to con-arb proceedings held in terms of Section 191(5A) read together with Rule 17.

19. When must the parties file statements

- (1) Tokiso or a Commissioner may direct:
- (a) the requesting party in an arbitration to deliver a statement of case; and
 - (b) the other parties to deliver an answering statement.
- (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; and
 - (b) be delivered within the time period specified by Tokiso or a Commissioner.
- (3) The Commissioner has a discretion to continue with the matter despite non-compliance with a directive of Tokiso or a Commissioner in terms of sub-rule (1). However, any non-compliance may be considered when determining costs at the conclusion of the arbitration hearing.

20. When the parties must hold a pre-arbitration conference

- (1) The parties to an arbitration must hold a pre-arbitration conference dealing with the matters referred to in sub-rule (3), if:
- (a) both parties are represented by a trade union, employer's organisation, legal practitioner and/or a candidate attorney.
 - (b) both parties agree to hold a pre-trial conference; or
 - (c) directed to do so by a Tokiso Director or the presiding Commissioner.
- (2) A pre-trial conference convened in terms of sub-rule (1)(a) and (b) must be convened at least fourteen (14) days before the date of the scheduled arbitration.
- (3) In a pre-arbitration conference, the parties must attempt to reach a consensus on the following:
- (a) any means by which the dispute may be settled;
 - (b) any jurisdictional issues, including but not limited to confirmation of Tokiso's jurisdiction to arbitrate the dispute;
 - (c) facts that are agreed between the parties;
 - (d) facts that are in dispute;
 - (d) the issues that Tokiso 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 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 for any on-the-spot inspection;
 - (k) securing the presence at Tokiso 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 the 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; and
 - (s) any issue pertaining to costs of the conciliation and arbitration.
- (4) Unless a dispute is settled, the parties must draw up and sign a minute setting out the facts on which the parties agree or disagree.
- (5) A minute in terms of sub-rule (4) may also deal with any other matter listed in sub-rule (3).
- (6) The referring party must ensure that a copy of the pre-arbitration conference minute is delivered to the appointed Commissioner seven (7) days before the date scheduled for the arbitration.
- (7) The Commissioner may, after receiving a pre-arbitration minute:
- (a) direct the parties to hold a further pre-arbitration conference; and /or
 - (b) issue any other directive to the parties concerning the conduct of the arbitration, including rescheduling the matter for hearing on another date.
- (8) The Commissioner has a discretion to continue with the arbitration proceedings despite non-compliance with this Rule.
- (9). However, any non-compliance may be taken into account when considering costs at the conclusion of the arbitration hearing.

21. When must Tokiso notify parties of an arbitration

Tokiso must notify the parties in writing of an arbitration hearing at least twenty-one (21) days before the scheduled date unless the parties agree to a shorter period or reasonable circumstances require a shorter period. If a notification is sent by registered mail only an additional seven (7) days notice must be allowed.

22. How to determine whether a Commissioner may arbitrate a dispute

If during the arbitration proceedings it appears that a jurisdictional issue has not been determined, the Commissioner must require the referring party to prove that Tokiso has jurisdiction to arbitrate the dispute.

23. How to postpone an arbitration

- (1) An arbitration may be postponed:
 - (a) by written agreement between the parties; or
 - (b) by application to Tokiso and on notice to the other parties in terms of sub-rule (3).
- (2) Tokiso 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 Tokiso at least seven (7) days before the scheduled date of the arbitration.
- (3) If the conditions of sub-rule (2) are not met, any party may apply in terms of Rule 31 to postpone an arbitration by delivering an application to the other parties to the dispute and filing a copy with Tokiso before the scheduled date of the arbitration.
- (4) After considering the written application, Tokiso may:
 - (a) without convening a hearing, postpone the matter; or
 - (b) convene a hearing to determine whether to postpone the matter.

PART FIVE: RULES THAT APPLY TO CONCILIATIONS AND ARBITRATIONS AND CON-ARBS

24. Where a conciliation or arbitration will take place

- (1) A dispute must be conciliated or arbitrated in the region in which the cause of action arose or the employer's principal place of business is located unless a Tokiso Director directs otherwise.
- (2) Tokiso determines the venue for conciliation or arbitration proceedings.
- (3) Tokiso or a Commissioner may direct that a dispute be conciliated or arbitrated on an online digital platform.
- (4) A party may apply in terms of rule 31 for a dispute to be conciliated or arbitrated on an online digital platform.
- (5) A party requesting that a matter proceeds on an online digital platform must demonstrate that all parties have the required connectivity to proceed on the online digital platform or commit to providing such connectivity to the other party to the dispute.

25 Representation before Tokiso

- (1) In conciliation proceedings a party to the dispute may appear in person or be represented by:
 - (a) if the party is an employer, a director or employee of that party and, in addition, if it is a close corporation, a member or employee of that close corporation;
 - (b) any member of that party's registered trade union or registered employers' organisation or an office-bearer or official as defined in the Act or an office-bearer or official as defined in the Act of a registered federation of trade unions or registered federation of employers' organisations;
 - (c) if the party is a registered trade union, any member of that trade union or any office bearer or official as defined in the Act and authorized to represent that party or an office-bearer or official

as defined in the Act of a registered federation of trade unions and authorized to represent that party; or

- (d) if the party is a registered employers' organisation, any director or employee of an employer that is a member of that employers' organisation or an official or office bearer as defined in the Act and authorised to represent that party or an office-bearer or official as defined in the Act of a registered federation of employers' organisations and authorized to represent that party.
- (2) Subject to sub-rule (3), in any arbitration proceedings a party to the dispute may appear in person or be represented only by:
- (a) a legal practitioner;
 - (b) a candidate attorney; or
 - (c) an individual entitled to represent the party at conciliation proceedings in terms of sub-rule (1)(a).
- (3) If the dispute being arbitrated is about the fairness of a dismissal and a party has alleged that the reason for the dismissal relates to the employee's conduct or capacity, a party is not entitled to be represented by a legal practitioner or a candidate attorney in the proceedings unless:
- (a) the Commissioner and all the other parties consent; or
 - (b) the Commissioner concludes that it is unreasonable to expect a party to deal with the dispute without legal representation, after considering –
 - (i) the nature of the questions of law raised by the dispute;
 - (ii) the complexity of the dispute;
 - (iii) the public interest; and
 - (iv) the comparative ability of the opposing parties or their representatives to deal with the dispute.
- (4) In any facilitation of large scale retrenchments as contemplated in section 189A(3) of the Act, a party may appear in person or be represented by:
- (a) a director or employee of the party, and, if a close corporation, a member or employee of that close corporation;
 - (b) any member, office-bearer or official of that party's registered trade union; or
 - (c) any member, office-bearer or official of that party's registered union or registered employers' organisation.
 - (d) No representation by a legal practitioner or candidate attorney shall be allowed in facilitations of large scale retrenchments as contemplated in section 189A(3).
- (5) No person representing a party in proceedings before Tokiso in a capacity contemplated in sub-rule (1) or (2), other than a legal practitioner or candidate attorney contemplated in sub-rule (2)(a) and (b), may charge a fee or receive a financial benefit in consideration for agreeing to represent that party.
- (6) If the 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.
- (7) The Commissioner may call upon the representative to establish why the representative should be permitted to appear in terms of this Rule.
- (8) A representative must tender any documents requested by the Commissioner for the purposes of sub-rule (6), including constitutions, payslips, contracts of employment, documents and forms or recognition agreements and/or proof of membership of a trade union or employers' organisation.

- (9) Despite the provisions of sub-rules (1), (2) and (3), a Commissioner may exclude any person who is representing a party in any proceedings on the basis that they are a member of the same employers' organisation as an employer party or a member of an employers' organisation that is a party to proceedings, if the Commissioner, after enquiring into the matter and considering relevant representations, believes that:
- (a) the representative joined the employer's organisation for the purpose of representing parties at Tokiso; or
 - (b) the representative's participation in the dispute resolution process—
 - (i) would be contrary to the purpose of the Rule which is to promote inexpensive and expeditious dispute resolution in a manner that is equitable to all parties;
 - (ii) is not in keeping with the objectives of the Labour Relations Act 66 of 1995; or
 - (iii) may have the consequence of unfairly disadvantaging another party to the dispute.
- (10) Despite the provisions of this Rule, but subject to the provisions of sub-rule (5), the Commissioner may, on application brought in accordance with rule 31, allow a person not contemplated in sub-rules (1), (2) and (3) to represent a party at arbitration proceedings before Tokiso, after considering:
- (a) whether it is unreasonable to expect the applicant party to deal with the dispute without representation, after considering the factors set out in sub-rule 1(c)(ii)(a) to (d);
 - (b) the reason why a person contemplated in Rule 25 cannot represent the applicant party, which includes affordability, if applicable;
 - (c) the ability of the proposed representative to meaningfully represent the applicant;
 - (d) whether the proposed representative is subject to the oversight and discipline of a professional or statutory body;
 - (e) whether the proposed representative will contribute to the fairness of the proceedings and the expeditious resolution of the dispute;
 - (f) prejudice to the other party; and
 - (g) any other relevant factors.

26 How to join or substitute parties to proceedings

- (1) Tokiso or a Commissioner may, at any stage before the conclusion of an arbitration or hearing, make an order joining any number of persons as parties in the proceedings if:
- (a) the right of the referring party to relief depends on substantially the same question of law or fact, which, if a dispute were to be referred separately against the person sought to be joined, it would arise in a separate claim;
 - (b) the party to be joined has a substantial interest in the subject matter of the proceedings; or
 - (c) the party to be joined may be prejudicially affected by the outcome of the proceedings.
- (2) Tokiso or Commissioner may make an order in terms of sub-rule (1):
- (a) on its own accord;
 - (b) on application by a party; or
 - (c) if a person entitled to join the proceedings applies at any time during the proceedings to intervene as a party.
- (3) An application in terms of this Rule must be made in terms of Rule 31.
- (4) When making an order in terms of sub-rule (1), a Commissioner may:

- (a) give appropriate directions as to the further procedure in the proceedings; and
 - (b) make an order of costs in accordance with these Rules.
- (5) If in any proceedings it becomes necessary to substitute a person for an existing party, any party to the proceedings may apply to Tokiso or a Commissioner for an order substituting that party for an existing party, and a Commissioner may make such order or give appropriate directions as to the further procedure in the proceedings.
- (6) 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, including the referral form, unless the person concerned or that person's representative is already in possession of the documents. The application may be made at any stage before the conclusion of an arbitration hearing.
- (7) Subject to any order made in terms of sub-rules (4) and (5), a joinder or substitution in terms of this Rule does not affect any steps already taken in the proceedings.

27 How to correct the citation of a party

If a party to any proceedings has been incorrectly or defectively cited, Tokiso or a Commissioner may of its own accord, by consent of the parties or on application and on notice to the parties concerned, correct the error or defect.

28 When Tokiso may consolidate disputes

- (1) Tokiso or a Commissioner may, of its own accord, by consent of the parties or on application, and on notice to the parties concerned, consolidate more than one dispute so that the disputes may be dealt with in the same proceedings.
- (2) Tokiso or a Commissioner may order consolidation of separate disputes of right, where:
- (a) the relief sought in each of the separate dispute to be consolidated depends on the determination of similar or substantially the same questions of law and fact;
 - (b) there will be no substantial prejudice on the party or parties sought to be joined through a consolidation order;
 - (c) the balance of convenience favour such consolidation; and
 - (d) Tokiso has jurisdiction over all disputes sought to be consolidated.

29 Disclosure of documents

- (1) At any time after the request for arbitration, but not less than fourteen (14) days before the hearing date, either party may request the other party to disclose any documents or material relevant to the dispute.
- (2) The party to whom the request is made must respond to the request within five (5) days from the date on which the request was received.
- (3) A Commissioner may either before or during the proceedings on his/her own accord, or on application, make an order as to the disclosure of relevant documents or other evidence.
- (4) Notwithstanding the above, the parties may agree on the disclosure of documents or other relevant evidence.

30 What happens if a party fails to attend arbitration proceedings before Tokiso

- (1) If a party to the dispute fails to attend or be represented at any arbitration proceedings before Tokiso, and that party:

- (a) had referred the dispute to Tokiso, a Commissioner may dismiss the matter by issuing a written ruling; or
- (b) had not referred the matter to Tokiso, the Commissioner may:
 - (i) continue with the proceedings in the absence of that party; or
 - (ii) adjourn the proceedings to a later date.
- (2) A Commissioner must be satisfied that the party had been properly notified of the date, time and venue of the proceedings, before making any decision in terms of sub-rule (1).
- (3) If a matter is dismissed, Tokiso must send a copy of the ruling to the parties within 14 days.

PART SIX: APPLICATIONS

31 How to bring an application

- (1) This Rule applies to any:
 - (a) application for condonation, joinder, substitution, variation, rescission, or postponement;
 - (b) application in a jurisdictional dispute;
 - (c) application to hear the dispute on an online digital platform; or
 - (c) other preliminary or interlocutory application.
- (2) Subject to Rule 32, an application must be brought at least fourteen (14) days before the date of the hearing and on notice to all persons who have an interest in the application.
- (3) The party bringing the application must sign the notice of application in accordance with Rule 4 and must state:
 - (a) the title of the matter;
 - (b) the case number assigned to the matter by Tokiso, if available;
 - (c) the relief sought;
 - (d) the address at which the party delivering the document will accept delivery of all documents in the proceedings;
 - (e) that any party that intends to oppose the matter must deliver a notice of opposition and answering affidavit within five (5) days after the application has been delivered to it;
 - (f) that the application may be heard in the absence of a party that does not comply with subparagraph (e); and
 - (g) that a schedule is included listing the documents that are material and relevant to the application.
- (4) The application must be supported by an affidavit. The affidavit 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 arises 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 in accordance with Rule 9; 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.
- (5) Any party opposing the application may deliver a notice of opposition and an answering affidavit within five (5) days from the day on which the application was served on that party. A notice of opposition and an answering affidavit must contain, with the changes required by the context, the information required by sub-rules (3) and (4) respectively.
 - (6) The party initiating the proceedings may deliver a replying affidavit within three (3) days from the day on which any notice of opposition and answering affidavit are served on it. The replying affidavit must address only issues raised in the answering affidavit and may not introduce new issues of fact or law.
 - (7) Tokiso or a Commissioner may permit the affidavits referred to in this Rule to be substituted by a written statement.
 - (8) In an urgent application, Tokiso or a Commissioner:
 - (a) may dispense with the requirements of this Rule; and
 - (b) may only grant an order against a party that has had reasonable notice of the application.
 - (9) Tokiso must allocate a date for the hearing of the application once a replying affidavit is delivered, or once the time limit for delivering a replying affidavit has lapsed, whichever occurs first. Tokiso must notify the parties of the date, time and place of the hearing of the application.
 - (10) Despite this Rule, Tokiso or a Commissioner may determine an application in any manner it deems fit, provided that Tokiso or the Commissioner informs the parties of how the process will be conducted and gives the parties an opportunity to be heard.

32 How to apply to vary or rescind arbitration awards or rulings

An application for the variation or rescission of an arbitration award or ruling must be made within fourteen (14) days of the date on which the applicant became aware of the arbitration award or ruling.

33 How to apply to refer a dismissal dispute to the Labour Court

- (1) An application in terms of Section 191(6) of the Act to refer a matter to the Labour Court, must be delivered:
 - (a) within ninety (90) days of a certificate that the dispute has not been resolved being issued; or
 - (b) by a party that has not requested arbitration, within fourteen (14) days of the referral for arbitration being filed.
- (2) Despite sub-rule (1), a party that requests arbitration may not thereafter make an application in terms of Section 191(6).
- (3) The application must state the grounds on which a party relies in requesting that the dispute be referred to the Labour Court.
- (4) If any party to the dispute objects to the matter being referred to the Labour Court, that party must state the grounds for the objection within seven (7) days of receipt of the application.
- (5) Tokiso must notify the parties of its decision in terms of Section 191(8) within fourteen (14) days of receiving the objection.

- (6) In the event that the request has been granted, the party who applied for the referral by a Tokiso Director must refer the matter to the Labour Court in line with Rule 11 of the Labour Court Rules.

PART SEVEN: SECTION 188A INQUIRY BY ARBITRATOR

34 How to request an inquiry by arbitrator in terms of section 188A

- (1) An employer requesting Tokiso to conduct an inquiry by arbitrator, must do so by delivering a completed Tokiso LRA IBA Referral Form to Tokiso or filing the referral on *Tokiso Online*.
- (2) If the referral document is not completed on *Tokiso Online*, the requesting party must:
- (a) complete and sign the Tokiso LRA IBA Referral Form in accordance with Rule 4;
 - (b) attach proof of the employee's consent in the form of:
 - (i) The consent form signed by the employee; or
 - (ii) A collective agreement that binds the employee; or
 - (iii) If the employee earns above amount determined by the Minister in terms of section 6(3) of the Basic Conditions of Employment Act (currently R211,596.30 per annum), the employee's contract of employment which expressly provides for an inquiry by arbitrator;
 - (c) where a Tokiso Panellist is selected by the parties, proof of agreement to that panellist's appointment;
 - (d) if a date of the arbitration, venue and/or dispensing of any timeframes in terms of these Rules are agreed to by the parties, proof of agreement thereof; and
 - (e) attach to the request written proof that the request was served on the other parties to the dispute in accordance with Rule 6.
- (3) Tokiso must accept but may refuse to process a request until the provisions of sub-rule (2) have been complied with and payment has been received from the employer party in terms of *Tokiso's Schedule of Costs*.
- (4) Within two (2) days of receiving a request in terms of sub-rule (1) and payment of the prescribed fee in terms of *Tokiso's Schedule of Costs*, Tokiso must notify the parties to the inquiry by arbitrator of when and where the inquiry will be held.
- (5) Unless the parties agree to a shorter period or reasonable circumstances require a shorter period, Tokiso must give the parties at least three (3) days' notice of the commencement of the inquiry by arbitrator. If a notification is sent by registered mail an additional seven (7) days' notice must be allowed.
- (6) Tokiso shall appoint the arbitrator unless the parties agree on who should be appointed as the arbitrator.
- (7) Tokiso shall determine the date and venue of the inquiry unless the parties agree on the date and venue of the inquiry.

PART EIGHT: GENERAL

35 Condonation for failure to comply with these Rules

- (1) Tokiso or a Commissioner may condone any failure to comply with any provision of these Rules, on good cause shown.
- (2) In exercising its powers and performing its functions Tokiso may act in such a manner as it deems expedient in the circumstances to achieve the objects of the Act. In doing so, it shall have regard to substance rather than form, save where the Act provides otherwise.

36 Requirements for recordings of Tokiso proceedings

- (1) Tokiso must keep a record of:
 - (a) all processes except conciliations and facilitations, unless otherwise stated in these Rules;
 - (b) any arbitration award or ruling made by a Commissioner.
- (2) The record must be kept using a digital recording and, if practically possible, also by legible notes.
- (3) A party may request a copy of the record or a portion of a record kept in terms of sub-rule (2), on payment of the relevant costs, where applicable.

37 How to have a subpoena issued and served

- (1) Any party who requires Tokiso or a Commissioner to subpoena a person in terms of Section 142(1) of the Act, must file a completed Tokiso LRA Subpoena Request Form together with a written motivation setting out why the evidence of the person to be subpoenaed is necessary.
- (2) If a Commissioner is already vested with the arbitration for which the application for subpoena is required, the Commissioner shall consider the submissions in terms of Rule 37(1) and shall determine whether to issue the subpoena before it is signed by a Tokiso Director.
- (3) If a Commissioner is not vested with the matter at the time the subpoena is requested, a Tokiso Director shall determine whether to issue the subpoena.
- (4) A party requesting Tokiso to waive the requirement for the party to pay witness fees in terms of Section 142(7)(c) must set out the reasons for the request in writing at the time of requesting Tokiso to issue a subpoena in respect of that witness. Tokiso's decision must be made in writing and delivered when issuing the subpoena.
- (3) An application in terms of sub-rule (1) must be filed with Tokiso at least fourteen (14) days before the arbitration hearing, or as directed by the Commissioner hearing the arbitration.
- (4) The Commissioner or a Tokiso Director may refuse to issue a subpoena if:
 - (a) the party does not establish why the evidence of the person is necessary;
 - (b) insufficient details of the person who is to be subpoenaed are provided;
 - (c) insufficient details of the book, document and/or object for which a person is subpoenaed are provided;
 - (d) the party subpoenaed does not have seven (7) days within which to comply with the subpoena;
 - (e) the party requesting the subpoena may not pay the prescribed witness fees, reasonable travel costs and/or subsistence expenses of the person subpoenaed; and/or
 - (f) the requirements set out in this rule have not been complied with.
- (5) A subpoena must be served by the person who has requested the issuing of the subpoena or by the Sheriff, at least seven (7) days before the scheduled date of the arbitration by:
 - (a) delivering a copy of it to the person subpoenaed personally;
 - (b) sending a copy of it by registered post to the subpoenaed person's:
 - (i) residential address;
 - (ii) place of business or employment; or
 - (iii) post office box or private bag number;

- (c) by leaving a copy of it at the subpoenaed person's place of residence or place of business or employment with a person who apparently is at least sixteen (16) years of age and is residing or employed there; or
 - (d) by email.
- (6) Service of a subpoena must be accompanied by proof of payment of the prescribed witness fees for one day in accordance with the tariff of allowances published by notice in the Government Gazette in terms of Section 142(7) of the Act and the witnesses' reasonable travel costs and subsistence expenses.
- (7) Sub-rules (4)(e) and (6) do not apply if Tokiso, in terms of Section 142(7)(c), has waived the requirement to pay witness fees.

37A How to call expert witnesses

A party intending to call an expert witness shall give seven (7) days, before the hearing, notice thereof to Tokiso and the other party to the dispute together with a summary of the proposed evidence of such witness, any document on which the witness will rely during evidence and the basis on which the witness is regarded to be an expert to enable the other party to consider the summary and obviate the need for any postponement.

38 Payment of witness fees

- (1) A witness subpoenaed in any proceedings in Tokiso must be paid a witness fee in accordance with the tariff of allowances published by notice in the Government Gazette in terms of Section 142(7) of the Act.
- (2) The witness fee must be paid by –
 - (a) the party who requested Tokiso to issue the subpoena; or
 - (b) Tokiso, if the issuing of the subpoena was not requested by a party or if Tokiso waives the requirement to pay witness fees in terms of Section 142(7)(c).
- (3) Despite sub-rule (1), the Commissioner may, in appropriate circumstances, order that a witness receives no fee or reasonable travel costs and subsistence expenses or only part of such fees or expenses.

39 Who pays the fees for any proceedings before Tokiso

- (1) Subject to sub-rule (2), Tokiso's fees for any proceedings shall be borne by the employer party.
- (2) In any proceedings, the Commissioner may make an order for the payment of costs according to the requirements of law and fairness and when doing so should have regard to:
 - (a) the measure of success that the parties achieved;
 - (b) considerations of fairness that weigh in favour of or against granting a cost order;
 - (c) any with prejudice offers that were made to settle the dispute;
 - (d) whether a party or the person who represented that party acted in a frivolous and vexatious manner:
 - (i) by proceeding with or defending the dispute; or
 - (ii) in its conduct during proceedings.
 - (e) the effect that a cost order may have on a continued employment relationship;
 - (f) any agreement concluded between the parties concerning the basis on which costs should be awarded;

- (g) the importance of the issues raised with the parties as well as to the labour community at large; and
 - (h) any other relevant factors.
- (2) A Commissioner may make an award of costs in favour of a party who appears or is represented by a person contemplated in rule 25(1)(a) in respect of reasonable disbursements incurred in the conduct of its case in the arbitration. A Commissioner who makes an award in terms of this provision must specify the items and amounts in respect of which costs are ordered.
- (3) A Commissioner may make an award of costs in respect of the legal fees of a party that is represented by a legal practitioner or candidate attorney, only if the other parties were represented by a legal practitioner or candidate attorney.

40 Certification and enforcement of arbitration awards

- (1) An application to have an arbitration award certified must be made on the Commission's Certification and Enforcement Form in respect of an award by a Commissioner.
- (2) Any arbitration award that has been certified in terms of Section 143 of the Act that:
- (a) orders the payment of an amount of money may be enforced by execution against the property of the employer party by the Sheriff of the court in the Magisterial district where the employer party resides, or conducts business;
 - (b) orders the performance of an act other than the payment of money may be enforced by way of contempt proceedings instituted in the Labour Court.
- (3) For the purposes of sub-rule (2), an arbitration award includes an award of costs in terms of Section 138(10), a taxed bill of costs in respect of an award of costs and an arbitration fee charged in terms of Section 140(2).
- (4) The amount of money that may be enforced through execution by the Sheriff in terms of this Rule includes:
- (a) The amount that is ordered to be paid in terms of the award;
 - (b) Any interest on that amount calculated in terms of section 143(2); and
 - (c) The Sheriff's costs permitted in terms of the Magistrate's Court Tariff for Sheriffs.

40A Payment of an arbitration fee ordered in terms of section 140 of the Act

- (1) Where the Commissioner, having found that the dismissal was procedurally unfair, orders payment of an arbitration fee in terms of 140(2) of the Act:
- (a) The arbitration fee shall be the fee set out in Tokiso's Tariff of Fees, as published on its website.
 - (b) The employer must pay the prescribed fee to Tokiso within fourteen (14) days of receipt of the award ordering payment of such a fee.
 - (c) Payment of the fee may only be made by electronic transfer into the bank account of Tokiso.

41 What words mean in these Rules

- (1) Any expression in these Rules that is defined in the Labour Relations Act, 1995 (Act 66 of 1995), has the same meaning as in that Act and –
- (2) 'Act' means the Labour Relations Act, 1995 (Act 66 of 1995), and includes any regulation made in terms of that Act;
- (3) 'Association' means any unincorporated body of persons;

- (4) 'BCEA' means Basic Conditions of Employment Act;
- (5) 'CCMA' means the Commission for Conciliation, Mediation and Arbitration established by Section 112 of the Act;
- (6) 'Commissioner' means a Commissioner appointed in terms of Section 117 of the Act;
- (7) 'Con-arb' means proceedings held in terms of Section 191(5A);
- (8) 'Deliver' means serve on other parties and file with Tokiso;
- (9) 'Employer' means the employer party to the dispute;
- (10) 'File' means to lodge with Tokiso in terms of Rule 7;
- (11) 'Labour Court' means the Labour Court established by Section 151 of the Act and includes any judge of the Labour Court;
- (12) 'Party' means any party to proceedings before Tokiso;
- (13) 'Public holiday' means a public holiday referred to in Section 1 of the Public Holidays Act, 1994 (Act 36 of 1994);
- (14) 'Rules' means these Rules and includes any footnote to a rule;
- (15) 'Senior Commissioner' means a Senior Commissioner appointed in terms of Section 117 of the Act and includes any person delegated by the Senior Commissioner to perform any of the functions of the Senior Commissioner;
- (16) 'Serve' means to serve in accordance with Rule 5 and 'service' has a corresponding meaning;
- (17) 'Schedule of Costs' is the list of fees charged by Tokiso that is published on Tokiso's website, www.tokiso.com;
- (17) 'Taxing officer' means any Commissioner appointed by a Tokiso Director in terms of Rule 39;
- (18) 'Tokiso' means Tokiso Dispute Settlement (Pty) Ltd.
- (19) 'Tokiso Director' means a Director of Tokiso appointed in terms of the Companies Act, and includes any person delegated by a Tokiso Director to perform any of the functions of a Tokiso Director.