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Dear SALLR colleague

RE: SLIP AND TRIP ALERT NOTICE 13 OF 2025

This is the thirteenth alert notice of those issues that will cause YOU to slip and definitely trip in 2025. These notifications have been compiled largely on the basis of queries that our call-centre receive, as well as the solutions provided thereto by our fast-tracking team.

Some of these alert notice issues will eventually be incorporated into our mouth-watering annual seminar workbook, as well as our delicious and spicy PowerPoint presentation compiled on an annual basis.

The attached notice deals, amongst others, with the following tricky issues:

- relevant factors to be taken into account by the registrar of labour relations when considering whether or not a trade union should be registered
- how to deal with a trade union in a scenario where the constitution of such trade union indicates that membership of such trade union is open to all workers in the Republic of South Africa
- the consequences when a relevant trade union passes a resolution that a specific industry is covered by such trade union's constitution and, subsequently, such union attempts to recruit members in the industry covered by such resolution

We look forward to YOU being part of the CCMA and SALLR continuing learning events – to secure YOUR seat, [kindly register by completing the attached registration form.](#)

Your hardworking CCMA and SALLR teams



Director: Brian van Zyl
Reg No: 2012/131276/07



SCAN TO VIEW FULL BROCHURE

FURTHER DETAIL OF THE IDENTIFIED TRICKY ISSUES

- The scenario is as follows: the registrar of labour relations refused to register a specific trade union on the basis that it holds the viewpoint that such trade union is not a genuine trade union in terms of s95(7) of the LRA. The trade union appealed this decision of the registrar and the labour appeal court dealt with such appeal in terms of s111(3) of the LRA. In this scenario, what is the test to be applied for overturning a decision of the labour court when dealing with such appeal in terms of s111(3) of the LRA?
- In considering whether or not to register a trade union, what role, if any, is played by the fact that a specific individual, being a political activist, is the dominant personality in the union and holds the office as general secretary and is, furthermore, apparently in control of the apparatus of the union?
- The scenario is as follows: the process of the formation of the trade union concerned, in essence, two meetings. The first meeting resolved to form an 'interim' structure and the second meeting adopted a constitution. What role, if any, do the number of members of such trade union in attendance at these meetings play when considering whether or not to register such trade union?
- When considering the registration of a trade union, to what extent is the registrar entitled to scrutinise the bank statements of the trade union?
- To what extent did the labour appeal court recently indicate that, when considering whether or not a trade union should be registered, reliance on *African Labour Civil Rights Union v Registrar of Labour Relations* [2018] ZALCJHB 370 (LC) is misplaced?
- When considering the registration of a trade union, to what extent is the period that such trade union existed prior to applying for registration relevant?
- With reference to *Minister of Labour and Another v Public Servants Association of SA and Another* (2017) 38 ILJ 1075 (LAC) and *Registrar of Labour Relations v Consolidated Association of Employers of SA Region* (2015) 36 ILJ 182 (LAC), how did the labour court recently express itself as to the powers of the registrar of labour relations, firstly, executing its functions in terms of the LRA and, secondly, exercising its relevant discretion in terms of the LRA?
- What are the factors to be taken into account to determine whether a trade union applying for registration is a genuine trade union?
- The constitutional court, in *National Union of Metalworkers of SA v Lufil Packaging (Isithebe) (a division of Bidvest Powerplus (Pty) Ltd) and Others* (2020) 41 ILJ 1846 (CC), [2020] 7 BLLR 645 (CC); (2020) 31 SALLR 138 (CC), held that a trade union cannot create a class of membership outside the provisions of its own constitution. In *Afgri Animal Feeds (a division of PhilAfrica Foods (Pty) Ltd v National Union of Metalworkers of*



SA and Others (2024) 45 *ILJ* 1937 (CC); (2024) 35 *SALLR* 169 (CC), the constitutional court held that a union did not represent dismissed employees in an industry not covered by such union's registered scope as contained in its constitution. With reference to these two judgments of the constitutional court, how did the labour court recently deal with a union's constitution indicating that membership of such union is open to all workers in the Republic of South Africa, when such union applied for organisational rights in a specific industry?

- The scenario is as follows: a trade union's constitution stipulated that all workers employed in specific industries could obtain membership of such union and, furthermore, that all workers employed in 'other industries' could also obtain membership as well – in this regard, the Constitution defines 'other industries' as 'any other activity, industry or interest group as defined by the national executive committee or the national office-bearers from time to time'. With reference to this scenario, if the relevant union passed a resolution resolving that a specific further industry was demarcated as an 'other activity, industry or interest group', can such union then lawfully recruit members in such 'other industry'?

