

**RULES FOR THE CONDUCT OF PROCEEDINGS BEFORE THE AGENCY FOR LABOUR
DISPUTE RESOLUTION AS PROVIDED FOR BY THE LABOUR RELATIONS ACT 66 OF
1995, AS AMENDED, (“THE LRA”)**

(“THESE RULES”)

Effective Date 01/07/2025 until repealed

PREAMBLE

The Agency for Labour Dispute Resolution (“ALDR”) has been accredited by the Commission for Conciliation Mediation and Arbitration under the LRA in its capacity as a Private Agency. The Rules found hereunder follow the CCMA’s Rules flow, headings and format for ease of reference and provide for the efficient use of ALDR as a Private Agency.

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PART ONE: SERVING AND FILING OF DOCUMENTS

1. How to contact ALDR

ALDR is to be contacted:

Telephonically: 081 660 0542

Email: admin@aldr.co.za

Physical Address: 42 Ingersol Road, Lynnwood Glen

2. Calculating time periods in the Rules

(1) To calculate any period of time in terms of the 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 Act, which timeline shall be governed by the provisions of the relevant legislation, *alternatively*, the Interpretation Act.

3. Who must sign documents

(1) A document that the party must sign in terms of the Act or the Rules may be signed by party or by a person entitled in terms of the Act or the Rules to represent the party in the proceedings.

(2) If the proceedings are jointly instituted or opposed by more than 1 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 relevant referral document.

4. 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 by:

(a) 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 is apparently in charge of the person's place of residence, business or place of employment at the time; or

- (iv) a person identified by subrule (2).
 - (b) Leaving a copy of the document at:
 - i) an address chosen by the person to receive service; or
 - ii) any premises in accordance with subrule (3).
 - (c) Emailing a copy of the document to the person's email address, or an email address chosen by that person to receive service; or
 - (d) 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.
- (2) A document may also be served:
- (i) on a company or 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 of South Africa, or its main place of business within the magisterial district in which the dispute first arose;
 - (ii) 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;
 - (iii) on a trade union or employer's organisation, by handing a copy of the document to a responsible employee or official at the main office of the union or employer's organisation, or its office in the magisterial district in which the dispute arose;
 - (iv) 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 with the chairman or secretary of the managing or other's controlling body of the partnership, firm or association, as the case may be;
 - (v) on a municipality, by serving a copy of the document on the Municipal Manager or any person acting on behalf of that person;
 - (vi) on a statutory body, by handing a copy to the secretary or similar office of a member of the board committee at that point, or any person acting on behalf of that body; or
 - (vii) 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 responsible employee at any office of the State Attorney.

- (3) If no person identified in subrule (2) is willing to accept service, service may be affected by affixing a copy of the document to:
- a) the main door of the premises concerned; or
 - b) if this is not acceptable, a postbox or other place to which the public has access.
- (4) ALDR, or a Commissioner appointed by ALDR, may order service in a manner other than those prescribed in terms of this Rule.

5. Notice of Proceedings before ALDR

- (1) ALDR may provide notice of conciliation and arbitration, or any other proceedings before it, using any of the methods prescribed in rule 4 and/or by any means of short message service (“sms”).

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

- (1) Proper service is proved in one of the following ways:
- (a) with a copy of the proof that a document has been mailed by registered post to the other party;
 - (b) if the 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 other party at any premises.
 - (c) If the document was served by email, with a copy of the sent email indicating the successful dispatch to the other party of the email and any attachments concerned.
- (2) If proof of service in accordance with subrule (1) is provided, it is presumed, until the contrary is proven, that the party on whom it was served has knowledge of the contents of the documents. The relevant provisions of the Electronic Communications and Transactions Act 25 2002 are applicable in respect of any issue concerning service by email, or the service of a notice of proceedings by short message served as submitted by these rules.
- (3) ALDR may accept proof of service in a manner other than those prescribed in this rule.

7. How to file documents with ALDR

- (1) A party must file documents with ALDR by:

- (a) emailing the document to the email address provided in rule 1, or an email address provided in the Notice of Set Down; or,
 - (b) by contacting ALDR to arrange for delivery of the document.
- (2) A document is filed with ALDR when:
- (a) an email has been received by ALDR at the email address provided in Rule 1, or as may otherwise be indicated by the Notice of Set Down; or
 - (b) ALDR confirms the successful delivery of a document by hand.
- (3) A party must only file the original document if requested to do so by ALDR or a Commissioner duly appointed. A party must comply with the request to file an original document within seven (7) days of the request.

8. Documents and notices sent by registered post

- (1) Any document or notice sent by registered post by a party is presumed, until the contrary is proven, 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 the documents delivered late

- (1) This rule applies to any referral document or application delivered outside the applicable time periods prescribed in the Act or these Rules.
- (2) A party must apply for condonation, using the process found in Rule 31 of these Rules, when a document or application is brought late.
- (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 reason for the lateness;
 - (c) the party seeking the condonation's prospects of success with the referral or application;
 - (d) any prejudice to the other party; and
 - (e) any other relevant factor.
- (4) ALDR, or a Commissioner, may assist a party to comply with this Rule.

PART TWO: CONCILIATION OF DISPUTES

10. How to refer a dispute to ALDR for conciliation

- (1) A party must refer a dispute to ALDR for conciliation by delivering a completed prescribed ALDR Conciliation Referral Form.
- (2) The referring party must:

- (a) sign the referral documents in accordance with Rule 4;
 - (b) attach proof that ALDR has jurisdiction by agreement between the parties;
 - (c) if an ALDR panellist is selected by the parties, attach proof of the agreement between the parties on the appointment of the panellist;
 - (d) if a date at the conciliation, venue and/or dispensing of any timeframes is agreed between the parties, attach proof thereof;
 - (e) attach to the referral document, written proof, in accordance with Rule 6, that the referral was served on the other parties to the dispute; and
 - (f) if the referral documents are filed out of time, attach an application for condonation in terms of these Rules.
- (3) ALDR must accept, but may refuse to process, a referral document until payment has been received from the employer party.

11. When must parties be notified of conciliation by ALDR

- (1) ALDR must notify the parties in writing of conciliation hearing at least:
- (a) Seven (7) days prior to the hearing, 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 subrule (1), a shorter period of notice may be provided if the parties have agreed thereto, 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 post only.

12. ALDR may attempt to resolve a dispute prior to conciliation

ALDR 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 the party has referred a dispute and fails to attend or be represented as contemplated in Rule 25, the Commissioner may:
- (a) continue with the proceedings;
 - (b) adjourn the conciliation to a later date within the 30-day period; or
 - (c) complete the proceedings by issuing a certificate that the dispute remains unresolved.
- (2) In exercising a discretion in terms of subrule (1), a Commissioner should take into account:

- (a) whether the party has previously failed to attend 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 Commissioners ruling; and
- (e) any other relevant factors.

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

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

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

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

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

A certificate issued in terms of section 135(5) of the Act 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.
- (2) No person may refer to anything said at conciliation proceedings during any subsequent proceedings unless the parties agree thereto in writing, or as ordered otherwise by a court of law.
- (3) No person, including a Commissioner, may be called as a witness during any subsequent proceedings at ALDR, or in any Court, to give evidence about what transpired during conciliation, unless ordered thereto by a Court of Law or by a Commissioner conducting an arbitration.

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

17. Conduct of Con-Arb in terms of section 191 (5(A) of the Act

- (1) ALDR must notify the parties in writing of the Con-Arb hearing at least fourteen (14) days prior to 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 (5)(a), must deliver a written notice to ALDR and the other party, at least seven (7) days prior to the scheduled date.
- (3) Subrule (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 related to promotion.
- (4) If a party fails to appear or be represented at the hearing scheduled in terms of subrule (1):
 - a) the Commissioner must conduct the conciliation on the date specified in the notification issued in terms of subrule (1), irrespective of whether a party has delivered a Notice of Objection in terms of subrule (2).
 - b) Where the provisions of subrule (3) are applicable, or no notice of objection has been lodged in terms of subrule (2), the Commissioner must commence with the arbitration immediately after certifying that the dispute remains unresolved.
 - c) Notwithstanding subrule (4)(b), if arbitration has not 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 provision of the Rules that are applicable to conciliation and arbitration respectively, including rules and representation, apply with the changes required

by the context, to the conciliation and arbitration parts of a con-arb proceeding, respectively.

- (6) If the arbitration does not proceed or is not concluded on the date specified in terms of the notice in subrule (1), ALDR must schedule the matter for arbitration in the presence of the parties or by notifying parties in terms of Rule 21.

PART FOUR: ARBITRATIONS

18. How to request arbitration

- (1) A party may request ALDR to arbitrate the dispute by delivering a duly completed ALDR Arbitration Referral Form.
- (2) The requesting party must:
- (a) sign the request in accordance with Rule 4;
 - (b) attach proof that ALDR has jurisdiction by agreement between the parties;
 - (c) where an ALDR panellist is selected by the parties, attach proof of the 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 such an agreement;
 - (e) attach proof that the request was duly served on the other parties in accordance with Rule 6;
 - (f) if the request was served out of time, attach an application for condonation in accordance with Rule 9.
- (3) ALDR must accept, but may refuse to process a request, until the referral is completed in terms of subrule's (1) and (2) and payment has been received by ALDR.
- (4) This rule does not apply to Con-Arb proceedings held in terms of section 191(5(A) read together with Rule 17.

19. When must parties file statements

- (1) ALDR or a Commissioner may direct:
- (a) the requesting party at arbitration to deliver a statement of case; and
 - (b) the other parties to deliver an answering statement.
- (2) A statement in terms of subrule (1) must:
- (a) set out the material facts upon which the party relies and on the legal issues that arise from the material facts; and
 - (b) be delivered within the time period specified by ALDR or a Commissioner in the Directive in terms of subrule (1).

- (3) The Commissioner has a discretion to continue with the matter despite non-compliance with the directive in terms of subrule (1). However, any non-compliance may be considered when determining costs at the conclusion of the arbitration hearing.

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

- (1) The parties to an arbitration must hold a pre-arbitration conference dealing with the matters referred to in subrule (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-arbitration conference; or,
 - (c) the parties are directed to do so by an ALDR Director or the Presiding Commissioner.
- (2) A pre-arbitration conference convened in terms of subrule (1) must be convened at least fourteen (14) days prior to the date of the scheduled arbitration.
- (3) In the 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 ALDR's jurisdiction to arbitrate the dispute;
 - (c) facts that are agreed to between the parties;
 - (d) facts that are in dispute between the parties;
 - (e) the issues that the Commissioner is required to decide;
 - (f) the precise relief claimed and if compensation is claimed, the amount of compensation and the calculation thereof;
 - (g) the sharing and exchanging of relevant documents and the preparation of a bundle of documents in chronological order with each page numbered;
 - (h) 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 purport to be;
 - (i) whether evidence on affidavit will be admitted, with or without the right of any party to cross-examine the person who deposed to the affidavit;
 - (j) which party must begin;
 - (k) the necessity for any on the spot inspection;
 - (l) securing the presence of witnesses;
 - (m) the resolution of any preliminary points that are intended to be taken;
 - (n) the exchange of witness statements;
 - (o) expert evidence;

- (p) any other means by which the proceedings may be shortened;
 - (q) an estimate of the time required for the hearing;
 - (r) the right of representation;
 - (s) whether an interpreter is required and, if so, for how long and for which languages; and
 - (t) any issue pertaining to costs of the proceedings.
- (4) Unless the dispute is settled, the parties must at least draw up and sign a minute setting out the facts on which the parties agree or disagree.
- (5) A minute in terms of subrule (4) may also deal with any other matter listed in subrule (3).
- (6) The referring party must ensure that a copy of the pre-arbitration conference minute is delivered to ALDR seven (7) days prior to the date scheduled for the arbitration.
- (7) The Commissioner may, after having received 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) Non-compliance with this rule may be taken into account when considering costs at the conclusion of the arbitration hearing.

21. When must parties received the notice of an arbitration from ALDR

- (1) ALDR must notify the parties in writing of an arbitration hearing at least twenty-one (21) days prior to the scheduled date, unless the parties agree to a shorter period, or reasonable circumstances require a shorter notification 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 ALDR has the 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 ALDR and on notice to the other parties in terms of subrule (3).
- (2) ALDR may postpone an arbitration without the parties appearing if:

- (a) all parties to the dispute agree in writing to the postponement; and
 - (b) the written agreement for the postponement is received by ALDR seven (7) days before the scheduled date of the arbitration.
- (3) If the conditions of subrule (2) are not met, the party requesting postponement may apply in terms of Rule 31 to postpone an arbitration by delivering an application to the other parties to the dispute and by filing a copy with ALDR before the scheduled date of the arbitration.
- (4) After considering the written application, ALDR 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 & ARBITRATIONS & CON-ARBS

24. Where will the process take place

- (1) A dispute must be conciliated or arbitrated in the region in which the cause of action arose, or where the employer's principal place of business is located, unless an ALDR Director directs otherwise.
- (2) Parties may agree to a venue for conciliation or arbitration proceedings.
- (3) If parties cannot agree, ALDR will determine the venue for the proceedings.
- (4) ALDR may direct that a dispute be conciliated or arbitrated on an online digital platform.
- (5) A party may apply in terms of Rule 31 for a dispute to be conciliated or arbitrated on an online digital platform.
- (6) A party requested that the matter proceeds on an online digital platform in terms of subrule (4) 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 ALDR

- (1) In conciliation proceedings a party to the dispute may appear in person or be represented only by-
 - (a) if the party is an employer, a director or employee of that party, and if a close corporation, also a member thereof; or
 - (b) any member, office bearer or official of that party's registered trade union or registered employer's organisation.
 - (c) If the party is a registered trade union, any member of the trade union or an office bearer or official as defined in the Act, and authorised to represent the party, or

- an office bearer official as defined in the Act of a registered federation of trade unions and authorised to represent that party; or
- (d) if the party is a registered employer's organisation, any director or employee of an employer that is a member of that employer's organisation, or an official, or an office bearer as defined in the Act and authorised to represent that party.
- (2) 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 subrule (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, the parties, despite subrule (1) (b), are not entitled to be represented by a legal practitioner 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) No person representing a party in proceedings before ALDR in the capacity contemplated in subrule (1) or (2), other than a legal practitioner or candidate attorney contemplated in subrule (2) (a) and (b), may charge a fee or receive a financial benefit in consideration for agreeing to represent the party.
- (5) If the party to the dispute object the representation of another party to the dispute or the Commissioner suspect that the representative of the party does not qualify in terms of this Rule, the Commissioner must determine the issue.
- (6) The Commissioner may call upon a representative to establish why the representative should be permitted to appear in terms of this Rule.
- (7) A representative must tender any documents requested by the commission for purposes of subrule (5), including constitutions, payslips, contracts of employment, documents and forms of recognition agreements and special proof of membership of the trade union or employer's organisation.

- (8) Despite the provisions of subrule's (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 employer's organisation as an employer party or a member of an employer's organisation that is a party to proceedings, if the commission, after enquiring into the matter and considering relevant representation, believes that:
- (a) the representative joined the employer's organisation for the purpose of representing parties at ALDR, or a similar institution; or
 - (b) the representative's participation in the dispute resolution process 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;
 - (c) is not in keeping with the objectives of the Labour Relations Act 66 of 1995, as amended; or
 - (d) may have the consequences of unfairly disadvantaging another party to the dispute.
- (9) Despite the provisions of this Rule, but subject to the provisions of subrule (4), the Commissioner may, on application brought in accordance with Rule 31, allow a person contemplated in these rules to represent a party at arbitration proceedings before ALDR, 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 subrule 3(b)(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 of discipline of a professional 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 facts.

26. How to join or substitute parties to proceedings

- (1) ALDR or a Commissioner may join any number of persons as parties in proceedings if their right to relief depends on substantially the same question of law or fact.

- (2) A Commissioner may make a Ruling 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 subrule (2)-
 - (a) of 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.
- (4) An application in terms of this Rule must be made in terms of Rule 31.
- (5) When making a Ruling in terms of subrule (2), 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.
- (6) If in any proceedings it becomes necessary to substitute a person for an existing party, any party to the proceedings may apply to ALDR for an order substituting that party for an existing party, and a Commissioner may make such a Ruling or give appropriate directions as to the further procedure in the proceedings.
- (7) 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 person's representative, is already in possession of the documents.
- (8) Subject to any Ruling made in terms of subrules (5) and (6), 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 the party

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

28. When may ALDR consolidate disputes

- (1) ALDR or a Commissioner may, of its own accord, by consent by 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) ALDR or a Commissioner may order consolidation of separate disputes of right, where:
 - (a) the relief sought in each of the separate disputes 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 to the party or parties sought to be joined through a consolidation order;

- (c) the balance of convenience favours such consolidation; and
- (d) ALDR has jurisdiction over all of the 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) A 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 an 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 ALDR

- (1) If a party to the dispute fails to attend or be represented at any proceedings before ALDR, and that party-
 - (a) had referred the dispute to ALDR, a Commissioner may dismiss the matter by issuing a written ruling; or
 - (b) had not referred the matter to ALDR, 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 subrule (1).
- (3) If a matter is dismissed, the Commission must send a copy of the ruling to the parties.

PART SIX: APPLICATIONS

31. How to bring an application

- (1) This rule applies to any-
 - (a) application for condonation, joinder, substitution, variation or rescission;
 - (b) application in a jurisdictional dispute;
 - (c) other preliminary or interlocutory application.
- (2) An application must be brought 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 ALDR;
 - (c) the relief sought;
 - (d) the address at which the party delivering the document will accept delivery of all documents and 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);
 - (g) that a schedule is included listing the documents that are material and relevant to the application.
 - (h) The application must be supported by an affidavit or a statement. The affidavit or statement must clearly and concisely set out-
 - (i) the names, description and addresses of the parties;
 - (ii) 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;
 - (iii) a statement of legal issues that arise from the material facts, in sufficient detail to enable any party to reply to the document;
 - (iv) if the application is filed outside the relevant time period, grounds for condonation in accordance with rule 9; and
 - (v) 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 timeframes prescribed in these Rules.
- (4) Any party opposing the application may deliver a notice of opposition and an answering affidavit or answering statement within five (5) days from the day on which the application was served on that party.
- (5) A notice of opposition and the answering affidavit or answering statement must contain, with the changes required by the context, the information required by subrules (3) and (4) respectively.
- (6) The party initiating the proceedings may deliver a replying affidavit or replying statement within three (3) days from the day on which any notice of opposition and answering affidavit or answering statement is served on it. The replying affidavit or

replying statement must address only issues raised in the answering affidavit or answering statement and may not introduce new issues of fact or law.

- (7) In an urgent application, ALDR 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.
- (8) ALDR must allocate a date for the hearing of the application once a replying affidavit or replying statement is delivered, or once the time limit for delivering a replying affidavit or replying statement has lapsed, whichever occurs first.
- (9) The Commission must notify the parties of the date, time and place of the hearing of the application.
- (10) Applications may be heard on a motion roll, without requiring parties to appear.
- (11) Despite this rule, ALDR or a Commissioner may determine an application in any manner it deems fit.

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

- (1) An application for the variation or rescission of an arbitration award 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 for the matter to be heard at the Labour Court, must be delivered:
 - (a) Within ninety (90) days of the 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 subrule (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) ALDR must notify parties of its decision in terms of section 191(8) within fourteen (14) days of receiving the objection.

PART SEVEN: SECTION 188A INQUIRY BY ARBITRATOR

34. How to request an enquiry in terms of Section 188A of the Act

- (1) An employer requesting ALDR to conduct an Inquiry by an Arbitrator, must do so by delivering a completed ALDR Inquiry by Arbitrator Referral Form to ALDR.
- (2) The requesting party must:
 - (a) complete and sign the ALDR Inquiry by Arbitrator Form;
 - (b) attached proof of the employee's consent in the form of:
 - (i) the consent form signed by the employee;
 - (ii) a collective agreement that is applicable to the employee; or,
 - (iii) if the employee earns above the amount determined by the Minister in terms of section 6(3) of the Basic Conditions of Employment Act, the employee's Contract of Employment which expressly provides for an Inquiry by an Arbitrator.
 - (c) Where an ALDR Panellist is selected by the parties, proof of agreement of that panellist's appointment;
 - (d) if the 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 party to the dispute in accordance with Rule 6.
- (3) Upon submission of the referral form, ALDR will provide an invoice to the individual and/or entity specified in the referral form.
- (4) ALDR must accept, but may refuse, to process a request until the provisions of subrule (2) have been complied with and payment has been received of the full amount as per the invoice in terms of subrule (3).
- (5) Within two (2) days of receiving the request in terms of subrule (1) and payment of the prescribed fee in terms of subrule (3), ALDR must notify the parties to the Inquiry by an Arbitrator of when and where the enquiry will be held.
- (6) ALDR shall be guided by the Collective Agreement, the Employee's Contract of Employment and/or the Employer's Disciplinary Policy in providing reasonable notice of the commencement of the enquiry.
- (7) Unless the parties agree to a shorter period, a period is specified in terms of subrule (6), or reasonable circumstances require a short period, ALDR must give the parties at least three (3) days' notice of the commencement of the Inquiry by an Arbitrator.

- (8) ALDR shall appoint the arbitrator, determine the date and the venue unless the parties agree otherwise in terms of subrule (2) (c) and/or (d).

PART EIGHT: GENERAL

35. Condonation for failure to comply with the Rules

- (1) ALDR 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, ALDR 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 ALDR proceedings

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

37. How to have a subpoena issued and served

- (1) Any party who requires ALDR or a Commissioner to subpoena a person in terms of Section 142(1) of the Act, must file a completed ALDR Subpoena Request Form, together with 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 37 (1) and shall determine whether to issue the subpoena before it is signed by an ALDR Director.
- (3) If a Commissioner is not vested with the matter at the time the subpoena is requested, an ALDR Director shall determine whether to issue the subpoena.
- (4) A party requesting ALDR to waive the requirement for the party to pay witness fees in terms of Section 142(7)(c) of the Act, must set out the reasons for the request in writing at the time of requesting ALDR to issue a subpoena in respect of that witness. ALDR's decision must be made in writing and delivered when issuing the subpoena.

- (5) An application in terms of subrule (1) must be filed with the Agency at least fourteen (14) days before the arbitration hearing, or as directed by the Commissioner before the arbitration.
- (6) The Commissioner or an ALDR Director may refuse to issue 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 being subpoenaed does not have seven (7) days within which to comply with the subpoena;
 - (e) the party requesting the subpoena does not pay the prescribed witness fees, reasonable travel costs and/or subsistence expenses of the person subpoena; and/or,
 - (f) the requirements set out in this rule have not been complied with.
- (7) A subpoena must be served by the person who 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 Private Bag number.
 - (c) By leaving a copy of it at the subpoenaed person's place of residence, or place of business, or place of employment, with a person who is at least sixteen (16) years of age and is reciting, is employed there; or,
 - (d) by email.
- (8) Service of the subpoena must be accompanied by proof of payment of the prescribed witness fees for one day in accordance with the tariff amounts 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, unless ALDR has waived the requirement to pay witness fees.

37A. How to call expert witnesses

A party intending to call expert witness shall give seven (7) days, before the hearing, notice thereof to ALDR 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 at ALDR 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 requested ALDR to issue the subpoena; or
 - (b) ALDR, if the issuing of the subpoena was not requested by a party, or if ALDR waives the requirement to pay witness fees in terms of Section 142(7)(c).
- (3) Despite subrule (1), ALDR may, in appropriate circumstances, order that the subpoenaed witness receive 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 ALDR

- (1) Subject to subrule (2), ALDR'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. When doing so the Commissioner should have regard to:
 - (a) the measure of success the parties achieved;
 - (b) considerations of fairness that weights in favour of, or against, granting a cost order;
 - (c) any without prejudice offers made to settle the dispute;
 - (d) whether a party, or the person representing the 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 the 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; and,
 - (g) any other relevant factors.
- (3) A Commissioner may make an order of costs in favour of a party who appears or is represented by a person contemplated in rule 25(1)(a) in respect of a reasonable

disbursements incurred in the conduct of its case and arbitration. A Commissioner who makes an award in terms of this provision, must specify the items and amounts in respect of which costs are awarded.

- (4) A Commissioner may make an order of costs in respect of the legal fees of the party that is represented by a legal practitioner or a candidate attorney, only if the other party was also represented by a legal practitioner or a candidate attorney.

40. Certification and enforcement of arbitration awards

- (1) An application to have an arbitration award certified must be made on the CCMA's Certification and Enforcement Form in respect of an award by the Commissioner.
- (2) Any arbitration award that has been certified in terms of Section 143 of the Act may be enforced by:
 - (a) An Award which orders the payment of an amount of money, may be enforced by execution against the property of the defaulting party by the Sheriff of the Court in the Magisterial District where the defaulting 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 order of costs in terms of Section 138(10), a tax bill of costs in respect of an award of costs, and an arbitration fee charged in terms of Section 140 (2) of the Act.
- (4) The amount of money that may be enforced to 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) of the Act; and
 - (c) The Sheriff's costs permitted in terms of the Magistrate court Tariff for Sheriffs.

41. What words mean in the Rules

- (1) Any words not specified in terms of this Rule should be given its ordinary meaning, or the meaning prescribed by law.
- (2) 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.
- (3) "**Act**" means the Labour Relations Act, 1995 (Act 66 of 1995), and includes any regulations made in terms of that Act;
- (4) "**ALDR**" means the Agency for Labour Dispute Resolution (Pty) Ltd;

- (5) “**ALDR Director**” means a Director of ALDR appointed in terms of the Companies Act 71 of 2008, and includes any person delegated by an ALDR Director to perform any of the functions and/or powers provided for in these Rules.
- (6) “**Association**” means any unincorporated body of persons;
- (7) “**BCEA**” means the Basic Conditions of Employment Act 75 of 1997, together with its regulations and amendments;
- (8) “**CCMA**” means the Commission for Conciliation, Mediation and Arbitration established by Section 112 of the Act;
- (9) “**Commissioner**” means a Commissioner appointed in terms of Section 117 of the Act;
- (10) “**Con-Arb**” means proceedings held in terms of Section 191 (5A) of the Act;
- (11) “**Deliver**” means serving on all interested parties and filing with ALDR in terms of these Rules;
- (12) “**Employer**” means the employer party to the dispute;
- (13) “**File**” means to lodge with ALDR in terms of Rule 7;
- (14) “**Labour Court**” means the Labour Court established by Section 151 of the Act and includes any Judge of the Labour Court;
- (15) “**Party**” means any party to the specific proceedings before ALDR;
- (16) “**Public Holiday**” means a public holiday referred to in Section 1 of the Public Holidays Act, 36 of 1994;
- (17) “**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;
- (18) “**Serve**” and “**Service**” means to serve a document in accordance with Rule 4;
- (19) “**Schedule of Costs**” is the list of fees charged by ALDR.
- (20) “**Taxing Officer**” means any Commissioner appointed by an ALDR Director in terms of Rule 39.