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United Nations Transitional Administration
in East Timor



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Administration Transitoire des Nations Unies
au Timor Oriental

UNTAET

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REGULATION NO. 2002/5

ON THE ESTABLISHMENT OF A LABOUR CODE FOR EAST TIMOR

The Special Representative of the Secretary-General (hereinafter: Transitional Administrator),

Pursuant to the authority given to him under United Nations Security Council resolution 1272 (1999) of 25 October 1999,

Taking into account United Nations Transitional Administration in East Timor (UNTAET) Regulation 1999/1 of 27 November 1999 on the Authority of the Transitional Administration in East Timor,

After consultation in the National Council,

For the purpose of establishing minimum labour conditions and labour administration institutions, the principles and procedures on Trade Unions and labour relations, and substantive and procedural rules to govern termination of employment in East Timor,

Promulgates the following:

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CHAPTER I
Introductory provisions

Section 1
Short title

The present Regulation shall be called the *Labour Code*.

Section 2
Definitions

In the present Regulation:

“**Amalgamated Organization**” means an Organization, which has been created under the procedure contemplated in sub-section 23.2 of the present regulation;

“**Annual Report**” means the annual report of the National Labour Board established under section 4.3 in the present regulation;

“**Assistant Registrar**” means the person appointed under section 19.3 in the present regulation, as the Deputy Head of the ORTUEO;

“**Cabinet Member**” means an officer of the Council of Ministers appointed pursuant to UNTAET Regulation 2001/28;

“**Cabinet**” means the Council of Ministers of the Transitional Government in East Timor created pursuant to UNTAET Regulation 2001/28;

“**Casual Workers**” are those hired as temporary replacements to permanent workers in the event of impending emergency where the need to preserve life and property is essential;

“**Certificate**” means a Certificate of Registration issued by the Registrar under section 20.2 (b) in the present regulation;

“**Child Labor**” means work performed by a person under the age of 18 years.

“**Child**” means a person under the age of 18 years of age;

“**Collective Agreement**” means a written agreement entered into between an employer or employers’ organization and a group of workers or Trade Union providing terms and conditions of employment;

“Committee” means the National Committee for Arbitration of Labour Disputes established under UNTAET Executive Order No. 2001/1 on an Interim Procedure to Settle Disputes Arising From the Termination of Labour Contracts;

“Comparable Full-time Worker” means a full-time worker who:

- i. has the same type of employment relationship; or
- ii. is engaged in the same or a similar type of work or occupation; or
- iii. is employed in the same establishment or, when there is no Comparable Full-time Worker in that establishment, in the same enterprise or, when there is no Comparable Full-time Worker in that enterprise, in the same branch of activity, as the Part-time Worker concerned;

“Competent Court” means the District Court in the District in which the worker performs his or her duties and in the absence of such District Court, Dili District Court;

“Conciliation and Mediation Service” means the service established in the Division under section 26 in the present regulation;

“Contract of Employment” means a relation in which a person (*the worker*) performs works or services for another person or body (*the employer*), in return for wages or other Remuneration. A Contract of Employment may be oral or written;

“Department” means the Department of Labour and Solidarity;

“Discrimination” means any distinction, exclusion or preference based on race, colour, national extraction, sex, sexual orientation, maternity, family responsibility, religion, political opinion, social origin, health status including HIV and AIDS, disability, language or age which directly or indirectly nullifies or hinders equality of opportunity or treatment in access to training, access to jobs and terms and conditions of employment, but does not include specific requirements based on the inherent nature of the particular job;

“District Minimum Wage” means the wage below which it is prohibited for an employer to remunerate workers and excludes any additional grants, bonuses and payments, whether in cash or in kind, payable by the employer to the worker arising out of his or her employment, which is determined by the National Labour Board following a recommendation by the Minimum Wages Board under the present regulation and which is applicable to a particular District of East Timor.

“Essential Services” means services as prescribed by the Transitional Administrator, the interruption of which would result in massive disruption or danger to the public. For example: police, ambulance, electricity, hospitals and essential public transport are all considered to be essential services;

“Family” means spouse, Children and other members of the immediate family of direct bloodline, such as parents and siblings, as well as adopted Children;

“Forced Labour” means all work or service that is extracted from any person under threat or penalty and is not offered voluntarily, but does not include

- i. Work of a purely military character during compulsory military service required by law;
- ii. Any work or service which forms part of the normal civic obligations of the citizens of East Timor including the performance of minor communal services in the direct interest of the said community and provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services;
- iii. Work or service required as a consequence of a conviction in a court of law, provided that the work or service is carried out under the supervision and control of a public authority and that the person is not hired to private individuals or bodies; and/or
- iv. Emergency work required in the event of war or calamity or other circumstances that would endanger the existence or the well-being of the whole or part of the population.

Provided that no form of forced or compulsory labour shall be utilized –

- v. As a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;
- vi. As a method of mobilizing and using labour for purposes of economic development;
- vii. As a means of labour discipline;
- viii. As a punishment for having participated in a strike; and
- ix. As a means of racial, social, national or religious discrimination.

“Labour Relations Board” means the Board established under section 27 in the present regulation;

“Law” means the law applicable in East Timor pursuant to UNTAET Regulation 1999/1;

“Light Work for Children” means work where Children are not engaged in a work which by reasons of its length or characteristics is likely to jeopardize their health, safety or morals, allows for their fully and normal development as Children, does not prejudice the Child participation in vocational orientation or training programmes approved by the competent authority, and does not interfere with their school attendance;

“Minimum Wages Board” means the Board established under section 43 in the present regulation.

“National Labour Board” means the Board established under section 4 in the present regulation.

“National Minimum Wage” means the wage below which it is prohibited for an employer to remunerate workers and excludes any additional grants, bonuses and payments, whether in cash or in kind, payable by the employer to the worker arising out of his or her employment, which is determined by the National Labour Board following a recommendation by the Minimum Wages Board under the present regulation and which is applicable to employees in the private sector in East Timor.

“Normal Hours of Work” referred to in the definition of *Part-time Worker* may be calculated weekly or on average over a given period of employment;

“Organization” means a Workers’ Organization or Trade Union, or Employers’ Organization;

“ORTUEO” means the Office of Registrar of Trade Unions and Employers Organizations established under section 18 in the present regulation;

“Part-time Worker” means an employee whose Normal Hours of Work are less than those of Comparable Full-time Workers;

“Persons with Disabilities” means individuals whose prospects of securing, retaining and advancing in suitable employment are substantially reduced due to a duly recognized physical or mental impairment;

“Probationary Period” means the period concerning the first month of employment wherein the employer and the concerned worker are given an opportunity to determine the latter’s qualification for the work to be performed. Where the probationary employee failed to qualify, his services shall be terminated without any compensation fee.

“Registered Office” means the address of a Registered Organization’s head office which the Registrar records in the Register and which is required to be included in a Registered Organization’s rules under sub-section 23.1(b) in the present regulation;

“Registered Organization” means a Workers’ Organization or Trade Union, or an Employers’ Organization which has been Registered under section 20 in the present regulation;

“Registrar” means the person appointed under section 19 in the present regulation as the head of the ORTUEO;

“Registration” means the process established under section 20 in the present regulation for certification of Workers’ Organizations or Trade Unions and Employers’ Organizations;

“Remuneration” means basic wages or salary and any additional grants, bonuses and payments, whether in cash or in kind, payable by the employer to the worker and arising out of his or her employment;

“Seasonal Workers” means workers hired for a particular season of a year such as planting or harvesting. They must not be dismissed from service during the season except on the grounds constituting misconduct as provided in section 36.2 in the present regulation;

“Sectoral Minimum Wage” means the wage below which it is prohibited for an employer to remunerate workers and excludes any additional grants, bonuses and payments, whether in cash or in kind, payable by the employer to the worker arising out of his or her employment, which is determined by the National Labour Board following a recommendation by the Minimum Wages Board under the present regulation and which is applicable to employees in a particular sector of the private sector in East Timor. For example, the Minimum Wages Board’s recommendation of the minimum wage for nurses in East Timor would be a Sectoral Minimum Wage.

“Serious Misconduct” means one or more of the following:

- i. Dishonest or immoral behavior which is offensive to co-Workers and/or employers;
- ii. Violence against other persons at the work place unless exercised in self-defense;
- iii. Intentional or negligent behaviour that endangers security or health conditions at work;
- iv. Unjustified absence from work for more than three (3) working days in a month;
- v. Intentional or negligent behaviour resulting in the material damage of goods, tools or machinery of the employer;

- vi. Revealing industrial secrets of the employer;
- vii. Conviction and imprisonment by an East Timorese Court.

“Sexual Harassment” means unwelcome physical or verbal conduct of a sexual nature that threatens the employment of the worker or creates an intimidating and hostile working environment;

“Statutory Board” means a board established pursuant to an UNTAET Regulation.

“Termination” or **“Termination of Employment”** means termination of employment at the initiative of the employer;

“Trade Union” means a Workers’ Organization.

“Worker” means a natural person who performs paid employment under the directions of a firm or another person;

“Workers’ and Employers’ Organizations” means organizations established to further, promote and defend the economic and social interests of, respectively, workers and of employers.

“Workers’ Representatives” means officers to the Workers’ Organizations or Trade Unions whose names are included in the Workers’ Organizations application for Registration according to section 20.5(c) in the present regulation;

CHAPTER II
On Employment and Labour Administration

Section 3
Definitions and scope

3.1 In the present Chapter:

“**Board**” means the National Labour Board established under section 4 of the present regulation;

“**Board Member**” means a person appointed to the National Labour Board under section 5 of the present regulation;

3.2 The minimum working and employment conditions Timor established in this Chapter shall not prejudice higher standard that may apply in individual or collective contracts of employment.

3.3 Standards concerning industrial relations, occupational safety and health, and concerning vocational training and skills development, shall be promulgated under separate UNTAET Regulations.

3.4 The present Chapter shall apply to all employees and all workplaces with the exception of:

- (a) Public servants;
- (b) Family and small-scale holdings producing for local consumption and not regularly employing hired workers; and
- (c) Workplaces where the employer has been granted a temporary exemption following an application before the entity authorized by the present Regulation.

3.5 Contracts of Employment, which apply conditions, which are below the standards established in the present Chapter shall comply with the present regulation within one month of the present regulation’s entry into force.

Section 4
Establishment of the National Labour Board

4.1 There shall be hereby established a National Labour Board, (hereinafter: “**the Board**”), of tripartite plus composition, comprising the following specialized boards:

- (a) Labour Relations Board whose responsibilities are set out in Chapter III in the present regulation; and
- (b) Minimum Wages Board whose responsibilities are set out in Chapter V in the present regulation.

4.2 The Board shall:

- (a) Provide independent advice on occupational safety and health matters and programmes on vocational training and skills development;
- (b) Grant employers any of the exemptions as established under the present and regulation;
- (c) Determine the National Minimum Wage, Sectoral Minimum Wage, and District Minimum Wage as appropriate, according to the Minimum Wages Board's recommendation; and
- (d) Perform any other function authorized by this or another UNTAET Regulation.

4.3 The specialized Boards shall meet as required and arrive at decisions independently on matters within their specialized area. Their decisions shall be communicated to the National Labour Board for noting and reflection in the annual report.

Section 5 Composition of the National Labour Board

5.1 The Board shall be comprised of seven members (*Board Members*) who shall be appointed by the Transitional Administrator upon the recommendations made by representative workers' organizations, representative employers' organizations, the Department and representatives of civil society groups according to the rules established under sub-section 5.2.

5.2 2 (two) Board Members shall be proposed by representative workers' organizations, 2 (two) Board Members shall be proposed from representative employers' organizations, both of which will be established pursuant to the present regulation, 2 (two) Board Members shall be proposed from the Department, and one Board Member shall be proposed by representatives of civil society groups.

5.3 The Cabinet Member shall provide the Transitional Administrator with a list of Board Member candidates who shall be appointed by publication in the Official Gazette.

5.4 In making the appointments the Transitional Administrator shall strive to achieve gender balance.

Section 6
Functioning of the National Labour Board

6.1 At the outset 2 (two) Board Members shall be appointed for a term of 2 (two) years, 2 (two) Board Members shall be appointed for a term of 4 (four) years, and 3 (three) Board Members shall be appointed for a term of 6 (six) years. Thereafter, Board Members shall be appointed for a term of 6 (six) years.

6.2 On expiry of a Board Member's initial appointment, the Transitional Administrator shall either appoint a replacement Board Member for a term of 6 (six) years, or shall appoint the Board Member for a further maximum period of 2 (two) years, after which time the Board Member shall be ineligible for re-appointment.

6.3 If any of the Board Members needs to be replaced due to permanent disability such as death, disqualification such as criminal conviction, or to any other reason not included here, the Transitional Administrator shall appoint a replacement who shall only serve for the remaining term of the person who is replaced.

6.4 Board Members shall be compensated for their work in accordance with UNTAET Directives promulgated by the Transitional Administrator for such appointments.

6.5 The Board shall be serviced by a secretariat provided by the Department of Labour and Solidarity.

Section 7
Board meetings

7.1 At its inaugural meeting the Board shall elect one of its member as the Presiding Officer.

7.2 A quorum for a meeting of the Board shall be 4 (four) Board Members, provided one of the Board Members present at the meeting is the Presiding Officer.

7.3 In all meetings of the Board if consensus cannot be reached, the Board shall make decisions by majority vote. In the event of a tied vote, the Presiding Officer shall have the casting vote.

7.4 Subject to the present regulation, the Board shall establish its own rules and procedures.

7.5 The Board shall meet at regular intervals of at least once every month. The Secretary of State for Labour and Solidarity shall call special meetings as necessary.

7.6 Within sixty calendar days of the end of each calendar year, the Board shall submit an annual report on its work to the Cabinet Member, who shall present the report to the National Council.

Section 8
The Department of Labour and Solidarity

8.1 A Department of Labour and Solidarity is hereby established composed of Division of Labour, Division of Social Services and Welfare and Division of Vocational Training and Employment. The Department shall have an Administrative and Finance Unit under the Office of the Secretary of State for Labour and Solidarity.

8.2 The Division of Labour shall be comprised of the following units:

- (a) Labour Relations Unit;
- (b) Labour Inspectors Unit; and
- (c) Office of the Registrar of Trade Unions and Employers Organizations (ORTUEO).
- (e) Such other units as required and as created by UNTAET Directives.

8.2.1 The Division of Social Services and Welfare shall be comprised

- (a) Social Service Unit for Women;
- (b) Social Service Unit for Children;
- (c) Social Service Unit for Disabled and Elderly; and
- (d) Social Welfare Unit.

8.2.2 The Division of Vocational Training and Employment shall be comprised of the following Units:

- (a) Skills Development and Upgrading Unit;
- (b) Employment Service Unit; and
- (c) Labour Market Assessment Unit.

8.3 The Department shall prepare an annual report to be presented by the Secretary of State for Labour and Solidarity to the Constituent Assembly.

8.4 The functions of the Division of Labour include the following:

- (a) Conciliation and mediation;

- (b) Prevention of disputes;
- (c) Collective bargaining;
- (d) Social dialogue;
- (f) Labour Inspection; and
- (g) Occupational Safety and Health.

8.4.1 The functions of the Division of Social Services and Welfare include the following:

- (a) Work and Welfare of Women;
- (b) Work and Welfare of Children;
- (c) Work and Welfare of Persons with Disabilities and Elderly; and
- (d) Work and Welfare of Refugees.

8.4.2 The functions of the Division of Vocational Training and Employment include the following;

- (a) Job seeker registration;
- (b) Job placement;
- (c) Research and Labour Market Information;
- (d) Employment promotion and job creation;
- (e) Develop and coordinate vocational training and skills development programmes; and
- (f) Assist in gaining skills and training and employment.

8.5 The performance of the Department's functions referred to in the precedent sub-sections shall be subject to budgetary processes in accordance with UNTAET Regulation No. 2000/20.

Section 9 Fundamental principles

9.1 Workers and employers shall have the right to freedom of association and collective bargaining.

9.2 Forced Labour is hereby prohibited.

9.3 Child Labour is permitted only in accordance with section 11 of the present regulation.

9.4 Discrimination in employment and occupation, in particular as regards equal Remuneration between women and men for work of equal value is hereby prohibited.

Section 10 Employment relationship

10.1 Work and services performed by persons for another person or body in return for wages or other Remuneration shall be governed by a Contract of Employment, in one of the following forms:

- (a) Contract for a specific task, which automatically terminates on the completion of that task for a specified period of time, which automatically terminates on the specified date with no notice requirement;
- (b) Contract for casual employment, which may be terminated by either party with notice according to the rules established under sub-clause 10.1(c) or compensation pay in lieu of notice;
- (c) Contract for an unspecified period of time, which may be terminated by either party provided a notice in advance is given according to the following rules:
 - (i) for contracts lasting more than 3 (three) and less than 6 (six) months, 7 (seven) days;
 - (ii) for contracts lasting more than 6 (six) and less than 1 (one) year, 15 (fifteen) days; and
 - (iii) for contracts lasting 1 (one) year or more, 30 (thirty) days.

10.2 In an oral Contract of Employment, where a dispute arises as to the existence of the contract or a term of the contract, the onus rests on the employer to prove the non-existence of the contract and/or its terms.

10.3 Contracts shall at a minimum include the following employment particulars:

- (a) Names of the parties;
- (b) Date of commencement;
- (c) Probation period;

- (d) Rate and payment intervals of Remuneration;
- (e) Nature of the work or services to be performed, including any job description;
- (f) Normal Hours of Work;
- (g) Overtime rules;
- (h) Disciplinary rules; and
- (i) Terminations procedures.

10.4 Parties may use the standard written contract which contains the minimum particulars required by sub-clause 10.3 and which shall be issued by the Department.

10.5 Both workers and employers have the right to a written Contract of Employment. Oral contracts currently under way may be converted into written contracts.

10.6 Parties may agree to a probationary period of not longer than 1 (one) month during which time either party may terminate the contract at any time.

10.7 The hierarchy of disciplinary measures other than dismissal shall be in the following order and in a language understood by the worker:

- (a) Written warning with explanation of the shortcoming or fault;
- (b) Opportunity to respond personally or with a representative;
- (c) Second warning;
- (d) Second opportunity to respond personally or with a representative;
- (g) Third warning;
- (f) Suspension;
- (g) Demotion.

10.8 A complaint that a disciplinary measure taken is unreasonable or that the procedures in the collective agreement have not been followed may be lodged with the Division of Labour for conciliation and mediation in accordance with the procedures set out in Chapter III in the present regulation.

10.9 Dismissal principles and procedures are set out in Chapter IV in the present regulation.

10.10 Subject to sub-section 10.11, upon the death or insolvency of the employer, the Contract of Employment shall terminate within one month. In case of insolvency, the employer shall notify the Department of Labour and Solidarity at least 1 (one) month after the declaration of insolvency.

10.11 Where rights and duties of the employer are transferred after his/her death to his/her successor, the Employment Contract shall remain unaffected.

10.12 Disputes concerning insolvency shall be referred to the procedure set out in section 25 in the present regulation.

Section 11

Special modalities for certain workers

11.1 Employment of, or work by, a Child between the age of 15 (fifteen) and 18 (eighteen) which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of such a person, shall be prohibited.

11.2 Employment of, or work by, a Child under the age of 15 (fifteen) shall be prohibited, provided that Children having attained the age of 12 (twelve) may be engaged in Light Work for Children.

11.3 Sub-sections 11.1 and 11.2 do not apply to vocational or training schools or institutions, or to artistic performances when authorization has been granted following application to the Board.

11.4 The employment of, or the carrying out of work by a Child which is dangerous or potentially dangerous, shall be prohibited.

11.5 Discrimination against workers carrying or perceived to be carrying the HIV or affected by AIDS shall be prohibited.

11.6 Pre and post-employment testing of a worker without her or his informed consent shall be prohibited.

11.7 The employer shall ensure the confidentiality of any test results, and shall facilitate counseling services.

11.8 Employers responsible for workplaces where HIV infection is a risk shall take all necessary measures, including the provision of protective equipment, to protect workers from that risk.

11.9 Employers shall take reasonable measures to adjust the workplace and working time in order to accommodate HIV/AIDS affected workers until such time as they no longer have the capacity to carry out the job assigned to them.

11.10 Women workers shall be entitled to maternity leave of 12 (twelve) weeks paid at the rate of 2/3 (two thirds) of their Remuneration, on the understanding that future social security payments will cover this contingency. This entitlement shall also apply in case of miscarriage of the baby after the 6th (sixth) month of pregnancy. In the absence of a social security system, the abovementioned payment shall be made by the employer.

11.11 During the legal absence from work while on paid or unpaid maternity leave, the seniority rights of the women workers concerned shall be preserved, and such workers shall have the right to be reinstated in their former position of employment or in an equivalent position compensated at the same rate of wages.

11.12 Pregnant women workers shall be entitled to adequate time off work after notifying their employers, to undergo medical examinations relating to their pregnancy.

11.13 Women workers shall be entitled, during 3 (three) months immediately following resumption of work, to 2 (two) nursing breaks per day of 1 (one) hour each which shall be counted as paid working time.

11.14 Pregnant or nursing women workers shall not be obliged to do night work if such work is incompatible with their pregnancy or nursing.

11.15 Employment of a woman on work which is determined by the Department to be prejudicial to her health, or the health of her Child, shall be prohibited during pregnancy and up to at least 3 (three) months after confinement and longer if the woman is nursing her Child.

11.16 Work prejudicial to the woman, or that of her Child, shall include in particular, any hard labour involving:

- (a) Heavy weight-lifting, pulling or pushing;
- (b) Undue and unaccustomed physical strain, including prolonged standing;
- (c) Work requiring special equilibrium;
- (d) Work with vibrating machines;
- (e) Work involving exposure to biological, chemical or physical agents which represent a reproductive health hazard.

11.17 Measures to overcome the conditions of work referred to in sub-sections 11.14 and 11.16 shall provide an alternative to such work in the form of:

- (i) elimination of risk;
- (ii) an adaptation of her conditions of work; or
- (iii) a transfer to another post, without loss of pay, when such an adaptation is not feasible

11.18 Special measures may be taken by the Department to overcome discriminatory practices and perceptions that hinder the equal opportunities and treatment in access to training, access to jobs and terms and conditions of employment of any of the above categories of workers. Such measures shall be deemed not to be discriminatory.

11.19 On production of a medical attestation, leave shall be provided before or after the maternity leave period in the case of illness, complications or risk of complications arising out of pregnancy or childbirth. In the abovementioned circumstances, worker women may use their paid sick leave and annual leave entitlements, or when such leave entitlements are exhausted, leave without pay shall be provided.

11.20 Maternity leave shall include a period of 6 (six) weeks compulsory leave after childbirth. If this 6 (six) week period goes beyond the 12 (twelve) weeks of paid maternity leave, worker women may use their paid sick leave and annual leave entitlements, or when such leave entitlements are exhausted, leave without pay shall be provided.

Section 12 Foreign Workers

Foreign workers shall be subject to additional employment conditions regulated by a separate UNTAET Regulation.

Section 13 Conditions of work

13.1 Employers shall take all necessary measures to prevent sexual harassment in the workplace. Breach of this sub-section shall be an offence.

13.2 The normal working time shall be 8 (eight) hours per day and 44 (forty four) hours per week.

13.3 An employer who requires or permits overtime shall compensate the worker at the rate of 1.5 (one and a half) of the normal hourly rate.

13.4 The total of normal and overtime hours for each worker shall not exceed 12 (twelve) hours per day.

13.5 After a period no longer than 5 (five) hours of continuous work, workers shall be entitled to a meal break of 1 (one) hour.

13.6 After 6 (six) days of work, workers shall be entitled to a period of rest comprising 24 (twenty four) consecutive hours, which shall as far as possible be taken on the customary day of rest, namely Sunday.

13.7 Work required to be performed on a rest day and on a public holiday shall be remunerated at the rate of twice the normal hourly rate.

13.8 There shall be an annual leave entitlement of 12 (twelve) working days on full pay. For each completed month of employment the employee shall be entitled to 1(one) day of leave. For periods of employment of less than 1 (one) month, a proportional leave entitlement shall apply.

13.9 There shall be a sick leave entitlement of 6 (six) days per year, calculated at the rate of 1 (one) half day per month worked, remunerated on full pay, and thereafter 6 (six) days sick leave remunerated at the rate of ½ (one half) the hourly rate. For 3 (three) or more consecutive sick days a medical certificate shall be provided by the worker.

13.10 There shall be a special leave entitlement, with full pay, of 3 (three) days per year to cover contingencies such as marriages and death of family members, community and religious events, to be taken following notice to the employer.

13.11 For the purposes of calculating leave entitlements, a seasonal worker employed for successive seasons by the same employer shall be deemed to have been employed continuously for the aggregate of all the time he or she has actually performed work for that same employer.

13.12 Application may be made to the Board to authorize carry over into the next year the above entitlements.

13.13 Wages are payable to an employee according to the periodicity set out in the employment contract, but not less than once a month.

13.14 Wages shall be paid in cash.

13.15 Wages shall be paid on a workday and near the workplace or at a place agreed by the parties.

13.16 The employer shall not make any deductions, except amounts authorized by Court order, advance payments, or as required by UNTAET Regulations.

13.17 Employers shall make available to every employee the details of his or her wages due, deductions made, and final net amount paid for the Remuneration period concerned, in the form of a written pay statement.

Section 14
Penalties and remedies

14.1 The contravention of any of the prohibitions and/or the commission of any of the offences contained in this Chapter, shall be penalized by the Labour Relations Board established in section 27 in the present regulation, who shall then issue an order requiring compliance with this regulation pursuant to section 29 of the present regulation.

14.2 Employers who are convicted of an offence under the present Chapter shall be excluded from tendering for Government contracts.

14.3 For the purposes of this section, the Transitional Administrator may prescribe by directive, particular sections of the present Chapter contravention of which shall be an offence.

Section 15

(Transferred as Section 47A as per resolution of the Constituent Assembly)

Section 16
Appeal to the Competent Court

The decision of the Labour Relations Board shall be deemed final and enforceable as if it were an order of the Court if no party files a claim before the competent Court within 15 (fifteen) days after the date on which the Labour Relations Board hands down its written decision.

CHAPTER III **On Labour Relations**

Section 17 Definitions

In the present Chapter:

“Board” means the Labour Relations Board established under section 27 of the present regulation;

“Board Member” means a member of the Board appointed under section 27 of the present regulation;

Section 18

Establishment of the Office of the Registrar of Trade Unions and Employers’ Organizations

18.1 There is hereby established in the Department, an Office of Registrar of Trade Unions and Employers’ Organizations (*the ORTUEO*).

18.2 The ORTUEO shall have the powers and functions prescribed in the present regulation and by an UNTAET Directive.

18.3 The ORTUEO shall:

- (a) Effect Registration of Organizations in the Register;
- (b) Keep and maintain the Register, including in respect of the prescribed particulars relating to a Registered Organization and any alternation or change which from time to time is effected in the name, rules or officers thereof, or in the situation of the Registered Office;
- (c) Issue Certificates;
- (d) Give written reasons for the rejection of applications for Registration;
- (e) Require the payment of fees for applications for Registration and the issuing of Certificates; and
- (f) Have such other powers as prescribed by an UNTAET Directive.

18.4 The ORTUEO may commence a legal action in a Court, for an act, omission, or a breach of an obligation arising under the present regulation.

Section 19
Appointment of the Registrar

19.1 The ORTUEO shall consist of the positions of Registrar, Assistant Registrar, and such number of administrative staff as required and as prescribed by the Registrar.

19.2 The structure of ORTUEO and the duties of the Registrar and the Assistant Registrar, including circumstances in which the Assistant Registrar shall act in place of the Registrar, in addition to the duties contained in the present regulation, shall be further prescribed by an UNTAET Directive.

19.3 The Transitional Administrator shall appoint the Registrar and the Assistant Registrar on the recommendation of the Cabinet Member for the Department.

19.4 The term of appointment of the Registrar and the Assistant Registrar shall be 5 (five) years. On the expiry of the 5 (five) year term of the Registrar or the Assistant Registrar, as the case may be, the Cabinet may re-appoint each person for a further maximum period of 3 (three) years, after which time each person shall be ineligible for re-appointment.

Section 20
Registration of Organizations

20.1 Any 10 (ten) or more members of a Workers' Organization or any 5 (five) or more members of an Employers' Organization may apply to the Registrar for Registration.

20.2 Not later than 30 (thirty) days after the date on which the ORTUEO's receipt of the application for Registration, the Registrar shall, subject to the Organization's compliance with the present regulation:

- (a) Register the Organization in the Register; and
- (b) Issue a Certificate to the Organization.

20.3 The date of Registration shall be the date the Registrar records the Organization's details in the Register and that date shall be the date of the Certificate issued by the Registrar.

20.4 The Certificate, unless cancelled or withdrawn, shall be conclusive evidence that the Organization has been Registered.

20.5 The application for Registration shall contain the following information:

- (a) 2 (two) copies of the Organization's rules or constitution and by-laws;
- (b) The name of the Organization and address of its head office; and

(c) The titles, names, addresses and occupations of the Organization's officers.

20.6 The Registrar shall Register an Organization in the Register and issue a Certificate only where:

- (a) The Organization's application for Registration contains the information required by sub-section 20.5 of the present regulation;
- (b) The Organization is not Registered;
- (c) In the Registrar's opinion, the name of the Organization applying for Registration does not so closely resemble that of another Organization so as to mislead or cause confusion to the public; and
- (d) The constitution and by-laws or rules of the Organization applying for Registration are in compliance with section 23 in the present regulation.

20.7 If the Registrar rejects the Organization's application for Registration, the Registrar shall notify the Organization of the rejection and the reasons for the rejection not later than 15 (fifteen) days after the application for Registration is received by the ORTUEO, by sending a written notice to the Organization's head office.

20.8 Not later than 30 (thirty) days after the date of Registration, the Registrar shall cause a notice, informing the public of the issuance of a Certificate to the Organization, to be published in two prominent newspapers in East Timor.

20.9 The Registrar may require payment of a fee for Registration and for the issuance of a Certificate in an amount and in a manner to be prescribed by the Registrar.

Section 21 Effects of Registration

21.1 Upon Registration, an Organization shall be a legal person with the capacity to contract and to hold property, and to sue and be sued.

21.2 Upon Registration and thereafter, on an annual basis or not later than 6 (six) months after the end of the financial year, Organizations shall report the number of their membership to the Registrar.

21.3 Unless expressly provided in the rules of the Organization, no person shall, by reason only that he or she is a member or officer of an Organization, be liable for any of the obligations and liabilities of the Organization.

21.4 Employers shall allow an employee who is an officer or member of a Registered Trade Union reasonable time off during working hours for the purpose of carrying out the Trade Union's activities and reasonable leave of absence for training and secondment for purposes related to the Trade Union's activities. Details as to what constitutes reasonable time off and reasonable leave of absence shall be the subject of negotiations between the Trade Union and employer concerned.

Section 22 Dissolution and Cancellation of Registration

22.1 The Registrar may cancel a Certificate:

- (a) At the request of the Organization upon its dissolution, to be verified in such manner as the Registrar may require; or
- (b) Where the Registrar is not satisfied that the rules of the Organization are in compliance with section 23 of the present regulation.

22.2 Not later than 30 (thirty) days prior to cancellation of a Certificate, the Registrar shall notify the Organization concerned in writing of the Registrar's intention to cancel the Certificate. That written notice shall include the specific reason the basis on which the Registrar intends to cancel the Organization's Registration, and shall inform the Organization that, unless within 30 (thirty) days of the date of the notice the Organization shows cause as to why its Registration should not be cancelled, the Registrar intends to cancel the Certificate.

22.3 The Certificate shall be cancelled by the Registrar entering a record in the Register that the Certificate has been cancelled and also recording in the Register the specific reason the basis on which the Registrar has cancelled the Certificate.

22.4 Not later than 7 (seven) days of cancellation of a Certificate, the Registrar shall cause a notice of the fact that the Certificate has been cancelled to be published in two prominent newspapers in East Timor. The notice shall include the reasons for the cancellation of the Certificate.

22.5 Any person who is aggrieved by a decision of the Registrar in respect of the cancellation of a Certificate may, not later than 30 (thirty) days after the date on which the person receives a written notification of the decision, appeal the decision to the Board.

Section 23 Rules of Registered Organizations

23.1 The rules of every Registered Organization shall include provisions relating to the following:

- (a) Name and principal objectives of the Registered Organization;
- (b) Registered Office to which all communication and notices may be addressed;
- (c) Qualification, eligibility for membership and termination of membership;
- (d) Grounds on which an officer may be suspended or expelled from office;
- (e) Grounds on which a member may be suspended or expelled from membership;
- (f) Penalties that may be imposed on a member and procedures to be followed before such penalties can be imposed;
- (g) Membership fee and other subscriptions;
- (h) Periodic elections to all offices and for the appointment of temporary replacements if an officer becomes disqualified from holding office or is incapacitated;
- (i) Nomination of candidates for election of officers;
- (j) Powers, functions and duties of officers;
- (k) Convening and conduct of meetings, vote required for different decisions and keeping of minutes of meetings;
- (l) Manner of altering rules of the Registered Organization;
- (m) Custody and investment of the Registered Organization's funds, persons responsible and annual audit of accounts;
- (n) Manner of dissolving the Registered Organization and the disposal of the funds at the time of dissolution;
- (o) Keeping a list of its members.

23.2 An Organization, whether Registered or not, may, by resolution duly passed by the majority of at least 50 (fifty percent) of the total valid membership in the respective Organizations, unless otherwise stated in its rules, amalgamate with one or more Organizations of the same type.

23.3 Upon amalgamation, all assets, rights, obligations and liabilities of the Organizations, which have amalgamated, shall devolve to the Amalgamated Organization.

23.4 A Registered Organization may, by resolution duly passed by a majority of at least 50% (fifty percent) of the total valid membership, unless otherwise stated in its rules, alter its rules or change its name.

23.5 Not later than 1 (one) month after either the amalgamation, or the change in rules or name, the Amalgamated Organization, or the Registered Organization, as the case may be, shall make an application to the ORTUEO for Registration of the details of the change and a Certificate.

23.6 In addition to the requirements for applications for Registration set out in section 20 of the present regulation, which shall apply, the application for Registration shall include 2 (two) copies of the following:

- (a) The resolutions which have the required membership support of:
 - (i) each of the Organizations which has amalgamated, to effect amalgamation; or
 - (ii) the Registered Organization which has changed its rules or its name, to effect that change;
- (b) The rules of the Amalgamated Organization, or the Registered Organization which has changed its rules or its name, as the case may be; and
- (c) A statement signed by an official of:
 - (i) each Organization which has amalgamated; or
 - (ii) the Registered Organization which has changed its rules or its name, certifying that there has been compliance with the rules governing:
 - 1) amalgamation of the respective Organization; or
 - 2) change of rules or name of the Registered Organization as the case may be.

23.7 If the Registrar is satisfied that there has been compliance with the requirements of the rules:

- (a) For amalgamation of each Organization which has amalgamated; or
- (b) For a change in rules or name of a Registered Organization,

as the case may be, the Registrar shall, subject to compliance with the requirements of the present regulation, Register in the Registrar the Amalgamated Organization, or the change in rules or name of a Registered Organization, as the case may be, and issue a Certificate.

23.8 The procedures set out in sub-sections 20.2 to 20.9 of the present regulation shall apply to the Registration of, and issuing a Certificate to, an Amalgamated Organization, or an Organization, which has changed its name, or its rules.

23.9 A Registered Organization, which has changed its rules or its name, or an Amalgamated Organization, as the case may be, may, not later than 30 (thirty) days after receipt of the written notice of the Registrar's decision to reject an application for Registration, appeal that decision to the Board.

23.10 A Registered Organization shall, in accordance with generally accepted accounting practice, principles and procedures:

- (a) Keep books and records of account of its income, expenditure, assets and liabilities;
- (b) Prepare annual financial statements consisting of an income and expenditure statement for the financial year having ended and a balance sheet showing its assets, liabilities and financial position at the end of that financial year; and
- (c) Have its books and records of accounts and financial statements audited annually by an auditor appointed by the Registered Organization, who shall not be a member of that Registered Organization.

23.11 A Registered Organization shall maintain in separate funds all moneys received or paid by the Registered Organization in respect of any contributory, provident or pension fund.

23.12 Within 6 (six) months after the end of its financial year, a Registered Organization shall submit to the Registrar a return, which shall contain the following:

- (a) The audited financial statements referred to above;
- (b) A list of the names and postal addresses of its elected and appointed officers; and
- (c) The number of members of the Registered Organization.

23.13 The Registered Organization shall make its financial records available to all its members.

23.14 An employee Trade Union member may submit directly to his or her employer, or through the Trade Union, written authorization for the periodic deduction from the employee's wages of subscriptions payable to the Trade Union. The employee may also revoke that authorization by giving 1 (one) month's written notice to the employer and or to the Trade Union, as the case may be.

23.15 An employer shall make the authorized deductions referred to in sub-section 23.14 above and promptly remit the funds collected to the Trade Union, along with:

- (a) A list of the names of employees from whom wage deduction of subscriptions have been made on behalf of the Trade Union; and
- (b) A detailed account of the amount collected and remitted.

23.16 Upon application of any member or officer of the Registered Organization, the Registrar shall issue any order that it deems necessary to prevent or stop a contravention of any provision of the rules of the Registered Organization and the Registered Organization shall, within 30 (thirty) days of the date of the Registrar's order, either comply with that order, or appeal the order to the Board.

Section 24 Collective Bargaining Procedure

24.1 A Registered Trade Union shall have the right to represent its members in a particular workplace for purposes of collective bargaining or for dealing with an employer including on matters concerning terms and conditions of employment.

24.2 In case of a dispute in respect of the recognition of a Trade Union by an employer, any of the parties may seek the assistance of the Conciliation and Mediation Service. If the matter remains unresolved for a period of more than 5 (five) consecutive days, any of the parties may file an application with the Board to resolve the question.

24.3 A Registered Trade Union may request the employer concerned to enter into negotiations concerning the terms and conditions of employment. The employer shall provide a reply within reasonable time which shall not be later than 30 (thirty) days after receiving the request for negotiations.

24.4 An employer or a Registered Employers' Organization may also make a request to a Registered Trade Union to enter into negotiations concerning the terms and conditions of employment and the Registered Trade Union shall reply within the period set out in sub-clause 24.3 above.

24.5 The parties to collective bargaining shall bargain in good faith and shall make every reasonable effort to conclude an agreement.

24.6 In order to facilitate collective bargaining, the parties shall disclose, share and exchange all information relevant to the negotiations with each other but shall keep such information confidential in respect of persons not a party to the negotiations. The parties shall not make any false or fraudulent misrepresentation in regards to matters under negotiation.

24.7 Employers shall allow reasonable time off during working hours, without loss of pay, for the Workers' Representatives to enable them to participate in collective bargaining negotiations and to hold discussions with Registered Trade Union members.

24.8 Where an employer, a Registered Employers' Organization, or a Registered Workers' Organization has failed to reply within the period set out in sub-section 24.3 above, or where in replying, has refused the request, and where after the commencement of negotiations the parties fail to reach agreement, either party may seek the assistance of the Conciliation and Mediation Service. If no agreement is reached through conciliation and mediation, any of the parties may file the necessary application to the Board for binding arbitration.

24.9 If a dispute has remained unresolved after recourse to collective bargaining procedures, either party may take action by exercising the right to strike or to lockout after observing the prescribed cooling-off period. A party to a dispute who is intending to exercise the right to strike or to lockout shall give a written notice to the other party and to the Conciliation and Mediation Service, at least 10 (ten) days before taking such action.

24.10 The Transitional Administrator may proscribe or otherwise restrict the right to strike or to lockout in cases involving Essential Services. A party may apply for the restriction of a strike or lockout to the National Labour Board, which shall determine if the application can be granted, and by what means. If the application is granted the Board shall proceed to arbitrate the case.

24.11 An employer shall not employ a person to perform the work of an employee participating in a strike or who is locked out, unless such work is necessary to maintain minimum maintenance services or services the interruption of which would result in material damage to the working area or machinery.

24.12 If an agreement is reached, a Collective Agreement shall be prepared in writing and signed by the parties. The Collective Agreement shall contain terms which refer to the date of effectiveness of the Collective Agreement, a list of the workers covered by the Collective Agreement, the Collective Agreement's duration and in particular whether it remains valid until such time as a new Collective Agreement is reached, and the procedures for the avoidance and settlement of grievances arising out of the interpretation, application and administration of the Collective Agreement, which may include a reference to conciliation or voluntary arbitration and such other matters as may be agreed upon.

24.13 The provisions of the Collective Agreement shall not be less advantageous to the employees than the provisions of UNTAET Labour Regulations governing employment in their field of employment.

24.14 The terms of the Collective Agreement shall be deemed to be incorporated into the employment contract of each employee who is covered by the Collective Agreement.

24.15 The parties to the agreement shall deposit a copy of the agreement with the Division.

Section 25
Complaints Procedure

Any complaint, dispute or grievance involving the implementation of the provisions of employment contracts, Collective Agreements and this regulation shall be dealt with in the following manner:

- (a) At first instance, employees shall attempt to reasonably resolve any complaint, dispute or grievance with their immediate supervisor who is in turn expected to exert efforts to hear, counsel or advise the employee regarding the case thus affording both sides with the opportunity to find the necessary solution or remedy themselves;
- (b) If the attempt by the parties to settle the dispute themselves at the level of the supervisor fails or where the nature of the case is such that it would be inappropriate to deal with it at the level of the supervisor, the employee may raise the matter to the level of the employer either directly or with the assistance of a Workers' Organization or Registered Trade Union representative;
- (c) If the case remains unsettled, the parties may seek third party assistance, including voluntary arbitration, alternative forms of dispute resolution, or bringing the case to the Conciliation and Mediation Service, and ultimately the Board.

Section 26
Conciliation and Mediation Service

26.1 A Conciliation and Mediation Service is hereby established within the Department. The Cabinet Member for the Department shall appoint an adequate number of conciliators and mediators to cover Dili and as may be needed in every district of East Timor, in a manner and for a term prescribed by the Cabinet Member for the Department.

26.2 The Conciliation and Mediation Service shall provide assistance to Workers' and Employers' Organizations on the prevention and settlement of labour disputes, including the promotion of labour management cooperation and partnership based on mutual trust and respect and the use of alternative dispute resolution methods.

26.3 The Department shall make all the necessary provisions to meet the training requirements of the Conciliation and Mediation Service's conciliators and mediators.

Section 27
Establishment and Composition of the Labour Relations Board

27.1 There shall be hereby established a Labour Relations Board (*the Board*), of tripartite plus composition.

27.2 The Board shall:

- (a) Hear and decide all labour disputes between an employer or a Registered Employers' Organization and its workers or a Registered Trade Union, connected with the employment or non-employment, or the terms of employment, or the conditions of work of any such workers, and other cases as may be assigned to it;
- (b) To decide whether an application to terminate the services of a worker is justified or not including the corresponding remedies; and
- (c) Any other function authorized by an UNTAET Regulation.

27.3 The Board shall be comprised of 7 (seven) members (*Board Members*) who shall be appointed by the Transitional Administrator.

27.4 At the outset 2 (two) Board Members' appointments shall be for a term of 1 (one) year, 2 (two) Board Members' appointments shall be for a term of 2 (two) years, and 3 (three) Board Members' appointments shall be appointed for a term of 3 (three) years. Thereafter, Board Members shall be appointed for a term of 1 (one) year.

27.5 The President and the Vice President shall be appointed by the Transitional Administrator and shall represent the public. The 5 (five) other members shall be named upon the recommendation of workers' employers' and civil society groups.

27.6 When a Board Member needs to be replaced due to permanent disability such as death, disqualification due to imprisonment, or for any other reason not included here, the Transitional Administrator shall appoint a replacement who shall serve for the remaining term of the Board Member who is replaced.

27.7 The Board shall be serviced by a secretariat provided by the Division.

27.8 The Board shall be independent in the discharge of its functions.

27.9 Board Members shall be compensated for their work in accordance with UNTAET Directives promulgated by the Transitional Administrator for such appointments.

27.10 The Cabinet Member shall provide the Transitional Administrator with a list of Board Member candidates who shall be appointed by publication in the *Official Gazette of East Timor*.

27.11 In making the appointments the Transitional Administrator shall strive to achieve gender balance.

Section 28
Procedure Before the Labour Relations Board

28.1 A sitting of the Board shall be constituted through a quorum of at least 4 (four) Board Members as may be determined by the President. The decision of the majority of the Board Members in a sitting shall be the decision of the Board. In the event of a tied vote, the President shall have the casting vote. The Board shall aim to resolve or decide a case within 30 (thirty) days from the date of receipt of the case. The Board's decision shall be deemed binding on the parties.

28.2 Any decision or order of the Board shall have the same force and effect as a decision or order of a Court in East Timor and shall be enforceable as if it were an order of such Court.

28.3 For the purposes of the present regulation, the Board shall not be bound by the rules of evidence in civil proceedings and may, if it so chooses, adopt its own rules of procedure which shall have regard to the need for informality, economy and dispatch in the proceedings of the Board.

28.4 The Cabinet Member for the Department shall ensure that the Board is provided with the necessary funding and technical support to perform its functions under the present regulation.

28.5 The Board's members shall receive remuneration in the form and at a level to be determined by the Transitional Administrator.

Section 29
Jurisdiction, penalties and remedies

29.1 The Board shall have jurisdiction to determine whether an offence has been committed under the present regulation.

29.2 Where the Board determines that a contravention of any of the prohibitions and/or an offence under the present regulation has been established, the Board shall make such order that it considers necessary to ensure compliance, including an order for reinstatement of the worker, the restoration to the worker of any entitlements due, compensatory damages, or fines.

29.3 The Board shall determine the penalty for the offences committed against section 29.2 according to a fine ranging from USD \$ 150.00 (one hundred and fifty United States dollars) to USD \$ 1,500.00 (one thousand five hundred United States dollars).

29.4 Employers who are convicted of an offence under the present regulation shall be excluded from tendering for government contracts.

29.5 For the purposes of this section, the Transitional Administrator may prescribe by directive, particular sections of the present regulation contravention of which shall be an offence.

Section 30
Appeal to the Competent Court

The decision of the Board shall be deemed final and enforceable as if it were an order of the Court if no party files a claim before the competent Court within 15 (fifteen) days after the date on which the Board hands down its written decision.

Section 31
Social Dialogue

31.1 The Transitional Administrator shall, of his own accord, at the initiative of the Transitional Administration, or at the request of a Registered Workers' or Employers' Organization, convene a forum for social dialogue from time to time for the consideration of policy issues in the field of labour and employment, with a view to arriving at policy recommendations on the basis of consensus.

31.2 The forum shall be tripartite-plus and with a gender balance in composition.

31.3 The forum shall be convened at least twice a year.

31.4 The forum shall establish its own procedures and such standing or ad hoc groups as may be necessary to assist it in its work.

Section 32
Transitional Provision

On the date the present regulation enters into force, UNTAET Executive Order No. 2001/1 on an Interim Procedure to Settle Disputes Arising From the Termination of Labour Contracts shall cease to have effect notwithstanding the procedures under consideration of the National Committee for Arbitration of Labour Disputes as established in section 41 in the present regulation.

CHAPTER IV **On Termination of Employment**

Section 33 Definition

In the present Chapter:

“Board” means the Labour Relations Board established pursuant to section 27 of the present regulation.

Section 34 Implementation and Scope

34.1 Subject to sub-section 34.2, the present Chapter shall apply to all workers in East Timor in all branches of business and economic activities.

34.2 The following categories of workers are excluded from the provisions of the present Chapter:

- (a) Workers engaged under a contract of employment for a specified period of time or a specified task;
- (b) Workers serving a Probationary Period or a qualifying period of employment, determined in advance and no longer than 30 (thirty) calendar days. An employer may terminate the services of an employee during a Probationary Period at any time and the employee shall not be entitled to any compensation payment;
- (c) Workers occupying managerial, executive or confidential positions;
- (d) Workers of Statutory Boards or under the Public Service Commission as provided by UNTAET Regulation No 2000/3 on the Establishment of a Public Service Commission.

34.3 Contracts of Employment for a specified period of time shall be limited to cases in which, owing either to the nature of the work to be effected or to the circumstances under which it is going to be effected, the employment relationship cannot be of indeterminate duration.

34.4 Contracts of Employment shall be deemed of indeterminate duration, except for cases referred to in Section 34.3 above.

34.5 Contracts of Employment shall be deemed of indeterminate duration if renewed on one or more occasions.

34.6 Upon consultation with the Workers' and Employers' Organizations concerned, the Transitional Administrator may exclude from the application of the present Chapter or certain provisions thereof, categories of workers whose terms and conditions of employment are governed by special arrangements which as a whole provide protection that is at least equivalent to the protection provided by the present Chapter.

Section 35
Justification for Termination of Employment

35.1 A Worker's Contract of Employment shall not be Terminated unless there is a valid reason for such Termination connected with the capacity or conduct of the Worker or based on the operational requirements of the undertaking, establishment or service.

35.2 Actions or circumstances which shall not constitute valid reasons for Terminating a Contract of Employment include, but are not limited to, the following:

- (a) Union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours;
- (b) Seeking office as, or acting or having acted in the capacity of, a Worker's representative;
- (c) The filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;
- (d) Race, colour, gender, sexual orientation, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;
- (e) Pregnancy or absence from work during maternity leave;
- (f) Age, subject to the law and practice regarding retirement;
- (g) Absence from work due to compulsory military service or other civil obligation.

35.3 Temporary absence from work because of illness or injury shall not constitute a valid reason for Termination.

35.4 The definition of what constitutes temporary absence from work, the extent to which a medical certification should be required, and possible limitations to temporary absence shall be determined by an UNTAET Directive.

Section 36
Rules for Termination of Employment

36.1 A Contract of Employment shall not be Terminated for reasons related to the worker's conduct or performance before the worker is provided an opportunity to defend himself/herself against the allegations made, unless the employer cannot reasonably be expected in the circumstances to provide that opportunity. Every reasonable effort shall be made to avoid the Termination of Employment of a worker.

36.2 Serious Misconduct of the worker is a valid reason for Terminating a Contract of Employment where the worker is not entitled to compensation payment.

36.3 The employer shall notify a worker in writing of a decision to Terminate his/her Contract of Employment.

36.4 Termination of a Contract of Employment for unsatisfactory performance of a worker shall not be valid unless the employer has given the worker appropriate instructions and 3 (three) warnings, which shall be in writing and orally, in a language understood by the worker and, if after a minimum of 3 (three) weeks has elapsed since the first warning the worker continues to perform his/her duties unsatisfactorily.

36.5 In cases of Termination stated to be for reasons based on the operational requirements of the employer, the establishment or service, the Board shall be empowered to determine whether the Termination was indeed for these reasons and to decide whether these reasons are sufficient to justify the Termination.

36.6 If the Termination is found to be unjustified, the Board shall:

- (a) Declare the Termination invalid and order the reinstatement of the worker; and/or
- (b) Order payment of compensation in lieu of reinstatement in accordance with the schedule below, in cases where, notwithstanding the Board's declaration of invalidity of the Termination and the Board's order to reinstate the worker, the employer refuses to reinstate the worker;
 - (i) 30 (thirty) days' payment where the worker has been employed for more than 3 (three) months but less than 1 (one) year;
 - (ii) 60 (sixty) days' payment where the worker has been employed for more than 1 (one) year but less than 2 (two) years;
 - (iii) 90 (ninety) days' payment where the worker has been employed for more than 2 (two) years but less than 3 (three) years;
 - (iv) 120 (one hundred and twenty) days' payment where the worker has been employed for more than 3 (three) years; and/or

- (c) Order such other relief as may be deemed appropriate.

36.7 The burden of proving the existence of a valid reason for the Termination of a Contract of Employment shall rest on the employer.

Section 37
Period of Notice

37.1 A worker whose employment is to be Terminated shall be entitled to a period of notice or compensation in lieu thereof, unless he is guilty of Serious Misconduct, or unless the worker has waived the right to notice under section 37.4 of the present regulation.

37.2 The period of notice shall be as follows:

- (a) 10 (ten) days where the worker has been employed for less than 6 (six) months and more than three (3) months;
- (b) 15 (fifteen) days where the worker has been employed for 6 (six) months or more but less than 1 (one) year;
- (c) 30 (thirty) days when the worker has been employed for 1 (one) year or more.

37.3 Instead of providing notice, the employer may effect Termination of Employment without notice, but shall pay the worker a sum equal to the remuneration and all other benefits that would have been due to the worker up to the expiration of the required period of notice.

37.4 Nothing in the present regulation shall prevent the parties from agreeing to a longer period of notice than that prescribed in section 37.1 in the present regulation, or to waive the right to receive the required notice.

37.5 During the period of notice, the worker shall, for the purpose of seeking other employment, be allowed by the employer to a reasonable amount of time off without loss of payment, taken at times that are convenient to the parties.

Section 38
Economic, technological, structural or similar reasons for Termination

38.1 All parties concerned shall seek to:

- (a) Avert or minimize as far as possible Termination of Employment for reasons of an economic, technological, structural or similar nature, which could prejudice the efficient operation of the employer's undertaking, establishment or service; and

- (b) Mitigate the adverse effects on the worker or workers concerned of any Termination of Employment for the reasons set out in sub-section 38.1(a) above.

38.2 When an employer contemplates Termination for reasons of an economic, technological, structural or similar nature, the employer shall:

- (a) Provide the concerned workers' representatives with relevant information including the reasons for the contemplated Termination, the number and categories of workers likely to be affected and the period over which the Terminations are intended to be carried out;
- (b) Give the concerned workers' representatives, as early as possible, an opportunity for consultation on measures to be taken to avert or minimize the Terminations and measures to mitigate the adverse effects of any Termination on the workers concerned such as finding alternative employment;
- (c) Notify the Department as early as possible giving relevant information, including a written statement of the reasons for the Terminations, the number and categories of workers likely to be affected and the period over which the Terminations are intended to be carried out;
- (d) Notify the Department at least 10 (ten) days in advance of the carrying out the Terminations.

38.3 Nothing in section 38 shall prevent workers from filing a request for conciliation or mediation with the Conciliation and Mediation Service.

Section 39 Procedure for Disputes on Termination of Employment

39.1 If a Contract of Employment is to be terminated, the employer and the worker and/or their representatives, if any, shall conduct bilateral negotiations to reach consensus on the actions to be taken.

39.2 If no consensus is reached, the worker or his/her representatives may file a request for conciliation or mediation by the Conciliation and Mediation Service.

39.3 The Conciliation and Mediation Service shall notify the employer concerned of a date for the first hearing, which shall be not later than 7 (seven) days after the date of the notice to the employer. If any of the parties or his/her representative does not appear at the first session of conciliation or mediation, the parties will be notified of a new session to be held 7 (seven) days after the date set down for the initial session. If any of the parties or his/her representatives again fails to appear at the scheduled conciliation or mediation session, the parties will be

notified of a new session to be held 7 (seven) days after the date set down in the second session. If any of the parties or his/her representatives again fails to appear at the third scheduled conciliation or mediation session, it shall be deemed that the process of conciliation or mediation has failed and the Conciliation and Mediation Service shall immediately submit the case to the Board.

39.4 The procedure for conciliation or mediation before the Conciliation and Mediation Service, whether successful or not, shall be completed within 22 (twenty two) days of its initiation. The Conciliation and Mediation Service shall submit a report of the results of the conciliation or mediation efforts to the Board.

39.5 If conciliation or mediation procedures before the Conciliation and Mediation Service have been exhausted and no consensus has been reached, the worker or his/her representatives may file a request for arbitration with the Board. The Board may refuse to hear a worker's request for arbitration if the request is filed with the Board later than 1 (one) year after the date on which the cause of the action arose.

39.6 The Board shall notify the parties of a private hearing to be held within 30 (thirty) days of the receipt of the worker's request for arbitration with the Board. Proceedings shall be as follows:

- (a) Notice shall be hand-delivered in duplicate by a person authorized by the Board to any office or business location of the employer, to the employer personally, or to any person present at the employer's office or business location and who is employed by the employer. The original notice shall be left with the employer, or the person employed, who shall acknowledge receipt by signing the copy, which shall be added to the case file. If the recipient or the person employed cannot read or write a thumbprint shall suffice. If the employer or the person employed refuses to acknowledge notice, notice is nevertheless complete if the person effecting service of the notice certifies the refusal and the time, date and place of the refusal. Such certification may be made on the copy that is filed at the Board;
- (b) Notice for workers or their representatives shall be made by hand delivery at the addresses submitted in the worker's complaint;
- (c) Where a matter of practice or proceedings arises that has not been regulated by an UNTAET Regulation and there is not an express rule from the applicable law that can be applied, the Board shall decide the practice of procedure to be used;
- (d) Parties shall be present at the hearings and may present their arguments and evidence in the order and in a manner established by the Board. Members of the Board shall have the right to question both parties and the witnesses presented by the parties, if any, at any time during the hearing. When any of the parties or his/her representatives does not attend the hearing the Board shall give further notice to the parties within 7 (seven) days after the date set down for the initial

session. If any of the parties or his/her representatives again fails to appear at the scheduled hearing, the Board shall proceed to deliberate;

- (e) Upon completion of the hearing, the Board shall deliberate in private and shall decide the case. A written decision may be released upon the end of the deliberations in the same session. In complex cases, the Board may, within a maximum of 15 (fifteen) days, schedule a session in order to release the written decision. Each party shall be given a copy of the written decision.

39.7 Decisions of the Board shall be in writing addressed to the parties concerned and shall contain the following elements:

- (a) The identities of the parties and members of the Board participating in the hearing;
- (b) An account of the events and circumstances of the case;
- (c) An account of facts the Board considered to be proved or not to be proved, and an account of the factual and legal grounds of those considerations;
- (d) A finding on the fairness or unfairness of the dismissal of the worker or the claim related to the Termination of the Contract of Employment; and
- (e) If the Board finds that the dismissal was unjustified, the Board shall order reinstatement of the worker or shall order payment of an amount of money that, based on the amount claimed by the worker, remedies the unfair Termination of Contract of Employment, pursuant to section 35.1 and 35.2 of the present regulation, or the claim related to the Termination of the Contract of Employment. The amount ordered to be paid for the Termination of Contract of Employment shall not exceed the amount claimed by the worker plus any interest on that amount between the date of Termination and the date of payment.

39.8 The decision of the Board shall be deemed binding on the parties.

Section 40 Appeal to the Competent Court

The decision of the Board shall be deemed final and enforceable as if it were an order of the Court if no party files a claim before the competent Court within 15 (fifteen) days after the date on which the Board hands down its written decision.

Section 41
Transitional Provisions

41.1 This procedure shall apply to all cases related to disputes arising from the Termination of a Contract of Employment as provided for in the present regulation. Cases that are being processed by the Conciliation and Mediation Service as at the date upon which the present regulation comes into force shall follow the procedure established by the present regulation. Cases under the consideration of the National Committee for Arbitration of Labour Disputes (*the Committee*) established under UNTAET Executive Order No. 2001/1 on an Interim Procedure to Settle Disputes Arising from the Termination of Labour Disputes as at the date upon which the present regulation comes into force shall proceed to conclusion before the Committee as provided by that Executive Order.

41.2 The Committee shall not accept any new cases on and from the date of the present Regulation's entry into force. The Committee is hereby dissolved upon the completion of the last case pending before it as at date the present regulation comes into force.

41.3 UNTAET Executive Order 2001/1 ceases to have effect upon dissolution of the Committee.

CHAPTER V
On the Establishment of a Minimum Wages Board

Section 42
Definitions

In the present Chapter:

“Board” means the Minimum Wages Board established under section 43 of the present regulation;

“Board Member” means a member of the Minimum Wages Board appointed under section 43 of the present regulation.

Section 43
Establishment, Composition and Functioning of the Board

43.1 There shall be hereby established a Minimum Wages Board (hereinafter: **“the Board”**).

43.2 The Board shall issue recommendations to the National Labour Board regarding the fixing of the National Minimum Wage, a Sectoral Minimum Wage, or a District Minimum Wage, as appropriate.

43.3 The Board shall be comprised of 7 (seven) part-time members (hereinafter: “**Board Members**”) who shall be appointed by the Cabinet Member.

43.4 At the outset 2 (two) Board Members’ appointments shall be for a term of 1 (one) year, 2 (two) Board Members’ appointments shall be for a term of 2 (two) years, and 3 (three) Board Members’ appointments shall be for a term of 3 (three) years. Thereafter, Board Members shall be appointed for a term of 3 (three) years.

43.5 2 (two) Board Members shall be proposed by representative Workers’ Organizations, 2 (two) Board Members shall be proposed by representative Employers’ Organizations, and 3 (three) Board Members shall be proposed by the Department according to the following formula: one nominee from the Department of Finance, one nominee from the Department of Economic Affairs and one nominee from the Department of Labour and Solidarity.

43.6 When a Board Member’s appointment expires, the Cabinet Member shall appoint a replacement Board Member. When a Board Member needs to be replaced due to permanent disability such as death, disqualification due to imprisonment, or to any other reason not included here, the Cabinet Member shall appoint a replacement who shall only serve for the remaining term of the person who is replaced.

43.7 In making appointments to the Board, the Cabinet Member shall strive to achieve gender balance.

43.8 Board Members shall be compensated for their work in accordance with UNTAET Directives promulgated by the Transitional Administrator for such appointments.

43.9 The Board shall be serviced by a secretariat provided by the Department’s Division of Labour and Social Services.

Section 44 Board Recommendations

44.1 At its inaugural meeting the Board shall elect one of its members as the Presiding Officer.

44.2 A quorum for the Board to make a recommendation in respect of the National Minimum Wage, a Sectoral Minimum Wage or a District Minimum Wage shall be at least of 4 (four) Board Members.

44.3 The Board’s recommendations in respect of the National Minimum Wage, a Sectoral Minimum Wage or a District Minimum Wage shall be by majority vote. In the event of a tied vote, the Presiding Officer shall have the casting vote.

44.4 In making its recommendations in respect of the National Minimum Wage, a

Sectoral Minimum Wage or a District Minimum Wage, the Board shall at a minimum have regard to the following:

- (a) The needs of workers and their families, taking into account the general level of wages, the cost of living, social security benefits and the relative living standards of other social groups; and
- (b) Economic factors, including the requirements of economic development, levels of productivity and any effect the wage might have on employment.

44.5 The Board shall issue a recommendation in respect of the National Minimum Wage, a Sectoral Minimum Wage or a District Minimum Wage, as appropriate at least once every 2 (two) years.

44.6 The Board shall communicate a recommendation in respect of the National Minimum Wage, a Sectoral Minimum Wage or a District Minimum Wage to the National Labour Board within 7 (seven) calendar days of the date of the Board's recommendation.

44.7 Upon the recommendations given by the Board, the National Labour Board shall determine the National Minimum Wage, a Sectoral Minimum Wage or a District Minimum Wage as appropriate, and according to section 7 of the present regulation.

44.8 Within 30 (thirty) calendar days of receipt of a recommendation from the Board, the National Labour Board shall issue a determination to be published in the *Official Gazette of East Timor*, and to be otherwise published and disseminated throughout East Timor.

44.9 Subject to this Regulation, the Board may establish its own rules of procedure for making recommendations in respect of the National Minimum Wage, a Sectoral Minimum Wage or a District Minimum Wage, including in respect of the calling of submissions from interested parties and non-government experts.

Section 45 Enforcement

45.1 The National Labour Board's determinations with respect to the National Minimum Wage, a Sectoral Minimum Wage or a District Minimum Wage as appropriate, shall not be subject to abatement, provided that Collective Agreements may provide for wages that exceed the National Minimum Wage, a Sectoral Minimum Wage or a District Minimum Wage, as appropriate.

45.2 The Department shall take appropriate measures, such as inspection, to determine whether an employer is complying with the National Labour Board's determinations in respect of the National Minimum Wage, a Sectoral Minimum Wage, or a District Minimum Wage.

45.3 If the Department determines that any employer has failed to apply the National Labour Board's determinations in respect of the National Minimum Wage, a Sectoral Minimum Wage or a District Minimum Wage, it shall notify the Labour Relations Board established in section 27 of the present regulation, who shall then issue such order that it considers necessary to ensure compliance according to section 29 of the present regulation.

45.4 The contravention by an employer of the Minimum Wages determined by the National Labour Board shall constitute an offence, which shall be penalized by the Labour Relations Board according to the range of penalties established in section 29 of the present regulation.

Section 46
Transitional Provision

In recognition of the resolution of the National Council of 13 July 2001, the Transitional Administrator should submit the present Regulation to the Constituent Assembly for its consideration, including its eventual amendment under UNTAET Regulation No. 2001/2 of 16 March 2001.

Section 46 A
Transitional Provision

Not later than 1 (one) month after the date of the present Regulation's entry into force, all Contracts of Employment which contain conditions which do not meet the minimum standards established in this Chapter, shall conform to the provisions of the present Regulations.

Section 47
Entry into force

The present regulation shall enter into force on 1 May 2002.

Sergio Vieira de Mello
Transitional Administrator

SCHEDULE
(Chapter II, section 8.3)

STANDARD CONTRACT

The following employment particulars shall be included in a form in Portuguese, English, Bahasa and Tetum to be prepared by the Department's Division:

- (a) Names of the parties;
- (b) Date of commencement;
- (c) Probation period;
- (d) Rate and payment intervals of Remuneration;
- (e) Nature of the work or services to be performed, including any job description;
- (f) Normal Hours of Work and arrangements for notice and payment of overtime;
- (g) Disciplinary rules;
- (h) Termination procedures.