REVIEW AND ANALYSIS OF COMPLIANCE OF THE NATIONAL LABOUR LEGISLATION OF TRINIDAD AND TOBAGO WITH CARICOM MODEL LABOUR LEGISLATION

May, 2007

By: Clive Pegus

Table of Contents

Table of Contents................................................................................................................ 1
I. Introduction................................................................................................................ .3
   Legal status of CARICOM Model Law and ILO Conventions in Trinidad and Tobago 4
   Legal Obligations of Trinidad and Tobago..................................................................... 6
   Applicable Legislation of Trinidad and Tobago............................................................. 6
II. Termination of Employment....................................................................................... 7
   Scope of Application....................................................................................................... 7
   Continuity of employment.............................................................................................. 8
   Protection of employment............................................................................................... 8
   Termination of employment........................................................................................... 9
   Successor......................................................................................................................... 9
   Remedies....................................................................................................................... 10
   Retrenchment ................................................................................................................ 10
   Winding up.................................................................................................................... 11
III. Registration, Status and Recognition of Trade Unions and Employers’ Organizations ................................................................................................................... 12
    Freedom of association protection for employees ....................................................... 13
    Registration and Status ............................................................................................... 14
    Recognition of Bargaining Rights................................................................................ 16
IV. Equality of Opportunity and Treatment in Employment and Occupation............... 20
    Objectives ..................................................................................................................... 20
    Status of ILO Conventions............................................................................................ 20
    Principles....................................................................................................................... 20
V. Occupational Safety and Health and the Working Environment.............................. 23
    Content.......................................................................................................................... 23
    Scope of Application..................................................................................................... 23
    Registration of Industrial Establishments and Mines ................................................... 23
    Administration.............................................................................................................. 23
    General Occupational Safety and Health Requirements............................................. 24
    Duties of employers ..................................................................................................... 25
    Duties of Employees..................................................................................................... 26
    Hazardous Chemicals, Physical Agents and Biological Agents................................... 26
    Notices.......................................................................................................................... 26
    Enforcement................................................................................................................ 27
VI. Recommendations..................................................................................................... 28
Review and Analysis of Compliance of the National Labour Legislation of Trinidad and Tobago with CARICOM Model Labour Laws

Termination of Employment................................................................. 28
Registration, Status and Recognition of Trade Unions and Employers’ Organizations29
Equality of Opportunity and Treatment in Employment and Occupation............... 29
Occupational Safety and Health and the Working Environment..................... 30
I. Introduction

This study undertakes a detailed audit and assessment of the extent to which existing national legislation of Trinidad and Tobago complies with the CARICOM model labour harmonization legislation in the areas of:

- Termination of employment;
- Registration, status and recognition of trade unions and employers’ organizations;
- Equality of opportunity and non-discrimination in employment; and
- Occupational safety and health and the working environment.

These model laws, which were adopted by the CARICOM Standing Committee of Ministers responsible for Labour in 1995 and 1997 for implementation by Member States, are based on the core labour standards of the ILO and seek to mirror related ILO Conventions, namely:

- Termination of Employment Convention, 1982 (No. 158);
- Freedom of Association Convention, 1948 (No. 87);
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98);
- Equal Remuneration Convention, 1951 (No. 100);
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111);
- Occupational Safety and Health Conventions.

In fact, among the stated objectives of the first three named CARICOM Model Labour Laws is to give effect to these related ILO Conventions. The other CARICOM Model Labour Law seeks to follow closely the standards established in core ILO Occupational Safety and Health Conventions and Recommendations. It should be noted however that the ILO has adopted several OSH instruments since the approval of the CARICOM OSH Model Law. In particular, the ILO adopted in 2002 a Protocol to Convention No. 155 to regulate further the recording and notification of occupational accidents and diseases, which should be considered by all CARICOM Member States in their efforts to implement the CARICOM Model Labour Laws.

While the primary focus of the study is concerned with compliance of Trinidad and Tobago with the CARICOM Model Labour Laws, comparisons are made with the applicable ILO Conventions. This approach has practical value in the light of Trinidad and Tobago’s obligation under international law and ILO jurisprudence to comply with treaties that it has ratified and with core international labour standards and to submit periodic reports on such compliance to the Committee of Experts on the Application of Conventions and Recommendations. In fact, Trinidad and Tobago’s obligation to comply with ratified ILO Conventions and core fundamental labour standards has greater legal force within Trinidad and Tobago than that of its obligation with respect to the CARICOM Model Labour Law.
This study is based essentially on legislative or statutory compliance. Its remit does not include other sources of law such as the common law or case law. It also does not focus on what may be accepted and practised as good industrial relations principles within Trinidad and Tobago. The intention is to ensure that the legislation in Trinidad and Tobago becomes fully compliant with the CARICOM Model Labour Laws and its ILO obligations.

While this assessment seeks to address the salient provisions of the CARICOM Model Labour Laws and related ILO Conventions and in particular gaps and inconsistencies in the legislation of Trinidad and Tobago, it does not address every single provision. Consequently, absence of comment on any particular provision of the CARICOM Model Labour Laws should not be construed as an acknowledgement of compliance by Trinidad and Tobago.

Recommendations are made regarding amendments required to address gaps and inconsistencies in Trinidad and Tobago’s legislation with a view to achieving compliance with the CARICOM Model Labour Laws and applicable ILO Conventions. It must be noted that these recommendations emanate from a purely technical assessment of the legislation against the benchmark of the CARICOM Model Labour Laws and related ILO Conventions. It is recognised that the soundness and practicability of the proposed amendments are matters to be determined by the Government of Trinidad and Tobago through the consultative process with the social partners in the labour movement and the employers’ federation. The final determination of the practical value and soundness of the recommendations must be that of the people of Trinidad and Tobago in general and the social partners in particular. It is therefore anticipated that the findings and recommendations of the study will be subject to review by the social partners of Trinidad and Tobago.

Legal status of CARICOM Model Law and ILO Conventions in Trinidad and Tobago

The CARICOM Model Labour Laws were adopted by the CARICOM Ministers of Labour for implementation by Member States. While Members States are expected to implement the model law as an important requirement of the CARICOM Single Market and Economy, there is no legal obligation to ensure compliance; the CARICOM Model Labour Laws are precatory and non-binding; and non-compliance does not invite any sanctions.

The non-binding nature of the CARICOM Model Labour Laws contrasts with the binding nature of a ratified ILO Convention. One fundamental principle of international law is that treaties are binding upon the parties to them and must be performed in good faith. This rule known as *pacta sunt servanda* is one of the
oldest principle of international law, now re-affirmed in Article 26 of the Vienna Convention on the Law of Treaties. Moreover, Article 27 of the Vienna Convention on the Law of Treaties prevents a party from invoking the provisions of its domestic law as justification for its failure to perform an obligation under the treaty.

It should be noted also that the International Labour Conference at its Eighty-eight Session declared that all Members of the ILO, which includes Trinidad and Tobago, have an obligation, arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are subject to those Conventions, namely:

a) freedom of association and the effective recognition of the right to collective bargaining;
b) the elimination of all forms of forced and compulsory labour;
c) the effective abolition of child labour; and
d) the elimination of discrimination in respect of employment and occupation.

Thus, it is important from an international law perspective for the domestic law of Trinidad and Tobago to be consistent with its international legal obligations.

The question arises as to how a treaty or convention ratified by Trinidad and Tobago becomes domestic law within the jurisdiction of Trinidad and Tobago. Trinidad and Tobago has a dualist and not a monist legal tradition. In a dualist legal system, unlike a monist system, treaties when ratified are not automatically incorporated into the domestic law of the ratifying State. The process of incorporation of the provisions of an international treaty, where not consistent with or not a part of existing domestic law, requires the enactment of legislation.

The process of legislation in Trinidad and Tobago, as is the case of all Parliamentary systems of democracy, is at times a time-consuming and cumbersome process. Trinidad and Tobago may wish therefore to consider the adoption of the good practice of Belize, which provides through its International Labour Organization Conventions Act, Chapter 304:01 (Act No. 37 of 1999) for the automatic incorporation in domestic law of ILO Conventions ratified by Belize, regardless of any conflicting law. In fact, where the ratified ILO Convention conflicts with an existing law in Belize, the provision of the ILO Convention prevails. This procedure is an efficient method of incorporating a ratified ILO Convention into domestic law. Of course, the automatic incorporation is subject to democratic and Parliamentary safeguards in that prior to ratification the treaty is laid before Parliament subject to negative resolution procedure. Parliament must have a say as to whether the treaty should be ratified in the first place. For the system of automatic incorporation of a treaty to be effective within the democratic

---

1 www.belizelaw.org
framework, the ratification process must not be seen as an exclusive executive act. It must be subject to Parliamentary scrutiny.

Legal Obligations of Trinidad and Tobago
Trinidad and Tobago therefore has a legal obligation under international law and ILO jurisdiction to comply with the following ILO Conventions that it has ratified or acceded to and that are subject of this study:

- Freedom of Association Convention, 1948 (No. 87);
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98);
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111);
- Equal Remuneration Convention, 1951 (No. 100);

It should be noted that Trinidad and Tobago has not ratified the Termination of Employment Convention, 1982 (No. 158) or any of the 18 core Occupational Safety and Health (OSH).

Therefore one can argue that the provisions of these Conventions, which are relevant to this study, are not only international treaty law but also peremptory norms of international labour law.

Applicable Legislation of Trinidad and Tobago
The statutes of Trinidad and Tobago which seek to incorporate provisions relevant to the CARICOM Model Laws and the applicable ILO Conventions are:

- Industrial Relations Act, 1973 (Chapter 88:01)
- Retrenchment and Severance Pay Act No. 32 of 1985
- Trade Unions Act,
- Occupational Safety and Health Act, 2005
II. Termination of Employment

The objectives of the CARICOM model legislation on termination of employment are:

a) to give effect to the provisions of the ILO Convention concerning Termination of Employment, 1981 (No. 158);

b) to confer upon employees the right to continuity of employment and protection against unfair dismissals; and

c) to establish procedures for employers to follow to terminate an employment relationship in a fair and equitable manner.

It should be noted that Trinidad and Tobago has not ratified the ILO Convention No. 158. Its *Redundancy and Severance Pay Act, 1985* addresses issues relating to the, 2003 addresses in a substantial manner the scope of issues contained in the CARICOM Model Law or the ILO Convention No. 158, including terms and conditions of employment, continuity of employment, termination of employment, unfair dismissal, redundancy and severance pay, burden of proof and remedies. There is no legislation addressing terms and conditions of employment, continuity of employment, and unfair dismissal and termination of employment in terms covered by the CARICOM Model Labour Law.

**Scope of Application**

The provisions of Part 11 of the model legislation (contracts of employment) apply to all contracts of employment with certain categories of exemption listed in section 10 (fixed term or fixed task contracts of less than six weeks, employee of a family member and employees with collective agreements).

ILO’s Convention 158 applies to all branches of economic activities and to all employed persons except fixed term or specific task workers, workers during their probationary period and workers engaged on a casual basis for short terms. The Convention also provides for Governments after consultation with workers’ and employers’ representative organizations to exclude categories of workers whose terms and conditions are governed by special arrangements, which facilitate protection equivalent to the Convention.

Trinidad and Tobago has no legislative provision relating to contract of employment as provided for in the CARICOM Model Legislation. There is no legislative provision defining the period of probation or any requirement for a contract of employment to be in writing and delivered to an employee within fourteen days of employment.

The Trinidad and Tobago does not have legislation relating to termination of employment except in the area of the retrenchment and severance pay. Its Industrial
Relations Act is limited in terms of its coverage of rights and obligations enshrined in the CARICOM Model Legislation on Termination of Employment.

**Continuity of employment**

There is no legislative provision in Trinidad and Tobago relating to continuity of employment.

**Protection of employment**

The Industrial Relations Act Chapter 88:01 protects a worker from dismissal by reason of his lawful trade union activities. It also protects a worker from dismissal in circumstances that are harsh and oppressive or not in accordance with the principles of good industrial relations practice.

Section 42(1) An employer shall not dismiss a worker, or adversely affect his employment, or alter his position to his prejudice, by reason only of the circumstances that the worker—

a) is an officer, delegate or member of a trade union;

b) is entitled to the benefit of an order or award under this Act;

c) has appeared as a witness or has given any evidence in a proceeding under this Act; or

d) has absented himself from work without leave after he has made an application for leave for the purpose of carrying out his duties as an officer or delegate of a trade union and the leave has been unreasonably refused or withheld.

Under Section 42(2) an employer shall not—

a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;

b) dismiss or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours;

c) with intent to dissuade or prevent the worker from becoming such officer, delegate or member or from so appearing or giving evidence, threaten to dismiss a worker, or to affect adversely his employment, or to alter his position to his prejudice by reason of the circumstance that the worker is, or proposes to become, an officer, delegate or member of a trade union or that the worker proposes to appear as a witness or to give evidence in any proceeding under this Act.

It should be noted that the definition of a worker under the *Industrial Relations Act* is very restrictive, which undermines the protection afforded by this provision.

Section 3 of the *Industrial Relations Act* excludes the following categories from the definition of a worker under the Act:

a) a public officer, as defined by section 3 of the Constitution;
b) a member of the Defence Force or any ancillary force or service thereof, or of the Police, Fire or Prison Service or of the Police Service of any Municipality, or a person who is employed as a rural constable or estate constable;

c) a member of the Teaching Service as defined in the Education Act, or is employed in a teaching capacity by a university or other institution of higher learning;

d) a member of the staff and an employee of the Central Bank established under the Central Bank Act;

e) a person who, in the opinion of the Board—
   (i) is responsible for the formulation of policy in any undertaking or business or the effective control of the whole or any department of any undertaking or business; or
   (ii) has an effective voice in the formulation of policy in any undertaking or business;

f) employed in any capacity of a domestic nature, including that of a chauffeur, gardener or handyman in or about a private dwelling house and paid by the householder;

g) an apprentice within the meaning of the Industrial Training Act.

**Termination of employment**

There are no statutory provisions relating to termination of employment on the grounds of misconduct or unsatisfactory performance or breach of contract of employment or notice required to be given by either party. There are also no statutory provisions on summary dismissal or constructive dismissal or on the burden of proof in the matter of dismissals.

**Successor**

There are provisions in the *Industrial Relations Act* that make a successor employer responsible in matters relating to dismissal.

Section 19 (2) provides that the Industrial Court may, during the course of any dispute pending before it, direct that any successors to, or any assignees of, the business of the employer who is a party to the dispute shall be joined or substituted as a party to the dispute; and any order or award of the Court in such dispute (whenever made) shall, save to the extent that it is otherwise expressly provided in such order or award, be binding on the successors or assignees of that employer.

Section 19(3) For the purposes of this section, any question whether a person is the successor to, or an assignee of, another shall be determined by the Court from all the circumstances in accordance with good conscience and the principles of good industrial relations practice and shall be binding on the persons referred to in subsection (1) and is conclusive for all purposes connected with the order or award.
This provision falls short of the CARICOM Model Labour Law, which provides that employment with a predecessor employer is automatically considered to constitute a single period of continuous employment with the successor employer.

**Remedies**
The Court may, in any dispute concerning the dismissal of a worker, order the re-employment or reinstatement (in his former or a similar position) of any worker, subject to such conditions as the Court thinks fit to impose, or the payment of compensation or damages whether or not in lieu of such re-employment or reinstatement, or the payment of exemplary damages in lieu of such re-employment or reinstatement.

An order under subsection (4) may be made where, in the opinion of the Court, a worker has been dismissed in circumstances that are harsh and oppressive or not in accordance with the principles of good industrial relations practice; and in the case of an order for compensation or damages, the Court in making an assessment thereon shall not be bound to follow any rule of law for the assessment of compensation or damages and the Court may make an assessment that is in its opinion fair and appropriate.

**Retrenchment**
The *Retrenchment and Severance Pay Act* No. 32 of 1985 makes provision for advance information and consultation with the recognised trade union prior to any retrenchment consistent with the CARICOM Model Legislation.

The minimum period of notice to be given to an employee of retrenchment is nine weeks, which compares favourably with the CARICOM Model Legislation. Workers are to be given time off to seek alternative employment. The retrenchment benefits to be paid to an employee also compares favourably with the CARICOM Model Legislation. A worker who has served the employer for between more than one year but less than five years is entitled to two weeks’ pay at his basic rate for each year of service and where he has served the employer without a break for five years and more, he is entitled to three weeks pay for each year of service in respect of service after the fifth year.

There is provision for prior notice and consultation with the recognised trade union. In addition, a retrenched worker has the statutory right to preferential treatment in the event of future recruitment by the employer.

The provision on retrenchment and severance pay, except for the issue of priority treatment of severance pay and the restrictive definition of a worker, is in conformity with the CARICOM Model Labour Law.
**Winding up**

Section 24 provides that in the event of a winding up or the appointment of a receiver all severance benefits, including terminal benefits, due to a retrenched worker shall enjoy the same priority as wages or salary due to any clerk or servant. This falls short of the CARICOM Model Labour Law which provides for priority treatment to be given to wages and other employment payments to which the worker is entitled over all other creditors, including the State and the social security system.
III. Registration, Status and Recognition of Trade Unions and Employers’ Organizations

The objectives of CARICOM Harmonization Act Regarding Registration, Status and Recognition of Trade Unions and Employers’ Organisations (referred to in this section as “CARICOM Model Legislation”) are:

a) to give effect to the provisions of National Constitutions on freedom of association, the ILO Conventions on Freedom of Association, No. 87 (1948) and on the Right to Organise and to Collective Bargaining, No. 98 (1949);
b) to establish procedures for the registration and status of trade unions and employers’ organisations;
c) to promote and protect the recognition of trade unions; and

d) to encourage orderly and effective collective bargaining.

Unlike the ILO Convention on Termination of Employment, No. 158 (1981), Trinidad and Tobago, together with all other CARICOM Member States have ratified the ILO Conventions on Freedom of Association, No. 87 (1948) and on the Right to Organise and to Collective Bargaining, No. 98 (1949). In addition, the principles and standards inherent in ILO Conventions No. 87 and 98 are fundamental principles of international labour law, which all ILO Members, even if they have not ratified the Conventions in question, have an obligation, arising from the very fact of membership in the ILO, to respect, to promote and to realise in good faith.

Introduction

The Trade Unions Act provides for the registration and status of trade unions. The Industrial Relations Act provides for the recognition and certification of majority trade unions as the exclusive bargaining agent in respect of a specified bargaining unit.

Scope of application

For the purposes of recognition and certification, the Industrial Relations Act section 2 (3) excludes the following persons from the definition of a worker:

a) a public officer, as defined by section 3 of the Constitution;
b) a member of the Defence Force or any ancillary force or service thereof, or of the Police, Fire or Prison Service or of the Police Service of any Municipality, or a person who is employed as a rural constable or estate constable;
c) a member of the Teaching Service as defined in the Education Act, or is employed in a teaching capacity by a university or other institution of higher learning;
d) a member of the staff and an employee of the Central Bank established under the Central Bank Act;
e) a person who, in the opinion of the Board—

---

2 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, Paragraph 2
(i) is responsible for the formulation of policy in any undertaking or business or the effective control of the whole or any department of any undertaking or business; or
(ii) has an effective voice in the formulation of policy in any undertaking or business;

f) employed in any capacity of a domestic nature, including that of a chauffeur, gardener or handyman in or about a private dwelling house and paid by the householder;
g) an apprentice within the meaning of the Industrial Training Act.

This wide exclusion from the definition of worker undermines the principles of freedom of association and the right to collective bargaining. In addition, the preamble to the Industrial Relations Act expressly states that it shall have effect notwithstanding section 4 and 5 of the Constitution, which provide inter alia for freedom of association.

Basic employee rights

Section 71 enumerates the basic employee rights. It states that every worker as between himself, his employer and co-workers shall have the following rights, that is to say:

a) the right to be a member of any trade union or any number of trade unions of his choice;
b) the right not to be a member of any trade union or other organisation of workers or to refuse to be a member of any particular trade union or other organisation of workers;
c) where he is a member of a trade union, the right, subject to this Act, to take part in the activities of the trade union (including any activities as, or with a view to becoming an official of the trade union) and (if appointed or elected) to hold office as such an official.

Freedom of association protection for employees

Section 42 (2) of the Industrial Relations Act Chap. 88:01 provides that an employer shall not—

a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;
b) dismiss or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours;
c) with intent to dissuade or prevent the worker from becoming such officer, delegate or member or from so appearing or giving evidence, threaten to dismiss a worker, or to affect adversely his employment, or to alter his position to his prejudice by reason of the circumstance that the worker is, or proposes to become, an officer, delegate or member of a trade union or that the worker proposes to appear as a witness or to give evidence in any proceeding under this Act.

An employer who contravenes subsection (1) or (2) is liable on summary conviction
to a fine of ten thousand dollars and to imprisonment for one year; and the Magistrate making the order for conviction may also order that the worker be reimbursed any wages lost by him and direct that, notwithstanding any rule of law to the contrary, the worker be reinstated in his former position or in a similar position.

Protection of trade union from employer interference
There is no statutory provision, which prohibits any person from committing an act designed to promote the establishment of a trade union under the domination of an employer or employers’ organisation.

Basic employer rights
There is no statutory provision, which addresses the issue of basic employer rights specified in the CARICOM Model Legislation coupled with corresponding penalties.

Registration and Status

Registrar

There is no requirement for consultation with representatives of trade unions and employers’ organisations in the appointment of the Registrar.

Registration

Section 10 of the Trade Unions Act provides as follows:
1) Every trade union to which this Act applies shall be registered under this Act.
2) It shall be deemed to be a sufficient compliance with this section if the Registrar, by writing under his hand, permits any person named therein to take the necessary steps for the formation of a trade union and if the trade union is in fact registered within six months of the permission being given.
3) Any seven or more members of a trade union may by subscribing their names to the rules of the union, and otherwise complying with the provisions of this Act with respect to registration, register such trade union under this Act.
4) If any of the purposes of a trade union is unlawful, the trade union shall not be registered and if registered the registration shall be void.

Section 18 makes some additional provisions regarding registration as follows:

(1) With respect to the registration under this Act, of a trade union, and of the rules thereof, the following provisions shall have effect:
   a) an application to register the trade union and printed copies of the rules, together with a list of the titles and names of the officers, shall be sent to the Registrar;
   b) the Registrar, upon being satisfied that the trade union has complied with the
Regulations respecting registration in force under this Act shall register the trade union and the rules;

c) no trade union shall be registered under a name identical with that by which any other existing trade union has been registered, or so nearly resembling such name as to be likely to deceive the members or the public;

d) the registrar shall not register any combination as a trade union unless in his opinion, having regard to the constitution of the combination, the principal objects of the combination are statutory objects, and may withdraw the certificate of registration of any such registered trade union if the constitution of the union, has been altered in such a manner that, in his opinion, the principal objects of the union are no longer statutory objects, or if in his opinion the principal objects for which the union is actually carried on are not statutory objects;

Legal Status

A trade union is considered to be an unincorporated entity. It may purchase or lease, in the names of the trustees for the time being of the union, any land, and may sell, exchange, mortgage, or let the land, and no purchaser, assignee, mortgagee, or tenant, shall be bound to inquire whether the trustees have authority for any sale, exchange, mortgage, or letting, and the receipt of the trustees shall be a discharge for the money arising therefrom; and for the purposes of this section every branch of a trade union shall be considered a distinct union.

Safeguard of funds

Section 16 imposes a duty upon every treasurer or other officer of a trade union to render a just and true account of all moneys received and paid by him since he last rendered the like account, and of the balance then remaining in his hands, and of all bonds or securities of the trade union, which account the trustees shall cause to be audited by some fit and proper person or persons appointed by the registrar, and the trade union shall pay such person or persons in accordance with the scale of fees prescribed by regulations made under this Act.

Annual return

Further section 29 provides that a general statement of the receipts, funds, effects, and expenditure of every trade union registered under this Act shall be transmitted to the Registrar before 1st June in every year, and shall show fully the assets and liabilities at the date, and the receipts and expenditure during the year preceding the date, to which it is made out of the trade union; and shall show separately the expenditure in respect of the several objects of the union, and shall be prepared and made out up to such date, in such form and shall comprise such particulars as the Registrar may from time to time require; and every member of, and depositor in any such trade union shall be entitled to receive, on application to the treasurer or secretary of that trade union, a copy of the general statement, without making any payment for the same.
Together with the general statement there shall be sent to the Registrar a copy of all alterations of rules and new rules and changes of officers made by the trade union during the year preceding the date to which the general statement is made out, and a copy of the rules of the trade union as they exist at that date.

**Amalgamation**

Section 25 provides for the amalgamation of two or more trade unions. It states that any two or more trade unions may, by the consent of not less than two-thirds of the members of each of those trade unions, become amalgamated together as one trade union, with or without any dissolution or division of the funds of such trade unions or either or any of them; but no amalgamation shall prejudice any right of a creditor of either or any union party thereto.

**International affiliation**

The Trade Unions Act does not have any express provision, which provides for trade unions and employers’ organisations to participate in, join or be affiliated to any international federations of trade unions or employers’ organisations. This should not be construed to mean that such a right does not exist.

**Recognition of Bargaining Rights**

**Tripartite Body for Certification**

The Industrial Relations Act Chap. 88:01 provides for a tripartite body for the determination of all applications, petitions and matters concerning certification of recognition, including the taking of preferential ballots as well as the certification of recognised majority unions.

**Application procedures**

Section 32 provides that all trade unions desiring to obtain certification of recognition must apply to the Registration Recognition and Certification Board (“the Board”) in the prescribed form and describe the proposed bargaining unit in respect of which certification is sought. The union shall serve a copy on the employer and the Minister of Labour.

Section 38 regulates the time within which an application for recognition may be made. It states that, subject to the Act, no application for certification of recognition under this Part shall be entertained or proceeded with where—

a) there is a recognised majority union for the same bargaining unit or any part thereof described in the application for certification; and

b) the application is made earlier than two years from the date on which the recognised majority union obtained certification as such, but an application may be made with leave of the Court although two years have not expired since the certification was obtained.

(2) Where a union desires to obtain leave of the Court for the purpose of subsection (1)(b) it shall make an application to the Court for the purpose and, if the
Court is satisfied that good reasons exist for the application to be made before the expiration of two years from the date when the recognised majority union obtained certification as such, it shall grant leave accordingly.

(3) In determining whether good reasons exist under subsection (2), the question whether the union making the application before the Court has as members in good standing more than fifty per cent of the workers comprised in the bargaining unit for which the recognised majority union is certified, may be taken into account, but may not be the sole reason on which leave is to be granted.

**Appropriateness of bargaining unit**

*Section 33 (1)* mandates the Board to first determine the bargaining unit it considers appropriate in the circumstances and in so doing the Board shall have regard to—

a) the community of interest between the workers in the proposed bargaining unit, including work location and methods and periodicity of payment therefor;

b) the nature and scope of the duties exercised by the workers in the proposed bargaining unit;

c) the views of the employer and the trade union concerned as to the appropriateness of the bargaining unit;

d) the historical development, if any, of collective bargaining in the industry or business to which the proposed bargaining unit belongs;

e) any other matters the Board considers to be conducive to good industrial relations.

*Section 3 (2)* In considering the appropriateness of a bargaining unit, the Board shall not be restricted by the terms of the application under section 32(3)(b) and may, notwithstanding such terms, determine the bargaining unit most appropriate for the workers of the employer in accordance with subsection (1).

**Employer recognition or notice**
The employer may give its views with respect to the appropriateness of the bargaining unit but there is no provision for recognition by the employer.

**Recognition**
The Board shall certify as the recognised majority union that trade union which it is satisfied has, on the relevant date, more than fifty per cent of the workers comprised in the appropriate bargaining unit as members in good standing.

(2) Where it appears to the Board that more than one union has as members in good standing more than fifty per cent of the workers comprised in an appropriate bargaining unit it shall certify as the recognised majority union that union which has the greatest support of the workers determined by preferential ballot, being in any event more than fifty per cent of those workers.

(3) All questions as to membership in good standing shall be determined by the
Board, but a worker shall not be held to be a member in good standing, unless the Board is satisfied that—

a) the union of which it is alleged the worker is a member in good standing has followed sound accounting procedures and practices;

b) the particular worker has—

(i) become a member of the union after having paid a reasonable sum by way of entrance fee and has actually paid reasonable sums by way of contributions for a continuous period of eight weeks immediately before the application was made or deemed to have been made; or

(ii) actually paid reasonable sums by way of contributions for a continuous period of not less than two years immediately before the application was made or deemed to have been made;

c) no part of the funds of the union of which it is alleged the worker is a member in good standing has been applied directly or indirectly in the payment of the entrance fee or contributions referred to in paragraph (b); and

d) the worker should be considered a member in good standing having regard to good industrial relations practice.

It should be noted that ILO jurisprudence requires that where one or more trade unions have applied for recognition status and none enjoys the majority support of the employees in a bargaining unit, the most representative trade union should be afforded the right to negotiate for a collective agreement at least on behalf of its members in the bargaining unit.

Compulsory recognition
Section 40 provides (1) Where a trade union obtains certification of recognition for workers comprised in a bargaining unit in accordance with this Part, the employer shall recognise that trade union as the recognised majority union; and the recognised majority union and employer shall, subject to this Act, in good faith, treat and enter into negotiations with each other for the purposes of collective bargaining.

Section 40 (2) A recognised majority union or an employer that fails to comply with this section is guilty of an industrial relations offence and liable to a fine of four thousand dollars.

It should be noted that section 24 (3) of the Civil Service Act affords a privileged position to the pre-existing recognized association without providing objective and pre-established criteria for determining the most representative association.

Collective Agreement
The Industrial Relations Act makes provision regarding the contents of a collective agreement, its enforceability and successor rights and obligations.

Section 46 provides for the registration of a collective agreement. Section 47 makes
the terms and conditions all registered collective agreements binding on the parties and directly enforceable in the Court. Section 48 provides that any successor or an assignee of an employer or recognised majority union shall be deemed to be a party to a registered agreement.
IV. Equality of Opportunity and Treatment in Employment and Occupation

Objectives
The objectives of the CARICOM Model Harmonisation Act regarding Equality of Opportunity and Treatment in Employment and Occupation (hereinafter referred to in this chapter as “the CARICOM Model Labour Law”) are:

a) to give effect to the provisions of the National Constitution; to ILO Convention concerning Equal Remuneration, No. 100 (1951); to the ILO Convention concerning Discrimination In Employment and Occupation, No. 111 (1958); and to certain provisions in the UN Convention on the Elimination of All Forms of Discrimination Against Women;

b) to eliminate, as far as possible, discrimination in employment and occupation against persons on the grounds of race, sex, religion, colour, ethnic origin, national extraction, social origin, political opinion, disability, family responsibilities, pregnancy or marital status;

c) to promote recognition and acceptance of the principle of equal opportunity and treatment on the above grounds in employment, occupation and other related activities including education, vocational training, employment services, provision of goods and services, partnerships and professional trade organisations.

Status of ILO Conventions
All thirteen CARICOM Member States, whose laws are reviewed in this study, except Suriname have ratified ILO Convention concerning Discrimination in Employment and Occupation, No. 111 (1958) and ILO Convention concerning Equal Remuneration, No. 100 (1951). All thirteen CARICOM Member States have ratified or acceded to the UN Convention on the Elimination of All Forms of Discrimination Against Women.

Principles
The fundamental principles underlying the CARICOM Model Labour Law insofar as protection against unlawful discrimination is concerned are:

(i) any discrimination in employment or occupation based on race, sex, religion, colour, ethnic origin, indigenous population, national extraction, social origin, political opinion, disability, family responsibilities, pregnancy, marital status or age except for purposes of retirement and restrictions on work and employment of minors shall be unlawful;

(ii) the scope of application of the principles shall include all workers in the public and private sectors, professional partnerships, professional
or trade organisations, qualifying bodies, vocational training bodies and employment agencies;

(iii) the principles of unlawful discrimination and equality of opportunity shall also apply to the provision of goods, services and facilities, advertisements and application forms;

(iv) the prohibition against unlawful discrimination applies both to workers and to persons seeking employment;

(v) the prohibition against unlawful discrimination extends to terms and conditions of employment, including conditions of work or occupational safety and health measures, workplace facilities, and career development opportunities;

(vi) measures to promote equality of opportunity of a temporary nature shall not be deemed unlawful discrimination;

(vii) employers have a duty to ensure equal pay for work of equal value;

(viii) the person alleging a violation shall bear the evidential burden of presenting a prima facie case of discrimination and thereafter the burden shall shift to the respondent to disprove the allegation.

Section 4 of the Constitution of Trinidad and Tobago provides for the right of the individual to equality of treatment from any public authority in the exercise of any functions without discrimination by race, origin, colour, religion or sex.

It should be noted that marital status, family responsibilities, disability, age are not listed in the Constitution as prohibited grounds of discrimination.

An Equal Opportunities Act was enacted in 2000, which prohibited discrimination in employment on grounds of sex, race, ethnicity, religion, origin, marital status or disability. This Act fell short of the CARICOM Model Legislation and the ILO Convention No. 111 by virtue of the non-inclusion of social origin, political opinion, family responsibilities and pregnancy.

The Act is intended to apply to all workers in the public and private sector, professional partnerships, professional or trade organisations, qualifying bodies, vocational training bodies and employment agencies. It also applied to the provision of goods, services and facilities, advertisements and application forms.

The Act has not yet been implemented because of legal challenges to the Act which has finally been held by the Privy Council to be valid. The Government now has to implement the legislation.

Attention is further drawn to the concerns expressed by the ILO Committee of Experts concerning the discriminatory aspects of several government regulations, which provide that married women female officers may have their employment terminated if family obligations affect their efficient performance of duties (section 57 of the Public Service Commission Regulations; section 52 of the Police Service Commission Regulations; and section 58 of the Statutory Authorities’ Service
Commission Regulation). It also noted that a female officer who marries must report the fact of her marriage to the Public Service Commission (section 14 (2) of the Civil Service Regulations. These Regulations are inconsistent with the CARICOM Model Labour Law and ILO Convention No. 111.
V. Occupational Safety and Health and the Working Environment

Unlike the other model labour laws, CARICOM Model Law on Occupational Safety and Health and the Working Environment (hereinafter referred to in this Chapter as “the CARICOM Model Labour Law”) does not have among its objectives the incorporation of any ILO Conventions. It is an Act to provide for the occupational safety and health of workers in the working environment.

Trinidad and Tobago has not ratified any of the 18 core OSH Conventions nor the Protocol to Convention No. 155.

Content
There are provisions relating to:
(i) registration of industrial establishments and mines;
(ii) administration;
(iii) general occupational safety and health requirements;
(iv) duties of employers, workers and other persons;
(v) hazardous chemicals, physical agents and biological agents;
(vi) enterprise safety and health representatives and committees;
(vii) notices of injury, accidents and explosions;
(viii) enforcement; and
(ix) offences and penalties.

Scope of Application
Trinidad and Tobago has a modern legislation patterned after the CARICOM Model Legislation. The Occupational Safety and Health Act (hereinafter referred to in this section on Trinidad and Tobago as “the Act”) applies generally to industrial establishments but there are certain provisions applicable to all workplaces. It applies also to industrial establishments belonging to or occupied by the State.

Registration of Industrial Establishments and Mines
The Act in section 60 provides that every person shall, within one month after he/she begins to occupy, or to use any premises, as a factory, serve on the inspector and the local health authority for the district a written notice stating the name and address of the occupier and title of the firm, address and location of the factory, the nature of the work, the name of the local health authority, and such other particulars as may be prescribed.

Administration
The Act provides for the establishment of the Occupational Safety and Health Authority and the appointment of a Chief Inspector and inspectors to administer and enforce the Act and regulations.

The Authority is a tripartite body with technical or professional persons with expert knowledge to:
a) assist and encourage persons concerned with matters relevant to any of the general purposes of the Act to further those purposes;
b) make such arrangements as it considers appropriate for the carrying out of research, the publication of results of research and the provision of training and information; and
c) make recommendations to the Minister and to promote awareness, including enforcement and the implementation of a national policy on occupational safety and health.

The Authority also has the power to approve and issue, with the consent of the Minister of Labour, such codes of practice, as it deems suitable. The Authority appoints the Chief Inspector. Other Inspectors are designated by the Minister of Labour on the advice of the Chief Inspector. The National Advisory Council is mandated to submit an annual report to Minister for incorporation in the Annual Labour Administration Report for Parliament.

Provision is made for the Occupational Safety and Health Agency (the Agency). The Agency shall carry out any directions given to it by the Authority. It has the power to direct operations of the Act.

**General Occupational Safety and Health Requirements**
The provisions in this section relates to work at dangerous machines, protective clothing devices, emergency drills and exits, cleanliness and sanitary conveniences, disposal of waste, noise and vibrations, overcrowding, ventilation, availability of drinking water, washing and change facilities, first-aid provisions and restrooms.

Section 22 of the Act prohibits a person under the age of 18 from operating machines, which are of a dangerous character. A worker over the age of 18 shall not work at a machine unless he/she has been fully instructed as to the dangers arising from its operations and the precautions to be observed and (a) has received sufficient training or (b) is under adequate supervision.

All persons entering an area in an establishment where they are likely to be exposed to the risk of head or bodily injury, or injury from air contaminants or any other bodily injury must be provided with suitable protective clothing or devices of an approved standard and adequate instruction in the use of such protective clothing or device.

By virtue of sections 8 and 25 of the Act, the employer and occupier of an industrial establishment employing twenty-five or more persons has the duty to prepare and revise in consultation with workers representatives in the industrial establishment –

a) a written statement of his/her general policy with respect to the safety and health of persons employed in the industrial establishment, specifying the organisation and arrangements for carrying out that policy; and
b) an emergency plan based on a risk assessment.
There is no statutory provision for the appointment of a workers’ safety representative for an industrial establishment with more than five but less than twenty-five workers. It should be noted that Trinidad and Tobago’s provision in this regard falls short of the requirements of the CARICOM Model Legislation which calls for the appointment of a Joint OSH Committee where the industrial establishment has twenty or more employees and for a workers’ safety representative in the case of more than five but less than twenty workers.

**Duties of employers**

Part 11 of the Act provides for general duties of employers to their employees as well as to other persons. It also provides general duties of occupiers.

Section 6 of the Act provides that it shall be the duty of every employer to ensure, so far as is reasonably practicable, the safety, health and welfare at work of all his/her employees and in particular,

a) the provision and maintenance of plant and systems of work that are, so far as is reasonably practicable, safe and without risks to health;

b) arrangements for ensuring, so far as is reasonably practicable, safety and absence of risks to health in connection with the use, storage and transport of equipment, machinery, articles and substances;

c) the provision of adequate and suitable protective clothing or devices if an approved standard to employees who in the course of employment are likely to be exposed to the risk of head, eye, ear, hand or foot injury, injury from air contaminant or any other bodily injury and the provision of adequate instructions in the use of such protective clothing or devices;

d) the provisions of such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the safety and health at work of his employees;

e) so far as is reasonably practicable as regards any place of work under the employer’s control, the maintenance of it in a condition that is safe and without risks to health and the provision and maintenance of means of access to and egress from it that are safe and without such risks;

f) the provision and maintenance of a working environment for his/her employees that is, so far as reasonably practicable, safe, without risks to health, and adequate as regards amenities and arrangements for their welfare at work; and

g) compliance with all other duties imposed on him/her by the Act and relevant.

An employer also have under section 7 of the Act the duty to conduct his/her undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment, who may be affected thereby are not thereby exposed to risks to their safety and health. Self-employed persons also have a similar duty.
An occupier also has a duty to take steps within approved standards to protect the safety and health of the public in the vicinity of his industrial establishment from dangers created by the operation and processes carried on therein and to take special care to ensure that plant and equipment used are of such integrity and that such adequate safety systems exist as to prevent the occurrence of fugitive emissions not conforming with an approved standard.

**Duties of Employees**

Section 10 of the Act provides that an employee shall:

a) take reasonable care for the safety and health of himself/herself and of other persons who may be affected by his/her acts or omissions at work;

b) cooperate with his/her employer so far as necessary to ensure compliance with the provisions of the Act and regulations;

c) report to his/her employer or supervisor any contravention of the Act or Regulations of which he or she knows; and

d) use or wear the equipment, protective devices and clothing required;

Section 15 of the Act gives a statutory right to an employee to refuse to work where he/she has reasonable justification to believe that (a) equipment, machine, tool or device or (b) physical condition of workplace - presents imminent and serious danger to life or health. The employee who exercises his/her right to refuse to work has a duty to report promptly the circumstances of the intended refusal to the employer or representative and a representative of the safety and health committee. In this scenario, the worker is deemed to be at work with pay. An employer may file complaint with Minister if he/she has reasonable grounds to believe that the worker acted without reasonable cause or in bad faith.

Section 76 provides that no employer or representative shall dismiss or threaten to dismiss, suspend or impose any penalty or intimidate or coerce worker because he/she acted in compliance with Act or Regulations

**Hazardous Chemicals, Physical Agents and Biological Agents**

The Minister may give orders to prohibit, limit or place conditions on use of hazardous chemicals, physical agents and biological agents. An employer is required to maintain an inventory of all hazardous chemical and hazardous physical agents. The inventory must contain information on the effects of the chemicals or agents. All hazardous materials are to be labelled and there must be adequate information to workers on the handling and disposal thereof so as to eliminate risks.

**Notices**

The employer has an obligation under section 46 of the Act to notify the Chief Inspector where a person is killed or critically injured from any cause at the workplace within forty-eight hours of such death or injury. There is no statutory...
duty on the employer to provide any notification to the recognised trade union or safety representative.

Where a medical practitioner forms the opinion that a patient is suffering from an occupational disease contracted in the industrial establishment, he/she shall within forty-eight hours send to the Chief Medical Officer for onward transmission to the Chief Inspector a notice concerning such disease.

**Enforcement**
Inspectors are vested with the power to enter, inspect any register, remove any register or article violating the Act, conduct tests, require an employer to conduct tests, make enquiries of any person in the workplace and require any equipment to be tested. The Inspector may also order an employer to comply with Act forthwith or within such time as he or she may specify.

Where an Inspector makes an order and finds that the contravention is a danger or hazard to safety and health, he/she may order that the workplace, equipment, machine, device, article or process be not used until the order is complied with. He or she may also order that work be stopped until the danger or hazard is removed.
VI. Recommendations

Termination of Employment

In order for Trinidad and Tobago to comply fully with the CARICOM Model Labour Law, the following amendments and additions to existing legislation will be required:

1) Legislation will have to be introduced to provide a duty on employers to prepare a written contract of employment within fourteen days of the employment of an employee and to deliver such contract to the employee forthwith. All contracts of employment should provide for certain standard provisions set out in the CARICOM Model Law. The legislation should apply to all employees except those employed for less than six weeks, family members of the employer and employees whose employment is regulated by a collective agreement.

2) Section 19 (2) of the Industrial Relations Act on successor employer should be repealed by a new provision which provides that where a business or part of it is sold, leased, transferred or otherwise disposed of, the periods of employment with the successive employer shall be deemed to constitute a single period of continuous employment with the successor employer of the employment was not terminated and severance pay was not paid.

3) A new provision should be added to the Industrial Relations Act to provide that an employee’s continuous employment shall not be treated as interrupted due to absences on account of leave, temporary lay-off, inability to work on account of an occupational disease or accident.

4) A new provision should be added to the Industrial Relations Act to protect the employment of an employee from termination unless there is a valid reason connected with the capacity or conduct of the employee or based on the operational requirements.

5) A new provision should be included in the Industrial Relations Act to set the maximum period for the probationary period to six months.

6) A new provision in the Industrial Relations Act on unfair dismissal which sets out reasons which should not constitute valid grounds for dismissal in terms consistent with the CARICOM Model Labour Law and ILO Convention No. 158.

7) A new provision should be added to the Industrial Relations Act on constructive dismissal, which will entitle an employee to terminate the contract of employment without notice where the employer’s conduct has made it unreasonable to expect the worker to continue the employment relationship.

8) The meaning of the term “worker” in the Retrenchment and Severance Benefits Act should amended to include workers in all occupations and workers who are in effective control of departments or have an effective voice in the formulation of policy.
Review and Analysis of Compliance of the National Labour Legislation of Trinidad and Tobago with CARICOM Model Labour Laws

9) Section 24 of the Retrenchment and Severance Benefits Act should be amended to provide that severance benefits and terminal benefits of workers are given priority over all other creditors including the State and the social security system.

Registration, Status and Recognition of Trade Unions and Employers’ Organizations

In order to comply fully with the requirements of the CARICOM Model Labour Law and the relevant ILO Conventions, the following legislative amendments are required:

1) This wide exclusion from the definition of worker in the Industrial Relations Act (Section 2 (3)) undermines the principles of freedom of association and the right to collective bargaining and be amended to include all workers except those employed in the disciplined forces, but subject to national regulations for right of association for those employed in the police, fire and prison services.

2) There should be a statutory provision, which prohibits any person from committing an act designed to promote the establishment of a trade union under the domination of an employer or employers’ organisation coupled with corresponding sanctions.

3) There should be a statutory provision which addresses the issue of basic employer rights specified in the CARICOM Model Legislation.

4) There should be a statutory requirement for the competent authority to consult with representatives of trade unions and employers’ organisations in the appointment of the Registrar.

5) The Trade Unions Act should be amended to ensure that trade unions and employers’ organisations be deemed to be bodies corporate with the capacity to contract and to hold property, and sue and be sued in their own names.

6) Section 34 should be amended to confer the right on the most representative trade union to negotiate collective agreement at least on behalf of their own members where there is no recognised majority union.

7) There is need for the Minister of Finance to establish objective criteria for determining the most representative association of civil servants pursuant to Section 24 of the Civil Service Act.

Equality of Opportunity and Treatment in Employment and Occupation

In order to comply with the CARICOM Model Labour Law, Trinidad and Tobago will need to enact and implement the Equal Opportunities Act with an amendment to include the prohibition of discrimination by virtue of social origin, political opinion, family responsibilities and pregnancy.
In addition, there is the need to repeal certain discriminatory provisions relating to female public officers, namely, regulations 57 and 58 of the Public Service Commission Regulations.

**Occupational Safety and Health and the Working Environment**

In order to comply with the CARICOM Model Labour Law, Trinidad and Tobago will be required to amend its Occupational Safety and Health Act to provide for the appointment of a workers’ safety representative for an industrial establishment with more than five but less than twenty-five workers and reduce the minimum threshold for the appointment of a Joint OSH Committee from twenty five employees to twenty employees.