

Committee on the Application of Standards

Date: 18 May 2025

Governments appearing on the preliminary list of individual cases have the opportunity, if they so wish, to supply on a purely voluntary basis, written information before 19 May 2025.

► Information on the application of ratified Conventions supplied by governments on the preliminary list of individual cases

Malaysia (ratification: 1961)

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

The Government has provided the following written information as well as copies of the Industrial Relations Act 1967 (Act 177) (updated text), Consultation sessions on section 12A of Act 177, the Trade Unions (Amendment) Act 2024, the Industrial Relations (Amendment) Regulations 2024, the Trade Unions (Amendment) Regulations 2024, the Appointment of date of coming into operation of the Industrial Relations (Amendment) Act 2020 and the Trade Unions (Amendment) Act 2024, and statistics on collective agreements.

Legislative reform

Malaysia reaffirms its strong collaboration with the ILO through the Memorandum of Understanding on the Decent Work Country Programme signed in 2019. This partnership has supported Malaysia in advancing legislative reforms in line with international labour standards. Domestically, the National Labour Advisory Council serves as a key tripartite platform to discuss and strengthen such reforms. The amendments to the Industrial Relations (Amendment) Act 2020 and the Trade Unions (Amendment) Act 2024 reflect major reforms to Malaysia's industrial relations legislation. The first phase of the Industrial Relations (Amendment) Act 2020, effective 1 January 2021, strengthened access to justice by providing for automatic referrals of dismissal cases and enhancing the powers of the Industrial Court. The second phase, which took effect on 15 September 2024, introduced more complex reforms, particularly on trade union recognition and sole bargaining rights, which reflect the need to regulate situations where multiple unions may represent the same class of worker. The significant amendments to Act 177 included section 9 (claim for recognition), section 11 (trade unions accorded recognition), sections 12A and 12B (new section – sole bargaining rights), section 13 (collective bargaining), section 26 (reference of trade disputes to the court), section 62 (power to make regulations relating to the process of determining the sole bargaining rights) and the First Schedule (essential services). This gradual approach enables employers, trade unions and employees to adapt progressively to relevant legal changes.

Complementary amendments to the Trade Unions Act 1959 (Act 262), effective 15 September 2024, removed long-standing sectoral restrictions on union formation. Trade unions and federations of trade unions are no longer required to be set up in a specific establishment or subject to the principle of similarity in industry, trade or occupation. This change allows for broader representation and a more diverse membership. The amendment to the Act also allows for the existence of more than one trade union representing the same group of workers in a single workplace. This amendment gives workers the freedom to choose which union they wish to join. Also important was the repeal of the competency checks, which were previously used as a stalling tactic by employers to delay or challenge union recognition. This amendment shifts towards facilitating more efficient and fair union recognition procedures. These reforms under Act 177 and Act 262 form a coherent framework to further improve Malaysia's industrial relations system. The amendment significantly aligns Malaysia's legal framework and legislative instruments with the Convention. It represents a strategic shift towards a more enabling commitment to freedom of association, a democratic system for trade unions and effective collective bargaining. This alignment between Act 177 and Act 262 and the subsidiary regulations demonstrates a commitment to a cohesive and integrated industrial relations system in Malaysia. Please find below the amendments to the Industrial Relations Act 1967 (Act 177) and its regulations, as well as the Trade Unions Act 1959 (Act 262) and its regulations, which came into effect on 15 September 2024.

Article 1 of the Convention: Adequate protection against anti-union discrimination

Although sections 8 and 59 of the Industrial Relations Act 1967 (Act 177) remain unchanged, we would like to highlight the key steps taken by the Government to ensure that anti-union discrimination complaints are properly handled and workers have access to effective remedies.

(1) Prohibition of anti-union discrimination (section 8)

Section 8 of the Industrial Relations Act 1967 expressly prohibits any act of interference, intimidation or discrimination by employers or their representatives against workers for participating in lawful trade union activities. This includes:

- dismissal or threats of dismissal;
- alteration of employment conditions to the worker's detriment;
- denial of promotion or employment based on union affiliation.

To illustrate enforcement, the Department of Industrial Relations Malaysia (DIRM) recorded the following complaints under section 8:

- complaints received in 2023: 16 cases;
- complaints received in 2024: 9 cases;
- complaints received between January and April 2025: 0 cases.

All 25 cases filed under section 8 of Act 177 in 2023 and 2024 have been resolved (21 at the DIRM level through conciliation and voluntary withdrawal, while 4 were referred to the Industrial Court). Most cases were resolved through conciliation by the Director General for Industrial Relations (DGIR), showing the effectiveness of administrative processes in handling union-related complaints. All section 8 cases were either settled or referred for adjudication, ensuring that workers' rights were addressed. This reflects the Government's commitment to protecting trade union rights and the efficiency of Malaysia's industrial relations system.

(2) Right to representation and referral to the Industrial Court (section 20)

In 2021, section 20 was amended to remove the Minister's discretion in referring unfair dismissal cases to the Industrial Court. This authority now lies with the DGIR. Under the new process, workers can file complaints directly with the DGIR, who will attempt conciliation. If no settlement is reached, the DGIR must refer the case to the Industrial Court, ensuring that all workers have access to a fair hearing. This reform promotes transparency, consistency and stronger protection for workers, especially those dismissed for union involvement.

(3) Criminal enforcement mechanism (section 59)

Section 59, which prohibits retaliation against workers for trade union activities, remains in effect. As it is a criminal offence, there is no conciliation process. Instead, the DIRM investigates complaints and, if necessary, initiates criminal proceedings.

(4) Government measures to ensure access and effective redress

Although sections 8 and 59 remain unchanged, the Government has put in place administrative measures to ensure that all anti-union discrimination complaints are promptly handled by the DGIR, victims have access to redress through conciliation or judicial referral and section 59 cases are properly investigated and prosecuted when offences are found.

In summary, while sections 8 and 59 remain unchanged, the amended section 20 significantly strengthens legal protections for workers against dismissal, including for union activities. This, along with active enforcement and complaint-handling mechanisms, highlights Malaysia's commitment to upholding international labour standards and protecting workers' rights to freedom of association without discrimination or reprisal.

Duration of recognition proceedings

The amendment to the Industrial Relations Act 1967 (Act 177), effective from 15 September 2024, introduced key reforms to simplify and speed up the trade union recognition process. The main changes are:

- (a) The responsibility for determining the eligibility and representational scope of trade unions has shifted from the Director General of Trade Unions (DGTU) to the DGIR. Previously, decisions by the DGTU could be appealed to the Minister, with the Minister's decision being subject to judicial review. This multi-tiered process has been eliminated, making the recognition process more efficient and quicker.
- (b) The authority to decide on the capacity of trade union members (that is, managerial, executive, confidential or security status), and issuance of the recognition declaration, has been shifted from the Minister to the DGIR, removing a discretionary layer and streamlining decision-making.

These changes have significantly reduced the duration of the recognition process from six to nine months or more to a maximum of four months in most cases. The reforms also address the legal gap that allowed employers to challenge decisions by the DGTU or DGIR during the recognition process. Under the new framework:

- There is no longer a separate decision on competency subject to early legal review.
- Employers can only contest the DGIR's decision after the recognition process is complete.

This has strengthened the integrity of the recognition process and has minimized procedural delays arising from premature judicial interventions.

The DIRM closely monitors and addresses any allegations of employer interference during the trade union recognition process under sections 4, 5, 7 and 8 of Act 177, especially during the secret ballot.

When a complaint of employer interference is raised during recognition:

- The DIRM will promptly assess the complaint. If found to be without merit, the recognition process will proceed without delay. No complaints have yet caused a delay in the process.
- If the issue can be resolved during the process, the DIRM will continue the proceedings without postponement to avoid unnecessary delays.
- If the issue is unrelated to the recognition process but involves violations under sections 4, 5, 7 or 8, the parties are advised to file a separate complaint with the DIRM. These matters will be handled independently and will not disrupt the recognition process.

This approach has been affirmed by the Federal Court in the case of *Valeo Malaysia Sdn Bhd v. Director General for Industrial Relations, Department of Industrial Relations Malaysia & Anor*, which affirmed the principles laid down by the High Court as follows:

- (a) The right to be heard before the DGIR to accord recognition is not specifically provided for in section 9 of Act 177.
- (b) The court will not be warranted in supplementing the legislation, that is Act 177, even if the legislative provision of section 9 thereof is not as full and complete as the court might think appropriate.
- (c) If the legislature has by its legislation decided what opportunity should be afforded, the court is bound by the legislation as much as the citizen and has no warrant to vary the legislative scheme of Act 177.
- (d) Not all common law principles relating to natural justice are applicable. The rules and ambit of natural justice vary according to the circumstances and context.
- (e) It is well established that when a statute has conferred on anybody the power to make decisions affecting individuals, the court will not only require the procedure prescribed by the statute to be followed, but will readily allow so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness.
- (f) The court should not fly in the face of a clearly evinced parliamentary intention to exclude the operation of the *audi alteram partem* rule.
- (g) It is not for the court to amend the statute by engrafting upon it some other provision that it might think more consonant with a complete opportunity for an aggrieved person to present his or her views and to support them by evidentiary material.

Exclusive bargaining rights: Minority unions

The Government acknowledges the ILO Conference Committee's 2022 recommendation to adopt measures, in consultation with social partners, to ensure that in situations where no union is declared as the exclusive bargaining agent, all unions within the bargaining unit are allowed to negotiate, jointly or separately, on behalf of their respective members. In response, the Government wishes to highlight that the matter has been addressed through the Industrial Relations (Amendment) Act 2020 (Act A1615), which introduced section 12A into the Industrial Relations Act 1967 (Act 177) to govern sole bargaining rights.

The introduction of section 12A provides a structured mechanism whereby:

- In cases where multiple trade unions represent the same class of worker at a particular workplace, the unions may agree among themselves on which union will have sole bargaining rights.
- If there is no agreement, the DGIR may determine the matter, including through a secret ballot to identify the union with the highest level of support. This provision was introduced after thorough consultations with employer and employee representatives, before being tabled and approved in Parliament as attached in annex. The Government's approach aims to:
 - avoid fragmented bargaining involving multiple unions representing the same category of worker at a single workplace;
 - ensure clarity and efficiency in the collective bargaining process;
 - resolve the issue of representation proactively, thereby preventing scenarios where no union is declared the exclusive bargaining agent. In line with this framework, the Government does not provide for all unions within the unit to negotiate jointly or separately on behalf of their individual members once the process under section 12A has been invoked and a union has been determined to hold sole bargaining rights. This is to ensure orderly and coherent industrial relations, prevent conflicting demands and promote effective and unified representation.

Migrant workers

Malaysia affirms that section 28(1)(a) of the Trade Unions Act 1959, which requires the authorization of the Minister of Human Resources prior to the registration of union office bearers, plays a crucial role in safeguarding national security and upholding the integrity of the industrial relations system. As of 2024, more than 28,000 foreign workers are registered as union members. To further support inclusive representation, a blanket ministerial exemption, effective from 15 January 2025, was granted to a trade union that submitted a formal application to register their office bearers under section 28(2) of the Act. This exemption enables non-citizen union officers to serve without requiring individual approval, demonstrating Malaysia's balanced and progressive approach to trade union governance.

Scope of collective bargaining

The Government informs the Committee that section 13(3) of the Industrial Relations Act 1967 (Act 177) was amended to support broader reforms aimed at aligning national legislation with international labour standards and strengthening collective bargaining in Malaysia. The revised section 13(3) now states that a trade union of workers may not include in its collective agreement proposals any matter relating to:

- (a) the promotion of workers by the employer from a lower to a higher grade or category;
- (b) the transfer of workers within the organization, provided there is no detriment to the terms of employment;
- (c) the appointment by the employer of any person to fill a vacancy;
- (d) the termination of a worker's services due to redundancy or reorganization, or the criteria for such termination;
- (e) the dismissal and reinstatement of a worker;

(f) the assignment or allocation of duties consistent with the terms of employment.

It is important to note that the amended provision introduces a new clause allowing trade unions to discuss general matters related to the restricted topics with employers, even if these are not part of formal collective agreement proposals. This aims to promote more open dialogue while respecting employers' decision-making authority. The Government acknowledges the Committee's long-standing recommendation to review and limit broad restrictions on collective bargaining. The recent amendment marks important progress by:

- clarifying that unions may engage in discussions on general issues related to restricted matters;
- narrowing the scope of prohibition to only formal proposals in collective agreements;
- encouraging broader consultation and transparency in employment-related decision-making. This balanced approach supports workers' rights while maintaining operational flexibility and reflects Malaysia's commitment to strengthening its industrial relations in line with the Convention. Subsequently, although the Industrial Court does not maintain specific statistical records on this matter, it is observed that approximately 98 per cent of collective agreements accorded cognizance by the Industrial Court have encompassed the above-mentioned subject matters.

Restriction on collective bargaining of public servants not engaged in the administration of the State

The Government is fully committed and has taken the necessary measures to enable collective bargaining for public servants not involved in state administration. Recent negotiations through the National Joint Council (NJC) led to the successful implementation of the Public Service Remuneration System in 2024, as detailed in Service Circular No. 1/2024. With 99.9 per cent of public sector employees accepting the new package, this highlights the success of the NJC's bargaining process. The Government affirms that the NJC remains the effective collective bargaining mechanism, grounded in a legitimate framework and democratic representation, with a key role in shaping policy outcomes.

Collective bargaining in practice

The Industrial Court gave cognizance to 274 collective agreements in 2023 and 240 in 2024. Sector-specific statistics for both years are provided in the annex.

Direct request

The Government has taken steps to explore the extension of Part VI of the Industrial Relations Act 1967 (Act 177), which provides for representations on unfair dismissal, to public servants employed under statutory bodies, in accordance with section 52(3) of the Act. Consequently, consultations were conducted from 23 to 25 August 2021 with a number of statutory authorities and regulatory agencies to assess the feasibility and implications of such an extension. These engagements involved key stakeholders from across the public sector. The consultations revealed that all statutory bodies already maintain internal mechanisms and disciplinary procedures for handling dismissal-related matters, established under their respective enabling Acts. These frameworks, in many cases, mirror the protections afforded under Part VI of the Industrial Relations Act and serve as parallel systems for resolving employment disputes. In light of these findings, the matter was referred to the Attorney General's Chambers (AGC) for legal review. The AGC advised that enforcing section 52(3) in its

current form would lead to overlapping legal protections, as these statutory bodies are governed by specific legislation that already provides for an independent authority or body empowered to hear and determine industrial disputes. These internal mechanisms operate in parallel to the Industrial Court, and extending Part VI without legislative reconciliation could result in jurisdictional conflicts and enforcement inconsistencies. Accordingly, the Government acknowledges the need for further policy alignment and legislative harmonization to ensure clarity, consistency and effective protection across all public sector frameworks. The matter remains under active review. Such findings also have been communicated to the employees' associations, that is, the Malaysian Trades Union Congress and the Congress of Union of Employees in the Public and Civil Services, during a series of engagements between 2022 and 2024.