

Committee on the Application of Standards

Date: 16 May 2022

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 16 May 2022.

▶ 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 statistics on the number of collective agreements given cognizance.

Observations of the Malaysian Trades Union Congress (MTUC)

The Government keeps its measures in protecting the rights of employees in the country.

The Industrial Relations Act (IRA) 1967 [Act 177] provides protection against acts of anti-union discrimination in respect of their employment through section 8 and section 59 of Act 177. Section 8 provides procedures for non-criminal union busting cases whereas section 59 deals with semi-criminal cases.

Currently, sections 4, 5 and 7 of Act 177 provide protections of the rights of workers to form, to join and to participate in trade union activities.

In addition, the Government is in the midst of amending Trade Unions Act 1959 [Act 262]. Act 262 regulates the operation of trade unions in Malaysia which generally provides for procedures and processes in terms of registration, cancellation and governance of trade unions. The proposed amendment aims to enhance the rights of collective bargaining power of unions in the country by allowing multiplicity of trade unions establishment as well as allow the existence of more than one trade union in one workplace.

The first reading of this bill has been tabled at Parliament on 24 March 2022. The second reading of this act is scheduled to be tabled in the forthcoming Parliament session.

Ongoing legislative reform

The Government has continued to cooperate with the ILO through the Labour Law and Industrial Relation Reform Project in the holistic review process. The development of the labour law amendments are as follows:

- (1) The amendment of Employment Act 1955 [Act 265] has been approved by Parliament on 20 March 2022 and has been gazetted on 10 May 2022.
- (2) Further, on the development of the amendment of Trade Unions Act 1959 [Act 262], the first reading of this bill has been tabled at Parliament on 24 March 2022. The second reading of this act is scheduled to be tabled in the forthcoming Parliament session.

Article 1 of the Convention. Adequate protection against anti-union discrimination. Effective remedies and sufficiently dissuasive sanctions.

Detailed information on the general remedies imposed in practice for acts of anti-union discrimination dealt with through sections 5, 8 and 20 of Act 177 are as follows:

- (i) Remedies for anti-union discrimination under section 8 and section 20 of Act 177 are awarded by Industrial Court based on facts and merits of each case. The Industrial Court will act to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form for all cases that have been referred by the Director-General of Industrial Relations under section 8, Act 177.
- (ii) Further, in the spirit of tripartism and as stipulated in Act 177, victims of anti-union discrimination may file complaints to the Director-General of Industrial Relations in order for the department to inquire or conciliate or investigate the complaints.
- (iii) 35 cases were reported from January 2021 until April 2022 under section 8 of Act 177. Out of 35 cases, 31 (88.57%) have been resolved by the Industrial Relations Department and the average duration of the proceedings is three to six months.
- (iv) As for the Industrial Court, the case which has been referred by the Director-General of Industrial Relations under section 8 of Act 177 shall be disposed within 12 months based on Industrial Court Client's Charter.

Articles 2 and 4. Trade union recognition for purposes of collective bargaining. Criteria and procedure for recognition. Exclusive bargaining agent.

The consultation sessions with stakeholders including the social partners have been done throughout the drafting process of each amendment including the Trade Unions Act 1959. As for the process on the amendment of Trade Union Act 1959, a total of 72 sessions of engagement, consultation and workshop with social partners have been conducted starting from 2018 to date.

The amendment of Trade Unions Act 1959 [Act 262], has undergone the first reading of its bill which has been tabled at Parliament on 24 March 2022. The second reading of this act is scheduled to be tabled in the forthcoming Parliament session.

The Government is of the view that simple majority is a minimum requirement and it shall be maintained in order for a trade union to become an exclusive bargaining agent and social partners agree with this. Where more than one trade union of workers have been accorded recognition, the exclusive bargaining agent will be determined among themselves or ascertained by the Director-General of Industrial Relations by way of a secret ballot (highest number of votes) as stipulated in the new section 12A of IRA 1967. Section 12A has yet to be enforced and subject to the amendment of Trade Union Act 1959.

In this regard, the amendment of Trade Unions Act 1959 [Act 262], has undergone the first reading of its bill which has been tabled at Parliament on 24 March 2022. The second reading of this act is scheduled to be tabled in the forthcoming Parliament session.

Duration of recognition proceedings.

The average duration of the recognition process is four to nine months. The decision on recognition by the Director-General of Industrial Relations may be appealed by the concerned union or employers by way of judicial review.

Migrant workers.

Foreign workers are eligible to become members of a trade union and are eligible to hold office upon approval of the Minister if it is in the interest of such union. In addition, Act 177 does not impose restrictions on migrant workers to engage in collective bargaining.

Scope of collective bargaining.

The Government maintains its opinion that section 13(3) of Act 177 shall be retained to maintain Industrial Harmony and in order to speed up the collective bargaining process. Furthermore, the provisions under section 13(3) of Act 177 is not compulsory provisions as if both parties agree, they may negotiate the said provisions during the collective bargaining process.

Prior to current amendment of section 13(3) of Act 177, questions of a general character with regards to promotion only may be raised for matters related to promotion, transfer, recruitment, termination of employment due to redundancy, dismissal and reinstatement and assignment or allocation of duties.

Compulsory arbitration.

The amendment on the proviso will be enforced respectively after the amendment of the Trade Unions Act 1959 [Act 262]. In this regard, the amendment of Act 262, has undergone the first reading of its bill which has been tabled at the Parliament on 24 March 2022. The second reading of this act is scheduled to be tabled in the forthcoming Parliament session.

Restrictions on collective bargaining in the public sector.

The Government is committed to ensure the welfare of public servants and recognized collective bargaining as one of the engagement sessions between employers and employees in the public sector. The contents of Service Circular 6/2022 and Service Circular 7/2020 can be accessed through <https://docs.jpa.gov.my/docs/pp/2020/pp062020.pdf> and <https://docs.jpa.gov.my/docs/pp/2020/pp072020.pdf>.

Collective bargaining in practice.

Statistical information on the number of collective agreements concluded and in force is provided.