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SPECIAL ALERT

Employment & Industrial Relations



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20 SEPTEMBER 2024

TRADE UNIONS & SOLE BARGAINING RIGHTS: THE FUTURE OF COLLECTIVE BARGAINING

The Ministry of Human Resources has announced that, effective 15 September 2024, several important legislative changes will come into effect, including 13 provisions of the Industrial Relations (Amendment) Act 2020 (which have yet to be enforced), the Trade Unions (Amendment) Act 2024, the Industrial Relations (Amendment) Regulations 2024, and the Trade Unions (Amendment) Regulations 2024. Collectively, these changes aim to enhance freedom of association and collective bargaining, addressing previously imposed restrictions.

In this article, we will explore how these amendments will impact the future of collective bargaining in Malaysia, particularly in light of the newly permitted multiplicity of trade unions.

Multiplicity of Trade Unions

Under the Trade Unions Act 1959, a “trade union” was defined as any association or combination of workmen or employers “within any particular establishment trade, occupation or industry or within any similar trades, occupations or industries”. The recent amendments have removed this limitation, effectively allowing the formation of multiple trade unions across various trades, occupations, or industries. This change aligns with international labour standards, promoting the principle of freedom of association

and aiming to enhance the protection of workers' rights in Malaysia.

However, concerns have been raised about the potential for increased inter-union rivalry and the rise of irresponsible trade unionism. This fragmentation could undermine the solidarity of trade unions and diminish their collective bargaining power.

Sole Bargaining Rights

The Industrial Relations Act 1967 (“**IRA 1967**”) introduces clarity through Sections **12A** and **12B**, establishing the concept of sole bargaining rights. Section **12A** specifies that when multiple trade unions are recognised by an employer to represent a class of employees, those employees can decide which trade union will hold sole bargaining rights. If no consensus is reached, an application can be made to the Director General of Industrial Relations (“**DGIR**”), who will determine which trade union has sole bargaining rights, potentially through a secret ballot.

Section **12B** of the IRA 1967 further stipulates that once a trade union obtains sole bargaining rights, no other trade union can claim these rights until 3 years have passed, or if the recognised trade union ceases to exist.

The Industrial Relations (Amendment) Regulations 2024 outline the application process for determining sole bargaining rights. Notably, if multiple applications are submitted under Section **12A**, the date of the first application will be considered the effective application date for all related requests.

The Future of Collective Bargaining

The introduction of multiple trade unions across various industries could foster healthy competition, encouraging trade unions to better meet the needs of their members. This may lead to more innovative negotiation strategies as trade unions strive to attract new members by offering improved services and support. However, increased competition also carries the risk of fragmentation, with individual trade unions potentially prioritising their own interests over collective worker solidarity.

While the IRA 1967 permits the existence of multiple trade unions, it also imposes restrictions on obtaining exclusive bargaining rights. The legal processes required to establish

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sole bargaining rights might unintentionally weaken the trade unions' overall bargaining power, resulting in lengthy legal disputes and delays in reaching collective agreements. Such outcomes could be detrimental to the trade union movement in Malaysia.

Ultimately, the future of collective bargaining will depend on the empowerment of workers. With greater freedom to form trade unions, workers may feel more motivated to advocate for their rights and participate in collective actions. Trade unions will likely focus on grassroots organising and fostering solidarity among workers, emphasising the importance of collective efforts to drive meaningful change.

Conclusion

The recent amendments represent a significant shift in the landscape of collective bargaining in Malaysia, promoting greater union diversity while introducing complexities in determining sole bargaining rights. As trade unions and employers navigate this new terrain, it will be crucial to balance the benefits of union multiplicity with the need for strong, unified representation to effectively protect workers' interests.

If you have any queries, please contact Associate, **Summer Chong Yue Han** (yhc@lh-ag.com), or her team Partner, **Shariffullah Majeed** (sha@lh-ag.com).