OVERVIEW

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1. INTRODUCTION
[Section 2 of Trade Unions Act] Any association or combination of workmen or employers, being workmen whose place of work is in West Malaysia, Sabah or Sarawak as the case may be, or employers employing workmen in West Malaysia, Sabah or Sarawak as the case may be:

- within any particular establishment, trade, occupation or industry or within similar trades, occupations or industries;
- whether temporary or permanent, and
- having among its objectives one or more of the following
  - regulation of relations between workmen and employers for the purpose of promoting good industrial relations between workmen and employers, improving working conditions or enhancing their economic and social status or increasing productivity,
  - regulation of relations between workmen and workmen or between employers and employers.
  - representation of either workmen or employers in trade disputes.
  - conducting of, or dealing with, trade disputes and matters relating thereto, or
  - promotion or organization or financing of strikes or lockouts in any trade or industry or the provision of pay or other benefits for its members during strike or lockout.
A trade union need not be called a union. All unions of employers are labelled associations.

Membership of union is limited geographically. Employees in Peninsular Malaysia may only join a union all of whose members work in the Peninsular.

Unions of a general nature are not permitted. Members of a trade union must be homogenous i.e.. Work in a particular establishment, trade, occupation or industry and therefore possess common interest.

Employers and employees both have the right to form and join unions but they must separate from each other and must satisfy the conditions “within any particular trade, occupation or industry.

Any organization or group of workers established to achieve one or more of the objectives stated in Trade Union Act is considered to have formed a trade union and therefore must conform to all legislative requirements of a trade union.
1.3 REASONS OF JOINING

Economic motives.
• Improve employees’ terms and conditions of service.
• Gives employees the collective strength to negotiate for better terms from employer.
• Give them a voice to express their needs to the government.

Protection of rights.
• Employees expect union to protect their rights, to protect them from exploitation and unfair treatment at work.

Social needs.
• Employees may be influenced to join to show solidarity with their fellow workers.
• Intense peer pressure to become a member, particularly if the union is at a crucial stage of applying for recognition.
1.4 MEMBERSHIP OF A TRADE UNION

- **Right to form and join a union.** Under section 5 of IRA, employers cannot:
  - Put a condition in a contract of employment preventing an employee joining a trade union.
  - Refuse to employ a person on the grounds that he is a member of a union.
  - Discriminate against a worker on the grounds that he is a member of a union.
  - Threaten to dismiss if he proposes to join a union or if he participates in trade union activities.
  - Under section 7 of IRA, employees also have the right not to join a trade union. Employees may not be forced to join a union.

- **Who can join a union?**
  Under section 26, 27 and 27A of Trade Union Act, the following classes of persons are prohibited from being members of a union:
  - any person below the age of 16 years,
  - any student of an educational institution established by or under any written law, unless he is also employed as an employee and is over the age of 18 years,
  - Any person employed in the establishment or industry or trade or occupation in respect of which the union is registered, and
  - Any public officer, unless exempted by Yang Di Pertuan Agong.
  - However, certain group of government employees is not allowed to join trade union at all:
    - members of the armed forces, police force and any prison service,
    - public officers prohibited under any law from forming or joining a union,
    - public officers employed in a confidential or security capacity,
2. REGISTRATION OF A TRADE UNION
2.1 NECESSITY FOR REGISTRATION

- **Section 8 of Trade Union Act.** Any organization which fits the definition is required by the Act to apply for registration as a union within 1 month of its establishment. This period may be extended at the discretion of the Registrar of Trade Union but it must not exceed 6 months.

- **Section 19 of Trade Union Act.** Failure to apply for registration in due time, or if its application is rejected, or if the registration is subsequently withdrawn or cancelled, then:
  - the trade union shall be deemed to be an unlawful association, and shall cease to enjoy any of its rights, immunities or privileges of a registered Trade Union, but without prejudice to any liabilities incurred by the union,
  - the union shall not, nor shall any of its officers, members or agents shall take part in any trade dispute, promote, organize of finance any strike or lockout, or provide pay or other benefits for its members during a strike or lockout,
  - the union shall be dissolved and its funds disposed of in such manner as may be prescribed and in accordance with the rules of the union; and
  - no person shall, except for the purpose of dissolving the union and disposing of its funds, or for the purpose of an appeal take part in its management or organization, or act on behalf of the union, or as an officer of the union.
2.2 DATE OF ESTABLISHMENT OF A TRADE UNION

- **Section 9 of Trade Union Act.** Date of establishment of a union is the date on which employees/employers agree to form an organization. If there is difficulty in proving this date, then date of establishment is deemed to be either one of the following dates:
  - date on which any person is proved to have been accepted as member of trade union,
  - date on which any act is proved to have been done by the union in furtherance of any of the objectives specified in the definition of the union.
2.3 APPLICATION FOR REGISTRATION

- **Section 10 of Trade Union Act.** Application for registration of trade union must fulfill the following requirements:
  - The application must be signed by at least 7 members.
  - It must be in the prescribed form and accompanied by the prescribed fees.
  - A printed copy of the rules of the union signed by the 7 members has to be submitted.
  - The name and address of the union should be included.
  - The name, age, citizenship and occupation of the office-bearers should be submitted.

- **Section 59 of Trade Union Act.** It is unlawful for a union to carry out any activities before a registration certificate is issued by the Registrar of Trade Union.
2.4 REFUSAL TO REGISTER

- **Section 12 of Trade Union Act.** Registrar shall refuse to register a trade union if:
  - he is of the opinion that the union is likely to be used for unlawful purposes or for purposes contrary to its objectives and rules,
  - any objectives of the union is unlawful,
  - he is not satisfied that trade union has complied with the provisions of the Act,
  - he is satisfied that objectives, rules and constitutions of the union conflict with any provisions of the Act,
  - the name under which the union is registered is:
    - identical to that of any existing trade union,
    - in the registrar’s opinion is undesirable, unless the union alters its name to the acceptable name.
2.5 CANCELLATION OF A TRADE UNION

- **Section 15 of Trade Union Act.** A certificate of registration of Trade Union may be cancelled by Registrar;
  - at the request of trade union upon its dissolution,
  - if he is satisfied that;
    - certificate was issued by fraud or mistake,
    - any one of the objectives or rules of the union is unlawful,
    - the constitution of the union is unlawful,
    - the union is likely to be used for any unlawful purpose,
    - the union has contravened any provision of the Act,
    - funds of the union are being expended in an unlawful manner,
    - the union has ceased to exist.

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Where 2 or more trade union registered in respect of a particular trade, occupation or industry exist, Registrar may if he is satisfied that it is the interest of employees concerned;

cancel the certificate of registration of union with the smallest number of employees as its members,

issue an order requiring the union with the smallest number of membership, to remove from its register the names of its members.
3. RECOGNITION OF TRADE UNION
3.1 DEFINITION

- A formal acknowledgement by an employer that a particular trade union has the right to represent its members/employees.

- It is important especially;
  - to a union — without it, the union cannot bargain collectively
  - To an employer — recognition signifies that he accepts the union concerned as the only proper bargaining representative of his employees.
3.2 SCOPE OF REPRESENTATION

- [Section 9 (1) of Industrial Relation Act]. Certain categories of employees may not be represented by a trade union where the majority of its members are not employed in the similar capacity;
  - managerial capacity,
  - executive capacity,
  - confidential capacity,
  - security capacity

- The act does not prevent them from joining trade union. It merely prohibits the union in which membership is in minority from representing them.
3.3 PROCEDURE FOR RECOGNITION

- [Section 9 (2) of Industrial Relation Act]. A trade union employees may serve, on an employer or trade union of employer, in writing, in prescribed form, a claim for recognition in respect of its employees or any class of employees.

- [Section 9 (3) of Industrial Relation Act]. Employer or trade union of employer, upon the claim is served must, within 21 days of its service;
  - accord recognition, or
  - refuse recognition. In this case, it is required to notify trade union of employees concerned, in writing, the grounds for not according recognition, or
  - apply to Director General to ascertain whether employees is respect of whom recognition is being sought are members of trade union concerned and also give a written notice of such application to the union.
[Section 9 (4) of Industrial Relation Act.

If employer or trade union of employer refuses recognition or has not to responded at all within the stipulated time, trade union of employees may report in writing to Director General. Director General, upon receipt of an application by employer or trade union of employer to ascertain membership or a report by trade union of employees on the failure of employer to respond, may take such step or make necessary enquiries as he considers necessary to resolve the matter.

Director General is empowered to compel trade union of employees or employer or trade union of employer to furnish such information as he considers necessary. If despite his efforts, the matter is not resolved, he is required to notify the Minister, who is then required to resolve.
[Section 9 (5) & (6) of Industrial Relation Act].

- If Minister decides that recognition be accorded to the trade union of employees, such recognition shall be deemed to be accorded by employer or trade union of employer, as from such date specified by Minister. Decision of Minister is final and cannot be questioned in any court.
3.4 PROHIBITED ACT PENDING RECOGNITION

- [Section 10 of Industrial Relation Act]. While claim for recognition is pending;
  - employer is prohibited from declaring a lockout against employees or terminating their services (except on disciplinary ground). This prohibition apply only until claim has been resolved.
  - employees are prohibited from picketing or going on strike against employer. This prohibition apply not only while claim is pending, but even after claim has been resolved.
3.5 EFFECTS OF A RECOGNITION

- [Section 11 of Industrial Relation Act].
  - If a union’s claim for recognition has been granted, no other union can make a claim in respect of the same class of employees, for a period of 3 years from the date when claim was granted.
  - However, this restriction does not apply in cases where the union whose recognition has been granted, ceases to exist.
  - If a union’s claim for recognition has been rejected by the Director General or Minister, the union cannot make another claim for a period of 3 months from the rejected date.
Although Industrial Relation Act does not specify them, a number of conditions have to be satisfied by a union before it can be recognized by an employer:

- The union must be a registered union.
- The competency of the union to be the representative of the employees in whose respect recognition is sought.

The representativeness of the union concerned;

- If the union is representative of a majority of the employees in whose respect recognition is sought, then general recognition will be accorded.
- If the union is not representative of the majority of the employees, then only limited recognition will be accorded.
3.7 DE-RECOGNITION

- A union which has been granted by an employer cannot have that recognition taken away.

- At present, there is no legal provision for de-recognition as there is for de-registration.

- This means that it is possible that a union which has been granted recognition for many years may have lost the support of the employees in a particular organization, yet it retains its recognition from the employer.
3.8 Reasons Why Trade Unions Need to Claim Recognition

For collective bargaining – recognition is the starting point for collective bargaining.

Why Recognition is Needed?

The union can negotiate for better terms and conditions on behalf of all workers in the workplace.

The union can represent individual members who have a grievance or complaint.
Employee’s Union.

Strength and power of trade union movement depend on size and density of membership and financial status of the union. Several active trade union and the most largest trade unions in Malaysia are National Union of the Teaching Profession (NUTP), The National Union of Plantation Workers (NUPW), The National Union of Bank Employees (NUBE), The Electrical Industry Workers Union and others.
Employers’ Association. Employers have equal right to form unions, which are mostly known as associations. Employers’ union is a response to the large and powerful national trade unions of employees. Their main objectives:

- To promote and protect the interests of their members.
- To negotiate and deal with trade union of employees.
- To represent their members in any dispute between individual members and the employee’s union.

In the year 2003, there were 14 employers’ unions, of which 9 are in Peninsular Malaysia. The most active are:

- Malaysian Agricultural Producers’ Association (MAPA).
- Commercial Employer’s Association of Peninsular Malaysia – Commercial Industry.
- Malayan Commercial Bank’s Association (MCBA) – Banking Industry.
- Association of Insurance Employers (AIE) – Insurance Industry.
4. TYPES OF UNIONS
4.1 PUBLIC SECTOR UNIONS

- **Public sector unions**
  - Public sector consists of the civil service, the statutory bodies and the local authorities.
  - In 2003, there were 211 unions in this sector and include the National Union of the Teaching Profession and the Malayan Nurses Union.
  - Trade Union Act provides that employees in the public sector can only form and join unions whose members are in the same ministry, department or occupation.
  - This is to ensure that discussions are possible with the employer on a logical basis.
  - Wages and other terms of services are discussed at the national level between the government and CUEPACS.
4.2 PRIVATE SECTOR UNIONS

Types

- **In-House Union**
  - is a Trade Union whose members are all employed by the same employer in the same place of employment.
  - Example; Telekom Berhad Employee Union, Tenaga Nasional Employee Union etc.
  - **Advantages of in-house union:**
    - They are more appreciative of the situation in their workplace and problems of employer and are less influenced by outsiders. Close relationship between employer and union will lead to a more peaceful industrial relations.
    - Cooperative spirit developed will lead to higher productivity.
  - **Disadvantages of in-house union:**
    - Generally weak because membership is limited and confined to workers in one particular company.
    - Leaders are chosen from a small number of members and this give rise to the possibility of exploitation by employer.
    - Union financial strength limit its union activities.
    - Fear of victimization by employer among leaders (managerial prerogatives).

- **National Trade Union** - is an association of employees either from the same or similar trades or occupations or industries.
4.3 EMPLOYERS UNION ASSOCIATIONS

- **Malaysian Trade Union Congress (MTUC).**
  - MTUC is not a trade union but a society registered with the Registrar of Societies. Membership is from individual trade union, which chooses to affiliate to it. In 1998, it had some member 180 members, most of which were unions in the private sector. The objectives of MTUC are:
    - To act as a spokesman for trade union at national and international level.
    - To represent employees’ viewpoint on tripartite bodies such as National Labor Advisory Council, EPF board.
    - To advise unions on matters on which they seek assistance.
    - To run training programs to help union leaders understand their roles and responsibilities.
    - To carry out research on matters of trade union interest.
  - To carry out the above functions, MTUC has a member of committees responsible for different areas such as women affairs, youth affairs, education, safety and health, consumer matters, industrial relations and organizing the unorganized.
○ Congress of Unions of Employees in The Public and Civil Service (CUEPACS).

- CUEPACS is a federation of trade union of government workers. It serves as the spokesman for the public sector employees and was first registered in 1959 with the Department of Trade Union. The objectives of CUEPACS are:
  - To promote the interests and improve the working of its affiliate trade unions.
  - To protect the interests of the affiliate trade unions and their members.
  - To endeavour to improve the conditions of employment of the members of the affiliate trade unions.
  - To promote legislation affecting the interest of the member unions in particular or trade union in general.

- Membership is open to all registered trade unions in the public and civil service in West Malaysia. The administration of CUEPACS is carried out by a council elected at a convention held once in 3 years.
Malaysian Employers Federation (MEF).

- MEF is the employer’s equivalent of MTUC.
- It has representatives on a number of councils and bodies such as National Labor Advisory Council, EPF Board, Social Security Organization Board, National Productivity Corporation and National Council for Occupational Safety and Health.
- It is a registered society. Membership is from individual companies and employer’s association. The objectives of MEF are:
  - To secure the organization of all employers.
  - To coordinate and present the opinions of employers on labor matters.
  - To promote, protect and defend the interest of employers.
  - To inform and advise members on the implementation of labor laws.
  - To advise members on settlement of trade disputes.

- The functions of MEF are:
  - To carry out research needed by its members especially for collective bargaining purposes.
  - To carry out wage and benefits surveys and monitors the Consumer Price Index (CPI).
  - To conduct training for its members on topics relating to labor legislation and other IR matters.
  - To provide industrial relations service to its members by representing them at the Industrial Court, advising them during the collective bargaining process and giving any other assistance requested by its members.