

# The Trade Union (Amendment) Bill 2022 – What are the proposed changes to the Trade Union Act 1959?

## Introduction

The Trade Union (Amendment) Bill 2022 (“Bill”) was passed on 5 October 2022 at the Dewan Rakyat (House of Representatives) and the Bill is currently pending revision and approval by the Dewan Negara (Senate).

In this update, we highlight some of the key amendments proposed to the **Trade Union Act 1959** (“TUA”) pursuant to the Bill, and the potential impacts and concerns that may arise from the proposed amendments.

## Key Amendments Proposed to the TUA

### 1. Definition of “trade union”/ “union”

Based on the Explanatory Statement to the Bill, the main objective of the Bill is to remove restrictions on the formation of a trade union based on a particular establishment or similarity in trade, occupation, or industry and to allow multiplicity of trade unions within any establishment, trade, occupation, or industry.

Currently, under the TUA, “trade union” or “union” is 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...”*

Therefore, the Bill is now proposing to remove the limitation of trade unions/unions to a particular establishment, trade, occupation, or industry or to similar trades, occupations, or industries.

# Employment & Administrative Law Update

JANUARY 2023

Shearn Delamore & Co  
7<sup>th</sup> Floor

Wisma Hamzah Kwong-Hing,  
No 1, Leboh Ampang  
50100, Kuala Lumpur, Malaysia

T: 603 2027 2727

F: 603 2078 5625

[info@shearndelamore.com](mailto:info@shearndelamore.com)

[www.shearndelamore.com](http://www.shearndelamore.com)

[www.linkedin.com/company/shearn-delamore-&-co](http://www.linkedin.com/company/shearn-delamore-&-co)

Further to the proposed change in definition, the Bill also proposes some consequential amendments in line with the stated objective of the Bill, which includes a proposal to allow any person who is a workman or an employer (including any workman who had been dismissed, discharged, retrenched, or retired) to be a member of any trade union, provided that the rules of the particular trade union allow for it, regardless of the establishment, trade, occupation or industry in respect of which the trade union is registered.

Therefore, pursuant to the proposed amendments, more than one trade union could be formed in a single workplace and that a single trade union may potentially have unlimited types of members which can be from a different workplace, trade, occupation, industry, and locality altogether. In other words, multiplicity of trade unions and omnibus trade unions will be allowed pursuant to the proposed amendments.

## 2. Time frame for registration of a trade union

The time frame for an application for registration of trade union is proposed to be increased from one month to six months; and the maximum extension of time which may be granted by the DGTU is proposed to be increased from six months in aggregate to 12 months in aggregate.

## 3. Refusal of registration of a trade union

The Bill proposes to limit the grounds for refusal of registration of a trade union. Pursuant to the proposed amendments, the DGTU would only be able refuse to register a trade union if:

- (a) He is satisfied that the objects, rules, and constitution of the trade union conflict with any provisions of the TUA or of any regulations; or
- (b) The name under which the trade union is to be registered is:
  - (i) Identical to that of any other existing trade union, or so nearly resembles the name of such other trade union as, in the opinion of the DGTU, is likely to deceive the public or the members of either trade union; or
  - (ii) In the opinion of the DGTU, would promote feelings of ill-will and hostility between different races, religions, and nationalities,

unless the trade union alters its name to one acceptable to the DGTU.

The Bill also introduces a requirement for the DGTU to inform the trade union in writing of his refusal and grounds for such refusal if he decides to refuse the trade union.

## 4. Grounds for cancellation of certificate of registration of trade union

The Bill proposes to limit the grounds for cancellation of certificate of registration of a trade union. Pursuant to the proposed amendments, the DGTU would only be able to cancel or withdraw the certificate of registration of a trade union:

- (a) At the request of the trade union upon its dissolution; or
- (b) If the DGTU is satisfied:
  - (i) That the certificate of registration was obtained or issued by fraud or mistake;
  - (ii) That the executive(s) of the trade union has been a member of the executive of any trade union which have had its registration cancelled or withdrawn because the funds of the trade union are or have been expended for purposes prejudicial to or incompatible with the security of Malaysia or public order, or because the trade union has been convicted of any offences specified in the Fourth Schedule (see below);
  - (iii) That the executive(s) of the trade union has been convicted by any court of law of criminal breach of trust, extortion or intimidation, or of an offence relating to investment of funds, application of funds, or collection of funds and moneys under the TUA;
  - (iv) That the funds of the trade union are or have been expended for purposes prejudicial to or incompatible with the security of Malaysia or public order, including for purposes of illegal strikes or lock-outs, or political objects; or
  - (v) That the trade union has ceased to exist;
- (c) Upon the amalgamation of the trade union or the voluntary dissolution of the trade union; or
- (d) If the trade union has been convicted of any of the offences specified in the new Fourth Schedule (which are offences against the state, offences relating to terrorism and offences of organised crime as specified under the Penal Code).

## 5. Power of the DGTU to suspend branch of trade union

The Bill seeks to entirely remove the power of the DGTU to suspend a branch of a trade union.

## 6. Threshold requirement for a trade union to organise a strike or declare a lock-out

The Bill seeks to lower the threshold requirement for a trade union to organise a strike or declare a lock-out by reducing the majority needed. Pursuant to the proposed amendments:

- (a) In respect of organising a strike, the trade union of workmen would be required to first obtain, through secret ballot, at least 60% from the total number of its members who are entitled to vote and in respect of whom the strike is to be called, and at least more than half of the votes received are in favour of the proposed strike.
- (b) In respect of declaring a lock-out, trade union of employers would be required to first obtain, through secret ballot, at least 60% votes from the total number of its members who are entitled to vote, and at least more than half of the votes received are in favour of the proposed lock-out.

The Bill also seeks to give more time for the DGTU to conduct any necessary investigations in relation to the proposed strike/lock-out, by amending the period from seven days to seven working days.

Further to that, the Bill also proposes to limit the grounds which the DGTU may rely on to direct the trade union not to commence the proposed strike/lock-out. Pursuant to the amendments, the DGTU may only direct the trade union not to commence the proposed strike/lock-out if he is satisfied that proposed strike/lock-out if carried out would contravene the provisions of the TUA relating to secret ballots, strikes and lock-outs or any provisions of Part IX of the Industrial Relations Act 1967 (“IRA”) (which relates to trade disputes, strikes and lock-outs, and matters arising therefrom). Currently, the DGTU may direct the trade union not to commence the proposed strike/lock-out if he is satisfied that the proposed strike/lock-out if carried out would contravene the TUA or any other written law.

## 7. Discrimination in membership of trade union

The Bill proposes that no trade union can confine its membership to a particular race, religion or nationality.

## 8. Power of the DGTU in carrying out investigation and enforcement under the TUA or any regulations thereunder

The Bill proposes to introduce a new section to provide the DGTU, the power:

- (a) To conduct investigations and to enforce any provision of the TUA or any regulations thereunder;
- (b) To appoint the necessary enforcement officers to perform such duties of the DGTU in investigation and enforcement;

- (c) To require the attendance of witnesses for examination which would assist in such investigations;
- (d) To require the production of articles or documents for the purposes of such investigations;
- (e) To seize any article or document in carrying out such investigations.

9. Liability of a president, secretary, treasurer, or other officer of a trade union

The Bill proposes to introduce a new section to impose liability on a president, secretary, treasurer or other officer of the trade union or person purporting to act on the instruction of the president, secretary, treasurer or such other officer of the trade union.

Pursuant to the proposed amendments, the said persons may be charged severally or jointly in the same proceedings with the trade union, and if the trade union is found guilty of the offence, such persons charged shall be deemed guilty of that offence and shall be liable to the same fine or penalty as an individual, unless it is proven that the offence was committed without his knowledge and that the offence was committed without his consent or connivance and that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.

10. Stay of execution pending appeal to the Minister of Human Resources

The Bill proposes to provide for an automatic stay of execution when an appeal to the Minister of Human Resources is made against the decision of the DGTU in matters relating to cancellation or withdrawal of certificate of registration of a trade union

11. Penalty for offence of non-compliance with provisions of the TUA

The Bill proposes to remove prison sentence as part of the possible penalties for offences of non-compliance with provisions of the TUA, while increasing the amount of fine imposable for the offences.

## Commentary

As reflected in the Explanatory Statement to the Bill, the main change that the Bill proposes to bring is to allow formation of omnibus trade unions and to allow for multiplicity of trade unions.

While this move appears to widen the freedom of association of workmen and employers, in tandem with the principles of the International Labour Organisation (“ILO”) Convention 87 on Freedom of Association and Protection of the Right to

Organise, this Bill has received much criticism from the representatives of the trade unions and the Malaysian Employers Federation (“MEF”), particularly on the issue of multiplicity of trade unions, where they have voiced their concerns that such multiplicity of trade unions may cause industrial disharmony and impact the economy negatively<sup>1</sup>.

In this regard, the multiple trade unions of workmen may possibly be left to compete against each other for representation of the workforce, affecting the bargaining power and unity of the trade union’s members. In this respect, it should be noted that according to section 11 of the IRA, only one trade union may be recognised by an employer at any one time for the purposes of collective bargaining.

The multiplicity of unions may possibly create inter-union and intra-union rivalries, causing conflicts and strain between those who seek to protect the interests of the workmen they seek to represent, thereby leading to industrial disharmony. This view is very much shared by the Federal Court as well in **Kesatuan Pekerja-Pekerja Bukan Eksekutif Maybank Bhd v. Kesatuan Kebangsaan Pekerja-Pekerja Bank**<sup>2</sup>, where it was amongst others held that *“multiplicity of trade unions in respect of the same occupation would not be in the best interest of industrial harmony”*.

Furthermore, the trade union landscape at present appears to be a more structured one whereby there is clarity on the types of workmen or employers which the trade union would represent. With the proposed changes allowing formation of omnibus unions, a lack of structure in the trade union landscape may potentially arise.

Pursuant to the proposed amendments, any workmen or employers may be a member of a random trade union which potentially has no connection with them, and there may be a possibility that these omnibus unions might be led by persons who have nothing to do with the professional activities or interests of its members, seeking to advance only their own interests. There is therefore a possibility that the workmen may lose out as they may not have their interests fought for.

Aside from the issue pertaining to multiplicity of unions and omnibus unions stated above, the Bill in general appear to provide some positive proposals for the trade unions, such as the limitation of the DGTU’s discretion in certain situations and the increased power of the trade unions.

The introduction of imposition of liability on the president, secretary, treasurer or other officer of the trade union or person purporting to act on the instruction of the president, secretary, treasurer or such other officer of the trade union, will help ensure that those in position of power within the trade union will do what they can to ensure that the object of the trade union and the acts of its members are always in line with the law and does not go beyond what is allowed for, thereby acting as a deterrence of illegal objects or activities by the trade union.

The removal of prison sentence as a possible penalty for offences of non-compliance with provisions of the TUA is of course a welcomed proposal, as prison sentences will directly impact the members' future job opportunities. While one may argue that this change would incentivise the committing of offences, it should be noted that amount of fine imposable for the offences has been increased, thereby maintaining the deterrent strength of the penalty for offences.

As it appears that the main concern arising from the Bill is mainly pertaining to the issue of multiplicity of trade unions and omnibus trade unions, it is hoped that the issues arising therefrom will be thoroughly considered before the Bill is revised and approved by the Dewan Negara to prevent or minimise the risks of the said issues from arising.

On a separate but related note, based on the proposed amendments under the Bill, it appears that some of the earlier amendments<sup>3</sup> to the IRA under the **Industrial Relations (Amendment) Act 2020** (Act A1615)<sup>4</sup> which have yet to come into force were made for the purposes of facilitating the amended TUA. Therefore, it is anticipated that once the amendments to the TUA under the Bill are finalised and passed, the said amendments to the IRA will come into force together with the amendments to the TUA.

<sup>1</sup> <https://tinyurl.com/47z7a456>; <https://tinyurl.com/4xs7zpk9>; <https://tinyurl.com/2u3avx25>.

<sup>2</sup> [2017] 2 ILR 230.

<sup>3</sup> Namely, amendments which relate to recognition of trade unions, collective bargaining and bargaining rights and reference of trade disputes to the Industrial Court.

<sup>4</sup> <https://tinyurl.com/2s35dryr>.

Written by Adam Thye Yong Wei.

For further information regarding this article or employment and administrative law matters in general, please contact:



[Sivabalah Nadarajah](#)

Head

Employment & Administrative Law

T: 603 2027 2866

E: [sivabalah@shearndelamore.com](mailto:sivabalah@shearndelamore.com)



[Adam Thye Yong Wei](#)

Associate

Employment & Administrative Law

T: 603 2027 2680

E: [adam.thye@shearndelamore.com](mailto:adam.thye@shearndelamore.com)

*Copyright © 2023 Shearn Delamore & Co. All rights reserved.*

*This Update is issued for the information of the clients of the Firm and covers legal issues in a general way. The contents are not intended to constitute any advice on any specific matter and should not be relied upon as a substitute for detailed legal advice on specific matters or transactions.*