



UNIONIZATION LANDSCAPE - MALAYSIA

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Malaysia Trade Union legislation change- Sept 2024

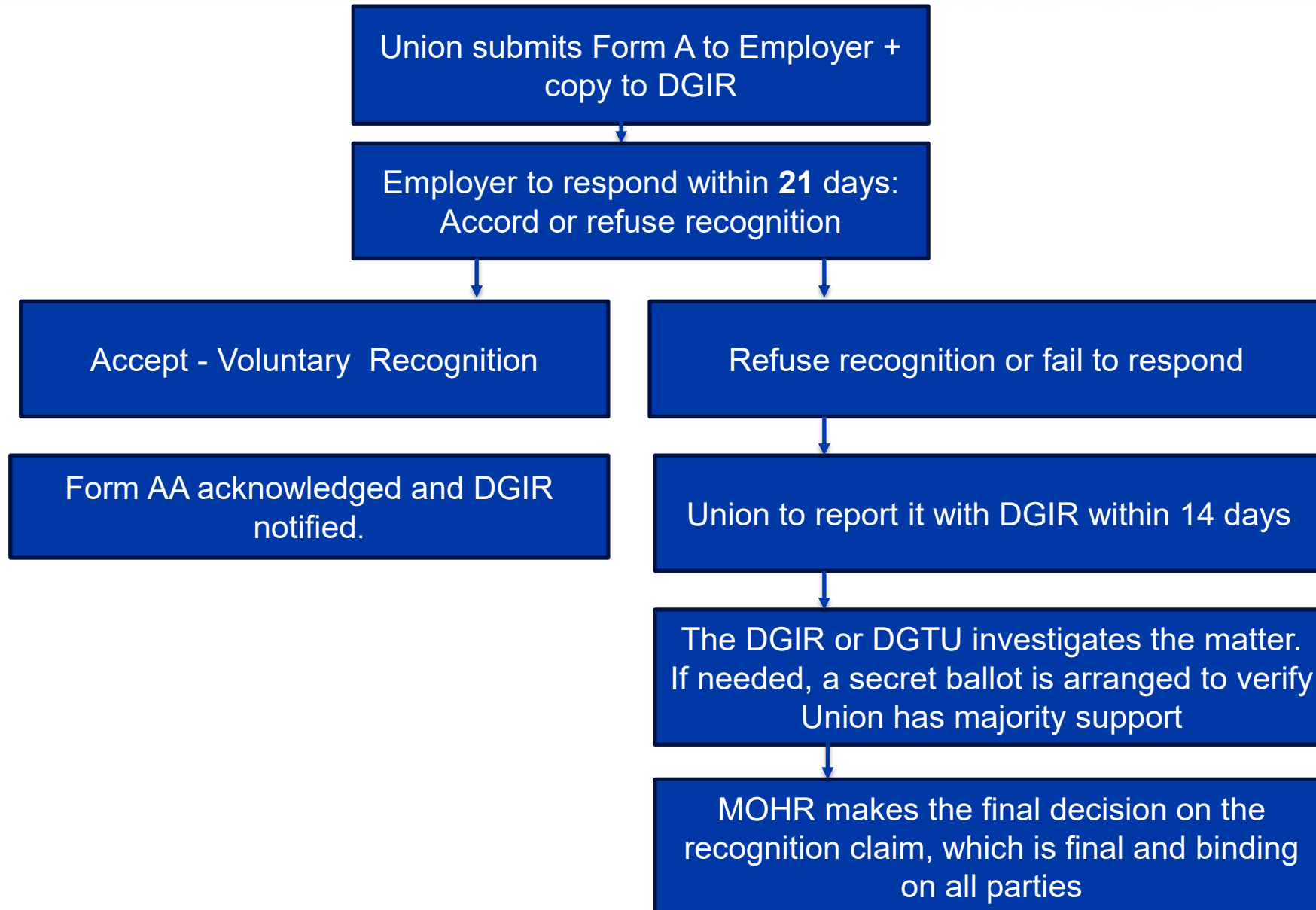
IR Act and TU law amendments in 2024 increase union rights and freedom of association.

- **Union can broaden scope of representation** by amending its constitution
 - Prior 2024 - one industry, one category of workers
 - Now –Omnibus unions
- **Allows multiplicity of unions** representing same class of workers
 - Prior 2024 - sole recognition/bargaining rights
 - Now - Different unions can seek recognition for same class of workers.
- Introduces secret ballot for sole bargaining rights of collective bargaining.

Trade Unions – Benefits/Risks

- Majority covers all workers except managerial, confidential and security.
- Affiliated to Global Unions like IndustriALL.

Value add for employees	Risks
Collective Bargaining on T&C.	More difficult to do business
Union Insurance scheme	Union may not understand the business
MADANI discount card	Reduce flexibility in decision making
Legal advice and representation for members	Influence on workforce sentiment – “us vs them”
National representation.	External agenda may be misaligned to company objectives
Job Security	



Claim for Recognition – Due Diligence

- Union must be **legally registered** under the Trade Union Act 1959
- Check constitution to see if the industry union can represent your **industry**
- Check document to see if the union can represent the said **category of workers**.
- Check those **Excluded** from scope - managerial, confidential, security categories.
- Check who are your eligible employees and number eligible to be represented at **Date of claim**

Conducting a secret ballot

- Pre-condition to accord recognition
- Used to determine majority support by workers
- Date, Time and Venue will be pre-determined by DGIR
- Notice sent to employees 7 days before secret ballot
- Employer Reps, Union Reps and DGIR present.
- The ballot shall be counted if a majority of eligible employees attend and cast their vote (50% + 1).

Example :

- *Out of 956 employees -689 employees are eligible to Vote*
- *The ballot shall be counted if a majority of eligible employees attend and cast their vote ie 345 (50% + 1)*
- *Majority votes required to win is **173.***

Union Campaigns

Recent union movement - concentrated in the Northern Region (Penang, Kedah)

Around 30 over MNCs have been unionized from 2025-2026

- Nichias FGS Bhd (Japanese) (90% vote)
- Flextronics Technology (US)
- Robert Bosch (US) (87% vote)
- Lumileds (US) (90% vote)
- AT&S (Austrian) (92% vote)

Union Campaigns in these sites include:

- Social Media postings on poor leadership/management
- Allegations of anti-union busting tactics by Company
- Spotlight on lesser terms and conditions, especially monetary.
- Influencing employees to lodge police reports against their managers for violating workers rights
- Influencing employees to make complaints to Health Ministry on unhygienic handling of food at cafeteria.
- Advocacy – Calls for legal reform on union busting for more severe penalties.

Statutory protections

Industrial Relations Act 1967 (Act 177) ("IRA 1967").

- Section 5(1)
 - prohibits employers from imposing conditions in contracts of employment seeking to restrain the right of an employee to join, participate in, or organize a trade union.
- Section 5(1)(c)
 - specifically prohibits discrimination against any person in regard to employment, promotion, any condition of employment, or working conditions on the grounds that the person is or is not a member or officer of a trade union.
- Section 4
 - further protects employees' rights to form and join trade unions of their own choosing
- Section 7
 - prohibits employers from interfering with, restraining, or coercing workmen in the exercise of their rights to form or join trade unions.
- **Section 8**
 - **empowers the Director-General of Industrial Relations to take appropriate action or inquiry where disputes arise regarding union recognition, including the conduct of secret ballots.**

Don'ts

- Threatening or intimidating employees by implying that their livelihood or career progression may be affected if they vote or join the trade union
- Campaigns, communications or actions influencing employees against voting for the union
- The use of unwanted promotions to remove key union officers from union membership eligibility.
- Offering any form of incentive to employees to dissuade employees from joining the trade union
- Interference with voting processes during secret ballots, including restricting access to polling stations or scheduling votes at inconvenient times.
- Intimidation of workers through management briefings that discourage union membership or create a hostile environment for unionization efforts.
- Any form of communication to the employees which may be perceived as a threat that the Company will cease its business or divert its business to elsewhere due to the union.

Dos

- Company can highlight its achievements. Sharing the engagement initiatives undertaken by the Company as well as outlining future plans.
- Factual communication on implications of unionization with no threats or promises of benefits (for example legal framework of unionization)
- Business as usual, ie transfer, promotions etc as long as business justification
- Educate employees on salary and benefits and continue annual compensation cycle as previously.
- Can enforce workplace rules and disciplinary measures where there are proven breaches

Risks of Union Busting

- Sanctions for union busting include imprisonment and/or a fine of RM50,000 (approximately USD 12,000)
- Beyond criminal sanctions, the Industrial Court may award remedies including reinstatement of dismissed workers and compensation

Union Immunity

- Malaysian Trade Union law confers absolute immunity to Unions from civil suits in respect of tortious acts (including defamation), regardless of whether a trade dispute exists.



4 key demands:

- Establish a high-level taskforce to investigate all union-busting cases
- Enforce the Industrial Relations Act and prosecute employers who engage in union-busting
- Reform laws and regulations to restrict employers from engaging in such practices
- Ensure that collective bargaining begins within 60 days of a secret ballot victory

JUDICIAL REVIEW

Government Relations

- Legal process where the High Court can examine, challenge and overturn the decisions of public bodies.
- Check and Balance to ensure Executive & legislature act within confines of the law

Basis

- Legality and Procedural Fairness: DGIR acted within their jurisdiction when conducting the secret ballot or issuing recognition notice.
- Errors of Law: Judicial review is used to correct errors of law by the DGIR regarding recognition.
- Rationality in Decision-Making: Decisions must not be irrational or based on improper considerations.
- Compliance with Statutory Requirements: The process must adhere strictly to the Industrial Relations Act 1967 and the Industrial Relations Regulations 2009

Context:

- Employers often seek judicial review to quash a decision by the DGIR that grants recognition,
 - secret ballot was not conducted properly
 - improper behaviour during campaign not investigated.

Remedies:

- *Certiorari* (quashing order) to nullify the decision
- *mandamus* to compel the authority to act legally.

Legal Process

Government Relations

- **ADMINISTRATIVE POWERS**

Section 8

- empowers the Director-General of Industrial Relations to take action/ inquiry where disputes arise regarding union recognition (breaches of section, 4, 5 or 7)
- These sections protect both employer and employee against unlawful interference and coercion

Typical scenarios

- If members engage in an illegal strike
- Social media attacks on management representatives
- Campaign aimed at Defaming the company

Process

- Company may make a complaint to the DGIR
- DGIR will review the complaint/conciliation
- IR officer may inquire/investigate
- Refer the matter to the Industrial Court

Thank You