

8/1/2021

CCS Insights

DGTU's Power in the Competency Check

工会总监有权利进行能力测试

Feel the CCS & Co Difference

Do we still need Trade Unions in Malaysia Series

“马来西亚还需要工会吗?” 系列

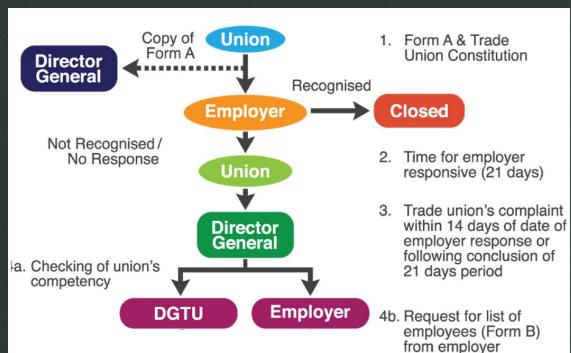


工会 Trade Union



If the employer rejects the trade union's registration application or if no response is received after the period has passed, the trade union can submit a report with the DGIR.

In this case, the DGIR must refer the trade union to the DGTU for a competency check, which is a procedure for determining the trade union's eligibility to represent the employees.





工会 Trade Union



Competency check in the recognition process was outlined clearly by the court in the case of *Minister of Labour & Manpower v Paterson Candy (M) Sdn Bhd*. Namely:

the workers must be within any similar trades, occupations or industries as written in the trade union's constitution. In respect of 'similarity' for a trade, occupation or industry, it must be 'similar' according to the opinion of the DGTU.

It is a standard practice in the DGIR's office to conduct a competency check although it is not mandatory in the Regulations.

The respondents further contended that the competency check could prevent the employer from resorting to objections and judicial reviews that will further delay the recognition process.



工会 Trade Union



The competency tests conducted against unions do not violate the principle of freedom of association.

However, the DGTU's decisions on the issue of "similarity" have often been challenged in the courts.

For example, in the case of *Kesatuan Kebangsaan Pekerja-Pekerja Syarikat-Syarikat Pembuatan Keluaran Getah v YB Menteri Sumber Manusia & Anor*, when the union filed an application for registration and the employer did not respond, the union submitted a report to the DGIR.

After a competence check, the Minister subsequently refused to recognize the union on the grounds that it was not competent to represent the workers, and the union appealed the Minister's decision in the High Court.



 **工会 Trade Union**  



The court, after referring to the National Union of Employees of Rubber Products Manufacturing Companies (NUECMRP) constitution, Rule 3(c), and the nature of the employer's business, agreed with the Minister's decision not to recognize the union because the workers were engaged in the manufacture and repackaging of medical products made of only 3.0% rubber and 97.0% non-rubber materials.

The court emphasized that workers must prove that their work involves the manufacture of rubber products containing more than 51% rubber materials in order to become members of the union.

 **工会 Trade Union**  

如果雇主拒绝了工会的注册申请，又或者是工会在期限过后没有收到雇主的答复，工会可以向工业关系部总监 [DGIR] 提交一份报告。在这种情况下，DGIR 必须将工会移交给工会总监 [DGTU] 以进行能力测试 [Competency check]，这是一个确定工会是否有资格代表雇员的程序。

在 *Minister of Labour & Manpower v Paterson Candy (M) Sdn Bhd* 一案中，法院对工会承认过程中的能力测试进行了明确的概述。也就是说，工人必须属于工会章程中规定的任何类似行业、职业或工业。关于行业、职业或工业的“相似性”，必须是根据工会总监 [DGTU] 的针对“相似”所把持的意见。虽然《条例》中没有强制规定，但进行能力测试是工业关系部总监 [DGIR] 办公室的标准做法。

 答辩人进一步辩称，能力测试可以防止雇主诉诸反对和司法审查，这将进一步拖延承认程序。

工 会 Trade Union



针对工会所展开的能力测试并不违反结社自由的原则 [principle of freedom of association]。

然而， DGTU 在 “相似性” 问题上的决定，往往 会受到法院的质疑。

例如，在 *Kesatuan Kebangsaan Pekerja-Pekerja Syarikat-Syarikat Pembuatan Keluaran Getah v YB Menteri Sumber Manusia & Anor* 一案中，当工会提出注册申请而雇主不作出回应的情况时，工会向 DGIR 提交了一份报告。

而在进行能力测试 [Competency check] 后，部长随后也拒绝承认该工会的成立，理由是该工会没有能力代表工人，于是对部长的决定，工会在高等法院提出上诉。

工 会 Trade Union



法院在参考了全国橡胶制品制造公司雇员工会 (NUECMRP) 的章程，第3(c)条和雇主的业务性质后，同意部长不承认该工会的决定，因为工人从事的是仅由 3.0% 橡胶和 97.0% 非橡胶材料制成的医疗产品的制造和重新包装。

法院强调，工人必须证明他们的工作涉及生产含有 51% 以上橡胶材料的橡胶产品，才能成为工会会员。



For further consultation, please contact:

Chin Chee Seng
Partner
+6012 365 4331
cchin@ccs-co.com

Wong Woei Teng
Audit Partner
+6017 237 8233
woeiteng@ccs-co.com

Jared Low
Assurance Director
+6018 763 4813
jared@ccs-co.com

CCS & Co

© 2020 CCS. All rights reserved. Not for further distribution without the permission of CCS & Co. "CCS" refers to the network of member firms of CCS & Co. The information contained in the slides represents the views of CCS and does not constitute the provision of professional advice of any kind. The information contained in the slides is based on our interpretation of existing legislation as at the published date. While CCS makes reasonable efforts to provide information which we believe to be reliable, we make no representations or warranties that the information provided is complete, accurate, up to date or non-misleading. The information provided herein should not be used as a substitute for consultation with professional advisers. Before making any decision or taking any action, you should consult a professional adviser who has been provided with all the pertinent facts relevant to your particular situation. No responsibility for loss occasioned to any person action or refraining from action as a result from using the information in the slides can be accepted by CCS.