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CCS Insights

Trade Unions - Meaning of “Establishment”

工会 - “机构” 的定义

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“马来西亚还需要工会吗?” 系列



工会 Trade Union



- Section 2(1) of the Trade Union Act was amended to include the phrase "establishment." "establishment" as defined under the Act means any place of business or employment belonging to an employer and includes any division or branch thereof.
- The High Court said in *British American Tobacco (M) Bhd Employees Union v Ketua Pengarah Kesatuan Sekerja & Ors [2011] 4 ILR 241* that:
 - *the aim of parliament was to foster the blossoming of trade unionism when it amended s 2 (1) of the Act in 1989 by introducing the phrase "establishment."*
 - *The goal was to allow in-house unions to gain legitimacy despite the existence of national unions.*



- A trade union that is registered to represent employees in one company cannot expand to represent employees in another.
- The High Court stated in *Perusahaan Otomobil Kedua Sdn Bhd v Ketua Pengarah Kesatuan Sekerja & Anor [2000] 5 CLJ 361* that:
 - *the first respondent failed to take into account the relevant consideration and misinterpreted the definition of "establishment" under s 2 of the Act, thereby committing an error of law beyond his jurisdiction.*
 - *Both the subsidiary and the application company are different and separate and distinct entities.*



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- 政府对《工会法》第2(1)条进行了修订，加入了“机构”这一字。根据该法的定义，“机构”是指属于雇主本身的所有商业或就业场所，包括其任何部门或分支机构。
- 高等法院在 *British American Tobacco (M) Bhd Employees Union v Ketua Pengarah Kesatuan Sekerja & Ors [2011] 4 ILR 241* 中说：-
 - 国会在1989年修订该法第2(1)条时，引入了“机构”一字，其宗旨是为了促进工会的发展。
 - 其目的是为了让内部工会 [In House Trade Union] 获得合法性，尽管存在全国性的工会。



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- 然而在一家公司名下注册，代表雇员的工会是不能扩大到代表另一家公司的雇员。
- 高等法院在 *Perusahaan Otomobil Kedua Sdn Bhd v Ketua Pengarah Kesatuan Sekerja & Anor [2000] 5 CLJ 361* 案中指出。
 - 第一被告没有考虑到相关的因素，并错误地解释了该法第2条中 "机构" 的定义，从而犯下了超出其管辖权的法律错误。
 - 子公司和申请公司都是不同的、独立的、不同的实体。

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