

SUBSIDIARY LEGISLATION 452.112

RECOGNITION OF TRADE UNIONS REGULATIONS

9th December, 2016

LEGAL NOTICE 413 of 2016.

1. (1) The title of these regulations is the Recognition of Trade Unions Regulations. Citation and objective.

(2) These regulations regulate the award and revocation of the recognition of a union, as the sole collective bargaining union at the place of work.

2. (1) In these regulations, unless the context otherwise requires:- Interpretation.

"Act" means the Employment and Industrial Relations Act; Cap. 452.

"the Director" shall mean the Director of Industrial and Employment Relations in terms of the Act and shall include any officer or officers deputed by him for the purpose of these regulations; and

"union" means a single trade union registered in terms of the Act:

Provided that for the purposes of these regulations, a 'union' shall also mean more than one union who act jointly:

Provided further that unions which acquire joint recognition in terms of these regulations shall, whilst such recognition remains, negotiate collectively jointly and not register separate disputes on collective issues with the employer but may only register a joint dispute with the employer and shall not order any industrial action on a separate basis and any action taken separately on a collective matter shall be null and void.

(2) Subject to the provisions of sub-regulation (1), terms and expressions used in these regulations shall, unless the context otherwise requires, have the meaning assigned to them in the Act.

3. Any verification process initiated in terms of these regulations shall be concluded within twenty eight working days which shall start to run from the date of the request up to the result, unless the parties agree for a longer period. Timeframe.

4. (1) When a union has been recognized by the employer, no union may request recognition for a period of one year from the date when such recognition was awarded. General provisions on recognition.

(2) A union shall have the right to request recognition, from the employer, as the sole collective bargaining union, in respect of the employees of that same employer. Such a request shall be made in writing to the employer and copying the Director.

(3) Without prejudice to article 57(2) of the Act, on receiving a request in terms of sub-regulation (2), the Director shall request lists and other information about -

- (a) union members from the union making the request for recognition, including proof of membership through a presentation of records and up-to-date records of payment:

Provided that for the purpose of these regulations, an employee would still be considered as a member of the union if he still has payments in arrears of not more than three months from the date of the request;

- (b) employees in the category or categories of interest from the employer and, in the case of membership fees paid through a check-off system, a list of such employees shall also be provided by the employer:

Provided that the list of employees provided in terms of paragraphs (a) and (b), shall reflect the staff complement as on the date when the request for recognition was effected by the union and shall exclude those employees whose employment contracts do not add up to more than four months in one calendar year.

(4) The lists and other information referred to in sub-regulation (3) shall be presented in the format requested by the Director within forty-eight hours from the request effected by the union.

Effects of
recognition.

5. Once a union is recognized as the sole collective bargaining union, no other union may intervene on a collective matter relating to the employees concerned with the employer, and conversely, no employer shall discuss collective matters relating to the employees concerned with a union other than the recognized union.

No recognized
union and a union
seeks recognition.

6. (1) Where there is no recognized union at the workplace and a union seeks to be recognized in relation thereto, if:

- (a) the requesting union fails to supply any requested information as required within forty eight hours from the request, it shall be presumed that the union does not have more than 50% of the employees concerned as its members; or
- (b) the requesting union has less than 50% of employees as members as ascertained by the Director on comparing the list of union members submitted by the union and that of the employees submitted by the employer,

the verification process shall be considered as having been completed, and the Director shall inform the employer and the requesting union accordingly, and in such cases:

- (i) the requesting union shall have no right to be recognized; and
- (ii) no further request for recognition may be made by the requesting union until the expiry of one

year period from the date of the request.

(2) Where there is no recognized union and a union seeks to be recognized, if the latter has more than 50% of employees as members, as ascertained by the Director on comparing the list of union members submitted by the union and that of the employees submitted by the employer, the Director shall inform the employer and union accordingly and the employer shall grant recognition to that union.

7. (1) Where there is a recognized union at the place of work, no claims by another union or unions can be made during the period starting three months before the expiry of a collective agreement up to three months after the expiry date of that collective agreement. If a new collective agreement is not yet concluded upon the lapse of three months from the date of expiry of the collective agreement, if a claim for recognition has been lodged, any negotiations on the pending agreement should be stopped until the verification process is concluded in terms of these regulations.

Recognized union
and another union
seeks recognition.

(2) Without prejudice to sub-regulation (1), where there is a recognized union at the place of work and a union seeks to be recognized in relation thereto, if:

- (a) the requesting union fails to supply any requested information as required within forty eight hours from the request, it shall be presumed that the union does not have more than 50% of the employees concerned as its members; or
- (b) the requesting union has less than 50% of employees as its members as ascertained by the Director on comparing the list of union members submitted by the union and that of the employees submitted by the employer,

the verification process shall be considered as having been completed, and the Director shall inform the employer and the requesting union accordingly, and in such cases:

- (i) the requesting union shall have no right to be recognized and
- (ii) no further request for recognition may be made by the requesting union until the expiry of one year period from the date of the request.

(3) Where there is a recognized union and a union seeks to be recognized, if the latter union has more than 50% of the employees as its members, as ascertained by the Director on comparing the list of union members submitted by the union and that of the employees submitted by the employer, a ballot in terms of these regulations shall take place unless the recognized union withdraws from the verification exercise, in which case the Director shall inform the employer and the requesting union accordingly and the employer shall grant recognition to the requesting union:

Provided that where the recognized union does not withdraw from the verification exercise and a ballot in terms of this sub regulation has to take place, the Director shall request the

recognized union the list and all the information required by regulation 4(3)(a) and the recognized union shall comply with the request within forty-eight hours.

No recognized union and more than one union seek recognition.

8. (1) Where there is no recognized union, and two unions or more make a request for recognition, if:

- (a) the requesting unions both fail to supply any requested information as required within forty eight hours from the request, or
- (b) it is ascertained by the Director on comparing the list of union members submitted by the unions and that of the employees submitted by the employer that neither of the requesting unions has more than 50% of the employees concerned as members,

the verification process shall be considered as having been completed, and the Director shall inform the employer and unions accordingly, and in such cases:

- (i) the requesting unions shall have no right to be recognized; and
- (ii) no further request for recognition may be made by the requesting unions separately until the expiry of one year period from the date of the request.

(2) Where there is no recognized union, and two unions or more make a request for recognition, if it is ascertained by the Director on comparing the list of union members submitted by the unions and that of the employees submitted by the employer that only one of the requesting unions has more than 50% of the employees concerned as members, the union enjoying more than 50% of the employees concerned as members shall be awarded recognition by the employer and the Director shall inform the employer and unions accordingly, and the other requesting union who has less than 50% of the employees as members shall have no right to be recognized and no further request for recognition may be made by the latter until the expiry of one year period from the date of the request.

(3) Where there is no recognized union, and two unions or more make a request for recognition, if it is ascertained by the Director on comparing the list of union members submitted by the unions and that of the employees submitted by the employer that both of the unions requesting recognition have more than 50% of the employees concerned as members, a ballot shall take place in terms of these regulations.

Ballot.

9. (1) Where a ballot is contemplated by these regulations, the logistical arrangements for the holding of such ballot shall be made by the Director and it shall be the duty of every person to cooperate fully with, and supply all necessary assistance to, the Director to enable a ballot to take place.

(2) The decision of the Director on any matter referred to in sub-regulation (1) or to the holding of a ballot shall be complied

with as specified by the Director.

(3) In the ballot process, only the members of the contesting unions employed with the employer concerned shall participate in the ballot.

(4) A ballot shall be held to determine which contesting union has the majority of valid votes cast.

(5) The date or dates on which and the place where the ballot shall take place shall be set by the director, in consultation with both the employer and the contesting unions.

(6) The ballot paper, which shall be in both the Maltese and the English language, shall be in the format set in the Schedule to these regulations.

(7) Only one box in the ballot paper shall be marked. If other words or marks are written on the ballot paper, that vote shall be considered to be invalid.

(8) The employer may choose to exclude top management from being considered as part of the workforce for collective representation purposes and hence from voting in such ballots. Article 67 of the Act shall *mutatis mutandis* apply to this sub regulation:

Provided that if an employer chooses to exclude such officers, he shall inform the Director accordingly within one week from the request for recognition.

(9) The employer shall take all necessary arrangements to facilitate the voting procedure based on a free and secret vote.

(10) During the ballot process, including the counting stage, the only persons who shall be present shall be the Director, and one representative of each union taking part in the ballot. The counting of the votes shall take place immediately after the conclusion of the ballot process and any decision on the validity or otherwise of a vote or votes shall rest on the Director, and that decision shall be final.

(11) The result of the ballot shall be communicated by the Director to the unions and to the employer participating in the process. The employer shall immediately publish the result of the ballot result at a prominent place at the workplace.

(12) The result of the ballot shall be valid until it is challenged by another union in terms of these regulations.

(13) During the verification process, commencing from the request until the final result, the unions involved in the said process shall not initiate industrial action at the place of work concerned in furtherance of a dispute relating to recognition.

10. (1) No person may interfere, intimidate, exert any force or otherwise cause, or threaten to cause, detriment to an employee:

Right of
association.

(a) for joining or attempting to join, or for leaving or attempting to leave a union;

(b) who is eligible to vote and freely wishes to vote, or not

to vote, in the process leading to, during or after any ballot organised or provided for under these regulations.

(2) Any person who alleges that he has suffered detriment by any person in any way in the processes referred to in sub-regulation (1) above shall have the right to refer his case to the Tribunal, and in the event that the Tribunal decides in his favour the Tribunal shall make an award of compensation.

Offences.

11. Any person who contravenes or fails to comply with the provisions of any of these regulations shall be guilty of an offence against the Act in terms of article 45 thereto and shall be liable to a minimum fine of five hundred euro.

Schedule
(Regulation 9)

DIPARTIMENT TAR-RELAZZJONIJIET INDUSTRIJALI U TAL-IMPIEG
DEPARTMENT FOR INDUSTRIAL & EMPLOYMENT RELATIONS

EŻERĊIZZJU TA' VERIFIKA – ISEM MIN IHADDEM
VERIFICATION EXERCISE - EMPLOYER'S NAME

IMMARKA L-GHAŻLA TIEGHEK F'KAXXA WAHDA
TICK YOUR PREFERENCE IN ONLY ONE BOX

UNION A

☐

UNION B

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