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## DRAFT RULES ON TRADE UNIONS UNDER INDUSTRIAL RELATIONS CODE

### Introduction

The Union Ministry of Labour and Employment (“**Ministry**”) has invited objections/suggestions within 30 days on the draft Industrial Relations (Central) Recognition of Negotiating Union or Negotiating Council and Adjudication of Disputes of Trade Unions Rules, 2021<sup>1</sup> (“**Draft Rules**”). The Draft Rules as prescribed under Sections 14 and 22 of the Industrial Relations Code, 2020 (“**IRC**”) proposes to provide mechanisms to recognise Trade Unions and verify their membership.

### Key Features

It deals with the criteria for recognising registered Trade Unions, either as the sole Negotiating Union of workers, or in the form of a ‘Negotiating Council’ in case of several unions in one industrial establishment.<sup>2</sup>

Section 14 of the IRC set standards for the recognition of Negotiation Unions or a Negotiating Council. Establishments with multiple Trade Unions shall recognise a single union with 51% of its workers employed in the establishment, to form the negotiating council.<sup>3</sup> The Draft Rules propose that in the event no single union has this proposed majority, the employer shall create a Negotiating Council comprising of representatives of registered Trade Unions, with no less than 20% of the total workers enrolled in it who are employed in the establishment. If establishments have only one registered Trade Union, then it may be recognised as the sole Negotiating Union, *i.e.*, if at least 30% of the total workers employed in the industrial establishment are enrolled in it.

Once the Council is established, it is empowered to negotiate with the employer on issues pertaining to classification of grades and categories of workers, leave with wages and holidays, promotion, transfer policy, disciplinary procedures, wages, wage period, dearness allowance, bonus increment, customary concessions or privileges of the workers.<sup>4</sup>

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<sup>1</sup> Government of India, Ministry of Labour and Employment, No. 2461 GI/2021, (May 4, 2021), accessible at: <https://ourgovdotin.files.wordpress.com/2021/05/draft-ir-central-recognition-of-negotiating-union-or-negotiating-council-adjudication-of-disputes-of-the-trade-unions-rules-2021.pdf>.

<sup>2</sup> Rule 2 of Draft Rules.

<sup>3</sup> Industrial Relations Code, 2020, Section 14(4).

<sup>4</sup> Rule 3 of Draft Rules.

Draft Rules call for the appointment of a ‘Verification Officer’ (“**VO**”) to verify membership of Trade Unions in the establishment. This officer must act independently and not have any interest with the Trade Union whose membership verification is to be carried out.<sup>5</sup>

Likewise, the Draft Rules propose certain logistical measures for the manner of verification of Negotiating Union and Negotiating Council. The process for their constitution will commence three months prior to the expiry of tenure of the existing trade unions recognised by the employer under the Code of Discipline.<sup>6</sup> Moreover, the VO must carry out the responsibility of membership verification in a time-bound manner as determined by the employer.<sup>7</sup>

Finally, the Draft Rules recommend providing appropriate facilities to the Negotiating Union or Council, by the establishment. These facilities include a suitable venue, and necessary facility for holding discussions, a notice board for the purpose of displaying the information about its activities and other related amenities.

### **Conclusion**

Draft Rules could potentially undermine representation of workers, considering that a sole Negotiating Union can be recognised at 30% membership, as opposed to 51%, as stipulated under the parent IRC.

It places the onus of creating the negotiating council and negotiating union on the employer. Presently, establishments negotiate with unions that have over 25% of workforce membership. However, other registered unions are not excluded from negotiation.

There is perhaps scope for the Rules to bring about consistency in negotiating practices in employer-employee relationships, as management would be required to deal with a single entity as opposed to several. However, the final Rules must be notified alongside the IRC being brought to force. It also appears that there is opposition to the text of the Rules from the perspective of organisations representing workers’ rights.<sup>8</sup>

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<sup>5</sup> Rule 5(1)(a) of Draft Rules.

<sup>6</sup> Ibid; Code of Discipline, which “lays down certain criteria for recognition of unions by the managements on a voluntary basis” is available at the Ministry’s website at: <https://labour.gov.in/sites/default/files/Code%20of%20Discipline.pdf>.

<sup>7</sup> Rule 5(1)(c) of Draft Rules.

<sup>8</sup> <https://www.theleaflet.in/draft-rules-on-trade-union-recognition-and-activities-are-arbitrary-and-unreasonably-restrictive/>.