

Annexure - III

Some matters under Industrial Relation Code, 2020 regarding retaining the existing registration of trade union registered under Trade Union Act, 1926

WE can retain/protect the registration of all existing trade unions registered under old Trade Union Act, 1926. But one condition is there in the Industrial Relation Code- that is all such existing trade unions should file a statement with Registrar of Trade Unions stating that the constitution/bye-law of the unions are in conformity with I R Code. Thus, the compliance statement should be filed. On this score what is legal positions under I R Code.

1.The Transitional Provisions for the existing Trade Unions: *Conditional Deemed Registration facility for the existing trade unions has been provided u/s.9(4) of I R Code*

Section 9(4): Every Trade Union registered under the Trade Unions Act, 1926 having valid registration immediately before the commencement of this Code shall be deemed to have been registered under this Code.

Provided that such Trade Union shall file with the Registrar a statement that the constitution of the executive of the Trade Union is in accordance with this Code along with the rules of the Trade Union updated in accordance with section 7 of I R Code and the Registrar shall amend his records accordingly.

Accordingly, respective trade union's constitution/rules/bye-laws should contain the matters. If not, we should amend or update accordingly. It is more or less the same as it was in the old Trade Union Act, but with few new additions that are being shown in *italics*

The matters to be contained in the Constitution or Rules of the Trade Union [u/s.7]

The trade union, before applying for registration shall frame a rule for the purpose of its own members. The Rules may provide for the following matters: -

- the name of the Trade Union;
- the whole of the objects for which the Trade Union has been established;
- the whole of the purposes for which the general funds of the Trade Union shall be applicable, all of which purposes shall be purposes to which such funds are lawfully applicable under this Code;
- the maintenance of a list of members of the Trade Union and adequate facilities for the inspection thereof by the office-bearers and members of the Trade Union;
- the admission of ordinary members (irrespective of their craft or category) who shall be persons actually engaged or employed in the industrial establishment, undertaking or industry, or units, branches or offices of an industrial establishment, as the case may be, with which the Trade Union is connected,

and also the admission of such number of honorary or temporary members, who are not such workers, as are not permitted under section 21 to be office-bearers to form the executive of the Trade Union;

- the payment of a subscription by members of the Trade Union from such members and others, as may be prescribed;
- the conditions under which any member shall be entitled to any benefit assured by the rules and under which any fine or forfeiture may be imposed on any member;
- *the annual general body meeting of the members of the Trade Union, the business to be transacted at such meeting, including the election of office-bearers of the Trade Union;*
- the manner in which the members of the executive and the other office bearers of the Trade Union shall be elected *once in a period of every three years and removed, and filling of casual vacancies;*
- the safe custody of the funds of the Trade Union, an annual audit, in such manner as may be prescribed, of the accounts thereof, and adequate facilities for the inspection of the account books by the office-bearers and members of the Trade Union;
- the manner in which the rules shall be amended, varied or rescinded; and
- the manner in which the Trade Union may be dissolved.

Besides these, there are some aspects that also warrant special attention in this connection that are listed below.

2.Cancellation of Trade Union u/s.9(5)

The certificate of registration of a Trade Union may be withdrawn or cancelled by the Registrar,

- on the application of the Trade Union verified in such manner as may be prescribed; or
- on the information received by him regarding the contravention by the Trade Union of the provisions of this Code or the rules made there under or its constitution or rules; or
- if he is satisfied that the members in a Trade Union falls below ten per cent. of total workers or one hundred workers, whichever is less.
- A certificate of registration of a Trade Union shall be cancelled by the Registrar where a Tribunal has made an order for cancellation of registration of such Trade Union[u/s.9(6)]

The Registrar shall issue a notice to the trade notice not less than sixty days informing the grounds for cancellation of the registration of the trade union. The Registrar shall record its reasons for doing so and communicate the same to the trade union.

3.Proportion of Office Bearers to be connected with industry.

S.23. (1) Not less than one-half of the total number of the office-bearers of every registered Trade Union in an unorganised sector shall be persons actually engaged or employed in an establishment or industry with which the Trade Union is connected:

Provided that the appropriate Government may, by special or general order, declare that the provisions of this section shall not apply to any Trade Union or class of Trade Unions specified in the order.

Explanation. —For the purposes of this sub-section, "unorganised sector" means any sector which the appropriate Government may, by notification, specify.

(2) Save as otherwise provided in sub-section (1), all office-bearers of a registered Trade Union, except not more than one-third of the total number of the office-bearers or five, whichever is less, shall be persons actually engaged or employed in the establishment or industry with which the Trade Union is connected.

Explanation. —For the purposes of this sub-section, an employee who has retired or has been retrenched shall not be construed as outsider for the purpose of holding an office in a Trade Union.

(Note: The above language has to be understood in clear terms. This means, in any union except in unorganized sector, the outsider leaders cannot be more than one third of the total number of office bearers. Also, all outsider leaders have to be formally admitted as honorary members into the respective union through a formal decision in the Union's committee recorded appropriately.)

4. Section 26 on Annual Return

26. (1) Every registered Trade Union shall—

(a) forward annually to the Registrar, on or before such date, in such form, audited in such manner and by such person, as may be prescribed, a general statement containing particulars of all receipts and expenditure of such registered Trade Union during the year ending on the 31st day of December next preceding such prescribed date, and of the assets and liabilities of the Trade Union existing on such 31st day of December;

(b) along with the general statement referred to in clause (a), forward to the Registrar a statement showing changes of office-bearers made by the Trade Union during the year to which such general statement refers, together also with a copy of the rules of the Trade Union corrected up to the date of dispatch thereof to the Registrar.

(2) A copy of every alteration made in the rules of a registered Trade Union shall be sent to the Registrar within fifteen days of the making of the alteration.

(3) For the purpose of examining the documents referred to in clauses (a) and (b) of sub-section (1), and sub-section (2), the Registrar or any officer authorised by him, by general or special order, may at all reasonable times inspect the certificate of registration, account books, registers and other documents, relating to a Trade Union, at its registered office or may require their production at such place as he may specify in this behalf, but no such place shall be at a distance of more than fifteen kilometres from the registered office of such Trade Union.

5. Changes in the Name of the Union

According to Section 24. (1) Any registered Trade Union may, with the consent of not less than two-third of the total number of its members and subject to the provisions of sub-section (3), change its name.

6. Communication to Trade Union and Change in its registration particulars (Section 11)

11. (1) All communications and notices to a registered Trade Union shall be sent, in such manner as may be prescribed, to the address of the head office of the Trade Union as entered in the register maintained by the Registrar.

(2) The Trade Union shall inform the Registrar if the members of such Trade Union fall below ten per cent. of total workers or one hundred workers, whichever is less.

(3) The Trade Union shall inform the Registrar of any change in the particulars given by it in its application for registration and in its constitution or rules, in such manner as may be prescribed.

Urgent Tasks before us:

Thus, in post- Labour Code implementation regime we must take up the following steps/measures on a priority basis to be executed through all our registered affiliated unions in the states to defend and protect their registered status.

a. For the unions already registered before the Labour Code notification:

All our existing unions should update/amend its constitution/rule according to section 7 where 12 points are listed including registered address of office trade union so as to comply with I R Code

- Be alert so that at any time you need to prepare a statement stating that the constitution of the executive of the Trade Union is in accordance with this Code along with the rules of the Trade Union updated in accordance with section 7 of I R Code
- Get ready to file that statement with Registrar of Trade Union designed under the I R Code.

b. For the purpose unions to be registered anew in the post-Labour Code regime:

The provisions related to registration of the trade union in the Industrial Relations Code should be strictly followed and necessary records are to be prepared accordingly and kept ready while submitting application for registration of new unions.