Industrial Relations

- Industrial relations – the relationship between workers and their employers within the work environment. In Malaysia defined narrowly.
- Industrial relations stresses the importance of three major areas:
  - The relationship between employers and trade unions
  - Employment law
  - Disciplinary procedures and termination of the employment contract
- The MIR development imperatives. Regulate IR system to attract foreign investments.
Industrial Relations

- Industrial relations focuses on areas such as:
  - Laws and rules which impact on the work environment
  - Terms and conditions of work
  - Rights and obligations of employers and employees
  - Processes by which the rules and terms are made

Industrial relations systems are tripartite

- The parties in an industrial relations system:
  - The employer
  - The employees
  - The government – MOHR.
- Tripartite discussion – National Labor Advisory Council (NLAC):
  - Discusses labor matters including labor policies and legislations for preserving industrial harmony and increased productivity
  - 14 reps for workers (MTUC and CUEPACS)
  - 14 reps for employers (MEF)
  - 12 reps for the government (HR Ministry)
  - Meets at least twice a year
Role of the Government in Industrial Relations

- The government plays three major roles in Malaysian industrial relations systems:
  - As legislator through parliament
  - Administrator through the Ministry of Human Resources
  - Participant by way of being the largest employer in the country

MOHR
- Lead govt agency on labor issues.
- Resp for formulating labor policy, implementation & enforcement of labor law (employee relations, child labor, trade union, OSH), skill development, training fund (HRDF).
- Industrial court – set principles and guidelines for labor law in the private sector through its decisions and awards.
Ministry of Human Resources

The objectives of the Ministry:
- To protect the welfare of workers – their safety, health, and rights
- To promote good employer-employee relationships through a stable and peaceful industrial relations system
- To equip the unemployed with basic industrial skills and to improve the skill level of the work force
- To assist in maximizing the country’s manpower resources through manpower planning

Related Organizations:
- Social Security Organization (SOCSO)
- Human Resource Development Corporation
- Skills Development Fund Corp.
- NIOSH (National Institute of Occupational Safety and Health)
- Industrial Court

Departments:
- Department of Labour, Peninsular Malaysia
- Department of Labour, Sabah
- Department of Labour, Sarawak
- Department of Industrial Relations
- Department of Trade Unions
- Department of Occupational Safety and Health
- Manpower Department
- Department of Skills Development
The Malaysia Employers Federation (MEF) is the central organization of private sector employers. Founded in 1959 as the Federation of Malaya Industrial & Commercial Employers' Consultative Association but subsequently changed its name to the Malayan Employers' Consultative Association (MECA). In 1977, MECA was renamed the Malaysia Employers Federation.

The MEF represents more than 10 sectoral employers associations and 3,480 corporations, comprising all types of economic activity.

The primary function of the MEF:
- promote and safeguard the rights and interests of employers.
- provides members with advice, guidance, and assistance in regards to the labor law and industrial relations matters and has created an Industrial Relations Panel, comprised of personnel and industrial relations practitioners, to formulate industrial relations policies.
- assists members in negotiating collective agreements,
- may represent members at Industrial Court hearings, and at the Labor Courts.
- conducts training courses on a regular basis.
Trade Union

- The Malaysian Trades Union Congress (MTUC) is the most representative workers' organization in the country.
- Founded in 1949, MTUC is the oldest trade union federation in Malaysia and represents approx 500,000 workers from all major industries and sectors.
- It has three main objectives:
  - to promote the interest of its affiliate unions to improve the economic and social conditions of workers;
  - to ensure that policies are developed & action taken towards ensuring full employment, establishing a minimum wage, a legal max. working week of 44 hours, and training centers for workers; and
  - to establish Social Security measures that provide retirement benefits, as well as protection against sickness, unemployment, old age, and injury.
- Actively involved in organizing workers, helping unions obtain recognition, and assisting unions in their negotiations with management.

- Takes part in the government's advisory councils, such as NLAC, and represents Malaysia's labor interests at the ILO.
- The Congress of Unions of Employees in the Public and Civil Services (CUEPACS) is a federation of 130 public sector employee trade unions at the national and state levels.
- Largest member is the National Union of the Teaching Profession (NUTP), which represents 105,000 teachers.
- CUEPACS negotiates annually with the Public Service Department regarding wages for civil servants, with their recommendations being sent to Parliament for final wage determination.
### Influence of International Bodies

**International Labor Organization (ILO)**
- An agency of UN
- Has 175 member states
- Malaysia joined ILO in 1957
- A tripartite body which provides an international forum for discussion on all matters relating to labor by holding annual meetings of members every June in Geneva
- The conference sets labor standards, which it expects member countries to ratify and implement

### Influence of International Bodies

#### 14 Conventions ratified by Malaysia

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<thead>
<tr>
<th>Convention Description</th>
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<tr>
<td>Forced Labour Convention, 1930 (No. 29)</td>
<td>11.11.1957</td>
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<td>Recruiting of Indigenous Workers Convention, 1936 (No. 50)</td>
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<td>Contracts of Employment (Indigenous Workers) Convention, 1939 (No. 64)</td>
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<td>Penal Sanctions (Indigenous Workers) Convention, 1939 (No. 65)</td>
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<td>Protection of Wages Convention, 1949 (No. 95)</td>
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<td>Right to Organise and Collective Bargaining Convention, 1949 (No. 98)</td>
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<td>Equal Remuneration Convention, 1951 (No. 100)</td>
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<td>Guarding of Machinery Convention, 1963 (No. 119)</td>
<td>6.06.1974</td>
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<tr>
<td>Minimum Age (Underground Work) Convention, 1965 (No. 123)</td>
<td>6.06.1974</td>
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- Minimum age specified: 16 years
- Minimum age specified: 15 years

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<tr>
<td>Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)</td>
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<tr>
<td>Worst Forms of Child Labour Convention, 1999 (No. 182)</td>
<td>10.11.2000</td>
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Influence of International Bodies

- The ILO also provides technical assistance to member states.
- The ILO is run by a governing body of 14 full members, 14 deputy members and 14 reserve members.
- The body is financed by the members but mostly the burden is carried by 7 countries – USA, Japan, Germany, France, Britain, Italy and Canada
- The ILO convention widely regarded as the most important is that on Freedom of Association.

Employment Legislations

- Employment Act, 1955
- Trade Unions Act, 1959
- Industrial Relations Act, 1967
- Factories and Machinery Act, 1967
- Occupational Safety and Health Act, 1994
- Workmen’s Compensation Act, 1952
- Wages Councils Act, 1947
- Children and Young Persons (Employment) Act, 1966
- Workers Minimum Standards of Housing and Amenities, 1990
- Employees Provident Fund Act, 1991
- Employees’ Social Security Act, 1969
- Weekly Holidays Act, 1950
- Private Employment Agencies Act, 1981
- Pensions Act, 1980
- Public Services Tribunal Act, 1977
- Employment (Restriction) Act, 1968
- Labour Ordinance, Sabah (Cap 67) and Sarawak (Cap 76)
### Employment Act, 1955

- The employment Act lays down provisions to protect workers from exploitation and to provide minimum benefits for all workers covered by the Act:
  - Those who earn not more than RM1500 per month
  - Those who carry out manual labour, or supervise such workers, or are employed to drive and maintain vehicles

- The benefits provided include:
  - Termination and maternity benefits
  - The right to a weekly rest day, annual leave and sick leave

### Trade Unions Act, 1959

- Trade Unions Act seeks to control the activities of trade unions so that they can develop in an orderly peaceful manner
- This is done by laying down rules and regulations which unions are required to follow
Industrial Relations Act, 1967

- Industrial Relations Act regulates the relations between employers and workmen and their unions.
- Laying down rules to help prevent and settle disputes between the two parties, thus ensuring peaceful industrial relations as far as possible.

Main objective if the IRA

- Regulate the relations between eyr-eyee.
- Prevent trade dispute form getting out of control
- Settle any trade dispute between eye-eyee in a judicious manner
- Establish the necessary machinery to settle trade disputes by way of negotiation, conciliation and arbitration.
- IRA = a social justice legislation
- IRA is a piece of **beneficent social legislation** – prevention and speedy resolution of disputes between employer & employee.

Azmi J (Dunlop Estate v All Malayan Estate Staff Union [1980] MLJ 234-245.
- ...... the IRA is a social legislation enacted with the prime object of attaining **social justice and industrial peace**, demands practical and realistic interpretation whenever necessary, for the purpose of maintaining good relationships and fair dealings between employers and workers and their trade union, and the settlement of any differences or disputes arising from their relationship.

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**Employment Relationship**

- A relationship between a person called an employee/worker and an employer for whom the employee performs work under certain conditions in return for remuneration (International Labor Organization, 2005).

- An agreement by which two or more persons agree to regulate their legal relationships as enforced by the law (Wadderburn, 1986)

- The reciprocal rights and obligations are created between employee and employer.

- Contract of employment is the keystone to the employment relationship

The Employment Act 1950 defines COS as:
- any agreement, whether oral or in writing and whether express or implied whereby one person agrees to employ another as an employee and that other agrees to serve his employer as an employee and includes apprenticeship contract. (Sec. 2, EA, 1950).

The Industrial Relations Act, 1967 defines contract of employment as:
- any agreement, whether oral or in writing and whether express or implied, whereby one person agrees to employ another as a workman and that other agrees to serve his employer as a workman (Sec. 2, IRA, 1967).

The definitions of employment contract under the Acts suggest:
- employment relationship may exist even if the employment contract is entered orally. (implied by the fact that a person is working for the employer.
- An employment contract may be entered for a particular period of time - fixed-terms contracts, or can be open-ended without specifying the duration.
- Employee – includes full-time, part-time employees & apprentices. At common law, a contract of apprenticeship does not give rise to the relationship of employer and employee.
Rights in an employment relationship

- Rights - an individual’s legitimate and enforceable claims to some desired treatment, situation or resource (Wright & Hartin, 1997)
- Who is an employer?
  - Any person or body of persons whether corporate or unincorporate who employs a workman under a contract of employment, and includes the Govt and any statutory authority (S2 IRA, S2 TUA)
  - Any person who has entered into a contract of service to employ and other person as an employee (S2 EA).
  - Differentiate employer with contractor (S2 EA)

Employer’s rights

- Prerogatives under S13 IRA
  - Promote
  - Transfer employees
  - Employment of persons, determine the number of employees to be engaged (man-power planning), decide upon efficient utilization of the workforce
  - Termination due to redundancy, re-organization [retrenchment]
  - Dismissal and reinstatement
  - Assignment and allocations of duties to employees.
- Operate & manage his business in all respects
- Formulate rules and regulations
- Engage new employees
- Take appropriate & lawful disciplinary actions
- Require any employees in the managerial, confidential or security position not to be member of a TU.
Rights given to employer are not absolute – Natural Justice

- Unfair labor practice
- Right to manage business – but not arbitrarily (abuses, discrimination)
- Termination – for good reasons only
- Closure of business – for bona fide reasons
- Assignment of duties – consistent or compatible with terms of employment
- Transfer – bona fide reasons.
- Reorganization/retrenchment – bona fide reasons.

Employee rights

There are various forms of employee rights at work.

- The ILO defines employee rights as the minimum rights laid down by law and collective agreements, and those set out in the employment contract (ILO, 2005).
- Des Jardins and McCall (1986) - right possessed by employees based on 1) contractual agreements (rights to a particular package of health benefits or rights to a specific number of paid holidays each year). 2) rights possessed on the basis of government regulations. (eg: employees’ rights to statutory contribution for retirement or social security, rights to join and organize, or rights to over-time pay). 3) rights possessed independently of any contractual obligations or legislations such as moral rights or entitlement of any employee to receive certain goods or be protected from certain harms in the workplace.
- Wright and Hartin (2003) two main right: 1) Workers rights and enterprise rights. Workers rights - rights provided by the legislation, non-negotiable. Enterprise rights - rights of employees that are not based on legislation, but are specific rights granted by employers. Other rights - in the area of public welfare and safety, ethical and moral standards and legal codes.
Justice Gopal Sri Ram (2007) state that the Malaysian courts have accepted that the right to earn a livelihood is a constitutionally guaranteed right and the at the very least, the Federal Constitution guarantees five rights of a workman namely:

- (i) protection of livelihood;
- (ii) the right to work in a reasonably safe environment;
- (iii) the right to unionize;
- (iv) the right to fair wage; and (v) the right of reinstatement.

The STAR 16 June 2008

Man orders father’s murder to get his job

PATNA (India): An Indian man, frustrated at failing to find employment, ordered the murder of his father to get his government job, a day before the victim was to retire. The man, arrested from a village in the impoverished eastern Bihar state, had planned to claim his father’s job on the grounds that he died while still at work, police officer Naresh Singh said yesterday. The son had paid a relative about US$2,500 (RM8,000) to carry out the crime. — Reuters

The STAR 16 June 2008
- Employees rights
  - Right to pay for work performed
  - Right conferred under the EA, IRA, TU
  - Right to join union – freedom of association. with the exception of "confidential" and "managerial and executive" employees, the police, and the military. While no law prevents foreign workers from joining a union, the Immigration Department places conditions on their work permits that effectively bars them from union participation.
  - Right to organize & bargain collectively. Section 15 of the Industrial Relations Act limits the scope of collective bargaining agreements in enterprises having "pioneer status."

- Prohibition of Forced or Compulsory Labor. The Constitution prohibits forced or compulsory labor, and the Government generally enforces the prohibition against forced or compulsory labor.

- Non-Discrimination on the Basis of Gender - in August 2001, the Malaysian Parliament amended the Constitution to prohibit gender discrimination

- Safe and healthy work environment (OSH Act, 1994)
References