EMPLOYERS CONSULTATIVE ASSOCIATION
OF TRINIDAD AND TOBAGO

Ref. No.: Corr. 127-814/2016
JFO/AJ

May 11, 2016

TO ALL ECA MEMBERS:

Dear Members,

RE: Update on ECA Submission to the Ministry of Labour – IRA Amendments

We are pleased to enclose the ECA's submission to the Minister of Labour and Small Enterprise Development (the Minister) with recommendations for changes to the Industrial Relations Act (IRA). The deadline given for the submission was April 30th 2016. Based on the extensive work undertaken by the Industrial Relations Advisory Committee (IRAC) as evidenced by their submission in 2013, the ECA has endorsed the recommendations made therein. Additionally, based on consultation and subsequent feedback from our membership and other relevant constituents, supplementary comments were included in our submission.

In terms of the legislative process, the Minister has signalled that following the receipt of submissions by the deadline date stated, the Ministry would review and compile all submissions and a draft document will be sent to all stakeholder groups within two (2) months.

At that time, it is expected that there will be further Consultation with the view to fine-tuning the proposals before crafting into a Bill.

Having made its submission, the ECA now wishes to continue relevant conversations as we invite you to join us at a breakfast meeting, where we will share perspectives both on the Industrial Relations Act (IRA) as well as on the next scheduled important Industrial Relations legislation, the Retrenchment and Severance Benefit Act Chapter 88:13, Act 32 of 1985.

The planned date for this proposed meeting is **Wednesday 25th May 2016 from 8.30am -10.30am** at our offices in Aranguez.

Kindly note that there will be **no charge for this session**, and we look forward to hosting you.

Respectfully,
EMPLOYERS CONSULTATIVE ASSOCIATION

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THE EMPLOYERS' CONSULTATIVE ASSOCIATION OF TRINIDAD AND TOBAGO'S (ECA'S) SUBMISSION TO THE PROPOSED AMENDMENTS TO THE INDUSTRIAL RELATIONS ACT, CHAPTER 88:01

The Employers' Consultative Association of Trinidad and Tobago (ECA) is recognized by the International Labour Organization (ILO), the International Organisation of Employers (IOE) and the Caribbean Employers' Confederations (CEC) as the organisation which is most representative of Employers in Trinidad and Tobago. Over the years, the ECA has played a pivotal role in tripartite dialogue at the international, regional and domestic levels and we once again welcome the opportunity to contribute to the proposed amendments to the Industrial Relations Act (IRA), Chapter 88:01.

In principle, the ECA supports your general thrust, Honourable Minister, for the modernization of labour legislation in Trinidad and Tobago since it is well established that there are significant shortcomings and gaps in the current legislative framework governing industrial relations. The IRA, in particular, is the most significant piece of labour legislation and it is logical that it should be the main area of focus at this point in time. We are however of the view that this process of labour legislation reform should not start and stop with the IRA but continue in a robust, collaborative and transparent manner. We are indeed heartened by your commitment in this regard as demonstrated at the recently concluded tripartite stakeholder consultations.

The ECA, has for many years played a major role in making significant, meaningful contributions not only to matters related to your Ministry, but in addition, to the continued growth and development of Trinidad and Tobago. Relative to this substantive matter, we have on quite a few occasions pointed out the many deficiencies of the IRA in the context of the dynamism and relevance of today's world of work as well as offered suggestions on the way forward. In 2012, the ECA as the employer representative on the Industrial Relations Advisory Committee shared, discussed, contributed and debated many of the issues and considered a number of perspectives as it impacted the current legislation. This process was as much a highly intellectual and informative exercise as it was practical and altruistic.

In view of the foregoing, the ECA wishes to lend its support and endorse the proposed amendments and recommendations espoused in the official Industrial Relations Committee Report dated June 2013 (copy enclosed). In addition, we wish to outline some other areas for consideration which became evident to us having had the privilege of hearing the views of the multi-stakeholder groupings at the recently concluded consultation on this very important subject.

Further, the ECA conducted a Survey with its membership on the IRAC and its responses have also been incorporated hereunder.

1. Definition of Worker

- The determination of who is a worker ought to remain within the purview of the Registration Recognition and Certification Board and not be placed under the Industrial Court.

- It is worth mentioning that the IRAC report recommends the Industrial Court for making determinations on who is a worker.

- The ECA however, proposes to support the recommendations of the IRAC report which suggests broadening the term of worker to include a wider cross section such as teachers, public officers, and workers in the Central Bank. Our reason for supporting these recommendations will be to ensure that our system of labour relations contains laws which protect rights of all citizens as enshrined in core labour standards of the International Labour Organization.

- The issue of "domestic worker" however requires further consultations and dialogue as breaches of the Minimum Wages Act and the Maternity Protection Act allows for a domestic to pursue a trade dispute through a lacuna as the question of "worker" within the meaning of the Act becomes negated.

2. Definition of Employer

- Small and Micro Enterprises (SMEs) are of vital importance to any country and ought to be encouraged and promoted especially during this period of structural adjustment. There is a need therefore to protect SMEs from the impracticality of what can sometimes be exacting standards, with respect to unfair dismissal claims and trade disputes before the Industrial Court. It is recommended that the protection of SMEs be a driving point in redefining the meaning of employer under the IRA.

3. Appropriateness of Bargaining Units

- Many employers of SMEs in Trinidad and Tobago have often complained of the economic impossibility of hammering out Collective Agreements with adamant trade union representatives for a small number of workers employed within their undertaking. Can it truly be said that an employer, especially of the kind in the SME sector, is not greatly affected by the rigors of any long, legal procedure over the wages for twenty workers or less, who may make up the entirety of his work force?

- It is submitted that collective bargaining on behalf of a bargaining unit of less than twenty workers for any employer is too much an abuse of process (as well as being economically disruptive) to allow it to be condoned by the IRA, and that SMEs be allowed reprieve from such rigors. This idea is ensconced within Schedule 1 of the 1999 Employment Relations Act (of the UK) which "introduces new rights for unions to gain the legal right to recognition from employers. The law only applies if 21 or more workers are employed."

4. Decertification of Recognized Majority Unions

- Another recommendation is the decertification of recognized majority unions whose members of the appropriate bargaining unit fall beneath a certain minimum number. It follows the reasoning previously voiced that to engage unions in collective bargaining for a minimal number of workers is an abuse of process and a waste of resources. At best, the negotiation of collective agreements should have force for a number of workers to truly warrant the phrase "collective". A minimal number, such as twenty workers, is recommended for this measure.

- We need to talk about illegal industrial action and in that regard the option of decertification has to remain as a viable option for employers as the IRA contemplates dialogue in lieu of resolution of disputes and there must be an insistence of this as it can and does have a negative impact on productivity levels.

5. The Efficiency and Effectiveness of the Registration, Recognition and Certification Board's (RRCB's) Process

- The ECA would want to voice its concerns to the Minster of Labour with regards to the issue of recognition of trade unions which in many cases can take several years for the process to be completed. This we find to be unfair not just to workers but also employers. Moreover, Trinidad and Tobago as a long standing member of the International Labour Organization has a duty to ensure national system of labour relations promotes and not stymies the process of free collective bargaining.

- The IRAC recommendations on this issue are geared toward rectifying these gaps that currently exist within our legislative framework.

6. Fines and Industrial Relations Offence:

- There appears to be very little or no reason for the distinction between the worker/trade union and the employer as far as the differences in punishment for industrial relations offences are concerned, yet the IRA treats the employer unfairly in this situation.

- It is submitted that the fines for industrial relations offences be reordered, so as to provide the semblance of financial equality of all actors before the law.

- It is to be noted that if the employer takes illegal industrial action he is liable not only for the fines which may be imposed, but also for any wages and remuneration which the concerned worker is due before and during the time of the action. However, the union is under no obligation to make good on any economic losses suffered by the employer caused by illegal industrial action.

- The proposed increased fines are significantly higher than the existing fines and should be tempered.

- Fines ought to be up to the maximum amount rather than set in stone. The judges of the Court should have some discretion in treating with matters of fines based on the circumstances of each case.

7. Right not to be unfairly dismissed

- We are proposing this right not apply to the dismissal of a worker unless that worker has been continuously employed for a period of no less than one (1) year ending with the effective date of termination/dismissal. Such a provision currently exists in Barbados in its recently proclaimed Employment Rights Act. In the UK the qualifying period can be as much as (two) 2 years.

- Our Members have suggested that the amendments provide for the dismissal of matters for frivolousness, lack of prosecution and/or failure to put in an appearance.

- In this regard, the ECA believes that a system of fees has an important role to play in getting employers and workers to bargain seriously around the table towards finding a resolution and to avoid legal proceedings wherever possible. Such fees should be structured with the intention of incentivising positive behaviours from employers and employees - encouraging settlement at every step in the process or encouraging claims only where there is a strong case for doing so. This would reduce the cost to taxpayers of supporting dispute resolution by reducing the number of claims that end up going to the Industrial Court.

8. Remedies for Unfair Dismissal

- A formula or structure for the award of damages is required.

- In Barbados for instance, where an order for reinstatement or re-engagement is not possible, the Court shall make an award of compensation which comprises:
  - A basic award[1];
  - An amount in respect of any benefits which the employee might reasonably be expected to have had he not been dismissed;
  - An amount not exceeding 52 weeks where dismissal was for a reason specified in the scheduled e.g. trade union activities. etc.

In essence, the amendments which employers seek are geared not just to securing economic and social progress, but achieving balance, equity and equality for all citizens and the wider community.

In closing we wish to express our willingness to meet with you and your team to discuss these recommendations further as well as to offer the services of our competent Secretariat to your Ministry.

- [1] Less than 2 years' service – 5 weeks' wages
- 2-10 years' service – 2 ½ weeks' wages for each year of that period.
- 10-20 years' service – 3 weeks' wages for each year of that period.
- 20-33 years' service – 3 ½ weeks' wages for each year of that period.

Once more thank you Honourable Minister for your commitment to this process and for allowing us an opportunity to contribute and air our views on a matter which is critical to us and our membership.

The ECA looks forward to further collaboration with you in the future.