

Hong Kong

Introduction

Despite the fact that Hong Kong residents have the right to be or to become a member of a registered trade union, Hong Kong has a relatively low level of employee participation in trade unions and related activities in comparison to many other modern industrialised countries. In addition, it generally enjoys harmonious labour relations, with an effective dispute resolution system co-ordinated by the Labour Relations Division of the Labour Department.

Nevertheless, a regulation system exists to administer trade unions and their operation. The following is a general summary of laws in Hong Kong regarding trade unions and their activities.

Applicable Legislation

Registration, membership, and operation of trade unions are regulated by the Trade Unions Ordinance (TUO) and the Trade Unions Registration Regulations (TURR). Further provisions relating to trade unions and their activities can be found under the Employment Ordinance (EO) and the Labour Relations Ordinance (LRO).

Establishment Requirements

Under the TUO, a trade union is defined as “any combination the principal objects of which are under its constitution the regulating of relations between employees and employers, or between employees and employees, or between employers and employers, whether such combination would or would not, if the TUO had not been enacted, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade.”

In order to be legally established in Hong Kong, every trade union must be registered in accordance with the statutory provisions of the TUO. It is an offence for any person to act as an officer or take part in the management or administration of an unregistered trade union.

The Registrar of Trade Unions is empowered to refuse to register or cancel a registration. The Registrar also has the power to appoint persons for membership

or for the position as an officer of a trade union. Furthermore, the Registrar may require persons to cease to hold office or cease to be a member of a union if the appointment breaches any rules of the particular trade union or otherwise contravenes section 17 of the TUO. Section 17 of the TUO provides the following:

- To be a member or an officer of a registered trade union, a person must be ordinarily resident in Hong Kong and be engaged or employed in a trade, industry, or occupation with which the trade union is directly concerned.
- Any person who has lawfully been a member of a registered trade union may, upon his or her retirement on account of age or ill-health from the trade, industry, or occupation in which he or she was engaged or employed and by virtue of which he or she was a member of the trade union, remain a member thereof, but is not permitted to be a voting member.
- Any person convicted of fraud, dishonesty, extortion, or membership of a triad society cannot be an officer of a registered trade union within a period of five years from the date of the conviction or discharge from prison, whichever is later.
- Any person under the age of 16 may be a member of a registered trade union but cannot be a voting member or a member of the executive of a registered trade union.
- Any person between the ages of 16 and 18 (including the age of 18) may be a member of a registered trade union but may not be a member of the executive of a registered trade union.
- Any offence in contravention of the above is punishable by a fine of HK\$1,000 and six months' imprisonment.

Registration Requirements

Every trade union, trade union federation, and amalgamation must be registered at the Registry of Trade Unions. A trade union federation is a trade union which is wholly an association, or combination, of other trade unions. An amalgamation takes place where two or more trade unions wish to be combined together to form a single trade union.

Schedule 2 of the TUO provides that the rules of every trade union shall:

- (a) Contain a statement of the name of the trade union and the address of its registered office;
- (b) Declare the whole of the objects for which the trade union is established;
- (c) Subject to certain provisions of the TUO, declare the conditions under which persons may enjoy:
 - (i) Voting membership; and
 - (ii) Non-voting membership;
- (d)
 - (i) Provide for the keeping of a register of members of the trade union; and
 - (ii) Make provision for the maintenance of discipline within the trade union, including provision for appeal to the voting members at a general meeting of the trade union against any decision of the executive cancelling the membership of any member or dismissing any officer;
- (e) Specify the method of convening and conducting annual general meetings and extraordinary general meetings, and the matters to be presented to the members of the trade union at such meetings, including in the case of annual general meetings the presentation of audited accounts;
- (f) Provide for the appointment and replacement of officers of the trade union;
- (g) Provide that every voting member of the trade union shall have a reasonable opportunity of voting;
- (h) Provide that all decisions in respect of the following matters be taken by decision of the voting members of the trade union by means of secret ballot-
 - (i) The appointment of members of the executive;
 - (ii) Change of name of the trade union;
 - (iii) Amalgamation of the trade union with any other trade union;
 - (iiia) Establishing an electoral fund;
 - (iiib) The payment of any expenses of a kind mentioned in section 33A(1);

- (iii) Being or becoming a member of an organization which is established in a foreign country; and
 - (iv) Federation of the trade union with any other trade union or with a trade union federation;
- (i) Specify the amount and manner of payment of subscriptions, fees, and contributions payable by members of the trade union;
- (j)
 - (i) Subject to certain provisions of the TUO, specify the purposes to which the funds of the trade union may be applied;
 - (ii) Provide for the creation, administration, protection, disbursement, and disposal of the welfare fund (if any) and declare the conditions under which any member, or the family of any member, of the trade union may become entitled to any benefit assured thereby;
 - (iii) Provide for the administration, protection, disbursement, and disposal of the electoral fund, if one is established, and declare the conditions under which money in the fund may be spent.
- (k) Provide for the custody and investment of the funds (if any) of the trade union, the designation of the officer or officers responsible therefore the funds, the keeping of accounts, and the annual, or more frequent periodic, auditing thereof;
- (l) Specify the commencement and termination of the financial year of the trade union;
- (m) Ensure reasonable opportunity for the inspection by members of the trade union of the rules of the trade union, its account books, and the registers of the names of the members thereof;
- (n) Provide for the making, altering, amending, and rescinding of the rules of the trade union;
- (o) Provide for the method of dissolution of the trade union and the manner in which the funds thereof shall be disposed of upon dissolution; and
- (p) Provide for the safe custody of the common seal of the trade union.

An application for the registration of a trade union shall be made to the Registrar in the prescribed form within 30 days of the establishment of the union. Every such application must be signed by not less than seven voting members of the trade union (including officers of the union). Upon receipt of any such application in the prescribed form, the Registrar will issue to the trade union a certificate in the prescribed form acknowledging receipt of such application.

An application for the registration of a trade union federation must be made to the Registrar in the prescribed form. A trade union federation can only be registered when all of the separate trade unions which make up the federation are registered and any addition to the membership must be approved by the Registrar. An application for registration shall be signed by the chairman and one other officer of each of the registered trade unions and should be accompanied by a declaration from each of such trade unions, signed by seven voting members, that the application is made with the consent of the voting members.

Where two or more registered trade unions wish to amalgamate to form a trade union federation, an application must be made to the Registrar for his consent. The application must be made in the form prescribed in the TUO and must be signed by the chairman and one other officer of each trade union. A new set of the proposed rules (three copies) to be formed by the amalgamation must also be included.

Consultation Requirements

There are no statutory consultation requirements/obligations on employers or employees in Hong Kong unless specifically required in an agreement with the relevant trade union.

Union Membership/Closed-Shop Arrangements

Rights Under The EO

Under section 21B(1) of the EO, employees and job applicants have the right to trade union membership and participation. The right of employees to trade union membership is also acknowledged in the Code of Labour Relations Practice published by the Labour Department (which does not have legal effect). In particular, under the EO an employee has the right to:

- Be or become a member or officer of a trade union registered under the TUO;

- Take part in the activities of the union once (s)he has become a member; and
- Associate with other persons for the purpose of forming or applying for the registration of a trade union in accordance with the provisions of the TUO.

Please note, however, that employees do not have the right to be represented by their trade union members.

Rights Under The TUO

Once a member of a registered trade union, an employee has the following rights:

- Limited immunity from civil, criminal, and tortious actions that are done in contemplation or furtherance of a trade dispute. “Trade dispute” is defined in the TUO as “any dispute or difference between employees and employers connected with the employment or non-employment, or the terms of employment, or with the conditions of or affecting employment, of any person.” Accordingly, such immunity does not extend to independent contractors even if they are members of a trade union.
- Inspection of union documents. Union members have the right to inspect the account books and membership register of the union. They may also make a written application for free inspection of any documents required by law to be registered (e.g., annual statements).
- Right to take legal action. Union members may take legal action against any officer of the union who wilfully withholds or misapplies union funds or property.
- Appeal to the Court of First Instance. Union members may appeal against the decisions of the Registrar, for example, where the Registrar refuses to register a union or where he cancels a registration.

In relation to closed-shop arrangements, there is no statutory requirement in Hong Kong that an individual must have union membership as a requirement of employment.

Employment Protection

The EO provides protection from discrimination for employees who are part of a union.

The EO provides that no offer of employment may be made to a job applicant conditional upon the offeree either: (i) not becoming a member of a trade union; (ii) giving up any existing membership of a trade union; or (iii) not associating with persons for the purpose of forming a trade union. Contravention of this section is punishable by a fine of HK\$100,000.

Further, an employer is required by section 21B of the EO to allow its employees 'appropriate time' to participate in the trade union activities. What constitutes appropriate time is determined by reference to any time which is outside working hours or, within working hours, for which the employee has been given permission to engage in union activities. Contravention of this section is an offence of strict liability and punishable by a fine of HK\$100,000. Employees who engage in industrial action such as picketing or work-to-rule within working hours may not be protected in all circumstances.

The EO also affords protection against summary dismissal. Under section 9(2) of the EO, the fact that an employee takes part in a strike does not entitle the employer to summarily dismiss him.

Collective Bargaining

Collective bargaining or collective bargaining agreements are not common in Hong Kong.

There is no statutory recognition of collective bargaining agreements. Moreover, case law in Hong Kong indicates the unlikelihood of the legal enforceability of collective bargaining agreements in the absence of express terms to that effect. The Hong Kong courts have considered the enforceability of collective bargaining agreements and in these cases have found the agreements to be unenforceable. The courts indicated that the agreements contained a mixture of language of policy and aspiration together with the language of obligation indicating that the parties did not intend to give it legal effect.

Employers are advised to be careful when negotiating collective bargaining agreements with unions and/or staff associations, so that they do not confer benefits in exchange for undertakings from the union which could prove to be unenforceable if tested.

Even if a trade union enters into an agreement with an employer, the employee will only be able to rely on the terms of that agreement if it forms part of the employee's contract of employment with the employer. The usual practice in Hong Kong, if collective bargaining takes place, is for unions and staff associations to negotiate changes to conditions of service which are then either incorporated into employment contracts or the employee handbook. Collective bargaining outcomes (as distinct from agreements) are therefore expressly enforced through individual employment contracts rather than by means of an agreement between union and employer.

Dissolution

As detailed above, under Schedule 2 of the TUO, the rules of a trade union must provide for the method of dissolution of the trade union and the manner in which the funds will be disposed of upon dissolution. A union may then be dissolved in accordance with its rules.

Pursuant to section 32 of the TUO, when a trade union is dissolved, notice of the dissolution shall be sent to the Registrar by the trade union 14 days after the dissolution. Such notice should be signed by the secretary of the trade union and seven persons who were voting members at the date of the dissolution. Upon registration of such dissolution, the trade union will cease to be a body corporate.

Other Provisions

Picketing

If a trade dispute is not amicably resolved, the TUO sanctions the use of peaceful picketing at or near the place of work by persons on their own behalf, on behalf of a trade union, or on behalf of an individual employer. Peaceful picketing is legal for the purpose of peacefully obtaining or communicating information or of peacefully persuading other persons to either work or abstain from working. However, any threat or intimidation in respect of the picketing is prohibited, as is any action which causes a breach of peace. Any person who contravenes this provision of the TUO shall be guilty of an offence and liable to a fine of HK\$1,000 and to imprisonment for six months.

Trade Disputes

The LRO governs trade disputes in the private sector. The LRO provides for various methods to resolve trade disputes such as through conciliation, mediation, and arbitration.

Where a trade dispute exists, the Commissioner for Labour (the “Commissioner”) may:

1. Inquire into the causes and circumstances of the trade dispute;
2. Take such steps as to him may seem expedient for the purpose of assisting the parties to reach a settlement of the trade dispute; and
3. Authorise a conciliation officer to initiate or undertake conciliation.

Where a conciliation officer has attempted conciliation but no settlement of the trade dispute has been reached, the Commissioner may authorise a special conciliation officer to initiate or undertake special conciliation.

If the dispute still fails to be settled, the Chief Executive of Hong Kong may either (i) with the consent of the parties, refer the dispute to arbitration; (ii) refer the dispute to a board of inquiry; or (iii) take any other action as warranted.

Where a trade dispute exists, the Commissioner may (whether or not conciliation or special conciliation has been attempted) refer the dispute to mediation.

According to Part V of the LRO, a cooling off order may be made for a period of up to 60 days and is designed to require parties to an individual dispute to discontinue or defer industrial action. This part of the LRO is, however, not in operation and is not likely to come into operation anytime soon.

Trade Unions in Hong Kong at a Glance

Applicable Legislation	Establishment Requirements	Registration Requirements	Consultation Requirements	Union Membership/ Closed Shop	Employment Protection	Collective Bargaining, Agreements and Action	Dissolution	Grievance Procedure/ Dispute Resolution
Trade Unions Ordinance	Registration Offence to be a part of an unregistered trade union.	Trade Union -Prescribed form -Within 30 days of establishment -Signed by at least seven voting members	N/A	No mandatory requirement to become a union member Employees have the right to: -become a member -take part in union activities -associate with persons for the purpose of forming a union Members' rights include: -immunity from certain lawsuits -inspection of union documents -legal action -appeal	No discrimination against an employee in relation to a trade union or its activities Employers required to allow employees appropriate time to participate in union activities Protection against summary dismissal	Not common in Hong Kong No statutory recognition of collective bargaining agreements Usual practice is for trade unions and staff associations to negotiate changes and incorporate them into individual contracts or handbook	Union rules must provide for method of dissolution Notice to be sent to the Registrar 14 days after dissolution	N/A
Trade Unions Registration Regulations								
Employment Ordinance								
Labour Relations Ordinance								

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