

職工會 條例



簡易指南



**A SHORT GUIDE TO
THE TRADE UNIONS ORDINANCE**



勞工處 職工會登記局

Registry of Trade Unions, Labour Department

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FOREWORD

This guide sets out in simple terms the main provisions of the Trade Unions Ordinance, Chapter 332 of the Laws of Hong Kong. It should be noted that the Ordinance itself remains the sole authority for the provisions of the law explained.

Enquiries relating to the interpretation of the provisions of this Ordinance may be made at the Registry of Trade Unions of the Labour Department.

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REGISTERING A TRADE UNION

Trade Unions Must be Registered

The Registry of Trade Unions of the Labour Department is responsible for the administration of the Trade Unions Ordinance and its subsidiary regulations.

Under the Trade Unions Ordinance, a trade union is any combination whose principal objects are to regulate the relations between employees and employers, or between employees and employees, or between employers and employers. Such an organisation must submit an application for registration to the Registrar of Trade Unions within 30 days of its establishment. The application shall be signed by not less than seven voting members of the trade union.

On receiving an application for registration, the Registrar of Trade Unions will issue to the trade union a certificate acknowledging its receipt and, as from that date, the provisions of the Trade Unions Ordinance (other than the provisions of Section 45 (affiliation with organizations in foreign countries)), apply to the applicant trade union.

A registered trade union has certain rights. Once registered, a trade union is conferred the status of a body corporate with perpetual succession and with power to hold movable and immovable properties, enter into contracts with parties and take legal proceedings. The trade union and its members also enjoy immunity from actions in respect of tortious acts and from civil suits in respect of any acts done in contemplation or furtherance of a trade dispute. Moreover, the purposes of a registered trade union shall not be deemed to be unlawful by reason merely that they are in restraint of trade so as to render any member of such trade union liable to criminal prosecution for conspiracy.

Rules

Every trade union shall make rules which provide for all the matters specified in Schedule 2 to the Trade Unions Ordinance. These include:

- (i) the name of the trade union and the address of its registered office;
- (ii) the whole of the objects of the trade union. These must include, as the trade union's principal objects, distinct provisions for regulating the relations between employees and employers, or between employees and employees, or between employers and employers;

- (iii) the conditions under which persons may enjoy voting membership and non-voting membership and the provision for the keeping of a register of the trade union's members;
- (iv) the maintenance of discipline within the trade union, including provision for appeal to the voting members at a general meeting of the union against any decision of the executive on canceling the membership of any member or dismissing any officer;
- (v) the method of convening and conducting Annual General Meetings and Extraordinary General Meetings and the matters to be presented to members at such meetings, including the presentation of audited accounts in Annual General Meetings;
- (vi) the appointment and replacement of officers of the trade union;
- (vii) every voting member of the trade union must have a reasonable opportunity of voting;
- (viii) the decisions to be taken by secret ballot:
 - the appointment of members of the executive;
 - a change of the trade union's name;
 - the amalgamation of the trade union with any other trade union;
 - establishment of an electoral fund;
 - payment of any electoral expenses in the absence of an electoral fund;
 - membership of an organisation established in a foreign county; and
 - the federation of the trade union with any other trade union or with a trade union federation;
- (ix) the amount and manner of payment of subscriptions, fees and contributions payable by members of the trade union and the purposes to which the trade union's funds may be applied;
- (x) the custody and investment of the trade union's funds, the designation of the officer(s) responsible for them and the keeping and auditing of accounts;
- (xi) the creation, administration, protection and disposal of welfare fund; the administration, protection, disbursement and disposal of electoral fund if established;
- (xii) the commencement and termination of the trade union's financial year;
- (xiii) the inspection by members of the trade union of its rules, its account books and the register of the names of its members;

- (xiv) the method of making, altering, amending and rescinding the trade union's rules;
- (xv) the method of dissolution of the trade union and the manner in which its funds shall be disposed of upon dissolution; and
- (xvi) the safe custody of the common seal of the trade union.

Refusal of Registration

The name of a trade union must be distinctive. No new trade union may be registered by the Registrar of Trade Unions if the proposed name is identical with or so nearly resembles the names of any trade unions, whether existing or having ceased to exist.

In addition, the Registrar of Trade Unions may also refuse to register a trade union if such trade union has not complied with any of the provisions of the Trade Unions Ordinance and its regulations; or any of the purposes of such trade union is unlawful; or the trade union applying for registration is substantially a trade union whose certificate of registration has been cancelled under section 10(1) of the Trade Unions Ordinance.

Appeals against Refusal to Register Trade Union

Where the Registrar of Trade Unions has issued a written notice of his refusal to register a trade union, any of the applicants aggrieved by such refusal may, within 28 days of the service of the notice, appeal to the Court of First Instance of the High Court.

Certificate of Registration

When the Registrar of Trade Unions is satisfied that a trade union has fulfilled all the conditions for registration, he will issue a certificate of registration, which then serves as conclusive evidence that the trade union has been registered under the Trade Unions Ordinance.

AMENDMENTS OF TRADE UNION RULES

Any alteration, amendment, addition or deletion made to any registered rules must have been constitutionally passed by the trade union's voting members. An application for the registration of all changes must be made to the Registrar of Trade Unions within 30 days of the changes being made. They shall only take effect until the same has been registered under the Trade Unions Ordinance.

The altered, amended, added or deleted rules of the trade union shall make adequate provision for all of the matters specified in Schedule 2 to the Trade Unions Ordinance.

When the Registrar of Trade Unions is of the opinion that the rules of a union are not registrable, he will issue a notice specifying the ground of refusal to the union. If a person feels aggrieved by the decision of the Registrar, he may lodge an appeal to the Court of First Instance of the High Court within 28 days after the service of the notice.

An offence is committed by any person who, with intent to mislead or defraud, issues or circulates false copies of trade union rules to others.

CHANGE OF TRADE UNION NAME

If a registered trade union desires to change its name, it must first obtain the votes in secret ballot, of a majority of its voting members or members' representatives present at a general meeting.

An application for registration of a change of name must be made to the Registrar of Trade Unions within 14 days of the trade union agreeing to the change. No change of name of a registered trade union shall take effect until the same has been registered under the Trade Unions Ordinance.

If the new name is identical with or so nearly resembles the names of any trade unions, whether existing or having ceased to exist, the Registrar of Trade Unions shall refuse to register the change of name.

Any person who considers that the Registrar of Trade Unions was wrong in refusing to register the change of name may appeal to the Court of First Instance of the High Court within 14 days after the refusal.

A change of name does not affect any right or obligation of the trade union or any of its members and legal proceedings may be continued by or against it as if the change had not been made.

TRADE UNION OFFICE AND POSTAL ADDRESS

Every registered trade union is required by law to have a registered office and a postal address. Any change of the situation of its registered office or postal address shall be notified to the Registrar of Trade Unions within two weeks of the change being made.

A newly registered union must inform the Registrar of Trade Unions of the situation of its registered office and its postal address within two weeks of the trade union being registered.

Any registered trade union that fails to give notice to the Registrar of Trade Unions of the above changes shall be guilty of an offence.

BRANCHES AND VARIOUS UNDERTAKINGS

Every registered trade union is required to notify the Registrar of Trade Unions in writing, of the establishment of every branch, business, or charitable, cultural, educational or medical undertaking, etc., within 14 days of its being established. Any change in the address of such branch, business or undertaking shall also be reported to the Registrar of Trade Unions within 14 days of the change being made.

Also, when a trade union has closed a branch, or ceased to operate any business or undertaking, it must report the fact to the Registrar of Trade Unions within 30 days of the closure or cessation.

TRADE UNION MEMBERS

Any person may be a member of a registered trade union provided he is ordinarily resident in Hong Kong and is engaged or employed in the trade, industry or occupation with which the trade union is directly concerned. Any person who is casually or seasonally engaged or employed in the trade, industry or occupation with which the trade union is directly concerned may also apply for membership of a registered trade union.

Junior Members

A person under the age of 16 may also be a member of a registered trade union, unless provision is made in the rules thereof to the contrary, but shall not be a voting member or a member of the executive of such trade union. Any member

under the age of 18, but of or over the age of 16, may, subject to the rules of a registered trade union, enjoy all the rights of a member but shall not be a member of the executive.

Retired Members

Members who retire on account of age or ill-health may retain their trade union membership but shall not have the right to vote.

Legal Rights of Members

Besides the rights and duties specified in the union's registered rules, a trade union member has certain legal rights under the Trade Unions Ordinance which are briefly set out as follows:

- (i) to enjoy immunity from civil suits for acts done in contemplation or furtherance of a trade dispute;
- (ii) to inspect the trade union's account books and register of members;
- (iii) to inspect at the Registry of Trade Unions documents which his trade union or trade union federation of which his trade union is a member, are required by law to file with the Registrar of Trade Unions;
- (iv) as a voting member, to sue, in any competent court, any treasurer or other officer who, on being relieved of office fails to hand over to the trade union any balance of trade union funds, securities, effects, registers, papers and property;
- (v) as a voting member, to apply to the District Court for an injunction restraining a trade union officer from holding office or controlling trade union funds; and
- (vi) as a voting member, to apply to the District Court for an order for the return or repayment of trade union funds and property which have been wrongfully withheld or misapplied.

TRADE UNION OFFICERS

No person shall, without the consent in writing of the Registrar of Trade Unions, be an officer of a registered trade union unless he is ordinarily resident in Hong Kong and is or has been engaged or employed in a trade, industry or occupation with which the trade union is directly concerned.

The appointment of officers of the executive must be made by decision of the members taken by secret ballot. Officers so appointed must not be less than the age of 18.

Any person convicted of any offence involving fraud, dishonesty, extortion or membership of a triad society, shall not be an officer of a registered trade union within five years from the date of conviction or discharge from prison (whichever is the later) except with the consent of the Chief Executive in Council.

Notices showing the names and aliases of all officers and their titles must be prominently exhibited in a trade union's registered office and branch office. When there is a change of trade union officers, or the title of any officer, the Registrar of Trade Unions must be notified of the change within 14 days of its taking place.

TRADE UNION FUNDS

Application of Funds

The funds of a registered trade union, other than the welfare and electoral funds, if any, may be expended only for the following purposes:

- (i) payment of salaries and allowances to officers and paid staff of the trade union;
- (ii) expenses incurred in dealing with the affairs of the trade union;
- (iii) expenses for the administration of the trade union;
- (iv) legal proceedings for securing or protecting the rights of the trade union as such or of any members in their dealings with their employers or employees;
- (v) the conduct of trade disputes and compensation of members for loss arising out of trade disputes;
- (vi) provision and maintenance of a welfare fund;
- (vii) purchase of bonds, securities or property;
- (viii) payment of subscriptions or donations to a registered trade union or other lawful association established within Hong Kong;
- (ix) promotion of entertainments;

- (x) subject to the approval of the Chief Executive, contributions or donations to a trade union or other similar organisation established outside Hong Kong;
- (xi) payment of fines imposed on the trade union for any offence of which it is convicted under the laws of Hong Kong; and
- (xii) any other purpose which the Chief Executive may approve.

Welfare Fund

Welfare fund can only be used for welfare benefits as specified in the trade union rules.

Electoral Fund

A registered trade union, if authorized by secret ballot of a majority of its voting members, may establish an electoral fund for the payment of the following:

- (i) expenses incurred by a candidate or prospective candidate for election to a District Council or the Legislative Council;
- (ii) expenses for the holding of a meeting or the preparation and distribution of literature or documents in support of a candidate or prospective candidate for the elections concerned; and
- (iii) expenses related to the registration of electors or the selection of a candidate for the elections concerned.

A registered trade union shall not compel a member to contribute to the electoral fund and the union shall not make contribution to the fund a condition for admission or continuing as a member with full membership rights in the union.

Where no electoral fund is established, a registered trade union, if authorized by secret ballot of a majority of its voting members present at a general meeting, may pay for the abovementioned expenses. Yet, such authorization must limit the expenditures to a specific election and specify the maximum amount authorized.

Except the payment of expenses relating to elections, the funds of a registered trade union shall not be applied directly or indirectly for any political purpose in Hong Kong or elsewhere.

Annual Statement of Account

Every registered trade union is required to furnish to the Registrar of Trade Unions an annual statement of account, audited by an auditor approved by the Registrar of Trade Unions, in a prescribed form (i.e. Form 13) within a period of not more than three months after the end of the trade union's financial year. The statement must include the accounts of every branch and undertaking established by the trade union. Members of the trade union are entitled to receive, free of charge, a copy of these accounts.

Auditor

The auditor is responsible for examining the balance sheet and statement(s) of receipts and expenditure and verifying them against all accounts and vouchers. When the accounts have been examined, the auditor must sign the annual statement of account as exhibiting a true and correct view of the trade union's affairs, or report in writing to the Registrar of Trade Unions, in what respect the accounts are incorrect, unsupported by vouchers, or not in accordance with the provisions of the trade union's registered rules or the Trade Unions Ordinance.

ANNUAL RETURN OF MEMBERSHIP AND OFFICERS

Every registered trade union is required to send to the Registrar of Trade Unions on or before 31 March in each year a return in the prescribed form (i.e. Form 10), showing membership figures, names and other particulars of the officers of the trade union thereof on 31 December in the preceding year.

AFFILIATION WITH ORGANISATIONS IN FOREIGN COUNTRIES

If a registered trade union wishes to become a member of an organisation of workers, employers or a relevant professional organisation established in a foreign country, it must first obtain the authorisation of a majority of its voting members present at a general meeting by secret ballot. Under the Trade Unions Ordinance, a relevant professional organisation means an organisation whose objects are to promote the interests of persons engaged or employed in a trade which is the same as, or similar to the one with which the union is directly concerned. A registered trade union is required to notify the Registrar of Trade Unions within one month of its becoming a member of the above organisations.

If a registered trade union wishes to become a member of a foreign organisation other than an organisation of workers, employers or a relevant professional organisation, the prior consent of the Chief Executive is required.

AMALGAMATION

Application for Consent to Amalgamation

Where two or more registered trade unions desire to amalgamate as one trade union, an application shall be made to the Registrar of Trade Unions for consent after a majority of the executive of each trade union has voted in favour of the making of such application.

Refusal to Consent to Amalgamation

The Registrar of Trade Unions may refuse to give consent to an intended amalgamation where:

- (i) the proposed name of such trade union is identical with or so nearly resembles the names of any trade unions, whether existing or having ceased to exist;
- (ii) any of the purposes of such trade union will be unlawful;
- (iii) any of the provisions of the Trade Unions Ordinance in respect of the making of application for consent to amalgamation have not been complied with; or
- (vi) the proposed rules of the trade union to be formed by the amalgamation will not make adequate provision for all of the matters specified in Schedule 2 to the Trade Unions Ordinance.

Where the Registrar of Trade Unions refuses to give consent to the amalgamation of any registered trade unions, the Registrar shall, in writing, notify the trade unions of the refusal and specify the ground for the refusal. Any person who considers that the Registrar of Trade Unions was wrong in refusing to give consent to an intended amalgamation may, within 14 days after the Registrar of Trade Unions has given such notice, appeal to the Court of First Instance of the High Court.

Procedure for Amalgamation

Each union party to the amalgamation shall post the notice in writing of the consent of the Registrar of Trade Unions to the amalgamation at its registered office and in every branch for a period of not less than 14 days. On expiry of this period, a vote on the amalgamation must be taken, by each of the trade unions, in secret ballot, at which the votes of at least 50% of the voting members must be recorded. The amalgamation can be proceeded with only if votes cast in favour of the amalgamation exceed those cast against it by at least 20%.

Where any of the trade unions seeking to amalgamate is a member of a trade union or other organisation established outside Hong Kong, such application for consent to the amalgamation shall be referred to the Chief Executive for consideration and consent.

TRADE UNION FEDERATION

Application for Registration

Any two or more registered trade unions may form a trade union federation and seek registration as such, provided that the voting members of each trade union comprising the federation, have given their consent to do so by a majority of votes taken by secret ballot at a general meeting of the trade union.

A trade union federation must apply for registration within 30 days of its being established.

Application for Membership

A registered trade union seeking to join an existing trade union federation must make an application for membership to the Registrar, which must be supported by a declaration that such application is made with the consent of the voting members as declared by a majority of the votes taken by secret ballot at a general meeting and by another declaration signed by all officers of such federation signifying their consent.

DISSOLUTION

The Trade Unions Ordinance does not prescribe the manner in which a trade union should be dissolved. However, every trade union is required to provide for the method of dissolution in its rules for observance in future.

When a trade union has decided to dissolve, notice of the dissolution must be given within 14 days after the dissolution to the Registrar of Trade Unions. Upon the registration of such dissolution, the trade union shall cease to be a body corporate.

CANCELLATION OF REGISTRATION

Request by Trade Union for Cancellation

The Registrar of Trade Unions shall, at the request of a trade union, cancel its registration but such request must be verified in such manner as the Registrar of Trade Unions may require.

Grounds of Cancellation

The Registrar of Trade Unions may cancel the registration of a trade union in the following cases;

- (i) the certificate of registration of the trade union has been obtained by fraud or mistake;
- (ii) the registration of the trade union has become void by reason that its purposes are unlawful;
- (iii) the trade union is being or has been used for any purpose that is unlawful or inconsistent with its objects and rules;
- (iv) the trade union has willfully and after notice from the Registrar of Trade Unions, violated any of the provisions of the Trade Unions Ordinance;
- (v) the trade union has allowed any rules which are inconsistent with the Trade Unions Ordinance to continue in force;
- (vi) the trade union has rescinded any rules providing for any matter listed in the Schedule 2 to the Trade Unions Ordinance;
- (vii) the funds of the trade union have been expended in an unlawful manner or for any purpose not authorized by its rules;
- (viii) any funds of the trade union that have been utilized for trade union purposes have willfully, after notice from the Registrar of Trade Unions, been omitted from its accounts; or
- (ix) the trade union has ceased to exist.

Notice of Cancellation

When a trade union has ceased to exist, or has voluntarily requested cancellation of its registration, the Registrar of Trade Unions may, without any notice in writing, cancel the trade union's registration.

In all other cases the Registrar of Trade Unions must, before canceling the registration of a trade union, give not less than two months' previous notice specifying briefly the ground of any proposed cancellation.

Where a trade union has received notice of the intention of the Registrar of Trade Unions to cancel its registration, any voting member of that trade union who considers the Registrar of Trade Unions is not entitled to cancel its registration may, within 28 days after the service of the notice, appeal to the Court of First Instance of the High Court.

Appeals against Cancellation of Registration of Trade Union

Any voting member of a trade union may, within 14 days after the cancellation of the registration of the trade union, appeal to the Court of First Instance of the High Court on the following grounds:

- (i) cancellation notice was not given by the Registrar of Trade Unions in accordance with the Trade Unions Ordinance;
- (ii) the trade union had not requested cancellation of its registration;
- (iii) the trade union had not ceased to exist.

LIQUIDATION

Consequent upon the cancellation of a trade union's registration, the Registrar of Trade Unions may appoint one or more persons to be liquidators. Any liquidator so appointed would, subject to the control of the Registrar of Trade Unions, have the authority to take possession of all property of the union and bring or defend any action or legal proceeding that may be necessary in order to satisfactorily wind up the trade union's affairs.



COMMON SEAL

A trade union must have a common seal which is to be used only by authority of the executive of the trade union. Any instrument to which the common seal is affixed must be signed by an authorized officer or member and countersigned by the Chairman, Treasurer or Secretary of the trade union. The rules of a trade union must provide for the safe custody of its common seal.



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