

# **A Guide to the Labour Relations Ordinance**

## **FOREWORD**

This guide outlines the legal framework provided by the Labour Relations Ordinance (Cap. 55) for the handling of trade disputes and the imposition in special circumstances of a cooling-off period. While every care has been taken in its preparation, it must be read together with the Ordinance. The courts are the final authority on questions of interpretation of the law.

Enquiries about the Ordinance may be made at any office of the Labour Relations Service of the Labour Department. The addresses are listed in Appendix 2.

## INTRODUCTION

With the exception of the Part on cooling-off period, the Labour Relations Ordinance came into operation on 1 st August 1975. Its primary aim is to lay down a set of procedures whereby trade disputes can be settled with a minimum of friction and disruption.

2. A dispute may be referred, in the first instance, to the Labour Relations Division (LRD) of the Labour Department for ordinary conciliation. If such conciliation does not bring about a settlement, the Commissioner for Labour may appoint a special conciliation officer to undertake conciliation.

3. The Commissioner may, whether or not ordinary conciliation or special conciliation has been attempted, appoint a mediator or a board of mediation and refer the dispute to mediation. While conciliation is entirely voluntary, the Commissioner may refer a dispute to mediation without seeking prior consent of the parties concerned.

4. If ordinary conciliation or special conciliation fails to settle the dispute, the Chief Executive in Council may have three options:

- (a) refer the dispute to arbitration with the consent of the parties;
- (b) refer the dispute to a board of inquiry; or
- (c) take any other action as warranted by the circumstances of the dispute.

These steps are illustrated in the chart in Appendix 1.

5. It may so happen that a dispute causes an interruption in the supply of goods or in the provision of services to such an extent that it is gravely injurious to the economy of Hong Kong or seriously jeopardizes the well-being of a substantial number of persons. To safeguard the public against such effects, the Ordinance provides for a cooling-off period to be invoked by the Chief Executive in Council when necessary. This provision will only come into effect on a day to be appointed by the Chief Executive in Council by notice in the Gazette.

6. The Ordinance does not affect the operation of the Minor Employment Claims Adjudication Board and the Labour Tribunal which adjudicate claims arising from breaches of contracts of employment, or under the Employment Ordinance and the Contracts for Employment Outside Hong Kong Ordinance.

7. The Ordinance applies equally to employers and employees in the private sector. It does not apply to employees in the service of the Government of the Hong Kong Special Administrative Region who are governed by appropriate service regulations and procedures.

## **CONCILIATION**

### ***Ordinary conciliation***

8. The Ordinance enables the Commissioner for Labour to inquire into, and to authorize a conciliation officer of the LRD to conciliate in a trade dispute in order to promote settlement. Participation in all forms of conciliation is voluntary and no compulsion is exerted by the Ordinance on the parties to attend conciliation meetings.

### ***Special conciliation***

9. Where a dispute is not settled by ordinary conciliation, the conciliation officer must promptly report the matter to the Commissioner. On receipt of the report, the Commissioner may appoint a special conciliation officer to initiate or undertake special conciliation, or submit a report to the Chief Executive in Council.

10. Instead of authorizing ordinary conciliation, the Commissioner may, if the circumstances so warrant, refer a dispute directly to special conciliation.

### ***Memorandum of settlement***

11. Where a dispute is settled by conciliation or special conciliation, an agreement to cover the terms of settlement must be drawn up and signed by both parties and delivered to the Commissioner. The parties are, of course, expected to honour such an agreement.

### ***Submission to Chief Executive in Council***

12. If an attempt to settle a dispute by ordinary conciliation or special conciliation fails, the appointed officer must promptly report the matter to the Commissioner. When further attempts at conciliation are unlikely to yield any fruitful result and a different approach may have to be made to resolve the trade dispute, the

Commissioner must submit a report on the trade dispute together with his recommendation to the Chief Executive in Council.

***Referral to arbitration or board of inquiry***

13. After considering the Commissioner's report, the Chief Executive in Council may –

- (a) refer the dispute to arbitration with the consent of the parties;
- (b) refer the dispute to a board of inquiry; or
- (c) take any other action as warranted by the circumstances of the dispute.

***Privileged communications***

14. Any information which comes to the knowledge of a conciliation officer during conciliation shall not be admissible in evidence in proceedings before an arbitration tribunal or a board of inquiry, except with the consent of the person who gives such information.

## **MEDIATION**

***Appointment of mediator or mediation board***

15. The Commissioner may, where a trade dispute exists and whether or not ordinary conciliation or special conciliation has been attempted, appoint a mediator or a board of mediation consisting of two or more persons to mediate the trade dispute.

***Powers of mediator***

16. A mediator may inquire into the causes and circumstances of a trade dispute and may –

- (a) visit premises where parties to the trade dispute or other interested parties are employed or carry on business;
- (b) conduct interviews with the parties to the trade dispute or other interested parties;
- (c) make such observations or do such other things as the mediator considers will

- assist in mediating the dispute; and
- (d) make recommendations to the parties concerning the settlement of the trade dispute and may make such recommendations public.

***Protection of mediator***

17. No mediator is liable to any suit or other proceedings for any act or thing done by him in good faith as a mediator.

***Privileged communications***

18. Anything communicated to a mediator shall not be admissible in evidence in proceedings before an arbitration tribunal or a board of inquiry, except with the consent of the person who gives such information.

**ARBITRATION**

***Appointment of arbitration tribunal***

19. Where the Chief Executive in Council refers a dispute to arbitration, he shall appoint an arbitration tribunal consisting of either a sole arbitrator or three arbitrators drawn from a published panel of persons who are deemed suitable to act as arbitrators. The tribunal is required to complete its task within the period specified by the Chief Executive in Council.

20. Arbitration proceedings shall be conducted in private and in a place to be decided by the tribunal having regard to the convenience of the parties and witnesses. Hearings may be conducted in English or Chinese.

***Right of audience***

21. The following persons have a right of audience before an arbitration tribunal :

- (a) any party to the dispute;
- (b) an office bearer of a registered trade union or an association of employers, if the trade union or association is a party to the dispute, or if members of the trade

- union or association are parties to the dispute;
- (c) if all parties agree, a barrister or solicitor representing a party to the dispute; and
  - (d) any other person representing a party to the dispute.

22. A person referred to in (b) or (d) above has a right of audience on behalf of a party only if he is authorized in writing by the party to represent it.

### ***Evidence***

23. An arbitration tribunal has similar power to the Court of First Instance of the High Court in requiring any person –

- (a) to furnish particulars that are relevant to the case;
- (b) to attend the tribunal and give evidence; and
- (c) to produce documents the tribunal specifies.

24. An arbitration tribunal may take any evidence which it considers to be relevant whether or not such evidence would have been admissible in a court of law. Any evidence given by a person in arbitration proceedings shall not be admissible in any civil or criminal proceedings by or against him, except where he is tried for perjury.

### ***Award***

25. An award made by the arbitration tribunal shall be submitted to the Chief Executive in Council who will publish it as soon as possible. Where a tribunal consists of three arbitrators, an award may be made by any two of them.

26. An award is not legally binding but since the parties voluntarily participate in the arbitration proceedings to secure a settlement, the award is expected to be accepted by the parties.

### ***Arbitration Ordinance inapplicable***

27. The Arbitration Ordinance (Cap. 341) does not apply to any arbitration or to any award made by an arbitration tribunal under the Labour Relations Ordinance.

## **BOARD OF INQUIRY**

### ***Appointment of a board of inquiry***

28. Where the Chief Executive in Council refers a trade dispute to a board of inquiry, he will appoint a board consisting of one or more members to investigate the causes and circumstances of the dispute. The Chief Executive in Council shall specify the period within which the board is to submit a report of its findings to him.

29. The proceedings of a board may be held in public or in private. The venue and time of sittings will be for the convenience of the parties and witnesses and the language may be English or Chinese.

### ***Police and court bailiffs to assist the board***

30. In conducting an inquiry, a board may call on the assistance of police officers and bailiffs of the court.

### ***Evidence***

31. A board of inquiry has similar power to the Court of First Instance of the High Court in requiring any person –

- (a) to furnish particulars that are relevant to the case;
- (b) to attend the board and give evidence; and
- (c) to produce documents the board specifies.

32. A board may take any evidence which it considers to be relevant whether or not such evidence would have been admissible in a court of law. Any evidence given by a person before a board shall not be admissible in any civil or criminal proceedings by or against him, except where he is tried for perjury.

### ***Right of audience***

33. The following persons have a right of audience before a board of inquiry –

- (a) any party to the dispute ;
- (b) an office bearer of a registered trade union or an association of employers if the

trade union or association is a party to the dispute, or if members of the trade union or association are parties to the dispute; and

- (c) any other person, including a barrister or solicitor, who is representing a party to the dispute.

34. With the exception of a barrister or solicitor, a person referred to in (b) and (c) above has a right of audience on behalf of a party only if he is authorized in writing by the party to represent it.

### ***Report of the board***

35. A board must submit a report of its findings, together with its recommendation, to the Chief Executive in Council within the period specified. The Chief Executive in Council shall publish the report as soon as possible.

36. A board of inquiry may submit an interim report as it thinks fit.

### ***Publication of, and comment on proceedings of board of inquiry***

37. Any person may publish a fair and accurate report or summary of any evidence given before a board of inquiry. However, no person shall –

- (a) publish or disclose any evidence received in proceedings held in private;
- (b) publish or disclose any evidence received in proceedings held in public if the publication or disclosure of the evidence is prohibited by the board; or
- (c) publish any comment on any proceedings or any evidence received in proceedings before the board's report is published.

Any person who contravenes the above section is liable on conviction to a fine of \$5,000 and to imprisonment up to six months.

38. This provision, however, should not be taken as restricting communications between persons who are parties to the trade dispute. Publication of comments on proceedings or evidence before the publication of the board's report is undesirable and may present a distorted picture of the trade dispute. Once the board's report is published, any person is free to publish any comments made.

### *Contempts to be offences*

39. Any person who behaves in an insulting manner, or uses insulting or threatening expressions before a board of inquiry, or interrupts its proceedings, is liable on conviction to a fine of \$2,000 and to imprisonment up to three months.

### *Protection of board members*

40. No member of the board is liable to any suit, or other proceedings, for any act or thing done by him in good faith as a member of the board, but this does not affect the power of the Court of First Instance of the High Court to make, where necessary, an order of mandamus<sup>1</sup>, certiorari<sup>2</sup>, or prohibition<sup>3</sup> in relation to board proceedings.

41. Evidence given before a board is absolutely privileged and no person is liable to any suit or civil proceedings for giving such evidence.

## **COOLING-OFF PERIOD**

42. This Part of the Ordinance is not yet legally in force. It will commence its operation at a time appointed by the Chief Executive in Council by notice in the Gazette.

### *The pre-requisites for making a cooling-off order*

43. The order can only be made by the Chief Executive in Council in very special circumstances where –

- (a) in contemplation or furtherance of a trade dispute, industrial action consisting of a strike<sup>4</sup> or any irregular industrial action short of a strike<sup>5</sup> or lockout<sup>6</sup> has begun

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### *Notes*

<sup>1</sup> Mandamus is a writ served by a superior court to a person or body commanding the performance of a specific public duty.

<sup>2</sup> Certiorari is a writ issuing out of a superior court calling up for review the record of proceedings held in a lower court.

<sup>3</sup> Prohibition is a writ to restrain a lower court from exceeding its jurisdiction.

<sup>4</sup> ‘strike’ means –

(a) the cessation of work by a body of persons employed acting in combination; or

- or is likely to begin;
- (b) the situation is such that an interruption is likely to occur in the supply of goods or the provision of services which might –
- be gravely injurious to the economy of Hong Kong
  - seriously affect the livelihood of a substantial number of persons
  - create a serious risk of public disorder
  - seriously jeopardize the internal security of Hong Kong
  - endanger the lives of a substantial number of persons
  - expose a substantial number of persons to serious risk of disease or personal injury; and
- (c) it would be conducive to a settlement of the trade dispute by negotiation, conciliation, arbitration or the appointment of a board of inquiry if the industrial action were discontinued or deferred.

***The cooling-off order***

44. The order shall specify the area of employment, i.e. the industry or

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- (b) a concerted refusal, or a refusal under a common understanding, of any number of persons employed, to continue to work for an employer in consequence of a trade dispute, done as a means of compelling –
- (i) their employer or the employer of any other person or body of persons; or
- (ii) any person or body of persons employed,
- to accept or not to accept terms or conditions of or affecting employment.

<sup>5</sup> ‘irregular industrial action short of a strike’ means any concerted course of conduct (other than a strike) which, in contemplation or furtherance of a trade dispute, -

- (a) is carried on by a group of employees with the intention of preventing, reducing or otherwise interfering with the production of goods or the provision of services; and
- (b) in the case of some or all of them, is carried on in breach of their contracts of employment or in breach of their terms and conditions of service.

<sup>6</sup> ‘lock-out’ means the closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him in consequence of a trade dispute, done with a view to compelling those persons, or to aiding another employer in compelling persons employed by him, to accept terms or conditions of or affecting employment.

industries, one or more undertakings or parts of undertakings and one or more descriptions of employees, affected by the order.

45. The order shall indicate the scope of the trade dispute so as to show the area of employment and the extent of matters to which the dispute relates.

46. The order may require any person to take steps, within a specified time, to withdraw any instruction for industrial action issued by him or on his behalf in order to discontinue or defer the specified industrial action during the effective period of the order.

47. The order shall specify the date of commencement and effective period of the order. The initial effective period may not exceed 30 days and the Chief Executive in Council may extend it to a total period of not exceeding 60 days.

48. The order shall be published in both English and Chinese.

***Ban on industrial action and discrimination during the period of the order***

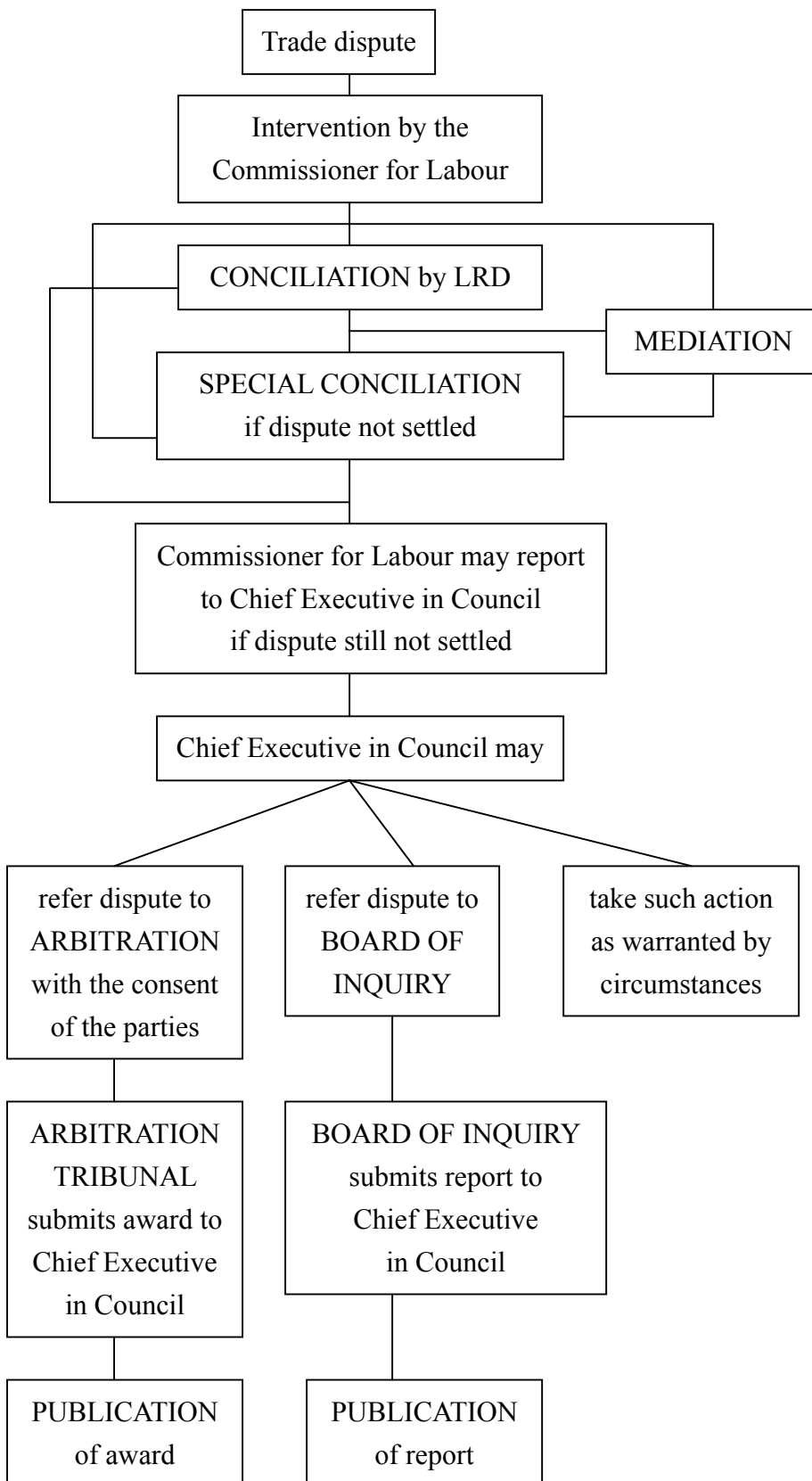
49. Irrespective of what the Trade Unions Ordinance provides, any person is guilty of contempt of court, if during the effective period of the cooling-off order, he –

- (a) calls, organizes, procures or finances a strike or threatens to do so;
- (b) organizes, procures or finances any irregular industrial action short of a strike or threatens to do so;
- (c) institutes, carries on, authorizes, organizes or finances a lockout or threatens to do so; or
- (d) penalizes or discriminates against an employee because of his taking part, failing or refusing to take part in the trade dispute;

within the area of employment specified in the order.

50. Proceedings for contempt of court under this provision may be brought in the Court of First Instance of the High Court on application by the Secretary for Justice.

## The Labour Relations Ordinance



Parallel to negotiation, conciliation, mediation, arbitration, inquiry, a COOLING-OFF period may be ordered by Chief Executive in Council. This Part is not yet in force.

**Offices of the Labour Relations Division of the Labour Department:**

**HONG KONG**

Hong Kong East Office  
12/F, AXA Centre,  
151 Gloucester Road,  
Hong Kong.

Hong Kong West Office  
3/F, Western Magistracy Building,  
2A Pokfulam Road, Hong Kong.

**KOWLOON**

Kowloon East Office  
Room 1206, 12/F, Stelux House,  
698 Prince Edward Road East,  
San Po Kong, Kowloon

Kowloon West Office  
Room 1009, 10/F,  
Cheung Sha Wan Government Offices,  
303 Cheung Sha Wan Road, Kowloon.

Kowloon South Office  
2/F, Mongkok Government Offices,  
30 Luen Wan Street,  
Mongkok, Kowloon.

Kwun Tong Office  
6/F, Kowloon East Government Offices,  
12 Lei Yue Mun Road,  
Kwun Tong, Kowloon.

**NEW TERRITORIES**

Tsuen Wan Office  
5/F, Tsuen Wan Government Offices,  
38 Sai Lau Kok Road, Tsuen Wan,  
New Territories.

Kwai Chung Office  
6/F, Kwai Hing Government Offices,  
166-174 Hing Fong Road,  
Kwai Chung, New Territories.

Tuen Mun Office  
Room 2720, Tuen Mun Parklane Square,  
2 Tuen Hi Road, Tuen Mun,  
New Territories.

Shatin & Tai Po Office  
Room 304-313, 3/F,  
Sha Tin Government Offices,  
1 Sheung Wo Che Road,  
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