

Guidance Notes for Application of a Trade Union / Trade Union Federation for Intended Receipt of Contributions or Donations from an External Force

1. According to section 34A(1) of the Trade Unions Ordinance (Cap. 332) (“TUO”), if an officer of a registered trade union / trade union federation (i.e. a member of the executive committee) knows or has reason to believe that any external force will make contributions or donations to the trade union / trade union federation, the trade union / trade union federation must make an application (“the application”) to the Registrar of Trade Union (“Registrar”) in the specified form before receiving the contributions or donations; and must decline to receive the contributions or donations until the Registrar has approved the application. Please refer to paragraph 13 for the definitions of “external place” and “external force”.
2. The aforementioned contributions or donations are not limited to funds. They include any contributions or donations having monetary value.

Application Form and Required Information

3. The application must be submitted to the Registrar in the specified form (i.e. Form 15(a)) and a number will be assigned upon approval.
4. According to section 34A(3) of the TUO, the application must set out:
 - (a) the particulars of the external force that makes the contributions or donations;
 - (b) the purposes for which the trade union / trade union federation intends to expend the contributions or donations; and
 - (c) any other information required by the specified form.
5. According to section 51C of the TUO, the Registrar may inquire about a registered trade union / trade union federation for performing the functions of the Registrar under the TUO, and may request the trade union / trade union federation, an officer of the trade union / trade union federation or a specified person¹ to produce documents or information, give explanations or further particulars in respect of a document or information produced, and answer questions relating to any matter for the inquiry.
6. Failure of the trade union / trade union federation to provide the relevant information for the application as required by law may affect the approval of the application or result in the application being rejected.

¹ “Specified person” means a person whom the Registrar or an authorized officer reasonably believes to have any document or information relating to an inquiry in that person’s possession, control or custody.

Application Method

7. Please submit the completed Form 15(a) along with the relevant information and documents in person, or by post, fax, or email to the Registry of Trade Unions office. The contact details are as follows:

Address: 11/F, One Mong Kok Road Commercial Centre, 1 Mong Kok Road, Kowloon

Fax: 2541 2681

Email address: rtu@labour.gov.hk

Application Result

8. Upon approval of the application by the Registrar, according to section 34A(5) of the TUO, the relevant trade union / trade union federation may only expend the contributions or donations for the purposes approved by the Registrar.
9. In case of need to alter the approved purposes of expenditure, the relevant trade union / trade union federation may make an application in writing to the Registrar. The written application must specify “Application for altering the purposes of expending contributions or donations from an external force” and may be submitted in the manner described in paragraph 7 above. However, the Registrar shall not approve the trade union’s / trade union federation’s transfer of the contributions or donations to the electoral fund established under section 33A of the TUO; or the use of the contributions or donations to pay for the expenses referred to in section 33A(1) under section 33B of the TUO.
10. If the application is rejected by the Registrar and the external force still makes contributions or donations to the trade union / trade union federation, the trade union / trade union federation must, in accordance with section 34(A)(4) of the TUO, return the relevant contributions or donations to the external force as soon as practicable.
11. According to section 36 of the TUO, a registered trade union / trade union federation must, after receiving contributions or donations made by an external force as provided in section 34A, furnish annually to the Registrar a statement of account using the specified form (i.e. Form 13(d)) audited by an auditor approved by the Registrar, that contains all receipts and expenditures of the trade union / trade union federation in connection with the contributions or donations during that financial year. If the contributions or donations mentioned have been wholly expended during any financial year, then, starting from the financial year immediately following that financial year, the trade union / trade union federation is no longer required to furnish the above

statement of account.

12. A registered trade union / trade union federation that contravenes sections 34A(1), 34A(4) or 34A(5) commits an offence and is liable to a fine of \$100,000 on summary conviction; or a fine of \$200,000 on conviction on indictment.
13. “External place” and “external force” mentioned in the TUO have the meaning given by the Safeguarding National Security Ordinance, namely:

“External place” means a region or place outside the Hong Kong Special Administrative Region of the People’s Republic of China (other than the Mainland and Macao).

“External force” means—

- (a) a government of a foreign country;
- (b) the authority of an external place;
- (c) a political party in an external place;
- (d) any other organization in an external place that pursues political ends;
- (e) an international organization²;

² “International organization” means—

- (a) an organization the members of which include two or more countries, regions, places, or entities entrusted with functions by any country, region or place; or
- (b) an organization established by or under a treaty, convention or agreement made by two or more countries, regions or places,

and includes an institution (however described) under the organization.

- (f) a related entity³ of a government, authority, political party or organization mentioned in paragraph (a), (b), (c), (d) or (e); or
- (g) a related individual⁴ of a government, authority, political party, organization or entity mentioned in paragraph (a), (b), (c), (d), (e) or (f).

³ A reference to a “**related entity**” of a government or authority is a reference to—

- (a) a company that falls within either or both of the following descriptions—
 - (i) the directors of the company are accustomed, or under an obligation (whether formal or informal), to act in accordance with the directions, instructions or wishes of the government or authority;
 - (ii) the government or authority is in a position to exercise, by virtue of other factors, substantial control over the company; or
- (b) a body that is not a company and that falls within either or both of the following descriptions—
 - (i) the members of the executive committee (however called) of the body are accustomed, or under an obligation (whether formal or informal), to act in accordance with the directions, instructions or wishes of the government or authority;
 - (ii) the government or authority is in a position to exercise, by virtue of other factors, substantial control over the body.

A reference to a “**related entity**” of a political party in an external place, any other organization in an external place that pursues political ends or an international organization (the organization) is a reference to—

- (a) a company that falls within either or both of the following descriptions—
 - (i) the directors of the company are accustomed, or under an obligation (whether formal or informal), to act in accordance with the directions, instructions or wishes of the organization;
 - (ii) the organization is in a position to exercise, by virtue of other factors, substantial control over the company;
- (b) a body that is not a company and that falls within either or both of the following descriptions—
 - (i) the members of the executive committee (however called) of the body are accustomed, or under an obligation (whether formal or informal), to act in accordance with the directions, instructions or wishes of the government or authority;
 - (ii) the organization is in a position to exercise, by virtue of other factors, substantial control over the body; or
- (c) a body that falls within the following description: the law, constitution, rules or other governing documents by which the body is constituted (or according to which the body operates) contain either or both of the following requirements—
 - (i) a director, senior officer or employee of the body is required to be a member of the organization;
 - (ii) any part of the body is required to constitute a part (however called) of the organization.

⁴ A reference to a “**related individual**” of a government, authority, political party, organization or entity is a reference to an individual that falls within either or both of the following descriptions—

- (a) the individual is accustomed, or under an obligation (whether formal or informal), to act in accordance with the directions, instructions or wishes of the government, authority, political party, organization or entity;
- (b) the government, authority, political party, organization or entity is in a position to exercise, by virtue of other factors, substantial control over the individual.