



Trade Unions Rights, Obligations and Duties



This leaflet summarises the statutory rights and duties of trade unions, trade union members and officers (or called “members of the executive”) under the Trade Unions Ordinance (“TUO”) (Cap. 332) and other relevant legislation, as well as the rights and obligations of members and officers under the trade union rules (or called “constitutions”). The relevant ordinances remain the sole authority for the provisions of the law explained.

◆ The right to form and join a trade union

- ◆ Article 27 of the Basic Law and Article 18 of the Hong Kong Bill of Rights, as set out in the Hong Kong Bill of Rights Ordinance (Cap. 383), guarantee that Hong Kong residents shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of their interests.
- ◆ Under the Employment Ordinance (“EO”) (Cap. 57), every employee has the right to be a member or officer of a trade union registered under TUO, and to associate with other persons for the purpose of forming or applying for the registration of a trade union. Trade union members or officers have the right to take part in activities of the trade union outside working hours or within working hours with the consent of their employers.
- ◆ EO provides that an employer shall not prevent or deter an employee from exercising the above rights; or terminate the contract of employment of, penalize or otherwise discriminate against an employee for exercising the above rights. An employer shall not include the following conditions or requirements in the terms of employment:
 - ▶ If the prospective employee is a member or officer of a trade union, the employee shall undertake to relinquish the membership or office therein;
 - ▶ The prospective employee shall undertake not to become a member of, or officer in, a trade union; or
 - ▶ The prospective employee shall undertake not to associate with other persons for the purpose of forming or applying for the registration of a trade union.

◆ Statutory rights of a registered trade union

◆ Body corporate

- ▶ According to TUO, a registered trade union is a body corporate with perpetual succession and with power to hold property movable or immovable and to enter into contracts and to institute legal proceedings.

◆ Protection from criminal prosecution/civil suit

- ▶ A trade union shall not, by reason merely that its purposes are in restraint of trade, be deemed to be unlawful so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise.

- ▶ In certain cases, a trade union, its members and officers may enjoy protection from civil suit in respect of any act done in contemplation or furtherance of a trade dispute.

◆ Trade union member

◆ Statutory rights

Inspection of trade union documents

- ▶ A trade union member may inspect the account books and the register of members of the trade union at the time and place specified in the trade union rules, and may also apply to the Registrar of Trade Unions (“the Registrar”) in writing for inspection of any documents required by TUO to be filed with the Registrar that are related to the trade union or to any trade union federation of which the trade union is a member, such as annual statements of account, registered rules and lists of officers, etc.

Other statutory rights

- ▶ A trade union member may take legal action against any trade union officers or other persons who wilfully withhold or fraudulently misapply moneys, documents or effects of the trade union, including applying to the District Court to require the person concerned to deliver up or repay to the trade union all such moneys, documents or effects, or restraining the relevant officer from holding office or controlling trade union funds.
- ▶ A trade union member may appeal to the Court of First Instance against the Registrar on such decisions as refusal to register a change of the union name or refusal to register an amendment to trade union rules, etc.

◆ Rights provided by trade union rules

To protect the rights and benefits of trade union members, TUO stipulates that trade union rules must provide adequately for each and all of the matters specified in Schedule 2 to TUO (including objects of the trade union, eligibility of membership, appointment and replacement of trade union officers, purposes of trade union funds, method of amending trade union rules, etc.). The trade union rules normally confer upon members the following rights:

- ▶ To attend general meetings of the trade union, move motions at the general meetings, vote on motions and officer elections at such meetings in accordance with the trade union rules (for voting members only);
- ▶ To stand for elections of officers in accordance with the trade union rules and provisions of TUO;
- ▶ To request the executive to convene extraordinary general meetings, or to appeal to the general meetings on decisions of the executive;

- ▶ To request a copy of the trade union rules;
- ▶ To enjoy benefits provided by the trade union in accordance with its rules; and
- ▶ To share the remaining union assets and funds in accordance with the union rules and the resolutions passed at the general meeting in the event of the dissolution of the union.

◆ **Obligations and duties**

Observe the rules and resolutions of trade union

- ▶ Trade union members have the obligations and duties to observe the trade union rules and various resolutions of general meetings, and pay subscriptions and other fees on time.

Update personal particulars

- ▶ Trade union members should inform the executive of any changes in their personal particulars so that the executive can update the register of members and notify members of such union affairs as the date and agenda of general meetings.

Active participation

- ▶ Trade union members should actively participate in trade union activities and express their views. They may also take part in the management of the trade union by assuming union office.

◆ **Trade union officer**

◆ **Statutory rights**

Inspection of trade union documents

- ▶ Trade union officers have the right to inspect the account books and register of members of the trade union at the time and place specified in the trade union rules.

Right of audience in hearings of trade disputes

- ▶ According to the Labour Tribunal Ordinance (Cap. 25) and the Minor Employment Claims Adjudication Board Ordinance (Cap. 453), a trade union officer may, with the leave of the Tribunal/Board and the authorization in writing by a claimant, defendant or party, have a right of audience before the Tribunal/Board.

◆ **Obligations and duties**

Administration of union affairs

- ▶ Trade union officers are elected by members to act as their agents to administer union affairs, and should comply with the requirements of TUO and trade union rules in administering union affairs. They also have a duty to carry out the resolutions passed by the executive and at the general meetings, and present the reports on union affairs and finance to members at the general meetings. A motion should be tabled at the general meeting for collective resolution by members when making important decisions.

Proper handling and custody of trade union documents/items

- ▶ Trade union officers should properly handle and keep custody of trade union documents/items, including the Certificate of Registration of a Trade Union (Form 3), the registered rules, admission forms, the register of members, seal of the trade union, financial documents and minutes of meetings, etc. Trade union documents containing personal data should be properly handled in accordance with the Personal Data (Privacy) Ordinance (Cap. 486).
- ▶ If the Certificate of Registration of a trade union is lost, application for replacement should be made to the Registry of Trade Unions ("RTU") as soon as possible.
- ▶ Trade union officers should submit relevant applications or forms to RTU in accordance with TUO in a timely manner.

Honest and law-abiding

- ▶ Where any offence under TUO or its regulations has been committed by a trade union, every officer of the trade union is guilty of the like offence unless the officer can establish that the act constituting the offence took place without the officer's knowledge or consent.
- ▶ A person commits an offence and is liable on summary conviction to a fine at level 6 (\$100,000) and to imprisonment for 6 months or on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year, if the person knows or has a reason to believe that:
 - any document or information is false or misleading in a material particular and still furnishes under TUO the document or information to the Registrar or any person authorized by the Registrar, whether in writing, orally or otherwise; or causes or procures the document or information to be furnished under TUO to the Registrar or any person authorized by the Registrar; or

- the document or information furnished under TUO to the Registrar or any person authorized by the Registrar contains any statement that is false or misleading in a material particular and still signs on such document or information.

- ▶ Any person, by false representation or imposition, obtains possession of any moneys, documents or effects of a trade union, or having in possession of the same, wilfully withdraws or fraudulently misappropriates the same, or wilfully applies any part of the same to purposes other than those stipulated in the trade union rules, the District Court may make an order requiring such person to deliver up to the trade union the same, and to repay the amount of the moneys applied improperly, or to pay fine and legal costs. The person concerned who fails to comply with the order of the District Court may be imprisoned.

Notification of charge or conviction of specified offences

- ▶ A trade union officer who is charged with or convicted of any offence specified in Schedule 1 to TUO (i.e. offences endangering national security and those involving fraud, dishonesty, extortion and membership of a triad society) must serve on the Registrar a written notice specifying the nature of the relevant offence as soon as reasonably practicable after the officer is charged with or convicted of the offence.

Avoiding conflict of interest

- ▶ A trade union officer who misuses the officer's position or power to accept an advantage may have breached the Prevention of Bribery Ordinance (Cap. 201).

◆ **Contact the Registry of Trade Unions**

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