

**A Guide to the
Labour Relations Ordinance**

FOREWORD

This guide outlines the major stipulations under the Labour Relations Ordinance (Cap. 55) which provide for the settlement of trade disputes and improvement of labour-management relations. It should be noted that the Ordinance itself remains the authority for the provisions of the law explained.

Enquiries about the Ordinance may be made at any office of the Labour Relations Division of the Labour Department. The addresses are listed in the following web page : <http://www.labour.gov.hk/eng/tele/lr1.htm>.

INTRODUCTION

The Labour Relations Ordinance aims to lay down a set of procedures for the settlement of trade disputes so as to minimise any social friction or economic disruption that a trade dispute may cause.

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.

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, the Minimum Wage 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 shall 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.

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 shall be drawn up and signed by both parties and a copy of which shall be 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 shall 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 may 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 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 an order of 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.

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 and Mediation Ordinance inapplicable

27. The Arbitration Ordinance (Cap. 609) does not apply to any arbitration or to any award made by an arbitration tribunal under the Labour Relations Ordinance. The Mediation Ordinance (Cap. 620) does not apply to any conciliation, special conciliation or mediation 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 shall 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.

Evidence

30. A board of inquiry has similar power to an order of 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.

31. 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.

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

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 of inquiry

35. A board of inquiry shall 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.

COOLING-OFF PERIOD

Introduction

40. This Part of the Ordinance will commence 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

41. 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 strike¹ or any irregular industrial action short of a strike² or lockout³ has begun or is likely to begin;
- (b) the situation arising out of the trade dispute 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

¹ ‘strike’ means –

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

² ‘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.

³ ‘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.

- 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.

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

42. 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.

43. 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.

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