

**LegCo Panel on Manpower**  
**Sub-committee on employer and employee relations**  
(For meeting on 9 December 1999)

**Administration's response on the principles  
of freedom of association of the ILO**

**Introduction**

This paper provides information on measures taken by the Administration to give effect to our obligations under the International Labour Convention (ILC) No. 87 on freedom of association and protection of the right to organise and ILC No. 98 on the right to organise and collective bargaining as applied to Hong Kong.

**Application of ILCs No. 87 and 98**

2. Hong Kong has applied International Labour Convention (ILC) No. 98 on the right to organise and collective bargaining in full since 1975. Hong Kong has also applied ILO No. 87 on freedom of association and protection of the right to organise with modifications since 1963, which is allowed under the Constitution of the International Labour Organization (ILO). A list of the current modifications registered with the ILO are at Annex.

3. We report regularly to the ILO on the application of these two conventions. These conventions are applied in Hong Kong by a combination of legislative and administrative measures.

## **The Basic Law**

4. Article 27 of the Basic Law provides, among other things, that Hong Kong residents shall have freedom of association, the right and freedom to form and join trade unions, and to strike.

5. Article 39 of the Basic Law further provides, amongst others, that the provisions of the international labour conventions **as applied to Hong Kong** shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region. The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law.

## **Legislative measures**

6. The two Conventions are applied in Hong Kong by a number of ordinances. Amongst others, the two major relevant ordinances are the Trade Unions Ordinance (TUO) and the Employment Ordinance (EO).

7. The TUO makes provisions on matters relating to the registration of trade unions and the regulation of their internal administration. Under the Ordinance, any combination of employees or employers which has the principal objects of regulating relations between employees and employers, between employees, or between employers is required to be registered with the Registry of Trade Unions.

8. The EO provides protection against union discrimination. The EO stipulates the rights of an employee to be or to become a union officer, participate in union activities and associate with others for the purpose of applying for registration of a trade union under the TUO. Any employer who prevents, deters, dismisses, penalizes or discriminates against an employee from exercising these rights shall be liable to prosecution and, upon conviction, to a fine of \$100,000.

9. The EO also protects the employee against unlawful and unreasonable dismissal, including dismissal on grounds of union discrimination. The remedies available to an employee who is dismissed on grounds of union discrimination include reinstatement/re-engagement, subject to the prior mutual consent between employer and the employee, termination payments and award of compensation up to a maximum of \$150,000.

10. As regards the right to strike, a reasonable interpretation of section 9 of the EO in the light of Article 27 of the Basic Law is that an employer cannot invoke this section to dismiss an employee summarily on the ground of his taking part in a strike.

11. Having consulted the Labour Advisory Board, we will propose amendments to the Employment Ordinance to make it clear that an employer may not terminate the contract of employment of an employee without notice or payment in lieu of notice under section 9 solely on the grounds that the employee takes part in a strike as defined

under the EO and to delete existing sections 31H, 31X and 32H.

### **Administrative measures**

12. The Registry of Trade Unions advises members of the public on the formation of trade unions and making of union rules. It runs regular courses to provide trade unionists with better knowledge of labour relations and trade union law and management. Its officers conduct regular inspections of account books of registered unions to ensure that there is no act of interference by employers in the establishment, functioning or administration of employees unions. In addition, the account books are open for inspection by their union members. Our inspections have not disclosed any acts of interference by employers through the provision of financial support. We have not received reports of acts of interference. We will continue to promote the importance of non-interference to trade unions and employers through our trade union educational courses and promotional visits to employers. These administrative measures have worked well and specific legislative provisions on non-interference are considered not necessary.

13. The Labour Department actively promotes employees' awareness of their trade union rights. The Department also organises, on a regular basis, training courses and seminars with a view to promoting employers' awareness of the legislative provisions on anti-union discrimination. Information leaflets are also prepared and distributed freely to members of the public.

14. An employee who is dismissed on grounds of union membership or activities may lodge a claim with the Labour Department against his employer for remedies. If conciliation fails to bring about a settlement, the employee may seek adjudication at the Labour Tribunal. The Department will also provide conciliation service to help employers and employees resolve their dispute whenever employees go on strike or take industrial action. Hong Kong is one of the places in the world with the lowest record of working days lost due to strikes. On average, 0.45 days per 1 000 wage earners and salaried employees per annum was lost over the past five years.

15. The Department has taken measures appropriate to local conditions to promote voluntary and direct negotiation between employers and employees or their respective organisations. It promotes effective channels for communication and voluntary and direct negotiation at the enterprise level. Where machinery for negotiation has not been set up, the Department will offer advice and assistance for its establishment.

16. The Department also promotes tripartite dialogue at the industry level through the setting up of tripartite committees comprising representatives of employers, employees' organisations and the Labour Department. So far, five such committees are formed in the construction, catering, theatre, warehouse and cargo transport, and property management trades. They serve as useful forums for the discussion of

industry-specific issues on a voluntary basis. The Department will continue its efforts in promoting the formation of such tripartite committees in other trades/industries.

17. Other promotional efforts include training courses, workshops, seminars, visits, tailor-made consultative services, videos and leaflets to promote awareness and experience sharing among employers. These activities have the objective of raising the maturity of labour relations that would be conducive to the further development of collective bargaining.

### **Conclusion**

18. We are committed to meeting our obligations under the international labour conventions as applied to Hong Kong. It is our policy to make progressive improvements to employees' rights and benefits. In doing so, we take full account of the best overall interests of the community and the pace of Hong Kong's economic and social developments. We also seek to achieve a balance between the interests of employees and employers.

Education and Manpower Bureau  
December 1999

**Application of International Labour Convention No. 87  
in the HKSAR: List of modifications registered with  
the International Labour Organization (ILO)**

The current modifications registered with the ILO are as follows:

- (1) All officers of a trade union are required to be or have been engaged or employed in the trade, industry or occupation with which the trade union is directly concerned but this requirement may be modified at the discretion of the public authority.
- (2) The funds of a trade union may be expended only for objects specified in national laws or approved by the public authority.
- (3) Amalgamation of registered trade unions is subject to the consent of the public authority where either of the trade unions is a member of an organisation established outside the territory.
- (4) The public authority may in certain circumstances intervene for the purpose of supervising the accounts of trade unions and ensuring the application of their rules.
- (5) The consent of the public authority is required for affiliation of trade unions with international organisations. (See *Note*)
- (6) Federations of trade unions may be established only by registered trade unions engaged in the same trade, occupation or industry, and membership of federations of trade unions is restricted to registered trade unions engaged in the same trade, occupation or industry as the component trade unions comprising such trade union federations. (See *Note*)

- (7) The modifications relating to primary trade unions apply also to federations of trade unions, except that no person who is not or has not been engaged in a trade, industry or occupation with which the primary union is directly concerned may be an officer of a federation of trade unions. (See Note)

*Note:* The Trade Unions Ordinance was amended in October 1997 so that registered trade unions are permitted to form trade union federations of whatever combinations and to be a member of an organisation of workers, employers and a relevant professional organisation established in a foreign country without the need to obtain the prior approval of the Government.