

EMPLOYMENT (AMENDMENT) BILL 1997

COMMITTEE STAGEAmendments to be moved by Honourable LEE Cheuk-yanClauseAmendment Proposed

2 By deleting the clause and substituting -

"2. Sections added

Part IVA of the Employment Ordinance (Cap. 57) is amended by adding after section 21C -

"21D. Effect of contravention of this Part

(1) Notwithstanding any liability provided for under sections 21B and 21C, an action may be brought against a person who discriminates against another person under this Part.

(2) In this section, "discriminate" (歧視) means to do any of the acts referred to in sections 21B and 21C which may render the doer of those acts liable to criminal prosecution.

(3) For the purposes of the application of subsection (1) to unlawful acts referred to in section 21B, an employee shall be entitled to remedies under this Part if and only if in relation to dismissal or other detriment suffered as a result of contravention of section 21B(2), the employee has exercised any of the rights mentioned in section 21B(1) within a period of 12 months immediately preceding such dismissal or detriment suffered by the employee.

ClauseAmendment Proposed**21E. Effect of this Part on legislation
and common law**

(1) Where any provision of an Ordinance which permits or requires a person to do an act which is unlawful under this Part does not admit of a construction that is consistent with this Part, it is hereby repealed to the extent of the inconsistency with this Part.

(2) For the avoidance of doubt a rule of the common law which permits or requires a person to do an act which is unlawful under this Part is hereby abrogated.

21F. Jurisdiction of Labour Tribunal

The Labour Tribunal established under the Labour Tribunal Ordinance (Cap. 25) shall have jurisdiction to inquire into, hear and determine actions brought under section 21D in accordance with this Part and with that Ordinance.

21G. Making of interim orders

Pending determination of the merits of the case, the Labour Tribunal hearing an action brought under section 21D may make an interim order to preserve —

- (a) the status quo existing between the parties to the action before the commission of the alleged unlawful act; or
- (b) the rights of the parties to the action.

ClauseAmendment Proposed**21H. Remedies**

(1) Where the Labour Tribunal is satisfied, in proceedings brought under section 21D, that a person has committed an act which is unlawful by virtue of that section, the Labour Tribunal may make an order which it considers just and appropriate in the circumstances.

(2) Without limiting the generality of the power conferred by subsection (1), the Labour Tribunal may —

- (a) make a declaration that the defendant has engaged in conduct, or committed an act that is unlawful under this Part, and order that the defendant should not repeat or continue such unlawful conduct;
- (b) order that the defendant should perform any reasonable act or course of conduct to redress any loss or damage suffered by the plaintiff;
- (c) order that the defendant should employ or re-employ the plaintiff;
- (d) order that the defendant should promote the plaintiff;
- (e) order that the defendant pay to the plaintiff damages by way of terminal payments mentioned in section 32O, and compensation for any other loss or damage suffered by reason of the defendant's conduct;

ClauseAmendment Proposed

- (f) order that the defendant pay to the plaintiff punitive or exemplary damages;
- (g) make an order declaring void in whole or part and either ab initio or from such other time as is specified in the order any contract or agreement made in contravention of this Part; or
- (h) declare that a legislative provision has been repealed in whole or part, or that a rule of the common law has been abrogated.

21I. Onus of proof

In proceedings brought under section 21D, where a person has shown that he has exercised any of the rights vested in an employee by or by virtue of section 21B(1) and that he suffered dismissal or other detriment in his employment, it shall be for the employer to show that the dismissal or detriment suffered was not due to the employee having exercised any of those rights.

21J. Exclusion

Save as otherwise provided in this Part, the provisions of Part VIA shall not apply to a claim for remedies made under this Part in relation to a dismissal in contravention of section 21B(2)(b).".".

ClauseAmendment Proposed

New By adding -

"Consequential Amendments

Labour Tribunal Ordinance

3. Schedule amended

The Schedule to the Labour Tribunal Ordinance (Cap. 25) is amended by adding -

"7. A claim for remedies under Part IVA of the Employment Ordinance (Cap. 57).".

New By adding -

"4. Transitional

(1) The amendments to the principal Ordinance effected by section 2 of this Ordinance shall not apply to the dismissal or other detriment suffered by an employee before the commencement of this Ordinance.

(2) In this section "the principal Ordinance" (主體條例) means the Employment Ordinance (Cap. 57) prior to its amendment by this Ordinance.".

OCCUPATIONAL DEAFNESS (COMPENSATION) (AMENDMENT) BILL 1997

COMMITTEE STAGE

Amendments to be moved by Hon LEUNG Yiu-chung

Clause	Amendment Proposed
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- 2 By deleting the clause and substituting -

"2. Interpretation

Section 2 of the Occupational Deafness (Compensation) Ordinance (Cap. 469) is amended, in the definition of "noise-induced deafness", by repealing "50dB" and substituting "40dB":.

- 3 By deleting the clause and substituting -

"3. Schedule substituted

Schedule 4 is repealed and the following substituted -

"SCHEDULE 4 [ss. 20 & 39]

PERCENTAGE OF PERMANENT INCAPACITY BY REFERENCE TO NOISE-INDUCED DEAFNESS

Percentage of permanent incapacity Average pure-tone bearing loss (dB) at 1. 2. 3. kHz frequencies as determined by the Board		FOR BETTER EAR										
		40 to Below 45 dB	45 to below 50 dB	50 to below 55 dB	55 to below 60 dB	60 to below 65 dB	65 to below 70 dB	70 to below 75 dB	75 to below 80 dB	80 to below 85 dB	85 to below 90 dB	90 dB or above
FOR BETTER DEAR	40 to Below 45 dB	x	x	x	x	x	x	x	x	x	x	x
	45 to below 50 dB	1										
	50 to below 55 dB	2	5									
	55 to below 60 dB	3	6	10								
	60 to below 65 dB	4	7	11	15							
	65 to below 70 dB	5	8	12	16	20						
	70 to below 75 dB	6	9	13	17	21	25					
	75 to below 80 dB	7	10	14	18	22	26	30				
	80 to below 85 dB	8	11	15	19	23	27	31	35			
	85 to below 90 dB	10	10	10	10	10	10	32	37	43		
	90 dB or above	11	11	11	11	11	11	33	38	45	51	
	12	12	12	12	12	12	34	40	46	53	60	

Annex XIX

EMPLOYEE'S RIGHTS TO REPRESENTATION, CONSULTATION
AND COLLECTIVE BARGAINING BILL

COMMITTEE STAGE

Amendments to be moved by the Hon. LEE Cheuk-yan

<u>Clause</u>	<u>Amendment Proposed</u>
2(1)	<p>(a) In the definition of "award" —</p> <p>(i) by deleting "'award'" and substituting "'arbitration award" (仲裁裁定)";</p> <p>(ii) by deleting "uner" and substituting "under".</p> <p>(b) In the definition of "certificate of registration", by adding "(登記證明書)" after "'certificate of registration'".</p> <p>(c) In the definition of "certificate of representativeness", by adding "(代表性證明書)" after "'certificate of representativeness'".</p> <p>(d) In the definition of "collective agreement", by adding "(集體協議)" after "'collective agreement'".</p> <p>(e) In the definition of "collective bargaining", by adding "(集體談判)" after "'collective bargaining'".</p> <p>(f) In the definition of "consultation", by adding "(諮詢)" after "'consultation'".</p>

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- (g) In the definition of "contract of employment", by adding "(僱傭合約)" after "'contract of employment'".
- (h) In the definition of "employee", by adding "(僱員)" after "'employee'".
- (i) In the definition of "employer", by adding "(僱主)" after "'employer'".
- (j) In the definition of "Labour Tribunal", by adding "(勞資審裁處)" after "'Labour Tribunal'".
- (k) In the definition of "representative trade union", by adding "(具代表性的職工會)" after "'representative trade union'".
- (l) In the definition of "trade union", by adding "(職工會)" after "'trade union'".
- (m) In the definition of "trade union representative", by adding "(職工會代表)" after "'trade union representative'".
- (n) In the definition of "undertaking", by adding "(企業)" after "'undertaking'".
- (o) In the definition of "working hours", by adding "(工作時間)" after "'working hours'".

2(2)

- (a) By adding "(相聯)" after "'associated'".
- (b) By adding "(相聯僱主)" after "'associated employer'".

<u>Clause</u>	<u>Amendment Proposed</u>
3(1)	By deleting "under" and substituting "under".
3(5) and (6)	By adding "(有關日期)" after ""the relevant date"".
5	<p>(a) In the definition of "appropriate time", by adding "(適當時間)" after ""appropriate time"".</p> <p>(b) In the definition of "relevant matters", by adding "(有關事項)" after ""relevant matters"".</p> <p>(c) In the definition of "trade union representative", by adding "(職工會代表)" after ""trade union representative"".</p>
6	<p>(a) In the definition of "recognition" -</p> <p>(i) by adding "(認可)" after ""recognition"";</p> <p>(ii) by adding "(獲認可的)" after ""recognized"".</p> <p>(b) In the definition of "a representative trade union" -</p> <p>(i) by adding "(具代表性的職工會)" after ""a representative trade union"";</p> <p>(ii) by adding "(職工會組合)" after ""group of unions"".</p>
7(2)	(a) By adding "(有關措施) is a measure envisaged by the employer relating to the rights, benefits or protection of employees and" after ""relevant measure"".

ClauseAmendment Proposed

- (b) In paragraph (e), by deleting "that effect a reduction of rights or benefits of a specified category" and substituting "which effect an extinguishment or reduction of the rights, benefits or protection of a specific category".

9. By adding -

"(4) Where, arising out of, or in connection with, the consultation with the employer, any manufacturing or commercial secret comes to the knowledge of a trade union representative, such representative shall not at any time, and notwithstanding that he is no longer a trade union representative, disclose such secret to any person."

10(2)(b) By adding "relating to the employee" after "arrangement".

12 (a) In the definition of "recognition"-

- (i) by adding "(認可)" after "'recognition'";
- (ii) by adding "(獲認可的)" after "'recognized'".

(b) In the definition of "a representative trade union" -

- (i) by adding "(具代表性的職工會)" after "'a representative trade union'";

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- (ii) by adding "(職工會組合)" after "'group of unions'".
- 13(1) (a) By adding "(集體協議)" after "'collective agreement'".
- (b) By adding "(集體談判)" after "'collective bargaining'".
- 13(3) By deleting "'award'" and substituting "'arbitration award" (仲裁裁定)".
- 15(1) By deleting "may apply" and substituting -
- "may -
- (a) where no representative trade union or group of unions has been recognized by the employer for the purpose of collective bargaining, at any time;
- (b) where a representative trade union or group of unions has been recognized by the employer for the purpose of collective bargaining, after the commencement of the 34th month of such recognition,
- apply".
- 17(2)(b) By adding "relating to the employee" after "arrangement".

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- 18 (a) By deleting subclause (4) and substituting -
- "(4) Unless the collective agreement expressly provides otherwise, a collective agreement which is a legally enforceable contract shall be binding for a period of 1 year from the date of commencement of the agreement."
- (b) In subclause (5), by adding "arbitration" before "award" wherever it appears.
- 19(4) By adding "arbitration" before "award".
- 20(2) By deleting "legal practitioner" and substituting "solicitor".
- 22(7)(a) By adding "for the purposes of collective bargaining under Part IV," at the beginning.
- 25 In the proposed paragraph 7(c) of the Schedule, by adding "arbitration" before "award".
- 26(b) In the proposed section 21B(1)(d), by adding "Part II of" after "under".

EMPLOYEE'S RIGHTS TO REPRESENTATION, CONSULTATION
AND COLLECTIVE BARGAINING BILL

COMMITTEE STAGE

Amendments to be moved by Hon. LEE Cheuk-yan

<u>Clause</u>	<u>Amendment Proposed</u>
Long title and enactment formula	<p>By adding the following as the Chinese text of the long title and enactment formula -</p> <p>"本條例草案</p> <p>旨在</p> <p>就僱員享有的代表權、諮詢權及集體談判權，以及就附帶或相關事宜，訂定條文。</p> <p>由香港總督參照立法局意見並得該局同意而制定。"</p>
Part I heading	<p>By adding the following as the Chinese text of the heading of the Part -</p> <p>"第I部</p> <p>導言"</p>
1	<p>By adding the following as the Chinese text of the clause -</p> <p>"1. 簡稱</p> <p>本條例可引稱為《僱員代表權、諮詢權及集體談判權條例》。"</p>
2 <u>Clause</u>	<p>By adding the following as the Chinese text of the clause -</p> <p><u>Amendment Proposed</u></p>

"2. 釋義

(1) 在本條例中，除文意另有所指外 —

“工作時間” (working hours)就僱員而言，指其按照與僱主訂立的合約所須工作的任何時間；

“代表性證明書” (certificate of representativeness)指根據第22條發給的證明書；

“仲裁裁定” (arbitration award)指根據第13(3)條作出的裁定；

“企業” (undertaking)包括任何作為獨立經濟實體的營商或業務或部分業務；

“具代表性的職工會” (representative trade union)指根據第6及12條解釋的具代表性的職工會；

“登記證明書” (certificate of registration)指職工會登記局局長根據《職工會登記規例》（第332章，附屬法例）發給的證明書；

“勞資審裁處” (Labour Tribunal)指由《勞資審裁處條例》（第25章）第3條設立的勞資審裁處；

“集體協議” (collective agreement)指根據第13條解釋的集體協議；

“集體談判” (collective bargaining)指根據第13條解釋的集體談判；

“僱主” (employer)指已訂立僱傭合約僱用他人為僱員的人，以及獲其妥為授權的代理人、經理人或代辦人；

ClauseAmendment Proposed

“僱員” (employee) 指憑藉第3條而本條例適用的根據僱傭合約受僱用的人；

“僱傭合約” (contract of employment)指一份書面或口頭、明訂或隱含的協議，由協議一方同意僱用另一方，而該另一方則同意以僱員身分為其僱主服務；亦指學徒訓練合約；

“諮詢” (consultation)指根據第7條解釋的諮詢；

“職工會” (trade union)指根據《職工會條例》（第332章）登記的職工會；

“職工會代表” (trade union representative)就僱主而言，指獲職工會授權的職員或其他人士。

(2) 就本條例而言，如有2名僱主而 —

(a) 其中一名僱主是一間公司並受另一名僱主（直接或間接）控制；或

(b) 該2名僱主是公司並受第三者（直接或間接）控制，

則該2名僱主須視為“相聯” (associated)；而“相聯僱主” (associated employer)亦須據此解釋。”

3

By adding the following as the Chinese text of the clause -

"3. 本條例的適用範圍

(1) 除第(2)至(4)款另有規定外，本條例適用於任何根據僱傭合約受聘的僱員，亦適用於該僱員的僱主，以及該僱主和僱員之間的僱傭合約。

(2) 本條例不適用於 —

ClauseAmendment Proposed

- (a) 屬受僱所從事業務的東主的家庭成員及與該東主在同一住宅居住的人；
- (b) 《往香港以外地區就業合約條例》（第78章）所界定的僱員；
- (c) 依據《商船條例》（第281章）第10(1)條訂立的協議而服務的人，或在香港駐有領事館官員代表的國家註冊的船舶上服務的人。

(3) 如在有關日期，該僱員的僱主所僱用的僱員人數和其他相聯僱主所僱用的僱員人數相加是少於20，則第III部（諮詢權）不適用於該僱員。

(4) 如在有關日期，該僱員的僱主所僱用的僱員人數和其他相聯僱主所僱用的僱員人數相加是少於50，則第IV部（集體談判權）不適用於該僱員。

(5) 在第(3)款中，“有關日期”（the relevant date）指按照第8條提出申請認可的日期。

(6) 在第(4)款中，“有關日期”（the relevant date）指按照第15條提出申請認可的日期。”

Part II
heading

By adding the following as the Chinese text of the heading of the Part -

"第II部

代表權”。

4

By adding the following as the Chinese text of the clause -

ClauseAmendment Proposed

"4. 代表權及與職工會代表聯絡

(1) 任何僱員，在與其僱主有關的情況下，均可享有就任何有關事項以職工會代表作為其代表的權利。

(2) 任何僱員均可享有於適當時間內在其僱主的處所與職工會代表聯絡的權利。".

5 By adding the following as the Chinese text of the clause -

"5. 釋義

就本部而言 —

“有關事項” (relevant matters) 就僱員而言，指 —

- (a) 申訴及紀律處分程序；
- (b) 因僱員的行為操守或工作能力而暫停或終止僱傭合約；
- (c) 僱主遵守《僱傭條例》（第57章）中的條文或其他規管僱用條款及條件或實際工作環境的法律；
- (d) 職工會與僱主雙方協定的任何其他事項；

“適當時間” (appropriate time) 就僱員與職工會代表聯絡而言，指 —

- (a) 該僱員的工作時間以外的時間；或

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- (b) 該僱員的工作時間以內的時間，而按照其僱主或任何代表其僱主的人所議定的安排，或得到其僱主或任何代表其僱主的人給予的同意，容許該僱員在該時間內參與該等活動；

“職工會代表” (trade union representative) 指由僱員所屬的職工會授權的職員或其他人士。”.

Part III By adding the following as the Chinese text of the heading of the
heading Part -

"第III部

諮詢權".

6 By adding the following as the Chinese text of the clause -

"6. 具代表性的職工會

就本部而言 —

“具代表性的職工會” (a representative trade union) 指其受僱於企業內的會員人數超過該企業內僱主所僱用的僱員人數的15%的職工會，而“職工會組合” (group of unions) 指2個或多於2個共同行事和聯合地符合上述規定的職工會；

ClauseAmendment Proposed

“認可”(recognition)就職工會或職工會組合而言，指在任何程度上，為諮詢的目的，具代表性的職工會或職工會組合獲得僱主或2名或多於2名的相聯僱主的認可；而“獲認可的”(recognized)及其他相關詞句亦須據此解釋。”.

7

By adding the following as the Chinese text of the clause -

"7. 諮詢

(1) 任何僱員，當其僱主建議任何影響其利益的有關措施時，在與其僱主有關的情況下，均可享有透過其所屬的具代表性的職工會或職工會組合獲得其僱主諮詢的權利。

(2) 就第(1)款而言，“有關措施”(relevant measure)指僱主計擬關乎僱員的權利、利益或保障，以及關乎下述1項或多於1項事項的措施，或與該或該等事項有關連的 措施 —

- (a) 企業擁有權的變更(不論是憑藉出售、其他形式的產權處置或法律的實施所致)；
- (b) 機構或企業全部或局部關閉或搬遷；
- (c) 重組，包括重要的科技轉變或工作分配上的變更；
- (d) 因1個或多於1個不涉及有關的個別僱員的理由而終止僱用；

ClauseAmendment Proposed

- (e) 終絕或削減某指明類別或組別僱員的權利、利益或保障的僱用條款或條件的變更；
- (f) 職工會與僱主雙方協定的任何其他事項。".

8

By adding the following as the Chinese text of the clause -

"8. 諮詢程序

(1) 具代表性的職工會或職工會組合，可以書面形式向僱主提出為根據第7條進行的諮詢而獲得僱主認可的申請。

(2) 該申請必須附有下列文件 —

- (a) 該職工會或該等職工會的規則的副本；
- (b) 該職工會或該等職工會的登記證明書的副本；
- (c) 該職工會或職工會組合的代表性證明書的副本；及
- (d) 該職工會或職工會組合有意代表其接受諮詢的會員或會員類別的描述。

(3) 僱主須在收到根據第(1)及(2)款提出的申請起計的30天內，向具代表性的職工會或職工會組合提交書面陳述，述明該職工會或職工會組合，就根據第7條規定的諮詢而言，已獲得其認可；該陳述並須一併附載該僱主必須諮詢的職工會或職工會組合所代表的會員或會員類別的描述。".

ClauseAmendment Proposed

9 By adding the following as the Chinese text of the clause -

"9. 為諮詢須披露資料

(1) 為諮詢的目的，僱主須以書面向獲認可的職工會或職工會組合（視屬何情況而定）的代表披露 —

(a) 提出有關建議的原因；

(b) 有關建議在對僱員有影響的範圍內的法律、經濟及社會含意；及

(c) 其計擬與僱員有關的措施。

(2) 為使諮詢能根據第(3)款的規定進行，該等資料必須在建議措施實行前的一段足夠時間，交付職工會代表，或郵寄往獲認可的職工會或職工會組合的已登記辦事處或通信地址。

(3) 僱主須本着真誠與職工會代表進行諮詢，以期與職工會代表達成協議。

(4) 任何職工會代表凡因與僱主進行諮詢或與此有關而知悉任何生產秘密或商業秘密，則不論何時，即使他已不再是職工會代表，均不得向任何人披露該秘密。".

10 By adding the following as the Chinese text of the clause -

"10. 補救

(1) 勞資審裁處具有司法管轄權，以查訊、聆訊和裁決由第7條適用的僱員所提出關於其僱主沒有遵守第7、8或9條任何一項規定的申索。

ClauseAmendment Proposed

(2) 勞資審裁處如裁斷根據第(1)款提出的申索具有充分理據，須作出表明此意的宣告，並可 —

- (a) 命令僱主遵守第7至9條的規定；
- (b) 宣告僱主在違反第7、8或9條的規定下作出的任何關乎該僱員的作為或在違反該等規定下訂立的任何關乎該僱員的合約或安排，在一開始或由宣告內指定的其他時間開始，全部或部分無效；
- (c) 命令僱主將該僱員復職或重新聘用該僱員；或
- (d) 作出給予該僱員的補償裁定。

(3) 在根據本條而行使酌情決定權時，勞資審裁處在顧及僱主遵守根據第(2)(a)款作出的命令是否合理可行後，須先考慮是否根據該款作出命令。

(4) 根據第(2)(d)款作出的補償裁定的款額，須為勞資審裁處在顧及僱主所犯過失的嚴重性和僱員蒙受的損失後，其認為公正公平的款額。".

11

By adding the following as the Chinese text of the clause -

"11. 集體協議可取代上述條文

按照第IV部的條文訂立的集體協議可以在任何程度上取代、更改或修改本部的規定。".

Part IV
heading

By adding the following as the Chinese text of the heading of the Part-

"第IV部

集體談判權".

ClauseAmendment Proposed

12 By adding the following as the Chinese text of the clause -

"12. 具代表性的職工會

就本部而言 —

“具代表性的職工會” (a representative trade union) 指任何符合以下說明的職工會 —

(a) 其受僱於企業內的會員人數超過該企業內僱主所僱用的僱員人數的15%；及

(b) 代表該企業內僱主所僱用的過半數僱員，

而“職工會組合” (group of unions) 指2個或多於2個共同行事和聯合地符合上述規定的職工會；

“認可” (recognition) 就職工會或職工會組合而言，指在任何程度上，為集體談判的目的，具代表性的職工會或職工會組合獲得僱主或2名或多於2名的相聯僱主的認可；而“獲認可的” (recognized) 及其他相關詞句亦須據此解釋。”.

13 By adding the following as the Chinese text of the clause -

ClauseAmendment Proposed

"13. 集體協議、集體談判及仲裁裁定

(1) 在本條例中，“集體協議”(collective agreement)指由具代表性的職工會或職工會組合或其代表，與1名或多於1名僱主就涉及下述1項或多於1項指定事項而訂立的任何協議或安排；而“集體談判”(collective bargaining)指關乎下述1項或多於1項指定事項或與該或該等事項有關連的商議。

(2) 上述所指的事項包括 —

- (a) 僱用條款及條件，或任何僱員須在其中工作的實際環境；
- (b) 1名或多於1名僱員的聘用或非聘用，或1名或多於1名僱員的終止或暫停僱用或僱傭職務；
- (c) 僱員與僱員之間或僱員組別與僱員組別之間的工作分配或僱傭職務的分配；
- (d) 紀律事宜；
- (e) 僱員的職工會會籍或非會籍問題；
- (f) 為職工會職員及職工會代表提供的設施，或方便職工會行政的安排；

ClauseAmendment Proposed

- (g) 進行商議或諮詢的機制，及其他關乎上述任何事項的程序，包括僱主對職工會享有在商議或諮詢中代表僱員的權利的認可或該等程序的執行。

(3) 在本條例中，“仲裁裁定”(arbitration award)指由仲裁人或由2名或多於2名的仲裁人根據集體協議的條文作出的裁定。".

14 By adding the following as the Chinese text of the clause -

"14. 受集體協議保障的權利

任何僱員，在與其僱主有關的情況下，均可享有受根據本部條文訂立的集體協議保障的權利。".

15 By adding the following as the Chinese text of the clause -

"15. 集體談判的程序

(1) 具代表性的職工會或職工會組合，可 —

(a) (如沒有具代表性的職工會或職工會組合為集體談判而獲得僱主認可)在任何時間；

(b) (如已有具代表性的職工會或職工會組合為集體談判而獲得僱主認可)在該認可起第34個月開始之後，

以書面形式向僱主提出為集體談判而獲得僱主認可的申請。

(2) 該申請必須附有下列文件 —

ClauseAmendment Proposed

- (a) 該職工會或該等職工會的規則的副本；
- (b) 該職工會或該等職工會的登記證明書的副本；
- (c) 該職工會或職工會組合的代表性證明書的副本；及
- (d) 該有意獲得認可的職工會或職工會組合所代表的僱員或僱員類別的描述。

(3) 職工會或職工會組合須同時將申請書的副本送交予任何其他已為根據第III部進行的諮詢而獲得僱主認可而又並非申請的其中一方的具代表性的職工會，及該職工會有權在任何時間聯同首述職工會作為申請的其中一方。

(4) 僱主須在收到根據第(1)及(2)款提出的申請起計的30天內，向具代表性的職工會或職工會組合提交書面陳述，述明該職工會或職工會組合，就集體談判而言，已獲得其認可；該陳述並須一併附載該獲僱主認可的職工會或職工會組合所代表的僱員或僱員類別的描述。

(5) 僱主與獲認可的職工會或職工會組合均有責任本着真誠進行商議，以期達成集體協議。".

16

By adding the following as the Chinese text of the clause -

"16. 為集體談判須披露的資料

(1) 就集體談判的所有階段而言，僱主須應書面要求，以書面向獲認可的職工會或職工會組合的代表披露本條規定的資料。

ClauseAmendment Proposed

(2) 須披露的資料，是指僱主管有的關乎他或相聯僱主的企業的所有資料，而 —

- (a) 假若沒有該等資料，職工會代表與該僱主進行的集體談判將會在實質程度上受到妨礙；及
- (b) 按照良好勞資關係的做法，該等資料是該僱主應為集體談判而披露的。

(3) 本條並不規定僱主披露下述資料 —

- (a) 披露有關資料將會損害國家安全；
- (b) 他披露有關資料將抵觸由任何法律或根據任何法律施加的禁制；
- (c) 有關資料是以機密形式向他傳達，或有關資料是他在其他情況下，由於另一人交託須保密而獲得的；
- (d) 有關資料特別關乎某個人（除非該個人同意披露該等資料）；
- (e) 基於某些原因，披露有關資料將會對他的企業造成重大的損害，惟該等原因不包括披露有關資料對集體談判的影響；或
- (f) 有關資料是他為提起或進行法律程序或或在法律程序中抗辯而獲得的。

(4) 僱主履行其在本條下的職責時，無須 —

ClauseAmendment Proposed

- (a) 出示或容許他人查閱任何文件(如該文件是為傳達或確定有關資料而擬備的則屬例外)、或提供任何文件的副本或摘錄；或
- (b) 編制或搜集任何資料，如有關編制或搜集工作涉及的工作量或支出與該等資料對集體談判的價值構成不合理的比例。".

17

By adding the following as the Chinese text of the clause -

"17. 補救

(1) 勞資審裁處具有司法管轄權，以查訊、聆訊和裁決由第14條適用的僱員所提出關於其僱主沒有遵守第14、15或16條任何一項規定的申索。

(2) 勞資審裁處如裁斷根據第(1)款提出的申索具有充分理據，須作出表明此意的宣告，並可 —

- (a) 命令僱主遵守第14至16條的規定；
- (b) 宣告僱主在違反第14、15或16條的規定下作出的任何關乎該僱員的作為或在違反該等規定下訂立的任何關乎該僱員的合約或安排，在一開始或由宣告內指定的其他時間開始，全部或部分無效；
- (c) 命令僱主將該僱員復職或重新聘用該僱員；或
- (d) 作出給予該僱員的補償裁定。

ClauseAmendment Proposed

(3) 在根據本條而行使酌情決定權時，勞資審裁處在顧及僱主遵守根據第(2)(a)款作出的命令是否合理可行後，須先考慮是否根據該款作出命令。

(4) 根據第(2)(d)款作出的補償裁定的款額，須為勞資審裁處在顧及僱主所犯過失的嚴重性和僱員蒙受的損失後，其認為公正公平的款額。".

18

By adding the following as the Chinese text of the clause -

"18. 集體協議的法律效力

(1) 如集體協議 —

(a) 是在本條例生效後以書面訂立；及

(b) 並未載有任何條文（無論是如何示明），述明該協議或該協議的部分內容擬為並非在法律上可強制執行的，

則須不可推翻地推定為訂立集體協議的各方擬使集體協議成為在法律上可強制執行的合約。

(2) 如集體協議是在本條例生效後以書面訂立，並載有一項條文（無論是如何示明），述明協議的部分內容擬為並非在法律上可強制執行的，則須不可推翻地推定為訂立集體協議的各方擬使集體協議（除該述明的部分外）成為在法律上可強制執行的合約。

(3) 集體協議，作為在法律上可強制執行的合約，在自協議生效日期起計的最少1年及最多3年內具有約束力。

ClauseAmendment Proposed

(4) 除集體協議另有明文規定外，集體協議作為在法律上可強制執行的合約，在自協議生效日期起計的1年內具有約束力。

(5) 自集體協議或仲裁裁定所指明的日期起，憑藉集體協議或仲裁裁定而僱主須遵守的有關僱員的僱用條款和條件，須具有成為該僱員的僱傭合約的一部分的效力，除非有關僱用條款和條件 —

- (a) 被僱主與獲認可的職工會或職工會組合在其後達成的集體協議或被仲裁裁定所取代或更改；或
- (b) 被僱主與僱員以明示或暗示的協議所取代或更改，惟該協議必須令憑藉集體協議或仲裁裁定而生效的條款及條件得以改善。

(6) 除第11條另有規定外，集體協議的任何條款，其意是終絕或削減僱員藉着或根據法律所賦予的任何權利、利益或保障者，即屬無效。".

19

By adding the following as the Chinese text of the clause -

"19. 有關集體協議的爭議

(1) 任何集體協議須訂定程序，以解決有關該集體協議的釋義及適用而引致的任何爭議。

(2) 該程序須規定訂立協議的各方嘗試透過調解解決爭議；如爭議仍未得到解決，則須透過仲裁解決。

ClauseAmendment Proposed

(3) 《仲裁條例》(第341章)不適用於根據集體協議由仲裁人或由2名或多於2名的仲裁人作出的仲裁或裁定。

(4) 如 —

(a) 集體協議沒有按第(1)款訂定有關程序；或

(b) 集體協議訂定的程序不能執行；或

(c) 爭議的任何一方透過集體協議的條款阻撓爭議的解決，

則勞資審裁處具有司法管轄權，以查訊、聆訊和裁決任何關乎集體協議或仲裁裁定的釋義、適用或強制執行的申索或與集體協議或仲裁裁定的釋義、適用或強制執行有關連的申索。".

Part V
heading

By adding the following as the Chinese text of the heading of the Part -

"第V部

雜項條文".

20

By adding the following as the Chinese text of the clause -

"20. 獨立審核員的委任

(1) 職工會或由2個或多於2個職工會共同行事的職工會組合，可委任一名合資格的獨立人士(“審核員”)，裁決該職工會或職工會組合，就第III或IV部而言，是否具有充分的代表性。

ClauseAmendment Proposed

(2) 該獨立人士須為律師或屬於由教育統籌司在憲報上公告指明類別的人士。

(3) 職工會或職工會組合須向僱主提交其建議委任為審核員的人士的姓名，而僱主在收到該建議的7天內，可以書面通知職工會或職工會組合，他基於以下理由 —

- (a) 該名人士不符合第(2)款所規定的資格；
或
- (b) 有理由相信該名人士不能稱職地執行委予他的職能，或在與職工會或職工會組合相關的情況下，有理由質疑該人的獨立性，

反對委任該人。

(4) 如僱主按照第(3)款提出反對，職工會或職工會組合可要求勞資審裁處確認其委任建議，或要求勞資審裁處委任由該職工會或職工會組合或由僱主提名的其他合資格的獨立人士。

(5) 如僱主沒有按照第(3)款提出反對，或勞資審裁處根據第(4)款的規定確認或作出委任，則就各方面而言，須不可推翻地推定為該審核員已有效地獲得委任。

(6) 審核員的合理費用及支出須由該職工會或職工會組合支付，但如勞資審裁處裁斷僱主無理取鬧地、瑣屑無聊地、或以任何其他方式不合理地反對委任獲提名的人士，勞資審裁處可命令該僱主支付全部或部分該筆費用及支出。".

ClauseAmendment Proposed**"21. 審核員的職能及權力**

(1) 根據第20條獲委任的審核員，須採取他認為適合的所有步驟，以裁定職工會或職工會組合是否具有充分的代表性；並須在他獲委任起計的30天內，按照第22條遞交報告予該職工會或職工會組合及該僱主。

(2) 在不影響第(1)款的一般性原則下，就第IV部的認可而言，如審核員認為適合，可進行一項僱員的不記名投票；或如上述情況並非合理地切實可行，則他可要求職工會或職工會組合，出示僱員在之前的3個月內簽署表明他們就集體談判而言願意以該職工會或職工會組合作為代表的書面授權書。

(3) 審核員有權免費 —

(a) 查閱職工會根據《職工會條例》(第332章)的條文而須備存的會員姓名及地址紀錄冊；及

(b) 查閱僱主根據《僱傭條例》(第57章)的條文而須備存的工資及僱傭紀錄。

(4) 應審核員的申請，勞資審裁處可 —

(a) 規定具有勞資審裁處信納與在第(1)款下審核員的職能有關的資料的任何人士，以書面提交該等資料予審核員；或

(b) 規定任何人士出示其管有，或在其保管或權力管轄下而勞資審裁處信納可能載有與審核員的職能有關的材料的所有文件。

ClauseAmendment Proposed

(5) 職工會或職工會組合有責任 —

- (a) 確保審核員執行根據第(1)款規定的職能，以及確保在其執行該等職能時，沒有受到職工會或任何會員、職員或受薪職員的干擾；及
- (b) 遵守審核員為執行其職能而提出的所有合理要求。

(6) 僱主有責任 —

- (a) 確保審核員在其執行根據第(1)款規定的職能時，沒有受到他或任何經理人、代理人或代辦人，或其僱員的干擾；及
- (b) 遵守審核員為執行其職能而提出的所有合理要求。

(7) 審核員及其聘用的任何人士須就有關會員的姓名及地址，及任何特別涉及個人的資料保密及協助保密（除非該個人已同意披露該等資料）。"

22 By adding the following as the Chinese text of the clause -

"22. 審核員的報告及證明書

(1) 審核員的報告須述明下述事項 —

- (a) 企業內僱員的人數；
- (b) 受僱於該企業的職工會或職工會組合的會員人數；及

- (c) 凡該申請關乎就第IV部而言的代表性，已表明其就集體談判而言願意以該職工會或職工會組合作為代表的僱員人數。

(2) 該報告亦須述明審核員是否信納 —

- (a) 他能夠在沒有受到第21(5)(a)及(6)(a)條提述的干擾下，執行其職能；
- (b) 他根據第21(5)(b)及(6)(b)條所提出的所有合理要求，均得到遵守；及
- (c) 沒有合理的理由懷疑第(1)(a)至(c)款提述的會員人數或僱員人數的準確性；或沒有合理的理由相信僱員沒有公平的機會表明他們就集體談判而言願意以該職工會或職工會組合作為代表的意願。

(3) 如僱主沒有或拒絕遵守勞資審裁處根據第21(4)條作出的指示或根據第21(6)條委以的責任，審核員須向勞資審裁處作出報告。

(4) 儘管本條例有任何其他條文的規定，在收到根據第(3)款作出的報告和聆訊該僱主後，如勞資審裁處信納該僱主沒有或拒絕遵守勞資審裁處根據第21(4)條作出的指示或根據第21(6)條委以的責任，勞資審裁處可指示審核員發給代表性證明書和命令該僱主支付任何虛耗的費用及支出。

ClauseAmendment Proposed

(5) 如有關的職工會或職工會組合符合根據第7或12條（視屬何情況而定）就代表性指明的規定，而審核員信納第(2)款指明的各事項，他須就指明的目的發給代表性證明書予該職工會或職工會組合。

(6) 代表性證明書須就指明的目的而言，為該職工會或職工會組合具有代表性的不可推翻的證據，而拒絕發給、撤回或取消該證明書，就該指明的目的而言，須為該職工會或職工會組合不具有代表性的不可推翻的證據。

(7) (a) 就第IV部所指的集體談判而言，從證明書發給的日期起計的1年期間屆滿時（如該職工會或職工會組合沒有在該期間內與僱主展開商議）；或

(b) 在任何其他情況下，從證明書發給的日期起計的3年期間屆滿時，

該代表性證明書須當作被撤回或被取消。".

23

By adding the following as the Chinese text of the clause —

"23. 職工會代表的給假

(1) 僱主須准許其作為職工會代表的僱員，在其工作時間內獲得給假，以執行關乎下述事項或與下述事項有關連的職能 —

(a) 按照第II部代表僱員；

(b) 按照第III部為諮詢的目的而作為代表；或

(c) 按照第IV部為集體談判的目的而作為代表。

ClauseAmendment Proposed

(2) 僱主亦須准許該僱員在其工作時間內獲得給假，以參與符合以下說明的訓練 —

(a) 與執行第(1)款所述的職責有關的；及

(b) 已獲他代表的職工會批准的。

(3) 僱員根據本條可獲准給假的時間，以及准許給假時附加規限條件的目的及情況，須在所有情況下均為合理。

(4) 准許僱員根據本條獲得給假的僱主，須支付該僱員依據該准許給假期間的薪酬。

(5) 凡該僱員在該給假時間內，其正常工作所得的薪酬不因其實際工作量而改變，則僱主須支付該僱員猶如其在該整段時間內正常工作一樣所得的薪酬。

(6) 凡該僱員在該給假時間內，其正常工作所得的薪酬隨其實際工作量而改變，則僱主須以該項工作的平均時薪計算支付該僱員所得的薪酬。

(7) 勞資審裁處具有司法管轄權，以查訊、聆訊及裁決本條適用的僱員提出關於其僱主沒有准許其給假或沒有根據本條規定支付薪酬的申索。

(8) 勞資審裁處裁斷根據第(7)款的申索具有充分理據，須作出表明此意的宣告，並可 —

(a) (如僱主沒有准許僱員獲得給假)作出由僱主支付予僱員的補償裁定；或

ClauseAmendment Proposed

- (b) (如僱主沒有按照本條支付僱員的薪酬)命令僱主支付其裁斷為僱主拖欠的款額。".

24 By adding the following as the Chinese text of the clause -

"相應修訂

《勞資審裁處條例》

24. 出庭發言權

《勞資審裁處條例》(第25章)第23(1)(e)條現予修訂，廢除“在審裁處的許可下，”。“.

25 By adding the following as the Chinese text of the clause -

"25. 修訂附表

附表現予修訂，加入 —

“7. 根據《僱員代表權、諮詢權及集體談判權條例》(1997年第 號)關於以下事宜的問題 —

- (a) 根據第7至10條僱員享有的諮詢權；
- (b) 根據第14至17條僱員享有的集體談判權；
- (c) 根據第19條集體協議或仲裁裁定的釋義、適用或強制執行；

ClauseAmendment Proposed

- (d) 根據第20條審核員的委任；
- (e) 根據第22條代表性證明書的發給；及
- (f) 僱主沒有按照第23條准許作為職工會代表的僱員獲得給假或支付薪酬。”。

26

By adding the following as the Chinese text of the clause -

"《僱傭條例》

26. 僱員參加職工會及其活動的權利

《僱傭條例》（第57章）第21B(1)條現予修訂 —

(a) 在(c)段中，廢除末處的句號而代以分號；

(b) 加入 —

“(d) 根據《僱員代表權、諮詢權及集體談判權條例》（1997年第 號）第II部僱員享有的代表權。”。

ClauseAmendment Proposed

27 By adding the following as the Chinese text of the clause -

"《職工會條例》

27. 加入條文

《職工會條例》（第332章）現予修訂，加入 —

“17B. 會員姓名及地址的紀錄冊

(1) 已登記職工會須編制和備存一份載有其會員的姓名及地址的紀錄冊，以及須在合理地切實可行的範圍內，確保紀錄冊中的記項準確和保持資料更新。

(2) 該紀錄冊可以電腦備存。

(3) 職工會須 —

(a) 容許任何會員，以合理的通告，在任何合理時間免費查明該紀錄冊中是否有關乎他的記項；及

(b) 應任何會員的要求，在合理地切實可行的範圍內盡快（不論是免費或是在獲繳付合理費用後）向他提供該紀錄冊內關乎他的任何記項的副本。

(4) 就本條而言，會員的地址指他的居住地址或他以書面要求職工會作為通信地址的另一地址。”。

Annex XX

TRADE UNIONS (AMENDMENT) BILL 1997

COMMITTEE STAGE

Amendments to be moved by Hon LEE Cheuk-yan

<u>Clause</u>	<u>Amendment Proposed</u>
2	By deleting the clause.
3	(a) By adding "of the Trade Unions Ordinance (Cap. 332)" after "Section 17". (b) By deleting paragraph (a) and substituting — "(a) in subsection (2), by repealing "and is or has been engaged or employed in a trade, industry or occupation with which the trade union is directly concerned";".
4	In the Chinese text, by deleting the clause and substituting — "4. 名稱改變 第 23 條現予修訂，廢除第(1)款而代以 — "(1) 任何已登記職工會如獲得出席會員大會的大多數有表決權會員以不記名投票方式通過，或如其規則容許由會員的代表表決，而出席會員大會的大多數會員代表以不記名投票方式通過改變職工會的名稱，則該職工會可同意改變其名稱。"。".

ClauseAmendment Proposed

- 5 (a) By deleting paragraph (a).
- (b) In paragraph (b), by deleting the full stop and substituting a semicolon.
- (c) By adding —
- "(c) in paragraph (1), by repealing "which the Governor may approve" and substituting "approved by secret ballot of a majority of the voting members of the trade union present at a general meeting or of a majority of members' representatives present at a general meeting where the rules of the trade union allow voting by members' representatives".".
- 6 By deleting the clause and substituting —
- "6. Use of funds for political purposes**
 Section 34 is repealed.".
- 11 By deleting the clause.
- 12 By deleting the clause.

CROSS-HARBOUR TUNNEL (CROSS-HARBOUR TUNNEL
REGULATIONS) (AMENDMENT) BILL 1997

COMMITTEE STAGE

Amendments to be moved by the Hon. IP Kwok-him

Clause

Amendment Proposed

1 By deleting the clause and substituting —

"1. Short title and commencement

(1) This Ordinance may be cited as the Cross-Harbour Tunnel (Cross-Harbour Tunnel Regulations) (Amendment) Ordinance 1997.

(2) This Ordinance shall come into operation on 1 January 1998."

- 2
- (a) In the proposed paragraph (f)(i), by deleting "at any 5 minutes exceed" and substituting "during any 5-minute period exceed an average of".
 - (b) In the proposed paragraph (f)(ii), by deleting "at any 5 minutes exceed" and substituting "during any 5-minute period exceed an average of".
 - (c) In the proposed paragraph (f)(iii), by deleting "at any 5 minutes" and substituting "during any 5-minute period".

EASTERN HARBOUR CROSSING (EASTERN HARBOUR CROSSING
ROAD TUNNEL REGULATIONS) (AMENDMENT) BILL 1997

COMMITTEE STAGE

Amendments to be moved by the Hon. IP Kwok-him

Clause

Amendment Proposed

1 By deleting the clause and substituting —

"1. Short title and commencement

(1) This Ordinance may be cited as the Eastern Harbour Crossing (Eastern Harbour Crossing Road Tunnel Regulations) (Amendment) Ordinance 1997.

(2) This Ordinance shall come into operation on 1 January 1998."

- 2
- (a) In the proposed paragraph (g)(i), by deleting "at any 5 minutes exceed" and substituting "during any 5-minute period exceed an average of".
 - (b) In the proposed paragraph (g)(ii), by deleting "at any 5 minutes exceed" and substituting "during any 5-minute period exceed an average of".
 - (c) In the proposed paragraph (g)(iii), by deleting "at any 5 minutes" and substituting "during any 5-minute period".

TATE'S CAIRN TUNNEL (TATE'S CAIRN TUNNEL REGULATIONS)
(AMENDMENT) BILL 1997

COMMITTEE STAGE

Amendments to be moved by the Hon. IP Kwok-him

Clause

Amendment Proposed

1 By deleting the clause and substituting —

"1. Short title and commencement

(1) This Ordinance may be cited as the Tate's Cairn Tunnel (Tate's Cairn Tunnel Regulations) (Amendment) Ordinance 1997.

(2) This Ordinance shall come into operation on 1 January 1998."

- 2
- (a) In the proposed paragraph (g)(i), by deleting "at any 5 minutes exceed" and substituting "during any 5-minute period exceed an average of".
 - (b) In the proposed paragraph (g)(ii), by deleting "at any 5 minutes exceed" and substituting "during any 5-minute period exceed an average of".
 - (c) In the proposed paragraph (g)(iii), by deleting "at any 5 minutes" and substituting "during any 5-minute period".