

To establish a tribunal having limited civil jurisdiction, to be known as the Labour Tribunal, and to make provision for the jurisdiction, procedure, and practice thereof and for matters connected therewith.

[1 March 1973] *L.N. 35 of 1973*

(*Format changes—E.R. 1 of 2013*)

Part 1

Preliminary

1. Short title

This Ordinance may be cited as the Labour Tribunal Ordinance.

2. Interpretation

In this Ordinance, unless the context otherwise requires—

authorized officer (獲授權人員) means a public officer who has been authorized by the Commissioner under section 6(5) to assist in conciliation under this Ordinance;

claim (申索) includes a proceeding before the tribunal between a claimant and a defendant; (*Amended 25 of 1999 s. 2*)

claimant (申索人) means a person seeking relief other than—

- (a) a defendant entering a counterclaim; and
- (b) a person who is being represented in a representative claim;

Commissioner (處長) means the Commissioner for Labour; (*Amended L.N. 142 of 1974*)

conciliation (調停) means a discussion or action initiated or undertaken by an authorized officer for the purpose of reaching a settlement of a claim; (*Amended 15 of 2012 s. 11*)

contract of employment (僱傭合約) means—

- (a) an agreement, whether express or implied by law, whereby one person agrees to employ another and that other agrees to serve his employer as an employee whether payment is to be on a price, task or time basis and wherever the services are to be rendered; and
- (b) a contract of apprenticeship;

defendant (被告人) means a person against whom relief is sought by a claimant other than—

- (a) a claimant against whom relief is sought by way of counter-claim;
- (b) a person who is being represented in a representative claim;

deputy presiding officer (暫委審裁官) means a deputy presiding officer appointed under section 5A; (*Added 21 of 1999 s. 7*)

employee (僱員) means a person who has agreed to serve as an employee under a contract of employment;

party (一方) means a claimant or defendant and any person joined

as a third party;

presiding officer (審裁官) means a presiding officer appointed under section 4;

registrar (司法常務主任) means the Registrar of the Labour Tribunal;

representative claim (代表申索) means a claim brought in the name of one claimant on behalf of himself and one or more other claimants;

Small Claims Tribunal (小額錢債審裁處) means the Small Claims Tribunal established by section 3 of the Small Claims Tribunal Ordinance (Cap. 338); (*Added 25 of 1999 s. 2*)

tribunal (審裁處) means the Labour Tribunal established by section 3 and a presiding officer or a deputy presiding officer appointed under this Ordinance; (*Amended 21 of 1999 s. 7*)

tribunal officer (調查主任) means a tribunal officer appointed under section 5.

Part 2

Constitution of Tribunal

3. Establishment of tribunal

- (1) There is hereby established a tribunal to be known as the Labour Tribunal which shall be a court of record with such jurisdiction and powers as are conferred on it by this and any other Ordinance.
- (2) All proceedings in the tribunal shall be heard and determined by a presiding officer or a deputy presiding officer sitting alone. (*Amended 21 of 1999 s. 8*)
- (3) The tribunal shall have a seal of a design approved by the Chief Justice, and all awards, summonses, and other processes of the tribunal shall be sealed therewith.

4. Appointment of presiding officers

- (1) The Chief Executive may appoint one or more presiding officers. (*Amended 25 of 1998 s. 2; 21 of 1999 s. 9*)
- (2) Subject to subsection (3), an appointment made under subsection (1) may be given retrospective effect.
- (3) No person appointed as presiding officer shall discharge any judicial function before the date of the instrument by which he is appointed or before the requirements of section 17 of the Oaths and Declarations Ordinance (Cap. 11) have been fulfilled. (*Amended 22 of 1973 s. 2*) (*cf. Cap. 336 s. 4*)

4A. Professional qualifications of presiding officers

- (1) A person shall be eligible to be appointed as a presiding officer if—
 - (a) he is qualified to practise as a barrister, solicitor or advocate in a court in Hong Kong or any other common law jurisdiction having unlimited jurisdiction either in civil or criminal matters; and

- (b) since becoming so qualified, he has for a period of or periods totalling not less than 5 years—
 - (i) practised as a barrister, solicitor or advocate in such a court;
 - (ii) been a legal officer as defined in section 2 of the Legal Officers Ordinance (Cap. 87);
 - (iii) been the Director of Legal Aid or a Deputy Director of Legal Aid, Assistant Director of Legal Aid or Legal Aid Officer, appointed in accordance with section 3 of the Legal Aid Ordinance (Cap. 91);
 - (iv) been the Official Receiver or an Assistant Official Receiver (Legal), Assistant Principal Solicitor, Senior Solicitor or Solicitor, appointed in accordance with section 75 of the Bankruptcy Ordinance (Cap. 6); or
 - (v) been the Director of Intellectual Property or a Deputy Director of Intellectual Property, Assistant Director of Intellectual Property, Assistant Principal Solicitor, Senior Solicitor or Solicitor, appointed in accordance with section 3 of the Director of Intellectual Property (Establishment) Ordinance (Cap. 412). *(Amended 26 of 2012 s. 37)*
- (2) For the purposes of calculating the period of 5 years referred to in subsection (1)(b)—
 - (a) periods of less than 5 years falling within any of the subparagraphs of that subsection may be combined;
 - (b) periods served in an office specified in Part I of the First Schedule to the repealed Registrar General (Establishment) Ordinance (Cap. 100) may be taken into account notwithstanding the repeal of that Ordinance.

(Added 10 of 2005 s. 140)

5. Tribunal officers

The Chief Executive may appoint such number of tribunal officers as he may think fit, who shall exercise such powers and perform such duties as are conferred on them by this and any other Ordinance.

(Amended 25 of 1998 s. 2)

5A. Appointment of deputy presiding officers

- (1) The Chief Justice may appoint any person who is eligible under section 4A to be appointed as a presiding officer to be a deputy presiding officer for such period and on such terms as he thinks fit. *(Amended 10 of 2005 s. 141)*
- (2) Subject to the terms of appointment, a deputy presiding officer shall, during the period for which he is appointed, have all the jurisdiction, powers and privileges, and perform all the duties of a presiding officer and any reference in any law to a presiding officer shall be construed accordingly.
- (3) Every appointment made in accordance with this section may be terminated by the Chief Justice at any time.

- (4) Where the hearing of any proceedings before a deputy presiding officer is adjourned or where the determination is reserved therein or the award or order is subject to review, the deputy presiding officer shall have power to resume the hearing and determine the proceedings or to deliver as the determination of the Tribunal the determination which he has reserved or to review the award or order which he has made, notwithstanding that before the hearing is resumed or determination is delivered or the review is disposed of, his appointment has expired or has been terminated.
- (5) For the purposes of subsection (4), the power of a deputy presiding officer to deliver a determination in a resumed hearing includes the power of awarding costs and the making of any order ancillary to or consequential upon the award of costs.

(Added 21 of 1999 s. 10)

6. Officers of the tribunal

- (1) There shall be attached to the tribunal a registrar and such number of deputy or assistant registrars, bailiffs, clerks, interpreters and other officers as the Chief Executive may consider necessary.
- (2) In addition to the powers and duties conferred or imposed by this and any other Ordinance, the registrar, any deputy or assistant registrar, bailiff, clerk, interpreter and other officer attached to the tribunal may exercise such powers and perform such duties, insofar as the same are applicable to the business of the tribunal, as those exercised or performed by the Registrar, deputy registrar, assistant registrar, bailiff, clerk, interpreter or other officer attached to the High Court.
(Amended 92 of 1975 s. 58)
- (3) Any act which under this or any other enactment is required or authorized to be done by the registrar may be performed by a deputy registrar or assistant registrar of the tribunal and any process of the tribunal may be executed by any bailiff thereof notwithstanding that it may have been directed personally to some other bailiff.
- (4) In exercise of his powers and performance of his duties under this Ordinance, a person to whom this section applies shall be subject to the same liabilities and penalties and have the benefit of the same protection as attached by virtue of the High Court Ordinance (Cap. 4) to a person exercising or performing similar powers or duties under that Ordinance.
- (5) The Commissioner may authorize any public officer to assist in conciliation under this Ordinance.

(Amended 25 of 1998 s. 2)

Part 3

Jurisdiction

7. Jurisdiction of tribunal

- (1) The tribunal shall have jurisdiction to inquire into, hear and determine the claims specified in the Schedule.
- (2) Save as is provided in this Ordinance, no claim within the jurisdiction of the tribunal shall be actionable in any court in Hong Kong.
- (3) Subsection (2) shall not operate to prevent the transfer of any claim to the tribunal in accordance with any rules made under section 73B of the District Court Ordinance (Cap. 336).
(Added 67 of 1995 s. 91)
- (4) Subsection (2) shall not operate to prevent the transfer of any claim to the tribunal in accordance with any rules made under section 73C of the District Court Ordinance (Cap. 336).
(Added 86 of 1995 s. 88)
- (5) Subsection (2) shall not operate to prevent the transfer of any claim to the tribunal in accordance with any rules made under section 73D of the District Court Ordinance (Cap. 336).
(Added 91 of 1997 s. 69)
- (6) Subsection (2) shall not operate to prevent the transfer of any claim to the tribunal in accordance with any rules made under section 73E of the District Court Ordinance (Cap. 336).
(Added 29 of 2008 s. 85)

7A. Transitional provisions

A claim specified in the Schedule to the Minor Employment Claims Adjudication Board Ordinance (Cap. 453) which is pending or being heard before the tribunal immediately before the commencement of that Ordinance shall continue in and be inquired into, heard and determined by the tribunal.

(Added 61 of 1994 s. 46)

8. Power to amend Schedule

The Legislative Council may, by resolution, amend the Schedule.

8A. Bankruptcy petitions and petitions for winding up

- (1) The tribunal shall not have jurisdiction to inquire into, hear or determine—
 - (a) any claim brought by way of a bankruptcy petition under the Bankruptcy Ordinance (Cap. 6) or by way of a petition for winding up under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); or
(Amended 28 of 2012 ss. 912 & 920)
 - (b) any claim submitted to proof in a bankruptcy or winding up under those Ordinances.
- (2) An order of a court made on or after 1 March 1973 on a petition mentioned in subsection (1), and anything done under the order, including any decision on a claim submitted to proof, shall not be invalid by reason only that the claim upon which the petition was founded or the claim submitted to proof was within the jurisdiction of the tribunal.

(Added 40 of 1981 s. 2)

9. *(Repealed 25 of 1999 s. 3)*

10. Declining jurisdiction

- (1) The tribunal may, at any stage of proceedings, if it is of the opinion that for any reason the claim should not be heard and determined by it, decline jurisdiction.
- (2) The tribunal may, when it declines jurisdiction under subsection (1), transfer the claim to the Court of First Instance, the District Court or the Small Claims Tribunal, in such manner as may be prescribed. *(Amended 25 of 1998 s. 2; 25 of 1999 s. 4)*
- (3) This section shall not apply to any claim transferred to the tribunal in accordance with any rules made under section 73Bof the District Court Ordinance (Cap. 336). *(Added 67 of 1995 s. 91)*
- (4) This section shall not apply to any claim transferred to the tribunal in accordance with any rules made under section 73Cof the District Court Ordinance (Cap. 336). *(Added 86 of 1995 s. 88)*
- (5) This section shall not apply to any claim transferred to the tribunal in accordance with any rules made under section 73Dof the District Court Ordinance (Cap. 336). *(Added 91 of 1997 s. 69)*
- (6) This section shall not apply to any claim transferred to the tribunal in accordance with any rules made under section 73Eof the District Court Ordinance (Cap. 336). *(Added 29 of 2008 s. 86)*

Part 4

Commencement of Proceedings

11. Filing claims

- (1) A proceeding in the tribunal shall be commenced by filing a claim with the registrar.
- (2) Subject to subsection (3), a claim shall be in writing in the prescribed form, in either the English or Chinese language, and shall be signed by the claimant.
- (3) The registrar may permit a claim to be made orally and shall cause it to be reduced to writing, in the language in which it is made, and shall supply a copy thereof to the claimant.
- (4) Subject to subsection (5), a claim shall be signed by each claimant and person represented as being correct to the best of his knowledge and belief.
- (5) In any joint or representative claim—
 - (a) the registrar may permit the claim to be filed if it has not been signed by all the claimants or persons represented named therein on condition that all such claimants or persons will do so before the date of hearing; and
 - (b) the name of a claimant or person who has not so signed the claim before it is heard may, if the presiding officer so directs, be struck out of the claim and the amount of the claim reduced accordingly.

12. Contents of claims

A claim shall contain—

- (a) the name and address of each claimant, and, in the case of a representative claim, the name and address of each person represented;
- (b) the name and address of each defendant;
- (c) the sum of money (whether liquidated or unliquidated) claimed by each claimant or person represented;
(Amended 20 of 2014 s. 11)
- (d) such particulars of the claim as shall be reasonably sufficient to inform the defendant of the grounds for the claim and of the manner in which the amount claimed by each claimant or person represented has been calculated.

13. Service of claim and notice of hearing

- (1) The registrar shall, when a claim has been filed—
 - (a) fix a place and date for hearing of the claim which shall, unless the parties otherwise agree, be not earlier than 10 days nor later than 30 days from the filing of the claim; and
 - (b) cause a copy of the claim, together with a notice in the prescribed form of the date and place of hearing, to be served on every defendant to the claim in the manner prescribed under subsection (2).
- (2) Service of a copy of the claim and of a notice of hearing—
 - (a) shall be carried out by such person as may be appointed by the registrar for this purpose; and
 - (b) shall be effected—
 - (i) by delivering them personally to the defendant;
 - (ii) by leaving them with some person for him at his last known place of residence or at his place of business; *(Amended 25 of 1999 s. 5)*
 - (iia) by sending them by post addressed to him at his last known place of residence or at his place of business; or *(Added 25 of 1999 s. 5)*
 - (iii) in such other manner as may be directed by the registrar.
- (3) The registrar shall, if the presiding officer has specified a period under section 14(2)(b) or (c), and the registrar has been notified, fix a new date of hearing to take account of that period and notify the defendant of the new date of hearing in the manner prescribed by subsection (2).

14. Inquiries by tribunal officer

- (1) When a claim has been filed, the registrar shall forward a copy thereof to a tribunal officer, who shall prepare a summary of facts relating to the claim.

- (2) The tribunal officer shall, if he is unable to complete the inquiries necessary for the preparation of the summary of facts relating to the claim within 10 days from the filing of the claim, forthwith so inform the presiding officer, who shall, subject to section 16, direct the tribunal officer to—
 - (a) cease to inquire further into the facts of the claim and prepare the summary of facts;
 - (b) complete the inquiries within such further period as may be specified by the presiding officer; or
 - (c) continue his inquiries and report thereon to the presiding officer within such period as may be specified by the presiding officer,and shall notify the registrar of any period specified by him under paragraph (b) or (c).
- (3) A summary of facts prepared by a tribunal officer shall, in addition to any other information which he considers will be of assistance to the tribunal, set out such facts as appear to him to be agreed by all or any of the parties and such facts as appear to him to be in dispute between any of the parties.
- (4) For the purpose of preparing a summary of facts, a tribunal officer shall have power to—
 - (a) interview at any reasonable time any person, including a party, and record a statement from him;
 - (b) enter and inspect at any reasonable time any premises in which a party is or has been employed and to examine any part of the premises and any machinery, fittings or equipment therein; and
 - (c) require any person to produce at any reasonable time any records, books of account or other documents which the tribunal officer may reasonably consider to be relevant to the claim, and to examine and make copies of such records, books of account or other documents.
- (5) A person who is interviewed by a tribunal officer shall not be compelled to make a statement or to answer any question put to him but the tribunal officer shall record in his summary of facts if any person has refused to be interviewed or to answer any question put to him.
- (6) A person who makes a statement to a tribunal officer shall be entitled to read such statement or, if he is illiterate or if the statement is written in a language which he does not understand, to have the statement read out to him in a language which he does understand and to correct any errors therein.
- (7) A statement made to a tribunal officer may be admitted as evidence of all matters therein if it is produced before the tribunal by the tribunal officer who recorded it and contains a statement by him that subsection (6) was complied with at the time when the statement was recorded.

15. Conciliation certificate to be filed

- (1) The tribunal shall not hear a claim until a certificate in the prescribed form signed by a tribunal officer or an authorized officer is filed or produced to the effect that—

- (a) one or more of the parties has refused to take part in conciliation;
 - (b) conciliation has been attempted but no settlement has been reached;
 - (c) conciliation is unlikely to result in a settlement being reached; or
 - (d) conciliation may prejudice the interests of a party.
- (2) A certificate under subsection (1) shall be filed with or produced to the tribunal not later than 24 hours before the date fixed for the hearing of the claim.
 - (3) During the hearing of a claim the tribunal may, subject to section 16, adjourn the claim and notify the Commissioner in the prescribed form of the adjournment and the reason therefor— (*Amended L.N. 377 of 1980; 20 of 2014 s. 12*)
 - (a) the tribunal is of the opinion that there is a reasonable likelihood of a settlement of the claim; and
 - (b) all parties to the claim have agreed to an adjournment for the purpose of conciliation.
 - (4) The Commissioner may, when he has been notified of an adjournment pursuant to subsection (3), hold conciliation between such of the parties to the claim as are willing to take part.
 - (5) The Commissioner may, if after such conciliation the parties reach a settlement of the claim or if he is of the opinion that there is no reasonable likelihood of such a settlement, so advise the tribunal in the prescribed form.
 - (6) The Commissioner shall, unless he has earlier advised the tribunal under subsection (5), advise the tribunal as to what, if any, progress has been made in the conciliation not less than 24 hours before the date to which the claim has been adjourned.
 - (7) If a settlement of a claim is reached, whether as a result of conciliation or not, the terms of the settlement shall be reduced to writing in the prescribed form and signed by the parties to the settlement.
 - (8) A settlement, which has been reduced to writing and signed by the parties thereto, shall be filed in the tribunal.
 - (9) A settlement filed under subsection (8) shall be treated for all purposes as if it were an award of the tribunal.

15A. Claims, etc. transferred from the Minor Employment Claims Adjudication Board, etc.

- (1) Where a claim is transferred to the tribunal under section 8(3) of the Minor Employment Claims Adjudication Board Ordinance (Cap. 453) or under section 7 of the Small Claims Tribunal Ordinance (Cap. 338)— (*Amended 28 of 1999 s. 18*)
 - (a) the claim shall upon such transfer be regarded for all purposes as a claim brought under this Ordinance;

- (b) all requirements under this Ordinance that would have to be fulfilled in relation to the claim before it could be inquired into, heard and determined by the tribunal if it were a claim brought under this Ordinance shall upon such transfer be deemed to have been fulfilled in relation to the claim.
- (2) Where a counterclaim or set-off and counterclaim is transferred to the tribunal under section 10 of the Small Claims Tribunal Ordinance (Cap. 338)—
- (a) the counterclaim or set-off and counterclaim shall upon such transfer be regarded for all purposes as—
 - (i) a claim or counterclaim; or
 - (ii) a claim or set-off and counterclaim, as the case requires, brought under this Ordinance;
 - (b) all requirements under this Ordinance that would have to be fulfilled in relation to the counterclaim or set-off and counterclaim before it could be inquired into, heard and determined by the tribunal if it were—
 - (i) a claim or counterclaim; or
 - (ii) a claim or set-off and counterclaim, as the case requires, brought under this Ordinance shall, upon such transfer, be deemed to have been fulfilled in relation to the counterclaim or set-off and counterclaim.
(Added 28 of 1999 s. 18)

(Added 61 of 1994 s. 47)

Part 5

Practice and Procedure

16. Presiding officers etc. to prevent delay to the prejudice of claimant

Every presiding officer, registrar, deputy or assistant registrar, tribunal officer and authorized officer shall ensure that there is no avoidable delay in the determination of a claim and shall have regard to any proceedings in any other court which may result in judgments to the prejudice of the claimant.

17. Place of hearing

A presiding officer shall sit for the disposal of the business of the tribunal at such places and times as, having regard to the convenience of the parties and witnesses, he may think fit.

18. Hearing to be in public unless otherwise ordered

The hearing of a claim shall be conducted in public unless the presiding officer considers that in the interests of justice the hearing or any part thereof should be in private, in which case he shall order accordingly.

19. Keeping of summary of evidence, etc.

The presiding officer shall keep or cause to be kept a summary,

whether by means of shorthand notes or mechanical, electronic or optical means or otherwise, of the evidence, submissions or statements made or given and of any point of law raised at the hearing and of his decision on such point of law.

(Amended 18 of 1974 s. 7; 25 of 1999 s. 6)

20. Hearing to be informal

- (1) The hearing of a claim shall be conducted in an informal manner.
- (2) The presiding officer may subpoena witnesses, order the production of any document, record, book of account or other exhibit and put to a party or witness such questions as he may think fit.
- (3) The presiding officer shall investigate any matter which he may consider relevant to the claim, whether or not it has been raised by a party.

20A. Failure of claimant to appear at hearing

- (1) If, upon the hearing of a claim, the claimant does not appear, the tribunal may strike out the claim, without prejudice, however, to the restoration thereof by the tribunal, on the application of the claimant, on such terms as it thinks just.
- (2) An application under subsection (1) shall be made within 7 days after the hearing or such further period as the tribunal may allow.

(Added 14 of 1984 s. 2)

21. Hearing of claim in absence of defendant

If a defendant who has been duly served with a copy of the claim and a notice of hearing fails to appear at the hearing, by himself or by a person authorized by the tribunal to appear on his behalf, the tribunal may, if it is of the opinion that the facts relating to the claim are sufficiently established, hear and determine the claim and make such award or order as it may think fit, notwithstanding the absence of the defendant.

21A. Setting aside award or order made in absence of defendant

- (1) Any award or order made by the tribunal under section 21 in the absence of a defendant at a hearing may be set aside by the tribunal, on the application of the defendant, on such terms as it thinks just.
- (2) An application under subsection (1) shall be made within 7 days after the hearing or such further period as the tribunal may allow.

(Added 14 of 1984 s. 3)

22. Decision to be announced at conclusion of hearing if possible

- (1) The presiding officer shall deliver his determination of a claim and make such award or order thereon as he may think fit as soon as possible after the conclusion of the hearing of the claim.

- (2) The reasons for an award or order may be given orally or in writing as the presiding officer may think fit.
- (3) A presiding officer shall, when he has made an award or order orally, reduce it to writing as soon as possible, and in any case not later than 14 days after the date of the award or order.
- (4) Every written award or order shall be served by the registrar on the parties, and it shall not be necessary for the party in whose favour an award or order has been made to prove that it reached the party to be served. *(Replaced 25 of 1976 s. 2)*
- (5) Service of a written award or order under subsection (4) shall be effected—
 - (a) by delivering it personally to the party to be served;
 - (b) by leaving it with some person for him at his last known place of residence or at his place of business; *(Amended 25 of 1999 s. 7)*
 - (ba) by sending it by post addressed to him at his last known place of residence or at his place of business; or *(Added 25 of 1999 s. 7)*
 - (c) in such other manner as the registrar thinks fit. *(Added 25 of 1976 s. 2)*

23. Right of audience

- (1) The following persons shall have a right of audience before the tribunal—
 - (a) a claimant or defendant;
 - (b) a tribunal officer;
 - (c) an authorized officer;
 - (d) an officer or servant of an unincorporated or incorporated company or a member of a partnership, if the company or partnership is a party; *(Amended 14 of 2003 s. 11)*
 - *(e) with the leave of the tribunal, an office bearer of a registered trade union or of an association of employers who is authorized in writing by a claimant or defendant to appear as his representative; and *(Amended 101 of 1997 s. 24; 135 of 1997 s. 14; 14 of 2003 s. 11)*
 - (f) a public officer, not being a barrister or solicitor, who appears on behalf of the Secretary for Justice, if the Secretary for Justice is a claimant or a defendant. *(Added 14 of 2003 s. 11)*
- (2) A barrister or solicitor shall have a right of audience before the tribunal only if he is—
 - (a) acting on his own behalf as a claimant or a defendant; or
 - (b) appearing before the tribunal on behalf of an offender for the purpose of section 42. *(Replaced 25 of 1999 s. 8)*

Editorial Note:

* As to the suspension of operation of 101 of 1997, please see s. 4(1) and (2) of Cap. 538. On 31 October 1997, that s. 4(1) and (2), to the extent that it was in effect immediately before 31 October 1997, ceased to have effect. Please see s. 14(2) of 135 of 1997.

24. Claims may be joined

- (1) If 2 or more claims are filed and it appears to the tribunal that —
 - (a) a common question of law or fact arises in both or all of them;
 - (b) the claims arise out of the same cause of action; or
 - (c) it would be in the interests of justice,the tribunal may order that such claims be joined.
- (2) The power conferred by this section may be exercised notwithstanding that an inquiry into or hearing of one or more of the claims has been commenced.

25. Representative claims

- (1) Subject to subsection (2), if 2 or more persons have claims against the same defendant, such claims may be brought in the name of one of such persons as the representative of some or all of them.
- (2) The tribunal may, if at any stage of the proceedings, it considers that the bringing of a representative claim may prejudice the defendant, order that the claims of all or any of the persons represented shall be inquired into separately.
- (3) Each person represented in a representative claim shall be deemed to have authorized the representative on his behalf to —
 - (a) call and give evidence and make submissions to the tribunal on any matter arising during the inquiry into the claim;
 - (b) file affidavits, statements or other documents;
 - (c) agree to a summary of facts prepared by a tribunal officer;
 - (d) agree to an adjournment or change of venue;
 - (e) agree to the holding of and to take part in conciliation;
 - (f) agree to a settlement of the claim on such terms as he may think fit;
 - (g) *(Repealed 25 of 1999 s. 9)*
 - (h) amend the claim in respect of all or any of the individual claims or to abandon the claim; and
 - (i) act generally in as full and free a manner as such claimant could act himself.
- (4) The authority deemed to be given to a representative by subsection (3) shall not be withdrawn save by leave of the tribunal.

- (5) In making an award in respect of a representative claim the tribunal may allocate such part of the award to each person represented as it thinks fit and the amount so allocated shall, for the purposes of section 38 of the Bankruptcy Ordinance (Cap. 6) and section 265 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (which provide for prior payment in bankruptcy and winding-up of certain debts), be considered as a separate award. (*Amended 28 of 2012 ss. 912 & 920*)
- (6) The tribunal may, at any time before making an award, grant leave to any person to join as a person represented in a claim on such terms as it may think fit.
- (7) The tribunal may cause public notice to be given, in such manner as it may think fit, of the particulars of a representative claim which has been filed and of the date and place which have been fixed for the hearing of the claim.

26. Joint defendants

- (1) If 2 or more persons are defendants to a claim, as partners or otherwise, it shall be sufficient to serve any of them with process and an award may be obtained and execution issued against any person so served notwithstanding that any other persons jointly liable may not have been served or been a party or may not be within the jurisdiction of the tribunal.
- (2) If an award is made against a person in accordance with subsection (1) and is satisfied by that person, he shall be entitled to recover in the tribunal contribution from any other person jointly liable with him.
- (3) An award obtained against a person in respect of his liability jointly with any other person shall not release such other person from liability under the award.
- (4) A person who is sued in respect of his liability jointly with any other person may set up any defence or counterclaim which he would have been entitled to set up if all the persons liable had been made defendants.
- (5) If 2 or more persons are joined as defendants, the claimant may obtain an award against any one or more of the defendants and may enforce the award without prejudice to his right to proceed with the action against any other defendant.

27. Evidence

- (1) The tribunal may at any time during the hearing of a claim allow a witness or a party to give evidence on oath or unsworn.
- (2) The rules of evidence shall not apply to proceedings in the tribunal, which may receive any evidence which it considers relevant.

28. Costs

- (1) Subject to subsection (2), the tribunal may award to a party costs and expenses, which may include—
 - (a) any reasonable expenses necessarily incurred and any loss of salary or wages suffered by that party; and

- (b) any reasonable sum paid to a witness for the expenses necessarily incurred and any loss of salary or wages suffered by him,

in attending a hearing of the tribunal or in being interviewed by a tribunal officer.

- (2) In making an award of costs under this section, the tribunal shall include a direction as to the amount to be paid by each party who is so liable to pay costs.
- (3) An award of costs shall be enforceable in the same way as any other award made by the tribunal.

29. Frivolous or vexatious claims

The tribunal may at any time dismiss a claim which it considers to be frivolous or vexatious on such terms as to payment of costs as it may think fit.

29A. Adjournment

- (1) The tribunal may at any time, either of its own motion or on the application of any party, adjourn the hearing of a claim on such terms as it thinks fit.
- (2) If any party fails to comply with the requirements of any term that may have been imposed on him under subsection (1), the tribunal may dismiss the claim, stay the proceedings or enter judgment against him as the tribunal may think appropriate.

(Added 25 of 1999 s. 10)

30. Security for awards and orders

- (1) The tribunal may order a party to give security for the payment of an award or order that has been or may be made if the tribunal considers it just and expedient to do so.
- (2) The tribunal may make the order either of its own motion or on the application of a party.
- (3) The order may require security to be given—
 - (a) by payment into the tribunal a sum of money that the tribunal considers sufficient; or
 - (b) in any other form and manner that the tribunal considers appropriate.
- (4) Without limiting subsection (1), the tribunal may make an order under that subsection against a party if—
 - (a) the tribunal is satisfied that there is a real risk that the payment of an award or order that has been or may be made will be obstructed or delayed because—
 - (i) the party has disposed of, removed from Hong Kong or lost control of assets belonging to the party;
 - (ii) the party is about to dispose of, remove from Hong Kong or lose control of assets belonging to the party; or
 - (iii) there is a real risk of the party disposing of, removing from Hong Kong or losing control of assets belonging to the party;

- (b) the tribunal is satisfied that—
 - (i) the party has conducted the proceedings in a manner that delays the determination of the case; or
 - (ii) the party's conduct otherwise constitutes an abuse of the process; or
- (c) the tribunal is satisfied that the party has, without reasonable excuse, failed to comply with any award, order or direction.
- (5) If a party fails to comply with an order under subsection (1), the tribunal may—
 - (a) dismiss the party's claim;
 - (b) stay the proceedings; or
 - (c) enter judgment on the claim against the party.
- (6) On a party's failure to comply with an order under subsection (1), the tribunal may exercise the powers referred to in subsection (5) without further hearing or considering the party's case if the order expressly indicates the tribunal's intention to do so on such non-compliance without further hearing or consideration.

(Replaced 20 of 2014 s. 13)

Part 6

Review and Appeal

31. Review of awards and orders

- (1) Except where a party has filed an application for leave to appeal and does not agree to withdraw the application, a presiding officer may, within 14 days from the date of an award or order given or made by him, review the award or order and on such review may re-open and re-hear the claim wholly or in part and may call or hear fresh evidence and may confirm, vary or reverse his previous award or order. *(Amended 29 of 1974 s. 2)*
- (2) The power conferred by subsection (1) may be exercised—
 - (a) by a presiding officer of his own motion, on notice in the prescribed form to all parties;
 - (b) on the application of a party within 7 days, on notice in the prescribed form to all other parties.
- (3) The exercise of the power conferred by subsection (1) shall not operate as a bar to appeal by a party against the award or order or thereafter against the determination of the review.
- (4) After a party has applied for a review of an award or order, the presiding officer may order the applicant to give security for the payment of any award or order that has been or may be made if the presiding officer considers it just and expedient to do so. *(Replaced 20 of 2014 s. 14)*
- (4A) The presiding officer may make the order either of the presiding officer's own motion or on the application of a party. *(Added 20 of 2014 s. 14)*

- (4B) The order may require security to be given—
- (a) by payment into the tribunal a sum of money that the presiding officer considers sufficient; or
 - (b) in any other form and manner that the presiding officer considers appropriate. *(Added 20 of 2014 s. 14)*
- (4C) Without limiting subsection (4), the presiding officer may exercise the power under that subsection if the presiding officer is satisfied that—
- (a) the application for a review of an award or order—
 - (i) is devoid of merit; or
 - (ii) is made to delay the process; or
 - (b) assets that may be available to satisfy an award or order may be disposed of to the prejudice of any party. *(Added 20 of 2014 s. 14)*
- (4D) If a party fails to comply with an order under subsection (4), the presiding officer may dismiss the application for review. *(Added 20 of 2014 s. 14)*
- (4E) On a party's failure to comply with an order under subsection (4), the presiding officer may dismiss the application for review under subsection (4D) without further hearing or considering the party's case if the order expressly indicates the presiding officer's intention to do so on such non-compliance without further hearing or consideration. *(Added 20 of 2014 s. 14)*
- (5) A presiding officer may transfer the hearing and consideration of a review to another presiding officer who shall have all the powers and functions which he would have if he had originally heard the claim and had prepared the record of proceedings.

32. Leave to appeal on point of law

- (1) If any party is dissatisfied with an award, order or determination by the tribunal on the grounds that the award, order or determination is—
 - (a) erroneous in point of law; or
 - (b) outside the jurisdiction of the tribunal,such party may, within 7 days after the date on which the award, order or determination was served on him, or within such extended time as may be allowed by the Registrar of the High Court on good cause, apply to the Court of First Instance for leave to appeal and the Court of First Instance may grant such leave. *(Amended 71 of 1982 s. 2)*
- (2) An application for leave to appeal under this section shall be—
 - (a) in the prescribed form which shall set out the grounds of appeal and the reasons in support of such grounds; and
 - (b) lodged with the Registrar of the High Court.
- (3) A refusal by the Court of First Instance to grant leave to appeal shall be final.

(Replaced 29 of 1974 s. 3. Amended 79 of 1981 s. 9; 25 of 1998 s.

33. *(Repealed 25 of 1976 s. 4)*

34. *(Repealed 79 of 1981 s. 9)*

35. Powers of Court of First Instance on appeal

- (1) On an appeal for which it has granted leave under section 32, the Court of First Instance may—
 - (a) allow the appeal;
 - (b) dismiss the appeal; or
 - (c) remit the matter to the tribunal with such directions as it thinks fit, which may include a direction to the tribunal for a new hearing.
- (2) On an appeal for which it has granted leave under section 32, the Court of First Instance may—
 - (a) draw any inference of fact; and
 - (b) make such order as to costs and expenses as it thinks fit, but may not—
 - (i) reverse or vary any determination made by the tribunal on questions of fact; or
 - (ii) receive further evidence.
- (3) Subject to section 35A, the decision of the Court of First Instance shall be final. *(Replaced 79 of 1981 s. 9)*

(Replaced 25 of 1976 s. 5. Amended 79 of 1981 s. 9; 49 of 1988 s. 3; 25 of 1998 s. 2)

35A. Appeal to Court of Appeal

- (1) If any party is dissatisfied with a decision of the Court of First Instance on an appeal heard by leave given under section 32, such party may, within 7 days after the date of the decision, apply to the Court of Appeal for leave to appeal and, if the Court of Appeal considers that a question of law of general public importance is involved, it may grant leave. *(Amended 49 of 1988 s. 3)*
- (2) An application for leave to appeal under this section shall be—
 - (a) in the prescribed form, setting out the question of law; and
 - (b) lodged with the Registrar of the High Court.
- (3) A refusal by the Court of Appeal to grant leave to appeal shall be final.

(Added 79 of 1981 s. 9. Amended 25 of 1998 s. 2)

35B. Powers of the Court of Appeal on appeal

On an appeal for which it has granted leave under section 35A, the Court of Appeal may— *(Amended L.N. 374 of 1991)*

- (a) allow the appeal;
- (b) dismiss the appeal; or

- (c) remit the matter to the tribunal with such directions as it thinks fit, which may include a direction to the tribunal for a new hearing,

and may make such order as to costs as it thinks fit.

(Added 79 of 1981 s. 9. Amended 49 of 1988 s. 3)

36. Procedure on appeal

Subject to this Part, an appeal from the tribunal shall be brought in such manner and shall be subject to such conditions as shall be prescribed.

(Amended 29 of 1974 s. 6)

37. Stay of execution on review or appeal

Neither a decision by a presiding officer to exercise his power of review under section 31 nor the filing of an application for leave to appeal under section 32 or section 35A shall operate as a stay of execution of an award or order unless the presiding officer, the Court of First Instance or Court of Appeal, as the case may be, otherwise orders and any stay of execution may be subject to such conditions as to costs, payment into the tribunal, the giving of security or otherwise as the presiding officer, the Court of First Instance or Court of Appeal may think fit.

(Replaced 29 of 1974 s. 7. Amended 25 of 1976 s. 6; 79 of 1981 s. 9; 25 of 1998 s. 2)

Part 7

Miscellaneous

38. Awards and orders may be registered in District Court

- (1) A final award or order of the tribunal may be registered in the District Court in the prescribed manner.
- (2) On registration, the final award or order—
 - (a) becomes for all purposes a judgment of the District Court made on the date on which the final award or order was made by the tribunal; and
 - (b) subject to section 40, may be enforced accordingly.
- (3) The final award or order may be enforced under subsection (2) (b) even though the award or order has been given for an amount that is beyond the jurisdiction of the District Court.

(Replaced 20 of 2014 s. 15)

39. Interest on claims and awards

- (1) The tribunal may include in the amount of an award interest at the rate specified in subsection (4) on the whole or any part of the amount claimed for the whole or any part of the period between the date when the cause of action arose and the date of the award.
- (2) The powers conferred by subsection (1) may be exercised—
 - (a) whether or not interest is expressly claimed;

- (b) at any time after the date of the award if it appears to the tribunal that the failure to claim or to award interest was through inadvertence; and
 - (c) if an award is made ex parte against the defendant.
- (3) An award shall carry interest at the rate specified in subsection (4) on the aggregate amount thereof, or on such part thereof as for the time being remains unsatisfied, from the date of the award until satisfaction.
- (4) The rate of interest specified for the purpose of subsections (1) and (3) shall be the rate from time to time applicable to judgment debts under section 50 of the District Court Ordinance (Cap. 336). (*Added 5 of 1986 s. 2. Amended 10 of 2005 s. 222*)

(Amended 5 of 1986 s. 2)

40. Payment of award

- (1) In a joint or representative claim the amount of an award or order shall be paid into the tribunal and shall be allocated amongst such parties to the claim and in such amounts as a presiding officer, who shall where possible be the presiding officer who heard the claim, may think fit.
- (2) When money is paid into the tribunal by a defendant, in full or part discharge of an award or order made against him, the defendant shall be deemed to have satisfied his liability under the award or order to the extent of the amount so paid and shall not be liable to any claimant as to the manner in which such money is allocated by the tribunal.

41. Interference with witness and perjury

- (1) No person shall by threats, persuasion or otherwise induce a witness or a party not to give evidence in any hearing before the tribunal.
- (1A) No person shall wilfully give false evidence in any hearing before the tribunal. (*Added 13 of 1995 s. 47*)
- (2) Any person who contravenes subsection (1) or (1A) shall be guilty of an offence and on conviction before a judge in the District Court shall be liable to a fine at level 2 and to imprisonment for 6 months. (*Amended 13 of 1995 s. 47; 25 of 1999 s. 13*)
- (3) (*Repealed 13 of 1995 s. 47*)

42. Insulting behaviour

- (1) If any person, in a hearing before the tribunal,—
 - (a) uses a threatening or insulting expression to or concerning or in the presence of the presiding officer; or
 - (b) behaves in an insulting manner or wilfully interrupts the proceedings,

the presiding officer may summarily sentence the offender to a fine at level 3 and to imprisonment for 6 months. (*Replaced 29 of 1974 s. 8. Amended 25 of 1999 s. 14*)

- (2) It is declared that section 50 of the High Court Ordinance (Cap. 4) applies in the case of any exercise by the presiding officer of his power under subsection (1). (*Added 25 of 1999 s. 14*)

43. Punishment of witness for non-attendance and of person for non-production of document

Any person who, without reasonable excuse, fails to comply with—

- (a) a subpoena served on him under section 20(2) to appear before the tribunal as a witness; or
- (b) an order under section 20(2) to produce any document, record, book of account or other exhibit,

shall be guilty of an offence and shall be liable on summary conviction to a fine at level 2.

(Amended 25 of 1999 s. 15)

44. Punishment for refusal to comply with request by tribunal officer to produce document and for obstruction of tribunal officer

Subject to section 14(5), any person who—

- (a) refuses, without reasonable excuse, to comply with a lawful request made by a tribunal officer for the production to him of any records, books of account or other documents; or
- (b) wilfully obstructs a tribunal officer in the carrying out of any duty under section 14,

shall be guilty of an offence and shall be liable on summary conviction to a fine at level 4.

(Amended 25 of 1999 s. 16)

45. Chief Justice may make rules

- (1) The Chief Justice may make rules— (*Amended 20 of 2014 s. 25*)

- (a) regulating the procedure for—
 - (i) applying for review, and the hearing of such applications, under section 31;
 - (ii) applying for leave to appeal, and the hearing of such applications, under sections 32 and 35A; (*Amended 25 of 1976 s. 7*)
 - (iii) the hearing of appeals under sections 35 and 35B; (*Replaced 29 of 1974 s. 9. Amended 79 of 1981 s. 9*)
- (b) regulating the transfer of proceedings to the Small Claims Tribunal, the District Court or the Court of First Instance; (*Amended 25 of 1998 s. 2; 25 of 1999 s. 17*)
- (c) providing for matters of procedure which are not provided for in this Ordinance;
- (d) prescribing anything which is to be or may be prescribed;
- (e) prescribing the fees and costs applicable to proceedings in the tribunal;
- (f) (*Repealed 25 of 1976 s. 7*)

- (g) generally for the better carrying out of the provisions of this Ordinance.
- (2) Without limiting subsection (1), the Chief Justice may make rules for regulating the following matters—
 - (a) the deposit, payment, delivery, and transfer in, into, and out of the tribunal of money and movable property of suitors;
 - (b) the evidence of such deposit, payment, delivery, or transfer, and the investment of and other dealings with money and movable property in the tribunal; and
 - (c) the powers and duties of the registrar with reference to such money and movable property. *(Added 20 of 2014 s. 25)*
- (3) Without limiting subsection (2), rules made under that subsection may provide for—
 - (a) regulating the placing on and withdrawal from deposit of money in the tribunal, and the payment or crediting of interest on money placed on deposit;
 - (b) determining the smallest amount of money on deposit on which interest is to be credited to an account to which money placed on deposit belongs;
 - (c) determining the time at which money placed on deposit is to begin and to cease to bear interest and the mode of computing such interest;
 - (d) determining the cases in which money placed on deposit is to begin and to cease to bear interest and the mode of computing such interest;
 - (e) determining the cases in which interest on money placed on deposit is to be placed on deposit; and
 - (f) disposing of money remaining unclaimed in the tribunal. *(Added 20 of 2014 s. 25)*

45A. Power of presiding officer to enforce payment of fine, etc.

For the purposes of enforcing the payment of any fine imposed or giving effect to any sentence of imprisonment a presiding officer shall have the powers of a judge.

(Added 29 of 1974 s. 10)

46. Procedure generally

In any matter of procedure for which no provision is made by this Ordinance or by rules made pursuant to section 45 the procedure applicable shall be such as the presiding officer may determine.

47. Immunity

- (1) A presiding officer has, in the performance of his powers or duties under this Ordinance, the same privileges and immunities as a judge of the Court of First Instance in civil proceedings in that court.
- (2) A witness before the tribunal shall be entitled to the same privileges and immunities as if he were a witness in civil proceedings in the Court of First Instance.

(Added 25 of 1999 s. 18)

48. Proceedings to which amendments made by Administration of Justice (Miscellaneous Provisions) Ordinance 2014 apply

The amendments made to this Ordinance by the Administration of Justice (Miscellaneous Provisions) Ordinance 2014 (20 of 2014) apply in relation to all proceedings to which this Ordinance relates irrespective of when those proceedings were commenced.

(Added 20 of 2014 s. 16)

Schedule

[s. 7]

1. A claim for a sum of money, whether liquidated or unliquidated, which arises from— *(Amended 20 of 2014 s. 17)*
 - (a) the breach of a term, whether express or implied or (if relevant) arising by force of section 10(1) of the Minimum Wage Ordinance (Cap. 608), of a contract of employment, whether for performance in Hong Kong or under a contract to which the Contracts for Employment Outside Hong Kong Ordinance (Cap. 78) applies; *(Amended 8 of 1976 s. 49; 59 of 1999 s. 3)*
 - (aa) the breach of a term, whether express or implied or (if relevant) arising by force of section 10(1) of the Minimum Wage Ordinance (Cap. 608), of a contract of apprenticeship; or *(Added 8 of 1976 s. 49)*
 - (b) the failure of a person to comply with the provisions of the Employment Ordinance (Cap. 57), the Minimum Wage Ordinance (Cap. 608) or the Apprenticeship Ordinance (Cap. 47), *(Amended 39 of 1973 s. 9; 8 of 1976 s. 49)*

other than a claim specified in the Schedule to the Minor Employment Claims Adjudication Board Ordinance (Cap. 453). *(Amended 61 of 1994 s. 48; 15 of 2010 s. 19)*

2. A claim for contribution under section 26(2).
3. Notwithstanding paragraphs 1 and 2, the tribunal shall not have jurisdiction to hear and determine a claim for a sum of money (whether liquidated or unliquidated), or otherwise in respect of a cause of action, founded in tort whether arising from a breach of contract or a breach of a duty imposed by a rule of common law or by any enactment. *(Amended 20 of 2014 s. 17)*
4. Any question as to—
 - (a) the right of an employee to a severance payment under Part VA of the Employment Ordinance (Cap. 57); or
 - (b) the amount of such payment, *(Added L.N. 178 of 1974)*other than a claim specified in the Schedule to the Minor Employment Claims Adjudication Board Ordinance (Cap. 453). *(Amended 61 of 1994 s. 48)*

5. Any question as to—
- (a) the right of an employee to payment of wages by a person other than his employer under Part IXA of the Employment Ordinance (Cap. 57); and
 - (b) the amount of such payment, (*Added 54 of 1977 s. 3*)
- other than a claim specified in the Schedule to the Minor Employment Claims Adjudication Board Ordinance (Cap. 453). (*Amended 61 of 1994 s. 48*)
6. Notwithstanding paragraphs 1, 2, 4 and 5, the tribunal shall have jurisdiction to hear and determine a claim transferred to the tribunal under section 8(3) of the Minor Employment Claims Adjudication Board Ordinance (Cap. 453) or section 7 or 10 of the Small Claims Tribunal Ordinance (Cap. 338). (*Added 61 of 1994 s. 48. Amended 28 of 1999 s. 18*)
7. A claim for remedies under Part VIA of the Employment Ordinance (Cap. 57). (*Added 75 of 1997 s. 6*)
- *8. (*Repealed 135 of 1997 s. 4*)
- **9. (*Repealed 135 of 1997 s. 14*)

Editorial Note:

* This paragraph was added by 98 of 1997. As to the suspension of operation of 98 of 1997, please see s. 5(1) and (2) of Cap. 538. On 31 October 1997, that s. 5(1) and (2), to the extent that it was in effect immediately before 31 October 1997, ceased to have effect. Please see s. 4(2) of 135 of 1997.

** This paragraph was added by 101 of 1997. As to the suspension of operation of 101 of 1997, please see s. 4(1) and (2) of Cap. 538. On 31 October 1997, that s. 4(1) and (2), to the extent that it was in effect immediately before 31 October 1997, ceased to have effect. Please see s. 14(2) of 135 of 1997.