

**Making Labour Laws in Semi-Authoritarian Hong Kong :**  
**Policy Venues and Informal Rules**

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**Abstract of thesis entitled: Making Labour Laws in Semi-Authoritarian Hong Kong :  
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In post-handover Hong Kong, civil liberties are combined with malformed democratic institutions to form what scholars call semi-authoritarianism. While business elites are guaranteed to enjoy strong influence in the legislature and thereby succeeded in rejecting several labour laws, some labour laws were occasionally passed with near-unanimous support from the business elites. Facing similar situations of policy punctuation and change in democratic societies, scholars of policy studies have used the concept of policy venue to identify the institutional sites for portraying problems and solutions, and hence reveal the influences of different actors on a certain policy. Although some scholars have argued that the concept of policy venue could be applied to study policy punctuation and change in semi-authoritarian Hong Kong, concrete examples that could back up this claim are rather rare. Also, while scholars that focus on regime types and democratization have agreed that informal institutions or rules could greatly affect formal rules and procedures and must therefore be given extra focus when studying about semi-authoritarian regimes, it is far from clear about what these rules are, and how can they be enforced in different policy venues of Hong Kong. This work will give a detailed account of the major policy venues and informal rules that are involved in making labour laws in Hong Kong. By showing the relations between multiple policy venues, the informal rules involved, and how informal rules could undermine or partially replace formal institutions, this work seeks to contribute to the larger literatures about policy venues and informal rules through the experience of semi-authoritarian Hong Kong.

摘要：

回歸後的香港，市民享有公民自由，但民主機制不健全，使它可被歸類為學者定義的半威權主義社會。商業精英在香港的立法機關裡相當具影響力，因此曾數次成功阻止幾條勞工法例的引入，但與此同時，亦有另外幾條勞工法例獲得商界精英幾近一致贊成並且獲得通過。在民主社會裡，類似的政策又有停滯又有改動的情況亦有出現；對此，學者利用政策場域的概念，研究不同政治行動者在制度化的場域之中，如何描繪社會問題與解決方法，並從而對政策結果施予不同的影響。雖然有學者提出，類似的研究方法可以套用到半威權主義香港並研究其中的政策停滯與改動，但實際的發現仍較有限。與此同時，儘管研究政體與民主化問題的學者都同意非正式制度或非正式規則可以影響正式制度的運作，並且認為研究半威權主義政權時必須對相關概念予以注視，但以香港為例，非正式制度的實際內容，以及它們在不同的政策場域中如何被執行，都有待澄清。本文將會詳細考究在香港制定勞工法例時，牽涉到的主要政策場域之間的關係，以及其中的非正式制度。透過指出這些政策場域與非正式制度，以及非正式制度如何能夠削弱甚或部份地取代正式制度，本文意圖借助半威權香港的經驗去豐富有關政治場域以及非正式制度的文獻。

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## 1. Introduction

Labour laws are among one of the most crucial social policies of different societies, and this holds true for post-handover Hong Kong as well. That said, after the handover of Hong Kong in 1997, two extremely puzzling phenomena could be found in the process of making labour laws. The two phenomena suggested that neither the representatives of employers nor the representatives of employees were acting as one would normally expect. To explain these two phenomena, this thesis follows the institutional perspective and draws particularly on the concepts of policy venues and informal rules to clarify how labour laws are made in Hong Kong. This thesis argues that in reality, the two puzzling phenomena are the results of policy actors following three informal rules of the policy venues for making labour laws in semi-authoritarian Hong Kong. Among the multiple policy venues involved, the Labour Advisory Board (the LAB) is the most important policy venue. As for the three informal rules, they are namely the 'rule of mutual respect', the 'rule of minimal intervention' and the 'rule of balance of power'. This research about Hong Kong not only confirms the findings of existing literatures; it also seeks to provide insights into policy venues, informal rules and semi-authoritarian regimes.

The case of making labour laws in Hong Kong is highly perplexing, because both

the representatives of employers and the representatives of employees have acted in unexpected ways. Because the transfer of power through democratic institutions is effectively prevented, post-handover Hong Kong is described by some scholars as a semi-authoritarian society. For instance, the dominance of sectoral interests and business elites in the Legislative Council (LegCo) has been institutionalized by the Basic Law. A classic example is the 'split-voting system', as introduced by Annex II of the Basic Law. Under the 'split-voting system', a member's bill could only be passed by reaching simple majority in both the geographical constituency and the functional constituency; whereas government bills could be passed by achieving a simple majority of all members present. With the 'split-voting system', legislators of the functional constituency could enjoy some kind of 'veto power' in the legislature. With these institutional designs, one would expect much resistance from sectoral interests and business elites against the introduction of new labour laws. In other words, even if new laws are successfully passed, they would likely win only by an extremely narrow margin. However, labour laws that were successfully passed in Hong Kong actually received near-unanimous support from all the legislators. For instance, in 2014, 53 legislators met to vote for the introduction of statutory paternity leave. The law was successfully passed with 52 'Yes' votes and 1 'Abstain'. The landslide was unexpected, because a lot of legislators that represent business or

sectoral interests actually voiced their concerns during the debate. Nonetheless, instead of exercising their institutionalized influence and easily turn down the bill, these legislators supported the bill in the end. Similarly, in 2010, statutory minimum wage was successfully introduced after yet another landslide support from the legislators. The 45 'Yes' to 1 'No' voting result of statutory minimum wage was equally unexpected, again due to the fact that legislators who opposed the law during LegCo debates did not vote against the bill. While examples of near-unanimous support from legislators could be repeatedly found in Hong Kong, previous researches tend to explain these cases of successful legislation separately and individually. To contrast, this thesis attempts to reveal the more fundamental logic behind these cases of successful legislation.

Alongside the unexpected behaviours of the representatives of employers, behaviours of the representatives of employees are equally confusing. As Hong Kong citizens enjoy civil liberty and could freely organize trade unions, one would expect representatives of labour to always vote for laws that could bring more benefits to the employees. Yet, there seems to be exceptions. For example, during the 2014-debate about introducing statutory paternity leave, some legislators tried to amend the government bill and increase the leave from 'no more than 3 days' to '7 days'. While a 7-day paternity leave is obviously more attractive, legislators of the

Hong Kong Federation of Trade Unions (HKFTU) and the Federation of Hong Kong and Kowloon Labour Unions (FLU) did not support the 7-day amendment. The voting decisions of the HKFTU and FLU legislators were criticized by some. Still, beyond accusations from political rivalries, the actual reasons behind their voting decisions remain unclear. It is the task of this thesis to explain the puzzling behaviours of the representatives of employers and the representatives of employees.

To understand how labour laws and policies are made in a society, some scholars have followed the institutional framework and study how the distinctive responses of policy actors are shaped by past institutional arrangements, the costs and opportunities faced by different actors, and the existing tensions over certain issues. Although multiple researches already exist to inspire future studies, many of them focused on democratic societies. Post-handover Hong Kong combines elements of democracy and authoritarianism, and is described by scholars as a semi-authoritarian society.<sup>1</sup> In 2017, the renowned Freedom House Annual Survey gave Hong Kong a Civil Liberties Rating of 2, but a 5 for the Political Rights Rating. The Freedom Rating was 3.5, rendering Hong Kong a 'partly-free' society.<sup>2</sup> Taking

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<sup>1</sup> William Case, "Hybrid Politics and New Competitiveness: Hong Kong's 2007 Chief Executive Election", *East Asia*, Vol. 25 No.4 (2008).

<sup>2</sup> The Freedom House Reports will rate the political rights and civil liberties enjoyed by citizens of a country or a region by a rating that ranges from 1 to 7. The rating 1 means 'the most free', whereas 7 represents 'the least free'. The Freedom Rating is the average between the Civil Liberties Rating and

into consideration that Hong Kong should be identified not as a democracy but a semi-authoritarian society instead, this thesis looks to the concept of policy venues and informal rules for studying semi-authoritarian Hong Kong.

In order to study policy punctuation and change in democratic societies, scholars of policy studies have used the concept of policy venues to identify the institutional sites for portraying problems and solutions, and hence reveal the influences of different actors on a certain policy.<sup>3</sup> This definition implies that identifying and studying policy venues could help reveal details such as the political actors and interests involved and the mechanisms for policy attention and agenda setting – all of which are crucial to understand the political dynamics of a society.<sup>4</sup> The concept of policy venues has been shown to be widely adoptable, even to semi-authoritarian Hong Kong. This thesis will complement existing scholarly works about Hong Kong by explaining the relations between various policy venues that have been identified.

Scholars who follow the institutional framework pay a lot of attention to the rules involved in different policy venues. Nevertheless, the actual rules that

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the Political Rights Rating.

For Hong Kong's ratings, see Arch Puddington and Jennifer Dunham, eds., *Freedom in the World 2017 – The Annual Survey of Political Rights and Civil Liberties* (Lanham: Rowman & Littlefield, 2018), 620

<sup>3</sup> Frank R. Baumgartner and Bryan D. Jones, *Agendas and Instability in American Politics*, 2nd ed. (Chicago: University of Chicago Press, 2010), 32.

<sup>4</sup> Arco Timmermans and Peter Scholten, "The Political Flow of Wisdom: Science Institutions as Policy Venues in the Netherlands", *Journal of European Public Policy*, Vol. 13 No. 7 (2006).

determine the policy outcome in a semi-authoritarian society could be hard to identify. Levitsky and Way argued that while informal institutions exist in all regimes, these institutions might be more important in undemocratic societies.<sup>5</sup> The reason is that in undemocratic societies, a huge disjuncture often exists between the formal rules which appear to be democratic, and the actual mechanisms of the authority which are not. Guillermo O'Donnell holds a similar view, in which he argued that informal institutions or rules "are often as important as their formal counterparts in structuring the 'rules of the game'".<sup>6</sup> As a semi-authoritarian society, the exact structure and effects of policy venues in Hong Kong could only be understood by paying attention to informal rules that are involved. This is an important task, because commonly found informal institutions, such as the use of clientelism, corruption, putsch threat, custom laws and civil disobedience<sup>7</sup>, have not been employed by Hong Kong labour. To this end, this work will also reveal and explain the informal rules that are involved in the major policy venues for making labour laws in Hong Kong.

This work consists of a total of 8 chapters. Following the introduction, the second chapter is a literature review. The third chapter explains how the current

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<sup>5</sup> Levitsky and Way, (2010), 27.

<sup>6</sup> As cited in Gretchen Helmke and Steven Levitsky, eds., *Informal Institutions & Democracy: Lessons from Latin America*, (Baltimore: Johns Hopkins University Press, 2006), 1.

<sup>7</sup> Hans-Joachim Lauth, "Informal Institutions and Democracy", *Democratization*, Vol. 7 No. 4 (2000).

research is conducted. Chapter 4 is arguably one of the more important chapters, as it explains the relations between major policy venues, and unearths the informal rules for making labour laws in Hong Kong. By revealing the actual mechanism and dynamics involved, it shows that in the policy sub-system of labour laws, problems and solutions are mainly portrayed in the Labour Advisory Board (LAB) – a body for tri-partite agreement. In semi-authoritarian Hong Kong, a new labour law is made only when policy actors follow the three informal rules, namely the ‘rule of mutual respect’, the ‘rule of minimal intervention’ and the ‘rule of balance of power’. To support the findings of the previous chapter, Chapter 5 will explain the details of two events. These two events have been repeatedly cited by the political opposition in Hong Kong to contrast the powerlessness of labour and the might of the government. The first is the repealing of the Employee’s Rights to Representation, Consultation and Collective Bargaining Ordinance in 1997, whereas the second will be that of the government’s successful resistance against the attempts to amend the length of statutory paternity leave in 2014. To follow, chapter 6 explains the durability of the LAB in making labour laws in Hong Kong. Before concluding the work, the seventh chapter will explain the implications of this research. With the experience of Hong Kong, it is hoped that the findings of this work could help contribute to scholarly works about policy venues and informal rules in

semi-authoritarian regimes.

## 2. Literature Review

In order to investigate the case of making labour laws in Hong Kong, scholarly works from the fields such as policy studies, labour history and industrial relations have been covered.

### On Semi-authoritarian Societies

Juan Linz famously argued that when studying about regimes that violate democratic norms, adjectives should be added to 'authoritarianism' rather than to 'democracy'<sup>8</sup>. Following Linz's call, political scientists have started to use more accurate terms to describe non-democratic regimes for some time. Olcott and Ottaway introduced the concept of Semi-Authoritarianism to describe regimes that adopt formal democratic institutions and provide a certain degree of political freedom to its citizens, but effectively prevents the transfer of power to a new political elite or organization<sup>9</sup>. In post-handover Hong Kong, citizens could enjoy large degree of civil liberties. Although formal democratic institutions such as elections still exist, political power is grasped in the hands of those who are loyal to the Chinese government. William Case therefore followed the definition of Olcott

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<sup>8</sup> Juan Linz, *Totalitarian and Authoritarian Regimes*, (Boulder: Lynne Rienner Publishers, 2000), 34.

<sup>9</sup> Martha Brill Olcott and Marina Ottaway, "The Challenge of Semi-Authoritarianism", *Carnegie Paper No. 7* (1999).

and Ottaway, and identified Hong Kong as a semi-authoritarian society.<sup>10</sup>

Levitsky and Way argued that in societies where meaningful democratic institutions exist, the authoritarian incumbent would face pressure and challenges. After studying 35 regimes which they defined as competitive-authoritarian, Levitsky and Way argued that the trajectory of these authoritarian regimes would depend on the country's linkage to the West, vulnerability to Western pressure to democratize (i.e. Western leverage) and the authoritarian incumbent's organizational strength. If Western linkage and Western leverage are low, but the incumbent could smoothly manage elite conflicts, then authoritarian rule would become stable.<sup>11</sup> To follow Levitsky and Way's discussion of an authoritarian incumbent's ability to deal with societal pressure, Brian C.H. Fong found that after the handover, the Hong Kong government had limited success in building ruling coalitions<sup>12</sup>. Fong noticed that business elites who have traditionally been seen by the Hong Kong government as trust-worthy allies have started to lose their close ties with the general public. Fong argued that the governing coalition with business elites has become narrowly based and handicapped. As a result, the government has found it increasingly difficult to accommodate or resist challenges from the civil society.

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<sup>10</sup> Case, (2008).

<sup>11</sup> Levitsky and Way, (2010).

<sup>12</sup> Brian C.H. Fong, "State-Society Conflicts Under Hong Kong's Hybrid Regime: Governing Coalition Building and Civil Society Challenges", *Asian Survey*, Vol. 53 No. 5 (2013).

Whilst Fong's work showed that scholarly works about semi-authoritarianism could shed light on the situation of Hong Kong and may help explain the occasional introduction of new labour laws in Hong Kong, the mechanisms for which business elites would resist or support a new law is far from obvious. After all, Fong's answer could not explain the near-unanimous supports from legislators of the functional constituency. This is where studies on policy venues could step in and help.

### **The Importance of Policy Venues**

To study agenda-setting in the United States, Baumgartner and Jones introduced the concept of policy venues to identify 'institutional locations where authoritative decisions are made concerning a given issue'<sup>13</sup>. Timmermans and Scholten added that a policy venue is where 'policies originate, obtain support, and are adopted as binding decisions'<sup>14</sup>. Adding to their original definition, Baumgartner and Jones found that interests could have different influences over a policy area, depending on the policy venue. To illustrate, they argued that for the pesticides industry, a committee for health would be a less favourable venue than a committee of agriculture.<sup>15</sup> Consequently, by identifying the policy venues in a certain policy

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<sup>13</sup> Baumgartner and Jones, (2010), 32.

<sup>14</sup> Timmermans and Scholten, (2006).

<sup>15</sup> Frank R. Baumgartner, Bryan D. Jones, and Jeffrey C. Talbert, "The Destruction of Issue Monopolies in Congress", *The American Political Science Review*, Vol. 87 No. 3 (1993).

area and also the relations between these venues, scholars could understand the roles of different interests, and how do they contribute to positive (policy change) or negative feedback (policy punctuation). In an attempt to use the punctuated equilibrium theory to study policy punctuation in Hong Kong, Chan and Lam showed that the concept of policy venues could even be applied to a semi-authoritarian society<sup>16</sup>. Chan and Lam argued that when comparing with democratic societies, the authoritarian elements of Hong Kong had caused a higher level of policy punctuation. That said, the major focus of Chan and Lam was on the government executive as an important venue to study policy punctuation and change in Hong Kong. Despite of their important theoretical finding, focusing only on the government executive might not be enough. Studies of democratic societies have shown that in many European countries, citizens are increasingly involved in decision making through means such as citizen panels and advisory boards<sup>17</sup>. So, focusing on the government alone would only be telling part of the story. This is the case even for non-democratic Hong Kong. Scholars such as Anthony B.L. Cheung have been aware of the growing significance of non-state actors in the policy process since the 1980s.<sup>18</sup> While the influences of these non-state actors may be

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<sup>16</sup> Lam and Chan, (2015).

<sup>17</sup> Jurian Edelenbos and Erik-Hans Klijn, "Managing Stakeholder Involvement in Decision Making: A Comparative Analysis of Six Interactive Processes in the Netherlands", *Journal of Public Administration Research and Theory*, Vol. 16 Issue 3 (2005).

<sup>18</sup> Anthony B.L. Cheung, "Hong Kong's Post-1997 Institutional Crisis: Problems of Governance and

lowered by the malformed democracy of Hong Kong, the importance of pressure groups, political parties and even advisory bodies are still on the rise.<sup>19</sup> This means that even when focusing on Hong Kong, there are a lot more policy venues other than the government executive that need to be identified. As a matter of fact, Chan and Lam were aware of the limits of their work, and they called for future researches to focus on specific institutional conditions.

While the concept of policy venues remains influential, scholars have started to find traditional understandings of policy venues problematic. Halligan suggested that policy advice could happen in locations outside or inside of the government, with the government having different levels of control over the actors. For instance, trade unions and the private sector in a democratic society would both be external to the government. Yet, if a private sector is on contract, then the government would have higher control over it, but lower control over the trade unions<sup>20</sup>.

Although Halligan's attention on 'government control' has received much appreciation, his work was seen as a classic example of the 'location-based' model to understand policy venues, meaning that venues that have a higher proximity with

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Institutional Incompatibility", *Journal of East Asian Studies*, Vol. 5 No. 1 (2005).

Also see Anthony B.L. Cheung, "Executive-Led Governance or Executive Power 'Hollowed-Out' - the Political Quagmire of Hong Kong", *Asian Journal of Political Science*, Vol. 15, No. 1 (2007).

<sup>19</sup> Peter T.Y. Cheung, "Civic Engagement in the Policy Process in Hong Kong: Change and Continuity", *Public Administration and Development* Vol. 31 No. 2 (2011).

<sup>20</sup> John Halligan, "Policy Advice and Public Service", in *Governance in a Changing Environment*, (Quebec: McGill-Queen's Press, 1995).

the decision-makers would have a higher influence.<sup>21</sup> Craft and Howlett questioned the 'location-based' model, because the influence of an actor could be affected by multiple factors, such as the actual content of the actor's advice to policy makers. At the same time, the practice of contrasting 'political' advices which are 'value-based' with 'technical' advices that are 'more objective', was questioned as well. Craft and Howlett pointed out that the personal and professional components could be combined in different ratios<sup>22</sup>, so that there may not be obvious 'political' or 'technical' advices. In other words, the technical/political distinction may have limited use in explaining how an actor could exercise greater influence on a policy area than the others. As a result of these critics, scholars have enriched the understanding of policy venues to cover even the media and the stock market<sup>23</sup>. Also, scholars have called for more focus on the exact content and influence of different actors in specific policy venues.<sup>24</sup> This study about Hong Kong labour law will follow these newest views and focus on unearthing the actual dynamics within different policy venues.

## **Informal Rules in Semi-authoritarian Societies**

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<sup>21</sup> Craft and Howlett, (2012)

<sup>22</sup> Ibid.

<sup>23</sup> Timmermans and Scholten, (2006).

<sup>24</sup> Craft and Howlett, (2012)

Applying the concept of policy venues to study non-democratic societies would be very different from studying democracies, mainly because informal institutions and informal rules in these societies tend to be more important. Helmke and Levitsky drew on the works of Douglass North and Guillermo O'Donnell to show that informal institutions or rules are often as important as formal institutions in creating the rules-in-use.<sup>25</sup> That said, scholars have realized that due to multiple reasons, it may not be easy to give definitions by drawing a clear line between informal institutions and informal rules. For instance, Sue Crawford and Elinor Ostrom saw rules, norms and shared strategies as 'three types of institutional statements'<sup>26</sup>, so that scholars that study informal institutions may find it necessary to clarify rather they are focusing on rules, norms, shared strategies, or something else.<sup>27</sup> Also, while some scholars tried to distinguish state institutions and rules as formal ones, and rules and organizations from the civil society as informal ones,<sup>28</sup> the 'state-societal distinction' was equally challenged.<sup>29</sup> Currently, the definition by Helmke and Levitsky is popularly adopted. The two authors defined informal

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<sup>25</sup> Helmke and Levitsky, (2006)

<sup>26</sup> Sue E.S. Crawford and Elinor Ostrom, "A Grammar of Institutions", *The American Political Science Review*, Vol. 89 No. 3 (1995).

<sup>27</sup> For instance, see Anna Grzymala-Busee, "The Best Laid Plans: The Impact of Informal Rules on Formal Institutions in Transitional Regimes", *Studies in Comparative International Development* Vol. 45 Issue 3 (2010), 312.

<sup>28</sup> Lily Lee Tsai, "Cadres, Temple and Lineage Institutions, and Governance in Rural China", *The China Journal* Vol. 48 (2002).

<sup>29</sup> Gretchen Helmke and Steven Levitsky, "Informal Institutions and Comparative Politics: A Research Agenda", *Perspectives on Politics*, Vol. 2 Issue 4 (2004).

institutions as *'socially shared rules, usually unwritten, that are created, communicated, and enforced outside of officially sanctioned channels'*.<sup>30</sup> This work will focus on discussing informal rules that are shared but not written.

Grzymala-Busse added a remark to this definition that although the informal rules are not enforced by legal recognition, the state and other formal actors would also use these informal institutions.<sup>31</sup> To study the significance of informal rules,

Grzymala-Busse used the examples of post-communist regimes to show that

**'informal institutions can replace, undermine, and reinforce formal institutions irrespective of the latter's strength'**<sup>32</sup>. Helmke and Levitsky agreed with

Grzymala-Busse and argued that **informal rules could 'reinforce, subvert, and sometimes even supersede formal rules, procedures, and organizations.'**<sup>33</sup>

Guillermo O'Donnell introduced the phrase of **'informally institutionalized'** to capture the complex cases where informal rules or institutions have become truly

important.<sup>34</sup> The old practice of 'dedazo' in Mexico, which allowed the sitting

president to choose his own successor, was raised by Helmke and Levitsky as an

example of 'informally institutionalized' rules.<sup>35</sup> As for the case of Hong Kong, Burns

and Li found that civil service values could be a kind of informal rules that may affect

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<sup>30</sup> Ibid.

<sup>31</sup> Grzymala-Busee, (2010), 312-313.

<sup>32</sup> Grzymala-Busee, (2010).

<sup>33</sup> Helmke and Levitsky, (2006)

<sup>34</sup> Guillermo O'Donnell, "Illusions About Consolidation", Journal of Democracy, Vol. 7 No. 2 (1996).

<sup>35</sup> Helmke and Levitsky, 2006

policy-making decisions of the government.<sup>36</sup> One of the examples that Burns and Li raised was how the civil service value of fiscal prudence added friction to the new education policy of small-class teaching. With their discussion of the statutory minimum wage in Hong Kong, Burns and Li also suggested that informal rules could exist in policy venues about labour issues in Hong Kong, as civil servants demonstrated their value adaptability and responded to the general public's pressure for change. Learning from these works, the current research will focus on informal rules that exist in Hong Kong. By illustrating the informal rules involved in making labour laws in Hong Kong, this work aims at contributing to studies about informal rules in semi-authoritarian regimes.

This work will study the concepts of policy venues and informal rules by learning how labour laws are made in Hong Kong. It is necessary to learn from scholarly works on labour relations and labour politics in Hong Kong and other parts of the world.

### **Labour Relations: General Views and the Case of Hong Kong**

Aidan Regan studied about social pacts in Ireland and he noticed that these pacts would require the joint-action between the government, employers and

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<sup>36</sup> John P. Burns and Wei Li, "The Impact of External Change on Civil Service Values in Post-Colonial Hong Kong", *The China Quarterly*, Vol. 222 (2015).

employer associations, and organized labour. In other words, a social pact is **a way to facilitate coordinated collective action among antagonistic organized interests.**<sup>37</sup>

Regan's study of Ireland shows that the policy venues for labour policies deserve to be studied carefully, for they could reveal the dynamics between two conflicting interests – the employers and the employees. Indeed, Ng Sek Hong described the labour-relations in Hong Kong as one of 'antagonistic co-operation', thereby showing that studying the policy venues for making labour laws in Hong Kong would be meaningful.<sup>38</sup> Regarding major policy venues for Hong Kong labour, H.A. Turner and his team noticed that in the late 1980s, the colonial government received huge resistance from legislators of the Labour constituency.<sup>39</sup> This confirmed that the LegCo has been an important policy venue for making labour laws, at least after the introduction of elections in 1985. Apart from the LegCo, the Labour Advisory Board (LAB) has also been emphasized in multiple works, thus showing that it is also an important policy venue that deserves more attention.<sup>40</sup> Although different works have identified the LegCo and the LAB as some of the important policy venues for formulating labour laws, most of these works are from a distant past. Joe England's

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<sup>37</sup> Aidan Regan, "Does Discourse Matter in the Formation and Consolidation of Social Pacts? Social Partnership and Labor Market Policy in Ireland," *Critical Policy Studies* Vol. 4 No.3 (2010).

<sup>38</sup> Sek Hong Ng, *The International Labour Organization and Hong Kong: A Background Brief With Notes of Comments*, (Hong Kong: New City Cultural Service, 1986), 63.

<sup>39</sup> H.A. Turner., Patricia Fosh and Sek Hong Ng, *Between Two Societies: Hong Kong Labour in Transition* (Hong Kong: Hong Kong University Press, 1991).

<sup>40</sup> Edward Kwan Yiu Chen, Sek Hong Ng and Tai Lok Lui, eds., *Labor Movements and Development of the Society: Experiences of Hong Kong*, (Hong Kong: Centre of Asian Studies of the University of Hong Kong, 1988).

classic, *Industrial Relations and Law in Hong Kong*, was written nearly 30 years ago.<sup>41</sup> H.A. Turner's equally famous work, *Between Two Societies: Hong Kong Labour in Transition*, was written back in 1991. While these works remain inspirational and influential, the situation in post-handover Hong Kong is rather unclear. An article by Fosh, Carver, Chow, Ng and Samuels in 2000 was one of the attempts to fill this gap. The research team learnt about 'trade unions and their relationship to power in Hong Kong' by conducting interviews with 50 significant figures of industrial relations in Hong Kong back in 1997. The research not only provides important findings that remain crucial today; it also provides inspirations to future researches by showing how interviews could help. Indeed, this 2000 article would be discussed again in the next chapter. Apart from this article from 2000, a work by Mathew Y.H. Wong in 2014 is another attempt to clarify the situation of Hong Kong labour after the handover.<sup>42</sup> Focusing on the introduction of statutory minimum wage in Hong Kong, Wong suggested the dynamics between multiple policy venues in Hong Kong. Wong gave a brief picture of the links between the Executive Council, the Provisional Minimum Wage Commission, the LAB and the LegCo. Whilst Wong's work was an inspiration which the author learnt a lot from, Wong did not discuss much about the informal rules involved in these policy venues.

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<sup>41</sup> Joe England, *Industrial Relations and Law in Hong Kong* (Oxford, Oxford University Press, 1989).

<sup>42</sup> Mathew Y.H. Wong, "The Politics of the Minimum Wage in Hong Kong", *Journal of Contemporary Asia* Vol.44 No. 4 (2014).

The reason for business elites to vote and support the statutory minimum wage with near-unanimous support remains to be answered. With former studies on policy venues such as the LegCo and the LAB, this work will explain the relations between multiple policy venues, the informal rules involved, and the dynamics involved in them.

### **Labour and Informal Rules**

To relate the issue of labour with the concept of informal rules, John Kenneth Galbraith's classic, *The New Industrial State*, has provided some insight<sup>43</sup>. Galbraith argued that modern economy has evolved from the early stages of industrialization. With changes of the economic structure, workers have ceased to be homogeneous and it has become impossible to pay and treat them alike. Consequently, trade unions have started to lose their more traditional role of demanding equal pay from employers, but have started to develop the roles of expressing the grievances of workers, helping to frame rules to justify the differences in welfare, and participating in the administration. Galbraith termed this kind of union a 'ministerial union', and it implies that informal rules such as 'the grievance machinery' could be developed between the employers and the employees. To add to this, Regan's study

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<sup>43</sup> John Kenneth Galbraith, *The New Industrial State* (Princeton: Princeton University Press, 2007), 322-336.

of Ireland showed that the creation of a set of 'common knowledge' or 'shared understanding' between all parties is one of the conditions to a stable and healthy mechanism for negotiation<sup>44</sup>. 'Common knowledge' or 'shared understanding' are examples of informal institutions or informal rules, and similar rules will also exist in Hong Kong. Put another way, employees in Hong Kong may find it beneficial to follow informal rules between themselves and the employers, so as to maximize their gains.

Learning from these scholarly works, the current research will sort out the relations between different policy venues, informal rules, and the exact dynamics involved, so as to bring new findings to the related literatures.

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<sup>44</sup> Regan, (2010).

### **3. Conducting the Research**

The qualitative method is employed to reveal the relations between policy venues, informal rules, and dynamics involved in making labour laws in semi-authoritarian Hong Kong.

#### **Research Design**

The research design of this thesis follows the logic of the institutional framework. To put it short, the fundamental logic of using institutional framework to study social pacts or progresses of labour laws is to understand how the distinctive responses of policy actors are shaped by past institutional arrangements, the costs and opportunities faced by different actors, and the existing tensions over certain issues. However, because Hong Kong is a semi-authoritarian society, focus must also be put on unearthing the informal rules involved. The strategy of this thesis is to explain the puzzling voting behaviours of the representatives of employers and the representatives of employees in two cases. The first case is the legislation for statutory paternity leave in 2014, in which the representatives of employers (i.e. mainly the legislators of the functional constituency) supported the 3-day leave, and the representatives of employees (i.e. the legislators of the Hong

Kong Federation of Trade Unions and the Federation of Hong Kong and Kowloon Labour Unions) did not support the 7-day amendment. The second case is the Provisional Legislative Council's repealing of the Employee's Rights to Representation, Consultation and Collective Bargaining Ordinance in 1997. In the latter case, legislators of the Hong Kong Federation of Trade Unions supported the decision to repeal a law that was believed to benefit labour. Elinor Ostrom once made an important reminder that when the actual behaviours of an actor contradict with the rules-in-form, then researchers should avoid quickly thinking that the actor is acting irrationally. Rather, one should be aware that this could actually mean that the rules-in-use are different from the rules-in-form.<sup>45</sup> With this in mind, one has a greater chance at understanding how labour laws are made by studying the debates over paternity leave and collective bargaining rights. In fact, by studying the two cases, this thesis will reveal the relations between different policy venues. It will also identify the informal rules involved and explain their effects on the voting behaviours of different policy actors. With so, it would show how labour laws are made in Hong Kong, and the two puzzling phenomena would cease to bring confusion.

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<sup>45</sup> Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action*, (Cambridge, UK: Cambridge University Press, 1990).

## Data Collection

With the focus on the voting behaviours of legislators, the debates in the legislature are of huge importance. Consequently, Hansards from 10 different LegCo meetings were carefully studied. Studying the Hansards could help identify the concerns, preferences and beliefs of different political actors. For instance, one could expect legislators from the functional constituency to express their reasons for supporting or rejecting a certain labour law. Similarly, it is expected that legislators who represent the Labour constituency would talk more about their rationale and concerns if they have to make political compromises. As to why focus on the 10 Hansards, there are basically two reasons. First, the Hong Kong government tried to put pressure on legislators by claiming to withdraw the Government Bill twice. The government did actually withdraw the Bill the first time in 1994, but the government did not do so the second time, in 2014. Even though democracy in Hong Kong is rather fragile, the government's plan to withdraw a certain bill could be seen by the public as a humiliation to the legislature, and may cause huge societal pressure on the executive. Consequently, studying the related Hansards and understand the government's reasons for taking such risk would be crucial for discovering the informal rules and dynamics involved. Second, the Hansards covered 3 important labour issues, namely the debates over statutory minimum wage,

collective bargaining and statutory paternity leave. While the latter two are obviously the focus of this work, studying what happened to statutory minimum wage could also help by allowing the author to fully make sense of the work by Mathew Wong in 2014. In brief, these 10 Hansards have a special place in understanding industrial relations in Hong Kong. They will be keys to identify the policy venues and causal mechanisms in making labour laws.

**Table 1 (LegCo Hansards Studied)**

	<b>Date</b>	<b>Major Debate Topic</b>	<b>Significance</b>
1	6 <sup>th</sup> June, 1994	Severance Payment / Long-service Payment	Lau Chin Shek attempted to 'by-pass' the LAB but failed
2	14 <sup>th</sup> December, 1994	Severance Payment / Long-service Payment	For the first time, the government withdrew a Bill because it was successfully amended without the agreement of the LAB
3	10 <sup>th</sup> April, 1997	Collective Bargaining Rights	Lee Cheuk Yan introduced his Bill and system design
4	26 <sup>th</sup> June, 1997	Collective Bargaining Rights	Lee Cheuk Yan's Bill was passed; HKFTU explained their reasons for not supporting
5	29 <sup>th</sup> October, 1997	Collective Bargaining Rights	Lee Cheuk Yan's Bill was repealed; HKFTU explained their stance
6	4 <sup>th</sup> February, 2009	Collective Bargaining Rights	HKFTU introduced their '3-layer model' for effective Collective Bargaining in Hong Kong
7	17 <sup>th</sup> July, 2010	Statutory Minimum Wage	Third Reading and Successful Legislation for statutory minimum wage
8	5 <sup>th</sup> June, 2013	Collective Bargaining Rights	HKFTU supported Lee Cheuk Yan's Bill which focused on the principles of collective bargaining
9	17 <sup>th</sup> December, 2014	Statutory Paternity Leave	Legislators debated over the relations between the LAB and the LegCo
10	18 <sup>th</sup> December, 2014	Statutory Paternity Leave	Voting Results over the amendments; Leung Kai Cheung abstained from his own amendment

Another important source of material is the official publications of the Hong Kong Federation of Trade Unions (HKFTU) - the largest labour organization in Hong Kong.<sup>46</sup> The author studied books published by, and documents of the HKFTU. Still, the most important focus was on the *FTU Press*, the official periodical of the HKFTU since 1981. To carry the current research, except for the issues from August 1988 to December 1989 which could not be accessed, all issues of the *FTU Press* from January 1981 to November/December 2017 have been studied.<sup>47</sup> For the amount of publications by the HKFTU during this period is unrivalled by any other labour organizations or employers' organizations in Hong Kong, studying these publications becomes very important. The decision to focus on the HKFTU was also because it has arguably always been the most influential labour organization in Hong Kong. After its establishment in 1948, the HKFTU has always been the largest trade union federation in Hong Kong. Since the HKFTU started participating in LAB elections in 1981, it has always has a seat in the LAB. Also, since the Labour functional

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<sup>46</sup> The colonial government of Hong Kong prohibited General Unions or trade union federations that are involved in multiple industries to register as a trade union. Therefore, when it was established in 1948, the HKFTU could only register as a society.

Hoping to show this historical detail, the HKFTU and other trade union federations such as the Hong Kong Confederation of Trade Unions and the Federation of Hong Kong and Kowloon Labour Unions would be described as labour organizations or trade union federations instead of unions throughout the work.

See Joe England, (1989).

<sup>47</sup> It is possible that the HKFTU did not provide copies of the FTU Press published during this time because their sympathy toward the Democratic Movement in China back then was now seen as problematic.

See Jia Tun Xu, *Xu Jia Tun's Memoirs of Hong Kong*, (Hong Kong: Linking Publishing: 1993).

constituency was introduced in 1985, the HKFTU could always win at least one of the seats. With the HKFTU's heavy involvement in different policy venues as a representative of labour, the publications of the HKFTU helped reveal the relations between different policy venues, and the informal rules that are involved in making labour laws.

The third and final source of data came from interviews with representatives of employers and employees in Hong Kong. These interviews are equally significant in revealing the relations between policy venues, and informal rules related to the making of labour laws in Hong Kong. Back in 2000, Fosh led a team of scholars to publish a research about trade unions in Hong Kong. The research was based on 50 interviews with key figures of industrial relations in Hong Kong, and the findings were very important. The interviewees of Fosh's team included for instance, representatives of employers, representatives of employees, and government officials from the Labour Department. By interviewing key figures of labour relations in Hong Kong, the research team was able to gain in-depth knowledge of the situation of Hong Kong. Learning from this previous research, the author of this thesis conducted 4 interviews in 2018. Among the 4 interviewees, 3 of them are members of the HKFTU, while the final interviewee is a member of the Liberty Party. The interviews allowed the author to collect information that is otherwise hard to

find, such as the organizational infrastructure of the HKFTU and how the members of the Liberty Party behave. The interviews also provided the author with chances to verify and cross-check with findings that were gathered from different sources. Each of the interview sessions lasted from 40 minutes to 120 minutes.

The 3 interviewees from the HKFTU have all worked in trade unions that are affiliated to the HKFTU. All of them have the experience of being a LegCo member, and all 3 interviewees have served as members of the Labour functional constituency. One of the interviewees was a representative of labour in the Labour Advisory Board for 10 years. Interviews with the three representatives of employees covered topics such as the organizational structure of the HKFTU, the effects of increasing political participation on the HKFTU, the work of the Labour Advisory Board, the relations between the LAB and the LegCo, and the relations between the HKFTU and other 'pro-establishment' political organizations. **Appendix I** is a sample of the list of questions asked during the three interviews with members of the HKFTU.

Apart from the representatives of employees, a representative of employers was also interviewed by the author. This representative of employers has been a member of the Liberal Party for more than a decade. While the interviewee from the Liberty Party is not a representative of employers in the LAB, he has been a

legislator of the functional constituency since 2000. In recent years, he was also invited to the Executive Council. This interviewee was asked about multiple issues. These questions included the LAB and its relations with the LegCo, the effects of new labour laws on employers, employers and their concerns over a 'populist' political atmosphere, and the view of employers on introducing laws at the territory level. The interview questions for the interviewee of the Liberty Party have been included in **Appendix II**.

## **Analysing Data**

The tool of process tracing was used to analyse the data collected. Collier pointed out that by carefully describing phenomena that are related to the research questions, investigators could identify changes and mechanisms of causation<sup>48</sup>. In order to identify the causal mechanisms, the sequences of different variables have been treated with care. The speeches and actions of different policy actors were also closely studied. Multiple examples will be covered in the following paragraphs to support the findings of this thesis.

## **Limitations of the Current Research**

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<sup>48</sup> David Collier, "Understanding Process Tracing", *Political Science and Politics* Vol. 44 No. 4 (2011).

Although the author has faith in the main arguments and findings of this thesis, the work does suffer some limitations. These limitations should be worked on in the future.

The repeatedly-mentioned research by Fosh and her team was conducted by interviewing 50 interviewees of different backgrounds. Still, Fosh and her team pointed out that their sample size was small. To contrast with Fosh's five-man team, the sample size of this work is even smaller. Also, while Fosh and her team interviewed multiple representatives of employers and members of different trade unions, the author of this work could only interview three members of the HKFTU and a legislator of the Liberty Party. The limited amount of interviews conducted was partially caused by the lack of time and man-power. This is especially the case for the author only being able to interview members of the HKFTU. This however, is not the only reason for the limited number of interviews conducted. For the representatives of employers, the author invited all representatives of employers in the LAB to take interviews. In the end, the author only received replies from the Federation of Hong Kong Industries (FHKI) and the Chinese General Chamber of Commerce (CGCC). Regretfully, neither the representatives of the CGCC nor the FHKI were able to meet the author. To ensure that the interviews would still reflect the opinions of employers, the author invited a well-experienced legislator of the

functional constituency to be an interviewee.

Although these weaknesses must be pointed out, the author believes that the arguments and findings of this thesis are still valid. The major reason is that interviews are not the most important source of data for this work. With more focus on analysing LegCo Hansards and publications of the HKFTU, the answers of the 4 interviewees were mainly used to support or verify the findings that are generated elsewhere. Also, one of the interviewed HKFTU members has been openly known for being more critical towards the current leadership of the HKFTU. This helped lower the one-sidedness of the answers from the representatives of employees.

Now, the findings of this research will be explained in detail.



## **4. Policy Venues and Informal Rules for Making Labour Laws in Hong Kong**

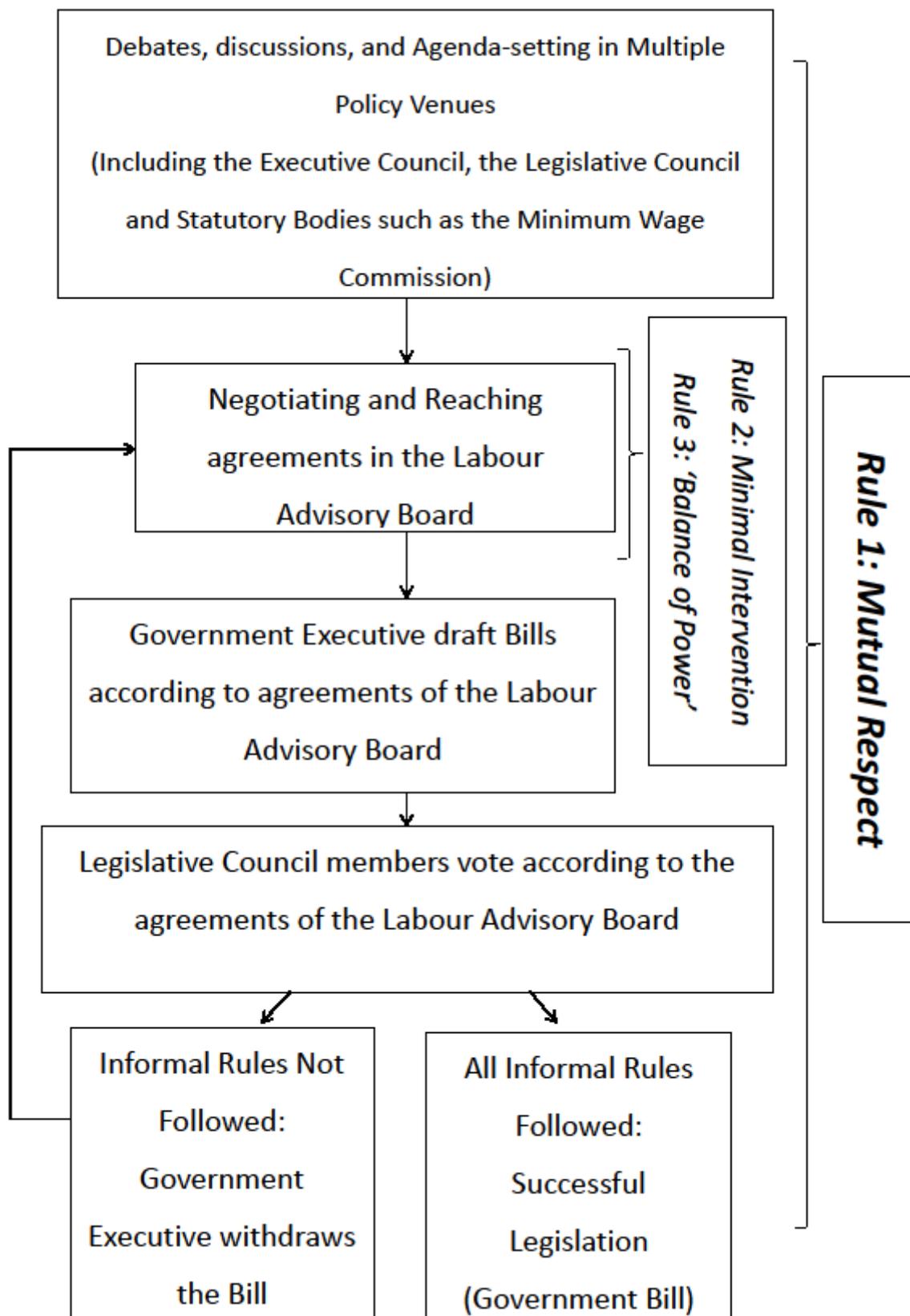
Multiple policy venues that are related to making labour laws in post-handover Hong Kong have already been identified by different scholars. These policy venues include the Executive Council, the Legislative Council, different statutory bodies such as the Provisional Minimum Wage Commission, and also the non-statutory body, the Labour Advisory Board (LAB)<sup>49</sup>. This thesis argues that to make a new labour law in Hong Kong, policy actors have to follow three informal rules. A law will not be passed unless agreements or consensuses are reached by the representatives of employers and employees in the LAB, and that all three rules are followed by different policy actors. The author names these rules the ‘rule of mutual respect’, the ‘rule of minimal intervention’ and the ‘rule of balance of power’. Graph 1 below is a graphical illustration of how labour laws are made in Hong Kong. This chapter will focus on making sense of Graph 1 by explaining the relations between different major policy venues, the informal rules and the political dynamics involved.

### **Graph 1 (A Graphical Illustration of How Labour Laws Are Made in Hong Kong)**

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<sup>49</sup> From 1997 to 2002, Tam Yiu Chung, who was the Vice Chairman of the HKFTU at that time, was invited to join the Executive Council by the Chief Executive. Later, Cheng Yiu Tong, the President of the HKFTU from 2000 to 2012, was also invited to join the Executive Council and he served as a member from 2002 to 2017.

See Hong Kong Federation of Trade Union, *Historical Writings for the 65<sup>th</sup> Anniversary of the Hong Kong Federation of Trade Unions* (Hong Kong: Zhonghua Book Company, 2013)



The Relations Between Different Policy Venues

Many scholars studied about the progresses in labour laws of post-handover Hong Kong. The successful legislation of statutory minimum wage in 2010 received particularly much attention. Yet, most of these works focused on explaining the role of a particular policy venue instead of revealing the relations between different policy venues. On the foundation laid forward by these previous researches, this thesis will explain how different policy venues are connected.

The successful introduction of statutory minimum wage received much attention from scholars. The case of minimum wage in Hong Kong will therefore be taken as a starting point of this thesis. In 2014, Wong gave a detailed record of the politics of minimum wage in Hong Kong. To begin with, Wong pointed out that minimum wage was in no way a new topic in Hong Kong, but it only started to catch the public's eyes after the media reported the life of an old toilet cleaner in 2001. According to Wong, the hourly wage of the toilet cleaner was as low as HK\$7 and he had no paid-leave. Because his wages were so low, the old man had to live in the toilet even though he worked 14 hours per day. After the report went public, many felt sorry for the old man and started to reconsider the need for introducing some kind of wage protection scheme. In the wake of increasing public concern, then Chief Executive (C.E.) Donald Tsang also started to study the problem of poverty.

While the C.E. could have easily suggested new policies under the ‘executive-led’ system of Hong Kong, Tsang started by ordering the LAB to study about ways to alleviate poverty. The LAB reported their findings to the C.E. in 2006. The LAB did not reach any agreements over the introduction of a statutory minimum wage. Instead, the LAB suggested the C.E. to launch the Wage Protection Movement to fight poverty in two industries that had the lowest wages. By design, the Wage Protection Movement suggested providers of cleaning service and security service to set the wage at no lower than the average monthly salary of workers that belonged to the two sectors, as measured by the Quarterly Report of Wage and Payroll Statistics. Despite the government efforts to raise the wages, the Wage Protection Movement was destined to achieve little because of its voluntarist nature. In late 2007, the HKFTU argued that the Wage Protection Movement was a failure because only slightly more than 1,000 companies agreed to join, while Hong Kong had around 63,000 companies at that time. On top of that, whilst Hong Kong had around 187,000 employees working in the cleaning and security sector, the Wage Protection Movement covered only around 30% of them.<sup>50</sup> Facing immense public pressure that continued to grow, the C.E. promised to push forward a minimum wage law should the Movement fails. Hence, after the failure of the Wage

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<sup>50</sup> Hong Kong Federation of Trade Unions, *FTU Press*, (Hong Kong: Hong Kong Federation of Trade Unions, May 2007).

Protection Movement, the government and the LAB started to work out a law in 2008. In theory, the LAB could not discuss about wages and working conditions. Therefore, C.E. Donald Tsang created the Provisional Minimum Wage Commission in 2009 to prepare for the legislation of statutory minimum wage. The Provisional Minimum Wage Commission was a statutory body and one would expect it to be more important than the non-statutory LAB in bringing about the minimum wage laws. However, what happened was very different to this expected outcome. As pointed out by Wong, legislation for a statutory wage became unavoidable after the Provisional Minimum Wage Commission introduced the Minimum Wage Bill to the LegCo. The focus of all debates was therefore shifted to the exact wage level under the new law. However, even after the Bill was passed, there were still no consensus between the representatives of employers and employees over the first wage level. While labour organizations tried to demand for \$33 per hour, representatives of employers claimed that it should be a lot lower. After heated debates, the representatives of employers agreed to go with \$28 per hour, but this plan would require representatives of employees to agree with it as well. Faced with the difficult situation of compromising at \$28 per hour or being defiant and continue with the \$33 demand, all 3 legislators from the Labour Functional Constituency and all 6 representatives of employees in the LAB organized a meeting to consult the

opinions of employees from different sectors. Most of the employees present were aware that around 310,000 employees in Hong Kong earned less than \$28 per hour back then. These people could certainly benefit under the new law. Consequently, many employees agreed that the \$28 level should be seen as a 'substantive achievement'. Fearing that not supporting the \$28 proposal would only postpone the introduction of a statutory minimum wage indefinitely, 87.4% of the employees present voted to agree to compromise.<sup>51</sup> Based on the voting results, the representatives of employees agreed with the \$28 proposal in the LAB. Ultimately, the Minimum Wage Ordinance was successfully enacted only after the LAB agreed with setting the first minimum wage level at \$28 per hour.

By looking back at the process of legislating for statutory minimum wage, it could be seen that the policy venues involved in making labour laws are actually related in a special way. Post-handover Hong Kong is an 'executive-led' society. Before being sent to the Legislative Council, bills have to be approved by the Chief Executive and the Executive Council. Hence, Cheung described the Executive Council as 'a kind of government cabinet'. In theory, the Executive Council and even the Legislative Council could respond rather quickly to public opinions and social pressure. That said, when labour policies are concerned, the actual response from

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<sup>51</sup> Hong Kong Federation of Trade Unions, *FTU Press*, (Hong Kong: Hong Kong Federation of Trade Unions, February 2011).

the Executive Council or the Legislative Council would start with seeking advice and support from the LAB. After the handover, “The Labour Advisory Board (LAB) is a non-statutory body to advise the Commissioner for Labour on labour matters.”<sup>52</sup>

In 1986, the LAB published its first-ever official report. The report claimed that the LAB played an active part in the formulation of labour policies including the introduction of long service payment provision, and it had given advice on **all major labour legislation** in Hong Kong to the Commissioner for Labour.<sup>53</sup> The report also described the LAB as a body to achieve **tri-partite agreement** between the government, employers and employees<sup>54</sup>. As shown in the process of legislation of statutory minimum wage, policy venues in the sub-system of labour laws are connected in the way that was depicted by Graph 1. While policy actors could set the agenda and go through debates over labour issues in policy venues such as the LegCo and the ExCo, more concrete policy goals and designs will only be achieved by consulting the LAB. This is precisely what happened when C.E. Donald Tsang ordered the LAB to study about ways to fight poverty. After that, if there are needs for tackling problems through legislation, the government executive would introduce a Bill to the Legislative Council. The Government Bill will be based on the suggestions

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<sup>52</sup> Labour Department, “*About Us: Advisory & Statutory Boards And International Labour Affairs.*” Labour Department.

[http://www.labour.gov.hk/eng/rbo/content1\\_1.htm](http://www.labour.gov.hk/eng/rbo/content1_1.htm) (Accessed April 1, 2018).

<sup>53</sup> Labour Advisory Board, (1986).

<sup>54</sup> Ibid.

of, or the agreements reached in the LAB. This is not only reflected by the interactions between the LAB, the Provisional Minimum Wage Commission and the LegCo. In fact, it is also reflected by the fact that the LAB's agreement over the \$28 wage level was what allowed the Minimum Wage Ordinance to be enacted on schedule.

In short, different policy venues in the sub-system of labour laws are actually inter-related. Despite being a non-statutory body, the LAB has been particularly important in making labour laws. It connects with the Legislative Council, the Executive Council, and other statutory bodies. As a matter of fact, the LAB has an important role as an advisor over labour issues. It is also a crucial body for achieving tri-partite agreements in Hong Kong.

### **The Informal 'Rule of Mutual Respect'**

When one compares the making of labour laws in Hong Kong with other democratic societies, the relations between the LAB and other policy venues are rather 'unconventional'. While the reasons for this will be explained in a later chapter, one must first understand the rules which policy actors have to follow. Recalling the arguments by scholars like Levitsky and Way, researchers must put more focus on informal rules when studying about semi-authoritarian societies.

To identify the actual 'rules-in-use' for making new labour laws in 'executive-led' semi-authoritarian Hong Kong, the three informal rules that need to be followed by policy actors will now be explained.

Above all, the '**rule of mutual respect**' is the most important informal rule for making labour laws in Hong Kong. The 'rule of mutual respect' means that in post-handover Hong Kong, a labour law should not be passed before a tri-partite agreement is reached between the employers, the employees, and the government. In other words, legislators should only support Bills and amendments that have been agreed by the LAB. By a similar logic, this rule also means that legislators should not attempt to amend Government Bills without the consensus of the LAB.

The 'rule of mutual respect' could be found by looking at the Hong Kong government's two attempts to withdraw Bills from the LegCo. In the history of colonial Hong Kong and post-handover Hong Kong, there have been two instances which the government attempted to withdraw a Bill from the LegCo. The first attempt happened in 1994. In the end, the Secretary for Education and Manpower did actually withdraw a Bill that was related to long-service payments. The second attempt happened in 2014, when the Secretary for Labour and Welfare claimed that he might withdraw the Government Bill about statutory paternity leave. While the 2014 case will be explained in greater detail in a later chapter, the 1994 case will

now be explained. The 'rule of mutual respect' will become clear once the government's reasons for taking the political risks of withdrawing the Bills are clarified.

As a former colony, industrial relation in Hong Kong is heavily influenced by the British tradition of Voluntarism. The core spirit of Voluntarism in industrial relation is that instead of actively stepping in and solving conflicts by making laws, the government should act as an 'arbitrator' and facilitate mutual-agreement between the employers and the employees. It follows that labour laws should only be made when terms are agreed by all parties, or when a law is necessary but mutual-agreement appear to be impossible. Also, following the principle of Voluntarism, the government would not actively propose to pay for changes. Instead, the employers are often the ones that have to pay for the improvements of labour's wellbeing. The Voluntarist understanding of industrial relation is closely related to the first 'rule of mutual respect'. The fact is that in both occasions, the government attempted to withdraw Bills from the LegCo under the influence of Voluntarism.

In 1993, the LAB started to discuss possible reforms in regard to severance payment and long-service payment in Hong Kong. After negotiating and making compromises back and forth in the LAB, the representatives of employers and the government agreed to refine the way to measure an employee's length of service. In

exchange, the representatives of employees were asked to support the old restriction that the total amount of severance payment and long-service payment should not exceed the sum of the annual income of the employee, or HK\$180,000.<sup>55</sup>

However, when the LegCo finally discussed the issue of severance payment and long-service payment in June of 1994, legislator Lau Chin Shek attempted to introduce an amendment that was not agreed by the LAB beforehand. Lau's first amendment attempt was unsuccessful, as the proposed amendment to the Employment Ordinance failed by one vote.<sup>56</sup> The government withdrew the Bill and allowed the LAB to further debate the issue. Later in December of 1994, when the LegCo was debating about a better way to improve the laws regarding severance payment and long-service payment, Lau Chin Shek suggested another similar amendment and this time it was successfully passed. Nevertheless, the Secretary for Education and Manpower argued that Lau's amendment was a deviation from the LAB', and this act could mean a huge blow to the mutual-trust between the employers and the employees. To stop Lau's amendment, the Secretary withdrew his Bill. As the founding President of the Hong Kong Confederation of Trade Unions (HKCTU) and also a member of the 'pro-democracy' United Democrats of Hong Kong,

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<sup>55</sup> The agreement was said to be made in a LAB meeting in April, 1993. Hong Kong Federation of Trade Unions, *FTU Press*, (Hong Kong: Hong Kong Federation of Trade Unions, September 1994).

<sup>56</sup> Legislative Council of Hong Kong, *Hansard of the Legislative Council*, 6<sup>th</sup> June 1994 (1994).

Lau failed to improve the conditions of labour at a faster pace. Frustrated by the attitude of the government and 'to take responsibility' for the postponed introduction of the new law, Lau resigned from the LegCo.

There is perhaps no better way to explain the logic behind the 'rule of mutual respect' than to quote the Secretary for Education and Manpower.

*"The LAB is the Government's main advisory body on labour issues. It is a body where employers and employees elect their own representatives to deliberate on issues concerning labour policy and legislative proposals. The LAB has an excellent record and has made significant improvements over the years to labour welfare at a pace and in a manner acceptable to both employers and employees. Every set of LAB's proposal represents the outcome of patient understanding and careful deliberations. We must not seek, therefore, to overturn these proposals lightly and abruptly. To do so would put our labour relations at risk and would damage the LAB's credibility as a successful mechanism for striking a reasonable balance between employers' and employees' interests, a system which has served Hong Kong so well over the years. **Mr President, because of this fundamental principle I withdraw the Bill.**"<sup>57</sup>*

This speech by the Secretary for Education and Manpower explained the

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<sup>57</sup> Leung Man Kin, Speech to the Legislative Council in *Hansard of the Legislative Council*, 14th December 1994 (1994).

government's decision to withdraw a Bill from the LegCo **for the first time in the history of Hong Kong**. The fundamental principle which the Secretary mentioned was never written into the law. While legislators may still try to amend the bills in the LegCo without the consensus of the LAB, the 'split-voting system' would be the first obstacle that these legislators must get over. On top of that, even if any of these amendments were passed, as a final measure, the government could always 'enforce' the 'rule of mutual respect' by withdrawing the bill.

To add more to the 'rule of mutual respect', it is worth pointing out that policy actors are expected to strictly follow this rule even outside of the institutionalized policy venues. This was revealed by one of the interviewees from the HKFTU, when the author asked him about the relations between the representatives of employers and employees in the LAB. The interviewee mentioned that before the legislation of statutory minimum wage, some businesses would pay for employees' meal-break while some businesses would not. However, it was unclear how meal hours should be treated under a new minimum wage law. To solve the problem of 'meal-break payment', the government was keen on 'resorting to tradition'. Hence, the government suggested companies that had the tradition of paying should continue, while companies that had not should not be forced to do so. According to the interviewee, members of the LAB agreed to remain silent over the government's

strategy. However, in late 2010, it was reported that Café de Coral, a listed company and a catering service provider, stopped paying for the meal hours of its employees. This act enraged members of the public because Chan Yue Kwong, the Chairman of Café de Coral, was a member of the Provisional Minimum Wage Commission.<sup>58</sup> The public was persuaded that the new policy of Café de Coral was a sign of corporate greed and the lack of sincerity to compromise and negotiate. The HKCTU was particularly outspoken about the company's commercial decision. The interviewee claimed that Chan Yuen Han, a legislator of the HKFTU, was also enraged by the new policy of Café de Coral and she joined the HKCTU to voice their discontent. Yet, Chan Yuen Han's actions were seen by representatives of employers as a violation of the LAB agreement. The interviewee suggested that the representatives of employers were less willing to compromise with the HKFTU in the LAB after this event. The interviewee's observation suggests that the 'rule of mutual respect' is not only applicable to the representatives of the LAB inside just one venue. Rather, the rule also applies to the interests that these representatives represent, and could be **binding** inside and outside of multiple policy venues. The fundamental 'rule of mutual respect' is a crucial element to successful negotiations, and it is widely followed in all the major policy venues related to making labour laws in Hong Kong.

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<sup>58</sup> Mathew Y.H. Wong, (2014)

## **The Informal ‘Rule of Minimal Intervention’**

The second informal rule of the policy venues for labour legislation in Hong Kong is the **‘rule of minimal intervention’**. Under this rule, labour laws should be avoided unless every other attempt has failed. Also, legislation should learn from past experiences and be kept at minimum. As mentioned, the idea of Voluntarism plays an important role in the industrial relation of Hong Kong. Both the employers and the government are particularly satisfied with making legislation at the territory level the final option unless all other voluntarist efforts have failed. That said, Voluntarism does not only mean that legislation should preferably be substituted by voluntarist actions. It also implies the idea that if new laws are necessary, then what has worked before should be included in, or considered by the new laws. Here again, studies about the legislation for statutory minimum wage helped reveal this rule.

Regarding the case of statutory minimum wage, the initial responses of the government and the LAB was to tackle poverty through voluntarist actions of the employers. The LAB’s 2006 report to the C.E., which suggested the Wage Protection Movement over legislating for statutory minimum wage, is the first sign of this rule. Although a minimum wage law was set to be introduced in 2008, the government was particularly cautious under the influence of Voluntarism. In creating the new

law, the government seldom laid out principles to be followed actively. Instead, the government tried to avoid giving clear instructions and suggestions over different difficulties. The most obvious problem was none other than that of 'meal-break payment'. To 'solve' the problem regarding meal-break, the government finally came up with the idea of 'resorting to tradition'. Even with the new minimum wage laws, employers could still choose to provide 'meal-break payment' or not. As a matter of fact, until this day, the minimum wage laws never truly answered the debates about 'meal-break payment'. Doubtlessly, the government's 'answer' to 'meal-break payment' could be denounced as a resort to trickery. Nevertheless, the LAB agreed with the government's way of 'solving the problem' back then, and it also remained relatively silent about the issue all through the years. This is to say that however disappointing one may find it to be, the government's decision to resort to voluntarist actions and traditional practices of employers is actually approved by the LAB. This is why the author argues that there is the 'rule of minimal intervention' in Hong Kong. Voluntarist agreements between the employers and the employees are seen as more ideal than legislation at the territory level. Even if legislation is necessary, the new laws should be made cautiously by learning from traditional practices and be kept at a minimum.

## The Informal 'Rule of Balance of Power'

The third informal rule of the policy venues for labour legislation is that a balance among different labour organizations should be secured to avoid causing political disturbances in Hong Kong. The author names this the 'Rule of Balance of Power'. Historically speaking, Hong Kong labour has been highly divided. Before the mid-1980s, labour was mostly divided between the pro-Communist HKFTU and the pro-Kuomintang Hong Kong and Kowloon Trades Union Council (HKTUC)<sup>59</sup>. The HKTUC started to rapidly lose support after the Sino-British Joint Declaration of 1984, but a new independent union movement occurred during the same time. The Federation of Hong Kong and Kowloon Labour Unions (FLU) was established in 1984. Although the FLU claims to be patriotic and supports the handover of Hong Kong, it was not close to the PRC like the HKFTU.<sup>60</sup> The FLU therefore provided a different option for labour. Another example of new, independent unions was the HKCTU that was established in 1990. The HKCTU had close ties with the Hong Kong Christian Industrial Committee and it has often showed a more defiant attitude over labour

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<sup>59</sup> Yick Chau, *A History of the Labour Movement in Hong Kong*, (Hong Kong: Nice News Publishing, 2009a). Also see Yick Chau, *History of the Struggles of the Hong Kong Leftists*, 4<sup>th</sup> ed, (Hong Kong: Nice News Publishing, 2009b).

<sup>60</sup> For the ideology and political beliefs of the FLU, see The Federation of Hong Kong and Kowloon Labour Unions, *Special Issue to Celebrate the 25<sup>th</sup> Anniversary of the FLU*, (Hong Kong: The Federation of Hong Kong and Kowloon Labour Unions, 2009). Also see The Federation of Hong Kong and Kowloon Labour Unions, *Special Issue to Celebrate the 30<sup>th</sup> Anniversary of the FLU*, (Hong Kong: The Federation of Hong Kong and Kowloon Labour Unions, 2015).

issues.<sup>61</sup> Chau Yick, an independent researcher of labour history of Hong Kong, suggested that after the establishment of the HKCTU, Hong Kong labour has been divided into 4 big groups: the HKFTU (pro-PRC), the HKTUC (pro-ROC), the FLU (patriotic but no close ties with the PRC) and that of the HKCTU (emphasizes on the value of democracy and questions the rule of the PRC).<sup>62</sup> When studying the elections of the LAB, Chau Yick noticed that there was a special pattern for the representatives of employees.<sup>63</sup> In the past, the HKFTU always boycotted the colonial government's LAB elections. The HKFTU's boycott ended in 1981, with Poon Tsz Ching, a member of the Hong Kong and Kowloon Lithographic Workers Union, winning a seat in the LAB election on behalf of the HKFTU. In the same election, Szeto Wah of the Hong Kong Professional Teachers' Union also won one of the seats. With the rising influence of the HKFTU and independent unions in the LAB election, the HKTUC failed to win any of the seats through election. In the end, the Commissioner for Labour appointed two HKTUC representatives to join the LAB. Later in 1985, when the HKTUC was able to win back one seat through election, the Commissioner for Labour appointed Cheung Woot Lun from the Hong Kong and Kowloon Cement and Concrete Construction Trade Workers Union, a HKFTU affiliate, to join the LAB. Chau argued that the acts of the Commissioner suggested that since

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<sup>61</sup> Chau, (2009a). Chau, (2009b).

<sup>62</sup> Chau, (2009a), 508.

<sup>63</sup> Chau, (2009a).

the 1980s, different labour organizations have agreed to a 'balance of power' in the LAB. The basic agreement was to have 2 representatives of civil servants, 2 representatives of the Left (i.e. HKFTU affiliates), 1 representative of the Right (i.e. HKTUC affiliates), and 1 representative of independent unions (usually from a FLU affiliate). After the handover, independent unions have 'taken' one seat from the Left, but this kind of balance has more or less remained unchanged. This kind of effort to balance the influences of different labour organizations was one of the reasons why after 1981, the HKFTU could quickly work peacefully with its long-time rival, the HKTUC. Table 3 shows the background of all representatives of employees in the LAB since 1997. By revealing a rather stable pattern could still be found after the handover, it shows that Chau's observation is extremely important. The continuation of this pattern suggests that most labour organizations have agreed to co-exist and co-operate in the LAB by respecting their 'balance of power'.

**Table 3 (Representatives of Employees in the Labour Advisory Board Since 1997)**

<b>Year</b>	<b>Elected by Registered Trade Unions</b>					<b>Appointed</b>
97-98	Leung Fu Wah (HKFTU)	Leung Tsz Leung (Indt.)	Poon Siu Ping (FLU)	Cheung Kwok Piu (C.S.)	Leung Chou Ting (C.S.)	Cheung Woot Lun (HKFTU)
99-00	Leung Fu Wah (HKFTU)	Leung Soot Fong (Indt.)	Poon Siu Ping (FLU)	Cheung Kwok Piu (C.S.)	Leung Chou Ting (C.S.)	Cheung Woot Lun (HKFTU)
						Cheung Bak Zi (Indt.)
01-02	Wong Kwok Kin (HKFTU)	Wong Siu Han (HKTUC)	Poon Siu Ping (FLU)	Cheung Kwok Piu (C.S.)	Leung Chou Ting (C.S.)	Cheung Bak Zi (Indt.)
03-04	Wong Kwok Kin (HKFTU)	Wong Siu Han (HKTUC)	Poon Siu Ping (FLU)	Cheung Kwok Piu (C.S.)	Leung Chou Ting (C.S.)	Cheung Bak Zi (Indt.)
05-06	Yip Wai Ming (HKFTU)	Wong Siu Han (HKTUC)	Poon Siu Ping (FLU)	Cheung Kwok Piu (C.S.)	Leung Chou Ting (C.S.)	Cheung Bak Zi (Indt.)
07-08	Yip Wai Ming (HKFTU)	Lee Tak Ming (HKTUC)	Ng Wai Yee (FLU)	Chung Kwok Sing (C.S.)	Leung Chou Ting (C.S.)	Cheng Kai Ming (Indt.)
09-10	Chui Sai Cheung (HKFTU)	Lee Tak Ming (HKTUC)	Ng Wai Yee (FLU)	Chung Kwok Sing (C.S.)	Leung Chou Ting (C.S.)	Cheng Kai Ming (Indt.)
11-12	Ng Chou Pak (HKFTU)	Lee Tak Ming (HKTUC)	Ng Wai Yee (FLU)	Chung Kwok Sing (C.S.)	Leung Chou Ting (C.S.)	Cheng Kai Ming (Indt.)

13-14	Ng Chou Pak (HKFTU)	Lee Tak Ming (HKTUC)	Chow Siu Chung (FLU)	Chung Kwok Sing (C.S.)	Leung Chou Ting (C.S.)	Chan Sou Hing (Indt.)
15-16	Ng Chou Pak (HKFTU)	Wong Siu Han (HKTUC)	Chow Siu Chung (FLU)	Chan Yiu Kwong (C.S.)	Leung Chou Ting (C.S.)	Chan Sou Hing (Indt.)
17-18	Tang Ka Piu (HKFTU)	Wong Siu Han (HKTUC)	Chow Siu Chung (FLU)	Chan Yiu Kwong (C.S.)	Lau Yuk Fai (C.S.)	Chan Sou Hing (Indt.)

**Source:**

Labour Advisory Board, *Labour Advisory Board Report* (Various Years).

**Note:**

- i. The organizational background of each representative has been bracketed. HKFTU stands for the Hong Kong Federation of Trade Unions, and FLU stands for the Federation of Hong Kong and Kowloon Labour Unions. The HKTUC represents the Hong Kong and Kowloon Trades Union Council. Indt. stands for independent unions. As defined by the Registry of Trade Unions, independent unions refer to employee unions that are not affiliated to the HKFTU, the HKTUC, the FLU, or the HKCTU (Hong Kong Confederation of Trade Unions).
- ii. C.S. stands for Civil Servants. While some unions of civil servants are affiliated to one of the four major trade union federations, the civil servant unions that are included in the LAB are independent unions.

In fact, two of the interviewees from the HKFTU emphasized their belief that labour organizations of different political views should joint hands to serve labour.

One of the interviewees argued that,

*“We (i.e. the HKFTU) will continue to work with other labour organizations. We now have good relations with the TUC and the FLU, but as long as we can respect our differences and serve the working people together, our cooperation with the HKCTU should not be affected.”*

In 2013, a massive Dock Strike happened in Hong Kong. Some members and supporters of the HKCTU openly accused the HKFTU and the FLU for being ‘yellow unions’. For example, Ho Wai Hong, the General Secretary of the HKCTU’s Union of Hong Kong Dockers condemned the HKFTU for being ‘strike-breakers’ and there would be no room for cooperation between the Union of Hong Kong Dockers and any of the HKFTU affiliates.<sup>64</sup> Left 21, a youth organization that claims to support Democratic Socialism<sup>65</sup>, felt that the demands of the HKFTU and the FLU were comparatively moderate. They proceeded to accuse the HKFTU and the FLU for

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<sup>64</sup> Ho Wai Hong was an highly active union organizer during the strike and he did a lot of interviews back then. One of his most interesting interviews was with International Online (formerly known as Qua-Si), a group which introduces themselves as Communists.

See Boon Ching Cheung, and Kit Or Yip, *“A Brief Discussion on the Victories and Losses of the Dock Strike”*.

International.

<http://international-online.org/2013/07/10/strike1/> (Accessed April 1, 2018).

<sup>65</sup> Left 21, “About Us”.

Left 21.

<http://left21.hk/wp/about/> (Accessed April 1, 2018).

being ‘Yellow Unions’.<sup>66</sup> To know more about the possible conflicts between different labour organizations, the author also asked the interviewees from the HKFTU to talk about the accusations they faced. One of the interviewees claimed that

*“These accusations are the worst. To me, employers are the only ones that would benefit from a divided-labour. Labour organizations must learn to respect each other. But what can we do about these accusations? Openly fight back and accuse the HKCTU for damaging the labour movement? No way, that will only make things worse.”*

By combining the findings from interviews and government documents, it can be seen that a ‘balance of power’ exists among different labour organizations. This kind of balance is not only seen in the composition of the LAB, but could also be found by looking at how labour organizations work with each other. To follow the informal ‘rule of balance of power’, political actors should be careful not to disturb the relative power and relations between labour organizations.

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<sup>66</sup> Left 21,

<http://left21.hk/wp/2013/03/%E6%B5%B7%E6%B4%8B%E4%B8%8A%E7%9A%84%E8%83%8C%E5%8F%9B%E8%80%85%E2%94%80%E2%94%80%E9%BB%83%E8%89%B2%E5%B7%A5%E6%9C%83/>  
(Accessed April 1, 2018)

In the article, the author used words such as ‘Yellow Union’ and ‘scab’ to describe the HKFTU affiliate and the FLU affiliate that were involved in the strike. The very first evidence that was used to support this claim was that both the HKFTU affiliate and the FLU affiliate have closer connections with the employers.

## Monitoring Policy Actors and Enforcing the Rules

Now that the relations between different policy venues and the informal rules involved have been made clear, it is necessary to cover how the policy actors are monitored and how the rules are enforced.

It is extremely important to note that all representatives of the LAB would be expected to strictly follow these 3 rules. The LAB is a non-statutory body and except by showing good-will, no one could force its members to negotiate with one another. In post-handover Hong Kong, the employers, the employees and the government all found the industrial relation to be quite harmonious. To continuously benefit from this harmonious relation, the informal rules are enforced by different policy actors. The most obvious way to enforce the rules is of course for the government to withdraw a Bill from the LegCo. The government's attempt to withdraw the Bill about paternity leave in 2014 is a concrete example, and this case will be explained in the next chapter. Apart from the government, representatives of employers or employees could also 'enforce' the rules in more subtle ways. For example, one of the HKFTU interviewees mentioned that Chan Yuen Han's attack on the 'meal-break payment' was seen by employers as a violation of the 'rule of mutual respect', which led the representatives of employers to be more hostile towards the HKFTU. This kind of action is certainly not as obvious as the withdrawal of Government Bills,

but the LAB's emphasis on good-will made it an effective way to 'enforce' the informal rules.

To know when to enforce the rules, there needs to be effective monitoring of the policy actors. As a matter of fact, it is very easy to monitor each actor and see whether they violated the informal rules or not. Starting from the first LegCo election of the HKSAR in 1998, every single representative of the Labour constituency has either belonged to the HKFTU or the FLU. Should any of the representatives of employees and their party members choose to violate the informal rules, business elites could easily identify these attempts and refuse to make agreements with them in the future.

**Table 4 (Representatives of the Labour Constituency Since 1998)**

Election	Name	Political Affiliation
1998	Lee Kai Ming	FLU
	Chan Wing Chan	DAB
	Chan Kwok Keung	HKFTU
2000	Li Fung Ying	FLU
	Chan Kwok Keung	HKFTU
	Leung Fu Wah	HKFTU
2004	Li Fung Ying	FLU
	Kwong Chi Kin	HKFTU
	Wong Kwong Hing	HKFTU
2008	Li Fung Ying	FLU
	Poon Pui Kau	HKFTU
	Yip Wai Ming	HKFTU
2012	Poon Siu Ping	FLU
	Tang Ka Piu	HKFTU
	Kwok Wai Keung	HKFTU
2016	Poon Siu Ping	FLU
	Ho Kai Ming	HKFTU
	Luk Chung Hung	HKFTU

**Note:**

- HKFTU stands for the Hong Kong Federation of Trade Unions. FLU stands for the Federation of Hong Kong and Kowloon Labour Unions. DAB stands for the Democratic Alliance for the Betterment and Progress of Hong Kong. The DAB is widely considered as another 'patriotic party' like the HKFTU, which has close ties with the Chinese government and its officials.
- Chan Wing Chan of DAB (1998) was also a member of the HKFTU. When working in the Provisional Legislative Council, Chan Wing Chan actually represented the HKFTU.

A similar situation actually also happens to the representatives of employers.

The LAB representatives of employers are selected but not elected. Since the handover, the 5 selected representatives of employers came from the 5 most influential employers' organizations in Hong Kong - the Chinese General Chamber of Commerce (CGCC), the Chinese Manufacturers' Association of Hong Kong (CMA), the Federation of Hong Kong Industries (FHKI), Employers' Federation of Hong Kong (EFHK), and the Hong Kong General Chamber of Commerce (HKGCC). With the exception of the EFHK, all other 4 organizations have their own representatives in the functional constituencies. In Hong Kong, only members of the HKGCC could vote for the First Commercial constituency, and only members of the CGCC could vote for the Second Commercial constituency. At the same time, only the members of the FHKI could vote for the First Industrial constituency, and only the members of the CMA have votes in electing the representative of the Second Industrial constituency.<sup>67</sup> Also, with the Executive Council recruiting members of major political parties such as the Liberty Party and the Business and Professional Alliance for Hong Kong, virtually all the representatives of business and sectoral interests are tied to the informal rules. In effect, representatives of employees could also easily identify any attempts by the representatives of employers to act against the

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<sup>67</sup> Ngok Ma, *Corporatism in Hong Kong: 25 Years of Functional Constituencies* (Hong Kong: City University of Hong Kong Press, 2012), 81-82.

informal rules. If this happens, labour organizations might refuse to improve workers' welfare in a more moderate manner. On the contrary, they may try to increase their level of militancy, and labour relation in Hong Kong may become less harmonious.

**Table 5 (Representatives of Employers in the Labour Advisory Board Since 1997)**

Year	Selected by Employers' Organizations					Appointed
	CGCC	CMA	FHKI	EFHK	HKGCC	
97-98	Ho Sai Chu	Lau Man Wai	Leung Kwan Yuen	Martin Hayton	Lau Kwong Chuen	Lee Nai Shee
				Mak Kin Wah		
99-00	Ho Sai Chu	Lau Man Wai	Leung Kwan Yuen	Mak Kin Wah	Lau Kwong Chuen	Lee Nai Shee
					Yeung Kwok Ki	
01-02	Ho Sai Chu	Lau Man Wai	Leung Kwan Yuen	Mak Kin Wah	Yeung Kwok Ki	Chen Cheng Jen
03-04	Ho Sai Chu	Yin Tek Shing	Leung Kwan Yuen	Mak Kin Wah	Yeung Kwok Ki	Chen Cheng Jen
			Lau Chin Ho			
05-06	Ho Sai Chu	Yin Tek Shing	Lau Chin Ho	Mak Kin Wah	Yeung Kwok Ki	Chen Cheng Jen
07-08	Ho Sai Chu	Yin Tek Shing	Lau Chin Ho	Mak Kin Wah	Hui Hon Chung	Cheung Shing Hung
09-10	Ho Sai Chu	Sze Wing Wai	Lau Chin Ho	Mak Kin Wah	Hui Hon Chung	Cheung Shing Hung
11-12	Ho Sai Chu	Sze Wing Wai	Lau Chin Ho	Mak Kin Wah	Hui Hon Chung	Cheung Shing Hung

13-14	Ho Sai Chu	Sze Wing Wai	Lau Chin Ho	Mak Kin Wah	Yu Kin On	Ho On Shing
15-16	Ho Sai Chu	Sze Wing Wai	Lau Chin Ho	Mak Kin Wah	Yu Kin On	Cheung Shing Hung
			Kwok Chun Wah			
17-18	Ho Sai Chu	Sze Wing Wai	Kwok Chun Wah	Mak Kin Wah	Yu Kin On	Cheung Shing Hung

**Source:**

Labour Advisory Board, *Labour Advisory Board Report* (Various Years).

**Note:**

- CGCC, CMA, FHKI, EFHK and HKGCC are all abbreviations of employers' organizations. They are the Chinese General Chamber of Commerce (CGCC), the Chinese Manufacturers' Association of Hong Kong (CMA), the Federation of Hong Kong Industries (FHKI), Employers' Federation of Hong Kong (EFHK), and the Hong Kong General Chamber of Commerce (HKGCC).
- Appointed representatives of employers are usually entrepreneurs that are known for their social services, or have a history of working with the government. For instance, Chen Cheng Jen has been known for being supportive of the Vocational Training Council.

Because the cost of monitoring is very low, but the price for violating the informal rules would be high for both the representatives of employers and employees, agreements of the LAB would often be passed by the LegCo smoothly and become a law. This is to say that the agreements in LAB are **binding**, and would affect the behaviours of political actors.

Labour legislation in Hong Kong involves different policy venues, and policy actors are expected to follow three informal rules. In regard of labour laws, the Executive Council, the Legislative Council and different statutory bodies will always look to the Labour Advisory Board. Despite being a non-statutory body, the Labour Advisory Board could greatly affect the policy outcomes. With the special importance of the Labour Advisory Board, there are three informal rules for labour legislation in Hong Kong. These rules are the 'rule of mutual respect', the 'rule of minimal intervention' and the 'rule of balance of power'. In short, labour laws should only be passed by the Legislative Council, if the Labour Advisory Board has agreed with the Bill. That said, the Labour Advisory Board will not support bills that violate the ideal of Voluntarism or could damage the relative strength of different labour organizations.

## 5. Two Events Explained

The previous chapter explained the relations between different policy venues and introduced the three informal rules for labour legislation in Hong Kong. It suggested that the 'rule of mutual respect' is the most important, and that the agreements of the LAB would greatly affect the policy outcome. To support the findings Chapter 4, the events of the repealing of the Employee's Rights to Representation, Consultation and Collective Bargaining Ordinance in 1997 and the failed amendments to statutory paternity leave in 2014 will be explained.

In Hong Kong, it is common to find denouncers of the government and the HKFTU mention two events to show that Hong Kong labour has been 'sold out'.<sup>68</sup> The first event is that in 1997, the Provisional Legislative Council repealed the Employee's Rights to Representation, Consultation and Collective Bargaining Ordinance with the 'Yes' votes from two legislators of the HKFTU. The Ordinance was the only law in Hong Kong to cover a legal framework for collective bargaining and supporters of the HKCTU are particularly frustrated by the act of repealing. The second event happened in 2014, when the LegCo debated over the introduction of statutory paternity leave. During the debates, legislators of the 'pro-democracy'

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<sup>68</sup> For instance, Left 21, "A Concise Record of the HKFTU's Betrayal between 2014 and 2015." Left 21.

[http://left21.hk/wp/2015/04/ftu\\_betray/](http://left21.hk/wp/2015/04/ftu_betray/) (Accessed April 1, 2018).

camp attempted to amend the government bill from allowing fathers 'to take a leave for not more than 3 days' to 7 days instead. All 6 HKFTU legislators did not vote over the amendment, and the 7-day amendment failed. In both cases, the voting decisions of the HKFTU legislators seemed to violate the interests of their constituency, but could well be the result of them following the rules of the policy venues for making labour laws.

What is seldom asked, but is in fact equally puzzling, is the reasons for legislators of the functional constituency to support the introduction of 3-day paternity leave in 2014. Levitsky and Way claimed that "the coexistence of meaningful democratic institutions and authoritarian incumbents creates distinctive opportunities and constraints for actors, which – in important areas of political life – generate distinct patterns of political behaviour"<sup>69</sup>. The voting behaviours of the representatives of employers and employees are distinct political behaviours that will now be explained.

### **The HKFTU and the Case of Collective Bargaining**

The right to collective bargaining has long been seen with the right for labour to organize and the right for labour to strike as the '3 fundamental rights of labour'.

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<sup>69</sup> Levitsky and Way, 2010.

Among the 189 existing ILO conventions, 8 of them were identified by the ILO as 'fundamental'. While none of the conventions focus on the right to strike, Convention No. 87 and Convention No. 98 focus precisely on the right to association and organize, and also the right to collective bargaining<sup>70</sup>. In most cases, employees would be in a disadvantage when they face their employers, and individual labourers may compete for jobs by lowering their wage demand. Sidney Webb and Beatrice Webb, the famous British socialist reformers of the Fabian Society, were aware that allowing individual labourers to organize and act collectively could avoid these undesirable competitions from happening. By bargaining collectively, the organized workers could also enjoy a greater bargaining strength<sup>71</sup>. That being said, the strength of organized labour would be extremely limited if they are allowed to organize and to strike, but the employers are not required to respect trade unions or negotiations that follow. To salvage, the idea of safeguarding the right to collective bargaining is treasured so that disadvantaged labour would be allowed to enter a fairer negotiation with the employer, in which both parties are expected or even required to respect and oblige to the agreements reached. Since 1975, the Hong

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<sup>70</sup> International Labour Organization, *"Conventions and Recommendations"*.

International Labour Organization.

<http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm> (Accessed April 1, 2018).

Also see Ng, (1986).

<sup>71</sup> Sek Hong Ng, *Current Situations and Prospects For Hong Kong Labour*, (Hong Kong: Wideangle, 1994), 23.

Kong government has applied the ILO Convention No. 98 in full. Nevertheless, given that no laws in Hong Kong focused on the right to collective bargaining, organized labour, in particular the HKCTU, has always questioned the government's sincerity to live up to the spirit and standard of Convention No. 98<sup>72</sup>. Before the handover of Hong Kong in 1997, HKCTU legislator Lee Cheuk Yan decided to push forward a Private Bill that aimed at filling this void in the labour laws of Hong Kong. Unsatisfied with the lack of legal protections over the right to collective bargaining, Lee Cheuk Yan invited Sir Bob Hepple, an internationally-renowned expert of labour law, to help draft a Bill that aimed at drawing a legal framework for employee's rights to consultation and collective bargaining. Lee's Private Bill was first introduced to the LegCo on the 10<sup>th</sup> of April, 1997 and was finally passed by the LegCo on 26<sup>th</sup> of June **with an extremely narrow margin – 28 Yes over 26 No.**<sup>73</sup> The Employee's Rights to Representation, Consultation and Collective Bargaining Ordinance marked a significant change in the legal framework for labour in Hong Kong, as it explicitly provided legal protection over the right to collective bargaining for the first time. However, the Employee's Rights to Representation, Consultation and Collective Bargaining Ordinance that was passed on the eve of the handover was extremely

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<sup>72</sup> International Labour Office Governing Body, "311<sup>th</sup> Report of the Committee on Freedom of Association".

Legislative Council of the Hong Kong Special Administrative Region.

<http://www.legco.gov.hk/yr99-00/english/panels/mp/employ/papers/b919e01.pdf> (Accessed April 1, 2018).

<sup>73</sup> Legislative Council of Hong Kong, *Hansard of the Legislative Council*, 26th June 1997 (1997).

short-lived. The new HKSAR government was quick to suspend the implementation of 3 ordinances on the 9<sup>th</sup> of July - less than 2 weeks after Lee's Bill was passed. The 3 ordinances included the Employee's Rights to Representation, Consultation and Collective Bargaining Ordinance and the government claimed that the 3 ordinances would be reviewed mainly by the LAB. A final decision about the 3 ordinances would be made by October 31<sup>st</sup>. Later, the Executive Council decided to repeal the Employee's Rights to Representation, Consultation and Collective Bargaining Ordinance, the Employment (Amendment) (No.4) Ordinance, and amend the Trade Union (Amendment) (No.2) Ordinance.<sup>74</sup> Finally, on the 29<sup>th</sup> of October, the Provisional Legislative Council approved the government's Employment and Labour Relations (Miscellaneous Amendments) Bill and put an official end to the short lived Ordinance that was initiated by Lee.<sup>75</sup>

As a representative of employees that participate in multiple policy venues, the HKFTU legislators voted for the repealing the Employee's Rights to Representation, Consultation and Collective Bargaining Ordinance because the Ordinance violated multiple rules for making labour laws. Lee's Bill was an attempt to provide a

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<sup>74</sup> International Labour Office Governing Body, "311<sup>th</sup> Report of the Committee on Freedom of Association".

Legislative Council of the Hong Kong Special Administrative Region.

<http://www.legco.gov.hk/yr99-00/english/panels/mp/employ/papers/b919e01.pdf> (Accessed April 1, 2018).

<sup>75</sup> Provisional Legislative Council of Hong Kong, *Hansard of the Provisional Legislative Council*, (Hong Kong: Provisional Legislative Council of Hong Kong, 29<sup>th</sup> October 1997).

detailed legal-framework for collective bargaining in Hong Kong. To put Lee's Bill in a very brief way, Lee suggested that in a company that has at least 50 employees, the employer will have to respond to the requests of a representative trade union or group of unions to collective bargaining over matters that include, for instance, the terms and conditions of employment and the termination or suspension of employment of 1 or more employees. All collective agreements would have legal effects. In Lee's Bill, 'a representative trade union' meant a trade union that 'has members in the undertaking who constitute more than 15% of the employees employed by the employer in that undertaking' and 'represents more than 50% of the employees employed by the employer in that undertaking'. 'Group of unions' meant '2 or more trade unions acting jointly and together satisfying those requirements'.<sup>76</sup> Members of the HKFTU claimed that they admired the professionalism of Lee's Bill, but regretfully had to vote against it because the Bill was far from desirable.<sup>77</sup>

The most important reason for the HKFTU to not support Lee's Bill was that they believed Lee's model of collective bargaining did not fit the reality of Hong Kong and would only create a greater divide between labour organizations. As pointed out in Chapter 4, one of the rules for making labour laws in Hong Kong is that the divides between labour organizations must be treated with care. Lee's bill

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<sup>76</sup> See Appendix IV for details.

<sup>77</sup> Legislative Council of Hong Kong, *Hansard of the Legislative Council*, 26th June 1997 (1997).

however, would most likely break the 'balance of power' among labour organizations. Collective bargaining is an extremely complicated topic. While it is easy to support the principle and spirit of collective bargaining, it can often be a highly challenging task for one to find the best arrangements to carry it out. Many models of collective bargaining could be found around the world at different levels, and each has very different strengths, weaknesses and special features.<sup>78</sup> A classic example would be the American model of collective bargaining at the enterprise level. The National Labor Relations Act of 1935 lays out the legal framework of collective bargaining in the United States. As mentioned in the National Labor Relations Act, it was believed that protecting the right to collective bargaining by law could safeguard commerce from undesirable obstructions that may come from both the employers and the employees. Collective bargaining was therefore seen not only as a right of labour, but even a duty and an obligation for employers and employees in the United States. In order to promote collective bargaining, representatives of collective bargaining would become the **exclusive representative of all employees** once they are designated or selected by the majority of employees in a unit. The existence of exclusive representation means that even if an employee is not a member of a union, or that he belonged to a smaller union that is not the

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<sup>78</sup> Hong Kong Federation of Trade Unions Research Department, (2011), 266-269.

major union in the unit, they will still be represented. Some commentators believed that this kind of system design can easily solve the problem of representation when there exist multiple unions, but of course it can also mean that unions might compete undesirably to fight for the leading role in a unit, and consequently the exclusive right to representation. While the list of models of collective bargaining can go on and on, the British model is the other model behind the American system that must be explained in detail.<sup>79</sup> The British model of collective bargaining is of extreme importance not only because the model of collective bargaining in Hong Kong stemmed from the colonial past, but also because the British model remains influential to Hong Kong under the Common Law system. It is perhaps not surprising that Voluntarism is again, the core spirit behind the British model.<sup>80</sup> The Trade Union and Labour Relations (Consolidation) Act 1992 is one of the key laws that lays out the framework of collective bargaining in the United Kingdom. Opposite to the American model which tries to make collective bargaining a duty of both the employers and the employees through the recognition of exclusive representatives, the British model encouraged voluntary bargaining and negotiations between the employers and the employees. While the Employment Relations Act 1999 includes terms that define how a trade union could be recognized to conduct collective

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<sup>79</sup> Hong Kong Federation of Trade Unions Research Department, (2011).

<sup>80</sup> Sek Hong Ng, *Discussions on Labour Issues*, (Hong Kong: Wideangle, 1984).

bargaining in the United Kingdom, the biggest difference between the British model and the American model is that collective agreements that are reached in the United Kingdom are not necessarily legally enforceable. Section 179 of the Trade Union and Labour Relations (Consolidation) Act 1992 stated that “A collective agreement shall be conclusively presumed not to have been intended by the parties to be a legally enforceable contract unless the agreement—

(a) is in writing, and

(b) contains a provision which (however expressed) states that the parties intend that the agreement shall be a legally enforceable contract. “

In other words, collective agreements in the United Kingdom are often just gentleman’s agreements that lack legal enforceability. In Hong Kong, with the exception of the short-lived Employee's Rights to Representation, Consultation, and Collective Bargaining Ordinance, the model of collective bargaining is largely based on the British model. While the government encouraged and helped promote collective bargaining, it never set out clear guidelines over issues such as that of the representation of employees. Just like the British model, collective agreements in Hong Kong are only gentleman’s agreements. These agreements are not legally enforceable unless they are included in contracts.<sup>81</sup> The printing industry in Hong

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<sup>81</sup> Ng, (1984), 33.

Kong is known for inviting officials of the Labour Department to witness the inclusion of terms of collective agreements in contracts, but this kind of practice is extremely rare.<sup>82</sup> Collective bargaining and collective agreements are rare in Hong Kong, and they usually only exist in industries where the employees have a greater bargaining power due to reasons such as high level of skill-requirements, limited source of labour, or labour being highly organized.<sup>83</sup> To make the situations more challenging, collective bargaining is more difficult to achieve because Hong Kong labour is historically, highly divided. In the past when Hong Kong labour was divided between the HKFTU and the HKTUC, employers tended to ignore unions from both sides so that they would not be hindered by the political debates. Even in cases where the employees were well-unionized and the employers had to recognize the unions, it was common for employers to not officially recognize the unions, but choose to 'respect both unions' and 'listen to their opinions'<sup>84</sup>. An example would be that of the Kowloon Motor Bus Co. (KMB). The KMB management never officially

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<sup>82</sup> Hong Kong Federation of Trade Unions, *FTU Press*, (Hong Kong: Hong Kong Federation of Trade Unions: April 1994).

<sup>83</sup> Hong Kong Federation of Trade Unions, *FTU Press*, (Hong Kong: Hong Kong Federation of Trade Unions: September 1997).

In the last few decades, only around 5% of the labour force in Hong Kong was covered by collective agreements. See Ng, (1984) and Ng, (1994). Figures about the current situation of collective bargaining are hard to find, but some legislators believe that the coverage of collective bargaining has shrank to less than 1% of the labour force.

See Abraham Lai Him Shek, Speech to the Legislative Council, in *Hansard of the Legislative Council*, 5<sup>th</sup> June 2013 (2013).

<sup>84</sup> Ng, (1984), 39. Also see Andy W. Chan and Ed Snape, "Union Weakness in Hong Kong: Workplace Industrial Relations and the Federation of Trade Unions", *Economic and Industrial Democracy* Vol 21 No. 2 (2000).

recognized the union of the Left (i.e. the KMB branch of the Motor Transport Workers General Union) nor the union of the Right (i.e. the Kowloon Motor Bus Workers General Union). Instead, both unions were respected and would be consulted over important issues that involve the employees. Still, 'agreements' with the two unions in the KMB are just gentleman's agreements that the KMB management had no legal responsibility to oblige to. Although these challenges exist, in Hong Kong, the British model never eliminated the possibility for labour to engage in collective bargaining with the employers. As a result, despite it being extremely difficult for employees to build a mechanism of collective bargaining with the employers, trade unions and the management of larger companies or industries have mostly entered a special kind of 'equilibrium', meaning that employers and employees sort of recognized the other<sup>85</sup>. The KMB is certainly an example of this kind. Nevertheless, the system design of Lee Cheuk Yan was similar to the American model of collective bargaining. If an industry or a company has only a single influential and significant union, then changing from the British model of collective bargaining to the American model might greatly benefit the employees. But things could go wrong if this is not the case. Cheng Yiu Tong was the Chairman of the HKFTU back in 1997. When explaining the HKFTU's decision to support the repealing

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<sup>85</sup> Andy W. Chan and Ed Snape, "Whither Hong Kong's Unions: Autonomous Trade Unionism or Classic Dualism?", *British Journal of Industrial Relations* Vol. 35, No. 1 (1997).

of Lee's Bill, Cheng pointed out that the HKFTU wanted the right for labour to collective bargaining to be written into the law, but Lee's Bill had the danger of dividing unions and may also cause chaos within a union.<sup>86</sup> As an actor of the policy venues of labour laws, the HKFTU had to be aware of the 'balance of power' among labour organizations. Consequently, the HKFTU legislators voted to support repealing the Ordinance.

An event from early 2018 actually proved that the worries of the HKFTU are reasonable. In early 2018, some KMB employees were unsatisfied with the company's practice of consulting only the 2 unions that were affiliated to the HKFTU and the HKTUC respectively. These unsatisfied employees openly criticized the HKFTU and HKTUC affiliates for ignoring KMB employees that do not belong to the two unions. Some of them moved on to borrow words from political rivals of the HKFTU and accused the HKFTU for being 'scabs' and that it was a 'yellow union'. Triggered by the unwillingness to respond from the management and the two unions, several KMB drivers even attempted to organize a 'go-slow' protest but ultimately faced punishments from the management. According to Lee's system design, in a company that has 50 employees or more, a union would gain the right

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<sup>86</sup> Yiu Tong Cheng, Speech to the Legislative Council in *Hansard of the Legislative Council*, 26th June 1997 (1997). Also see Yiu Tong Cheng, Speech to the Provisional Legislative Council in *Hansard of the Provisional Legislative Council*, (Hong Kong: Provisional Legislative Council of Hong Kong, 29<sup>th</sup> October 1997).

to represent the employees in collective bargaining if it 'has members in the undertaking who constitute more than 15% of the employees employed by the employer in that undertaking', and 'represents more than 50% of the employees employed by the employer in that undertaking'. In the KMB, even though there exists multiple-commitment of the employees<sup>87</sup>, the HKFTU's KMB branch of the Motor Transport Workers General Union which claims to have around 8,000 members is beyond obvious, the largest union. One may assume that the number of its members was exaggerated by 25%, but even if that really is the case, in a company that has around 11,700 employees<sup>88</sup>, over 50% of the employees would still be members of the KMB branch of the Motor Transport Workers General Union. No matter how, the significance of the HKFTU affiliate would still be crystal clear. Assuming that the Employee's Rights to Representation, Consultation and Collective Bargaining Ordinance is still in effect, then the HKFTU affiliate would certainly be recognized as the **exclusive representative to engage in collective bargaining**. If so, the KMB employees that were unsatisfied with the HKFTU affiliate would have no

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<sup>87</sup> During the events in February 2018, there were 6 unions in the KMB. The KMB claimed to have around 11,700 employees, but the 6 unions claimed to have nearly 13,000 members. While some members could have retired, the more likely explanation to having more union members than KMB employees would be for some employees to commit to multiple unions in order to maximize their gains.

For a discussion about trade union multiple-commitment in Hong Kong, see Andy W. Chan and Ed Snape, (2000), 135.

<sup>88</sup> Transport International Holdings Limited, "2017 Annual Report".

HKEXnews.

<http://www.hkexnews.hk/listedco/listconews/SEHK/2018/0416/LTN201804169985.PDF> (Accessed April 10, 2018).

role to play. Besides, as a non-member of the HKFTU affiliate, their discontent could even make them the 'strike-breakers'. These undesirable effects of dividing labour would remain even though Lee's Bill included the idea of 'group of unions'. Again, one may assume that the Employee's Rights to Representation, Consultation and Collective Bargaining Ordinance is still in effect, just that the reported amount of members of the HKTUC's Kowloon Motor Bus Workers General Union is not exaggerated. According to the *2016 Annual Statistical Report of Trade Unions in Hong Kong*, the HKTUC union had 1939 members.<sup>89</sup> In other words, they would be representing slightly more than 16% of employees of the KMB and that they might become a part of the 'group of unions'. However, because the union that affiliated with the HKFTU already controlled at least 50% of the employees in the KMB, the HKTUC union would not be recognized as a member of the 'group of unions' unless they receive the support from the members of the HKFTU affiliate. But given the unmatched influence of the HKFTU affiliate, it is likely that the HKTUC will not be welcomed. If this happens, then instead of benefiting from the legal rights provided by the Ordinance, the HKTUC affiliated would simply lose all its significance in the KMB. All in all, the KMB example shows that Lee's system design could be problematic when used to deal with the highly-divided working people of Hong

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<sup>89</sup> Registry of Trade Unions, *Annual Statistical Reports by the Registry of Trade Unions*, (Hong Kong: Registry of Trade Unions, 2016).

Kong. Because Lee's design violated the 'rule of balance of power', the HKFTU supported the repealing of the Ordinance.

Apart from failing to maintain a balance between labour organizations in Hong Kong, Lee's bill was never agreed by the LAB. Lee's Bill was prepared in an extremely short period of time. Not only did it lack the agreement of the LAB, it was also never studied carefully by the Bills Committee. Without the LAB's agreement, Lee Cheuk Yan's bill violated the 'rule of mutual respect', which is the most important rule of the policy venues of labour laws. As an actor of different policy venues, the HKFTU could only vote against the Ordinance. In reality, Loh Kung Wai, a legislator that was seen as 'pro-democracy' also voted against Lee's Bill. Loh's major concern was that Lee's Bill was never carefully studied and discussed by any Bills Committee<sup>90</sup>. Lee's Bill failed to consult the LAB, and it also failed to meet the procedural requirements of the LegCo. As an active representative of employees in the policy venues, the HKFTU could only follow the rules and vote against it.

The study of the HKFTU's decision to support repealing the Employee's Rights to Representation, Consultation, and Collective Bargaining Ordinance showed that the 'rule of mutual respect' and the 'rule of balance of power' must be followed by

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<sup>90</sup> Lau Chin Shek, a HKCTU fellow of Lee, tried to move Loh by saying that people that support democracy should support the Bill, but Loh responded by saying that being a democrat does not mean supporting the Bill **at that time**. See Christine Kung Wai Loh, Speech to the Legislative Council in *Hansard of the Legislative Council*, 26th June 1997 (1997).

actors that participate in the policy venues of labour laws. The event of the 7-day amendment for paternity leave will confirm the significance of the 'rule of mutual respect', and will show that the 'rule of minimum intervention' also has to be taken seriously by political actors.

### **The HKFTU and the Case of Paternity Leave**

Family-friendly policies represent a different way to understand human resource management, in which making the employee work more is not always the best thing to do. Contrary to traditional beliefs, productivity and well-being of employees actually tend to increase when they are allowed to achieve a balance between work and familial life<sup>91</sup>. Allowing employees who just gave birth to take paid maternity leave is a clear and simple example of family-friendly policies. However, the mother is not the only person affected by a new-born child. Many studies have shown that shortly after a baby's birth, it is actually good for both the parents and the baby if the father could get involved by sharing time with and taking care of the mother and the child<sup>92</sup>. Besides, some studies suggested that the productivity of a 'new-father' will increase if he were given a paternity leave by his

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<sup>91</sup> Hong Kong Federation of Trade Unions Women's Affairs Committee, (2009).

<sup>92</sup> Jay L. Zagorsky, "Divergent Trends in US Maternity and Paternity Leave, 1994-2015", *American Journal of Public Health* Vol.107 No.3 (2017): 460.

employer.<sup>93</sup> This is perhaps because instead of having to worry about everything at work, he would be free from working duties when his wife and children need him the most. After the leave, he would return to work with more focus, and maybe also more devotion to work for a caring employer. Paternity leave is therefore, another family-friendly policy that can be found in many countries such as Singapore.

The idea of paternity leave is not new, and neither is it new to Hong Kong. No later than the 1990s, there already were discussions about how paternity leave might positively affect Hong Kong. Since 2005, the HKFTU started to promote the idea and some memorable campaigns were carried out by them. Their members, particularly then-LegCo member Wong Kwok Hing, were successful in bringing the issue to the public. Later in 2007, the China Light & Power Co. Ltd officially allowed all its male employees to enjoy a 3-day paid paternity leave.<sup>94</sup> Having realized that the new policy did not harm the China Light & Power Co. Ltd, the issue of paternity leave started to gain more support from employers and the general public. Perhaps because the winners and losers for introducing paternity leave are not clear, the government and the representatives of employers were less determined to resist a

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<sup>93</sup> Legislative Council of the Hong Kong Special Administrative Region, *“Legislative Council Brief: Employment (Amendment) Bill 2014.”*

Legislative Council of the Hong Kong Special Administrative Region  
[https://www.legco.gov.hk/yr13-14/english/bills/brief/b201402284\\_brf.pdf](https://www.legco.gov.hk/yr13-14/english/bills/brief/b201402284_brf.pdf) (Accessed April 1, 2018)

<sup>94</sup> Hong Kong Federation of Trade Unions, *FTU Press*, (Hong Kong: Hong Kong Federation of Trade Unions, April 2007).

related policy change.<sup>95</sup> In the 2011/12 Policy Address, C.E. Donald Tsang stressed the need for the Hong Kong government to actively put forward family-friendly policies. Starting from the 1<sup>st</sup> of April, 2012, government employees could enjoy a 5-day full-paid paternity leave. Apart from making an example by introducing the 5-day leave, the government also invited 18 members of the Human Resources Managers' Club to study about the issue of paternity leave in Hong Kong. Backed with solid findings from the research, the LAB started to discuss about paternity leave and the government agreed to pick up the initiative to legislate for paternity leave. After back-and-forth debates and negotiations, the LAB finally agreed to introduce statutory paid paternity leave to the law in November, 2012.

The bill that was drafted by the government largely followed the Voluntarist tradition in Hong Kong. While the government agreed to actively introduce the law, the details of the law should follow the greatest ideal – to seek tri-partite agreement between the employers, the employees and the government. As a result, the proposed law has to be backed up by studies about the real situation in Hong Kong, and be agreed by representatives of employers and employees. The afore-mentioned research that was done by members of the Human Resources Managers' Club in 2012 found that among the companies and organizations that

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<sup>95</sup> Elinor Ostrom, (1999), 46.

were studied, more than 81% of them had been providing their male employees with a paternity leave that lasted from 1 to 3 days. 43.5% of these companies and organizations actually offered their male employees a 3-day leave.<sup>96</sup> The government then saw a paternity leave of 'no more than 3 days' to be the 'highest common factor' that most employers in Hong Kong would accept. After all, while it is true that the proposal of 'no more than 3 days' was extremely vague and could be accused of being a 'tricky move', it also correctly covered the 81% of employers that already provided paternity leave to their male employees. Under a similar logic of Voluntarism, the government tried to tackle the problem of wage during the leave by 'resorting to tradition'. The laws about maternity leave were raised as the 'tradition' that could help guide the making of paternity leave laws. In Hong Kong, the law requires employers to pay 4/5 of the normal wage to mothers taking maternity leave. Upon replying challenges from legislators over the issue of paternity leave, the Secretary for Labour and Welfare argued that "Paternity leave is a leave that rises from the personal needs of an employee. In this sense, it is like sick leave and maternity leave. These kinds of leaves should not be confused with leaves that do not depend on the personal needs of the employee, such as statutory holidays and paid leaves. Therefore, the wage level of the paid paternity leave

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<sup>96</sup> Legislative Council of the Hong Kong Special Administrative Region, *Hansard of the Legislative Council*, 17<sup>th</sup> December 2014 (2014).

should follow the existing level of maternity leave.” By justifying the decision to pay pregnant employees 4/5 of their normal wages, the government thereby explained why the decision to pay 4/5 of normal wages to employees taking the paternity leave was reasonable. This kind of reply confirms the view that the government of Hong Kong sees itself as an ‘arbitrator’ that facilitates negotiations and agreements between employers and employees under the principle of Voluntarism, but not an active actor that would emphasize on the comparative-disadvantage of labour in negotiations and lean toward labour.<sup>97</sup>

Some legislators believed that the Hong Kong government showed a lukewarm attitude over the issue of paternity leave, and were greatly dissatisfied. Thus, these legislators tried to amend the Government Bill when it was being debated in the LegCo. A total of 4 amendments were suggested by the legislators and they all received heated debates.<sup>98</sup> The focus here would be the first amendment proposed by legislator Kenneth Leung Kai Cheung. Leung’s amendment aimed at changing the number of days of the statutory paternity leave from ‘no more than 3 days’ to ‘7 days’. As the Chairman of the Bills Committee, Leung was aware of several key

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<sup>97</sup> The Secretary for Labour and Welfare also mentioned that the ILO only suggested employers to pay pregnant employees at least 3/5 of their normal wages during maternity leave, and he moved on to argue that the legal requirement for employers to pay 4/5 of the normal wage to pregnant employees excels the ILO standard. The Secretary used this to say that tri-partite agreement in Hong Kong has been a success.

See Matthew Kin-Chung Cheung, Speech to the Legislative Council, in *Hansard of the Legislative Council*, 18<sup>th</sup> December 2014 (2014).

<sup>98</sup> Legislative Council of the Hong Kong Special Administrative Region, 17<sup>th</sup> December 2014 (2014).

questions that were raised by other legislators to challenge the Government Bill.

Above all, most members of the Bills Committee pointed out that the proposed 3-day leave was inadequate for fathers, especially in situations where their partner have undergone operations or have suffered from postnatal depression. A more ideal paternity leave should therefore, be longer than 3 days. Also, the Government pointed out that in 2010, there were around 46,500 non-Government employees who became fathers. Using this figure as estimation, it was believed that the introduction of a 3-day paternity leave would only increase the total wage costs by around 0.02%. Some members of the Bills Committee believed that the impact of paternity leave on operating costs would be minimal, and the government should be more determined in increasing the length of the leave. Not to be overlooked is that the government was giving a 5-day paid-paternity leave to their employees when the Bill was being debated in the LegCo. Some members of the Bills Committee moved on to question the government's decision to make a law that lagged behind its own 5-day policy. To bring up these questions, Leung moved his first amendment to increase the statutory paternity leave from 3 days to 7 days.<sup>99</sup>

Leung's amendment was quickly seen as pro-labour and it received support from the HKCTU and other 'pro-democracy' parties. That being said, the HKFTU

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<sup>99</sup> Kenneth Kai Cheung Leung, Speech to the Legislative Council, in *Hansard of the Legislative Council*, 18<sup>th</sup> December 2014 (2014).

legislators did not support Leung's amendment even though the HKFTU also demanded a 7-day paternity leave during the 2012 LegCo election campaign. The major concern of HKFTU legislators was that Leung's amendment violated the rules of the policy venues of labour laws.

To the HKFTU, the biggest reason to not support the amendments was that the LAB never agreed on any of the amendments. Having become a regular actor in the tri-partite system, the HKFTU was expected to follow the rule of mutual trust and only support laws and amendments that have been agreed by the LAB. Wong Kwok Hing of the HKFTU was arguably the most enthusiastic legislator in pushing forward the introduction of statutory paternity leave, and his speeches in the LegCo explained the voting decisions of the HKFTU legislators. When debating about the amendments, Wong made it clear that the HKFTU was not satisfied with the 3-day leave. Instead, they wanted a 7-day leave, or the leave should at least be equivalent to what the civil servants could enjoy.<sup>100</sup> That being said, Wong pointed out that **unless the goal for organized labour is to overthrow Capitalism**, the correct way would be to gain progress under the principles of 'on just grounds', 'to our advantage' and 'with restraint'.<sup>101</sup> Wong pointed out that it is extremely difficult for

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<sup>100</sup> Kwok Hing Wong, Speech to the Legislative Council, in *Hansard of the Legislative Council*, 17<sup>th</sup> December 2014 (2014).

<sup>101</sup> This strategy could be found repeatedly in works published by the HKFTU. For instance, see Hong Kong Federation of Trade Unions, (2013). In Chinese, the strategy is known as 有理、有利、有節. This concept actually originated from a 1940

organized labour to push forward their agenda in Hong Kong. For instance, it took more than 40 years to criminalize defaulted payment of wages, and it took nearly 20 years to introduce the statutory minimum wage. Therefore, when it took nearly 5 years to shape public support for paternity leave and it took almost 9 years to reach the agreement of introducing a 3-day leave, Wong and the HKFTU were not willing to risk their hard-thought progress and hard-earned status in the system of tri-partite agreement and support any amendments that were not agreed by the LAB. Wong moved on to say that in Hong Kong, one could not expect to enhance the rights and welfare of employees in one day. Rather, organized labour could only 'accumulate small success to a big triumph'<sup>102</sup>. Wong's speech confirmed the significant rule of mutual trust in the LAB, and also showed that policy punctuation could only be broken with the agreements of the LAB.

As a matter of fact, the SAR government is keen on 'enforcing' the rule of mutual trust and protecting the credibility of the LAB. To the HKSAR government, the LAB has worked effectively and has been a key to maintaining harmonious

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article of Mao Ze Dong. In his article, *'Current Problems of Tactics in the Anti-Japanese United Front'*, Mao argued that 'the three principles' would allow the Communist Party of China (CPC) to 'develop the progressive forces, win over the middle class and isolate the die-hard forces'. It is indeed very interesting for the HKFTU to use the words of Mao to describe their strategy, as it not only showed their relations with the CPC, but also showed the logic behind their work in Hong Kong. See Ze Dong Mao, *"Current Problems of Tactics in the Anti-Japanese United Front"*, Marxists Internet Archive. [https://www.marxists.org/reference/archive/mao/selected-works/volume-2/mswv2\\_34.htm](https://www.marxists.org/reference/archive/mao/selected-works/volume-2/mswv2_34.htm) (Accessed 10 April 2018).

<sup>102</sup> Kwok Hing Wong, Speech to the Legislative Council, in *Hansard of the Legislative Council*, 17<sup>th</sup> December 2014 (2014).

labour relations in Hong Kong.<sup>103</sup> Should any of the hard-earned consensus reached by the LAB be 'overturned' by legislator's amendments, then not only would the functioning mechanism of tri-partite agreement be undermined, but labour relations in Hong Kong would also cease to be co-operative. The government has therefore always been aware of protecting the credibility of the LAB. As it has been mentioned in Chapter 4, the colonial government defined a new relation between the LAB and the LegCo after the introduction of elections in Hong Kong, in which the LegCo should respect the agreements reached by the LAB. At the same time, the colonial government was extremely aware of threats to the LAB and the mechanism of tri-partite agreement. Hence, in 1994, after the LegCo passed an amendment that violated the consensus of the LAB, the colonial government withdrew a Bill from the LegCo for the very first time in the history of Hong Kong. Even though colonial rule ended in 1997, the HKSAR government holds the exact same attitude over labour relations and the LAB must be respected. During the LegCo debates over paternity leave, the Secretary for Labour and Welfare faced a situation that was similar to that of 1994. Tommy Cheung Yu Yan, who was the representative of the Catering constituency, warned the Secretary for Labour and Welfare that it is **his duty to do anything to safeguard the mechanism of tri-partite**

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<sup>103</sup> For instance, see Leung Man Kin, Speech to the Legislative Council in *Hansard of the Legislative Council*, 14th December 1994 (1994). Similar claims have been raised by multiple officials in the 9 Hansards that the author studied.

**agreement, and the Secretary should either withdraw the Bill or resign** if any of the amendments were passed.<sup>104</sup> Finally, against the legislators' attempts to 'over-ride' the agreements of the LAB, the Secretary made it clear that if the agreements over paternity leave were to be amended, then

*“the Government will have no alternative but to withdraw the Bill reluctantly and unwillingly, so that the LAB of the new term will reconsider the issue, hoping it will reach a consensus as soon as possible.”*<sup>105</sup>

This is what happened when the government tried to withdraw a bill for the second time in the history of Hong Kong. The event of paternity leave not only confirms the fundamental rule of mutual trust in the policy venues for making labour laws, but also showed that as a last resort, the government would choose to withdraw a bill to ensure that labour laws will only be passed in the LegCo according to the agreements of the LAB. Also, with legislator Tommy Cheung Yu Yan warning the Secretary for Labour and Welfare, it showed that business elites are also keen to follow the rules of the LAB.

In the end, none of the 6 HKFTU legislators voted on any of the amendments.

Despite wanting to increase the length of the paternity leave, by not voting at all,

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<sup>104</sup> Tommy Yu Yan Cheung, Speech to the Legislative Council, in *Hansard of the Legislative Council*, 17<sup>th</sup> December 2014 (2014).

<sup>105</sup> Matthew Kin-Chung Cheung, Speech to the Legislative Council, in *Hansard of the Legislative Council*, 18<sup>th</sup> December 2014 (2014).

none of the HKFTU legislators violated the rule of mutual trust between representatives of employers and representatives of employees. Perhaps worth explaining here is the reason for the HKFTU legislators to not vote, but not ‘abstain’ or vote ‘no’ over the amendments. The HKFTU legislators did not vote ‘No’ because in principle, they supported the amendments. While they may still follow the rule of mutual trust by abstaining, ‘pro-democracy’ legislator Albert Chan Wai Yip attacked the HKFTU’s plan to not support the amendments. Chan claimed that HKFTU legislators should be seen as ‘strike-breakers’ if they vote ‘no’ or abstain from voting. Chan also accused the HKFTU for being a ‘yellow union’<sup>106</sup>. The final decision for HKFTU legislators to not vote at all was likely to refute Albert Chan’s accusations.<sup>107</sup> Equally worth noting is that Poon Siu Ping, a legislator of the FLU and a representative of the Labour functional constituency, **did exactly the same** as the HKFTU legislators by not voting over the first 3 amendments. Given that the FLU also participates in the LAB, the voting decisions of Poon Siu Ping should serve to confirm the rules of different policy venues and show how the informal rules could affect the voting behaviours of political actors.<sup>108</sup>

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<sup>106</sup> Albert Wai Yip Chan, Speech to the Legislative Council, in *Hansard of the Legislative Council*, 18<sup>th</sup> December 2014 (2014).

<sup>107</sup> See Appendix III for more.

<sup>108</sup> When discussing with the author over the case of paternity leave, Doctor Ng Sek Hong suggested the author to be more critical about the HKFTU. Doctor Ng’s concern was that if the author’s explanation is indeed ‘correct’, then the HKFTU would be voting according to their emotions but not their principles (i.e. abstain from voting if a motion violates the rules of the LAB).

Another reason for the HKFTU to not support the 7-day amendment was that it violated the second rule of the policy venue of the LAB. As a rule of the policy venue, legislation should follow the ideal of Voluntarism by drawing from traditions and keeping the legislation at a minimum. The government's suggestion of paying 4/5 of the normal wages to employees taking paternity leave, and the suggestion to legislate for a leave that is 'no more than 3 days', were signs to illustrate the significance of Voluntarism. In reality, this rule has the benefit of being able to help find practical solutions. A meaningful event was that when legislator Kenneth Leung Kai Cheung's second amendment about paternity leave entered the voting stage, Leung argued against his own amendment and ended up abstaining. The second amendment from Leung was moved on behalf of legislator Helena Wong and it suggested the wage level during paternity leave should change from 4/5 to the entirety of the employee's normal wage. Yet, Leung was aware that many questions existed. To quote Leung's own words,

*“ we have not hold any discussion on whether the extra one fifth of the employees' wages should be paid by way of insurance, solely by the Government, or jointly by the Government and the employer, or whether an additional five or six days should be provided for paternity leave without pay.”*

Leung moved on to say that

*“I do not think we should accentuate the provision of full pay to employees taking paternity leave, because if we make such an arrangement, members of the public will surely have other aspirations.”*<sup>109</sup>

As a result, Leung decided to abstain from voting on his own amendment. To compare with Leung, legislator James Tien Pei-Chun opposed the amendments raised by legislator Lee Cheuk Yan as unfounded. Tien mocked legislator Helena Wong and Lee Cheuk Yan for putting up a ‘political show’ and argued that

*” Mr LEE Cheuk-yan speaks against Mr WONG Kwok-hing because the Hong Kong Confederation of Trade Unions and the Federation of Trade Unions are rivals; and the Democratic Party is also taking the chance to make demands.”*<sup>110</sup>

That being said, Cheung commented that

*” On the contrary, I find the views of Mr Kenneth LEUNG, who is a professional, cogent and impartial.”*<sup>111</sup>

The comments from Cheung showed that the rule of minimum intervention is also important in the policy venues for making labour laws. Political actors who fail to follow these rules could easily be dismissed by business elites as ‘trouble-makers’.

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<sup>109</sup> Kenneth Kai Cheung Leung, Speech to the Legislative Council, in *Hansard of the Legislative Council*, 18<sup>th</sup> December 2014 (2014).

<sup>110</sup> James Tien Pei-Chun, Speech to the Legislative Council, in *Hansard of the Legislative Council*, 18<sup>th</sup> December 2014 (2014).

<sup>111</sup> *ibid.*

## Representatives of Employers and the Case of Paternity Leave

The previous section showed that the voting behaviour of the HKFTU legislators is the result of them following the informal rules for labour legislation in Hong Kong. Now, with the near-unanimous support for the legislation of 3-day paternity leave back in 2014, it will be shown that the voting behaviours of representatives of employers are also affected by the informal rules for labour legislation.

It is not unexpected for legislators that represent sectoral or business interests to voice their worries over paternity leave. It is also not unexpected for these legislators to reject the 7-day amendment. For example, legislator Tommy Cheung commented that

“If I am asked whether three or seven days of paternity leave are adequate, I would say even 70 days is inadequate. If a mother has postnatal depression, how long is needed for recovery? If a baby has some problems after birth, how long is needed for care and attention by the father? How can we muddle everything up for discussion, and then declare that Mr Tommy CHEUNG is cold-blooded?”<sup>112</sup>

Many other legislators opposed the amendment. In the end, among the 19 votes from the functional constituency, there was only 1 ‘Yes’ against 18 ‘No’. The amendment was negative under the ‘split-voting system’.

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<sup>112</sup> Tommy Yu Yan Cheung, Speech to the Legislative Council, in *Hansard of the Legislative Council*, 18<sup>th</sup> December 2014 (2014).

Still, if one gives a more careful look at the 3-day Bill, the voting results are actually very puzzling. The Hansards showed that legislator Tommy Cheung was not the only one who disliked the idea of legislating for paternity leave. Vincent Fang Kang, who was a member of the Liberty Party and the representative of the Wholesale and Retail functional constituency, also voiced his worries. This is to say that in theory, there should at least be two votes by Tommy Cheung and Vincent Fang against the 3-day Bill. Nevertheless, the 3-day Bill was passed after receiving 52 'Yes', 0 'No' and 1 'Abstain'. The three informal rules are again, the key for explaining this puzzle.

In regard of the case of paternity leave, the 3-day Bill was agreed by the LAB, yet the 7-day amendment was never agreed by the LAB. Hence, if legislators that represent business and sectoral interests also follow the 'rule of mutual respect', then it is natural for the Government Bill to be passed, and the amendment to be rejected. Still, the interview with the Liberty Party member showed that the real situation is more complicated.

When asked if the Liberty Party imposes any restriction on legislators of the functional constituency, the interviewee said there are not really any restrictions. The interview argued that in fact, because legislators of the functional constituency are bound to express the interests of their constituency, it is in a way, impossible for

the party to interfere. This matches with the observation of Ngok Ma, in which he claimed that the Liberty Party often allows its members to deviate from the party's stance and vote according to the interests of the constituencies that they represent<sup>113</sup>. That said, the interviewee mentioned that

*“The Liberty Party takes the LAB very seriously. As a matter of fact, in the past 20 years or so, we never opposed any of the LAB agreements.”*

The interviewee's answers showed that similar to the legislators of the HKFTU, the legislators that represent business interests could also face some very difficult situations. As reflected by the case of the 7-day amendment, sometimes it can be impossible to serve labour and respect the informal rules for labour legislation. Thus, when facing dilemmas that couldn't be solved, the HKFTU legislators would abstain from voting, or simply not vote. Although the representatives of employers stand on the opposite side of the representatives of employees, they can also face this dilemma of wanting to serve their constituencies without violating the informal rules for labour legislation. Consequently, one may expect representatives of employers to behave in ways that can help them deal with the dilemma. In the case of the Liberty Party, the solution is for legislators to leave the Chamber and not vote at all. For the 3-day Government Bill about paternity leave, the Hansard showed

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<sup>113</sup> Ma, (2012), 175.

that Tommy Cheung, Vincent Kang and James Tien Pei-Chun were all present. Yet, **none of them voted over the bill**. The major reason for some Liberty Party members to not vote is exactly the same as that of the HKFTU legislators. That is, to follow the informal rules for labour legislation, and particularly the ‘rule of mutual respect’. Legislator Felix Chung Kwok-Pan is a member of the Liberty Party. His speech during the LegCo meeting summarized the Liberty Party very well.

“Mr Tommy Cheung opposes the Bill very determinedly. But he doesn’t want a ‘red-cross’ on the voting records, so he decided to not vote. Mr Cheung is not against the provision of paternity leave. He is only opposing the idea of legislating for paternity leave. The Liberty Party believes in the free market, and the provision of paternity leave should depend on the capability of every company. In fact, even without the law, some companies provide 14-day paternity leave. For companies that could not afford providing paternity leave, they should be allowed to not to.

But we respect the decisions of the LAB.....I understand the Secretary when he said he might need to withdraw the Bill should any of the amendments be passed. After all, the LAB never agreed with those amendments. As for the Government Bill, the Liberty Party will support it. The LAB has representatives of employers and employees, and we support the agreements reached by everyone.”<sup>114</sup>

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<sup>114</sup> Felix Chung Kwok-Pan, Speech to the Legislative Council, in *Hansard of the Legislative Council*, 18<sup>th</sup> December 2014 (2014).

With the example of the Liberty Party, it is now clear that the near-unanimous supports from representatives of employers over Government Bills are caused by the informal rules for labour legislation. Either by joining the LAB or the Executive Council, the representatives of business and sectoral interests are expected to respect the agreements of the LAB. Consequently, these legislators should only behave according to the 'rule of mutual respect'. If for whatever reason that the legislators could not support the Government Bill, they should still follow the informal rules by ways such as leaving the Chamber and not vote.

The detailed discussions about what happened to collective bargaining and paternity leave in Hong Kong should have supported the discoveries of Chapter 4. By understanding the three informal rules and the importance of the LAB, distinctive behaviors of different actors could be understood.

## 6. The Durability of the Labour Advisory Board

When used to study industrial relation in a certain society, the institutional framework emphasizes on the roles played by past institutions. In the case of Hong Kong, the Labour Advisory Board has been shown to be very important. Without the agreements of the Labour Advisory Board, it is even impossible to introduce new labour laws. This chapter aims at explaining the durability of the Labour Advisory Board as an social institution for making labour laws in post-handover Hong Kong.

The durability and stability of institutions have been the focus of many literatures. In one of the widely cited works, Clemens and Cook suggested two straight-forward ways to understand institutions. Firstly, institutions could be understood in the negative sense. With so, institutions are linked with defining opportunities and constraining actions of different actors. It follows that the patterns of interaction between different actors will also be affected. Secondly, institutions could be positively perceived. When seen in this way, institutions could provide guides to actors for practical action. The two views are not mutually exclusive, and the differences between may not be very obvious. Based on these two understandings, Clemens and Cook concluded that institutions will endure if

actors and coalitions do not defect from institutional arrangements, or that the institutions are reinforced through interactions or legitimations. The case of the LAB in Hong Kong could be explained in a similar manner.

### **Explaining the Endurance of the LAB: the LAB as a Constraint**

When looking at the history of the LAB, one may find it to fit more into the negative model as raised by Clemens and Cook. The LAB is believed to be established by the Governor in 1928. Having experienced multiple changes in its structure, the LAB survived the handover and was kept in Hong Kong. The LAB has now transformed into an advisory body for labour legislation. Yet, to start with, the LAB was never designed to promote the rights of labour. Due to the lack of available governmental documents, there are disagreements over the exact year of establishment of the LAB. For example, the HKFTU believed that the LAB started in 1927<sup>115</sup>, and a member of the Hong Kong Christian Industrial Committee believed that it started in 1929<sup>116</sup>. A more widely accepted view is that the LAB was created in 1928<sup>117</sup>. Still, disagreements aside, it is easy to see that all three views (i.e. 1927/1928/1929) suggest that the LAB was created in response to the Canton-Hong

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<sup>115</sup> Hong Kong Federation of Trade Unions, *FTU Press*, (Hong Kong: Hong Kong Federation of Trade Unions, March 1991).

<sup>116</sup> Fung Or Luk, "The Labour Advisory Board", in *Topics On Labour Movements in China and Hong Kong*, (Hong Kong: Hong Kong Christian Industrial Committee, 1986), 165-176.

<sup>117</sup> Chen, Ng, and Lui, eds., (1988)

Kong Strike from 1925 to 1926. The LAB started with only 3 members, in which the employers, the government and the military each had one representative. At that point of time, the LAB was more like a platform for the government to co-ordinate with business elites against workers' militancy. Between 1936 and 1937, the LAB did not even hold a single meeting.<sup>118</sup> After the Second World War, the structure of the LAB was changed. Three labour representatives were appointed to join in 1947, but the LAB was still dominated by representatives of employers. Also, at that time, the LAB focused only on giving opinions on laws that were drafted by the Commissioner of Labour, and its value as an advisory body was doubtful. Soon, the structure of the LAB was changed to further balance the influence between employers and employees. The 1950 LAB had 4 representatives of employers and 4 representatives of employees. The government was responsible for appointing 2 representatives of employers and 2 representatives of employees. The other 2 representatives of employers were nominated by employers' organizations, whereas the remaining 2 representatives of employees were elected through a 'one union one vote' election. The current structure of the LAB has not changed since 1989. Starting from 1989, the LAB is made up of 6 representatives of employers and 6 representatives of employees. Now, the government is still responsible for the appointment of 1

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<sup>118</sup> Chen, Ng, and Lui, eds., (1988), 133.

representative of the employers and 1 representative of the employees, but all remaining representatives are elected by labour unions or selected by employers' organizations. The traditional method of 'one union one vote' is still used to elect representatives of employees. **Table 2** is a summary of the structural developments of the LAB throughout the years.

**Table 2 (Historical Developments of the Structure of the LAB)**

		1927	1946	1950	1977	1985	1989
Total number of representatives		3	9	8	12	12	12
Representatives of Employers	Appointed by the government	3 (i)	6 (ii)	2	2	2	1
	Selected by employers' organizations			2	4	4	5
Representatives of Employees	Appointed by the government	/	3	2	3	2	1
	Elected by registered trade unions (One Union One Vote)		/	2	3	4	5

**Source:**

Hong Kong Federation of Trade Unions, *FTU Press*, (Hong Kong: Hong Kong Federation of Trade Unions, March 1991).

**Remarks**

i: The employers, the government, and the military each had 1 representative.

ii: Chinese employers and non-Chinese employers each had 3 representatives.

But how exactly did the LAB define the opportunities of different actors and constrain their action? To fully understand this, one must pay attention to a few events from the 1980s. Before the introduction of elections in 1985, the Governor enjoyed great executive powers and received huge support from the legislature. After all, LegCo members were appointed by the Governor and they usually share very similar beliefs and visions. With little to no oppositions in the legislature, the views of the LAB meant little to the LegCo members before 1985. For instance, in 1976, the LAB suggested restricting over-time work by teenagers but the LegCo members rejected the suggestion. Later in 1983, the LAB suggested improving the sickness-welfare for employees, but was again rejected by the legislators<sup>119</sup>.

Nonetheless, situations clearly changed after the political reforms of 1985. The 1986 LAB report claimed that it had given advice on **all major labour legislation** in Hong Kong to the Commissioner for Labour.<sup>120</sup> This is undoubtedly, a different picture from what happened in 1976 and 1983. Later, in 1993, the LAB started to discuss about reforms of long-service payment and severance payment. In 1994, following Lau Chin Shek's attempt to amend the government bill, the Secretary for Education and Manpower withdrew his Bill from the LegCo for the first time in Hong Kong's

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<sup>119</sup> Chen, Ng, and Lui, eds., (1988). Also see Hong Kong Federation of Trade Unions Women's Affairs Committee, *48 · 08 · 60: Collected Essays on the Hong Kong Federation of Trade Unions' Services for Women*, (Hong Kong: Hong Kong Federation of Trade Unions, 2009).

<sup>120</sup> Labour Advisory Board, (1986).

history. While the Secretary for Education and Manpower justified his decision by emphasizing the role of the LAB and its importance in bringing about a harmonious labour relation in Hong Kong, what he said was actually a new creation. The fact is that **the ‘rule of mutual respect’ was created by the colonial government after 1985**. The colonial government’s changing attitude toward the LAB should be seen as an attempt to define the ‘proper conduct’ of policy actors for labour legislation after the introduction of elections. Under the newly created rule, labour legislation in Hong Kong should rely on reaching consensus, but not on political struggles and debates in the Legislative Council.

That said, it must be explained why the practices and institutions of colonial period were kept in post-handover Hong Kong. The most important reason is that the Chinese government desires prosperity and stability in Hong Kong under the ‘One Country Two System’. One of the HKFTU interviewees told the author,

*“The Provisional Legislative Council did a lot on amending the Society Ordinance before and after the handover. One of the key points that were kept from the colonial period is that societies must not have overseas political connections. People often think that the Society Ordinance was kept that way to target the TUC and the HKCTU. I tell you, that is partially true, but it was also meant to target us, the HKFTU. Wealthy people in Hong Kong are fearful that the HKFTU could become an official member of the*

*All-China Federation of Trade Unions. So, it became necessary for the Society Ordinance to retain elements of colonial rule.”*

Apart from that, the Chinese government also suggested the HKFTU to actively embrace the LAB. After the fall of the Gang of Four, the Communist Party of China (CPC) held the 6<sup>th</sup> Plenary Session of the 11<sup>th</sup> Central Committee of the Communist Party of China.<sup>121</sup> During the 6<sup>th</sup> Plenary Session of June 1981, the famous *Resolution on Certain Questions in the History of Our Party Since the Founding of the People’s Republic of China*, was passed and adopted. Up till this date, the 1981 *Resolution* was still regarded as one of the most important CPC documents as it gave an official account on the nature of the Cultural Revolution and the problems of Mao’s ‘Ultra-Leftism’. With the CPC’s official denunciation of Mao’s ‘Ultra-Leftism’, the 1981 September/October Issue of the *FTU Press* followed the spirit of the *Resolution* and wrote that ‘We must love our great Socialist Motherland. We need to stay practical and unite all patriotic forces according to the real situations of Hong Kong’.<sup>122</sup> The fact that the HKFTU ended boycotting the LAB in the exact same year is an evidence to show that the Chinese government wanted the LAB to be kept after 1997. Indeed, as a social institution, the LAB was able to promote cooperation

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<sup>121</sup> Maurice Meisner, *Mao’s China and After: A History of the People’s Republic*, 3<sup>rd</sup> ed., (New York: The Free Press, 1999). Also see Liqun Qian, *Mao’s Era and the Post-Mao Era (1949-2009) : Another Kind of Historical Writing*, (Taipei: Linking Books, 2012).

<sup>122</sup> Hong Kong Federation of Trade Unions, *FTU Press* (Hong Kong: Hong Kong Federation of Trade Unions, October 1981).

between employers and employees, at least after 1985. Also, labour organizations benefited from respecting and cooperating with each other. All these effects of the LAB are desired by the CPC. In short, as an effective way to constrain the action of policy actors especially by lowering the militancy of labour organizations, the LAB was deliberately kept in post-handover Hong Kong.

### **Explaining the Endurance of the LAB: the LAB as a Guide to Practical Actions**

The fact that the LAB is extremely important for maintaining a harmonious industrial relation in Hong Kong should not only be understood in a negative way. Another important reason for the LAB to endure as a social institution is that it provided a guide to practical actions to different policy actors. Organized labour benefited particularly much from these institutional arrangements.

From the start of colonial rule in 1842, the colonial government never laid out a legal framework to protect the rights of labour. Situations changed only after the chaotic events of 1967<sup>123</sup>, when the colonial government quickly responded by

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<sup>123</sup> 'The Leftist Riot of 1967' is certainly a more popular term, but it is also seen as a politically biased term that ignores the crimes committed by the colonial government. A number of scholars have tried to use more neutral terms such as 'the events', 'the disturbances' or 'the turbulence' to refer to what happened in 1967.

introducing the Employment Ordinance in 1968. Ng Sek Hong once gave a brilliant analysis of the effects of this change. Ng argued that after 1967, labour movement and collective bargaining in Hong Kong hit a slump. Labour movement after 1967 were mostly of 'self-protective' nature. At the same time, with the introduction of the Employment Ordinance, employers and employees in Hong Kong slowly started looking at government legislation as the standard for everything. Contracts started to be made after the laws. Legal rights were emphasized during conflicts and disagreements. Ng summarized the situation by pointing out that "ironically, when the Hong Kong government emphasized its non-interventionist, voluntarist attitude toward labour legislation, the labour relation in Hong Kong started to be affected or even driven by the government's legislations."

Under this situation, the LAB becomes a platform for representatives of employees to influence labour legislation. Indeed, at least 5 methods can be identified to show the significance of the LAB.

Creating social pressure has been proven to be successful in pushing for new labour laws in post-handover Hong Kong. The introduction of statutory minimum wage in Hong Kong is arguably the most successful example of moving an issue up the policy agenda through immense pressure. Previous chapters have shown that the LAB meetings became more favourable to labour, after events such as those that

are related to 'meal-break payment'.

In semi-authoritarian Hong Kong, elections are also another way to move an issue higher on the political agenda. Ming Kau Chan and Lawrence K.K. Ho argued, one of the reasons for C.E. Donald Tsang to promise to study the possibilities of a statutory minimum wage was the need to show his determination to battle against grassroots poverty for his 2007 re-election campaign.<sup>124</sup> Representatives of employees could for instance, use their place in the Election Committee or the Executive Council to favour their work in the LAB.

The third way to affect the agenda of a certain policy venue is through pressure created by the occasional outbreak of what Regan called a 'macro-exogenous' event.<sup>125</sup> Chan and Ho highlighted the significance of the Chinese government's introduction of a national minimum wage law on Hong Kong.<sup>126</sup> They argued that the minimum wage law in mainland China – especially its implementation in Hong Kong's neighbouring Pearl River Delta region, created a huge contrast between Hong Kong and the mainland. The two authors suggested that this kind of contrast was one of the reasons for the SAR government to be more determined to introduce statutory minimum wage in Hong Kong. Apart from the pressure caused by the new

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<sup>124</sup> Ming K. Chan and Lawrence K.K. Ho, "From Minimum Wage to Standard Working Hour: HKSAR Labour Politics in Regime Change", *Journal of Current Chinese Affairs* (2013)

<sup>125</sup> Regan, (2010).

<sup>126</sup> Chan and Ho (2013).

law in China, the World Trade Organization (WTO) might also have a role to play in pushing for the legislation for statutory minimum wage<sup>127</sup>. Following the 2008 Financial Crisis, the WTO began to rethink fundamental notions of the free-market, and it also started to pay more focus on protecting low-income workers. In the 2010 Trade Policy Review of Hong Kong, the WTO was positive about Hong Kong's introduction of a statutory minimum wage<sup>128</sup>, suggesting that the new law could have been supported by international pressure. Representatives of the LAB could emphasize the effects of these exogenous events to benefit their negotiations.

The fourth method to promote labour legislation is by emphasizing on the possible benefits of policy change in the LAB and other policy venues. One of the HKFTU interviewees agreed that in the LAB, it is easier for representatives of employees to reach consensus with the representatives of employers over issues that may benefit the employers, or do not involve increasing operation costs of businesses. An example was that in 2009, the government and the employers were convinced that some employers would abuse the Protection of Wages on Insolvency Fund to 'pay their bills', and the practice was seen as harmful to all parties, including the government, the employers and the employees. Eventually, with strong support

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<sup>127</sup> Doctor Ng Sek Hong suggested this possible angle to the author in a private conversation. Credits should belong to him.

<sup>128</sup> World Trade Organization, "Trade Policy Review"

World Trade Organization.

[https://www.wto.org/english/tratop\\_e/tpr\\_e/s241\\_sum\\_e.pdf](https://www.wto.org/english/tratop_e/tpr_e/s241_sum_e.pdf) (Accessed April 1, 2018).

from the LAB, the HKSAR government finally made the failure to pay under award of tribunal a criminal offence.<sup>129</sup>

The fifth method to gain progress in labour legislation is for representatives of employees to make 'deals' with the representatives of employers. This strategy has at least been employed by representatives of the HKFTU and the FLU, but it is a highly controversial practice. During the LegCo meeting on the 14<sup>th</sup> of December 1994, HKFTU member Tam Yiu Chung revealed that the representatives of employers agreed to improve the laws only if the HKFTU agrees with keeping the HK\$180,000 'maximum cap' and not support any amendments to the bill<sup>130</sup>. The HKFTU found it 'acceptable' to compromise because the employers' new proposal could benefit 91.24% of the labour force, whereas removing the \$180,000 cap would only benefit the other 8.76% of high-income employees who earned more than HK\$15,000 per month.<sup>131</sup> In the end, even though Tam agreed that the amendment by HKCTU legislator Lau Chin Shek to remove the \$180,000 cap would be better to the working people of Hong Kong, he could not support the bill. Having to respect the LAB consensus and his promise to the representatives of employers,

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<sup>129</sup> When asked, the interviewee for the March 29<sup>th</sup> session agreed that agreements that do not involve money are easier to reach, and raised this event as an example. It is worth mentioning that representatives of employees have actually demanded this change for decades, but real change only came after employers realized that the behaviours of individual employers under the old law could have more serious effects on all other employers.

<sup>130</sup> Yiu Chung Tam, Speech to the Legislative Council in *Hansard of the Legislative Council*, (Hong Kong: Legislative Council of Hong Kong, 14 December 1994).

<sup>131</sup> Hong Kong Federation of Trade Unions, *FTU Press*, (Hong Kong: Hong Kong Federation of Trade Unions, January 1995)

Tam abstained from voting on Lau's amendment. A similar practice also happened to a member of the FLU. In the LegCo meeting of June 26<sup>th</sup>, 1997, FLU legislator Lee Kai Ming explained his decision to vote against all legislators' amendments to the bills that were related to the Employment Ordinance. Lee stated that,

*"The bills that have been passed are the fruits of negotiation and agreements between the employers and the employees, both inside and outside of the LAB. Although many of the bills have not lived up to the full expectations of labour, the negotiations did involve making compromises by both sides. All that we have discussed and agreed upon have been included in the government's bill. I was heavily involved in the negotiations and to keep my promises made during these negotiations, I could only vote 'No' on all the amendments raised by other legislators."*<sup>132</sup>

The speeches by Tam and Lee showed that in the LAB, representatives of employees could 'make a deal' with the representatives of employers and gain their support to break the deadlock. However, because the representatives of employers tend to demand legislators who represent labour to vote in a certain way, it is possible that this kind of 'deal' would be denounced by the general public for being 'opportunistic'.

Whether these 5 ways of influencing labour legislation is good for labour would

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<sup>132</sup> Kai Ming Lee, Speech to the Provisional Legislative Council in *Hansard of the Provisional Legislative Council*, (Hong Kong: Provisional Legislative Council of Hong Kong, 29<sup>th</sup> October 1997).

be another question. Still, because the LAB has acted as a widely-respected social institution for labour legislation, it actually provided room and opportunities for policy actors. With the examples that were mentioned above, the LAB has been reinforced and endured through repeated legitimation and interactions between the policy actors.

The durability of the Labour Advisory Board as a social institution for labour legislation could be explained by at least two reasons. It endured because it added constraints to policy actors, and in particular lowered the militancy of organized labour. This matches with the need of People's Republic of China in keeping Hong Kong stable and prosperous under 'One Country Two Systems'. At the same time, the Labour Advisory Board provided guides to practical actions of policy actors. Organized labour found it particularly important in influencing labour legislation under the existing labour relation of Hong Kong. Through repeated legitimation and interactions, the Labour Advisory Board is endured.

## 7. Implications

After revealing the policy venues and informal rules for making labour laws in Hong Kong, 2 implications could be drawn from the current study.

### **The Usefulness of the Institutional Framework**

To start with, the current study showed the power of the institutional framework in making sense of some of the most complicated case. In many ways, studying Hong Kong labour would seem impossible. Hong Kong is not only a former colony, but also a semi-authoritarian society which enjoys the status of a sub-national special administrative region. The legislature in Hong Kong and the 'split-voting system' is unconventional. The Labour Advisory Board is a non-statutory body, but it has been treated as the highest organ for tri-partite agreements. What is more is that Hong Kong labour has a long history of divide and clash. While all this made the case of Hong Kong extremely special, the institutional framework could still allow a careful study to be made.

One way to put the institutional perspective is to study the effects of past-institutional arrangements and opportunities for action on different policy actors. With so, the distinctive responses of policy actors could be explained. By following the institutional perspective and employing concepts such as policy

venues and informal rules, the logic behind labour legislation in Hong Kong could still be identified. Table 6 shows the voting results of the major changes in Hong Kong labour laws since 1997. It supports the findings of this work by providing a clear picture of labour legislation in Hong Kong.

**Table 6 (Voting Results of Major Changes in Hong Kong Labour Laws Since 1997)**

<b>Major (Proposed) Changes in Labour Laws</b>	<b>LAB Agreement / Support</b>	<b>LegCo Voting Results</b>
Collective Bargaining Rights (Private Member Bill by Legislator Lee Cheuk Yan)	Not Consulted	Passed before the handover (28 Yes, 26 No)  [Repealed after the handover]
Statutory Minimum Wage	Supportive (Assisted the government and the Provisional Minimum Wage Commission)	Passed (46 Votes, 45 Yes, 1 No)
Criminalization of defaulted payment of wages	Agreement Reached	Passed (44 Votes, 44 Yes, 0 No)
Statutory Paternity Leave	Agreement Reached	Passed (53 Votes, 52 Yes, 0 No, 1 Abstain)
Statutory Paternity Leave (7-Day Amendment)	Not Consulted	Negated (19 Votes from Functional Constituencies, 1 Yes, 18 No) (20 Votes from Geographical Constituencies, 12 Yes, 8 No)

Source:

Legislative Council of the Hong Kong Special Administrative Region, *Hansard of the*

*Legislative Council* (Various Meetings)

The institutional framework is not only strong in aiding in-depth case studies. In fact, it can also be used to conduct comparative studies to yield even more insights. An example would be a work from 1993 by Ng and Cheng, in which the authors highlighted the difference between Singapore and Hong Kong. The authors contrasted for instance, Singapore's National Trades Union Congress to Hong Kong labour that was highly divided. Following this kind of comparative works, one could even discover more with the institutional framework.<sup>133</sup> Of course, as shown by this thesis on Hong Kong, using the institutional framework to study semi-authoritarian societies would be more challenging. Yet, in short, the institutional framework is still extremely useful.

## The Halfway House May Not Stand

Samuel Huntington famously claimed that "liberalized authoritarianism is not a stable equilibrium; the halfway house does not stand".<sup>134</sup> Huntington's claim attracted many scholars to test his view with different cases.<sup>135</sup> Regarding the

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<sup>133</sup> For example, Dan Slater's study about Singapore could definitely bring more. See Dan Slater, *Ordering Power: Contentious Politics and Authoritarian Leviathans in Southeast Asia*, (Cambridge: Cambridge University Press, 2010).

<sup>134</sup> Samuel Huntington, *The Third Wave: Democratization in the Late Twentieth Century*, (Norman: University of Oklahoma Press, 1993), 137.

<sup>135</sup> An example would be Guillermo O'Donnell (1996). Also see William Case, "Can the 'Halfway House' Stand? Semidemocracy and Elite Theory in Three Southeast Asian Countries", *Comparative Politics Vol.28 No.4* (1996), 437-464.

future of semi-authoritarian Hong Kong, the case of Hong Kong labour seems to support the claim by Huntington.

Labour legislation in Hong Kong relies heavily on the Labour Advisory Board and the three informal rules, namely the 'rule of mutual respect', the 'rule of minimal intervention' and the 'rule of balance of power'. Nevertheless, neither were the representatives of employers or employees truly satisfied with the rules.

At the territory level, the HKFTU respects the LAB and sees it as some sort of a 'semi-collective bargaining' body. Nevertheless, the LAB could not negotiate about the issue of wage and working conditions, and also suffers significant weaknesses. The HKFTU therefore urged the government to make the LAB a statutory body so that the agreements reached in it will cease to be only advises to the Commissioner of Labour and the government, but will have greater importance that the government must positively respond to. On top of all these, the HKFTU also suggested the government to follow the British example of the Advisory, Conciliation and Arbitration Service (ACAS) and create a similar public body.<sup>136</sup> The HKFTU tried to bring their design to the LegCo in 2009, but the Bill had failed to pass despite receiving support from the HKCTU.<sup>137</sup>

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<sup>136</sup> Hong Kong Federation of Trade Unions Research Department, (2011).

<sup>137</sup> Legislative Council of the Hong Kong Special Administrative Region, *Hansard of the Legislative Council*, (Hong Kong: Legislative Council of the Hong Kong Special Administrative Region, 4<sup>th</sup> February, 2009).

As for the representatives of employers, the interviewee from the Liberty Party argued that,

*“I hate it when other legislators bring out unrealistic and incomparable examples from other countries. I also don’ t think that the HKCTU’ s criticisms against the LAB are valid at all. But to me, as long as the government stands its ground and withdraw Bills when necessary, political parties can demand whatever they like.”*

Still, when asked about the HKFTU’s suggestion of making the LAB a statutory body, the interviewee opposed it in a determined way. The interviewee argued that it is the duty of the Legislative Council to monitor the government and make laws. The interviewee believed that legislators must not handover their duty to the LAB, or else the Legislative Council would be completely passive. The interviewee added more by claiming that

“one person one vote is not the most ideal. There won’t be any balancing under that kind of design. Just look at the USA! In what way does paying lobbyists outshine the functional constituency? Let’s be real, in the USA, people like me would simply become lobbyists.”

Discontent comes not only from the policy actors that participate in the policy venues and agree to follow the informal rules, but also from ‘pan-democrats’. Regarding the problem of democracy, the HKCTU believes that it is best to the

working people of Hong Kong if they were given full franchise. This is mainly because the Functional Constituencies are seen by the HKCTU as a violation of the ideal of democracy. The HKCTU also tend to believe that without the Functional Constituencies, people of Hong Kong could freely create laws that are beneficial to labour under the principle of democracy. For similar reasons, the LAB was seen by the HKCTU as undemocratic and suspicious. The HKCTU was not convinced that the LegCo (especially its popularly elected members) should respect the undemocratic LAB.<sup>138</sup> As a result, 'pan-democrats' tend to ignore the three informal rules for labour legislation. At the same time, the government's withdrawal of Bills will not be seen as enforcing the informal rules, but as signs of the lack of democracy in Hong Kong.

With all these elements combined, the LAB and the informal rules are actually quite fragile. Currently, the functional constituency could ensure that no Bills could be passed without the agreement of the LAB. However, there is no long-term guarantee that Bills that were supported by the LAB could actually be passed. If the pressure for democratization increases, the representatives of employers and employees may find it necessary to seek create other institutions for labour legislation. Representatives of employers may seek to retain their influence by

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<sup>138</sup> Cheuk Yan Lee, Speech to the Legislative Council, in *Hansard of the Legislative Council*, 18<sup>th</sup> December 2014 (2014).

maintaining the semi-authoritarian nature of Hong Kong, whereas labour organizations could find a more democratic Hong Kong beneficial to labour. While this complicated situation is partly caused by the Chinese government's 'promise for democracy' to the people of Hong Kong, the Hong Kong example could still add to support Huntington's claim.

## 8. Conclusion

The institutional framework has been used in this thesis to study labour legislation for semi-authoritarian Hong Kong. As a society which combines elements of democracy and authoritarianism, the concept of policy venues and informal rules were particularly helpful in revealing the mysteries about Hong Kong. The puzzling behaviours of the representatives of employers and employees have been explained by looking at the effects of past-institutional arrangements and opportunities for action to each policy actor. By revealing the policy venues, informal rules, and power dynamics involved in making labour laws in Hong Kong, it is hoped that this work helped contribute to the existing literature on semi-authoritarianism, informal rules, and the concept of policy venues.

In post-handover Hong Kong, the non-statutory Labour Advisory Board connects different policy venues for labour legislation. From the legislature that enjoys formal legal authority, to the Chief Executive's 'cabinet' – the Executive Council, all major policy venues will seek advice from the Labour Advisory Board. At the same time, three informal rules have been developed to guide labour legislation. They are, the 'rule of mutual respect', the 'rule of minimal intervention' and the 'rule of balance of power'. Labour legislation is only possible when all three rules are followed by policy actors.

The 'rule of mutual respect' means that labour laws in Hong Kong should only be passed after being backed by the agreement of the Labour Advisory Board. Any attempts to support laws or amend bills without the agreement of the Labour Advisory Board would be seen as a threat to the credibility of the tri-partite system. The government will 'enforce' the 'rule of mutual respect' by withdrawing the Bill from the legislature when necessary. The policy venues and informal rules would greatly affect the behaviours of political actors. To illustrate, legislators of the Hong Kong Federation of Trade Unions supported repealing the Employee's Rights to Representation, Consultation and Collective Bargaining Ordinance in 1997. Their decision was mainly because the Ordinance violated the 'rule of mutual trust' and could also violate the 'rule of balance of power' by affecting the relative power of different labour organizations. Also, in 2014, the legislators of the Hong Kong Federation of Trade Unions did not support any amendments to paternity leave, for these amendments violated the 'rule of mutual respect' and the 'rule of minimal intervention'.

With the case of Hong Kong labour, 2 implications can be drawn. Firstly, the institutional framework has been shown to be highly valuable. With the institutional perspective, major policy venues, the informal rules, the interests involved and the power dynamics behind different actors during labour legislation have all been

made clear be made clear. Researches on semi-authoritarian regimes could also draw lessons from the institutional perspective. Secondly, this thesis provided a case that supports Huntington's claim, that "liberalized authoritarianism is not a stable equilibrium; the halfway house does not stand".<sup>139</sup> This thesis showed that the Labour Advisory Board and the informal rules for labour legislation are not guaranteed to function. In fact, multiple policy actors may or may want to challenge and change the situation. Representatives of employers find the current situation acceptable and may want to resist public demand for democratization. Representatives of employees may find it necessary to formalize the informal rules. One of the possible ways is to make the Labour Advisory Board a statutory body. Apart from that, 'pan-democrats' also seek to change the rules of labour legislation to depend more on democratic elections. All these possible outcomes suggest that under the pressure for democratization, the Labour Advisory Board and the three informal rules might not always endure.

This thesis has explained how labour laws are made in Hong Kong. It is hoped that the findings could bring insights to the readers on different topics and in particular, on the future of Hong Kong.

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<sup>139</sup> Samuel Huntington, *The Third Wave: Democratization in the Late Twentieth Century*, (Norman: University of Oklahoma Press, 1993), 137.

## **Appendix I: A Sample of Interview Questions Prepared for HKFTU Interviewees**

- What difficulties do the Hong Kong working class face?
- What are the differences between the HKFTU and labour parties from around the world?
- To what extent, and in what ways, is the LAB important?
- How is the overall environment in the LAB?
- Do you think that the lack of social security in Hong Kong made it harder for labour to bargain with the employers?
- Do you think it is easier to reach agreements in the LAB when little monetary costs are involved (e.g. criminalization of the failure to pay under award of tribunal)?
- Are ordinary workers involved in the negotiation process? What about cooperation with other labour organizations and even the HKCTU?
- Do you think that mobilizing workers (e.g. the May First Demonstration) is useful in creating public support?
- Do you think that the handover greatly changed the practices of the HKFTU?
- Have any Chinese officials tried to influence the decision-making in the HKFTU?
- What is the relation between the HKFTU and other 'pro-establishment' parties?
- What do you think about the future of Hong Kong? Will it stay Capitalist?

## **Appendix II: A Sample of Interview Questions Prepared for**

## **the Interviewee from the Liberty Party**

- In what ways are the employers in Hong Kong affected by labour legislation after the handover?
- To what extent, and in what ways, is the LAB important?
- Will the Liberty Party require its legislators to vote in a certain way?
- Why did the Liberty Party support statutory minimum wage and statutory paternity leave?
- What is the relation between the Liberty Party and other labour organizations? Will there be any channels of communication?
- What do you think about some legislators amending Bills without the agreement of the LAB?
- What do you think about the future labour relation in Hong Kong?
- The HKFTU suggested the promoting the LAB to a statutory body, and requiring the Legislative Council to fully support it. What is your take on this suggestion?

### Appendix III: Membership of HKFTU Affiliates, 1949-2016

Year	Affiliates	Membership
1949	28	29000
1950	42	32000
1951	48	35000
1952	44	31000
1953	46	30000
1955	51	35000
1967	64	95408
1968	65	96062
1969	65	100180
1970	66	114387
1971	66	126408
1972	66	145521
1973	66	170047
1974	67	184440
1975	67	211866
1976	67	224544
1977	67	228313
1978	67	214848
1979	66	196543
1980	66	182601
1981	69	169647
1982	71	171073
1983	71	167933

1984	73	166461
1985	70	167832
1986	72	169802
1987	78	168550
1988	81	173956
1989	81	173820
1990	82	175746
1991	84	181498
1992	87	192019
1993	89	199862
1994	91	205916
1995	97	222448
1996	113	245679
1997	118	260118
1998	118	258186
1999	130	278063
2000	136	286904
2001	143	287233
2002	147	296516
2003	149	289741
2004	154	285403
2005	158	282202
2006	174	292671
2007	176	311834
2008	178	335945

2009	179	350252
2010	180	368740
2011	183	380009
2012	184	396110
2013	184	405516
2014	187	403235
2015	189	415145
2016	190	422903

**Source:**

- Registrar of Trade Unions, *Annual Departmental Reports by the Registrar of Trade Unions* (Hong Kong: Registrar of Trade Unions, 1985 -1993)
- Registry of Trade Unions, *Annual Statistical Report by the Registry of Trade Unions* (Hong Kong: Registry of Trade Unions, 1994 - 2016)
- Po Lung Leung, "A Brief Introduction of the Hong Kong Federation of Trade Unions", in *Topics On Labour Movements in China and Hong Kong*, (Hong Kong: Hong Kong Christian Industrial Committee, 1986), 131.

**Note:**

- i. Some figures from *Topics On Labour Movements in China and Hong Kong* are different from the Reports by the Registrar of Trade Unions. These figures from 1984 and 1985 have been updated according to the *Reports* and were shown in Italic fonts.
- ii. Records from 2003 to 2010, 2012 and 2014 are not openly accessible. The author was able to collect data from these years thanks to the generous help from staffs of the Registry of Trade Unions.

i. **Appendix IV: Voting Record of the Employment  
(Amendment) Bill 2014)**

投票 VOTE: 4  
日期 DATE: 18/12/2014  
時間 TIME: 03:21:24 下午 PM

動議 MOTION: 《2014年僱傭(修訂)條例草案》— 全體委員會審議階段— 梁繼昌議員的第一項修正案— 第6條  
EMPLOYMENT (AMENDMENT) BILL 2014 - COMMITTEE STAGE - HON KENNETH LEUNG' S 1ST AMENDMENT TO CLAUSE 6

動議人 MOVED BY: 梁繼昌 Kenneth LEUNG

	功能界別 Functional Constituencies	地方選區 Geographical Constituencies	最後結果 Final Result
出席 Present	23	24	
投票 Vote	19	20	
贊成 Yes	1	12	
反對 No	18	8	
棄權 Abstain	0	0	
結果 Result	否決 Negatived	否決 Negatived	否決 Negatived

個別表決如下 THE INDIVIDUAL VOTES WERE AS FOLLOWS:

議員 MEMBER	投票 VOTE	議員 MEMBER	投票 VOTE
<b>功能界別 Functional Constituencies</b>		<b>地方選區 Geographical Constituencies</b>	
何俊仁 ALLEN HO		曾旺成 TSANG Yok-sing	出席 PRESENT
涂謹申 James TO		李卓人 LEE Che-lo yan	贊成 YES
劉鳳珍 Dr LAU Wong-fai	反對 NO	陳鳳林 CHAN Kam-lan	反對 NO
石禮謙 Abraham SHEK		梁耀忠 LEUNG Yiu-chung	贊成 YES
蔡子人 Tommy CHEUNG	反對 NO	劉慧珊 Emily LAU	贊成 YES
馮檢基 Frederick FUNG		譚耀宗 TAM Yiu-chung	反對 NO
方剛 Vincent FANG		王國興 WONG Kwok-hing	出席 PRESENT
李國麟 Prof Joseph LEE		湯家驊 Renny TONG	
林健鋒 Jeffrey LAM	反對 NO	何秀蘭 Cyd HO	贊成 YES
梁家傑 Andrew LEUNG	反對 NO	陳克勤 CHAN Hak-kan	反對 NO
黃定光 WONG Ting-kwong	反對 NO	梁美芬 Dr Priscilla LEUNG	反對 NO
李慧珍 Sanny LEE	反對 NO	黃國健 WONG Kwok-kin	出席 PRESENT
林天福 Dr LAM Tai-fai	反對 NO	葉劉淑儀 Mrs Regina IP	
陳健波 CHAN Kin-wo	反對 NO	蕭偉波 Paul TSE	
Dr LEUNG Ka-lau		梁家傑 Alan LEONG	
鍾國柱 CHEUNG Kwok-che		梁國雄 LEUNG Kwok-hung	
IP Kwok-him	反對 NO	陳偉業 Albert CHAN	
黃亮基 NG Leung-sing	反對 NO	黃毓民 WONG Yuk-man	
何俊賢 Steven HO	反對 NO	毛孟靜 Claudia MO	贊成 YES
Frankie YICK	反對 NO	田北辰 Michael TIEN	
YIU Si-wing	反對 NO	田北辰 James TIEN	
馬建國 MA Fung-kuok	反對 NO	胡志偉 WU Chi-wei	贊成 YES
Charles Peter MCK	出席 PRESENT	范國威 Gary FAN	贊成 YES
梁繼昌 Kenneth LEUNG	贊成 YES	陳志全 CHAN Chi-chuen	贊成 YES
KWOK Wai-keung	出席 PRESENT	陳恒禧 CHAN Han-pun	反對 NO
Dennis KWOK		陳家浩 Dr Kenneth CHAN	贊成 YES
Christopher CHEUNG	反對 NO	梁志祥 LEUNG Che-cheung	反對 NO
IP Kin-suen		麥美娟 Alice MAK	出席 PRESENT
Martin LIAO		Dr KWOK Ka-ki	贊成 YES
POON Siu-ping	出席 PRESENT	馮超雄 Dr Fernando CHEUNG	贊成 YES
TANG Ka-piu	出席 PRESENT	單仲偕 SIN Chung-kai	
Ir Dr LO Wai-keuk	反對 NO	黃碧雲 Dr Helma WONG	贊成 YES
CHUNG Kwok-pun	反對 NO	蔡耀基 Dr Elizabeth QUAT	
Tony TSE	反對 NO	梁耀忠 Dr CHIANG Lai-wan	反對 NO
		鍾樹根 Christopher CHUNG	反對 NO

**Note:**

- The names of all HKFTU members have been highlighted.
- Poon Siu Ping is a member of the FLU. He was a representative of the labour constituency.

## **Appendix V: Extract from the Employee's Rights to Representation, Consultation, and Collective Bargaining Ordinance**

### **PART I**

#### **PRELIMINARY**

(3) Part III (right to consultation) shall not apply to an employee if on the relevant date the number of employees employed by his employer added to the number of employees employed by any associated employer was less than 20.

(4) Part IV (right to collective bargaining) shall not apply to an employee if on the relevant date the number of employees employed by his employer added to the number of employees employed by any associated employer was less than 50.

### **PART III**

#### **RIGHT TO CONSULTATION**

5. Representative trade union

For the purposes of this Part—

“recognition” (認可), in relation to a trade union or group of unions, means the recognition of a representative trade union or group of unions by an employer, or 2 or more associated employers, to any extent, for the purposes of consultation; and

“recognized” (獲認可的) and other related expressions shall be construed accordingly;

“a representative trade union” (具代表性的職工會) means a trade union which has members in the undertaking who constitute more than 15% of the employees employed by the employer in that undertaking and “group of unions” (職工會

組合) means 2 or more trade unions acting jointly and together satisfying that requirement.

#### **PART IV**

#### **RIGHT TO COLLECTIVE BARGAINING**

##### **12. Representative trade union**

For the purposes of this Part, unless the context otherwise requires—

“recognition” (認可), in relation to a trade union or group of unions, means the recognition of a representative trade union or group of unions by an employer, or 2 or more associated employers, to any extent, for the purposes of collective bargaining; and “recognized” (獲認可的) and other related expressions shall be construed accordingly;

“a representative trade union” (具代表性的職工會) means a trade union—

(a) which has members in the undertaking who constitute more than 15% of the employees employed by the employer in that undertaking; and

(b) which represents more than 50% of the employees employed by the employer in that undertaking,

and “group of unions” (職工會組合) means 2 or more trade unions acting jointly and together satisfying those requirements.

##### **13. Collective agreements, collective bargaining and arbitration awards**

(1) In this Ordinance, “collective agreement” (集體協議) means any agreement or arrangement made by or on behalf of a representative trade union or group of unions and 1 or more employers and relating to 1 or more of the matters specified below; and “collective bargaining” (集體談判) means negotiations relating to or connected with 1 or more of those matters.

(2) The matters referred to above are—

(a) the terms and conditions of employment, or the physical conditions in which any

employees are required to work;

(b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of 1 or more employees;

(c) allocation of work or the duties of employment between employees or groups of employees;

(d) matters of discipline;

(e) an employee's membership or non-membership of a trade union;

(f) facilities for officers of trade unions and trade union representatives, or arrangements facilitating the administration of trade unions;

(g) machinery for negotiation or consultation, and other procedures relating to any of the above matters, including the recognition by employers of the right of trade unions to represent employees in such negotiation or consultation or in the carrying out of such procedures.

(3) In this Ordinance, an "arbitration award" (仲裁裁定) means an award by an arbitrator or 2 or more arbitrators acting under the provisions of a collective agreement.

#### 14. Right to be covered by a collective agreement

Every employee has the right in relation to his employer to be covered by a collective agreement made in accordance with the provisions of this Part.

