

**Public Policy Research Funding Scheme  
(Special Round)**

**New Unions as Old Binaries or New Directions.**

**新工會：跳出二元，嶄新方向**

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**Report**

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## b. Executive Summary

### 報告摘要 研究摘要

#### 1. Abstract of Research

##### 研究摘要

Although much attention has been focused on young students there is ample evidence that the protest movements since June 2019 have encompassed a broad spectrum of society, most notably Hong Kong's workforce. One manifestation of workforce participation has been the formation of a number of 'new trade unions' which now large coverage of the economy, ranging from finance through construction to the public sector.

在二零一九年六月以來的社會運動，焦點均集中在學生身上，但證據顯示參與者其實涵蓋社會各界勞動力。「新工會」的冒起體現了來自本港經濟支柱的工人參與，不論是金融業還是建築業及公共服務業。

Historically, organized labour receives little attention in Hong Kong except in the rare cases of strikes by powerful niches of workers such as the pilots (2001) or bar benders (2007) or mass actions such as the transport workers general strike (1967) or police mutiny (1977). Unions and union organisations are more commonly noted for providing membership services and raising demands often through political parties and factions. The growth of new unions over the past 16 months, with possibly 4000 groups applying to register, may change the industrial relations landscape either by further deepening longstanding social divisions within the union movement or presenting a new force for change. The question is whether within a context of political repression towards labour, this rejuvenation of trade unionism has the potential to counterbalance employer dominance in employment relations.

在香港近代史上，除了在罕有情況下某些特別行業的工人罷工，工人集體組織甚少受關注。其中包括機師（2001年）和扎鐵工人（2007年）的罷工，或其他集體行動例如交通運輸工人罷工（1967年）及警察叛變（1977年）。工會和工會聯會/總會普遍因提供會員服務或透過政黨提出要求而著名。在過去十六個月中發展的新工會，包括近四千個提出申請的組織，或會改變勞資關係格局，其縱然可能加深工會運動長年的分歧，但亦有望成為變革力量。重點在於，在現時對勞工的政治壓迫下，工會的復興有沒有潛力去制衡現時由僱主支配的勞資關係。

This research involves an extensive investigation of new unionism to understand and document their origins, management, strategies and potential trajectory over a five-month period (May - September 2020). The study compared different unions and examined union-initiated activities to identify whether there are indications that they are sustainable organizations and locate these changes within the context of existing multi-union and polarised political institutions of Hong Kong. The purpose of this study is to analyse and explain whether these unions are significant developments or short-lived occurrences, and whether they might further harm or might help mature the state of employment relations within Hong Kong.

此研究在五個月內(二零二零年五月至九月)著力記錄和了解新工會的起源、管理、策略和發展軌跡，並比較不同的工會及檢視工會發起的行動，追尋這些工會的可持續性，並在現時香港多工會和兩極化政治體制下找出變化。此研究旨在分析和解釋這些新工會是否象徵重大發展還是只是曇花一現，並解釋其如何有助或損害香港勞資關係的狀態。

## 2. Laypersons summary on policy implications & recommendations

政策含意及建議概要(業外人士均適用)

Employment relations as the mechanisms and procedures by which employers and employees negotiate the terms and atmosphere in which work takes place has always been a political process. Such kind of politics is usually confined to within the workplace context and various elements of the government have rarely been directly involved in Hong Kong. Nevertheless, when large mass labour actions threaten social stability or elite hegemony, such as such as the 1967 strikes or the police mutiny in 1977, the government has acted swiftly and resolutely. On labour issues, the government also impacts employment relations in two further aspects: as the largest employer it impacts standards and as law maker, it establishes the framework for employment relations. Hong Kong has taken the ideological position of neo-liberalism regarding employment and the working class generally which has significantly advantaged employers and led to worsening inequality. This neo-liberalism has been more passive than dogmatic, allowing employers to dominate discourse and setting the government on ad hoc approach to modernising the legal framework.

勞資關係由各種機制和程序組成，讓僱主和僱員磋商工作的條件和氛圍——它從來都是一個政治過程。一般而言，這種政治限於工作的範疇，而政府中的不同角色在過往甚少直接參與其中。然而，當大型勞工行動對社會穩定或精英霸權帶來挑戰，例如一九六七年的罷工或一九七七年的警察叛變，政府則迅速而果斷作出對應。在勞工議題上，政府對勞資關係有另外兩方面的影響：其一，作為最大的僱主，政府影響勞工標準；此外，作為立法的一部分，政府建立勞資關係的框架。香港對勞資和工人階級原則上採取新自由主義，讓僱主處於顯著的優勢地位，加劇社會不平等。這種新自由主義的意識形態雖然並非以教條式呈現，但其被動地讓僱主支配話語權，並引導政府採取一個臨時的方式去更新法律框架。

The recent rapid growth in the number of people wishing to form and join trade unions is remarkable in that it has been initiated as part of a broader political movement but has been peaceful, restrained and contemplative. Between June 2019 and September 2020 inclusive, 420 unions were registered with the Registry of Trade Unions and approximately several thousand a wish to be or have become legal unions.

欲成立或加入工會的人數在近年快速增長，顯著的地方在於其作為一個更廣泛的政治運動的一部分，卻是和平、克制並且經過深思的行動。在二零一九年六月至二零二零年九月期間，在職工會登記局成功登記的工會近 420 個。約有數千個仍在此過程中，期望成為法律認受的工會。

The research involved in-depth interviews with 33 persons involved in organising 22 new union, visiting 144 new union registered offices, and over thirty additional interviews with trade union officials. Initial contacts were made using random sampling regardless of political, sectorial or other considerations, by reference to the Trade Union Registry records of those registered and applying to register since June 2019. To deepen the understanding, additional interviews with officials and representatives from older unions and three trade union organisations were undertaken. Moreover, three case studies involving observation, further interviews and some document collection were completed. Desk based research involved a review of the registration process and comprehensive review of publicly available social and traditional print media.

此研究涉及與 33 位在 22 個新工會進行組織工作的受訪者的深入訪談，對 144 個新工會註冊地址的實地訪問，以及與超過 30 位工會人員進行的額外訪談。基於職工會登記局自二零一九年六月公開的工會註冊及註冊申請資料，我們運用了隨機抽樣的方式去初步接觸部分受訪人士，不涉政治、行業或其他考慮。為加深認識，我們亦額外訪問了來自以前成立的工會以及三個工會聯會或總會的人員和代表。另外，我們亦完成了三個個案研究，當中包括觀察、進一步訪問及收集文件。而桌面研究包括對工會註冊過程及對社交和傳統印刷媒體報導作詳細調查。

#### Key results:

##### 主要研究結果：

1. Although early union registration focused on white-collar and professional (42%), there are many blue-collar (30%) as well as mixed blue and white collar workers and enterprise level unions (24%). The rest are public service-related unions. 儘管早期註冊的多為白領及專業人士的工會(42%)，整體而言，藍領工會(30%)和藍白領混合僱員工會以及企業工會(24%)亦不少。其餘為公共服務相關的工會。
2. Whilst early discussion of the new union phenomena assumed unions were establishing to impact electoral politics, our research found both a broad political engagement and a strong workplace orientation to trade union growth, although for pro-establishment registrations it has not been possible to know their intentions. 早期對新工會的討論一般假設工會成立目的是影響選舉政治，但此研究發現廣泛的政治參與以及強大的勞工導向同時存在，推動工會增長。而偏建制註冊新工會的特定動機卻無法確定。
3. The advent of Covid-19 pandemic since February 2020 has become a major focus of unions, both helping members in accessing protective equipment and social engagement. Another aspect is dealing with increasing number of people losing jobs or helping workers with work arrangements that endanger their health. 新冠肺炎自二零二零年二月的來襲成為了新工會一個主要關注點，包括協助會員獲取防護裝備以及社會參與。另一方面，新工會為正增長的失業人口提供支援，以及幫助需要面對危害健康的工作安排的工人。
4. Whilst many new unions have taken an independent line from both the major political camps, there has developed a strong membership-based orientation among those studied. 許多新工會選擇獨立於主要政治陣營，是次研究中有工會已建立了集中以會員為本的方向。
5. It seems likely that many unions are 'paper' unions or established for a single political purpose and will disappear within a few years or be absorbed into existing unions. This probably effects pro establishment unions more than other political leanings. However, many new unions are active and either challenging the more established unions or working with established organisations which have embraced this reinvigoration of the labour movement. 不少工會有可能是「紙上工會」或以單一政治目的而成立的工會，它們或會在幾年內消失或融入現有工會，看來對偏建制工會的影響會大於其他政治取態的工會。另一方面，不少新工會亦頗為活躍，有的會對較成熟的工會帶來挑戰，有的則與建立已久卻支持重振工會運動的總會或聯會合作。
6. The progressive unions face, as the older unions have, an extremely hostile environment of weak legal protection, victimisation and climate of fear for unionists. This is greatly exacerbated by the new National Security Law, with its ambiguous wording and uncertain application. 較進步的新工會，與舊工會一樣，均面對極為敵對而不利的環境，當中問題包

括薄弱的法律保障、工會人士面對報復以及恐懼的氣氛。關於香港新訂立的國家安全法，其模稜的用詞及不確定的實行情況或進一步影響工會運作環境。

7. **The Hong Kong executive is seen as pro-business, whether that be because of the continued colonial mentality in the executive or due to weakness or prejudice in administrative leadership. This discontent with the executive's leadership was universally held, irrespective of political leaning.** 香港的行政機關被視為親商，不論是由於行政部門延續自殖民時代的思維還是行政領導的軟弱或偏執。無論政治傾向如何，受訪者普遍都對行政部門的領導層感到不滿。
8. **The present position of Legco, similarly is not seen as effective. Reasons for this were not researched in depth, but its role as rubber stamp for the executive due to its undemocratic design was of frequent concern. Again, this view is widespread, though not universal.** 同樣地，現時立法會的地位亦不被認為切實有效。其原因並非是此研究重點，但由於其不民主的設計，受訪者對其作為行政領導層橡皮圖章的角色提出關注。此觀點常見於受訪者間，儘管非完全普遍。
9. **Whilst the union registration process had mixed experiences for those applying to form a union there are a number of concerns with the process, from ambiguity on what is required to register, lack of transparency in numbers seeking to register and suspicions over some registrations given registration addresses filed.** 曾申請工會註冊的受訪者於註冊過程中有不同的經歷。註冊過程存在的問題包括部分註冊要求含糊，關於申請註冊的數據缺乏透明度，以及因註冊地址而對工會註冊產生質疑。

## Summary recommendations:

### 建議概要：

1. **The most obvious and fundamental recommendation is to bring forward the Basic Law provisions on universal suffrage, especially given the National Security legislation has now been imposed on Hong Kong. 最顯著且根本的建議是根據基本法相關條文進行普選，尤其考慮到國安法已在香港實施。**
2. **Revive the discussion and reinstate the principles in ‘Employee's Rights to Representation, Consultation and Collective Bargaining Ordinance’ repealed in 1997 and promote genuine collective bargaining throughout Hong Kong. 重啟有關集體談判權的討論，重置在一九九七年廢除的《僱員代表權、諮詢權及集體談判權條例》中提及的原則，並在香港廣泛推廣真正的集體談判。**
3. **The executive needs take steps to recognise diversity of viewpoints among the various trade unions and their labour organisations in Hong Kong and regain a position of neutrality. 行政機關應採取行動承認香港各個工會及其聯會或總會之間的多元觀點，並重新保持中立。**
4. **Good governance involves openness, transparency and accountability. Steps to improve data on union registration as well as employer obligations would be helpful. 達到良好管治需要公開、透明和問責。政府應採取行動改善工會註冊數據的透明度以及重申僱主的責任。**
5. **The process of union registration could be improved through focusing on employee-based registration and more explicit standardised guidance for those making applications for registration. 工會註冊過程應以僱員為本，並為有意申請工會註冊人士提供更明確且有統一標準的指引。**
6. **Government consultation should become undertaken such that it is considered meaningful by civil society and in doing this trade unions should be consulted on matters which relate to members and workers in general. 政府應進行受公民社會認受而有意義的諮詢。就任何與工會會員和廣大勞工相關的議題，政府應諮詢工會意見。**
7. **Labour Advisory Board and Labour Functional Constituency should both move from union level voting to representation based on universal membership suffrage, similar to the Legal and Education Functional Constituencies. 勞工顧問委員會以及立法會勞工界功能組別議席應由原來的工會團體層面投票，改為與法律界別及教育界別相似的、以會員人數為代表基礎的普選。**

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### **c. Main Body**

This report examines the rise of new union registrations which began to rapidly increase since June 2019 by examining the rise, its context what may be learned from this new feature of employment relations in Hong Kong. Through a mixed method approach to empirically examine the pattern of unionisation and an analysis of the views, strategies and aspirations of those involved in the phenomena, this research draws lessons for the future development of employment relations. The findings point to critical and urgent considerations for reform of the government role from a minimalist to a more supportive view of legitimate workers collective rights and how recognition will be for the general good of Hong Kong.

#### **1. introduction**

##### **Background**

Tung and now Lam's administrations have recognised the problems of sustained inequalities which have grown in Hong Kong, and Lam, among others, identified this as a contributing factor to the present unrest, which though now overly suppressed has not disappeared. The research provides an independent and objective analysis of new unions and their potential to help or hinderance to Hong Kong's future prosperity and social cohesion. Whist there were strikes, the 2014 protests is often seen as primarily a student led movement, and widespread despondence after its perceived failure (Kong 2017) , most students moved into the workforce, as they turned to the needs of economic survival and family commitments. The 2019 protests have shown discontent ran deeper, continues into work life and includes older generations of the workforce. The development of new unions represents a tangible illustration of how divisions in society evolve due to distrust of government, frustration due to lack of opportunities to influence governance and a continued power of employers to exploit the working class. Many new unions have a weak basis and will disappear, but hundreds will remain to challenge the status quo, some politically but most through employment relations activism.

The government's proposed extradition bill led to over 700 protests in its first six months (The Government of the Hong Kong Special Administrative Region, 2019), which continued even after the government withdrew the bill. From media footage of the early mass marches through police arrest data to flash protests in Central, working people form the bulk of the protest movement in Hong Kong, indicating. The widespread public anger reflected not only resentment at government's use of heavily armed police rather than social engagement but a general discontent in a governance system which advantages the political economic elite (Amnesty 2020).



Although seemingly less prone to escalations in violence than students, the working population has been much in evidence in both verbal and physical confrontations with the police. The degree and extent of workforce involvement far exceeds the 2014 protests, and the diversity of employment sectors marks a new development for Hong Kong. The police reported in mid-November 2019 that over 4,000 people had been arrested, with close to 40% as students (ETnet, 2019). Students appear to have been in the spotlight since the beginning of these protests, but little attention has been given to the involvement of employees who make up the city's economic backbone. Among those arrested are employees from a wide variety of sectors, for example banking (Chen, Liu and Baigorri, 2019), aviation/piloting (Reuters, 2019), legal practice (Ling, 2019), medical/healthcare (Cheung, 2019), and cleaning (Wong, 2019). A group of academics specializing in communication and public opinion polling sent out over 6,600 questionnaires in August 2019 to investigate the backgrounds of movement participants and found that in terms of socio-economic status, 50.6% of the participants surveyed considered themselves as middle-class (Sum, 2019). This is not an isolated study – an opinion poll conducted in June 2019 shows a similar finding that over half of the participants surveyed identified themselves that way (Chan, Chung and Lee, 2019).

Workers' engagement in the anti-extradition bill movement are manifested in various ways. Setting up unions to bring together like-minded co-workers and to prepare for strikes is one. A few territory-wide strikes, including 12th June, 5th August, 2nd to 3rd September and in November 2019. For example, it was estimated that approximately 350,000 workers, including 2,300 aviation workers, took part in the strike on 5th August (Hong Kong Confederation of Trade Unions, 2019; Hollingsworth, 2019). Some civil servants had organized a rally to gather colleagues together to show support (Cheng, 2019a). Obstruction to traffic might have been one of the factors for employees' absence at work on that particular workday (South China Morning Post, 2019), nonetheless, voluntary participation in the strike by a large number of workers could arguably be evidenced by the high turn-out at the district-based pro-strike rallies on the same workday, the number of which was put at 290,000 (RTHK, 2019b).

In addition to peaceful sector- or industry-wide rallies joined by, for example, accountants (Zhang, 2019), teachers (Quackenbush, 2019) and lawyers (Cheng, 2019b), spontaneous lunchtime protests and flash mobs also occurred in Central and several other districts where office buildings are concentrated, such as Kowloon Bay (for example, see RTHK, 2019a; Chan and Ng, 2019). White-collar employees – some even in suits – were among those at the forefront (Jones and Lai, 2019).

Support for the movement came developed in instances of lawyers providing pro bono legal advice and services to arrested protesters, as well as doctors and healthcare workers volunteering to offer medical assistance to those injured at protests. The flourishing of protest posters and other promotional materials across the eighteen districts and on social media could not have been possible without the efforts and time put in by professional graphic designers and artists (Liu, Wong and Woodhouse, 2019; Jacobs, 2019).

Large scale police suppression of nearly all collective social actions was prevalent by December 2019, and continues into 2020, making it difficult for groups to organise unions and promote membership (Mahtani et al 2019). The COVID Regulations in Hong Kong, 599G Prevention and Control of Disease (Prohibition on Group Gathering) Regulation enacted on 29 March 2020, the Hong Kong Government was enforced to suppress the spread of the Sars-CoV-2 virus, prohibiting any four-person gathering in public place, though the size and exemptions varied through the year. Critics have argued that the Regulation 599G is used to ban public discussion of labour issues and unions' activities, for example the objection to an intended rally on the International Workers' Day (1st May, 2020) organised by the Hong Kong Confederation of Trade Unions (HKCTU) despite their proposed plan to ensure social distancing.

The health workers action to pressure the government to close the border to mainland travel as well provide more appropriate protection for workers in the sector should be seen as a successful action. Whilst on 31<sup>st</sup> January, the Chief Executive claimed closing the border with the mainland for travellers would be an act of discrimination, by 5<sup>th</sup> February, stricter controls were introduced in a change of policy. Whilst this was due at least in part to a strike by approximately 2700 hospital workers, deemed legal by the Secretary for Labour and Welfare, the border control demands were less secure than demanded by the strikers. However, the strike was also concerned with a number of workplace issues related to the pandemic, and through bargaining, these demands appear to have been extensively met. Whilst some sections of society criticised the strikers for not risking their lives to treat patients, there is both no evidence they did not, but rather, they were seeking to minimise the risk of infection and loss of life among hospital staff, patients, family members and wider society.

The Law of the P.R.C. on Safeguarding National Security in the Hong Kong Special Administrative Region ("NSL") came into force on 30<sup>th</sup> June 2020, following its adoption by the Chinese National People's Congress (NPC) Standing Committee on the same day as well as the NPC's endorsement of a relevant decision in the month before. As discussions surrounding the NSL were growing before it

came into operation, the Secretary for Labour and Welfare evaded a question about the NSL's potential impacts on the economy and employment, saying it was "too early" to comment (The Government of the Hong Kong Special Administrative Region, 2020) while the Hong Kong Federation of Trade Unions claimed that the majority of over 1000 respondents in a survey they conducted supported the NSL, which was considered to be able to help stabilise the economy and employment (Cheng, 2020).

However, there have been media and survey reports on the negative ramifications of the law on business and employment. Certain technology companies (for example, Iyengar (2020) and Tam (2020)) and hedge fund firms (for example, Lockett and Shane (2020)) are said to have been considering or actually planning exits from the city, potentially leading to loss of jobs in Hong Kong. Particularly, around one-third of the 183 surveyed member companies of the American Chamber of Commerce indicated in July 2020 that their companies would contemplate moving their operations or capital out of the city either in the short or medium to long term (American Chamber of Commerce in Hong Kong, 2020). Despite the absence of concrete data on the effects on employment, with businesses shifting, relevant local job positions are likely to be affected. In addition to the financial aspect, the NSL's impacts on employment are also felt by part of the workforce in the education sector. Anecdotally, for example, a teacher's registration was cancelled in October for allegedly spreading "pro-independence" messages in his teaching (Wong, 2020), with several others being warned (Davidson, 2020).

#### Traditional trade unionism in HK

Employment relations in Hong Kong have been shaped by migration of large influxes of people escaping periods of turmoil in mainland China providing local capital with cheap versatile workforce, which was made vulnerable by a colonial government and civil service elite which were both insulated from and cared little for the masses. Major events such as the Shep Kip Mai fire, the 1967 riots, the police mutiny 1977 and the forced government to introduce incremental reforms aimed and preventing threats to the economic and political elite. The Republic period left the Trade Union Congress, the Communist period, the Federation of Trade Unions (FTU) and the religious – social welfare movement of the Cristina Industrial Committee (CIC gave rise to the Confederation of Trade Unions (CTU) a breakaway group, Federation of Labour Unions (FLU). Thus, political factions and ideological difference has dominated the labour movement from early in the 20<sup>th</sup> Century to now.

The Hong Kong Federation of Trade Unions (FTU) is the largest trade union in Hong Kong, with over 410,000 members in 2016, and organizes 40% of the unionized population. It was founded in 1948 with a total of 251 affiliated unions. (FTU, 2019). FTU's commitment to the provision of district level service in community participation began in 1994. It functions as a 'transmission-belt' of China, and acts as a quasi-political party of the working class since 1997. Its early efforts were focused in gaining support from the labouring mass at grassroots levels. However, in the mid-1980s, FTU experienced difficulties when most factories were relocated to mainland China. Since the 1990s the, FTU has become politically active in legislative and district elections, at community level in promoting the Basic Law and cultivating a sense of belonging to Hong Kong and China. Nevertheless, FTU has avoided discussion of collective bargaining rights. Collective bargaining and consultation law was brought up once pre-1997, before the political handover, and was supported by the Hong Kong Confederation of Trade Unions (HKCTU, 2019). HKCTU was founded in 1990 with 190,000 members in 2019 and is affiliated with over 90 pro-democratic labour unions.

One result of these divisions as well as the ease of trade union registration by the Labour Department (in the spirit of liberalism) has been multi-unionism within the workplace. For example, in the public sector, according to FTU (2019), aside from Government Employees Association, its member unions also include 42 trade unions of different government departments, such as Staff Association of Department of Health. There are also some friendly unions of FTU, respectively the Hong Kong Senior Government Officers Association, Hong Kong Chinese Civil Servants' Association, Hong Kong Civil Servants General Union and Hong Kong Federation of Civil Service Unions. Even for HKCTU, a trade union that has been classified with opposite political stance, it has 10 unions in the sector, including the Government Employees Solidarity Union (CTU, 2019).

Weakness of grassroots levels was partly a legacy of political tensions between the Nationalist and Communist parties in its pre-war heydays (Hong and Ip, 2003) and partly neoliberalist economic policies which allowed rapid economic development in the 1960s to 1980s. As a result, workers were unprotected against downsizing, dismissals and wage stagnation under deindustrialization as China open up (Lethbridge, Ng and Chen, 2000). Hong Kong unions remain weak in effective representative of workers as employees and unions were hardly involved in determining wages and conditions. Collective bargaining only accounts for less than 5% of the workforce (Chan and Snape, 2000). Meanwhile joint consultation exists only in the public sector.

Grassroots workers (working class) in Hong Kong face tougher labour market and depressed wages and opportunities, and Chan and Snape (2000). The Federation of Trade Union's role in prioritizing its political ties with the PRC authorities to maintain political and social stability comes at the expense of workers' rights. In motivating economic prosperity, the management holds no legal obligation to its workers under the circumstance that FTU supports the government over other labour organizations under the corporatist approach. Indeed, industrial pacifism is prevalent in Hong Kong unions. Such approach has given way to a lack of worker representation as well as inefficiency in shop-floor empowerment (Chiu and Levin, 1999). Hong Kong is a "highly industrialized society with an underdeveloped system of industrial relations" (England, 1989). As Ng (1982) noted, even though Hong Kong pursued laissez-faire policies power relations could have been more fairly managed through some form of industrial democracy. Whilst unionized form of industrial relations has become unfashionable, unions have been integral parts of social and economic development globally, and societies with high both high economic performance and strong social cohesion are invariably societies with strong organized labour.

#### New unions in Hong Kong

New trade unions have been formed at an unprecedented pace. According to Notices Nos. 23 to 58 published in the HKSARG Gazette Volume 23 between June and early December 2019, the number of new unions that were officially registered over the course of three months from September to November and named in the HKSARG Gazette, already stood at 12. The number needs to be put into the context where only 13 new unions were registered in the entire year of 2017, with the same in year 2018 (Registry of Trade Unions of the Labour Department of the HKSARG, 2018; 2019). The number subsequently exploded; between June 2019 and September 2020 inclusive, 420 unions were registered with the Registry of Trade Unions and about 4000 seeking registration.

As workers' organizations in industrial relations, these newly established unions set out to represent the voices and interests of employees from a wide range of sectors. Some of them come from sectors traditionally considered as the driving forces of Hong Kong's economic growth, such as the Hong Kong Financial Industry Employees General Union (Liu, 2019), and the Hong Kong Insurance Union. In addition to the flourishing of unions for white-collar professionals such as speech therapists (General Union of Hong Kong Speech Therapists, 2019) and accountants (Hong Kong Alliance of Accounting Professionals, 2019), new blue-collar workers' unions are also emerging in the midst of protests, such as the Maritime Transport Service Industry Trade Union.

What is common among some of these new unions is, alongside socio-economic demands peculiar to members from those particular sectors, they also make public political appeals in relation to the recent protest movement. Some unions expressly state the “five demands”<sup>1</sup>, in whole, in part or along the lines, in their objectives or aims. For example, “continuously striving for universal suffrage” is explicitly mentioned as one of the future directions for one union whereas “offering financial assistance to employees arrested or injured in political participation/ social movement” is included as one of the aims of another union (Hong Kong Construction and Engineering General Union, 2019; Hong Kong Insurance Union, n.d.).

The discussion over the rapid growth of unions to influence Legco membership refers to the competition for the Legco seats of the Labour Functional Constituency. The Labour Functional Constituency is composed of trade unions which are registered according to the Trade Union Ordinance,<sup>2</sup> and eligible unions elect three legislative councillors to ‘represent’ their constituency since 2011. All registered trade unions with voting members which consist entirely of employees and have been in operation for 12 consecutive months prior to the election can apply to be registered as corporate electors (Registration and Election Office 2018).<sup>3</sup> Trade unions successfully registered as corporate electors will appoint an authorized representative to cast their ballot. The constituency utilizes a block voting system, each union can vote for as many candidates as there are vacancies and no more<sup>4</sup>. Candidates with the greatest number of votes received will be elected until there are no more vacancies. Nonetheless, seats in the constituency have been uncontested since 2008. Two seats are held firmly by FTU, and another labour organisation since 2004.

The surge in new unions registering since the second half of 2019 potentially introduce new dynamics to the Labour Functional Constituency and potentially shift towards pro-democracy candidates. Three CTU affiliated union chairpersons announced their candidacy to the Labour Constituency for the next Legislative Council Election (倬安, 吳 2020). Since Hong Kong’s trade unions are generally politically divided with significant pro-democratic and pro-establishment camps, a contested election in the constituency has significance for Hong Kong politics.

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<sup>1</sup> For explanation of the ‘Five Demand’, see Cheng (2019)

<sup>2</sup> Chapter 332 of Hong Kong Law: <https://www.elegislation.gov.hk/hk/cap332>.

<sup>3</sup> According to Section 21 of the Legislative Council Ordinance (Chapter 542) of Hong Kong Law: [https://www.elegislation.gov.hk/hk/cap542?xid=ID\\_1438403409125\\_004](https://www.elegislation.gov.hk/hk/cap542?xid=ID_1438403409125_004).

<sup>4</sup> According to Section 51 of the Legislative Council Ordinance (Chapter 542) of Hong Kong Law: [https://www.elegislation.gov.hk/hk/cap542?xid=ID\\_1438403409577\\_002](https://www.elegislation.gov.hk/hk/cap542?xid=ID_1438403409577_002).

Nonetheless, one should not be quick to identify, or dismiss, these unions as merely politically-driven or party-leaning entities; instead, it is imperative to note that some, if not all, of them are or will likely be alternatives to, if not rivals with, both old and relatively young unions from both ends of the political spectrum in Hong Kong. Take the finance sector, the newly-registered Hong Kong Financial Industry Employees General Union was born at a time when there were/are already, for example, the FTU-affiliated Hong Kong Banking Employees Association (HKFTU, n.d.), the CTU-affiliated Insurance and Finance Practitioners Solidarity Sector founded in 2010 (HKCTU, n.d.), and the Hong Kong Financial Workers' Union registered in 2018. It is in this context that this investigation has relevance to Hong Kong's current political system. Moreover, because of the nature of employee relations, the tussel over union registrations introduces a new and more generally significant relevance to Hong Kong. New union organizing strategies, socio-economic and socio-political demands, ideologies or any other factors potentially either reinforce existing divisions within the labour movement or influence change in the landscape of employment relations in the short and the long run. A reinvigorated labour movement has the potential to move beyond dichotomy or polarization and cultivating an enabling environment for social dialogue in the economic sectors, and thus our society, in today's politically charged Hong Kong.

## 2. Objectives of study

The overall policy question being addressed in this research focuses on whether the development of new unions between July 2019 and September 2020 deepen social divisions, represent a maturation and solidification of the majority of protesters (who are working people, not students) or provide an opportunity for social cohesion both in the short term and longer term through institutional innovations. This will be addressed through specific research question areas.

Given new unions are forming in all the major economic sectors of Hong Kong the study assesses whether their formation has any short term or longer-term impact on the respective economic sectors.

This involves key questions:

1. Are the unions focused only on 'the five demands'?
  - 1.1. If so, what are the strategies to pursue this and the potential for influence among the sectors' workforces?
  - 1.2. If holding a wider focus, what is this focus?
2. Does this replicate the traditional unions often seen in Hong Kong which mostly focus on service provision and 'firefighting' dealing with problematic employers or conflicts as they arise?
  - 2.1. Does it represent narrow political focus which in time may seem distant from members
  - 2.2. Or does it represent more engaged unions in workplace issues from social dialogue to collective bargaining in some forms.
3. So far unions that registered have been in professional and white-collar sectors, but with the possibility of blue collar, construction industry workers union forming and others, what will be the emerging patterns
4. With discussion of inter union councils, will coordination between unions evolve, and will they develop lasting structures?
5. What is the impact of new unions on the exiting industrial relations system? Although Hong Kong unionisation rates are quite high among advanced economies, they have tended to be weak within the workplace. Will the pattern of seeking progress through political action remain the foci or workplace and social dialogue emerge?
6. Are there implications for government and in particular labour legislation, labour department services, tripartite advisory mechanisms and the disputes mediation & arbitration system?



### **3. research methodology**

This section covers the method used more than the theoretical methodological reason for the research programme. The section is divided into three main parts, the original plan, the explanations for areas which deviate from the original plan and finally the mixed method programme of research undertaken and the specific areas each method was focused on discovering.

#### Original research Plan

The research uses three main data collecting methods: in-depth interviews, monitoring of social media and focus groups.

The research is exploratory and so interviews are most appropriate. Semi structured interviews will be used with note taking by the interviewer is used to record responses. Interviews were to be conducted with organisers in all the new unions and in corresponding established unions in the same sectors where they exist. Focus group meetings, and Interviews will also be conducted in each of the four major union organisations, labour NGOs and academics in the industrial relations and labour law fields. This was meant to result in approximately 120 interviews with trade unions will be conducted, with 10-12 interviews with NGOs and academics.

Monitoring social media was to provide both a detailed record of developments occurring in the research area and provide a list of individuals to be interview.

Focus groups to gather a few individuals to discuss specific issues which arise from the data collection. The topic will be decided from the research results but might include matters which relate to trade union functioning, as training needs, gender bias, or expectations from government or established union organisations, such as specific labour policy desires, or from employers, such as social dialogue or revisions to dismissal procedures.

#### Reasons for amended research plan

The original research plan involved extensive use of interviews supplemented with focus group meetings and monitoring of social media posts. Whilst social media monitoring was systematically summarised, direct contact with informants became difficult to sustain to the level originally expected. This meant 33 organisers of new unions were interviewed in-depth rather than 120. This was supplemented by over 30 interviews with a range of NGOs, academics and especially trade union

officials from both older and newer trade unions, including several interviews in the three largest union organisations.

The reasons why interviewing more people became difficult are listed below:

1. The Covid-19 pandemic reduced social interactions which normally form the basis for selecting candidates for interviews. The implementation of restrictions on public gatherings by the Carrie Lam from 27<sup>th</sup> March to manage the spread of SARS-CoV-2 ended the type of events where new unions open booths to attract members and explain their policies. However, although this eased in the late summer, the experience of SARS in 2003 has a deep impact on people's minds resulting in fewer public activities.
2. The mass peaceful demonstrations of 2019 which have become an integral part of Hong Kong civil society and at which various civil society organisations, including trade unions and their organisations, had promoted their activities had been the main venue at which our early research contacts were made (when writing the original research proposal). However, by late 2019 such gatherings were suppressed. The frequent non issuing of 'Letters of no Objection' and on the rare occasions such letters were issued it was often rescinded whilst meetings took place, creating terror among citizens with threats to public safety and an atmosphere of repression. Thus, social gatherings prior to the Covid-19 pandemic had already become tense, with little opportunity for the kinds of social exchange possible in mid 2019.
3. The atmosphere for civil society space has turned extremely negative and many people feel the government is repressive and hostile after the enactment of the National security Law, and many civil society groups became cautious of engaging with outsiders. Undertaking an anonymous questionnaire might be safe but meeting strangers was often seen as too risky, even if the subject matter was innocuous. The vagueness of the law and the authoritarian pronouncements from various sources made field research difficult.
4. Whether this view is mistaken or not, the project was caught up in this hostility. Many potential interviewees refused our requests or ignored them. Others were open that they did not trust a project which was funded by an organisation which Carrie Lam had established. We found that PICO is viewed by some people as biased and, thus, the research funded also not neutral.
5. Over 2/3rds of the newly registered unions appeared to support the pro-establishment political line and they were not open to interviews despite many attempts to reach out to them based on introductions, visiting their registered premises and submission of letters requesting help. We extended the project for a seventh month in the hope that some of our

contacts would eventually agree to formal interviews, but none did so. Our pool of potential new unions to research was not 400+ but around 100.

#### Abandoning Focus group research.

Whilst the research managed about half the interviews planned and about a quarter at depth, the decision to abandon Focus Group method occurred because the same atmosphere of 1-5 above made group meetings across organisations impossible. Focus groups are a very creative form of research but it requires either a simple issue which is not require a dep personal stake in the issue or a high degree of trust in both the activity and the co-members of the group. The rising social tension created the wrong sort of atmosphere. At the time of applying for the grant, despite the social conflicts on the streets, the growth and discussion around the development of new unions was both positive and experimental. These both provide fertile soil in which to plant the seeds of focus group sessions. The soil is now rather toxic, with even social media groups becoming guarded and fearful, although we used these as a limited proxy for focus groups, to witness how innovations and strategies are being developed.

#### Actual programme of research

Whilst these are negative elements in the research, as the number of groups indicating an intention to form a trade union grew rapidly and the phenomena began to mature into patterns and events, alternative methods to interviews became a fruitful addition to the research programme. The research, thus, developed a mixed method approach.

#### Interviews

The research materials were acquired through interviews with the representatives from recently established trade unions (new trade unions in below)<sup>5</sup>. All interviews were conducted in the period of June 2020 to October 2020. Any trade unions that received official registration, or have submitted their application to the Registry of Trade Union after June 2019 would fit into the criteria of new trade unions as defined by the research team for this stage in the research<sup>6</sup>. The principle goal of such criteria is to construct a research focus group of trade unions that are as diverse as possible in an attempt to grasp the complexity of the recent exponential growth of interest in trade unionism.

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<sup>5</sup>They are referred as either representative or interviewee in this report.

<sup>6</sup>The date of application submission and date of registration as published on government's Gazette.

The research team reached out to trade unions via a number of different methods; researchers were sent to addresses of new trade unions, or public events and activities announced by the unions to establish contact; researchers also contacted unions via their Facebook pages and Telegram channels if they are present on these social media platforms; in addition, researchers also requested interviewees to introduce other unions to the study, with explicit permission from both side. However new unions which are associated with pro establishment camp avoided responding to our requests to interview. In an attempt to reach out, pairs of researchers visited over 140 union registration offices seeking to arrange future agreed interviews and leaving invitation letters explain the research and its purpose, as explained under 'Observation', below. Responses ranged from the address of the union had already moved through to confusion at being used as a union registered address. Several had short conversations or gave business cards inviting our researchers to phone to arrange an interview time but subsequently became unavailable. Whilst not mentioned in the research findings, as they fell out of the main purpose of the research, it appears many were probably established to influence electoral politics, though a conversation with three engineers involved in setting up an independent but not pro-democracy new union were also interested in improving the management of their employer.

All interviews were conducted either face-to-face or via online video call due to the concern with the ongoing COVID-19 pandemic. The interview was structured in the semi-open fashion to allow interviewees to freely express themselves without hindered by over-formalisation. Four main research areas were covered in the interviews: the union's formation process, the objective of the union's establishment, the union's relationship with other trade unions and their views on social affairs and industrial relations. Interviews lasted an average of 90 minutes and interview notes transcribe about 80,000 words in total. Two interviewers were present during interviews, except on three occasions when only one researcher was available. One interviewer was responsible for conducting the conversation, while the other was responsible for recording notes and asking supplementary questions. All recordings were done by pen and paper, without any voice or video recording. This method was chosen since the presence of camera or voice recorder were found to influence behaviour of interviewees in previous studies. Moreover, this method was preferred in order to protect the anonymity of the interviewees. The note recordings were later transcribed and translated into digital transcripts for analysis and both researchers verified the contents. In a few cases, interviewees asked to see the transcript to verify honesty but other than one minor suggestion, this process helped increase trust.

In total, in-depth interviews focused on 22 new trade unions were from a diverse range of industrial or professional background, involving a total of 33 interviewees. Unions were asked to provide one representative for the interview, but they are welcomed to send in additional representatives should find suitable. The size of interviewee groups ranged from 1 to 3 per interview. In contrast, 157 unions either ignored or turned down the research team's invitation. One union specifically cited the source of research funding as the reason behind their refusal. Among the unions that were interviewed, most of them are either registered or seeking to be registered as employee unions with the exception of two unions which are registered as employee + employer union. In terms of gender profile, the interviewees consisted of 22 male and 11 females. Overall, the interviewees were younger than the median age of Hong Kong population<sup>7</sup>, ranging from early twenties to late thirties.

In addition to the in-depth interviews focused on a specific set of questions related to the new unions origins, organising and relationships, approximately 30 other interview were conducted with trade union officials from new and old unions as part of case study and observational studies. These provided new perspectives and additional background to help us understand the activities of new unions and the older unions' and labour organisation views of the new union phenomena. Discussions were also undertaken with three academics in the field and several labour related NGOs, covering issues of significance and trajectory of new unions as well as discussing the meaning of some specific findings.

#### Monitoring media, formal and informal

Local media reports and research from around the world indicates new forms of social media have been important facilitators for both union organising and for developing policies and practices among interested individuals and groups. Thus, the team collected incidence of and sources for such communication and dissemination relevant to the project. In order to protect the identity of sources of sources, only publicly available sources were sources. No private groups were accessed and those using secure applications such as Signal, were ignored. With the advent of the National security Law, all information previously collected, was scrubbed to ensure safety, especially given the ambiguity of the Law's intention regards retroactivity of criminality and Police 'mistakes' in seizing materials later exposed as inappropriate. No data was held, only summaries of analysis derived from data.

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<sup>7</sup>The median age of Hong Kong population was estimated to be 43.4 years old according to 2016 Population By-census: Census and Statistics Department (2017).

In addition, members of the research team reviewed 19 local newspaper outlets, including both print and online media, from January 2020 to June 2020. We used Google algorithms and software “WiseNews” for this research, by specifically looking at terms such as “new unions” (新工會, “industrial actions” (工業行動) and “general strike” (三罷) .

### Social Media

Since the Anti-ELAB Movement has developed from June 2019, the rate of unionization has climbed vigorously in comparison to figures of previous years. There are hundreds of unions established, yet not every union relies on social media. There is no channel to make communication with them, not to mention to realize their existences. In contrast, a couple of these new unions that withheld a pro-movement stance utilize the social media as the platform to interact with their audience. These social media channels include Telegram, Facebook and Instagram. Some pro-movement new unions that are less active might not use all of the three channels. Regarding the ubiquity of social media, the review should only put focus on the pro-movement unions.

Publicly available information on a total of 34 trade unions were reviewed, that include more than 1,700 social media posts. In the social movement, Telegram is an instant message system which a majority of activists employed for communication. The app has the function to create a Telegram channel, so that the administrator of the channel can deliver message in one way. These Telegram channels of the union were chosen for revision. A few unions do not rely on Telegram, are comparatively less active, according to the quantity of their postings. There are 6 of them that only use Facebook as a communication platform, they are reviewed as well.

It is noteworthy that most of these trade unions did not open a Telegram channel or a Facebook page after their union application was confirmed by the Registry of Trade Unions. Most union has their Telegram channels or Facebook pages in November or December 2019, respectively 10 unions and 12 unions. The remaining were 4 unions channels in January 2020, 2 channels on August 2019, February 2020 and October 2020 respectively, and each in April and June 2020. During the period where these channels were opened, most of the controversial incidents such as the 6.12 protest, 7.21 attack, 8.31 incident or the Prohibition of Face Covering Regulation have long passed. There social media postings are less movement related.

### Union registration

All the Gazette notices digitally published between the beginning of June 2019 and 30<sup>th</sup> September 2020 by the Registry of Trade Unions in relation to the Trade Unions Ordinance (Chapter 332) have been accessed through the government website of “The Government of the Hong Kong Special Administrative Region – Gazette” (Director of Government Logistics of the Government of the Hong Kong Special Administrative Region, n.d.). In total, 881 notices have been examined. These examined Gazette notices cover the registrar’s notifications of unions’ application for registration under the Trade Union Ordinance, union registration, change of name, cancellation of union registration, union dissolution as well as withdrawal of application for registration.

The notices concerning the change of name, registration cancellation, and dissolution of a union established before June 2019 are not the focus of this research. On the notices relating to application for registration are the union’s full name in English or Chinese, its registered address, and the date of the application, and the date of the notice. On the notice announcing registration are the full names in English or Chinese, the registered address, the registration number, the date of registration, and the date of the notice.

It should be noted that although the period of the Gazette reviewed covers June 2019 – September 2020, the notices that appear in the Gazette published in the aforementioned period include one notice that was dated 31<sup>st</sup> May 2019 in relation to the registration of a union on the same date but was only published in the Gazette on 6<sup>th</sup> June of the same year, as well as one notice that refers to the application for registration (in May 2019, i.e. before June 2019) of a union whose registration was subsequently done in October 2019. Due to the temporal proximity as well as the completeness of the Gazette records, these two notices are not taken out in the review despite their registrations took place in May 2019.

### Observation

Pairs of researchers visited 80 location addresses (145 union offices) from May to July 2020 throughout urban areas of Hong Kong. The addresses were gathered from the Government gazette (the Trade Union Ordinance section) online to identify localities for field trip observations. The purpose of the field visit is to obtain a better understanding of where and what types of office are used for union registrations. This also provides opportunities for the team to meet unionists and introduce the research aims in person, to observe their environment, and to conduct unstructured interviews. The interviewees included union organisers or officers, who are also working in these addresses. These interviews were too brief or causal to form part of the formal interview research

plan. Instead research team members delivered an invitation letter to the union representatives or to their mailbox inviting them to a formal interview later. Occasionally, business cards were also exchanged to facilitate further contact.

### Case Studies: One – Three

These three case studies form background for the research and are not directly explain in the research findings. We felt that an explicit analysis of these cases would be difficult to explain in detail but also maintaining ethical standards of interviewee or informant anonymity. The case, rather, form an extremely useful general background understanding for the research and activities of unionists.

#### One - Health workers' strike

To understand the hospital workers' strike, news reports from various media outlets were examined. These includes 185 news reports from 15 Chinese newspapers, from January 20 to February 9, through the online newspaper searching platform, Wisenews. Also, data were gleaned from the social media webpages of the unions that were involved in the strike, particular Facebook pages and Telegram groups. Significantly, some first-hand information was obtained from via a detailed interview with new union official involved.

#### Two - Referendum

On 20 June, 2020, the research team conducted a case study looking at the referendum on general strike in response to the implementation of the National Security Law. The team was divided into two groups: Three members of the research team volunteered at different polling stations, in order to conduct a detailed participant observation and to understanding the insider's narrative; another three visited different polling stations, to conduct on-site observations and unstructured interviews with unionists and participants. Fieldnotes were written on-site to record the event and research meetings held to discuss our experience.

#### Three – application of Anti-Epidemic Fund

The case examined the Anti-Epidemic Fund's application within the tourism and hospitality sector and looked at how the fund was reportedly distributed and compared this to how employers managed levels (numbers) and types (full, contract, part time) of employment. The study also examined how new unions were responding to felt injustices in employer strategies and compared these to activities of older unions. The findings were derived from first-hand data from interviews, and secondary data from news reports, union websites, and union communication channels on Facebook, Telegram, and



Instagram. Event listing of union actions was tracked between January and September 2020. An activity record was kept to identify recurring keywords to trace relevant postings for analysis.

#### **4. research findings**

The research focused on trying to understand why new unions formed, what they want and what they have been doing or plan to do. The context of the mass politic movement frames this period in time, but we tried to approach the research quite ethnographically, to understand the issues from the view of informants, interviewees and writers among these new unions. The pandemic placed some constraints and the new National Security Law dampened trust in discussing the complex and important subjects. However, we were able to make several findings and to speak to a range of people. It remains however, mostly a pro democratic and neutral set of informants because grass roots or new unionists in the pro establishment camp simply ignored our multiple attempts to make contact.

This section examines the overall pattern of new union registration, the role and relevance of political demands among the new unions, relations among unions and with labour organisations and view of the government's role and the overall context of employment relations in Hong Kong.

#### **Patterns of unionisation**

Background/ the relevant requirements relating to registration

The Registry of Trade Unions ("Registry") is responsible for registering trade unions in accordance with the Trade Union Ordinance ("TUO") and Trade Union Registration Regulations. Pursuant to section 5(1) and (2) of the TUO, every trade union should be registered, with an application made to the registrar within thirty days of its establishment. The registrar is supposed to issue a certificate acknowledging the receipt of the application (section 5(4) of the TUO) and a certificate acknowledging the registration (section 6(2) of the TUO). However, no timeframe is specified for the issuance of such certificates. The notifications of unions' application for registration and registration in the Gazette are done by the registrar as required under section 66 of the Gazette. A specified time period is, however, absent in this regard.

Trend of applications and registrations

For the purpose of this research, out of the 881 notices investigated, 450 unions are found to have been mentioned in relation to their application for trade union registration and/or registration under the aforementioned government notices. Out of the 450 unions named in the Gazette published as of 30<sup>th</sup> September 2020, 420 unions were announced therein to have been registered, with the

remaining 30 in the process of application. The number of registrations peaked at 124 in April 2020. The figure then decreased to approximately 50 between May and June respectively. From July to September of the same year, it declined to a level below 40 per month.

According to the Gazette records, there does not appear to be a huge backlog of applications to process. Out of the 420 registered unions examined in the research, 36% of the unions (152) were found registered officially in the same month they were officially announced to have applied for registration. 38% (160) were registered within the following two months after their applications. However, there were also 36 cases (close to 9%) where it took the registrar five months or more to process the registration. And 9 out of those were still pending after five months, as of 30<sup>th</sup> September.

In relation to the actual application and registration time, there appears to be an inconsistency between the Gazette publication system and unions' accounts. A few union representatives that we interviewed indicated that their actual experience differed from the official Gazette records (or the absence thereof). For example, one union we interviewed revealed that they submitted their application in late March 2020 and were still pending response from the registrar as of the time of writing. However, the Gazette published between March and September 2020 do not show such application records; neither are there any notices relating to its registration. Another union said that they had submitted their application to the registrar around December or January 2020. Yet, the relevant Gazette notice indicates April. Such discrepancy potentially shows that there might be differing understanding among unions and the registrar of what amounts to "application" for registration under the TUO. It is argued that this is not without any implications or consequences. Under section 5(5) of the TUO, a union officer or anyone taking part in the "management or administration" of a trade union that is "not registered" may amount to a criminal offence liable to 6-month imprisonment in addition to a fine. Since an application under the TUO is a necessary step to being registered by the registrar, the lack of a prompt official recognition and notification of union application for registration is not ideal nor beneficial to unions as this might hinder unions' planning for future operation.

It is also worth noting that the Secretary for Labour and Welfare Law Chi-kwong revealed in a Chinese-language blog entry dated 12<sup>th</sup> April 2020 in his official blog under the Labour and Welfare Bureau website that the number of "applications for union registration that they received" between January and March of the same year reached 1578 (Law, 2020). The figure contrasts enormously with the data

we gathered by examining the Gazette notices that notified the fact of unions having “applied for registration” under the Trade Union Ordinance in the same period, which was 196.

This raises serious questions as to information transparency in relation to union registration: What is the status of those applications that were “received” by the registrar between January and March but did not appear in the Gazette as “applied for registration”? Has there been a selective publication of information in the Gazette? Are there different understandings of “received” applications and “applications” among the unions and within the registrar? When is an application deemed as amounting to an “application” published in the Gazette?

Classifications and distributions of new unions by job nature and sector

136 (30%) of the total 450 unions are found to be “blue-collar” unions which would cover workers engaged in manual labour work. 191 unions (42%) are regarded as “white-collar” unions which are linked to work that is dominantly done in an office setting, or that does not require manual labour work. 106 unions (24%) are classified as likely representing a mixed workforce. It is worth noting that there is no clear-cut division in certain contexts where white- and blue-collar employees can be encompassed. Thus, for the purpose of this study, unions that are put under this mixed group include:

- company/enterprise- or institution-level unions
- unions that are sector/industry-wide, without specifying particular positions (for example, unions that could represent employees from a particular health/medical institution or the “construction industry”, “social/community service”)
- unions that are found to be difficult to be classified without further information or due to their less visible presence in Hong Kong, for example, a “Tobacco Industry Employees” union

Unions that are comprised of people engaged in public services are also singled out, accounting for 17 out of the 450 unions examined.

These new unions represent a wide variety of sectors in Hong Kong. The ones that stand out in the aforementioned period, however, largely reflect some traditional economic pillars in the city. For example, unions in relation to construction and engineering account for ~18% of the total (81/450) while those related to business and finance make up ~12% (55/450). The number of enterprise/company/institution-level unions stands at 20 only (around 4%), showing their existence as a minority group, which is generally in line with the trend in the past in which sector/industry-level unions dominated.

In terms of industry/sector distribution, it is found that some inter-related newly registered unions are highly compartmentalised and separated in a way that they attempt to represent delicate division of labour within the same sector. Taking the example of the education sector, several unions have sprung up for teachers teaching various subjects, including humanities, Chinese and Liberal Studies, specifically on Hong Kong island, which share the same registered address and are indicated to have made their application on the same date, i.e. 23<sup>rd</sup> January 2020. The construction and engineering sector has seen the same phenomenon. For instance, according to the examined Gazette, at least 28 new unions in the construction sector have been registered at the same address as the Construction Charity Fund Integrated Service Centre which is affiliated with the HKFTU. These unions represent numerous positions connected to different specialised construction works, such as welding, machinery operation, concrete pump truck operation, bar fixing, and so on.

Our research also pinpointed a few unions that are intended to represent sectors or types of work which have shrunk drastically or are close to non-existent in Hong Kong. For example, the Hong Kong Gold Mining Labour Union was registered on 29<sup>th</sup> April 2020 at an address that is found to be linked to a tech gadget company seemingly irrelevant to gold mining, or for that matter the extractive industries, at all. It is worth noting that in Hong Kong with a population of around eight million people, there are only 30 people (as of March 2020) engaged in mining and quarrying territory-wide (Census and Statistics Department of the Hong Kong Special Administrative Region, 2020). Given the lack of relevant natural resources here, the number of workers in gold mining are reasonably expected to be even lower. Another example of a union in a rare sector in Hong Kong is the Aerospace Technology Staff Union, which was said in a Gazette notice to have applied for registration on 20<sup>th</sup> April 2020 and officially registered in merely nine days.

#### Site visits

The research team find that more new unions are registered with a third party's address. These includes secretary service provider, accounting firms, law firms, and shared warehouses in industrial building. This brings new challenges to the authority to verify whether the unions are functioning or not. The research team has found at least two cases that the occupants does not related to the unions registered with their address. This suggests that loopholes exist in the Labour Department's information-checking mechanism.

In general, we observed that union representatives are relatively passive towards being interviewed. Some of them show tiredness as they were visited by other journalists or researchers before. In most cases, when we asked if they would like to be contacted later for further discussion on union's affairs, they agreed initially but then did not respond to our emails or telephone calls later. This is one of the main obstacles the research team faced when we tried to understand these news unions.

It also comes to our attention that some unions from different business background are registered with the same address. For example, 22 unions from different sectors are registered in an unstaffed subdivided unit in an industrial building in Kwun Tong. We cannot provide any evidence, including from site visits and online material review, that these unions are functioning and complying with the legal requirement of Trade Union Ordinance. These potentially are problems when it comes to the election of the government's Labour Advisory Board and the labour representatives in Legco election.

#### Interview evidence

Among those union officials who agreed to in-depth interviews, overall, 5 out of the 22 interviewed new unions gave positive evaluation of their dealings with the Registry of Trade Unions (RTU); 8 gave neutral evaluation; 8 gave negative evaluation; and 1 had no comment. The interviewees who gave positive evaluation commented that the process was smooth, and their responsible staff were helpful. All their applications were submitted before January 2020, ahead of the main wave of applications.

The complaints of interviewees who gave negative evaluation include unresponsiveness of RTU staff, excessive questioning on political motive, lack of clear guidelines, and unreasonable restriction on membership, union name and other matters. One union representative even doubted if RTU received instruction to prioritise the applications of pro-establishment unions while intentionally sabotaging those of pro-democratic unions. A few interviewees also claimed that efficiency largely depend on the quality of individual staff: pro-establishment staff deliberately hindering the processes of pro-democratic unions. Of the unions who reported negative experience, their application period from submission application to official registration (as announced on Hong Kong Government's Gazette) ranged less than a month to more than 2 months.

#### **Relevance of Political demands**

##### Media research

Those new trade unions making use of social media express strong opinions for political incidents. The well-known 'five-demands protest slogan which developed in the wake of the Yuen Long sectarian

violence and questions over the police role (RTHK 2019c, 2020) had been a strong unifying refrain of the anti-extradition law social movement. It is noteworthy however, that the political criticisms or demands expressed, were not levelled at the five demands, at least they were not expressed directly in such postings. The unions share news depicting those incidents of “an obvious abuse of police’s power” frequently, and various comments are made. However, they never use formal tools which they frequently use for union related activities, such as official statements, seminars, street stalls or petitions, to ask for investigation of police behaviour. They published two inter-union statement criticizing Hong Kong Police Force (HKPF) for terminating the protests on January 1, 2020 and January 19, 2020, and another one for its pro-employer position in the Fu Lum labour dispute. One union also shared a petition urging for sanctions against HKPF by way of protest. Thus, dissatisfaction shown towards HKPF, does not amount to direct political demands to the Hong Kong government itself.

Unions also made an appeal on election-related actions. Examples are the union leaders running for the election, the appeal to vote in the district council election and the unofficial primary election of the legislative council, the establishment of union to win the labour functional constituency and to promote voter the registration. Such activities are similar to the older unions and their respective labour organisations. The remaining demands popularised in the ‘Five demands, not one less’ slogan, the release of arrestees, retraction of the “riot” characterization and the withdrawal of the Extradition Bill were not mentioned on the publicly available new union social networks.

Instead, they have been asserting viewpoints and making demands on social affairs happened in 2020. The majority of this trade unions have their pages or channels launched on or after November 2019. At the time, the social movement has claimed down a bit, they only react strong on two situations: the COVID-19 outbreak and the introduction of the National Security Law. These unions have multiply urged for boarder control to prevent COVID-19 from spreading. The Hospital Authority Employees Alliance (HAEA) even launched a 5-day strike for the epidemic. HAEA utilized the social media to update the strike’s situation and its attitude and demands. The other supporting unions, shared petitions, urged people to wear white ribbon or typed some words and shared news to show the support, each in their own ways. The second active social media moment went to the introduction of the National Security Law: surveys to understand members’ opinions, open letters and statements expressing opposition, information packs (summaries) for members to understand the negative effect of the law. Last but not least, a referendum on a proposal to strike against the law was carried out. These unions spent two weeks promoting it.

These unions share news or make postings regarding social affairs on a regular basis. However, those are not strictly political demands, they are raising the audience's concern about various matters they considered important. On special occasions like the anniversary of the June 4 incident, the death of raincoat man and the death of Mr. Alex Chow, memorial posts were published. The unions provide welfare offered by association with certain shops, and hope that the members will support certain activists. They specifically promoted the members to consume at these shops on the week of the labour day, echoing an online appeal. Such encouragement to shopping was further reinforced by the formation of the welfare platforms to provide more benefits to their members. Some other unions have appealed for the audience to take personal actions for political incident; they did not launch those events but considered them important. They include protests, rallies and a strike on 27<sup>th</sup> May 2020 in opposition to the National Security Law. Some unions addressed social issues that are related to their industry, such as a new education sector union criticising the dismissal of an academic or financial union lamenting US trade sanctions.

#### Interview evidence

Out of the 22 interviewed new unions interviewed, only one union explicitly stated that the "Five demands" is their main objective. 18 new unions cited their intention to support the 2019-2020 protest movement as the reason why they were found; 1 additional union stated that they were not found in support of the movement, but nevertheless was influenced by it. Only 4 new union explicitly cited intention to influence the Labour constituency in the next Legislative Council election as one of the reasons of their establishment. 3 new unions said their establishment have no relation to the protest whatsoever. Their main purpose is to address issues concerning their own workplace, profession or industry. This is marked contrast to the social media postings discussed above.

As police intensified crackdown on the protest movement, the idea of utilizing trade unions and labour movement as a means to diversify and sustain the protest gained traction during the second half of 2019, leading up to the call for a general strike on 5<sup>th</sup> August 2019. 15 new unions cited the intention to participate in strike action as important or reason behind their establishment originally. Interviewee from union G summed up the gist of such these new unionists' thought process perfectly, "If the adults can stop going to work, the youngsters can stop going to street<sup>8</sup>". Strike is something ought to be done to avoid the bloodshed, as interviewee from union N put it bluntly. The intention to organize a general strike therefore entails the establishment of trade unions; interviewee from union K said, "going on

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<sup>8</sup> 「大人唔番工，細路唔洗衝」

strike without union is dangerous for the workers". As explained by the interviewees from union I, they were propelled by the belief that since trade union is allowed to organize strike, protest action in the form of labour action will be protected under the labour law. Not discounting other reasons, some looked to duplicate the success and impact of the HAEA strike and the series of actions to shut down the airport spearheaded by aviation workers.

However, it is important to bear in mind that trade unions are associations of individuals; their inner working is inevitably entangled with organic social interactions. Likewise, members of these new unions do not function as a monolithic bloc; different opinions exist inside any unions. Union M representatives recounted that their founding members including themselves were initially split between those who strongly support strike actions and those who are more reluctant to commit to such strong actions. This dispute regarding fundamental direction of the union was only resolved by an executive committee election.

As the new unions and this renewed interest in trade unionism continued to rapidly develop during the first half of 2020, some unions expressed their subsequent disillusionment about their original goal to go on general strike. The interviewee from union W said that they gave up on the plan after finding out going on strike for political reason would not be protected by the labour law. Union F's representative also echoed this narrative, "Many unions established with the purpose to go on strike, as some say trade union can protect workers during strike. But such discourse vanished (eventually)". Union T took the matter back to their membership with a survey, they found out their members expect the union to grow much stronger before carrying out a strike. Following the strike referendum on 20<sup>th</sup> June 2020, there was a general depletion of enthusiasm and expectation among the new unions about general strike. The interviewee from union P commented on their disappointment, "Now the reality sinks in, there are still a lot of people who do not care about politics ("Hong Kong Pigs"<sup>9</sup>) and are unwilling to get involved. It's useless to force them because they are burdened by mortgage and making a living". In contrast, other interviewees and informants were less concerned with the strike as a purpose of the referendum and more as raising general awareness and attracting new membership enrolment. In these regards, the referendum was highly successful.

Of the 18 new unions which said their union were found in support of the protest movement, 13 indicated that their present activities primarily revolve around non-political issues – concerning

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<sup>9</sup> 「港豬」



workplace, professional and industrial problems, providing membership welfare and education, dealing with labour disputes, managing internal administrative matters, and reliving the fallouts caused by the Covid-19 pandemic. It is worth noting that all interviewees from these 13 unions do not see themselves deviating from their roots of supporting the protest movement. Union representatives however spoke of different reasons for their shift of attention. Some reflected on their unions' direction, subsequently came to the conclusion that trade unions as platform to push forward both economic and political agendas necessitate long-term organizing and internal consolidation. "At the beginning, we naively thought having a union is all that needed to go on strike, but subsequently found out things are not so simple", one of union C's representative said. The lesson learnt is that the status of workers has to be levitated, collective power expanded before any demands can be made. Interviewees from union H mirrored the aforementioned comment, "After the COVID situation and the strike referendum, we discovered that the power to appeal for a strike in society is relatively small"; hence, a lot more build up has to be done. New unions often see themselves having the dual role of addressing wider social issues as well as their own professional/industrial specific issues. "Even back in November 2019, the consensus (among new unions) was that striking is not an end in itself; there is a purpose behind the strike... political demand and industrial demands are always related", the interviewee from union J additionally noted that the condition in their industry is inevitably connected to government policy. Furthermore, a number of these new unions were established in industries and professions that did not have sufficient or any labour representation previously, hence addressing long-standing labour issues is equally important if not more important to them than political demands.

### **Relation between unions**

#### Media review

The newly established unions developed their own communications platform which connected new trade unions and traditional unions. Nevertheless, from what is revealed in the social media, the relationship between some unions has diverged. Some trade unions did not participate in the 2020 Referendum, they instead form a new group to launch a campaign to hand in letter of petitions to the G20 consulates. In August, two welfare platforms were formed. The combination for the two platforms were basically the same as the referendum group and petition letter group respectively. This shows a pattern of possible fragmentations, which may not heal for a time. On the other side, there are several examples of older unions and labour organisations actively supporting new unions, whether they are formally affiliated or not. For example, on occasion pro-democracy labour

organisation staff will post supportive comments on independent pro-movement unions' Facebook pages.

#### Interview findings

Of the unions interviewed, 6 are affiliates of a pro-democracy labour organisation, while 1 is affiliated with another labour organisation; 15 indicated they have no affiliation. no union claimed association with the pro establishment labour organisation. Of the 6 pro-democracy affiliates interviewed, all of them cite administrative convenience and availability of support resources as the reason to be affiliated. The older labour organisation has vast connection with local and international trade unions is seen as an additional advantage which could help new unions to be connected. Being affiliate with a larger structure does not make these unions became dependent on it. Evidently, the five unions do not rely on the labour organisation's professional organizers to facilitate their internal operation: taking care of recruitment, dues collection, selection of executive officers and internal communication autonomously. These unions also demonstrated high level of independence; take charge of their own direction, deciding their own priorities. They also do not agree with pro-democracy labour organisation on every matter. For instance, one interviewee wished pro-democracy labour organisation could be more progressive on dealing with labour disputes, instead of bringing the cases to the Labour Tribunal.

Of the new unions which have no affiliation, aside from those who had no opinion, most responded that they consider pro-democracy labour organisation to be a friendly fellow union, having various level of cooperation and communication with them. Interviewees commented that pro-democracy labour organisation's efforts to assist and facilitate new unions are much appreciated. Yet despite their generally positive evaluation, these new unions wish to remain independent from pro-democracy labour organisation. One interviewee recounted, "(pro-democracy labour organisation) ... invited us to become their affiliation, but we refused due to the political reasons. I do not support the tactics of the pan-democratic side". As quoted here, these non-affiliated unions see pro-democracy labour organisation's association with electoral politics and the Pan-democrats camp as political burden; the perceived passivity and weakness of pro-democracy labour organisation's approach to labour issues is therefore a collateral of its political position.

On the contrary, the interviewed new union have no contact with pro-establishment labour organisation at all. The union representatives tend to know little about pro-establishment labour organisation, but in general consider them indulged in welfarism while contribute little to defend

workers and improve labour rights. Some interviewees even accused pro-establishment labour organisation of soft-balling on labour rights in exchange for resources and proximity to government and business elites.

The strong desire of these new unions to remain independent from “old” unions thus reflects some deep-seated dissatisfaction against the established labour “system”, where the prominent actors in the labour movement have failed to represent the rights of workers.

### **Role and activities of new unions**

#### Media research

Nearly every unions have conducted surveys to the workers from their industry. The surveys are useful for the unions to draw a better picture of what is happening. As the epidemic has vigorously crushed the economy and the work arrangement, the working conditions of the workers are the usual focus. There are surveys on the work arrangements during the epidemic, the comments of the government’s anti-epidemic fund, the disease preventive measures and equipment in the workplace and the situation of the no-pay leaves. Some unions also released surveys to understand what their members want their union to bring to them. Overall, the surveys are tools unionists use to understand and know how to react to industrial situations.

Not every union utilize the social media to express workplace concerns or labour rights, only some did so, and they do it in their own ways. One new union listed employers that forced their employees to take no-pay leave or those that had fired employees. It also listed negative comments on public platforms to make potential consumers of aware of purported employers who are exploitative of their workers. Another union used questionnaires to collect members’ opinions and reflected them in quarter meetings with management. It also used the social media to report its communication with the management. Another new white-collar union drafted some disease preventive guidelines for members’ reference. A professional employees new union developed a Facebook page allow members to anonymously report issues, discontent and whistle-blow. A public sector employees new union made daily update of the information regarding any civil service staff who caught the SARS-CoV-2 virus to ensure workplace safety. From all these examples, it can be seen that unions are trying different innovative way to attract workers’ attention to labour rights and use a digital platform to handle workplace issues. This is quite different from traditional unions, who only handled labour dispute cases by a case by case basis without other members knowing.

Some issues that affect the wellbeing of the workers do not stem from the employers or the companies that worked on. Instead, the government's decision or policy has led to that situation. Particularly in the COVID-19 pandemic, many industries need to support or even instructions of the government. One new union has filmed a video to express discontent to the social gathering ban to highlight impact on earnings and jobs in their industry. Another highlighted the need for public funding support for their industry. Different public sector or unions whose members face particularly strong governmental employment or decisions have urged for the change in work practices.

### Interview findings

While vast majority of the interviewed unions are typical employees' union as initiated and organised by employees themselves, there are a few exceptions. Two new unions are registered as employer + employee union. One of which is Union M. Their representative explained that this arrangement was due to the nature of their industry, many of their colleagues are self-employed. In additionally, there are also a few interesting outliers when compare to the recognized norms in trade unionism. For instance, union A began with their employer "brought up the topic and encouraged us to set up a union and hoped we will fight for our own rights", their representative told. He asked them, "why don't you guys set up a union?"

Contrary to expectation that the new unions would subscribe to a more radical stance against employers, plurality of interviewed new unions across the political spectrum – from pro-democracy labour organisation affiliates, non-aligned labour organisation affiliate to independent ones, are in agreement that a more constructive relationship between employers and employees is preferable. Some believe that an inherently harmonious and mutually beneficial employer-employee relationship is possible, should the right approach is taken by both side. The interviewee from union B said, "I believe that it is important to communicate with the employers, and to some extend I find employers supportive in 'professionalising' our sector... strike should be used as the last measure". This view is mirrored by Union U's representative, "We are not only trying to become the bridge between employees and employers, we are also trying to be one between the employees and the government, so that we can help each other... In addition, we want to gather the workers of our industry, rather than fighting against the employers or launching a strike. Strike is our right, but it is not necessary for us to exercise it. A union can share mutual interest with the employers' business".

Nonetheless, for most of the interviewed unions, their desire to increase engagement with employers stemmed from the general oversight of employees' need in Hong Kong mainstream corporate culture; therefore, any increase in communication between employers and employees is generally seen as an important first step to demand employers to register the concerns of their employees. Interviewees from Union H noted, "We can explore issues such as how to increase employers' concern about their workers. Such communication has been lacking in the past... If workers have maintained communication with the employers so improving their awareness, those (confrontational) incidents may be avoidable". "We sent letters to the company about our dissatisfaction", Union K's representative described the preliminary progress they have made, "we considered it is important to set up a channel with the company, so that they will know they have a problem when handling issues wrongly". As interview from Union R put concisely, while many in society (including some trade unions) hold the view that if the employer are having a good state shall benefit their employees, it is important to also realize that when the employees are in good shape, the business will also be in good shape.

Simultaneously, this non-confrontational approach can be understood as Hong Kong unions survival adaptation to a historically weak ground for trade union activity<sup>10</sup>; a unique circumstance produced by the combination of historical partisanship within labour movement, pro-business government policy and stringent corporate culture. Union D's representatives commented, "the principal theme of union is the struggle between employers and employees". Notwithstanding their strong opinion on this matter, they conceded that, "Hong Kong's concept on employees is indeed lacking behind. Relationship between employers and employees are not equal". Their union have no plans for actions and would focus growing in strength at least in the short term. One union elaborated their purpose to stay in good terms with employers perfectly. "As a union, we hope more companies will recognize us. That is because without the right to collective bargaining, trade union in Hong Kong lacks legal recognition", the interviewee from Union J explained, "consequently, we need to form good relationship with companies, and let them be aware of our existence. Since trade union in Hong Kong lacks legally defined power, companies would not necessarily be intimidated by our action".

As some seek to build relationships with employers, while other aim to avoid confrontation. Nonetheless, the interviewed unions agree that the ill of employees is deeply rooted in Hong Kong's work workplace employment relations. In fact, Hong Kong's suffocating employment environment of heavy workload, long hours and flat pay remains the largest concern of the members, rather than any

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<sup>10</sup>The historical weakness of Hong Kong trade unionism has been documented by scholars, see Chan & Snape, 2000 & Ng & Ip, 2007.

particular overt antagonism relations between employers and employees. Reflecting on their recently earned experience in trade unionism, the representative of Union R told, “when operating a union in Hong Kong, I start wondering why there are matters that none of them (employees) raised concern about, while some others dare not speak out against their employers”. Even in businesses which are sympathetic to the protest movement, there are situations where staff were exploited by their employers. Yet the same work culture persists as noted by the representatives from Union H, “many (employees) do not prefer to get involved in such activities (fight for their rights) due to their slave-like characters... such ideology must be altered”. Under such culture, the employees feel obliged to accept work demands from employer even though those demands might be unreasonable or detrimental to their well-being. In particular, many interviewees have cited excessive long working hour or obligated over-time as major issues in their profession or workplace. A few interviewees also spoke of the difficulty in motivating employees to stand up for their rights, even when the law is violated; they would rather seek another job. “Like the old saying goes<sup>11</sup>, its in our tradition”, one representative from Union T commented on the difficulty of organising union in Hong Kong, “the industrial environment in Hong Kong is pro-capitalist, the employers enjoy few limitations to their power. They learn how to navigate through the grey area to suppress their workers. As for employees, they are under a lot of limitations, it is difficult for them to resist. In the past, I was also not familiarised with my rights. Therefore, I had no intention to form a union”. Many of the interviewed unions including Union T hence set educating the public and employees as one of their mission, to change those entrenched concepts.

In conclusion, the interviewees largely understood the power imbalance between employers and employees as a product of structural inequality enabled by the government’s subscription to a pro-employer discourse. In other words, rather than blaming their employers for dreadful conditions, trade unions across the political spectrum are more likely to see the government as the main culprit. This indicates a broad base consensus that Hong Kong’s labour issue is fundamentally policy driven. Like both the representatives from Union E and Union O pointed out, the status of trade unions has been undermined by government policy since the colonial period. The workplace relations are shaped in large part by the lack of legal status to represent workers, namely the lack of right to collective bargaining and other protections. Progressive laws provide legitimacy and dignity to persons just as much as bad laws suppress and encourage prejudice. As demonstrated, the new unions do not intend to destabilize industrial relations or antagonize the relationship between employers and employees.

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<sup>11</sup> 「工字不出頭」

“We represent the workers to voice out. Whenever the employers suppressed the employees or if there are any injustice situations, we should bring it up to make discussions”, said the representatives of Union T, “an antagonistic relationship should only be led to if the power balance between the employers and employees are lost... however, many things should be carried out before ending up into such an antagonistic situation”. If anything, the unions are demanding, it is simply recognition of their existence and be given the status to represent employees in the eyes of employers. The demonstrated willingness of the interviewed unions to pursue a constructive relationship with employers gave evidence that a more balance approach in managing industrial relation should be pursued in terms of public policy; providing a formal legal framework to negotiate and resolve labour dispute might actually help to reduce conflicts and by extension reduce friction and transaction cost in the economy as a whole.

### **View of Governments role in employment relations**

#### Media research

The National Security Law also wield a strong influence on the unions’ attitude. The most quintessential proof for this argument is that the majority of the unions stop calling shops that shared similar stance “yellow shop”. Instead, they are now referred as the “shops with consciousness”. The unions and their collaboration partners try to avoid failing into the trap of the law. One union that always urged “Hong Kong Independence” in its social media, stopped doing so. Without huge political incidents, it is difficult to tell how reserved in political expression the unions become, still from minor details of the postings, the unions seem to be less politically active.

#### Interview findings

18 of the interviewed new unions hold significantly negative view on the government’s approach to trade unions. This sentiment is multi-partisan, shared by non-aligned labour organisation affiliated, pro-democracy labour organisation affiliated and independent unions; and in spite of their difference, unions primarily concern with supporting the protest movement and unions primarily concern with economic issues can even agree on their steep dissatisfaction with the government.

One particular policy that some of the interviewed unions especially voiced out on is the Employment Support Scheme, especially for those from industries that are hit hard by the pandemic. They are very dissatisfied with how the scheme has been drawn and implemented. Interviewee of Union B from the food and beverage industry (which is affiliated with non-aligned labour organisation) slammed the Labour Department for not listening and responding to their demands, despite attempts after

attempts of appeal were made. The interviewee especially noted that the Anti-epidemic Fund<sup>12</sup> goes largely to employers. The government's initiatives have failed to protect the livelihood of workers especially the zero-hour-contract and self-employed ones in their industry. Representatives from Union M, from another industry where self-employment is common, commented on the government's support scheme for their industry, "The scheme was implemented in a bad way, some workers discovered that they are not eligible to get any supporting money through the scheme... as the money is provided to the companies, we have no clue how much is received and how much will be paid to the affected workers in the production. In fact, not many have succeeded in receiving money from the funding as far as we know". Union S and Union Q's representatives went even further, declared that government policies are not oriented for the protection of workers but for the affluent, employers and corporations. Interviewee from Union S said, "The employment protection scheme is design to safeguard the interest of the employers. The government's stance is so obvious from all the evidence".

The interviewed unions hence feel strongly that the government does not value trade unions and workers in general. From their perspective, they were barely consulted during policy making processes; as a result of such negligence, government polices tend to tilt towards the interest of employers and corporations. "They only listen to those who can provide them with benefits", said one interviewee from Union M. The scepticism on the government's approach to trade unions goes beyond seeing such negligence as a functional failure of the bureaucracy, but directly doubt if it is intentional. Speaking about the education sector, Union D's representatives commented that Education Bureau officials did not even attempt to meet with the Professional Teacher's Union (HKPTU) that represents approximately 100,000 educators (HKPTU 2020); the largest union in the sector, and one of the largest mono-professional union in Hong Kong. They found the government seeing trade union's existence as a threat rather than an essential part of the public discourse. "The government only listens to what they want to hear. Or they would listen, but make no change in their direction", said the interview from Union J.

Discouragingly, the 4 remaining unions did not give positive evaluation neither. Union H's representatives felt the government is generally apathetic towards trade unions, yet they fear prosecution in the future due to their political stance. Interviewee from Union U while avoided giving direct opinion regarding the government, commented that, "It is important for unions to strengthen ourselves, making the government listen to our words... We can assist the government to bring

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<sup>12</sup> For more information, see <https://www.coronavirus.gov.hk/eng/anti-epidemic-fund.html>



benefits to the people. Putting political matters aside, discussion with union workers will allow the government to learn that the employers are not the only stakeholder in Hong Kong; employees also matter”.

## 5. policy implications & recommendations

To provide a workable framework for understanding normative policy making in the context of employment relations it is helpful to explain the ideological frames which inform policy making in the field. Given the deeply political nature of employment relations it is necessary to start by acknowledging the ideological underpinnings which shape or justify inaction as well as action. The section will then briefly introduce two areas of policy: labour law and then government and employer engagement with trade unions. The section will then finish with a listing of specific policy recommendations.

### Ideological perspectives in employment relations

The academic study of employment relations much criticised for being empirically focused but for policy implications, such foci analysis is an advantage. At its heart, employment relations is concerned with understanding conflict between parties, actors or institutional structures in the employment relationship and the academic and practitioner field agrees with some unanimity that ideology frames both how people observe these relations and how they prescribe improvements. A commonly used and simple ideological framing is given by (1966) who originally introduced the idea of seeing perspectives as orientated towards unitarian or pluralism, which identify an ideological normative framework of how the relations between workers and employers should be, as well as descriptively summarising practices. In this a unitarist holds that all conflict is unhealthy and usually caused by outsiders (familiar enough refrain of authoritarians and dictators the world over) but in employment relations it sometimes places the burden similar to Confucius's preoccupation with bad leaders, in that problems occur when the elite acts against the general interest (or harmony) as is deeply paternal. This would mean that an employer should not work in the interests of the owners or shareholders if they exist as is enshrined in Hong Kong law but instead must act in the interests of the society in which the employee inhabit – the general good. This is responsibility is not abstract but real and specific. In a society where such paternalist employers would exist there is no need for labour laws or state interference. Predictably, research has not found generalisable examples, and when some employers or politicians make such claims, they are either philosophical idealists (not practical) or employing Fox's later third perspective (1974) of radicalism and trying to legitimate their hegemonic power to suppress disobedience.

The second perspective that Fox describes is pluralism, in which various parties or actors have different aims but their need for interdependence creates conflicts. The role of the government and civil society is to help the central parties, the employees and employer, to settle difference and

cooperate. As employers hold resources and other forms of power, it is necessary for the government to balance power by protecting workers and at the same time promote the mechanisms, such as collective bargaining, mediation services, etc, to promote mutual cooperation. This perspective is often seen as liberal in nature but runs a wide spectrum of political viewpoints. Although not expressly associated normally, an analogy can be drawn to Keynes view of economies, in that the natural state of capitalism is chaotic and arbitrary, requiring laws and a degree of management which remain commonplace today. A pluralist approach to employment relations, similarly views a regulated employment market as cruel, despotic and deeply unfair which eventually leads to poor economies as labour is forced into subsistence wages and profits are transferred elsewhere (and this means expressly not into investment – why bother if labour is cheap and exploitable, just as corrupt volatile money flows around unregulated financial markets).

The third view derives from Marx but covers a wide group of social reform initiatives in what Fox terms radicals. This view holds that conflicts are fundamental and endemic between the elite, who control resources, and workers who labour. As illuded to above, many academics of employment relations view claims of free choice, rights of capitalists and laissez-faire government policies as thinly veiled screens to hide the fact these people are actually aware this class holds the power and don't want to share it. What Marx has in common with Keynes is the view of tendency to instability, but in the realm of employment relations (as opposed to class conciseness and politics) trades unions and positive government intervention act to incorporate labour into the existing capitalist hegemony and that was a significant reason is why Lenin switched to revolutionary political party discussions.

The framework established since the late 1960s colonial era in Hong Kong in direct response to social upheaval that outwardly show a desire to move from unitarist to more pluralist institutions. The government began setting a good example of cooperative employment relations through the system of Joint Consultative Committees, with wide remit of issues able to be discussed. The private sector, however, has been largely neglected with minimal legal protections and a reluctance for the government to take the mediating role, a sort of unitarian through neglect or acquiescence to the business elite. Our findings point to the view that the government is universally seen as anti-labour and unhelpful to unions across all political allegiances of trade union movement. This contrasts with our findings of the new union movement, which are generally positive towards their employers, especially among pro-democracy unions because they want their employers to prosper and they see conflicts within a pluralist framework. Some unions, particularly some of the professional and the more pro establishment leaning interviewees indicate the necessity of collaborating with employers

as they hold power, showing a radical viewpoint of employment relations. The Hong Kong government in its attacks on unions during the medical workers' strike and the Referendum demonstrated unhelpful politicised factionalism which sought to divide society, ironically, whilst in the health workers dispute, officials sought to negotiate with the relevant unions for a settlement. Such seeming duplicity erodes trust in the employment relations climate and undermines the efforts of those bargaining a settlement. This stands in marked contrast to the unions who organised themselves with dignity. In the strike, the health workers maintained their professional ethics to care for the sick but felt compared to pressure to ensure a safer situation for the people of Hong Kong and for themselves, patients and colleagues. In the case of the referendum, they set a high threshold for the strike and when it was not met, announced the results accordingly. This showed transparency, engagement and democratic decision making.

To demonstrate the contribution of this study as part of a need to shift the discourse on employment relations in Hong Kong, our research challenges official government position as given in its 'Fourth periodic report submitted by Hong Kong ...' in December 2019 to the Committee on Economic, Social and Cultural rights of the United Nations Economic and Social Council distributed August 2020. Paragraph 84 (p20-21) of the report claims in response to previous suggestions to

... adopting legislation on collective bargaining, it is the firm belief of the Government that collective bargaining, if it is to be effective, should be voluntary. There is no consensus in the community on introducing compulsory collective bargaining by legislation. Legco had vetoed calls for compulsory collective bargaining five times in the past.

Apart from the emotive phrasing of 'compulsory', the idea of consensus in employment relations implies a unitarist perspective and belies the actual divisions in employment relations. This is most sharply shown in the use of the word 'belief' as in the 'governments belief' which implies its 'beliefs' are superior to the beliefs of trade unions both in this study and those attempting to introduce legal mechanism to *promote* (not *compel*). Moreover, the use of 'belief' demonstrates a tacit acknowledgment, probably be coincidence of Fox's argument that employment relations cannot be understood separate from the ideological viewpoints (beliefs) that the various parties hold. What this study shows is that whilst the governments professed belief may be shared by sections of the business community, it is demonstratively not held by large sections of the community, as represented in past employment related practices and the growth and activities of new unions. The fact that the design

and procedures of Legco protect the interests of certain minority factions merely reinforces the ideological argument.

The same report goes on to defend current tripartism in Hong Kong (para. 85, p 21):

... through the labour advisory board (LAB) which advises government on labour matters with representatives of employers and employees, and the government participating on an equal footing ... [unions elected via] well tested and accepted by the labour sector.

The veracity of that statement bears no relation to our findings from interviewees across the political landscape, with a view that the LAB gives unions no demonstrable voice or power to influence government policy. The statement also contains a contradiction in employment relations terms as the government cannot be 'on an equal footing' in the organisation if the organisation itself is merely and advisory body to the Government. The whole discussion within employee relations is that the difference between advising, consulting and bargaining is the locus of power in the relation. Making such a mistake further shows the unitarist view of government.

One straightforward and immediate solutions, which would have prevented the rising number of union registrations and the deepening tensions within Hong Kong would have been to abolish the functional constituencies and provided universal suffrage. The rise of new unionism has occurred in part because of the undemocratic system in Hong Kong, although the causation is also indirect. Hong Kong's long standing and authoritarianism has been used to block workers from decent wages, working conditions and life opportunities and the government has lost trust from the working class. The civil service and 'disciplined' forces have been protected with high and secure pay whilst most people live in insecurity and falling real wages. The government is seen to side with employers and this atmosphere creates tremendous distrust.<sup>13</sup> Whilst some amendments seem appropriate, it is likely the wrong ones will be undertaken. Just as the NSL only stops overt resistance to Hong Kong's declining autonomy, the act of suppressing unionisation merely be to create new problems. Unlike street protests, employment relations rely on both parties actively agreeing to the relation. Hong Kong's economy has declined, not because it is not competitive but because employers never invested in their workforce and the income gaps grew so that many employers no longer need to rely on direct

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<sup>13</sup> Add to this, rumours it is likely there will be an attempt to halt the growth in the unionisation movement through changes to trade union registration it is likely tensions will increase again.

employment. Hong Kong's wealth, comes from its workforce but decades of low pay and long hours in poor workplaces has shown the divide between the public sector and the private, between the insulated civil servant and the masses, and between the social classes. As in most political economies, the state of employment relations is the perfect mirror of healthy society.

There are two areas of implications of the research: an urgent need for comprehensive legal protections for employees and their unions, and government to genuinely engage employees as the backbone of Hong Kong society and its only real asset.

### Legal framework

The resistance by the elite to genuine worker participation in shaping Hong Kong's economic activity is best demonstrated by examining the government's attitude to laws which protect and promote collective labour rights and ILO core conventions , notably Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

Legally protected rights to collective bargaining was identified by several unionists to ensure a level of access to management decision making which directly impact employees. There is no legislation to offer such protection in Hong Kong. The Employee's Rights to Representation, Consultation and Collective Bargaining was first passed into law in June 1997 but soon repealed due to changes in the political contexts and the legislature. Without legal recognition of collective bargaining and unions' right in this regard, unions wishing to negotiate and enforce collective bargaining agreements with the employers are not accorded any protection. A rare local case in 2001 also gave us a practical insight into what a lack of legal protection means for workers. In *Cable & Wireless (Hong Kong) Ltd v Hong Kong Telecom International Ltd*, a union attempted to enforce a collective bargaining agreement which required the employer to consult the union in case of dismissal of any union member; however, the company subsequently failed to do so while making 173 union members redundant. In the absence of a relevant legislation, the Court of First Instance reaffirmed the general common law view that collective bargaining agreements were "not legally binding" and thus not enforceable., and found the same on the facts and surrounding circumstances of this particular case the rejects the legal enforceability of collective agreements in general.

More generally, as Glofcheski (2014), the Hong Kong Law Reform Commission has long ignored employment law, which has never been made one of the focus areas in its legal reviews and reports since the body's establishment. Without such a review initiating comprehensive labour law reforms is

particularly challenging and this begs the question, why has this not been done if it is not to protect the economic and political elite. Referring back to the first quote earlier in this section, and combining that with these legal case it is clear that “it is the firm belief of the Government that collective bargaining, if it is to be effective, should be voluntary” is in fact a government belief that employers should be free to do what they like with the bare minimum of legal decency. Voluntary in fact means unilateralism or, in employee relations terms Unitarian.

#### Government and employer engagement with trade unions.

The series of interviews conducted with these new unions clearly points to a severe lack of trust in the government’s direction on labour issues and trade union affairs. The new trade unions consider the lack of involvement of unions in policy making process and the lack of initiative from authorities to communicate with employee representatives as the indication of the government’s favouritism towards employers. The current tripartite consultation mechanism is therefore seen as ineffectual, under which representation on the employee side lacks legitimacy. Commenting on this subject matter, the interviewee from Union G said that the government and business elites are only willing to work with “harmonious” unions which are willing to compromise the interest of working people. To increase confidence of trade unions and the public’s trust in the government’s handling of labour issues, the tripartite body – Labour Advisory Board therefore should be reviewed and reformed. In particular, seats in the board should be increased and the selection process of employee representatives should be amended to allow more room for trade unions from different background to voice their opinion.

For governmental bodies or authorities which are responsible for overseeing a particular industry or sector, they too could be benefited from having direct communication with trade unions in relevant industry or sector. Union R reported that they contact the authority (in this case the Monetary Authority) in particular, filling complaints regarding observed regulation violations. While they appreciate the Authority has acted on their complaints, they would like to have direct feedback as well. This is just one example of how inputs from trade union not only can register and highlight the welfare and well-being of workers, they can also provide critical recommendation on how to maintain and improve the healthiness of their respective industry or sector. From financial industry to public health sectors, examples have proven that trade unions’ voice can strongly safe-guard professional standards, provide policy recommendations that are informed by “frontline” experience, and improve communication between the government and said industry or sector.

From the research, there are two examples of why a reluctance to engage with organised labour, unions, has negative consequences. In contrast, we found no examples of bad decisions happening because new unions were consulted, though there are international examples of decision making concerning environmental harm (but equally there are unions pressuring for socially beneficial environmental outcomes, ETUC n.d.). Regarding the health workers strike in February 2020, one of the key problems that led to the strike, was that if they were inside the system and recognised by management and government as responsible employees and citizens it is unlikely the strike would have occurred, and employer and government would have made better decisions quicker.

A more recent example of how appropriate consultation would have led to better fiscal management. The guidelines of the Anti-Epidemic Fund underlie loopholes for industrial violations. First, the fact that the employer only has to comply with the committed headcount of a 'specified month' of their choice encourages job instability. While temporary workers could be included in the committed headcount, a profit could be gained for laying off permanent workers during the subsidy period. Second, employees were not included in the dialogue and could suffer from a higher risk of worker exploitation. An example of heightened job insecurity is indicated in the wording of the Fund's guidelines, which encourages no-pay leaves, as the document writes, "The total number of employees on the payroll (excluding those on no-pay leave..." (GovHK, 2020). In effect, employers were recommended to issue no-pay leaves instructions. Insiders reported that one hotel forced entry-level staff to take no-pay leaves for an average number of 20 days in April 2020, whereas the upper management was only required to take one no-pay leave. This hotel was granted a wage subsidy of almost HK\$ 9mil. for over 300 employees in June and August 2020. A transparent system should be enforced to ensure employers' accountability in spending all of the wage subsidies on their employees and this would most logically and most ethically been done by engaging the unions who represent these workers. To reiterate – employers represent the owners and unions represent the employees.

### Specific Recommendations

1. Democracy. The most obvious and fundamental recommendation is to bring forward the Basic Law provisions on universal suffrage, especially given the National Security legislation has now been imposed on Hong Kong. Strong electoral democracies are associated with process for executive legitimation which legitimises more interventionist approaches towards employment relations. In turn, a safe progressive labour environment encourages upskilling and promotes more egalitarian distribution of resources, safer workplaces, and less revolutionary citizens.



- 1.1. Whilst the abolition of the functional constituencies would be preferable, in the meantime, the electoral process should be membership based, similar to the Legal and Education Functional Constituencies. This promotes a focus on membership rather than counting unions, which is the essential purpose of unionisation in the first place. It seems illogical to have a union with thousands of members have the same worth as a union with seven (required for union registration) or fewer members.
2. Laws. Workers need much more labour protection and a climate more conducive to progressive and cooperative employment relations. Once a proper legislative framework is developed, trade unions will be given the room to mature as partners in development. This review should take specific steps:
  - 2.1. A systematic review on the Trade Union Ordinance and the wider legal framework on employment and collective labour rights should be conducted in consultation with worker representatives, labour unions, relevant civil society organisations and other stakeholders in order to bring them into full compliance with ILO Conventions No. 87 (Freedom of Association) and No. 98 (Right to Organize and Collectively Bargain) as applicable to Hong Kong by virtue of Article 39 of the Basic Law.
  - 2.2. In particular, the silence on the right to collective bargaining in the existing legislation including the Trade Union Ordinance, together with the legal and technical potentials in (re-)enacting a legislation to protect workers and unions' right to collective bargaining, should be thoroughly investigated and reviewed. A simple and easy first step, would be to reinstall the 'Employee's Rights to Representation, Consultation and Collective Bargaining Ordinance' rescinded in 1997 without meaningful consultation or review.
  - 2.3. In addition, labour laws should be given sufficient attention in the work of the Hong Kong Law Reform Commission. For the purpose of reviving the discussion on collective bargaining, it is suggested that a sub-committee be set up under the Hong Kong Law Reform Commission to take up the initial research and technical review, with inclusive appointments of members ranging from experienced legal practitioners and academics to other relevant stakeholders such as union representatives on different ends of the spectrum.
  - 2.4. Once a comprehensive collective bargaining law has been enacted, for example, it becomes incumbent on the government to act as its champion and to set a good example, by comprehensively engaging the law itself. This can be done, for example, by following these steps:
    - 2.4.1. Introduce bargaining to all departments with exceptions for some discipline service units and director grades to replace JCCs initially but extended to ensure comprehensive

coverage. There must be provisions to include all part time and temporary staff within bargaining arrangements to counter the segmented labour market practices currently widespread within the government.

2.4.2. A transition period should be allowed but all subverted organisations of the government should also institute collective bargaining arrangements.

2.4.3. To promote bargaining generally within Hong Kong, the government should ensure that all agreements with suppliers and contractors contain a provision requiring evidence of genuine free collective bargaining as part of the bidding and awarding process.

2.4.4. To establish an independent organisation to help promote, train and advise on the development of collective bargaining. The governance of this organisation should be tripartite, with an international academic advisory board.

3. Pluralism. The executive must accept there are two political factions within the labour movement of Hong Kong, together with several shades between or around these main factions. By increasingly been seen to involve one side in governance, the executive creates the image, if not the reality, politicising its role. Such politicisation gives the wrong image of Hong Kong, increasingly replicating a weak despotism where governance is domestically legal but lacks legitimacy by any international standard. It is a sign of weak government that such labour factions exist, and a more inclusive approach will benefit the people of Hong Kong in the long run.
4. Transparency. Transparency is a huge problem of the Hong Kong executive in general and breeds distrust and resentment. The people of Hong Kong are not children in need of a paternal guardian. There are many issues of transparency required to improve labour relations and transparency of employers is as important as government transparency. For example, the Trade Union Registry, should keep a publicly accessible monthly log of groups seeking registration to form a union, those successfully accepted, and those registered. This should form a starting point to a much more open government, with specified contact points and accountability. There are a number of recommendations regarding accountability ranging from appeals processes through to methods of independent monitoring. In the research, however, there are such low levels of evidenced based trust it will be difficult to have credibility in this area at present.
5. Union Registration. There is a danger that making recommendations to change the trade union registration process in the present climate of distrust may provide an excuse to further undermine workers' right to freedom of association to enable workers to collectively protect their interests. Nevertheless, specific improvements should be discussed through open, transparent, meaningful and monitorable dialogue. This can only take place in an atmosphere of trust in the government

and its agencies, including the police but this is neither exists nor seems likely in the near future.

Some specific ideas include:

- 5.1. Removing employer and employer- employee unions form the register and registering them under some sort of friendly society Ordinance. This reduces the problem of company or business control over workers.
- 5.2. Providing a clear checklist for applicants to help preparation of applications. Whilst this seemed less important in the past, with few registrations but is good practice for administrative transparency now.
6. Consultation. Consultation is inferior to collective bargaining and so may be useful in three areas and not as a substitute.
  - 6.1. as a transition towards bargaining for all civil service departments and Outside the Civil Service Joint Consultative Committee mechanism should be replaced by collective bargaining when such bargaining processes start. Recognizes the trade unions of every public organizations and government departments. Unlike private enterprises, the goods and services delivered by these entities affect the welfare and rights of the citizens. The workers are not ordinary employees but civil servants. The rank-and-file workers have the best knowledge on the flaws of policy designs during the executive process, the reserves and volume of use for government resources and any looming problems the government is going to confront. The increase of communication can benefit the operation of the government. The government should stop treating trade unions as only the entity for improvement of industrial relation condition, but a useful consultancy for public management and public policy.
  - 6.2. Appoints trade unions representatives as the members of government committees and advisory boards. In the past, the government will only provide seats for union members into statutory bodies related to labour affairs, such as the Labour Advisory Board. The government has such arrangements as it sees trade unions as the entities that strive for the improvement of working conditions and treatments. In fact, the trade unions represent a large group of workers from various industries. The representatives carry both professional knowledges and the opinions of the industries. When the government introduce a new policy or handle an instance as if the epidemic or strike, the suggestions of these union representatives' matter. Conflicts arise when workers representative (i.e. unions) are not part of the decision-making process in which they have direct expertise, or which impact them. If they workers feel inside

the system and understand every concern and rationale of the government decision, they are not going to strike, but advise the government to make better decisions.

7. The Labour Board is seen by many labour unions and labour organisations as rather ineffective. A key problem in this is its representative legitimacy as well as the weakness of the mechanism itself. One way to improve legitimacy is to elect members to the Board based on total union membership.

- 7.1.1. With citizens able to join multiple unions and incomplete records of union membership possible in some cases, this should be done in the same way elections are carried out, with one-time direct voting of union members.

- 7.1.2. At present there is understandable distrust of sharing union membership lists with the government and so a system to ensure anonymity would need to be found.

## **6. Conclusion**

The rise of new unions in Hong Kong has been dramatic and significant. It appears likely that many of the thousands of groups attempting to register new unions are doing to block attempts to alter the electoral politics but the initial attempts by some pro-democratic groups to influence functional constituency elections is no longer their main concern, and never was for many others. Many trade new unionists, as with many in society, have already written Legco off as a game where the a power elite ensure the play is always fixed for them to win, Thus, it is likely the many paper unions formed to block the move to change legislators will disappear or remain dormant and ,thus, largely irrelevant beyond a narrow pro establishment desire to block democratic reform agendas. What will remain are possibly hundreds of new dynamic unions which have the potential to reinvigorate employment relations in Hong Kong.

These active new unions have some potential to disrupt the traditional politic divisions among labour organisations in Hong Kong, but they are more likely to pressure the government to change its unitarist, pro-business and pro traditional power structures. It will be wise for the government to move from this base to a more pluralist view of employment relations, recognising employee rights and start legislating collective labour protection and talking to ALL factions within the labour movement. The present situation is best summed up by a pro establishment interview who remarked “Hong Kong has a first world economy and third world employment relations”.

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