

## **Proposed Guidelines for Conducting Duty Visits Outside Hong Kong Issued to the Equal Opportunities Commission**

### **Purpose**

This paper reflects the views of the Equal Opportunities Commission (EOC) on the part of the draft Code of Conduct for the Chairperson of the EOC as related to duty visits outside Hong Kong. The draft Code was proposed by the Home Affairs Bureau (HAB).

### **Background**

2. In the proposed guidelines related to duty visits outside Hong Kong, the Home Affairs Bureau (HAB) has asked the Chairperson of the Equal Opportunities Commission to seek the approval of the Secretary for Home Affairs (SHA) before embarking on any overseas duty visit.

3. EOC was informed that the purpose of the approval procedure is to ensure that public funds are used responsively and properly. To facilitate the approval process, it has been proposed to the Chairperson that the EOC should provide the following information to the HAB concerning the Chairperson's overseas duty visit:-

- (a) provide information on the purpose, destination and duration of the proposed visit;
- (b) confirm that funds are available within EOC's budget to cover the expenses to be incurred for the proposed visit;
- (c) confirm that the purpose of the proposed visit complies with his statutory duties; and
- (d) confirm that the day-to-day operation of the EOC will not be affected by the proposed visit.

## **EOC's Views**

4. The EOC has considered the proposed approval process required by the Home Affairs Bureau and has concluded that the proposal is inconsistent with the EOC's independent status as required by law and policy for the following reasons:-

- (1.1) The EOC is an independent statutory body established pursuant to section 63(1) of the Sex Discrimination Ordinance (SDO).
- (1.2) The establishment, composition, functions and powers of the EOC are set out in the relevant sections of the SDO, the Disability Discrimination Ordinance (DDO) and the Family Status Discrimination Ordinance (FSDO).
- (1.3) It is the Chairperson and the other Members, as the governing body of the EOC, who have authority under the law – to perform the functions and powers of the EOC, in its name. The legislation [section 63(7) of the SDO] quite clearly states that the EOC is not to be regarded as a servant or agent of the Government, or enjoying any status, immunity or privilege of the Government. It is therefore independent of Government and has autonomy when acting in accordance with the functions and responsibilities conferred upon it by the 3 ordinances.
- (1.4) Pursuant to the legislation, there is only one thing in respect of which the EOC must seek the prior approval of the Chief Executive of the HKSAR and that is to become a member of or an affiliate to any international body concerned with (whether in whole or in part) the elimination of discrimination. This is pursuant to

section 64(2)(i) of the SDO. There is no other provision in the relevant ordinance which requires the Government's prior consent or approval in respect of the way it carries out its functions and powers.

- (2.1) Although the independence of the EOC is entrenched in the legislation itself, it does not mean that the EOC operates in an unaccountable manner. For example, the EOC is required by law to:
  - (2.2) appoint an external auditor to audit its accounts annually;
  - (2.3) publish an Annual Report each year of its activities, *“including a general survey of developments, during that year, in respect of matters falling within the scope of the Commission's functions”*. Such report of the EOC's activities is not only provided to HAB, but to the Chief Secretary for Administration who must table it in the Legislative Council. That means that the EOC's activities are (and have been) discussed in the Legislative Council and the EOC is (and has been) called upon to explain and/or to provide further details. Along with the Annual Report that must be tabled in the Legislative Council each year, there must also be a statement of financial accounts and an auditor's report on the financial statement. This means that the EOC is accountable for the use of its resources and may be questioned by the Legislative Council in respect of its income and expenditure. All these are done in furtherance of the principles of openness, transparency and accountability.
  - (2.4) Pursuant to section 19(1) of schedule 6 of the SDO, the Director of Audit has power to conduct an examination into *“the economy, efficiency and effectiveness with which*

*the Commission has expended its resources in performing its functions and exercising its powers*". However, although the Director of Audit has this statutory right to examine the "*economy, efficiency and effectiveness*" with which the EOC carries out its work in terms of finance, under section 19(5) of Schedule 6 of the SDO, the Director of Audit is not entitled to question the merits of the policy objectives of the EOC. This is to ensure that financial accountability does not encroach on the EOC's independence in formulating its own policy objectives, which reflects once more the importance of the EOC's independent status.

- (2.5) The Ombudsman has jurisdiction over the EOC in respect of matters concerning maladministration. Furthermore, the EOC, as a statutory body, is subject to juridical review by the Court.
  
- (2.6) Furthermore, there is already a Memorandum of Administrative Arrangements (MAA) in place which has been worked out with the agreement of the SHA and the EOC in consultation with the Secretary for the Treasury. This provides the framework for the "*working relationship between the Hong Kong Government and the EOC*". Under the MAA, the EOC is required to hold regular meetings with the HAB and to submit quarterly progress review reports to the HAB to report on the financial and operational performance as against its objectives and aims. In addition, the EOC also provides a monthly report on itemized expenditures for the HAB. This has been the standing arrangement since EOC's establishment and has worked very well.
  
- (2.7) The provisions of the MAA are founded on the principle

that the EOC should have autonomy and flexibility in utilizing its funds as is compatible with the SDO, DDO and FSDO. Paragraph 2.2 states that “*the EOC will be autonomous in the management and control of its activities.*” It is clear from the Memorandum that HAB’s role is to act as the focal point of contact between the Government and the EOC, with the SHA in the role of controlling officer of the expenditure subheads. There is nothing in the MAA which states that the HAB/SHA has the power to go beyond what is permitted by law. Indeed, paragraph 1.5 makes it clear that while the Government is not precluded from issuing directions, this can only be “*as provided for in the SDO*”.

5. The EOC is of the view that the requirement for the Chairperson to seek approval from the SHA before undertaking overseas duty visits is inconsistent with Government’s own policy on arms-length non-departmental public bodies and is based on or will give rise to the wrong perception that the EOC is hierarchically accountable to the Government.

6. The EOC is of the view that HAB’s legitimate interest should be on the policy framework of having an independent body (i.e. the EOC) as a major component in promoting equality but not on the EOC’s operational decisions. The requirement to seek approval for overseas duty visits will be perceived as an unwarranted attempt to micro-manage the EOC’s operation.

7. Operational decisions including but not limited to overseas duty visits for the EOC Chairperson, Members and staff can and should be self-regulated within the EOC. As a matter of fact, there is a proper policy and procedure within the EOC on the undertaking of overseas duty visits for the Chairperson, Members and staff, requiring the approval of the Commission.

8. As stated in paragraphs 4(2.1) to 4(2.7), there is already sufficient check and balance to ensure EOC's accountability. The proposed approval process raises cause for concern for the EOC as a whole and is not considered acceptable as it would infringe the EOC's independence and autonomy as permitted by the SDO.

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*Equal Opportunities Commission*  
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