

**Subcommittee on Race Discrimination
(Proceedings by Equal Opportunities Commission) Regulation**

**The Administration's response to the views expressed by deputations/individuals
on the proposed Regulation**

<p style="text-align: center;">Deputation [LC Paper no. of submission]</p>	<p style="text-align: center;">Comments</p>
<p>Hong Kong Bar Association (HKBA) (LC Paper No. CB(2)1332/08-09(01))</p>	<p>It is generally desirable to have identically phrased provisions of the “merits” threshold for the EOC to take legal proceedings (Para. 3).</p> <p><u>Administration's Response:</u></p> <p>The relevant provision (i.e. “it appears to EOC that the claim is well founded”) under the proposed Race Discrimination (Proceedings by Equal Opportunities Commission) Regulation (“the propose Regulation”) is modelled on the corresponding provision under the Sex Discrimination Ordinance (SDO) and the Family Status Discrimination Ordinance (FSDO). It serves the same purpose as the provision “EOC has reasons to believe that an unlawful act under DDO was committed” under the Disability Discrimination (Proceedings by Equal Opportunities Commission) Regulation (“DD(PEOC)R”). There is no material difference between these two provisions.</p>

<p>Deputation [LC Paper no. of submission]</p>	<p>Comments</p>
<p>Federation of Hong Kong Industries (LC Paper No. CB(2)1332/08-09(02))</p>	<p>The Government should make the best endeavour to use the same legal terminology and phrasing format in similar regulations under the discrimination-related ordinances (Para. 2).</p> <p><u>Administration's Response:</u> Please see our response above to the HKBA.</p>
<p>Northern Ireland Council for Ethnic Minorities (NICEM) (LC Paper No. CB(2)1332/08-09(03))</p>	<p>To add in a safeguard clause in the proposed Regulation and clarify the circumstances under which the EOC may bring proceedings (Paras. 2 and 3).</p> <p><u>Administration's Response:</u> The proposed Regulation serves to empower the EOC to bring proceedings as if it were the victim. It is made in accordance with section 83 of the RDO. It does not impose any new restrictions on the enforcement provisions in sections 69 to 80 of the RDO. This is very clear and there is no need to add the proposed clause.</p>
<p>Society for Community Organization (LC Paper No. CB(2)1332/08-09(04))</p>	<p>Remove the additional requirements in the DD(PEOC)R as it is not desirable to impose further procedural requirements (Para. 2).</p> <p><u>Administration's Response:</u></p> <ul style="list-style-type: none"> ● The DD(PEOC)R highlights the conciliation role of the EOC and sets out the necessary steps for the EOC to notify the aggrieved persons with disabilities (PWDs) before bringing civil proceedings concerning that PWD in its own name.

Deputation [LC Paper no. of submission]	Comments
	<ul style="list-style-type: none"><li data-bbox="472 384 2121 512">● The notice requirement also enables the EOC to be advised where applicable of the wishes of the PWD concerned in relation to the proceedings concerning that PWD that the EOC intends to initiate under its own name.<li data-bbox="472 571 2121 783">● The Labour and Welfare Bureau (LWB) considers that the existing provisions under the DD(PEOC)R serve well to achieve the objectives of the legislation and provides procedural safeguards to ensure that PWDs are informed without restricting EOC's power to initiate legal proceedings. Indeed, DD(PEOC)R was made after consultation with the Legislative Council, EOC and the rehabilitation sector and LWB does not consider it necessary to amend the regulation. <p data-bbox="472 839 2121 962">Clarify why there is a specific reference to an order (i.e. "an order declaring void any contract or agreement made in contravention of the Ordinance" in the DD(PEOC)R but not in the proposed Regulation nor similar regulations under the SDO or FSDO (Para. 3).</p> <p data-bbox="472 1002 887 1038"><u>Administration's Response:</u></p> <p data-bbox="472 1078 2121 1409">Paragraph 3 of the proposed Regulation enables the EOC to apply for any remedy available under Section 70(3) of the RDO. An order declaring void any contract or agreement made in contravention of the RDO is one of the remedies listed in Section 70(4) of the RDO which the District Court may make under Section 70(3). Therefore, paragraph 3 of the proposed Regulation does enable the EOC to apply for such an order under the Regulation. The passage "including a declaration that the act which is the subject of the proceedings is an unlawful act or an injunction in respect of such act or both a declaration and an injunctions" in paragraph 3 merely gives examples of remedies available and is non-exhaustive. The position is the same for the SDO, DDO and FSDO.</p>

Deputation [LC Paper no. of submission]	Comments
Carole J Petersen (LC Paper No. CB(2)1332/08-09(05))	<p>Do not think that the difference in the language has had any potential impact. EOC could issue a public statement explaining that the standard for deciding whether to commence proceedings is essentially the same across ordinances (Paras. 2 to 4).</p> <p><u>EOC's Response:</u></p> <p>The EOC will issue a public statement explaining that the standard for deciding whether to commence proceedings is essentially the same across ordinances.</p> <hr/> <p>The RDO is a weaker law than the SDO and does not give the EOC adequate jurisdiction to assist victims of racial discrimination by Government.</p> <p><u>Administration's Response:</u></p> <p>The view is not related to the proposed regulation.</p>