

立法會
Legislative Council

Ref : CB2/SS/14/08

LC Paper No. CB(2)2025/08-09
(These minutes have been seen
by the Administration)

**Subcommittee on Race Discrimination (Formal Investigations) Rules,
Race Discrimination (Investigation and Conciliation) Rules and
Code of Practice on Employment under the Race Discrimination Ordinance**

**Minutes of the first meeting
held on Friday, 22 May 2009, at 10:45 am
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Paul TSE Wai-chun (Chairman)
Dr Hon Margaret NG
Hon LEUNG Yiu-chung
Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP
Hon LI Fung-ying, BBS, JP
Hon Cyd HO Sau-lan
Hon Starry LEE Wai-king
- Members absent** : Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Dr Hon Priscilla LEUNG Mei-fun
Hon IP Kwok-him, GBS, JP
- Public Officers attending** : Equal Opportunities Commission

Mr Raymond TANG Yee-bong
Chairperson

Mr Joseph LI
Director of Operation Division

Mr Herman POON Lik-hang
Chief Legal Counsel

The Administration

Constitutional and Mainland Affairs Bureau

Mr Raymond TAM Chi-yuen
Under Secretary for Constitutional and Mainland Affairs

Mr Arthur HO Kin-wah
Deputy Secretary for Constitutional and Mainland Affairs

Mr Hubert LAW Hin-cheung
Principal Assistant Secretary for Constitutional and Mainland
Affairs

Clerk in attendance : Miss Flora TAI
Chief Council Secretary (2)3

Staff in attendance : Ms Clara TAM
Assistant Legal Adviser 9

Ms Amy YU
Senior Council Secretary (2)3

Action

I. Election of Chairman

Mr Paul TSE was elected Chairman of the Subcommittee.

II. Meeting with the Administration and Equal Opportunities Commission

[Legislative Council (LegCo) Brief on the Race Discrimination (Formal Investigations) Rules and Race Discrimination (Investigation and Conciliation) Rules, LegCo Brief on the Code of Practice on Employment under the Race Discrimination Ordinance, LC Paper Nos. CB(2)1642/08-09(01)-(03), LS69/08-09, L.N. 94 of 2009, L.N. 95 of 2009 and G.N. 2733 of 2009]

2. The Subcommittee deliberated (index of proceedings attached at **Annex**).

3. Members agreed that the Subcommittee should invite views on the Code of Practice on Employment under the Race Discrimination Ordinance (the Code) from individuals and organizations which had given views on the Race Discrimination Bill, and post a notice on the website of the Legislative Council to invite public views. At the request of the Subcommittee, the Equal Opportunities Commission (EOC) undertook to arrange for the translation of the Code in the six common ethnic minority languages (i.e. Urdu, Nepali, Tagalog, Thai, Hindi and Indonesian) as soon as possible

EOC

Action

to facilitate ethnic minorities to understand the contents of the Code. Members also agreed to tentatively schedule a meeting on 8 June 2009 at 2:30 pm to receive views on the Code, pending EOC's advice on when the translated versions of the Code would be available.

(Post-meeting note: EOC advised after the meeting that the translated versions of the Code would be available in early June 2009. With the concurrence of the Chairman, the next meeting would be held on 8 June 2009 at 2:30 pm to continue discussion with the Administration/EOC on the Code and the Rules, while the meeting for receiving views from deputations would be held on 12 June 2009 at 10:45 am.)

EOC

4. EOC was requested to -

- (a) provide the respective Codes of Practice on Employment under the Sex Discrimination Ordinance (Cap. 480), Disability Discrimination Ordinance (Cap. 487) and Family Status Discrimination Ordinance (Cap. 527);
- (b) provide information on the number of public consultation sessions held for ethnic minorities and the attendance figures of these sessions;
- (c) provide a table setting out the major views and concerns raised during the public consultation period, including those raised by ethnic minorities, and how such views/concerns had been incorporated/addressed in the current version of the Code;
- (d) provide the translated versions of the Code and any relevant information notes in the six ethnic minority languages when they were available;
- (e) consider members' suggestion of revising the wording of paragraph 5.3.4 of the Code to actively encourage employers to advertise vacancies in different ethnic minority languages as far as possible; and
- (f) highlight the importance of practising and promoting racial equality in the beginning of the Code.

Admin

5. The Administration was requested to provide a response at the next meeting to members' suggestion of deferring the introduction of the Code to allow more time for consultation.

6. Members agreed that the Chairman would move motions on behalf of the Subcommittee at the Council meeting on 3 June 2009 to extend the scrutiny period of the two sets of Rules and the Code to 8 July 2009.

Action

7. The meeting ended at 12:50 pm.

Council Business Division 2
Legislative Council Secretariat
24 June 2009

**Proceedings of the first meeting of the
Subcommittee on Race Discrimination (Formal Investigations) Rules,
Race Discrimination (Investigation and Conciliation) Rules and
Code of Practice on Employment under the Race Discrimination Ordinance
on Friday, 22 May 2009, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000044 - 000405	Dr Margaret NG Ms Cyd HO Mr TAM Yiu-chung Ms Miriam LAU Mr Paul TSE Clerk	Election of Chairman. Mr Paul TSE's declaration that he was newly appointed as a member of the Equal Opportunities Commission (EOC).	
000406 - 001011	Chairman EOC	Briefing by EOC on the Code of Practice on Employment (the Code) under the Race Discrimination Ordinance (Cap. 602) (RDO).	
001012 - 001112	EOC	Briefing by EOC on the Race Discrimination (Formal Investigations) Rules and Race Discrimination (Investigation and Conciliation) Rules.	
001113 - 001159	Chairman ALA9	The legal adviser's confirmation that the two sets of Rules were materially in the same terms as the corresponding rules under the Sex Discrimination Ordinance (Cap. 480) (SDO), Disability Discrimination Ordinance (Cap. 487) (DDO) and Family Status Discrimination Ordinance (Cap. 527) (FSDO).	
001200 - 002007	Dr Margaret NG Chairman Ms Cyd HO Ms LI Fung-ying Mr LEUNG Yiu-chung Clerk	Extension of scrutiny period. Arrangements for receiving views from the public and relevant organizations on the Code.	
Scrutiny of the Code of Practice for Employment under RDO			
002008 - 003623	Chairman Dr Margaret NG EOC	EOC's confirmation that the Code would be published in six other common languages of ethnic minorities (i.e. Hindi, Indonesian, Nepali, Tagalog, Thai and Urdu) after it was approved by the Legislative Council (LegCo). Dr Margaret NG's enquiry about improvements made to the Code to emphasize promotion of racial equality in the workplace and to render it more practical and easier to comprehend.	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>EOC's response that -</p> <ul style="list-style-type: none"> (a) to encourage employers to promote racial equality in the workplace, the Code's contents on good employment procedures and practices had been substantially expanded to cover all aspects and stages of employment relationship, including recruitment criteria, vacancy advertising, terms and conditions of employment, promotion and training, harassment and termination of employment; (b) employers were encouraged to adopt a systematic approach by putting in place a policy on racial equality, a sample of which was provided in the Code for reference. Employers were also encouraged to monitor the implementation of such policy through gathering relevant information. While there were views that the gathering of such information should not be included in the Code as it was not required under RDO, EOC considered that employers should be recommended to adopt such practice which could help them take positive action to promote racial equality in the workplace; (c) in response to concerns expressed by some employers during the consultation, illustrations and examples derived from relevant case law had been added to demonstrate how the issue of justification might be applied in particular situations; and (d) the contents on racial harassment (in paragraph 5.3.14 of the Code) had been substantially revised taking into account views received during the consultation exercise and after making reference to relevant materials and case law in other jurisdictions. To better explain and demonstrate the concept of racial harassment, a list of the types of inappropriate behaviour which could be regarded as harassment on the ground of race were set out in the Code, in place of the situational illustrations used in the first draft of the Code. 	

Time Marker	Speaker(s)	Subject(s)	Action required
003624 - 004240	Dr Margaret NG EOC Chairman Mr LEUNG Yiu-chung	<p>EOC was requested to provide for members' reference the respective Codes of Practice on Employment under SDO, DDO and FSDO.</p> <p>Dr Margaret NG's view that EOC should try its best to make available the translated versions of the Code in the six common ethnic minority languages before the Subcommittee meeting scheduled for receiving views from deputations, so as to help people of different ethnic backgrounds understand the contents of the Code. Mr LEUNG Yiu-chung's concurrence with Dr NG.</p>	<p>EOC to provide requisite information (para 4 of minutes)</p> <p>EOC to follow-up (para 3 of minutes)</p>
004241 - 005153	Mr LEUNG Yiu-chung EOC	<p>Mr LEUNG Yiu-chung' views that -</p> <p>(a) the recommendations on good employment procedures and practice in chapter 5 should be placed in the earlier part of the Code, in order to underline the importance of employers taking proactive actions to promote racial equality and harmony in the workplace; and</p> <p>(b) as compared with the Code of Practice on Employment under SDO, the Code was less proactive in providing guidance to employers on good practice. For instance, in respect of advertising vacancies, the code under SDO recommended employers to encourage people of different sexes to apply for jobs by placing advertisements in publications likely to reach both sexes. In contrast, paragraph 5.3.4 of the Code, which encouraged employers to advertise in both English and Chinese media where reasonably practicable, was less proactive in its wording. Mr LEUNG considered this inadequate in ensuring that job information could reach people from different racial groups, as some ethnic minorities could not read in Chinese nor English.</p> <p>EOC's response that -</p> <p>(a) mention would be made in the early part of the Code of the contents on good practice with a view to highlighting the importance of adopting such practice; and</p> <p>(b) EOC had made reference to similar codes under the other three anti-discrimination ordinances in drafting the Code. The codes under SDO, DDO and FSDO were</p>	<p>EOC to follow up (para 4 of minutes)</p>

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>relatively more simple and couched in general wording, while the Code provided more detailed and specific guidelines to employers, e.g. paragraph 5.3.4 of the Code was more detailed than its corresponding provision under SDO. As regards the advertising of vacancies, taking into account the fact that some employers, in particular those of smaller scale, would have practical difficulties in advertising vacancies in different ethnic minority languages, the Code adopted a practical approach of encouraging employers to advertise in both English and Chinese media where reasonably practicable. According to data from the Census and Statistics Department, around 70% of ethnic minorities in Hong Kong could communicate in English.</p>	
005154 - 010930	<p>Ms Cyd HO EOC Chairman Admin Ms LI Fung-ying</p>	<p>Ms Cyd HO's concurrence with the view that the Code should be made available in the six common ethnic minority languages as soon as possible.</p> <p>EOC was requested to provide information on the number of public consultation sessions held for ethnic minorities, the attendance figures of these sessions, the major views and concerns expressed by ethnic minorities during the consultation period and whether such views had been incorporated into the current version of the Code.</p> <p>Concern expressed by Ms Cyd HO and Ms LI Fung-ying that there was insufficient time for scrutiny of the Code. Ms HO asked whether consideration could be given to withdrawing the Code and reintroducing it after the Subcommittee had completed its scrutiny.</p> <p>The Administration's response that -</p> <p>(a) EOC had all along engaged the relevant stakeholders in the drafting of the Code. A public consultation exercise had been launched in October 2008 and the consultation period had been extended to January 2009 to provide further opportunities for stakeholders and the public to express their views. The first draft of the Code had been published in the six common ethnic minority languages to facilitate ethnic minorities to give views on it. The Panel on Constitutional Affairs (CA Panel) had been briefed on both the first draft and the revised draft of</p>	<p>EOC to provide requisite information (para 4 of minutes)</p>

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>the Code. In their submissions to the Panel on the revised draft of the Code, the Society for Community Organization (SOCO), Hong Kong Unison and Hong Kong Human Rights Monitor (HKHRM) had indicated that the revised draft had incorporated many of the views they had raised during the consultation period, albeit further amendments to the revised draft had been suggested; and</p> <p>(b) it was the Administration's plan to bring into operation the substantive provisions of RDO around mid-July 2009 after the Code had been issued by EOC.</p>	
010931- 011517	Ms LI Fung-ying EOC Chairman	<p>Illustration 3 under paragraph 3.3.1 of the Code regarding the determination of whether a person work wholly or mainly outside Hong King.</p> <p>EOC's explanation that -</p> <p>(a) the illustration was added in response to request for more specific guidance on how to determine whether a person work wholly or mainly outside Hong Kong in which case the RDO did not apply; and</p> <p>(b) the illustration was based on the relevant case law in UK, which showed clearly that the whole period of employment should be taken into account in determining whether a person work wholly or mainly outside Hong Kong, and that a person was considered to work mainly outside Hong Kong as long as he had spent more time working outside Hong Kong in the whole period of employment than in Hong Kong.</p>	
011518- 011948	Chairman Administration EOC	<p>The Chairman's enquiry about the feasibility of deferring the introduction of the Code in the event that Members could not complete its scrutiny within the scrutiny period.</p> <p>The Administration's response that -</p> <p>(a) during the scrutiny of the primary legislation, the Administration had undertaken to fully implement RDO by mid 2009. The Administration had been working towards this target; and</p> <p>(b) it was the Administration's undertaking that the Code should be brought into operation together with RDO as the Code</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		could provide practical guidance to help employers and employees better understand and fulfill their roles and responsibilities under RDO.	
011949 - 013101	Dr Margaret NG EOC Chairman Administration	<p>Dr Margaret NG's reiteration of the importance for EOC to publish the Code in different ethnic minority languages to facilitate ethnic minorities to understand its contents.</p> <p>EOC was requested to provide members with the translated versions of the Code and any relevant information notes in the six ethnic minorities languages when they were available.</p> <p>Dr NG's dissatisfaction with the wording of paragraph 5.3.4 of the Code. Her view that the wording should be revised to encourage employers to advertise vacancies in different ethnic minority languages in the spirit of promoting racial equality.</p>	EOC to provide requisite information (para 4 of minutes)
013102- 014002	Ms Cyd HO Chairman EOC Clerk Dr Margaret NG	EOC was requested to provide for members' reference a summary of the views received during the consultation period and whether such views had been incorporated into the current version of the Code. EOC's response that it was finalizing the consultation report on the Code and would make its best endeavour to submit it for members' reference at the next meeting.	EOC to provide requisite information (para 4 of minutes)
014003 - 015119	Mr LEUNG Yiu-chung Administration Chairman	<p>Mr LEUNG's view that the introduction of the Code should be deferred for a few months to allow more time for the ethnic minorities to express their views.</p> <p>The Administration's response that according to its understanding, it was the wish of ethnic minorities to implement RDO as soon as possible to provide a redress mechanism for racial discrimination.</p>	
015120 - 015500	EOC Dr Margaret NG	<p>Further discussion on the approach adopted in paragraph 5.3.4 of the Code relating to advertising of vacancies.</p> <p>Dr Margaret NG's reiteration of her view that the wording of the paragraph should be revised to actively encourage employers to advertise in different ethnic minority languages as far as possible. Should individual employers found it impracticable to do so, they should advertise in both English and Chinese as far as practicable.</p>	EOC to follow up (para 4 of minutes)

Time Marker	Speaker(s)	Subject(s)	Action required
015501 - 020122	Dr Margaret NG Administration Chairman Mr LEUNG Yiu-chung	Submission from SOCO and the joint submission from Hong Kong Unison and HKHRM to the CA Panel in March 2009.	
020123 - 020420	Ms Cyd HO Administration Chairman Mr LEUNG Yiu-chung Dr Margaret NG	Date of meeting for receiving deputations. Mr LEUNG Yiu-chung requested the Administration to respond at the next meeting to the suggestion of deferring the introduction of the Code for a few months to allow more time for consultation.	Admin to follow up (para 3 of minutes)
020421 - 020502	Chairman	Closing remarks	

Council Business Division 2
Legislative Council Secretariat
24 June 2009