

**LegCo Panel on Constitutional Affairs**

**Revised Draft Code of Practice on Employment under  
the Race Discrimination Ordinance**

**Purpose**

This Paper seeks Members' views on the Revised Draft of the Code of Practice on Employment (Code) under the Race Discrimination Ordinance, Cap. 602 (RDO).

**Background**

2. The Equal Opportunities Commission (EOC) conducted public consultation between October 2008 and January 2009 on the first draft of the Code. An information note was produced in Chinese and English and six minority languages<sup>1</sup>, advising the reader about the broad areas covered by the first draft of the Code, how to obtain it and information on the public consultation meetings. With the extension of the consultation period originally ending on 8 December 2008 to 19 January 2009, the first draft of the Code itself was translated in the six minority languages.

3. A total of 88 written submissions were received by the EOC during the consultation exercise. In addition, a series of ten public consultation meetings were held. Three of these were conducted in Chinese, seven were conducted in English. Simultaneous interpretation was provided in a selection of languages from the six minority languages according to the meeting schedule. There were forty-five other briefing sessions held with various stakeholder organizations.

4. The first draft of the Code has now been revised taking into account the submissions and views received through the above channels as well as comments by Members in the Panel meeting on 17 November 2009. The Revised Draft of the Code is at **Annex**.

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<sup>1</sup> Hindi, Indonesian, Nepali, Tagalog, Thai and Urdu

## Revised Draft Code

5. Substantial revision has been made to the first draft of the Code. Wording and expressions in the first draft of the Code have been reviewed to emphasize the spirit of the RDO in promoting racial equality in the workplace. Illustrations and examples have been reviewed to facilitate a better understanding of the application of the RDO.

6. The structure of the Revised Draft strengthens the emphasis on good employment procedures and practices. The contents on this topic have been substantially expanded. Recommendations are made in relation to all aspects of the employment relationship. Employers are encouraged to adopt these recommendations. They include good procedures and practices relating to recruitment criteria, vacancy advertising, terms and conditions of employment, promotion and training, harassment, and termination of employment.

7. In making these recommendations, reference has been made to relevant materials, primarily codes under other discrimination ordinances<sup>2</sup> and the UK Code of Practice on Racial Equality in Employment.

8. The Revised Draft maintains the recommendation for a systematic approach by following a policy on racial equality. A sample policy is provided. Employers are encouraged to monitor the implementation of such policy, and to take positive action that is allowed under the RDO in order to promote substantive racial equality where appropriate.

9. With regard to concerns about indirect discrimination relating to language and other employment issues, employers are recommended to discharge their responsibilities by ensuring that all rules, policies and practices are related to specific job requirements or organization needs, and they are encouraged to make effort to accommodate cultural practices of employees. Illustrations and examples derived from relevant case law are given to demonstrate how principles relating to justification may be applied in particular situations and what measures employers could consider in accommodating employees.

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<sup>2</sup> The Sex Discrimination Ordinance, the Disability Discrimination Ordinance and the Family Status Discrimination Ordinance.

10. With regard to overseas employees, employers are recommended to discharge their responsibilities under the RDO by ensuring that any benefits they provide to overseas employees do not go beyond meeting specific needs or circumstances which are different from local employees, and that these benefits are not given on the ground of race.

11. These recommendations will help employers to comply with the relevant provisions of the RDO. Employees' role and responsibilities have also been emphasized in the Revised Draft.

### **Way Forward**

12. Taking into account any further comments from Members, we will finalize the Code.

13. Section 63 of the RDO provides that, before the Code comes into operation, it has to be published in the gazette and be laid before the Legislative Council.

Equal Opportunities Commission  
March 2009

**Code of Practice on Employment  
under the Race Discrimination Ordinance**

## Contents

### **Chapter 1 – Introduction**

- 1.1 The Race Discrimination Ordinance p.
- 1.2 Purpose of the Code p.
- 1.3 Status and Application of the Code p.
- 1.4 Recommendations of good practice and use of illustrations p.

### **Chapter 2 – Meaning of Race under the RDO**

- 2.1 What is meant by race under the RDO p.
- 2.2 What is not regarded as an act done on the ground of race under the RDO p.

### **Chapter 3 – Scope of Part 3 of the RDO**

- 3.1 Employment field p.
- 3.2 Meaning of employment p.
- 3.3 Work wholly or mainly outside Hong Kong p.
- 3.4 Grace period for small employers p.
- 3.5 Domestic helpers p.
- 3.6 Religion p.
- 3.7 Other occupational relationships p.
  - 3.7.1 Contract workers p.
  - 3.7.2 Partners p.
  - 3.7.3 Commission agents p.
  - 3.7.4 Barristers p.
- 3.8 Other matters p.
  - 3.8.1 Vocational training p.
  - 3.8.2 Employment agencies p.

### **Chapter 4 – Rights and Responsibilities under the RDO**

- 4.1 Responsibilities of employers and principals p.
- 4.2 Rights of employees and workers and their role p.

### **Chapter 5 – Practising and Promoting Racial Equality**

- 5.1 Complying with the RDO p.
- 5.2 Drawing up and implementing a policy p.

5.3	Good employment procedures and practices	p.
5.3.1	Recruitment using consistent selection criteria	p.
5.3.2	Race must not be a factor	p.
5.3.3	Genuine Occupational Qualification (GOQ)	p.
5.3.4	Advertising vacancies	p.
5.3.5	Shortlisting	p.
5.3.6	Race related information	p.
5.3.7	Interviewing	p.
5.3.8	Tests	P
5.3.9	Recruitment through employment agencies or employment services	p.
5.3.10	Terms and conditions of employment, benefits, facilities and services	p.
5.3.11	Overseas employees	p.
5.3.12	Language	p.
5.3.13	Promotion, transfer and training	p.
5.3.14	Prevent harassment on the ground of race	p.
5.3.15	Grievance procedures	p.
5.3.16	Dismissals, redundancies and unfavourable treatment	p.
5.3.17	Monitoring	p.
5.3.18	Positive action	p.

## **Chapter 6 – Unlawful Acts under the RDO**

6.1	Types of discrimination under the RDO	p.
6.1.1	Racial discrimination	p.
6.1.2	Discrimination on the ground of near relative's race	p.
6.1.3	Discrimination by way of victimization	p.
6.2	When discrimination is unlawful in employment	p.
6.3	Unlawful racial harassment	p.
6.4	Vilification and the offence of serious vilification	p.
6.5	Discriminatory advertisements	p.
6.6	Instructions and pressure to discriminate	p.
6.7	Acts allowed under the RDO	p.
6.7.1	Genuine Occupational Qualification	p.
6.7.2	Training for skills to be used outside Hong Kong	p.
6.7.3	Special skills, knowledge or experience	p.
6.7.4	Existing local and overseas terms of employment	p.
6.7.5	Positive action	p.

**Chapter 7 – When discrimination and harassment is encountered**

- 7.1 Legal protection under RDO p.
- 7.2 Complaint handling by the EOC p.
- 7.3 Legal Assistance by the EOC p.
- 7.4 Other functions of the EOC p.

**Sample policy on racial equality** p.

# 1 Introduction

## 1.1 The Race Discrimination Ordinance

1.1.1 The Race Discrimination Ordinance (RDO) was enacted in 2008. Its main objectives include making discrimination, harassment and vilification on the ground of race unlawful; and giving the Equal Opportunities Commission (EOC) the function of eliminating such discrimination, harassment and vilification as well as promoting equality and harmony between people of different races<sup>1</sup>.

1.1.2 Part 3 of the RDO deals with discrimination and harassment on the ground of race in the employment field, which includes employment as well as other occupational relationships and matters<sup>2</sup>, making such discrimination and harassment unlawful. Part 5 of the RDO deals with discriminatory advertisements and other unlawful acts.

## 1.2 Purpose of the Code

1.2.1 This Code of Practice (the Code) is issued by the EOC, pursuant to RDO section 63, to give practical guidance on how to prevent discrimination and harassment on the ground of race and other unlawful acts in the employment field. This Code is intended to encourage employers, employees and other concerned parties to promote racial equality and harmony in the workplace by adopting good practice, and to help them to understand their respective rights and responsibilities under the RDO so that they will respect, and refrain from infringing, the rights of other people. This Code also helps employees and workers to know what to do if they encounter discrimination and harassment on the ground of race.

1.2.2 The Code should be read in the light of and subject to the RDO. It should be read as a whole and in the spirit of promoting racial equality. It should not be read narrowly or approached in a minimalist way.

## 1.3 Status and Application of the Code

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<sup>1</sup> See the long title of the RDO (Cap.602)

<sup>2</sup> See Chapter 3 of this Code (p.)



1.3.1 The Code is a statutory code that has been laid before the Legislative Council. The Code provides recommendations for good employment procedures and practices. It should be used to promote racial equality and harmony in the workplace. Although the Code is not law, it shall be admissible in evidence and the court shall take into account relevant parts of the Code in determining any question arising from proceedings under the RDO<sup>3</sup>. If, for example, an employer has followed the Code's recommendations on taking reasonably practicable steps to prevent discrimination and harassment, it may help the employer to show that it has complied with the law.

1.3.2 In line with the RDO's application in the employment field, this Code applies to employment relationships in both private and public sectors, unless the employee does his or her work wholly or mainly outside Hong Kong<sup>4</sup>. It also applies to other occupational relationships and work related matters, such as contract workers, commission agents, partnerships, vocational training and the services of employment agencies<sup>5</sup>.

#### 1.4 Recommendations of good practice and use of illustrations

1.4.1 The Code provides recommendations on good employment procedures and practices<sup>6</sup>. Employers and other concerned parties should follow these recommendations by adopting them appropriately to the scale and structure of their organizations and available resources. Organizations and businesses operating on a small scale with a simple structure may adopt less formal practices, so long as they follow the spirit of practising and promoting racial equality.

1.4.2 The Code makes use of simple scenarios to illustrate how principles and concepts of the RDO may be applied in the employment field. The application of discrimination law depends very much on the facts of each particular case. The illustrations used in the Code are intended to facilitate a general understanding of the principles of the RDO. They may not embrace all the relevant facts of, and should be not

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<sup>3</sup> RDO section 63(14)

<sup>4</sup> RDO section 16 and paragraph 3.3 of this Code (p.)

<sup>5</sup> See Chapter 3 of this Code (p.)

<sup>6</sup> See Chapter 5 of this Code (p.)

understood as directly applicable to, any specific situation actually encountered by the reader.

- 1.4.3 At the time of issuing the Code, there are no court decisions in Hong Kong applying the RDO. Case law and other materials under other discrimination laws in Hong Kong or elsewhere (such as international common law jurisprudence) may help in understanding how the RDO operates, and relevant references are given in footnotes where appropriate, though differences between legislative provisions and actual circumstances overseas and those in Hong Kong should be noted.
- 1.4.4 While the Code is intended to explain the general principles of the law, it is not a complete and authoritative statement of the law and it should not be taken as a substitute for taking appropriate legal advice in relation to any specific situation.

## 2 Meaning of Race under the RDO

### 2.1 What is meant by race under the RDO

2.1.1 The RDO provides that race means a person's "race", "colour", "descent" or "national or ethnic origin"<sup>7</sup>. A racial group is a group of persons defined by reference to these characteristics<sup>8</sup>. In this respect, the RDO is in line with the meaning of racial discrimination in Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

2.1.2 The RDO further elaborates on the meaning of "descent"<sup>9</sup> by providing that discrimination on the ground of descent means discrimination against members of communities based on forms of social stratification such as a caste system or similar systems of inherited status which nullify or impair their equal enjoyment of human rights.

2.1.3 There is no elaboration in the RDO relating to the meaning of "race", "colour", and "national or ethnic origin". In applying these terms, the following are useful references:-

(1) ICERD and related documents<sup>10</sup>;

(2) Case law and other materials in other jurisdictions (for example, common law jurisdictions).

2.1.4 The above reference materials indicate that:-

(1) Racism and racial discrimination are the result of social processes that seek to classify people into different groups with the effect of marginalizing some of them in society<sup>11</sup>. In this context, the words "race", "colour", "national or ethnic origins" in discrimination laws

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<sup>7</sup> RDO section 8(1)(a)

<sup>8</sup> RDO section 8(1)(d)

<sup>9</sup> RDO section 8(1)(c)

<sup>10</sup> For example, General Recommendation VIII of the Committee on the Elimination of All Forms of Racial Discrimination (a body of independent experts established under the ICERD) states that identification of individuals as being members of particular racial groups should be based on their self-identification if no justification to the contrary exists.

<sup>11</sup> Policy and Guidelines on Racism and Racial Discrimination, paragraph 2.1, Ontario Human Rights Commission, 2005

have broad popular meanings<sup>12</sup>. They are not mutually exclusive and a person may fall into more than one racial group<sup>13</sup>. For example, identifying people as Asian is an act done on the ground of race. The same is true of identifying people as having Chinese origin. A person living in Hong Kong may be in the Asian racial group as well as in the Chinese origin group (also a racial group under the RDO).

(2) National origin includes origin in a nation that no longer exists or a nation that was never a nation state in the modern sense<sup>14</sup>. National origin is not the same thing as nationality. The national origin of a person can be different from his nationality or citizenship. For example, a person living in Hong Kong of Indian origin may have Malaysian nationality.

(3) A group is an ethnic group (and its members having the ethnic origin of the group) if it is a distinct segment of the population distinguished from others by a sufficient combination of shared customs, beliefs, traditions and characteristics derived from a long common history or presumed common history<sup>15</sup>. On this basis, Jews and Sikhs have been held to be ethnic groups<sup>16</sup>. Other groups in the same nature will also be regarded as ethnic groups.

(4) Religion in itself is not race. A group of people defined by reference to religion is not a racial group under the RDO<sup>17</sup>. The RDO does not apply to discrimination on the ground of religion<sup>18</sup>. But requirements or conditions relating to religion may indirectly discriminate against certain racial groups, and when this is so the RDO applies<sup>19</sup>.

## 2.2 What is not regarded as an act done on the ground of race under the RDO

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<sup>12</sup> *King-Ansell v Police* [1979] 2 NZLR 531 and *Mandla v Dowell Lee* [1983] ICR 385

<sup>13</sup> RDO section 8(1)(d) and the UK Code of Practice on Racial Equality in Employment, p.111, Commission For Racial Equality 2005

<sup>14</sup> the UK Code of Practice on Racial Equality in Employment, p.109, Commission For Racial Equality 2005

<sup>15</sup> *King-Ansell v Police* [1979] 2 NZLR 531; see also *Mandla v Dowell Lee* [1983] ICR 385 and *BBC Scotland v Souster* [2001] IRLR 150

<sup>16</sup> *King-Ansell v Police* [1979] 2 NZLR 531 and *Mandla v Dowell Lee* [1983] ICR 385

<sup>17</sup> *Nyazi v Rymans* (EAT, 10 May 1988, unreported)

<sup>18</sup> *Tower Hamlets London Borough Council v Rabin* [1989] ICR 693

<sup>19</sup> See RDO section 4(b); and paragraph 6.1.1(2) of this Code (p.)

2.2.1 The RDO provides that acts done on the ground of the matters specified in section 8(3) are not acts done on the ground of race under the RDO. Acts done on the ground of these matters also do not constitute requirements or conditions within the definition of indirect discrimination under the RDO<sup>20</sup>. These matters are:-

- (1) Whether or not a person is an indigenous villager<sup>21</sup>;
- (2) Whether or not a person is a permanent resident, or has the right of abode or right to land, or is subject to any restriction or condition of stay, , or has permission to land and remain in Hong Kong<sup>22</sup>;
- (3) How long is a person's length of residency in Hong Kong<sup>23</sup>;
- (4) Whether or not a person has a particular nationality and citizenship<sup>24</sup>.

2.2.2 Although acts done on the grounds of the above matters would not constitute discrimination under the RDO because they do not come within the meaning of race under the RDO, these matters should not be used as a mask to hide what is in fact race discrimination under RDO.

### ***Illustration 1***

*A Hong Kong resident of Pakistani origin applies for a job as a manager with a company. She meets all the requirements of the job, but she is not a permanent resident in Hong Kong. The company declined to consider her application and told her that it only employs people who are permanent residents in Hong Kong. In fact, the company does not only employ people who are permanent residents in Hong Kong and there are managers working in the company who are of various national or ethnic origins and who are not permanent residents in Hong Kong. Although whether or not a person is a permanent resident is not a ground of race under the RDO, on the information above, the court can draw an*

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<sup>20</sup> See RDO section 4(b); and paragraph 6.1.1(2) of this Code (p.)

<sup>21</sup> RDO section 8(3)(a); "Indigenous inhabitant" is a term defined in the Village Representative Election Ordinance Cap.576; "Established village" is a term defined in the Government Rent (Assessment and Collection) Ordinances Cap.515.

<sup>22</sup> RDO section 8(3)(b)

<sup>23</sup> RDO section 8(3)(c)

<sup>24</sup> RDO section 8(3)(d)

*inference that the real reason for declining to consider the job applicant's application was on the ground of her Pakistani origin, which is a ground of race under the RDO.*

### 3 Scope of Part 3 of the RDO

#### 3.1 Employment Field

Part 3 of the RDO deals with discrimination and harassment in the employment field, which includes employment as well as other occupational relationships and matters.

#### 3.2 Meaning of employment

3.2.1 The RDO defines “employment” as a contract of service or apprenticeship, or a contract to personally do any work<sup>25</sup>. This definition of employment is wider than under the common law or labour legislation. People who are not employees under the common law or labour legislation are protected from discrimination and harassment on the ground of race under the RDO if they fall within the RDO definition of employment.

***Illustration 2:-***

*The RDO applies to a self-employed musician of Filipino origin who contracts with a bar-owner to personally perform in the bar. The bar-owner may not discriminate or harass him on the ground of race under the RDO.*

3.2.2 Private employers as well as the Government<sup>26</sup> and other public bodies are all bound by the RDO, and their employees and workers are entitled to work free from discrimination and harassment on the ground of race under the RDO.

#### 3.3 Work wholly or mainly outside Hong Kong

3.3.1 The RDO does not apply to people who work wholly or mainly outside Hong Kong<sup>27</sup>. Reference case law indicates that:-

(1) The RDO applies to all employment situations, unless the employee

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<sup>25</sup> RDO section 2; and a contract within this definition needs not be written.

<sup>26</sup> RDO section 3

<sup>27</sup> RDO section 16(1)

works wholly or mainly outside Hong Kong, or works wholly outside Hong Kong on a Hong Kong registered ship or aircraft<sup>28</sup>

- (2) To determine whether a person work wholly or mainly outside Hong Kong, the whole period of employment should be taken into account<sup>29</sup>.
- (3) A person works mainly outside Hong Kong as long as the person has spent more time working outside Hong Kong in the whole period of employment than in Hong Kong, in which case the RDO does not apply<sup>30</sup>.
- (4) When a person works mainly in Hong Kong, the RDO applies even if the act of discrimination takes place outside Hong Kong. This means that the RDO applies to a person who is discriminated against when he is stationed outside Hong Kong, as long as he has worked more time in Hong Kong than outside Hong Kong in the whole period of his employment<sup>31</sup>.

**Illustration 3:-**

*The RDO applies to a manager of Dutch origin who works in Hong Kong 55% of the time and 45% of the time outside Hong Kong in the whole period of his employment. On the other hand, the RDO does not apply to a factory supervisor of Japanese origin employed by a company to stay and work in a factory in the mainland and does not work in Hong Kong at all.*

**Illustration 4:-**

*An accountant of Chinese origin who has worked for a company in Hong Kong for 5 years has just been transferred to stay and work in the company's factory in the mainland. Even though the accountant no longer has to work in Hong Kong, the RDO applies to him because for the whole period of his employment he has spent the majority of working time in Hong Kong. When he has worked in the mainland for more than 5 years, he would have worked more time outside Hong Kong for the whole period of his employment and the RDO will not apply.*

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<sup>28</sup> *Haughton v Olau Line (UK) Ltd* [1986] IRLR 465; RDO section 16(1) and (2)

<sup>29</sup> *Saggar v Ministry of Defence* [2005] IRLR 618

<sup>30</sup> *Carver v Saudi Arabian Airlines* [1999] ICR 991

<sup>31</sup> *Saggar v Ministry of Defence* [2005] IRLR 618



3.3.2 The RDO applies to people who work on:-

- (1) a ship registered in Hong Kong; or
- (2) an aircraft registered in Hong Kong and operated by a person whose principal place of business is in Hong Kong or is ordinarily resident in Hong Kong,

unless they work wholly outside Hong Kong<sup>32</sup>.

***Illustration 5:-***

*The RDO applies to a person who works on a Hong Kong registered ship even if this person only spends 10% of time in Hong Kong waters. The RDO does not apply to a person who works on a Hong Kong registered ship but spends all the time outside Hong Kong waters.*

3.4 Grace period for small employers

3.4.1 For the first 3 years after the enactment of the RDO, there is a grace period during which RDO section 10(1) and 10(2) (provisions making discrimination under the RDO in employment unlawful) do not apply to employers who employ no more than 5 employees<sup>33</sup>. If a company is controlled by another company or if 2 companies are controlled by a third person, the employees of both companies are included for the purposes of counting the number of employees<sup>34</sup>.

3.4.2 The grace period does not apply to acts of harassment on the grounds of race or discrimination by way of victimisation<sup>35</sup>. All employers may not at any time harass their employees on the ground of race or discriminate against them by way of victimisation. The grace period also does not apply to the employment of domestic helpers<sup>36</sup>. Employers of domestic helpers may not at any time discriminate against them after recruitment<sup>37</sup>.

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<sup>32</sup> RDO section 16(2)

<sup>33</sup> RDO section 10(3) and (8)

<sup>34</sup> RDO section 10(9)

<sup>35</sup> See RDO section 6 and 10(3); and paragraph 6.1.3 of this Code (p.)

<sup>36</sup> RDO section 10(3)

<sup>37</sup> See paragraph 3.5 of this Code (p.)

3.4.3 The grace period will expire on 10 July 2011, by which time the provisions making discrimination under the RDO in employment unlawful will apply to all employers. Even during the grace period, if an employer at any time has more than 5 employees, the RDO will apply in respect of any acts of discrimination on the ground of race done at that time.

### 3.5 Domestic helpers

3.5.1 RDO section 10(1) (a) and (c) make discrimination on grounds of race in recruitment unlawful. But these provisions do not apply to the recruitment of domestic helpers who work in the place where the employer or his or her near relatives live<sup>38</sup>. For example, an employer may choose to recruit a domestic helper of Indonesian origin to work at her home and declines to recruit a domestic helper of Thai origin on the ground of the difference in origin.

3.5.2 Once the domestic helper has been employed, however, RDO section 10(2) applies and the employer may not discriminate against the domestic helper on the ground of race.

### 3.6 Religion

Part 3 of the RDO (provisions relating to discrimination under the RDO in employment field) does not apply to employment for the purposes of an organized religion if the employment is limited to persons from particular racial groups in order to comply with the doctrines of the religion or to avoid offending the religious susceptibilities common to its followers<sup>39</sup>.

### 3.7 Other occupational relationships

#### 3.7.1 Contract workers

RDO section 15 applies to people who are contract workers. Contract workers are workers who are employed by a contractor or a sub-contractor of a principal to do work for the principal<sup>40</sup>. A contractor is a person who enters into a contract with the principal to

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<sup>38</sup> RDO section 10(7)

<sup>39</sup> RDO section 23(1)

<sup>40</sup> RDO section 15(1)

undertake work for the principal<sup>41</sup>. A sub-contractor is a person who enters into a contract with the contractor or a sub-contractor to undertake all or part of the work<sup>42</sup>. The principal may not discriminate against its contract workers on the ground of race under RDO section 15.

***Illustration 6:-***

*A cleaning contractor employs cleaners, and under a contract with a trading firm (the principal), sends the cleaners to the trading firm to clean its office. The cleaners are of different national origins (for example, some are of Chinese origin and others are of Nepalese origin). They are all contract workers of the trading firm and it must not discriminate against any of them on the ground of race.*

3.7.2 Partners

RDO section 17 applies to partnership firms having 6 or more partners. These firms may not discriminate against any of its partners or any person who wishes to become a partner on the ground of race.

3.7.3 Commission agents

RDO section 22 applies to commission agents, who are people remunerated in whole or in part by commission for work done for their principal. For example, an insurance company as a principal may not discriminate on the ground of race against its insurance agents who are paid commission in whole or in part under RDO section 22.

3.7.4 Barristers

RDO section 35(1) and (2) apply to barristers and their clerks, and they may not discriminate on the ground of race against a pupil or a tenant or against any person in relation to the offer of a pupilage or tenancy<sup>43</sup>. RDO section 35(3) applies to any person giving, withholding or accepting instructions to a barrister, and there may not be discrimination on the ground of race in these matters. For example, a lay client may not refuse to instruct a barrister because the barrister is of Indian origin.

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<sup>41</sup> RDO section 15(7)

<sup>42</sup> RDO section 15(7)

<sup>43</sup> Under RDO section 35(4), the terms “pupil”, “pupilage”, “tenant” and “tenancy” have the meanings commonly associated with their use in the context of a set of barristers’ chambers.

## 3.8 Other matters

### 3.8.1 Vocational training

- (1) RDO section 20 applies to providers of vocational training. These providers may not discriminate on the ground of race against any person seeking or undergoing training to help fit him or her for employment. For example, a technical college may not refuse to admit a student of Pakistani origin to enrol in a mechanic training course because of his or her origin.
- (2) A vocational training provider is not required to modify its arrangements or make different arrangements regarding holidays or medium of instructions for any persons of any racial group<sup>44</sup>. A provider may set language requirement for courses and may refuse enrolment for people who do not meet the requirement regardless of their race. Such language requirement should be commensurate with the contents of the course.
- (3) Course information and material may be provided only in the language required for the course. However, where practicable it is good practice to design and provide courses, programmes, information and material in ways which enable people from different racial groups have equal opportunities to undergo vocational training, and providers are encouraged to do so.

### 3.8.2 Employment agencies

- (1) RDO section 21 applies to employment agencies. These agencies may not discriminate on the ground of race against any person who wants to obtain their services.
- (2) RDO section 21(4) provides that an employment agency is not subject to any liability under section 21 if it can show that it relied on a statement by an employer that the employer could lawfully refuse employment to a person under the RDO, for example, the employer

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<sup>44</sup> RDO section 20(2)

stating that race is a genuine occupational qualification<sup>45</sup>, providing that it is reasonable to rely on the statement.

- (3) For language requirement of a job and good practice relating to the language of advertisement, see paragraph 5.3.4(3) of this Code (p.).

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<sup>45</sup> See paragraph 5.3.3 of this Code (p.)

## 4 Rights and Responsibilities under the RDO

### 4.1 Responsibilities of employers and principals

4.1.1 Employees and workers are entitled to work free from discrimination and harassment on the ground of race under the RDO. Employers may not discriminate or harass their employees and workers on the ground of race. The RDO requires employers to take reasonably practicable steps to prevent discrimination and harassment. Only if an employer has done so, will it have discharged its legal responsibility under the RDO<sup>46</sup>.

4.1.2 RDO section 47(1) provides that anything done by an employee in the course of employment is treated as done by the employer as well under the RDO. This is so even if the employer did not know or did not approve of what the employee has done. If, for example, an employee discriminates or harasses another employee on the ground of race, the employer would be treated as having also discriminated or harassed that other employee on the ground of race, and be legally liable unless the employer has taken reasonably practicable steps to prevent discrimination and harassment from happening.

(1) In order to discharge their responsibility to take reasonably practicable steps to prevent discrimination and harassment on the ground of race, it is recommended that employers adopt and implement the policy of the good employment practice and procedures described in Chapter 5 of this Code (p.).

(2) Reference case law indicates that social gatherings involving employees immediately after work or for an organized party are within the course of employment even though the events take place outside the workplace or normal work hours<sup>47</sup>.

4.1.3 Similarly, RDO section 47(2) provides that anything done by an agent with the authority of the principal (whether express or implied, precedent or subsequent) is treated as done by the principal as well, so

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<sup>46</sup> RDO section 47(3)

<sup>47</sup> *Chief Constable of the Lincolnshire Police v Stubbs* [1999] IRLR 81, a sex discrimination case which has reference value to the application of the RDO

that, for example, the principal would be held liable for any discrimination or harassment on the ground of race done by the agent with the authority of the principal. It is recommended that principals adopt the good employment practice and procedures described in Chapter 5 of this Code in order to ensure that their agents do not have authority to commit any act of discrimination and harassment on the ground of race.

## 4.2 Rights of employees and workers and their role

4.2.1 Employees and workers themselves may not discriminate or harass their colleagues in the course of employment and may not aid their employer to do so. All employees and workers have the right to work free from discrimination or harassment on the ground of race. They are also entitled not to be instructed to discriminate or harass anyone on the ground of race<sup>48</sup>.

4.2.2 RDO section 48(1) makes it unlawful for a person to knowingly aid another person to do an unlawful act under the RDO. RDO section 48(2) provides that, when the employer or principal is liable for the act of an employee or agent, the employee or the agent will be treated as aiding the employer or the principal to do the act. Employees and workers are also personally liable for harassment on the ground of race<sup>49</sup>.

4.2.3 Employees and workers should respect the rights of the people they work with. They are recommended to:-

(1) Take part in training related to equal opportunities;

(2) Observe the requirement of the RDO and follow the recommendations of this Code;

(3) Cooperate with measures taken by the management to promote equal opportunities and prevent discrimination and harassment on the ground of race.

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<sup>48</sup> RDO section 43; and paragraph 6.6 of this Code (p.)

<sup>49</sup> Paragraph 6.2 and 6.3 of this Code (p.)

## 5 Practising and Promoting Racial Equality

### 5.1 Complying with the RDO

Under Part 3 of the RDO, employers may not discriminate or harass any of their employees and workers on the ground of race and are required to take reasonably practicable steps to prevent such discrimination or harassment. Good employment practice is the key to employers complying with the RDO and meeting their legal responsibilities. Employers are encouraged to adopt the recommendations below as appropriate to the scale and structure of their organizations and available resources. Organizations and businesses operating on a small scale with a simple structure may adopt less formal practices so long as they follow the spirit of practising and promoting racial equality.

### 5.2 Drawing up and implementing a policy

5.2.1 A systematic approach is the best way to develop and maintain good employment practice. Employers are encouraged to draw up an equal opportunities policy which includes explicit reference to racial equality. This represents the employer's commitment to racial equality and forms the framework for action in promoting racial equality and putting it into practice.

5.2.2 The policy should explain that, in terms of racial equality, its objective is to ensure that:-

(1) No job applicant or employee will be treated less favourably than another on the ground of race;

(2) No job applicant or employee of any racial group will suffer a detriment from requirements or conditions which have a disparately adverse impact on people belonging to his or her racial group than people not belonging to that racial group, unless such requirements or conditions can be justified as serving a legitimate objective and bearing a rational and proportionate connection to that objective;

(3) Opportunities in the organization for employment, training and career development are equally open to all qualified people



regardless of race;

(4) The racial identity of every job applicant and employee is to be respected and no one is subjected to racial harassment in any way;

(5) The grievance system is properly administered regardless of race for job applicants and employees to raise any concern or complaints internally; and that such matters will be dealt with properly with appropriate remedial action; and no reprisal will be directed against anyone raising concern or complaints.

5.2.3 To be effective, the policy must be implemented through the adoption of good employment procedures and practices which will achieve the above objectives (see paragraph 5.3 of this Code (p.)). It is recommended that the overall responsibility for implementing the policy rests with senior management, and that employees are engaged in the development and review of the policy, such as through the establishment of a joint committee consisting of management and employee representatives. The details of the policy will depend on the scale and structure of the individual organization and the available resources, but the spirit of practising and promoting racial equality must always be followed. A sample policy is attached at the end of this Code. The policy should be disseminated and made known to all recruits and employees.

### 5.3 Good employment procedures and practices

#### 5.3.1 Recruitment using consistent selection criteria

(1) Employers should make all recruitment decisions on the basis of consistent selection criteria. Consistent selection criteria should be specific to the job. They may set out, for example:-

(a) The type of experience the job holder should have, for example, merchandising experience;

(b) The amount of experience required for the job, for example, five years experience;

(c) The educational qualifications, for example, a diploma in

merchandising;

(d) The specific technical and managerial skills, for example, use of certain computer software, proficiency in particular languages (if this is necessary for the satisfactory performance of the job<sup>50</sup>);

(e) The personal qualities required for the job, for example, willingness to travel, willingness to meet people of different backgrounds; and

(f) The physical and other skills required for the job, for example, eye-hand co-ordination for delicate assembly work.

(2) Consistent selection criteria (including language requirements<sup>51</sup>) should reflect job requirements and should be commensurate with the satisfactory performance of the job (and see paragraph 5.3.5 of this Code (p.) for shortlisting). It is recommended that employers develop consistent selection criteria as one of the first steps in establishing a fair recruitment practice, and from time to time re-examine the criteria to see whether they still apply or need to be modified.

### 5.3.2 Race must not be a factor

(1) The race of a person does not affect his or her ability to do a job, so long as he or she possesses the relevant qualifications, skills and personal qualities required by the job. Employers must not assume that people belonging to certain racial groups are not suitable for employment.

(2) By making recruitment decisions on the basis of consistent selection criteria, the employer's interest is served because each individual is assessed according to his or her capabilities to carry out a given job and will not be judged by irrelevant considerations such as race.

(3) Except where race is a genuine occupational qualification (see paragraph 5.3.3 of this Code (p.)), employers should ensure that race

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<sup>50</sup> See paragraph 5.3.12 and 6.1.1(2)(v) of this Code (p.)

<sup>51</sup> See paragraph 5.3.12 and 6.1.1(2)(v) of this Code (p.)

is not used as a ground for determining who should be offered employment. This applies no matter whether recruiting by advertisement, through employment agencies or through career offices in educational establishments.

- (4) Employers should ensure that employees handling applications and conducting interviews are trained not to assume that people belonging to certain racial groups are not suitable for employment or to use race as a ground for determining who should be offered employment. For example, candidates with names, appearance or accent indicating they are of Pakistani origin should not be refused on the ground of their origin.

### 5.3.3 Genuine Occupational Qualification (GOQ)

- (1) Except for situations specified under RDO section 11, race may not be a ground for refusing employment and the consistent selection criteria may not make any reference to race. The situations specified in RDO section 11 are:-

- (a) The job involves participation in a dramatic performance or other entertainment in a capacity for which a person of a particular racial group is required for reason of authenticity;

- (b) The job involves participation as an artist's or photographic model in the production of a work of art, visual images or sequence of visual images for which a person of a particular racial group is required for reason of authenticity;

- (c) The job involves working in a place where food or drink is provided to and consumed by the public in a particular setting for which, in that job, a person of that racial group is required for reasons of authenticity;

- (d) The holder of the job provides persons of a particular racial group with personal services promoting their welfare, and those services can most effectively be provided by a person of that racial group;

- (e) The job involves providing persons of a particular racial group

with personal services of such nature or in such circumstances as to require familiarity with the language, culture and customs of and sensitivity to the needs of that racial group, and those services can most effectively be provided by a person of that racial group.

- (2) Where a particular job falls into the above situations, race is referred to as a genuine occupational qualification (GOQ). If an employer claims that GOQ applies to a job, it is for the employer to show that it is so and the court will examine the claim strictly. For example, the situation in (d) above was held not to apply to managerial and administrative jobs because the job holders did not provide personal services and did not have direct contact with service recipients of particular racial groups<sup>52</sup>.

#### 5.3.4 Advertising vacancies

Employers should ensure that the contents of advertisements are based on consistent selection criteria. Employers are encouraged to:-

- (1) Fill vacancies by open application so that people from all racial groups have the opportunity to apply. Where vacancies are to be filled by promotion or transfer, publish the information to all eligible employees so that there is no restriction on applications from any racial groups.
- (2) Avoid requests for photographs and copies of ID cards at the application stage as this may be perceived as an indication of an intention to discriminate on the ground of race although asking for ID numbers would be acceptable. Requests for photographs and copies of ID card can be made at the interview stage for identification purposes.
- (3) Advertise vacancies widely so that job information may reach people from different racial groups. Different channels may be used, such as newspapers, Labour Department's job centres, employment agencies, professional journals and specialist magazines or publications. Where the ability to read and write in a particular

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<sup>52</sup> *London Borough of Lambeth v Commission for Racial Equality* [1989] IRLR 379

language is necessary for the satisfactory performance of a job, advertisement may specify the language requirement and may be published in that language. Given that English and Chinese are the two prevalent languages in Hong Kong, and that there are people who can speak but not read in Chinese, where the job requires only the ability to speak but not read or write Chinese, employers are encouraged to consider advertising in both English and Chinese where practicable.

- (4) Include statements such as “the post is equally open to people from all racial groups” in advertisements, as this will send out a clear message that applicants from all racial groups are welcome;

#### 5.3.5 Shortlisting

It is recommended that employers:-

- (1) Use consistent selection criteria as the basis for shortlisting, matching these objective standards against the corresponding experience and capability of each applicant;
- (2) Ensure that the marking system is consistently applied to all applicants; the weighting on different factors, for example, command of a language or previous experience, should reflect the requirements of the job and be consistently applied regardless of race;
- (3) Guard against making assumptions in general about the abilities of people from different racial groups which may not be true of the individual;
- (4) Train personnel staff to objectively compare applicants when shortlisting, and not to assume that people belonging to certain racial groups are less suitable for employment or to use race as a ground for determining who should be offered employment.

#### 5.3.6 Race related information

- (1) It is recommended that questions on application forms should not suggest that the employer wishes to take into account any race

related factors not relevant to the job which would lead to employment being declined on the ground of race, unless GOQ applies<sup>53</sup>.

- (2) Race related information may be sought for purposes of making any special arrangement, for example, with regard to dates or times coinciding with religious festivals or observance, or dietary needs or cultural norms. This information may also be used for the purpose of monitoring the implementation of the policy on racial equality. The purpose for requesting or using such information should be clearly stated. This information should be detachable from the rest of the application form and should not be made known to members of selection panels before the interview.

### 5.3.7 Interviewing

It is recommended that employers:-

- (1) Ensure that personnel staff, line managers and all other employees who may be involved in staff recruitment receive training on non-discriminatory practice. It should also be brought to their attention that it is unlawful to instruct or put pressure on others to discriminate<sup>54</sup>;
- (2) Only questions that relate to the requirements of the job are asked at job interviews;
- (3) Keep record of the recruitment process and interviews for 24 months, or if this is not practicable, at least not less than 12 months<sup>55</sup>.

### 5.3.8 Tests

If tests are to be used for selection purposes, it is recommended that employers:-

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<sup>53</sup> See paragraph 5.3.3 of this Code (p.)

<sup>54</sup> RDO section 43 and 44

<sup>55</sup> Under the RDO, the time limit for lodging a complaint with the EOC is 12 months (RDO section 78(4)(c) and for taking legal action in the District Court is 24 months (RDO section 80), keeping records properly will help to deal with disputes within these time limits.

- (1) Use selection tests that are specifically related to the job and/or the career requirements and should measure an applicant's actual or potential ability to do or train for the job;
- (2) Give preference to using professionally designed tests wherever practicable. These can contribute important objective information about the applicant, for example, intelligence, aptitude and skills. They have the advantage that they produce numerical scores which do not depend upon opinion or subjective interpretation;
- (3) Review tests regularly to ensure that they remain relevant and free from any bias, either in content or scoring.

#### 5.3.9 Recruitment through employment agencies or employment services

Where recruitment is done through employment agencies, employment services provided by the Labour Department, and educational establishments or non-government organizations, the employer should advise them that they should comply with the RDO and follow the recommendations in this Code as far as practicable. Employers should specify that vacancies are open to people from all racial groups, unless GOQ applies (see paragraph 5.3.3 of this Code (p.)).

#### 5.3.10 Terms and conditions of employment, benefits, facilities and services

- (1) It is recommended that employers make sure their practices, rules and requirements on access to any benefits, facilities or services do not treat any employee less favourably on the ground of his or her race than another employee of a different race (see paragraph 6.1.1(1) of this Code (p.) for direct discrimination).
- (2) It is also recommended that employers should minimize any disparately adverse impact that their practices, rules and requirements may have on any racial groups (see paragraph 6.1.1(2) of this Code (p.) for indirect discrimination). When employees' cultural or religious practices, such as those expressed in dress codes, conflict with an employer's policies or workplace requirements, it is recommended that the employer consider whether it is practicable to vary or adapt these requirements. For example, employers may

consider flexibility in working arrangements<sup>56</sup>. Employers should consult staff, trade unions and other workplace representatives on practical ways in which they can accommodate workers' needs.

- (3) In respect of pay, hours of work, overtime, bonuses, holiday entitlement, sickness leave, employers should maintain the principle of equal pay for equal work.
- (4) With everything being equal, an employee of one racial group is entitled to equal pay and benefits when he or she is doing "like work" or the same work as another employee of a different racial group. "Like work" means work which is of a broadly similar nature and where the differences between the tasks performed by either of them are not of practical importance to the terms and conditions of employment<sup>57</sup>. Different job titles, job descriptions or contractual obligations do not necessarily imply that the work is different. It is what the job-holders actually do that matters. The question of whether the two jobs are "like work" can be answered by a general consideration of the type of work involved and the skill and knowledge required to do them.
- (5) A related principle to equal pay for equal work is that of equal pay for work of equal value. Where employees of one racial group undertake work as demanding as that of colleagues of another racial group, even though the work is different, they should receive the same pay and benefits. That is, jobs of equal value warrant equal pay.
- (6) Overseas experience suggests that different jobs done by different workers can be compared on the basis of the demands made on a worker in terms of effort, skill, responsibility and working conditions<sup>58</sup>. Employers can set individual pay rates based on market forces and individual performance but should not pay a class

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<sup>56</sup> See *Ahmad v Inner London Education Authority* [1977] ICR 490 (which is not a case under race discrimination legislation but is illustrative of what employers should do to accommodate employees), where the employer was prepared to allow a devout Muslim employee to work part-time so that he could attend Friday prayers; and *Tower Hamlets London Borough Council v Rabin* [1989] ICR 693, where the employer was prepared to seek a part-time worker to cover for a Jewish job applicant who has to observe Sabbath and cannot work on Saturdays.

<sup>57</sup> UK Equal Pay Act 1970

<sup>58</sup> Guidelines Respecting the Application of Section 11 of the Canadian Human Rights Act and Prescribing Factors Justifying Different Wages for Work of Equal Value, 1986.



of workers less for doing work of equal value on the ground of race.

(7) Employers should maintain the principle of equal pay for equal work and are encouraged to progressively implement equal pay for equal value. This will require objective and professional evaluation of different jobs within the same establishment, or alternative methods of approaching the issue of equal pay which can be demonstrated to be non-discriminatory on the ground of race. Large organizations in both the public and private sectors with a structured human resources department could take a lead in this.

(8) Individual differences in pay are not in themselves discriminatory. Each case should be considered on its own merits. According to overseas experience<sup>59</sup>, the following considerations are relevant in considering differences in pay for equal work or work of equal value:-

(a) Different performance ratings;

(b) Length of service;

(c) Re-evaluation and downgrading of a position on objective work-related criteria;

(d) A temporary training position;

(e) The existence of internal labour shortage in a particular job classification;

(f) Re-classification of a position to a lower level, where the person continues to get the former level of pay;

(g) Regional rates of pay; for example, an employee is rewarded because the work is done in different locations; and

(h) Economic factors, such as a temporary shortage in a particular type of skilled labour.

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<sup>59</sup> UK Equal Pay Act 1970 and Guidelines Respecting the Application of Section 11 of the Canadian Human Rights Act and Prescribing Factors Justifying Different Wages for Work of Equal Value, 1986.

### 5.3.11 Overseas employees

- (1) Employees coming from overseas to work in Hong Kong may be in circumstances unconnected with race which are different from local employees. For example, overseas employees may require relocation assistance or that they are recruited because they possess skills that are not readily available in Hong Kong.
- (2) RDO section 12, 13, 14 and Schedule 2 deal with employees coming from overseas. RDO Schedule 2 defines those employees in existing employment who are on overseas terms of employment; and those who are on local terms of employment. Situations where differences in treatment are allowed under the RDO between these employees are specified in RDO section 14 (see paragraph 6.7.2 to 6.7.4 of this Code (p.)).
- (3) It is recommended that, when employers address circumstances specific to employees coming from overseas to work in Hong Kong by providing benefits to them which are not available to local employees, they ensure that the benefits provided do not go beyond meeting the specific non-race related circumstances of these employees and that the benefits are not given on the ground of race.

### 5.3.12 Language

- (1) Employers must ensure that any language requirement (including academic qualification, fluency and accent requirement) for a job is relevant to and should be commensurate with the satisfactory performance of a job (see paragraph 6.1.1(2)(v) of this Code (p.); and see paragraph 5.3.5 (p.) for shortlisting).
- (2) A person's accent in speaking a language can be related to his race, employers should ensure that employees and workers are not discriminated against or harassed because of their accent<sup>60</sup> (see paragraph 5.3.14 of this Code (p.) for prevention of harassment).
- (3) Where the workforce includes people who are not proficient in the

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<sup>60</sup> Policy and Guidelines on Racism and Racial Discrimination, paragraph 3.6, Ontario Human Rights Commission, 2005

language of the workplace, employers should ensure that they are provided with and understand information on health and safety requirements and other matters relevant to their employment; for example, safety signs and notices.

### 5.3.13 Promotion, transfer and training

It is recommended that employers:-

- (1) Examine the assessment criteria of any appraisal system to ensure that employees are promoted on merit and the criteria adopted are not discriminatory on the ground of race. Measurable standards for evaluating job performance should be established;
- (2) Organize selection for promotion along the same lines as recruitment. Consistent selection criteria for posts should be compared with the detailed assessment of all candidates' abilities and qualities including their potential. The individual whose profile best fits the job requirements should be selected;
- (3) Where opportunities for promotion, training or transfer arise, specify the conditions for application to all staff who may be interested, and set out related procedures in writing for communication to all employees irrespective of race who are eligible;
- (4) Assess all possible candidates, and if promotion is by nomination, ensure that everyone suitable is considered and that nobody with potential has been overlooked;
- (5) Keep records of notes on promotion, transfer and training for 24 months, or if this is not practicable, at least not less than 12 months<sup>61</sup>.
- (6) Review and change rules which restrict or preclude transfer between certain jobs if they are found to be discriminatory; and
- (7) Examine policies, rules and practices regarding selection for training,

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<sup>61</sup> Under the RDO, the time limit for lodging a complaint with the EOC is 12 months (RDO section 78(4)(c)) and for taking legal action in the District Court is 24 months (RDO section 80), keeping records properly will help to deal with disputes within these time limits.

day release and personal or career development to ensure that:-

- (a) No one from any racial group is treated less favourably on the ground of race than another not from that racial group;
- (b) Any disparately adverse impact on any racial groups is minimized;
- (c) Where there is found to be an imbalance in training between persons of different racial groups than might be expected, the cause should be identified and, if necessary, remedied to ensure that it is not discriminatory.

#### 5.3.14 Prevent harassment on the ground of race

Employees and workers of all racial groups are entitled to be free from harassment on the ground of race. Employers must ensure that the working environment is one in which the racial identity of all employees is respected. It is recommended that employers:-

- (1) Make a clear statement in the equal opportunities policy that harassment on the ground of race will not be tolerated;
- (2) Provide a work environment that is safe and free from abuse and insults. Employees and workers should treat each other politely and with respect.
- (3) Explain that harassment<sup>62</sup> on the ground of race is unacceptable; and explain the types of behaviour which can be regarded as harassment on the ground of race, such as:-
  - (a) Racially derogatory remarks or insults; for example, name calling which people of certain racial group may find offensive or impolite should be avoided;
  - (b) Display of graffiti or slogans or other objects offensive to certain racial groups;
  - (c) Racist jokes, banter, ridicule or taunts; for example, laughing at

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<sup>62</sup> See paragraph 6.3.2 and 6.3.3 of this Code (p.)

- the accent or habits of people belonging to certain racial groups;
- (d) Using a disparaging or offensive tone when communicating with people on the ground that they belong to certain racial groups;
  - (e) Ostracize people because of their racial group;
  - (f) Imposing excessive workloads or performance targets on people on the ground of race;
  - (g) Unnecessarily picking on individuals from particular racial groups;
- (4) Make the above known to all recruits and employees;
- (5) Ensure that grievances and complaints are properly dealt with; in doing so, as an alternative to dealing with a complaint of harassment formally in accordance with the designated internal grievance procedures, employers should consider offering an informal route to resolving a grievance;
- (6) Ensure that no one will be victimized<sup>63</sup> or penalized for coming forward with a complaint or grievance.

#### 5.3.15 Grievance procedures

It is recommended that employers:-

- (1) Ensure that employees who have in good faith taken action under the RDO do not receive less favourable treatment than other employees, for example, by being disciplined or dismissed;
- (2) Designate an internal grievance procedure or an officer to deal with complaints concerning discrimination and harassment on the ground of race or victimization<sup>64</sup> within the organization. These procedures should be communicated to all staff and be reviewed from time to time;

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<sup>63</sup> See paragraph 6.1.3 of this Code (p.)

<sup>64</sup> See paragraph 6.1.3 of this Code (p.)

- (3) Advise employees to use the internal grievance procedures, where appropriate, but without prejudice to the individual's right to apply to the EOC or the court;
- (4) Deal with all complaints of discrimination and harassment on the ground of race or victimization effectively. It should not be assumed that they are made by those who are over-sensitive. The rule of confidentiality should be observed and the rights of both the complainant and respondent respected; and
- (5) Handle disciplinary procedures uniformly without reference to race.

#### 5.3.16 Dismissals, redundancies and unfavourable treatment of employees

It is recommended that employers:-

- (1) Ensure that employee of one racial group is not disciplined or dismissed for performance or behaviour which would be overlooked or condoned in the case of another employee of a different racial group;
- (2) Review redundancy procedures affecting employees of any racial group so as to ensure that there is no discrimination on the ground of race and to remove any unjustifiable and disparately adverse impact on any racial groups;
- (3) Ensure that conditions of access to voluntary redundancy benefits are available on equal terms to employees of all racial groups in the same or similar circumstances
- (4) Ensure that when there is downgrading or short-time working (for example, owing to a change in the nature or volume of an employer's business) the arrangements do not discriminate on the ground of race;
- (5) Keep records of notes on dismissals and redundancies for 24 months, or if this is not practicable, at least not less than 12 months<sup>65</sup>;

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<sup>65</sup> Under the RDO, the time limit for lodging a complaint with the EOC is 12 months (RDO section 78(4)(c)) and for taking legal action in the District Court is 24 months (RDO section 80), keeping records properly will help to deal with disputes within these time limits.

- (6) Ensure that a standard of conduct or behaviour is observed to prevent employees of any racial groups from being intimidated, harassed or otherwise subjected to unfavourable treatment<sup>66</sup>.

#### 5.3.17 Monitoring

- (1) Employers are encouraged to regularly monitor and review the implementation of the equal opportunities policy and the good employment procedures and practices. The objective of monitoring is to gain an appreciation of the situation regarding, for example:-
- (a) The composition of the workforce by racial group, for comparison with benchmarks such as census data;
  - (b) The distribution of people from different racial groups within the organization, by job type and grade, or by work locations;
  - (c) The pattern of career development (including remuneration and benefits, termination or other disciplinary action) of people from different racial groups.
- (2) Such information will show, for example, whether people from particular racial groups:-
- (a) Do not apply for employment or promotion, or that fewer apply than might be expected;
  - (b) Are not recruited, promoted or selected for training and development or are appointed or selected in a significantly lower proportion than their rate of application; and
  - (c) Are concentrated in certain jobs, sections or departments.
- (3) In organizations with a simple structure, the situation may be assessed from personal knowledge. In organizations with larger structure, monitoring will require formal processes for collecting, analyzing and evaluating information, for example, through surveys,

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<sup>66</sup> See paragraph 5.3.14 of this Code (p.)

consultation and feedback. This may be done in stages as operational requirements or resources permit and should be done with prior consultation with employees or their representatives. Information collected should be treated in strict confidence and in accordance with the Personal Data (Privacy) Ordinance.

(4) Information obtained through monitoring will help to show whether:-

(a) Employees and workers (including job applicants<sup>67</sup>) from any racial group are being treated less favourably than those not from the same racial group;

(b) Policies, rules and practices have disparately adverse impact on any racial group.

(5) If monitoring data shows significant disparities between racial groups, employers should investigate the cause to ensure that race is not a barrier to opportunities. They should examine and review relevant policies, rules and practices to see if they have disparately adverse impact on any racial group; and if so, take steps to minimize such impact.

(6) Employers are also encouraged to take positive action to address any situation where any racial group might be under-represented in the workforce than might be expected (see paragraph 5.3.18 of this Code (p.)).

#### 5.3.18 Positive action

(1) Because of discrimination or other disadvantages in the past, people from particular racial groups may have been deprived of the opportunity to gain the qualification or experience to fully realize their potential.

(2) Therefore, RDO section 49 allows employers and other concerned parties to provide people from a particular racial group (or groups) goods, access to facilities, services, opportunities, grants, benefits or

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<sup>67</sup> See paragraph 5.3.6 of this Code (p.) for obtaining race related information from job applicants.



programmes to meet their special needs in relation to employment, when it is reasonably intended to ensure that they have equal opportunities in employment.

- (3) RDO section 51 and 52 allow employers and other concerned parties to provide training for people from a particular racial group (or groups) for particular work, when for the past 12 months in Hong Kong generally (or for an employer, in a particular establishment) no person from that racial group (or groups) has been doing that work or the number of persons from that racial group doing that work has been comparatively small.
- (4) Measures taken under RDO section 49, 51 or 52 are called positive action. Examples of positive action may include encouragement to apply for employment, transfer or promotion, language classes, mentorship schemes, and management skills training or other training courses.
- (5) Positive action under the RDO means providing only training or encouragement, and does not extend to providing employment to individuals from particular racial groups on the ground of their race<sup>68</sup>.

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<sup>68</sup> UK Code of Practice on Racial Equality in Employment, p.40, Commission For Racial Equality 2005

## 6 Unlawful acts under the RDO

### 6.1 Types of discrimination under the RDO

The RDO defines different types of discrimination. They are:-

#### 6.1.1 Racial discrimination

Racial discrimination occurs in the following situations under the RDO<sup>69</sup>:-

##### (1) Direct discrimination

Direct discrimination occurs when person A treats person B (belonging to one racial group) less favourably than person C (belonging to a different racial group) on the ground of person B's race, when person B and person C are in same or materially similar situation<sup>70</sup>.

##### **Illustration 7:-**

*A person of Pakistani origin who speaks fluent Cantonese and has adopted a Chinese name applies by telephone for the job of a sales person and is invited for an interview. But, because his appearance indicates that he is of Pakistani origin, when he turns up to the interview he is falsely told that someone else has already been hired and the interview is declined. This is less favourable treatment on the ground of race if another job seeker not of Pakistani origin would not have been declined.*

##### **Illustration 8:-**

*A manager of Chinese origin is treated less favourably on the ground of race (directly discriminated against), if a manager of English origin is paid a higher amount of salary than the manager of Chinese origin on the ground of their difference in origin, when they are both in the same or materially similar employment*

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<sup>69</sup> RDO section 4(1)

<sup>70</sup> RDO section 4(1)(a) and section 8(5)

*situation (such as they both do the same job and have similar experience and their performance are both good).*

The following points should be noted:-

- (a) RDO section 9 provides that if an act is done for more than one reason and one of the reasons is the race of a person, then it is taken to be done for the reason of the race of the person;
- (b) RDO section 4(3) provides that segregation of a person on the ground of his or her race from other persons is direct discrimination; for example, employees of non-Chinese origins are required to have their meals in a separate part of the staff canteen from employees of Chinese origin.

## (2) Indirect discrimination

Indirect discrimination occurs when a person applies an apparently non-discriminatory requirement or condition to everyone of all racial groups<sup>71</sup>, but:-

- (a) Only a considerably smaller proportion of people from a particular racial group can meet the requirement or condition than the proportion of people not from that racial group;
- (b) The person applying the requirement or condition cannot show the requirement or condition to be justified on non-racial grounds;
- (c) The requirement or condition is to the detriment of person B (belonging to that particular racial group) because he or she cannot meet it.

### ***Illustration 9:-***

*A blanket ban on beards for health and safety reasons in a food packaging factory is a requirement or condition that indirectly discriminates ethnic groups such as the Sikhs (who by their custom have to keep a beard), when compared to*

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<sup>71</sup> RDO section 4(1)(b)

*other racial groups, if information shows that face masks could be used satisfactorily to meet health and safety standards<sup>72</sup>.*

The following points should be noted:-

- (i) Preferences and factors to be taken into account (as opposed to an absolute requirement or condition for achieving an objective) are not within the meaning of requirement or condition under the RDO<sup>73</sup>.
- (ii) A requirement or condition cannot be met if a person cannot meet it consistently with the customs and cultural conditions of his or her racial group<sup>74</sup>.
- (iii) RDO section 4(2) provides that a requirement or condition is justifiable if it serves a legitimate objective and bears a rational and proportionate connection to the objective.
- (iv) Reference case law indicates that requirement or conditions in relation to work times and appearance can lead to claims of indirect discrimination. To determine whether a requirement or condition is justifiable, each case has to be examined on its own merits, considering any discriminatory effects against any significant degree of increased cost, decreased efficiency, or serious safety problem in accommodating individuals from particular racial groups<sup>75</sup>.

***Illustration 10:-***

*A blanket ban on beards in a food packaging factory in Illustration 10 above is justifiable if information shows that face masks could not satisfactorily meet health and safety standards<sup>76</sup>.*

***Illustration 11:-***

*An employer who decides not to accommodate Jewish*

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<sup>72</sup> UK Code of Practice on Racial Equality in Employment, p.20, Example B; and *Mandla v Dowell Lee* [1983] ICR 385

<sup>73</sup> *Perera v Civil Service Commission* [1983] IRLR 166

<sup>74</sup> *Mandla v Dowell Lee* [1983] ICR 385

<sup>75</sup> *Osborne v Inco Ltd* [1985] 15 DLR (4th) 723

<sup>76</sup> *Panesar v The Nestle Co Ltd* [1980] IRLR 60

employees (who have to observe Sabbath and cannot work on Saturdays) but requires them to work on Saturdays is able to justify this requirement with information showing that accommodation would lead to a significant degree of increased safety risk, increased cost and decreased efficiency<sup>77</sup>.

**Illustration 12:-**

A requirement to wear protective headgear in a repair workshop, even if indirectly discriminatory for Sikhs (who by their custom have to wear a turban), is justifiable given information on the risk of injury, and the possibility of liability on the employers, and that the requirement would be more difficult to enforce if an exception is made for one person<sup>78</sup>.

- (v) Reference case law also indicates that requirement or condition in relation to academic or language standard can lead to claims of indirect discrimination. Employers must be able to justify any such requirement or condition by showing that it is relevant to and not more demanding than what is required for doing the job.

**Illustration 13:-**

For a job as a clerical officer or clerical assistant in a government department in the UK, successful applicants would be required to deal with inquiries from the public in person and by telephone. An ability to understand and communicate in English was a prime requirement, and a requirement that candidates must possess an English Language "O" Level or equivalent was overall fair and not arbitrary<sup>79</sup>. Such a requirement is justified on grounds unconnected with race because it bears a rational and proportionate connection to the objective of communication in English which is legitimate and required for the job.

6.1.2 Discrimination on the ground of near relative's race

Discrimination on the ground of the race of a near relative happens

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<sup>77</sup> *Osborne v Inco Ltd* [1985] 15 DLR (4th) 723

<sup>78</sup> *Singh v British Rail Engineering Ltd* [1986] ICR 22

<sup>79</sup> *Raval v Department of Health and Social Security* [1985] ICR 685

when person A treats person B less favourably than other people on the ground of person B's near relative's race<sup>80</sup>. A near relative means a person's spouse, parent or child (including born out of wedlock, adopted or step child), grandparent or grandchild, sibling and in-laws<sup>81</sup>.

**Illustration 14:-**

*A manager is discriminated against on the ground of his near relative's race when he applies for promotion to the post of director but is declined because the company considered he and his wife are not suitable for company social functions on the ground that his wife is of Indonesian origin, and another manager whose wife is not of Indonesian origin is appointed.*

6.1.3 Discrimination by way of victimization

Discrimination by way of victimization happens if person A treats person B less favourably than other people by reason that person B or a third person has done or intends to do, or is suspected to have done or to intend to do, the following<sup>82</sup>:-

- (1) Bring proceedings under the RDO;
- (2) Give information or evidence in connection with proceedings under the RDO;
- (3) Otherwise do anything under or by reference to the RDO;
- (4) Allege that someone has contravened the RDO.

**Illustration 15:-**

*A manager of Nepalese origin is discriminated against by way of victimization if he complains that he was paid less annual bonus than another manager of Chinese origin on the ground of race, and the company decides to dismiss him by reason that he makes this complaint.*

6.2 When discrimination is unlawful in employment

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<sup>80</sup> RDO section 5

<sup>81</sup> RDO section 2

<sup>82</sup> RDO section 6

6.2.1 Employers may not discriminate against job applicants in the ways described in paragraph 6.1.1 – 6.1.3 above of this Code<sup>83</sup>:-

- (1) In the arrangement for determining who should be offered employment (for example, an employer may not refuse to interview a job applicant on the ground that the name, appearance or accent of the job applicant indicates that he or she is of Pakistani origin);
- (2) In the terms on which the employment is offered (for example, an employer may not offer a lower starting salary for the same post to applicants of Chinese origin than applicants of Japanese origin, on the ground of the difference in origin);
- (3) By refusing, or deliberately omitting to offer employment (for example, an employer may not refuse to offer employment to a job applicant on the ground that he or she is of Indian origin).

6.2.2 Employers must not discriminate against employees and workers in the ways described above paragraph 6.1.1 – 6.1.3 above of this Code<sup>84</sup>:-

- (1) In the terms of employment (for example, for the same job doing the same work for the same pay, the employer may not on the ground of race require a employee of Nepalese origin to work longer hours than an employee of Chinese origin);
- (2) In the access to opportunities for promotion, transfer or training, or to any other benefits, facilities or services, or refusing or deliberately omitting to afford access to these things (for example, an employer may not give priority for promotion to employees of Chinese origin over employees of other origins on the ground of the difference in origin);
- (3) By dismissing the employee or subjecting him to any other detriment (for example, in a downsizing exercise, an employer may not use race as a factor and select employees of Chinese origin for redundancy first and employees of English origin last);

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<sup>83</sup> RDO section 10(1); and see paragraph 6.7 of this Code (p.) for acts allowed under the RDO

<sup>84</sup> RDO section 10(2); and see paragraph 6.7 of this Code (p.) for acts allowed under the RDO

- (4) In arrangements relating to death or retirement<sup>85</sup>;
- (5) Reference case law indicates that an employee who is forced to resign because he or she is discriminated against on the ground of race by the employer is treated as having been dismissed on the ground of race by the employer;
- (6) Reference case law also indicates that employers may not discriminate against former employees in the ways described in paragraph 6.1.1 – 6.1.3 of this Code (p.) in relation to internal appeal process or reference letters after termination<sup>86</sup>.

### 6.3 Unlawful racial harassment

#### 6.3.1 The RDO makes it unlawful for:-

- (1) An employer to harass on the ground of race a job applicant or an employee<sup>87</sup>;
- (2) An employee to harass on the ground of race a job applicant or another employee of his or her employer<sup>88</sup>;
- (3) A principal to harass on the ground of race a contract worker<sup>89</sup>;
- (4) A contract worker to harass on the ground of race another contract worker<sup>90</sup>;
- (5) A partner of a partnership firm to harass on the ground of race another partner or a person applying to be a partner<sup>91</sup>;
- (6) A principal to harass on the ground of race a commission agent<sup>92</sup>;

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<sup>85</sup> RDO section 10(4) and (5)

<sup>86</sup> *Rhys-Harper v Relaxion Group* [2003] IRLR 484

<sup>87</sup> RDO section 24(1) and (2)

<sup>88</sup> RDO section 24(3)

<sup>89</sup> RDO section 24(4)

<sup>90</sup> RDO section 24(5)

<sup>91</sup> RDO section 24(6), (7) and (8)

<sup>92</sup> RDO section 24(9)



- (7) A commission agent to harass on the ground of race a fellow commission agent<sup>93</sup>;
- (8) A job applicant or an employee to harass on the ground of race his or her employer<sup>94</sup>;
- (9) Person A to harass person B on the ground of race, if person A lives in a place where person B is employed by a third person to work<sup>95</sup>, for example, a lodger harasses a domestic helper employed by the landlord to work in the place the lodger lives;
- (10) Providers of vocational training to harass on the ground of race people who want to be trained or are being trained<sup>96</sup>;
- (11) Employment agencies or their staff to harass on the ground of race people who want to be provided with their services<sup>97</sup>

6.3.2 Harassment on the ground of race occurs in the following situations under the RDO:-

(1) Unwelcome conduct harassment

Person A engages in unwelcome conduct (which may include an oral or a written statement) towards person B on the ground of person B's race or person B's near relative's race, in circumstances where a reasonable person would have anticipated that person B would be offended, humiliated or intimidated<sup>98</sup>.

(2) Hostile environment harassment

Person A engages, on the ground of person B's race or person B's near relative's race, in conduct alone or together with other persons that create a hostile environment for person B<sup>99</sup>.

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<sup>93</sup> RDO section 24(10)

<sup>94</sup> RDO section 24(11)

<sup>95</sup> RDO section 24(12)

<sup>96</sup> RDO section 25(3)

<sup>97</sup> RDO section 25(4)

<sup>98</sup> RDO section 7(1)

<sup>99</sup> RDO section 7(2)

6.3.3 For types of behaviour which can be regarded as harassment on the ground of race, please see paragraph 5.3.14(3) of this Code (p.).

#### 6.4 Vilification and the offence of serious vilification

6.4.1 RDO section 45 makes it unlawful for a person by any public activity to incite hatred towards, serious contempt for, or severe ridicule of another person(s) on the ground of race. Such public activity is vilification on the ground of race.

6.4.2 An activity in public includes any form of communication to the public or conduct observable by the public, such as speaking, writing, gestures or wearing of clothing, displaying signs, flag, emblems and insignia<sup>100</sup>.

6.4.3 An act of vilification done with intent and involves threats of physical harm to people of the targeted race or their property is a criminal offence punishable on conviction by fine at a maximum at \$100,000 or imprisonment for a maximum of 2 years<sup>101</sup>. This offence is called serious vilification.

#### 6.5 Discriminatory advertisements

RDO section 42 makes it unlawful to publish or cause to be published an advertisement which indicates, or might reasonably be understood as indicating, an intention by a person to do an unlawful act under Part 3 of the RDO. For example, it is unlawful to publish an advertisement indicating that only people of Chinese origin would be employed by a company.

#### 6.6 Instructions and pressure to discriminate

RDO section 43 makes it unlawful, if person A has authority over person B, or if person B usually acts on the wishes of person A, for person A to make or try to make person B to do an unlawful act under the RDO (such as to racially discriminate or harass on the ground of race a third person). RDO section 44 makes it unlawful for person A to induce or try to induce person B, by offering some benefit to or by threatening person B, to do an unlawful act under the RDO.

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<sup>100</sup> RDO section 45(4)

<sup>101</sup> RDO section 46

**Illustration 16:-**

*The personnel manager is required to carry out instructions from the managing director. The managing director may not tell the personnel manager to recruit only candidates who are Caucasian to be the general manager.*

6.7 Acts allowed under the RDO

6.7.1 Genuine Occupational Qualification

Where GOQ applies as specified under RDO section 11, employment may be declined on the ground of race (see paragraph 5.3.3 above of this Code (p.)). If an employer claims that GOQ applies to a job, it is for the employer to show that it is so and the court will examine the claim strictly.

6.7.2 Training for skills to be used outside Hong Kong

RDO section 12 provides that RDO section 10 (provisions making discrimination under the RDO in employment unlawful) does not apply to an act done by an employer for the benefit of a person employed in Hong Kong (but who is not ordinarily resident in Hong Kong) in order to train him or her in skills which are intended to be used wholly outside Hong Kong.

6.7.3 Special skills, knowledge or experience

(1) RDO section 13 provides that RDO section 10 (provisions making discrimination under the RDO in employment unlawful) does not apply to an act done by an employer for the benefit of a person recruited or transferred from outside Hong Kong to work in Hong Kong where the work requires special skills, knowledge or experience not readily available in Hong Kong.

(2) This also applies when this person's employment is renewed, or he or she is promoted or transferred within the same group of companies.

(3) The act done must be reasonable having regard to the prevailing terms of employment offered to people with the relevant skills,

knowledge or experience in places outside Hong Kong.

- (4) The person must actually possess the skills, knowledge or experience not readily available in Hong Kong.

#### 6.7.4 Existing local and overseas terms of employment

- (1) RDO section 14 provides that, for employees in existing employment as specified in RDO Schedule 2, RDO section 10 (provisions making employment discrimination on the ground of race unlawful) does not apply to different treatment:-
  - (a) Between an employee on local terms of employment and another employee on overseas terms of employment;
  - (b) Between an employee on overseas terms of employment who is a national or citizen of a country or place and another employee on overseas terms of employment who is a national or citizen of another country or place.
- (2) Employees in existing employment as specified in RDO Schedule 2 are employees who fall within RDO Schedule 2 section 1 to 6 (including judicial officers, ICAC officers, other public officers and specified English teachers). For details please refer to the RDO.
- (3) RDO Schedule 2 section 11 provides that:-
  - (a) For judicial officers, ICAC officers and other public officers,
    - (i) Local terms of employment mean the local conditions or terms of service within the meaning of such regulations, administrative rules, circulars and circular memoranda as apply generally from time to time to the appointment or employment of these officers;
    - (ii) overseas terms of employment mean the overseas conditions or terms of service within the meaning of such regulations, administrative rules, circulars and circular memoranda as apply generally from time to time to the appointment or employment of these officers.

(b) For any employee other than a public officer,

- (i) local terms of employment mean the conditions or terms of service as apply from time to time primarily to the employment of a person who is a Hong Kong permanent resident;
- (ii) overseas terms of employment mean the conditions or terms of service as apply from time to time primarily to the employment of a person who is not a Hong Kong permanent resident.

(4) Employees in existing employment as specified in RDO Schedule 2 remain so specified upon their promotion, extension of employment, or renewal or re-engagement after termination.

#### 6.7.5 Positive action

RDO sections 49, 51 and 52 allow for positive action to be taken to assist racial groups who have been disadvantaged in the past (see paragraph 5.3.18 of this Code (p.)). Examples of positive action may include encouragement to apply for employment, transfer or promotion, language classes, mentorship schemes, and management skills training or other training courses.

## 7 When discrimination and harassment is encountered

### 7.1 Legal protection under RDO

- 7.1.1 The right of employees or workers (including job applicants) to be free from discrimination and harassment on the ground of race under the RDO is protected by law. They may bring civil proceedings in the District Court to seek remedies to redress any loss or damage when they have been discriminated against or harassed on the ground of race<sup>102</sup>. Legal proceedings should be brought within 24 months from the time when the discrimination or harassment is done<sup>103</sup>.
- 7.1.2 Employers and employees are encouraged to resolve discrimination and harassment issues internally informally or formally using their grievance procedures before taking legal proceedings. Employees are encouraged to seek legal advice or apply for legal aid from the Legal Aid Department before taking legal proceedings.
- 7.1.3 As an alternative to taking legal proceedings, employees or workers (including job applicants) may lodge a complaint with the EOC for investigation and conciliation<sup>104</sup>. Complaints should be lodged within 12 months from the time when the discrimination or harassment is done.

### 7.2 Complaint handling by EOC

- 7.2.1 When a complaint is lodged with the EOC, the EOC will investigate into the complaint. The investigation is an exercise to help clarify the issues for the EOC and the parties, so as to facilitate settlement by conciliation.
- 7.2.2 All parties to the complaint (complainant, respondent and witnesses) should provide all relevant and appropriate information during the investigation.
- 7.2.3 RDO section 78(4) provides that, if the EOC takes the view that the complaint is frivolous, vexatious, misconceived or lacking in substance, the EOC may not conduct or may discontinue an investigation. Other

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<sup>102</sup> RDO section 70

<sup>103</sup> RDO section 80

<sup>104</sup> RDO section 78

situations when the EOC may not conduct or may discontinue an investigation include where the complaint is not unlawful under the RDO, or where more than 12 months have passed since the act was done, or where the person aggrieved does not desire the investigation to be conducted or continued.

- 7.2.4 Information provided during the investigation may be admissible in evidence before the Court if legal proceedings are brought at a later stage.
- 7.2.5 The EOC maintains an independent and impartial role during the investigation. If investigation is conducted and is not discontinued, the EOC will help the parties to settle their dispute by conciliation.
- 7.2.6 The primary objective of the complaint-handling process is settlement by conciliation, the EOC may at any stage of the process explore the possibility of settlement between the parties. This may occur at an early stage soon after the complaint is lodged before any investigation into the details. If parties could not at an early stage reach settlement, then investigation into details will continue.
- 7.2.7 If the EOC does not discontinue the investigation, it will proceed formally to the conciliation process. In the conciliation process, it is for the parties to decide if and how they would agree to resolve their dispute. Everything said and done by a party in the course of conciliation is not admissible in subsequent legal proceedings relating to the dispute except with the consent of that party.
- 7.2.8 If parties are able to reach a settlement, a settlement agreement is usually signed and is legally binding between the parties. Subject to parties' agreement, terms of settlement may include monetary compensation, changes in policy and practices, reinstatement or apology.
- 7.2.9 The time spent by the EOC in the complaint handling process does not count towards the 24 months timeline for taking legal proceedings<sup>105</sup>. In other words, that timeline is extended by the period of time spent by the EOC in the complaint handling process.
- 7.2.10 The complaint-handling process by the EOC provides an alternative to

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<sup>105</sup> RDO section 80(3)

legal proceedings in resolving discrimination and harassment issues. Confidentiality is also a feature of the process. This alternative can be a less formal, cheaper, faster way of resolving these issues when compared to legal proceedings. For further details on the EOC's complaint handling process, please consult specific publications by the EOC.

### 7.3 Legal Assistance by the EOC

- 7.3.1 When a complaint has been lodged with the EOC, but there has been no settlement of the complaint, the aggrieved person may apply for assistance from the EOC to take legal proceedings.
- 7.3.2 The EOC will consider all applications for legal assistance. In deciding whether to provide assistance in each application, the EOC will take into account a wide range of factors including whether the case raises a question of principle, the complexity of the case, the strength of the evidence, and the EOC's own strategic concerns and priorities.
- 7.3.3 If legal assistance is provided by the EOC, it may include giving legal advice and representation on the case by the EOC's own legal officers or outside lawyers. For further details on legal assistance by the EOC, please consult specific publications by the EOC. If legal assistance is not provided by EOC, claimants may still take legal proceedings in the District Court and they may seek legal advice or apply for legal aid from the Legal Aid Department.

### 7.4 Other functions of the EOC

- 7.4.1 The EOC is a statutory body created by law. Other than the complaint handling and legal assistance functions described above, it has powers and functions under different anti-discrimination laws including the RDO. EOC's other powers and functions under the RDO include:-
  - (1) Working towards the elimination of all forms of racial discrimination;
  - (2) Promoting equality of opportunities between persons of different racial or ethnic backgrounds;
  - (3) Initiating formal investigation in the public interest;
  - (4) Issuing codes of practice for elimination of discrimination and promotion of racial harmony;



(5) Enforcing the RDO by issuing enforcement notices and bringing proceedings in respect of discriminatory practices and certain other unlawful acts.

# Sample policy on racial equality

## 1. Introduction

- 1.1 [Organisation's name] is committed to making full use of the talents, skills, experience, cultural perspectives of different people, and to making sure that it is an organization where they are respected and valued and can achieve their full potential, regardless of race, colour, caste, or national or ethnic origins;
- 1.2 [Organisation's name] will comply with the Race Discrimination Ordinance and will follow the recommendations in the Code of Practice issued by the Equal Opportunities Commission under the Ordinance.

## 2 Objectives

- 2.1 The objectives of this policy are to ensure that:-
  - (1) No one will be treated less favourably on the grounds of race, colour, caste, national or ethnic origins;
  - (2) No one from any racial group will suffer a detriment from any requirements or conditions which cannot be justified on non-racial grounds;
  - (3) Opportunities for employment, training and career development are equally open to all qualified people regardless of race, colour, caste, national or ethnic origins;
  - (4) Everyone is treated with respect and dignity and no one will be subjected to any unwelcome conduct, or to an environment that is hostile or intimidating, on the ground of race, colour, caste, national or ethnic origins;
  - (5) The grievance system is properly administered regardless of race, colour, caste, national or ethnic origins; and there will be no reprisal against anyone raising concerns or complaints or taking action on discrimination or harassment on the grounds of race, colour, caste, national or ethnic origins.

## 3 Implementation

- 3.1 This policy will be a priority for [Organisation's name];
- 3.2 [Position] will have overall responsibility for this policy; and [Position (if different)] will be responsible for the day-to-day operation of this policy;

- 3.3 The policy will be communicated to all workers and job applicants;
- 3.4 Workers will be consulted about the policy and its implementation;
- 3.5 Workers will be trained on the policy and their rights and responsibilities;
- 3.6 Opportunities for employment, promotion, transfer and training will be advertised widely, internally and externally, and all applicants will be welcomed, regardless of race, colour, caste, national or ethnic origins;
- 3.7 Selection criteria and performance appraisals will be entirely related to the job or training opportunity;
- 3.8 Information on the ethnic and racial backgrounds of workers and applicants for employment, promotion and training will be collected and analysed, to monitor the implementation of this policy. The information will be held in strictest confidence and will only be used to promote equality and prevent discrimination;
- 3.9 Requirements and conditions will be reviewed in the light of monitoring results;
- 3.10 Harassment on the ground of race
  - (1) Every worker will be treated with respect and dignity. All workers have a right to work in an environment that is free from abuse or insults, where individuals treat each other with respect and value politeness.
  - (2) Harassment on the ground of race, colours, caste, national or ethnic origins is unacceptable. No one should be subjected to any unwelcome conduct, or to an environment that is hostile or intimidating, on the ground of race, colours, caste, national or ethnic origins. Examples of unacceptable conduct include:-
    - (a) Racially derogatory remarks or insults; for example, name calling which people of certain racial groups may find offensive or impolite should be avoided;
    - (b) Display of graffiti or slogans or other objects offensive to certain racial groups;
    - (c) Racist jokes, banter, ridicule or taunts;

- (d) Using a disparaging or offensive tone when communicating with people on the ground that they belonging to certain racial groups
- (e) Avoiding people on the ground that they belong to certain racial groups;
- (f) Imposing excessive workloads or performance targets on people on the ground of their race, colour, caste, national or ethnic origins;
- (g) Unnecessarily picking on individuals from particular racial groups.

3.11 Complaints about discrimination or harassment on the ground of race, colour, caste, national or ethnic origins will be taken seriously and may result in disciplinary sanctions including dismissal.