

Submission of the Hong Kong Bar Association
in Response to the Judiciary's Consultation Paper on
the Proposed Legislative Amendments to the District Court Equal Opportunities Rules

1. The Hong Kong Bar Association (“the Bar”) welcomes the Judiciary’s recommendations in the Consultation Paper to streamline the adjudication of Equal Opportunities (“EO”) proceedings in the District Court by replacing technical pleadings by more informal claim and response forms.

Background

2. Anti-discrimination statutes are social legislation with a view to protecting civil rights. Thus, EO claims should be adjudicated in a speedy manner and the costs of litigation should be reduced as much as possible.¹
3. As stated in our Submission dated 5 November 2011 in response to the Judiciary’s Consultation Paper on the Review on Adjudication of Equal Opportunities Claims by the District Court, the Bar supports the proposed introduction of informal claim forms and response forms in EO proceedings under normal circumstances to allow more flexibility and to reduce costs, subject to the Court’s discretion to order the use of pleadings in appropriate cases for case management purposes.

The Consultation Paper

4. In the Consultation Paper, the Judiciary makes various recommendations to reform the procedural framework by way of amendments to the District Court Equal Opportunities Rules (Cap. 336G) (“DCEOR”), which may be summarised as follows:
 - (1) A person who intends to initiate an EO claim would need to file with the Court a completed “claim form”, which provides guidance on the relevant information required for the commencement of EO proceedings.
 - (2) Upon receipt of the “claim form”, the Court would send a copy of the “claim form” to the respondent and inform him/her of the date of the first directions hearing (normally about 8-12 weeks from the filing of the “claim form”).

¹ *Sit Ka Yin Priscilla v Equal Opportunities Commission and Others*, DCEO 11 of 1999 (unreported, 26 October 2010) at §23.

- (3) Any respondent who intends to oppose the claim would not need to file any acknowledgement of service, but would only have to file with the Court and send to the claimant a completed "response form" within 28 days after receipt of the "claim form".
- (4) Within 14 days after the respondent has received the "claim form" or after the claimant has received the "response form", either party may send the other party a "request form" to demand the latter to provide further particulars of the grounds to substantiate the latter's case.
- (5) The procedures for, amongst others, service and exchange of documents, amendment of the forms, joinder of causes of action, and making court orders in default of filing of a document, are simplified.
- (6) The Court retains a discretionary power to order, at any stage of the proceedings of an EO claim, the use of formal pleadings in accordance with the *Rules of the District Court* (Cap. 336H) instead of the prescribed forms.
- (7) There would be a new Practice Direction dedicated for EO claims to provide for, amongst others, details of the proposed process and arrangements.

The Bar's Position

5. The Bar agrees that the proposed amendments to the DCEOR are in line with the objectives of streamlining the procedural framework, providing more flexibility for the parties in the EO proceedings, expediting the adjudication of EO claims and saving time and costs to the parties concerned.
6. The Bar also welcomes that the Court would retain a discretionary power to order the use of formal pleadings instead of the prescribed forms in appropriate cases.
7. The Bar suggests that more flexibility may be given to:
 - (1) a respondent who may require more time to file and serve a notice to respond in Form 3; and
 - (2) a claimant or respondent who may require more time to file and serve a reply to a request for further particulars in Form 4,

by inserting the phrase “*or within such extended period as the Court may upon special request allow*” in the proposed new Rules 9(1), 10(2) and 11(2), in line with the procedural regime under Rule 17(2) of the Employees’ Compensation (Rules of Court) Rules (Cap. 282B) (“**EC(ROC)R**”).

8. The Bar’s proposed amendments to the proposed new Rules 9(1), 10(2) and 11(2) would read as follows:

- (1) Rule 9(1): “*The respondent who wishes to oppose the claim in question must, within 28 days after having been served with the copy of the notice in Form 2 under rule 8, or within such extended period as the Court may upon special request allow ...*”;
- (2) Rule 10(2): “*The respondent must, within 14 days after having been served with the copy of the notice in Form 4, or within such extended period as the Court may upon special request allow ...*”;
- (3) Rule 11(2): “*The claimant must, within 14 days after having been served with the copy of the notice in Form 4, or within such extended period as the Court may upon special request allow ...*”

9. Further, the Bar would wish to point out that although the usual costs order in an EO claim is that each party shall bear its own costs,² in order to deter parties to EO proceedings from administering unnecessary or vexatious requests for further particulars, express provisions (consistent with rule 18(3) of the EC(ROC)R) may be introduced to the DCEOR as follows:

- (1) “*If the party so requested to furnish particulars fails to do within 14 days after having been served with the copy of the notice in Form 4, or within such extended period as the Court may upon special request allow, and in consequence of such failure it is necessary to adjourn the hearing of the application, the Court may order that the costs occasioned by such adjournment shall be paid by the party so in default.*”
- (2) “*The Court may disallow, with costs, any request for particulars which appears to the court to be unnecessary or vexatious.*”

² See sections 73B(3), 73C(3), 73D(3) and 73E(3) of the District Court Ordinance (Cap. 336).

(3) *“The Court may award against the party making a request for particulars the costs of the replies thereto.”*

10. The Bar anticipates that the proposed amendments to the DCEOR would enhance the efficiency, simplicity and cost-effectiveness in the adjudication system of EO cases.

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Hong Kong Bar Association