

立法會
Legislative Council

LC Paper No. CB(2)2023/07-08
(These minutes have been seen
by the Administration)

Ref : CB2/BC/2/06

**Bills Committee on
Race Discrimination Bill**

**Minutes of meeting
held on Wednesday, 13 February 2008, at 8:30 am
in Conference Room A of the Legislative Council Building**

Members present : Hon Margaret NG (Chairman)
Hon Abraham SHEK Lai-him, SBS, JP (Deputy Chairman)
Hon Martin LEE Chu-ming, SC, JP
Hon James TO Kun-sun
Hon Bernard CHAN, GBS, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Dr Hon YEUNG Sum, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk, JP
Hon LI Fung-ying, BBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Alan LEONG Kah-kit, SC
Dr Hon Fernando CHEUNG Chiu-hung
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon TAM Heung-man
Hon Mrs Anson CHAN, GBM, JP

Members absent : Hon LEE Cheuk-yan
Dr Hon LUI Ming-wah, SBS, JP
Hon CHEUNG Man-kwong
Hon CHAN Yuen-han, SBS, JP
Hon Howard YOUNG, SBS, JP
Hon Albert CHAN Wai-yip
Hon Daniel LAM Wai-keung, SBS, JP

Action

- Public Officers attending** : Mr Arthur HO
Deputy Secretary for Constitutional and Mainland Affairs (1)
- Mr Victor NG
Principal Assistant Secretary for Constitutional and Mainland Affairs (5)
- Mr Stanley NG
Assistant Secretary for Constitutional and Mainland Affairs (5)A
- Miss Betty CHEUNG
Senior Government Counsel
- Miss Shandy LIU
Senior Government Counsel
- Clerk in attendance** : Miss Flora TAI
Chief Council Secretary (2)2
- Staff in attendance** : Mr KAU Kin-wah
Assistant Legal Adviser 6
- Ms Joanne MAK
Senior Council Secretary (2)2
- Ms Anna CHEUNG
Legislative Assistant (2)2

Action

I. Meeting with the Administration

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|---------------------------|-------|--------|--|
| LC
CB(2)1046/07-08(01) | Paper | No. -- | Administration's paper entitled "Clauses on employment, especially on offer of overseas terms and employment by airlines and shipping companies" |
| LC
CB(2)1046/07-08(02) | Paper | No. -- | Administration's paper entitled "Clauses on employment : specified exceptions under Clause 10" |
| LC
CB(3)176/06-07 | Paper | No. -- | The Bill |

Action

LC	Paper	No.	--	Summary of views received from deputations/individuals on specific clauses of the Bill (as at 6 February 2008)
CB(2)1030/07-08(01)				

Clause-by-clause examination of the Bill

The Bills Committee completed scrutiny of Clauses 15 to 17 (index of proceedings attached at **Annex**).

2. The Administration was requested to provide written response to -
- (a) Mr Ronny TONG's concern that an employer might be able to circumvent the proposed legislation by setting up a company in an overseas jurisdiction where there was no anti-racial discrimination law to recruit staff from that jurisdiction to work in Hong Kong and his suggestion of adding an express provision under Part 3 of the Bill to the effect that any local or overseas companies within the same group should be regarded as one employer;
 - (b) the concerns of the legal adviser to the Bills Committee that the definition of "overseas terms of employment" in paragraph 11 of Schedule 2 turned on the fact whether the terms of employment applied to people who were not Hong Kong permanent residents, which might not be the basis upon which overseas terms of employment were usually granted and it was not clear how "primarily" in the definitions should be interpreted;
 - (c) Mr Ronny TONG's suggestion of amending Clause 15 to extend the protection of contract workers who worked under a sub-contract which was not made directly with the principal and Mr Alan LEONG's suggestion of substituting "with the principal.", at the end of Clause 15(1), with "directly with the principal or indirectly through one or more intermediaries.";
 - (d) Ms LI Fung-ying's concern that the scope of employment to be protected under Clause 16 might be narrower than that of the Employment Ordinance and the Employees' Compensation Ordinance as these two ordinances seemed to apply to an employee working outside Hong Kong provided that the employee's contract of employment was entered into in Hong Kong with a Hong Kong employer;

Action

- (e) the justification for providing for an exemption for small partnership and not providing for a date when the exemption would expire under Clause 17;
 - (f) the rationale for not following the amendment made to the Race Relation Act of the United Kingdom in 2003 narrowing down the small partnership exemption; and
 - (g) an explanation of conditions for the Chief Executive in Council to exercise the power under Clause 17(7) to alter or abolish the exemption.
3. There being no other business, the meeting ended at 10:40 am.

Council Business Division 2
Legislative Council Secretariat
22 May 2008

**Proceedings of the meeting of Bills Committee on
Race Discrimination Bill
on Wednesday, 13 February 2008, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000507	Chairman	Briefing on the informal meeting between members of the Bills Committee and the Secretary for Constitutional and Mainland Affairs (SCMA) held on 28 January 2008.	
000508 - 003619	Ms Emily LAU Chairman Admin Mrs Anson CHAN Mr Ronny TONG Dr YEUNG Sum Dr Fernando CHEUNG Clerk Mr Jeffrey LAM	<p>Provision of draft Committee Stage amendments to be proposed by the Administration as early as possible.</p> <p>The Chairman's request for a concrete response from the Administration to address the four fundamental issues raised by the Bills Committee as early as possible.</p> <p>Discussions on the response of the Administration about Central Government's response to the concern raised by United Nations (UN) Committee on the Elimination of Racial Discrimination regarding the Bill, and on Ms Emily LAU's suggestion that the Bills Committee should write to the UN Committee conveying the Bills Committee's concerns.</p> <p>The Chairman's conclusion that she would write to the UN Committee in her personal capacity and provide a copy of the paper encapsulating the scrutiny progress of the Race Discrimination Bill prepared by the Legislative Council (LegCo) Secretariat to the Committee.</p>	
003620 - 005113	Chairman Admin	The Administration's response to concerns raised by members at the last meeting on 21 January 2008 concerning clauses on employment. [LC Paper Nos. CB(2)1046/07-08(01) and (02)]	
005114 - 005950	Mr Ronny TONG Admin Chairman	Regarding paragraph 7 of LC Paper No. CB(2)1046/07-08(01), Mr Ronny TONG's suggestion that a provision should be added under Part 3 to the effect that any local or overseas companies within the same group should be regarded as one employer.	Admin to provide written response to Mr TONG's suggestion. (para. 2(a) of minutes)

Time marker	Speaker	Subject	Action required
005951 - 010821	Dr Fernando CHEUNG Admin Mr Ronny TONG Chairman	<p>Dr Fernando CHEUNG's enquiries of whether it would constitute racial discrimination if the terms of employment of a local native-speaking English teacher (NET) of a different race compared less favourably than that of an overseas NET who was employed on overseas terms and about the effect of the status of an employee being a permanent resident of Hong Kong.</p> <p>The Administration made the following responses -</p> <p>(a) an exception for employees who were in existing employment on local and overseas terms was provided for under Clause 14 and Schedule 2;</p> <p>(b) it was permissible to offer overseas terms after enactment of the Bill provided that the employee concerned fulfilled the conditions specified under Clause 13; and</p> <p>(c) whether or not an employee was a Hong Kong permanent resident would not affect the application of Clause 13 or 14.</p>	
010822 - 011815	Chairman Admin ALA6	<p>ALA6's concern that the definition of "overseas terms of employment" under paragraph 11 of Schedule 2 depended on whether an employee was a Hong Kong permanent resident but such terms were often offered on the basis of an employee's being a national or citizen in a foreign country.</p> <p>The Administration was requested to review the definitions to address the concern.</p>	<p>Admin to provide written response to ALA6's concerns. (para. 2(b) of minutes)</p>
011816 - 014512	Dr Fernando CHEUNG Admin Chairman ALA6 Mrs Anson CHAN Mr Ronny TONG Dr YEUNG Sum Mr Alan LEONG	<p>Clause-by-clause examination of the Bill</p> <p><u>Clause 15</u></p> <p>Dr Fernando CHEUNG's concern about the adequacy of protection for an employee of a subcontractor who had not entered into a contract with the principal.</p> <p>The Administration's confirmation that the employee would not be</p>	

Time marker	Speaker	Subject	Action required
		<p>protected under Clause 15.</p> <p>Mr Ronny TONG's suggestion that the contractual relationship under Clause 15 should be extended to cover contract workers who worked under a sub-contract which was not made directly with the principal.</p> <p>Mr Alan LEONG's suggested amendment for Clause 15(1).</p>	<p>Admin to provide written response to Mr TONG's and Mr LEONG's suggestions. (para. 2(c) of minutes)</p>
014513 - 015501	Admin Ms Emily LAU Chairman Ms LI Fung-ying	<p><u>Clause 16</u></p> <p>Ms Emily LAU's remark that the Administration should respond to the suggestion made by Mr Y K CHONG concerning Clause 16 [LC Paper No. CB(2)1030/07-08(01)].</p> <p>Ms LI Fung-ying's concern that the scope of employment to be protected under Clause 16 was narrower than that of other employment-related legislation in Hong Kong, specifically, the Employment Ordinance and the Employees' Compensation Ordinance.</p> <p>The Administration's agreement to address Ms LI's concern in writing.</p>	<p>Admin to provide written response to concern raised by Ms LI. (para. 2(d) of minutes)</p>
015502 - 015741	Chairman Admin	<p>The Chairman's remark that the Administration should respond to the suggestion made by the Hong Kong Bar Association concerning Clause 16. [LC Paper No. CB(2)1030/07-08(01)].</p> <p>The Chairman's view that it was problematic if the Bill allowed a company in Hong Kong to practise racial discrimination in its employment provided that the employee concerned did his work wholly or mainly outside Hong Kong.</p> <p>The Administration's explanation that Clause 16 was in line with the relevant provision in the existing anti-discrimination ordinances.</p>	
015742 - 021003	Admin Ms LI Fung-ying Chairman Ms Emily LAU Dr Fernando CHEUNG	<p><u>Clause 17</u></p> <p>Ms LI Fung-ying's enquiry of the basis of giving the exemption to "a firm of not less than 6 partners"</p>	<p>Admin to provide written response to concerns raised by various</p>

Time marker	Speaker	Subject	Action required
	<p>Dr YEUNG Sum Mrs Anson CHAN Mr Martin LEE</p>	<p>under Clause 17(1).</p> <p>The Administration's response that a line had to be drawn somewhere to define small partnership and the provision was consistent with relevant provision in the existing anti-discrimination ordinances.</p> <p>The Chairman's concern that a majority of the solicitor firms in Hong Kong consisted of less than 6 partners and they would fall outside the scope of applicability of Clause 17.</p> <p>Ms Emily LAU's reference to the concerns raised by the Hong Kong Bar Association concerning Clause 17. [LC Paper No. CB(2)1030/07-08(01)]</p> <p>Dr Fernando CHEUNG's query about the conditions under which the Chief Executive in Council would exercise the power provided under Clause 17(7) to alter or abolish the exemption.</p> <p>Mr Martin LI's and Mrs Anson CHAN's expression of disagreement with Clause 17 and their concern that no date was provided for the expiry of the small partnership exemption.</p>	<p>members on Clause 17. (para. 2(e)-(g) of minutes)</p>
021004 - 021018	Chairman	Date of next meeting.	