

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

**Summary of views received from deputations/individuals on specific provisions of the Code of Practice on Employment  
(the Code) under the Race Discrimination Ordinance (RDO)  
(as at 15 June 2009)**

| <b>Deputation/Individual<br/>[LC Paper No. of submission]</b>   | <b>Comments/Proposed amendments</b>  |
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| <b>Chapter 2 - Meaning of Race under RDO</b>  |  |
| <b>Paragraph 2.1 - What is meant by race under RDO</b>  |  |
| <p>The Law Society of Hong Kong<br/>[CB(2)1816/08-09(03)]</p> <p>Society for Community Organization (SOCO)<br/>[CB(2)1835/08-09(02)]</p> <p>Employers' Federation of Hong Kong<br/>[CB(2)1890/08-09(01)]</p> <p>The Democratic Party (DP)</p> <p>Hong Kong Human Rights Monitor (HKHRM)<br/>[CB(2)1880/08-09(02)]</p> | <p><u>Paragraph 2.1.3</u></p> <p>The Law Society considers that the reference to “ICERD (International Convention on the Elimination of All Forms of Racial Discrimination) and related documents” is unlikely to be of much use to employers, and it would be more helpful to include in the Code those sections of the ICERD documents which are considered relevant.</p> <p><u>Paragraph 2.1.4</u></p> <p>SOCO considers it important to highlight the issues of religion and language in paragraph 2.1 to clarify the meaning of race under RDO, by inserting the heading “Religion” to paragraph 2.1.4 and inserting after paragraph 2.1.4(4) a paragraph with a heading about language to explain how the issue of language can be related to racial discrimination.</p> <p>DP suggests providing more illustrations to paragraph 2.1.4(4) to explain how requirements or conditions relating to religion may indirectly discriminate certain racial groups.</p> |

| Deputation/Individual<br>[LC Paper No. of submission]  | Comments/Proposed amendments  |
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|  | <p>Employers' Federation of Hong Kong is of the view that the interaction between the concept of race and the religion of an individual should be further explained in the Code.</p> <p>HKHRM suggests making the following amendments to the Chinese text of paragraph 2.1.4(2) to achieve consistency with the English text -</p> <p>(a) amend the phrase "民族包括一些其國家已不復存在的民族" to "民族包括一些其國家已不復存在的國家的民族"; and</p> <p>(b) amend the phrase "從未自成一國的民族" to "從未自成一民族國家的民族".</p>   |
| <b>Paragraph 2.2 - What is not regarded as an act done on the ground of race under the RDO</b>                               |   |
| <p>The Hong Kong Bar Association<br/>[CB(2)1816/08-09(02)]</p> <p>The Law Society of Hong Kong<br/>[CB(2)1816/08-09(03)]</p> | <p><u>Paragraph 2.2.2 – Illustration 1</u></p> <p>The Bar Association considers the illustration not readily understood. If the intended meaning of the fourth sentence is to indicate that the company in fact employs non-permanent residents of Hong Kong, it can be rephrased as "In fact, the company does not employ <i>only</i> people who are permanent residents of Hong Kong".</p> <p>The Law Society finds the statement "She meets all the requirements of the job" in the illustration irrelevant, misleading and should be deleted.</p> |
| <b>Chapter 3 - Scope of Part 3 of RDO</b>  |   |
| <b>Paragraph 3.3 - Work wholly or mainly outside Hong Kong</b>   |   |

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| <p>The Law Society of Hong Kong<br/>[CB(2)1816/08-09(03)]</p> <p>Hong Kong General Chamber of Commerce (HKGCC)<br/>[CB(2)1880/08-09(03)]</p>  | <p><u>Paragraph 3.3.1</u></p> <p>The Law Society considers it inappropriate to present in the Code a method of determination of section 16(1) of RDO (i.e. meaning of working wholly or mainly outside Hong Kong) expressed with absolute confidence as if the UK cases somehow are binding on Hong Kong courts. Similarly, the illustrations in the Code on this point (which are absolutely specific) can prove misleading.</p> <p>HKGCC points out that when assessing how much of the “whole period of employment” of an employee is spent working in Hong Kong (as opposed to outside Hong Kong), it is not clear from paragraph 3.3.1(2) and illustration 4 whether the assessment should only be based on historical facts (i.e. contractual or prospective allocation of time between Hong Kong and outside Hong Kong for future purposes should be ignored).</p> |
| <p><b>Paragraph 3.8.1 – Vocational training</b></p>   |   |
| <p>HKSKH Lady MacLehose Centre (HKSKH)<br/>[CB(2)1816/08-09(01)]</p> <p>Hong Kong Unison<br/>[CB(2)1848/08-09(01)]</p> <p>Hong Kong Integrated Nepalese Society</p> <p>The Federation of Hong Kong &amp; Kowloon Labour Unions (FHKKLU)</p> | <p>Hong Kong Unison and Hong Kong Integrated Nepalese Society consider that vocational training providers should be actively encouraged to cater to the needs of ethnic minorities as far as practicable in planning and designing training courses, e.g. by providing course information and material in English. More illustrations on good practice in this regard should be provided in the Code.</p> <p>HKSKH and FHKKLU suggest that examples should be added to illustrate when language requirement for vocational training courses can be regarded as commensurate with the contents of the course.</p>  |
| <p><b>Chapter 4 - Rights and responsibilities under RDO</b></p>   |   |

| <b>Deputation/Individual<br/>[LC Paper No. of submission]</b>  | <b>Comments/Proposed amendments</b>  |
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| <b>Paragraph 4.1 - Responsibilities of employers and principals</b>  |  |
| <p>The Hong Kong Bar Association<br/>[CB(2)1816/08-09(02)]</p> <p>The Law Society of Hong Kong<br/>[CB(2)1816/08-09(03)]</p> <p>Employers' Federation of Hong Kong<br/>[CB(2)1890/08-09(01)]</p> | <p><u>Paragraph 4.1.2 (1)</u></p> <p>The Law Society considers it inappropriate for the Code to recommend the adoption of a specific policy of good employment practice, which imposes obligations upon employers over and above those required by RDO. This section should be rewritten to provide for a recommendation that an employer implements a policy which covers compliance with the restrictions in RDO. This point appears in various other paragraphs throughout the Code, each of which should be amended.</p> <p><u>Paragraph 4.1.2 (2)</u></p> <p>The Bar Association, Law Society and Employers' Federation of Hong Kong consider that the paragraph needs to be refined, as the case law is far more complex than implied in this paragraph. While the Code may have to indicate the possibility that certain after-work activities may in the context of RDO be regarded as "in the course of employment", it should at the same time emphasize that such a finding is very much fact-sensitive and it should not be taken that every social gathering "immediately after work" or every "organized party" involving work colleagues would be so held.</p> <p><u>Paragraph 4.1.3</u></p> <p>The Law Society points out that normally an "agent" is not an employee, but this paragraph refers to "employment practice". Clarification is considered necessary in this regard.</p> |
| <b>Paragraph 4.2 - Rights of employees and workers and their roles</b>   |  |
| <p>Society for Community Organization<br/>(SOCO)</p>   | <p>Paragraph 4.2.3 on employees' role should be expanded along the lines of paragraphs 24 to 25 of the Code of Practice on Employment under the Sex Discrimination Ordinance (SDO Code).</p>   |

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| [CB(2)1835/08-09(02)]   |  |
| <b>Chapter 5 - Practising and promoting racial equality</b>   |  |
| <b>Paragraph 5.2 - Drawing up and implementing a policy</b>   |  |
| <p>The Law Society of Hong Kong<br/>[CB(2)1816/08-09(03)]</p> <p>Employers' Federation of Hong Kong<br/>[CB(2)1890/08-09(01)]</p> | <p><u>Paragraph 5.2.1</u></p> <p>The Law Society and the Employers' Federation of Hong Kong opine that there are certain areas where the Equal Opportunities Commission (EOC) has overstepped the mark in advising employers. For instance, while employers should make best efforts in providing a discrimination-free environment in the workplace, they are not under any obligation to “promote” racial equality or to monitor compliance with RDO.</p> <p><u>Paragraph 5.2.2(2)</u></p> <p>The Law Society considers that the word "disparately" used in this paragraph (and in numerous places elsewhere throughout the Code) should be amended. It points out that the actual wording in RDO refers to a considerably smaller proportion and recommends that the wording in the legislation be used.</p> <p><u>Paragraph 5.2.3</u></p> <p>The Law Society considers the statement "the spirit of practising and promoting racial equality must always be followed" misleading, as there is no obligation upon any employer to promote racial equality. Furthermore, it is pointed out that at common law, one rarely talks about "spirit", unlike some other jurisdictions where the "spirit" of legislation can be used for construing legislative provisions.</p> |

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| <b>Paragraph 5.3.1 – Recruitment using consistent selection criteria</b>   |  |
| Society for Community Organization (SOCO)<br>[CB(2)1835/08-09(02)]   | The Code does not provide a general explanation of the principles or benefits of using consistent selection criteria. SOCO suggests incorporating paragraphs 10.1 to 10.5 of the SDO Code, mutatis mutandis, into paragraph 5.3.1 [please refer to point 5 (Consistent selection criteria) on pages 4 and 5 of SOCO's submission for details].   |
| <b>Paragraph 5.3.3 – Genuine Occupational Qualification</b>  |  |
| HKSKH Lady MacLehose Centre<br>[CB(2)1816/08-09(01)]   | <u>Paragraph 5.3.3(1)(c)</u><br><br>Examples should be included to illustrate the nature of the jobs covered under the situation specified in the sub-paragraph and explain the meaning of “authenticity”.   |
| <b>Paragraph 5.3.4 - Advertising vacancies</b>   |  |
| The Law Society of Hong Kong<br>[CB(2)1816/08-09(03)]<br><br>HKSKH Lady MacLehose Centre (HKSKH)<br>[CB(2)1816/08-09(01)]<br><br>Society for Community Organization (SOCO)<br>[CB(2)1835/08-09(02)]<br><br>Hong Kong Human Rights Monitor (HKHRM)<br>[CB(2)1880/08-09(02)]<br><br>Hong Kong General Chamber of | Making reference to paragraph 11.5.2 of the SDO Code, SOCO suggests inserting the following under paragraph 5.3.4 -<br><br>- “review all advertising materials and accompanying literature relating to employment to ensure that such materials do not present different races in stereotypical roles. Use job titles, headlines and illustrations with care.”<br><br><u>Paragraph 5.3.4(2)</u><br><br>The Law Society considers that the statement “asking for ID numbers would be acceptable” should not be made as this is very unlikely to be acceptable in the light of the restrictions in the Personal Data (Privacy) Ordinance.<br><br><u>Paragraph 5.3.4(3)</u> |

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| Commerce (HKGCC)<br>[CB(2)1880/08-09(03)]   | <p>HKSKH suggests that where the job requires only the ability to speak but not read or write in Chinese, the Code should recommend (rather than encourage) employers, particularly large employers, to advertise in both Chinese and English. HKSKH is of the strong view that wording such as “employers are encouraged to” should be replaced by “employers are recommended to” or “employers should”, as appropriate, with a view to emphasizing the importance of ensuring racial equality in employment matters.</p> <p>HKGCC considers the recommendation to advertise in both Chinese and English too onerous, especially for small employers. If making such a recommendation is a must, then all recommendations should be qualified to the effect they are not mandatory.</p> <p>HKHRM suggests amending the Chinese rendition of the word "satisfactory" in paragraph 5.3.4(3) from "理想" to "良好" to achieve consistency with the Chinese text of paragraphs 5.3.1(1)(d) and 5.3.1(2).</p> |
| <b>Paragraph 5.3.5 - Shortlisting</b>   |   |
| HKSKH Lady MacLehose Centre<br>[LC Paper No. CB(2)1816/08-09(01)]<br><br>The Federation of Hong Kong &<br>Kowloon Labour Unions | In respect of paragraph 5.3.5(1) and (2), EOC should consider adding that employers should also keep record of the selection criteria and marking system used in the shortlisting process.  |
| <b>Paragraph 5.3.6 - Race related information</b>   |   |
| The Law Society of Hong Kong<br>[CB(2)1816/08-09(03)]   | <p><u>Paragraph 5.3.6 (2)</u></p> <p>The beginning of this paragraph should be revised to read "Race-related information should only be sought for the purposes of making ...".</p>   |

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| <b>Paragraph 5.3.7 - Interviewing</b>  |  |
| <p>The Law Society of Hong Kong<br/>[CB(2)1816/08-09(03)]</p> <p>Society for Community Organization (SOCO)<br/>[CB(2)1835/08-09(02)]</p> <p>Hong Kong Human Rights Monitor (HKHRM)<br/>[CB(2)1880/08-09(02)]</p> | <p>The Law Society suggests that reference should be made to the risk of holding interviews on days on which certain ethnic groups may not be able to attend.</p> <p>SOCO suggests making reference to paragraphs 11.8 and 11.9 of the SDO Code and inserting-</p> <ul style="list-style-type: none"> <li>(a) at the beginning of paragraph 5.3.7 - “An interviewer who seeks evidence of skills and abilities and who relies on facts rather than generalised hunches will be less likely to be biased. In line with good management practice, it is recommended...”; and</li> <li>(b) after paragraph 5.3.7(3): “It is a good practice to record, immediately after the interview, the assessment that each interviewer has formed on the applicant's ability to match the consistent selection criteria. This will not only ensure a logical assessment of the applicant's strengths and weaknesses but will also serve as a valuable explanation and defence against any unfounded suggestion of race bias.”</li> </ul> <p>In relation to paragraphs 5.3.7(3) and 5.3.16(5), HKHRM suggests adding the words “at least” before “24 months” and deleting the phrase “or if this is not practicable, at least not less than 12 months” to the effect that records of recruitment process, and notes on dismissals and redundancies are kept for not less than 24 months.</p> |
| <b>Paragraph 5.3.8 - Tests</b>   |  |
| <p>Society for Community Organization (SOCO)<br/>[CB(2)1835/08-09(02)]</p>   | <p>SOCO suggests inserting after paragraph 5.3.8 information on post-hiring enquiries along the line of paragraphs 11.13 and 11.14 of the SDO Code.</p>  |
| <b>Paragraph 5.3.9 – Recruitment through employment agencies or employment services</b>  |  |

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| <p>Association of Indonesian Migrant Workers in Hong Kong</p> <p>Hong Kong General Chamber of Commerce (HKGCC)<br/>[CB(2)1880/08-09(03)]</p>   | <p>HKGCC considers that the Code should clarify that if employers instruct the agency or employment services that there should be no discrimination in the recruitment process, the employer is not liable if the agencies/employment services are found to have infringed the provisions of RDO.</p> <p>Association of Indonesian Migrant Workers in Hong Kong suggests adding to the Code that an arrangement by employment agencies for underpayment to employees of certain racial groups is an act of discrimination on the ground of race.</p>   |
| <p><b>Paragraph 5.3.10 - Terms and conditions of employment, benefits, facilities and services</b></p>   |  |
| <p>HKSKH Lady MacLehose Centre (HKSKH)<br/>[CB(2)1816/08-09(01)]</p> <p>The Law Society of Hong Kong<br/>[CB(2)1816/08-09(03)]</p> <p>Society for Community Organization (SOCO)<br/>[CB(2)1835/08-09(02)]</p> <p>Hong Kong Human Rights Monitor (HKHRM)<br/>[CB(2)1880/08-09(02)]</p> <p>Hong Kong General Chamber of Commerce (HKGCC)<br/>[CB(2)1880/08-09(03)]</p> | <p>SOCO suggests inserting under paragraph 5.3.10 various paragraphs relating to dress codes, equal pay for work of equal value, job titles, part-time work, and consideration for individual differences in pay, along the lines of paragraphs 12.1, 12.4, 12.5, 12.9 to 12.11, 12.13 and 12.15 of the SDO Code (please refer to point 9 on pages 6 to 8 of SOCO's submission for details).</p> <p>HKSKH suggests adding a sub-paragraph under paragraph 5.3.10 to specify that employees of the same rank should be assigned broadly similar duties.</p> <p><u>Paragraph 5.3.10(1)</u></p> <p>HKHRM suggests adding the words “terms, policies and conditions” (“條款、政策、條件”) after the word “rules” to provide better safeguards to employees.</p> <p><u>Paragraph 5.3.10(2)</u></p> <p>The Law Society suggests that the reference to the UK case <i>Ahmad v Inner Education</i></p> |

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| Employers' Federation of Hong Kong<br>[CB(2)1890/08-09(01)]  | <p><i>Authority (1977)(ICR 490)</i> in footnote 60 be removed, as there is no case law to suggest that Muslims should be considered a distinct ethnic group for the purposes of RDO.</p> <p><u>Paragraphs 5.3.10(4) to (8)</u></p> <p>The Law Society, Employers' Federation of Hong Kong and HKGCC consider that the paragraphs on equal pay for equal work/work of equal value are inappropriate and misleading and should be deleted. It is pointed out that equal pay for equal work is an entirely separate issue from race discrimination and it goes beyond the scope of RDO to provide in the Code that employers should maintain the principle of equal pay for equal work.</p>  |
| <b>Paragraph 5.3.12 - Language</b>   |   |
| The Law Society of Hong Kong<br>[CB(2)1816/08-09(03)]<br><br>Hong Kong General Chamber of Commerce (HKGCC)<br>[CB(2)1880/08-09(03)]<br><br>Employers' Federation of Hong Kong<br>[CB(2)1890/08-09(01)] | <p>Employers' Federation of Hong Kong expresses concern about the need to justify pre-conditions which may have a differential impact on different races (e.g. language requirements) as well as the structuring of different remuneration packages for different applicants. It considers that paragraph 5.3.12 should be materially expanded, with relevant examples to be added.</p> <p><u>Paragraph 5.3.12(1) and (2)</u></p> <p>HKGCC considers that paragraphs 5.3.12(2) and 6.1.1(1)(c) should be appropriately qualified to make it clear that accent requirement can be acceptable so long as it is commensurate with the satisfactory performance of a job as stated in paragraph 5.3.12(1).</p> <p><u>Paragraph 5.3.12(3)</u></p> <p>The Law Society opines that EOC should clarify whether it is of the view that all relevant information relating to employment matters should be provided in a language (or languages)</p> |

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|   | which can be read by all employees. If this is not the case, the paragraph should be amended.  |
| <b>Paragraph 5.3.13 - Promotion, transfer and training</b>  |  |
| Society for Community Organization (SOCO)<br>[CB(2)1835/08-09(02)]<br><br>Hong Kong Integrated Nepalese Society                 | SOCO suggests - <ul style="list-style-type: none"> <li>(a) inserting before paragraph 5.3.13(1) a paragraph similar to paragraph 13.1 of the SDO Code; and</li> <li>(b) inserting after paragraph 5.3.13(6) a paragraph similar to paragraph 13.1.6 of the SDO Code.</li> </ul> Hong Kong Integrated Nepalese Society recommends stating in the Code that employers should ensure that employees of ethnic minorities are not treated less favourably in terms of training opportunities because of language.  |
| <b>Paragraph 5.3.14 – Prevent harassment on the ground of race</b>  |  |
| The Law Society of Hong Kong<br>[CB(2)1816/08-09(03)]<br><br>Society for Community Organization (SOCO)<br>[CB(2)1835/08-09(02)] | SOCO recommends that, except for the examples mentioned in paragraph 5.3.14(3)(a)-(g), paragraph 5.3.14 should be re-drafted along the lines of SDO Code paragraphs 19-22 (please refer to point 11 on pages 8 to 11 of SOCO's submission for details).<br><br><u>Paragraph 5.3.14(3)(f)</u><br><br>The Law Society points out that while the imposition of excessive workload or performance targets on people on the ground of race is almost certainly to be unlawful under RDO, it does not amount to harassment as defined in section 7 of RDO. |

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| <b>Paragraph 5.3.16 – Dismissals, redundancies and unfavourable treatment of employees</b>   |  |
| HKSKH Lady MacLehose Centre (HKSKH)<br>[CB(2)1816/08-09(01)]<br><br>Society for Community Organization (SOCO)<br>[CB(2)1835/08-09(02)]                                   | SOCO suggests inserting in paragraph 5.3.16 a paragraph similar to paragraph 14.1 of SDO Code.<br><br>HKSKH suggests adding a sub-paragraph under 5.3.16 to specify that the race of an employee (including race-related factors such as language, appearance and attire) should not be used as the ground for dismissals, redundancies and unfavourable treatment of employees.                 |
| <b>Paragraph 5.3.17 – Monitoring</b>   |  |
| The Law Society of Hong Kong<br>[CB(2)1816/08-09(03)]  | Any suggestion that monitoring should be carried out by <u>all</u> employers should be removed from the Code. Whilst the monitoring of practices and policies and their impact is a useful exercise for large employers, it could amount to a very dangerous exercise when carried out other than with greatest care.  |
| <b>Chapter 6 – Unlawful acts under RDO</b>   |  |
| <b>Paragraph 6.1.1 – Racial Discrimination</b>   |  |
| The Law Society of Hong Kong<br>[CB(2)1816/08-09(03)]<br><br>Society for Community Organization (SOCO)<br>[CB(2)1835/08-09(02)]<br><br>Unitarian Universalists Hong Kong | SOCO recommends that the Code should follow a similar structure as that of the SDO Code. Making reference to the SDO Code, SOCO suggests placing the contents of chapter 6 (types of discrimination, racial harassment, victimization, vilification and positive action) in an earlier part of the Code, say between chapters 2 and 3.<br><br><u>Paragraph 6.1.1 (1) – Direct Discrimination</u> |

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| <p>[CB(2)1880/08-09(01)]</p> <p>Hong Kong Human Rights Monitor (HKHRM)</p> <p>[CB(2)1880/08-09(02)]</p> | <p>HKHRM suggests amending the word "作為" in the last sentence of the Chinese text of paragraph 6.1.1(1)(a) into "行爲" to achieve consistency with other parts of the Chinese text.</p> <p>Illustration 7 –The Law Society points out that it is not necessary that “another job seeker not of Pakistani origin would not have been declined” for unlawful discrimination to exist.</p> <p>Illustration 8 – The Law Society points out that the fact that the two people mentioned in the illustration are “in the same or materially similar employment situation (such as they both do the same job and have similar experience and their performance are both good)” is not essential. It will constitute race discrimination if someone is paid less than they otherwise would have been on the ground of race, even without a direct comparator.</p> <p><u>Paragraph 6.1.1(2) – Indirect Discrimination</u></p> <p>Illustration 9 – The Law Society suggests revising the last few words to read “if information shows that the blanket ban is not justifiable, as face masks could have been used satisfactorily to meet health and safety standards”.</p> <p>Illustration 13 – Unitarian Universalists Hong Kong suggests either putting an illustration to demonstrate how language requirement can be considered indirect discrimination or deleting Illustration 13 from the Code so that a standard language requirement cannot be easily used as an excuse for screening out ethnic minorities or justifying indirect discrimination.</p> |
| <p><b>Paragraph 6.1.2 – Discrimination on the ground of near relative’s race</b></p>                    |   |
| <p>The Law Society of Hong Kong</p> <p>[CB(2)1816/08-09(03)]</p>  | <p>The action in Illustration 14 can still be regarded as race discrimination even if there is no subsequent appointment.</p>   |
| <p><b>Paragraph 6.1.3 – Discrimination by way of victimization</b></p>                                  |   |

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| The Law Society of Hong Kong<br>[CB(2)1816/08-09(03)]  | The Law Society suggests to make it clear in Illustration 15 that victimization can occur even when the allegation of unlawful discrimination is without merit.  |
| <b>Paragraph 6.3 – Unlawful racial harassment</b>  |  |
| Society for Community Organization (SOCO)<br>[CB(2)1835/08-09(02)]   | The concept of racial harassment has been downplayed in the Code and there is insufficient details relating to the formulation of a policy on racial harassment.   |
| <b>Paragraph 6.5 – Discriminatory advertisements</b>   |  |
| HKSKH Lady MacLehose Centre (HKSKH)<br>[CB(2)1816/08-09(01)]   | Language issues and relevant examples should be included in paragraph 6.5, for instance, by stating that it would be unlawful to specify a language requirement in the recruitment advertisement if it is not necessary for the satisfactory performance of the job, and to advertise solely in a language which is not required for the satisfactory performance of the job.  |
| <b>Paragraph 6.7 – Acts allowed under RDO</b>  |  |
| The Law Society of Hong Kong<br>[CB(2)1816/08-09(03)]<br><br>Hong Kong General Chamber of Commerce (HKGCC)<br>[CB(2)1880/08-09(03)]<br><br>Employers' Federation of Hong Kong<br>[CB(2)1890/08-09(01)] | <u>Paragraphs 6.7.3 and 6.7.4</u><br><br>The Code is still unclear in the area of expatriate exceptions. The condition of expatriate employment may change over time (e.g. cessation of special skills, right of abode, etc.) which may create confusion and concern on the eligibility of expatriate terms. For instance, the Code does not explain whether a company is obliged to align an expatriate's employment terms after he has obtained permanent residency after staying in Hong Kong for seven years. Neither does it explain in detail how the exception in section 12 of RDO will apply in practice. More illustrations should be provided to explain how these exceptions will operate in practice. |
| <b>Chapter 7 – When discrimination and harassment is encountered</b>   |  |

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| <b>Paragraph 7.2 – Complaint handling by EOC</b>   |   |
| Hong Kong Unison<br>[CB(2)1848/08-09(01)]  | <p><u>Paragraph 7.2.10</u></p> <p>The paragraph focuses on the advantages of conciliation. However, it is also important to remind complainants that conciliation can only be conducted with the mutual consent of both parties and that a mediation agreement would not be tantamount to a court order, with a view to facilitating parties concerned to choose the dispute resolution method most suited to their needs.</p>  |
| <b>Paragraph 7.3 – Legal assistance by EOC</b>   |   |
| <p>The Hong Kong Bar Association<br/>[CB(2)1816/08-09(02)]</p> <p>Hong Kong Unison<br/>[CB(2)1848/08-09(01)]</p> | <p><u>Paragraph 7.3.2</u></p> <p>The Bar Association opines that the range of factors highlighted in the paragraph has not been set out in clear order. It seems that the last sub-clause, namely “and whether the case reflects a widespread problem or the EOC’s strategic concerns”, refers to two factors that are not mutually exclusive which have been appended under that sub-clause as an afterthought.</p> <p>Hong Kong Unison considers that elaboration should be made on the meaning of the phrase “EOC’s strategic concerns”.</p> |
| <b>Annex – Sample policy on racial equality</b>  |   |
| Society for Community Organization (SOCO)<br>[CB(2)1835/08-09(02)]   | <p>The following should be incorporated into the sample policy:</p> <p>(a) An equal opportunities action plan will be drawn up, with racial equality targets and timetables, to show what steps the organization plans to take to achieve equality of opportunity;</p>  |

| <b>Deputation/Individual<br/>[LC Paper No. of submission]</b> | <b>Comments/Proposed amendments</b>  |
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|   | <p>(b) The effectiveness of the policy and the plan will be monitored regularly. A report on progress will be produced each year, and published via the intranet, the website, the staff newsletter, notice boards, and the annual report; and</p> <p>(c) Customers and clients will be made aware of the policy, and of their right to fair and equal treatment, irrespective of race, colour, nationality or ethnic or national origins.</p>   |
| Employers' Federation of Hong Kong<br>[CB(2)1890/08-09(01)]   | Small employers will find the Code difficult to observe. While it is appropriate for the Code to recommend the adoption of a specific policy, the sample policy set out in the Code is too strenuous for small companies to comply with.   |
| Paragraph 3 of the sample policy – Implementation             |  |
| The Law Society of Hong Kong<br>[CB(2)1816/08-09(03)]         | <p><u>Paragraphs 3.4 and 3.5</u></p> <p>To include paragraphs of this nature (dealing with training and consultation) into the policy on racial equality is in effect imposing contractual obligations upon employers which do not exist in the legislation. It should at least be made clear to employers that they are not obliged to include these sections unless they wish to do so.</p> <p><u>Paragraph 3.7</u></p> <p>The paragraph is incorrect and should be re-drafted, as the only restriction should be that criteria and performance appraisals are not racially motivated.</p> <p><u>Paragraphs 3.8 and 3.9</u></p> <p>It is inappropriate to impose an obligation upon employers to monitor.</p> <p><u>Paragraph 3.10(2)(f)</u></p> |

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|   | This does not necessarily amount to harassment. |

Council Business Division 2  
Legislative Council Secretariat  
16 June 2009