

Memorandum of Administrative Arrangements
between the Government of the Hong Kong Special Administrative
Region and the Equal Opportunities Commission

1. Preamble

- 1.1 This Memorandum of Administrative Arrangements (MAA) has been worked out between the Secretary for Constitutional and Mainland Affairs (SCMA) and the Equal Opportunities Commission (EOC). It provides a framework for the working relationship between the Government of the Hong Kong Special Administrative Region (the Government) and the EOC. This MAA supersedes the previous MAA signed on 7 March 1997 and the supplementary MAA signed on 19 May 1998.
- 1.2 The provisions of the MAA are based on the principle that the EOC should have autonomy and flexibility in utilizing its funds as is compatible with the provisions of the Sex Discrimination Ordinance (Cap.480) (SDO), the Disability Discrimination Ordinance (Cap.487) (DDO), the Family Status Discrimination Ordinance (Cap.527) (FSDO) and the Race Discrimination Ordinance (Cap.602) (RDO).
- 1.3 In the event of any inconsistency between the provisions of this MAA and the provisions of the SDO, DDO, FSDO and RDO, the relevant legislation will prevail.
- 1.4 Both the SCMA and the EOC may, having taken into account the changed circumstances and new matters, propose amendments to the MAA. Any amendments, which are agreed by both parties, will form part of the MAA.
- 1.5 This MAA does not preclude the Government from issuing directions as provided for in the SDO.

2. Relationship between the Government and the EOC

- 2.1 The Constitutional and Mainland Affairs Bureau (CMAB) acts as the focal point of contact between the Government and the EOC.
- 2.2 The Government provides funding support for the EOC's activities in the light of overall government policies and priorities.
- 2.3 The Permanent Secretary for Constitutional and Mainland Affairs (PSCMA) is the Controlling Officer for the government subvention to the EOC.
- 2.4 The EOC is autonomous in the management and control of its activities. It has the responsibility to ensure that its operation, administrative and management systems and practices, including financial control, recruitment, remuneration and training, procurement procedures and information systems, reflect the cost effective and prudent use of the government subvention.
- 2.5 The EOC will provide relevant information and statistics to the SCMA to enable him to answer questions from the Legislative Council concerning the EOC as appropriate.

3. Regular Reviews

- 3.1 The SCMA may require the EOC to hold regular meetings with the CMAB and to submit quarterly progress review reports to the CMAB to report on its financial position and operational performance in regard to its objectives and aims. Performance measures to be reported and the format of the report are to be set out by the SCMA in consultation with the EOC (a model format is at the Appendix). The format of the report will be reviewed as and when required.
- 3.2 The EOC will, upon request, submit regular reports to the SCMA on the review of the number, ranking and remuneration of the top three tiers of the executives of the EOC. SCMA will review the number,

ranking and remuneration packages of the top three tiers of the executives of the EOC, having regard to prevailing government guidelines in respect of senior executives in subvented bodies and make arrangements for public disclosure of the outcome.

4. Budgeting

4.1 Level of subvention

Each year, the SCMA will allocate a provision for the EOC to meet its operating expenditure. The level of the Government's annual subvention for the EOC is determined by SCMA having regard to the following –

- (a) the overall government budgetary situation, and that of the CMAB;
- (b) the operating expenditure of the EOC and changes to the cost of existing services;
- (c) the recurrent consequences of capital works scheduled to come on stream in that year;
- (d) approved funding for new and improved services, if any;
- (e) the additional cost to the EOC of complying with new statutory requirements;
- (f) surplus of income over expenditure in the previous year; and
- (g) the viability of covering the expenditure with the EOC's reserves, taking into account the committed and/or designated expenditure of the EOC.

4.2 New and improved services

The EOC should endeavour to meet the requirement of new and

improved services from its existing resources through redeployment and re-prioritisation. Where the EOC requires additional funds for introducing new or improved services, the Commission could submit the proposals to SCMA for consideration. Such proposals will be considered by SCMA along with other proposals under his/her policy purview.

4.3 Draft Estimates of Expenditure

- (a) The EOC will, upon invitation, submit to the PSCMA its draft estimates of expenditure for the next financial year, along with EOC's programme of activities and performance targets as shown in the Controlling Officer's Report. Draft estimates of expenditure will show, for the ensuing financial year, personal emoluments, recurrent expenditure other than personal emoluments and capital expenditure.
- (b) The draft estimates will provide details of the EOC's estimated income from other sources (including interest income and donations) and requirements for the next financial year.
- (c) The EOC will be informed, normally by March each year, of the amount of government subvention provisionally approved for the coming financial year. In so doing, the PSCMA will draw the EOC's attention to any areas where approval is conditional or withheld and to any difference between the amount requested and the amount provided. This subvention will be included in the Government's annual budget and presented in the Draft Estimates for CMAB. The amounts of recurrent and capital subventions will be confirmed after the enactment of the relevant Appropriation Ordinance.

5. The Estimates

5.1 The EOC's subvention accounts comprise two components –

(a) Recurrent Subvention

- (i) Personal emoluments, including salary, allowances, gratuity and personnel-related expenses (including staff on-costs) for staff in the EOC.
- (ii) Recurrent expenditure other than personal emoluments such as general departmental expenses, office rents and rates etc. Fixed assets costing more than \$150,000 per item should not be included.

(b) Capital Subvention

Any non-recurrent item with expenditure exceeding \$150,000, including non-recurrent expenditure for specific purposes and fixed assets.

5.2 No virement between recurrent subvention (Component 5.1(a)) and capital subvention (Component 5.1(b)) is allowed, except with the approval of the Secretary for Financial Services and the Treasury (SFST) or the appropriate authority as necessary via PSCMA.

5.3 Virement between Component 5.1(a)(i) and Component 5.1(a)(ii) is permissible. The EOC will inform the PSCMA of any virement made between Components 5.1(a)(i) and 5.1(a)(ii) as soon as possible.

5.4 The provision for recurrent subvention will not normally be increased during the course of the financial year. However, the EOC may request additional funds to meet specific needs such as –

- (a) upward price adjustment in the course of the year to reflect latest decision on civil service pay adjustment;
- (b) new statutory obligations;
- (c) new or additional services requested by the Government; and
- (d) unforeseen contingencies beyond the control of the EOC.

The factors in paragraph 4.1, where appropriate, will be taken into account when considering whether the request will be approved.

- 5.5 The subvention of EOC may be clawed back under the following circumstances –
- (a) downward price adjustment in the course of the year to reflect latest decision on civil service pay adjustment; and
 - (b) curtailment/cessation of agreed services/activities in the course of the year, as appropriate.
- 5.6 Recurrent subvention will be released in 12 equal monthly instalments in advance to the EOC's bank account. This arrangement may be varied on the request of the EOC in circumstances where the EOC can demonstrate that it is causing cash-flow problems. The EOC will keep the PSCMA informed where it appears that significant deviations from the approved estimates will result.
- 5.7 The EOC may set aside its unspent recurrent subvention in the form of a reserve for meeting operational contingencies. This should not affect the EOC's expenditure for other worthy causes. The ceiling of this reserve should not at any one point in time exceed 25% of its recurrent subvention of the current financial year. If the level of reserve at the end of the previous financial year exceeds the reserve ceiling (i.e. 25% of the annual recurrent subvention of the current financial year), the EOC should return the amount in excess to the Government in the current financial year, except with the approval of the PSCMA or when the ceiling of reserve is raised by PSCMA in accordance with paragraph 5.10 below.
- 5.8 The reserves may be spent at the discretion of the EOC within the reserve ceiling and should be spent on activities as are necessary for, or incidental or conducive to, the better performance of the EOC's statutory functions. It may be used on operational grounds for procurement of capital assets or office improvement works but shall not be spent for purposes that will advance staff welfare unrelated to operational needs. The EOC will absorb all financial consequences arising from the use of this reserve. Prior approval from PSCMA will be sought if the EOC foresees its intended spending of the reserve

money, which will be for meeting its operational requirements, would generate consequential expenditure which is unlikely to be absorbed within EOC's subvention.

- 5.9 The EOC will inform the PSCMA of the position of reserve account in the quarterly progress review report.
- 5.10 The EOC may propose and the PSCMA may raise the ceiling of the reserve following consultation with the SFST.

6. Attendance at the Legislative Council Meetings

- 6.1 The principal officers of the EOC may be invited to attend meetings of the Finance Committee, the Public Accounts Committee or other committees/panels of the Legislative Council.

7. Governance

- 7.1 The EOC will ensure that it is operated in a transparent, and accountable manner, and that its governance framework will include the following features –
 - (a) clear delineation of accountability and clear division of responsibilities;
 - (b) adequate information systems and management practices, including financial control, recruitment, remuneration and training, and procurement procedures; and
 - (c) robust internal control and reporting/monitoring systems.

8. Conditions of Service for Staff of the EOC

- 8.1 The EOC may determine its staffing structure and appoint its own staff on terms and conditions of service determined by the EOC.
- 8.2 The EOC will observe the principle of fairness and transparency in its rules and procedures on human resources management.
- 8.3 The PSCMA will provide, where appropriate and for reference purpose, to the EOC on an annual basis updated information on cash allowance / housing allowance of civil servants of comparable ranks.

9. Access to Records and Accounts

- 9.1 The PSCMA will have unhindered access to the records and accounts of the EOC in relation to fulfilling his/her functions as the Controlling Officer, save those personal data pertaining to the EOC's complaint cases and privileged matters as defined and/or governed by the rule of law. The EOC will be obliged to explain to the PSCMA any matters relating to the receipt, expenditure or custody of any money derived from the subvention.
- 9.2 The EOC will transmit to the PSCMA the finalised accounts and the audited accounts for each financial year within six and eight months respectively after the close of that financial year. The PSCMA may pass the accounts on to other bureaux/departments of the Government for examination.

10. Fees and Charges

- 10.1 The EOC may introduce fees and charges for providing services or operating activities that are consistent with, and without compromising, the functions and duties of the EOC and are in line

with government policies towards the promotion of equal opportunities and elimination of discrimination.

11. Donation

- 11.1 The EOC may accept and use donations for the better performance of its statutory functions. Funds to meet additional commitments arising from the donations to the EOC will not be provided by the Government.
- 11.2 If the EOC receives any non-designated donations, the donations should be spent on its operational activities relating to the performance of statutory functions of the EOC as stated in the SDO, DDO, FSDO and RDO.
- 11.3 Donations and income derived therefrom will be separately identified in the accounts of the EOC.
- 11.4 The EOC will keep proper records in the receipt and use of each donation.

12. Insurance

- 12.1 The EOC will take out insurance cover in respect of its properties such as vehicles and will take out third party liability and any other insurance cover which is required by law to take out.

13. Duty Visit Arrangement

- 13.1 The Chairperson, EOC will seek the approval of the Commission for, and inform the SCMA of, any duty visits outside Hong Kong.

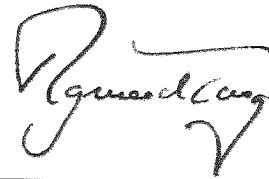
13.2 The notice for duty visits outside Hong Kong will be made, as far as practicable, at least one week before the commencement of the duty visits outside Hong Kong. The Chairperson will also confirm that the operation of the EOC will not be adversely affected during such duty visits outside Hong Kong.



(Stephen Lam)

Secretary for
Constitutional and Mainland Affairs

for and on behalf of
the Government



(Raymond Tang)

Chairperson
Equal Opportunities Commission

for and on behalf of
the Equal Opportunities Commission

Dated 11 September 2009

FORM FOR QUARTERLY PROGRESS REVIEW BETWEEN CMAB AND EOC

Head 144 –Government Secretariat: Constitutional and Mainland Affairs Bureau

Programme (5) – Subvention: Equal Opportunities Commission Quarter Review (to)

Policy Area 28: Constitutional and Mainland Affairs (Secretary for Constitutional and Mainland Affairs)

Aim:

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Operational Objectives:

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Matters for Attention:

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