

**Bills Committee on  
Sex Discrimination (Amendments) Bill 2014**

**Follow up on issues raised at the  
Bills Committee meetings on 23 July 2014**

This paper provides the Administration's response to issues raised by Members at the meeting on 23 July 2014.

**The estimated number of employees working on ships and aircrafts registered in Hong Kong and those registered outside Hong Kong**

2. According to the Marine Department, there were approximately 48 000 employees working on ships registered in Hong Kong as at July 2014. It does not have record on the number of employees working on ships registered outside Hong Kong.

3. The estimated number of employees working on the four locally-based airlines<sup>1</sup> providing scheduled passenger services on Hong Kong-registered aircraft, including cabin crew, flight crew, etc., is about 17 000. Relevant figures concerning the number of local employees working on aircraft registered outside Hong Kong is however not available.

**The respective numbers of passenger ships registered in and those registered outside Hong Kong which had anchored (berthed) at the Ocean Terminal in Tsim Sha Tsui in past year**

4. According to the Marine Department, there is only one Hong Kong registered passenger ship. It runs the route between Xieman and Taiwan and will usually not be berthed at the Ocean Terminal. In 2013, there were 37 passenger ships registered outside Hong Kong that berthed at the Ocean Terminal in Tsim Sha Tsui.

**The estimated number of employees of the cross-border tourism industry, and detailed information on the protection rendered by the**

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<sup>1</sup> Cathay Pacific Airways, Hong Kong Dragon Airlines, Hong Kong Airlines and Hong Kong Express Airways

## **relevant legislation of the Mainland against sexual harassment**

5. The Travel Industry Council of Hong Kong advised that there were 19 243 Tour Escort Pass holders in Hong Kong as at 16 August 2014. However, it could not provide any estimate on the number of the Tour Escort Pass holders engaging in cross-boundary tourism.

6. The Department of Justice (DoJ) has provided information on the protection rendered by the relevant laws of the Mainland against sexual harassment at Annex<sup>2</sup>.

## **The number of sexual harassment cases lodged with the Equal Opportunities Commission (EOC) in the past few years and relevant details (e.g. amount of monetary compensation awarded, breakdown on cases settled by conciliation and those taken to the court)**

7. Any person may lodge complaints about discrimination on the grounds of sex, marital status, pregnancy, disability, family status or race with the EOC. The EOC will investigate the complaints and conduct conciliation. For complaints where settlement could not be reached, the complainants may, where applicable, apply for legal assistance from the EOC or take civil action on their own.

8. The EOC handled 512 sexual harassment cases from January 2009 to August 2014, with breakdown as follows –

- (a) 136 cases of successful conciliation (settlement terms may include letter of apology, promulgation of employer's equal opportunities policies and / or financial settlement);
- (b) 83 cases of unsuccessful conciliation (the applicant may apply to the EOC for legal assistance to file civil suit in the District Court or take civil action on his /her own);
- (c) 255 cases of discontinuance –
  - i. 30 cases involved no unlawful act;
  - ii. 99 cases in which the complainants have no desire to pursue;

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<sup>2</sup> The information in the Annex is for reference only.

- iii. 21 cases were beyond the 12-month time bar<sup>3</sup>; and
  - iv. 105 cases lacked substance,
- (d) 10 cases of early resolution (case resolved among the parties before the investigation took place); and
- (e) 28 active cases.

During this period, 16 sexual harassment cases were granted with legal assistance by the EOC, and a total of \$187,263 was awarded as compensation.

**Explanation of the avenues of redress available to victims of sexual harassment which took place on a local ship or aircraft outside Hong Kong involving harassers who were overseas residents (or Mainlander), and the civil proceedings involved**

9. The DoJ has advised that in cases of sexual harassment that take place on a Hong Kong registered ship or aircraft, victims of sexual harassment may seek redress with local authorities where local legislation against sexual harassment is in place, or consider seeking assistance from the EOC upon returning to Hong Kong.

10. Insofar as the mutual legal assistance perspective in relation to such redresses is concerned, in any cause or matter before the court (e.g., civil proceedings instituted under section 76(1) of the Sex Discrimination Ordinance (SDO), an application for injunction under section 81 of the SDO), if it appears necessary for the purpose of justice, the court may issue a letter of request to the judicial authorities of a place outside Hong Kong (including the Mainland of China) to take evidence in that place.

**Legal liability on the employer if it was proven that the employer had failed to take reasonably practicable steps to prevent sexual harassment by customers to employee in the workplace**

11. The EOC is currently conducting a public consultation, which includes the question of employer's liability for harassment of

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<sup>3</sup> The EOC may decide not to conduct, or discontinue an investigation if a period of over 12 months has passed since the act was committed (SDO s.84(4)(c)).

employees by customers. Upon receiving the EOC's proposal, the Administration will consider how to follow up.

**The number of indecent assault by customers against service providers reported to the Police**

12. The Police has advised that it maintains statistics on the number of indecent assault cases, but not breakdown into the number of indecent assaults by customers against service providers.

**The policy considerations of using "local aircraft" in the Bill and "Hong Kong-controlled aircraft" in the Aviation Security Ordinance (Cap. 494)**

13. According to the Security Bureau, the main purposes of the Aviation Security Ordinance (ASO) (Cap.494), including the adoption of the definition of "Hong Kong controlled aircraft", are to prohibit acts which pose a threat to the safety of international civil aviation, address aviation security related offences such as hijacking and sabotage, and to give effect to international conventions on aviation security (e.g., the Tokyo Convention, the Hague Convention, and the Montreal Convention and the Montreal Protocol). As such, the ASO needs to make reference to and be consistent with the relevant international conventions in defining the coverage of its application.

14. For the Sex Discrimination (Amendment) Bill, we are proposing to expand the territorial scope of the proposal to cover sexual harassment of service providers by customers, and of customers by service providers, that take place on board a Hong Kong registered ship or aircraft while such a ship or aircraft is outside Hong Kong under the Bill. These are not covered by the current provisions under the SDO. Generally speaking, legislation in Hong Kong will apply to its own territory, unless specified otherwise, for example, the aforementioned ASO.

**Constitutional and Mainland Affairs Bureau  
October 2014**

## Relevant Legislation(s) of the Mainland Against Sexual Harassment

The law on protecting women from sexual harassment in the Mainland is provided in the Law on Protection of Women's Rights and Interests of the People's Republic of China (PRC) (the "Women Protection Law") which was promulgated by the Standing Committee of the National People's Congress on 28 August 2005 and effective on 1 December 2005.

2. Article 40 of the Women Protection Law provides that "*Sexual harassment against women is prohibited. The female victims shall have the right to file complaints with the units where they work and the departments concerned*". The provision expressly prohibits sexual harassment of women and states that when a female victim is subject to sexual harassment, she has the right to report to the relevant authorities.

3. Article 58 provides for remedies available to the victims of sexual harassment: "*Where a person, in violation of the provisions of this Law, commits sexual harassment or domestic violence against a woman, if such act constitutes a violation of the regulations for administration of public security, the victim may apply to a public security organ for an administrative sanction against the violator according to law, and may also bring a civil suit in a people's court according to law*". On the basis of this provision, victim can apply for an administrative sanction as well as initiate a civil claim against the wrongdoer.

4. Article 58 is to be read in conjunction with paragraph 2 of article 52, which provides that: "*Where a woman in strained circumstances needs legal aid or judicial relief, the local legal aid institution or people's court shall help her and provide her with legal aid or judicial relief in accordance with law*". Hence, the local legal aid institution or people's court is obliged under the law to assist woman in difficulty and provide her with necessary assistance (including legal aid etc.).

5. Article 53 further provides that when a woman's lawful rights and interest are infringed upon, she may file a complaint with a women's organization and the organization shall protect the lawful rights and interests of the victim. Under article 54, such protection includes rendering support to the women victims who need help in lawsuits<sup>1</sup>.

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<sup>1</sup> Women's Protection Law, Article 54 - "*women's organizations shall support the women victims who need help in lawsuits*"

6. It may be noted that the extent or the form of “sexual harassment” is not defined in the Women Protection Law. On the other hand, Shanghai and other provinces such as Shanxi, Jiangxi and Hunan have enacted local implementing rules which provide further details on what constitutes “sexual harassment”.

7. For example, article 32 of “Measures of Shanghai Municipality for Implementation of the Law on Protection of Women’s Rights and Interests (Second Amendment)” expressly prohibits sexual harassment of women, whether it is done in the form of language, words, images, electronic information or bodily actions. Similar provision is also contained in article 41 of “Measures of Shanxi Municipality for Implementation of the Law on Protection of Women’s Rights and Interests” but with more elaboration on “sexual harassment” including the introduction of the concept of “contrary to the will of women”.

8. It should also be noted that the Women Protection Law protects only women from harassment by men, but not vice versa. In addition, it appears that the Women Protection Law is silent on whether same-gender sexual harassment is protected under that law.

### **Other relevant legislation in the Mainland on sexual harassment**

#### **General Principles of the Civil Law of the PRC**

9. On the other hand, legal protection may be offered to both men and women under the General Principles of the Civil Law of the PRC, which states that no one should infringe upon another’s reputation or personal dignity by insulting or labeling them, failing which the victim shall have the right to demand, among other things, an apology and compensation for losses. Before the passage of the Women Protection Law, this law is often invoked by victims of sexual harassment to file a claim against the alleged wrongdoers. The relevant provisions under General Principles of the Civil Law of the PRC are set out below –

- (a) Article 98: Citizens shall enjoy the rights of life and health.
- (b) Article 101: Citizens and legal persons shall enjoy the right of reputation. The personality of citizens shall be protected by law, and the use of insults, libel or other means to damage the reputation of citizens or legal persons shall be prohibited.

- (c) Article 120: If a citizen's right of personal name, portrait, reputation or honour is infringed upon, he shall have the right to demand that the infringement be stopped, his reputation be rehabilitated, the ill effects be eliminated and an apology be made; he may also demand compensation for losses. The above paragraph shall also apply to infringements upon a legal person's right of name, reputation or honour.

### Penalties for Administration of Public Security Law

10. In addition, both men and women are also afforded protection against sexual harassment by the Penalties for Administration of Public Security Law. Article 42 of this Law states that a person who “repeatedly dispatching pornographic, humiliating, intimidating or other information to disturb the normal life of another person” shall be subject to detention and/or fine<sup>2</sup>.

11. Article 44 of the Penalties for Administration of Public Security Law further provides that a person who molests another person or intentionally exposes his/her body in a public place shall be detained for a specified period<sup>3</sup>.

### Criminal Law of the People's Republic of China

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<sup>2</sup> Article 42 – “A person who commits one of the following acts shall be detained for not more than five days or be fined not more than 500 yuan; and if the circumstances are relatively serious, he shall be detained for not less than 5 days but not more than 10 days and may, in addition, be fined not more than 500 yuan:

- (1) writing letters of intimidation or threatening the personal safety of another person by other means;
- (2) openly humiliating another person or slandering another person by fabricating stories;
- (3) framing-up another person by fabricating stories in an attempt to make the person subject to criminal investigation or to penalty for administration of public security;
- (4) threatening, humiliating or beating up a witness or his close relative or retaliating against either of them;
- (5) **repeatedly dispatching pornographic, humiliating, intimidating or other information to disturb the normal life of another person; or**
- (6) peeping, secretly taking photos, eavesdropping, or spreading the privacy of another person.(our emphasis added)”

<sup>3</sup> Article 44 – “A person who molests another person or intentionally exposes his/her body in a public place, if the circumstances are abominable, shall be detained for not less than 5 days but not more than 10 days; if a person molests a mentally disabled person, or a person suffering mental disorder, or a person who has not attained to the age of 14, or commits such act with other serious circumstances, he shall be detained for not less than 10 days but not more than 15 days.”

12. Under the Criminal Law of the PRC (“Criminal Law”), promulgated on 14 March 1997 and effective on 1 October 1997, any act of indecent nature or insults against a woman is prohibited. Article 237 states –

“Whoever **acts indecently against or insults a woman** by violence, coercion or any other forcible means shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention.

Whoever gathers a number of people to commit the crime mentioned in the preceding paragraph or commits the crime before the public in a public place shall be sentenced to fixed-term imprisonment of not less than five years.

Whoever acts indecently against a child shall be given a heavier punishment in accordance with the provisions of the preceding two paragraphs. (*our emphasis added*)”.

Chapter 4 of the Criminal Law also prohibits sexual offences of a serious nature such as rape.