

LEGISLATIVE COUNCIL BRIEF

SEX DISCRIMINATION (AMENDMENT) BILL 2014

INTRODUCTION

At the meeting of the Executive Council on 10 June 2014, the Council ADVISED and the Chief Executive ORDERED that the Sex Discrimination (Amendment) Bill 2014 (the Bill), at Annex, should be introduced into the Legislative Council (LegCo) to protect service providers from sexual harassment by their customers.

JUSTIFICATIONS

Sexual harassment of service providers by customers

2. Under section 40 of the Sex Discrimination Ordinance (Cap. 480) (SDO), it is unlawful for a person to sexually harass another person in the course of offering to provide, or providing, goods, facilities or services to that other person (i.e., a service provider sexually harasses a customer), but the SDO does not render unlawful any sexual harassment of a service provider by a customer.

3. According to the Equal Opportunities Commission (EOC), sexual harassment of service providers by customers especially in some service industries is not uncommon. The EOC has received only a few complaints about sexual harassment of service providers by customers over the past few years, but was unable to take any action because of a lack of provisions outlawing such harassment under the existing SDO. Notwithstanding that the EOC has not received a substantial number of enquiries and complaints on this front, it believes that there could be more victims of such harassments who did not make enquiries or lodge complaints to the EOC as this is not covered by the SDO. According to studies conducted by the Association for the Advancement of Feminism in 2011 and 2013, women in certain service industries such as nurses, airline hostesses, waitresses, beer promoters, and saleswomen were particularly prone to sexual harassment by customers. In a survey conducted by the EOC with the Hong Kong Flight Attendants Alliance in November 2013, 27% of the respondents¹ indicated that they had been sexually harassed in

¹ 106 out of 392 (or 27% of) respondents indicated that they had been sexually harassed in the last year. Out of 239 counts of allegation as reported by the 106 respondents, the most common alleged harassers were customers (59%).

the last year when they were on duty in flight.

4. In this connection, the EOC has also studied overseas legislation and noted that section 28G of the Sex Discrimination Act 1984 in Australia, which is similar to section 40 of the SDO, was amended in 2011 to extend the statutory protection against sexual harassment to cover any sexual harassment that takes place in the course of either receiving or providing goods, services or facilities. Similar protection could also be found in other common law jurisdictions such as Canada and New Zealand².

5. We have discussed the proposal to extend the protection under the SDO to cover also sexual harassment of service providers by customers with the LegCo Panel on Constitutional Affairs (CA Panel) at its meeting on 17 June 2013. The CA Panel unanimously supported that the proposed amendment should be implemented as soon as possible.

Application to Hong Kong registered ships and aircraft while outside Hong Kong

6. In view of the situation in the airline industry as reflected by the survey outlined in paragraph 3, we also propose, after discussion with the EOC, to expand the territorial scope of the proposal to cover sexual harassment of service providers by customers, and of customers by service providers³, that takes place on board a Hong Kong registered ship or aircraft while such a ship or aircraft is outside Hong Kong. These are not covered by the current provisions under the SDO. The current proposal seeks to render sexual harassment both ways unlawful on a Hong Kong registered ship or aircraft outside Hong Kong.

7. According to the general principles of statutory interpretation, the protection afforded by section 40 of the SDO, as it now stands, is available only where an act of sexual harassment takes place in Hong Kong. Section 41 of the SDO⁴ provides that the prohibition on sex

² Sexual harassment, including customers harassing service providers, is prohibited under section 14 of the Canadian Human Rights Act. Section 62 of the New Zealand Human Rights Act 1993 prohibits any person sexually harassing another, including application in relation to access to goods and services.

³ Despite that the EOC has not received any sexual harassment complaints from customers against flight attendants, such a two-way approach is in line with sexual harassment laws overseas, such as Australia.

⁴ Section 41(3) of the SDO states that –
“Section 28(1) applies on and in relation to-

discrimination relating to the provision of goods, facilities or services under section 28(1) of the SDO applies to a Hong Kong registered ship or aircraft and a Hong Kong Government ship or aircraft even if the ship or aircraft is outside Hong Kong. We propose to adopt the same approach in section 41 of the SDO for extending the territorial scope of sexual harassment in relation to the provision or use of goods, facilities or services.

THE BILL

8. The provisions of the Bill are to amend the SDO to render unlawful any sexual harassment against providers or prospective providers of goods, facilities or services⁵; and to apply the provisions relating to sexual harassment occurring in offering to provide, seeking to provide or providing goods, facilities or services to sexual harassment of this kind occurring on local ships or aircraft outside Hong Kong.

LEGISLATIVE TIMETABLE

9. The legislative timetable will be –

Publication in the Gazette	20 June 2014
First Reading and commencement of Second Reading debate	25 June 2014
Resumption of Second Reading debate, Committee Stage and Third Reading	To be notified

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- (a) any ship registered in Hong Kong;
 - (b) any aircraft or dynamically supported craft registered in Hong Kong and operated by a person who has his principal place of business, or is ordinarily resident, in Hong Kong;
 - (c) any ship, aircraft or dynamically supported craft belonging to or possessed by the Government,
- even if the ship, aircraft or dynamically supported craft is outside Hong Kong.”

⁵ The provisions are applicable to sexual harassment of both men and women, by virtue of s.2(8) of SDO –

“A provision of Part III or IV framed with reference to sexual harassment of women shall be treated as applying equally to the treatment of men and for that purpose that provision, and subsections (5) and (7), shall have effect with such modifications as are necessary”.

IMPLICATIONS OF THE PROPOSAL

10. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no financial, civil service, economic, productivity, environmental or family implications. Sustainability implication is considered to be insignificant. The proposed amendments will not affect the current binding effect of the SDO. Any additional work arising from the implementation of the proposal will be absorbed by the Constitutional and Mainland Affairs Bureau and the EOC within their existing resources.

PUBLIC CONSULTATION

11. As explained in paragraph 5 above, we have consulted the CA Panel on 17 June 2013 and the Panel supported legislative amendments to protect service providers from sexual harassment by customers. We expect the public will welcome our proposal to extend the statutory protection to cover service providers and customers who are sexually harassed on board Hong Kong registered ships or aircraft while outside Hong Kong.

12. The EOC was consulted on the Bill and is content with it. We have also, through arrangements by the EOC, consulted relevant stakeholder groups, including representatives from flight attendants associations, trade unions and workers' associations. They support and urge that the proposals be introduced to the LegCo as soon as possible.

PUBLICITY

13. Concurrent with issue of this LegCo Brief, a press release will be issued to introduce the provisions of the Bill. A spokesperson will also be made available to address media enquiries.

ENQUIRIES

14. Enquiries on this Brief may be directed to Mr D. C. CHEUNG, Principal Assistant Secretary for Constitutional and Mainland Affairs, at 2810 2159.

Constitutional and Mainland Affairs Bureau
18 June 2014

A BILL

To

Amend the Sex Discrimination Ordinance to render unlawful any sexual harassment against providers or prospective providers of goods, facilities or services; and to apply the provisions relating to sexual harassment occurring in offering to provide, seeking to provide or providing goods, facilities or services to sexual harassment of this kind occurring on local ships or aircraft outside Hong Kong.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Sex Discrimination (Amendment) Ordinance 2014.

2. Sex Discrimination Ordinance amended

The Sex Discrimination Ordinance (Cap. 480) is amended as set out in sections 3 and 4.

3. Section 40 amended (other sexual harassment)

After section 40(1)—

Add

“(1A) It is unlawful for a person to sexually harass a woman in the course of—

- (a) seeking to be provided with goods, facilities or services by her; or
- (b) being provided with goods, facilities or services by her.”.

4. Section 41 amended (extent of Part 4)

After section 41(5)—

Add

- “(6) Section 40(1) and (1A) does not apply to sexual harassment that occurs outside Hong Kong except as provided in subsection (7).
- (7) Section 40(1) and (1A) applies to sexual harassment that occurs on a ship, aircraft or dynamically supported craft referred to in subsection (3) even if it is outside Hong Kong.”.

Explanatory Memorandum

This Bill amends the Sex Discrimination Ordinance (Cap. 480) to—

- (a) make it unlawful to sexually harass providers or prospective providers of goods, facilities or services; and
 - (b) apply the provisions relating to sexual harassment occurring in offering to provide, seeking to provide or providing goods, facilities or services to sexual harassment of this kind occurring on local ships or aircraft outside Hong Kong.
2. Clause 3 adds a new subsection (1A) to section 40 of the Ordinance. This is to extend the protection against sexual harassment to providers or prospective providers of goods, facilities or services.
 3. Clause 4 adds new subsections (6) and (7) to section 41 of the Ordinance. This is to apply section 40(1) and (1A) to sexual harassment that occurs on local ships or aircraft outside Hong Kong.