

**立法會**  
*Legislative Council*

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**Paper for the House Committee Meeting  
on 27 June 2014**

**Legal Service Division Report on  
Sex Discrimination (Amendment) Bill 2014**

**I. SUMMARY**

- 1. The Bill**

The Bill amends the Sex Discrimination Ordinance (Cap. 480) 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.
- 2. Public Consultation**

According to the Administration, the Equal Opportunities Commission and relevant stakeholder groups, including representatives from flight attendants associations, trade unions and workers' associations, had been consulted and they supported the proposal.
- 3. Consultation with LegCo Panel**

The Panel on Constitutional Affairs was consulted at its meeting on 17 June 2013. Members were generally in support of legislative amendments to protect service providers from sexual harassment by customers.
- 4. Conclusion**

No difficulties relating to the legal and drafting aspects of the Bill have been identified. Subject to Members' views, the Bill may be ready for the resumption of Second Reading debate.

## **II. REPORT**

The date of First Reading of the Bill is 25 June 2014. Members may refer to the LegCo Brief (with no reference number) issued by the Constitutional and Mainland Affairs Bureau on 18 June 2014 for further details.

### **Object of the Bill**

2. The object of the Bill is to amend the Sex Discrimination Ordinance (Cap. 480) (SDO) 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.

### **Background**

3. Currently, under section 40 of the SDO, it is unlawful for a service provider to sexually harass a customer in the course of offering to provide, or providing, goods, facilities or services. However, the legislation does not render unlawful any sexual harassment of a service provider by a customer.

4. According to the LegCo Brief, sexual harassment of service providers by customers especially in certain service industries is not uncommon. The Equal Opportunities Commission (EOC) was unable to take any action because of a lack of provisions outlawing such harassment under the current legislation. The Bureau has discussed with the Panel on Constitutional Affairs (CA Panel) the proposal to extend the protection under the SDO to cover also sexual harassment of service providers by customers and the Panel supported the proposed amendment.

5. Further, according to paragraph 6 of the LegCo Brief, in view of the situation in the airline industry, the Bureau, after discussion with the EOC, proposes to expand the territorial scope of the proposal to cover sexual harassment of service providers by customers, and of customers by service

providers<sup>1</sup>, 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 of the SDO. The proposal seeks to render unlawful sexual harassment of this kind occurring on a Hong Kong registered ship or aircraft even if it is outside Hong Kong.

6. Under the current legislation, the protection afforded by section 40 of the SDO is available only where an act of sexual harassment takes place in Hong Kong. Section 41 of the SDO<sup>2</sup> provides that the prohibition of sex 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. The Bureau proposes to adopt the same approach to expanding the territorial scope in respect of sexual harassment relating to the provision or use of goods, facilities or services.

## **Provisions of the Bill**

7. 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 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.

8. The Bill amends the SDO by adding -

- (a) a new subsection (1A) to section 40 of the SDO. This is to extend the protection against sexual harassment to providers or prospective providers of goods, facilities or services<sup>3</sup>; and

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<sup>1</sup> According to the LegCo Brief, 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.

<sup>2</sup> Section 41(3) of the SDO states:

"Section 28(1) applies on and in relation to –

- (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."

<sup>3</sup> By virtue of section 2(8) of the SDO, the provisions are applicable to sexual harassment of both men and women. Section 2(8) provides that: "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."

- (b) new subsections (6) and (7) to section 41 of the SDO. This is to apply section 40(1) and (1A) to sexual harassment that occurs on local ships or aircraft outside Hong Kong.

9. The Bill contains no commencement provision. By virtue of section 20(2) of the Interpretation and General Clauses Ordinance (Cap. 1), the Bill, if passed, would come into operation on the day of gazettal.

### **Public Consultation**

10. According to paragraph 12 of the LegCo Brief, the EOC has been consulted on the Bill and is content with it. The Bureau has also through arrangements by the EOC consulted relevant stakeholders groups, including representatives from flight attendants associations, trade unions and workers' associations and they are in support of the proposal.

### **Consultation with LegCo Panel**

11. As advised by the Clerk to the CA Panel, the Panel discussed the proposal to expand the scope of protection against sexual harassment under the SDO at its meeting on 17 June 2013. Members in general expressed support for the proposal and requested the proposed amendment be implemented as soon as possible.

### **Conclusion**

12. No difficulties relating to the legal and drafting aspects of the Bill have been identified. Subject to Members' views, the Bill may be ready for the resumption of Second Reading debate.

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