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Subcommittee on Rights of Ethnic Minorities

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 6 November 2017**

Implementation and review of the Race Discrimination Ordinance

Purpose

This paper provides background information on the review of the Race Discrimination Ordinance (Cap. 602) ("RDO"), which was conducted by the Equal Opportunities Commission ("EOC") as part of EOC's Discrimination Law Review ("DLR"). This paper also summarizes the major concerns expressed by members of the Panel on Constitutional Affairs ("the Panel") on the implementation and review of RDO at its previous meetings.

Background

The Race Discrimination Ordinance

2. RDO is an anti-discrimination law enacted in July 2008 to protect people against discrimination, harassment and vilification on the ground of their race. Under RDO, it is unlawful to discriminate, harass or vilify a person on the ground of his/her race. RDO has come into operation since 10 July 2009.

3. After the enactment of RDO, the Administration has introduced the Administrative Guidelines on Promotion of Racial Equality ("the Guidelines") to provide guidance to relevant bureaux, departments and public authorities to promote racial equality and ensure equal access to public services in key areas concerned.¹ Under the Guidelines, relevant bureaux, departments and public authorities have drawn up checklists of measures that would assist in promoting racial equality and equal access to key public services.

¹ The Guidelines cover the key public services, namely, medical, education, vocational training, employment and major community services. The Constitutional and Mainland Affairs Bureau is responsible for coordinating and maintaining an overview on the implementation of the Guidelines in the Government as a whole.

Equal Opportunities Commission

4. Under RDO, EOC is entrusted with the functions and powers to work towards the elimination of racial discrimination and to promote equality of opportunity and harmony between persons of different racial groups. It has the power to conduct formal investigations and obtain information in accordance with RDO. EOC is empowered to deal with individual complaints and provide legal assistance. In addition, EOC can make recommendations to the Government for amending the anti-discrimination ordinances, including RDO.

5. In 2014-2015, the Government provided an additional recurrent funding of \$4.69 million to EOC for setting up a dedicated Ethnic Minority ("EM") Unit to enhance the EOC's work on promoting equal opportunities and racial integration by:

- (a) improving equal educational opportunities for EM students;
- (b) enhancing EMs' employment opportunities;
- (c) deepening social inclusion and understanding between EMs and other communities including Chinese; and
- (d) educating providers of goods, services and facilities on cultural sensitivity for serving EM customers.

Discrimination Law Review

6. On 8 July 2014, EOC published the Consultation Paper on DLR and announced the commencement of a three-month public consultation exercise.² According to the executive summary of the Consultation Paper, DLR was to review the four existing discrimination ordinances.³ Its purpose was to improve protection from discrimination and promote equality in Hong Kong.

7. On 29 March 2016, EOC submitted a report on DLR to the Administration for its consideration. The report contained a total of 73 recommendations, 27 of which were considered by EOC to be higher priority issues. The Administration consulted the Panel at its meeting on 20 March 2017 on nine prioritized recommendations (see **Appendix I**) under DLR that the Administration considered to be capable of forging consensus among stakeholders and the society. Of the nine prioritized recommendations (except

² The public consultation was subsequently extended to end on 31 October 2014.

³ The four discrimination ordinances are, namely the Sex Discrimination Ordinance (Cap. 480), the Disability Discrimination Ordinance (Cap. 487), the Family Status Discrimination Ordinance (Cap. 527), and RDO.

the first recommendation on prohibiting direct and indirect discrimination on grounds of breastfeeding), amendments to RDO will be involved. Members of the Panel were generally in support of the nine prioritized recommendations. In the Policy Agenda of 2017, it is announced that the Administration will submit the legislative amendment proposals for implementing the nine prioritized recommendations in the form of a composite bill to the Legislative Council in the 2017-2018 session. The Administration intends to consult the Panel on the relevant legislative amendment proposals in due course.

Discussions by the Panel on Constitutional Affairs

Recommendations under Discrimination Law Review

8. When the Administration consulted the Panel at its meeting on 20 March 2017 on the nine prioritized recommendations under DLR, some members took the view that the Administration should also take forward the following recommendations relating to RDO:

- (a) to amend RDO by providing that it is unlawful for the Government to discriminate in performing its functions or exercising its powers (DLR recommendation 6);
- (b) to repeal the provisions regarding vocational training and education in relation to modifying or making different arrangements for medium of instruction under sections 20(2) and 26(2) of RDO (DLR recommendations 9 and 10); and
- (c) to amend the four anti-discrimination Ordinances (including RDO) to include a provision that they apply to all public authorities (DLR recommendation 20).

9. The Administration explained that it intended to focus on those recommendations that were relatively less complex or controversial at the present stage, with a view to taking forward necessary legislative amendments in a step-by-step manner. The Administration considered that the recommendations in para 8(a) to (c) above, however, would likely have impact across multiple domains and policy areas, and it needed more time to carefully consider them. The Administration also advised that the exemption on medium of instruction under RDO was included when RDO was enacted having regard to the operational needs of vocational training bodies. Nevertheless, the Administration noted that over the years, these bodies had enhanced support for the non-Chinese speaking community and strived to offer courses in suitable languages when the need arose.

10. Some members repeatedly requested the Administration to clarify whether the scope of the application of RDO covered all Government functions and powers at various meetings of the Panel. In particular, they enquired whether the Police were exempted from the coverage of RDO.

11. The Administration explained that RDO was binding on the Government (which included the Police) and it prohibited discriminatory acts and practices in all the areas specified in RDO.⁴ Moreover, the relevant provisions of the Basic Law and the Hong Kong Bill of Rights Ordinance (Cap. 383) also prohibited the Government and public authorities from engaging in practices that would entail any form of discrimination including race discrimination.

Legal assistance

12. When the Panel received a briefing by the EOC Chairperson on the work of EOC at its meeting on 19 April 2017, Dr Hon Fernando CHEUNG expressed concern that from July 2009 to June 2015, only three applicants were granted legal assistance by EOC in relation to complaints under RDO, and only one case concerning race discrimination was brought to the Court since RDO had come into effect. He considered that it was undesirable for EOC to dispose of such discrimination complaints mainly through conciliation for both parties.

13. EOC Chairperson explained that EOC's approach in handling complaints was primarily conciliatory, though it was empowered to take legal action should conciliation efforts fail. About 70% to 80% of the complaints received by EOC could be settled by conciliation, and the number of applications which had been granted legal assistance by EOC stood at around 10 to 20 each year. EOC Chairperson advised that EOC had already commenced a review of its complaint-handling and legal assistance functions, taking into account the views and interests of stakeholders, to assess whether the current processes were the most efficient and effective in meeting EOC's objectives and mission within the statutory parameters, and to propose any changes to improve in this area.

14. EOC Chairperson further advised that the Legal and Complaints Committee of EOC was tasked to consider the applications and decide on whether or not to grant assistance to the applicant. The forms of legal assistance might include legal advice, legal services relating to the gathering and assessment of further information or evidence, or representation in legal proceedings by EOC lawyers or lawyers in private practice engaged by EOC.

⁴ RDO offers protection in several areas, including employment, education, provision of goods, facilities or services, disposal or management of premises, eligibility to vote for and to stand for election to public bodies, offering of a pupillage or tenancy in a barrister's chambers, and participation in clubs.

Funding provision for the Ethnic Minority Unit

15. At the Panel meeting on 19 April 2017, Hon Claudia MO and Hon Holden CHOW urged the Administration to provide financial provision on a recurrent basis for the EM Unit of EOC. The Chairperson of EOC highlighted that while the staff cost of the EM Unit had been included in the recurrent provision for EOC, he hoped that the Government would provide subvention of about \$5 million per year to cover the project/programme expenses of the EM Unit for promoting equal opportunities for ethnic minorities. The Panel passed the following motion moved by Hon Claudia MO:

"This Panel urges the Constitutional and Mainland Affairs Bureau to strengthen the provision of support for the work of EOC, and requests that adequate financial resources be expeditiously provided for EOC's EM Unit so as to rectify the unfair situation currently faced by ethnic minorities."

16. The Administration advised that there had been an increase in the annual subvention to EOC after deducting the one-off provision. Starting from 2014-2015, the Administration had been providing a funding of \$4.69 million each year to EOC for setting up the EM Unit within EOC. In 2017-2018, the Administration had included a one-off funding support of \$9.5 million in the proposed subvention for EOC's proposed office relocation and fitting-out work.

Latest development

17. The Subcommittee will discuss the implementation and review of RDO with the Administration and EOC representatives at the next meeting on 6 November 2017.

Relevant papers

18. A list of the relevant papers on the Legislative Council website is in **Appendix II**.

**Summary of nine recommendations in the EOC's submissions
prioritised by the Government**

Recommendation	
5	It is recommended that the Government introduce express provisions prohibiting direct and indirect discrimination on grounds of breastfeeding. These provisions could be included by an amendment to the Sex Discrimination Ordinance as a form of sex discrimination, a separate category of discrimination, or alternatively as an amendment to the Family Status Discrimination Ordinance. The definition of breastfeeding should also include expressing milk.
7	It is recommended that the Government amend the Race Discrimination Ordinance provisions prohibiting direct discrimination and harassment by association by repealing the provisions regarding near relatives, and replacing it with a definition of an associate to include: <ul style="list-style-type: none"> (a) a spouse of the person; (b) another person who is living with the person on a genuine domestic basis; (c) a relative of the person; (d) a carer of the person; and (e) another person who is in a business, sporting or recreational relationship with the person.
8	It is recommended that the Government amend the Race Discrimination Ordinance to include protection from direct discrimination and harassment by perception or imputation that a person is of a particular racial group.
15	It is recommended that the Government amend the provisions of the Sex Discrimination Ordinance, Race Discrimination Ordinance and Disability Discrimination Ordinance to provide protection from sexual, racial and disability harassment to persons in a common workplace such as consignment workers and volunteers.
16	It is recommended that the Government amend the provisions of Race Discrimination Ordinance and Disability Discrimination Ordinance to provide protection from racial and disability harassment of service providers by service users.

Recommendation	
17	It is recommended that the Government amend the provisions of the Race Discrimination Ordinance and Disability Discrimination Ordinance to provide protection from racial and disability harassment of service providers by service users, where such harassment takes place outside Hong Kong, but on Hong Kong registered aircraft and ships.
18	It is recommended that the Government amend the Sex Discrimination Ordinance, Race Discrimination Ordinance and Disability Discrimination Ordinance to provide protection of tenants or sub-tenants from sexual, racial or disability harassment by another tenant or sub-tenant occupying the same premises.
19	It is recommended that the Government amend the Sex Discrimination Ordinance, Race Discrimination Ordinance and Disability Discrimination Ordinance to provide protection from sexual, racial and disability harassment by management of clubs of members or prospective members.
22	It is recommended that the Government repeal the provisions under the Sex Discrimination Ordinance, Family Status Discrimination Ordinance and Race Discrimination Ordinance which require proof of intention to discriminate in order to award damages for indirect discrimination claims.

CMAB
March 2017

Appendix II

Relevant documents on Implementation and review of the Race Discrimination Ordinance

Committee	Date of meeting	Paper
Panel on Constitutional Affairs	20.3.2017 (Item IV)	Agenda Minutes
	19.4.2017 (Item V)	Agenda Minutes

Council Business Division 2
Legislative Council Secretariat
3 November 2017