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Panel on Constitutional Affairs

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 20 April 2020**

Administrative Guidelines on Promotion of Racial Equality

Purpose

This paper provides background information on the Administrative Guidelines on Promotion of Racial Equality ("the Administrative Guidelines"). It also summarizes the major concerns raised by the Panel on Constitutional Affairs ("the Panel") and the former Subcommittee on Rights of Ethnic Minorities ("the Subcommittee") on the subject.

Background

Administrative Guidelines on Promotion of Racial Equality

2. The Administration introduced the Administrative Guidelines in 2010 to provide general guidance to relevant bureaux and departments ("B/Ds") and public authorities to promote racial equality and ensure equal access to public services in the key areas concerned, and to take this into account in the formulation, implementation and review of relevant policies and measures. Under the Administrative Guidelines, relevant B/Ds and public authorities have drawn up checklists of measures that would assist in promoting racial equality and equal access to key public services to enhance the transparency of their work.¹ The Administrative Guidelines cover key public services which are particularly relevant to meeting the special needs of ethnic minorities ("EMs") and facilitating their integration into the community, namely, medical, education, vocational training, employment and major community services. CMAB is responsible for coordinating and maintaining an overview on the implementation of the Administrative Guidelines in the Government as a whole, including monitoring implementation of the

¹ The checklists are uploaded onto the website of the Constitutional and Mainland Affairs Bureau ("CMAB") and available in six EM languages (http://www.cmab.gov.hk/en/issues/equal_agpre.htm).

Administrative Guidelines, collecting relevant information and publicizing such information to the public. CMAB is also responsible for conducting review of the implementation of the Administrative Guidelines.

3. The Administration embarked on a review on the implementation of the Administrative Guidelines in September 2017 in collaboration with various B/Ds. According to the Administration, a number of B/Ds indicated that they had put in place new measures to assist EMs as set out in paragraph 12(a) to (e) of the Administration's paper [LC Paper No. CB(2)723/17-18(01)] submitted to the Subcommittee.

Members' deliberations

Effectiveness of the Administrative Guidelines

4. The Administration consulted the Panel on the draft Administrative Guidelines on 7 July 2009 and briefed members on the implementation progress at its meetings on 19 October 2009 and 11 December 2009. Some members queried the effectiveness of the Administrative Guidelines to promote racial equality on the grounds that the draft Administrative Guidelines which were couched in abstract and broad terms would be implemented on a voluntary basis only. These members considered that a high-level monitoring mechanism led by the Chief Secretary for Administration ("CS") should be set up to ensure compliance within the Government. Members requested the Administration to provide adequate resources for B/Ds to implement the Administrative Guidelines.

5. The Administration advised that under the Policy Committee led by CS, all relevant policy secretaries were aware of the need to implement the Administrative Guidelines. Relevant B/Ds and public authorities had the obligation to comply with the Administrative Guidelines even though it was not legally binding for them to do so. The Ombudsman was empowered to investigate maladministration cases of relevant B/Ds in relation to failure to apply the Administrative Guidelines within the confines of The Ombudsman Ordinance (Cap. 397). CMAB would also maintain an overview on the implementation of the Administrative Guidelines within the Government. The Administration also assured the Panel that it would strive to provide the resources to meet the bid for additional funding from relevant B/Ds for the financial year 2010-2011 for the implementation of the Race Discrimination Ordinance (Cap. 602) and the Administrative Guidelines.

6. When the Subcommittee discussed the implementation and review of the Administrative Guidelines at its meeting on 23 January 2018, some members expressed concern that the adoption of the Administrative

Guidelines was merely voluntary, and that the lack of a proper complaint and reporting mechanism as well as inadequate monitoring of compliance had undermined the effectiveness of the Administrative Guidelines in safeguarding EMs' equal access to public services. They urged the Administration to make compliance with the Administrative Guidelines mandatory, and to extend the scope of application of the Administrative Guidelines to cover all public authorities. The Administration stressed that relevant public authorities were required to comply with the Administrative Guidelines. CMAB and relevant authorities would continue to keep the Administrative Guidelines under regular review, especially in the context of how to enhance existing measures and introduce new measures that would promote racial equality.

7. The Subcommittee passed a motion urging the Government to expeditiously amend the Race Discrimination Ordinance (Cap. 602) so as to address the inadequacies of the Administrative Guidelines and help promote racial equality. The Administration's response to the motion is in **Annex I to Appendix I**.

Implementation and previous review of the Administrative Guidelines

8. When the Panel discussed the outline of topics to be included in the third report of the Hong Kong Special Administrative Region under the International Convention on the Elimination of All Forms of Racial Discrimination at its meeting on 16 November 2015, some members urged the Administration to closely monitor the implementation of the Administrative Guidelines. The Administration advised that the application of the Administrative Guidelines had been extended from 14 B/Ds and public authorities in 2010 to 23 at present.² The implementation of the Administrative Guidelines, which was last reviewed in late 2014, had been smooth according to the feedback provided by relevant B/Ds.

9. During the deliberation of the Subcommittee on the implementation and review of the Administrative Guidelines, some members stressed the need

² The 23 relevant authorities are the Education Bureau, the Social Welfare Department, the Labour Department, the Home Affairs Department, the Employees Retraining Board, the Vocational Training Council, the Food and Health Bureau, the Department of Health, the Hospital Authority, the Construction Industry Council, the Office of the Government Chief Information Officer, the Innovation and Technology Commission, the Office of the Communications Authority, Housing Department, the Hong Kong Observatory, the Post Office, the Legal Aid Department, the Hong Kong Police Force, the Correctional Services Department, the Customs and Excise Department, the Immigration Department, the Fire Services Department, and the Registration and Electoral Office.

for relevant authorities to keep record of service users' race, which in their view would be useful for evaluating how far the needs of EMs under their respective policy areas were met. They also considered it necessary for relevant authorities to gauge the feedback of EMs and stakeholders concerned in order to seek continuous improvements to their services and the implementation of the Administrative Guidelines. The Subcommittee passed two motions urging the Government to set up a high-level commission on EMs and draw up guidelines on data collection for promoting racial equality. The Administration's responses to the two motions are in **Annexes II and III to Appendix I**.

10. Members of the Subcommittee also expressed concern about whether relevant authorities had arranged interpretation services for EMs in accordance with the requirements of the Administrative Guidelines. In particular, members noted with concern the low usage rates of interpretation services by some government departments. The Administration was requested to explore the feasibility of providing interpretation services across relevant authorities centrally so as to better ensure the quality of the interpretation services.

11. The Administration advised that relevant authorities had all along been providing specific services, such as interpretation services, to meet the practical needs of EMs under their respective policy areas. Since the interpretation needs of EMs varied depending on what public services they sought, relevant authorities would consider the actual situation and adopt suitable procedures to provide interpretation services to EMs in need. Nevertheless, CMAB would coordinate with relevant authorities to see whether there was room for improvements in the provision of interpretation services to EMs and explore the feasibility of drawing up standard guidelines and procedures for interpretation services. In this respect, CMAB had provided an additional allocation of \$3 million to the EM Unit of the Equal Opportunities Commission ("EOC") in 2017-2018. The EM Unit would embark on a series of initiatives for the purpose of promoting equal opportunities for EMs including the one on exploring the prospect of introducing accreditation for interpreters of EM languages.

12. In July 2018, the Administration announced the formation of a high-level steering committee under the chairmanship of CS to enhance collaboration within the Government on support for EMs, as well as to coordinate, review and monitor the work in this area and consider how the \$500 million earmarked in the 2018-2019 Budget should be effectively utilized for strengthening support services for EMs. The Steering Committee comprises Directors of Bureaux and Heads of Departments who are overseeing the provision of key public services relevant to EMs.

Recent review of the Administrative Guidelines

13. Some members all along raised concern that it was not mandatory for B/Ds and other public authorities, including the Hospital Authority and the Housing Department, to keep disaggregated data on the ethnicities of their service users. In their view, such data would be useful for planning services for EMs. These members further suggested that performance indicators and a complaint-handling mechanism should be introduced in relation to the implementation of the Administrative Guidelines, and the publicity of the Administrative Guidelines should also be enhanced.

14. In response to members' concerns, the Administration informed the Panel at its policy briefing cum meeting on 16 December 2019 that the Administration was taking active steps to review the Administrative Guidelines, including drawing up guidelines for provision of interpretation services and collection of race-related data from service users. The Administration aimed to complete the improvements of the Administrative Guidelines by the end of 2019 and then apply it to all B/Ds as well as related organizations providing services to EMs.

Latest development

15. The Administration will brief the Panel on the latest improvements made to the Administrative Guidelines at the next meeting on 20 April 2020.

Relevant papers

16. A list of relevant papers on the LegCo website is in **Appendix II**.

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9 March 2018

Ms Joanne MAK
Clerk to Subcommittee
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road,
Central, Hong Kong

Dear Ms MAK,

**Subcommittee on Rights of Ethnic Minorities
Motions passed at the meeting on 23 January 2018**

Thank you for your letter dated 25 January 2018. The responses of the HKSAR Government to the three motions under the agenda item “Implementation and review of the Administrative Guidelines on Promotion of Racial Equality” passed by the Subcommittee on 23 January 2018 are at **Annexes I to III** please.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Cathy LI'.

(Miss Cathy LI)
for Secretary for Constitutional and Mainland Affairs

Subcommittee on Rights of Ethnic Minorities

**Motion passed under agenda item I
"Implementation and review of the Administrative Guidelines on
Promotion of Racial Equality"
at the meeting on 23 January 2018**

This Subcommittee urges the Government to expeditiously amend the Race Discrimination Ordinance ("RDO") and include government functions and powers in the review of RDO, so as to address the inadequacies of the Administrative Guidelines on Promotion of Racial Equality and help promote racial equality.

Moved by: Hon Claudia MO

Response from the HKSAR Government

The Government is committed to eliminating racial discrimination and promoting equal opportunities for ethnic minorities (EMs). The Race Discrimination Ordinance (Cap. 602) (RDO), which came into full operation in July 2009, purports to protect people against discrimination, harassment and vilification on the ground of race. According to the RDO, it is unlawful to discriminate in specified areas, including employment; education; provision of goods, facilities, services and premises; election and appointment matters of public bodies etc.; arrangements in relation to barristers and membership of clubs. It is also unlawful to racially harass another person (i.e. engaging in unwelcome conduct, in circumstances in which a reasonable person would have anticipated that the other person would be offended, humiliated or intimidated by that conduct) in these fields.

2. The RDO binds the Government (section 3 of the Ordinance) and therefore, prohibits discriminatory acts and practices of the Government and other public authorities in all the areas specified in the RDO, such as employment; education; the provision of goods, facilities or services; and the disposal or management of premises. In particular,

section 27 of the RDO renders it unlawful for the HKSAR Government to discriminate against a person in the provision of the services of any department of the HKSAR Government or any undertaking by or of the HKSAR Government.

3. Under the HKSAR's legal framework, public bodies have always been prohibited from practising racial discrimination. The Hong Kong Bill of Rights Ordinance prohibits the HKSAR Government and public authorities from engaging in practices that would entail any form of discrimination, including discrimination on the ground of race. Avenues are also available to address complaints against public authorities through the Ombudsman, complaint channels in Bureaux and Departments, and the Legislative Council, etc.

Constitutional and Mainland Affairs Bureau
March 2018

Subcommittee on Rights of Ethnic Minorities

**Motion passed under agenda item I
"Implementation and review of the Administrative Guidelines on
Promotion of Racial Equality"
at the meeting on 23 January 2018**

Although Hong Kong has implemented the Race Discrimination Ordinance ("RDO") and the Administrative Guidelines on Promotion of Racial Equality ("the Administrative Guidelines"), RDO does not apply to the Government. The Equal Opportunities Commission has requested that amendments be expeditiously made to RDO by placing the Government under statutory regulation, yet the Government has turned down this suggestion. While the Administrative Guidelines have been drawn up, there is no monitoring at all, resulting that ethnic minorities ("EMs") in Hong Kong are unfairly treated when accessing to public services (including education, housing, healthcare, employment and social welfare services, etc.). This Subcommittee urges the Government to immediately amend RDO and set up a high-level commission on EMs for monitoring government policies, public services, legislation and resource allocation from the perspective of EMs, with a view to ensuring equal opportunities for EMs and protecting them against discrimination.

Moved by: Dr Hon Fernando CHEUNG Chiu-hung

Response from the HKSAR Government

The Government attaches great importance to the work on support for the ethnic minorities (EMs). Through various support services in areas such as education, employment and social participation, the Government seeks to safeguard equal opportunities for EMs and to facilitate their integration into the Hong Kong society. As recently announced in the 2018-19 Budget, the Chief Secretary for Administration will set up an inter-departmental steering committee to co-ordinate, review and monitor work in this area. The Government will also earmark \$500 million to strengthen support for EMs.

Race Discrimination Ordinance

2. The Government is committed to eliminating racial discrimination and promoting equal opportunities for EMs. The Race Discrimination Ordinance (Cap. 602) (RDO), which came into full operation in July 2009, purports to protect people against discrimination, harassment and vilification on the ground of race. According to the RDO, it is unlawful to discriminate in specified areas, including employment; education; provision of goods, facilities, services and premises; election and appointment matters of public bodies etc.; and arrangements in relation to barristers and membership of clubs. It is also unlawful to racially harass another person (i.e. engaging in unwelcome conduct, in circumstances in which a reasonable person would have anticipated that the other person would be offended, humiliated or intimidated by that conduct) in these fields.

3. The RDO binds the Government (section 3 of the Ordinance) and therefore, prohibits discriminatory acts and practices of the Government and other public authorities in all the areas specified in the RDO, such as employment; education; the provision of goods, facilities or services; and the disposal or management of premises. In particular, section 27 of the RDO renders it unlawful for the HKSAR Government to discriminate against a person in the provision of the services of any department of the HKSAR Government or any undertaking by or of the HKSAR Government.

4. Under the HKSAR's legal framework, public bodies have always been prohibited from practising racial discrimination. The Hong Kong Bill of Rights Ordinance prohibits the HKSAR Government and public authorities from engaging in practices that would entail any form of discrimination, including discrimination on the ground of race. Avenues are also available to address complaints against public authorities through the Ombudsman, complaint channels in Bureaux and Departments, and the Legislative Council, etc.

Administrative Guidelines on Promotion of Racial Equality

5. Meanwhile, the Government will continue to safeguard the equal rights of people with different ethnic origins, and enhance the sensitivity among public officers serving EMs through education and publicity as well as the implementation of the Administrative Guidelines on Promotion of Racial Equality (the Guidelines). The Guidelines is

administrative in nature and relevant public authorities are required to comply. At present, different bureaux and departments and public authorities are responsible for implementing and monitoring the implementation of the Guidelines in areas relevant to their purview. In accordance with the Guidelines, the relevant authorities have drawn up checklist of measures within their respective policy and programme areas that would assist in the promotion of racial equality, equal access to key public services and transparency of their work. The checklists have been uploaded onto the CMAB website and are subject to the monitoring of the Legislative Council and the public. The Constitutional and Mainland Affairs Bureau and the relevant authorities will continue to keep the Guidelines under regular review, especially in the context of how to enhance existing measures and introduce new measures that would promote racial equality. Besides, the Government will keep the coverage of the Guidelines under review.

Constitutional and Mainland Affairs Bureau
March 2018

Subcommittee on Rights of Ethnic Minorities

**Motion passed under agenda item I
"Implementation and review of the Administrative Guidelines on
Promotion of Racial Equality"
at the meeting on 23 January 2018**

The Government often refuses to collect data relating to ethnic minority service users on grounds of "avoiding racial discrimination". However, many countries have in fact clearly stated that data collection is an effective means of vigorously stamping out racial discrimination instead. This Subcommittee urges the Government to draw up guidelines on data collection to ensure that the collection and use of the relevant ethnicity data shall aim to eliminate discrimination or promote racial equality.

Moved by: Hon SHIU Ka-chun

Response from the HKSAR Government

In accordance with the Administrative Guidelines on Promotion of Racial Equality (the Guidelines), the relevant government bureaux and departments (B/Ds) and public authorities should consider taking appropriate steps to assess the impact of their policies and measures on racial equality or provision of equal access to key public services. These steps may include collection of relevant information and statistics, consultation with relevant stakeholders and other appropriate measures. Moreover, to facilitate assessment by the public, the relevant public authorities should consider setting indicators and/or targets as appropriate.

2. B/Ds and public authorities, having regard to their own policy considerations and needs, may collect data and statistics on the races of stakeholders and conduct related studies. The data and statistics is collected on a voluntary and confidential basis, and the purpose of which is to facilitate the Government in formulating policies and measures that would enable equal access by EMs to public services. The Constitutional and Mainland Affairs Bureau will continue to request the

relevant authorities to collect data and set indicators for the continuous improvement of services provision to EMs.

Constitutional and Mainland Affairs Bureau
March 2018

Appendix II

Relevant documents on Administrative Guidelines on Promotion of Racial Equality

| Committee | Date of meeting | Paper |
|--|--------------------------|---|
| Panel on Constitutional Affairs ("CA Panel") | 7.7.2009 (Item III) | Agenda Minutes |
| | 19.10.2009 (Item III) | Agenda Minutes |
| | 11.12.2009 (Item III) | Agenda Minutes |
| | 16.11.2015 (Item IV) | Agenda Minutes |
| | 16.10.2017 (Item III) | Agenda Minutes |
| Subcommittee on Rights of Ethnic Minorities | 23.1.2018 (Item I) | Agenda Minutes |
| House Committee | 26.10.2018 | Report of the Subcommittee on Rights of Ethnic Minorities |

Council Business Division 2
Legislative Council Secretariat
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