

Code of Practice on Employment under  
the Race Discrimination Ordinance

**Submission of the Hong Kong Bar Association**

1. The Hong Kong Bar Association (“HKBA”) was asked by the Legislative Council Subcommittee on Race Discrimination (Formal Investigation) Rules, Race Discrimination (Investigation and Conciliation) Rules and Code of Practice on Employment under the Race Discrimination Ordinance (“the LegCo Subcommittee”) to comment on the Code of Practice on Employment under the Race Discrimination Ordinance (“COP”).
2. The COP was issued by the Equal Opportunities Commission (“EOC”) in April 2009 and was gazetted (GN 2733/2009).
3. The HKBA commented on a draft of the COP in January 2009 at the invitation of the EOC. In the said comments, the HKBA took the view that the COP should be “a source of practical advice of the positive roles employers and employees can and should play in eliminating racial discrimination in the workplace” and should promote “good practices” in the workplace. The said comments can be accessed at: <http://www.hkba.org/whatsnew/submission-position-papers/2009/20090108b.pdf>.
4. The HKBA notices that the COP has been substantially reviewed to take account of comments of various parties to the draft. Nevertheless, the HKBA would provide the LegCo Subcommittee with the following observations.
5. **Paragraph 2.2.2:** Illustration 1 is not readily understood. It appears that the intended meaning of the fourth sentence is to indicate that the company in fact employs non-permanent residents of Hong Kong. If this is so, then the fourth sentence can be rephrased to: “In fact, the

company does not employ *only* people who are permanent residents of Hong Kong ...”.

6. **Paragraph 4.1.2:** The HKBA has considered the case referred to in the footnote, namely Chief Constable of the Lincolnshire Police v Stubbs [1999] IRLR 81. In that case, the allegation was one of sexual harassment in a social gathering of work colleagues and the English Employment Appeal Tribunal held on the facts of that case that the occasion was an extension of the employment of the police officers. While the COP may have to indicate the possibility that certain after-work activities may in the context of anti-discrimination legislation be regarded as “in the course of employment”, it should at the same time emphasize that such a finding is very much fact-sensitive and it should not be taken that every social gathering “immediately after work” or every “organized party” involving work colleagues would be so held.
7. **Paragraph 7.3.2:** The HKBA finds that the range of factors highlighted in the paragraph has not been set out in clear order. It seems that the last sub-clause, namely “and whether the case reflects a widespread problem or the EOC’s strategic concerns”, refers to two factors that are not mutually exclusive but have been appended under that sub-clause as an afterthought.
8. Last but not least, the HKBA reiterates that it is desirable for the EOC to draft and publicize additional codes of practice under the Race Discrimination Ordinance (Cap 602) on housing and provision of goods and services as soon as practicable.

Dated 1 June 2009.



Hong Kong Bar Association