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OUR REF : CMAB/CR 1/34/92

8 August 2013

The Honourable TAM Yiu-chung, GBS, JP
Chairman of Panel on Constitutional Affairs
Legislative Council Complex
1 Legislative Council Road
Central

Dear Mr TAM,

**Follow-up on the meeting of the Panel on Constitutional Affairs
on 17 June 2013**

At the meeting of the Legislative Council (LegCo) Panel on Constitutional Affairs (CA Panel) held on 17 June 2013, Members noted that the Administration has been following up the legislative proposals of the Equal Opportunities Commission (EOC) to amend the anti-discrimination ordinances. This letter provides further information about the progress concerned.

2. By way of background, in 1999 the EOC submitted to the Administration 20 proposals to amend the Sex Discrimination Ordinance (SDO) and the Disability Discrimination Ordinance (DDO). These proposals were discussed by the LegCo Panel on Home Affairs (HA Panel) in 2001¹. At that juncture the Administration considered that eight of the 20 proposals were either infeasible or unnecessary; for the remaining 12, the Administration indicated no in-principle objection, among which three have since been implemented fully².

¹ Relevant HA Panel papers are Papers No. CB(2)247/00-01(01), CB(2)830/00-01(01) and CB(2)1672/00-01.

² These three relate to (a) extending the scope of s.2(5)(b) of the SDO to cover sexual harassment in the field of education; (b) extending the coverage of vicarious liability to acts of sexual harassment under s.76(1) of the SDO; and (c) extending the coverage of vicarious liability to acts of harassment or vilification under s.72(1) of the DDO. These amendments were implemented via Ord. No. 29 of 2008 when the Race Discrimination Ordinance (RDO) was enacted.

3. In 2009, the EOC informed the Administration that it was reviewing the 1999 proposals in the light of latest development and experience. In August 2011, the EOC submitted revised proposals relating to all the four anti-discrimination ordinances³, including 10 which were raised in 1999 and one new proposal. That being the case, the Chairperson of the EOC stated at the CA Panel meeting held on 17 June 2013 that the EOC would further review the four anti-discrimination ordinances, with a view to harmonizing the principles and provisions therein. We have sought clarification with the EOC; it stated to us its wish for the Administration to continue to take forward the 11 proposals submitted in 2011, but it would also reconsider the first-batch legislative proposals raised in 1999.

4. In the light of the EOC's latest position, the Administration will focus on the 11 amendments submitted by the EOC in 2011. The current status of these 11 proposals is as follows –

- (a) one has been implemented on 10 May 2013⁴;
- (b) five will be taken forward by the Statute Law (Miscellaneous Provisions) Bill, tentatively scheduled for introduction to the LegCo in the 2013/14 legislative session⁵;
- (c) one will be taken forward by an amendment bill tentatively scheduled for introduction to the LegCo in the 2013/14 legislative session⁶;
- (d) one has been considered by the Department of Justice (DoJ) as unnecessary from the legal point of view⁷; and

³ The SDO, DDO, RDO, and the Family Status Discrimination Ordinance (FSDO).

⁴ The Legislation Publication (Revision) Order 2013 amended the headings of SDO ss.7 and 8 to more accurately reflect the nature of these two provisions.

⁵ The five amendments are technical ones relating to the repeal of certain exceptions under Part 2 of Schedule 5 to the SDO; issuance of enforcement notice under the DDO; protection of EOC staff against liability in implementing the four anti-discrimination ordinances; and refining the Chinese text of the four anti-discrimination ordinances.

⁶ This amendment seeks to extend the protection of the SDO to cover sexual harassment by customers against service providers, as discussed at the CA Panel on 17 June 2013, ref: CB(2)1324/12-13(03).

⁷ EOC's proposal is to clarify that the District Court is not barred from granting more than one statutory remedy under the four anti-discrimination ordinances. DoJ considers that this is unnecessary as the current provisions do not have the effect of barring the District Court from awarding more than one statutory remedy.

- (e) three proposals need to be further considered because of their complexities and potential far-reaching implications⁸.

5. We will continue to work closely with the EOC in taking forward the legislative proposals above.

Yours sincerely,

(Signed)

for Secretary for Constitutional and Mainland Affairs

cc Chairperson, EOC

⁸ The three proposals relate to recovery of costs and expenses by the EOC in civil proceedings; the concept of “direct disability discrimination” under s.6(a) of the DDO; and the availability of damages for indirect discrimination where intent cannot be proved.