### Public Consultation – Code of Practice on Employment under the Race Discrimination Ordinance

**29 November 2008** 

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### **Aims**

- Collect stakeholders' views
- Develop a user-friendly code of practice
- Assist employers to understand their obligations and develop good management practices
- Assist employees to understand their rights and obligations
- Statutory requirement



### **Consultation Questions**

- Does it contain the guidance that you would expect to see?
- Are the examples helpful and realistic?
- Is there anything that should be added to or removed?
- Is it clearly written and easy to understand?
- Are there any other comments you would like the EOC to consider?



### **Effective Dates**

- Provisions relating to the operation of the EOC
  - > Functions & powers, code of practice, rules & regulations
  - ➤ October 3, 2008
- Substantive provisions
  - ➤ April 2009



### **Contents**

- Introduction (purpose and status of the Code)
- Meaning of "race"
- Scope of employment protection
- Overview of prohibited/unlawful acts
- Liability for unlawful acts
- Further details on direct and indirect discrimination
- Exceptions and matters not affected
- · Good practice
- · Complaint and legal proceedings



### **Status**

- A statutory code of practice
- Not legally binding and cannot prevail over other statues
- However, Courts will take into account of any relevant parts of the Code in deciding cases



### Meaning of "Race"

- Race
- Colour
- Descent (forms of social stratification)
- · National origin
- Ethnic origin



### **Not Race**

- Indigenous inhabitants
- Permanent residency
- Right of abode
- · Permission to land and remain
- Restriction or condition of stay
- Length of residency
- Nationality
- Citizenship or resident status of other countries



### **Scope of Protection**

- · Work wholly or mainly in Hong Kong
- · Recruitment and terms
- Promotion, training, transfer, other detriments
- Termination: non-renewal, constructive dismissal
- Contract workers, partnerships, commission agents
- Qualifying bodies, vocational training, employment agencies
- Not apply to "small employers", "domestic helpers" and "compliance with religious doctrines"



### **Prohibited Acts**

- Race discrimination (direct / indirect)
- Discrimination on the ground of near relative's race
- Harassment (including hostile environment)
- Vilification/serious vilification
- Victimization
- Other unlawful acts ("discriminatory advertisements" and "instructions and pressure to discriminate"



### Liability

- Employer and principal liability
- Employee liability for aiding employer's unlawful acts
- Employee's direct liability
- Reasonably practicable steps by an employer to prevent unlawful acts
- Policy
- Training, supervision and remedial action



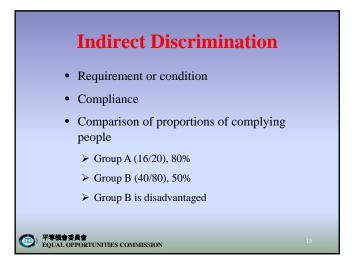
### **Direct Discrimination**

- Less favourable treatment
- Hypothetical comparator
- Motive not necessary, but relevant
- More than one reason
- Other persons of the same race not discriminated against – may be relevant, but not necessarily a complete answer
- Segregation is less favourable treatment



## Direct Discrimination Direct evidence is rare Discriminator may not even be aware of their own prejudice and discrimination Court look to defendant for explanation and may draw inference from circumstantial evidence in the absence of satisfactory explanation

# Indirect Discrimination Equal application of requirement or condition to people of different races Adverse impact or disadvantage for people of particular racial group(s) Not justifiable



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