

**Minutes of the Eighty-fifth Meeting of
The Equal Opportunities Commission
held on 17 June 2010 (Thursday) at 2:30 p.m. in the
Equal Opportunities Commission's Conference/Training Room**

Present

Mr. LAM Woon-kwong, G.B.S., J.P.	Chairperson
Ms CHAN Ka-mun, Carmen, J.P.	
Ms CHAN Man-ki, Maggie	
Prof. Randy CHIU	
Ms CHIU Lai-kuen, Susanna	
Ms CHOI Hing-shi	
Mrs. CHONG WONG Chor-sar, M.H., J.P.	
The Hon FUNG Kin-kee, Frederick, S.B.S., J.P.	
Dr. LAW Koon-chui, Agnes, J.P.	
Mr. LUI Tim-leung, Tim, B.B.S., J.P.	
Mr. Amirali Bakirali NASIR, J.P.	
Ms NG Wing-mui, Winnie	
Mr. Saeed UDDIN, M.H.	
The Hon TSE Wai-chun, Paul	
Dr. TSE Wing-ling, John, M.H.	
Ms WONG Ka-ling, Garling	
Mr. Michael CHAN Yick-man	Secretary Director, Planning & Administration [DPA]

Absent with apology

Mr. LEE Luen-fai

In attendance

Mr. Joseph LI Siu-kwai	Director, Operations [D(Ops)]
Mr. Herman POON Lik-hang	Chief Legal Counsel [CLC]
Dr. Ferrick CHU Chung-man	Head, Policy and Research [HPR]
Ms Shana WONG Shan-nar	Head, Corporate Communications and Training [HCCT]

Miss Kerrie TENG Yee-san
Miss Gloria YU Wai-ling

Accountant [ACCT]
Senior Equal Opportunities
Officer, Administration &
Personnel [SAP]

I. Introduction

1. The Chairperson (C/EOC) welcomed all Commission Members (Members) to the 85th Meeting. An apology for absence had been received from Mr. LEE Luen-fai due to clash of meetings.

2. As agreed at the last meeting, C/EOC said that a press briefing would be held after the meeting on major items discussed at this meeting.

II. Confirmation of Minutes

(Agenda Item No. 1)

3. The Minutes of the 84th Meeting held on 18 March 2010 issued to Members on 15 April 2010 were confirmed without amendments.

III. Matters Arising

(Agenda Item No. 2)

Public Access to EOC Meetings

4. At the last EOC Meeting, Members decided that due to space constraint and resource implications and that there were already different channels to publicize EOC's work, opening up meetings would not be considered at present. Nonetheless, to further enhance EOC's transparency, Members agreed that press briefings could be held after EOC Board Meetings and committees meetings. The Policy & Research Committee (PARC) had since conducted a press briefing after its 1st meeting held on 29 April 2010, and a press briefing would be convened after today's EOC meeting.

5. Regarding Members' views at the last meeting to hold an annual public forum in July, the EOC office had prepared a proposal on the annual forum vide EOC Paper No. 20/2010 under Agenda Item 6.

Formal Investigation on Accessibility in Publicly Accessible Premises

6. C/EOC reported that the Formal Investigation on Accessibility in Publicly Accessible Premises (FI) Report had been released on 7th June 2010. Findings were widely reported in the media and comments were positive. The report had generated discussions in the community for greater improvements on accessibility in the premises concerned. The next step forward would be to closely monitor improvement measures to be undertaken, which included urging the Government for a high level leadership in coordinating the improvements required and promoting barrier-free access. Considerations would also be given to conducting similar investigations in selective areas/districts of privately owned buildings with high public usage in future.

7. D(Ops) added that after the release of the FI Report, the LINK and the Commissioner for Rehabilitation had been contacted. It was noted that the Commissioner for Rehabilitation was coordinating a meeting within the Government for following up the deficiencies identified. Furthermore, the EOC office had received several complaints relating to both Government and private buildings on access problems identified in the Report. The Operations Division would follow up with the subject through various means and channels.

8. Ms Maggie CHAN suggested the EOC office to provide Members with regular updates on the progress of the improvements made to the premises concerned and other follow-ups. Mr. Tim LUI noted the positive responses from the public on EOC's work in this regard and recommended the EOC to closely liaise with parties concerned to ensure improvements were done as soon as possible to enhance EOC's credibility and image. Members' suggestions were noted.

(Dr. John TSE joined the meeting at this juncture.)

IV. New Agenda Items

Proposal to set up an Equal Opportunities Tribunal

(EOC Paper No. 14/2010; Agenda Item No. 3)

9. C/EOC remarked that EOC Paper No. 14/2010 revisited EOC's earlier recommendations to the government to establish an Equal Opportunities Tribunal (EOT) aiming to provide a user-friendly, informal, flexible and efficient adjudication system, and without the need to engage professional legal representative or if legal representation was required, the cost would be reduced. The recommendations envisaged active case management by the tribunal itself to facilitate the parties to define the issues and to give guidance on preparation of trial. As yet, no action has been taken by the government on the recommendations.

10. CLC briefed Members on the background and development of the EOT recommendations, particularly on the issues affecting the way forward.

(The Hon Frederick FUNG joined the meeting at this juncture.)

11. After deliberations, Members were in general supportive of the proposal of establishing an EOT. However, some viewed that the wider community might not have a full grasp of the essential characteristics of an EOT and that some of the details in the recommendations might need further deliberations. The Meeting agreed that more thoughts should be given to this subject before strategically mapping out the way forward. Discussions with stakeholders concerned with a view to enhance understanding and garner support from the wider community on the proposed EOT should be initiated. This would add weight when the EOC further liaised with the Government to take forward the recommendations.

12. Ms Maggie CHAN suggested to circulate all relevant background papers on this subject to Members again to facilitate their consideration.

Ms Garling WONG suggested the EOC office to conduct research and provide relevant data relating to the establishment and usage of similar equal opportunities adjudication mechanism overseas for Members' reference. Pending progress on the creation of an EOT, Mr. AB NASIR and the Hon Paul TSE suggested exploring the feasibility of other interim alternatives serving similar aim as the proposed EOT, such as creation of a specialized EO lawyers system providing legal services at a reduced fee, pro-bono paralegal support and establishing a specialized panel of judges.

Proposal for Law Amendment

(EOC Paper No. 15/2010; Agenda Item No. 4)

13. CLC briefed Members on the 12 items of proposed amendments as per Annex to EOC Paper No. 15/2010.

14. Members noted that most of the proposed amendments (Items 2 to 10 of the Annex) were submitted to the Government in 1999. The Government had no objection in principle to these proposals and had in fact included them in a draft bill in 2003, though it was not further pursued. Except for Item 2 on Sexual Harassment, these proposals were mainly technical in nature and did not involve significant changes. For the rest of the proposed items, Item 11 on damages in respect of indirect discrimination was a new proposal whereas Items 1 and 12 respectively on declaratory and injunctive relief and definition of direct disability discrimination taken out by the EOC were among the proposals submitted in 1999, but the Government had reservation at the time on Item 12 and had further deliberations with EOC on Item 1 where an agreed approach had yet to be decided.

15. Ms Maggie CHAN and the Hon Frederick FUNG suggested to follow up with those proposals that had a more pressing need and those where the Government had no objection in principle first. The Hon Paul TSE echoed his agreement other than proposed Item 1, which was related to giving EOC the power to initiate proceedings to apply for declaratory and injunctive relief. He considered that the proposal might give EOC too wide a power and also did not conform to the existing

adversarial litigation system. CLC responded that EOC's power would only be used under prescribed conditions.

16. In response to a question posed by the Hon Frederick FUNG, DPA said that the EOC office had followed up the subject from time to time at the six-monthly review meeting and through written correspondence with EOC's housekeeping bureau. However it was understood that due to the tight schedule of the LegCo, there was as yet no timetable for the legislative amendments concerned. He added that there was one proposed amendment on SDO and DDO submitted by the EOC earlier, which the Government had taken forward and passed by the LegCo as a consequential amendment when the Race Discrimination Ordinance was enacted. Mrs. CHONG and Ms Maggie CHAN appreciated EOC staff's hard work, including those seen in the recently released Formal Investigation report. They both considered regular follow up on the proposals put forward to the Government and report to the EOC Board important for monitoring purposes.

17. C/EOC agreed that the EOC office should first follow up with the Government on those proposals listed in the Annex where the Government had already agreed to in principle. For other items such as Item 1, more deliberations would be required and they would be considered separately by either the Policy and Research Committee (PARC) or the Legal and Complaints Committee (LCC) as appropriate. Progress on the proposals would be reported to the EOC Board regularly in the future.

Change of Terms of Reference of the Policy and Research Committee (PARC)

(EOC Paper No. 16/2010; Agenda Item No. 5)

18. EOC Paper No. 16/2010 was to seek Members' advice on (a) the proposed increase in the frequency of meeting of the PARC from 3 months to 2 months, and (b) whether the Chairperson should become a member of the Administration and Finance Committee (A&FC), the PARC and the Community Participation and Publicity Committee (CPPC) as opposed to currently being in attendance. C/EOC invited

Members' view on the above and said he had no strong view on (b).

19. Members had no objection to the proposed change in (a) but had extensive discussions on (b) from the perspectives of effective communication, good corporate governance, line of authority and accountability of the Chairperson and the public' perception on his power in the EOC.

(The Hon Paul TSE and Mr. AB NASIR participated in the discussions and left the meeting respectively after expressing their views.)

20. As Members had no objection to the proposed change to the frequency of meeting of PARC, it was endorsed by the Meeting.

21. Some Members viewed that the Chairperson should be a full Member of all the committees no different from other Members of the EOC Board, and the Chairperson was already now the Convenor and Member of the LCC. Separately, there might be a need to review if the Chairperson should automatically be the Convenor of the LCC as was the case at present. A number of other Members expressed concern as the Chairperson was also a full time head of the EOC office with executive power like a Chief Executive Officer and becoming a full Member with voting rights might be perceived as having excessive power in the EOC. There were already considerable discussions in the past on separating the post of the Chairperson and the Chief Executive Officer to ensure proper check and balance.

22. C/EOC said that as a matter of principle, it was good for the EOC, in terms of governance, to separate the roles of the Chairperson and the Chief Operating Officer. For the time being, for the Chairperson to be seen as more accountable for EOC's matters, he suggested the Chairperson to become an ex-officio member of the 3 committees with voting rights but the Chairperson would only exercise his voting right when invited by the respective Convenor to do so in normal circumstances. On whether the Chairperson should be the Convenor of LCC, more thoughts would be given and Members' advice would be sought in due course. Members posed no objection to C/EOC's

suggestion. The matter was decided.

July Annual EOC Forum

(EOC Paper No. 20/2010; Agenda Item No. 6)

23. Members had diverse views on this subject. Ms Susanna CHIU expressed that the annual forum as discussed in the last meeting should be similar to an Annual General Meeting (AGM) of a public company where the EOC was to present to the public information on its past performance and future work priorities. The Hon Frederick FUNG said that he expected the annual forum to be in the form of a special EOC Meeting where the public could attend as observers. Dr John TSE opined that the event should be in the form of a discussion forum, preferably with small group discussions facilitating exchange of views between the EOC and the public on matters advocated by the EOC. Mr. Tim LUI expressed that the forum would not be very useful if it were to release information that would shortly be publicized in EOC's Annual Report. He also said that the name of the event, the topics to be included and the location for holding the event should be well thought out to avoid any undesirable effect. Hence, it would be too early to hold the event in July. Dr. Agnes LAW said that itemized breakdown of costs for organizing the event should be provided in due course.

(Ms Carmen CHAN and Ms Susanna CHIU left the meeting at this juncture.)

24. C/EOC said that the original proposal as discussed in the last meeting was similar to that of an AGM; however, as Members expressed different views on the format as well as the content of the proposed event, there was a need to give more consideration to the subject. As such, the original plan for holding the event in July would be deferred for the time being. The Meeting agreed that a Task Group comprising the Convenors of the 4 EOC Committees and interested Members be formed to give more thoughts to this matter.

(As some Members might need to leave the meeting early, to facilitate more thorough discussion, at this juncture, the Meeting proceeded to

consider EOC Paper No. 21/2010 on Minimum Wage Bill – Transitional Arrangement for PWDs Already in Employment under Agenda Item 10 – Any Other Business.)

Minimum Wage Bill – Transitional Arrangement for PWDs Already in Employment

(EOC Paper No. 21/2010; Agenda Item No. 10 - AOB)

25. C/EOC said that the EOC office had earlier sought advice from Members on whether a new option proposed by the Government for serving PWD employees to retain their current wage level which was below the Statutory Minimum Wage (SMW) without the need for a productivity assessment to be conducted. In response, 9 EOC Members had agreed to this new option, 2 rejected and 1 requested a meeting to discuss the matter. One of the Members Ms CHOI Hing-shi who had rejected the new option had provided written comments in her reply. The paper that had been provided to Members seeking their advice and Ms CHOI's written comments were included in EOC Paper No. 21/2010 for Members' further deliberation. The relevant paper submitted to the Bills Committee on Minimum Wage Bill by the Labour and Welfare Bureau in June 2010 under reference LC Paper No. CB(2)1818/09-10(02) was also tabled for Members' reference.

26. Members had extensive discussions on the matter and noted that the latest proposal by the Government enabled employees with disabilities to mutually agree with their respective employers to maintain their current salaries until such time when they decided to opt for work assessment. Members also noted that the new option was initiated by PWD groups concerned and the main purpose was to ensure employment opportunities for serving PWD employees with relatively less ability. Some Members believed that the new option would be beneficial to the serving PWD employees since it would save the uncertainty of undergoing a productivity assessment if they chose not to initiate for one. Others believed that the new option could be used as a means of exploitation, particularly so when there was no genuine balance of power between employers and serving PWD employees.

(Ms Winnie NG and Dr Agnes LAW left the meeting respectively after expressing their views on the subject.)

27. After deliberations and taking into account Members' views expressed also in this meeting, the Meeting reiterated EOC's stance on this subject and agreed to the following to safeguard the rights of PWD employees and prevent discriminatory treatment and abuses:

- i. Employees with disabilities should be covered by the Minimum Wage Legislation;
- ii. the Government's latest proposal enabling employees with disabilities to mutually agree with their respective employers to maintain their current salaries until such time when they decide to opt for work assessment is noted;
- iii. to ensure that employees with disabilities will not be subjected to abuse and discriminatory treatment, the EOC will monitor the situation closely after the legislation comes into effect; and
- iv. the EOC will ask the Government to undertake to review the transitional arrangements within a period of not more than 2 years.

Reports of the Legal & Complaints Committee, Community Participation & Publicity Committee, Policy and Research Committee and Administration & Finance Committee

(EOC Paper No. 17/2010; Agenda Item No. 7)

28. Members noted EOC Paper No. 17/2010.

Compliance and Management Study Report and its Recommendations

(EOC Paper No. 18/2010; Agenda Item No. 8)

29. DPA briefly explained to Members the salient points contained

in EOC Paper No. 18/2010 which was to seek their endorsement to the Compliance and Management Study Report submitted by EOC's external consultant, PricewaterhouseCoopers Limited (PwC) and the suggestions contained therein with a view to further enhancing EOC's operational efficiency. He also took the opportunity to suggest to the Meeting to consider revising the purchase authority limit (for a single order or item) from HKD1M to HKD1.3M to be delegated to the Chairperson so as to align with the value of purchases currently stated in the EOC's Procurement of Stores and Services Manual. All purchase over HKD1.3M including those requiring tender procedures would continue to be the authority of the EOC Board.

30. Members noted the study by PwC was a follow up on the Audit Report and Public Accounts Committee (PAC) Report. They also noted from PwC's report that all the recommendations from the Audit Report and the PAC Report had been duly implemented by the EOC and incorporated as part of its governance/administrative arrangements. For continuous improvement, PwC had provided a number of suggestions and they had been considered by the Administration and Finance Committee (A&FC). The A&FC supported the report and its recommendations and provided further refinements on the suggestions vide the said paper.

31. The Meeting endorsed the study report and suggestions from PwC, the A&FC's further suggestions and the revised delegation of purchase authority to the Chairperson.

Six Monthly Report of EOC's Financial Position as at 31 March 2010

(EOC Paper No. 19/2010; Agenda Item No. 9)

32. Members noted EOC Paper No. 19/2010.

V. Any Other Business

33. There being no other business. The meeting was adjourned at 6:05pm.

VI. Date of Next Meeting

34. The next regular EOC meeting was scheduled for 16 September 2010 (Thursday) at 2:30 p.m.

*Equal Opportunities Commission
June 2010*