

Making Our Church Safe for All:

Seminar on Preventing Sexual Harassment in Church

Definition of Sexual Harassment and the Related Liabilities of Church

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Today's presentation



Definition of Sexual Harassment

**The latest amendment on
Sex Discrimination Ordinance (SDO)**

Related Liabilities of Church



Are these sexual harassment?

A youth group leader made a sex joke to draw attention in the class?

A male choirmaster held the hand of a female choir member when he prayed for the choir member's sick parent?

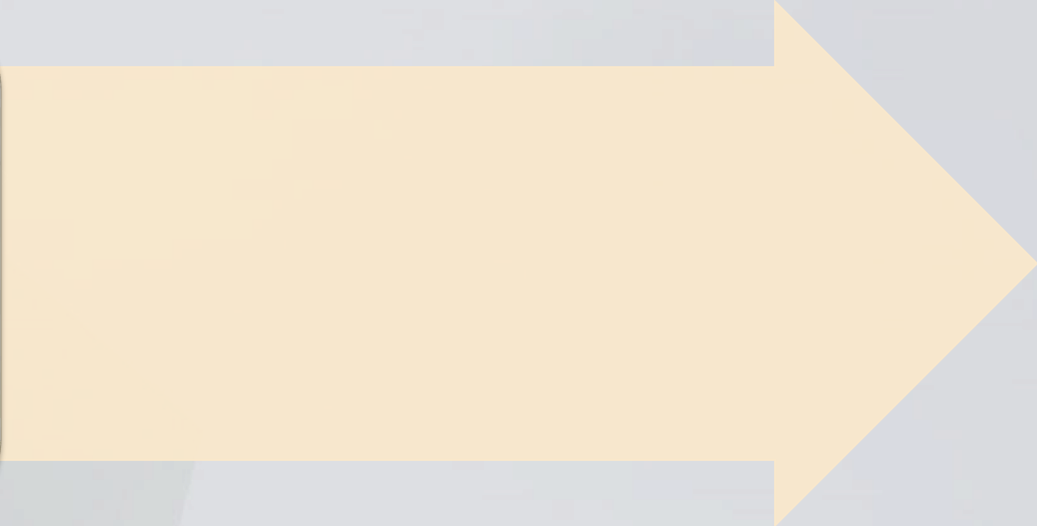
A church counselor asked a newly married couple about their sex life?

A male pastor patted and massaged the shoulder of a male church member?

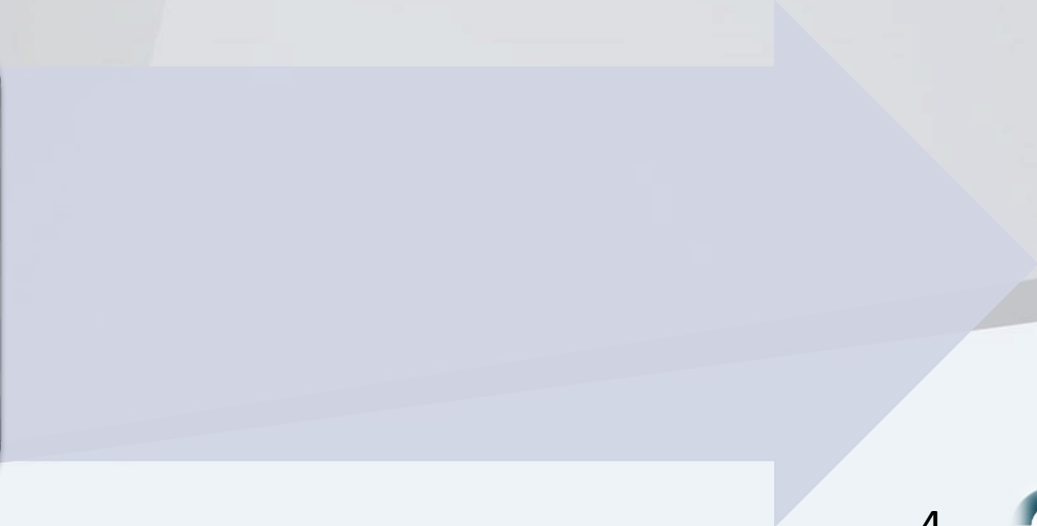


Types of Sexual Harassment

**One person
against another
person**



**Creating a sexually
hostile/intimating
environment**



Definition of Sexual Harassment

One person against another person

Subjective Test

- **Unwelcome** sexual advance or request for sexual favors
- Other unwelcome conduct of a sexual nature

Objective Test

- **Reasonable Person Test**
- having regard to all the circumstances
- a reasonable person would have anticipated the harassed person would be offended, humiliated or intimidated



Definition of Sexual Harassment

Creating a Sexually Hostile Environment

Any person, either alone or together with other persons

engages in a **conduct of a sexual nature** which creates a hostile or **intimidating environment** for another person

The behavior does not need to be directly or consciously targeted at an individual
e.g. Open discussion of sexual jokes



Examples of Sexual Harassment

- Uninvited physical contact or gestures
- Unwelcome requests for sex
- Sexual comments or jokes
- Offensive communications of a sexual nature (e.g. e-mail, text messages...)
- Displays of offensive or pornographic material
- Sexual assault or forced sexual intercourse



Sexual Harassment can happen

- Repeatedly or as a One off incident
- Explicitly or Implicitly
- Regardless of Gender



Application of the Ordinance & the latest amendments

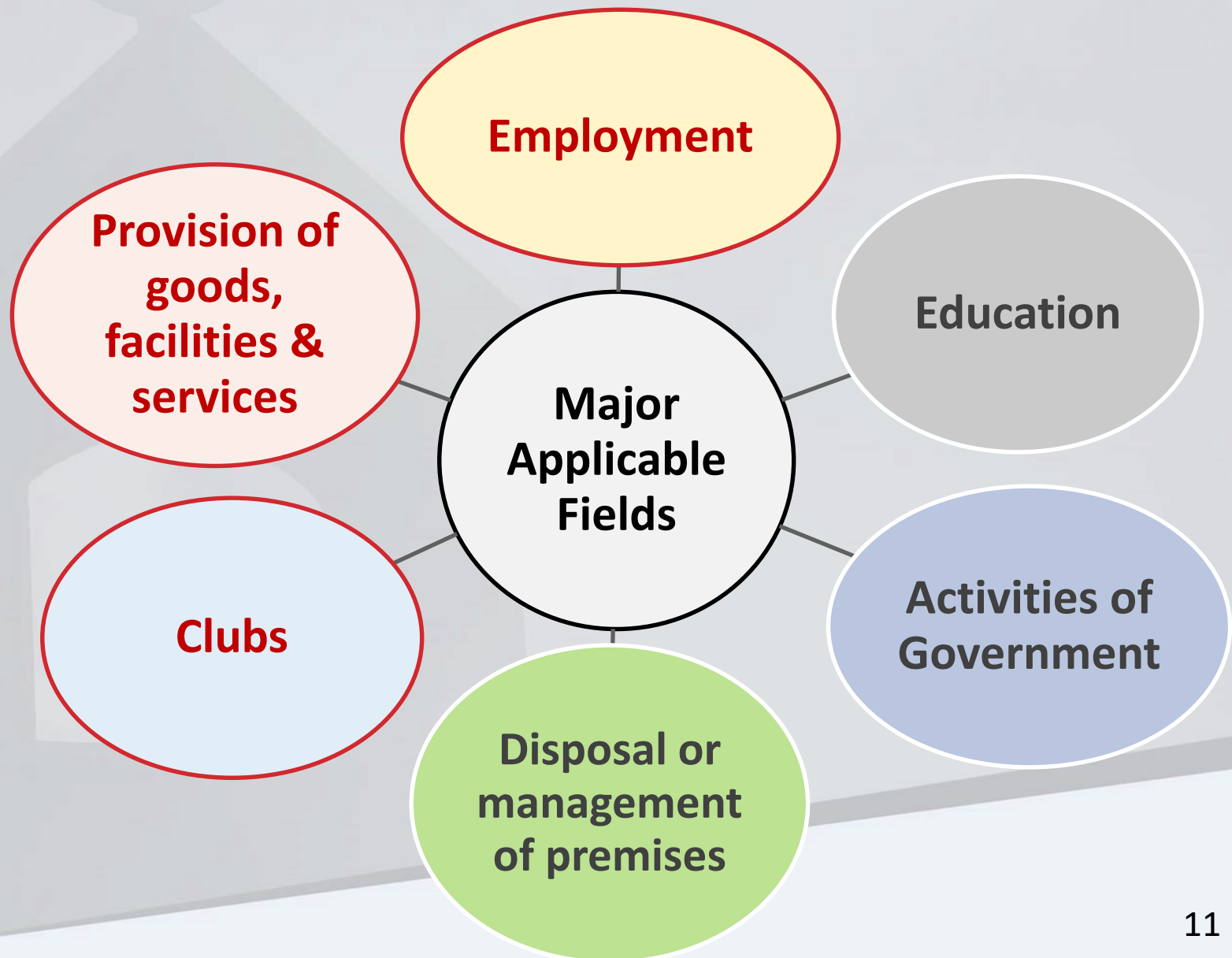


Sexual Harassment

- A form of unlawful discrimination act
- Under the Sex Discrimination Ordinance
- Civil Liability
 - **Balance of probability**
 - **Intention is irrelevant:** Not necessary to show the intention or the motive behind. Even if the act is of a playful nature e.g., **sex jokes**, it may amount to sexual harassment



Major Applicable Fields



Provision of Goods, Facilities & Services

Service Provider

- Employee
- Staff member of care home
- **Pastor/ Staff member of church/ Service provider from church**

Service Users

- Customer
- Resident
- **Church members and others who use church services**

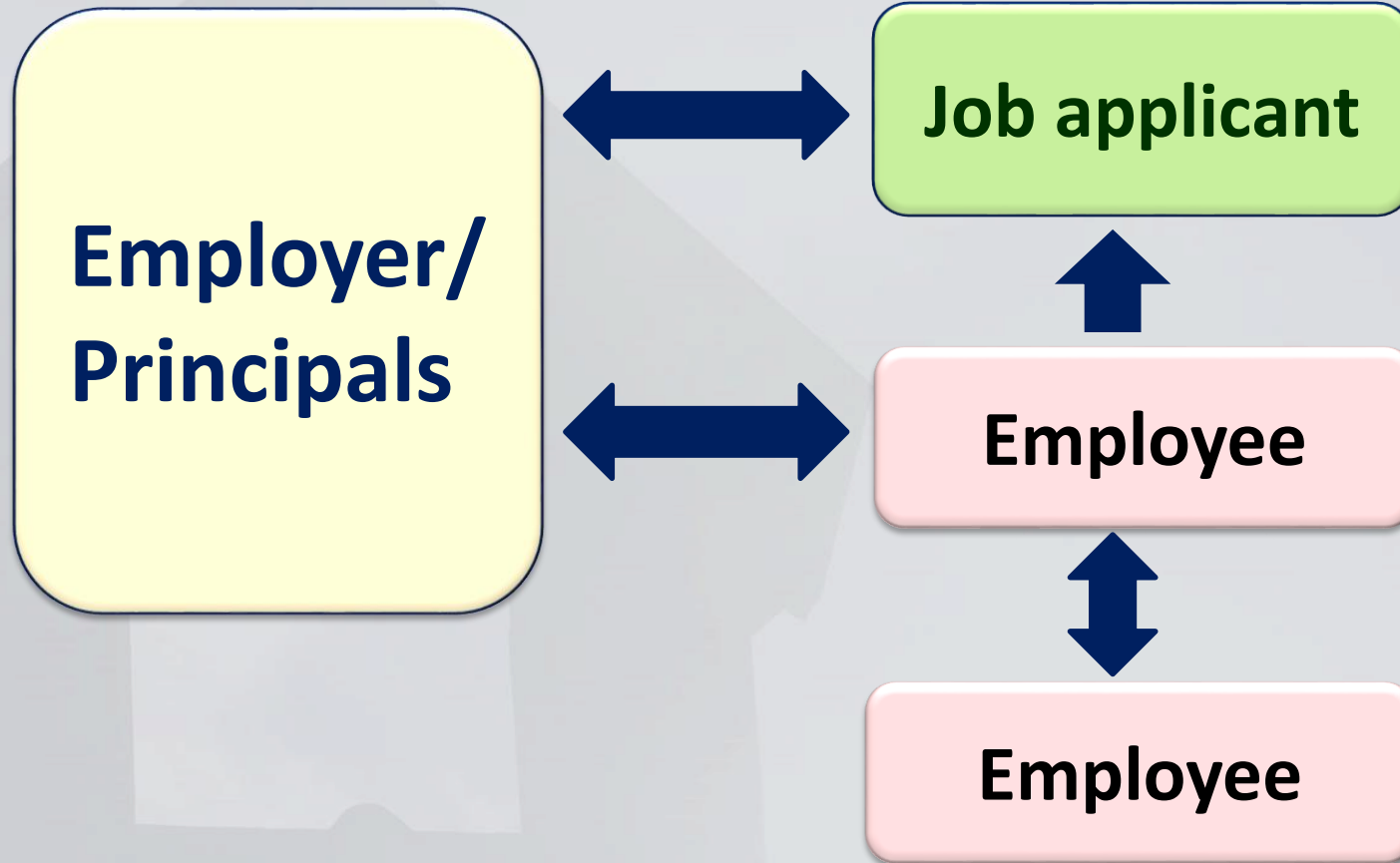


Latest amendment of the anti-discrimination ordinance

Same as SDO, the DDO and RDO have been amended to protect service providers from **disability** and **racial harassment** by service users.



Employment

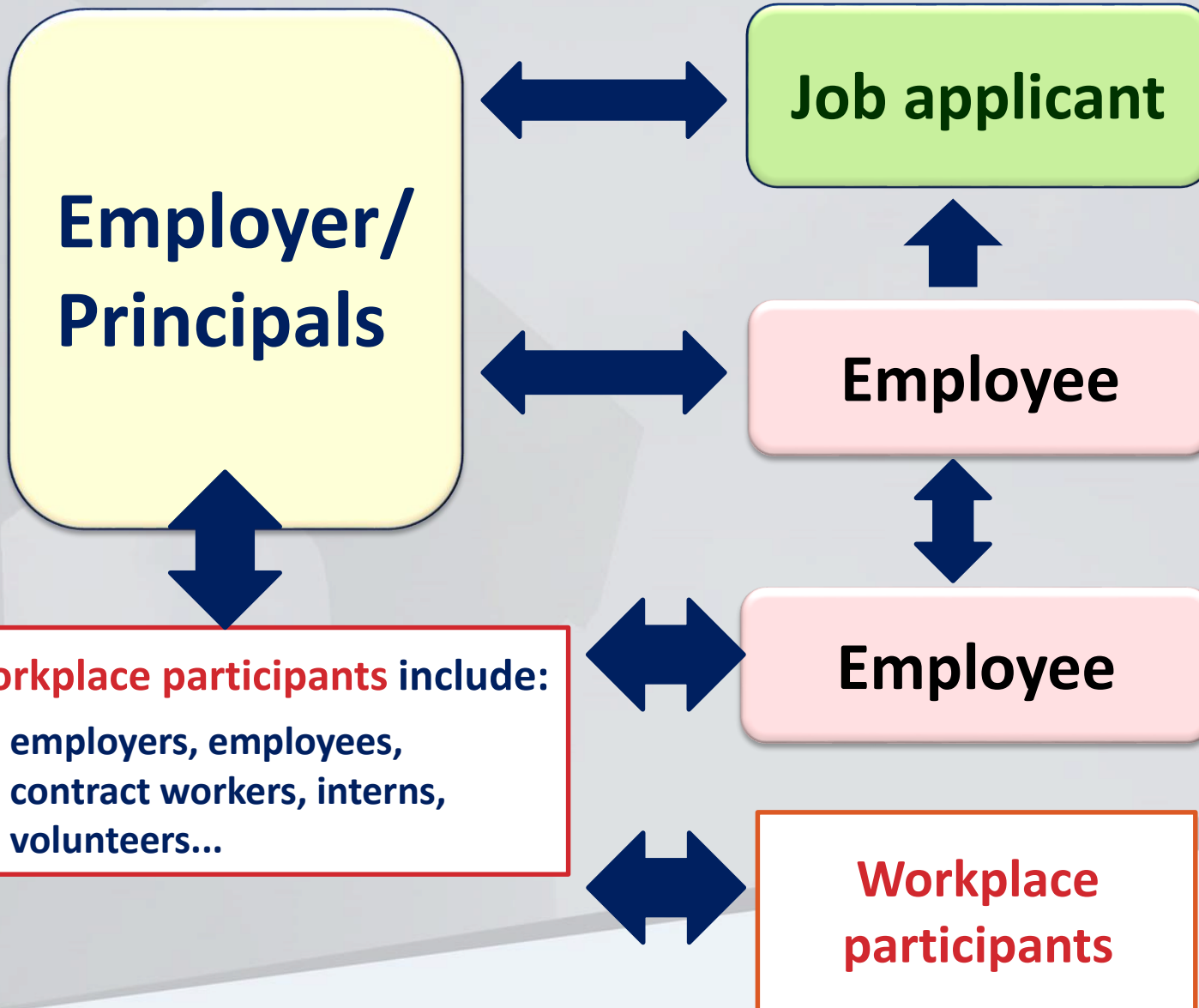


In the course of employment


- Events occurred within or outside work hours
- Within and/ or away from work premises
- **Closely work-related:** within the employment relationship provisions
- **Example:**
 - Overseas business trips
 - Overseas missionary work
 - Church outings
 - Christmas carol singing outside the church



Amendment: Harassment in Common Workplace



Harassment in Common Workplace

- 
- SDO, DDO and RDO have been amended to prohibit **sexual, disability and racial harassment** committed by a “workplace participant” against another “**workplace participant**” in common workplace
 - **Workplace Participant** includes:
 - Employer
 - Employee
 - Intern
 - Volunteer
 - Partner in a firm
 - Principal
 - Contract worker
 - Commission agent



Workplace Participant

- **Workplace participants** working in a common workplace **may not have employment relationship**
 - **Intern** who is engaged for an internship is not an employee
 - **Volunteer** who performs volunteer work other than in the capacity of an employer or employee



Harassment in Common Workplace

- The law amendments further define “**workplace**”:
 - any place attended by a person as a workplace participant, or a place where a person works as a workplace participant
- Example:
 - Service center run by an NGO where employees and volunteer workers both go there to work. A **volunteer sexually harassed the staff in the center**



Legal Liability



Personal Liability

- Individuals are **personally liable for their own unlawful harassment (sexual, disability, racial) under the Anti-discrimination Ordinances**

It is **unlawful** to:

- **instruct** someone to harass another person
- **pressure** someone to harass another person
- **knowingly aid** someone to harass another person



Vicarious Liability

- **Employers** are vicariously liable for the unlawful act done by their employees in the course of employment, whether or not it was done with the employer's knowledge or approval
- **Principals** are vicariously liable for the unlawful act done by their agents with the authority
- **Persons engaging interns or volunteers will be liable for an act done by an intern/ volunteer**
- **Defence:** if employers can prove that they have taken reasonably practicable steps to prevent the unlawful discrimination/ harassment



Reasonably Practicable Steps



1. **Policy formulation:** develop an equal opportunities & anti-harassment policy
2. **Implementation** of the policy and regular review
3. **Setting up a complaint handling** and resolution procedure
4. **Appointing a person** in the organization to take responsibility for equal opportunities issues
5. **Training** for employees, interns and volunteers about the anti-discrimination ordinances



Victimization

- Unlawful act of discrimination
- Treating a person **less favourably** because he/she has **made or plans to make a complaint against discrimination/ harassment, or takes legal action, acts as witness** against discrimination/ sexual harassment, or helps somebody else to do so



What to do if you are sexually harassed?

- 1. Write down what happened:**
date, time, place, details of the incident
- 2. Get support :** under safe circumstances, tell the harasser to stop the behavior and leave the scene, and tell the people you trust
- 3. Lodge a complaint** with your employer/ management of your church or to the EOC
- 4. Legal proceedings** if needed



Sexual Harassment

Complaint mechanism within your organization

Civil

Criminal

(e.g., Indecent assault)

EOC



Time bar :
12 months

District court



Time bar :
24 months

Police



Mindset to Create a Safe Church

- Avoiding delay: church management has responsibility to deal with sexual harassment complaint cases
- Handle complaint with care
 - Caring for the victim's feelings
 - Confidentiality
 - Avoid conflict of interest
- Correct the misconceptions
- Raise the awareness and sensitivity



Anti-Sexual Harassment Unit

- EOC is setting up an Anti-Sexual Harassment Unit (ASHU)
 - **Promote public awareness** on anti-SH policies and measures
 - **Provide information** on provisions of the law, advice on where to lodge complaints and seek support service
 - **Hotline service**: serve as a first port of call for those affected by sexual harassment



For more information...

Anti-discrimination laws amendments:

修訂反歧視法例與我何干？

HOW THE AMENDMENTS
TO THE ANTI-DISCRIMINATION LAWS
AFFECT YOU



Guidance on Amendments to the
Anti-discrimination Ordinances

https://www.eoc.org.hk/eoc/Upload/UserFiles/File/FactSheet/Guidance_ADO_E.pdf



EOC Website : www.eoc.org.hk

EOC Hotline : 2511 8211





THANK YOU!