

# Legislating against race discrimination in Hong Kong

August 2005

In September 2004 the Hong Kong SAR Government's Home Affairs Bureau ("HAB") issued a consultation document entitled "Legislating Against Racial Discrimination" to seek the public's opinion on proposed legislation on race discrimination.

The HAB identified three principal reasons for legislating against racial discrimination:

1. to prevent and combat racial discrimination
2. to establish norms and standards in race relations
3. to fulfil Hong Kong's obligations under international law

## Hong Kong: a special case for race discrimination

According to Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination ("ICERD"), racial discrimination includes "any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin". In Hong Kong, inter-communal relations between the local Chinese majority and ethnic minorities are generally harmonious and peaceful. Nevertheless, racial discrimination and intolerance occurs infrequently. Those of south and south-east Asian origin and new immigrants from Mainland China are most often the victims.

Mainland immigrants encounter racial discrimination even though they are ethnically Chinese. Discrimination occurs as a result of their identity and status, their different skill in local languages, their weaker knowledge of the local society and their differences in appearance and behaviour associated with their place of origin in the Mainland. While immigrants from foreign countries are protected under the ICERD formula on the grounds of national origin, Mainland immigrants are denied the same protection since Hong Kong is a part of China and thus their nationality is the same as that of Hong Kongers.

## Contents

Introduction

Hong Kong: a special case for race discrimination

The need for new legislation

Definition of race discrimination

Effectiveness

About Bird & Bird

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## The need for new legislation

The Sex Discrimination Ordinance (Cap.480), the Disability Discrimination Ordinance (Cap.487) and the Family Status Discrimination Ordinance (Cap.527) are the legislation that directly currently regulates discrimination. However, they do not address race discrimination.

Race discrimination is addressed in the Hong Kong Bill of Rights Ordinance (Cap.383) ("BORO"), but this is only effective within the public sector and as between the individual and the public sector. There is a real need for legislation to tackle race discrimination in the private sector where the problem is most prevalent.

The United Nations High Commissioner for Human Rights reiterated the need for a comprehensive race discrimination law when he recently urged the Hong Kong SAR Government to fulfil its legal obligations under international law. The relevant international convention currently binding on Hong Kong, the ICERD, has been in force since 1969. As a colony of the United Kingdom,

Hong Kong was automatically bound by the ICERD when the UK ratified it. Hong Kong's legal obligation persisted after the handover in 1997 as China is also a state party to the ICERD. The ICERD requires states to enact race discrimination legislation locally.

In 2004, the HAB finally decided to introduce legislation on race discrimination in compliance with this obligation.

## Definition of race discrimination

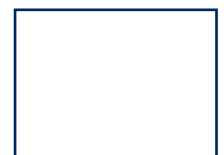
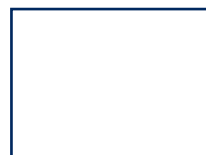
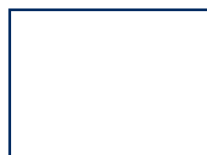
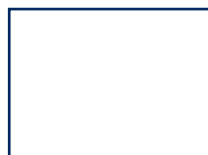
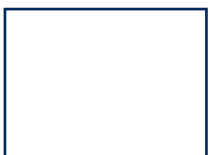
The Race Discrimination Bill is modelled on the existing anti-discrimination Ordinances. Similar to the other legislation, the Bill has comprehensive application and will cover the areas of employment, education, goods and services, facilities, and government. The Bill targets six types of discrimination:

1. **Direct racial discrimination** - a person discriminates against another person if, on racial or ethnic grounds, he treats that person less favourably than he treats or would treat other persons.

2. **Indirect racial discrimination** - a person should be regarded as indirectly discriminating against another person if he or she applies to that other person a requirement or condition which he or she does not apply or would not apply to persons not of the same racial or ethnic group as that other person.

3. **Discrimination on the basis of the race or ethnicity of the spouse or a relative of a person** - a person discriminates against another person if, on the basis of the racial or ethnic background of the spouse or a relative of that other person, he or she treats the person less favourably than he or she treats or would treat a person of a different racial or ethnic background.

4. **Discrimination by victimisation** - a person discriminates against another person if he or she treats the person victimised less favourably than he or she treats or would treat other persons because the person victimised asserts his or her rights under the Bill.



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5. **Racial harassment** - a person harasses another if the harasser engages in unwelcome or unwanted conduct on account of the racial or ethnic background of the person harassed, in circumstances in which a reasonable person, having regard to all the circumstances would have anticipated that the person harassed would be offended, humiliated or intimidated by that conduct.

6. **Racial vilification** - racial vilification is defined as an act whereby a person, by any activity in public, incites hatred towards, serious contempt for, or severe ridicule on another person on the ground of the person's racial or ethnic background.

The Race Discrimination Bill provides certain exceptions, mainly for small companies and employers. Employers who have less than six employees will be granted a three-year exemption to assist them in adapting to the new legislation. Other exceptions involve: genuine occupational qualification, small dwellings, voluntary bodies and clubs, charities, special training, and ministers of religion.

It is proposed that the Equal Opportunities Commission ("EOC") be the body responsible for implementing the provisions of the Bill. According to the HAB, the Bill will be introduced into the Legislature sometime before the end of 2005 and is likely to be enacted the following year.

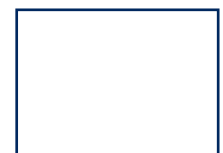
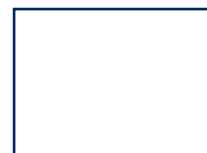
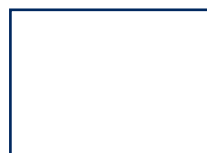
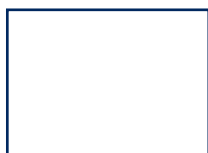
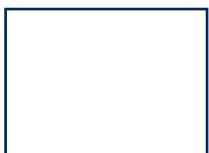
## Effectiveness

The effectiveness of the Race Discrimination Bill will depend on how it is administered. The proposed legislation will require employers to improve their written employment policies. This will provide employees with an enhanced understanding of their own rights. In turn, it will help ensure that employers are implementing the required race discrimination policies within their organisation. However, the initial impact will vary depending on the size of the company due to the three-year exemption granted to smaller businesses.

The effectiveness of the Bill may be impeded by the HAB's intention of permitting the Immigration Ordinance to prevail over the proposed bill thus allowing discrimination to persist in cases relating to immigration.

Additionally, the position of Mainland immigrants remains uncertain as the Bill, like the ICERD, prohibits discrimination only on the ground of 'national origin' rather than that of origin from any territory outside of Hong Kong.

In conclusion, enacting the Race Discrimination Bill is a step in the right direction for Hong Kong. It will provide employees with some form of statutory redress for race discrimination, but not impose overly onerous obligations on employers.



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