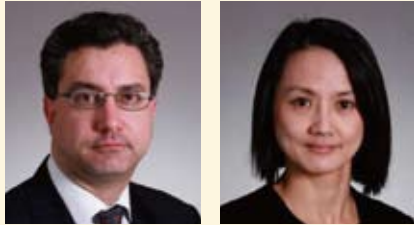


The Racial Discrimination Ordinance



By **Simon McConnell**
and **Mun Yeow**

The Racial Discrimination Ordinance (the **RDO**) has recently been passed. This is the fourth piece of specific anti-discrimination legislation in Hong Kong.

Objects: The objects of the RDO are to make racial discrimination, harassment and vilification unlawful and extend the jurisdiction of the Equal Opportunities Commission (the **EOC**) to cover racial discrimination.

Under the RDO, 'race' means the race, colour, descent or national or ethnic origin of a person. Other factors like nationality, citizenship, resident status or language are not a ground of race. The RDO prohibits direct racial discrimination, where one treats another person less favourably than he would treat others of a different race in similar circumstances and indirect racial discrimination, where one imposes a requirement which, despite applicable to all, will cause a disproportionate and unjustifiable adverse impact on one particular ethnic minority. Racial harassment, where one offends or humiliates the other person due to the latter's race or the race of his near relative, is prohibited. Racial vilification may constitute a civil claim and criminal charge, depending on the gravity. It arises when one publicly incites hatred towards another person due to his race.

Application: The RDO applies to employment, provision of education, goods, facilities, services and premises, election and appointment to public bodies, pupillage and tenancy by and instructions to a barrister and membership of and access to clubs.

There are exceptions to the application. The most commonly found exception is where being a particular racial group is a genuine occupational qualification for the job. For instance, the job involves participation in a dramatic performance for which a person of that racial group is required or the employee is provided with training in skills which he appears to intend to exercise wholly outside Hong

Kong. The other excepted circumstances is where the employee must possess special skills not readily available in Hong Kong. For existing employment, it is not unlawful for employers to differentiate treatment towards employees under local contracts and those under overseas contracts. Employers have freedom to employ a domestic helper by reference to race. For the first three years, the RDO exempts small businesses employing not more than five employees. The RDO does not require educational establishments to modify their holidays and medium of instruction for students from a particular racial group. Premises forming part of small dwellings shared by the landlord or his near relatives are exempted. The Ordinance does not apply to any voluntary body established with the main object of providing benefits to a particular racial group. Clubs with the main objective to provide benefits of membership for a particular racial group are likewise exempted.

Vicarious liability: An employer is legally responsible for the discriminatory acts done by the employees in the course of employment. But he is not liable if he has taken reasonable practicable steps to prevent such discriminatory acts.

Legal consequences: Contravention of the RDO may give rise to both civil and criminal liability. Civil remedies may be damages, declaratory or injunctive relief. Serious vilification is an offence punishable by a fine and imprisonment. The EOC is empowered to enforce the RDO by issuing codes of practices and conducting formal investigation. It may also issue enforcement notices and bring proceedings.

Phases of enactment of the RDO: The RDO will come into force on a date to be appointed. It is anticipated that it will operate by phases. The first phase will be to implement the relevant provisions empowering the EOC to exercise its functions and power. Thereafter, relevant sections applicable to the Government and the private sectors will be implemented progressively.

Allens Arthur Robinson

49/F One Exchange Square

8 Connaught Place, Central, Hong Kong

Tel: (852) 2840 1202 Fax: (852) 2840 0686

Email: simon.mcconnell@aar.com.au

mun.yeow@aar.com.au

www.aar.com.au