

BILLS COMMITTEE
LEGISLATIVE COUNCIL SECRETARIAT
LEGISLATIVE COUNCIL BUILDING
8 Jackson Road
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28 May 2007

Hon. Chairman of the Committee,
Hon. Members of the Committee,

Proposed Race Discrimination Legislation

Further to the detailed and helpful briefing to the International Business Committee on [], 2006, I wish to explain the concerns of the French Chamber of Commerce regarding the treatment of expatriate remuneration under the Race Discrimination Bill that your Bureau is preparing.

Hong Kong is a regional platform for corporate headquarters and professional services with a small local population, where employers compete intensely with each other and with employers in other major Asian cities for a limited pool of executives, managers and professionals. Preferential employment terms are offered wherever necessary to sustain a company's development and, indirectly, the role of Hong Kong as a regional hub. These characteristics distinguish Hong Kong from many territorial states which have enacted legislation against racial discrimination.

In this context, the issue of remuneration packages is perfectly distinct from the issue of racial discrimination. When Hong Kong employers offer favourable packages, they do so not for discriminatory reasons, but because they are compelled to incur this often substantial cost in order to recruit, incentivize and retain certain categories of staff. These packages are offered irrespective of race colour, descent or national or ethnic origin. Many members of the French Chamber employ Hong Kong Chinese, Mainland Chinese or other Asians on more favourable terms than French or other Caucasian staff – or vice versa - for reasons that can be entirely explained through demand and supply on the labour market.

Judging from the IBC Paper 7/2006, I am not sure whether this economic reality will be adequately reflected – and protected - in the proposed legislation. We are concerned about the legislative technique of creating a special exception for “overseas terms”. The IBC Paper suggests that such terms could be viewed as prohibited, unless they are justified by the narrow set of exceptions set out in the Annex. Even if this may not be the intent of the Race Discrimination Bill, the general public (as can already be seen from present press coverage) and many employees will gain this impression. If employers and employees start to measure employment terms against these exceptions, there will be legal uncertainty, litigation and potentially the loss of valuable employees to other Asian cities.



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In addition, the terms of the exception itself are not operative. It is unclear what "overseas terms" means. The nature and value of packages offered to expatriates vary widely among companies and industries, and many local employees also receive benefits that might be considered typical "overseas terms". Neither a generic expression like "overseas terms" nor a casuistic enumeration of such terms would do justice to Hong Kong employment practice.

Further, the three cumulative conditions under which "overseas terms" would be permitted under par. 7 of the Annex are too narrow and are far from including all situations in which employers offer favourable conditions for non-discriminatory reasons. To give just one example, under par. 7, a Hong Kong employer may not offer benefits considered to be "overseas terms" to an existing employee, because this employee has not been "recruited or transferred from a place outside Hong Kong". No effort could be made to retain such an employee when he/she is offered more favourable terms by a competitor or a company outside Hong Kong, without risking a violation of the new ordinance.

I appreciate that the exceptions have been drafted for the purpose of facilitating, and not restricting, the offer of expatriate packages. However, The French Chamber believes that the terms of the proposed bill need to be revised to achieve this purpose and reflect the non-discriminatory reality of the Hong Kong labour market. We therefore urge the Hong Kong government to reconsider the proposed treatment of "overseas terms" under the Race Discrimination Bill. Further, we believe it will be necessary in due course to circulate a full draft of the bill to IBC members and other parties for consultation, to ensure that the reality of the Hong Kong labour market is fully taken into account in the draft bill.

We remain at your disposal,

Yours sincerely,

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FRENCH CHAMBER OF COMMERCE
& INDUSTRY IN HONG KONG
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Vice-President, China Committee