

## **Draft Code of Conduct for the Promotion of Equal Opportunities through the Elimination of Racial Discrimination**

### **PART 1**

#### **Purpose and Status of the Code of Conduct**

This Code of Conduct<sup>1</sup> provides practical guidelines to help business enterprises understand the standards in the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (1965), and how best they can implement policies to eliminate racial discrimination and maximise equal opportunities. The Code of Conduct does not impose any legal obligations, nor is it an authoritative statement of law.

Employees of all racial groups have a right to equality of opportunity. Providing this right is likely to involve costs for employers. However, a coherent and effective equal opportunities programme will motivate employees in their work and allow for a fuller development of their abilities. It is particularly important for all concerned participate conscientiously in this worthy process.

Guidance on equality of opportunity for everyone is the responsibility of the State, and the adoption of this Code of Conduct will raise consciousness on the damage wrought by racial attitudes in the workplace.

#### **Application of the Code of Conduct**

While the Code of Conduct is applicable to all business enterprises, some of its recommendations and detailed provisions may need to be adapted to suit particular circumstances. Any such adaptations should however be fully in line with the Code of Conduct's general intentions.

#### **Racial Discrimination**

Racial Discrimination according to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) means any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the effect of nullifying or impairing the recognition, enjoyment or exercise on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

#### **Discrimination**

The Code of Conduct forbids racially discriminatory acts against a person, directly or indirectly, in the field of employment.

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<sup>1</sup> The Code of Conduct is prepared by Pusat KOMAS and Penang Institute.

**Direct Discrimination** consists of treating a person, on racial grounds<sup>2</sup>, less favorably than others are or would be treated under the same or similar circumstances. Segregating a person from others on racial grounds constitutes less favourable treatment.

**Indirect Discrimination** consists of applying, under any circumstances, a requirement or condition that, although applied equally to persons of all racial groups, is such that a considerably smaller proportion of a particular racial group can comply with it; that it cannot be shown to be justifiable on other than racial grounds; and that it is to the individual's detriment. Examples are:

- a rule about clothing or uniforms that disproportionately disadvantages a racial group and cannot be justified
- an employer who requires higher language standards than are needed for safe and effective performance of the job

Indirect discrimination is a complex matter, and is not be spelt out in full in every relevant section of the Code of Conduct. Reference will only be made to the terms 'indirect discrimination' or 'discriminate indirectly'.

Discrimination by **victimization** is also discriminatory. A person may for example be victimized after being suspected of or is know to have exposed an alleged act of discrimination on himself or herself, or on others.

### **The Code of Conduct and Good Employment Practice**

Many of the Code of Conduct's provisions show the close link between equality of opportunity and good employment practice. For example, selection criteria which are relevant to job requirements and carefully observed selection procedures not only help to ensure that individuals are appointed according to their suitability for the job without regard to racial group, they are also good employment practice. In the absence of consistent selection procedures and criteria, decisions are often too subjective and there is greater potential for racial discrimination to occur.

### **Positive Action**

Opportunities for employees to develop their potential through encouragement, training and careful assessment are also part of good employment practice. Many employees from racial minorities have potential which, perhaps because of previous discrimination and other causes of disadvantage, have not been realised and which are not reflected in their qualifications and experience. Where members of particular racial groups have been under-represented over the previous twelve months in a particular workplace, employers and training bodies are to encourage them to take advantage of opportunities, and to provide training for them.

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<sup>2</sup> Racial grounds are the grounds of race, colour, descent, or national or ethnic origin. Groups defined by reference to these grounds are referred to as racial groups.

## **Monitoring of Code Implementation**

Effective monitoring and evaluation of the Code of Conduct are vital in ensuring that its objective functions are fulfilled. Monitoring should be conducted by both employers and employees.

The management is tasked to observe the extent to which employees adhere to the code and do not display discriminatory and disrespectful behaviour at work. This not only allows the management to intervene when employees display undesired behaviour, but also to adjust organisational structures and to further refine the Code of Conduct where needed.

At the same time, the employer is also accountable to employees in terms of keeping to equitable and non-discriminatory organisational practices. An assessment of the Code from the perspective of the employees should be undertaken, where the employees should evaluate themselves as well as the management. Periodical reviews of the Code of Conduct should take into consideration all feedback, including unfavourable reports (if any) of discrimination made by employees.

In the case of discriminatory practices that go against the values of the Code of Conduct, there should be a proper process of inquiry and assessment conducted by an objective ethics committee within the business organisation.

Self-assessment should be performed by both employers and employees, allowing for communication and interaction between the management and the employees.

## **Benefits of Compliance**

There is a strong moral and ethical case to support the notion that business entities should integrate the Code of Conduct into their business practices within their sphere of influence. The following main benefits have been identified:

- Improved stakeholder relations
- Improved employee recruitment, retention and motivation
- Improved risk assessment and management
- Reduced risk of consumer protests
- Enhanced corporate reputation and brand image
- Strengthened shareholder confidence
- More sustainable business relationships with governments, business partners, trade unions, sub-contractors and suppliers

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## PART 2

### RESPONSIBILITIES OF EMPLOYERS

2.01 Responsibility for providing and maintaining equality of opportunity for all job applicants and employees rests primarily with employers. To this end it is recommended that they should adopt, implement and monitor an equal opportunities policy to ensure genuine equality of opportunity.

2.02 This policy should be clearly communicated to all employees e.g. through notice boards, circulars, contracts of employment, written notifications to individual employees and by way of discrimination awareness training.

2.03 An equal opportunities policy aims to ensure that:

- no job applicant or employee receives less favorable treatment than another on racial grounds;
- no applicant or employee is placed at a disadvantage by requirements or conditions that have a disproportionately adverse effect on his or her racial group and that cannot be shown to be justifiable;
- where appropriate, and where permissible, employees of underrepresented racial groups are given training and encouragement to achieve equality of opportunity within the organization.

2.04 It is important to maintain a working environment that is free from racism and racial harassment. In order to ensure that an adopted equal opportunities policy is effective, the following actions by employers are recommended:

- allocating overall responsibility for the policy to a member of senior management;
- discussing and reaching agreement with the recognized trade union or employee representatives, as appropriate, on the policy's contents and implementation;
- ensuring that the policy is made known to all employees and, if possible, to all job applicants;
- providing training and guidance for staff to ensure that they understand their position in law and under company policy;
- making it clear that breaches of policy and practice will be regarded as misconduct and could lead to disciplinary proceedings;
- examining and regularly reviewing existing procedures and criteria and altering them should these be found to be actually or potentially discriminatory;

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- promoting a good and harmonious working environment and atmosphere free from racism and racial harassment;
- making an initial analysis of the workforce and regularly monitoring the application of the policy with the aid of analyses of the ethnic origins of the workforce and of job applicants.

### Sources of Recruitment

#### Advertising

2.05 When advertising job vacancies, **it is discriminatory** for employers to publish an advertisement that indicates, or could reasonably be understood to indicate, an intention to discriminate against applicants from a particular racial group.

2.06 It is therefore recommended that:

- employers should not confine advertisements unjustifiably to those areas or publications which would exclude or disproportionately reduce the numbers of applicants of a particular racial group;
- employers should ensure that any requirement or condition is job related and can be justified. Where a particular qualification is required, employers should accept equivalent qualifications obtained from foreign institutions.

2.07 In order to demonstrate their commitment to equality of opportunity, it is recommended that information sent by employers to job applicants include statement that they are an equal opportunities employer, or are working to become an equal opportunities employer.

#### Employment Agencies

2.08 When recruiting through employment agencies, **it is discriminatory** for employers:

- to give instructions to discriminate, for example by indicating that certain groups are or are not preferred;
- to bring pressure on them to discriminate against members of a particular racial group.

#### Other Sources

2.09 **It is discriminatory** to use recruitment methods that exclude or disproportionately reduce the numbers of applicants of a particular racial group and which cannot be shown to be justifiable. It is therefore recommended that employers should not recruit solely through the following methods:

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- the recommendations of existing employees;
- procedures by which applicants are mainly or wholly supplied through trade unions where this means that only members of a particular racial group, or a disproportionately high number of them, are recruited.

### **Sources for Promotion and Training**

2.10 Employers should not allow access to promotion or training in ways that are discriminatory. It is therefore recommended that:

- job and training vacancies should be made known to all eligible employees, and not in such a way as to exclude or disproportionately reduce the number of applicants from a particular racial group;
- employers should seek employees through the use of media accessible to all potential applicants.

### **Selection Procedures**

2.11 Employers should not discriminate:

- in recruitment and in the arrangements made for determining who should be offered employment;
- in promotion, transfer and training and in the ways of affording access to opportunities for promotion, transfer or training.

### **Selection Criteria and Tests**

2.12 Selection criteria and tests should be examined to ensure that they are related to job requirements and are not discriminatory. For example:

- a standard of language or a clearly demonstrated career pattern higher than that needed for the safe and effective performance of the job in question should not be required, nor or a higher level of education qualification than needed;
- in particular, employers should not disqualify applicants who are unable to complete an application form unassisted unless personal completion of the form is a valid test of the standard of language required for safe and effective performance of the job;
- overseas degrees, diplomas and other qualifications that are of an equivalent standard to Malaysia qualifications should be accepted as such;
- selection tests that contain irrelevant questions or exercises on matters that may be unfamiliar to racial minority applicants should not be used (for example, general

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knowledge questions on matters more likely to be familiar to indigenous applicants);

- selection tests should be related to the job's requirements, i.e. an individual's test marking should measure ability to do or train for the job in question.

### **Treatment of Applicants**

Shortlisting, interviewing and selection

2.13 In order to avoid direct or indirect discrimination it is recommended that:

- staff should be instructed not to treat applicants from particular racial groups less favorably than others. These instructions should be confirmed in writing;
- a job description (including job title, duties and responsibilities, conditions of work, pay, prospects, etc.) and a personnel specification (including educational standards/qualifications (essential and preferred), training (essential and preferred, etc.) should be prepared before recruitment commences;
- staff responsible for shortlisting, interviewing and selecting candidates should:
  - agree on the selection criteria and of the need for their consistent application;
  - be given guidance on training on the effects that generalized assumptions and prejudices about race can have on selection decisions;
  - be made aware of the possible misunderstandings that can occur in interviews between persons of different cultural background.
  - shortlisting, interviewing and selection panels should comprise two or more people

### **Genuine Occupational Qualifications**

2.14 Selection on racial grounds is allowed in certain jobs where being of a particular racial group is a genuine occupational qualification for that job. An example is where the holder of a particular job provides persons of a racial group with personal services promoting their welfare, and where those services can most effectively be provided by a person of that group.

### **Transfers and Training**

2.15 In order to avoid direct or indirect discrimination it is recommended that:

- staff responsible for selecting employees for transfer or other jobs should be instructed to apply selection criteria without discrimination;

- industry or company agreements and arrangements of custom and practice on job transfers should be examined and amended if they are found to contain requirements or conditions that appear to be indirectly discriminatory. For example, if employees of a particular racial group are concentrated in particular sections, the transfer arrangements should be examined to see if they are unjustifiably restrictive, and these should be amended where necessary;
- staff responsible for selecting employees for training, whether induction, promotion or skill training should be instructed not to discriminate on racial grounds, and appropriate training should be provided;
- selection criteria for training opportunities should be examined to ensure that they are not indirectly discriminatory.

### **Dismissal (including redundancy and other detriments)**

2.16 **It is discriminatory** to evaluate on racial grounds in dismissal, or by subjecting an employee to any other detriment action. It is therefore recommended that:

- staff responsible for selecting employees for dismissal, including redundancy, should be instructed not to discriminate on racial grounds;
- selection criteria for redundancies should be examined to ensure that they are not indirectly discriminatory.

### **Performance Appraisals**

2.17 **It is discriminatory** to evaluate on racial grounds in appraisals of employee performance.

2.18 It is recommended that:

- staff responsible for performance appraisals be instructed not to discriminate on racial grounds;
- assessment criteria be examined to ensure that they are not discriminatory.

### **Terms of Employment, Benefits, Facilities and Services**

2.19 **It is forbidden** to discriminate on racial grounds in the terms of employment and in the provision of benefits, facilities and services for employees. It is therefore recommended that:

- all staff concerned with these aspects of employment should be instructed accordingly;

- the criteria governing eligibility should be examined to ensure that they are not discriminatory.

2.20 In addition, employees may request extended leave from time to time in order to visit relatives in their countries of origin or who have emigrated to other countries. Many employers have policies that allow annual leave entitlement to be accumulated, or extra unpaid leave to be taken to meet these circumstances. Employers should take care to apply such policies consistently and without discrimination.

### **Grievance, Disputes and Disciplinary Procedures**

2.21 **It is forbidden** to discriminate in the operation of grievance disputes and disciplinary procedures, for example by victimizing an individual through disciplinary measures because he or she has complained of racial discrimination, or given evidence about such a complaint. Employers should not ignore or treat lightly grievances from members of particular racial groups on the assumption that they are over-sensitive about discrimination.

2.22 It is recommended that in applying disciplinary procedures, consideration be given to the possible influence on the employee's behaviour of the following:

- racial abuse or other racial provocation;
- communication and comprehension difficulties;
- differences in cultural background or customs.

### **Cultural and Religious Needs**

2.23 Where employees have particular cultural and religious needs that conflict with existing work requirements, it is recommended that employers consider whether it is reasonably practicable to vary or adapt these requirements to enable such needs to be met. For example, it is recommended that they should not refuse employment to a turbaned Sikh because he could not comply with unjustifiable uniform requirements.

Other examples of such needs are:

- observance of prayer times and religious holidays;
- wearing of dress such as saris or trousers worn by women from different races in Malaysia.

2.24 Work requirements would generally be discriminatory if they have a disproportionately adverse effect on particular racial groups and cannot be shown to be justifiable.

## Communications and Language Training for Employees

- 2.25 Although there is no legal requirement to provide language training, difficulties in communication can create barriers to equal opportunities in the workplace. Good communication can improve efficiency, promotion prospects, health and safety and create better understanding between employers, employees and unions. Where the workforce includes employees whose language proficiency is limited, it is recommended that steps are taken to ensure that communication is as effective as possible.
- 2.26 These should include, where reasonably practicable:
- provision of interpretation and translation facilities, for example, in the communication of grievance and other procedures, and in terms of employment;
  - training in relevant language and communication skills;
  - training for managers and supervisors in the background and culture of racial groups;
  - alternative or additional methods of communication, where employees find it difficult to understand health and safety requirements, for example:
    - translations of safety signs and notices
    - instructions through interpreters
    - instruction combined with industrial language training
  - training in equal opportunities and in relation to terms and conditions of employment

## Instructions and Pressure to Discriminate

- 2.27 **It is discriminatory** to instruct or put pressure on others to discriminate on racial grounds.
- An example of discriminatory instruction is:
    - one from a personnel or line manager to junior staff to restrict the numbers of employees from a particular racial group in any particular work
  - An example of pressure to discriminate is:
    - an attempt by a shop steward or group of workers to induce an employer not to recruit workers of particular racial groups, for example by threatening industrial action.
- 2.28 **It is also forbidden** to discriminate in obedience of such instructions or pressure.

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2.29 To avoid discriminatory instructions and pressure to discriminate it is recommended that:

- guidance be given to all employees, and particularly those in positions of authority of influence, on the relevant provisions of the law and on company policy for assisting those coming under such pressure;
- decision-makers be instructed not to give way to pressure to discriminate;
- giving instructions or bringing pressure to discriminate be treated as a serious disciplinary offence.

### **Victimization**

2.30 **It is discriminatory** to victimize individuals who have made allegations or complaints of racial discrimination or provided information about such discrimination, for example, by disciplining them or dismissing them.

2.31 It is recommended that guidance on this matter be given to all employees and particularly to those in positions of influence or authority.

### **Monitoring Equality of Opportunity**

2.32 It is recommended that employers regularly monitor the outcome of selection decisions and effects of personnel practices and procedures in order to assess whether equality of opportunity is being achieved.

2.33 The information needed for effective monitoring may be obtained in a number of ways. This can be done through records showing the racial groupings of exiting employees and job applicants. It is recognized that the need for detailed information and the methods of collecting will vary according to the circumstances of individual establishments.

2.34 It is open to employers to adopt the method of monitoring best suited to their needs and circumstances but, whichever method is adopted, they should be able to show that it is effective. In order to achieve the full commitment of all concerned, the chosen method should be discussed and agreed to, where appropriate, with trade union or employee representatives.

2.35 Employers should ensure that information on individuals' racial groups is collected for the purpose of equal opportunities monitoring only, is confidential and is protected from misuse.

2.36 Reasons for selection and rejection should be recorded at each stage of the selection process.

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- 2.37 Selection criteria and personnel procedures should be reviewed regularly to ensure that they do not include requirements or conditions that constitute or may lead to indirect discrimination.
- 2.38 This information should be carefully and regularly analyzed and, in order to identify areas that may need particular attention, a number of key questions should be asked. Is there evidence that individuals from some particular racial group:
- do not apply for employment or promotion, or that fewer apply than might be expected?
  - are not recruited or promoted at all, or are appointed in a significantly lower proportion than their rate of application?
  - are underrepresented in training or in jobs carrying higher pay, status or authority?
  - are concentrated in certain shifts, sections or departments?
- 2.39 If the answer to any of these questions is yes, the reasons for this should be investigated. If direct or indirect discrimination is found, action should be taken to end it immediately. It is recommended that acts of discrimination by employees are treated as disciplinary offences.

### **Positive Action**

- 2.40 Although they are not legally required, positive measures are allowed by the law to encourage employees and potential employees to provide training for employees who are members of particular racial groups that have been underrepresented in a particular work. Discrimination at the point of selection for work, however, is not permissible under these circumstances.
- 2.41 Positive action measures are important for the development of equality of opportunity. It is therefore recommended that, where there is under-representation of particular racial groups in a particular work, the following measures should be taken where appropriate and reasonably practicable:
- use job advertisements designed to attract members of racial groups and encourage their applications. Advertisements could include a statement that applications are particularly welcomed from the under-represented racial group;
  - use recruitment and training schemes for school leavers designed to reach members of racial groups;
  - encourage employees from minority ethnic groups to apply for promotion or transfer opportunities;

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- provide training for promotion or particular skills for employees from racial groups who lack particular expertise but show potential: supervisory training may include language training.

**PART 3**

**RESPONSIBILITIES OF INDIVIDUAL EMPLOYEES**

3.01 While the primary responsibility for providing equality of opportunity rests with the employer, individual employees at all levels and of all racial groups have responsibilities too. Good race relations depend on them as much as on the management, and so their attitudes and activities are very important.

3.02 The following actions by individual employees would be **discriminatory**:

- discrimination against fellow employees or job applicants on racial grounds, for example, in recruitment, promotion transfer and training;
- racial harassment;
- inducing or attempting to induce other employees, unions or management to practice discrimination. For example, they should not refuse to accept other employees from particular racial groups or refuse to work with a supervisor of a particular racial group;
- victimizing individuals who have made allegations or complaints of racial discrimination or provided information about such discrimination.

3.03 To assist in preventing racial discrimination, including harassment, and promoting equality of opportunity, it is recommended that individual employees:

- co-operate in measures introduced by management designed to ensure equality of opportunity and non-discrimination and to create a good and harmonious working environment free from racism and racial harassment;
- where such measures have not been introduced, press for their introduction;
- draw the attention of the management and, where appropriate, the trade unions to suspected discriminatory acts or practices;
- refrain from harassment or intimidation of other employees on racial grounds, for example, by attempting to discourage them from continuing employment.

**Responsibilities of Individual Employees from Racial Groups**

3.04 In addition to the responsibilities set out above, individual employees from racial groups should recognize that in many occupations advancement may be dependent on an appropriate standard of language proficiency. Similarly, an understanding of the industrial relations procedures that apply is often essential for good working relationships.

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3.05 They should therefore:

- where appropriate, seek to improve their standards of language proficiency;
- co-operate in industrial language training schemes introduced by employers;
- co-operate in training or other schemes designed to inform them of any industrial relations procedures, company agreements, work rules, etc.;
- where appropriate, participate in discussions with employers and unions, to find solutions to conflicts between cultural or religious needs or customs and operations requirements.

**PART 4**

**RESPONSIBILITIES OF EMPLOYMENT AGENCIES**

4.01 Employment agencies, in their role as employers, have the responsibilities outlined in Part 2 of the Code of Conduct. In addition, they have responsibilities as suppliers of job applicants to other employers.

4.02 **It is discriminatory** for employment agencies

- to discriminate on racial grounds in providing services to clients;
- to publish job advertisements indicating, or which may be understood to indicate, that applications from any particular groups will not be considered or will be treated more favorably or less favorably than others;
- to act on directly discriminatory instructions from employers to the effect that applicants from a particular racial group are rejected or preferred or that their numbers be restricted;
- to act on indirectly discriminatory instructions from employers i.e. that requirements or conditions be applied which would have a disproportionately adverse effect on applicants of a particular racial group and which cannot be shown to be justifiable.

4.03 It is recommended that agencies also avoid indicating such conditions or requirements in job advertisements unless they can be shown to be justifiable. Examples in each case may be those relating to educational qualifications or residence.

4.04 It is recommended that staff be given guidance on their duty not to discriminate and on the effect that generalized assumptions and prejudices can have on their treatment of members of particular racial groups. This could include anti-racism and racial awareness training.

4.05 In particular, staff should be instructed:

- not to ask employers for racial preferences;
- not to draw attention to racial origin when recommending applicants unless the employer is trying to attract applicants of a particular racial group under the exceptions in the Order;
- to report to a supervisor a client's refusal to interview an applicant for reasons that are directly or indirectly discriminatory. The supervisor should inform the client that his refusal is discriminatory. If the client still refuses the agency should inform

the applicant of his or her right to complain to the Human Rights Commission of Malaysia (SUHAKAM);

- to inform their supervisor if they believe that an applicant, though interviewed, has been rejected on racial grounds. If the supervisor is satisfied that there are grounds for this belief, he or she should arrange for the applicant to be informed of the right to complain to the Human Rights Commission of Malaysia (SUHAKAM);
- to treat job applicants without discrimination. For example, they should not send applicants from particular racial groups to only those employers who are believed to be willing to accept them, or restrict the range of job opportunities for such applicants because of assumptions about their abilities based on race, colour, ethnic, or national origins, or nationality.

4.06 It is recommended that employment agencies discontinue their services to employers who give discriminatory instructions and who refuse to withdraw them.

4.07 Regardless of whether employment agencies recruit from the labour market as a whole or from some form of register, careful regard should be paid to the active promotion of equality of opportunity.

4.08 It is recommended that employment agencies monitor the effectiveness of the measures that they take for ensuring that no discrimination occurs. For example, where reasonably practicable, they should make periodic checks to ensure that applicants from particular racial groups are being referred for suitable jobs for which they are qualified at a similar rate to that for other comparable applicants.

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## **PART 5**

### **REPORTING AND FOLLOW-UP**

5.01 Business enterprises are strongly encouraged to communicate the implementation of the Code of Conduct through a reporting mechanism, which could include a separate statement on management discussion and analysis in their annual reports.

5.02 Business enterprises are also strongly encouraged to:

- provide training on the Code of Conduct and the International Convention on the Elimination of Racial Discrimination (ICERD) for relevant departments;
- provide an update on the implementation of the Code of Conduct during their annual stakeholders' meeting;
- create a grievance mechanism within the company to allow for reporting of the issues of racial discrimination as highlighted in this Code of Conduct.