

**For discussion on
22 February 2016**

**Legislative Council Panel on
Administration of Justice and Legal Services**

**Report of Public Consultation on Enactment of Apology Legislation
and Second Round Consultation**

PURPOSE

This paper briefs Members of the Panel on the Enactment of Apology Legislation in Hong Kong: Report & Second Round Consultation with the draft Apology Bill annexed (“**Consultation Report**”). The second round consultation will start on 22 February 2016 and will last for six weeks.

BACKGROUND

2. The Steering Committee published the Consultation Paper entitled “*Enactment of Apology Legislation in Hong Kong*” (“**Consultation Paper**”) and launched the first round public consultation regarding apology legislation, which lasted for six weeks, on 22 June 2015. The Consultation Paper contains the following seven recommendations:

- (1) an apology legislation shall be enacted in the Hong Kong Special Administrative Region (“Hong Kong”);
- (2) the apology legislation shall apply to civil and other forms of non-criminal proceedings including disciplinary proceedings;
- (3) the apology legislation shall cover full apologies;
- (4) the apology legislation shall apply to the Government;
- (5) the apology legislation shall expressly preclude an admission of a claim by way of an apology from constituting an acknowledgment of a right of action for the purposes of the Limitation Ordinance;
- (6) the apology legislation shall expressly provide that an apology shall not affect any insurance coverage that is, or would be, available to the person making the apology; and
- (7) the apology legislation shall take the form of a stand-alone legislation.

3. The Consultation Paper also raises the following two issues:
- (1) whether the proposed apology legislation should be applicable to regulatory proceedings¹; and
 - (2) whether factual information conveyed in an apology should be protected by the proposed apology legislation.
4. Two consultation forums (one conducted in English and one conducted in Cantonese) were held on 11 and 22 July 2015 respectively with a total of about 140 attendees. In addition to the two consultation forums, members of the Steering Committee, the Regulatory Framework Sub-committee and the Working Group on Apology Legislation attended various interviews by the media and briefings or sharing sessions with various stakeholders and parties concerned to explain the Consultation Paper.
5. The consultation concluded on 3 August 2015. 75 written responses were received. In addition, comments were received from attendees of the two consultation forums held in July 2015. Respondents included various Government bureaux and departments, statutory bodies or regulators, a legislative councillor, political parties, civil and social organisations as well as stakeholders from various sectors such as insurance, medicine, law and mediation.

RESPONSES RECEIVED ON THE SEVEN RECOMMENDATIONS

6. The majority of the responses received were in support of the recommendations that an apology legislation shall be enacted in Hong Kong (Recommendation 1), that the apology legislation shall cover full apologies (Recommendation 3), that the apology legislation shall apply to the Government (Recommendation 4), and that the apology legislation shall expressly provide that an apology shall not affect any insurance coverage that is, or would be, available to the person making the apology (Recommendation 6).
7. In relation to the recommendations that the apology legislation shall apply to civil and other forms of non-criminal proceedings including disciplinary

¹ Refers to proceedings involving the exercise of regulatory powers of a regulatory body under an enactment.

proceedings (Recommendation 2), that the apology legislation shall expressly preclude an apology from constituting an acknowledgement of a right of action for the purposes of the Limitation Ordinance (Recommendation 5) and that the apology legislation shall take the form of a stand-alone legislation (Recommendation 7), the responses received were mostly neutral and only a few opposed the recommendations.

RESPONSES RECEIVED ON THE TWO ISSUES

8. In relation to whether the proposed apology legislation should be applicable to regulatory proceedings, most of the responses received were neutral. Some responses supported the view that the proposed apology legislation should cover regulatory proceedings. There were two responses from regulatory bodies which expressed opposing views and concerns that their regulatory functions and powers might be compromised if the apology legislation applies to regulatory proceedings.

9. In relation to the issue as to whether factual information conveyed in an apology should be protected by the proposed apology legislation, the majority of the responses, i.e. 59 out of 75, were neutral. While there were 13 responses in support, three were in opposition, with some expressing concerns that statements of fact were not necessarily integral to an effective apology and that a claimant's case might be adversely affected if statements of fact were protected by the apology legislation.

STEERING COMMITTEE'S RESPONSES AND RECOMMENDATIONS

10. The Steering Committee has considered the responses and endorsed the seven recommendations made in the Consultation Paper. With regard to the two specific issues, the Steering Committee recommends that the apology legislation shall also apply to regulatory proceedings which are civil proceedings in nature and that, where appropriate, there shall be excepted civil proceedings to which the apology legislation does not apply. In this connection, all relevant stakeholders who would like to suggest any proceedings to be exempted from the application of the apology legislation are invited to submit their views and reasons for consideration. As to whether the apology legislation shall cover statements of fact in connection with the matter in respect of which an apology has been made, the public and all relevant stakeholders are also invited to express

further views on this issue for consideration.

11. In summary, the Steering Committee has made the following final recommendations:

- (1) an apology legislation shall be enacted in Hong Kong;
- (2) the apology legislation shall apply generally to civil and other forms of non-criminal proceedings including disciplinary and regulatory proceedings with exceptions. All relevant stakeholders who would like to suggest any proceedings to be exempted from the application of the proposed apology legislation are invited to submit their views and reasons for consideration;
- (3) the apology legislation shall cover full apologies;
- (4) the apology legislation shall apply to the Government;
- (5) the apology legislation shall expressly preclude an admission of a claim by way of an apology from constituting an acknowledgment of a right of action for the purposes of the Limitation Ordinance;
- (6) the apology legislation shall expressly provide that an apology shall not affect any insurance cover or indemnity that is, or would be, available to the person making the apology and that any contracting out of the apology legislation should be prohibited or declared void;
- (7) the apology legislation shall take the form of a stand-alone legislation; and
- (8) as to whether the apology legislation shall cover statements of fact in connection with the matter in respect of which an apology has been made, the public and all relevant stakeholders are invited to express further views on this issue for consideration.

DRAFT APOLOGY BILL

12. In response to suggestion to have available a draft of the proposed apology legislation for consideration, the Department of Justice (“**DoJ**”) has provided a draft of the proposed Apology Bill which is annexed to the Consultation Report. Similar to the apology legislation enacted in other jurisdictions, the draft Apology Bill is relatively short. It contains 11 clauses and a schedule covering the following main areas: (i) definition of apology; (ii) proceedings to which the apology legislation would be applicable; (iii) effect of apology in those applicable proceedings; (iv) effect of apology on Limitation

Ordinance and contracts of insurance and indemnity; (v) applicability to the Government; and (vi) a schedule of excepted proceedings. The draft bill is further explained in an accompanying Explanatory Memorandum.

SECOND ROUND CONSULTATION ON SPECIFIC MATTERS

13. The Consultation Report will be published on and publicly available as from 22 February 2016. It is accessible online at this website: <http://www.doj.gov.hk/eng/public/apology.html>. Comments from the public and stakeholders are welcome on the following matters:

- (1) excepted proceedings to which the proposed apology legislation shall not apply;
- (2) whether the factual information conveyed in an apology should likewise be protected by the proposed apology legislation; and
- (3) the draft Apology Bill as prepared by DoJ.

WAY FORWARD

14. At the close of the 6-week second round public consultation on 5 April 2016, the Steering Committee will consider views and comments received during the consultation period and make final recommendations on these specific matters under consultation.

Department of Justice
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