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Panel on Administration of Justice and Legal Services

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 22 February 2016**

Public Consultation on enactment of Apology Legislation

Purpose

This paper provides a brief account of the past discussions of the Panel on Administration of Justice and Legal Services ("the Panel") on the public consultation launched by the Steering Committee on Mediation ("the Steering Committee")¹ on enactment of apology legislation in Hong Kong.

Current situation

2. At present, there is no comprehensive legal definition in Hong Kong explaining the meaning of "apology", nor is there any legislation setting out the legal consequences of making an apology. Strictly speaking, an apology per se is unlikely to determine legal liability. The court is the sole and ultimate tribunal to decide whether a person is legally liable. Indeed, even if someone admits that he was negligent, he may not be so regarded by the court if the court is of the view that such admission was, for example, made out of one's unfamiliarity with the legal standard thus rendering the admission to be of dubious value. Nevertheless, there seems to be a common perception that an apology would automatically amount to an admission of fault or liability.

3. Apology legislation is nothing new and can be found in many overseas jurisdictions. According to the Administration, a survey of the apology legislation (including a bill from Scotland) of 56 common law jurisdictions

¹ Established in 2012 by the Secretary for Justice and chaired by him with three Sub-committees dealing with regulatory framework, accreditation and public education and publicity to advise and assist in the further promotion and development of mediation in Hong Kong, and supported by the Department of Justice.

suggests that the trend of apology legislation worldwide is clearly moving towards:

- (a) a wider coverage (embracing full apology, i.e. one that includes an admission of fault, as opposed to a partial apology such as an expression of regret or sympathy which does not include an admission of fault); and
- (b) a more general application (extending to non-criminal proceedings including disciplinary proceedings).

Enactment of apology legislation in Hong Kong

4. In 2010, the Working Group on Mediation established by the Department of Justice recommended, amongst others, that the question of whether there should be an apology legislation dealing with the making of apologies for the purpose of enhancing settlement deserves fuller consideration by an appropriate body. To follow up on this recommendation, an Apology Legislation Sub-group was formed under the Regulatory Framework Sub-committee of the Steering Committee.

5. After reviewing the report prepared by the Regulatory Framework Sub-committee, the Steering Committee published a Consultation Paper on the Enactment of Apology Legislation in Hong Kong ("the Consultation Paper") on 22 June 2015 for a six-week public consultation. Recommendations for consultation are as follows:

- (a) an apology legislation is to be enacted in Hong Kong to promote and encourage the making of apologies in order to facilitate the amicable settlement of disputes by clarifying the legal consequences of making an apology;
- (b) the apology legislation is to apply to civil and other forms of non-criminal proceedings including disciplinary proceedings;
- (c) the apology legislation is to cover full apologies;
- (d) the apology legislation is to apply to the Government;
- (e) the apology legislation expressly precludes 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 (Cap. 347);

- (f) the apology legislation expressly provides that an apology should not affect any insurance coverage that is, or would be, available to the person making the apology; and
- (g) the apology legislation is to take the form of a stand-alone legislation.

At the close of the public consultation on 3 August 2015, the Steering Committee will consider the views and comments received during the public consultation period and make a final recommendation.

Past discussions

6. The Panel was briefed on the Consultation Paper at its meeting on 22 June 2015. Major views expressed by members and the Hong Kong Bar Association ("the Bar Association") are summarized in the ensuing paragraphs.

7. The Bar Association in principle supported the enactment of an apology legislation to promote and encourage the making of apologies in order to facilitate the amicable settlement of disputes by clarifying the legal consequences of making an apology. The Bar Association would carefully study the recommendations raised in the Consultation Paper and provide its views accordingly.

8. In reply to a member's enquiry about the legal consequence for a person causing injury but who refused to convey his/her apology to the injured person for the loss and suffering sustained under the proposed apology legislation, the Steering Committee advised that the purpose of the proposed apology legislation was not to compel apologies. The main objective of the legislation was to promote and encourage the making of apologies in order to facilitate the amicable settlement of disputes. The proposed apology legislation as contemplated by the Steering Committee should comprise three elements. First, an apology would not constitute an admission of liability in law. Second, an apology admitting fault or liability by a party causing the injury would not be admissible as evidence in legal proceedings by the plaintiff to establish legal liability. Third, apologies would not be relevant to the determination of legal liability by the court.

9. On recommending full apologies in the proposed apology legislation, the Steering Committee explained that this was because full apologies were viewed as more effective than either a partial apology or no apology. This conclusion was consistent with the approach taken in the latest apology legislation in Canada and the Apologies (Scotland) Bill.

10. As to the scope of non-criminal proceedings under the proposed apology legislation, the Steering Committee advised that as there were a number of arguments for and against applying the proposed apology legislation to disciplinary proceedings, which were in the nature of civil proceedings, and regulatory proceedings², which were between civil and criminal proceedings, public views were sought as to whether the apology legislation should apply to these proceedings.

11. Question was also raised as to why statements of facts were not recommended to accompany an apology in the proposed apology legislation. The Steering Committee advised that there were pros and cons for covering statements of facts in the proposed apology legislation. The main argument for applying apology legislation to statements of facts was that without such protection, people might just offer bare apologies which would be meaningless and ineffective and might even be regarded as insincere. On the other hand, there were arguments against applying apology legislation to statements of facts. If statements of facts were inadmissible, the plaintiff's claims might be adversely affected or even stifled in some circumstances, such as where the facts could not otherwise be obtained through specific discovery. In the light of this, the Steering Committee therefore did not make any recommendation as to whether the apology legislation should also apply to statements of facts accompanying an apology. Comments and opinions were sought from the public in this regard.

Latest position

12. The Administration will brief the Panel on the outcome of the public consultation on enactment of apology legislation in Hong Kong at its meeting scheduled for 22 February 2016.

Relevant papers

13. A list of relevant papers is in the **Appendix**.

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Legislative Council Secretariat
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² Regulatory proceedings refer to proceedings involving the exercise of regulatory powers by a regulatory body under an enactment. Examples of regulatory proceedings include proceedings brought before the Market Misconduct Tribunal or the Securities and Futures Appeals Tribunal under the Securities and Futures Ordinance (Cap. 571).

Appendix

Proposed Apology Legislation

List of relevant papers

Date	Meeting	Paper
22 June 2015	Panel on Administration of Justice and Legal Services	Administration's paper on "Public Consultation on Enactment of Apology Legislation" LC Paper No. CB(4)1168/14-15(05) Minutes of meeting LC Paper No. CB(4)1427/14-15

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