
Apology Bill

Contents

Clause	Page
1.	Short title and commencement C9
2.	Object of this Ordinance C9
3.	Interpretation..... C9
4.	Meaning of <i>apology</i> C11
5.	Apology to which this Ordinance applies C11
6.	Meaning of <i>applicable proceedings</i> C13
7.	Effect of apology for purposes of applicable proceedings C13
8.	Admissibility of evidence of apology C15
9.	Apology not a Limitation Ordinance acknowledgment C15
10.	Contract of insurance or indemnity not affected..... C17
11.	Other matters not affected C17
12.	Amendment of Schedule..... C17
13.	Application to Government C17
Schedule	Proceedings that are Not Applicable Proceedings..... C19

A BILL

To

Provide for the effect of apologies in certain proceedings and legal matters.

Enacted by the Legislative Council.

1. Short title and commencement

- (1) This Ordinance may be cited as the Apology Ordinance.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Justice by notice published in the Gazette.

2. Object of this Ordinance

The object of this Ordinance is to promote and encourage the making of apologies with a view to preventing the escalation of disputes and facilitating their amicable resolution.

3. Interpretation

In this Ordinance—

apology (道歉)—see section 4;

applicable proceedings (適用程序)—see section 6.

4. Meaning of *apology*

- (1) In this Ordinance, an apology made by a person in connection with a matter means an expression of the person's regret, sympathy or benevolence in connection with the matter, and includes, for example, an expression that the person is sorry about the matter.
- (2) The expression may be oral, written or by conduct.
- (3) The apology also includes any part of the expression that is—
 - (a) an express or implied admission of the person's fault or liability in connection with the matter; or
 - (b) a statement of fact in connection with the matter.
- (4) In this Ordinance, a reference to an apology made by a person includes an apology made on behalf of the person.
- (5) Section 5 specifies the apologies to which this Ordinance applies.

5. Apology to which this Ordinance applies

- (1) This Ordinance applies to an apology made by a person on or after the commencement date of this Ordinance in connection with a matter, regardless of whether—
 - (a) the matter arose before, on or after that date; or
 - (b) applicable proceedings concerning the matter began before, on or after that date.
- (2) However, this Ordinance does not apply to—
 - (a) an apology made by a person in a document filed or submitted in applicable proceedings;
 - (b) an apology made by a person in a testimony, submission, or similar oral statement, given at a hearing of applicable proceedings; or

- (c) an apology adduced as evidence in applicable proceedings by, or with the consent of, the person who made it.

6. Meaning of *applicable proceedings*

- (1) In this Ordinance, the following proceedings are applicable proceedings—
 - (a) judicial, arbitral, administrative, disciplinary and regulatory proceedings (whether or not conducted under an enactment);
 - (b) other proceedings conducted under an enactment.
- (2) However, applicable proceedings do not include—
 - (a) criminal proceedings; or
 - (b) proceedings specified in the Schedule.

7. Effect of apology for purposes of applicable proceedings

- (1) For the purposes of applicable proceedings, an apology made by a person in connection with a matter—
 - (a) does not constitute an express or implied admission of the person's fault or liability in connection with the matter; and
 - (b) must not be taken into account in determining fault, liability or any other issue in connection with the matter to the prejudice of the person.
- (2) This section is subject to section 8.

8. Admissibility of evidence of apology

- (1) Evidence of an apology made by a person in connection with a matter is not admissible in applicable proceedings as evidence for determining fault, liability or any other issue in connection with the matter to the prejudice of the person.
- (2) However, if in particular applicable proceedings there is an exceptional case (for example, where there is no other evidence available for determining an issue), the decision maker may exercise a discretion to admit a statement of fact contained in an apology as evidence in the proceedings, but only if the decision maker is satisfied that it is just and equitable to do so, having regard to all the relevant circumstances.
- (3) This section applies despite anything to the contrary in any rule of law or other rule concerning procedural matters.
- (4) In this section—

decision maker (裁斷者), in relation to applicable proceedings, means the person (whether a court, a tribunal, an arbitrator or any other body or individual) having the authority to hear, receive and examine evidence in the proceedings.

9. Apology not a Limitation Ordinance acknowledgment

For the purposes of section 23 of the Limitation Ordinance (Cap. 347), an apology made by a person in connection with a matter does not constitute an acknowledgment within the meaning of that Ordinance in connection with the matter.

10. Contract of insurance or indemnity not affected

- (1) An apology made by a person in connection with a matter does not void or otherwise affect any insurance cover, compensation or other form of benefit for any person in connection with the matter under a contract of insurance or indemnity.
- (2) This section applies regardless of whether the contract of insurance or indemnity was entered into before, on or after the commencement date of this Ordinance.
- (3) This section applies despite anything to the contrary in any rule of law or agreement.

11. Other matters not affected

This Ordinance does not affect—

- (a) discovery, or a similar procedure in which parties are required to disclose or produce documents in their possession, custody or power, in applicable proceedings;
- (b) the operation of section 3, 4 or 25 of the Defamation Ordinance (Cap. 21); or
- (c) the operation of the Mediation Ordinance (Cap. 620).

12. Amendment of Schedule

The Chief Executive in Council may, by notice published in the Gazette, amend the Schedule.

13. Application to Government

This Ordinance applies to the Government.

Schedule

[ss. 6 & 12]

Proceedings that are Not Applicable Proceedings

1. Proceedings conducted under the Commissions of Inquiry Ordinance (Cap. 86).
 2. Proceedings conducted under the Control of Obscene and Indecent Articles Ordinance (Cap. 390).
 3. Proceedings conducted under the Coroners Ordinance (Cap. 504).
-

Explanatory Memorandum

In Hong Kong, parties to disputes may be deterred from making apologies, expressions of regret or other similar expressions because of their concern about the potential legal implications. By providing for the effect of apologies in certain proceedings and legal matters, this Bill seeks to promote and encourage the making of apologies with a view to preventing the escalation of disputes and facilitating their amicable resolution.

2. Clause 1 sets out the short title and provides for commencement.
3. Clause 2 explains the object of the Bill.
4. Clause 3 lists the defined terms used in the Bill—*apology* and *applicable proceedings*. Their full meanings are spelt out in clauses 4 and 6.
5. Clause 4 defines *apology* for the purposes of the Bill. An apology made by or on behalf of a person means an expression of the person's regret, sympathy or benevolence. If part of the expression is an admission of the person's fault or liability, or a statement of fact, the admission or statement is also included in the meaning of *apology*.
6. Clause 5 makes it clear that the Bill applies to an apology made on or after the commencement date of the Bill. That clause also provides that the Bill does not apply to an apology if it is made by a person in certain documents or oral statements in applicable proceedings, or if it is adduced as evidence in applicable proceedings by or with the consent of the person. That means such an apology may be taken into account in the proceedings if the apology maker so decides.

7. Clause 6 enumerates *applicable proceedings* for the purposes of the Bill. They are judicial, arbitral, administrative, disciplinary and regulatory proceedings, and other proceedings conducted under an enactment. However, applicable proceedings do not include criminal proceedings or some specific types of proceedings listed in the Schedule.
8. Clause 7 precludes a person's apology from constituting an admission of the person's fault or liability, and from being taken into account in determining fault, liability or any other issue (for example, appropriate remedies or sanctions, and issues of credibility) to the prejudice of the person, for the purposes of applicable proceedings. Clause 7 is subject to clause 8 concerning admissibility of evidence of apologies.
9. Currently, it is possible for an apology to be admitted in evidence in civil proceedings to prove the matters stated in the apology in order to establish legal liability. Clause 8(1) alters the position by making evidence of a person's apology generally inadmissible for determining fault, liability or any other issue to the prejudice of the person in applicable proceedings (including proceedings where the usual rules of evidence do not apply).
10. However, a statement of fact contained in an apology is admissible as evidence in particular applicable proceedings at the decision maker's discretion, which may be exercised in an exceptional case and only if it is just and equitable to do so, having regard to all the relevant circumstances (see clause 8(2)).
11. The Limitation Ordinance (Cap. 347) governs the limitation periods for bringing actions of various classes. Under section 23 of that Ordinance, the limitation periods for certain rights of action relating to land, personal property, debts and other

claims may be extended by an acknowledgment of the title or claim in issue. Clause 9 precludes an apology from constituting an acknowledgment for the purposes of that section 23, and so also from extending the relevant limitation period.

12. Some parties to disputes may be concerned that insurance cover could be affected by apologies because of provisions in insurance contracts that prohibit the admission of fault by the insured without the insurer's consent. Clause 10 provides that a person's apology (defined by clause 4 to include an admission of fault) does not affect any insurance cover, compensation or other form of benefit for any person under a contract of insurance or indemnity.
13. Clause 11 stipulates other matters not affected by the Bill, namely—
 - (a) discovery or a similar procedure in applicable proceedings;
 - (b) the operation of the provisions involving apologies in the Defamation Ordinance (Cap. 21);
 - (c) the operation of the Mediation Ordinance (Cap. 620), which provides, among other things, that a mediation communication (which may contain an apology) may be disclosed for certain purposes, or admitted in evidence in proceedings, only with leave of a specified court or tribunal.
14. Clause 12 empowers the Chief Executive in Council to amend the Schedule, which specifies the proceedings that are not applicable proceedings (see also clause 6(2)(b)).
15. Clause 13 applies the Bill to the Government.