



Ref: Lv022/17

8 May 2017

**By Email only** ([bc\\_103\\_16@legco.gov.hk](mailto:bc_103_16@legco.gov.hk))

The Hon. Holden CHOW Ho-ding  
Chairman  
Bills Committee on Apology Bill

Dear The Hon. Chow

### **Apology Bill**

The Hong Kong Federation of Insurers ("HKFI"), together with our 88 General Insurance Members and 48 Life Insurance Members constituting over 90% of market share, is in general support of implementing apology legislation in Hong Kong to facilitate the early resolution of disputes including those related to insurance claims.

Upon closer examination of the matter, however, we would like to suggest to the Bills Committee to remove s. 8(2) and s. 8(4) from the Bill for the following reasons:

- (1) The aim of the legislation is to promote and encourage the making of apologies. Parties to a dispute need to know unequivocally that making an apology will not attract legal liability or be used against him or her in court proceedings. The removal of s. 8(2) (and therefore s. 8(4)) helps to make this crystal clear. The presence of the exception in s. 8(2) gives rise to uncertainty for lay persons and such doubt may cause the person to refrain from making an apology (i.e. if the Bill is to promote an apology without consequence, then why it creates an undesirable exception?). This defeats the legislative intent of facilitating early resolution of disputes (including those related to insurance claims);
- (2) If s. 8(2) is permitted to remain, it will be used as a "backdoor" by the claimant to admit to the statement of fact to establish liability. This gives rise to a number of issues:
  - (a) Instead of a trial proceeding in the usual matter (the claimant proving his or her case), litigators will be arguing and requiring the court to determine whether the exception should be invoked. This is problematic for a number of reasons including opening up a new battlefield for litigation and unnecessarily complicating the trial and adding to its length, which has the effect of using up more resources of the judiciary and adding to costs of litigation;

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- (b) There is no definition of what is an exceptional case and it is foreseeable the claimant will seek to argue that his or her case deserves invoking the exception. This will give rise to a new body of law as the Courts will have to interpret and give guidance on what is an exceptional case (this deviates from the legislative intent);
- (3) It would not facilitate a proper gathering of evidence pursuant to the well-established laws of evidence where there is a doctrine that a claimant normally bears the burden of proof.

We also attach as an **Appendix** to this letter our suggested amendment to the Apology Bill as elaborated above.

Yours sincerely



Orchis Li  
Chairperson  
Legal Working Group  
Life Insurance Council ("LIC")

c.c. The Hon. K P Chan, BBS, JP  
Councillors, General Insurance Council ("GIC") and Life Insurance Council  
Members, Legal Working Groups under the GIC and LIC

## 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.