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8 June 2017

Ms Angel WONG  
Clerk to Bills Committee  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong

**By Post & By E-mail**

Dear Ms WONG,

**Re: Apology Bill**

We refer to the Apology Bill (“Bill”) and our previous submissions to the Bills Committee.

One of the issues addressed in our submissions is the application of the Bill to proceedings of the Legislative Council (“LegCo”). The Government’s view, as stated in our submissions, is that the Bill does not apply to proceedings of the LegCo. However, if the LegCo Members take a different view, the Government is of course more than happy to consider their views.

We also note the view that it may not be entirely clear whether the proceedings relating to Rules 73, 73A and 85 of the Rules of Procedure of the LegCo may constitute “disciplinary proceedings” within the meaning of “applicable proceedings” under the Bill. Solely to avoid any unnecessary arguments, the Government is minded to propose Committee Stage Amendment (“CSA”) to amend the Schedule to the Bill which lists the proceedings that are not applicable proceedings by including LegCo proceedings to the Schedule.

In addition, in order to further alleviate some Members’ concern as to the exceptional circumstances where a decision maker may exercise the discretion under clause 8(2) to admit a statement of fact as evidence in any particular applicable proceedings, the Government is happy to provide an alternative draft of clause 8(2) for Members’ consideration. The alternative draft provides that the discretion may

be exercised by the decision maker under clause 8(2) when there is an exceptional case (for example, where there is no other evidence available for determining an issue) and that it is just and equitable to do so, having regard to (a) whether it is in the public interest or the interests of the administration of justice for the statement to be admitted as evidence in the proceedings; and (b) any other relevant circumstances. In the event Members find the alternative draft more desirable, we would seek to likewise introduce CSA to effect the change.

A copy of the draft CSA (in mark-up format at the Annex) reflecting the proposed amendments is attached.

We would be most grateful if you could bring this letter and the enclosed draft CSA to the attention of the Chairman and Members of the Bills Committee.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'William LIU', with a stylized flourish at the end.

(William LIU)

Senior Government Counsel

Encl.

(#1511013)

**Proposed Committee Stage Amendments to  
Apology Bill**

(shown as mark-up revisions to the provisions of the Bill)

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**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.~~ the following matters—
  - (a) whether it is in the public interest or the interests of the administration of justice for the statement to be admitted as evidence in the proceedings;
  - (b) any other 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.

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**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).
  4. Proceedings of the Legislative Council, including proceedings of a committee, panel or subcommittee established or mandated by the Legislative Council to discharge a function or exercise a power of the Legislative Council.
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