

**Bills Committee on Apology Bill**  
**Government's response to the list of follow-up actions arising from the discussion**  
**at the meeting on 9 June 2017**

This paper sets out the Government's response to a matter raised by a Member in relation to clause 10 of the Apology Bill ("Bill") at the meeting on 9 June 2017. The matter concerns two issues, namely (i) the meaning of "rule of law" under clause 10(3) of the Bill and (ii) the relationship between clause 8(2) and clause 10(1) of the Bill.

**Meaning of "rule of law" under clause 10(3) of the Bill**

2. Clause 10(3) provides that "[t]his section applies despite anything to the contrary in any rule of law or agreement."

3. "Law" is defined in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) ("IGCO") as "any law for the time being in force in, having legislative effect in, extending to, or applicable in, Hong Kong." It would therefore encompass both ordinances in force in Hong Kong and the common law. "Ordinance" is also defined under section 3 of the IGCO. It means, *inter alia*, "any Ordinance enacted by the Legislative Council" and "any provision or provisions of any such Ordinance or subsidiary legislation". It follows that the reference to any rule of law would include any provision in any ordinance.

**Relationship between clauses 8(2) and 10(1)**

4. Clause 10(1) preserves the validity of contracts of insurance or indemnity notwithstanding an apology being made. A concern was raised whether such safeguard in clause 10(1) would be affected if a decision maker exercises the discretion under clause 8(2) to admit a statement of fact contained in an apology as evidence in applicable proceedings. The Government had responded to this issue in the submissions to the LegCo in March 2017<sup>1</sup>.

5. In gist, under clause 8(2), a decision maker has the discretion to admit,

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<sup>1</sup> See LC Paper No. CB(4)669/16-17(03), §§28 – 30.

as evidence in applicable proceedings, a statement of fact contained in an apology. The discretion may only be exercised if:

- (i) there is an exceptional case (for example, where there is no other evidence available for determining an issue); and
- (ii) the decision maker is satisfied that it is just and equitable to do so.

6. Clause 8(2) and clause 10(1) deal with two separate and distinct matters. Clause 8(2) concerns the exercise of discretion by a decision maker to admit a statement of fact contained in an apology as evidence in applicable proceedings. Clause 10(1) deals with validity of insurance cover and indemnity.

7. It is pertinent to note that clause 10(1) provides:

“An **apology** made by a person in connection with a matter does not void or otherwise affect any insurance cover....” (emphasis added)

8. The expression “apology” is defined in clause 4 to include a statement of fact. The meaning of “apology” is not qualified by clause 8(2) and is not dependent on the treatment of a statement of fact under clause 8(2). Admission of a statement of fact as evidence in applicable proceedings does not affect the legal position that the statement of fact would still be part of the “apology” as defined in the Bill (see clause 4) to which the protection under clause 10(1) applies. In other words, whether a statement of fact is ultimately admitted as evidence in applicable proceedings is irrelevant and does not affect the validity of insurance cover and indemnity under clause 10.

9. It follows from paragraphs 4 to 8 above that the operation of clause 8(2) has no bearing on clause 10(1). The protection on validity of contracts of insurance or indemnity under clause 10 would not be affected by a decision maker’s decision to admit a statement of fact contained in an apology as evidence in the proceedings under clause 8(2). The Government does not consider it necessary to specify explicitly that clause 10(1) would apply despite an admission by the decision maker of a statement of fact as evidence under clause 8(2). Hence, there is no need to amend clause 10.

10. We come to the views above without any need to refer to clause 10(3) of the Bill. There is also no inconsistency or conflict between clause 8(2) and clause 10(1).

**Department of Justice**  
**June 2017**