

立法會
Legislative Council

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**Paper for the House Committee Meeting
on 10 February 2017**

**Legal Service Division Report on
Apology Bill**

I. SUMMARY

1. The Bill

- (a) The Bill seeks to implement the recommendations of the Steering Committee on Mediation to promote and encourage the making of apologies in resolution of disputes by providing, among others, that:
 - (i) evidence of a person's apology would, subject to certain exceptions, be generally inadmissible for determining fault or liability in civil proceedings and other forms of non-criminal proceedings including disciplinary proceedings; and
 - (ii) an apology would not extend limitation periods or affect insurance coverage.
- (b) The new statutory scheme would only apply to apologies made on or after the commencement date of the Bill after its enactment.
- (c) The Bill, if enacted, would apply to the Government.

2. Public Consultation Two rounds of public consultations were launched in June 2015 and February 2016. The majority of the responses were in favour of enacting apology legislation in Hong Kong.

3. Consultation with LegCo Panel The Panel on Administration of Justice and Legal Services was briefed on the legislative proposal at three meetings from June 2015 to November 2016. Members supported the proposal, but raised various concerns.

4. Conclusion Our scrutiny of the Bill is continuing. As the Bill introduces a new statutory scheme providing for the effect of apologies in certain legal proceedings, Members may wish to form a Bills Committee to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 8 February 2017. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: CD/MED 012/1) issued by the Department of Justice ("DoJ") on 25 January 2017 for further details.

Object of the Bill

2. By providing for the effect of apologies in certain proceedings and legal matters, the Bill seeks to promote and encourage the making of apologies with a view to preventing the escalation of disputes and facilitating their amicable resolution.¹

Background

3. In Hong Kong, parties to civil disputes may be deterred from making apologies, expressions of regret or other similar expressions because of concerns about the potential legal implications, such as an apology being admitted in evidence to determine fault or liability in legal proceedings, extending limitation periods and adversely affecting insurance coverage where the insurance contract contains a clause prohibiting the admission of fault by the insured without the insurer's consent. According to paragraph 5 of the LegCo Brief, apology legislation has been enacted in the United States, Australia, Canada and Scotland to address some of these concerns.

4. Following two rounds of six-week public consultation in June to August 2015 and February to April 2016, the Steering Committee on Mediation ("SCM") chaired by the Secretary for Justice ("SJ") published a final report in November 2016, recommending new legislation to make evidence of a person's apology inadmissible for determining fault or liability in all civil proceedings, subject to certain exceptions.

Provisions of the Bill

5. The Bill seeks to implement SCM's recommendations by creating a new statutory scheme to provide for the effect of apologies in certain proceedings and legal matters.

Meaning of apology and scope of application (clauses 4, 5 and 13)

6. Under clause 4, an apology made by or on behalf of a person means an expression (whether oral, written or by conduct) of the person's regret, sympathy or benevolence, and includes any part of the expression that is an express or implied admission of the person's fault or liability or a statement of fact in connection with the matter in respect of which the apology is made ("relevant matter").

¹ Clause 2 sets out the object of the Bill. According to paragraph 9.4.8 of *Drafting Legislation in Hong Kong – A Guide to Styles & Practices* published by the Law Drafting Division of DoJ, an objects clause aids clearer understanding by giving the reader a statement of the objects sought to be achieved by the legislation, and providing an overview of the legislation.

7. Under clause 5, the new scheme would apply to an apology made on or after the commencement date of the Bill after its enactment ("Relevant Date"), regardless of when the relevant matter arose or when the relevant legal proceedings began. However, the new scheme would not apply to (a) a person's apology contained in certain documents filed or oral statements made in the relevant proceedings; or (b) an apology adduced as evidence in those proceedings by or with the consent of the person. By virtue of clause 13, the new scheme would apply to the Government.

Applicable proceedings and exceptions (clause 6)

8. Under the Bill, "applicable proceedings" is defined to mean judicial, arbitral, administrative, disciplinary and regulatory proceedings (whether or not conducted under an enactment) as well as other proceedings conducted under an enactment (clause 6(1)). However, the Bill would not apply to criminal proceedings or proceedings specified in the Schedule, namely, those conducted under the Commissions of Inquiry Ordinance (Cap. 86), the Control of Obscene and Indecent Articles Ordinance (Cap. 390) and the Coroners Ordinance (Cap. 504) (clause 6(2)).²

Effect of apology in applicable proceedings (clauses 7 and 8)

9. In applicable proceedings, an apology made by or on behalf of a person would not constitute an express or implied admission of the person's fault or liability, and must not be taken into account in determining fault, liability or any other issue in connection with the relevant matter to the person's prejudice (clause 7); nor would evidence of an apology be admissible for determining fault, liability or any other issue in connection with the relevant matter to that person's prejudice (clause 8(1)).

10. However, a court, tribunal, arbitrator or any other body or individual having the authority to hear, receive and examine evidence in applicable proceedings would have the discretion in an exceptional case to admit a statement of fact contained in an apology as evidence in the proceedings, if satisfied that it is just and equitable to do so, having regard to all relevant circumstances (clause 8(2) and (4)).

Matters not affected by an apology or the Bill (clauses 9 to 11)

11. Under clause 9, an apology would not constitute an acknowledgment of the claimant's title or claim for the purpose of extending the limitation periods for certain rights of action relating to land, personal property, debts and other claims under section 23 of the Limitation Ordinance (Cap. 347).

12. Under clause 10, a person's apology made on or after the Relevant Date would not affect any insurance cover, compensation or other form of benefit for any

² According to the Administration, proceedings under these Ordinances are to be excluded because they are fact-finding in nature and do not involve any determination of liability: see LC Paper No. CB(4)150/16-17(03), paragraph 7(1) and (2). Under clause 12, the Chief Executive in Council would have the power to amend the Schedule by notice published in the Gazette.

person under a contract of insurance or indemnity regardless of when the contract of insurance or indemnity was entered into and despite anything to the contrary in any rule of law or agreement (including a policy condition in the insurance contract).

13. Under clause 11, the Bill would not affect: (a) discovery or a similar procedure for the disclosure or production of documents in applicable proceedings; (b) the operation of section 3, 4 or 25 of the Defamation Ordinance (Cap. 21) which permits a defendant to rely on an apology or an offer of amends as a defence or in mitigation of damages in a defamation action; or (c) the operation of the Mediation Ordinance (Cap. 620) relating to, among other matters, the disclosure or admissibility in evidence of a communication (e.g. an apology) made in the course of mediation.

Commencement

14. Under clause 1(2), the Bill, if passed, would come into operation on a day to be appointed by SJ by notice published in the Gazette.

Public Consultation

15. According to the LegCo Brief, two rounds of public consultations were launched in June 2015 and February 2016 respectively. The majority of the responses were in favour of enacting apology legislation in Hong Kong. There was also support for the legislation to protect statements of fact conveyed in an apology, although views differed as to whether the court should retain a discretion to admit such statements as evidence against the apology maker in appropriate circumstances.

Consultation with LegCo Panel

16. As advised by the Clerk to the Panel on Administration of Justice and Legal Services, the Panel was briefed on the legislative proposal at its meetings on 22 June 2015, 22 February 2016 and 28 November 2016. Members generally supported the proposal, but raised various concerns including whether the claimants' right to a fair hearing would be unduly affected if factual information conveyed in an apology was protected by the proposed apology legislation, and the legal uncertainty arising from the court's discretion to admit statements of fact in exceptional cases.

Conclusion

17. Our scrutiny of the legal and drafting aspects of the Bill is continuing. As the Bill introduces a new statutory scheme providing for the effect of apologies in certain legal proceedings, Members may wish to form a Bills Committee to study the Bill in detail.

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