

10 August 2015

Mr William Liu
Department of Justice
Hong Kong SAR Government
10/F., Rumsey Street Multi-storey Carpark Building
2 Rumsey Street
Sheung Wan
Hong Kong

Dear Mr Liu

Enactment of Apology Legislation in Hong Kong

The Hong Kong General Chamber of Commerce (“HKGCC”) is grateful for the opportunity to comment on the Consultation Paper on the Enactment of Apology Legislation in Hong Kong.

Having regard to the recommendations and key factors enumerated by the Steering Committee on Mediation (“The Committee”) and the global trend towards providing protection for full rather than partial apologies in the context of civil proceedings, the HKGCC shares the Committee’s view that Apology Legislation should be adopted in Hong Kong.

Specifically, the HKGCC supports the Committee’s seven recommendations as follows:

- (a) Hong Kong should adopt apology legislation.
- (b) The legislation should apply to civil and other non-criminal proceedings, including disciplinary proceedings.
- (c) The legislation should cover full apology.
- (d) The legislation would apply to the government.
- (e) The legislation should preclude admission of a claim via an apology from constituting an acknowledgement of a right of action in the context of Limitation periods.
- (f) An apology must not affect any insurance coverage that is or would be available to the apology maker.
- (g) The legislation be stand-alone rather than be subsumed under the Mediation Ordinance.

The HKGCC also subscribes to Committee’s view that:

- I. “no change” would be undesirable in view of the benefits of the proposed legislation

and the international trend;

- II. legislation should remove the fear that an apology would amount to an admission of fault or that it would be taken into evidence. A party should be free to make an apology and steer to an amicable relationship with the aggrieved party, which would assist to prevent the dispute escalating, and may facilitate a settlement;
- III. in this regard, a full apology protection would better serve this objective, as would precluding an apology from affecting limitation periods or insurance coverage;
- IV. the protection should be extended to disciplinary proceedings, as with some other jurisdictions such as certain Canadian and Australian provinces/states and;
- V. having stand-alone legislation will lead to greater awareness which the committee believes is crucial for the legislation to be truly effective. Lawyers must also be made well aware of the legislation, since they are often consulted by persons whether to apologise before being served with proceedings. From the Australian and Canadian experience, it is clear that much needs to be done to promote awareness and usage among the general public and legal professionals.

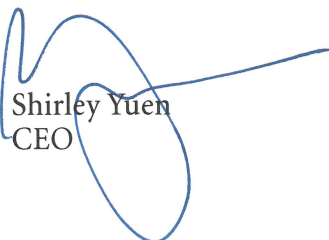
For the reasons as set out above, the HKGCC believes that such legislation is useful and should be supported. The benefits are that it would:

- encourage reduction in litigation;
- reduce costs in pursuing/defending claims;
- promote quicker resolution of lawsuits or use of mediation and hence reduces burden on the judiciary, and
- offer an emotional closure to the aggrieved parties which may in some situations be more valuable than monetary compensation.

It is noted that as the government may be a primary user of the legislation, this would be helpful in emergency or disaster situations where statements from a government and/or public officials can go a long way to placate or diffuse public discontent as with the 2012 Lamma ferry disaster where the Marine Department made an official apology only after eight months.

We are also pleased to note that the legislation is not intended to deprive aggrieved persons of the right to sue or to prevent the courts from being the final arbiter of the facts and evidence in determining liability.

Yours sincerely



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CEO