

Kluwer Mediation Blog

Hong Kong Apology Ordinance 2017

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The Apology Bill was passed on 13 July 2017 by the Hong Kong Legislative Council and it was gazetted as “Apology Ordinance (Cap.631)” on 20 July 2017.

The Ordinance will come into operation on 1 December 2017, a date appointed by the Secretary for Justice. It is the first piece of apology legislation enacted in Asia. Although it is short (13 sections and 1 schedule), those who have worked on this project have spent about 5 years from incubation to delivery.

History

The idea of legislating the Ordinance was not unexpected in the Hong Kong mediation community. On 8 February 2010, the former Secretary for Justice, as the Chairman of the Working Group on Mediation, released the Working Group Report (“the Report”). Recommendation 43 of the Report states: “The question of whether there should be an Apology Ordinance or legislative provisions dealing with the making of apologies for the purpose of enhancing settlement deserves fuller consideration by an appropriate body.”

The Working Group on the proposed Apology Legislation (“the Working Group”) was formed in early 2013. I had the privilege of joining the Working Group chaired by Professor Nadja Alexander. The Working Group held a total of 7 meetings during the period from 26 February 2013 to 17 February 2015 to work on the matter and published the first consultation paper “Enactment of Apology Legislation in Hong Kong” in June 2015. A further consultation paper – “Enactment of Apology Legislation in Hong Kong: Report & 2nd Round Consultation” was published in February 2016. The final report – “Enactment of Apology Legislation in Hong Kong: Final Report and Recommendations” came in November 2016. The majority of the responses received were in favour of the proposed legislation.

Object

The object of the Ordinance is to promote and encourage the making of apologies with a view to preventing the escalation of disputes and facilitating their amicable resolution.

Features

For the purpose of achieving the object, the Ordinance provides a wide definition of apology including a statement of fact. The Ordinance applies to applicable proceedings which include

nearly all proceedings except criminal proceedings and those set out in the Schedule to the Ordinance. In terms of time, the Ordinance does not have retrospective effect.

Definition

The Ordinance provides a wide definition of “apology”. An apology is an expression (whether in writing, oral or by conduct) of a person’s regret, sympathy or benevolence in connection with a matter, and includes, for example, an expression that the person is sorry about the matter. An apology also includes an expression that is an express or implied admission of the person’s fault or liability in connection with the matter.

An apology, in addition to an expression of regret, sorry, etc., may also include a statement of facts of the subject matter. Unlike the apology legislation of other jurisdictions, the Ordinance expressly stipulates that such a statement of facts is within the definition of the apology. The effect of including a statement of facts as part of the definition of apology will be discussed in another paragraph below.

It is hoped that with a wide definition of apology, an apology-maker may determine a suitable expression of apology.

Applicable proceedings

The Ordinance has made reference to the term “applicable proceedings” which are (a) judicial, arbitral, administrative, disciplinary and regulatory proceedings (whether or not conducted under another piece of legislation); and (b) other proceedings conducted under another piece of legislation. The Ordinance is not intended to apply to criminal proceedings and the proceedings in the Schedule to the Ordinance, which are not “applicable proceedings”. At present, the Schedule includes four types of proceedings and the Chief Executive together with the Executive Council members may amend the Schedule from time to time.

Retrospective Effect

Regardless whether the subject matter arose before, on or after 1 December 2017 or whether the applicable proceedings concerning the matter began before, on or after 1 December 2017, the Ordinance applies so long as the apology is made by a person on or after 1 December 2017. In short, the Ordinance does not have retrospective effect in respect of an apology made before 1 December 2017.

Admissibility

For the purpose of applicable proceedings, an apology does not constitute an admission (whether express or implied) of fault or liability. So, when the decision maker of applicable proceedings has to determine fault or liability, he/she must not take into account the apology and allow it to prejudice his/her judgment.

However, there are circumstances where a party chooses to make an apology to the court documents such as pleadings and witness statement, or in testimonies or oral submissions given at the hearing, intending the apology to be taken into account in the proceedings. The Ordinance has provisions to disapply it so that an apology may be taken into account in applicable proceedings if the apology-maker so intends. Further, an apology made outside applicable proceedings may also

be adduced as evidence in applicable proceedings provided that consent has been obtained from the apology-maker.

Statement of facts

The Ordinance is the first one which expressly deals with the statement of facts. As mentioned before, the term apology as defined includes a statement of facts. That means, a statement of facts is considered to be part of the apology and therefore it will not be taken as evidence for the purpose of determining fault or liability. That said, in exceptional circumstances (for example, whether there is no other evidence available to determine the issue), the decision maker of applicable proceedings may exercise his/her 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 the public interest or the interests of the administration of justice. This exception is intended to strike a balance between encouraging the making of apologies and a higher threshold of proving one's claim.

Limitation Ordinance and Contract of Insurance not affected

For the sake of removing confusion, the Ordinance stipulates that an apology will not extend or affect the obligation of the Limitation Ordinance. It also makes it clear that an apology will not void or adversely affect a contract of insurance or indemnity.

Government

The Ordinance, once it comes into operation, applies to individuals and institutions. For the removal of misunderstanding, the Ordinance also states that it applies to the Government.

Way forward

In some jurisdictions, the public are not aware of the existence of the apology legislation. The Department of Justice has assured members of the Legislative Council that a series of education and publicity activities will be launched to enhance public awareness on the Ordinance, including its objectives, coverage, application and implications.

Full text

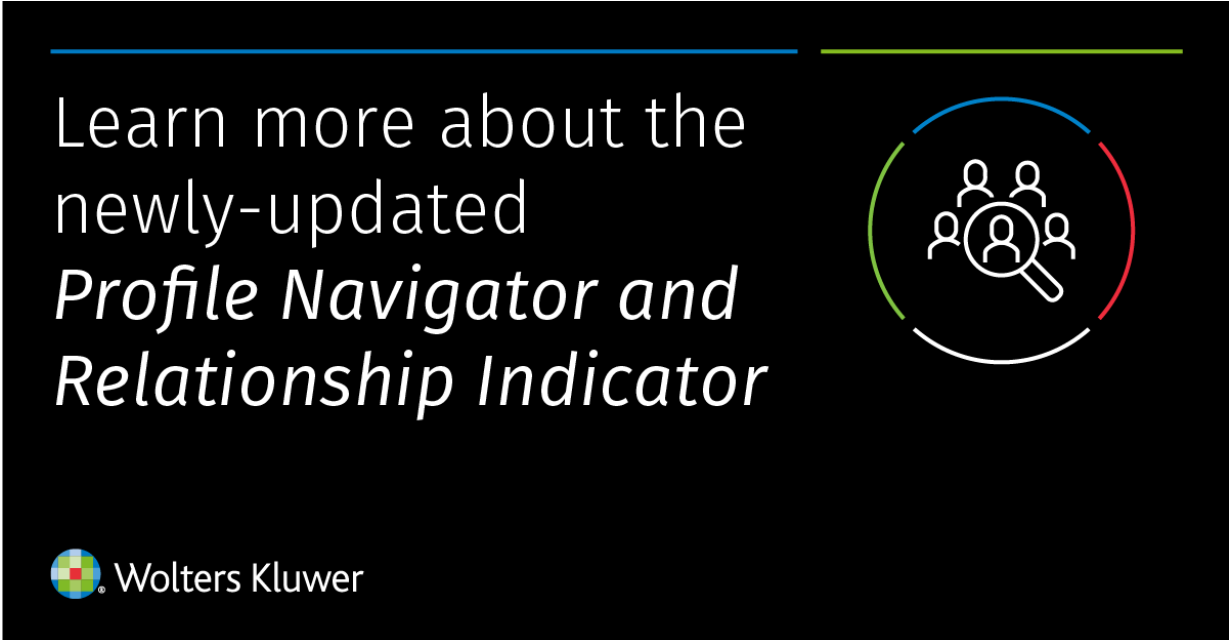
As a member of the Steering Committee on Mediation, which advises on and assists in the promotion of and development of mediation in Hong Kong, I share the Apology Ordinance in this blog and hope that this piece of legislation will receive more attention locally and internationally. For those who are interested to read the Ordinance, they may visit the homepage of [Hong Kong e-Legislation](#).

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