

VIVIEN CHAN & Co.

YOUR GREATER CHINA LAWYERS

HONG KONG | BEIJING

NEWSLETTER

issue 04 . 2018

IP UPDATE



Owen Tse

PARTNER
LLB (Hons), BSc (Surveying)(Hons)
MHKIS, MRICS, RPS(QS)

- Head of Dispute Resolution Practice



Ken Hung

ASSOCIATE

BBA (Law), University of Hong Kong
LLB, University of Hong Kong

Apology Ordinance – Apology Without Consequence?

A proper apology may usually be a helpful tool in trying to manage and narrow disputes. However, lawyers would usually advise against making an apology as it may constitute admission of liability to the detriment of the apology maker. It may also deprive one from his insurance protection.

Being the first piece of apology legislation in Asia, the Apology Ordinance (Cap. 623 of the laws of Hong Kong) has come into effect in December 2017, operating to prevent an apology from constituting admission of liability to the maker's detriment. It enables parties in Hong Kong to make use of open apology to facilitate resolution of disputes.

The Ordinance serves to exclude an apology made from being admissible evidence for determining fault, liability or other issue in connection with the matter (where an apology was made) against the apology maker, and such protection extends to all civil disputes (but not criminal disputes) and most disciplinary and regulatory proceedings. On the other hand, while usually an admission of liability is prohibited under most insurance contracts, it is expressly provided in the Ordinance that an apology made does not void or otherwise affect any insurance cover, compensation or other form of benefit under a contract of insurance or indemnity. The Ordinance serves to offer a comprehensive protection when an open apology is made.

At the same time, apology is widely defined under the Ordinance. It means an expression of regret, sympathy or benevolence in connection with a matter, where such expression may be made orally, in writing or by conduct. Accordingly, there is no restriction as to the means or forms of an apology. On the other hand, an apology also includes any part of expression that is an express or implied admission

of one's fault or liability in connection with that matter, or a statement of fact in connection with that matter. With this wide definition (even including a statement of fact), the Ordinance encourages the making of the most sincere apology to help resolving disputes, and places no restriction on how an apology should be made or formulated in order to be protected under the Ordinance.

That said, a residual discretion has been left with the decision maker (e.g. the court, tribunal or arbitrator) of the relevant proceedings. The Ordinance provides that in an exceptional case, 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 the public interest or the interests of the administration of justice. Only one example of "exceptional case", namely "where there is no other evidence available for determining an issue", has been provided in the Ordinance. It is uncertain as to how and how often will such discretion be exercised, and attention should be paid to the development of cases and examples in this area.

Given that an apology may serve to address the parties' emotional aspect of the dispute, the making of apology as inadmissible evidence under the Ordinance is a welcoming development in helping parties to resolve their disputes.

© Vivien Chan & Co., Newsletter issue 04, February 2018
All Rights Reserved.