



3 August 2015

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By mail and email: mediation@doj.gov.hk

The Steering Committee on Mediation
10/F., Rumsey Street Multi-storey Carpark Building,
2 Rumsey Street,
Sheung Wan,
Hong Kong.

For the attention of: Ms Jenny Fung

Dear Ms Fung,

Enactment of Apology Legislation in Hong Kong – Consultation Paper

The Hong Kong Institute of Certified Public Accountants (HKICPA) is the only statutory licensing body of accountants in Hong Kong responsible for the professional training, development and regulation of the accountancy profession. The HKICPA sets auditing and assurance standards, ethical standards and financial reporting standards in Hong Kong. We are grateful for the opportunity to comment on the above consultation paper, as it would appear that it could affect the efficiency of disciplinary proceedings by professional bodies and have a negative impact on the HKICPA's role as a regulator of the accountancy profession.

It is noted that the purpose of the consultation paper is to facilitate discussions and to assist the Steering Committee to draw up its final recommendations before presentation to LegCo. The HKICPA appreciates the far reaching importance of this proposed legislation and welcomes the opportunity to be a part of that process.

As a general comment, the HKICPA accepts that encouraging parties to make a genuine apology at the earliest opportunity is desirable in any civilized society. The HKICPA agrees that an apology should be voluntary and it would not be right for parties to be forced to make an apology or that, if they did not make an apology, they should be penalised for that decision.

However, whether the proposed apology legislation would necessarily encourage more apologies being made and lead to a reduction in litigation, is unclear.

Given the already mature apology legislation in other jurisdictions, the HKICPA feels that the case for an apology legislation in Hong Kong would benefit from clear and compelling evidence (e.g. in the form of a detailed empirical study) to support the Steering Committee's conclusions that the enactment of the legislation in the form proposed would necessarily have the desired effect.



In respect of regulatory and disciplinary matters, the HKICPA, as a regulator of the accountancy profession, would be concerned with an apology legislation that would effect and undermine its regulatory and disciplinary function.

Apology legislation should not be allowed to be misused as a means to abnegate professional responsibility or legal liability or frustrate any punitive, regulatory or disciplinary action from being taken.

Regulators exercise statutory powers bestowed upon them by the Legislature. Careful consideration should be given before introducing a law that might well have the unintended result of undoing and undermining powers that the Legislature had intended the regulator to have.

By way of example, it would appear that a well timed full apology given during an inspection of a practice unit or an investigation of a member could be inadmissible in any subsequent disciplinary proceedings.

The question must be raised whether a regulator should ever be placed in the invidious position of withholding relevant information from an independent tribunal whose duty it is to protect the public.

Protection of the public and the reputation of the profession is paramount to all regulated industries or professional bodies. It is therefore not surprising that independent tribunals may receive any relevant evidence and are trusted in the manner by which they would use that evidence. If there is evidence of an admission contained in a full apology, should the tribunal be compelled to exclude that evidence?

Further, should the Court of Appeal, on appeal from a decision, be allowed to have regard to the apology that had been received before the tribunal?

The above has been mentioned to highlight some of the complexities that would have to be faced if the proposal were to be extended to regulatory or disciplinary proceedings.

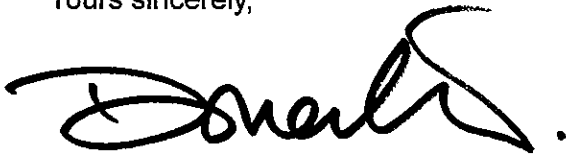
In fact, unless it can be shown that there exists a compelling need to include regulatory or disciplinary proceedings within the proposed apology legislation, it is questionable that this should be the case, especially when:

- Unlike private litigation, there is a high degree of public interest involved in these types of proceedings. A regulator or professional body is expected to serve and protect the public interest and it should not be hampered in carrying out that function;
- Members of a professional body are measured to a high standard of professional behaviour of which honesty and integrity are paramount values. The proposed legislation rather than promoting these values could unintentionally legitimize and encourage professionals to be less than forthcoming to either their professional organization or in subsequent disciplinary proceedings; and

- Not all jurisdictions that have mature apology legislation have considered it necessary to extend their legislation to include all disciplinary or regulatory proceedings.

If you have any questions on our submissions or would like to meet to discuss it, please contact Donald Leo, General Counsel, in the first instance.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Donald Leo", followed by a period.

Donald Leo
General Counsel

DL/ky