

By post and by fax at 3543 0390

3 August 2015

Ms Jenny FUNG Mei Fung  
Secretary to the Steering Committee on Mediation  
Department of Justice  
10/F Rumsey Street Multi-storey Carpark Building  
2 Rumsey Street Sheung Wan Hong Kong

Dear Ms FUNG

**Public Consultation on the Enactment of Apology Legislation in Hong Kong**

Thank you for your letter of 22 June 2015 inviting the Institution to put forth our views on the captioned subject.

In response to the captioned Consultation, the Hong Kong Institution of Engineers is pleased to provide herewith our views and suggestions for your consideration.

Thank you for your kind attention.

Yours sincerely



Ir CHAN Chi Chiu  
President  
The Hong Kong Institution of Engineers

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**Enclosure**

**Views from the The Hong Kong Institution of Engineers on the  
Public Consultation on Enactment of Apology Legislation in Hong Kong**

The Hong Kong Institution of Engineers (HKIE) in general welcomes the enactment of apology legislation in Hong Kong, hoping that it may promote the use and development of mediation culture in Hong Kong. We believe in principle that an apology made for facilitating earlier settlement of civil disputes, whether through mediation or other means, should be encouraged and be allowed to be expressed on a 'without prejudice' basis openly without any fear of it being read as an admission.

2. In general, the HKIE is in support of the following recommendations stated in the Consultation Paper:

- (a) An apology legislation is to be enacted in Hong Kong, as a stand-alone legislation
- (b) The scope of the apology legislation is to apply to civil and some other forms of non-criminal proceedings and to cover full apologies
- (c) The Hong Kong SAR Government is to be subjected to the apology legislation
- (d) An admission of a claim by way of an apology is to be excluded from being treated as an acknowledgement of a right of action under the Limitation Ordinance (Cap. 347)

3. In the following paragraphs we would like to elaborate our views on other specific recommendations under the Consultation Paper regarding the operation details of a stand-alone apology legislation for consideration.

4. In relation to whether to cover a full apology or just a partial apology, the HKIE is of the view that, from the perspective of encouraging settlement of disputes, the receipt of a full apology is to be supported. This also helps avoid questions over the sincerity of partial apology in the perception of the recipient.

5. Regarding the issue concerning the Limitation Ordinance (Cap. 347), in order to be effective and avoid uncertainty, the HKIE sees the benefits of precluding an admission of a claim by way of apology from constituting an acknowledgment or confirmation of a claim for the purposes of that Ordinance. However, we suggest that a set of clear guidelines/ definitions of what should not be read as an apology for this purpose should be laid down.

6. The HKIE opines that the issue concerning insurance contracts is an important aspect and should be properly addressed for removing the associated disincentives in making apologies.

7. As for the factual information conveyed in an apology, the HKIE agrees that there are pros and cons for covering the statements of facts in the apology legislation. A

proper balance should be maintained in this regard. Subject to the operative details, the HKIE is of the view that, provided that a clear guidance is offered as to what is and what is not covered by the apology legislation, the factual information if conveyed within or as part of an apology may be covered. This, in turn, means that a clear definition on what constitutes an apology is necessary.

8. As with many other jurisdictions, the HKIE observes that the scope of apology legislation in Hong Kong should be restricted to civil proceedings and, indeed, part of such proceedings. In relation to disciplinary proceedings, the HKIE notes their unique features as civil proceedings and the involvement of regulatory regimes in the same. The HKIE is of the view that prudence should be exercised in this regard. Subject to operative details, the HKIE sees a viable option to be explored at this stage is to allow statutory/ professional/ trade institutions/ bodies/ associations charged with disciplinary functions to opt in the apology legislation on a voluntary basis. This may also be utilised as an opportunity for the promotion of settlement culture to the wider community in Hong Kong.

9. The HKIE will be pleased if the proposed apology legislation can be enacted and will be put into use soon for the benefits of all stakeholders.