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## **EMPLOYMENT SPOTLIGHT : APPLICABILITY OF THE APOLOGY ORDINANCE IN THE WORKPLACE**

Increasingly, there has been a spotlight on issues and complaints which arise in the workplace. Common issues might include complaints relating to harassment, bullying, discrimination and preferential treatment. When tensions run high, an apology is often valuable in helping to diffuse conflict and amend relationships. However, there is often a general reluctance to apologise for fear that it might constitute an admission of fault which might be used against a party in legal proceedings.

Hong Kong was the first jurisdiction in the Asia-Pacific region to enact an apology legislation. The Apology Ordinance (Cap 631) (the “Ordinance”) came into effect on 1 December 2017 with the objective to promote and encourage the making of apologies with a view to preventing the escalation of disputes and facilitating their amicable resolution. Pursuant to s7 of the Ordinance, an apology made by a person following the commencement of the Ordinance does not constitute an express or implied admission of fault, nor will it be admissible as evidence in legal proceedings (subject to certain exceptions).

An apology is defined in the Ordinance as an expression of regret, sympathy or benevolence, whether oral, written or by conduct made by a person or on behalf of a person. It includes an express or implied admission of fault or liability. The Ordinance protects apologies made in proceedings, including judicial, arbitral, administrative, disciplinary and regulatory proceedings, but excludes apologies made in criminal proceedings and proceedings conducted under the Commissions of Inquiry Ordinance (Cap 86), Control of Obscene and Indecent Articles Ordinance (Cap 390), Coroners Ordinance (Cap 504) and of the Legislative Council.

The Ordinance will therefore apply to an apology made in respect of claims and proceedings relating to employment disputes brought in the Labour Tribunal and/or High Court, complaints made to the Equal Opportunities Commission and claims relating to discrimination, harassment and/or victimisation filed in the District Court.

However, it is important to note that there are certain exceptions to the applicability of the Ordinance. Perhaps

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the most relevant is that a decision maker (for example, the court, tribunal or arbitrator) may, in an exceptional case, exercise a discretion to admit a statement of fact contained in an apology as evidence in the proceedings, where it is just and equitable to do so, having regard to the public interest or the interests of the administration of justice. It is not clear how the decision makers will interpret what constitutes an “exceptional case” and how it will exercise its discretion in determining to admit a statement contained in an apology as evidence in proceedings. Given this uncertainty, it is difficult to see how far a sincere apology would be helpful to parties.

Whilst it remains to be seen how the Ordinance may have an impact on proceedings, given the large number of labour disputes in Hong Kong, the hope is that the option to apologise without fear of admitting fault will assist in a more amicable resolution of disputes and parties would have less of a need to resort to legal proceedings.

For further information in relation to the Apologies Ordinance and other employment law related matters, please do not hesitate to contact Andrea Randall ([andrearandall@gallhk.com](mailto:andrearandall@gallhk.com) / +852 3405 7688).

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