

**Legal advice on the proposed amendments
to reg. 44 and 38A(1) of the Construction Site (Safety) Regulations**

The Department of Justice has advised that in HKSAR v Lam Geotechnics Limited, HCMA 379/2000, the Court of First Instance ruled that –

- (1) the elements of offence purportedly set out in reg. 44 of the Construction Site (Safety) Regulations (“CSSR”) were incompletely defined because of the uncertainty in the words “to the satisfaction of the Commissioner”; and
- (2) reg. 44 of the CSSR was ultra vires the enabling powers conferred on the Commissioner for Labour by the Factories and Industrial Undertakings Ordinance (“FIUO”).

The charge against Lam Geotechnis Ltd. was struck out and the conviction was quashed.

2. In the light of the above rulings, the Department of Justice has further advised that amendments to reg. 44 of the CSSR will be necessary to ensure that the related offence provision is enforceable. To this end, reg. 44 should be amended to clearly define the elements of offence so that those who are required to regulate their conduct according to the CSSR can ascertain what measures, standard or criteria would satisfy the Commissioner.

3. The Labour Department (“LD”) has examined the provisions of the CSSR and identified that reg. 38A(1) should also be amended. Upon consultation, the Department of Justice has advised that this regulation also fell outside the enabling provision of the FIUO as it imposes a general duty on contractors responsible for a construction site to “ensure that every place of work on the site is, so far as is reasonably practicable, made and kept safe for any person working there”, and does not specify any means for ensuring safety.

4. The Department of Justice has further advised that if the policy intention is to enable the Commissioner to make regulations imposing a general duty on the contractors to ensure safety and health without specifying the measures to be taken, legislative amendments will have to be made to section 7 of the FIUO to empower the Commissioner to do so.

5. The LD considers it desirable to specify the means of ensuring the safety of persons working on construction sites such that the contractors can follow and has therefore proposed to amend reg. 38A(1). The Department of Justice has advised that the proposed amendments will bring reg. 38A(1) within the enabling provision of section 7(1)(h) of the FIUO (i.e. providing for means of ensuring safety of persons in industrial undertakings).