

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1550/07-08(05)

Ref : CB2/BC/4/07

**Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2008**

**Background Brief**

**Purpose**

This paper summarises the past discussions of the Panel on Administration of Justice and Legal Services (the Panel) on various proposals in the Statute Law (Miscellaneous Provisions) Bill 2008.

**Ordinances containing offence provisions with the drafting formula "to the satisfaction of" an enforcement agency**

Background

2. In June 2003, the Subcommittee on Proposed Resolution under Section 7 of the Factories and Industrial Undertakings Ordinance (Cap. 59) was set up to examine, inter alia, proposed amendments to regulation 44(1) of the Construction Sites (Safety) Regulations (Cap. 59I) to make it enforceable in the light of the judgment of the Court of First instance (CFI) in *HKSAR v Lam Geotechnics Limited* (HCMA 379/2000).

3. Section 7 of Cap. 59 empowers the Commissioner for Labour to prescribe, by regulation, specific means of ensuring the safety of persons in industrial undertakings and of securing the removal of danger or defects. Regulation 44 of Cap. 59I, made under section 7 of Cap. 59, requires a contractor to ensure that machinery is securely fenced "to the satisfaction of the Commissioner".

4. In *Lam Geotechnics*, the appellant appealed against a conviction for a contravention of regulation 44(1)(c) of Cap. 59I. CFI allowed the appeal and ruled that the elements of the offence purportedly set out in regulation 44 of Cap. 59I were incompletely defined because of the uncertainty in the words "to the satisfaction of the Commissioner", which meant that those who were required to regulate their conduct according to the regulation could not ascertain, before a prosecution was brought, what fencing measures would satisfy the Commissioner. CFI found that regulation 44 of Cap. 59I was *ultra vires* section 7 of Cap. 59.

5. In the light of this ruling, regulation 44(1) had been amended to prescribe the specific safety measures required. The phrase "to the satisfaction of the Commissioner" had also been deleted from the regulation so as to remove the uncertainty inherent in the phrase. The amendment came into operation on 28 November 2003. As the court

ruling might impact on other legislative provisions which contained the drafting formula "to the satisfaction of" an enforcement agency, the Subcommittee had referred the issue to the Panel for follow-up in August 2003.

### Discussions of the Panel

6. The Panel discussed the issue at a number of meetings since 2003. In response to the request of the Panel, the Administration conducted an analysis of the judgment in the *Lam Geotechnics* case with a view to assessing the extent of its impact on other similar legislative provisions. The Administration had identified 86 provisions in subsidiary legislation and 10 provisions in principal legislation containing drafting formulas similar to the phrase "to the satisfaction of" an enforcement agency. After a preliminary review of the 96 provisions, the Administration came to the view that the elements of offence under those provisions were not clearly set out.

7. The Administration proposed that, where an offence provision required action to be taken "to the satisfaction of" an official, this should be subject to a general statutory requirement that no offence was committed unless -

- (a) the enforcement agency had specified to the person concerned the measures to be taken to the agency's "satisfaction"; or
- (b) the person concerned had commenced the regulated activity without approaching the enforcement agency to ascertain the measures to be taken to the agency's "satisfaction".

The Administration proposed to introduce in the relevant legislation a general statutory provision to the above effect.

8. A member considered that a better alternative to the Administration's approach was to clearly stipulate the safety measures to be taken by any affected persons "to the satisfaction of" the enforcement agency in the principal ordinance, to avoid uncertainty that might result in prosecution of the affected persons.

9. The Administration explained that there were practical limitations on the extent to which the measures could be stipulated in advance. The provisions proposed would strike an appropriate balance between the right of the affected persons to know what action they must take "to the satisfaction of" the enforcement agencies, and the need for the agencies to have flexibility in determining the measures that might be required.

10. A member expressed concern whether a person who had commenced a regulated activity without approaching the enforcement agency to ascertain the safety measures to be taken "to the satisfaction of" that agency would be subject to prosecution, after the relevant provision was amended as proposed.

11. The Administration explained that such person would not be liable to prosecution for a pre-amendment failure to approach the enforcement agency as no one should be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under Hong Kong or international law at the time when it was committed.

### **Conveyancing and Property Ordinance (Cap. 219)**

12. The Administration advised the Panel that the Law Society of Hong Kong, prompted by two court judgments in 1998, proposed to incorporate a new section 13A in the Conveyancing and Property Ordinance (Cap. 219). The two judgments were to the effect that a purchaser of a property could require a vendor to produce any documents before the date for the statutory commencement of title or make any requisitions in respect of such documents in original form. However, prior to the delivery of the two judgments, a vendor was not required to produce the "originals" of "all" title deeds and documents relating "exclusively" to the subject property that were made prior to the intermediate root of title to fulfil his duty to "give" a good title.

13. Members asked whether the amendments proposed by the Law Society complied with the legislative intent of the Ordinance. The Administration explained that the legislative intent of section 13 of Cap. 219 was to limit the period for deducing title back to a good root of title at least 15 years prior to the date of the sale and purchase agreement. The effect of the new section 13A was consistent with the legislative intent of section 13 and would help alleviate potential problems for many property owners.

### **Legal Officers Ordinance (Cap. 87) and related amendments**

14. The Administration proposed to amend Schedule 1 of the Legal Officers Ordinance (Cap. 87) by adding "Senior Public Prosecutor" and "Public Prosecutor" and deleting "Assistant Government Counsel". Senior Government Counsel and Government Counsel in the Prosecutions Division of the Department of Justice would adopt the new post titles of "Senior Public Prosecutor" and "Public Prosecutor" when the Bill came into operation.

15. The legal adviser of the Panel pointed out that the Chinese word "官" did not appear to have been used any longer in the designation of public officers and judges seemed to be the only ones retaining the use of "官". He asked whether the Administration had considered using other Chinese terms for "prosecutor" than "檢控官". The Administration undertook to review the Chinese term used before and after the handover, and the use of the word "官" in other post titles.

**Relevant papers**

16. A list of relevant papers available on the LegCo website (<http://www.legco.gov.hk>) is in the **Appendix**.

Council Business Division 2  
Legislative Council Secretariat  
17 April 2008

## Statute Law (Miscellaneous Provisions) Bill 2008

## Relevant documents

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper</u>
Subcommittee on Proposed Resolution under Section 7 of the Factories and Industrial Undertakings Ordinance	31 July 2003	Minutes of meeting [LC Paper No. CB(2)2994/02-03]
Panel on Administration of Justice and Legal Services	18 December 2003	Paper prepared by the Legal Service Division on "Referral from the Subcommittee on Proposed Resolution under Section 7 of the Factories and Industrial Undertakings Ordinance – Review of legislative provisions" [LS9/03-04]  Administration's paper on "Review of legislative provisions containing the drafting formula 'to the satisfaction' of an enforcement agency" [LC Paper No. CB(2)693/03-04(01)]  Minutes of meeting [LC Paper No. CB(2)1104/03-04]
	12 July 2005	Administration's paper on "Review of legislative provisions containing the phrase 'to the satisfaction' of an enforcement agency (the drafting formula)" [LC Paper No. CB(2)2224/04-05(01)]  Minutes of meeting [LC Paper No. CB(2)2621/04-05]
	24 April 2006	Background brief prepared by the LegCo Secretariat on "Review of legislative provisions containing the drafting formula 'to the satisfaction' of an enforcement agency" [LC Paper No. CB(2)1750/05-06(01)]

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper</u>
		Administration's paper on "Review of legislative provisions containing the phrase 'to the satisfaction of' an enforcement agency" <a href="#">[LC Paper No. CB(2)1750/05-06(02)]</a>  Minutes of meeting <a href="#">[LC Paper No. CB(2)2494/05-06]</a>
	23 October 2006	Background brief prepared by the LegCo Secretariat on "Review of legislative provisions containing the drafting formula 'to the satisfaction' of an enforcement agency" <a href="#">[LC Paper No. CB(2)135/06-07(04)]</a>  Administration's paper on "Review of legislative provisions containing the phrase 'to the satisfaction of' an enforcement agency" <a href="#">[LC Paper No. CB(2)135/06-07(05)]</a>  Minutes of meeting <a href="#">[LC Paper No. CB(2)427/06-07]</a>
	26 November 2007	Background Brief prepared by the Legislative Council Secretariat on "Review of legislative provisions containing the drafting formula 'to the satisfaction of' an enforcement agency" <a href="#">[LC Paper No. CB(2)404/07-08(04)]</a>  Administration's paper on "Statute Law (Miscellaneous Provisions) Bill 2008" <a href="#">[LC Paper No. CB(2)404/07-08(05)]</a>  Minutes of meeting <a href="#">[LC Paper No. CB(2)673/07-08]</a>