

**Administration's response to issues raised
at the meeting of the LegCo Subcommittee
on regulation relating to
Occupational Safety and Health
on 26 November 1998**

To state the reasons for not providing a proprietor or contractor with an opportunity to give "reasonable excuse" or "reasonable cause" under subclause (1) of Clause 14.

We do not think it appropriate to provide "reasonable excuse" or "reasonable cause" in sub-clause (1) of Clause 14 for the following reasons:-

- (a) A strict liability approach has been adopted for the offences in the existing FIU (Confined Spaces) Regulations. A similar approach should be adopted in the proposed replacement regulations.
- (b) Work safety is an issue of social concern and warrants creation of strict liability for breaching the requirements intended to safeguard such safety. This approach is considered effective in promoting the object of the law, which is the provision of a safe working environment and prevention of work accident, because it will encourage greater vigilance to prevent the commission of the prohibited act. As a matter of legal policy, this is the approach adopted in most provisions dealing with occupational safety in Hong Kong. Therefore, in most of the offences found in the 27 sets of regulations made under the Factories and Industrial Undertakings Ordinance, no provision for "reasonable excuse/cause" has been built in.
- (c) However, even without the provision of "reasonable excuse" in a certain offence, a proprietor or contractor being charged for an offence can still adduce evidence to prove that he has done everything possible to ensure his compliance with the requirement of the law and therefore has not committed the offence. In other words, the "reasonable excuse" defence is available even in a strict liability situation except that it has to be adduced and proved by the defendant. If a "reasonable excuse" requirement is present in the offence provisions, the enforcement agent has to prove that the defendant has no reasonable excuse. This is not appropriate in an

offence involving such important issue as work safety and will add to the workload of the enforcement agent. This is because the prosecution will have to find out proactively whether the proprietor's or contractor's claim of an excuse is actually reasonable or not before taking his case to court. We can envisage that if such wording is put into the regulation, it will be very difficult for the prosecution to prove all elements of a breach beyond reasonable doubt as required in a criminal case and secure a conviction.