

立法會
Legislative Council

Ref : CB2/SS/14/02

LC Paper No. CB(2) 2994/02-03
(These minutes have been seen by
the Administration)

**Subcommittee on proposed resolution under section 7 of
the Factories and Industrial Undertakings Ordinance**

**Minutes of the third meeting
held on Thursday, 31 July 2003 at 10:45 am
in Conference Room A of the Legislative Council Building**

Members present : Hon Cyd HO Sau-lan (Chairman)
Hon LEE Cheuk-yan
Hon CHAN Kwok-keung, JP
Hon LI Fung-ying, JP

Members absent : Hon Andrew CHENG Kar-foo
Hon Abraham SHEK Lai-him, JP
Hon LEUNG Fu-wah, MH, JP

Public Officers attending : Dr LO Wai-kee
Acting Deputy Commissioner for Labour
(Occupational Safety and Health)

Ms Marie SIU
Senior Government Counsel (Law Drafting)

Mr TSO Sing-hin
Chief Occupational Safety Officer (Support Services)
Labour Department

Mr Danny CHAN
Deputy Chief Occupational Safety Officer (Development)
Labour Department

Clerk in attendance : Mrs Sharon TONG
Chief Assistant Secretary (2)1

Staff in attendance : Miss Kitty CHENG
Assistant Legal Adviser 5

Mrs Eleanor CHOW
Senior Assistant Secretary (2)4

I. Confirmation of minutes of meeting

The Chairman suggested that members be given more time to consider the minutes of the meeting on 16 July 2003 before they were confirmed.

(Post-meeting note: As the Secretariat had not received any proposed amendments to the minutes from members one week after their issuance, the minutes of the meeting held on 16 July 2003 were taken as confirmed.)

II. Meeting with the Administration

2. The Subcommittee deliberated (index of proceedings attached at **Annex**).
3. Members scrutinized and supported the newly proposed amendments to the Construction Sites (Safety) Regulations (CSSR) by the Administration (LC Paper No. CB(2) 2910/02-03(01)).
4. Referring to the ruling made by the Court of First Instance in an appeal case, *HKSAR v. Lam Geotechnics Limited, HCMA 379 of 2000*, that Regulation 44(1) of the CSSR fell outside the enabling powers conferred on the Commissioner for Labour by section 7 of the Factories and Industrial Undertakings Ordinance because of the uncertainty in the words "to the satisfaction of the Commissioner", Assistant Legal Adviser 5 said that the ruling would impact on other legislative provisions which contained the drafting formula "to the satisfaction" of an enforcement authority. She further pointed out that this was the first time that such a point had been raised by the court and that the Government had not filed for an appeal. In this connection, it was uncertain whether the judgment would affect law to a wider extent. The Administration had responded in its letter dated 29 July 2003 (LC Paper No. CB(2)2930/02-03(02)) that it would bring the attention of the relevant enforcement agencies to the court ruling.
5. The Chairman said that the issue was outside the purview of the Subcommittee. Members agreed that the matter be referred to the Panel on Administration of Justice and Legal Services for follow-up.

III. Any other business

6. At the invitation of the Chairman, the Clerk said that as the Subcommittee concluded its deliberations, the Subcommittee would submit a written report to the House Committee at its first meeting after the summer recess (tentatively scheduled for 3 October 2003). Thereafter, the Administration could give 12 clear days notice for moving the motion on the Regulations at a Council meeting.

7. The meeting ended at 11:12 am.

Council Business Division 2
Legislative Council Secretariat
19 August 2003