

**Extract from the background brief on
"Review of legislative provisions containing the drafting formula
"to the satisfaction" of an enforcement agency" for the meeting of
Panel on Administration of Justice and Legal Services on 23 October 2006**

CB(2)135/06-07(04), para.14

14. 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. DOJ undertook to clarify whether such a person should approach the relevant enforcement agency to ascertain the measures required after the provision concerned was amended.

**Extract from the Administration's paper on
"Review of legislative provisions containing the phrase
"to the satisfaction of" an enforcement agency" for the meeting of
Panel on Administration of Justice and Legal Services on 23 October 2006**

CB(2)135/06-07(07(05))

para.3

3. It is contrary to the interests of legal certainty and fairness for an offence to be committed where a person is unable to ascertain with an appropriate degree of certainty what conduct is prohibited. At the 24 April 2006 meeting of the Panel, the Administration proposed that where an offence provision requires action to be taken "to the satisfaction" of an official, this should be subject to a statutory requirement that no offence is committed unless -

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

para.5(81)

81. The Chairman pointed out that a person might have already commenced a regulated activity without approaching the enforcement agency to ascertain the safety measures to be taken "to the satisfaction of" that agency. She expressed concern that such person would be subject to prosecution after the relevant provision was amended as proposed. She sought clarification whether the affected person should approach the relevant enforcement agency to ascertain the measures required after the provision concerned was amended. The Administration undertook to revert to the Panel on the issue.

para.10

10. The Administration considers that, in the situation where a person may have commenced a regulated activity without approaching an enforcement agency before the relevant "to the satisfaction of" provision was amended, such person would not be liable to prosecution for a pre-amendment failure to approach the enforcement agency. The reason is that, as incorporated in Article 39 of the Basic Law (and in Article 12 of the Hong Kong Bill of Rights Ordinance (Cap.383))< Article 15 of the International Covenant on Civil and Political Rights provides that no one shall 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.