

**Bills Committee on
Air Pollution Control (Amendment) (No. 2) Bill 2013**

Follow-up actions required of the Administration

The Administration was requested by members at the meeting on 17 December 2013 to take the following actions –

1. with respect to the Chinese rendition of the English text "...and could not have reasonably known", which appears as "亦按理不可能知悉" in section 78(b) of the Air Pollution Control Ordinance (Cap. 311) and as "而按理亦不能知悉" in the proposed sections 78(1)(b) and 81(1) –

- (a) to review whether it is appropriate to amend the rendition as such and to provide the relevant considerations; and**
- (b) to consider whether the words "而按理亦不能知悉" are required to be put in brackets given that no brackets are found in its corresponding English text.**

The Department of Justice advises that changing 按理亦不能知悉 to 按理亦不可能知悉 does not reflect the policy intent, since if the knowing of the presence of the asbestos containing material is factually impossible, there would not have been any prosecution in the first place, which leads to the plea of the defence by the defendant. In other words, if the possibility of knowing the presence of the material is an essential element of the defence, the defendant can never rely on the defence. What the defendant failed to do or should have done, could only affect whether he or she could or could not know the presence of the material, which should be determined by the Court by a scale of reasonableness.

The policy intent of the proposed section 78(1)(b) is that the defence is available to the defendant only if, in addition to establishing that he or she did not know the presence of the relevant material at the time of the offence, the defendant also needs to establish that the lack of the knowledge was reasonable. In the Chinese text of the provision, the second element is put inside a pair of brackets. The reason for doing so is to enable the second element of the defence to be related to the first element in a more comprehensible manner in that on the whole the long provision is easier to understand.

**Environment Bureau/Environmental Protection Department
20 December 2013**