

**財經事務及庫務局
(庫務科)**

香港下亞厘畢道
中區政府合署

**FINANCIAL SERVICES AND THE
TREASURY BUREAU
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Dear Miss Fung,

Revenue (Personalized Vehicle Registration Marks) Bill 2005

Thank you for your letter dated 18 May 2005. I set out below the Administration's response to your questions.

Proceeds from the auction of personalized vehicle registration marks

2. Section 3(1) of the Public Finance Ordinance (Cap. 2) provides that except where otherwise provided by any other enactment, any moneys raised or received for the purposes of the Government shall form part of the general revenue. Accordingly, the existing regulations 10(2) and 13(5) of the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374 sub. leg. E) (the Regulations) set out, as an exception to section 3(1) of the Public Finance Ordinance, that the proceeds from the auction of special vehicle registration marks (SVRMs) and ordinary vehicle registration marks (OVRMs) are credited to the Lotteries Fund.

3. We consider that, with section 3(1) of the Public Finance Ordinance, it is not necessary to include any express provision in the Revenue (Personalized Vehicle

Registration Marks) Bill 2005 (the Bill) to provide that the proceeds from the auction of personalized vehicle registration marks (PVRMs) will be paid into the general revenue. The current drafting has clearly reflected the Administration's intention.

Clause 10 – new regulation 12A of the Registration and Licensing of Vehicles Regulations

4. A provision stating whether a notice is or is not subsidiary legislation is required, normally, in case of doubt as to whether the notice has legislative effect. In the case under the proposed regulation 12A, a notice is published for the purpose of inviting the public to make applications for PVRMs. This is merely one of the steps in the exercise of the administrative powers of the Commissioner for Transport (C for T) relating to PVRMs. There is no reason to believe that such a notice will have legislative effect. The notice is not subsidiary legislation. We therefore consider that it is not necessary to add a provision to this effect in the Bill.

Clause 10 – new regulation 12F

5. The proposed regulation 12F(2)(a) in clause 10 of the Bill provides that a proposed PVRM which is likely to be offensive to a reasonable person, or has a connotation offensive to good taste or decency shall be refused. Subject to the consideration of C for T based on prevailing circumstances, it is likely that many of those proposed PVRMs which are defamatory would be caught by and rejected pursuant to this criterion. Therefore, we do not propose to make defamation one of the vetting criteria.

Clause 10 – new regulation 12G

6. The purpose of the proposed regulation is to allow C for T, after he has decided to accept the application for a proposed PVRM, to review his decision if he is satisfied that there is a good cause for doing so. For example, he may receive valid submissions from members of the public that the proposed PVRM approved may actually be caught by one of the vetting criteria. Upon review, C for T may reverse his acceptance of the application, and the proposed PVRM will not go for auction. This arrangement will avoid the anomaly whereby C for T must proceed with the auction of a proposed PVRM not suitable for allocation and cancel it after the auction, incurring abortive costs on the part of both the Administration and the general public.

7. A proposed PVRM which is not suitable for allocation and already refused by C for T will not be put up for auction. The anomaly in paragraph 6 will not arise. There is no need to subject refused applications to the power of review.

Clause 10 – new regulations 12I, 12K and 12O

8. The proposed regulations are modelled on the existing regulations 9(4), 13(7) and 14(3) of the Regulations, which provide that C for T may, without notice to the allocatee of a SVRM or OVRM, cancel the allocation if the SVRM or OVRM is not assigned to a vehicle within 12 months of allocation. The existing practice in respect of SVRMs and OVRMs is that the successful bidder is required to sign a memorandum of sale of vehicle registration mark (VRM). One of the conditions of sale reflects the statutory requirement that the VRM must be assigned to a vehicle within 12 months. If there is no action by the allocatee after the 12-month period is over, TD will cancel the allocation without notifying the allocatee further. TD intends to adopt this practice in respect of PVRMs. The certificate of allocation will cease to be valid upon the cancellation of the allocation by C for T and, under the proposed regulation 22(1A) in clause 18 of the Bill, C for T may require the certificate of allocation to be returned to him. We consider that allocatees would know clearly that the allocation of their PVRMs would be cancelled if they are not assigned to vehicles within 12 months of allocation as such arrangement is provided for in the proposed regulations in the Bill in a sufficiently clear manner.

9. Even if C for T notifies a PVRM allocatee under the proposed regulations 12I(6), 12K(5) or 12O(6), the notification will not be regarded as a notice of cancellation referred to in the proposed regulation 12L(2). The arrangements in the proposed regulation 12L are applicable where C for T cancels the allocation of a PVRM for the reason that the PVRM is no longer appropriate to be allocated having regard to the provisions in the proposed regulations 12C and 12F.

Clause 10 – new regulation 12L

10. We propose that a PVRM allocatee aggrieved by any decision made by C for T to cancel the allocation of the PVRM under the proposed regulation 12L may appeal to the Administration Appeals Board under the proposed regulation 12O. In exercising his power of cancellation, C for T will have due regard to relevant factors and must act reasonably. Furthermore, as the ground for cancelling the allocation of a PVRM may be one of those set out in the proposed regulations 12C and 12F, being that the PVRM is offensive, may cause danger to the safety of road users, is confusing for the purpose of law enforcement, etc., we believe the general public will expect that in such case the PVRM which has become inappropriate for allocation should be processed and cancelled expeditiously.

Clause 10 – new regulation 12O

11. An important objective of the proposed PVRMs Scheme is that it has to be administratively simple, so appeal against C for T's decision to refuse an application is not provided in order to expedite the processing procedures. Such an

arrangement is legally in order as, in the case of a decision to refuse an application for a proposed PVRM, no one has yet acquired any economic interest over a PVRM or has a right to a PVRM. We expect that the implications of a refusal of an application will be relatively minor, and we do not therefore propose an appeal arrangement for refused applications. In any case, in exercising his power to determine whether a proposed PVRM should be accepted or refused under the new regulation 12F, C for T has a duty under administrative law to act reasonably. He will take into consideration the criteria set out in regulation 12F and other matters which he may reasonably regard as relevant.

Giving of notices

12. The requirement in the proposed regulation 12L(3), which provides that the notice to be given by C for T to a PVRM allocatee under the proposed regulation 12L(2) before C for T cancels the allocation of the PVRM is to be sent to the allocatee by ordinary post at the address last known to C for T or the address appearing on the register of vehicles maintained by C for T, is modelled on regulation 15 of the Regulations. This is because both of these provisions concern cancellation. As regulation 15 deals with cancellation of registration of vehicles which have not been licensed, so the notices to be given under these provisions could be sent in a similar manner.

13. As regards the other notices to be given in writing under the proposed regulations 12D(1), 12F(3) and (4), 12G(3) and 12Q(1), they will be given in a manner that is consistent with the existing practice. TD intends to send the notices in writing to the address entered by the concerned applicant in the application form or to any new address advised by the applicant. We consider that the existing practice is working well so far. We therefore do not propose to add any provision similar to section 101 of the Ordinance for the giving of notices under the proposed regulations 12D(1), 12F(3) and (4), 12G(3) and 12Q(1).

14. The Administration intends that the notices required to be given under the proposed regulations in clause 10, except the notice under the proposed regulation 12Q(1), may be given by electronic means. Section 5 of the Electronic Transactions Ordinance (Cap. 553) has provided the legal basis for doing this. We also propose to exclude the proposed regulation 12Q(1), which concerns an allocatee's surrender of his PVRM where the certificate of allocation (in hard copy) has to be returned to TD, from the application of section 5 of the Electronic Transactions Ordinance by an exclusion under section 11(1). Hence we do not propose any provision similar to section 29 of the Electronic Transactions Ordinance.

15. I hope the above helps to clarify matters. Please feel free to contact me if you have any questions concerning this reply.

Yours sincerely,

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for Secretary for Financial Services and the Treasury

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