

**For information
on 28 June 2005**

**Paper for Bills Committee on the
Revenue (Personalized Vehicle Registration Marks) Bill 2005**

Purpose

This paper provides the Administration's response to the questions raised by Members at the meeting of the Bills Committee on the Revenue (Personalized Vehicle Registration Marks) Bill 2005 (the Bill) held on 14 June.

Requirements on the characters in a personalized vehicle registration mark (PVRM)

2. The Transport Department (TD) has looked at over 60 PVRM-type Schemes which are implemented in the various provinces/states of Australia, Canada and USA, New Zealand and the United Kingdom. 14 of the jurisdictions allow PVRM-type vehicle registration marks (VRMs) with 8 or more characters, including spaces. These 14 jurisdictions are: Western Australia, Ontario, Florida, Illinois, Indiana, Maine, Montana, Nebraska, New York, North Carolina, Pennsylvania, Virginia and West Virginia, and the United Kingdom. 12 of these Schemes do not have any restrictions on the grouping of letters and numerals and two do. The requirements in another 50 or so schemes vary from 6 to 7 characters, inclusive of spaces. The majority of these Schemes do not have any restrictions on the grouping of letters and numerals. Only 7 jurisdictions have grouping restrictions (namely, the United Kingdom, Victoria, Arkansas, Connecticut, Delaware, Illinois and Massachusetts). One jurisdiction (Wyoming) allows only 4 characters. We are not aware of any enforcement problems encountered by the overseas jurisdictions.

3. There was a suggestion that the Administration should research the number of characters allowed in the PVRM-type scheme (if any) of the top 10 economies in terms of their gross domestic product. According to the 2005 World Economic Outlook Database of the International Monetary Fund, the economies are USA, Japan, Germany, United Kingdom, France, Italy, Mainland China, Canada, Spain and

Korea. As explained above, there are PVRM-type schemes in the United Kingdom and various provinces or states of the USA and Canada, and the requirements for the number of characters vary amongst different states/provinces in the USA and Canada as outlined above. In the United Kingdom, their PVRM-type Scheme allows 8 characters and there are restrictions on the grouping of letters and numerals. As for the other economies in the top ten list, either there is no such scheme or information is not available to us.

4. The Administration is mindful of the importance of ensuring that the introduction of the PVRMs Scheme will not bring about difficulties in law enforcement or adverse implications on road safety. We have, since the conception of the PVRMs Scheme, closely involved the Hong Kong Police Force (the Police) and TD in the process to ensure that the law enforcement and road safety angles are satisfactorily addressed in designing the features of the Scheme. The Police's position is that the PVRMs Scheme does not give rise to concerns about law enforcement.

5. We have looked at the issues again in the light of Members' views, in consultation with TD and the Police. As revealed from the practice of overseas jurisdictions, it is not uncommon that 8 or more characters with spaces are allowed in PVRM-type VRMs without grouping restrictions. The Administration considers that allowing 8 characters will give vehicle owners more room for creativity and more choices. We do not propose to require separate groupings of letters and numerals for our PVRMs. A PVRM consisting of intermixing letters and numerals does not necessarily mean that they are more difficult to remember. For example, it may probably be easier for some people to remember "A11 4 U" by attaching a meaning to it. With the assistance of the Police, relevant Government departments and non-official members, TD will ensure that those PVRM applications which will likely be confusing for law enforcement or detrimental to road safety will not be approved as per the proposed vetting criteria.

6. As regards the proposed requirement that there may not be more than 4 identical letters or numerals placed side by side in a PVRM, as explained at the last meeting, it is proposed for traffic enforcement

reasons. Both the TD and the Police would propose to have the restriction to avoid possible confusion in reading, and to spell out the restriction clearly in the Bill. We consider that it may not be easy for some people to identify the number of identical letters or numerals in a combination like “1111111” as against “11111111” or “EEEEEE” as against “EEEEEEE”. We therefore suggest restricting the maximum number of identical letters or numerals. We propose the maximum number to be 4, which is in line with the maximum number of identical numerals that may appear in the existing VRMs.

Channeling the PVRM auction proceeds to poverty-alleviation initiatives

7. The Acting Chief Executive announced at the end of May that the Administration had decided to propose using the net proceeds from the sale of PVRMs for poverty-alleviation initiatives.

8. The Administration’s intention is to allow the proceeds from the sale of PVRMs to be paid into the general revenue. The Administration will set aside an amount equivalent to the estimated net proceeds from the sale of PVRMs in the general revenue for the next five years to fund poverty alleviation initiatives. The current estimate of the net proceeds is in the order of \$60 million per annum (being \$70 million less the estimated running costs and depreciation). In case the estimated net proceeds turn out to be understated, the Administration would review and adjust the commitment after three years.

9. Depending on the nature of the specific poverty alleviation proposals, the Administration will include the provision under the relevant Head or Heads of Expenditure in the draft Estimates of the relevant year.

Cancellation of company names

10. The registration of company names is governed by the Companies Ordinance (Cap. 32). Under the Ordinance, the Registrar of Companies (the Registrar) has powers to direct changes in company names under some circumstances. For example, the Registrar has power under section 22A of the Ordinance to direct a company to change its name if in the opinion of the Registrar the name by which the company is

registered gives so misleading an indication of the nature of its activities as to be likely to cause harm to the public. The Registrar also has power under section 22(2) of the Ordinance to direct a company to change its name within 12 months of registration where the company name is the same as, or in the opinion of the Registrar, too like a name appearing at the time of the registration in the Registrar's index of company names.

11. Members may wish to note that other legislation also provides for the power to revoke registrations or withdraw approvals after they are granted. The Solicitors (Group Practice) Rules (Cap. 159 sub.leg.X) provides that approval shall not be given to a name of a group practice that, in the opinion of the Council of The Law Society of Hong Kong, is ostentatious, in bad taste, misleading, exploitative, deceptive, inaccurate, false, sensational, offensive or in any other way out of keeping with the dignity of the legal profession. The Rules provide that the Council may, if it thinks fit, determine that an approval previously granted in respect of a name be withdrawn. The Trade Marks Ordinance (Cap. 559) provides that the registration of a trade mark may be revoked, inter alia, on the ground that, in consequence of the use made of it in relation to the goods or services for which it is registered, the trade mark is liable to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services.

12. The Administration considers that we need to strike a balance between public interest and the interest of the PVRM holder in proposing the cancellation (or recall) arrangement. The power of cancellation would be necessary for the smooth administration of the PVRMs Scheme. The acceptance or otherwise of applications for PVRMs would be made in a prudent manner pursuant to a vetting process. A cancellation would have to be based on specific reasons as to why, despite the fact that the Commissioner for Transport (C for T) has considered the PVRM to be suitable for allocation after careful vetting, the PVRM is not or is no longer suitable. C for T cannot lightly exercise this power, and we expect that the incidence of cancellation would be rare. It is understood that some of the jurisdictions (being provinces and states in Australia, Canada or USA) have not exercised their power to recall PVRM-type VRMs in the past three years. For those who have done so, only a few cancellations were made annually.

Compensation in relation to cancellation of PVRMs

13. The Administration was requested to clarify whether the holder of a cancelled PVRM might claim damages against the Government if the holder suffered loss or damage as a result of such cancellation by C for T. Cancellation of a PVRM is a statutory power given to C for T. As a general rule, there is no compensation for a lawful exercise of a statutory power, unless there is provision for compensation. The Bill has not provided for compensation, apart from refund of the auction price or the special fee as appropriate. The Administration considers that there is no cause of action for a PVRM holder to claim damages from the Government.

14. The Administration was asked to elaborate whether the principle established in European jurisprudence that revocation of a licence in accordance with the provisions of the law subject to which the licence was issued does not amount to a deprivation of property is equally applicable to cancellation of an allocated PVRM which was not due to the fault or default of the PVRM holder, like a breach of licence conditions. As stated in paragraph 6 of the Administration's letter to the Assistant Legal Advisor dated 9 June 2005, it is well established in European human rights jurisprudence that revocation of a licence in accordance with the provisions of the law subject to which the licence was issued does not amount to a deprivation of property. This is not limited to the situation where conditions of a licence are not fulfilled. Under European jurisprudence, if a licence is subject to conditions, *or to general laws regulating its use*, the licence holder will only have a reasonable and legitimate expectation to the extent that the relevant conditions are fulfilled (emphasis added) (see Jessica Simor & Ben Emmerson Q.C., *Human Rights Practice*, Sweet & Maxwell, updated to January 2005, at para 15.012). In *Gudmunsson v Iceland* (1996) 21 EHRR CD 89, the applicant complained of a breach of Article 1 of Protocol No. 1 (which protects property rights) on the ground that his taxi licence had been withdrawn. The European Commission noted that: "a licence can be withdrawn if conditions attached to the licence are no longer fulfilled *or if the licence is withdrawn in accordance with provisions of the law which were in force when the licence was issued.*" (emphasis added). In the case of PVRM, since the cancellation of a PVRM (even assuming

that the PVRM is property for the purposes of BL 105) after its allocation will be made in accordance with the legislative provisions subject to which the PVRM will be issued, it will not amount to a deprivation of property under BL 105.

Reservation of VRMs with “ZG” for Garrison vehicles

15. As explained at the last Bills Committee meeting, the reservation of “AM” and “LC” for Government vehicles and Legislative Council Commission vehicles is already in the existing Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374 sub.leg.E). We propose in the Bill to extend this arrangement from the existing VRMs to PVRMs. The reservation of “A” and “F” is proposed in the same spirit.

16. There is no need to reserve “ZG” because any proposed PVRMs bearing “ZG” will be disapproved by virtue of the proposed vetting criterion that a PVRM shall be refused if in C for T’s opinion it is likely to cause a reasonable person to believe that the motor vehicle on which the PVRM is displayed belongs to or the person using the vehicle represents the Hong Kong Garrison. Nevertheless, the Administration would have no objection to the adding of a requirement to reserve “ZG” in the Road Traffic (Registration and Licensing of Vehicles) Regulations, applying it to the existing VRMs and PVRMs.

Treasury Branch
Financial Services and the Treasury Bureau
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