

立法會 *Legislative Council*

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Report of the Bills Committee on Revenue (Personalized Vehicle Registration Marks) Bill 2005

Purpose

This paper reports on the deliberations of the Bills Committee on Revenue (Personalized Vehicle Registration Marks) Bill 2005 (the Bill).

Background

Existing arrangements

2. At present, there are two types of vehicle registration marks. A vehicle owner is allocated an ordinary vehicle registration mark (OVRM) upon registration of a vehicle. OVRMs are in the format of a maximum of two letters of the alphabet followed by a maximum of four numerals. A vehicle owner may also choose another OVRM which has been reserved for allocation by auction. Special vehicle registration marks (SVRMs) consist of numbers alone, or a maximum of two letters followed by any of the special numbers set out in Schedule 5 to the Road Traffic (Registration and Licensing of Vehicles) Regulations. SVRMs are put up for bidding at public auctions. Proceeds from the auction of OVRMs and SVRMs are paid into the Lotteries Fund (LF).

The proposed Personalized Vehicle Registration Marks Scheme

3. In the 2004-05 Budget, the Financial Secretary announced the proposal to introduce a Personalized Vehicle Registration Marks (PVRMs) Scheme, as one of the revenue-raising measures, in addition to the existing arrangements for allocating and auctioning vehicle registration marks (VRMs). Under the PVRMs Scheme, vehicle owners may choose their preferred VRMs and use them upon approval of their applications and following a bidding exercise.

4. To provide more choice and add to the attraction of the PVRMs Scheme, the Transport Department (TD) will allow for combinations of up to eight letters of the alphabet, numerals and/or blank spaces for PVRMs. The key features of the PVRMs Scheme are as follows :

- (a) Applications for PVRMs should be made to the Commissioner for Transport (C for T). Applicants are required to pay a deposit.
- (b) PVRM combinations may have up to a maximum of eight letters of the alphabet (other than the exceptions set out below), numerals and/or blank spaces; a blank space will count as one of the permitted characters and there may only be one blank space between two letters/numerals or between a letter and a numeral;
- (c) those PVRM combinations likely to cause enforcement problems will not be approved, e.g. the letters "I", "O" and "Q" will not be allowed as they resemble the numerals "1" and "0" respectively, and there should be no more than four identical letters or numerals placed side by side in a PVRM;
- (d) PVRM combinations must not cause a reasonable person to believe that the vehicles bearing them belong to or the persons using the vehicles represent the Government of the Hong Kong Special Administrative Region (HKSAR), any country or the government of any country, an international organization in which the HKSAR Government participates, the offices of the Central People's Government in HKSAR, or any public body in HKSAR;
- (e) PVRM combinations must not be offensive to good taste or decency, offensive to a reasonable person, refer to a triad title or nomenclature or have a triad connotation, or be confusing for law enforcement, or detrimental to road safety; and
- (f) PVRM combinations must not duplicate existing VRMs or be of a similar pattern to existing forms of VRMs or permit/licence numbers and they must not duplicate the marks reserved for certain types of vehicles, e.g. marks with prefixes or suffixes "A" and "F" used by the Fire Services Department for the department's ambulances and other vehicles, "AM" for government vehicles and "LC" for the Legislative Council's vehicles.

The Bill

5. The Bill seeks to amend the Road Traffic Ordinance (Cap. 374) (the Ordinance) and the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374 sub. leg. E) (the Regulations) to give effect to the PVRMs Scheme proposed in the 2004-05 Budget.

The Bills Committee

6. At the House Committee meeting on 6 May 2005, Members decided to form a Bills Committee to study the Bill. Hon CHAN Kam-lam was elected chairman of the Bills Committee and the membership list of the Committee is at **Appendix I**. The Bills Committee has held six meetings with the Administration and met with interested parties. Individuals and organizations that have presented views to the Bills Committee are listed in **Appendix II**.

Deliberations of the Bills Committee

7. In considering the PVRMs Scheme proposed under the Bill, members of the Bills Committee have expressed a number of concerns which are summarized in the ensuing paragraphs.

Implementation arrangements of the PVRMs Scheme

Level of deposit

8. A person applying for a PVRM is required to pay a deposit and to set out in the application form the way he will display his proposed PVRM. C for T will consider applications received and notify applicants of his approval or otherwise of the proposed PVRMs. All approved PVRMs will be put up for auction. The deposit paid by the applicant will be the reserve auction price for the PVRM in question.

9. The Bills Committee notes that under the Administration's original proposal presented to the Panel on Financial Affairs in November 2004, a deposit of \$20,000 was payable. However, the views expressed by Members, the trade and the community at large on the level of deposit were diverse. The Administration has reported that there appeared to be greater support for a lower level of deposit. It has therefore proposed to set the level of deposit at \$5,000 in the Bill.

10. As a lower level of deposit will likely attract more applications, the Bills Committee notes that the Administration has proposed to adopt a ballot system whereby TD will invite applications for PVRMs, initially twice a year, and set a limit on the number of applications to be processed. All applications for PVRMs will be placed into a pool and will be balloted if the number of applications exceeds the set limit. Applicants whose applications are successfully balloted and meet the technical requirements will be required to pay the deposit. The ballot system is a pilot arrangement subject to review one to two years after scheme implementation. The Administration has estimated that the recurrent administrative costs will be around \$6 million a year as a result of the ballot system.

Combination requirements for PVRMs

11. Some members have queried the rationale for allowing a combination of up to eight characters (consisting of letters/numerals/spaces) in a PVRM. There is a suggestion that PVRMs should consist of no more than six characters to tally with the existing requirements for VRMs. Some members further urge that to avoid confusion, letters of the alphabet and numerals should not be allowed to be intermingled in a PVRM. The Bills Committee has also considered information on PVRM-type schemes in some overseas jurisdictions.

12. The Administration's view is that allowing a maximum of eight characters in a variety of combinations in a PVRM will give vehicle owners more room for creativity and greater choices. On overseas practice, the Administration has informed members that of over 60 PVRM-type schemes implemented in the various provinces/states of Australia, Canada, the United States (US), New Zealand and the United Kingdom (UK), 14 jurisdictions including Western Australia, Ontario, New York and UK allow eight or more characters (inclusive of spaces) for PVRM-type of vehicle registration marks. 12 of these schemes do not have any restriction on the grouping of letters and numerals and two (including UK) do. The remaining 50 or so jurisdictions implement PVRM-type schemes which allow combinations of up to six or seven characters. The majority of these schemes do not have grouping restrictions on letters and numerals. Nevertheless, some members maintain their concern about the appropriateness of the proposed combination requirements.

13. Regarding the concern of some members and automobile retailers about the technicality of installing new PVRM plates on vehicles, the Administration has advised that according to information from car dealers, about 82.5% of vehicle models can accommodate the display of an eight-character PVRM in a single row on their licence plates while 96.5% can accommodate a seven-character PVRM.

Concerns about law enforcement and safety

14. One of the major concerns about the PVRMs Scheme is whether its implementation will give rise to enforcement problems and affect the safety of road users. Given the many possible combinations of up to eight letters/numerals/spaces in a PVRM, some members are gravely concerned about possible difficulty for frontline law enforcement officers and the general public who are not conversant with the English language to read and remember PVRMs made up of such combinations, particularly in hit-and-run traffic accidents. A member also maintains his view that intermingling letters and numerals in a PVRM will give rise to enforcement difficulties.

15. The Administration considers that any difficulty in reading or remembering will apply to existing VRMs and the proposed PVRMs alike as the former are also made up of letters and numerals. According to the Hong Kong Police Force (the Police), the PVRMs Scheme will not give rise to concerns about law enforcement. It has also advised that the present training provided to

frontline police officers before they are posted to the Traffic Formations is adequate for them to carry out enforcement duties even if the proposed PVRMs Scheme is implemented. Moreover, in law enforcement, the relevant agencies do not solely refer to the VRM of a vehicle, but also the full description of the particulars of the vehicle.

16. Some members do not agree entirely with the Administration that for enforcement reasons, PVRMs with a grouping of more than four identical letters or numerals placed side by side will not be allowed. They query that as one of the stated objectives of the PVRMs Scheme is to provide room for creativity, the proposed restriction should be relaxed. Both TD and the Police however maintain their position that the restriction is necessary from the enforcement point of view.

17. The Administration has highlighted that when vetting proposed PVRMs, C for T will be assisted by the Police, relevant government departments and non-official members to ensure that PVRM applications which will likely be confusing for the purposes for law enforcement will not be approved. Nevertheless, noting members' views on the proposed combination requirements of PVRMs and their concern about the possible impact on enforcement and road safety, the Administration has undertaken to review the operational arrangements one year after implementation of the proposed scheme.

Reservation of certain registration marks

Vehicles of the Hong Kong Garrison

18. Noting the proposal in the Bill to reserve certain registration marks for assignment to certain government vehicles and vehicles owned by the Legislative Council Commission (the Commission) and not to allocate them as PVRMs, some members have asked whether VRMs consisting of "ZG" should also be reserved for vehicles of the Hong Kong Garrison of the People's Liberation Army. The Administration accepts the suggestion and will introduce the necessary Committee Stage amendments (CSAs) to also reserve "ZG" under regulation 11 of the Regulations.

Vehicles owned by the Legislative Council Commission

19. Currently, all VRMs consisting of the letters "LC" and a number are reserved for assignment to vehicles owned by the Commission. The Administration has not proposed any change to the existing policy which has been adopted since 1994. However, since a new category of registration marks (i.e. the PVRMs) will be introduced, the Administration sees a need to stipulate clearly in the Bill the "LC" combinations that will continue to be assigned to the Commission (i.e. registration marks consisting of the letters "LC" only; registration marks consisting of the letters "LC" at the beginning and followed by a numeral or numerals only; and registration marks consisting of the letters "LC" as the suffix, preceded by a numeral or numerals only). The rest of the "LC" combinations may be auctioned as PVRMs if they fulfil other necessary

conditions.

20. In the course of deliberation, the Administration has been asked to consider a member's suggestion that registration marks consisting of the letters "LC" which are reserved for the Commission under the Bill should be released for public auction or for application under the PVRMs Scheme; while similar combinations consisting of the letters "LEGCO" can be reserved for assignment to vehicles owned by the Commission instead.

21. The Administration considers that the proposal may have a slight positive effect on revenue as it would make a larger set of registration marks available for auction. While it finds that the proposal should be feasible and acceptable, the Administration has sought the views of the Commission on the matter. The Commission has subsequently advised the Administration that it is of the unanimous view that the existing policy should be maintained. As such, the Administration will not propose any change to the Bill in this respect and the Bills Committee has taken note of the Administration's decision.

Other VRM combinations

22. Regarding some members' suggestion of reserving VRMs featuring certain company names such as HSBC or SWIRE for allocation to the companies concerned, the Administration considers that this option may not be fair or practicable as some individuals with surnames such as SWIRE may be interested in applying for a PVRM of such letter grouping. On another suggestion to also reserve PVRMs of three or four identical letters in Schedule 5A to the Regulations for sale by auction at C for T's discretion, the Administration has no objection and will move the necessary CSAs.

Cancellation of PVRMs after allocation

The need for recall

23. The Bills Committee notes that pursuant to proposed regulation 12L of the Regulations, C for T may recall a PVRM after allocation should it be found afterwards that the registration mark is no longer appropriate for allocation. The PVRM holder will be refunded the full amount of the auction price and offered an OVRM at no charge. An aggrieved PVRM holder may appeal to the Administrative Appeals Board. To avoid futile applications, TD will provide a channel for potential applicants to check if their preferred PVRMs have been recalled so that they can make an informed decision before submitting an application.

24. Some members consider the proposed arrangement to recall PVRMs highly unfair to the vehicle owner who has gone through all the necessary procedures to obtain a PVRM of his choice. To provide greater certainty, members have requested the Administration to consider the feasibility of setting a time limit beyond which C for T cannot recall a PVRM which has been allocated. The Bills Committee has also discussed with the Administration other statutory

provisions such as the Companies Ordinance (Cap. 32), Trade Marks Ordinance (Cap. 559) and Solicitors (Group Practice) Rules (Cap. 159 sub.leg. X) relating to the power to revoke registrations after they have been granted.

25. The Administration is not in favour of setting a time limit for recall. It points out that certain PVRMs, which were acceptable at the time of allocation, may no longer be so over time, such as when the usage of a PVRM becomes associated with a triad connotation. It is therefore necessary to empower C for T to recall expeditiously those PVRMs which are no longer appropriate. However, the Administration assures members that C for T cannot exercise this power lightly and only with very sound reasons. The Administration has also advised that similar "recall" power is rarely exercised in overseas jurisdictions. Furthermore, PVRM holders aggrieved by the decision of C for T can appeal to the Administrative Appeals Board.

26. As an alternative, some members have suggested that the Bill may provide for a validity period for an allocated PVRM during which the PVRM cannot be cancelled by C for T, similar to the arrangements applicable to trade marks registered under the Trade Marks Ordinance (Cap. 559). After consideration, the Administration has decided not to stipulate a validity period as proposed because at present, SVRMs and OVRMs are not subject to a period of validity. Inconvenience and confusion may arise if PVRMs alone are allocated for a limited period.

27. The Bills Committee has examined whether the proposed provisions empowering C for T to recall PVRMs already allocated are consistent with Article 105 of the Basic Law (BL 105) which protects property right. Some members point out that as the value of a PVRM may have appreciated since its allocation, it will not be equitable to refund only the auction price to its holder in case the PVRM is recalled. Concern has been raised as to whether a PVRM holder may claim compensation against the Government if he suffers loss or damage as a result of such recall.

28. Since a PVRM will be sold by auction to a person and thereafter transferable together with the vehicle to which it is assigned, the Administration is prepared to assume on the basis of the European human rights jurisprudence that a PVRM is a property for the purposes of BL 105 because it may have a certain economic value. The Administration's legal advice is that according to the principle established in European jurisprudence, revocation of a licence in accordance with provisions of the law subject to which the licence was issued does not amount to a deprivation of property. Applying this principle to the case of PVRMs, the Administration takes the view that since the recall of a PVRM will be made in accordance with the statutory provisions subject to which the PVRM is allocated, it will not amount to a deprivation of property under BL 105. As to whether the holder of a recalled PVRM may claim damages against the Government, the Administration has advised that the power to recall a PVRM after its allocation is a statutory power conferred on C for T and as a general rule, no compensation is payable for the lawful exercise of a statutory power, unless the relevant legislation provides for a compensation. The Administration

considers that there is no cause of action for a PVRM holder to claim damages from the Government and that it has no intention to propose any further compensation to the person whose PVRM has been recalled by C for T in accordance with the legislative provisions. TD however assures members that it will inform potential PVRM holders of the risk of cancellation and the refund arrangements through its publicity leaflets, website, application forms, the memorandum of sale and the certificate of allocation of PVRM, etc.

Certificate of allocation for PVRMs

29. The Administration has proposed to issue a certificate of allocation to the PVRM holder. The certificate will serve to prove the ownership of the PVRM and contains, inter alia, the name of the PVRM holder, the display formats, the auction date and price, and the terms and conditions to be observed by him. Proposed regulation 12M requires that in case of recall by C for T, the PVRM holder should return to the Commissioner the certificate of allocation previously issued to him. Some members consider the requirement on the PVRM holder to safe-keep the certificate and to return the same to C for T upon recall of the PVRM too onerous. They ask whether the information contained in the certificate of allocation can be incorporated in the existing Vehicle Registration Document (VRD) instead.

30. While some of the information (such as the name of the vehicle owner and the display format of the PVRM) is already provided in the VRD, the Administration is not in favour of modifying the existing licensing system to further include information such as the auction date and price of the PVRM in the VRD as this will incur additional cost and delay. If the certificate of allocation is to be dispensed with, the auction date and price, and terms and conditions for PVRMs can be made available on TD's website and at its licensing offices. A note may also be added to the VRD to remind the vehicle owner/potential buyer as to how the details of a PVRM may be checked. As members have not raised further objection to the issuance of a certificate of allocation, the Administration decides to maintain its original proposal.

Re-allocation of recalled PVRMs

31. The Administration's original thinking was that if the circumstances under which the PVRM was recalled have subsequently changed, the PVRM concerned can be "revived" for sale by auction and the previous holder of the PVRM may participate in the public auction and bid for it again.

32. Some members are of the view that the previous PVRM holder should be given the right of first refusal, i.e. he should be accorded priority to be re-allocated the PVRM in question at the original auction price which he has paid and which has been refunded to him upon recall of the PVRM concerned. A public auction will be arranged only if the previous holder does not accept the re-allocation.

33. On overseas practice, the Administration has found that some jurisdictions do accord the right of first refusal to the holder of the recalled PVRM while some do not. It has nevertheless accepted members' proposal and will introduce CSAs to set out the detailed arrangements in the Bill. The Bills Committee notes that, in gist, if a recalled PVRM is available for allocation again, the previous PVRM holder will be notified by registered mail or by notice published in two local Chinese language newspapers and one local English language newspaper. He will be given four weeks to purchase the PVRM at the original auction price without going through public auction. If the PVRM is not allocated to the previous holder within the four-week period for whatever reason, the PVRM in question will be put up for auction in accordance with the proposed provisions in the Bill.

Revenue implications

Income of the PVRMs Scheme and the Lotteries Fund

34. The Bills Committee notes that according to the Administration's ballpark estimate, the revenue to be generated from the auctioning of PVRMs will be around \$70 million a year. On how the estimated figure has been arrived at, the Administration's conservative estimate is that the average auction price of PVRMs would be between \$20,000 and \$25,000 and that TD will auction about 3 000 PVRMs a year in order not to bring pressure to the auction of SVRMs and OVRMs. The Bills Committee nevertheless notes that the eventual outturn will depend very much on the popularity of the Scheme.

35. Currently, proceeds from the auctions of OVRMs and SVRMs are paid into the LF. Some members are gravely concerned about the possible impact of the PVRMs Scheme on the LF, in particular if people have a greater interest in the PVRMs Scheme, thereby reducing the income of LF and the financial support available for charity or welfare bodies.

36. The Administration has informed members that since the announcement of the PVRMs Scheme in March 2004, there has not been any significant drop in the auction price of existing OVRMs and SVRMs, as evidenced in the average price of all auctioned VRMs in 2004-05, which remained at \$16,532 as compared to \$16,071 in 2003-04. The Administration also considers that the existing arrangements for auctioning OVRMs and SVRMs will not be affected by the PVRMs Scheme as each of the three schemes has its respective market and will appeal to different users.

37. Regarding financial support for charity, the Bills Committee notes that during the past few years, proceeds from the sale of OVRMs and SVRMs have accounted for only 6% to 7% of the revenue of the LF while the Mark Six Lottery has made up some 70% of its revenue. The Administration has further estimated that even if the auction proceeds of OVRMs and SVRMs will drop by 5%, this will only translate into a 0.3% drop in the overall revenue of the LF. Nevertheless, the Administration will keep under review the auction proceeds from OVRMs, SVRMs and PVRMs after implementation of the proposed

Scheme.

Use of proceeds from the sale of PVRMs

38. Noting the original proposal that income from the sale of PVRMs will be paid into the general revenue in accordance with section 3(1) of the Public Finance Ordinance (Cap. 2) instead of being designated for specific use, some members have urged the Administration to consider crediting the income to LF or using it to finance initiatives to support the needy.

39. In this regard, the Bills Committee notes that the Acting Chief Executive announced in end May 2005 that the net proceeds from the sale of PVRMs would be used for poverty alleviation initiatives. While the sale proceeds will 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 next five years to fund poverty alleviation initiatives. The current estimated net proceeds are in the order of \$60 million per annum (being \$70 million less the estimated running costs and depreciation). Depending on the nature of the specific poverty alleviation proposals, the Administration will include the provision under the relevant Head(s) of Expenditure in the draft Estimates of the relevant year.

Intellectual property concerns

40. On whether the PVRMs Scheme will give rise to intellectual property concerns, the Administration has confirmed that according to its legal advice, there is generally no copyright in single words and short phrases. Moreover, as PVRMs do not include symbols, no question of copyright should arise. As trademark infringement refers to the unauthorized use of a trademark in the course of trade or business in relation to goods and services, and PVRMs are not used as trademarks for goods and services, the Administration considers it unlikely that the use of a PVRM would constitute a trademark infringement.

Other views

41. Arising from the proposed amendment to regulation 19 of the Regulations that the PVRM holder is required to notify the C for T within 72 hours after any change in personal particulars, some members take the opportunity to urge the Administration to provide a more convenient, one-stop notification mechanism to enable members of the public to report changes in personal particulars to all relevant departments. The Transport Department has agreed to consider ways to streamline the existing procedures for reporting changes of particulars by vehicle licence holders.

42. To provide more room for variety, some members suggest that vehicle owners should be given greater choice in the font types and sizes of letters and numerals to be displayed on vehicle licence plates. The Administration has agreed to refer the suggestion to the Environment, Transport and Works Bureau for longer-term consideration.

Follow-up by the Administration

43. At the request of the Bills Committee, the Administration has agreed that the Secretary for Financial Services and the Treasury will, in his speech during the Second Reading debate on the Bill, give an undertaking to take follow-up action and to report to the relevant Panel(s)/subcommittee in due course :

- (a) to conduct an overall review of the PVRMs Scheme one year after its implementation (paragraphs 10, 17 and 37);
- (b) to set aside sums equivalent to the estimated net proceeds from the sale of PVRMs in the next five years for poverty alleviation initiatives (paragraph 39); and
- (c) to consider ways to streamline the existing procedures for vehicle licence holders to report changes in personal particulars and the feasibility of giving greater choice on the font types and sizes of letters and numerals displayed on vehicle licence plates (paragraphs 41 and 42).

Committee Stage Amendments

44. The Bills Committee supports the CSAs proposed to be moved by the Administration and will not move any CSAs in its name.

Recommendation

45. The Bills Committee supports the resumption of the Second Reading debate on the Bill on 14 December 2005.

Consultation with the House Committee

46. The House Committee was consulted on 2 December 2005 and supported the recommendation of the Bills Committee in paragraph 45.

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

Membership List

Chairman Hon CHAN Kam-lam, SBS, JP

Members Ir Dr Hon Raymond HO Chung-tai, S.B.St.J.,JP
Dr Hon David LI Kwok-po, GBS, JP
Hon Mrs Selina CHOW LIANG Shuk-yee, GBS, JP
Hon SIN Chung-kai, JP
Hon Abraham SHEK Lai-him, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Ting-kwong, BBS
Hon Albert Jinghan CHENG

(Total : 9 Members)

Clerk Miss Polly YEUNG

Legal Adviser Ms Connie FUNG

Date 1 July 2005

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

**Organizations/individual that have submitted views
to the Bills Committee**

1. Dah Chong Hong (Motor Service Centre) Limited
2. Right Hand Drive Motor Association (HK) Ltd
3. Mr WONG Wang-tai, member of Wan Chai District Council