

The Government of the Hong Kong Special Administrative Region

政府總部
環境運輸及工務局
香港花園道美利大廈



Environment, Transport
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本局檔號 Our Ref. ETWB(T)CR 1/981/00

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11 May 2007

Mr Kelvin Lee
Assistant Legal Adviser
Legislative Council
Legislative Council Building
8 Jackson Road
Central, Hong Kong

Dear Mr Lee,

Tsing Sha Control Area Bill

I refer to your letters of 16 April and 3 May 2007. Please find below our clarifications on your questions.

Clause 24

We consider that even without an express provision on the right to be heard, before a financial penalty can be imposed on the operator pursuant to the provisions of the Bill, the operator will be notified about the case against him in advance as well as given a chance to explain his case. This is implicit under the requirement of natural justice in administrative law, and can therefore be an administrative procedure. Clause 24(3) provides for prior notice to be given to the operator and a reasonable opportunity for the operator to remedy the breach before a financial penalty can be imposed. The operator will be invited to explain his case when the prior notice is served.

Burden and Standard of Proof in Offences

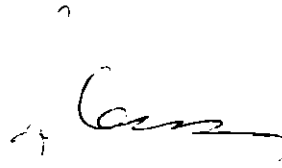
Clauses 14, 17(2) and 17(4) only require the accused to prove his defence, and not innocence. It is a “no-fault” defence in these clauses, which

is commonly available for statutory strict liability offences. Our intention is that the general rules in criminal procedures and evidence in respect of burden and standard of proof of defence should apply in the present case, i.e. the defendant charged with such offences may be entitled to raise a statutory defence based on demonstrating his/her lack of culpability, and the defendant who invokes the defence must prove it on a balance of probabilities.

Chinese Text

We consider that our Chinese version appropriately reflects the meaning "sending it *to the registered owner*", in addition to "at the address shown...". It properly reflects our policy intention and amendment is not necessary.

Yours sincerely,



(Clement Lau)

for Secretary for the Environment,
Transport and Works

c.c. DoJ (Attn : Miss Leonora Ip) 2845 2215
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