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By Fax (2136 8017)

2 April 2008

Ms Macella LEE
AS for Transport and Housing (Transport) 2C
Transport and Housing Bureau
Transport Branch, Division 3
Traffic Management Section
16/F Murray Building
Garden Road
Central

Dear Ms LEE,

Re: Road Traffic Legislation (Amendment) Bill 2008

I am scrutinising the legal and drafting aspects of the above Bill and would be most grateful if you could clarify the matters set out in the Appendix to this letter.

I shall be most grateful if you could let me have your response in both Chinese and English at your earliest convenient.

Yours faithfully,

(Kelvin LEE)
Assistant Legal Adviser

Encl

c.c. DoJ (Attn.: Ms Vicki LEE, SGC and Miss Emma WONG, GC)
(Fax No. 2869 1302)

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Appendix

L.N. 3 and 28 of 2008

1. It is observed that clause 28 of the Bill are not consistent with the Road Traffic (Driving Licences) (Amendment) Regulation 2008 (L.N.3 of 2008) and L.N. 55 of 2008. I understand that the Administration will introduce CSAs to rectify the problems.

Clause 20

2. Clause 20 concerns the amendments to section 72A of Road Traffic Ordinance (Cap. 374) (RTO). There are several references to "the court" or "a court", should "magistrate" be added after such references?

3. Further, clause 20 proposes to add a new subsection 12 to section 72A in relation to the meaning of "applicable person". Should this be added to the existing subsection 11 which sets out the relevant definitions of section 72A?

Reissue of Driving Licence

4. Please clarify when a person whose driving licence is cancelled by the Commissioner for Transport under regulation 20 of the Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg. B) applies for a full driving licence and is granted one, the driving licence is regarded as issued or reissued to that person. Further, please clarify whether that person needs to complete the probationary driving period before he is eligible to apply for a full licence.

5. It is observed that provisions like clauses 4 and 46 make references to "...reissue of...driving licence or driving instructor's licence;". Such provisions appear to be wide enough to include all types of driving licences. Please clarify whether this is the policy intention.

Clause 47

6. In the proposed regulation 45A (clause 47 of the Bill) concerning the practice and procedure on review by a Transport Tribunal, reference is made to "authorized representative" of a person applying for review: "Authorized representative" is not defined in the Bill nor in RTO. Section 20(2) of RTO provides that any person may "...be represented by counsel, solicitor or agent" in proceedings before a Transport Tribunal. Instead of using "authorized representative", "counsel, solicitor or agent" should be used to maintain consistency.

7. Further, the proposed regulation 45C provides that service of notices to an applicant may be by registered post. However, it does not specify to which address the notices should be served. For the avoidance of doubt, an address for service, as in section 76 of RTO, i.e. the registered address of a registered owner, or the last known postal address of a driver should be specified.

Chinese Text

8. It is observed that several provisions of the Bill replace "合格" with "及格". "合格" is the Chinese translation for "pass" in the Glossary of Legal Terms, fourth edition. It is commonly used in other ordinances whereas "及格" is not commonly used. Please explain the purpose of the amendments.