



中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China

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26 October 2010

Mr Paul John O'Brien
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Dear Mr O'Brien,

Motor Vehicle Idling (Fixed Penalty) Bill – Clause 2(2)

I refer to clause 2(2) of the Motor Vehicle Idling (Fixed Penalty) Bill which seeks to provide the following -

"Where this Ordinance includes an example of the operation of a provision -

- (a) the example is not exhaustive; and*
- (b) if the example is inconsistent with the provision, the provision prevails."*

Under section 7 of Schedule 1 to the Bill (vehicles necessarily idling for certain purposes), idling prohibition does not apply to a driver of a motor vehicle if the vehicle is lawfully designed primarily for a purpose other than the carriage of the driver, any passengers and their personal effects and idling the vehicle is necessary for a purpose for which the vehicle is primarily designed. Five examples are set out under that provision in smaller print.

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You may recall that serious concerns about the drafting of clause 2(2) of the Bill were raised by members at the Bills Committee meeting on 25 October 2010. In this regard, I would be pleased if you could advise on the following matters –

- (i) Please provide precedents in the Laws of Hong Kong where examples are given to demonstrate the "operation (實施)" of a provision in a piece of legislation.
- (ii) If inclusion of examples in a legislative provision represents a new approach to law drafting in Hong Kong, please give the justification for this new approach.
- (iii) By including an example of the operation of a provision of the Bill, the Administration should ensure that the example falls squarely within that provision and it fulfils all the conditions/requirements of that provision. However, the effect of clause 2(2) seems to be that examples which are given in the Bill are neither exhaustive nor conclusive. Please advise the Bills Committee the purpose of clause 2(2).

I look forward to your reply in bilingual form before 28 October 2010.

Yours sincerely,



Kitty Cheng
Assistant Legal Adviser

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