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**BY FAX : 2877 5029**

28 October 2010

Ms Kitty Cheng  
Assistant Legal Adviser  
Legislative Council Secretariat  
Legal Service Division  
Legislative Council Building,  
8 Jackson Road, Central  
Hong Kong.

Dear Ms Cheng,

**Motor Vehicle Idling (Fixed Penalty) Bill – clause 2(2)**

Thank you for your letter by fax of 26 October 2010 concerning clause 2(2) of the Bill and the examples in section 7 of Schedule 1 to the Bill.

I can provide the following advice in response to the matters raised in your letter.

- (i) *Please provide precedents in the Laws of Hong Kong where examples are given to demonstrate the operation of a provision in a piece of legislation.*

There are numerous precedents in the laws of Hong Kong for the use of examples. See, for instance, section 52(2) of the Evidence Ordinance (Cap. 8), section 35(1) of the Bills of Exchange Ordinance (Cap. 19), section 30(2) of the Limitation Ordinance

(Cap. 347), section 106(2) of the Copyright Ordinance (Cap. 528), and the Schedule to the Widows and Orphans Pension Ordinance (Cap. 94), which contains numerous examples of the operation of the provisions in that Schedule.

- (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.*

As indicated in my response to item (i) above, the inclusion of examples in legislative provisions is not new to Hong Kong.

The Bills Committee may also wish to note the following extract from the information paper submitted by the Department of Justice for the meeting of the Panel on Administration of Justice and Legal Services on 15 December 2009 (LC Paper No. CB(2)512/09-10(04)):

“20. **Reader aids** – The use, where appropriate, of reader aids such as notes and examples will be encouraged. An ordinance-specific interpretation provision to clarify their status will be included in contexts in which clarification is required, while the question of a provision of general application is being considered.”.

As indicated in this extract, examples are a form of reader aid. The use of examples would not be appropriate in every piece of legislation. However, where the subject matter of the law touches the everyday life of people in Hong Kong, as is the case with the Motor Vehicle Idling (Fixed Penalty) Bill, reader aids such as examples can play an important role in assisting the reader to understand and comply with the law.

- (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).*

The purpose of clause 2(2) is two-fold. Clause 2(2)(a) provides that where an example is included, it is not exhaustive. The purpose of this is to confirm that the example is not an exhaustive statement of the law, it is only an example of the operation of the provision. Clause 2(2)(b) provides that if the example is inconsistent with the provision, the provision prevails. The purpose of this is to preserve the primacy of the operative provision over the example such that, in the most unlikely event that there may be some inconsistency in the interpretation of the example and the interpretation of the operative provision, primacy would be given to the operative provision.

The Bills Committee may wish to note that a similar interpretation provision applies in the Commonwealth of Australia. Section 15AD of the Acts Interpretation Act 1901 (Australia) reads:

**“15AD Examples**

Where an Act includes an example of the operation of a provision:

- (a) the example shall not be taken to be exhaustive; and
- (b) if the example is inconsistent with the provision, the provision prevails.”.

Yours sincerely,



( Paul O'Brien )

Senior Assistant Law Draftsman

c.c. “B” File

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