



立法會秘書處 法律事務部
LEGISLATIVE COUNCIL SECRETARIAT
LEGAL SERVICE DIVISION

來函檔號 YOUR REF :
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Transport and Housing Bureau
Transport Branch
14/F, Murray Building
Garden Road
Central
Hong Kong

2 June 2010

BY FAX
Fax No.: 3904 1774

Dear Ms HO,

Re: Road Traffic (Amendment) Bill 2010

We spoke in relation to the captioned Bill. I would be most grateful for your clarification on the following matters –

The use of "shall" and "must"

Clause 6 of the Bill introduces amendments to, among other things, section 36(2) and (7) of the Road Traffic Ordinance (Cap. 374) (RTO). "Must" is used in clause 6(5) of the Bill. However, "shall" is used in section 36(2), (7) and (9) of RTO. Although there are proposed amendments to section 36(2) and (7), there is no proposed amendment to replace "shall" with "must". Please consider whether it would be more consistent to use the same wording (either "shall" or "must") in the same section of RTO. Similar observations apply to clauses 8 and 10.

Circumstances of Aggravation

Clauses 6 to 8 propose, among other things, that if one of the dangerous driving offences is committed in circumstances of aggravation, the maximum fine and term of imprisonment for the offence, and the minimum disqualification periods for the offence are each increased by 50%. They further provide that a person commits an offence in circumstances of aggravation if at the time of committing the offence the proportion of alcohol in the person's breath, blood or urine is tier 3.

It appears that the only circumstance under which the maximum sentence and the minimum disqualification periods may be increased is the proportion of alcohol. Other circumstances, for example, the driver was driving under the influence of dangerous drugs, is not one of the circumstances of aggravation. Please clarify whether this is the legislative intent to exclude other aggravating circumstances at this stage. If it is in the affirmative, please explain whether there is any plan for including other aggravating circumstances. Further, please explain whether the court should be given the discretion to consider what amounts to "circumstances of aggravation".

Lastly, "circumstances of aggravation" is translated into Chinese language as "犯罪情節特別嚴重". The Chinese expression is not commonly used in legislation in Hong Kong. Please explain the rationale of adopting this translation.

Start of Disqualification Period

Clause 18 proposes to introduce a new section 69A to RTO concerning the start of disqualification period. If section 69A is applicable, the court or magistrate must direct that the disqualification is not to start to run until the person is "released from custody", unless the court or magistrate for special reasons orders otherwise.

Please clarify whether "released from custody" refers to the completion of serving the term of imprisonment computed under section 67A of the Criminal Procedure Ordinance (Cap. 221) with any remission granted under rule 69 of the Prison Rules (Cap. 234 sub. leg. A).

Yours faithfully,



(Kelvin Ka-yun LEE)
Assistant Legal Adviser

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