



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

來函檔號 YOUR REF :
本函檔號 OUR REF : LS/B/22/10-11
電 話 TELEPHONE : 3919 3511
圖文傳真 FACSIMILE : 2877 5029

By Fax (3904 1774)

3 October 2011

Miss Erica NG
Principal Assistant Secretary for Transport and
Housing (Transport) 2
Transport and Housing Bureau
Transport Branch
Division 3
Traffic Management Section
14/F, Murray Building
Garden Road, Central

Dear Miss NG,

Road Traffic (Amendment) (No. 2) Bill 2011

We are scrutinizing the legal and drafting aspects of the captioned Bill and have the following questions relating to the Bill for your clarification-

Clause 7 – new section 67A of the Road Traffic Ordinance (Cap. 374) (RTO)

It is noted that this new section, which empowers the Commissioner for Transport (the Commissioner) and the police to retrieve any data stored in the electronic data recording device (EDRD), is proposed to apply to **a motor vehicle** with a fitted EDRD. By using the term "a motor vehicle", it appears that under this new section any motor vehicle fitted with an EDRD would be subject to the power of the Commissioner and the Police to retrieve data stored in the EDRD. However, the Bill proposes to require EDRDs to be installed on specified public light buses (PLBs) only. Please clarify if it is the Administration's intention to make this new section apply to all motor vehicles fitted with an EDRD instead of the specified PLBs only, and if so, why?

Clause 8 – new section 102I of RTO

- (a) If a proprietor of a pre-service training school fails to apply to the Commissioner for Transport (the Commissioner) for a renewal of the designation of a pre-service schools at least 3 months before the date of its expiration in accordance with the new section 102I(9)(b) of RTO but could show good cause for the late application, will the Commissioner consider such an application? If so, should this be provided in the proposed section 102I?
- (b) If a proprietor of a pre-service training school chooses not to renew or fails to renew the relevant designation under the new section 120I(9) of RTO, is the proprietor required to make refunds of any fee paid for taking a pre-service training course at the school for the part of the course which has not been given? It is noted that the consequences of revocation and termination of a designation are provided in the new sections 102J and 102K respectively. As such, will the Administration consider also making provisions for the consequences of the expiration of a designation?

Clause 8 – new section 102J of RTO

In relation to the revocation of designation of a pre-service training school, a proprietor of a pre-service training school may make representations in writing under the new section 102J(2)(b) of RTO to oppose the intended revocation within 28 days after the service of the notice of intention by the Commissioner to revoke the designation and may appeal to a Transport Tribunal against the Commissioner's decision on revocation of the designation under the new section 102J(4) of RTO within 14 days after the service of the notice of the decision to revoke the designation. Is it necessary to specify in the Bill the mode of service of the notice of intention to revoke and the notice of decision to revoke to avoid disputes on the validity of service of the relevant notices and the calculation of the period for making a representation or an appeal?

Clause 14 – new regulation 121(6) of the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374 sub. leg. A) (CMV Regulations)

It is noted that under the new regulation 121(6)(c) of the CMV Regulations, it is an offence for any person to wilfully remove a fitted EDRD from **the motor vehicle** without lawfully authority or reasonable excuse. However, the Bill proposes to require EDRDs to be installed on specified PLBs only. Since there may be some vehicles other than PLBs that have been

installed with EDRDs voluntarily for safety or other reasons, it is possible that the new offence under the new regulation 121(6)(c), as drafted, would also be applicable to such motor vehicles. Does this reflect the Administration's intention? If so, what is the reason for applying the offence to motor vehicles other than the specified PLBs?

New Schedule 18 to the CMV Regulations

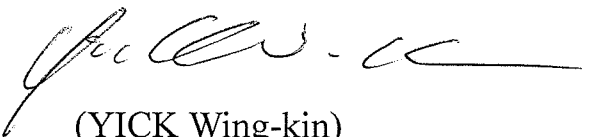
It is proposed that the new regulation 24B of the CMV Regulations will only apply to a PLB which is of a description specified in the new Schedule 18 to the CMV Regulations. It is noted that no description is currently specified in Schedule 18 to the CMV Regulations. In that regard, please let us know the Administration's timetable for specifying the description of the relevant PLBs in the new Schedule 18 to the CMV Regulations.

New Schedule 19 to the CMV Regulations

As regards the new Schedule 19 to the CMV Regulations which provides for installation and performance requirements for EDRDs, please consider if it is desirable to further provide in the Schedule that an EDRD should be so designed and constructed to prevent or withstand destruction or damage of running data stored in the EDRD caused by impact arising from road accidents.

It is appreciated that your reply in both languages could reach us as soon as possible, preferably by 14 October 2011.

Yours sincerely,



(YICK Wing-kin)
Assistant Legal Adviser

cc. DoJ (Attn.: Mr Peter SZE, Govt Counsel (By Fax: 2845 2215))
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