

財 經 事 務 及 庫 務 局

**FINANCIAL SERVICES AND THE
TREASURY BUREAU**

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10 June 2005

The Honourable CHAN Kam-lam, JP
Legislative Council, HKSAR
Room 523F, West Wing
Central Government Offices
Hong Kong

Dear Mr Chan,

Revenue (Personalized Vehicle Registration Marks) Bill 2005

Thank you for your letter dated 27 May 2005. The Administration's response to your questions is set out below.

Auction of personalized vehicle registration marks (PVRMs)

2. The Government intends to auction about 3,000 PVRMs a year and the recurrent cost for the Transport Department (TD) to implement the PVRMs Scheme will be about \$6 million a year. The average cost of a PVRM successfully auctioned will be, therefore, \$2,000. I would like to point out that this figure is higher than the average actual cost for TD to handle a PVRM application. This is because the number of PVRM applications is expected to be much greater than the 3,000 PVRMs to be auctioned after being successfully balloted and approved by the Commissioner for Transport (C for T). The average cost for TD to handle a PVRM application will decrease substantially if the number of applications is much greater than 3,000 a year.

3. As the PVRMs Scheme is new, the revenue to be generated from auctioning PVRMs is difficult to estimate. The ballpark estimate is \$70 million a year, or about \$23,300 for a PVRM successfully auctioned.

Intellectual property

4. We have already considered issues on intellectual property in the context of the PVRMs Scheme and have sought the advice of the Intellectual Property Department in devising the Scheme. The legal advice given by the Department is set out in paragraphs 13 and 14 of the Legislative Council Brief.

5. The Department has advised that the unauthorized use of a trademark in the course of trade or business in relation to goods or services would be an infringement of a trademark. As PVRMs are not used as trademarks for goods or services, it is unlikely that the use of a PVRM would constitute an infringement of a trademark.

Lotteries Fund

6. Our original policy intent is for the proceeds from the auction of PVRMs to be paid into the general revenue, and the current drafting of the Bill has reflected the Administration's intention.

7. As announced by the Acting Chief Executive at the end of last month, the Government has decided to propose that the net proceeds from the sale of PVRMs be used for poverty alleviation initiatives. We are studying the details for implementing this proposal.

Administrative appeals

8. As one of the important features in the design of the PVRMs Scheme is that it has to be administratively simple and effective, we do not propose an appeal mechanism for applicants whose applications are refused. We expect that the implications of a refusal of a PVRM application will be relatively minor. At the time when C for T determines to refuse a PVRM application or reverses his determination to accept a PVRM application, no one has yet acquired any economic interest over a PVRM or has a right to a PVRM. (This is different from the recall by C for T of a PVRM that has been sold by auction because such recall may affect the economic interest or right of the PVRM holder concerned. Therefore, the Government proposes an appeal mechanism for such recall cases.) While no appeal mechanism will be provided for refused applications, C for T, in exercising his power to determine whether a PVRM application should be accepted or refused, has a duty to act reasonably under administrative law principles and take into consideration the criteria set out in the proposed regulation 12F of the Road Traffic (Registration and Licensing of Vehicles) Regulations (the Regulations) in clause 10 of the Bill and other matters which he may reasonably regard as relevant. The determination of C for T will also be

subject to judicial review. Upon receipt of an application for judicial review, the Court may review the determination of C for T if the determination is considered to be illegal, irrational or procedurally improper.

“Offensive” or “having connotation offensive to good taste or decency”

9. The proposed regulation 12F(2)(a) of the Regulations in clause 10 of the Bill provides that C for T shall refuse an application for a PVRM which is likely to be offensive to a reasonable person, or has a connotation offensive to good taste or decency. Generally speaking, “offensive” carries the meaning of giving or meant to give offence, being insulting, disgusting, nauseous or repulsive, etc, while “offensive to good taste or decency” carries the meaning of not conforming to the recognized standards of good taste, modesty or decorum, or being improper, immoral or obscene, etc. A PVRM application will probably be rejected if the PVRM contains foul language or disturbing words. Whether a PVRM under application is offensive or has a connotation offensive to good taste or decency is to be decided by C for T in consultation with the relevant departments and the non-officials who assist him.

Potential danger to the safety of any user of the road

10. The proposed regulation 12F(2)(d) of the Regulations in clause 10 of the Bill provides that C for T shall refuse an application for a PVRM which may cause danger to the safety of any user of the road. The purpose of this provision is to avoid PVRM combinations that may create confusion among road users and thus cause traffic accidents. In this connection, applications for PVRMs such as “STOP”, “TURNLEFT” and “U TURN” probably will not be approved. However, whether a PVRM under application will cause danger to the safety of any user of the road is to be decided by C for T in consultation with relevant departments and the non-officials who assist him.

11. I hope the above helps to clarify matters. Please feel free to contact me if you have any questions concerning this reply.

Yours sincerely,

(Edward Mak)
for Secretary for Financial Services and the Treasury

c.c.

Clerk to Bills Committee on

	Revenue (Personalized Vehicle Registration Marks) Bill 2005 [2121 0420]	
C for T	(Attn: Ms Amy Chow)	[3101 5561]
Law Draftsman	(Attn: Ms Phyllis Ko)	[2845 2215]
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