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(庫務科)

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FINANCIAL SERVICES AND THE
TREASURY BUREAU
(The Treasury Branch)

Central Government Offices,
Lower Albert Road,
Hong Kong

傳真號碼 Fax No. : 2234 9757
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[By Fax: 2877 5029]

9 June 2005

Ms Connie Fung
Assistant Legal Adviser
Legislative Council Secretariat
Legal Service Division
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Ms Fung,

Revenue (Personalized Vehicle Registration Marks) Bill 2005

Thank you for your letter of 25 May 2005. I set out below the Administration's response to your questions.

Clause 10 – new regulation 12G

2. As explained in our letter of 23 May, we propose to set out in the proposed regulation 12G in clause 10 of the Bill that if the Commissioner for Transport (C for T) is satisfied that there is a good cause to do so, he may review his determination to accept an application for a proposed personalized vehicle registration mark (PVRM) before the PVRM is sold by auction. Review would likely be triggered by valid submissions from members of the public or Government departments, or subsequent change in circumstances. However, C for T's power of review is not intended to be limited by specific grounds of review to be set out in the law. That said, C for T must act reasonably under administrative law principles when exercising his power. The proposed regulation 12F in clause 10 of the Bill would also set out vetting criteria for PVRMs which C for T may refer to in reviewing his determination. We believe this proposal is appropriate in order to avoid the anomaly whereby C for T must

proceed with the auction of a proposed PVRM not suitable for allocation, simply to cancel it after the auction.

Clause 10 - new regulations 12I, 12K and 12O

Conditions in the memorandum of sale

3. Further to the Administration's advice at the Bills Committee meeting on 24 May, the conditions set out in the memorandum of sale of vehicle registration mark (VRM) between the Transport Department (TD) and the purchaser include -

- (a) allocation of a VRM is subject to regulations 9 to 14 of the Road Traffic (Registration and Licensing of Vehicles) Regulations;
- (b) the purchaser shall make payment of the purchase price immediately after the bidding is completed;
- (c) payment shall be made by crossed cheque made payable to "The Government of the Hong Kong Special Administrative Region". Post-dated cheques and cash will not be accepted. Without limiting the generality of condition (b), condition (b) shall be deemed to be breached if the crossed cheque is not met on presentation;
- (d) a VRM can only be assigned to a motor vehicle which is registered in the name of the purchaser. The certificate of incorporation must be produced immediately by the purchaser if a VRM purchased is to be registered under the name of a body corporate;
- (e) if the purchaser breaches any of the conditions of sale, C for T shall be entitled to proceed against the purchaser for damages for breach of contract; and to cancel the allocation of the VRM and re-sell the same by auction and the purchaser shall pay to C for T on demand an amount equal to the difference in prices where the price on re-sale is lower than the original bid price; and
- (f) the VRM must be assigned to a vehicle within 12 months of the date of its allocation.

4. A statutory power for sale should be construed as impliedly authorizing acts which can fairly be regarded as incidental or consequential to the power itself. C for T is entitled to impose conditions of sale so long as they are reasonable and are not inconsistent with the provisions in the Road Traffic

Ordinance and its regulations. We consider that the conditions in the memorandum of sale are either reasonable requirements relating to sales or a reflection of legal requirements, and that there is no need for express statutory provisions to empower C for T to impose similar conditions in respect of PVRMs.

Compensation in relation to cancellation of PVRM

5. The proposed regulation 12L in clause 10 of the Bill provides that C for T may, in his discretion, cancel the allocation of a PVRM at any time after the allocation if he is satisfied that the PVRM is not or is no longer appropriate for allocation having regard to such matters as he considers relevant. The proposed regulation 12M in that clause further provides for refund to the PVRM holder of an amount equal to the auction price or the special fee received by the Government in respect of the PVRM, on return of the certificate of allocation, etc. There is also provision for refund of the vehicle licence fee for the unexpired period of the licence where applicable. If the Bill is passed, the sale and transfer of all PVRMs will be subject to the legislative control as proposed in the aforesaid clauses.

6. Since a PVRM will be sold by auction to a person and thereafter transferable together with the vehicle to which it is assigned, the Administration is prepared to assume on the basis of the European human rights jurisprudence that a PVRM is a property for the purposes of BL 105 because it may have a certain economic value. However, as illustrated above, the cancellation of a PVRM after its allocation is part and parcel of the statutory scheme subject to which the PVRM will be sold and transferred. According to legal advice, it is well established in European jurisprudence that revocation of a licence in accordance with provisions of the law subject to which the licence was issued does not amount to a deprivation of property.

7. On the above premises, the Administration takes the view that the proposed regulations providing for the cancellation of PVRM are not inconsistent with BL 105 since the rights of PVRM holders are always subject to the legislative control of the use of the PVRM including a risk of it being cancelled in accordance with the statutory requirements.

8. The Administration does not intend to propose any further compensation to the holder of a cancelled PVRM. TD will ensure that potential purchasers and PVRM holders are well aware of the risk of cancellation and the arrangement to refund the auction price or the special fee. TD intends to publicize widely these through publicity leaflets, its website, application forms, publicity arrangements at auctions, and the memorandum of sale and the certificate of allocation of PVRM, etc.

Certainty of PVRM allocation

9. The Administration has considered the suggestion to provide a period of validity for an allocated PVRM, during which a PVRM may not be cancelled. We have also considered the feasibility of stipulating a time limit beyond which C for T could not recall a PVRM which has been allocated.

10. We do not propose to provide a period of validity for an allocated PVRM. Under the current arrangements, Special VRMs and Ordinary VRMs are not subject to any limit on the period of validity. It would cause inconvenience to a PVRM holder if a PVRM is allocated for a limited period.

11. We consider that it is necessary to empower C for T to cancel a PVRM any time after allocation, and it would not be in the interest of the general public to set a time limit before which C for T may recall a PVRM. As explained at the Bills Committee meeting on 24 May, some PVRMs may become caught by the vetting criteria in the proposed regulations 12C and 12F in clause 10 of the Bill any time after allocation (e.g. a PVRM may not be used as a triad connotation at the time when it was approved but its usage may change over time) as circumstances change, necessitating a cancellation. We believe the general public will expect that in such case the PVRM which has become inappropriate for allocation should be cancelled expeditiously. The power of cancellation would therefore be necessary for the smooth administration of the PVRMs Scheme.

12. The acceptance or otherwise of applications for PVRMs would be made in a prudent manner pursuant to a vetting process. A cancellation would have to be based on specific reasons as to why, despite the fact that C for T has considered the PVRM to be suitable for allocation after careful vetting, the PVRM is not or is no longer suitable. C for T cannot lightly exercise this power, and we expect that the incidence of cancellation would be rare. Furthermore, the rights of the PVRM holder are safeguarded by the eligibility to appeal to the Administrative Appeals Board.

13. 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.	C for T	(Attn: Ms Amy Chow)	3101 5561
	Law Draftsman	(Attn: Ms Phyllis Ko)	2845 2215
	LO(CL)	(Attn: Mr Dominic Lai)	2869 0670