

LS/B/11/06-07
2869 9209
2877 5029

Environment, Transport and Works Bureau
Transport Branch
Division 3
Road Safety and Traffic Management Section
15th and 16th Floor Murray Building
Garden Road
Central
(Attn. : Mr Clement LAU, AS(T)2A)

16 April 2007

BY FAX
Fax No. : 2104 7274

Dear Mr LAU,

Tsing Sha Control Area Bill (the Bill)

We are scrutinizing the legal and drafting aspects of the Bill and should be grateful if you may clarify the following points—

Clause 24

Clause 24 imposes financial penalty on the operator of the Control Area. I appreciate that this provision is similar to the provision in the Tsing Ma Control Area Ordinance (Cap. 498). It appears that there is no procedure for the operator to be heard before it is decided that the operator is in breach of the requirements of the Bill or the management agreement or before the Chief Executive in Council approves the imposition of the financial penalties. Please clarify whether this is the policy intent.

Burden and Standard of Proof in Offences

Clause 14 creates a duty for certain persons to provide information to the authorized officers. It is a defence under clause 14(7) if the person so charged to prove that he did not know, etc. who the driver of a vehicle was at the time of an alleged offence.

Please clarify whether it is the Administration's intention that an accused bears only an evidential or persuasive burden of proof or it is intended that an accused bears the legal burden of proof of his defence. Please also clarify the Administration's intent regarding clause 17(2) and (4).

Chinese Text

The Chinese text of clauses 22(4) and 23(3)(a) of the Bill (regard disposal of abandon vehicles) is as follow—

"...以寄往登記冊所示地址的掛號郵件將該通知寄交該車主，或將該通知以記錄派遞派遞至登記冊所示地址給予該車主"

The following version may be more accurate—

"...藉掛號郵遞方式或記錄派遞方式將通知送交該車主在登記冊上所示的地址"

Yours faithfully,

(LEE Ka-yun, Kelvin)
Assistant Legal Adviser

c.c. DoJ (Attn : Ms Leonora IP, SGC) (Fax : 2845 2215)
(Attn : Miss Clara LEUNG, GC) (Fax : 2869 1302)
LA
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(Attn. : Mr Clement LAU, AS(T)2A)

3 May 2007

BY FAX
Fax No. : 2104 7274

Dear Mr LAU,

Tsing Sha Control Area Bill (the Bill)

I refer to my letter dated 16 April 2007. We spoke already.

Regarding my query on the burden and standard of proof of offences in the Bill, my main concern is whether an accused is required to prove his innocence and whether the standard of proof of the accused is on balance of probabilities. Further, I am concerned with the justifications of placing the burden of proof on the accused.

Yours faithfully,

(LEE Ka-yun, Kelvin)
Assistant Legal Adviser

c.c. DoJ (Attn : Ms Leonora IP, SGC) (Fax : 2845 2215)
(Attn : Miss Clara LEUNG, GC) (Fax : 2869 1302)

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