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By Fax (3904 1774)

11 February 2009

Miss Rossana LAW
PAS for Transport and Housing (Transp) 2
14th Floor Murray Building
Garden Road
Central
Hong Kong

Dear Miss LAW,

Road Traffic (Driving-offence Points) (Amendment) Bill 2009

I refer to your letter dated 4 February 2009, which does not appear to have addressed my query as to the effect of the proposed section 16(1A) to the court's discretionary power to try a charge in the absence of a defendant.

At present, if a person appears before a magistrate as required under a summons issued under the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) and the prosecution and the defence have closed their cases, the magistrate may continue the trial and deliver his ruling/verdict if the person deliberately absents himself from the hearing. The relevant principles are set out in the passages of Hong Kong Archbold I have quoted in my letter dated 2 February 2009. It would appear from the wording of the proposed section 16(1A) that the magistrate's discretionary power will be removed. Please clarify whether this is the legislative intent. If so, what is the basis of the removal even where the defendant has apparently been provided with a fair hearing but deliberately absent himself from the trial.

Grateful for your early reply to facilitate my reporting to the House Committee as soon as practicable.

Yours faithfully,

(Kelvin Ka-yun LEE)
Assistant Legal Adviser

c.c. LA
SALA2
Miss Francoise LAM, SGC (DoJ)