

LS/B/13/09-10
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By Fax (2572 0306)

12 August 2010

Mr Mok Wai Chuen
Assistant Director (Air Policy)
Environmental Protection Department
46/F, Revenue Tower
5 Gloucester Road
Wan Chai
Hong Kong

Dear Mr Mok,

**Motor Vehicle Idling (Fixed Penalty) Bill -
Exemptions by the Director**

I refer to clause 6 of the Motor Vehicle Idling (Fixed Penalty) Bill which seeks to enable the Director of Environmental Protection ("the Director") to grant exemption to a driver or class of drivers and would be pleased if you advise on the following matters.

Questions

- (a) What criteria would the Director consider before he decides whether or not to grant exemption under clause 6? Has the Administration considered expressly providing these criteria in the Bill?
- (b) If an exemption is granted to *a driver* (and not to a class of drivers) under clause 6(1), is there any way in which members of the public or enforcement officers may acquire knowledge of such exemption?
- (c) Although a notice of exemption is to be published in the Gazette if an exemption is granted to a class of drivers, the notice of exemption is not subsidiary legislation (clause 6(6)). Will there be a register or centralized database for all such exemptions to which members of the public may have access?

You may also recall that at the meeting of the Bills Committee on 27 May 2010, the Administration, in response to Hon Regina Ip's enquiry, advised that the idling prohibition would apply to consular personnel but "some of them *might* enjoy immunity" as a matter of protocol (LC paper no. CB(1)2298/09-10, at p. 1-2 of Annex).

Questions

- (d) Please provide information about the class(es) of consular personnel who might enjoy immunity and the number of people belonging to the class(es); and .
- (e) how members of the public and enforcement officers can identify drivers enjoying consular immunity.

I look forward to your reply in bilingual form before 1 September 2010.

Yours sincerely,

Kitty Cheng
Assistant Legal Adviser

c.c. CCS(1)2

**Bills Committee on
Motor Vehicle Idling (Fixed Penalty) Bill**

Questions Raised by Assistant Legal Adviser on 12 August 2010

Administration's Response

- (a) *What criteria would the Director consider before he decides whether or not to grant exemption under clause 6? Has the Administration considered expressly providing these criteria in the Bill?*
1. In deciding whether to grant an exemption under clause 6 of the Motor Vehicle Idling (Fixed Penalty) Bill (the Bill) to a driver (or a class of drivers), the Director of Environmental Protection (the Director) will consider whether the need to allow the internal combustion engine to continue operating while the motor vehicle is stationary on the road is genuine and unavoidable as well as the degree of environmental nuisances caused. If the Director is satisfied that there is a justified case, he or she would exercise the power under clause 6 of the Bill to exempt the driver (or the class of drivers) from complying with the idling prohibition, subject to any condition he or she thinks fit. If a case is related to a particular local community, the Director would also consider the views of the District Council concerned when deciding on the matter. Similar to the provisions in other ordinances which confer exemption power on an authority, such as Regulation 24 of the Road Traffic (Village Vehicles) Regulations (Chapter 374N) and section 47 of the Hazardous Chemicals Control Ordinance (Chapter 595), we do not consider it necessary to include these details in the Bill.
- (b) *If an exemption is granted to a driver (and not to a class of drivers) under clause 6(1), is there any way in which members of the public or enforcement officers may acquire knowledge of such exemption?*
2. When granting an exemption under clause 6 of the Bill to a driver, the Director will request him or her to produce the written notice to the enforcement agents to support his or her exemption status. We will also keep a record of exemptions granted to individual drivers for reference of the enforcement agents. For members of the public, they may obtain information regarding such exemptions by making a request.
- (c) *Although a notice of exemption is to be published in the Gazette if an exemption is granted to a class of drivers, the notice of exemption is not subsidiary legislation [clause 6(6)]. Will there be a register or centralized database for all such exemptions to which members of the public may have access?*

3. To facilitate drivers to check whether they belong to an exempted class of drivers, we will also publish the information on the Environmental Protection Department's website.
- (d) *Please provide information about the class(es) of consular personnel who might enjoy immunity and the number of people belonging to the class(es).*
4. Members of a consular post could enjoy certain privileges and immunities under the Vienna Convention on Consular Relations (VCCR) which is implemented by the Consular Relations Ordinance (Cap. 557). For example, Article 43 of VCCR provides that consular officers and consular employees generally shall not be amenable to the jurisdiction of the judicial or administrative authorities of the receiving State in respect of acts performed in the exercise of consular functions. Moreover, Article 41(1) and (2) of VCCR provide that consular officers shall enjoy personal inviolability except in the case of a grave crime and in execution of a judicial decision of final effect. Additional privileges and immunities could also be provided under the bilateral consular agreements concluded by the Central People's Government with other foreign States and which have been applied to the Hong Kong Special Administrative Region (HKSAR).
5. As at 15 August 2010, there are about 700 accredited consular officers and consular employees in HKSAR.
- (e) *How members of the public and enforcement officers can identify drivers enjoying consular immunity.*
6. All consular staff accredited to HKSAR should possess a Consular Corps Identity Card issued by the Commissioner of Registration. In case of doubt, the Director of Protocol would assist in ascertaining the consular status of the person concerned.

Environmental Protection Department
September 2010