



立法會秘書處 法律事務部  
LEGAL SERVICE DIVISION  
LEGISLATIVE COUNCIL SECRETARIAT

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URGENT

By Fax (3904 1774)

4 May 2017

Ms WONG Wing Yee, Winnie  
Assistant Secretary  
Transport & Housing Bureau  
Transport Branch, Division 2  
Traffic Management Section  
21/F, East Wing, CGO  
2 Tim Mei Avenue  
Tamar, Hong Kong

Dear Ms WONG,

**Two proposed resolutions under section 13 of the Fixed Penalty  
(Traffic Contraventions) Ordinance (Cap. 237) and section 12 of the  
Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240)**

I refer to your written response to the question on whether the Legislative Council ("LegCo") may prescribe, by resolution, different levels of fixed penalties instead of a uniform penalty for the different offences as provided for in section 4, 5, 6, 7, 8, 9, 10 or 11(1) of the Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237) (per item (a) of the list of follow-up actions arising from the discussion at the meeting on 21 March 2017) dated 26 April 2017 (LC Paper No. CB(4)932/16-17(02)).

You responded that the ordinary and natural meaning of section 13 is that LegCo may only increase the amount of the fixed penalty set out therein. You contended that there is nothing to suggest that this includes a power to prescribe different levels of fixed penalties for contravention of different provisions. It seems that your argument much relied on the interpretation of the formulation of words of "a fixed penalty" [*underline added*] as appeared in

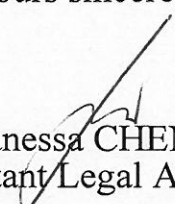
section 13, the long title of Cap. 237 and the Explanatory Memorandum of the Fixed Penalty (Traffic Contraventions) Bill 1970. You have come to the view that LegCo has not been empowered to prescribe by resolution under section 13 different levels of fixed penalties for different contraventions under Cap. 237.

It is noted that under section 7(2) of the Interpretation and General Clauses Ordinance (Cap. 1), words and expressions in the singular include the plural and words and expressions in the plural include the singular. Thus, a fixed penalty can mean one fixed penalty or more than one fixed penalty. Reference can also be made to the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240). Although similar formulation of words "a fixed penalty" has been adopted (see the long title of Cap. 240 and the Explanatory Memorandum of the Fixed Penalty (Criminal Proceedings) Bill 1974), it is noted that different levels of fixed penalties are prescribed in the Schedule for different traffic offences under Cap. 240. Thus, it is not conclusive as to whether different levels of fixed penalties can be prescribed by resolution by LegCo for different contraventions under Cap. 237 by simply relying on the formulation of words "a fixed penalty" as stated in your written response.

In order to assist the Subcommittee to consider whether different levels of fixed penalties can be prescribed by resolution by LegCo for different contraventions under Cap. 237, please provide further information/clarification relating to the legislative intent of section 13 of Cap. 237.

I should appreciate your reply in both English and Chinese as soon as practicable.

Yours sincerely,

  
(Vanessa CHENG)  
Assistant Legal Adviser

c.c. DoJ (Attn: Mr Gary LI, GC (By Fax: 2536 8114))  
Legal Adviser  
Senior Assistant Legal Adviser 1  
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