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G9/8/3 Pt. 4

10 September 2002

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Ms. Anita SIT
Clerk to Legislative Council Panel
on Financial Affairs
Legislative Council Building
8 Jackson Road, Central
Hong Kong.

Dear Ms. SIT,

LegCo Panel on Financial Affairs

**Views from a member of the public
regarding third-party insurance for motor vehicles**

Thank you for your letter of 9 August 2002 regarding Mr Raymond Pao's e-mail on the above subject. After consulting the Environment, Transport and Works Bureau, Transport Department, Police and the Office of the Commissioner of Insurance (OCI), we set out the Administration's comments in the following paragraphs.

The compulsory insurance requirement under the Motor Vehicles Insurance (Third Party Risks) Ordinance (the Ordinance) relates to liabilities for third party death or bodily injury. As set out in the reply of OCI dated 20 June 2002 (copy attached and English version only) to Mr Pao, an exclusion clause like the one mentioned by Mr Pao in a motor insurance policy will not prejudice the rights or interests of the third parties in respect of their claims for death or bodily injury. This is because under section 10 of the Ordinance, the insurer is required to settle such claims irrespective of exclusion clauses. Hence, notwithstanding the exclusion clause, the law already protects the interests of third parties in respect of claims for death or bodily injury and there is no need for them to seek compensation personally from the driver or the vehicle owner.

As regards claims for third party property damage, there is no compulsory insurance requirement to cover such claims and the Ordinance does not apply to them. Insurance to cover third party property damage is at the moment purchased on a voluntary basis. An exclusion clause on third party property damage contained in the policy merely sets out what is agreed between an insurer and the insured.

The Government is mindful of the importance of road safety and has taken a number of measures to tackle drink driving. Any driver who is found exceeding the prescribed alcohol limit when driving has committed a criminal offence. He/she may face prosecution under the Road Traffic Ordinance and be liable to a maximum fine of HK\$25,000 and up to three years' imprisonment on conviction. In 2001, the Police had taken enforcement action against a total of 1,241 drivers for this offence. Moreover, since the introduction of this legislation in 1995, the Police may demand a screening breath test from any driver who is suspected of drink driving being involved in a traffic accident; or having committed a moving traffic offence. On public education, the Police and the Transport Department will continue to discourage and warn against drink driving through various publicity programmes/channels, such as special Announcements of Public Interest on TV channels before major festivals, road safety seminars for drivers and other appropriate occasions. The Government and the concerned industry body will also continue to provide information on the requirements and protection under the Ordinance.

Yours sincerely,

(Alan LO)
for Secretary for Financial Services
and the Treasury

c.c. SETW (Attn: Ms Alice Au-Yeung)
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INS/TEC/6/10 (VII)

20 June 2002

Mr. Raymond Pao
1501 World Wide House
19 Des Voeux Road Central
Hong Kong.

Dear Mr. Pao

Drink Driving Exclusion Clause

Thank you for your letter of 17 June 2002 regarding the "drink" driving exclusion clause" ("exclusion clause") in your motor insurance policy.

Whilst we are debarred under the Insurance Companies Ordinance from intervening in the terms and conditions of an insurance policy, we would wish to point out that drunk driving is a traffic offence under the Road Traffic Ordinance. One of the basic principles of insurance is not to provide insurance protection in respect of any unlawful acts, we therefore do not see anything improper for the insurers to insert such an exclusion clause.

The incorporation of the exclusion clause in a motor policy will not prejudice the protection for innocent third party traffic victims. Under section 12 of Motor Vehicles Insurance (Third Party Risks) Ordinance, irrespective of any such exclusion clause in the policy, the insurer is still required to settle bodily injury or fatal claims arising out of a motor accident, albeit it has a right to seek indemnity from the insured. With such requirement, the rights of third party traffic victims are protected.

Yours faithfully,

(S K Leung)
for Commissioner of Insurance
(Insurance Authority)