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Paper for the House Committee meeting on 22 February 2008

**Subcommittee on Road Traffic (Driving Licences)
(Amendment) Regulation 2008**

Purpose

This paper reports on the deliberations of the Subcommittee on Road Traffic (Driving Licences) (Amendment) Regulation 2008 (the Subcommittee).

Road Traffic (Driving Licences) (Amendment) Regulation 2008 (L.N. 3 of 2008)

2. The Secretary for Transport and Housing (STH) has made the Road Traffic (Driving Licences) (Amendment) Regulation 2008 (the Amendment Regulation) to implement several proposals to improve the arrangements for the issue and renewal of driving licences.

3. The Amendment Regulation amends the Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg. B) (the principal regulations) to –

- (a) add two new definitions of "identity card" and "permanent identity card" in the interpretation section of the principal regulations (section 2);
- (b) amend the manner of making a declaration of physical fitness by an applicant for a driving licence in that the requirement to sign the declaration is dispensed with (section 3);
- (c) specify the type of document of identity required of an applicant in an application for a full driving licence (section 4);
- (d) set out the requirement that an applicant for a full driving licence to drive a taxi, public light bus, private light bus, public bus, private bus, medium goods vehicle, heavy goods vehicle, special purpose vehicle or articulated vehicle in Hong Kong must be a holder of an identity card not subject to any condition of stay other than a limit of stay (sections 5 and 6);

- (e) empower the Commissioner for Transport (C for T) to amend, by order published in the Gazette, the Fourth Schedule to the principal regulations, in which countries or places are specified as countries or places the holders of whose driving certificates or licences are exempt from the requirement to take a driving test in Hong Kong (section 5);
- (f) provide for the requirement in respect of an application for renewal of a full driving licence through online communication system (section 6); and
- (g) include the Republic of Iceland in the Fourth Schedule to the principal regulations to permit the direct issue of Hong Kong full driving licence to holders of driving licences issued in the Republic of Iceland (section 7).

The Amendment Regulation will come into effect on 10 March 2008.

The Subcommittee

4. The House Committee agreed at its meeting on 18 January 2008 to form a subcommittee to study the Amendment Regulation. Chaired by Hon James TO, the Subcommittee held a meeting with the Administration to discuss the related matters. The membership list of the Subcommittee is at **Annex A**.

5. To allow sufficient time for members to scrutinize the Amendment Regulation, the Council passed a motion on 30 January 2008 to extend the scrutiny period of the Amendment Regulation to 5 March 2008.

Deliberations of the Subcommittee

Issue and renewal of full driving licences for commercial vehicles

6. The Subcommittee has examined the justification for setting out the requirement that an applicant for a full driving licence to drive a taxi, public light bus, private light bus, public bus, private bus, medium goods vehicle, heavy goods vehicle, special purpose vehicle or articulated vehicle (collectively known as commercial vehicles) in Hong Kong must be a holder of an identity card not subject to any condition of stay other than a limit of stay.

7. The Subcommittee notes that under the existing legislation, any person wishing to apply for a driving licence to drive a commercial vehicle is only required to fulfill the stipulated requirements under the principal regulations. So long as the applicant fulfills the stipulated requirements, Transport Department (TD) would be required to issue a relevant driving licence to the applicant. TD does not have the legal authority or the discretion to include additional checks/ requirements or to reject the application even if the applicant is not allowed to perform commercial driving duties for

employment purpose under the immigration law.

8. The Subcommittee notes that there is a previous case whereby a taxi driver with a full Hong Kong taxi driving licence was found to be a Mainland visitor holding an Exit-entry Permit for travelling to and from Hong Kong and Macau (commonly known as the two-way permit). He was subsequently arrested by the Immigration Department for breaching his condition of stay as he took up employment without the prior permission of the Director of Immigration. The Subcommittee agrees that this legal anomaly is undesirable and should be rectified.

9. Under the Amendment Regulation, the Administration proposes to amend Regulations 11 and 15 of the principal regulations to the effect that only—

- (a) holder of a Hong Kong permanent identity card; or
- (b) holder of an identity card (other than a permanent identity card) and is not subject to any condition of stay other than a limit of stay as defined in section 2(1) of the Immigration Ordinance (Cap. 115)

may be issued with a full driving licence for commercial vehicle or have such a licence renewed. This would effectively bar the occurrence of the unlawful situation whereby visitors holding a full driving licence for commercial vehicle can hire such vehicle to perform commercial driving duties in Hong Kong. The Subcommittee also notes that Regulation 10(1) is correspondingly amended to require the submission of the applicant's document of identity when applying for a full driving licence to drive a commercial vehicle in Hong Kong. The new definition of "document of identity" covers only permanent identity card and identity card (other than a permanent identity card) which is not subject to any condition of stay. The Subcommittee is also advised by the Administration that the exclusion of police warrant cards in the new definition of "document of identity" under the new Regulation 10(4) will not pose any difficulties to the Police because all Police officers are required to register for Hong Kong identity cards.

10. In order to enable non-Hong Kong residents who have a genuine need to apply for or renew a full driving licence to drive a commercial vehicle in Hong Kong, the Subcommittee notes that the Amendment Regulation will empower C for T to waive the relevant requirements if he considers it appropriate to do so.

Visitors holding a valid international driving permit or a valid domestic driving permit

11. The Subcommittee has examined whether visitors holding a valid international driving permit (IDP) or a valid domestic driving permit issued in a place outside Hong Kong, including the Mainland, can perform commercial driving duties in Hong Kong.

12. The Administration has advised that under Regulation 37(1)(a) of the principal regulations, a visitor to Hong Kong holding an IDP issued by a party to the Geneva Convention on Road Traffic 1949 (the 1949 Convention) may drive a motor vehicle of

any class specified in the IDP for a period of 12 months from the date of his last entry. Article 5 of the 1949 Convention imposes an express prohibition on hire and reward uses. Therefore, an IDP does not confer any right for its holder to perform commercial driving duties.

13. The Administration also points out that as the Mainland of China is not a party to the 1949 Convention, no IDPs are issued by the relevant Mainland authorities. By virtue of Regulation 37(1)(b) of the principal regulations, a visitor from the Mainland may drive in Hong Kong on the strength of his Mainland driving licence. Nevertheless, all visitors including Mainland visitors are subject to Regulation 2 of the Immigration Regulation (Cap. 115 sub. leg. A), i.e. subject to conditions of stay that they shall not take up any employment either paid or unpaid during his stay in Hong Kong. Hence, it is unlawful for visitors holding IDP or domestic driving permit to perform commercial driving duties during their stay in Hong Kong.

14. The Subcommittee has also examined whether a Hong Kong permanent resident who has been disqualified from driving for a certain period under the driving-offence points system can continue to drive in Hong Kong during such period if he holds a valid domestic driving permit issued in a place outside Hong Kong.

15. The Administration advises that in case a visitor presents an IDP or a domestic driving permit issued in a place outside Hong Kong when he commits a traffic offence which carries Driving-offence Points, the Police would check the visitor status of the driver by requesting him to produce his travel document as evidence of his right to drive in Hong Kong under Regulation 37 of the principal regulations. Where Driving-offence Points are concerned, a unique record will be created for each driver, irrespective of which types of driving licence (including IDP, domestic driving permit or driving licence issued by the Transport Department) he is holding. Further inquiries will also be made if irregularities are detected in the course of the examination.

Direct endorsement arrangement

16. The Subcommittee notes that under the existing direct endorsement arrangement, public/private light bus driving licences are directly granted to public/private bus driving licence holders without requiring them to sit for another driving test. Similar arrangement is applicable in the case of heavy goods vehicle licence holders so as to enable them to drive medium goods vehicle without further test. This is because driving licence holders of a larger passenger-carrying vehicle are recognized by C for T to have the competence to drive a similar vehicle of smaller carrying capacity. The Subcommittee notes that in order to clearly reflect the Administration's policy intention to maintain the existing direct endorsement arrangement for issuing driving licences to Hong Kong Permanent Identity Card holders and Non-permanent Identity Card holders who are not subject to any condition of stay, the Administration will move a motion to amend Regulation 11(2). The draft wording of the amendment is at **Annex B**.

Renewal of full driving licences

17. The Subcommittee notes that under the current arrangement, for authentication of his identity, a driving licence holder will need to include a copy of his identity document (ID) in submitting his application for renewal by post or make use of an e-certificate for on-line renewal of his driving licence.

18. The Subcommittee notes that to simplify the procedure for renewal of full driving licences and to promote postal and electronic applications, TD will in future send to each holder of a full driving licence a renewal application form before the expiry of the driving licence to remind him of the need for renewal. Each renewal application form will contain a unique personal identification number, which is linked to the number of the licence holder's ID recorded in TD's computer system. In submitting his renewal application by post, the licence holder will only need to fill in his ID number, while in the case of Internet application, he will need to provide his ID number and the personal identification number for authentication. The applicant will no longer need to provide a copy of his ID (for postal applications) or use e-certificate (for online applications).

Direct issue of full driving licences to holders of Icelandic driving licences

19. The Subcommittee notes that under the principal regulations, C for T may issue Hong Kong driving licences to holders of driving licences issued by countries/places listed in the Fourth Schedule to the principal regulations without requiring them to pass Hong Kong driving tests. This direct issue arrangement applies only to driving licences for private cars, light goods vehicles, motorcycles and motor tricycles. The Schedule was first drawn up in the 1970s to include countries where driving tests were known to be of a standard comparable with that in Hong Kong. Since then, requests for inclusion in the list made by other countries/places have been considered on a case-by-case basis by TD having regard to the standard of driving test in the country/place concerned.

20. The Administration points out that the Iceland authority, which has been recognizing driving licences issued by Hong Kong, has asked that the above direct issue arrangement be extended to Icelandic driving licence holders. Having examined the driving test standard in the Republic of Iceland, C for T is satisfied that it is comparable with that in Hong Kong. The Subcommittee agrees to the Administration's proposal to include the Republic of Iceland in the Fourth Schedule to the principal regulations as one of the countries eligible for direct issue of Hong Kong driving licences.

Empowering C for T to designate countries/places eligible for direct issue

21. The Road Traffic Ordinance (Cap. 374) provides that STH may make regulations to allow C for T to amend by order in the Gazette the list of countries/places eligible for the direct issue arrangement. Considering that C for T is the competent authority in deciding on the eligibility for direct issue arrangement,

which carries no policy implications, the Administration proposes to take the opportunity to amend the principal regulations such that C for T may amend the list of countries/places eligible for direct issue arrangement by order in the Gazette in future.

22. The Subcommittee is in support of the Amendment Regulation and the proposed amendments to be moved by the Administration.

Advice sought

23. The House Committee is invited to note the deliberations of the Subcommittee.

Council Business Division 1
Legislative Council Secretariat
19 February 2008

**Subcommittee on
Road Traffic (Driving Licences) (Amendment) Regulation 2008**

Membership list

Chairman	Hon James TO Kun-sun
Members	Hon Miriam LAU Kin-yee, GBS, JP Hon Andrew CHENG Kar-foo Hon LI Fung-ying, BBS, JP Hon Audrey EU Yuet-mee, SC, JP Hon CHEUNG Hok-ming, SBS, JP (Total: 6 Members)
Clerk	Mr Andy LAU
Legal Adviser	Mr KAU Kin-wah
Date	29 January 2008

Regulation 11(2) is repealed and the following substituted –

"(2) The Commissioner shall issue a full driving licence (other than a full driving licence to drive a taxi, public light bus, private light bus, public bus, private bus, medium goods vehicle, heavy goods vehicle, special purpose vehicle or articulated vehicle) to an applicant to drive a motor vehicle of the class to which his application relates if the applicant holds a valid full driving licence for a class of motor vehicle which the Commissioner accepts as evidence of his competence to drive a motor vehicle of the class to which his application relates.

(2A) The Commissioner shall issue a full driving licence to drive a taxi, public light bus, private light bus, public bus, private bus, medium goods vehicle, heavy goods vehicle, special purpose vehicle or articulated vehicle to an applicant for such a licence if -

- (a) the applicant -
 - (i) is the holder of a permanent identity card; or
 - (ii) is the holder of an identity card (other than a permanent identity card) and is not subject to any condition of stay other than a limit of stay as defined in section 2(1) of the Immigration Ordinance (Cap. 115); and
- (b) the applicant holds a valid full driving licence for a class of motor vehicle which the Commissioner accepts as evidence of his competence to drive a motor vehicle of the class to which his application relates.

(2B) The Commissioner may waive the requirement of paragraph (2A)(a) if he considers it appropriate to do so."