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**Panel on Transport and Panel on Financial Affairs**

**Report of the Joint Subcommittee on Issues Relating  
to Insurance Coverage for the Transport Sector**

**Purpose**

This paper reports on the deliberations of the Joint Subcommittee on Issues Relating to Insurance Coverage for the Transport Sector.

**Background**

2. According to section 4 of the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272), it shall not be lawful for any person to use, or to permit any other person to use, a motor vehicle on a road unless the vehicle concerned is covered by valid third party risks insurance. Offenders shall be liable to a fine of \$10,000 and to imprisonment for 12 months on conviction.

3. The Panel on Transport and Panel on Financial Services ("two Panels") held a joint meeting on 28 February 2011 to discuss with deputations and the Administration issues relating to the difficulties encountered by the transport sector in obtaining insurance coverage. A total of 27 deputations from the transport and insurance sectors attended the meeting. During the discussion, members and deputations pointed out that the difficulties encountered by the transport sector in obtaining insurance coverage were attributable to a number of factors and might involve policy, legal, operational as well as enforcement issues.

## **The Joint Subcommittee**

### Terms of reference

4. At the joint meeting on 18 March 2011, the two Panels agreed to appoint a joint subcommittee to follow up the relevant issues in a comprehensive and focused manner. The terms of reference of the Joint Subcommittee as endorsed by the two Panels are as follows -

"To study the issues relating to the difficulties encountered by the transport sector in obtaining insurance coverage, and where appropriate, to make recommendations on measures to tackle the problem."

### Areas of study

5. The House Committee approved the activation of the Joint Subcommittee in July 2011. The Joint Subcommittee comprises six members and its membership list is in **Appendix I**. Under the chairmanship of Hon Miriam LAU, the Joint Subcommittee, on the basis of its terms of reference, decided to focus its examination on the following areas -

- (a) identification and examination of the factors contributing to the difficulties encountered by the transport sector in obtaining insurance coverage;
- (b) exploration of possible measures to tackle the problems identified; and
- (c) monitoring the actions to be taken by relevant Government bureaux/departments in tackling the problems identified and assisting the transport trades in obtaining the necessary insurance coverage.

### Meetings held

6. Between October 2011 and May 2012, the Joint Subcommittee held 10 meetings, including nine meetings with the Administration at which the Hong Kong Federation of Insurers ("HKFI") participated. The Joint Subcommittee also met with representatives of the trades concerned at one of its meetings. A list of the organizations which have provided views to the Joint Subcommittee is in **Appendix II**.

## **Deliberations of the Joint Subcommittee**

### High insurance premium

7. The Joint Subcommittee takes note of the concern of the taxi and public light bus ("PLB") trades about the soaring insurance premium since 2009. Based on the statistics released by the Office of the Commissioner of Insurance ("OCI"), the average annual insurance premium per vehicle, including third party risk and comprehensive insurance, paid by owners of taxis, red mini-buses and green mini-buses respectively increased by 33.8%, 49.8% and 48.1% in 2009 when compared with that in 2008. According to some taxi and PLB trade leaders, the third party risk insurance premium could be as much as \$19,000 per annum for a taxi and \$50,000 per annum for a PLB, while the comprehensive insurance premium could be up to \$27,000 per annum for a taxi and \$60,000 per annum for a PLB.

8. According to the Administration and HKFI, taxi and PLB insurance business has been highly competitive. Coupled with huge claims payments, these two lines of business have recorded continuous underwriting loss since 2005 and 2006. This situation only began to improve in 2010. The increase in taxi and PLB premium rates (mainly in 2009 and 2010) was mainly caused by the heavy underwriting losses and the need to restore premium rates to a more reasonable and sustainable level. The insolvency of a taxi insurer in early 2009 has highlighted the fact that persistent unreasonable level of premiums that was not adequate to meet claims was not sustainable and could lead to insurer insolvency. Other insurers in the same business thus consider it necessary to tighten their underwriting policy and raise their premium rates.

9. HKFI has further advised members that the insurance sector has raised the transparency of premium rate for taxi and PLB insurance and made the pricing information available to the public. If the problems contributing to the underwriting loss of motor business could be tackled, there would be room for reduction in the taxi and PLB insurance premium.

10. Regarding some members' concern about whether insurance companies would make up the underwriting loss of taxi and PLB insurance business by raising the premium rates of general motor insurance, HKFI considers it impossible for the insurance sector to do so. HKFI has explained that under the principle of risk management, insurance companies usually charge a higher premium for taxis and PLBs as they are more prone to accidents.

11. The Joint Subcommittee shares the concern of the taxi and PLB trades that the limited number of insurers underwriting taxi and PLB insurance, and the concern of the insurance industry that payment of huge compensation in claims involving exaggeration of injuries and other illegal activities, such as insurance fraud and champerty, may be contributory factors leading to the rise in insurance premium.

#### Limited number of insurers

12. The Joint Subcommittee notes that currently, 60 insurers are underwriting motor insurance cover in Hong Kong. Out of them, only about 12 insurers are providing insurance cover for some 18 000 taxis and 4 000 PLBs. Some members share the concern of the taxi and PLB trades that the number of insurance companies willing to underwrite taxi and PLB insurance is too limited. The taxi and PLB trades have also pointed out that some insurance companies refused to underwrite taxis and PLBs which have been involved in claims before, or charge a very high premium upon renewal of the insurance policies. In view of the limited number of insurers underwriting taxi and PLB insurance, the Joint Subcommittee has discussed the feasibility of providing insurance coverage by a mutual insurance association, akin to a protection and indemnity ("P&I") club for the shipping sector. The Joint Subcommittee has sought information on the authorization for mutual insurance association operating business in Hong Kong.

13. According to the Administration, unlike a traditional insurance company, a mutual insurance association does not have a share capital and its members are both insurers and insured persons who will jointly bear claim risks and liabilities. Under the Insurance Companies Ordinance (Cap. 41) ("ICO"), a company is required to seek authorization from the Insurance Authority ("IA") to carry on insurance business in Hong Kong. Irrespective of whether it is an insurance company or a mutual insurance association, a company must satisfy IA, among others, that it can meet the insolvency margin requirement and will make adequate reinsurance arrangements for the risks that it will underwrite before it is authorized to carry on insurance business in Hong Kong. Based on IA's regulatory experience, an applicant's capital generally must not be less than \$200 million.

14. The Administration has explained that the determination of the amount of solvency margin is set out in section 10 of ICO. In general, the amount is the higher of one-fifth of an insurance company's relevant premium income and one-fifth of its relevant outstanding claims liabilities, subject to a minimum of \$20 million if the insurance company carries on motor vehicles insurance business. A company applying for authorization is required by IA to submit,

among others, a three-year business plan. The business plan shall incorporate, among others, a budgeted revenue account, a budgeted profit and loss account and a budgeted balance sheet under different scenarios in respect of each of the three years. The applicant is required to demonstrate to IA's satisfaction that it will be able to meet the solvency margin requirement at all times.

15. In considering whether an insurance company has made adequate reinsurance arrangements, the Administration has informed the Joint Subcommittee that IA will take into account, among others, factors including reinsurance management framework of the insurance company; type of reinsurance arrangements; maximum retention of the insurance company; spread of risks among reinsurance companies; and security of reinsurance companies.

16. Regarding the operation of P&I Clubs, the Administration has explained that at present, there are five P&I Clubs authorized by IA to carry on insurance business in Hong Kong. All these are international P&I Clubs with professional underwriters and claims executives. They are associations of ship owners, owned and controlled by the insured ship owners ("P & I Members"), operating on a non-profit making mutual basis. In other words, the P&I Members pool their financial resources together in order to meet the insured losses sustained by each individual P&I Member. The basic principle for the operation of a P&I Club is that the premiums ("calls") paid by the P&I Members in relation to any one year would be adequate to meet all the claims, reinsurance costs and administrative expenses of the club for that year. If there are shortfalls because of poor underwriting results, the P&I Members will be required to pay "additional or supplementary calls". On the other hand, if there are surpluses because of good underwriting results, the surpluses may be returned to the P&I Members, or transferred to a contingency reserve to meet potential losses for future years.

17. The Joint Subcommittee has been advised of the following major differences between P&I Clubs and traditional insurance companies -

- (a) for P&I Clubs, calls are collected in advance based on pre-determined rate. Supplementary calls may need to be collected when there are poor underwriting results and/or large claims. Thus, there is uncertainty on premium calls. For traditional insurance companies, premiums are agreed with the insured at the inception of policies;

- (b) the operating funds of P&I Clubs must be generated amongst the ship owner members and there is no access to equity markets. On the other hand, traditional insurance companies have access to equity markets;
- (c) for P&I Clubs, ship owner members are jointly and severally responsible for any unsettled claims liabilities and hence there is an uncertainty for other members to pay additional monies should a member fail to meet its obligations. There are no such liabilities for the insured who purchase insurance policies from traditional insurance companies;
- (d) the ultimate control of a P&I Club is in the hands of the ship owner members, whereas the ultimate control of a traditional insurance company is in the hands of its shareholders;
- (e) P&I Clubs provide comprehensive liability cover to meet ship owners' operational needs, whereas traditional insurance companies might not provide cover as comprehensive as P&I Clubs, as there could be exclusions for different types of policies or different insured companies; and
- (f) P&I Clubs provide various free services to their ship owner members, including information on loss prevention measures, legal advice, updated information on port regulations, etc. Traditional insurance companies normally do not provide such services to the insured ship owners.

18. The Joint Subcommittee notes the opposition from 16 deputations of the taxi trade against providing P&I insurance for the transport sector on a mutual basis.

#### Exaggeration of injuries

19. The Joint Subcommittee is concerned that the exaggerating of injuries sustained during traffic accidents and abuse in the issuance of sick leave certificate may lead to unnecessary payment of compensation, hence a rise in insurance premium. Members are particularly concerned about the handling of traffic accident victims with prolonged recovery after injuries.

20. According to the Hospital Authority ("HA"), sick leave certificate is an important document issued by registered medical practitioners as part of their professional services. Doctors are expected to exercise care in issuing certificates and similar documents as prescribed in the Code of Professional Conduct published by the Medical Council of Hong Kong. Based on the advice from the Medical Council, HA has promulgated the General Guidelines for Issuing Medical Certification for Sick Leave. The Guidelines provide guidance to doctors employed by HA that sick leave should be granted only if the medical practitioner is fully convinced that based on his professional judgement, medical records and patient's prevailing condition that the patient is unfit for work on account of his sickness. Any doctor who in his professional capacity gives any certificate for sick leave or similar documents containing statements which are untrue, misleading or otherwise improper would render himself liable to professional disciplinary proceedings.

21. On the issue of prolonged recovery, HA has advised the Joint Subcommittee that in general, patients with unsatisfactory progress in recovery will be managed by clinical teams upon consultation with senior or experienced clinical staff within the team. In assessing the recovery status of patients, doctors in public hospitals take into account a number of factors, such as the nature and types of injury, the severity and relevant treatment given and the individual conditions of the patients. HA does not have protocols or guidelines specific for traffic accident injury, and the management for prolonged recovery is based on clinical and professional judgement.

22. The Joint Subcommittee notes from HA that in February 2011, the United Kingdom ("UK") Government called for a major review of the sickness absence system in order to help combat the 140 million days loss to sick leave each year. The review "Health at Work - an independent review of sickness absence" was published in November 2011. The review recommends, among others, the setting up of a new Independent Assessment Service ("IAS") by the UK Government. IAS provides an in-depth assessment of an individual's physical and/or mental function, and advice on how an individual taking sickness absence could be supported to return to work.

23. To address the problem of prolonged sickness after injuries, the Joint Subcommittee has invited the Secretary for Food and Health and the Secretary for Labour and Welfare to discuss the feasibility of introducing IAS in Hong Kong for individuals with persistent sickness absence. However, the two Secretaries have declined the invitation on the ground that the issue is outside their policy remit. In this connection, the Joint Subcommittee is of the view that the Administration should study the feasibility of introducing IAS in Hong Kong.

24. To tackle the problem of exaggeration of injuries and abuse in the issuance of sick leave certificate, Hon CHAN Kin-por has suggested that -

- (a) an independent medical review system should be jointly established by HA and the insurance sector;
- (b) a central reporting mechanism should be implemented by HA to receive complaints relating to exaggeration of injuries from insurance companies; and
- (c) consideration should be given to the introduction of "a fit note system" (i.e. replacement of the conventional sickness certificate with a new medical certificate called "the fit note") as implemented in UK.

25. Regarding the suggestion of the joint establishment of an independent medical review system, HA has pointed out the operational difficulties, for example, the privacy concern and impact on doctor-patient relationship, in implementing a central reporting mechanism to handle cases suspected of exaggerating injuries. In this regard, it is necessary to seek the advice of the Medical Council of Hong Kong on how a doctor should handle information received from a third party alleging that a patient has been exaggerating his injuries.

#### Insurance fraud and champerty

26. The Joint Subcommittee is concerned that the undesirable trend of insurance fraud may lead to the rise in premium for taxis and PLBs. Members have pointed out that activities of recovery agents have become more rampant in recent years, and these agents abet the injured in traffic accidents to exaggerate the degree of injuries sustained so as to claim a higher amount of compensation. As a result of an increase in the amount of compensation payout, insurance companies have also increased the insurance premiums. The Joint Subcommittee has examined possible measures to tackle the problems of insurance fraud and champerty.

*Channel for reporting suspected fraudulent insurance claims*

27. The Joint Subcommittee shares the concern of the transport sector and the insurance industry the lack of effective channel for them to report to the Police suspected illegal activities in relation to claims arising from traffic accidents, e.g. insurance fraud, exaggeration of claims and champerty. The taxi and PLB trades have also requested the Police to step up its enforcement actions against such illegal activities, so that taxi and PLB owners do not need to bear excessive insurance premium arising from a higher amount of unnecessary compensation payment.

28. The Joint Subcommittee notes from the Administration that several jurisdictions including Canada, Australia, UK and the United States ("US") provide insurance fraud hotlines for the public to report any suspected fraudulent activities. In London, there is an Insurance Fraud Enforcement Department under the London Police's Economic Crime Directorate dedicated to combating insurance fraud. Members have asked the Police to consider providing an effective channel for reporting traffic accident-related insurance frauds and setting up a dedicated team to deal with the matter.

29. Having considered the views of members, the Administration has advised the Joint Subcommittee that the Police has put in place a dedicated reporting system for the insurance sector in February 2012, whereby the Commercial Crime Bureau consolidates and coordinates reports on traffic accident-related insurance frauds referred by insurance companies through HKFI. For other suspected insurance-related fraud, members of the public and insurance companies can make reports directly to the nearest police stations or in writing with a copy to the Commercial Crime Bureau for monitoring the investigation progress, or a hotline of the Crime Wing Information Centre.

30. The Joint Subcommittee notes that the Police maintains close communication with HKFI on matters relating to traffic accident-related insurance fraud. So far, the Police has not received from the insurance sector any referral of suspected fraud cases since the implementation of its dedicated reporting system in February 2012. The Police considers that the preliminary screening of suspected insurance fraud performed by HKFI before referral would facilitate the Police's investigation.

31. On the education and publicity efforts, the Joint Subcommittee notes that the Police has conducted a seminar on motor insurance fraud for the insurance sector and transport sector on 8 February and 28 February 2012 respectively. The Police will conduct another seminar for the insurance sector in June 2012. The

Police has launched a series of promotion and education programmes on fraud prevention throughout the year. A television series on fraud cases including insurance fraud will be broadcasted through the "Police Magazine" in mid-July 2012.

32. Regarding the possible measures to detect insurance fraud, the Joint Subcommittee has been advised that in UK, the insurance industry has funded a national insurance fraud register, which enables insurers to share information on known cases of fraud and facilitate insurers to identify any claimants who fail to declare previous fraudulent insurance claims. Members also note that HKFI is exploring the idea of setting up a data-sharing mechanism for fraud prevention and detection. Given that the mechanism would be a major information infrastructure with legal, financial, commercial and privacy implications, HKFI considers it necessary to proceed with utmost caution and discuss thoroughly among its member companies. In particular, HKFI considers that issues relating to personal data privacy of the individuals concerned would need to be addressed before the proposal could be taken forward. HKFI will continue its deliberations on the proposed mechanism.

33. The Joint Subcommittee has asked HKFI to make reference to the UK experience and the practice of the Commercial Credit Reference Agency in Hong Kong in addressing the issue of personal data privacy when considering the setting up of insurance fraud detection mechanism.

#### *Medical-related measures*

34. On the medical front, the Joint Subcommittee has been advised that in the Province of Ontario, Canada, a number of automobile insurance fraud cases are linked to medical clinics that provide health care services to automobile accident victims. There were past incidents where clinics recommended certain treatments for exaggerated or non-existent injuries so as to receive payment from insurers. The Ontario authorities are considering whether it would be appropriate to introduce a licensing and/or regulatory regime for these clinics. Given the complexity of the concept and that more analysis and consideration would be required, no decision has been made.

35. The Joint Subcommittee has also been advised that in Singapore, the insurance and medical sectors are examining the feasibility of designating medical specialists who can diagnose non-hospitalization injuries (such as whiplash) and assess such claims. Their primary concern is that these injuries are difficult to diagnose and yet easy to be faked due to their subjective symptomatic nature. Having designated medical specialist might lead to better diagnosis and

assessment of injuries. On the other hand, it is uncertain whether having designated medical specialists would actually make a significant diagnosis of whiplash cases or screening out fraudulent claims. In Hong Kong, some insurance companies may require claimants to attend medical examinations, which are paid by the insurance companies, by dedicated doctors or at public clinics, particularly when there are severe injuries or extended sick leave.

#### *Surveillance by insurance companies*

36. As regards surveillance by insurance companies, the Administration has informed the Joint Subcommittee that in US, some insurance companies develop specific training programmes for their claims professionals and establish red flags processes to help them identify what may be an unusual claim. Some of them also employ a panel of medical professionals to assess dubious claims. In Australia, some insurance companies use a combination of factual and surveillance investigations to identify fraudulent activities. Similarly, in Hong Kong, some insurance companies have internal procedures to identify suspicious claims and investigate possible fraudulent claims.

#### *Monitoring of Traffic Accident Victims Assistance*

37. The Joint Subcommittee and some deputations from the taxi and PLB trades are concerned about suspected fraudulent claims of Traffic Accident Victims Assistance ("TAVA"). Members have pointed out that as the financial assistance offered under the TAVA Scheme is non-means tested and does not take into account the element of fault leading to the traffic accident, this may give law-breakers opportunities to obtain TAVA by deception. Some applicants for TAVA may provide false information to the Social Welfare Department ("SWD"), which administers the Scheme, after obtaining sick leave certificates. Moreover, the "no fault" assistance may inadvertently give rise to careless driving on the road, resulting in more traffic accidents and hence compensation payments. The Joint Subcommittee has called on the Administration to strengthen the monitoring of TAVA applications.

38. According to the Administration, the TAVA Scheme, established under the Traffic Accident Victims (Assistance Fund) Ordinance (Cap. 229) ("the Ordinance"), aims to provide speedy financial assistance to injured victims or kin of deceased victims as a result of road traffic accidents on a non-means-tested basis, regardless of the element of fault leading to the occurrence of the accident. Eligibility for assistance under the TAVA Scheme is subject to the following criteria being met -

- (a) the accident is a traffic accident as defined under the Ordinance and has been reported to the Police;
- (b) the victim died from the accident, or the injury sustained by the victim gave rise to at least three days' hospitalization or sick leave as certified by a registered medical practitioner;
- (c) the application is made within six months after the date of the accident; and
- (d) the victim is a person having the right to remain in Hong Kong or being permitted to remain in Hong Kong under the Immigration Ordinance (Cap. 115), and he is not in contravention of a limit of stay, if any, in force against him at the time of the accident.

39. The Administration has explained that SWD processes and considers each application based on the eligibility criteria set out in paragraph 38 above, including verifying with the relevant departments the information and documents submitted by the applicant, in order to prevent fraudulent claims and ensure that the grants could duly help those with genuine needs. When processing the application, SWD maintains close liaison with the Police, HA and the Department of Health ("DH"), with a view to vetting suspicious applications in detail, such as cases where applicants have withheld information, or where applicants have made repeated claims within a short period of time. Depending on the circumstances, SWD would pass the medical reports provided by the applicants to HA/DH for re-assessment, and also refer suspected fraudulent cases to the Police for further investigation and follow-up action. In addition, SWD provides a standard report form on fraudulent claims, which is uploaded onto its website, to facilitate members of the public to report suspected fraudulent cases. When SWD receives such a report and finds that any person has provided inaccurate information in an attempt to deceive TAVA payments, the case will be referred to the Police for investigation and follow-up.

40. The Administration has informed the Joint Subcommittee that during the five years between 2007-2008 and 2011-2012, SWD received a total of 43 557 TAVA applications with a total assistance payment of about \$890 million. In that period, 108 persons were found to have made fraudulent claims, involving an amount of about \$2.1 million. All these 108 persons were prosecuted and 106 of them were subsequently convicted, with penalty ranging from 80 hours of community service to six months' imprisonment. The remaining two prosecuted cases are pending court decision.

41. The Administration has stressed that all along the Police and SWD stand on guard against possible fraudulent claims and would take action against those suspected cases. For instance, having observed a number of traffic accidents of similar nature between August and December 2009, the Police and SWD made joint investigation into these cases and conducted the "Operation Blue Day" in November 2010, which eventually crushed a syndicate that fabricated car accidents with used dilapidated vehicles for deception purpose. This operation served as a deterrent against fraudulent claims.

42. The Joint Subcommittee notes that TAVA applicants have to provide personal information including their identity card number for assistance claims. Relevant essential information of each applicant will be kept in SWD's Computerized Social Security System ("CSSS"). Caseworkers will be alerted by CSSS when they come across applications made by previous applicants. SWD is developing CSSS-II which is scheduled for implementation in the second half of 2013. The Joint Subcommittee has suggested that additional information of the traffic accidents relating to TAVA applicants, such as the name of vehicle owner and driver and the vehicle registration mark, should be kept in the new system to facilitate the necessary analysis and fraud investigation. The Administration has agreed to consider the feasibility of capturing additional information of the traffic accidents relating to TAVA applications in CSSS-II.

43. The Joint Subcommittee is of the view that data sharing between SWD and HKFI could help deter and prevent the making of fraudulent claims. In this regard, the Joint Subcommittee notes that HKFI is represented in the TAVA Advisory Committee of SWD. The Joint Subcommittee has urged HKFI to refer information on suspected fraud cases identified to SWD and the Police for follow-up. The Joint Subcommittee has also urged SWD to vigorously monitor repeated claim cases.

*Right of aided person to select lawyer under the Legal Aid Ordinance*

44. The Joint Subcommittee notes the HKFI's concern that the right of an aided person to select his own lawyer under the Legal Aid Ordinance (Cap. 91) ("LAO") in legal aid cases relating to traffic accidents may indirectly give rise to the activity of champerty. To encourage the public to seek proper legal advice when pursuing their claims for personal injuries, HKFI has suggested that the aided person should only be allowed to choose his own lawyer whose name is on the Legal Aid Panel ("panel"). Members have raised query as to whether the Legal Aid Department ("LAD") would consider assigning cases to lawyers on the panel by rotation.

45. The Administration has explained that section 13 of LAO provides that where a legal aid certificate is granted, the Director of Legal Aid may act for the aided person through legal aid counsel or assign any lawyers in private practice who are on the panel selected by either the aided person if he so desires, or the Director. When distributing legal aid work to lawyers in private practice, irrespective of the types of cases involved, LAD will adhere to the fundamental principle that the aided person's interest is of paramount importance. When an aided person decides to nominate his own lawyer, LAD takes the view that the effect of section 13 of LAO is such that the aided person's nomination should be given due weight and should not be rejected unless there are compelling reasons to do so. In the absence of any compelling reasons, LAD is of the view that it does not have any valid ground under the existing legal framework to decline or question the nomination of the aided person. Similarly, unless there is evidence to the contrary, it is improper for LAD and would be a slur on the character and professional integrity of the nominated lawyer for LAD to enquire if the nomination is prompted by some kind of questionable conduct on the part of the lawyer concerned. LAD has its own mechanism to evaluate the performance of lawyers and will include the name of a nominated lawyer in a record of unsatisfactory performance if they are not satisfied with the performance and/or conduct of a nominated lawyer on the handling of legal aid cases. If a lawyer is included in the record of unsatisfactory performance, further assignment of cases to him must be endorsed by a directorate officer of LAD.

46. The Joint Subcommittee has suggested that LAD should consider adopting a rotation system in order to prevent aided persons entering into private agreements with the panel lawyers or non-panel lawyers and to provide fairness in the allocation of legal aid cases to lawyers on the panel.

47. The Joint Subcommittee notes that having regard to recent public concern about possible champerty practice in certain legal aid cases, LAD is considering the suggestion of putting in place a "declaration system" to ensure that the aided person's choice of lawyers has not been affected by any improper conduct on the part of the lawyers nominated. The Legal Aid Services Council will be consulted before any "declaration system" is put in place.

#### Making of false statements in legal proceedings of civil claims arising from traffic accidents

48. The Joint Subcommittee is concerned that during legal proceedings of civil claims arising from traffic accidents, there seems to be no follow-up action in the event of the litigants making false statements e.g. making false or exaggerated claims. Information is sought on how the matter will be dealt with.

49. According to the Administration, if any person makes a false statement in any judicial proceedings, the person may be guilty of the offence of perjury under section 31 of the Crimes Ordinance (Cap. 200) and shall be liable on conviction to imprisonment for seven years. Under Order 41A, rule 9 of the Rules of the High Court (Cap. 4A) or the equivalent provisions in the Rules of District Court (Cap. 336H), the making of a false statement in a document which is verified by "a statement of truth" may constitute civil contempt of court. Besides, a breach of a court order or acts amounting to failure to give proper discovery of documents under Order 24, rule 16(2) of the Rules of the High Court (Cap. 4A) or true and frank disclosure may also constitute civil contempt of court and the persons concerned may be pursued in accordance with Order 52 of the Rules of the High Court or Order 52 of the Rules of District Court.

50. The Administration has explained that persons aggrieved in any legal proceedings may apply to the court asking the court to impose penalty on any person who has committed civil contempt of court. In legal proceedings where there is a suspicion of any person making a false statement, the judge may not necessarily handle the allegation or make a referral of the matter due to different reasons. One reason is that a judge in civil proceedings makes findings of fact on a balance of probabilities. The mere fact that the judge accepts the evidence of one witness does not suggest that the other witnesses have made any false statement. If the aggrieved person has reasonable grounds to suspect that any person has made a false statement thus committing an offence, that person may make a complaint to the Police. The relevant law enforcement department will conduct further investigation. If necessary, the Department of Justice will provide advice in relation to the relevant investigation. If there is sufficient evidence to support the complaint, the Department of Justice will prosecute the offender for appropriate offences. The Department of Justice is willing to conduct briefings for the insurance sector on the mechanism, if necessary.

#### No claim discount

51. The Joint Subcommittee notes the concern of the taxi and PLB trades about the unfair deduction of no claim discount ("NCD") by insurance companies where taxi or PLB drivers are eventually found not at fault in traffic accidents. The taxi and PLB trades have pointed out that in the past, depending on the claim records, insurance companies would offer staggered levels of NCD on insurance premiums to taxi and PLB owners, but at present, insurance companies only offer a single discounted premium level for all owners who are entitled to NCD. The trades consider that the present practice has in effect reduced the amount of NCD previously enjoyed by the taxi and PLB owners.

52. According to the Administration and HKFI, to encourage good driving behaviour, it is a general practice of insurers to give a discount on the premium upon renewal of policies. Depending on the type of vehicles, NCD enjoyed by commercial vehicles can be as high as 30%. However, if a policyholder has made any claims during the policy period, the NCD would be reduced progressively. NCD is not no fault discount and will only be granted where there are "no claims". Hence, in general, it will only be unaffected where no claim arises or where the insurer can successfully recover all or most of the claims it has paid. To improve and standardize the market practice for handling NCD, motor insurers reached a common understanding on reinstating NCD for taxis and PLBs in November 2010. Issued on 16 November 2010, the "Market Understanding on Reinstating No Claim Discount for Taxi and Public Light Bus" ("the Market Understanding") in **Appendix III** clarifies the circumstances under which NCD could be reinstated. In general, NCD can be reinstated if the insured or insured driver is not at fault in an accident and the insurer succeeds in recovering the claims payment, or the insured has agreed to relinquish his right on claims on the accident and signed a declaration letter to that effect. To be eligible for reinstating NCD, the insured must maintain the motor insurance with the same insurer throughout the material time.

53. The Joint Subcommittee notes the view of the taxi and PLB trades that the Market Understanding is not useful. Some members have pointed out that it is stated in the Market Understanding that the reinstatement of NCD represents concessions granted by the insurer concerned on an ex-gratia basis and hence, each case is to be handled based on individual merits. The insurer reserves the right to refuse reinstatement if circumstances warrant. HKFI has indicated that the insurance sector is willing to discuss matters relating to NCD with the taxi and PLB trades again.

54. The Joint Subcommittee also notes the concern of the PLB's trade that when a PLB has been involved in a traffic accident, the NCD of the other PLBs on the same fleet would be reduced. HKFI has informed members that a meeting was conducted on 11 April 2012 with the key insurance players writing taxi and PLB insurance. All the insurance companies attending the meeting confirmed that they would not deduct NCD for the whole fleet of vehicles if only one of them whose driver is ultimately found at fault in a traffic accident. Other than NCD, a further reduction in the premium for a fleet of vehicles called "fleet discount" may be provided by some insurers. Such offer should be distinguished from NCD and may be affected if one of the vehicles in the fleet is involved in a traffic accident.

Private settlement and late reporting of traffic accident

55. The Joint Subcommittee takes note of the taxi and PLB trades' concern that some insurance companies refuse to process claims for accident in which a reconciliation agreement has been signed by a taxi or PLB driver with the other party involved in the traffic accident. As a result, the taxi or PLB owner may have to make compensation payment for the accident on his own. The taxi and PLB trades consider the arrangement unfair and request the insurance trade to provide guidelines on the signing of reconciliation agreements for compliance by taxi and PLB drivers. The guidelines could also serve as reference for insurance companies in processing claims. In addition, the taxi and PLB trades are concerned that insurance companies decline to process late-reported traffic accident claims.

56. The Administration and HKFI have explained that motor insurance policies in general contain a provision requiring policyholders to report immediately any accidents in which they are involved, so that insurers can appoint professional loss adjustors to investigate the accidents, assess the liabilities and extent of damages and reduce possible losses. Most insurance policies also have a condition requiring policyholders not to enter into any private settlement agreement with the other party of an accident without obtaining the insurer's prior consent. If a policyholder breaches the above policy conditions, his claim could be declined by the insurer.

57. HKFI has advised the Joint Subcommittee that the insurance sector is not opposed to the private settlement of traffic accident where there is no personal injury and the damage of vehicle is minor, but has strong reservations about regularizing such a mutual agreement. The insurance sector is worried that drivers would abuse the use of private agreements in traffic accidents, thus materially impairing the interests of both the insured and the insurer. HKFI has pointed out that it is difficult for an insurance company to handle a traffic accident claim where a private settlement agreement has been made, particularly if the driver involved is not the vehicle owner. If one of the parties concerned decides to lodge a claim some time, say one year, after the accident, it would be difficult for the insurer to gather evidence for the case. Late reporting of an accident would also foster fraudulent claims. HKFI has stressed that insurance companies are required by the law to handle personal injury claims arising from traffic accidents, notwithstanding that private settlement agreements have been made between drivers. However, the insurer would reserve its right of recovery in such circumstances. In the view of HKFI, even minor damages to the vehicle should be reported to the insurers. Indeed, there has not been a successful case where an insurance company recovers claims payment from its client.

58. Some members have pointed out the concern of taxi and PLB trades that the reporting of damage of vehicles involved in traffic accidents will result in the deduction in NCD. Noting the specification in the private settlement agreement that the settlement is merely on the damage of the vehicle without admission of liability on both parties involved in the traffic accident, and hence there is no prejudice against the interests of the insurer, some members have queried whether such an agreement would be acknowledged by the insurance sector. There is a suggestion that the insured should still report to his insurer the occurrence of the traffic accident where a private settlement agreement has been made, and the NCD deducted will be reinstated should there be no subsequent claims made to the insurer.

59. HKFI has emphasized that insurance companies do not oppose the engagement of private settlement agreement if there were no personal injury involved in the traffic accidents and no prejudice against their interests. Nevertheless, having regard to its legal advice, HKFI does not encourage the engagement of private settlement agreements.

60. The Administration has advised the Joint Subcommittee that OCI will explore with taxi and PLB underwriters, and if necessary the taxi and PLB trades, the feasible options to address the issue of private settlement agreement where there is only damage to vehicle and no third party involved in the traffic accident, on the premise that the insured vehicle owner reports to his insurer the occurrence of the accident.

61. Regarding late reporting of traffic accidents, HKFI has explained that according to the terms and conditions of motor insurance policy, policyholders should notify their insurers of an occurrence of traffic accident which may give rise to a claim either on an immediate basis or within a required period of time after the occurrence. Although the period of 14 days is a common practice in the insurance trade, some insurance companies do not even specify the expiry of the period for policyholders to report any accidents in which they are involved. Late-reported cases would not be covered. However, in practice, depending on individual merits of the case, insurance companies may waive such condition subject to reasonable justification. Policyholders are recommended to contact their insurers if they have any enquiries.

62. Hon Miriam LAU has pointed out that in the event of a traffic accident involving a rentee-driver, the policyholder, usually the vehicle owner, is not always notified until quite some time after the accident. In accordance with the Motor Vehicles Insurance (Third Party Risks) Ordinance, insurance companies

have to take up a personal injury claim even when there is late reporting of the accident, but the insurer reserved its right to later deny indemnity and recover from a policyholder any loss or payment of a claim. Hon Miriam LAU calls on the insurance sector to consider whether such right could be waived in the event of a traffic accident involving a rentee-driver.

Notification of the vehicle owner in the event of a traffic accident involving a rentee-driver

63. The Joint Subcommittee has raised concern that in the event of a traffic accident involving a rentee-driver, the taxi or PLB owner may not know of the accident after quite some time. The Joint Subcommittee has enquired whether the Police could provide the owner of a vehicle (including taxi/PLB) with a copy of the Notice of Intended Prosecution ("NIP") at the same time when it is issued to a rentee-driver who is involved in the traffic accident.

64. According to the Administration, section 68 of the Road Traffic Ordinance (Cap. 374) ("RTO") provides, among others, that a person driving a motor vehicle prosecuted for an offence under section 36, 36A, 37, 38 or 41 shall not be convicted of such an offence unless he is served an NIP within a specified period. There is currently no requirement to serve an NIP to the vehicle owner if he is not the driver and hence is not being prosecuted for the driving offence concerned. Therefore, the Police is not empowered under RTO to provide a copy of NIP to the vehicle owner if he is not involved in the traffic accident. Besides, there is personal data privacy concern having regard to the Personal Data (Privacy) Ordinance (Cap. 486).

65. Some members are of the view that vehicle owners would be put in an unfair position of bearing the liabilities for late-reported accidents if they are not even aware of the incidents. In the event that the driver of a vehicle involved in a traffic offence is not the vehicle owner himself, the Police should also be required to serve a copy of NIP to or to notify the vehicle owner. At the Joint Subcommittee's request, the Administration has undertaken to study members' suggestion of issuing a copy of NIP to or notifying the vehicle owner in the event that the person driving his vehicle is alleged to have committed a traffic offence.

Other insurance policy terms and conditions

*Drink or drug driving*

66. Some members have pointed out the transport sector's concern that taxi or PLB owners have little or no control over their drivers' behaviours. However,

drivers' behaviours could put taxi or PLB owners at risk as the owner may be ultimately responsible for the poor driving behaviour of the driver in terms of legal liability and insurance cover. The Joint Subcommittee has sought clarification on the matter.

67. HKFI has advised the Joint Subcommittee that drink or drug driving generally falls outside the coverage of the insurance policy, and may result in a denial of insurance claim. According to its legal advice, if a taxi or PLB owner only rents the vehicle to a driver for use in connection with the driver's own business, the owner is generally not liable for the driver's drink or drug driving, and hence not liable for any third party claims so arising. In the event of a traffic accident involving third party personal injury, the insurer would process any related claims as required by the Motor Vehicles Insurance (Third Party Risks) Ordinance. However, the insurer would reserve its right of recovery against the driver. In the case where the driver is employed by the vehicle owner, the owner would be responsible for any legal liability that may arise from the driver's driving behaviour. The insurance sector, however, has no consensus on how to exercise its right of recovery for drink/drug driving cases. Currently, each and every case will be considered according to actual circumstances and its own merits.

68. Some members of the Joint Subcommittee have suggested that the insurance sector should provide the taxi and PLB trades with guidelines on how to effectively manage drivers' driving behaviour.

*Gale or storm signal no. 8 or above*

69. The Joint Subcommittee has sought clarification on whether taxis or PLBs running on the roads are covered by the insurance policy when typhoon signal no. 8 or above is hoisted. According to HKFI, motor insurance policies (including those for commercial vehicles) generally do not contain a clause to exclude coverage when gale or storm signal no. 8 or above is hoisted. Regardless of whether gale or storm signal no. 8 or above is hoisted, policyholders are required to observe the policy condition that "the insured shall take all reasonable steps to safeguard the insured motor vehicle from loss or damage". Otherwise, the policyholder is running the risk of being considered a breach of policy condition. The insurer may decline a claim if the policyholder has not taken all reasonable steps to safeguard the insured motor vehicle from loss or damage.

70. Some members have requested HKFI to give assurance to the transport sector that taxi and PLBs which are driven for business purposes in adverse

weather such as typhoon no. 8 are covered provided that reasonable care had been taken by the policyholder in normal circumstances to protect the insured vehicle.

#### High-risk occupation in insurance policy

71. The Joint Subcommittee notes the concern of the taxi and PLB trades that their drivers are classified as engaging in high-risk occupation, and some insurance companies refuse to underwrite insurance for high risk jobs in the transport sector or charge a higher premium.

72. HKFI has clarified that there is no common definition of high-risk occupation in motor insurance policies. Each insurance company would, taking into account the market conditions and the company's own underwriting guidelines, decide to underwrite employees' compensation insurance for different industries. Insurance companies determine premium rates on the basis of risk of underwriting the policies, which are mainly the rate of accident and the amount of claim. Underwriting losses in the business of employee's compensation insurance has been registered for many years. Coupled with huge insurance payouts for work injuries and insurance fraud conspiracy, insurance companies underwriting employees' compensation insurance have to adjust upwards the premium rate to a more reasonable and sustainable level.

73. According to HKFI, the Employees' Compensation Insurance Residual Scheme ("ECIRS") has been set up for the purpose of enabling employers, particularly those engaged in occupation of the "High Risk Groups", who encounter difficulties in taking out employees' compensation insurance. The ECIRS Bureau has drawn up a list of high-risk industries, for example, the scaffolding, cleaning, recycling and the transport/logistics industries. The ECIRS Bureau has appointed independent actuaries to determine the benchmark premium rates so as to facilitate the employers of these industries to take out insurance policies and estimate the premiums.

74. On whether ECIRS is applicable to motor insurance, HKFI has explained that ECIRS is rolled out to address public concern over the possible non-availability of employees' compensation insurance cover for certain high-risk industries. As for motor insurance, there is no lack of insurers in the market engaging in this kind of business but higher premium rates are charged for taxi and PLB trades.

Insurance coverage for cross-boundary transportation operators

75. The Joint Subcommittee notes the concern raised by the cross-boundary transport trade that the operators must take out relevant insurance policy for their vehicles in Hong Kong and the Mainland separately before they are permitted to operate. When a cross-boundary vehicle is involved in an accident in the Mainland, most of the injured Hong Kong people would choose to return to Hong Kong immediately for medical treatment and often file upon recovery their claims according to the legal proceedings of Hong Kong. As such, claims are made in Hong Kong, and the insurer in the Mainland may refuse to process the claims or make any compensation. At the same time, the insurer in Hong Kong may also refuse to give compensation as the traffic accident occurred in the Mainland. As a result, operators are unable to obtain any insurance coverage and would have to shoulder the liabilities. The cross-boundary transport trade consider that the Administration should assist the trade to take out insurance policy which could provide comprehensive coverage against traffic accidents in both Hong Kong and the Mainland. The Joint Subcommittee has explored the feasibility for the insurance sector to provide one insurance policy covering both Hong Kong and the Mainland.

76. OCI has explained that the issue of one insurance policy covering two places is very complex, given the different legal systems in Hong Kong and the Mainland. In Hong Kong, vehicle owners are required under the Motor Vehicles Insurance (Third Party Risks) Ordinance to take out relevant insurance cover, while vehicle owners have to comply with Mainland laws when driving in the Mainland. The cross-boundary transport operators will need to take out insurance policies under the respective requirements in the two places. To cater for the situation where traffic accidents occur in the Mainland and the claims are made in Hong Kong, an extra risk provision covering the situation could be added to the main policy. It is hoped that a one-stop service could be provided for the insured by insurance companies.

77. According to HKFI, at present, two insurance companies are providing three insurance policies respectively covering traffic accidents that occur in Hong Kong, traffic accidents that occur in the Mainland, and cases of traffic accident occur in the Mainland and claims are made in Hong Kong. Given the differences in the legal system and standards of law enforcement in the two places, the issues involved are complex. Nevertheless, HKFI is actively studying the feasibility of providing one insurance policy covering Hong Kong and the Mainland. HKFI has undertaken to discuss the subject with the relevant insurance authorities of the Mainland at their next meeting in the latter half of 2012. OCI has also undertaken

to raise the matter with the relevant Mainland authorities during their regular communication.

78. The Joint Subcommittee has urged the insurance sector to raise publicity on the new insurance product referred to in the above paragraph. Hon Miriam LAU considers it important that one insurance policy covering Hong Kong and the Mainland be provided in the longer term, given the proliferation of cross-boundary transport business.

#### Observations and recommendations

79. Having studied the various issues relating to the difficulties encountered by the transport trade in obtaining insurance coverage and the possible measures to tackle the problems, the Joint Subcommittee has come to a number of observations and recommendations.

#### *Observations*

80. The Joint Subcommittee notes the concern of the taxi and PLB trades about the high insurance premium charged by insurance companies which may be attributable to a number of factors. These include limited number of insurance companies underwriting taxi and PLB insurance, payment of huge compensation in claims involving exaggeration of injuries, insurance fraud and champerty activities. On the prevention and detection of insurance fraud, the Joint Subcommittee has the following observations -

- (a) the Police has put in place a dedicated reporting system for the insurance sector in February 2012, whereby the Commercial Crime Bureau consolidates and coordinates reports on traffic accident-related insurance frauds referred by insurance companies through HKFI. For other suspected insurance-related fraud, members of the public and insurance companies can make reports directly to the nearest police station or in writing with a copy to the Commercial Crime Bureau for monitoring the investigation progress, or a hotline of the Crime Wing Information Centre;
- (b) HKFI is exploring the idea of setting up a data-sharing mechanism for fraud prevention and detection;
- (c) on the medical front, some insurance companies in Hong Kong may require insurance claimants to attend medical examinations, which are paid by the insurance companies, by dedicated doctors or at

public clinics, particularly when there are severe injuries or extended sick leaves;

- (d) some insurance companies in Hong Kong have internal procedures to identify suspicious claims and investigate possible fraudulent claims;
- (e) to facilitate the necessary analysis and investigation into fraudulent claims of TAVA, SWD will consider the feasibility of capturing additional information of traffic accidents relating to TAVA applications, e.g. the name of vehicle owner and driver and the vehicle registration mark, in its is new system, i.e. CSSS-II; and
- (f) LAD is considering the suggestion of putting in place a "declaration system" to ensure that the aided person's choice of lawyers has not been affected by any improper conduct on the part of the lawyers nominated.

### *Recommendations*

81. The Joint Subcommittee has made the following recommendations -

- (a) the Administration should study the feasibility of introducing IAS in Hong Kong with a view to addressing the issue of prolong recovery of injuries and providing support to the injured to return to work;
- (b) to tackle the problem of exaggeration of injuries and abuse in the issuance of sick leave certificates, the Administration should, in collaboration with HA or any other relevant authority, study the feasibility of :
  - (i) establishing an independent medical review system jointly with the insurance sector;
  - (ii) implementing a central reporting mechanism to receive complaints relating to exaggeration of injuries from insurance companies; and
  - (iii) introducing "a fit note system" as a replacement of the conventional sickness certificate making reference to the UK experience;

- (c) the Administration should study the feasibility of issuing a copy of NIP to or other possible ways to notify the taxi or PLB owner in the event that the person driving his vehicle is alleged to have committed a traffic offence;
- (d) OCI should, in collaboration with HKFI/taxi and PLB underwriters, study the feasible options to address the issue of private settlement agreement signed between the driver involved in the traffic accident where there is only damage to the vehicle and no third party involved, on the premise that the insured taxi or PLB owner reports to his insurer the occurrence of the accident; and
- (e) to address the concern of the cross-boundary transport trade, OCI should, in collaboration with HKFI, study the feasibility of providing one insurance policy covering both Hong Kong and the Mainland.

**Advice sought**

82. Members are invited to note the deliberations of the Joint Subcommittee and consider its recommendations in paragraph 81 above.

Council Business Division 2  
Legislative Council Secretariat  
22 June 2012

**Panel on Transport and Panel on Financial Affairs**

**Joint Subcommittee on Issues Relating to  
Insurance Coverage for the Transport Sector**

**Membership list**

**Chairman** Hon Miriam LAU Kin-ye, GBS, JP

**Members** Hon James TO Kun-sun  
Hon CHEUNG Hok-ming, GBS, JP  
Hon Ronny TONG Ka-wah, SC  
Hon CHAN Kin-por, JP  
Hon IP Wai-ming, MH

(Total : 6 Members)

**Clerk** Mrs Sharon TONG

**Legal Adviser** Mr Kelvin LEE

**Panel on Transport and Panel on Financial Affairs**

**Joint Subcommittee on Issues Relating to  
Insurance Coverage for the Transport Sector**

A. Organizations which have made oral representation to the Joint Subcommittee

1. Hong Kong Kowloon Taxi & Lorry Owners' Association Ltd.
2. The Kowloon Taxi Owners Association Ltd.
3. Tai Wo Motors Ltd.
4. Hong Kong Container Tractor Owner Association Ltd.
5. Wai Yik H.K. & Kln. & N.T. Taxi Owners Association Ltd.
6. Hong Kong Guangdong Boundary Crossing Bus Association
7. Sun Hing Taxi Radio Service General Association
8. United Friendship Taxi Owners & Drivers Association Ltd.
9. Himwell Limited
10. Public Omnibus Operators Association Ltd.
11. China Hong Kong and Macau Boundary Crossing Bus Association Ltd.
12. Taxi Dealers & Owners Association Ltd.
13. Chung Shing Taxi Ltd.
14. The Hong Kong Federation of Insurers
15. Taxi Drivers and Operators Association Ltd.

16. G.M.B. Maxicab Operators General Association Ltd.
  17. The Hong Kong Federation of Insurers - Accident Insurance Association
  18. Lok Ma Chau China-Hong Kong Freight Association
- B. Organizations and individuals which/who have provided written submissions only
1. Taxi and P.L.B. Concern Group
  2. The Taxi Operations Association Ltd.
  3. Happy Taxi Operator's Association Ltd.
  4. H.K. & Kln. Radio Car Owners Association Ltd.
  5. Rights of Taxi (Si Hai) Telecommunication Centre Ltd.
  6. Taxi Association Ltd.
  7. N.T. Taxi Merchants Association Ltd.
  8. Lantau Taxi Association
  9. 新界的士聯會
  10. Fraternity Taxi Owners Association
  11. Wing Tai Car Owners & Drivers Association Ltd.
  12. 的士前線司機總會

**Market Understanding on Reinstating No Claim Discount (NCD) for  
Taxi and Public Light Bus**

**Introduction**

It is a general practice for taxi and public light bus insurers to give a progressive discount, i.e. No Claim Discount (NCD) to the renewal premium if the previous year's motor insurance policy has been claim-free. Given the nature of this discount, NCD will only be given when there is no claim made under the policy. It is important to note that NCD will not be allowed, irrespective of whether the insured/insured driver is at fault, once the insurer has been given a notice of accident in which:

- 1) An 'Own Damage' claim is being made;
- 2) 'Third Party Property Damage' is involved; or
- 3) 'Third Party Bodily Injury' is involved.

Despite the above general practice, there are occasionally disputes on the issue of reinstating NCD in respect of taxi and public light bus insurance policies. For the purpose of minimizing these disputes, this Market Understanding, as agreed by most taxi and public light bus insurers, is prepared to clarify the issue and set out the circumstances where NCD will be reinstated. To be eligible, the insured must maintain the motor insurance with the same insurer throughout the material time (i.e. from the date of accident to the date when the NCD is to be reinstated).

**1) In respect of 'Own Damage'**

- a) When the insurer receives a notice of accident with an 'Own Damage' claim made, the NCD will be affected accordingly.
- b) The NCD can be reinstated if the insured has eventually decided to relinquish the rights under the insurance policy in connection with the particular accident at issue by signing a declaration letter to that effect before the next insurance renewal.
- c) The taxi and public light bus insurer may also reinstate the NCD to the insured if:
  - i. the insured/insured driver is not at fault in the accident;
  - ii. the third party at fault is traceable; and
  - iii. the insurer succeeds in recovering the claim payment.

**2) In respect of 'Third Party Property Damage'**

- a) When the insurer receives a notice of accident involving 'Third Party Property Damage', the NCD will be affected accordingly.
- b) The NCD can be reinstated if the insured/insured driver has eventually decided to relinquish the rights under the insurance policy in connection with the particular

accident at issue by signing a declaration letter to that effect before the next insurance renewal.

- c) The taxi and public light bus insurer may also reinstate the NCD to the insured if:
  - i. the insurer is satisfied that the insured/insured driver is not at fault in the accident;
  - ii. the insurer takes over the defence of the claim; and
  - iii. the claim is concluded and the insurer needs not make any payment.

### **3) In respect of 'Third Party Bodily Injury'**

- a) When the insurer receives a notice of accident involving 'Third Party Bodily Injury', the NCD will be affected accordingly.
  
- b) The NCD may be reinstated if the insured/insured driver has eventually decided to relinquish the rights under the insurance policy in connection with the particular accident at issue by signing a declaration letter to that effect before the next insurance renewal. However the insurer must first be satisfied that:
  - i. the insured/insured driver is not at fault in the accident;
  - ii. the third party bodily injury sustained and the potential claim arising therefrom are slight; and
  - iii. the insured/insured driver will defend and pay the 'Third Party Bodily Injury' claim if found liable.

### **Conclusion**

It must be stressed that to be eligible for reinstating NCD, the insured must maintain the motor insurance with the same insurer throughout the material time. The reinstatement of NCD represents concessions granted by the insurer concerned on an ex-gratia basis and hence each case is to be handled based on individual merits; and the insurer reserves the right to refuse reinstatement if circumstances warrant.

#### *Note:*

*This Market Understanding is agreed by the following insurers:*

- 1) Bank of China Group Insurance Company Limited,*
- 2) China Taiping Insurance (Hong Kong) Company Limited,*
- 3) Dah Sing Insurance Company Limited,*
- 4) The Pacific Insurance Company Limited,*
- 5) Target Insurance Company Limited,*
- 6) Trinity General Insurance Company Limited, and*
- 7) Wing Lung Insurance Company Limited.*

*(as at 16 November 2010)*