

The Government of the Hong Kong Special Administrative Region

政府總部
運輸及房屋局
運輸科

香港添馬添美道 2 號
政府總部東翼



Transport and
Housing Bureau
Government Secretariat
Transport Branch

East Wing, Central Government Offices,
2 Tim Mei Avenue,
Tamar, Hong Kong

檔號 OUR REF.: THB(T)L 3/39/30
檔號 YOUR REF.: CB1/PL/TP

電話 Tel. No.: 3509 8200
傳真 Fax No.: 3904 1774

By Fax: 2978 7569

4 August 2014

Panel on Transport
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong
(Attn: Ms Sophie Lau)

Dear Ms Lau,

**Motion on “Use of smart phones by taxi drivers while driving”
passed by the Panel on Transport at the meeting on 28 February 2014**

Thank you for your letter of 3 March 2014 to the Secretary for Transport and Housing on the motion passed at the meeting on 28 February 2014. Our response is set out below.

On the suggestion to study the enactment of legislation to regulate the practice of using smart phones by taxi drivers while driving, the Police are collecting data regarding the number of mobile phones mounted on the dashboards of vehicles involved in traffic accidents with personal injuries. The Transport Department is also collecting overseas information regarding studies and practices to regulate the use of smart phones by drivers while driving. Further, the Road Safety Council has been invited to conduct a study on this subject. We will report the matter to the Panel on Transport once we are in the position to do so.

As for the suggestion to study the enactment of legislation against fare bargaining by taxi passengers, Members of the Panel may wish to refer to the reply by the Secretary for Transport and Housing to Part 3 of the Legislative Council oral question asked by the Hon. Kwok Wai-keung on taxi service at the sitting on 25 June 2014. A copy of the reply is at Annex for reference.

Yours sincerely,

(Ms Freda Chan)
for Secretary for Transport and Housing

c.c.

External

Commissioner for Transport (Attn: Mr Leung Tak-fai and Mr Albert Su)
(Fax No.: 2511 8942 and 2824 0433)

Commissioner of Police (Attn: Mr Patrick Pang) (Fax No.: 2200 4377)

Internal

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Press Releases

LCQ2: Measures to combat the offer of discounts on taxi fares

Following is a question by the Hon Kwok Wai-keung and a reply by the Secretary for Transport and Housing, Professor Anthony Cheung Bing-leung, at the Legislative Council meeting today (June 25):

Question:

Under section 40 of the Road Traffic (Public Service Vehicles) Regulations, any taxi driver who solicits business by offering a discount on taxi fare commits the offence of "soliciting". Recently, some associations of the taxi trade have complained to me that taxi-call service mobile applications (Apps) with the option "85" have become available lately, and all the taxi drivers registered under that option are willing to offer a fare discount of 15% to passengers. Such associations said that many taxi drivers took risks and used such kind of Apps to offer fare discounts to passengers in order to solicit business. As a result, the livelihood of drivers charging legal fares has been seriously affected. In this connection, will the Government inform this Council:

(1) whether it has examined if the developers who provide the aforesaid Apps for downloading have contravened the law; if the outcome of its examination is in the affirmative, whether it instituted any prosecution against the developers concerned and demanded the developers to remove those Apps from the platforms of web stores, in the past 12 months; if no prosecution has been instituted, how the Government curbs taxi drivers' soliciting business by offering fare discounts to passengers through such Apps;

(2) given that in reply to a question raised by a Member of this Council in November last year, the Government indicated that the Police were following up on whether any taxi drivers were using the Apps to offer fare discounts to passengers, of the details of the follow-up actions; whether police officers were deployed to disguise as taxi passengers in the past four months to call taxis by means of the Apps for the purpose of carrying out law enforcement operations to combat the offer of fare discounts by taxi drivers; if so, of the respective numbers of such law enforcement operations and taxi drivers who were prosecuted; and

(3) given that the existing legislation only prohibits taxi drivers from offering, on their own initiative, fare discounts to passengers to solicit business, whether the Government will conduct a study on enacting legislation to prohibit fare bargaining by passengers, in order to curb taxi drivers' offering fare discounts at the request of passengers?

Reply:

President,

The Government has all along been striving to assist the trade in maintaining quality taxi service. Taxi operation is regulated by the Road Traffic Ordinance and its subsidiary legislation. The Police combat any malpractices vigorously. The

Transport Department (TD) reminds the taxi trade to abide by the law through close communication with them. TD also disseminates information to passengers through different channels.

Members of the public can all along hire taxi service through calling taxi call stations. As smart phones and mobile applications (mobile apps) have been gaining popularity, the use of taxi-hailing mobile apps is becoming more common. This kind of mobile app brings convenience to passengers and is by nature no different from the conventional way of hiring taxi service through taxi call stations. While using taxi-hailing mobile apps solely for hiring taxi service is not illegal in itself, it is an offence for any person to use such mobile apps to solicit passengers by offering a fare discount. Whether an offender can be prosecuted would depend on whether there is concrete evidence.

The reply to the various parts of the Hon Kwok Wai-keung's question is as follows:

(1)&(2) According to the "soliciting" behaviour prescribed under regulation 40 of the Road Traffic (Public Service Vehicles) Regulations (the Regulations), any taxi driver or his/her representative who in any manner attracts or endeavours to attract any person in order to induce such person to make use of his/her vehicle without a reasonable excuse commits an offence. The driver or his/her representative is liable to a maximum fine of \$10,000 and imprisonment for six months. Against the above regulation, any taxi driver who offers a fare discount on his/her own initiative to induce passengers to make use of his/her vehicle is engaging in "soliciting" activities, irrespective of whether such arrangements are made through mobile apps, telephone calls or other means.

The Government is aware that mobile apps are available in the market for drivers and passengers to arrange taxi service at legal fares. This is not unlawful. Using mobile apps to arrange taxi service is also catching on in other places. However, the arrangement would be illegal if there is any concrete evidence showing that a fare discount option is available through the mobile app for the purpose of soliciting passengers. As the mobile app industry is developing quickly, the apps come with various types, designs and functions. They also evolve rapidly. Further, it is quite often that only the driver and passenger(s) are present when the incident takes place. All these make it rather difficult to adduce evidence for instituting a prosecution. According to legal advice, there has to be sufficient evidence to prove that the mobile app developer/operator or the taxi driver concerned has been deliberately offering a fare discount through the mobile app to attract passengers to use taxi service before the law enforcement agency can institute any prosecution against the individual(s) concerned.

The Police have all along been looking into taxi malpractices through disguising as passengers from time to time. Based on the information provided by the Police, the number of offenders prosecuted for "soliciting" in 2013 and the first five months of 2014 is 156 and 27 respectively. None of these "soliciting" prosecutions involved the use of mobile apps. The Police are concerned about malpractices in relation to taxi service, including those involving the use of mobile apps, and would have to investigate each case to determine whether there is sufficient evidence to institute a prosecution. This has to be done on a case-by-case basis.

TD is willing to offer advice to mobile app developers and the taxi trade regarding provision of mobile apps that are in compliance with the law. Indeed, TD has recently met some mobile app developers to understand their operation. Further, TD would remind the trade from time to time not to break the law inadvertently when using mobile apps to accept hire. The trade should certainly not risk infringing the law.

(3) Taxi drivers and passengers are legally required to charge and pay taxi fares according to the meter respectively. Regulation 47 of the Regulations provides that a taxi driver shall not charge a passenger more than the metered fare while regulation 48 prohibits passengers from intentionally or dishonestly endeavouring to avoid payment of the metered fare.

The Hon Kwok Wai-keung enquired whether the Government would consider amending the law to prohibit fare bargaining by taxi passengers. In this regard, the Transport Advisory Committee (TAC) studied carefully whether it would be feasible and meritorious to legislate against fare bargaining by taxi passengers in 2008. Reference was drawn from the practices in 14 cities. Most of these cities (including Tokyo, London and New York) did not prohibit fare bargaining by taxi passengers. None of them imposed penalty on passengers for fare bargaining. Even if fare bargaining by taxi passengers was explicitly prohibited, TAC's assessment was that it would be rather difficult to adduce evidence and take enforcement actions as only the taxi driver and passenger(s) were present when fare bargaining took place. The deterrent effect so achieved would also not necessarily be any greater than that of the existing arrangements. Further, the assessment was that a number of people might find it too harsh to make a verbal enquiry for lower taxi fares an offence. In any event, it is lawful for taxi drivers to refuse requests by passengers for lower taxi fares.

Apart from the above, after the implementation of the taxi fare structure that increases short-haul fares and lowers long-haul ones since late 2008, the fare per kilometre for long-haul trips is lower than that for short-haul ones. For instance, an urban taxi journey of nine kilometres or more is regarded as a long-haul trip. The incremental charge per jump is at \$1 after nine kilometres. Meanwhile, the amount charged is \$1.6 for each jump below nine kilometres. This fare structure is conducive to reducing the incentive for fare bargaining by passengers and offering a fare discount by taxi drivers.

Meanwhile, some trade members worry that making such legislative amendments would eliminate the existing flexibility in their daily operation. For instance, they would no longer be able to cope with the situation whereby a taxi driver charges a lower fare due to taking a wrong route or having insufficient change, etc..

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