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25 February 2011

Ms Joanne Mak
Clerk to Panel on Transport
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Ms Mak,

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

Joint meeting on 28 February 2011

We refer to your letter to the Secretary for Financial Services and the Treasury dated 2 February 2011, inviting representatives from the Department of Justice ("DoJ"), among others, to attend the joint meeting for the discussion on measures to combat fraudulent insurance claims and activities. The invitation stems from the request of Hon Chan Kin-por, vide his letter dated 1 February 2011 (as attached to your letter), for these various departments to explain a number of matters, including the Police and DoJ in respect of law enforcement actions against insurance fraud and champerty ("包攬訴訟").

Insofar as law enforcement against insurance fraud and champerty is concerned, it is under the purview of the Police. The role of DoJ is to prosecute such illegal activities after the Police have concluded investigation into suspected cases and to provide legal advice in connection with such investigation. The information which DoJ is in a position to provide on fraud cases and law enforcement actions against such illegal activities is rather limited.

Since Hon Chan Kin-por's letter has made reference to "champerty", we also take this opportunity to clarify that fraud and champerty are two different offences. In cases involving fake injuries arising from traffic accidents, persons purported to have been injured would exaggerate their claims against insurance companies. The relevant crimes committed are fraud related and the victims are insurance companies which may ultimately result in increase in insurance premiums.

However, making false or exaggerated claims against insurance companies is not caught by the common law offences of champerty and maintenance, which are concerned with unlawful intermeddling of law suits by persons who are not parties to the proceedings that might result in a genuine risk in the integrity of the court's process. In a typical champerty case involving a recovery agent, damages due to the claimant (which is often less than what he might have otherwise obtained through the normal course of litigation) would be shared by the recovery agent and thus it can be said that victims of the offence of champerty are usually the claimants and their relatives. Offences relating to champerty and maintenance have nothing to do with insurance fraud. DoJ has mounted promotional campaign to raise awareness among members of the public to unlawful activities of recovery agents, but it is important to note that such activities of recovery agents are not normally related to fraudulent insurance claims.

We hope the above information on the role of DoJ in law enforcement and the relationship between fraud and champerty would be useful for Members' reference, and it is not necessary for DoJ to join the meeting.

Yours sincerely,



(Ms Adeline Wan)
Senior Assistant Solicitor General
(General Legal Policy)