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Panel on Transport and Panel on Financial Affairs

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

**Minutes of meeting
held on Thursday, 26 April 2012, at 2:30 pm
in Conference Room 2A of the Legislative Council Complex**

Members present : Hon Miriam LAU Kin-ye, GBS, JP (Chairman)
Hon James TO Kun-sun
Hon Ronny TONG Ka-wah, SC
Hon CHAN Kin-por, JP
Hon IP Wai-ming, MH

Member absent : Hon CHEUNG Hok-ming, GBS, JP

Public Officers attending : Item I

Miss Carrie CHANG
Principal Assistant Secretary for Transport and Housing
(Transport) 1

Mr Adrian LAM
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services) (Acting)

Mr Dannis LEUNG
Chief Transport Officer/Planning/Taxi
Transport Department

Mr HO Ying-foo
Superintendent (Fraud Division) (Commercial Crime Bureau)
Hong Kong Police Force

Mr SIU Wai-sing
Chief Inspector (Fraud Division) (Commercial Crime Bureau)
Hong Kong Police Force

Ms Angela NG
Senior Superintendent (Administration)
(Traffic Branch Headquarters)
Hong Kong Police Force

Mr WONG Yiu-ming
Superintendent (Law Revision and Projects)
(Traffic Branch Headquarters)
Hong Kong Police Force

Mr Ros LAM, JP
Assistant Commissioner of Insurance
(General Business Division)
Office of the Commissioner of Insurance

Mr David LIU
Senior Insurance Officer (General Business Division)
Office of the Commissioner of Insurance

Mr T E KWONG
Deputy Director of Legal Aid

Mr Chris CHONG
Assistant Director of Legal Aid

Mr Harry WONG
Governing Committee Member
The Hong Kong Federation of Insurers

Miss Kelly MOK
Deputy Chairman of Accident Insurance Association
The Hong Kong Federation of Insurers

Clerk in attendance : Mrs Sharon TONG
Principal Council Secretary (2)

Staff in attendance : Ms Mina CHAN
Council Secretary (2) 7

Ms Camy YOONG
Clerical Assistant (2) 7

I. Meeting with the Administration

The Joint Subcommittee deliberated (index of proceedings attached at **Annex**).

2. The Joint Subcommittee noted that the Social Welfare Department had provided a paper (LC Paper No. CB(2)1779/11-12(03)) on the Traffic Accident Victims Assistance Scheme, and agreed that discussion on the issue was scheduled for May 2012.

Legal Aid Scheme for civil cases

3. Deputy Director of Legal Aid ("DD/LA") advised that in response to the recent concern raised by Legislative Council Members over possible champerty practice in certain legal aid cases, the Legal Aid Department ("LAD") was studying the suggestion of adopting a "declaration system" to ensure that the aided person's choice of lawyers had not been affected by any improper conduct on the part of the lawyers nominated. The Legal Aid Services Council would be consulted before any "declaration system" was implemented.

4. DD/LA further said that LAD had a mechanism to investigate representations including those from insurance companies if they took the view that legal aid should not have been granted to an aided person or if they were not satisfied with the performance and/or conduct of a nominated lawyer on the handling of a legal aid case.

5. On Mr CHAN Kin-por's question as to why LAD did not consider assigning cases to the lawyers on the Legal Aid Panel ("the panel") by rotation only, DD/LA explained that under section 13 of the Legal Aid Ordinance (Cap. 91), the Director of Legal Aid ("DLA") might act for an aided person in any civil proceedings or assign counsel or solicitor on the panel, to be selected by the aided person, if he so desired, or otherwise selected by DLA. DD/LA stressed that the relationship of trust and confidence between the aided person and the lawyer had significant impact on the former's interest, which was the paramount consideration in the choice of lawyers.

6. The Chairman suggested that LAD should consider adopting a rotation system in order to prevent aided persons entering into private agreements with the panel lawyers/non-panel lawyers and to provide fairness to the way legal aid cases were allocated to lawyers on the panel.

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

7. On whether the Police could provide the owner of a vehicle (including taxi/public light bus ("PLB")) a copy of the Notice of Intended Prosecution ("NIP") at the time it was issued to a rentee-driver who was involved in a traffic accident, Superintendent (Law Revision and Projects) (Traffic Branch Headquarters) of the Hong Kong Police Force recapitulated his response at the last meeting that the Road Traffic Ordinance (Cap. 374) did not require the Police to do so. Section 68 of the Road Traffic Ordinance stipulated, amongst other things, 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 was served an NIP within a specified period. His view was that there was currently no requirement to serve an NIP to the vehicle owner if he was not the driver and hence was not being prosecuted for the driving offence concerned.

8. Members were of the view that vehicle owners would be put in an unfair position of bearing liabilities for late-reported injuries if they were not even aware of the incidents. In the event that the driver of a vehicle involved in a traffic offence was not the vehicle owner himself, the Police should also be required to serve a copy of NIP to or to notify the vehicle owner. Members did not consider such act a breach of privacy as the information was disclosed on reasonable grounds. They called on the Administration to consider what arrangements could be put in place to address the situation, and if there was no viable administrative solutions, consider amending the relevant legislation. Chief Transport Officer/Planning/Taxi of the Transport Department opined that section 68 of the Road Traffic Ordinance did not rule out that other relevant parties could be informed. Principal Assistant Secretary for Transport and Housing (Transport) 1 said that the Transport and Housing Bureau ("THB") would study members' suggestion and the Police indicated willingness to explore with THB possible arrangements that could address members' concerns.

Drink/drug driving

9. The Chairman pointed out that vehicle owners had little or no control over their drivers' behaviours. However, drivers' behaviours could put

vehicle owners at risk as the vehicle owner might be ultimately responsible for the poor driving behaviour of his driver in terms of legal liability and insurance cover.

10. Mr Harry WONG, Governing Committee Member of the Hong Kong Federation of Insurers ("HKFI"), advised that drink or drug driving generally fell outside the scope of insurance policy coverage, and might result in a denial of insurance claim. HKFI had sought legal opinion on taxi and PLB owners' potential liabilities arising from their drivers' drink/drug driving. He explained that 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 (Cap. 272). However, the insurer would reserve its right of recovery against the driver. In the case where the driver was employed by the vehicle owner (i.e. with a principal/agent relationship), the vehicle owner would very likely be liable for the driver's act of drink/drug driving.

11. Mr Harry WONG further said that the insurance sector had no consensus on how to exercise its right of recovery for drink/drug driving cases. Each and every case would be considered according to actual circumstances and its own merits. Meanwhile, there was a view that motor insurance should in the future be taken out by the driver rather than the vehicle owner. However, legislative amendments would be required. Mr IP Wai-ming expressed reservations about the aforesaid view as it would have significant implication on the relationship between employer and employee.

12. The Chairman suggested that the insurance sector should provide the taxi/PLB trade with some guidelines on how to effectively manage drivers' driving behaviour. Mr Harry WONG responded that HKFI would bring up the issue on drink/drug driving with the insurance industry.

Insurance cover in case of typhoon signal no. 8 or above

13. On whether vehicles running on the roads were covered when typhoon signal no. 8 (or above) was hoisted, Mr Harry WONG answered in the affirmative. However, he remarked that the policyholder had an obligation to take reasonable steps to safeguard the insured motor vehicle from loss or damage. Otherwise, he was running the risk of being considered a breach of policy condition. The Chairman requested further assurance be given to the transport sector that taxis/PLBs which were driven for business purposes in adverse weather such as typhoon no. 8 were insured provided that reasonable care had been taken by the policyholder in normal circumstances to protect

the insured vehicle. Mr Harry WONG undertook to convey the Chairman's view to the insurance sector.

II. Any other business

14. There being no other business, the meeting ended at 4:27 pm.

Council Business Division 2
Legislative Council Secretariat
29 June 2012

**Proceedings of meeting of the Joint Subcommittee on
Issues Relating to Insurance Coverage for the Transport Sector
held on Thursday, 26 April 2012, at 2:30 pm
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action Required
000142 - 000513	Chairman	Opening remarks and the schedule of discussion on the Social Welfare Department's paper regarding the Traffic Accident Victims Scheme (LC Paper No. CB(2)1779/11-12(03))	
000514 - 000618	Chairman	Dates of next meetings	
000619 - 000855	Chairman Mr CHAN Kin-por Clerk	Submission of the Joint Subcommittee's report to the Panel on Transport and Panel on Financial Affairs	
000856 - 002302	Chairman Admin Mr CHAN Kin-por	The right of the aided person to select his own solicitor under the Legal Aid Ordinance (Cap. 91); Legal aid systems in other jurisdictions; and Measures to tackle potential touting practice in legal aid cases	
002303 - 003726	Mr CHAN Kin-por Chairman The Hong Kong Federation of Insurers Admin	Availability of statistical information on lawyers who had handled cases of personal injury claims under the Legal Aid Scheme; Reporting system of evaluating the performance and/or conduct of assigned lawyers; Assignment of lawyers in legal aid cases; and Fees for lawyers undertaking civil legal aid works	
003727 - 004422	Mr CHAN Kin-por Chairman The Hong Kong Federation of Insurers Admin	Revocation of the Legal Aid Certificate in personal injury cases	

Time marker	Speaker	Subject(s)	Action Required
004423 - 010456	Chairman Admin The Hong Kong Federation of Insurers Mr CHAN Kin-por	Notification of the vehicle owner in the event of a traffic accident involving a rentee-driver and their respective liabilities in the traffic accident	The Transport and Housing Bureau and the Police to study members' suggestion of issuing a copy of the Notice of Intended Prosecution to or notifying the vehicle owner in the event that the person driving his vehicle was alleged to have committed a traffic offence
010457 - 012852	Chairman The Hong Kong Federation of Insurers Mr IP Wai-ming Mr CHAN Kin-por	Taxi/public light bus owners' potential liabilities arising from their drivers' drink/drug driving	
012853 - 013510	Chairman The Hong Kong Federation of Insurers Mr CHAN Kin-por	Insurance coverage for vehicles running on the roads when typhoon signal no. 8 or above is hoisted	
013511 - 015646	Chairman The Hong Kong Federation of Insurers Mr CHAN Kin-por	Definition of high-risk occupation in insurance policy for the transport sector; and Employee's Compensation Insurance Residual Scheme	
015647 - 015814	Chairman The Hong Kong Federation of Insurers	Follow-up to the last meeting and closing remarks	