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By Fax (3912 4816)

3 September 2019

Miss Ann CHAN
Principal Assistant Secretary for Transport and Housing
(Transport) (Special Assignment)
Transport and Housing Bureau
22/F, East Wing
Central Government Offices
2 Tim Mei Avenue, Tamar
Hong Kong

Dear Miss CHAN,

Franchised Taxi Services Bill

I am scrutinizing the captioned Bill with a view to advising Members on its legal and drafting aspects. To facilitate Members' consideration of the Bill, I should be grateful if you could clarify the following matters:

Clause 3

It is proposed that a franchisee or a person would commit an offence if the franchisee or the person "uses, or causes or permits the use of" a franchised taxi for the prohibited purpose(s) specified in clause 3 of the Bill. It is noted that where the statutory provisions create offences by reason of the words "use", "cause" or "permit the use of" appearing in juxtaposition, "cause" or "permit the use of" generally requires the prosecution to prove mens rea, while the word "use" would create an offence of absolute liability.¹ Please clarify whether:

¹ Please see Kevin McCormac, *Wilkinson's Road Traffic Offences*, Volume 1, 27th ed. Sweet & Maxwell, paragraph 1.161.

- (a) the prosecution would be required to prove mens rea in respect of the offences of causing or permitting the unlawful use of a franchised taxi under clause 3; and
- (b) the offence of using a franchised taxi for an unlawful purpose under clause 3 would be an absolute liability offence.

It is further noted that where a statute provides alternative offences of "causing or permitting", the only persons who can be convicted of "using" are the driver or an employer if the vehicle was being used on the employer's business by his employee.² According to paragraph 9 of the Legislative Council ("LegCo") Brief (File Ref.: THB(T)CR 1/1136/2015) issued by the Transport and Housing Bureau on 17 April 2019, the Administration is of the view that maintaining an employer-employee relationship between the franchisees and the drivers would not be a mandatory requirement. Please clarify whether and how a franchisee without an employer-employee relationship with its drivers would commit the offence of using a franchised taxi for an unlawful purpose if its franchised taxi was used by the driver for an unlawful purpose under clause 3 of the Bill.

Clause 8

Clause 8 of the Bill seeks to provide that a franchisee must provide a guarantee to the Commissioner for Transport ("Commissioner") after a franchise for providing franchised taxi services is granted. It is noted that franchisees providing franchised public bus services are not required to provide any guarantee to the Commissioner under the Public Bus Services Ordinance (Cap. 230). Please clarify whether and why a different approach is proposed in the Bill for franchised taxi services.

Clause 13

Clause 13 seeks to empower the Chief Executive in Council, the Secretary for Transport and Housing and the Commissioner to give a franchisee a written direction or requirement in respect of a matter that relates to its franchise or the franchised taxi service provided by it. However, it is noted that there appears to be no such similar provision in

² Please see Kevin McCormac, *Wilkinson's Road Traffic Offences*, Volume 1, 27th ed. Sweet & Maxwell, paragraphs 1.179 and 1.189.

Cap. 230 relating to franchised public bus services. Please clarify whether and why a different approach is proposed in the Bill for franchised taxi services.

Clause 16

Please clarify the meaning of "a reasonable opportunity" in clause 16(1)(b) and (d). Please also clarify under what circumstances a franchisee would be regarded as having had a reasonable opportunity to do the acts specified in clause 16(1)(b) and (d).

Clause 37

It appears that the proposed amendment to the Schedule to the Shenzhen Bay Port Hong Kong Port Area (Permission to Enter) Notice (Cap. 245K) under clause 37(1) may be inaccurate in that there should be no comma after "taxis" in item 2. Please consider whether clause 37(1) should be revised.

Clause 56

Clause 56 seeks to amend section 102I of the Road Traffic Ordinance (Cap. 374) to the effect of adding "taxi/taxis" to subsections (3)(b) (i), (ii) and (iii) and "franchised taxi" to subsection (3)(b)(iii) so that pre-service courses could be provided to a holder of a full driving licence to drive a taxi or a franchised taxi etc. However, it appears that currently a holder of a full driving licence to drive a taxi is not required to attend and complete any pre-service course under Regulation 8A of the Road Traffic (Driving Licences) Regulations (Cap. 374B). Please clarify the policy intent of the proposed amendments under clause 56.

Clause 60

It appears that a conjunction ("and"/"or" between paragraphs (d) and (e)) is missing in clause 60(3) concerning the proposed amendment to Regulation 37(2) of the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374A). Please consider whether clause 60(3) should be revised.

Other requirements

Paragraph 3 of Annex B to the LegCo Brief sets out certain proposed requirements relating to vehicle types, compartment facilities

and vehicle age of franchised taxis. However, it appears that there is no proposed provision in the Bill relating to these requirements. Please clarify how these proposed requirements would be imposed on and enforced against a franchisee after a franchise is granted. Would these proposed requirements be included in the terms of the franchise?

I look forward to receiving your reply in both English and Chinese as soon as possible, preferably by **30 September 2019**.

Yours sincerely,



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