

**For discussion  
on 15 February 2019**

**Legislative Council Panel on Transport**

**Review of Penalty Level for Illegal Carriage of  
Passengers for Hire or Reward**

**PURPOSE**

This paper briefs Members on the review conducted by the Transport Department (“TD”) on the penalties for illegal carriage of passengers for hire or reward so as to increase the deterrent effect, and seeks Members’ views on the proposal to increase the related penalties as stipulated under the Road Traffic Ordinance (Cap. 374) (“RTO”).

**BACKGROUND**

2. According to the law, any person who drives or uses a motor vehicle for carriage of passengers for hire or reward without meeting the prescribed conditions contravenes section 52 of the RTO. The Government has been closely monitoring the situation on illegal carriage of passengers for hire or reward and taking a multi-pronged approach comprising enforcement, education and publicity in combating such illicit acts.

3. On enforcement, the Police has been taking stern actions against the offence through targeted operations, including collecting intelligence, conducting covert operations, investigating and following up on referral cases and complaint cases, etc. On publicity and education, the TD has been making use of various channels, including broadcasting announcement of public interest on radio, displaying samples of Hire Car Permits on its webpage, etc. to promote the knowledge on how to distinguish illegal hire services. It has also set up an online enquiry system for the public to check whether a vehicle has been issued with a valid Hire Car Permit. The TD has also reminded the public that the third party risks insurance for any vehicle used for illegal carriage for hire or reward may be invalidated.

## Improving taxi service quality

4. At the same time, the Government is pressing ahead with various measures to address the community's demand for enhanced personalised and point-to-point transport services. To strengthen its interaction and cooperation with the taxi trade and other stakeholders, the TD established the Committee on Taxi Service Quality ("CTSQ") in January 2018, which serves as a multi-party platform for discussing various strategies and measures to drive changes to enhance the service quality of existing taxis. In the past year, the TD, in collaboration with the CTSQ, took forward a series of measures. On public education, the TD published the updated "Hong Kong Taxi Service Standard" and the "Hong Kong Taxi Service Guidelines", which set out the conduct and performance expected of taxi drivers. It also launched a series of online training courses<sup>1</sup> for in-service taxi drivers, and an enhanced Quality Taxi Driver Commendation Scheme to recognise taxi drivers with outstanding service quality so as to enhance the professional image of taxi drivers. Furthermore, the TD has enhanced its mechanism for handling complaints relating to taxi services<sup>2</sup>. The TD and CTSQ have also encouraged the trade to leverage on technology to enhance the operational efficiency and service quality, such as setting up or integrating the taxi hailing application platforms.

5. In response to the requests from the community and feedback from the taxi trade, the Government plans to introduce legislative amendments to raise the penalty levels for various taxi drivers' malpractices in 2019, including (i) the introduction of a two-tier penalty system for taxi driver-related offences of a more serious nature such that heavier maximum penalties will be imposed on repeat offenders; (ii) the introduction of a Taxi Driver-Offence Points System such that taxi driver who has repeatedly committed various taxi driver-related offences will be subject to the consequence of disqualification from driving taxis for a certain period of time; and (iii) updating some of the existing taxi driver-related offence provisions to ensure that they reflect and suit the present

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<sup>1</sup> The online training courses cover topics such as effective communication skills between drivers and passengers, conflict handling methods and knowledge on barrier-free facilities. To encourage active participation of taxi drivers in the training course, participants may schedule an appointment free-of-charge to sit for an examination arranged by the TD, upon completion of the online course, with those completing the course and passing the examination being awarded with a certificate by the TD for commendation.

<sup>2</sup> The mechanism is enhanced with a view to taking actions against drivers who are the subjects of repeated complaints and assisting the taxi trade in setting up a system for self-monitoring and regulation.

circumstances<sup>3</sup>. In parallel, the Government has committed to the introduction of franchised taxi service. We are working on the legislative proposals, with a view to introducing into the Legislative Council a bill on franchised taxi within the 2018-19 legislative year.

## **THE REVIEW**

### **Current Legislative Framework**

6. Notwithstanding the Government's ongoing efforts, with the increasingly widespread use of online hailing platforms, illegal hire services making use of such platforms have become more prevalent in recent years. To further strengthen the efforts in combating illegal carriage of passengers for hire or reward, the TD has conducted a review on the existing penalties for the offence to examine whether there is any scope to enhance the deterrent effect for better protection of the safety of passengers and other road users.

7. Section 52 of the RTO stipulates, among other requirements, the following restrictions over the use of a vehicle regarding carriage of passengers for hire or reward<sup>4</sup> –

- (a) no person shall drive or use a motor vehicle; or suffer or permit a vehicle to be driven or used for the carriage of passengers for hire or reward unless the vehicle meets the various specified conditions, such as a Hire Car Permit is in force in respect of the vehicle;

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<sup>3</sup> The Government consulted the LegCo Panel on Transport and Transport Advisory Committee in July 2018 on the proposals.

<sup>4</sup> The third party risks insurance of a vehicle used for illegal carriage of passenger for hire or reward may become invalid. Under the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272), it is illegal for any person to use, or to cause or permit any other person to use, a motor vehicle on a road unless valid third party insurance is in force in relation to the user of the vehicle. Any person convicted of using a vehicle without valid third party risks insurance shall be liable to a fine of \$10,000 (equivalent to a fine at level 3) and imprisonment for 12 months, and shall be disqualified from holding or obtaining a licence to drive a motor vehicle for a period of ranging from twelve months to three years as the court may determine.

- (b) no person shall solicit or attempt to solicit any person for hire or reward to travel in a private car, private light bus, private bus<sup>5</sup> or goods vehicle; and
- (c) no person shall permit or suffer a motor vehicle which is licensed as a private car, private light bus or private bus to stand or ply for hire or reward.

8. Any person who contravenes the above commits an offence, and is liable to the penalties under the RTO as tabulated below:

First conviction	Subsequent conviction(s)
(a) Maximum fine of \$5,000 <sup>6</sup> (level 2) ( <i>section 52(10)(a) of the RTO</i> )	(a) Maximum fine of \$10,000 <sup>6</sup> (level 3) ( <i>section 52(10)(a) of the RTO</i> )
(b) Maximum imprisonment of 3 months ( <i>section 52(10)(a) of the RTO</i> )	(b) Maximum imprisonment of 6 months ( <i>section 52(10)(a) of the RTO</i> )
(c) Suspension of vehicle licence and impoundment of vehicles for 3 months ( <i>section 93 and Schedule 4 of the RTO</i> )	(c) Suspension of vehicle licence and impoundment of vehicles for 6 months ( <i>section 93 and Schedule 4 of the RTO</i> )
(d) Disqualification of driving licence ( <i>section 69(1) of the RTO, a general provision applicable to any offence under the RTO in connection with the driving of a motor vehicle.</i> )	

<sup>5</sup> Under section 52 of the RTO, a vehicle licensed as a private light bus can only be driven or used, or suffered to be driven or used for the carriage of passengers for hire or reward, if it is used as a school private light bus or exclusively for the carriage of persons who are disabled persons and persons assisting them; whereas a vehicle licensed as a private bus can only be driven or used, or be suffered or permitted to be driven or used for the carriage of passengers for hire or reward, if the passengers are students, teachers or employees of an educational institution, disabled persons, or persons employed to assist disabled persons.

<sup>6</sup> Section 52(10)(a) of RTO stipulates the absolute amount of the fine (i.e. \$5,000 for first conviction and \$10,000 for second or subsequent conviction) instead of using the corresponding fine levels.

## Considerations

9. Our policy objectives are to regulate the services of carriage of passengers for hire or reward, thereby enhancing the safety and protecting the interests of passengers and road users. In reviewing the penalties of illegal carriage of passengers for hire or reward, we seek to increase the deterrent effect against the related offence, while being mindful of the proportionality of the proposed penalty level having regard to the seriousness of the contravention and its relativity to penalties for offences of similar nature.

10. With the increasing popularity of online hailing platforms, cases relating to illegal carriage of passengers for hire or reward have become more prevalent in recent years. In the period between January 2015 and December 2018, the Police took enforcement actions against a total of 195 cases of illegal carriage of passengers for hire or reward, of which 2018 recorded 69 cases representing a 38% increase over 50 cases in 2017. All vehicles involved are private cars and light goods vehicles (“LGVs”).

11. During the afore-mentioned period, 137 cases<sup>7</sup> were tried in court for the first conviction of illegal carriage of passengers for hire or reward. The penalties handed down by the court under the RTO were as follows –

- (a) six cases with 50 to 120 hours of community service order;
- (b) 128 cases with fines of \$300 to \$5,000, of which, 12 cases (10%) were fined less than \$1,000; 64 cases (50%) between \$1,000 to \$2,000; 22 cases (17%) between \$2,500 to \$3,000, and the remaining 30 cases (23%) between \$3,800 to \$5,000 (only five were fined at \$4,000 and above);
- (c) one case with imprisonment for six weeks; and two cases with imprisonment for two weeks (suspended for one year) and two months (suspended for two years) respectively;
- (d) all cases with vehicle licences suspended and vehicles impounded for three months.

According to TD’s record, among the 136 convicted cases, the court ordered

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<sup>7</sup> For the most recently convicted case (judgement handed down on 24 December 2018), the penalty is still pending the court’s decision. In one of the remaining 136 convicted cases, penalties of both \$5,000 fine and 2 months imprisonment suspended for two years were imposed.

the disqualification of driving licence of one convicted driver only.

12. According to sections 90 and 93 of the RTO, once a vehicle has been ruled by the court as being involved in illegal carriage of passengers for hire or reward, TD will arrange to suspend the vehicle licence and detain the vehicle for a period specified in Schedule 4 of the RTO. During the period between January 2015 and December 2018, TD detained a total of 75 vehicles. The number of vehicles detained by TD has increased three-fold from 9 in 2017 to 39 in 2018.

13. A number of recent traffic accidents involving illegally hired vehicles have further highlighted the lack of protection for passengers and road users. There is therefore a case to raise the penalty levels under the RTO. This could not only enhance the deterrent effect but also provide the court with a new reference point in considering and meting out appropriate punishments for individual convicted cases having regard to specific circumstances. We also see a need for more specific provisions to be included in the law for the court to invoke the power already provided for in section 69(1)(a) of the RTO to suspend driving licences of convicted drivers having regard to the circumstances of the case in question. By setting more severe penalties and adding a specific provision on suspension of driving licence could send a clear message to the public and operators of illegal carriage of passengers that the Government is committed to combat the illicit act.

### **Proposed Revised Penalties**

14. In proposing the revised penalties for illegal carriage of passengers for hire or reward, the TD has taken into account penalties for similar offences in other jurisdictions as well as other traffic offences in Hong Kong.

15. The TD has looked into similar offences in ten jurisdictions, namely, the Mainland, Macau, Taiwan, Singapore, Chicago, Germany, London, New York City, the Northern Territory of Australia and San Francisco. The penalties imposed by these ten jurisdictions are set out at **Annex**. In gist, among the types of penalties applicable to illegal carriage of passenger for hire or reward in Hong Kong, these ten jurisdictions impose one or more types of penalties like fine, imprisonment and/or vehicle impoundment, but none of them have included all of such types of penalties in their respective legislative regimes.

16. Nonetheless, it is noted that the maximum fine stipulated in the prevailing legislation in Hong Kong is relatively on the low side when compared with those imposed in other jurisdictions. Among the ten

jurisdictions, the maximum fine which can be imposed range from equivalent to Hong Kong dollars of about \$16,000 to \$6.4 million, whereas the maximum fine for the same offence in Hong Kong is only \$5,000 (equivalent to the fine level 2) and \$10,000 (equivalent to the fine level 3) on first and subsequent convictions respectively.

17. Apart from taking reference from other jurisdictions, the TD has examined the relativity of penalties of other traffic offences in Hong Kong. It is noted that traffic offences the conviction on indictment of which carry a heftier maximum fine of \$25,000 (level 4) and \$50,000 (level 5) are mostly of more serious nature, for example, dangerous driving, drunk driving and causing grievous death or grievous bodily harm by dangerous driving. Any person convicted on indictment of these offences is also liable to a longer maximum imprisonment period ranging from three to ten years and generally a longer suspension period of driving licence.

18. A more related reference point would be the offences concerning various taxi drivers' malpractice mentioned in paragraph 5 above, for example, overcharging, soliciting or damaging, defacing or altering taximeters. The Government has recently proposed to adopt a two-tier fine system for these offences with the first conviction set at maximum fine of \$10,000 (level 3) and subsequent conviction at \$25,000 (level 4).

19. Having considered the penalties for illegal carriage of passengers for hire or reward in ten other jurisdictions as well as those for comparable traffic offences in Hong Kong, we propose increasing the penalties for illegal carriage of passengers for hire or reward under section 52 and Schedule 4 of the RTO in the following aspects –

- (a) **raising the maximum fine** from the current \$5,000 (level 2) and \$10,000 (level 3) to \$10,000 (level 3) and \$25,000 (level 4) for first and subsequent conviction(s) respectively;
- (b) **lengthening the period for suspension of vehicle licence and impoundment of vehicles** from the current 3 months and 6 months to 6 months and 12 months upon first or subsequent conviction(s) respectively; and
- (c) **adding a specific provision under section 52** such that a court or magistrate may order a person convicted of the offence to be **disqualified to drive** for such a period as the court or magistrate thinks fit.

A comparison table of the existing and proposed penalties is provided as follows –

Existing Penalties		Proposed Penalties	
First conviction	Subsequent conviction(s)	First conviction	Subsequent conviction(s)
(a) Fine: \$5,000 (level 2) at maximum	(a) Fine: \$10,000 (level 3) at maximum	(a) Fine: <b>\$10,000 (level 3)</b> at maximum	(a) Fine: <b>\$25,000 (level 4)</b> at maximum
(b) Imprisonment : 3 months at maximum	(b) Imprisonment: 6 months at maximum	(b) Imprisonment : <b>no change</b>	(b) Imprisonment : <b>no change</b>
(c) Suspension of vehicle licence and Impoundment of vehicles: 3 months	(c) Suspension of vehicle licence and Impoundment of vehicles: 6 months	(c) Suspension of vehicle licence and Impoundment of vehicles: <b>6 months</b>	(c) Suspension of vehicle licence and Impoundment of vehicles: <b>12 months</b>
(d) Disqualification of driving licence for a period as the court or magistrate thinks fit ( <i>under a general provision of the RTO</i> ).		(d) Disqualification of driving licence for a period as the court or magistrate thinks fit ( <i>under a new and specific provision of the RTO</i> ).	

## Trade Consultation

20. The TD has consulted the goods vehicle (“GV”) trade as well as the school private light bus (“SPLB”) trade on the Government’s proposal. The GV trade comprises members of trade unions of vehicle drivers and employees, and associations of goods vehicle owners and employers. The GV trade agrees in general that intentional carriage of passengers for hire or reward by LGVs should be combated. Some trade representatives opine that the Government should be careful in considering the implications of extending the period for suspension of vehicle licences and impoundment of vehicles, as some vehicle owners would be punished even though they are unaware of the illegal act which is committed by another person, for example, the drivers. Moreover, some representatives are concerned that LGV drivers will face prosecution inadvertently, as some passengers may intentionally deceive the LGV drivers for providing carriage of passengers instead of goods.



21. TD has explained that whether a vehicle owner may be prosecuted depends on the fact of the cases<sup>8</sup>. Also, regarding the concern expressed by the GV trade over the proposed extended vehicle impoundment period with the vehicle owners being unaware of the illicit act performed by another person using or driving the vehicle, TD has reminded the trade that under section 52 of Cap. 374, no person shall suffer or permit a motor vehicle to be driven or used for the carriage of passengers for hire or reward. LGV drivers are also encouraged to be more alert and refuse the provision of service if they suspect or recognise that the services may involve carriage of passengers only.

22. The SPLB trade comprises members from the trade associations of operators. Some trade representatives opine that young drivers being attracted to join the LGV trade for carriage of goods or participate in alleged illegal carriage of passengers for hire or reward by LGVs has caused difficulties for the operators in the SPLB trade in recruiting new young drivers. The trade agrees in general with the Government's proposal to impose heavier penalties on illegal carriage of passengers for hire or reward.

## **ADVICE SOUGHT**

23. Members are invited to comment on the proposal.

**Transport and Housing Bureau**  
**Transport Department**  
**February 2019**

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<sup>8</sup> Among the 137 cases convicted between January 2015 and December 2018, five cases involved the vehicle owners permitting the use of the vehicles for the illegal hire services.

**Penalties for Illegal Carriage of Passengers for Hire or Reward  
in Ten Other Jurisdictions**

	<b>Jurisdiction</b>	<b>Imprisonment</b>	<b>Fine<sup>1</sup></b>	<b>Vehicle Impoundment</b>	<b>Suspension of Driving Licence</b>
<b>I. Asian Jurisdictions</b>					
1.	The Mainland <sup>2</sup>	--	Not less than RMB 10,000 (around HKD 12,000) and not exceeding RMB 30,000 (around HKD 35,000)	--	--

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<sup>1</sup> The amounts in HKD equivalent to that in the currency of the jurisdictions concerned were calculated by the respective exchange rates on 28 January 2019.

<sup>2</sup> 中華人民共和國工業和信息化部《網路預約計程車經營服務管理暫行辦法》第三十四條 (No English version).

	<b>Jurisdiction</b>	<b>Imprisonment</b>	<b>Fine<sup>1</sup></b>	<b>Vehicle Impoundment</b>	<b>Suspension of Driving Licence</b>
2.	The Macau SAR	--	<p><b><u>Unauthorised provision of hire car/ taxi service</u></b>  MOP 25,000<sup>3</sup>  (around HKD 24,000)  (Proposed to be increased to MOP 90,000<sup>4</sup> (around HKD 88,000))</p> <p><b><u>Unauthorised carriage of passengers for reward</u></b>  MOP 30,000<sup>5</sup>  (around HKD 29,000)</p>	Unauthorised vehicles involved will be detained <sup>6</sup>	--
3.	Singapore <sup>7</sup>	Not exceeding 6 months	Not exceeding SGD 3,000 (around HKD 17,000)	The vehicle may be forfeited	--

<sup>3</sup> 澳門特別行政區政府第 366/99/M 號訓令：核准《輕型出租汽車(的士)客運規章》第十四條第一(a)款 (No English version).

<sup>4</sup> 澳門特別行政區政府《輕型出租汽車客運法律制度》法律草案第十一條第二款及第四款 (No English version).

<sup>5</sup> 澳門特別行政區政府第 17/93/M 號法令《道路交通規章》第五十二條第十四款 (No English version).

<sup>6</sup> 澳門特別行政區政府第 3/2007 號法令《道路交通法》第一百二十三條第二款及第五款 (No English version).

<sup>7</sup> Section 101(2) and (7) of Road Traffic Act of Singapore Government.

	<b>Jurisdiction</b>	<b>Imprisonment</b>	<b>Fine<sup>1</sup></b>	<b>Vehicle Impoundment</b>	<b>Suspension of Driving Licence</b>
4.	Taiwan <sup>8</sup>	--	TWD 100,000 (around HKD 25,000) to TWD 25,000,000 (around HKD 6.4M)	Suspension of vehicle licence for 4 months to 1 year, or cancellation of vehicle licence, the reapplication of which is banned for two years	Disqualification of driving licence for 4 months to 1 year, or cancellation of driving licence, the reapplication of which is banned for two years
<b>II. Non-Asian Jurisdictions</b>					
5.	Germany <sup>9</sup>	--	Not exceeding EUR 10,000 (around HKD 90,000)	--	--
6.	United States of America (“USA”) – New York City <sup>10</sup>	Not more than 60 days	Not less than USD 1,000 (around HKD 7,800 ) and not more than USD 2,000 (around HKD 16,000)	--	--

<sup>8</sup> 台灣《公路法》第七十七條 (No English version).

<sup>9</sup> Section 61 of Passenger Transportation Act.

<sup>10</sup> Section 19-506(b) of The New York City Administrative Code.

	<b>Jurisdiction</b>	<b>Imprisonment</b>	<b>Fine<sup>1</sup></b>	<b>Vehicle Impoundment</b>	<b>Suspension of Driving Licence</b>
7.	USA – Chicago <sup>11</sup>	--	<p><b><u>First conviction</u></b></p> <p>Not less than USD 1,000 (around HKD 7,800) and not more than USD 10,000 (around HKD 78,000)</p> <p><b><u>Subsequent conviction(s)</u></b></p> <p>Not less than USD 5,000 (around HKD 40,000)</p>	Administrative penalty of USD 2,000 (around HKD 16,000 <sup>12</sup> ) plus towing and storage fees	--
8.	USA – San Francisco <sup>13</sup>	--	<p><b><u>First conviction</u></b></p> <p>USD 2,500 (around HKD 20,000)</p> <p><b><u>Subsequent conviction</u></b></p> <p>USD 5,000 (around HKD 40,000)</p>	--	--
9.	United Kingdom – London <sup>14</sup>	--	Not exceeding GBP 2,500 (around HKD 26,000)	--	--

<sup>11</sup> Sections 9-114-020, 9-114-410 and 9-114-420 of Municipal Code of Chicago.

<sup>12</sup> Calculated by the exchange rate on 28 January 2019.

<sup>13</sup> Division II Section 1105(a)(1) of the San Francisco Transportation Code.

<sup>14</sup> Section 6 of Private Hire Vehicles (London) Act 1998 Chapter 34 and section 37 of Criminal Justice Act 1982 Chapter 48.

	<b>Jurisdiction</b>	<b>Imprisonment</b>	<b>Fine<sup>1</sup></b>	<b>Vehicle Impoundment</b>	<b>Suspension of Driving Licence</b>
10.	Australia – Northern Territory <sup>15</sup>	--	Not exceeding AUD 13,175 (around HKD 74,000), with an amount equivalent to the annual fee for the licence a person should have held on top	--	--

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<sup>15</sup> Section 30, 79A and 79B of Commercial Passenger (Road) Transport Act of Northern Territory of Australia.