

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

**Follow-up to the meeting on 4 May 2021**

	<b>Follow-up action (Suggestion)</b>	<b>Government's response</b>
(a)	<p>suggestions raised in the submission from the Hong Kong Federation of Insurers (“HKFI”) (LC Paper No.: CB(4)942/20-21(01))</p>	<p><b>Occurrence of accidents</b></p> <p>The Hong Kong Police Force (“the Police”) handled more than 15 000 traffic accidents involving injuries in 2020. For handling requests of the insurance companies for details on persons and vehicles involved in traffic accidents as well as nature of the incidents, the Police will provide relevant information as appropriate upon request of the insurance companies in a timely manner under an established mechanism. Since the Police has to check the authenticity of the insurance information of both parties involved in the accident before the requested information can be passed to a third party (including the relevant insurance company) under the existing legislation, it takes time for the Police to process relevant requests.</p> <p>The Police noted the comments of the insurance industry and will provide assistance as far as practicable so as to help the people in need. At present, the court is responsible for adjudicating cases and</p>

determining sanctions following the investigation of traffic accidents by the Police. As such, it generally takes more than six months to process a traffic accident case. To expedite the process in getting the required information, the insurance companies are recommended to make such application as soon as possible after the accident and maintain communication with the case investigation officer for obtaining further information.

**Applying for social welfare compensation by injured person**

If the applicant for the Traffic Accident Victims Assistance (“TAVA”) Scheme indicates his/her intention to make insurance claims, the Social Welfare Department (“SWD”) will issue a notice to the insurance company concerned. SWD will refine the existing correspondence templates with insurance companies and include the name, address and telephone numbers of the applicant. To further guard against abuse and fraud under TAVA, on the premise of ensuring that the road traffic accident victims or their dependants receive speedy financial assistance, SWD will step up its work in different aspects, including to enhance reminders on the application form and website of the legal consequences of fraudulent act,

		<p>strengthen the investigation on income statements when processing the applications, especially for cases of those who claim to be self-employed drivers, and strengthen the mechanism to verify whether the applicant has received damages or compensation from other sources for the same traffic accident. SWD will refine the declaration form and consider requesting self-employed drivers to provide all relevant documentary proof relating to the car rental agents and car owners concerned, e.g. the vehicle registration document and car rental contract.</p> <p>SWD has also installed a closed-circuit television system at the office of TAVA Section and put up notices against touting activities. SWD will continue to enhance the publicity on application channels other than approaching the TAVA Section in person, e.g. submitting applications through email, fax or post, so as to reduce the number of applicants gathering outside the office.</p> <p>SWD will continue to monitor the implementation of the TAVA Scheme and maintain close collaboration with the Police, the Hospital Authority and the Department of Health to combat fraud cases. Any person who has information on attempts to obtain assistance payment by deception can report to the SWD or the Police.</p>
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		<p><b>Judicial process of claims</b></p> <p><u>Combatting insurance fraud and champerty</u></p> <p>The Police has all along been conducting professional investigations into insurance fraud. This includes the establishment of a task force under the Commercial Crime Bureau to monitor emerging trends of organised fraud cases and conduct targeted investigation and analysis. The Police has also maintained close contacts with other government departments, the Insurance Authority (“IA”) and stakeholders (such as HKFI), while at the same time enhanced intelligence gathering for intelligence-led operations. On publicity and education, the Police has disseminated information on the latest modus operandi of various common fraud cases and anti-deception messages via different media platforms, including online platforms and traditional media. The Police has also set up the Anti-Deception Coordination Centre's “Anti-Scam Helpline 18222” to provide 24-hour immediate assistance to the public.</p> <p>As regards champerty, the Police will continue to keep track of crime trends and investigate relevant crimes. In addition, the Government</p>
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		<p>will continue to strengthen public awareness against such illegal acts through publicity and education.</p> <p><u>Monitoring mechanism of Legal Aid Department (“LAD”)</u></p> <p>As regards limiting the legal aid cases to be handled by a law firm, since cases are assigned on the basis of individual solicitor, LAD sets an assignment limit on individual solicitor but not on a law firm. Nonetheless, LAD will carefully take into account the number of cases taken up by various lawyers in the same law firm, such as whether necessary support can be obtained for handling the cases, and consider not assigning cases to other lawyers in the same law firm when necessary.</p> <p>After the legal aid case is assigned to assigned lawyers, LAD has to carry out administrative functions (such as approval and payment of expert and other fees) and monitor assigned-out cases to ensure the continued merits and satisfactory progress of individual cases. According to the legal principles laid down by the Court of Appeal in Ngao To-ki v Attorney General, in monitoring assigned lawyers, LAD will not issue orders or dictate what steps should or should not be taken by assigned lawyers in litigation. Nevertheless, to ensure</p>
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		<p>prudent use of public funds and safeguard the interests of aided persons, LAD attaches great importance to and closely monitors the performance of assigned lawyers. Guidance Notes setting out the statutory provisions relating to legal aid and the criteria required by LAD in handling legal aid cases are issued to all solicitors and counsel on the Legal Aid Panel (“Panel”). LAD will assess the performance of assigned lawyers in accordance with the statutory provisions and guidelines specified and take actions against assigned lawyers with unsatisfactory performance, which include issuance of advisory letters, placing the lawyer on the Record of Unsatisfactory Performance/Conduct, removing the lawyer from the Panel, or/and re-assigning the case to other lawyers.</p> <p>HKFI suggested LAD consider referring cases involving minor injuries or undisputed responsibility to the insurance companies for direct follow-up. However, prior to the granting of legal aid certificates, LAD is not representing the applicants and thus is not in a position to provide legal advice to the applicants in respect of the amount of compensation. Hence, for cases involving minor injuries or undisputed responsibility, the applicants have to decide for themselves how to negotiate with the insurance companies. Also, if a legal aid certificate is discharged or revoked, the injured person</p>
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		<p>is no longer a legally-aided person. LAD can no longer act for that person.</p> <p>As regards the suggestion of requiring the legally-aided person to provide adequate justification when nominating their lawyers and direct handling of cases by LAD subject to available resources, LAD will consider the suggestion as appropriate.</p> <p><b>Rehabilitation and follow-up</b></p> <p>HKFI developed the Insurance Fraud Prevention Claims Database in 2018 to identify suspected cases on claims fraud through artificial intelligence and data analysis. The IA is ready to work with the HKFI to step up promotion efforts, with a view to increasing participation rate and data flow as well as enhancing the effectiveness of the system. Also, the Police has been conducting professional investigations into insurance fraud, including the establishment of a task force under the Commercial Crime Bureau to monitor emerging trends of organised fraud cases and conduct targeted investigation and analysis.</p>
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		<p>liability issues in case of a traffic accident. In general, the Police will request the car owner concerned to provide the footage for accident investigation. Taxi owners must ensure that the storage and use of footage complies with the Personal Data (Privacy) Ordinance (Cap. 486) and other relevant legislation.</p> <p>TD welcomes the taxi trade's own initiative to establish a database on traffic accidents and claims involving taxis to facilitate taxi owners/dealers to identify drivers with bad driving records, thereby encouraging taxi drivers to cultivate good driving behavior and reducing traffic accidents. In addition, the IA considers that the establishment of such database would facilitate taxi owners to provide information on traffic accidents or claims of individual drivers to insurance companies when taking out insurance, such that the insurance companies will be able to more accurately assess the risks involved.</p> <p>Since the database will involve collection and storage of personal data of individual taxi drivers, the trade must be cautious about the collection, storage, access and transfer of personal data to a third party when setting up the database so as to ensure that the use of the database complies with the Personal Data (Privacy) Ordinance</p>
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		(Cap. 486) and other relevant legislation.
<b>Hong Kong Police Force</b>		
(b)	strengthening communication with the insurance sector and arranging experience sharing sessions on a regular basis so as to speed up the investigation process	Currently, the Insurance Fraud Focus Group (“Focus Group”) of the Commercial Crime Bureau organises regular meetings with the IA and ad hoc meetings with the HKFI. Other than IA and HKFI, the Focus Group also maintains close communication with various stakeholders in the insurance industry about insurance-related cases and matters. To foster exchange with the industry, the Focus Group is coordinating with IA and HKFI to hold experience sharing sessions regularly on collection of evidence and investigation on suspected insurance fraud cases.
(c)	expediting the provision of information required by the insurance sector on road traffic accidents	Please refer to the reply to item (a) above in relation to “Occurrence of accidents”.
(d)	conducting investigations into suspected cases by a specified task force under the Commercial Crime Bureau instead of by regional police stations	When a report on insurance-related fraud is received, the report will be referred to the investigation units in the respective Police district where the case took place for commencement of investigation. Cases that are highly-syndicated, complicated in nature or cases that involve a substantial amount of money will be referred to and handled by the Commercial Crime Bureau. In addition, the Focus

		<p>Group will provide crime officers of different Police districts with training and sharing sessions on how to handle insurance-related fraud cases. An internal hotline is set up for crime officers to make enquiries to ensure thorough investigation into the cases. The investigation progress of relevant cases will be monitored regularly.</p>														
(e)	<p>providing the number of reported cases on insurance fraud and champerty from 2016 to 2020 as well as the number of prosecutions instituted, with a breakdown on the number of such cases relating to motor insurance</p>	<p><u>Insurance fraud</u> According to the Police’s records, the number of insurance-related fraud cases between 2016 and 2020 is as follows:</p> <table border="1" data-bbox="1014 730 2029 906"> <thead> <tr> <th>Year</th> <th>2016</th> <th>2017</th> <th>2018</th> <th>2019</th> <th>2020</th> <th>Total</th> </tr> </thead> <tbody> <tr> <td>No. of Cases</td> <td>74 (27)</td> <td>42 (2)</td> <td>60 (8)</td> <td>45 (5)</td> <td>29 (5)</td> <td>250 (47)</td> </tr> </tbody> </table> <p>Note: Figures in brackets refer to cases related to motor insurance</p> <p>Depending on the actual circumstances, individual insurance-related fraud case may involve offences such as “theft”, “fraud”, or “obtaining property by deception” under the Theft Ordinance (Cap. 210), and/or the common law offence of “conspiracy to defraud”, with maximum penalties of ten to 14 years of imprisonment. As insurance-related fraud is not itself a specified offence, the Police cannot provide the breakdown of prosecution,</p>	Year	2016	2017	2018	2019	2020	Total	No. of Cases	74 (27)	42 (2)	60 (8)	45 (5)	29 (5)	250 (47)
Year	2016	2017	2018	2019	2020	Total										
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		conviction and penalty figures.  <u>Champerty</u> There is no champerty case between 2016 and 2020.
<b>Legal Aid Department</b>		
(f)	assigning legal aid cases to lawyers on the Panel by rotation instead of allowing an aided person to nominate his own lawyer	To protect the interests of legal aid recipients, when assigning legal aid cases, LAD will consider the competence of lawyers (such as their experience in handling cases of similar nature) according to the merits and requirements of the cases. Hence, legal aid work would not be distributed to lawyers on the Panel by rotation.
(g)	reducing the limit set for the number of cases assigned to a Panel lawyer	The limit was adjusted recently in 2018. LAD will review the assignment limit for a Panel lawyer as and when appropriate in consultation with the Legal Aid Services Council which comprises members from the two legal professional bodies.
(h)	providing the following statistics from 2016 to 2020 with a breakdown on the number of traffic accident-related cases – (i) legal aid applications received; (ii) legal aid certificates granted;	(i)&(ii) The number of traffic accident-related legal aid applications and legal aid certificates granted is as follows –

- (iii) registered lawyers on the Panel;
- (iv) cases involving misuse of legal aid and related follow-up actions; and
- (v) cases involving unsatisfactory conduct or malpractices committed by Panel lawyers and related disciplinary actions;

Year	Number of traffic accident-related legal aid applications	Number of traffic accident-related legal aid certificates granted
2016	626	338
2017	648	320
2018	577	297
2019	614	279
2020	616	262

- (iii) LAD does not maintain separate statistics on the number of Panel lawyers who have handled traffic accident cases.
- (iv) From 2016 to 2020, LAD has conducted investigation on 16 traffic accident-related cases upon receipt of representations related to means and/or merits. Out of these 16 cases, 2 cases on merits were found to be substantiated, resulting in the discharge of legal aid certificates.
- (v) The number of cases involving unsatisfactory conduct or malpractices committed by Panel lawyers and related disciplinary actions in relation to traffic accident-related legal aid

		cases is as follows:		
		Year	Advisory letter	Placing on Record of Unsatisfactory Performance and Conduct
		2016	0	1
		2017	0	2
		2018	0	0
		2019	0	0
		2020	0	1
<b>Social Welfare Department</b>				
(i)	strengthening efforts to verify the information received from applicants of TAVA	Please refer to the reply to item (a) above in relation to “Applying for social welfare compensation by injured person”.		
(j)	reviewing whether to tighten the current eligibility criteria for applying TAVA to prevent abuse	The Traffic Accident Victims (Assistance Fund) Ordinance was enacted in 1979 with the implementation of TAVA Scheme as approved by the Legislative Council to provide assistance to traffic accident victims and their dependents. The TAVA Scheme is a		

		social welfare initiative which aims to provide speedy financial assistance to injured victims of road traffic accidents or their surviving dependents (in case of death). SWD will continue to monitor the implementation of the TAVA Scheme.
(k)	maintaining close liaison with the insurance sector and providing the information required by the sector on TAVA applications	The representative of the Accident Insurance Association under HKFI is one of the members of the TAVA Advisory Committee. SWD will continue to communicate with the insurance sector through this platform.
(l)	exploring ways to avoid touting activities conducted by recovery agents nearby the office of the TAVA section	Please refer to the reply to item (a) above in relation to “Applying for social welfare compensation by injured person”.

**Transport and Housing Bureau**  
**Financial Services and the Treasury Bureau**  
**Transport Department**  
**Hong Kong Police Force**  
**Department of Justice**

**Social Welfare Department  
Legal Aid Department  
Insurance Authority  
June 2021**