



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

LC Paper No. CB(3)1323/2025(01)

來函檔號 YOUR REF : TLB CR 240-001-007
本函檔號 OUR REF : LS/B/32/2025
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Urgent by Email (joycekok@tlb.gov.hk)

16 September 2025

Miss KOK Sen-ye, Joyce
Principal Assistant Secretary for
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20/F, East Wing
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2 Tim Mei Avenue, Tamar
Hong Kong

Dear Miss KOK,

Road Traffic (Amendment) (Ride-hailing Service) Bill 2025

We are scrutinizing the captioned Bill with a view to advising Members on its legal and drafting aspects. To facilitate Members' consideration of the Bill, we should be grateful if you could clarify the matters set out in the Appendix.

Please let us have your response in both Chinese and English as soon as practicable, preferably before the second Bills Committee meeting.

Yours sincerely,

(Jonathan CHENG)
Assistant Legal Adviser

Encl.

c.c. Department of Justice
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Definition of “certificate” (clause 7(3))

1. Considering that the ride-hailing regulation has yet to be made, please clarify:
 - (a) the meaning of “certificate” in the proposed new section 52(6A)(a) of the Road Traffic Ordinance (Cap. 374) and whether it is proposed to refer to a “ride-hailing vehicle certificate”, which is defined under the proposed new section 55ZC(4)(a)(v) of Cap. 374; and
 - (b) if so, whether the definition of “ride-hailing vehicle certificate” could be provided under section 2 of Cap. 374 and the word “certificate” in the proposed new section 52(6A)(a) of Cap. 374 could be replaced as appropriate.

Issues under Clause 8

Proposed new Offences (Division 2 of the proposed new Part 6A)

2. The proposed new section 55D of Cap. 374 provides that ride-hailing service licensees must ensure that any ride-hailing passenger transport service booked through the licensee’s licensed platform is provided by a private car with a valid ride-hailing vehicle permit and is provided by a driver who holds a valid ride-hailing vehicle driving permit. A ride-hailing service licensee who does not comply would commit an offence and would be liable on first conviction to a fine at level 3 (HK\$10,000) in respect of each non-compliant participant and imprisonment for six months and to more severe penalties on subsequent convictions. It is noted that the level of fine is lower for a similar offence in another legislation, namely section 12T of the Road Traffic (Public Service Vehicles) Regulations (Cap. 374D), which provides that a taxi fleet licensee must not use a vehicle to provide services under the licensee’s taxi fleet licence unless the vehicle is a fleet taxi in respect of the licence, and a licensee who commits the offence is liable on conviction to a fine at level 2 (HK\$5,000) and to imprisonment for six months. Please clarify the rationale for proposing to fix the level of fine at level 3 (HK\$10,000) for the proposed new offence under the proposed new section 55D of Cap. 374.

3. The Bill proposes to introduce new offences. The proposed new sections 55D(1) and 55F(1) of Cap. 374 are offences (“Group A Offences”) where the statutory defence of “took all reasonable precautions” and “exercised all due diligence” would be available. On the other hand, no statutory defence appears to be available for the offences set out under the proposed new sections 55B(1), 55E(1) and (2) of Cap. 374 (“Group B Offences”). Both groups of the proposed new offences seem to be intended to be strict liability offences, please confirm whether that is the case. Furthermore, please clarify also as to the following:

- (a) we note that the statutory defences of Group A Offences, i.e. “took all reasonable precautions” and “exercised all due diligence” may be inconsistent with the common law defence of “honest and reasonable belief”. Please confirm whether the common law defence of “honest and reasonable belief” would be available for Group A Offences, and if not, the reason(s) for it;
- (b) whether the common law defence of “honest and reasonable belief” would be available to a defendant prosecuted for Group B Offences, and if so, in proving the defendant’s belief whether the defendant would bear an evidential burden, or would be required to discharge a persuasive burden of proof; and
- (c) if the defendant of Group B Offences would be required to discharge a persuasive burden of proof, please explain how it is consistent with Article 87 of the Basic Law and Article 11(1) of the Hong Kong Bill of Rights (right to be presumed innocent) and that it could satisfy the rationality and proportionality tests laid down in *Hysan Development Co Ltd v Town Planning Board* [2016] 6 HKC 58.

Directions given by the Commissioner for Transport and conducting inquiries - (Division 3 of the proposed new Part 6A)

4. The proposed new section 55M of Cap. 374 seeks to empower the Commissioner for Transport (“Commissioner”) to give direction to ride-hailing service licensees. Under the proposed new section 55M(2) of Cap. 374, the Commissioner could give a written notice of his decision to exercise a direction. Please clarify whether the notice would specify the date the decision takes effect and if so, whether the Bill would provide specification of the relevant date as a requirement. In this regard, we refer to section 12S(4) and (5) of Cap. 374D.

5. The proposed new section 55N(1) of Cap. 374 seeks to empower the Commissioner to appoint a public officer to conduct an inquiry if he has reason to believe a ride-hailing service licensee has failed to comply with certain matters. Please clarify whether it would be necessary to include failure to comply with directions given to the licensee by the Commissioner pursuant to the proposed new section 55M(1) of Cap. 374 as one of the matters listed under the proposed new section 55N(1) of Cap. 374, to the effect that the Commissioner could appoint a public officer to conduct an inquiry if he has reason to believe that the directions given to the licensee have not been complied with.

6. The proposed new section 55N of Cap. 374 seeks to provide that the Commissioner could appoint a public officer to conduct an inquiry. It is noted that the procedures for conducting the inquiry, e.g. requirement on service of a notice to fix a time and place for the inquiry is not provided. In this regard, we refer to section 12W(2)

to (4) of Cap. 374D, which provide for those matters. Please clarify whether the regulation to be made by the Secretary for Transport and Logistics (“Secretary”) pursuant to the proposed new section 55ZC(3)(e) of Cap. 374 (i.e. to provide for the procedures for conducting an inquiry) would provide for similar matters.

7. Under the proposed new section 55O(1) of Cap. 374, the Commissioner could, after considering a report of inquiry, impose a financial penalty on the ride-hailing service licensee concerned. Please clarify:

- (a) what are the factors the Commissioner would consider before imposing a financial penalty and whether those factors would be provided for in the Bill. In this regard, we refer to section 35(3) of Unsolicited Electronic Messages Ordinance (Cap. 593); and
- (b) whether the licensee would be given an opportunity to make representations to the Commissioner before the Commissioner decides whether to impose a financial penalty. In this regard, we refer to section 35(4) of Cap. 593.

Licences and permits - (Division 3 to 5 of the proposed new Part 6A)

8. The proposed new section 55J of Cap. 374 does not contain requirements for certain basic information to be specified in ride-hailing service licences. Please clarify whether basic information for identification purposes (e.g. licence number) would be included in the licence, and whether it would be necessary to set out in the Bill the requirement to specify such information in the licence. In this regard, we refer to section 12E(4) of Cap. 374D. Similarly, please also clarify whether it is appropriate to provide in the Bill that certain basic information (e.g. the validity period, permit number) would be specified in ride-hailing vehicle permits and ride-hailing vehicle driving permits under the proposed new sections 55U and 55Y of Cap. 374.

9. Under the proposed new section 55J of Cap. 374, the Commissioner could issue a ride-hailing service licence, and the licence issued could be subject to certain conditions (see subsection (2)). The conditions that the Commissioner could impose on a ride-hailing service licence could relate to matters set out under the proposed new section 55J(3) of Cap. 374. Please clarify as to the following:

- (a) whether it is your intention that by requiring a licensee to submit to the Commissioner returns and accounts in relation to the services provided under the ride-hailing platform it would assist the Commissioner to keep in view the financial capability of a licensee and if so, whether “returns and accounts” are sufficient for that purpose;
- (b) whether the Commissioner would also have a continuing oversight of the licensee’s level of investment as well, and if so, whether that would be a condition under section 55J(3) of Cap. 374; and

- (c) whether the condition relating to the ride-hailing service licensee's directors and other management personnel (proposed new section 55J(3)(e) of Cap. 374) would have the purpose of assisting the Commissioner to keep in view the management of the relevant service platforms by qualified personnel and if so, what information would be required from the licensees if such a condition is imposed on the relevant licence.

“Proper and efficient ride-hailing service” - (Division 3 of the proposed new Part 6A)

10. A ride-hailing service licensee would have the duty to “ensure that proper and efficient ride-hailing service is maintained to the satisfaction of the Commissioner” under the proposed new section 55K(1)(a) of Cap. 374. Please clarify what is the scope of the licensee's duty under the proposed requirement to maintain “proper and efficient ride-hailing service to the satisfaction of the Commissioner”. Please consider whether details of the scope of the duty would be expressly provided in the Bill, or such details would be specified in any codes or guidelines made available to the public and the industry upon passage of the Bill to facilitate compliance. In this regard, we note that a failure to comply with this requirement could be a reason for the Commissioner to appoint a public officer to conduct an inquiry under the proposed new section 55N(1)(a) of Cap. 374 (which could result in a financial penalty).

Review by Transport Tribunal and the ride-hailing regulation (Division 6 of the proposed new Part 6A)

11. Under the proposed new section 55ZB of Cap. 374, a person aggrieved by a specified decision could apply in writing to the Commissioner for a review of the decision by a Transport Tribunal. “Specified decision” is defined under the proposed new section 55ZB(3) of Cap. 374. It is noted that “specified decision” does not include decisions made under the proposed new section 55J(2) of Cap. 374 (i.e. imposition of conditions on the ride-hailing service licence), the proposed new section 55U(3) of Cap. 374 (i.e. imposition of conditions on the ride-hailing vehicle permit) and the proposed new section 55Y(2) of Cap. 374 (i.e. imposition of conditions on the ride-hailing vehicle driving permit). Please clarify the reasons that those decisions made by the Commissioner would not fall within the scope of “specified decision” under the Bill.

12. The proposed new section 55ZB(1) of Cap. 374 allows an aggrieved person to apply for a review of the Commissioner's decision by a Transport Tribunal. Please clarify whether it would be necessary to:

- (a) provide for the procedures applicable to the Transport Tribunal. In this regard, we refer to section 12Y(3) of Cap. 374D and we also note that the power of the Secretary to make regulations under the proposed new section 55ZC of Cap. 374 does not appear to include the power to make regulation specifically to provide for the procedures of the Transport Tribunal (subsection (6) seeks only to provide for “the review by a Transport

Tribunal of any decision made by the Commissioner under the regulation”); and

- (b) specifically provide for when certain decisions of the Transport Tribunal would take effect. In this regard, we refer to section 12Y(4) of Cap. 374D.

13. Please clarify whether a duplicate of a ride-hailing service licence, a ride-hailing vehicle permit or a ride-hailing vehicle driving permit would be provided in the event they are lost, damaged, defaced or destroyed and if so, whether it would be necessary to provide for the power of the Secretary to make regulation for that under e.g. the proposed new section 55ZC(3), (4) and/or (5) of Cap. 374.

14. Under the proposed new section 55ZD(3) of Cap. 374, it is proposed that the prescribed fees which could be charged under the proposed new section 55ZD(1)(a) of Cap. 374 e.g. application fee for ride-hailing service licences “need not be limited to the amount of administrative or other costs incurred or likely to be incurred by the Government for the purposes of this Ordinance”. Please clarify:

- (a) the basis for determining whether additional fee(s) which is above costs would be payable and the appropriate amount; and
- (b) whether it would be appropriate to include a limit on the excess amount in the Bill. In this regard, we refer to section 19T(3) of the Fire Safety (Buildings) Ordinance (Cap. 572) as an example (where a limit of 20% of the costs for the surcharge is provided).