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L/M (6) in G9/8/3(02) Pt. 4
CB1/PL/FA

14 March 2003

Clerk to Legislative Council Panel
on Financial Affairs
Legislative Council Building
8 Jackson Road, Central
Hong Kong
(Attn: Mr Joey Lo)

Dear Mr Lo,

LegCo Panel on Financial Affairs

**Further email from a member of the public
regarding third-party insurance for motor vehicles**

Thank you for your letter of 7 February 2003 regarding Mr Raymond Pao's further e-mail on the above subject. After consulting the Environment, Transport and Works Bureau, Department of Justice, Transport Department, Police and the Office of the Commissioner of Insurance, we set out in the following paragraphs the Administration's comments on the 4 points raised in Mr Pao's e-mail.

- 1) An insurance policy is a contract made between the policyholder and the insurer on the terms and conditions agreed by them, subject to any applicable statutory requirements. By the inclusion of a "Drink Driving Exclusion Clause" in a motor insurance policy, it is agreed between the two parties that the insurer will not incur any contractual obligation to indemnify (or compensate) the policyholder for any damages or losses suffered by him in relation to his liability arising from a traffic accident involving drink driving. However, the inclusion of such clause will not prejudice the protection for and the rights of third party victims (in so far as death or bodily injury is concerned). Under section 12 of the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272), the insurer

is required to settle claims relating to death or bodily injury irrespective of exclusion clauses, so long that the concerned motorist is held liable.

On the other hand, the existence or otherwise of a “Drink Driving Exclusion Clause” in the motor insurance policy may affect the insurer’s right to recover the payment made under section 12 from the policyholder. The existence of such clause and the requirements of the existing section 12 are not contradictory, and do not necessarily imply anything misleading in the writing of motor insurance contracts.

- 2) The existing law has addressed the issue of driving without third party insurance (in relation to liabilities for third party death or bodily injuries). Section 4 of the Motor Vehicles Insurance (Third Party Risks) Ordinance, Cap. 272, states that “it shall not be lawful for any person to use, or to cause or permit other person to use, a motor vehicle on a road unless there is in force in relation to the user of the vehicle by that person or that other person, as the case may be, such a policy of insurance or such a security in respect of third party risks as complies with the requirements of this Ordinance”. The section applies to all drivers, irrespective of whether they are driving under the influence of drinks or alcohol. All drivers who fail to comply with this provision will be liable to a fine of \$10,000 and to imprisonment for 12 months under Cap. 272.

Separately, any driver who is found exceeding the prescribed alcohol limit when driving on a road has committed a criminal offence under the Road Traffic Ordinance. He/she may face prosecution and be liable to a maximum fine of \$25,000 and up to three year’s imprisonment on conviction.

In 2002, there were about 900 and 1 200 cases of prosecution against driving without third party insurance and drink driving respectively. Concerned government departments will continue their enforcement efforts in this regard. Where there is sufficient evidence, prosecution action will proceed.

- 3) Where government property is damaged as a result of a traffic accident, the Government would issue letters to the party at fault to seek recovery of the value or costs of repair of the damaged property. If the party at fault refuses to pay, the Government would consider taking legal action against him/her. For traffic accidents involving government property,

we do not keep statistics on whether such accidents involved drink driving. The figures requested by Mr Pao are therefore not available.

- 4) As explained in our reply of 10 September 2002 (copy enclosed for easy reference), the Government has taken a number of measures to tackle drink driving, including law enforcement, publicity and education. There is ongoing publicity launched by the Road Safety Council, including radio Announcements of Public Interest (APIs), TV APIs, leaflets, etc. The publicity reinforces social norms of disapproving drink driving, warns of personal and social consequences of such behavior, strengthens the perception of a responsible road user and promotes safer road use. Besides, individuals can also purchase insurance policy to protect their own properties from traffic accidents, whether or not caused by drink driving.

Yours sincerely,

(Alan Lo)

for Secretary for Financial Services and the Treasury

c.c. SETW (Attn: Mr Charles Wu)
HKPF (Attn: Mr Yew Chi-hung)
C for T (Attn: Ms Tonia Lo)
C of I (Attn: Miss Brenda Tsang)
D of J (Attn: Ms Elsie Tse)

Internal

Tsy Branch (Attn: Ms Carrie Wong)

2528 9016

G9/8/3 Pt. 4

10 September 2002

CB1/PL/FA

Ms. Anita SIT
Clerk to Legislative Council Panel
on Financial Affairs
Legislative Council Building
8 Jackson Road, Central
Hong Kong.

Dear Ms. SIT,

LegCo Panel on Financial Affairs

**Views from a member of the public
regarding third-party insurance for motor vehicles**

Thank you for your letter of 9 August 2002 regarding Mr Raymond Pao's e-mail on the above subject. After consulting the Environment, Transport and Works Bureau, Transport Department, Police and the Office of the Commissioner of Insurance (OCI), we set out the Administration's comments in the following paragraphs.

The compulsory insurance requirement under the Motor Vehicles Insurance (Third Party Risks) Ordinance (the Ordinance) relates to liabilities for third party death or bodily injury. As set out in the reply of OCI dated 20 June 2002 (copy attached and English version only) to Mr Pao, an exclusion clause like the one mentioned by Mr Pao in a motor insurance policy will not prejudice the rights or interests of the third parties in respect of their claims for death or bodily injury. This is because under section 10 of the Ordinance, the insurer is required to settle such claims irrespective of exclusion clauses. Hence, notwithstanding the exclusion clause, the law already protects the interests of third parties in respect of claims for death or bodily injury and there is no need for them to seek compensation personally from the driver or the vehicle owner.

As regards claims for third party property damage, there is no compulsory insurance requirement to cover such claims and the Ordinance does not apply to them. Insurance to cover third party property damage is at the moment purchased on a voluntary basis. An exclusion clause on third party property damage contained in the policy merely sets out what is agreed between an insurer and the insured.

The Government is mindful of the importance of road safety and has taken a number of measures to tackle drink driving. Any driver who is found exceeding the prescribed alcohol limit when driving has committed a criminal offence. He/she may face prosecution under the Road Traffic Ordinance and be liable to a maximum fine of HK\$25,000 and up to three years' imprisonment on conviction. In 2001, the Police had taken enforcement action against a total of 1,241 drivers for this offence. Moreover, since the introduction of this legislation in 1995, the Police may demand a screening breath test from any driver who is suspected of drink driving being involved in a traffic accident; or having committed a moving traffic offence. On public education, the Police and the Transport Department will continue to discourage and warn against drink driving through various publicity programmes/channels, such as special Announcements of Public Interest on TV channels before major festivals, road safety seminars for drivers and other appropriate occasions. The Government and the concerned industry body will also continue to provide information on the requirements and protection under the Ordinance.

Yours sincerely,

(Alan LO)
for Secretary for Financial Services
and the Treasury

c.c. SETW (Attn: Ms Alice Au-Yeung)
HKPF (Attn: Mr Yew Chi-hung)
C for T (Attn: Ms Amy Chow)
C of I (Attn: M H Y Mok)