

立法會
Legislative Council

LC Paper No. CB(1)976/2024(04)

Ref. : CB3/PL/TP

**Panel on Transport
Meeting on 12 July 2024**

Background brief on combating illegal carriage of passengers for hire or reward and regulating online hire car hailing platforms

Purpose

This paper provides background information on how the Administration combats illegal carriage of passengers for hire or reward and regulates online hire car hailing platforms. It also summarizes the major views and concerns expressed by the Panel on Transport (“the Panel”) and the Bills Committee on Road Traffic Legislation (Enhancing Personalized Point-to-point Transport Services) (Amendment) Bill 2023 (“the Bills Committee”) on relevant issues.

Background

2. Currently, taxis constitute the majority of personalized point-to-point transport services, while the role of hire cars with permits in the current transport system is to mainly supplement services that are not provided by existing means of public transport, with a view to meeting specific travel needs.¹ Section 52(3) of the Road Traffic Ordinance (Cap. 374) (“RTO”) provides that no person shall drive or use a motor vehicle, or suffer or permit a motor vehicle to be driven or used for the carriage of passengers for hire or reward unless the vehicle complies with certain conditions, which include a hire car permit (“HCP”) being in force in respect of the vehicle. Under Regulation 14(1) of the Road Traffic (Public Service Vehicles) Regulations (Cap. 374D), the Commissioner for Transport may, for the purpose of authorizing the use of a private car for the carriage of passengers for hire or reward, issue in respect of the private car an HCP for a specific type of service. An HCP will only be issued to the registered owner of the private car.

¹ There are five types of hire car permits, namely hotel hire car service, tour hire car service, private service (limousine) hire car, private service (limousine – cross boundary) hire car and private service hire car.

Increasing the penalties for offences relating to illegal carriage of passengers for hire or reward by motor vehicles

3. In the light of community calls in recent years for the Government to implement initiatives to increase penalties for offences relating to illegal carriage of passengers for hire or reward by motor vehicles, the Administration introduced the Road Traffic Legislation (Enhancing Personalized Point-to-point Transport Services) (Amendment) Bill 2023 (“the Bill”) at the Legislative Council (“LegCo”) meeting on 12 July 2023, proposing to raise the maximum fine for the relevant offences and lengthen the period of suspension of vehicle licence and impoundment of vehicle.² After considering the views of the Bills Committee during scrutiny of the Bill, the Administration proposed amendments to the Bill to increase the maximum term of imprisonment for the offence of using a motor vehicle for illegal carriage of passengers for hire or reward.³ The Bill and the relevant amendments were passed at the LegCo meeting of 13 December 2023.

4. In addition, with regard to the community’s views on illegal carriage of passengers for hire or reward and regulation of online hailing platforms, the Administration said that it was reviewing how to enhance existing legislation to more effectively combat illegal activities and exploring how to regulate online hailing platforms, thereby only allowing taxis and hire cars with permits to provide services through the platforms. The Administration was studying the experiences of different places and would communicate with LegCo members, the trade and other stakeholders on policy and legal perspectives involved in the relevant regulation, as well as the key considerations derived from the study on experiences of other places.

Major views and concerns of Members

5. On 15 March 2019, the Panel was briefed by the Administration on the proposal to increase the related penalties for illegal carriage of passengers for hire or reward as stipulated under RTO. The Bills Committee also expressed views

² The Administration proposed increasing the penalties for illegal carriage of passengers for hire or reward under section 52 and Schedule 4 to the Road Traffic Ordinance (Cap. 374) as follows: (a) to raise the maximum fine from the current level 2 (\$5,000) and level 3 (\$10,000) to level 3 (\$10,000) and level 4 (\$25,000) for the first and subsequent conviction(s) respectively; and (b) to lengthen the period of suspension of vehicle licence and impoundment of vehicle from the current three months and six months to six months and 12 months for the first and subsequent conviction(s) respectively.

³ The relevant amendments propose to increase the maximum term of imprisonment for illegal carriage of passengers for hire or reward by motor vehicles from 3 months to 6 months for the first conviction; and from 6 months to 12 months for any subsequent conviction.

and concerns on relevant issues during the Bills Committee's scrutiny of the Bill from August to November 2023.

Discussion by the Panel

6. During the Panel discussion, a few Members expressed concern about the Administration's efforts in combating the provision of personalized and point-to-point hire car service through the use of online hailing platforms. They pointed out that the increasing popularity of the online hailing hire car service demonstrated that passengers had huge demand for alternative means of personalized and point-to-point transport service apart from taxis. They therefore considered that the Administration should facilitate the development of point-to-point hire car service by loosening the existing licensing regime of hire car service and the issuance of more HCPs to allow more market entrants.

7. The Administration responded that it welcomed the use of technology, such as online hailing platforms, to enhance the provision of personalized and point-to-point public transport service, but stressed that the provision of such service must comply with the law. Using online hailing platform itself would not constitute an illicit act, and in fact some taxi associations were also offering online hailing taxi service. It was the use of vehicles for hire or reward which contravened with the requirements stipulated under Section 52 of RTO through the use of online hailing platforms would commit an offence. In addition, there would be risks involved for a passenger using vehicles engaged in the illegal carriage of passengers for hire or reward, such as the invalidation of third party insurance. The Administration stressed that the policy objective was to regulate the service of carriage of passengers for hire or reward, thereby enhancing the safety and protecting the interests of passengers and road users. It was therefore imperative to increase the deterrent effect against the related offence through introducing heavier penalty in combating such illicit acts. In order to address the community's demand for personalized and point-to-point transport services of higher quality, a Taxi Fleet Regime would be introduced under which both passengers and taxi drivers would have better protection.

8. Some Members considered that Hong Kong should welcome new market entrants to bring in innovative and enhanced service, but in doing so, such service must comply with the law, and that the present online hailing service provided by private vehicles without HCPs constituted an unfair competition to the taxi trade, in that any person in possession of a private vehicle could provide hire car service directly to passengers without the need to abide by the legal requirements applicable to the taxi trade such as fee structures and vehicle requirements. In this connection, the Panel passed a motion, the wording of which is at **Appendix 1**.

Views expressed by the Bills Committee

9. The Bills Committee considered that the ineffectiveness, inefficiency and laxity of the Administration in combating the offence of illegal carriage of passengers for hire or reward by motor vehicles have led to the failure to effectively tackle the problem of illegal online hailing of white licence cars. This not only creates unfair competition for the taxi industry, but also makes it difficult to ensure the safety of passengers and protect them from possible loss of their property. On law enforcement, Members considered that the Police's decoy operations could only target a small proportion of unlawful acts. This, coupled with the overly lenient sentences currently imposed by the courts for offences relating to illegal carriage of passengers for hire or reward by motor vehicles, makes it difficult to achieve a deterrent effect. They therefore stressed that the Administration should step up its efforts to combat such offences and appeal against the overly lenient sentences handed down by the courts, seeking more severe penalties so that lawbreakers could be severely punished. There was also a suggestion to strengthen publicity and explain to inbound tourists the risks associated with travelling by illegal hire cars.

10. The Administration responded that it had been taking a multi-pronged approach comprising enforcement, education and publicity in combating illegal carriage of passengers for hire or reward by motor vehicles. On enforcement, the Police had been taking action through targeted operations, including collecting intelligence, conducting decoy operations, and investigating and following up on referral and complaint cases to combat such offences vigorously. In fact, the Police had stepped up their actions and publicity, including enforcement actions at various locations such as the Hong Kong-Zhuhai-Macao Bridge, Wanchai and the airport in late September 2023, resulting in a total of seven persons being arrested. Moreover, the Transport Department ("TD") had reminded the public that third-party risks insurance for any vehicle used for illegal carriage of passengers for hire or reward might be invalidated. TD had also set up an online enquiry system for the public to check whether a vehicle had been issued with a valid HCP. As regards sentencing by the courts, the Administration proposed to increase the maximum penalty for illegal carriage of passengers for hire or reward by motor vehicles, so as to provide the court with a new reference indicator reflecting the seriousness of the offence concerned, and enable the court to impose appropriate penalties on convicted cases having regard to the circumstances of the cases.

11. Some Members asked the Administration how it would strengthen the regulation of online car hailing platforms that provided white licence car service. The Administration explained that it was examining whether there were already relevant regulatory provisions in the existing legislation that imposed applicable legal requirements on the online hailing platforms. On law enforcement, whether

the platform concerned had violated the relevant provisions would depend on factors relating to concrete evidence, mens rea, etc., and the suspected offence must have taken place or been committed in Hong Kong. According to the experience of the Police, many online platforms did not operate in Hong Kong, and it was necessary to consider how to determine who should be held liable (for example, the staff employed by the relevant platforms in Hong Kong might not be directly involved in or related to the provision of hire car services). The Administration had also been closely monitoring the progress of a judicial review case brought by drivers of an online hailing platform in relation to the rejection of HCP application, and the possible implications of the case on the regulatory regime.

12. The Bills Committee noted that the Bill proposed to raise the maximum fine for illegal carriage of passengers for hire or reward by motor vehicles or a related soliciting activity, and to lengthen the period of suspension of vehicle licence and impoundment of vehicle. Some Members were concerned that the maximum term of imprisonment for the relevant offences had not been increased. They considered that the penalties for illegal carriage of passengers for hire or reward by motor vehicles should be aligned with the maximum term of imprisonment for malpractices or offences committed by drivers, so as to avoid any misunderstanding that the offence of illegal carriage of passengers for hire or reward by motor vehicles was less serious than malpractices or offences committed by taxi drivers. Moreover, many unscrupulous drivers who were currently using motor vehicles for illegal carriage of passengers for hire or reward committed the offence by using rented vehicles. In this case, lengthening the period of suspension of vehicle licence would not be sufficient to deter the drivers of rented vehicles. These drivers might continue to commit the offence by renting a motor vehicle from another car rental company. Therefore, these Members proposed that the maximum term of imprisonment for the offence of using a motor vehicle for illegal carriage of passengers for hire or reward should be increased from 3 months to 6 months for the first conviction, and from 6 months to 12 months for subsequent conviction in order to enhance the deterrent effect on drivers.

13. The Administration advised that after listening to the views expressed by members, it considered that the increase in maximum imprisonment term was in line with the policy intent of the Bill to increase the relevant penalties, and would be effective in deterring vehicle owners and drivers from using their vehicles or borrowing/renting other people's vehicles to commit relevant offences. The Administration therefore agreed to introduce amendments to the Bill to revise the maximum term of imprisonment for the relevant offences.

Latest position

14. The Administration plans to consult the Panel on how to regulate online hire car hailing platforms and step up efforts in combating illegal carriage of passengers for hire or reward at the Panel meeting to be held on 12 July 2024.

Relevant papers

15. A list of relevant papers is in **Appendix 2**.

Council Business Divisions
Legislative Council Secretariat
9 July 2024

(Translation)

Panel on Transport

**Motion on "Review of penalty level
for illegal carriage of passengers for hire or reward"
passed at the meeting on 15 March 2019**

Given that the use of motor vehicles for illegal carriage of passengers for hire or reward ("white licence cars") has become increasingly rampant, posing a threat to the protection, rights and interests duly enjoyed by passengers and road users, this Panel urges the Government to expeditiously implement the proposal to increase the penalty level for the offence of illegal carriage of passengers for reward, and as the proposal concerns the maximum penalty level, the Police and the Department of Justice must seek review of the overly lenient sentences so that the sentences should reflect the seriousness of the offence and achieve a deterrent effect; meanwhile, the Police should continue to conduct "sting operations" and take stringent law enforcement actions against "white licence cars" engaged in illegal carriage of passengers for reward.

Jointly moved by: Hon Frankie YICK Chi-ming
Hon YIU Si-wing
Dr Hon CHIANG Lai-wan
Hon LAU Kwok-fan
Hon LUK Chung-hung

Seconded by : Ir Dr Hon LO Wai-kwok

**Combating illegal carriage of passengers for hire or reward and study
of regulation of online hire car hailing platforms**

List of relevant papers

Committee	Date of meeting	Paper
Panel on Transport	21 April 2017	<u>Agenda</u> Item V: Public Transport Strategy Study Role and Positioning Review - Personalized and point-to-point transport services Minutes <u>Follow-up paper</u>
	16 June 2017	<u>Agenda</u> Item III: Public Transport Strategy Study Minutes <u>Follow-up paper</u>
	15 March 2019	<u>Agenda</u> Item III: Review of penalty level for illegal carriage of passengers for hire or reward Minutes
	8 April 2022	<u>Agenda</u> Item III: Enhancing personalized and point-to-point transport services Minutes
Bills Committee on Road Traffic Legislation (Enhancing Personalized Point-to-point Transport Services) (Amendment) Bill 2023 and Taxi-Driver-Offence Points Bill	8 December 2023*	<u>Report of the Bills Committee to the Council</u>

Finance Committee	10 April 2019	<u>Administration's written replies to initial questions raised by Members on the Estimates of Expenditure 2019-2020</u> (Reply Serial Nos.: THB(T)169, THB(T)181 and THB(T)204)
	14 April 2021	<u>Administration's written replies to initial questions raised by Members on the Estimates of Expenditure 2021-2022</u> (Reply Serial No: THB(T)082)
	18 April 2024	<u>Administration's written replies to initial questions raised by Members on the Estimates of Expenditure 2024-2025</u> (Reply Serial Nos.: TLB069 and TLB098)

* Issue date

Council meeting	Paper
28 June 2017	<u>Question 7: Regularization of online car hailing service</u>
31 January 2018	<u>Question 3: Point-to-point transport services under new economic models</u>
16 May 2018	<u>Question 2: Illegal carriage of passengers for reward</u>
15 July 2020	<u>Question 18: Illegal carriage of passengers for hire or reward by motor vehicles</u>
5 June 2024	<u>Question 19: Online ride-hailing services</u>

Research Office of the Legislative Council Secretariat	Paper
27 March 2020	<u>Regulation of ride-hailing apps in selected places</u>

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