

立法會
Legislative Council

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 9 July 2002**

Date of tabling in LegCo : 10 July 2002

Amendment to be made by : 16 October 2002 (or 6 November 2002 if extended by resolution)

Airport Authority Ordinance (Cap. 483)
Airport Authority (Permitted Airport-Related Activities) Order (L.N. 127)

The Airport Authority (AA) is established by the Airport Authority Ordinance (Cap. 483) (the Ordinance). Its purpose is to develop and maintain an airport for civil aviation at and in the vicinity of Chek Lap Kok.

2. On 29 October 2001, AA briefed the Panel on Economic Services (the Panel) that an Order would be made by the Chief Executive under section 5(3) of the Ordinance so that it could engage in certain airport-related activities beyond its geographical limitation. A draft Order was discussed by the Panel on 20 March 2002. Members expressed grave concern that the scope of the draft Order might be too wide and AA might compete for profit with the private sector in the provision of logistics services.

3. Having taken into account Members' views, a revised draft Order was submitted to the Panel on 24 June 2002. The scope of permitted airport-related activities is narrowed. These include:

- (a) entering into an alliance with another airport outside Hong Kong;
- (b) investing in other airports in the Mainland;
- (c) providing consultancy or management services to other airports; and
- (d) providing carriage or logistics services and related facilities.

4. Conditions for engaging in these activities are imposed. Section 4 of the revised draft Order provides that AA shall not engage in these activities unless they are expedient for or conducive to the promotion or maintenance of Hong Kong's status as a centre of international and regional aviation or the competitiveness of the Airport. Furthermore, it can only operate the carriage and logistics services where it is, for the time being, not practicable for any other person to provide these services and it is requisite or expedient for AA to provide the services.

5. Under section 5 of the revised draft Order, if the proposed amount of consideration for the investment in an airport exceeds 2.5% of the issued share capital of AA (i.e. \$916.2 million), approval of the Financial Secretary will have to be obtained.

6. Members were in general support of the revised draft Order. One member queried the basis for pitching the amount of consideration at the proposed level. He was concerned that AA could set the amount of investment on each individual project at or below 2.5% of the issued share capital of AA in order to obviate the need for seeking prior approval of the Financial Secretary. Also, there was no limitation on the number of investment projects under a single airport. The Administration agreed to review the drafting of section 5.

7. In this Order, that provision (section 5) has been revised to read as follows:

"5. Approval of Financial Secretary

(1) The Authority shall obtain the approval of the Financial Secretary before engaging in a permitted airport-related activity specified in section 1, 2 or 3 of the Schedule in respect of an airport if -

- (a) the amount of consideration payable by the Authority for or pursuant to engaging in the activity exceeds 2.5% of the issued share capital of the Authority; or
- (b) where the Authority proposes to engage in more than one such activity in respect of the airport, the aggregate amount of consideration payable by the Authority for or pursuant to engaging in the activities exceeds 2.5% of the issued share capital of the Authority.

(2) After engaging in the activity referred to in subsection (1), the Authority shall ensure that a report of the activity is laid, as soon as practicable, on the table of the Legislative Council."

8. Where AA proposes to engage in more than one airport-related activity whose consideration are to be aggregated, it is not clear from the wording of subsection (1)(b) whether such activities refer to activities proposed at the same time or include activities that have already been proposed on previous occasions or have even been undertaken.

9. In response to our queries, the Administration has agreed to propose an amendment to section 5 to better reflect the policy intent (please see **Annex**). The proposed amendment would make it clear that once the aggregate of the amounts of consideration of any permitted airport-related activities specified in section 1, 2 or 3 of the Schedule that have been engaged in or undertaken to be engaged in by AA in respect of an airport has reached 2.5% of the issued share capital of AA, all specified permitted airport-related activities proposed to be undertaken thereafter in respect of the same airport will have to be subject to the approval of the Financial Secretary.

10. Members may refer to the LegCo Brief (File Ref.: EDB CR 2/935/95(02)) issued by the Economic Development and Labour Bureau dated 9 July 2002 for details.

Encl.

Prepared by

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EDB CR 7/951/82(02) Pt.32

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30 September 2002

Ms Anita Ho

Assistant Legal Adviser
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Ms Ho,

**Airport Authority (Permitted Airport-related Activities) Order
(L.N. 127 of 2002)**

I refer to the above Order and would like to inform you that we intend to make drafting amendments to section 5 as attached.

(Danny Lau)
for Secretary for Economic Development
and Labour

c.c. DoJ (Attn : Ms Michelle Tsang)
(Attn : Mr Dominic Lai)

5. Approval of Financial Secretary

(1) The Authority shall obtain the approval of the Financial Secretary before undertaking to engage in any permitted airport-related activity specified in section 1, 2 or 3 of the Schedule in respect of an airport if the aggregate of -

- (a) the amount of consideration payable by the Authority pursuant to such activity; and
- (b) where the Authority is engaging in or has undertaken to engage in any other permitted airport-related activities specified in section 1, 2 or 3 of the Schedule in respect of the same airport, the amounts of consideration paid or payable by the Authority pursuant to such activities

exceeds 2.5% of the issued share capital of the Authority.

(2) After engaging in an activity approved by the Financial Secretary under subsection (1), the Authority shall ensure that a report of the activity is laid, as soon as practicable, on the table of the Legislative Council.

EDB CR 2/935/95(02)
LS/S/40/01-02

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Secretary for Economic Development and Labour
(Attn: Mr Danny Lau,
PAS for ED&L (Economic Development))
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9 September 2002

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Dear Mr Lau,

**Airport Authority (Permitted Airport-related Activities) Order
(L.N. 127 of 2002)**

I am scrutinising the legal and drafting aspects of the above Order on behalf of the Members and would like to seek your clarification on section 5 of the Order which reads as follows:

"5. Approval of Financial Secretary

"(1) The Authority shall obtain the approval of the Financial Secretary before engaging in a permitted airport-related activity specified in section 1, 2 or 3 of the Schedule in respect of an airport if-

(a); or

(b) where the Authority proposes to engage in more than one such activity in respect of the airport, the aggregate amount of consideration payable by the Authority for or pursuant to engaging in the activities exceeds 2.5% of the issued share capital of the Authority.

(2) After engaging in the activity referred to in subsection (1), the Authority shall ensure that a report of the activity is laid, as soon as practicable, on the table of the Legislative Council."

2. Section 5(1)(b) appears to mean that where the Authority proposes to engage in activities specified in section 1, 2 or 3 of the Schedule in respect of an airport, the activities whose consideration are to be aggregated for the purpose of subsection 1 are restricted to those which are proposed at the same time. Other activities, such as activities proposed at another time or already undertaken need not be taken into account.

3. If the above interpretation is correct, the Authority presumably can split the intended investment in a single airport into different proposals with the overall consideration in each proposal (whether consisting of one or more of the activities) being less than 2.5% of the issued share capital of the Authority and thereby do away with the approval of the Financial Secretary. Is this within the contemplation of the policy intention?

4. With regard to "the activity referred to in subsection (1)" in section 5(2), does it mean any activity or a permitted activity fulfilling the condition in (a) or (b)? If (b), does it refer to each of the activities?

5. Your reply in both English and Chinese version before 16th September 2002 is most appreciated so that I can include your reply into my report on the Order to the House Committee.

Yours sincerely,

Anita HO
Assistant Legal Adviser

cc: DoJ (Attn: Miss Michelle Tsang, SALD) (Fax No. 28452215)
LA