

Legislative Council Panel on Transport

Review of the Regulatory Framework and Licensing System for Non-franchised Bus Operation

PURPOSE

This paper sets out the results of the review on the regulatory framework and licensing system for non-franchised bus (“NFB”) operation conducted by the Transport Advisory Committee (“TAC”).

BACKGROUND

Concerns about Non-franchised Bus Operation

2. In recent years, there have been concerns among the public transport trades about an oversupply of NFBs in the market in which demand for public transport services has been growing slowly. In addition, whilst generally most NFB services are operated in a proper manner, some individual NFB operators provide unauthorised services and some have gone beyond their established scope of operation by providing services which deviate from the transport policy. To address these concerns, the Administration has asked the TAC to review the issues involved.

The Review

3. Members were advised during the Panel meeting held on 19 December 2003 that the TAC had set up the Working Group on Review of Regulation of Non-franchised Bus Operation (“the Working Group”) to review the regulatory framework and licensing system for NFB operation.

4. During the past months, the Working Group has held 11 meetings and a number of consultation sessions with representatives of the NFB, public light bus and taxi trades to better understand the problems and exchange views on measures to be recommended. The Working Group has now completed the review and a report has been submitted by the TAC to the Administration for consideration.

FINDINGS AND RECOMMENDATIONS OF THE WORKING GROUP

Role of Non-franchised Buses

5. The Working Group has reviewed the role played by NFBs in the public transport system and considers that NFBs should continue to play its role as a supplementary transport mode in the transport modal hierarchy. It also affirms NFBs' role in providing tailor-made services to specific groups of passengers and to meet certain market niches such as services for groups of tourists.

Recommended Measures

6. To address the oversupply problem and to improve the regulatory regime governing NFB operation, the Working Group proposes a number of recommendations to:

- (a) coordinate the change in NFB services with demand;
- (b) strengthen regulatory control over NFB operation; and
- (c) enhance effectiveness and efficiency of enforcement actions.

Annex

A copy each of the review report and Executive Summary of the report detailing the findings and recommendations is at Annex.

WAY FORWARD

7. The Administration will carefully examine the review findings and recommendations. We will consider any views Members may have and we will also consult the NFB trade on the recommended measures before deciding on the way forward. In the meantime, the Administration will continue to step up our enforcement against unauthorised NFB activities.

**Report of Transport Advisory Committee
Working Group
Review of Regulation of
Non-Franchised Bus Operation**

July 2004

**Report of Transport Advisory Committee Working Group
Review of Regulation of Non-Franchised Bus Operation**

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CHAPTER 1

INTRODUCTION

FUNCTION OF NON-FRANCHISED BUS

1.1 Given the limited road space and community concerns about environmental impact created by road-based vehicles, the existing transport policy is to accord priority to the mass carriers viz. railways and franchised buses, with railway as the backbone of the public transport network. The other transport modes assume a supplementary role. Non-franchised buses (“NFBs”) fulfil the supplementary functions of:

- (a) relieving heavy demand on franchised bus and green minibus services primarily during peak hours; and
- (b) filling gaps of passenger demand which cannot be met by the regular public transport services.

NFBs also provide tailor-made service to specific groups of passengers, such as transport service to groups of tourists.

CONCERNS OF PUBLIC TRANSPORT TRADES

1.2 In recent years, the number of NFBs has increased rapidly. The NFB and other transport trades have expressed concerns about an oversupply of NFBs as public transport patronage during the same period has been growing slowly.

1.3 There are also concerns that some NFB operators have gone beyond their established scope of operation by providing services which deviate from the transport policy. Whilst such NFB services provide alternative services to passengers, they may undermine the financial viability of regular and legitimate transport services. This is not in the interest of the public. In addition, whilst most NFB services are operated in a proper manner, some individual operators operate unauthorised services, run more trips than permitted, pick up or set down passengers at unapproved locations or deviate from the approved routeing, etc. Such activities lead to traffic and environmental problems. The third party insurance policy for a vehicle might also be invalidated if the vehicle concerned is used for operating unauthorised services. Although

the Administration has strengthened its enforcement actions, some difficulties, such as the complication in differentiating between authorised and unauthorised NFB services, have hindered successful enforcement against the abovementioned malpractices.

TRANSPORT ADVISORY COMMITTEE'S REVIEW

1.4 In view of the above concerns, there are requests for the Administration to take measures to address the oversupply problem, strengthen the regulation of NFB operation and step up enforcement against unauthorised NFB services. The Administration therefore invited the Transport Advisory Committee ("TAC") in late 2003 to conduct a review on the regulatory framework and licensing system for NFB operation.

1.5 In response to the invitation, the TAC set up a Working Group on Review of Regulation of Non-Franchised Bus Operation ("Working Group") at the end of 2003.

MEMBERSHIP AND TERMS OF REFERENCE

1.6 The Working Group comprises the following members of the TAC:

Mr Leung On-fook	Chairman
Dr Cheng Hon-kwan	(membership until March 2004)
Mr Jeffrey Lam Kin-fung	
Mr Lai Chi-tong	
Dr Eric Tsang Po-keung	
Prof Jim Chi-yung	
Dr Wong Sze-chun	(membership since April 2004)
Mr Lester G. Huang	(membership until January 2004)

1.7 The terms of reference of the Working Group are:

- (a) To review the role of NFB in the public transport services sector.
- (b) To review the regulatory framework and licensing system for NFB operation, including those for the operation of contract

hire services and the 14-day provision for prior approval for free bus services.

- (c) To review the enforcement procedures and measures for tackling unauthorised operation of NFB services.
- (d) To recommend to the TAC measures to strengthen the regulation of NFB operation, taking into account the results of these reviews and views of the public and the public transport trades.

WORK PROGRAMME

1.8 The Working Group commenced its work in December 2003 and has held 11 meetings. To better understand the problems created by NFB operation, the Working Group conducted a site visit to black spots of unauthorised NFB operation in February 2004.

1.9 It has received written submissions on the regulation of NFB operation from various sectors including public transport operators, the real estate industry and members of the public. To exchange views with the public transport trades on the issue, the Working Group convened consultation sessions with representatives from the NFB, public light bus ("PLB") and taxi trades. The opinions of other public transport operators including franchised bus, railway and tramway companies were also sought. A copy of the consultation paper and lists of parties whose views have been invited by the Working Group and parties which have provided written submissions regarding the review are at Annex A and B respectively.

CHAPTER 2

ROLE OF NON-FRANCHISED BUS

EXISTING TRANSPORT POLICY AND MODAL HIERARCHY

Transport Policy

2.1 The existing transport policy as stated in “*The White Paper on Transport Policy in Hong Kong*” (January 1990) (“White Paper”) and reaffirmed by the - “*Hong Kong Moving Ahead - A Transport Strategy for the Future*” (October 1999) and the Third Comprehensive Transport Study (May 2000) is:

- (a) to maintain a balanced public transport system with coordination among the different modes; and
- (b) to ensure the provision of safe, efficient and cost-effective public transport services to the community.

Transport Hierarchy

2.2 The transport strategy as stipulated in the White Paper is:

- (a) to make efficient and safe use of the transport infrastructure and services;
- (b) to improve the mobility of people and goods; and
- (c) to achieve a better balance between capacity and demand maximising benefits to the community.

2.3 In line with the above transport strategy, the modal hierarchy of the public transport modes is generally based on their relative efficiency and capacity. Given the limited road space and community concerns about environmental impact from road transport, priority is accorded to the mass carriers viz. railways and franchised buses. The other modes, including PLBs, NFBs and taxis perform a supplementary role in the public transport system, and each serves its own niche markets. To

make this hierarchy effective, a high degree of inter-modal coordination is required.

Inter-modal Coordination

2.4 The inter-modal coordination policy is to give priority to off-street modes and economic road users, and to minimise wasteful competition. With the continued expansion and improvement of the public transport network and the slackening demand for public transport services in recent years, the need for coordinating the various public transport services has become more important. For franchised bus, for instance, the planning concept is to encourage development of bus-bus interchanges in preference to direct bus routes and to rationalise existing franchised bus services particularly those in busy urban corridors. Without coordination, there could be over provision of certain services. This would add to road congestion in busy corridors. The viability and efficiency of various modes would also be undermined, thus leading to pressure on fares, fewer choices for commuters, and inadequate services for the less populated areas.

2.5 In applying the inter-modal coordination policy, consideration is given to such factors as changes in demand, convenience of the travelling public, capacity of competing modes, availability of suitable kerbside and terminus facilities, road congestion, and the likely financial viability of each new route. Adequate flexibility, however, is allowed in the inter-modal coordination policy to meet changing circumstances.

Roles of NFB and other Road-based Transport Modes

2.6 Under the above policy framework, **franchised buses** are important providers of services particularly to areas not conveniently served by railways. They also play a prominent role as feeders to railways and to provide choice. **PLBs** include green minibuses (“GMB”) and red minibuses (“RMB”). The primary function of GMB, which operate scheduled services on fixed routes, is to provide regular transport services to supplement and serve as feeders to the mass carriers, serve areas physically inaccessible to buses or where demand does not justify the provision of high capacity services. RMB, on the other hand, provide a relatively flexible service within their existing service areas at

unregulated fares. **Taxis**, as an alternative to private cars, provide personalised services to passengers who are willing to pay a premium fare.

2.7 The **supplementary role played by NFBs** includes:

- (a) **relieving heavy demand** on franchised bus and GMB services primarily during the peak hours; and
- (b) **filling gaps of passenger demand** which cannot be met by regular public transport services.

Provision of services by NFB operators as a peak supplement and to schools and places of work helps reduce the peak-hour demand on regular public transport services and enable them to keep down the level of resources left idle during off-peak period, with beneficial effect on fares.

2.8 In addition, NFBs **provide tailor-made service to specific groups of passengers**, such as transport service to groups of tourists.

REVIEW OF ROLE OF NFB

2.9 The Working Group considers that the distinct roles of various public transport modes outlined in paragraphs 2.3 to 2.8 above have been serving our community efficiently, minimising wasteful competition and reducing adverse effects on road traffic and our environment. The Working Group has examined the feasibility of expanding the functions of NFBs. There has been a significant expansion in public transport capacity in recent years and the situation has reinforced the need for better coordination among the various public transport modes to optimise the use of resources and to address growing environmental concerns. Any undue expansion of fleet and services of NFB or any other road-based transport mode would upset the current balance and result in over provision of services, particularly in busy corridors. This would undermine the viability and efficiency of various public transport services, create road congestion and cause adverse impact on the environment. This would not be in the interest of the public.

2.10 In view of the above, the Working Group considers that NFB should continue to play the supplementary role as mentioned in

paragraph 2.7 above. The Working Group also recognises NFBs' role in providing tailor-made services to specific groups of passengers and to meet certain market niches, such as services on group-hire basis for tourists, students, participants of short-term events like guests attending wedding or funeral.

CHAPTER 3

LICENSING AND REGULATION OF SUPPLY OF NON-FRANCHISED BUS

3.1 This Chapter examines the existing regulatory system governing the licensing and provision of NFB services. It also sets out the concerns about the system and the Working Group's proposed measures to contain the increase in NFBs.

EXISTING LICENSING SYSTEM

Passenger Service Licence

3.2 The operation of NFB service is regulated through Passenger Service Licence ("PSL") issued by the Commissioner for Transport ("C for T") under section 27 of the Road Traffic Ordinance ("RTO"), Cap. 374 and its subsidiary legislation (extracts of legislative provisions relevant to regulation of NFB operation referred to in this report are at Annex C). The law requires that each vehicle operating under a PSL should be issued with a Passenger Service Licence Certificate.

Types of NFB Service and Endorsement

Public Non-franchised Buses

3.3 A PSL may authorise the holder to operate one or more of the seven types of public bus service specified in section 4(3) of the Public Bus Services Ordinance ("PBSO"), Cap. 230, or any other type of service approved by C for T under section 27(4)(b) of the RTO, Cap. 374. There are eight types of public NFB service and a PSL holder has to obtain separate endorsement as well as approval for individual route operation as appropriate from C for T before operating any one of them:

Code	Service Type	Remarks
A01	Tour Service) The definition of these services are stipulated under section 4(3) of PBSO, Cap. 230.))))))
A02	Hotel Service	
A03	Student Service	
A04	Employees' Service	
A05	International Passenger Service	
A06	Residents' Service	
A07	Multiple Transport Service	
A08	Contract Hire Service	This is a type of service approved by C for T under section 27(4)(b) of RTO, Cap. 374.
	Sub-type: Free Bus Service ("FBS")	According to the existing licence conditions on contract hire service, any service with a fixed route or a fixed destination area on which carriage is offered to any member of the public other than at separate fares (commonly known as "Free Bus Service") and its operation is for more than 14 days either consecutively or intermittently during a continuous period of 12 months is subject to prior approval from C for T.

3.4 Among the eight types of service:

- (a) employees' service (A04), international passenger service (A05), residents' service (A06), multiple transport service (A07) and regular FBS are **scheduled services**. Operation of scheduled services including routeing, stopping places, timetable, etc. should be in accordance with the details as specified in a service detail, schedule of service or details of approved service approved by C for T; and
- (b) the other types, including tour service (A01), hotel service (A02), student service (A03), and contract hire service (A08) (except regular FBS), are **non-scheduled services** whereby more flexibility is allowed under the PSL system for them to provide tailor-made services to passengers.

Private Non-franchised Buses

3.5 Private buses are also a type of NFB regulated under the PSL system. Details of its licensing system and operation as well as proposed measures to better regulate private NFB services are in paragraphs 6.1 to 6.5 in Chapter 6.

Criteria for Assessing Applications for PSL

3.6 In determining an application for a PSL (for both public and private NFBs), C for T is required by section 28 of RTO, Cap. 374 to take into account, in addition to any other matter which he considers relevant to the application:

- (a) any policy direction from the Chief Executive with respect to the provision of public transport services;
- (b) any limit in force on the number of vehicles that may be registered;
- (c) the need for the services to be provided by the applicant;
- (d) the level of service already provided or planned by other public transport operators;
- (e) traffic conditions in the areas and on the roads where the services are to be provided; and
- (f) the standard of service to be provided by the applicant.

Licensing Process

3.7 **Application for new PSL by new applicants:** Applicants have to provide in their application, amongst others, the following information:

- (a) the type of service proposed;
- (b) the route or area to be served where appropriate;
- (c) the number and type of vehicles to be operated on the service;
- (d) the frequency at and the period on each day during which the service shall be operated; and
- (e) proposed fares (if any).

3.8 In addition, applicants are required to provide supporting documents, such as service contract and user group support letter, to justify the need for the proposed service. The Transport Department (“TD”) would examine the supporting documents to verify whether the service demand is substantiated when considering the applications.

3.9 **Application for additional endorsement and additional vehicle** by existing operators: Applicants have to provide similar information as in the case of application for new PSL for consideration and vetting by TD. TD would examine the supporting documents to verify whether the service demand is substantiated. In the case of applications for additional vehicles involving a net increase in the number of buses of an existing PSL holder, the PSL holder concerned has to submit details of bus deployment and / or bus hiring records. TD would examine the deployment and hiring details before deciding whether to approve the applications.

3.10 **Application for renewal of PSL and endorsements** by existing operators: Applications are processed in a similar manner as in the case for applications for new PSL. In general, applicants would be required to provide service contract or user group support letter where appropriate, and approval would be granted if the service need is considered justified. If applicants fail to provide supporting documents to demonstrate the continued need for a particular type of NFB service, the endorsement granted for that particular type of service will be withdrawn at the time of renewal of the PSL.

3.11 A PSL may be issued for a period not more than five years, and is not transferable. It may be extended by C for T for periods each of which would not be more than five years. At present, a PSL is normally issued for a period of two years and is subject to renewal.

3.12 Under section 33 of RTO, Cap. 374, any person who does not accept C for T’s decision to refuse to issue a PSL may apply to C for T for a review of his decision by a Transport Tribunal. The Tribunal comprises three persons appointed by the Chief Secretary for Administration.

Flexibility of the Existing Licensing System

3.13 To enhance regulation of NFB services, TD has in the past few years taken the following measures through amendments to PSL conditions and administrative procedures:

- (a) assessing utilisation of the whole fleet of the applicant for any application for additional vehicles;
- (b) requiring contract or hiring record to support application for renewal of endorsements;
- (c) requiring pre-payment arrangement for student services except those for post-secondary educational institutions;
- (d) requiring TD's prior approval for individual route operation of employees' service;
- (e) improving display on service operation of residents' service, e.g. standard signboard showing "Residents' Service", the service destination and route number on each bus deployed to operate resident's service as well as placement of "Details of Approved Service" on board the vehicle;
- (f) rationalising residents' service and their stops in busy areas; and
- (g) requiring operators to seek prior approval from C for T in respect of FBS with a fixed route or fixed destination area and operated for more than 14 days either consecutively or intermittently during a continuous period of 12 months.

3.14 In response to requests by the NFB trade, the following flexible arrangements for processing and vetting applications for NFB services have been implemented to allow NFB operators certain operational flexibility:

- (a) more than one type of endorsement can be granted to a PSL holder for operating more than one type of NFB service;
- (b) when granting endorsement for tour (A01), hotel (A02), student (A03) and employees' (A04) services, the same type of

endorsement will be granted automatically to the whole NFB fleet of a PSL holder to allow the NFB operator maximum flexibility in deploying his fleet to operate the service;

- (c) when granting endorsement for tour service (A01), endorsement for hotel service (A02) will be granted automatically to the PSL holder; and
- (d) endorsement for operation of contract hire service (A08) will be granted automatically to PSL holders granted with other types of endorsements. However, such arrangement ceased with effect from 29 December 2003.

PROBLEMS AND CONCERNS

Oversupply of NFBs

3.15 During the last five years from end 1998 to end 2003, the registered fleet size of NFBs increased by 23% from 5,900 to 7,200. In terms of service type, the percentage growth in the same period is as follows:

Service Type	No. of registered NFB as at end 1998	No. of registered NFB as at end 2003	Percentage Growth
Tour Service (A01)	2 537	3 336	+31%
Hotel Service (A02) ⁽¹⁾	915	3 426	+274%
Student Service (A03)	2 988	4 265	+43%
Employees' Service (A04)	2 259	2 432	+8%
International Passenger Service (A05)	570	745	+31%
Residents' Service (A06)	841	1 055	+25%
Multiple Transport Service (A07)	0	0	0
Contract Hire Service (A08) ⁽²⁾	3 000	6 720	+124%

- (1) Hotel service (A02) endorsement has been granted automatically to PSL holders with tour service (A01) endorsement since May 2000.
- (2) Contract hire service (A08) endorsement has been granted to PSL holders with other types of endorsement since December 1998. This arrangement ceased with effect from 29 December 2003.

The chart at Annex D illustrates changes in the number of NFBs with different types of endorsement since end 1998.

3.16 During these five years, however, public transport patronage only increased by 2.7% from 11.1 million passengers per day in end 1998 to 11.4 million passengers per day in end 2003. The NFB trade and other public transport trades generally recognise that there is an oversupply of NFBs in the market in terms of number of vehicles as well as number of endorsements. Such an excess supply of NFB services has given rise to problems as described in paragraphs 3.17 to 3.19.

Viability of NFBs and Other Public Transport Modes

3.17 With the rapid increase in the number of NFBs in the past few years and the relatively slow increase in public transport service demand as mentioned in paragraph 3.16, NFB operators face greater competition among themselves to strive for more business opportunities. They also have to compete more intensively with other public transport modes, in particular minor modes including PLB and taxis, in order to obtain passenger share.

3.18 The unhealthy competition arising from an excessive supply of NFB services may undermine some regular public transport operators who provide essential services including less viable but socially desirable services. Such unhealthy competition also affects the viability of the NFB trade and other minor modes, which in the longer term may affect the provision of their services. This is against the inter-modal coordination policy and may lead to undesirable consequences including fewer choices for commuters and inadequate services for less populated areas.

Increase Likelihood for Unauthorised NFB Operation

3.19 As a result of keen competition among NFB operators and with other modes of transport, some individual NFB operators have gone beyond their established scope of operation to operate services deviating from the NFB policy. Some NFB operators also operate unauthorised NFB services. Such services would undermine the regular and legitimate transport services, including authorised NFB services, and

cause traffic problems at some popular spots.

RECOMMENDATIONS

Coordinating the Change in NFB Services with Demand

3.20 To address the problem of oversupply of NFB vehicles and services and taking into account the importance of minimising impact of the proposed measures on existing supply, the Working Group considers that there is a need to coordinate the change in NFB services with demand in a more effective manner as follows:

- (a) **New Supply** (i.e. applications for new PSL including associated endorsements and vehicles from new applicants; applications for additional endorsement and vehicle from existing operators and applications for future renewal of the above PSL and endorsement): very stringent measures should be adopted in processing applications that would result in growth of NFB vehicles or services; and
- (b) **Existing Supply** (i.e. applications for renewal of PSL and endorsement and replacement of vehicle by existing PSL holders): since these applications will not expand the existing supply of NFB service, greater flexibility should be allowed in order to minimise impact on existing NFB services and their users.

3.21 Measures recommended by the Working Group to better coordinate the change in NFB services with demand are set out in paragraphs 3.22 to 3.40.

Stringent Vetting of Applications and Documentary Requirement

3.22 The Working Group recommends that all applications in respect of NFB should be assessed against the criteria stipulated under section 28 of RTO, Cap. 374 (details in paragraph 3.6 above) to ensure that only services that are genuinely in demand and could not be adequately provided by regular public transport modes will be approved. This is to help alleviate the oversupply problem.

3.23 **New Supply:** The Working Group recommends the following measures for processing application for new PSL, additional vehicle and additional endorsement:

- (a) an applicant has to provide relevant supporting documents, e.g. contracts with validity period of 6 months or above, to prove the genuine long term need for the proposed services. Documents provided should be vetted and verified strictly. This same requirement is applicable to the future renewal of these new PSLs and additional endorsements; and
- (b) to ensure that there is practical need for all services approved, the validity period approved for endorsement should tie in with the validity period of the contract submitted but not exceeding that of the PSL.

3.24 **Existing Supply:** The Working Group appreciates that some existing operators might have difficulties in securing future contracts of sufficiently long period when their PSL or endorsements are due for renewal, such as those small operators providing services under sub-contracting arrangements. Having regard to the existing mode of operation of small operators and to address their concerns, the Working Group recommends the following measures for processing renewal of PSL or endorsement:

- (a) contract of any period, including sub-contract, can be accepted as sufficient proof for need of services to justify the renewal. The endorsement will be renewed up to the expiry of the contract or the PSL, whichever is the shorter; and
- (b) if an existing PSL holder does not have a valid contract or sub-contract at the time of application for renewal of PSL or a particular endorsement, a period of six months from the expiry date of the PSL/endorsement can be allowed for the PSL holder to obtain a relevant contract for renewal. If a contract cannot be obtained during the six-month period, future applications for the PSL/endorsement will be treated in the same way as that for new supply.

Full Fleet Vetting for Applications

3.25 **New Supply:** To ensure that the utilisation of the existing fleet of an applicant would be examined in considering applications for new supply, full fleet vetting should apply to applications for:

- (a) renewal of new PSL and its associated endorsement granted to new applicants;
- (b) additional vehicle from existing operators;
- (c) additional endorsement from existing operators and future renewal of such additional endorsement; and
- (d) future renewal of PSL which covers additional vehicle and additional endorsement.

3.26 To facilitate full fleet vetting, an applicant should be required to submit vehicle deployment and utilisation records of their whole NFB fleet for examination by TD. The applicant may also be required to provide other relevant documents such as invoices and debit notes to prove the validity of the deployment records if situation warrants.

3.27 The purpose is to ensure that such new supply should be approved or renewed only if the fleet concerned is well utilised. To avoid undue disruption to existing operation, the Working Group suggests that existing endorsements and existing vehicles approved before the implementation of the new measures should not be affected.

3.28 **Existing Supply:** To avoid disruption to existing service operation, the proposed full fleet vetting should not apply to renewal of existing PSL that does not involve additional vehicle or additional endorsement, renewal of existing endorsement or replacement of existing vehicle.

Single / Restrictive Endorsement

3.29 A PSL holder at present may be granted with more than one endorsement for the provision of different types of service. There is no restriction on the number of endorsements for an NFB. As at end April 2004, about 4,000 or 57% of public NFBs have three or more endorsements. This flexible approach in granting endorsements has resulted in excessive number of endorsements available in the market as

some PSL holders are inclined to apply for more types of endorsement than are required. This situation also causes difficulties in regulating the activities of NFBs.

3.30 New Supply: To address the above problem, the Working Group recommends that all new vehicle applied for by new applicants and additional vehicle applied for by existing operators should normally be granted with one type of endorsement only. Two endorsements would be approved only under very exceptional circumstance, e.g. when the services under the two endorsements concerned are complementary to each other and serve the same or very similar clienteles (such as tour service (A01) and hotel service (A02)) and the applicants can provide justification for the proposed services.

3.31 The Working Group appreciates that the single/restrictive endorsement proposal might have the drawback of not facilitating optimal use of new vehicles that may be approved. Additional vehicles may be required to satisfy new demand for a different type of service even if the existing fleet of a PSL holder might have spare capacity. However, restricting the number of endorsements of a vehicle of new applicant and additional vehicle of existing operator has the benefit of inducing potential and existing operators to think carefully before entering into the trade or expanding their fleet. This is because the types of service that can be provided by the vehicle applied for will be more restricted. This will help prevent further oversupply of vehicles and facilitate better utilisation of current NFBs to meet demand for services. Moreover, it will allow better control on and easier identification of the types of service being provided by an NFB, particularly when distinct livery/labels (relevant recommendation is in paragraph 5.21) are adopted for different types of service. Enforcement actions against unauthorised NFB operation of these vehicles can be taken more effectively and promptly.

3.32 Appreciating that some existing small operators are currently holding contract hire service (A08) endorsement only, the Working Group considers that opportunity should be given to them to improve their viability under the new regulatory framework through the granting of an additional endorsement if justified. If such operators apply for additional endorsement, the Working Group recommends that the concerned vehicle could be granted with one additional endorsement, or two additional endorsements that are complementary in nature, provided the need for the additional endorsement can be justified. Flexibility in

vetting and documentary requirements would be allowed for this type of applications.

3.33 Existing Supply: Incumbent NFB operators raised strong objection to the application of single/restrictive endorsements to their existing vehicles during the Working Group's consultation with the NFB trade. They were concerned that this would hamper their business opportunities and might even make their business not viable. The Working Group, therefore, does not propose to impose single/restrictive endorsement to renewal of existing PSL or endorsement. Nevertheless, the Working Group recommends that if existing operators apply for additional endorsement or endorsement which has lapsed for whatever reason, the application should be treated as one for new supply. Flexibility should be given to allow operators to change their endorsement from one type to another provided sufficient justification could be produced.

Cease Full Fleet Endorsement and Automatic Granting of Endorsement for New Supply

3.34 At present the following approaches are adopted to enable NFB operators to have maximum flexibility in fleet deployment:

- (a) **full fleet endorsement arrangement:** if an application of a PSL holder for endorsement for tour service (A01), hotel service (A02), student service (A03) or employees' service (A04) for some of his NFB vehicles is approved, the same endorsement will be granted to the other vehicles of his NFB fleet currently without such endorsement;
- (b) **automatic granting of endorsement:** endorsement of contract hire service (A08) is granted automatically to vehicles approved with any other types of endorsement (this practice ceased in December 2003) and endorsement of hotel service (A02) is granted automatically for vehicles approved with tour service (A01) endorsement.

These arrangements have led to an undue amount of endorsements in the market. They have also resulted in abuse of the endorsement for unauthorised operation.

3.35 New Supply: The Working Group proposes that the Administration should tighten up the existing flexibility in granting endorsements to operators which do not currently have the endorsements concerned:

- (a) the Administration should stop the current practice of automatic granting of the same endorsement to the full fleet of a PSL holder;
- (b) automatic granting of hotel service (A02) endorsement to vehicles approved with tour service (A01) endorsement should be terminated; and
- (c) the measure implemented since December 2003 to cease automatic granting of contract hire service (A08) endorsement to vehicles currently without such endorsement should continue.

This means that in future endorsements will only be granted to those vehicles which are required to provide the corresponding types of NFB service.

Application for Operation of Scheduled Services by NFB Operators

3.36 New Services: The need for NFB services should be considered as established only if the criteria stipulated under section 28 of RTO, Cap. 374 are met. Taking **new residents' service** as an example, applications for new services should be processed with due regard to a number of principles, including:

- (a) the residents' service should facilitate commuters to connect to the nearby rail station or public transport interchange to avoid adding congestion to busy urban districts;
- (b) the residents' service should not pose significant adverse impact on regular public transport services in the area concerned;
- (c) existing or planned public transport services in the area to be served by the proposed residents' service are inadequate or limited;
- (d) residential development served by the proposed residents' service are distant from rail station, public transport interchange

- or major franchised bus stop or GMB stop and use of alternative services will result in excessive number of interchanges; and
- (e) the residents' service will not operate in congested areas or via local busy road and will not cause traffic congestion.

As for applications for **new employees' service**, the following factors should be considered:

- (a) the employees' service should be considered if:
 - (i) the service is fully subsidised by the employer; or
 - (ii) existing or planned public transport services in the area or during the period to be served by the proposed service are inadequate or limited; or
 - (iii) the workplace to be served by the proposed service is distant from rail station, public transport interchange or major franchised bus stop or GMB stop and use of alternative services will result in excessive number of interchanges;
- (b) the employees' service should be to and from the workplace;
- (c) the workplace and/or destination of the employees' service are not within busy urban areas or congested districts and its operation will not cause traffic congestion;
- (d) passengers of the employees' service should be restricted to employees of the employer; and
- (e) the service should be provided to the employees of one employer at any one time.

3.37 Existing Services: the Working Group noted the Administration's continued efforts to improve regular public transport services in the light of changing traffic demand. As a result of the improvement in regular transport services, adjustment of supplementary services may be necessary. The Working Group recommends that, in reviewing the need for any adjustment to the supplementary services provided by NFBs, the Administration should take into account not only the changes in the level of regular public transport services but should also have regard to the changes in passenger demand for the NFB services concerned.

3.38 If the review shows that the passenger demand for the NFB service has dropped, the existing NFB service may be adjusted, withdrawn or truncated. Adjustment to the existing NFB services may

include changes in routings of the service, frequency, operating hours, etc. On the other hand, if the review shows that demand for the NFB service has remained stable despite the improvement in regular public transport services, the NFB service concerned may be maintained.

Requirements for Replacement of Vehicle

3.39 It is important to avoid undue growth in the total carrying capacity of the NFB fleet due to increased size of replacement vehicles and to avoid a rising number of large NFBs creating traffic problems on roads. The Working Group recommends that the Administration, in processing application for replacement of vehicle, should introduce a requirement that the seating capacity of the replacement vehicle should be comparable to that of the original vehicle. A replacement vehicle with a larger capacity may be approved only if the applicant can provide valid justification, e.g. vehicle of the same capacity is no longer available in the market, genuine need for the proposed capacity increase, etc.

Provide Incentives for Sourcing NFBs from Existing Fleet in the Market

3.40 As a further step to contain the growth of total number of NFBs in the market, the Working Group proposes that the Administration should consider providing incentives to encourage applicants who wish to increase their number of NFBs or who wish to enter the NFB trade to source vehicles from the existing NFB fleet in the market. For this purpose, the Administration may accord priority to the processing of applications for new PSL or additional vehicles if the NFBs concerned are sourced from the existing fleet in the market, i.e. from owners who will not replace their vehicles, thus without increasing the overall NFB fleet size. Such application may be processed immediately. Under these arrangements, applicants who intend to purchase new vehicles would be given a period (say, six months) for them to try to source vehicles from the existing fleet in the market. Their application would be processed as soon as they could source vehicles from the existing fleet or at the end of the period if they could not source such vehicles during the period.

OTHER PROPOSALS CONSIDERED

Desirability of Imposing a Cap on NFB Fleet

3.41 The Working Group has also examined the desirability of imposing a cap on NFB fleet. A number of public transport operators, including members of the NFB trade, have suggested freezing the number of NFB vehicles in view of the relatively stable demand for public transport services and the downturn of the economy on the one hand, and the opening of new railways and the continued increase in the number of NFBs on the other. They believe that a freeze on the NFB fleet size would control the supply of NFB capacity and would stop aggravating the unhealthy competition among the transport modes, particularly the NFBs, PLBs and taxis.

3.42 Restriction on the number of NFB fleet size can be imposed by the Chief Executive in Council by notice in the Gazette under section 23(1)(b) of RTO, Cap. 374 up to a period of 12 months. Any extension of the period of the restriction requires a resolution by the Legislative Council.

3.43 The Working Group has carefully considered two options:

- (a) to freeze the number of NFB vehicles, and
- (b) to freeze the number of endorsements for selected types of service.

Option (a) will contain the growth of NFB fleet at the current level. Option (b) will enable control of growth of those types of service where the supply in the market is already sufficient to meet anticipated demand while allowing flexibility to maintain growth in those areas where there is increase in demand.

3.44 The Working Group is of the view that option (a) is arbitrary. It would restrict the flexibility in meeting the genuine needs of some service sectors which may require additional vehicles to meet demand due to their special circumstances. Moreover, imposing a limit on the number of NFBs may lead to speculation and thus generate premium in NFBs. If option (b) were to be pursued, there is a need to devise a mechanism to determine which service sectors should be allowed an increase in supply and which should not. Capping the number of

selected types of endorsement might in turn increase the cost of those services and is not in the interest of the users.

3.45 In view of the above drawbacks, the Working Group does not consider it appropriate to impose a cap on the NFB fleet size. Instead, the Working Group considers that a two-pronged approach should be developed. First, measures to tighten the licensing regime and vetting procedures should be introduced to coordinate the change in NFB services with demand. Second, the operators of NFB services should be better regulated, with strengthened enforcement, as a way to ensure that NFB operation meets its purpose without encroaching on the function of other transport modes.

Advancing the Certificate of Fitness Test

3.46 At present, NFBs that have reached the vehicle age of 12 years are required to undergo the Certificate of Fitness (“CoF”) test to ensure their safety. Some NFB operators have suggested to tighten the requirement to cover NFBs aged 10 years as a means to gradually reduce the number of existing NFBs available in the market. The Working Group considers that there is no sufficient justification from both the operational and vehicle safety perspective for advancing the CoF test from 12 to 10 years and therefore does not recommend the adoption of this measure.

CHAPTER 4

OPERATION OF NON-FRANCHISED BUS AND MEASURES TO FACILITATE REGULATION

4.1 This Chapter sets out the legislative and administrative measures in place to regulate NFB operation. It also examines the problems relating to NFB operation and recommends measures to facilitate more effective regulation.

EXISTING REGULATION OF NFB OPERATION

Legislative Requirements

Road Traffic Ordinance, Cap. 374

4.2 Section 52(4) of RTO, Cap. 374, includes provisions forbidding person from driving or using a public bus other than one operated under a franchise, and from permitting such a vehicle to be driven or used for the carriage of passengers unless a PSL is in force in respect of the vehicle. Section 52(9) of the RTO, Cap. 374 also specifies that it is an offence for a person to drive or use a motor vehicle, or to permit a motor vehicle to be driven, in contravention of any conditions subject to which the vehicle licence was issued.

4.3 Any person contravenes the above is liable in the case of first conviction to a fine of \$5,000 and to imprisonment for three months. In the case of second or subsequent conviction for that offence, the maximum penalty is a fine of \$10,000 and imprisonment for six months.

4.4 In addition, if C for T has reason to believe that an NFB has been used otherwise than for the purpose authorised by the PSL, or any PSL condition or provision of RTO, Cap. 374 has not been complied with, he may appoint a public officer to hold an inquiry under section 30 of RTO, Cap. 374. C for T may cancel, suspend or vary a PSL after an inquiry has been held.

Public Bus Services Ordinance, Cap. 230

4.5 Section (4)1 of PBSO, Cap. 230, stipulates that a public bus service shall not be operated except under a franchise or unless the service is a type of authorised NFB services specified in the Ordinance or approved by C for T under section 27(4)(b) of RTO, Cap. 374. Any person not complying with the legislative provision shall be guilty of an offence and shall be liable on conviction to a fine of \$100,000.

Licensing Conditions

4.6 Apart from the legislative control, NFB operation is also regulated through the imposition of PSL conditions. C for T may issue a PSL subject to such conditions as he may specify. PSL conditions may include, but not limited to:

- (a) the number and types of vehicles that the licensee may use;
- (b) the purposes for which the vehicles may be used;
- (c) the areas or routes in or on which the vehicles may be used;
- (d) the places at which the vehicles may stand or stop to pick up or set down passengers;
- (e) the records that the licensee must keep;
- (f) the fares to be charged; and
- (g) the frequency at which and the period on each day during which the service shall be operated on routes specified in the licence.

PROBLEMS AND CONCERNS

Problems relating to NFB Operation

4.7 The types of problem created by some NFB operators are described in paragraphs 4.8 to 4.15.

Exploitation of loopholes in legislation or licensing conditions

4.8 Some individual NFB operators have exploited the loopholes of existing licensing conditions to provide unauthorised services or go beyond their established scope of operation to provide services deviating

from the NFB policy. The type of service subject to most frequent abuse in this regard is contract hire service (A08), in particular FBS.

4.9 Some NFB operators make use of contract hire service (A08) endorsement to hire out their vehicles to provide any types of service, including those covered by A01 to A07 endorsements, as long as no separate fares are charged. This deviates from the purpose of contract hire service (A08) endorsement which is for catering ad hoc demands for services that could not be met by the other seven types of service, e.g. wedding, funeral and open day of institutions.

4.10 In line with the intention that A08 endorsement is for meeting short-term service needs, there is an existing licensing condition for contract hire service requiring NFB operator to seek C for T's approval for operation of a service with fixed route or fixed destination area consecutively or intermittently over 14 days in a period of 12 months. However, the following problems are caused by some individual operators:

(a) The 14-day rule for FBS

Some operators disregard the licensing conditions and operate services in excess of 14 days without approval. Some operators deploy different vehicles every 14 days to run long term regular services to circumvent the requirement to seek C for T's prior approval for operation of a service with fixed route or fixed destination area consecutively or intermittently over 14 days in a period of 12 months. Some even have the misconception that doing so is in line with the licensing conditions.

(b) The "open to the public" rule under FBS

An FBS with fixed route or fixed destination area running over 14 days would require C for T's prior approval if it is open to any member of the public. Some individual operators get round this by disguising their services as services to restricted parties like club members.

(c) The "no separate fare" rule under FBS

Some operators claim that they are providing FBS but the separate payment is in fact hidden, such as in the form of management charges or club fees.

4.11 Such FBS are usually services to and from shopping malls or housing development or services for flat viewing and operate for more than 14 days within a 12-month period without TD's approval. While some of these services provide daily service, some only operate on Saturdays, Sundays and public holidays.

Non-compliance with Licensing Conditions by PSL Holders

4.12 Some individual PSL holders, though holding the relevant valid endorsement, provide the corresponding types of services not in accordance with the licensing conditions. Examples include:

- (a) operate more trips than permitted (mainly residents' service and international passenger service);
- (b) call at unauthorised stops en-route (mainly residents' service, employees' service and international passenger service);
- (c) deviate from prescribed routeing of approved service (mainly residents' service and international passenger service);
- (d) operate routes without C for T's approval (mainly residents' service, employees' service, and FBS);
- (e) serve more than one group of clientele per trip (mainly student service, residents' service and employees' service);
- (f) collect cash payment on board vehicles without authorisation (mainly employees' service and student service in respect of which there is a licensing condition of no fare collection at boarding points or on board the buses except for post-secondary education establishments); and
- (g) not displaying the required signs to indicate the types of service being operated.

Provision of Unauthorised NFB Service

4.13 There are cases where an NFB operator, though holding a valid PSL, operates service without the relevant type of endorsement. For example, a PSL holder who only holds a student service (A03) endorsement operates residents' service which should require an A06 endorsement.

4.14 Other cases of unauthorised operation of NFB service include picking up passengers along the way or after large scale events, such as concerts, at separate fare. Some operators operate fixed route, fixed schedule and fee charging service under the pretext of student service. The seven types of NFB service are clearly defined in section 4(3) of the PBSO, Cap. 230, while the contract hire service (A08) endorsement is approved by C for T under regulation 27(4)(b) of RTO, Cap. 374 to cater for those services that are not covered by the other seven types. Its original intention is to meet ad hoc demands as the regular needs have already been covered and categorised under the other seven types. Some NFB operators have the misconception that with the contract hire service (A08) endorsement, they are permitted to hire out their vehicles to provide all types of service.

Traffic Offence

4.15 In order to increase the attractiveness of their services and to increase patronage hence their revenue, some NBF operators commit traffic offences by picking up, setting down or waiting for passengers at bus stops or restricted zones. Some solicit passengers at public places with a view to attracting passengers to use their service.

Limited Control Over NFB Hirers and Sponsors

4.16 During TD's investigation into suspected unauthorised service, many of the PSL holders concerned disclaim knowledge of malpractices on the ground that they have little control over the usage of the vehicles when they are hired by their clients. There may be difficulty to prove the guilty mind (i.e. mens rea) of the operators or hold them liable for permitting the use of vehicles for unauthorised services. On the other hand, the existing licensing framework is not very effective in holding the sponsors or users of the NFB service responsible as PSLs are issued to NFB operators and thus only bind the operators but not the sponsors.

RECOMMENDATIONS

4.17 To address the problems mentioned above, the Working Group proposes a number of measures to enhance the regulation of the operation

of NFBs. They are set out in paragraphs 4.18 to 4.32 below. In addition, measures to facilitate enforcement and prosecution are also required and they are explained in Chapter 5.

Revise the Arrangements for Contract Hire Service (A08)

4.18 As explained in paragraphs 4.8 to 4.11, the existing flexibility allowed under the contract hire service (A08) endorsement has been abused by some individual operators. The Working Group recommends to replace the regulatory arrangements in respect of contract hire service with a new system which would, on the one hand, maintain flexibility for NFB operators to carry out legitimate contract hire services and, on the other hand, minimise the chance for abuse.

4.19 Contract hire service (A08) endorsement is to cater for ad hoc demand for services that cannot be met by the other seven types of service. Under the proposal, contract hire services to be operated by NFBs with contract hire service (A08) endorsement are classified into two groups, i.e. those require prior approval from C for T before the operation of the service, and those do not require such prior approval.

Contract Hire Services Not Require Prior Approval from C for T

4.20 To maintain flexibility for NFB operators to provide legitimate contract hire services, all NFBs with contract hire service (A08) endorsement will be allowed to provide those contract hire services that are ad hoc and non-regular in nature without the need for prior approval by C for T. Example are services for meeting ad hoc demand of activities like wedding ceremony, funeral, open day of educational institutions, etc.¹. If such ad hoc service serves same/similar origin and destination area, it should be operated for no more than 2 days in a month. The purpose is to avoid possible abuse of the flexibility such that ad hoc services may become regular services without prior approval from

¹ Other examples of contract hire service that do not require prior approval may include services for catering demand of the following activities: activity organised by specified non-governmental organisations, visit or day trip for a specific purpose, conference and trade exhibition at specified venues, sports and cultural events held in selected venues, production of movie/television programme, temporary transport services provided for emergency and contingency purposes, etc.

C for T. On the other hand, an operator can still provide a service, without C for T's prior approval, for more than 2 days in a month if the service does not have the same/similar origin and destination areas. The Working Group recommends that the Administration should determine the types of contract hire service that can be operated without prior approval from C for T in consultation with the NFB trade.

Services Require Prior Approval from C for T

4.21 To ensure that services of more regular nature or are of greater concern would be examined by TD before they are operated, contract hire service (A08) endorsement holders should be required to obtain prior approval from C for T for provision of contract hire service that is of a more regular nature or is of greater concern, such as FBS for flat viewing, shopping malls and clubs, regardless of the duration of service operation. This group also covers any service which serves same/similar origin and destination area and operates for more than 2 days in a month. Applications for operating these services should be assessed against the criteria set out in section 28 of RTO, Cap. 374. The Working Group also suggests that the Administration should work out arrangements to deal with urgent applications for provision of services in exceptional circumstances.

4.22 During the consultation held by the Working Group, the NFB trade expressed concern about the proposed requirement for prior approval for operation of contract hire service. The Working Group considers that allowing certain types of contract hire service that are ad hoc and non-regular in nature to operate without the need for prior approval by C for T will provide adequate flexibility for legitimate service. On the other hand, the Working Group considers that provision of regular contract hire services should be subject to more effective regulation under the above proposed arrangements. Enforcement actions against operation of unauthorised regular contract hire service (A08) without C for T's approval can also be taken more efficiently. The measures recommended in paragraphs 4.20 to 4.21 above aim to strike a reasonable balance.

Conditions for Operation of FBS

4.23 Among the various regular contract hire services, the operation of FBS has been of greatest concern. The Working Group recognises the value of these services as they provide immediate benefits to passengers and help the sponsors to promote their business such as retailing, property sale and genuine club activities. On the other hand, the operation of regular FBS may undermine regular public transport services if they duplicate each other in terms of catchment areas. The viability of regular transport services is important since they provide services to the public, covering both peak hours and off-peak hours. Many regular transport service operators operate a package of routes which are socially desirable but not profitable routes. Undue activities of FBS that would undermine regular public transport services would not be in the interest of the public.

4.24 Having regard to the above considerations, the Working Group suggests that applications for FBS should be processed taking into account the following:

- (a) services should be to the nearby residential developments or major public transport interchanges;
- (b) the proposed service should not cause or lead to traffic congestion;
- (c) if FBS operating between a particular location (e.g. a shopping mall) and a particular destination area would adversely affect regular public transport services in the same areas, the FBS may be approved but it should only be allowed to operate for a maximum period of 15 days, either consecutively or intermittently, in a year. FBS between that particular location and substantially different destination areas may be allowed to operate separately provided that they would be subject to the same 15-day maximum period;
- (d) for places where no regular public transport service is available or where there is no significant adverse impact on regular public transport services, the period of operation of the FBS can be longer and determined on the merit of each case; and

- (e) an FBS which is not ad hoc in nature, if approved, should be subject to certain conditions in respect of routeing, operating hours, frequency and bus types. The operating hours of the FBS should generally tie in with the opening hours of the location involved, e.g. shopping malls or clubs.

Responsibility of PSL Holders

4.25 To address the situation that some PSL holders disclaim responsibility for unauthorised NFB operation, the Working Group proposes the following additional PSL conditions to state clearly the PSL holders' responsibility for proper use of their vehicles:

- (a) to require the PSL holder to ensure that the services operated are in accordance with the conditions of the PSL;
- (b) drivers driving an NFB should be in the employ of the PSL holder of that bus;
- (c) in the case of hiring out an NFB for provision and operation of NFB services, including contact hire service (A08), the PSL holder has to sign a proper contract with the hirer to include particulars covering purpose of the hiring, bus(es) involved, routeing and period of hiring, etc. A copy of document containing the purpose of the hire and basic operational details signed by all parties concerned, including the PSL holder, the hirer and the driver, should be kept in the bus(es) concerned when operating those contract hire services (A08) which require prior approval from C for T;
- (d) when the PSL holder hires out his vehicles for operation of NFB services, including contract hire service (A08), the bus so hired should only be driven by a person in the employ of the PSL holder. The PSL holder should notify and fully brief the driver of the purpose of the hiring and the route to be taken by the bus. A copy of the document containing the purpose of the hire and operational details should be given to the driver before operation of the service. The driver should signify his understanding to the service details;
- (e) the PSL holder should keep a daily operation record of each of the buses under the PSL;

- (f) the document of hiring and the daily operation record should be produced to C for T upon request; and
- (g) the PSL holder should take adequate measures such as staff training, inspection and monitoring of the use of the buses to safeguard against misuse of the buses.

4.26 The proposed additional PSL conditions aim at ensuring that PSL holders would take reasonable steps to oversee the proper operation of the services as approved by C for T and in accordance with the licensing conditions. In case malpractice is found and contravention to the PSL conditions is suspected, the PSL holder may be liable to inquiry under section 30 of RTO, Cap. 374. The PSL holder may also be prosecuted under RTO, Cap. 374 for breaching the licensing conditions.

Stipulating Schedule of Services for Regular NFB Services

4.27 In order to have better control and effective monitoring of those NFB services which are regular in nature and to facilitate enforcement against unauthorised operation, the Working Group recommends that schedule of service should be drawn up as a PSL condition for all regular NFB services, including shuttle services provided under hotel service (A02), student service (A03) for tertiary education institutions, employees' service (A04) and certain types of contract hire service (A08) of a regular nature with same/similar departure/destination areas. At present, residents' service (A06) and international passenger service (A05) are already required to operate in accordance with schedule of service approved by C for T.

4.28 The schedule of service should stipulate all relevant operating details of the services, including fares, routeing, operating period, frequency, number and type of buses, stopping points, etc. Any alteration to the details of the schedule of service or details of the approved service should require prior approval from or notification to C for T. Otherwise, the operators will breach the licensing conditions and should be subject to inquiry for any unauthorised deviation from the approved schedule.

Involvement of Hirers and Sponsors

4.29 To address the problem mentioned in paragraph 4.16 above, the Working Group has examined the proposal to require sponsors to seek approval in principle from TD before appointing NFB operator to provide service. Having regard to the concern expressed by the NFB trade about the negative impact that may be caused to the users of the services as well as NFB operators, the Working Group decided not to pursue the suggestion.

4.30 Instead, the Working Group recommends requiring the sponsors to submit joint application together with the operators for certain types of service. At present, hirers and sponsors are required to submit joint applications with NFB operators to show their support to the proposed services when the latter apply for provision of residents' service. The Working Group recommends that this requirement be extended to applications for the following services that are of a regular nature with same/similar departure/destination areas:

- (a) shuttle services provided under hotel service (A02);
- (b) student service (A03) for tertiary education institutions;
- (c) employees' service (A04);
- (d) international passenger service (A05); and
- (e) certain types of contract hire service (A08).

4.31 The service sponsor/hirer should not require the operators to commence the proposed service unless TD has granted approval for the service route. This new measure will avoid the scenario under which a PSL holder's application for service has been disapproved, but he still has to proceed to provide the service in order to fulfil his contractual obligation agreed with the sponsor.

4.32 The Working Group also recommends that hirers or sponsors should be required to signify in the application forms that they are fully aware of the purpose and details of the service and, if applicable, are responsible for the sponsorship, e.g. full subsidisation in the case of employees' services. Warning messages against aiding and abetting in the operation of unauthorised NFB services should be included in the undertaking. This is to discourage the sponsor from asking the driver to operate the NFB in deviation from the agreed service which may lead to

unauthorised services.

CHAPTER 5

ENFORCEMENT AND PROSECUTION

EXISTING ENFORCEMENT MECHANISM

5.1 This chapter examines the existing enforcement mechanism, identifies problems that have been encountered and recommends measures to strengthen the mechanism.

5.2 There are a number of tools the Administration can use to tackle unauthorised NFB services. These include prosecutions instituted under section 52 of RTO, Cap. 374 or section 4 of PBSO, Cap. 230, inquiries under section 30 of RTO, Cap. 374 and transport management measures.

5.3 Upon receipt of information or complaints about unauthorised NFB service, TD will conduct quick check to confirm existence of the service. If this is confirmed, TD will ask the PSL holder to cease operation of the unauthorised service immediately and provide explanation on the unauthorised operation. In case the unauthorised service continues, TD will consider and implement possible measures to curb the service, e.g. by improving parallel regular public transport services and implementing traffic management measures. TD will also consider issuing warnings, initiating prosecution action or inquiry as appropriate. Actions that may be taken are summarised in paragraphs 5.4 to 5.9.

Liaison with Operators and Sponsors

5.4 TD will liaise with concerned operators and sponsors to understand why unauthorised services are operated and asked for termination of the unauthorised service. In addition, TD may replace such services with regular public transport services or by other authorised means.

Warnings

5.5 TD will issue verbal or written warnings, depending on the severity of the noncompliance, to instruct the concerned operators to cease the unauthorised services.

Prosecution

5.6 Prosecution action will be initiated if there is evidence to show that the unauthorised operation of NFB service might constitute an offence outlawed by RTO, Cap. 374 or PBSO, Cap. 230. To prepare for prosecution, there is the need to collect information on operational characteristics of the unauthorised service, including surveys, interviews with PSL holders or other relevant parties as appropriate. Summons will be laid if adequate evidences have been collected. If traffic offences subject to fixed penalty tickets are committed by the NFB operators/drivers, fixed penalty tickets will be issued.

5.7 Section 52 of RTO, Cap. 374 provides for the prosecution for carriage of passengers by NFB without a PSL or for breaches of the licensing conditions. The maximum penalty is a fine of \$5,000 and imprisonment for 3 months in the case of a first conviction for that offence, and a fine of \$10,000 and imprisonment for 6 months in the case of a second or subsequent conviction for the same offence. Separately, section 4(2) of the PBSO, Cap. 230 prohibits the operation of a public bus service without a franchise or unless the service is a type of authorised NFB services specified in the Ordinance or approved by C for T under Section 27(4)(b) of RTO. The maximum penalty for conviction of the offence is a fine of \$100,000.

Inquiry

5.8 C for T is empowered under section 30 of RTO, Cap. 374 to hold inquiry if he has reason to believe that any vehicle in respect of which a PSL is in force:

- (a) has been or is being used for service not authorised by the licence; or

- (b) has not complied or is not complying with any condition of the licence or any provision of RTO, Cap.374.

5.9 C for T will appoint a public officer to conduct the inquiry. After examining all the facts presented to him, the inquiry officer would submit a report to C for T for consideration. C for T may cancel, suspend or vary a PSL after considering the inquiry report. If the PSL holder does not accept C for T's decision, he may apply for a review of the decision by a Transport Tribunal.

Enforcement on Unauthorised NFB Operation

5.10 Enforcement actions taken since 2000 are shown in the table below:

Year	Fixed Penalty Tickets ¹	Summonses ²	Number of Inquiry Held ³
2000	3,995	668	0
2001	4,489	636	0
2002	4,130	739	1
2003	4,263	623	6
2004 (up to end May)	2,580	312	26

- (1): The figures represent all fixed penalty tickets issued to NFBs including minor traffic offences.
 (2): The figures represent all summonses issued to NFBs including minor traffic offences.
 (3): For 2004, figures include the number of inquiries initiated that are still in process.

5.11 The above figures show that there has been a steady increase in the number of enforcement actions in the past few years in respect of NFB operation. With regard to court prosecutions, the penalties imposed range from absolute discharge to a fine of \$6,000.

5.12 For inquiry cases found to be substantiated, sanctions have been imposed, ranging from suspension of the PSL of individual buses for 2 months to cancellation of the PSL of an operator.

PROBLEMS AND CONCERNS

5.13 The problems relating to operation of unauthorised NFB services are set out in Chapter 4. The following paragraphs examine the problems and concerns relating to enforcement and prosecution.

Difficulties in Identifying Unauthorised Services

5.14 There is an existing statutory requirement for PSL holders to display the PSL plate at the rear of a bus to show the PSL number. There is also a PSL condition requiring NFB operator to display a sign of specified format at the windscreen or the front destination indicator to show the type of service it is providing whenever in operation. For selected service types like employees' service (A04) and residents' service (A06), it is additionally required that information, including the name of the employer and destination of the service, should also be displayed.

5.15 Nevertheless, some PSL holders do not comply with the above requirements. Some others display signs of varying sizes or format thus creating difficulties in identifying the types of service in operation for enforcement purposes. Enforcement staff find it difficult to identify clearly the type of service being operated and whether the services are authorised or not. Moreover, the arrangement that a particular NFB can be allowed to provide more than one type of service makes the identification even more difficult.

Insufficient Power for Enforcement

5.16 At present, there is no explicit provision specifying the power of TD officers to board on vehicles for discharge of duties. When TD officers perform their duty to take enforcement actions against unauthorised service operation, some bus operators or users refuse boarding of TD officers on their buses for checking and investigations. TD officers may not be able to obtain sufficient evidence to pursue enforcement actions against noncompliant operators.

Resource and Time Required for Taking Enforcement Actions

5.17 Each enforcement process will require checking of existence of offence, conducting thorough surveys to prove the unauthorised operation, interviewing and taking statements with drivers and/or PSL holders, etc. For instance, in view of the current 14-day rule in respect of contract hire service, it is very resource intensive to collect sufficient evidence to prove that the service has been in operation for over 14 days in a year without C for T's approval.

5.18 As regards inquiry, there is a need for the appointment of a public officer to investigate the case, conduct hearings and submit report to C for T on the findings of investigation. Even for minor breach of licensing conditions, such as not displaying proper signs to indicate the types of service provided, the same sort of complicated enforcement process leading to either prosecution or inquiry is still required. All these processes are time-consuming and resource intensive.

Deterrent Effect of Penalty

5.19 Past experience indicates that sentence handed down by the court for unauthorised NFB operation or breach of PSL conditions ranges from absolute discharge to a fine of \$6,000. When compared with the maximum penalty provided for under the existing law, the penalty tends to be relatively lenient and might not be effective in deterring operators from contravening the PSL conditions.

RECOMMENDATIONS

Enhance Identification Systems for Better Service Differentiation

5.20 To enhance effectiveness of enforcement actions, the Working Group proposes that the requirement for displaying appropriate signs in standard format in all NFBs should be stipulated clearly. Failure to display such signs would be a breach of PSL conditions and the PSL holders would be held responsible. Accordingly, no display or display of signs not up to the required format or standard or displaying incorrect signs should be subject to fixed penalty ticketing, summons or inquiry as appropriate.

5.21 Upon the gradual implementation of the concept of single or restrictive endorsement, the Working Group suggests that a new livery system should be developed for different types of service to facilitate identification and enforcement action. Compulsory requirement for adopting the livery should be adopted for vehicles subject to single or restrictive endorsement. As for existing vehicles, NFB operators should be encouraged to adopt the livery scheme on a voluntary basis.

Ban Cash Payment on Board Unless with Authorisation by C for T

5.22 At present, cash payment on board is generally allowed for NFB services except for specified service types like employees' service (A04), student service (A03) for primary and secondary students and contract hire service (A08). Since unauthorised NFB services would normally obtain payment from passengers direct rather than from sponsors such as property management offices, banning of cash payment on board (including Octopus card payment) by passengers when boarding, alighting and during the whole journey would create hurdle for unauthorised NFB activities and help forestall their occurrence.

5.23 Cash payment on board can be detected relatively easily and this will facilitate enforcement by frontline officers. On the other hand, it is important to enable legitimate services to receive payment from passengers appropriately. On this basis, the Working Group proposes to include a PSL condition to the effect that cash payment on board is banned except with authorisation by C for T so that payment of fares on any services must be made:

- (a) at designated selling location approved by C for T, and
- (b) in the forms of coupons, pre-paid tickets, monthly tickets or any other forms as approved by C for T.

Authorise Officers to Board NFBs

5.24 To stipulate clearly that TD officers have sufficient power to perform their legitimate duties, the Working Group recommends to include a new PSL condition to require NFB operators to allow TD officers to board and ride on their vehicles for the purpose of carrying out

investigation, traffic survey or other official duties.

Step Up Enforcement Actions and Prosecution

5.25 Some NFB operators start to provide services while TD is processing their applications for operation of NFB services. They perceive that operation of such service while application is being processed should be treated differently from services without approval or services beyond the scope of NFB operation. The Working Group considers that provision of NFB service before proper approval has been obtained is a contravention of the existing PSL licensing system and therefore should not be allowed. The Working Group recommends that the Administration should take enforcement actions to combat all unauthorised NFB services, including provision of service before the necessary approval has been granted, and that the Administration should expedite processing of applications as appropriate with a view to minimising problems caused by such services.

5.26 It is observed that enforcement by the Police has proved to be highly effective. Common traffic violations in many black spots, such as no-stopping restrictions, would be reduced once there was the presence of uniformed police officers. The Working Group suggests that enforcement against unauthorised NFB activities should continue to be strengthened, especially by prosecuting drivers for traffic offences in some black spots.

More Stringent Sanctions/ Penalties

5.27 To ensure that sanctions against unauthorised services have sufficient deterrent effect, the Working Group proposes that TD should review the current administrative sanctions with particular emphasis to impose heavier penalties for repeated offenders subsequent to C for T's acceptance of the findings of an inquiry hearing.

Create Clear Offences which Could be Subject to Fixed Penalty

5.28 The Administration has been taking various enforcement actions, including fixed penalty ticketing, summons and inquiry, against

unauthorised NFB services. The simplest and least resource intensive means of enforcement action is fixed penalty ticketing. To streamline enforcement procedures and to enable enforcement actions be taken efficiently, the Working Group recommends that common breaches of PSL conditions should be turned into scheduled offences that are subject to the fixed penalty ticketing system under section 52(9) of RTO, Cap. 374. Possible breaches in this regard include:

- (a) not displaying the PSL plate;
- (b) not displaying the stipulated service signs;
- (c) displaying signs of a style or standard different from the stipulated requirement;
- (d) collecting cash payment on board (including Octopus card payment) without authorisation of C for T;
- (e) not keeping document with operational details of the service on bus;
- (f) not keeping a copy of the contract hire record in the vehicle when in operation of the contract hire service;
- (g) not producing the contract hire record to TD officers when requested;
- (h) not allowing TD officers to board an NFB;
- (i) operating service not according to the respective schedules of service; and
- (j) operating contract hire service without approval from C for T.

Transport Management Measures

5.29 The Working Group considers that implementation of traffic management measures to regulate NFB operation can help eradicate unauthorised services and relieve traffic problems caused by excessive NFB services at black spots, e.g. stacking of buses at lay-bys and traffic congestions caused by overrun trips. Where necessary, TD should also improve the provision of public transport services to ensure that transport demand of the public is adequately met.

Traffic Management Schemes

5.30 At present, NFBs are subject to general traffic restrictions. The operation of unauthorised NFB services on busy roads like Canton

Road and Connaught Road Central has created serious traffic obstruction during peak hours. The Working Group suggests that suitable traffic management measures should be implemented to better regulate the picking up and setting down activities of authorised NFB services and tackle the irregularities caused by unauthorised NFB activities at these problem spots. Distinctive and limited number of restricted zone permits can also be developed for authorised NFB services to facilitate easy enforcement.

5.31 An example of traffic management schemes is the one introduced at Connaught Road Central outside Worldwide House in April 2004. A “4pm to 9pm” bus restricted zone is designated at the location. To tie in with this new traffic management measure, TD issued new and specially designed restricted zone permits to NFBs approved for picking up passengers at this location so as to facilitate identification of authorised residents’ services and enforcement against those unauthorised services. The designation of the bus restricted zone coupled with strict enforcement actions at the concerned location and the nearby areas have effectively eliminated the operation of unauthorised NFB services from this busy location.

Improvement of Regular Public Transport Services

5.32 The Working Group recommends that TD should consider improvement measures in regular public transport services where justified and appropriate to forestall operation of unauthorised NFB services.

5.33 The Working Group also recommends early planning for public transport services to cater for need to connect to railway stations and demand from new housing development. Moreover, to prevent unauthorised NFB services from coming into place at new housing development, TD can invite the developers, e.g. through the Real Estate Developer Association, to discuss the public transport needs of the planned development at an early stage so that satisfactory public transport services could be planned and provided in a timely manner for the development.

CHAPTER 6

OTHER RELATED ISSUES

REGULATION OF PRIVATE NON-FRANCHISED BUS OPERATION

6.1 Private buses are a type of NFB. Section 2 of RTO, Cap. 374 defines a private bus as a bus used or intended for use:

- (a) otherwise than for hire or reward; or
- (b) for the carriage of passengers who are exclusively
 - (i) the students, teachers and employees of an educational institution; or
 - (ii) disabled persons and persons assisting them whether or not for hire or reward.

Like public NFBs, private NFB services are regulated by the PSL system under RTO, Cap. 374. Holders of PSL for NFB operation are required to comply with the relevant PSL conditions. As private NFB services are regulated under the PSL system, they may be subject to inquiry action under section 30 of RTO, Cap. 374 in the same manner as public NFBs.

6.2 According to section 27 of RTO, Cap. 374, there are four types of service provided by private NFBs:

- (a) student service;
- (b) employees' service;
- (c) disabled persons' service, and
- (d) any other services, which are not for hire or reward, approved by C for T.

Section 2 of RTO, Cap. 374 provides that separate fares are allowed to be charged on private NFB student service and disabled persons' service but not the other two types of service.

6.3 Private NFBs are subject to strict restrictions by way of registration of vehicles (e.g. private bus for student service must be registered in the name of an educational institution) and mode of operation (i.e. private bus used for employees' service and other service must not be used for hire or reward), with vehicle ownership mostly confined to the institutes or organisations requiring the services.

6.4 As at 31 May 2004, there are 493 registered private NFBs of which 473 are licensed to provide the four types of private NFB services mentioned above.

Recommendations

6.5 The Working Group considers that private NFBs should be subject to the same requirements and conditions as those for public NFBs as far as practicable so as to facilitate better regulation of private NFB services and to prevent possible uses of private NFBs for unauthorised operation. In general, the measures recommended for coordinating the change in NFB services with demand, better regulation of NFB services and operation, as well as enforcement and prosecution against unauthorised NFB operation should apply to private NFBs wherever appropriate.

CROSS-BOUNDARY COACH SERVICE

6.6 Cross-boundary coach service ("CBCS") is operated under the PSL regime as a form of international passenger service (A05) and is regulated by a quota system jointly administered by Hong Kong and Mainland authorities. The quota system for CBCS aims at ensuring smooth traffic flow and safe operation at the control points. Under the system, a coach with a quota may run a cross-boundary round-trip via a designated control point within a specified hour. The relevant PSL specifies, among others, the number of trips allowed and the control point the coach should use when crossing the boundary. Hong Kong and Mainland authorities regularly review the number of quotas issued and the operation of CBCS to ensure that the services provided can meet the demand of cross-boundary travellers without causing any traffic problems at the control points.

Irregularities in the Operation of CBCS

6.7 There have been increasing incidents of cross-boundary coach operators not observing the requirements prescribed in the PSL or other licensing conditions. Malpractices include overruns, non-compliance with allocated timeslots, and picking up and dropping off passengers at unauthorised locations. Since the end of 2003, the problem of overruns has worsened. Some operators even operated short-haul services terminating at the Huanggang control point without authorisation. As a consequence, the operation, public order and environment of both the Lok Ma Chau and Huanggang control points have been adversely affected. These unauthorised services also cause traffic congestion and environmental problems on the Hong Kong side. While the Administration has been tightening the enforcement actions against the malpractices since early this year, the effect has not been satisfactory.

Better Regulation of CBCS

6.8 In May 2004, Hong Kong and Mainland authorities agreed to take a two-pronged approach to better regulate the CBCS using the Lok Ma Chau and Huanggang control points. On the one hand, the authorities will further enhance the enforcement actions against those operators who breach PSL or other licensing conditions. On the other hand, the authorities have invited applications from all existing cross-boundary coach operators with quotas for the Lok Ma Chau control point to operate five groups of six cross-boundary routes plying between various districts of Hong Kong and the Huanggang control point or its vicinity to meet the proven passenger demand. Additional quotas will be allocated to the operators concerned to enable them to provide a suitable level of service on each route. The Administration plans to introduce the above routes and implement the enhanced enforcement measures in August 2004.

6.9 The objectives of the new measures are to better regulate the operation of CBCS and to bring improvements to the operation of the control points and traffic condition in Hong Kong. At the same time, the introduction of the six short haul cross-boundary coach routes should suitably address the demand of cross-boundary travellers.

Working Group's Views

6.10 The regulation of the operation of CBCS is a matter between Hong Kong and Mainland authorities and is outside the scope of this review. Generally, the Working Group welcomes the authorities' initiative to tackle the irregularities in the operation of CBCS and address the increasing demand of cross-boundary travellers.

CHAPTER 7

SUMMARY OF RECOMMENDATIONS

INTRODUCTION

7.1 Public NFB service is a type of service available for hire or reward. Provision of NFB services is regulated by PSL issued by C for T.

7.2 Increase in the number of public NFBs in recent years has caused oversupply of NFBs in the market. Moreover, whilst most NFB services are operated in a proper manner, some individual operators operate unauthorised NFB services or services beyond the established scope of NFB operations. To tackle these problems, the Working Group proposes measures to:

- (a) coordinate the change in NFB services with demand;
- (b) strengthen regulatory control over NFB operation; and
- (c) enhance effectiveness and efficiency of enforcement actions.

7.3 Taking into account views expressed by the transport trades in the consultation sessions, the Working Group has adopted the following guidelines in developing the measures:

- (a) stringent control be exercised on new supply (i.e. applications for new PSL including associated endorsements and vehicles from new applicants; applications for additional endorsement and vehicle from existing operators and applications for future renewal of the above PSL and endorsement);
- (b) suitable flexibility be maintained in processing applications for renewal of existing supply (i.e. applications for renewal of PSL or endorsement and replacement of vehicle from existing operators) to provide continuity for current legitimate business operation; and

- (c) the existing regulatory framework be improved to ensure proper service operation and facilitate enforcement.

7.4 The following is a summary of recommendations by the Working Group on the above three aspects. While the concerns set out in paragraph 7.2 are mainly related to public NFBs, the Working Group considers that the same proposed measures should also be applied to private NFBs (which are for use other than for hire or reward; or for carriage of passengers who are exclusively the students, teachers and employees of an educational institution or disabled persons and persons assisting them whether or not for hire or reward) as far as practicable. The purpose is to facilitate better regulation of private NFB services and to prevent possible uses of private NFBs for unauthorised operation.

FINDINGS AND RECOMMENDATIONS

Role of NFBs

7.5 The Working Group has reviewed the role played by NFBs in the public transport system. Having regard to the need to maintain a balanced public transport system with coordination among the different modes to ensure the effectiveness of the transport hierarchy and to minimise wasteful competition, the Working Group considers that NFBs should continue to play its role as a supplementary transport mode :

- (a) to relieve heavy demand on franchised bus and green minibuses primarily during peak hours; and
- (b) to fill gaps of passenger demand that cannot be met by regular public transport services.

7.6 It also affirms NFBs' role in providing tailor-made services to specific groups of passengers and to meet certain market niches such as services for groups of tourists.

Coordinate the Change in NFB Services with Demand

7.7 To address the problem of oversupply of NFB services, the Working Group considers that there is a need to contain the increase in NFBs. It recommends that applications that will result in additional supply of NFB vehicles or services should be processed stringently. Processing of applications that will not expand the existing supply may be allowed greater flexibility. On this basis, the Working Group proposes the following measures:

New Supply (i.e. applications for new PSL including associated endorsements and vehicles from new applicants; applications for additional endorsements and vehicles from existing operators and applications for future renewal of the above PSL and endorsement)

- (a) all applications that will result in new supply should be subject to stringent vetting and documentary requirements (including contracts valid for 6 months or more) to prove that there is a genuine long-term need for the services applied for;
- (b) to ensure that the utilisation of the existing fleet of an applicant would be examined in considering applications for new supply, full fleet vetting should apply to applications for:
 - (i) renewal of new PSL and its associated endorsement granted to new applicants;
 - (ii) additional vehicle from existing operators;
 - (iii) additional endorsement from existing operators and future renewal of such additional endorsement; and
 - (iv) future renewal of PSL which covers additional vehicle and additional endorsement.

The purpose is to ensure that such new supply should be approved or renewed only if the fleet concerned is well utilised. To avoid undue disruption to existing operation, the Working Group suggests that existing endorsements and existing vehicles approved

before the implementation of the new measures should not be affected;

- (c) new NFBs applied for by new applicants and additional vehicles applied for by existing operators should normally be granted with one type of endorsement only and two endorsements would be approved only under very exceptional circumstances, e.g. when the service under the two endorsements concerned are complementary to each other;
- (d) if an existing operator who only holds contract hire service (A08) endorsement applies for additional endorsement, one additional endorsement (or two if they are complementary in nature) could be granted provided the need for the additional endorsement can be justified to improve their viability. Flexibility in vetting and documentary requirements would be allowed for this type of applications;
- (e) the existing arrangement of full fleet endorsement (i.e. automatic granting of the same endorsement to the full fleet of a PSL holder) and automatic granting of hotel service (A02) endorsements to vehicles with tour service (A01) endorsement should be terminated to avoid excessive supply of service endorsement in the market. The measure implemented since December 2003 to cease automatic granting of contract hire service (A08) endorsement to vehicles currently without such endorsement should also continue;
- (f) for applications involving new or additional vehicles, measures should be taken to encourage applicants to source vehicles from existing fleet in the market without increasing the overall number of NFBs. Applicants who intend to purchase new vehicles would be given a period (say, six months) for them to try to source vehicles from the existing fleet in the market. Their applications would be processed as soon as they could source vehicles from the existing fleet or at the end of the period if they could not source such vehicles during the period;

Existing Supply (i.e. applications for renewal of PSL or endorsement and replacement of vehicle from existing operators)

- (g) applications for renewal of PSL or endorsement should be subject to proof of need for service. Contract (including sub-contract) of any duration can be accepted as proof. If such contract is not available at the time of application, a period of six months from the expiry date of PSL or endorsement can be allowed for applicants to obtain such contract. If a contract cannot be obtained during the six-month period, any application for the same endorsement in future should be processed in the same way as that for new supply;
- (h) replacement vehicle applied for should be of comparable capacity with the one to be replaced unless there is valid justification;

For All Applications (i.e. both new supply and existing supply)

- (i) to ensure that only services that are genuinely in demand will be approved, all applications should be assessed against the criteria stipulated under section 28 of the Road Traffic Ordinance as follow:
 - (i) any policy direction from the Chief Executive with respect to the provision of public transport services;
 - (ii) any limit in force on the number of vehicles that may be registered;
 - (iii) the need for the services to be provided by the applicant;
 - (iv) the level of service already provided or planned by other public transport operators;
 - (v) traffic conditions in the areas and on the roads where the services are to be provided; and
 - (vi) the standard of service to be provided by the applicant; and
- (j) validity period of endorsement should be in line with that of its supporting contract but not exceeding that of the PSL.

7.8 Operation of NFB Scheduled Services: the need for **new services** should be considered on the basis of the criteria stipulated in section 28 of RTO, Cap 374. General principles that should be considered in processing applications for new residents' service and new employees' service are set out in paragraph 3.36. As for **existing services**, in reviewing the need for any adjustment to existing NFB services, the Administration should take into account both the changes in the level of regular public transport services and the changes in passenger demand for the NFB services concerned.

Strengthen Regulatory Control over NFB Operation

7.9 Generally, most NFB services are operated in a proper manner. However, some individual NFB operators have exploited the loophole of existing licensing conditions to provide unauthorised services or go beyond their established scope of operation to provide services deviating from the NFB policy.

7.10 The type of service of greatest concern is the contract hire service (A08), particularly FBS. The Working Group affirms that contract hire service (A08) endorsement is to cater for ad hoc demand for services that cannot be met by the other seven types of service and recommends that the existing regulatory control over contract hire service (A08) should be revised as follows:

- (a) contract hire services to be provided under A08 endorsement should be classified into two groups, i.e. those which would require prior approval from C for T before the service is operated and those which do not require such prior approval:
 - (i) A08 endorsement holders can provide contract hire services without seeking C for T's prior approval if the services are for meeting ad hoc demand such as wedding ceremony, school picnic, and open day of educational institution. Such services should not operate for more than 2 days in a month if they serve same/similar origin and destination area. The

Working Group suggests that the Administration should determine the types of service that can be operated without prior approval in consultation with the NFB trade;

- (ii) other contract hire services that are of a more regular nature or are of greater concern, such as FBS for flat viewing, shopping malls and clubs, etc, regardless of the duration of operation, should require prior approval from C for T. This group also covers any service which serves same/similar origin and destination area and operates for more than 2 days in a month. The Working Group suggests that the Administration should work out arrangements to deal with applications which involve provision of urgent services in exceptional circumstances;
- (b) in processing applications for FBS, the following should be taken into account:
- (i) if an FBS operates between a particular location (e.g. a shopping mall) and a particular destination area would adversely affect regular public transport services in the same area, the FBS may be approved but it should only be allowed to operate for a maximum period of 15 days, either consecutively or intermittently, in a year. FBS between that particular location and substantially different destination areas may be allowed to operate separately provided that each of the services would be subject to the same 15-day maximum period;
 - (ii) for places where no regular public transport service is available or where there is no significant adverse impact on regular public transport services, the period of operation of the FBS can be longer and determined on the merit of each case; and
 - (iii) an FBS which is not ad hoc in nature, if approved, should be subject to certain conditions in respect of routeing, operating

hours, frequency and bus types.

General principles that should be considered in processing applications for FBS are set out in paragraph 4.24.

7.11 To better regulate the operation of NFB activities and facilitate enforcement actions against unauthorised NFB activities, the Working Group recommends that:

- (a) additional PSL conditions should be imposed to increase the responsibility of PSL holders for ensuring proper use of their vehicles in compliance with their licence. Additional conditions include:
 - (i) driver of an NFB should be in the employ of the PSL holder of that bus;
 - (ii) proper contract should be signed between the PSL holder and the hirer in the case of hiring out an NFB for provision and operation of NFB services;
 - (iii) a copy of document containing the purpose of the hire and basic operational details signed by all parties concerned, including the PSL holder, the hirer and the driver, should be kept in the bus(es) concerned when operating those contract hire services (A08) which require prior approval by C for T;
 - (iv) PSL holder should notify and fully brief the driver of the purpose of the hiring and the route to be taken and the driver should signify his understanding of the service details;
 - (v) PSL holder should keep a daily operation record of each of the buses under the PSL;
 - (vi) the document of hiring and the daily operation record should be produced to C for T upon request; and
 - (vii) PSL holder should take adequate measures such as staff training, inspection and monitoring of the use of the buses to avoid misuse of the buses.
- (b) at present, schedule of service is stipulated for international passenger service (A05) and residents' service (A06). This

requirement should be extended to shuttle services provided under hotel service (A02), student service (A03) for tertiary education institutions, employees' service (A04), and certain types of contract hire service (A08) of a regular nature with same/similar origin and destination areas to facilitate better monitoring. The schedule of service should stipulate all relevant operating details including fares, routeing, operating hours, frequency, number and types of buses, stopping points, etc.; and

- (c) at present, hirers of residents' service (A06) are required to submit joint applications together with NFB operators to signify their full knowledge of the details of the proposed service. This requirement should be extended to the following services of a regular nature with same/similar origin and destination areas:
 - (i) shuttle services provided under hotel service (A02);
 - (ii) student service (A03) for tertiary education institutions;
 - (iii) employees' service (A04);
 - (iv) international passenger service (A05); and
 - (v) certain types of contract hire service (A08).

If applicable, hirers should also signify that they are responsible for the sponsorship, e.g. full subsidisation in the case of employees' service.

Enhance Effectiveness and Efficiency of Enforcement Actions

7.12 The Working Group recommends the following measures to enhance the effectiveness of enforcement action in combating unauthorised NFB operation:

- (a) improve the identification system to enable enforcement officers to differentiate easily the types of NFB service being provided by a vehicle. This includes requirement for displaying appropriate signs in standard format in all NFBs to indicate the service being operated and requirement for vehicles subject to single/restrictive

endorsement to adopt a livery system to indicate the type of service provided by the vehicles. As for existing vehicles, the operators concerned should be encouraged to adopt the livery scheme on a voluntary basis;

- (b) ban cash payment on board to help pre-empt operation of unauthorised service, so that unless with authorisation by C for T, payment of fares must be made:
 - (i) at designated selling locations approved by C for T; and
 - (ii) in forms of coupons, pre-paid tickets, monthly tickets or any other form as approved by C for T.
- (c) stipulate clearly the power of TD officers to board and ride on any NFBs to facilitate their investigation into suspected unauthorised activities;
- (d) step up enforcement actions and strengthen cooperation between TD and Police to combat all unauthorised NFB services, including provision of service before the necessary approval has been granted and traffic violations;
- (e) review the current administrative sanctions subsequent to inquiry to impose heavier penalties for repeated offenders so as to ensure sufficient deterrent effect;
- (f) streamline enforcement procedures by creating common breaches of PSL conditions as specified offences that are subject to fixed penalty ticketing system, e.g. not displaying the PSL plate or the stipulated service signs, collecting cash payment on board without C for T's authorisation and not keeping document with service details on bus;
- (g) implement traffic management measures to better regulate the picking up and setting down activities of authorised NFB services and to tackle the irregularities caused by unauthorised NFB activities; and

- (h) improve regular public transport services where justified and plan for transport services at an early stage to cater for transport needs arising from new development so as to forestall operation of unauthorised NFB services.

Desirability of Imposing a Cap on NFB Fleet

7.13 The Working Group has examined the desirability of freezing the number of NFBs. The Working Group considers that the proposal will restrict the flexibility in meeting the genuine needs of some service sectors which may require additional vehicles to meet demand due to their special circumstances. Moreover, imposing a limit on the number of NFBs may lead to speculation, thus generate premium in NFBs and increase the cost of NFB services which is not in the interest of the users of the services.

7.14 In view of the above drawbacks, the Working Group does not consider it appropriate to impose a cap on the NFB fleet size or on the number of endorsements for selected types of NFB service. Instead, the Working Group considers that a two-pronged approach should be adopted. First, measures to tighten the licensing regime and vetting procedures should be introduced to coordinate the change in NFB services with demand. Second, the operators of NFB services should be better regulated, with strengthened enforcement, as a way to ensure that NFB operations meet their purpose without encroaching on the function of other transport modes.

EXPECTED EFFECT OF RECOMMENDATIONS

7.15 The recommendations are expected to help coordinate the change in NFB services so that it would be more in line with changes in demand. This will help minimise unhealthy competition both within the NFB trade and with other transport modes.

7.16 Under the relevant recommendations, adequate flexibility is allowed in processing applications for renewal of PSL and endorsement and replacement of vehicle. This will help minimise the adverse impact on

existing NFB operators as well as users of existing services.

7.17 Proposals to improve the existing regulatory control and strengthen efficiency of enforcement actions will help reduce unauthorised NFB activities and abuses of the regulatory flexibility to provide services deviating from the NFB policy by some individual operators.

7.18 Through the implementation of the recommended measures, the Working Group hopes that business opportunities and operating environment for both law-abiding NFB operators and regular public transport service providers will improve and commuters can benefit from a well-coordinated public transport system.

**Transport Advisory Committee Working Group
on Review of Regulation of Non-Franchised Bus Operation
Proposals under Consideration**

Purpose

1. This paper sets out the proposals on the regulatory framework and licensing system for non-franchised bus (“NFB”) operation presently under consideration by the Transport Advisory Committee Working Group (“Working Group”) on Review of Regulation of Non-Franchised Bus Operation and gauges the opinions of the transport trades on the proposals.

Background

2. NFB services are authorized by Passenger Service Licence (“PSL”) issued by Transport Department under the Road Traffic Ordinance (Cap.374) (“RTO”). In accordance with section 28 of RTO, the Transport Department will take into account, in addition to any other matter which is relevant to the application, the following in determining an application for operation of NFB service:
 - (a) any policy direction from the Chief Executive in respect to the provision of public transport services;
 - (b) any limit in force on the number of vehicles that may be registered;
 - (c) the need for the services to be provided by the applicant;
 - (d) the level of service already provided or planned by other public transport operators;
 - (e) traffic conditions in the areas and on the roads where the services are to be provided; and
 - (f) the standard of service to be provided by the applicant.
3. The Administration, taking into account requests raised by the operators, adopts a relatively flexible approach in processing applications for PSL to allow them to maintain efficient and effective NFB operations. A PSL may authorize the holder to operate one or more of the following 8 types

of NFB service:

<u>Service Type</u>	<u>Code</u>
Tour Service	A01
Hotel Service	A02
Student Service	A03
Employees' Service	A04
International Passenger Service	A05
Residents' Service	A06
Multiple Transport Service	A07
Contract Hire Service	A08

Problems of NFB Operation

4. Public transport trades including NFB, public light bus ("PLB") and taxi trades have expressed their concerns to the TACWG about an oversupply of NFBs. During the last five years between 1998 and 2003, the number of registered NFBs increased from 5,868 to 7,206, representing an increase of 23% which is 19% higher than the 4% growth in the number of franchised buses over the same period.
5. Besides, the trades are also concerned that individual NFB operators have recently gone beyond their established scope of operation to operate unauthorised services or services deviating from the NFB policy. For example, some individual NFB operators have abused the flexibility allowed to provide long-term free bus services to the public with a fixed route or a fixed destination area. On the other hand, some individual operators pick up/ set down passengers at unapproved locations or deviate from the approved routeing, etc. Whilst such NFB services may provide alternative services to passengers, their mode of operation would undermine the regular and legitimate transport services. This is not in the interest of the public.
6. In view of the above problems, there is general support for the Administration to strengthen the regulation on NFB services and step up enforcement against unauthorised NFB services.

7. The Administration, therefore, invited the Transport Advisory Committee (“TAC”) at the end of 2003 to conduct a review on the regulatory framework and licensing system for NFB operation and to propose measures to strengthen the regulation of NFB after taking into account the views of the public transport trades and the public. The objective of the review is to help the Administration maintain a balanced public transport system with proper coordination among different public transport modes to ensure safe and efficient service delivery.
8. In response to the invitation, the TAC set up a Working Group at the end of 2003. The Working Group commenced its work immediately upon establishment. It has received views from various sectors and exchanged views with representatives from the PLB, taxi and NFB trades in January 2004 on the review of the operation of NFB.

Role of NFBs

9. Given the limited road space and community concerns about environmental impact created by road-based vehicles, the existing transport policy is to accord priority to the mass carriers, viz. railways and franchised buses with railways as the backbone of the public transport system. The other modes will assume a supplementary role. The inter-modal co-ordination policy under this public transport system has been operating effectively, reducing unhealthy competition, traffic congestion as well as environmental impact. Under this policy, NFB should continue to fulfil a supplementary function of relieving demand for franchised bus and green minibus services during peak hours and filling gaps of passenger demand which cannot be met viably by the regular public transport services. They also provide tailor-made services, such as hotel, tour and student services, to specified groups of passengers.

Proposals under Consideration

10. In the light of the problem of oversupply of NFB services, the Working Group considers that there is a need to regulate NFB services in a more effective way. In particular, stringent control should be asserted on

increase of supply of NFB vehicles or services. On the other hand, there is a need to tackle the unauthorised NFB services and to improve the traffic situation. In order to ensure that NFB operation is regulated under a more effective system and to provide a reasonable operating environment to the legitimate public transport operators, including law-abiding NFB operators, the Working Group is considering three types of proposals, including:

- (a) co-ordinate the growth of NFB with demand for their services;
- (b) strengthen regulatory means to tackle unauthorised services; and
- (c) better use of transport management measures to regulate NFB services.

(a) Co-ordinate the Growth of NFB with Demand for their Services

11. The Working Group is examining a series of proposed measures to coordinate the growth of NFB with demand for their services and to ensure that all applications lodged in respect of NFBs meet the requirements under section 28 of the RTO (Cap.374) so that the increase of NFB will come under effective control. Details of the proposals under consideration are at Annex 1.

Annex 1

(b) Strengthen Regulatory Means to Tackle Unauthorised Services

12. The existing licensing conditions on Contract Hire Service (A08) stipulates that any service with a fixed route or a fixed destination area on which carriage is offered to any member of the public other than at separate fares and its operation is for not more than 14 days, either consecutively or intermittently, during a continuous period of 12 months, is not subject to prior approval. Such service is commonly known as “free bus service”. Some individual NFB operators are now abusing this flexibility to provide different types of unauthorised services.
13. Besides, some individual operators are now providing services to service sponsors/hirers before approval is obtained from the Administration.
14. To ensure that enforcement officers can combat unauthorised operation more effectiently, we initially propose that the Adminstration should

adopt a series of measures to achieve the following objectives:

- (i) Reduce the possibility of abusing Contract Hire Service (A08) by NFB operators;
- (ii) Hold the PSL holders ultimately responsible for the services provided by their fleets;
- (iii) Ensure that the drivers and service sponsors/hirers fully understand the particulars of the services rendered, in order to prevent them from providing/ requesting the PSL holder for provision of unauthorised NFB services;
- (iv) Ensure that the enforcement officers and passengers can differentiate different types of NFB services;
- (v) Facilitate enforcement officers to take enforcement actions effectively by empowering them with relevant authority; and
- (vi) Imposed stricter sanctions on PSL holders who commits repeated offence.

Annex 2

15. Details of the proposed measures under consideration are at Annex 2.

(c) Better Use of Transport Management Measures

16. The Administration should implement the following transport management measures to forestall the occurrence of unauthorised NFB operation:

- (i) Improve the level of regular public transport services;
- (ii) Implement different traffic management measures at individual locations affected by NFB activities to improve the traffic condition. Competitive regular public transport services should also be provided at these locations to meet the passenger demand; and

- (iii) Encourage operators of regular public transport services to offer concession schemes to attract passengers.

Advice Sought

17. Public transport trades are welcome to express their views on the above proposals. We will carefully examine the views expressed by the public transport trades as well as other sectors before finalizing the proposals. The Working Group plans to submit proposals to strengthen the regulation on NFB operation to the TAC around the middle of this year.

Transport Advisory Committee Working Group
on Review of Regulation of Non-Franchised Bus Operation
May 2004

Coordinating the Growth of
Non-Franchised Bus with Demand for their Services -
Proposals under Consideration

The following proposals under consideration aim at coordinating the growth of NFB with demand for their services in a more effectively manner. When considering various applications related to NFB services (such as applications for new PSL, additional vehicle, replacement vehicle, additional service endorsement, and PSL and service endorsement renewal), the Administration should adopt appropriate proposals from those set out below according to the different nature of the applications. In general, more stringent measures should be adopted in processing applications that would result in new supply of NFB vehicles or services.

1. The Administration should in accordance with section 28 of the RTO (Cap. 374) adopt stringent vetting criteria in processing applications concerning NFB services.
2. In order to justify his application for NFB services, an applicant has to provide documents that satisfy the stringent requirements, including valid service contracts, to prove the genuine need for the proposed services for a period (e.g. the next 6 months) after the approval is granted. To ensure that there is practical need for all services approved, the Administration, in vetting applications for a service, should stipulate that the validity period approved for the service should tie in with the contract submitted but not exceed the validity period of the PSL.
3. The Administration should assess the operating situation of the whole NFB fleet of the applicant so as to ascertain whether there is a genuine need to adjust/ maintain his existing fleet.
4. In order to prevent any abuse of the flexibility of allowing one single bus to provide one or several types of services and to ensure that NFBs are better geared to service needs, the Administration should require each bus be allowed to provide only one or a restricted number (e.g. not more than two) of types of service.

5. On the other hand, the Administration should tighten up the existing flexibility in processing applications. When granting endorsement for a NFB of a PSL holder to provide a particular service, including Tour Service (A01), Hotel Service (A02), Student Service (A03) and Employees' Service (A04), the Administration should stop automatic grant of the same service endorsement to the full fleet of the PSL holder.
6. When granting endorsement for one NFB of a PSL holder to provide Tour Service (A01), the Administration should stop automatic grant of service endorsement for that bus to provide Hotel Service (A02).
7. The Administration should improve regular public transport services in accordance with changing passenger needs, and aptly adjust the existing NFB services in the light of the changes in the level of service of the regular public transport services.
8. For application for replacement vehicle, if approved, its passenger capacity should be comparable to that of the original vehicle. In principle, capacity of the replacement vehicle should not exceed that of the original one.

**Strengthen Regulatory Means to Enforce against Unauthorised
Services -
Proposals under Consideration**

To monitor the operation of NFB more effectively and to enforce against the unauthorised services, the Administration should adopt the following proposals:

1. The existing PSL conditions should be revised to strengthen the regulation of Contract Hire Services (A08). The Working Group initially considers that PSL holders who are permitted to provide contract hire services should be allowed to provide specified short-term contract hire services (e.g. contract hire services provided for no more than two days, such as those transport services provided to participants of group/school activities or weddings and funeral guests); whereas for other contract hire services, prior approval from the Administration shall be obtained every time when such service is hired. As regards free bus services for promotional purposes, including free bus services for shopping malls and show flats, prior approval shall be obtained regardless of the duration of service or whether the service is offered to any member of public or not. Operational restrictions, including the operating period of the service during the day, frequency and bus types, should also be imposed for these free services. The number of days for a single sponsor/hirer or a designated place of departure/destination to be provided with services within a year shall also be restricted.
2. The existing PSL conditions should be revised to establish that a PSL holder shall be held ultimately responsible for the services provided by its fleet. When a NFB service has been approved by the Administration, the PSL holder shall ensure that the drivers assigned to drive the respective NFB fully understand the particulars of the service approved, such as the frequency and the routes. The PSL holder shall also sign a proper contract with the service sponsor/hirer, a copy of which shall be kept in the buses concerned for inspection.

The PSL holder shall keep a daily operation and hiring record for every NFB to keep track of the details and for inspection by the Administration as necessary.

3. The existing PSL conditions should be revised to require service particulars such as type of service, routeing, point of departure/destination, schedule of service and name of service sponsor/hirer to be clearly marked or displayed in specified format, as the type of service may apply, when the NFBs are in service.
4. The existing PSL conditions should be revised to stipulate that NFBs which are approved to operate only one or restrictive types of service shall display clearly on the vehicle body the type of services provided.
5. To facilitate clear identification by enforcement officers that the NFBs are providing services in accordance with approval granted by the Administration, the existing PSL conditions should be revised to include that a schedule of service shall be stipulated for services with specified routes, frequency or fares. These services include shuttle services provided under Hotel Service (A02), Student Service (A03) for tertiary education institutions, Employees' Service (A04), International Passenger Service (A05), Residents' Service (A06), Multiple Transport Service (A07) and certain types of Contract Hire Service (A08) operating on fixed routes.
6. NFBs generally provide specified services for specific groups of passengers. The existing PSL conditions should be revised to strengthen the regulation of the forms of payment. Payment of fares shall be made at designated locations and in the forms as approved by the Administration. Cash payment on board by passengers shall be banned under normal circumstances.
7. The existing PSL conditions should be revised to empower enforcement officers of the Transport Department to board a NFB for the purpose of carrying out investigation and prosecution.

8. The existing PSL conditions should be revised to require a service sponsor/ hirer of shuttle services provided under Hotel Service (A02), Student Service (A03) for tertiary education institutions, Employees' Service (A04), International Passenger Service (A05), Residents' Service (A06) and certain types of Contract Hire Service (A08) operating on fixed routes or fixed timetables to submit advance application to the Administration with details of the proposed service. The service sponsor/hirer may hire service operators only after approval-in-principle has been granted by the Administration. Accordingly, the operators need to produce the respective approval-in-principle when applying for operation of the service concerned.
9. The existing PSL conditions should be revised to ensure that the PSL holder shall make known to the service sponsor/hirer that the approved service details like frequency and routing. The service sponsor/hirer, accordingly, shall acknowledge in written form the service on hire and guarantee that he will not require the PSL holder or driver to provide unauthorised services.
10. The existing mechanism of sanction should be reviewed to ensure that PSL holders who committed repeated offences are imposed with stricter sanctions.
11. To facilitate on-site prosecution by enforcement officers, the relevant regulations should be amended to turn certain types of breach of licensing conditions into specified offences which can be enforced through issuing of fixed penalty tickets. For example, these breaches may include operating without properly displaying the type of service or collecting fare payment on board without authorization or at unapproved locations.

Parties whose Views have been Invited by
Transport Advisory Committee Working Group
on Review of Regulation of Non-Franchised Bus Operation and
Parties which have Provided Written Submissions
regarding the Review

1. Aberdeen Maxicab Service Co Ltd
香港仔專線小巴有限公司
2. Apleichau Maxicab Service Co Ltd
鴨脷洲專線小巴有限公司
3. Bothfine Transportation Ltd
普輝運輸有限公司
4. Cantel Ltd
承泰有限公司
5. Central Maxicab Service Co Ltd
中環專線小巴有限公司
6. Cheung Wong PLB Co. Ltd. (Lee Kan Wah)
長旺專線（李鏡華）
7. Chit Fai Motors Co Ltd
捷輝汽車有限公司
8. Choi Kee Mong Kok PLB Co Ltd
財記旺角專線小巴公司
9. City Joy Investment Ltd
新彩投資有限公司
10. Citybus Limited
城巴有限公司
11. Environmental Light Bus Alliance 環保小巴大聯盟 (submission made by
Sizhe Consultant Limited 思哲顧問有限公司 on their behalf)

12. Express Top Industries Ltd
運泰實業有限公司
13. Fine Luck Ltd
新興運輸有限公司
14. GMB Maxicab Operators General Association Ltd
綠色專線小巴（綠專）總商會有限公司
15. H.K. Tele-call Taxi Association
香港無線電的士聯誼會
16. Happy Taxi Operator's Association
車馬樂的士聯會
17. HK Kln & NT Public & Maxicab Light Bus Merchants' United Association
香港九龍新界公共專線小型巴士聯會總商會
18. HK Public Light Bus Owner & Driver Association
香港公共小巴車主司機協進總會
19. Ho King Hoo Ltd
好景號有限公司
20. Ho Kin-ping
何建平
21. Hobsford Ltd
恆津有限公司
22. Hon Miriam Lau Kin-ye, J P, Legislative Councillor
立法會議員劉健儀
23. Honest Profit Corp Ltd
誠利有限公司
24. Hong Kong Guangdong Boundary Crossing Bus Association
港粵直通巴士協會
25. Hong Kong Kowloon Taxi & Lorry Owners Association
香港九龍的士貨車商會

26. Hong Kong Scheduled (GMB) Licensee Association
香港專線小巴持牌人協會
27. Hong Kong Taxi Association
香港計程車會
28. Hong Kong Taxi Drivers' Association
香港的士司機總會
29. Hop Kwan Special Route PLB Co Ltd
合群專線小巴有限公司
30. Kamalie Ltd
金萬利有限公司
31. Kowloon-Canton Railway Corporation
九廣鐵路公司
32. Kwai Ching United Green PLB Co Ltd
葵青聯運專線小巴有限公司
33. Kwok Chung Motor Car Ltd
國松汽車有限公司
34. Lam Tin Wai Hoi PLB Merchants Association Ltd
藍田惠海小巴商會
35. Lee Keung Enterprises Ltd
李強企業有限公司
36. Leung Shek Kei
梁錫基
37. Merry Dragon Ltd
喜龍有限公司
38. MK Chan
39. Motor Transport Workers General Union
汽車交通運輸業總工會
40. Motor Transport Workers General Union (Non-franchised Bus Branch)
汽車交通運輸業總工會（非專利巴士分會）

41. MTR Corporation Limited
地鐵公司
42. N.T. Taxi Merchants Association
新界的士商會有限公司
43. New Territories Taxi Drivers' Rights Alliance
新界的士司機權益大聯盟
44. New Territories Taxi Operations Union
新界的士營運協會
45. New Territories West buses/coaches association
新界西巴士聯會
46. Non-Franchised Public Buses Worker Association
非專利公共巴士從業員協會籌備委員會
47. New World First Bus Services Limited
新世界第一巴士服務有限公司
48. North District Taxi Merchants Association
北區的士商會
49. Pak Kai Taxi Owners Association
百佳的士車主聯會
50. Peace Base Investment Ltd
平基投資有限公司
51. PLB General Association
公共小型巴士總商會
52. Powerful Resources Technology Ltd
53. Public Omnibus Operators Association Ltd
公共巴士同業聯會有限公司
54. Public Vehicle Merchants Fraternity Association
營業車聯誼會
55. Quadripartite Taxi Service Association
四海的士車主司機聯會

56. Raytop International Ltd
唯峰國際有限公司
57. Rich Success Transportation Ltd
富昇運輸有限公司
58. Rights of Taxi Owners & Drivers Association
的士權益協會
59. Royal Best Quality Taxi Association
豪華優質的士電召聯會
60. Sai Kung PLB (Maxicab) (No.1 & 2) Co Ltd
西貢（1,2 號）專線小巴有限公司
61. Sai Kung Taxi Operators Association Ltd
西貢的士工商聯誼會
62. Saraluck Investment Ltd
順亞投資有限公司
63. School Buses Operators Association Ltd
學童車協會有限公司
64. Sea Dragon Maxicab Service Co Ltd
海龍專線小巴有限公司
65. Set Main Development Ltd
實明發展有限公司
66. Sham Shui Po District Council
深水埗區議會
67. Sun Bus Limited
陽光巴士有限公司
68. Sun Cheong Transportation (HK) Co Ltd
新昌運輸香港有限公司
69. Sun Hing Taxi Radio Association
新興的士電召聯會
70. Sun Hing Taxi Radio Service General Association
新興台的士從業員聯會

71. Sunning Transportation Ltd
新寧運輸有限公司
72. Superlong Ltd
超栢萊有限公司
73. Tai Wo Motors Limited
泰和車行有限公司
74. Tang's Taxi Companies Association
新界港九合眾的士聯誼會
75. Taxi Dealers & Owners Association Limited
的士車行車主協會有限公司
76. Taxicom Vehicle Owners Association Ltd
港聯的士車主聯會有限公司
77. The Association of N.T. Radio Taxicabs
新界電召的士聯會
78. The Fraternity Association of N.T. Taxi Merchants
新界的士商業聯誼會
79. The HK Taxi and Public Light Bus Association
香港的士小巴商總會
80. The Incorporated Owners of Beacons Heights
畢架山花園業主立案法團
81. The Kln PLB Chiu Chow Traders & Workers Friendly Association
潮籍工商聯誼會
82. The Kowloon Taxi Owners Association Limited
九龍的士車主聯會有限公司
83. The Real Estate Developers Association of Hong Kong
香港地產建設商會
84. The Taxi Operators Association Ltd
的士同業聯會有限公司
85. Traffic Services Employees Association
交通事業從業員協會

- 86. Tso Kin-sheung
曹健湘
- 87. Tsuen Wan Motors Co Ltd
荃灣汽車有限公司
- 88. Tuen Mun PLB Association
屯門公共小巴商會
- 89. United Friendship Taxi Owners & Drivers Association
聯友的士同業聯會
- 90. Urban Taxi Drivers Association Joint Committee Co. Ltd.
市區的士司機聯委會
- 91. Win Top Service Ltd
運通服務有限公司
- 92. Wing Lee Motor Co Ltd
榮利車行有限公司
- 93. Wong Hon-cheung

Legislative Provisions relevant to Regulation of NFB Operation

Paragraph number	Relevant legislative provision	
	Section, Ordinance	Subsection
- Para. 3.2	Section 27, Road Traffic Ordinance, Cap. 374	<p>(1) Subject to the provisions of this section and of sections 28 and 29 of the Road Traffic Ordinance (Cap. 374), the Commissioner for Transport (the “Commissioner”) may, on application made in the prescribed manner, issue a passenger service licence in respect of one or more public buses, public light buses, private buses or school private light buses for use in accordance with this Ordinance.</p> <p>(2) Subsection (1) does not apply to a public bus operated under a franchise granted under the Public Bus Services Ordinance (Cap. 230).</p> <p>(3) A passenger service licence may authorize the holder to operate-</p> <p>(a) a public bus service;</p> <p>(b) a private bus service;</p> <p>(c) a public light bus service; or</p> <p>(d) a school private light bus service.</p>

Paragraph number	Relevant legislative provision	
	Section, Ordinance	Subsection
<ul style="list-style-type: none"> - Para. 3.3 - Table of para. 3.3 - Para. 4.14 	Section 4, Public Bus Services Ordinance (“PBSO”), Cap.230	<p>(3) This section does not apply to a public bus service which is-</p> <ul style="list-style-type: none"> (a) a tour service, that is to say, a service- <ul style="list-style-type: none"> (i) for the carriage of passengers at separate fares; (ii) entitling the passengers to travel together on a journey, with or without breaks, from the place or places at which they are taken up (being the same place or 2 or more places in the same vicinity) to one or more other places and back to the place or places at which they were taken up; (iii) in which all the passengers are carried for the greater part of the journey; and (iv) in which no passenger is a person who frequently, or as a matter of routine, travels, at or about the time of day at which the journey is made, to or to the vicinity of a place from or through which the journey is made; (b) an international passenger service, that is to say, a service for the carriage of passengers in either direction between any one or more of the following

Paragraph number	Relevant legislative provision	
	Section, Ordinance	Subsection
		<p>places, that is to say, the Hong Kong International Airport, Hung Hom Railway Station, Macau Ferry Pier or any other pier, any Hong Kong border crossing, any hotel, airline office or ferry or similar terminal, where the passengers on the service consist only of-</p> <ul style="list-style-type: none"> (i) persons arriving in or intending to leave Hong Kong by aircraft, railway, ferry vessel, ship or motor vehicle; (ii) persons meeting or accompanying the persons referred to in sub-paragraph (i); or (iii) persons employed by an airline or the agent of an airline, or by any travel, shipping or railway agent; <p>(c) an hotel service, that is to say, a service for the carriage of passengers residing at an hotel where every passenger is taken up or set down at the hotel;</p> <p>(d) a student service, that is to say, a service for the carriage to or from a school, university or other educational establishment of students thereof, persons accompanying or in charge of such students or who</p>

Paragraph number	Relevant legislative provision	
	Section, Ordinance	Subsection
		<p>teach at the school, university or other educational establishment;</p> <p>(e) an employees' service, that is to say, a service provided by an employer for the carriage to or from their place of work of passengers who are persons employed by him;</p> <p>(f) a residents' service, that is to say, a service approved by the Commissioner, after considering the interests of any grantee franchised to operate over any part of the route to be covered by the service and any other relevant matter, and provided by or on behalf of the management, residents or owners of any residential development for the carriage of passengers to or from the residential development;</p> <p>(g) a multiple transport service, that is to say, a service (other than a service provided mainly for the carriage of passengers to or from a residential development) in which no passenger is a person who frequently or as a matter of routine travels, at or about the time of day at which the journey is to be made, to or to the vicinity of</p>

Paragraph number	Relevant legislative provision	
	Section, Ordinance	Subsection
		a place from or through which the journey is made, approved by the Commissioner, after considering the interests of any grantee franchised to operate over any part of the route to be covered by the service and any other relevant matter, for the carriage of passengers by a public bus service in combination with carriage by another mode or modes of public transport service from one departure point to one destination and where a combined fare is paid for the whole journey, single or return, at a place other than at the boarding point of the bus or on the bus.
<ul style="list-style-type: none"> - Para. 3.3 - Table of para. 3.3 - Para. 4.5 - Para. 4.14 	Section 27, Road Traffic Ordinance, Cap. 374	<p>(4) For the purposes of subsection (3)(a) a public bus service means a service which-</p> <ul style="list-style-type: none"> (a) is for the carriage of passengers by public bus; and (b) is of a type specified in section 4(3) of the Public Bus Services Ordinance (Cap. 230) or of any other type approved by the Commissioner; and (c) is not required to be operated under a franchise granted under the Public Bus Services Ordinance (Cap. 230).

Paragraph number	Relevant legislative provision	
	Section, Ordinance	Subsection
<ul style="list-style-type: none"> - Para. 3.6 - Para. 3.22 - Para. 3.36 - Para. 4.21 - Para. 7.3 	Section 28, Road Traffic Ordinance, Cap. 374	<p>In determining an application for a passenger service licence, the Commissioner shall take into account, in addition to any other matter which he considers relevant to the application-</p> <ul style="list-style-type: none"> (a) any policy direction from the Chief Executive with respect to the provision of public transport services; (b) any limit in force under section 23 of the Road Traffic Ordinance (Cap.374) on the number of vehicles that may be registered; (c) the need for the services to be provided by the applicant; (d) the level of service already provided or planned by other public transport operators; (e) traffic conditions in the areas and on the roads where the services are to be provided; and (f) the standard of service to be provided by the applicant.

Paragraph number	Relevant legislative provision	
	Section, Ordinance	Subsection
- Para. 3.12	Section 33, Road Traffic Ordinance, Cap. 374	<p>(1) Subject to subsection (2), where the Commissioner-</p> <ul style="list-style-type: none"> (a) refuses to register a vehicle under section 24 or 26 of the Road Traffic Ordinance (Cap. 374); (b) refuses to license a vehicle or cancels a licence under section 25 or 26 of the Road Traffic Ordinance (Cap. 374); (c) refuses to issue a passenger service licence under section 29 of the Road Traffic Ordinance (Cap. 374) or cancels, suspends or varies a passenger service licence under section 31 of the Road Traffic Ordinance (Cap. 374), <p>the applicant or the holder of the licence may, within 21 days of being notified of the decision of the Commissioner, apply in writing to the Commissioner for a review of the Commissioner's decision by a Transport Tribunal.</p> <p>(2) This section shall not apply where the Commissioner-</p> <ul style="list-style-type: none"> (a) refuses to register a motor vehicle under section 24(1)(d) or(e) of the Road Traffic Ordinance (Cap. 374); (b) refuses to license or cancels a motor vehicle licence

Paragraph number	Relevant legislative provision	
	Section, Ordinance	Subsection
		under section 25(1)(ii) of the Road Traffic Ordinance (Cap. 374).
- Para. 3.42	Section 23, Road Traffic Ordinance, Cap. 374	<p>(1) Without prejudice to any other enactment, the Chief Executive in Council by notice in the Gazette may limit the number of vehicles which may at any time be registered by reference to any one or more of the following- (Amended 3 of 2002 s. 15)</p> <ul style="list-style-type: none"> (a) the total number of vehicles in all classes; (b) a class or description of vehicle or a description of the conditions subject to which vehicle licences will be issued; (c) the date of manufacture of vehicles; (d) the country of origin of vehicles. <p>(2) Subject to subsection (3), any limit notified under subsection (1) shall remain in force for such period not exceeding 12 months as shall be specified in the notice.</p> <p>(3) The Legislative Council may from time to time by resolution extend the period for which a limit remains in force under subsection (2).</p>

Paragraph number	Relevant legislative provision	
	Section, Ordinance	Subsection
		<p>(4) Any limit notified under subsection (1) shall not affect the registration of any vehicle in force when the notice comes into operation.</p> <p>(5) If the Commissioner-</p> <p>(a) receives applications for the registration of vehicles within a category of vehicle which is the subject of a notice under subsection (1); and</p> <p>(b) would, but for the limit under subsection (1) on the number of vehicles that may be registered in that category, grant the applications,</p> <p>the Commissioner may cause the applications to be determined by lot.</p>
<ul style="list-style-type: none"> - Para. 4.2 - Para. 5.7 	Section 52, Road Traffic Ordinance, Cap. 374	<p>(4) No person shall-</p> <p>(a) drive or use a public light bus, a private bus, a school private light bus or a public bus other than one operated under a franchise granted under the Public Bus Services Ordinance (Cap. 230); or (Amended 50 of 1999 s. 10)</p> <p>(b) suffer or permit such a vehicle to be driven or used,</p> <p>for the carriage of passengers unless a passenger service licence</p>

Paragraph number	Relevant legislative provision	
	Section, Ordinance	Subsection
		is in force in respect of the vehicle.
<ul style="list-style-type: none"> - Para. 4.2 - Para. 5.8 - Para. 5.28 	Section 52, Road Traffic Ordinance, Cap. 374	<p>(9) No person shall-</p> <ul style="list-style-type: none"> (a) drive or use; or (b) permit or suffer to be driven or used, <p>a motor vehicle in contravention of any conditions subject to which the vehicle licence was issued.</p>
<ul style="list-style-type: none"> - Para. 4.4 - Para. 4.26 - Para. 5.2 - Para. 5.6 - Para. 5.8 - Para. 6.1 	Section 30, Road Traffic Ordinance, Cap. 374	<p>(1) If the Commissioner has reason to believe in respect of any vehicle in respect of which a passenger service licence is in force that-</p> <ul style="list-style-type: none"> (a) the vehicle has been or is being used otherwise than for the purpose of the service authorized by the licence; or (b) any condition of the licence or any provision of this Ordinance has not been or is not being complied with, <p>he may appoint a public officer to hold an inquiry.</p> <p>(2) An officer appointed under subsection (1) shall fix a time and place for the inquiry and shall give 21 clear days' written notice thereof to the licensee.</p> <p>(3) An inquiry may be postponed if the officer conducting it</p>

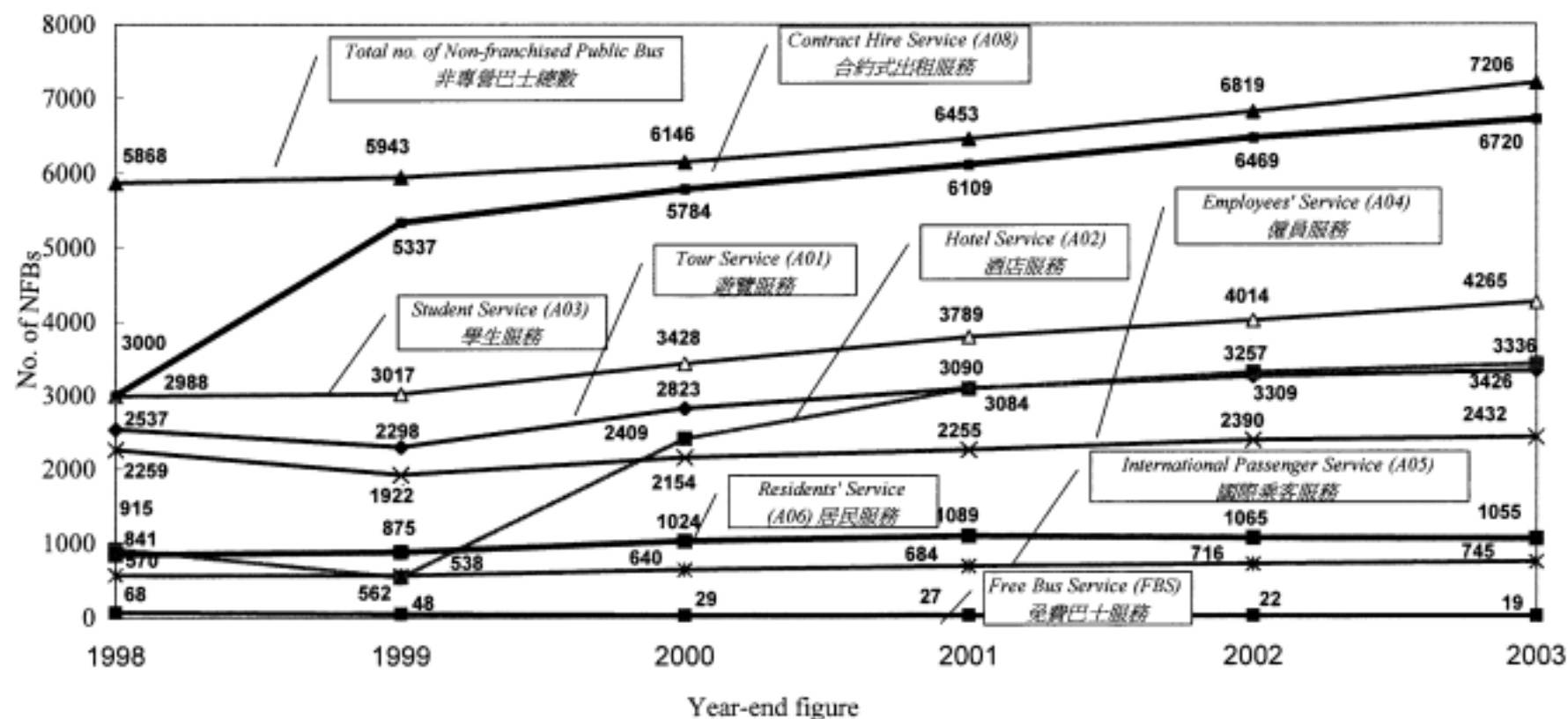
Paragraph number	Relevant legislative provision	
	Section, Ordinance	Subsection
		<p>thinks fit and where an inquiry is postponed the officer shall cause a notice to be served on the licensee specifying the date to which the inquiry has been postponed.</p> <p>(4) At an inquiry the officer conducting the inquiry shall consider-</p> <p>(a) any evidence received by him, whether tendered on behalf of the licensee or otherwise, and any representations made by or on behalf of the licensee or otherwise;</p> <p>(b) representations in writing by or on behalf of the licensee.</p>
- Para. 4.5	Section 4, Public Bus Services Ordinance, Cap.230	(1) A public bus service shall not be operated except under a franchise granted under this Ordinance or another enactment.
- Para. 5.2	Section 52, Road Traffic Ordinance, Cap. 374	(10) Any person who contravenes- <p>(a) this section, other than subsection (2), commits an offence and is liable in the case of a first conviction for that offence to a fine of \$5000 and to imprisonment for 3 months, and in the case of a second or subsequent conviction for that offence to a</p>

Paragraph number	Relevant legislative provision	
	Section, Ordinance	Subsection
		<p>fine of \$10000 and to imprisonment for 6 months;</p> <p>(b) subsection (2) commits an offence and is liable in the case of a first conviction for that offence to a fine of \$1000 and to imprisonment for 3 months, and in the case of a second or subsequent conviction for that offence to a fine of \$2000 and to imprisonment for 6 months.</p>
<ul style="list-style-type: none"> - Para. 5.2 - Para. 5.7 	Section 4, Public Bus Services Ordinance, Cap.230	<p>(2) Any person who-</p> <ul style="list-style-type: none"> (a) operates, or manages or assists in the management of, a public bus service, or (b) uses, or causes or permits to be used, a bus in the operation of a public bus service, <p>which is operated in contravention of subsection (1) of the Section 4 of the Public Bus Services Ordinance (Cap. 230) shall be guilty of an offence and shall be liable on conviction to a fine of \$100000.</p>

Paragraph number	Relevant legislative provision	
	Section, Ordinance	Subsection
<ul style="list-style-type: none"> - Para. 6.1 - Para. 6.2 	Section 2, Road Traffic Ordinance, Cap. 374	<p>"private bus" (私家巴士) means a bus used or intended for use-</p> <ul style="list-style-type: none"> (a) otherwise than for hire or reward; or (b) for the carriage of passengers who are exclusively- <ul style="list-style-type: none"> (i) the students, teachers and employees of an educational institution; or (ii) disabled persons and persons assisting them, whether or not for hire or reward;
<ul style="list-style-type: none"> - Para. 6.2 	Section 27, Road Traffic Ordinance, Cap. 374	<p>(5) For the purposes of subsection (3)(b) of the Road Traffic Ordinance (Cap. 374) a private bus service means-</p> <ul style="list-style-type: none"> (a) a student service, that is to say, a service for the carriage to or from an educational institution of students thereof and persons accompanying or in charge of such students or who teach at the educational institution, in private buses registered in the name of the educational institution; (b) an employees' service, that is to say, a service provided by an employer for the carriage of his employees to or from their place of work, in private buses registered in the name of the employer;

Paragraph number	Relevant legislative provision	
	Section, Ordinance	Subsection
		<p>(c) a disabled persons' service, that is to say, a service provided exclusively for the carriage of disabled persons and of persons employed to assist them;</p> <p>(d) any other service, which is not for hire or reward, approved by the Commissioner.</p>

Number of Registered Public Non-franchised Buses



Report of Transport Advisory Committee Working Group on Review of Regulation of Non-franchised Bus Operation

Executive Summary

Public Non-franchised Bus Service

Public non-franchised bus (“NFB”) service is a type of service available for hire or reward. Provision of NFB services is regulated by passenger service licence (“PSL”) issued by the Commissioner for Transport (“C for T”). There are eight types of public NFB service:

<u>Types of Service</u>	<u>Code</u>
Tour Service	A01
Hotel Service	A02
Student Service	A03
Employees’ Service	A04
International Passenger Service	A05
Residents’ Service	A06
Multiple Transport Service	A07
Contract Hire Service (to meet ad hoc service demand not covered by the other seven types)	A08

A PSL holder has to obtain separate endorsement as well as approval for individual route operation as appropriate from C for T before operating any of the services.

2. In recent years, there have been concerns among the public transport trades about an oversupply of NFBs in the market in which demand for public transport services has been growing slowly. Moreover, whilst generally most NFB services are operated in a proper manner, some

individual NFB operators provide unauthorised services and some have gone beyond their established scope of operation by providing services which deviate from the transport policy. Such activities undermine the financial viability of regular and legitimate transport services and cause traffic and environmental problems. The third party insurance policy for a vehicle might also be invalidated if the vehicle concerned is used for operating unauthorised services.

The Review

3. In late 2003, the Administration invited the Transport Advisory Committee (“TAC”) to conduct a review on the regulatory framework and licensing system for NFB operation. The TAC set up the Working Group on Review of Regulation of Non-franchised Bus Operation (“the Working Group”) in December 2003.

4. The Working Group has held 11 meetings. To better understand the problems and exchange views on measures to be recommended, the Working Group has held a number of consultation sessions with representatives of the NFB, public light bus (“PLB”) and taxi trades. It has also conducted a site visit to black spots of unauthorised NFB activities and invited opinions and suggestions from various sectors including other transport operators. The Working Group studied the views and suggestions gathered carefully and took them into full account in mapping out the recommendations.

Findings and Recommendations

5. The Working Group has reviewed the role played by NFBs in the public transport system and proposed the following three main categories of measures to address the oversupply problem and to improve the regulatory regime governing NFB operation:

- (a) coordinate the change in NFB services with demand;
- (b) strengthen regulatory control over NFB operation; and
- (c) enhance effectiveness and efficiency of enforcement actions.

6. While the concerns set out in paragraph 2 are mainly related to public NFBs, the Working Group considers that the same proposed measures should also be applied to private NFBs (which are for use other than for hire or reward; or for carriage of passengers who are exclusively the students, teachers and employees of an educational institution or disabled persons and persons assisting them whether or not for hire or reward) as far as practicable. The purpose is to facilitate better regulation of private NFB services and to prevent possible uses of private NFBs for unauthorised operation.

7. The Working Group has adopted the following guidelines in developing the measures:

- (a) stringent control be exercised on new supply (i.e. applications for new PSL including associated endorsements and vehicles from new applicants; applications for additional endorsement and vehicle from existing operators and applications for future renewal of the above PSL and endorsement);
- (b) suitable flexibility be maintained in processing applications for renewal of existing supply (i.e. applications for renewal of PSL or endorsement and replacement of vehicle from existing operators) to provide continuity for current legitimate business operation; and
- (c) the existing regulatory framework be improved to ensure proper service operation and facilitate enforcement.

Role of NFBs

8. The Working Group noted that the existing transport policy is to maintain a balanced public transport system with coordination among the

different modes and to ensure the provision of safe, efficient and cost-effective public transport services to the community. In line with this policy and given the limited road space and community concerns about environmental impact from road transport, the modal hierarchy of the public transport modes is generally based on their relative efficiency and capacity, as follows:

- (a) railways are developed as the backbone of the public transport system at the top of the transport hierarchy;
- (b) franchised buses are main providers of services particularly to areas not conveniently served by railways and as feeders to railways; and
- (c) PLBs, NFBs and taxis perform a supplementary role in the public transport system and each serves their own niche markets.

9. Having regard to the need for a high degree of inter-modal coordination to ensure the effectiveness of the transport hierarchy and to minimise wasteful competition, the Working Group considers that NFBs should continue to play its role as a supplementary transport mode:

- (a) to relieve heavy demand on franchised bus and green minibus services primarily during peak hours; and
- (b) to fill gaps of passenger demand that cannot be met by regular public transport services.

It also affirms NFBs' role in providing tailor-made services to specific groups of passengers and to meet certain market niches such as services for groups of tourists.

Coordinate the Change in NFB Services with Demand

10. The number of NFBs increased rapidly by 23% from 5,900 to 7,200 in the past five years although the daily public transport patronage only grew by 2.7% during the same period. To address the problem of oversupply of NFB services, the Working Group considers that there is a need to contain the

increase in NFBs. It recommends that applications that will result in new supply of NFB vehicles or services should be processed stringently. Processing of applications that will not expand the existing supply may be allowed greater flexibility. On this basis, the Working Group proposes the following measures:

New Supply (i.e. applications for new PSL including associated endorsements and vehicles from new applicants; applications for additional endorsements and vehicles from existing operators and applications for future renewal of the above PSL and endorsement)

- (a) all applications that will result in new supply should be subject to stringent vetting and documentary requirements (including contracts valid for 6 months or more) to prove that there is a genuine long-term need for the services applied for;
- (b) to ensure that the utilisation of the existing fleet of an applicant would be examined in considering applications for new supply, full fleet vetting should apply to applications for:
 - (i) renewal of new PSL and its associated endorsement granted to new applicants;
 - (ii) additional vehicle from existing operators;
 - (iii) additional endorsement from existing operators and future renewal of such additional endorsement;
 - (iv) future renewal of PSL which covers additional vehicle and additional endorsement.

The purpose is to ensure that such new supply should be approved or renewed only if the fleet concerned is well utilised. To avoid undue disruption to existing operation, the Working Group suggests that existing endorsements and existing vehicles approved before the implementation of the new measures should not be affected.

- (c) new NFBs applied for by new applicants and additional vehicles

applied for by existing operators should normally be granted with one type of endorsement only and two endorsements would be approved only under very exceptional circumstances, e.g. when the service under the two endorsements concerned are complementary to each other;

- (d) if an existing operator who only holds contract hire service (A08) endorsement applies for additional endorsement, one additional endorsement (or two if they are complementary in nature) could be granted provided the need for the additional endorsement can be justified to improve their viability. Flexibility in vetting and documentary requirements would be allowed for this type of applications;
- (e) the existing arrangement of full fleet endorsement (i.e. automatic granting of the same endorsement to the full fleet of a PSL holder) and automatic granting of hotel service (A02) endorsement to vehicles with tour service (A01) endorsement should be terminated to avoid excessive supply of service endorsements in the market. The measure implemented since December 2003 to cease automatic granting of contract hire service (A08) endorsement to vehicles currently without such endorsement should also continue;
- (f) for applications involving new or additional vehicles, measures should be taken to encourage applicants to source vehicles from existing fleet in the market without increasing the overall number of NFBs. Applicants who intend to purchase new vehicles would be given a period (say, six months) for them to try to source vehicles from the existing fleet in the market. Their application would be processed as soon as they could source vehicles from the existing fleet or at the end of the period if they could not source such vehicles during the period;

Existing Supply (i.e. applications for renewal of PSL or endorsement and replacement of vehicle from existing operators)

- (g) applications for renewal of PSL or endorsement should be subject to proof of need for service. Contract (including sub-contract) of any duration can be accepted as proof. If such contract is not available at the time of application, a period of six months from the expiry date of the PSL/endorsement can be allowed for applicants to obtain such contract. If a contract cannot be obtained during the six-month period, any application for the same endorsement in future should be processed in the same way as that for new supply;
- (h) replacement vehicle applied for should be of comparable capacity with the one to be replaced unless there is valid justification;

For All Applications (i.e. both new supply and existing supply)

- (i) to ensure that only services that are genuinely in demand will be approved, all applications should be assessed against the criteria stipulated under section 28 of the Road Traffic Ordinance as follow:
 - (i) any policy direction from the Chief Executive with respect to the provision of public transport services;
 - (ii) any limit in force on the number of vehicles that may be registered;
 - (iii) the need for the services to be provided by the applicant;
 - (iv) the level of service already provided or planned by other public transport operators;
 - (v) traffic conditions in the areas and on the roads where the services are to be provided; and
 - (vi) the standard of service to be provided by the applicant; and
- (j) validity period of endorsement should be in line with that of its supporting contract but not exceeding that of the PSL.

11. **Operation of NFB Scheduled Services:** the need for **new services** should be considered on the basis of the criteria stipulated in section 28 of RTO, Cap 374. General principles that should be considered in processing applications for new residents' service and new employees' service are at Annex A. As for **existing services**, in reviewing the need for any adjustment to existing NFB services, the Administration should take into account both the changes in the level of regular public transport services and the changes in passenger demand for the NFB services concerned.

Strengthen Regulatory Control over NFB Operation

12. Generally, most NFB services are operated in a proper manner. However, some individual NFB operators have exploited the loophole of existing licensing conditions to provide unauthorised services or go beyond their established scope of operation to provide services deviating from the NFB policy.

13. The type of service of greatest concern is the contract hire service (A08), particularly free bus service ("FBS"). Whilst FBS provide immediate benefits to passengers and help the sponsors to promote their business, they may undermine regular public transport services. The viability of regular services is important to the public since they provide services during both peak hours and off-peak hours and many of them also operate a package of routes which include socially desirable but not profitable routes. The Working Group has fully taken this into account and recognises that contract hire service (A08) endorsement is to cater for ad hoc demand for services that cannot be met by the other seven types of service. The Working Group recommends that the existing regulatory control over contract hire service (A08) should be revised as follows:

- (a) contract hire services to be provided under A08 endorsement should be classified into two groups, i.e. those which would require prior approval from C for T before the service is operated and those which do not require such prior approval:

- (i) A08 endorsement holders can provide contract hire services without seeking C for T's prior approval if the services are for meeting ad hoc demand such as wedding ceremony, school picnic, and open day of educational institution. Such services should not operate for more than 2 days in a month if they serve same/similar origin and destination area. The Working Group suggests that the Administration should determine the types of service that can be operated without prior approval in consultation with the NFB trade;
 - (ii) other contract hire services that are of a more regular nature or are of greater concern, such as FBS for flat viewing, shopping malls and clubs, etc, regardless of the duration of operation, should require prior approval from C for T. This group also covers any service which serves same/similar origin and destination area and operates for more than 2 days in a month. The Working Group suggests that the Administration should work out arrangements to deal with applications which involve provision of urgent services in exceptional circumstances;
- (b) in processing applications for FBS, the following should be taken into account:
- (i) if an FBS operates between a particular location (e.g. a shopping mall) and a particular destination area would adversely affect regular public transport services in the same area, the FBS may be approved but it should only be allowed to operate for a maximum period of 15 days, either consecutively or intermittently, in a year. FBS between that particular location and substantially different destination areas may be allowed to operate separately provided that each of the services would be subject to the same 15-day maximum period;

- (ii) for places where no regular public transport service is available or where there is no significant adverse impact on regular public transport services, the period of operation of the FBS can be longer and determined on the merit of each case; and
- (iii) an FBS which is not ad hoc in nature, if approved, should be subject to certain conditions in respect of routeing, operating hours, frequency and bus types.

General principles that should be considered in processing applications for FBS are at Annex B.

14. To better regulate the operation of NFB activities and facilitate enforcement actions against unauthorised NFB activities, the Working Group recommends that:

- (a) additional PSL conditions should be imposed to increase the responsibility of PSL holders for ensuring proper use of their vehicles in compliance with their licence. Additional conditions include:
 - (i) driver of an NFB should be in the employ of the PSL holder of that bus;
 - (ii) proper contract should be signed between the PSL holder and the hirer in the case of hiring out an NFB for provision and operation of NFB services;
 - (iii) a copy of document containing the purpose of the hire and basic operational details signed by all parties concerned, including the PSL holder, the hirer and the driver, should be kept in the bus(es) concerned when operating those contract hire services (A08) which require prior approval from C for T;
 - (iv) PSL holder should notify and fully brief the driver of the

purpose of the hiring and the route to be taken and the driver should signify his understanding of the service details;

- (v) PSL holder should keep a daily operation record of each of the buses under the PSL;
 - (vi) the document of hiring and the daily operation record should be produced to C for T upon request; and
 - (vii) PSL holder should take adequate measures such as staff training, inspection and monitoring of the use of the buses to avoid misuse of the buses;
- (b) at present, schedule of service is stipulated for international passenger service (A05) and residents' service (A06). This requirement should be extended to shuttle services provided under hotel service (A02), student service (A03) for tertiary education institutions, employees' service (A04), and certain types of contract hire service (A08) of a regular nature with same/similar origin and destination areas to facilitate better monitoring. The schedule of service should stipulate all relevant operating details including fares, routeing, operating hours, frequency, number and types of buses, stopping points, etc.; and
- (c) at present, hirers of residents' service (A06) are required to submit joint applications together with NFB operators to signify their full knowledge of the details of the proposed service. This requirement should be extended to the following services of a regular nature with same/similar origin and destination areas:
- (i) shuttle services provided under hotel service (A02);
 - (ii) student service (A03) for tertiary education institutions;
 - (iii) employees' service (A04);
 - (iv) international passenger service (A05); and
 - (v) certain types of contract hire service (A08).

If applicable, hirers should also signify that they are responsible for the sponsorship, e.g. full subsidisation in the case of employees' service.

Enhance Effectiveness and Efficiency of Enforcement Actions

15. The Working Group recommends the following measures to enhance the effectiveness of enforcement action in combating unauthorised NFB operation:

- (a) improve the identification system to enable enforcement officers to differentiate easily the types of NFB service being provided by a vehicle. This includes requirement for displaying appropriate signs in standard format in all NFBs to indicate the service being operated and requirement for vehicles subject to single/restrictive endorsement to adopt a livery system to indicate the type of service provided by the vehicles. As for existing vehicles, the operators concerned should be encouraged to adopt the livery scheme on a voluntary basis;
- (b) ban cash payment on board to help pre-empt operation of unauthorised service, so that unless with authorisation by C for T, payment of fares must be made:
 - (i) at designated selling locations approved by C for T; and
 - (ii) in forms of coupons, pre-paid tickets, monthly tickets or any other form as approved by C for T.
- (c) stipulate clearly the power of TD officers to board and ride on any NFBs to facilitate their investigation into suspected unauthorised activities;
- (d) step up enforcement actions and strengthen cooperation between TD and Police to combat all unauthorised NFB services, including provision of service before the necessary approval has been granted

and traffic violations;

- (e) review the current administrative sanctions subsequent to inquiry to impose heavier penalties for repeated offenders so as to ensure sufficient deterrent effect;
- (f) streamline enforcement procedures by creating common breaches of PSL conditions as specified offences that are subject to fixed penalty ticketing system, e.g. not displaying the PSL plate or the stipulated service signs, collecting cash payment on board without C for T's authorisation and not keeping document with service details on bus;
- (g) implement traffic management measures to better regulate the picking up and setting down activities of authorised NFB services and to tackle the irregularities caused by unauthorised NFB activities; and
- (h) improve regular public transport services where justified and plan for transport services at an early stage to cater for transport needs arising from new developments so as to forestall operation of unauthorised NFB services.

Desirability of Imposing a Cap on NFB Fleet

16. The Working Group has examined the desirability of freezing the number of NFBs which is suggested by a number of public transport operators. The Working Group considers that the proposal will restrict the flexibility in meeting the genuine needs of some service sectors which may require additional vehicles to meet demand due to their special circumstances. Moreover, imposing a limit on the number of NFBs may lead to speculation, thus generate premium in NFBs and increase the cost of NFB services which is not in the interest of the users of the services.

17. In view of the above drawbacks, the Working Group does not consider it appropriate to impose a cap on the NFB fleet size or on the number of endorsements for selected types of NFB service. Instead, the Working Group considers that a two-pronged approach should be adopted. First, measures to tighten the licensing regime and vetting procedures should be introduced to coordinate the change in NFB services with demand. Second, the operators of NFB services should be better regulated, with strengthened enforcement, as a way to ensure that NFB operation meet their purpose without encroaching on the function of other transport modes.

Cross-Boundary Coach Service

18. Cross-boundary coach service (“CBCS”) is operated under the PSL regime as a form of international passenger service (A05) and is regulated by a quota system jointly administered by the Hong Kong and Mainland authorities. There have been increasing incidents of cross-boundary coach operators not observing PSL or other licensing conditions. Malpractices include overruns, non-compliance with allocated timeslots and operation of short-haul services terminating at the Huanggang control point without authorisation.

19. The Working Group noted that Hong Kong and Mainland authorities agreed to better regulate the operation of CBCS through the following means:

- (a) further enhance the enforcement actions against those operators who breach PSL or other licensing conditions; and
- (b) introduce five groups of six cross-boundary routes plying between various districts of Hong Kong and the Huanggang control points or its vicinity to meet the proven passenger demand.

20. The Working Group welcomes the authorities’ initiative to tackle the irregularities in the operation of CBCS and address the increasing demand

of cross-boundary travellers.

Expected Effect of Recommendations

21. The recommendations are expected to help coordinate the change in NFB services so that it would be more in line with changes in demand. This will help minimise unhealthy competition both within the NFB trade and with other transport modes.

22. Under the relevant recommendations, adequate flexibility is allowed in processing applications for renewal of PSL and endorsement and replacement of vehicle. This will help minimise the adverse impact on existing NFB operators as well as users of existing services.

23. Proposals to improve the existing regulatory control and strengthen efficiency of enforcement actions will help reduce unauthorised NFB activities and abuses of the regulatory flexibility to provide services deviating from the NFB policy by some individual operators.

24. Through the implementation of the recommended measures, the Working Group hopes that business opportunities and operating environment for both law-abiding NFB operators and regular public transport service providers will improve and commuters can benefit from a well-coordinated public transport system.

**General Principles that should be Considered
in Processing Applications for
New Residents' Service and New Employees' Service**

Applications for **new residents' service** should be processed with due regard to the following:

- (a) the residents' service should facilitate commuters to connect to the nearby rail station or public transport interchange to avoid adding congestion to busy urban districts;
- (b) the residents' service should not pose significant adverse impact on regular public transport services in the area concerned;
- (c) existing or planned public transport services in the area to be served by the proposed residents' service are inadequate or limited;
- (d) residential development served by the proposed residents' service are distant from rail station, public transport interchange or major franchised bus stop or GMB stop and use of alternative services will result in excessive number of interchanges; and
- (e) the residents' service will not operate in congested areas or via local busy road and will not cause traffic congestion.

For processing applications for **new employees' service**, the following factors should be considered:

- (a) the employees' service should be considered if:
 - (i) the service is fully subsidised by the employer; or
 - (ii) existing or planned public transport services in the area or during the period to be served by the proposed service are inadequate or limited; or
 - (iii) the workplace to be served by the proposed service is distant from rail station, public transport interchange or major franchised bus stop or GMB stop and use of alternative services

will result in excessive number of interchanges;

- (b) the employees' service should be to and from the workplace;
- (c) the workplace and/or destination of the employees' service are not within busy urban areas or congested districts and its operation will not cause traffic congestion;
- (d) passengers of the employees' service should be restricted to employees of the employer; and
- (e) the service should be provided to the employees of one employer at any one time.

Annex B

General Principles that should be Considered in Processing Applications for Free Bus Service (“FBS”)

For applications for FBS, the following factors should be considered:

- (a) services should be to the nearby residential developments or major public transport interchanges;
- (b) the proposed service should not cause or lead to traffic congestion;
- (c) if an FBS operates between a particular location (e.g. a shopping mall) and a particular destination area would adversely affect regular public transport services in the same areas, the FBS may be approved but it should only be allowed to operate for a maximum period of 15 days, either consecutively or intermittently, in a year. FBS between that particular location and substantially different destination areas may be allowed to operate separately provided that they would be subject to the same 15-day maximum period;
- (d) for places where no regular public transport service is available or where there is no significant adverse impact on regular public transport services, the period of operation of the FBS can be longer and determined on the merit of each case; and
- (e) an FBS which is not ad hoc in nature, if approved, should be subject to certain conditions in respect of routeing, operating hours, frequency and bus types. The operating hours of the FBS should generally tie in with the opening hours of the location involved, e.g. shopping malls or clubs.