

**立法會**  
**Legislative Council**

LC Paper No. CB(1)905/04-05  
(These minutes have been seen  
by the Administration)

Ref: CB1/PL/ES/1

**Panel on Economic Services**

**Minutes of meeting held on  
Monday, 24 January 2005, at 10:45 am  
in the Chamber of the Legislative Council Building**

- Members present** : Hon James TIEN Pei-chun, GBS, JP (Chairman)  
Hon Abraham SHEK Lai-him, JP (Deputy Chairman)  
Ir Dr Hon Raymond HO Chung-tai, S.B.St.J., JP  
Hon Fred LI Wah-ming, JP  
Hon CHAN Kam-lam, JP  
Hon SIN Chung-kai, JP  
Hon Howard YOUNG, SBS, JP  
Hon Miriam LAU Kin-yee, GBS, JP  
Hon Jeffrey LAM Kin-fung, SBS, JP  
Hon Andrew LEUNG Kwan-yuen, SBS, JP  
Hon Ronny TONG Ka-wah, SC  
Hon CHIM Pui-chung  
Hon KWONG Chi-kin  
Hon TAM Heung-man
- Member attending** : Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
- Members absent** : Dr Hon David LI Kwok-po, GBS, JP  
Dr Hon LUI Ming-wah, JP  
Hon LAU Chin-shek, JP  
Hon WONG Ting-kwong, BBS
- Public Officers attending** : **Agenda item IV**  
Ms Sandra LEE  
Permanent Secretary for Economic Development and  
Labour (Economic Development)

Mr Howard LEE  
Principal Assistant Secretary for Economic Development  
and Labour (Economic Development) A3

Mr Alan K M CHU  
Principal Assistant Secretary for Security

Mr CHOY Tak-po  
Commander, Airport Division  
Immigration Department

Ms KWOK Ngan-ping  
Acting Head of Airport Command  
Customs & Excise Department

Mr CHEUNG Siu-wah  
Deputy Regional Commander  
New Territories South  
Hong Kong Police Force

Mr LAU Fu-sang  
District Commander, Airport District  
Hong Kong Police Force

Mr LAM Kin-ha  
Chief Property Manager  
Government Property Agency

Mrs Marigold LAU  
Project Director 2  
Architectural Services Department

Dr Henry KONG  
Senior Port Health Officer  
Department of Health

**Agenda item V**

Ms Sandra LEE  
Permanent Secretary for Economic Development and  
Labour (Economic Development)

Mr Darryl CHAN  
Principal Assistant Secretary for Economic Development  
and Labour (Economic Development) A2

Mr Jeffrey TO  
Chief Operations Officer (Air Services)  
Civil Aviation Department

**Clerk in attendance** : Mr Andy LAU  
Chief Council Secretary (1)2

**Staff in attendance** : Miss Anita HO  
Assistant Legal Adviser 2

Ms Anita SIT  
Senior Council Secretary (1)9

Miss Winnie CHENG  
Legislative Assistant (1)5

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**I Confirmation of minutes and matters arising**

- (LC Paper No. CB(1)673/04-05 - Minutes of meeting held on  
7 December 2004  
LC Paper No. CB(1)716/04-05 - Minutes of meeting held on  
16 December 2004)

The minutes of the meetings held on 7 December and 16 December 2004 were confirmed.

**II Information papers issued since last meeting**

- (LC Paper No. CB(1)575/04-05(01) - Extract of minutes of meeting of  
the Panel on Home Affairs held  
on 9 November 2004 regarding  
the Heritage Tourism  
Development Project at the  
Central Police Station Compound  
LC Paper No. CB(1)635/04-05(01) - Tables and graphs showing the  
import and retail prices of major  
oil products from December 2002  
to November 2004 furnished by  
the Census and Statistics  
Department)

2. Members noted the information papers issued since last meeting.

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**III Items for discussion at the next meeting scheduled for 28 February 2005**

- (LC Paper No. CB(1)714/04-05(01) - List of outstanding items for discussion  
LC Paper No. CB(1)714/04-05(02) - List of follow-up actions)

3. Members agreed that the following items would be discussed at the next meeting scheduled for 28 February 2005:

- (a) Progress of the Hong Kong Wetland Park Project and amendments to subsidiary legislation under the Country Parks Ordinance; and  
(b) Future development of the electricity market in Hong Kong

4. The Chairman reminded members of the following two meetings scheduled for 31 January 2005-

- (a) Joint Panel meeting with the Panel on Planning, Lands and Works from 9:00 am to 10:30 am to discuss the proposed domestic heliport development; and  
(b) Special meeting from 10:45 am to 1:00 pm to discuss the proposed privatization of the Airport Authority.

**IV Funding proposal for the fitting out works for customs, immigration and quarantine facilities at SkyPlaza, Hong Kong International Airport**

- (LC Paper No. CB(1)714/04-05(03) - Information paper provided by the Administration)

5. The Principal Assistant Secretary for Economic Development and Labour (Economic Development) A3 (PAS/ED(A3)) briefed members on the salient points of the funding proposal as set out in LC Paper No. CB(1)714/04-05(03). To handle the increasing number of passengers at the Hong Kong International Airport (HKIA), Airport Authority (AA) had started to construct a second passenger terminal building called the SkyPlaza. On full development, AA envisaged that the SkyPlaza would become an inter-modal transportation node, providing integrated transit services to passengers of air, land and sea transport. As an integral part of this facility, the Government would provide customs, immigration and quarantine facilities (CIQ facilities) to be manned by the Customs and Excise Department, the Immigration Department, the Hong Kong Police Force and the Department of Health. The Administration needed to fit out the Government accommodation required by these Government departments. The estimated capital cost of the project was \$40.7 million.

6. In reply to the Chairman, the Permanent Secretary for Economic Development and Labour (Economic Development) (PSED) said that the SkyPlaza project was being undertaken by AA on its own financial resources. Subject to the

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approval of the Finance Committee, the Administration would entrust the fitting-out works for Government CIQ facilities to AA for inclusion in their SkyPlaza development construction contract for better co-ordination and efficiency.

7. In reply to the Chairman's enquiry about the initiatives to improve the key facilities in HKIA to sustain its competitiveness, PSED said that AA's latest review concluded that due to faster than expected growth in air traffic and unforeseen upward trends of passenger throughput, some of the existing passenger processing facilities including departure kerb, bus and coach facilities, etc were inadequate to meet the forecast demand. As such, AA had started to construct the SkyPlaza which would provide, inter alia, extra ground transportation facilities for road-base traffic and passenger handling and coach staging facilities for cross-boundary coaches. PAS/ED (A3) added that AA had been constantly reviewing the planning needs to meet forecast growth at HKIA. For example, additional air cargo stands were provided to cater for the need of the industry.

8. The Chairman was also concerned about the shortage of kerbside spaces outside the Passenger Terminal Building, causing inconvenience to arriving passengers and meeters. PAS/ED (A3) advised that the kerbside spaces outside the Passenger Terminal Building were mainly reserved for dropping off departing passengers. To cater for the demand, modification works were being carried out by AA at Car Parks 1 and 2 to provide additional kerbside spaces for picking up arriving passengers.

9. Mr Howard YOUNG indicated support for the construction of a second passenger terminal building to cater for the rising demand. On the entrustment fees for the design and fitting-out works, he enquired about the basis for pitching the rate of the entrustment fees at 16% of the value of the entrusted works. The Project Director of the Architectural Services Department (PD/ASD) advised that the percentage on-cost of around 16% had been adopted by the Administration for other entrustment works. The Administration would further negotiate with AA to see if the entrustment fees could be lowered.

10. On Mr YOUNG's concern about the design standard of the entrusted works which would have a bearing on the amount of the entrustment fees and the quality of the facilities, PD/ASD advised that the design of the CIQ facilities would model on the existing ones for better integration with the environment of HKIA. The cost estimates for the related building works and services was \$17.2 million. AA would include the related works in the construction contract of the SkyPlaza project. The actual cost for the related works would be re-measured according to the rates of the contract and finalized upon completion of the project.

11. Mr Ronny TONG sought the Administration's view on how the SkyPlaza project could help maintain and enhance the aviation hub status of HKIA. PSED advised that SkyPlaza would be an integrated multi-purpose transportation and airport business centre which would serve as a strategic focal point of HKIA air, sea and land traffic flows. SkyPlaza would link with various developments in SkyCity including

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AsiaWorld-Expo and SkyPier. In order to cope with the demand for cross-boundary coach services, particularly with the opening of Disneyland and the Hong Kong-Zhuhai-Macau Bridge, there was a need to provide permanent passenger handling facilities and additional coach staging areas in the vicinity of the Passenger Terminal Building, which were not provided for under the original Master Plan drawn up in 1991. In addition, the existing passenger processing facilities would operate near capacity during peak periods starting from around 2005. The demand for check-in counters had grown faster than originally planned, mostly as a result of the overall accelerated growth in traffic. In 2004, passenger levels already reached 37 million. In order to cope with the passenger demand forecasts and provide extra spaces for ground transportation and cross-boundary coach facilities, there was an urgent need to expand the passenger terminal building.

12. Mr SIN Chung-kai enquired about the future expansion plan for passenger processing facilities, particularly when the proposed SkyPlaza was operated at capacity.

13. Whilst indicating support for the SkyPlaza project, Mr CHAN Kam-lam considered that there was a need to prepare a long term development plan for HKIA so as to provide timely facilities for the processing of passengers to sustain the growth of the airport.

14. Mr LAM Kin-fung remarked that the Administration and AA should keep a close watch on demand forecasts vis-à-vis the actual growth trends for the purposes of airfield and facilities planning. He also remarked that the SkyPlaza project was well received by the business community.

15. PSED said that AA had formulated Master Plan 2020 to guide HKIA's development up to year 2020. The Plan included various developments to meet passenger demand forecasts and measures to enhance Hong Kong's status as an aviation hub. Key facilities and services which would be required to meet forecast demand over the years and HKIA's ultimate annual capacity of 87 million passengers and 9 million tones of cargo had been identified in the Master Plan 2020. Whilst the proposed SkyPlaza development could meet the demand for departing passenger processing facilities up to 2010, AA had been constantly reviewing the demand forecasts and put in place the necessary airfield and facilities to sustain the growth of the airport. There were plans to expand the Passenger Terminal Building to the north and south to accommodate the ultimate annual capacity of 87 million passengers.

16. PAS/ED(A3) added that upon the completion of SkyPlaza, the existing Passenger Terminal Building would be renumbered as Terminal 1 and SkyPlaza as Terminal 2. Check-in counters for airlines would be reshuffled. AA was discussing the matter with the airline industry. SkyPlaza would link the existing Passenger Terminal Building and be fully integrated with the airport and the Airport Express railway station.

17. Ms Miriam LAU was concerned about the arrangements for future expansion

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of passenger processing facilities, particularly kerbside spaces for loading and unloading. She asked if provisions had been made for future expansion of such facilities.

18. PAS/ED(A3) added that the SkyPlaza would provide additional kerbside spaces for unloading of passengers. Provisions had been made for future expansion of other passenger processing facilities in SkyPlaza. Arrangements could also be made to utilize the car park next to SkyPlaza if necessary.

19. Noting the actual modal split in 2002-03 was 19% by rail and 81% by road, which had deviated significantly from the original estimates, Mr CHAN Kam-lam opined that there was a need to introduce measures to boost the patronage of Airport Railway, other than simply providing extra kerb length to meet the growth of ground transportation.

20. PSED said that MTR Corporation Limited had launched a series of measures to boost the patronage of Airport Railway including fare concessions. She believed that the company would continue to launch promotional campaign to attract passengers to use Airport Railway.

21. Mr Andrew LEUNG indicated support for the proposed SkyPlaza project. He however enquired whether the Administration had considered co-locating immigration and customs facilities for air passengers at SkyPlaza, whereby officers from Hong Kong and the Mainland would conduct separate cross-boundary checks within the same premises.

22. The Principal Assistant Secretary for Security replied that co-location of immigration and customs facilities at cross-boundary control points involved complex legal and jurisdiction issues. There was no plan to provide co-location of immigration and customs facilities at SkyPlaza. The consensus with the Mainland so far was to pursue co-location at a new control point to be built at the Hong Kong-Shenzhen Western Corridor.

23. Mr Abraham SHEK said that there was a need to provide adequate passenger processing facilities to maintain the competitiveness of HKIA. On this basis, he would support the SkyPlaza project. He however questioned whether the intent behind the SkyPlaza project was to expand the assets value of AA so as to facilitate the planned partial privatization of AA. As AA could gain substantial benefits from the SkyPlaza development which covered office towers, retail and entertainment centre, he queried why the related CIQ facilities had to be funded by the Government.

24. PAS/ED(A3) advised that the original Master Plan drawn up in 1991 already included the planning concept of the SkyPlaza but its design had been updated to reflect the operational needs of HKIA to meet forecast demand. Regarding the funding arrangement for CIQ facilities, he clarified that these had all along been funded by Government as immigration and customs control-related activities were functions undertaken by Government. In order to fit out the Government

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accommodation required by various Government departments, the Administration needed to put forward a related funding proposal to the Public Works Subcommittee and the Finance Committee for consideration. On the development cost of SkyPlaza, he confirmed that this would be fully absorbed by AA and that the accommodation required for the CIQ facilities would be provided to Government free of charge.

25. Mr Abraham SHEK remarked that the Government should adopt new thinking in taking forward projects of this type. As the planned Government facilities were intended to facilitate the business of AA, which was going to be privatized, the Government should require AA to bear the related costs. After all, the land on the Chek Lap Kok Island was actually the property of Hong Kong citizens.

26. In reply to the Chairman, PSED said that Hangzhou Xiaoshan International Airport Company Limited and AA had recently signed a letter of intent to form a strategic alliance between the two airports, outlining the consensus reached for an intention for an equity investment to form a new joint venture company. AA was also working closely with other airports in the Pearl River Delta Region with a view to complementing one another in the region.

27. The Chairman concluded that members were generally in support of the a construction of second passenger terminal in HKIA and the provision of CIQ facilities there. On the proposed Government capital works project and the estimates for the related works, the Public Works Subcommittee (PWSC) would further consider the Administration's proposal at its meeting on 16 February 2005. He added that the Administration should consider inviting AA to attend PWSC meeting for discussion of the relevant item.

**V Amendments to the Carriage by Air Ordinance to apply the Montreal Convention**

(LC Paper No. CB(1)714/04-05(04) - Information paper provided by the Administration)

28. The Principal Assistant Secretary for Economic Development and Labour (Economic Development) A2 (PAS/EDL(A2)) briefed members on the Administration's proposal to amend the Carriage by Air Ordinance (Cap. 500, "the Ordinance") to apply the Convention for the Unification of Certain Rules for International Carriage by Air signed at Montreal on 28 May 1999 (the "Montreal Convention"). The proposed legislative amendment sought to bring Hong Kong's aviation regulatory framework governing airlines' liabilities towards passengers and shippers in line with international standards. Details of the proposal are set out in the Administration's information paper.

29. In reply to the Chairman's enquiry, PAS/EDL(A2) advised that the Montreal Convention was signed on 28 May 1999 but only came into force on 4 November 2003 upon ratification by the 30th contracting State. So far, 62 States including the European Union, the United States and Japan had ratified the Convention.

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30. PSED supplemented that the Montreal Convention was open to signature by sovereign states and extension of the Convention to Hong Kong Special Administrative Region (HKSAR) had to be effected through notification to the International Civil Aviation Organisation (ICAO), depository of the Convention, by the Central People's Government (CPG). CPG was a signatory to the Convention and had initiated the ratification process.

31. Given that the Montreal Convention had been applied in some contracting States but not in HKSAR, the Chairman enquired how this situation would affect the air carriers' liabilities and air passengers' rights in different circumstances. PAS/EDL(A2) advised that the Convention provided guidelines on the situations in which the Convention would apply. In short, applicability of the Convention would depend on a number of factors, including whether the air ticket was a single trip or a return trip ticket and the place of departure. For example, given that at present the Montreal Convention was in force in USA but not in HKSAR, in the case of a single trip ticket from USA to Hong Kong, the Montreal Convention would not apply. In the case of a return ticket for trips from USA to Hong Kong and Hong Kong to USA, the Convention would apply and was enforceable in courts in USA. However, if the return trip ticket was for trips from Hong Kong to USA and then from USA to Hong Kong, as the departure place was Hong Kong, the Convention would not apply. Insofar as the Convention was not in force in Hong Kong, Hong Kong airlines would not be subject to the Convention in many circumstances.

32. Mr LAM Kin-fung said that the airline industry basically supported the present proposal, but had raised concerns about the proposed mandatory advance payment scheme. He enquired whether it was necessary for Hong Kong to introduce the scheme. PAS/EDL(A2) replied that a mandatory advance payment scheme was discretionary under the Montreal Convention. However, ICAO had passed a resolution encouraging individual governments to take measures under their domestic law to promote the making of advance payments by airlines. On the international level, most European countries had introduced a mandatory advance payment scheme. In the event of an aircraft accident resulting in passenger death or injury, airlines based in Hong Kong were prepared to make advance payments to persons entitled to compensation on a voluntary basis. During the Administration's consultation on the proposal, the Consumer Council had expressed strong support for the introduction of a mandatory scheme. The Administration therefore proposed to introduce a mandatory scheme to provide better legal protection to passengers.

33. Noting that CPG had initiated the ratification process, Mr LAM Kin-fung asked whether the timing of the application of the Montreal Convention to Hong Kong could tie in with that to the Mainland China. PAS/EDL(A2) advised that CPG had signed the Convention and had initiated the ratification process. Depending on the progress of the legislative work, the Administration would further liaise with CPG to determine the appropriate timing for CPG to notify ICAO on the application of the Montreal Convention to HKSAR. PAS/EDL(A2) pointed out that under the Convention, there were specific provisions catering for the situation of different timing

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of application of the Convention to different jurisdictions within a State.

34. Mr Ronny TONG elucidated the need to enact legislative amendments to enable the application of the Montreal Convention to HKSAR. He said that a major objective of the international legal instruments or conventions in regard to international air carriage was to set an upper limit to air carriers' liabilities with regard to international carriage of passengers, baggage and cargo in the event of aircraft accident. Hence, irrespective of whether individual countries had ratified the instruments/conventions, many air carriers at their own initiative had incorporated the terms of the legal instruments/conventions into their contracts with clients so as to limit their liabilities in the event of an aircraft accident. To promote the application of a uniform set of rules worldwide in regard to air carriers' liabilities, many countries would sign the international legal instruments/conventions governing air carriers' liabilities. For the international legal instruments/conventions to apply to a jurisdiction, thus enabling the application of the instruments/conventions when relevant litigation was instituted in the jurisdiction, it was necessary for the jurisdiction to enact its own legislation to effect the application. If HKSAR did not enact legislation to effect the application of the Montreal Convention, the rights of passengers as provided in the Convention would not apply to Hong Kong citizens in many circumstances. Hence, it was necessary to enact legislation to effect the application of the Montreal Convention to HKSAR.

35. Mr Ronny TONG further said that in the past few decades, a lot of complicated issues/problems had arisen from litigations on air carriers' liabilities in regard to international carriage. As the legal profession had the experience and in-depth understanding of the problems/issues in this area of law, he opined that the Administration should consult the legal profession, i.e. the Law Society of Hong Kong and the Hong Kong Bar Association, on the legislative proposal to apply the Montreal Convention.

36. PSED advised that the Administration had not specifically consulted the legal profession on the present proposal, but had consulted the Aviation Advisory Board, the membership of which included a representative from the legal profession. She undertook to consult the two associations of the legal profession when the first draft of the proposed legislative amendments was available.

37. Mr SIN Chung-kai said that the Democratic Party in principle supported the Administration's proposal. It was stated in the Administration's paper that new provisions had been introduced in the Montreal Convention to recognize electronic tickets and air waybills, in addition to physical tickets and air waybills, as proof of carriage. Pointing out that electronic air tickets were already being used by some airlines, Mr SIN enquired about the legal basis, if any, for recognition of the electronic tickets currently in use.

38. PAS/EDL(A2) advised that at present, electronic air tickets were recognized through contracts between airlines and their clients. The enactment of legislation to apply the Montreal Convention would provide statutory basis for recognition of

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electronic tickets.

39. Ms Miriam LAU commented that the present proposal should be welcome from the angle of consumers. She pointed out that the implementation of the Montreal Convention in HKSAR would entail a higher level of potential liability being imposed on air carriers. As air carriers must maintain adequate insurance to cover their potential liability, they probably would have to pay higher premiums, and as a result might face a greater pressure to raise air ticket prices. She asked whether the Administration had made any assessment on the impact of the application of the Montreal Convention in HKSAR on air ticket prices.

40. PAS/EDL(A2) replied that the Administration had not made specific assessment in this regard. Given the trend of countries worldwide switching from the Warsaw System to the Montreal Convention, many insurers currently already set their premiums on the basis of the compensation requirements under the Montreal Convention. In fact, some airlines at their own initiatives had already raised their compensation limit in their contracts with clients to the level required under the Montreal Convention. In view of this development, the Administration considered that the implementation of the Montreal Convention in HKSAR would not have significant impact on the insurance premiums payable by airlines.

41. Mr Ronny TONG and Mr KWONG Chi-kin referred to Articles 133 and 134 of the Basic Law and enquired whether the provisions were applicable to the Montreal Convention and other international legal instruments on civil aviation, and if the answer was in the affirmative, why the application of the Convention to HKSAR required the confirmation by CPG.

42. PSED explained that Articles 133 and 134 of the Basic Law applied to bilateral air services agreements and arrangements between HKSAR and other states or regions. The Articles did not apply in the context of international conventions which were open to state parties, such as the Montreal Convention.

43. In view of members' concern about the applicability of the provisions in the Basic Law to the Montreal Convention, the Chairman requested the Administration to further examine this matter in drawing up the relevant legislative proposal.

**VI Any other business**

44. There being no other business, the meeting ended at 12:10 pm.