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Panel on Economic Development
Meeting on 29 March 2010

Background brief on issues relating to the Air Transport
(Licensing of Air Services) Regulations

Purpose

This paper provides background information on issues relating to the Air Transport (Licensing of Air Services) Regulations (Cap 448 sub. leg. A) (the Regulations) and summarizes concerns and views expressed by Members on these issues.

The Air Transport Licensing Authority

2. The Air Transport Licensing Authority (ATLA) is a statutory body established under the Regulations and is responsible for issuing route licences to Hong Kong airlines for operation of scheduled air services to and from Hong Kong. ATLA currently consists of eight members. Applications for route licences are normally considered and decided by ATLA in the form of a panel of members through circulation of papers (for uncontested applications) or hearing (for contested applications).

Discussions on the Amendment Regulations in 2004

3. It has been a long and established practice of ATLA that it discharges its duties through a panel of no fewer than three members. At the meeting of the Panel on Economic Services¹ (the Panel) on 16 December 2003, the Administration proposed to prescribe a quorum of ATLA for the dispatch of business by way of legislation which was supported by members. The Amendment Regulation 2004, which sought to specify that the quorum at a meeting

¹ The Panel on Economic Services was renamed as the Panel on Economic Development with effect from the 2007-2008 session.

of ATLA was three members, came into effect on 5 March 2004. A Subcommittee was formed to study the Amendment Regulation 2004.

4. When scrutinizing the Amendment Regulation 2004, the Subcommittee noted that according to section 4(6)(c), "the way in which the Licensing Authority shall determine questions for their decision shall be such as the Chief Executive may prescribe". However, the Chief Executive had not prescribed any procedures for ATLA which had developed over the years a set of procedures to consider route licence applications submitted by Hong Kong airlines. The Subcommittee considered that it was necessary to give legal status to the existing set of procedures adopted by ATLA. The Administration then undertook to conduct a separate exercise to prescribe the procedures of ATLA.

5. On 25 October 2004, the Panel supported the Administration's proposal to empower ATLA to determine their own procedure. The Administration subsequently introduced the Amendment (No. 2) Regulation 2004 which replaced the existing discretionary power of the Chief Executive with an express provision for ATLA to determine their own procedure subject to other provisions in the Regulations.

6. Under the express provision, ATLA would be given statutory power to make necessary procedures governing the routine processing of an application from time to time, such as:

- (a) determining whether applications should be considered by circulation or by meetings;
- (b) setting deadlines for applicants and objectors to file written submissions;
- (c) specifying the sort of information that should be provided in the submissions;
- (d) deciding whether a directions hearing is required before holding an inquiry; and
- (e) serving of notices by ATLA.

To enhance the transparency of ATLA's work, the procedures and any subsequent changes would be made public.

7. The Amendment (No. 2) Regulation 2004 came into operation on 8 February 2005.

Latest development

8. During the briefing on the policy initiatives under the 2009-2010 Policy Address at the Panel meeting on 16 October 2009, the Administration has indicated that it is reviewing the ATLA's regulatory regime with a view to enhancing regulatory oversight and promoting competition and innovation in the airline industry.

9. The Administration is inviting public views on the proposals arising from the review of the Regulations by the end of April 2010, and subject to the outcome of the consultation, it will table legislative amendments to the Regulations in the Council in due course. The Administration will brief the Panel on the proposals arising from the review at the meeting on 29 March 2010.

References

Administration's paper on Proposed Amendment to the Air Transport (Licensing of Air Services) Regulations

<http://www.legco.gov.hk/yr03-04/english/panels/es/papers/es1216cb1-549-4e.pdf>

Minutes of the Panel meeting on 16 December 2003

<http://www.legco.gov.hk/yr03-04/english/panels/es/minutes/es031216.pdf>

Administration's paper on Civil Aviation Ordinance (Chapter 448): Air Transport (Licensing of Air Services) (Amendment) Regulation 2004 issued by Environment Development and Labour Bureau on 20 January 2004 (Legislative Council Brief)

http://www.legco.gov.hk/yr03-04/english/subleg/brief/4_brf.pdf

Report of the Subcommittee on Air Transport (Licensing of Air Services) (Amendment) Regulation 2004

<http://www.legco.gov.hk/yr03-04/english/hc/papers/hc0220cb1-1033e.pdf>

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<http://www.legco.gov.hk/yr04-05/english/panels/es/papers/es1025cb1-71-3e.pdf>

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<http://www.legco.gov.hk/yr04-05/english/panels/es/minutes/es041025.pdf>

Administration's paper on Civil Aviation Ordinance (Chapter 448): Air Transport (Licensing of Air Services) (Amendment) (No.2) Regulation 2004 issued by Environment Development and Labour Bureau on 15 December 2004 (Legislative Council Brief)

http://www.legco.gov.hk/yr04-05/english/subleg/brief/215_brf.pdf

Administration's consultation paper on proposals arising from review of Air Transport (Licensing of Air Services) Regulations (Cap. 448 sub. leg. A)

<http://www.legco.gov.hk/yr09-10/english/panels/e/dev/papers/e/dev0329cb1-1249-1-e.pdf>

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