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Panel on Economic Development
Meeting on 19 April 2011

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 of the Panel on Economic Development (the Panel) on related issues.

The Air Transport Licensing Authority

2. The Air Transport Licensing Authority (ATLA), a statutory body established under the Regulations, is responsible for granting licences to local airlines to operate scheduled air services between Hong Kong and any point in the world. ATLA's existing regulatory regime emphasises co-ordination of air services and makes it an object of ensuring, among other things, the avoidance of uneconomical overlapping of air services. It does not distinguish first-time applications and renewal applications for licences, nor impose notification requirements on licence holders, nor does it provide the power for ATLA to intervene when there are signs of any licence holder getting into financial difficulty. To better regulate local airlines, the Administration considers it necessary to improve ATLA's regulatory regime in a number of areas.

Proposals arising from a review of the Regulations

3. ATLA's general policy¹, when it comes to considering whether to grant (or refuse) licences and deciding on the licence conditions, with its reference to the coordination of air services and the need to avoid uneconomical overlapping, is not in line with the global liberalisation of air services in recent years, nor with Hong Kong's progressive liberalization policy on air services².

4. The Administration conducted a review and issued a consultation paper on proposals arising from the review to the relevant stakeholders in late February 2010. The proposals include the following:

- (a) to update ATLA's general policy to read "ATLA shall have regard to the development of air services generally with the object of ensuring the most effective service to the public and generally to the interests of the public".
- (b) to require an airline applying for an ATLA licence for the first time (i.e. the airline does not have any ATLA licence at the time of application) to demonstrate to the reasonable satisfaction of ATLA that –
 - (i) it can meet at any time its actual and potential obligations, established under realistic assumptions, for a period of 24 months from the start of operations; and
 - (ii) it can meet its fixed and operational costs incurred from operations according to its business plan and established under realistic assumptions, for a period of 3 months from the start of operations, without taking into account any income from its operations.
- (c) to require licence holder, for the renewal of a licence upon expiry or for new licence application, to demonstrate to the reasonable satisfaction of ATLA that it can meet its actual and potential obligations for a 12-month period. For this purpose,

¹ ATLA's general policy is that ATLA shall have regard to the coordination and development of air services generally with the object of ensuring the most effective service to the public while avoiding uneconomical overlapping and generally to the interests of the public, including those persons requiring or likely to require facilities for air transport, as well as those persons providing such facilities.

² The progressive liberalisation policy emphasises more liberal market access and promotes competition in the interest of the public and Hong Kong's aviation industry.

the licence holder should be required to provide a business plan covering, at least, a period of 12 months, 2 months in advance of the period to which it relates to.

- (d) to require licence holders to notify ATLA of specific events, in particular the changes in capital structure (and provide ATLA with the audited financial statements and a business plan every year), financial difficulties or intention to cease to operate air services or such cessation etc.
- (e) to empower ATLA such that –
 - (i) it may at any time assess the financial performance of a licence holder and require the licence holder to provide relevant information;
 - (ii) it may suspend or revoke the licence or attach or vary any new or existing licence conditions if ATLA is no longer satisfied that the licence holder can meet its actual and potential obligations for a 12-month period;
 - (iii) it may, upon revocation of a licence, grant a temporary licence, not exceeding 12 months, pending financial reorganization of the licence holder, provided that there is a realistic prospect of a satisfactory financial reconstruction within that time period;
 - (iv) when insolvency or similar proceedings are commenced against a licence holder, it may make an assessment of the financial situation and on the basis of its findings review the status of the licence;
 - (v) it may suspend or revoke a licence if the licence holder knowingly or recklessly furnishes ATLA with false or misleading information on an important point; and
 - (vi) it may hire consultants or advisors to assist ATLA in discharging its duties and to pass the information submitted by the licence applicants and holders to the consultants or advisors.
- (f) to update existing penalties for using any aircraft in

contravention of the provisions of the Regulations³, to follow those specified in Section 5(2) of the Civil Aviation Ordinance, as follows –

- (i) in the case of summary conviction, a fine not exceeding \$100,000 or imprisonment for a term not exceeding 3 months or both such fine and such imprisonment; and
- (ii) in the case of conviction on indictment, a fine not exceeding \$5,000,000 or imprisonment for a term not exceeding 2 years or both such fine and such imprisonment.

Views of Panel members on the proposals

5. In response to Panel members' concern about the proposed change in ATLA's general policy raised at the meeting on 29 March 2010, the Administration stressed that Hong Kong's progressive liberalization policy would encourage entry of more operators into the market, enhance competition and provide more consumer choices. Some members expressed concern that under the proposals, ATLA would no longer need an endorsement from the Civil Aviation Department (CAD) certifying, inter alia, the adequacy and competence of the staff to be employed by the applicant were satisfactory, and asked how ATLA could exercise oversight in this regard. The Administration advised that the granting and validity at any time of a licence should depend on the possession of a valid Air Operator's Certificate granted by CAD. Moreover, section 11(h) of the Regulations required ATLA to have regard to, among other things, the remuneration and general conditions of employment of aircrew and other personnel employed by the applicant when considering to grant or refuse to grant a licence.

Latest development

6. During the briefing on the policy initiatives under the 2010-2011 Policy Address at the Panel meeting on 15 October 2010, the Administration has indicated that the respondents of the consultation generally supported the proposals to improve the regulatory regime of ATLA, and put forward some suggestions, the Administration is considering the comment received with a

³ The existing penalties were set in 1950 and 1969, and are inadequate (for example, the maximum penalties for a second offence under regulation 3(2) are \$70,000 and/or imprisonment for 2 years).

view to finalizing the proposals.

7. The Administration will brief the Panel at the meeting on 19 April 2011 on the outcome of the consultation exercise and the proposed change to the proposals in the light of the comments received.

References

8. The relevant papers are available at the following links -

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/edev/papers/edev0329cb1-1249-1-e.pdf>

Administration's 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/edev/papers/edev0329cb1-1439-7-e.pdf>

Minutes of meeting on 29 March 2010
<http://www.legco.gov.hk/yr09-10/english/panels/edev/minutes/edev20100329.pdf>

Administration's paper on policy initiatives of the Transport Branch of the Transport and Housing Bureau (Page 4)
<http://www.legco.gov.hk/yr10-11/english/panels/edev/papers/edev1015cb1-20-2-e.pdf>

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