

立法會
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Paper for the House Committee

**Subcommittee on the Six Orders Made under Section 5(1) of the
Public Bus Services Ordinance and Gazetted on 20 January 2012**

Purpose

This paper reports on the deliberations of the Subcommittee on the Six Orders Made under Section 5(1) of the Public Bus Services Ordinance and Gazetted on 20 January 2012 (the Subcommittee).

Background

2. Under section 5(1) of the Public Bus Services Ordinance (Cap. 230) (the Ordinance), the Chief Executive (CE) in Council may grant any company registered under the Companies Ordinance (Cap. 32) the right to operate a public bus service on such routes as he specifies by order. The routes so specified form the franchised bus networks of the relevant bus franchises.

3. To meet the changing transport needs of the community, the franchised bus network needs to be adjusted from time to time. Section 15(1) of the Ordinance provides that the Commissioner for Transport may, after consultation with the franchised bus companies, require them to introduce new routes and make alterations to specified routes on a temporary basis where appropriate. Such changes may take effect for a period of 24 months (the relevant period) only unless the bus routes are specified in the schedule of routes orders made by the CE in Council under section 5(1) of the Ordinance before expiry of the relevant period.

4. The existing Schedules of Routes Orders were approved by the CE in Council in January 2011 formalizing changes to bus routes up to 30 September 2010.

Schedules of Routes Orders

5. To formalize the service changes introduced between 1 October 2010 and 30 September 2011, the Administration has to make the following new Orders (the six Orders) to repeal the existing ones and update the bus routes operated by the respective franchised bus companies -

- (a) *Schedule of Routes (Citybus Limited) Order 2012* (L.N. 4) – Citybus Limited has made alterations to 16 routes in respect of its franchise for Hong Kong Island and cross-harbour bus services;
- (b) *Schedule of Routes (Citybus Limited) (North Lantau and Chek Lap Kok Airport) Order 2012* (L.N. 5) – Citybus Limited has introduced one new route and made alterations to four routes in respect of its franchise for north Lantau and Chek Lap Kok Airport bus services;
- (c) *Schedule of Routes (Kowloon Motor Bus Company (1933) Limited) Order 2012* (L.N. 6) – Kowloon Motor Bus Company (1933) Limited (KMB) has introduced one new route, cancelled one route and made alterations to 56 routes;
- (d) *Schedule of Routes (Long Win Bus Company Limited) Order 2012* (L.N. 7) – Long Win Bus Company Limited (LWB) has made alterations to one route;
- (e) *Schedule of Routes (New Lantao Bus Company (1973) Limited) Order 2012* (L.N. 8) – New Lantao Bus Company (1973) Limited (NLB) has made alterations to two routes; and
- (f) *Schedule of Routes (New World First Bus Services Limited) Order 2012* (L.N. 9) – New World First Bus Services Limited has introduced one new route, cancelled one route and made alterations to 18 routes.

The six Orders were published in the Gazette on 20 January 2012 and tabled at the Legislative Council meeting on 1 February 2012. These six Orders will come into operation on 1 April 2012.

The Subcommittee

6. At the House Committee meeting held on 3 February 2012, Members agreed to form a Subcommittee to study the six Orders. Under the chairmanship of Hon Philip WONG, the Subcommittee has held three meetings. The membership list of the Subcommittee is in **Appendix I**. Apart from discussion with the Administration, the Subcommittee has also invited views from the franchised bus companies on measures to improve bus services, particularly lost bus trips. A list of franchised bus companies which have given views to the Subcommittee is in **Appendix II**.

7. To allow sufficient time for scrutiny of the six Orders, a resolution was passed at the Legislative Council meeting on 22 February 2012 to extend the period for amending the Orders to 21 March 2012.

Deliberations of the Subcommittee

8. In general, the Subcommittee has no objection to the six Orders to formalize the changes introduced to the bus routes of the five franchised bus companies during the period between 1 October 2010 and 30 September 2011. Nevertheless, members have raised concerns and sought clarification on a number of policy and legal/drafting issues, and the deliberations are summarized in the ensuing paragraphs.

Monitoring of franchised bus operation

9. Some Subcommittee members have expressed concerns about lost bus trips, and enquired about how the existing monitoring system ensures that bus trips are on schedule. According to the Administration, franchised bus companies are required to operate bus services in accordance with the routeing, timetable, frequency and bus allocation as stipulated in the Schedule of Service approved by the Transport Department (TD). Franchised bus companies are also required to submit to TD operating returns on each route, including the number of buses deployed, the number of trips and kilometers travelled, and the number of passengers carried etc. TD monitors the operation of bus services through scrutiny of the operating returns, and public feedback collected through various channels, such as the Transport Complaints Units and 1823 Call Centre. In addition, TD conducts regular surveys (including termini checks, en-route bus stop surveys, journey time surveys, screenline surveys and on-vehicle surveys etc.) to gather information on the level of service provided, as well as ad hoc surveys in response to complaints or suggestions, or problems which have been identified from the regular returns of franchised bus companies.

10. The Subcommittee notes from the Administration's paper (Annex to LC Paper No. CB(1) 1249/11-12(02)) that the average percentage of bus trips which deviated from the Schedule of Service was 5.6% in 2011. The problem was more acute in certain districts, including the Kowloon City District which recorded a lost trip rate of 11.1% in 2011. Given the high percentage of deviation, some members have questioned the efficacy of the existing mechanism in monitoring franchised bus operation. These members have also enquired about the actions taken/to be taken by the Administration to deal with the problem of lost trips.

11. The Administration has confirmed that the average percentage of deviation of 5.6% in 2011 was higher than that of about 3% to 4% in the previous two years. According to the franchised bus companies, higher rates of turnover and sick leave of bus drivers were the major reasons for lost trips in 2011. The franchised bus companies have been taking measures to improve the situation, including recruitment of new bus drivers, reviewing bus drivers' remuneration and improving their working environment. TD will monitor the situation to ensure the franchised bus companies will continue to take proactive actions to address the problem. In gist, if noticeable and consistent changes in passenger demand for a particular bus route are noted, TD would liaise with the bus operators to adjust the services to match such changes. If any problem or deficiency is identified on any particular route or group of routes, for example, if traffic congestion plagues a particular route, TD will liaise with the relevant parties to address the problem and recommend improvement measures, such as implementation of traffic management schemes, alteration of the bus routeing or adjustment of service timetables. If the problem arises from operating practice, shortage of bus drivers, or high breakdown rates of buses, TD will require the franchised bus companies to make improvement. TD will closely monitor the results of the improvement actions made by franchised bus companies through conducting field surveys and checking reports submitted by the companies. In case a franchised bus company fails to provide reasonable explanation and make timely improvements, TD will issue reminder letters to the company requesting it to implement measures within a reasonable period of time. Follow-up surveys will also be arranged to ascertain the effectiveness of improvement measures made by franchised bus companies.

12. To ascertain the manpower situation of each of the franchised bus companies, the Subcommittee has requested the Administration to provide information on the ratio of the number of buses to bus drivers of each franchised bus company. According to the Administration, the existing five franchised bus companies operated a total fleet of 5 798 buses and employed a total of 12 088 full-time and 330 part-time bus drivers as at end of 2011. The average

ratio of the number of full-time drivers to buses is 2.11¹ (i.e. two or more full-time bus drivers per vehicle) which is comparable to that of 2.01 in Singapore.

13. The Subcommittee notes that apart from NLB (which has the driver/bus ratio of 1.34 owing to its relatively short operating hours), KMB has the lowest driver/bus ratio of 2.04 among the remaining four franchised bus companies which might explain why KMB has the highest lost trip rate of 7.2% in 2011. Some members have enquired about the actions taken by TD to ask KMB to improve its bus services. The Administration has advised that TD has been taking follow-up actions on different fronts. Apart from strengthening the monitoring of performance of bus services through field surveys and inspections, TD has had frequent correspondences (including issue of reminder letters/warning letters) and meeting with KMB's senior management, as well as demanding timely and effective remedial measures. According to KMB, the increase of lost trip rates in 2011 was primarily a result of more congested roads and shortage of bus drivers, the latter of which was mainly due to the introduction of the statutory minimum wage which funnelled potential drivers to other occupations. To improve the situation, KMB has implemented a number of measures which include recruiting more bus drivers through different channels, expanding its bus driver training school capacity, reviewing remuneration for existing bus drivers and improving their working environment, as well as retaining new bus drivers through the provision of a special bonus. As a result, the latest lost trip rate of KMB in February 2012 was reduced to 6.7%. TD would continue to closely monitor the situation.

14. Some members have enquired about the penalties which the Administration can take against non-compliance with the Schedule of Service if there is still no progress of improvement after a reasonable period of time. The Administration has advised that it may recommend the CE in Council to impose financial penalty on the franchised bus company according to section 22 of the Ordinance.

Electronic system to gather data of bus departures and arrivals at bus stops

15. Some members remain concerned about the efficacy of the existing monitoring mechanism. As a step forward, these members suggest that an electronic system should be put in place to gather real-time information on bus arrival and departure time at bus stops. The electronic system should be set up using public fund to ensure that the cost incurred will not be passed on to the commuters.

¹ Two part-time drivers are counted as one full-time driver for calculation purpose.

16. According to the Administration, franchised bus companies are obliged to set up their own management system to monitor the provision of bus services in accordance with the approved timetable set out in the Schedule of Service. In this connection, franchised bus companies deploy bus regulators at major bus termini to regulate bus departures and make adjustments in case of any service disruption. To alleviate the enormous workload arising from the task of recording the departure information, KMB and LWB have developed an electronic "Terminus Management System" to assist in regulating bus arrival and departure times in some of their busy termini. On the other hand, Citybus Limited and New World First Bus Services Limited have installed computer terminals at some busy termini. The bus regulators manually input the bus departure times to the computer, and the information is linked to the bus companies' in-house database. For those bus termini observed by infrequent bus service, bus captains will normally call up the companies' Control Centres to register any deviations from scheduled departure times. TD encourages franchised bus companies to develop and expand on-line electronic system to help maintain the regularity and reliability of their services, with due regard to operational need and cost-effectiveness of such a system. The Administration has reiterated that while real-time information on bus arrival and departure at bus stops may help provide detailed information on the early/late arrival of a certain bus at a certain bus stop, such information may not be directly used by TD to perform its monitoring role. The large amount of data would require detailed analysis before these can be put to use. TD would still require the franchised bus companies to investigate, explain the reason for non-compliances and to propose rectification measures. Therefore, the proposed use of public money to set up such a system for monitoring purpose would not be cost-effective.

17. The Subcommittee is not convinced of the Administration's response. As the subject falls outside the remit of the six Orders, the Clerk is requested to relay members' concerns to the Panel on Transport for follow up.

Amendments to the six Orders

18. To ensure that the lost trip rate can be kept at a reasonable level, Mr LEE Wing-tat has indicated his intention to move an amendment to include a benchmark for deviation from the Schedule of Service in the six Orders. He has sought advice from both the legal adviser to the Subcommittee and the Administration on the feasibility and legality of the proposed amendment. In this connection, the legal adviser to the Subcommittee has prepared a paper (LC Paper No. LS43/11-12) on whether the six Orders may be amended and the

scope of such amendments (if any), with particular reference to the provision of a "benchmark" in the six Orders. According to the paper referred to provided that the six Orders are subsidiary legislation, the Legislative Council may, under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1), by resolution passed at a Legislative Council meeting, amend such subsidiary legislation in any manner consistent with the power to make such subsidiary legislation. If the six Orders are subsidiary legislation, the admissibility of any amendment proposed under section 34(1) of Cap. 1 will have to be ruled on by the President of the Legislative Council after considering any submission from the Administration. If the six Orders are not subsidiary legislation, any amendment has to be made by the CE in Council by an administrative order.

19. The Administration has advised that it may not be appropriate to include a "benchmark" simply based on a fixed percentage of lost trips which could be affected by factors beyond the bus companies' control, and that the impact and the seriousness of each incident of non-compliance varies. Instead of imposing penalties based on a certain benchmark, it would be more appropriate to consider any non-compliance with the Schedule of Service on a case-by-case basis. According to the advice given by the Department of Justice at the Subcommittee meeting on 8 March 2012 -

- (a) the Administration is going to proceed on the basis that the six Orders, like others previously, are to be treated as subsidiary legislation. However, it is willing to engage in discussion with the Legislative Council as to whether the schedule of routes orders are subsidiary legislation if the Legislative Council considers that this issue should be referred to a panel for further consideration;
- (b) the amendment proposed by Mr LEE Wing-tat does not appear to be consistent with the power of the CE in Council under section 5(1) of the Ordinance to make an order to specify routes and may not be made by the Legislative Council under section 34(2) of Cap. 1.

The Administration will provide a paper setting out the views in writing in due course.

Follow-up action

20. As to whether the schedule of routes orders are subsidiary legislation, the matter will be referred to the Panel on Administration of Justice and Legal Services for follow up.

Advice sought

21. Members are requested to note the deliberations of the Subcommittee.

Council Business Division 1
Legislative Council Secretariat
14 March 2012

**Subcommittee on the Six Orders Made under Section 5(1) of the
Public Bus Services Ordinance and Gazetted on 20 January 2012**

Membership list

Chairman Dr Hon Philip WONG Yu-hong, GBS

Members Hon WONG Yung-kan, SBS, JP
Hon LEE Wing-tat
Hon CHEUNG Hok-ming, GBS, JP
Hon KAM Nai-wai, MH
Hon CHAN Hak-kan
Hon WONG Sing-chi
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP
Hon Tanya CHAN

(Total : 10 Members)

Clerk Miss Becky YU

Legal Adviser Miss Carrie WONG

Date 14 February 2012

Appendix II

List of franchised bus companies which have made written and oral representations to the Subcommittee

- (1) New Lantao Bus Co (1973) Ltd
- (2) New World First Bus Services Ltd/Citybus Ltd
- (3) The Kowloon Motor Bus Co (1933) Ltd/Long Win Bus Co Ltd