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Paper for the House Committee

**Report of the Subcommittee on
Hong Kong Air Navigation (Fees)(Amendment) Regulation 2011
and Civil Aviation (Aircraft Noise) (Certification)
(Amendment) Regulation 2011**

Purpose

This paper reports on the deliberations of the Subcommittee on Hong Kong Air Navigation (Fees) (Amendment) Regulation 2011 (L.N. 159 of 2011) and Civil Aviation (Aircraft Noise) (Certification) (Amendment) Regulation 2011 (L.N. 160 of 2011).

Background

2. The Hong Kong Air Navigation (Fees) Regulations (Cap 448 sub. leg. D) and the Civil Aviation (Aircraft Noise) (Certification) Regulations (Cap 312 sub. leg. A) ("the Regulations") provide for the fees and charges relating to civil aviation to be levied by the Civil Aviation Department (CAD). Most of the fees under the Regulations were last adjusted in 1986¹. In a review recently conducted by CAD on the fees and charges related to civil aviation under the Regulations, it is found that the fees and charges levied for some of the services do not recover all the costs of the services provided, with the cost recovery rates ranging from 5% to about 80%. Some services are also being provided free of charge to the aviation industry.

3. In line with the Government's policy that fees and charges should in

¹ The exceptions are certain examination fees in connection with flight crew licensing (last revised in 1990), the fees for the noise certificates (last revised in 1996) and the maximum fee for aerodrome licensing (last revised in 1998).

general be set at a level sufficient to recover the full cost of providing services, the Administration has made the two Amendment Regulations (L.N. 159 and 160 of 2011) with a view to achieving full cost recovery for the services provided. The Administration also intends to adjust the over-recovery fees to the respective full costs in one go and delete an obsolete fee.

4. The Amendment Regulations include the following main provisions:
 - (a) to provide for the payment of the fees prescribed in the Schedule to the Hong Kong Air Navigation (Fees) Regulations;
 - (b) to adjust the level of certain fees with a view to achieving full cost recovery;
 - (c) to introduce new fee items in respect of certain matters provided for in the Air Navigation (Hong Kong) Order 1995;
 - (d) to streamline the structure of examination fees for the grant or renewal of a licence to act as a flight crew member;
 - (e) to delete the fee item for the renewal of a certificate of validation; and
 - (f) to reflect the abolition of official flying tests.

5. The Amendment Regulations are proposed to take effect from 13 January 2012.

The Subcommittee

6. At the meeting of the House Committee on 25 November 2011, a subcommittee was formed to study the Amendment Regulations. The membership list of the Subcommittee is at **Appendix I**. Under the chairmanship of Hon LEE Cheuk-yan, the Subcommittee has held two meetings. Apart from discussion with the Administration, the Subcommittee has also invited views from the public and interested parties, including the relevant industry organizations. The Subcommittee received verbal representations from nine deputations at the meeting on 20 December

2011, and two written submissions from other organizations and individuals. A list of these organizations/individuals is at **Appendix II**.

7. To allow more time for the Subcommittee to study the Amendment Regulations, the scrutiny period has been extended from 21 December 2011 to 11 January 2012 by a resolution of the Council passed on 14 December 2011.

Deliberations of the Subcommittee

The fee proposals in the Amendment Regulations

8. The Subcommittee in general supports the fee proposals in the Amendment Regulations. According to the Administration, airlines and the relevant industry organizations and stakeholders have been consulted and they generally agree with the fee proposals under the Amendment Regulations. The Subcommittee notes that both the Airline Operators Committee of the Hong Kong International Airport and the Board of Airline Representatives Hong Kong have expressed agreement with the Administration's adoption of the user-pays and cost-recovery principles, and that they find the proposed fee adjustments to be in line with these principles. The Subcommittee also notes the hope of the aviation industry that if the economy worsens and the industry is adversely affected, the Administration could consider alleviation measures or implementation of the increase in phases. On this point, the Administration has indicated that the Government will duly take into account the difficulties the industry faces in case there is a downturn in economy.

9. The Chairman has enquired about the current charging practice for the grant or variation of aircraft maintenance engineer licence. The Administration has explained that a fee is not currently imposed on applicants taking examinations for aircraft maintenance engineer licence. To follow the cost-recovery principle for the services provided by CAD, new fee items are proposed to cover the costs for conducting the examinations, for the approval of training courses, and of persons providing the training, conducting examinations or furnishing reports. Accordingly, new fee items at a rate of \$315 (for every multiple choice question paper) and \$775 (for every essay question paper) are proposed to be charged.

10. The Chairman has expressed concern about the large increases in the

rates for the grant or renewal of a licence to act as a flight crew member. The Administration has explained that for an applicant holding a licence to act as a flight crew member issued in a jurisdiction outside Hong Kong, a new fee at a rate of \$2,055 will be introduced for the grant of a licence to such applicant to act as a flight crew member locally. This fee will cover the assessment made by CAD on the applicant as to what examinations should be taken in Hong Kong and what can be exempted. On the other hand, the fee for all other applicants will be increased from \$170 to \$1,100. The Administration considers the increases acceptable based upon the full cost-recovery principle.

11. Some members of the Subcommittee have enquired whether the costs of operating aircraft noise monitoring stations have been reflected in the fees for granting aircraft noise certificates. The Administration has advised that under the user-pays principle, the fees of granting the aircraft noise certificates can only be devised on the basis of recovering the cost of processing the applications, and such costs will not include the costs of operating aircraft noise monitoring stations which is a separate service.

12. As regards the fee for the grant of permission in respect of captive balloons, the Chairman has enquired about the legal provisions in relation to the flying of balloons, in particular the types and sizes of balloons the flying of which required CAD's approval. The Administration has advised that according to Article 70 of the Air Navigation (Hong Kong) Order 1995 (Cap 448C), unless with the written permission of the Director-General of Civil Aviation –

- (i) a balloon exceeding two metres in any linear dimension at any stage of its flight, including any basket or other equipment attached to the balloon, may not be flown in controlled airspace, and
- (ii) captive balloons may not be flown within five kilometres of an aerodrome or at a height of more than 60 metres above the ground level or within 60 metres of any vessel, vehicle or structure.

Control of aircraft noise

13. During the scrutiny of the Amendment Regulations, Ma Wan residents have expressed concerns about the impact of aircraft noise. The

Subcommittee discussed various ways to address their concerns, and paragraphs 14 to 22 below summarize such deliberations.

Regulating by differential charges

14. The Subcommittee notes the suggestion of Airport Development Concern Network that CAD should impose a higher charge on noisier aircraft on the ground that the Civil Aviation (Aircraft Noise) Regulations (Cap 312A) was formulated according to Annex 16 to the Convention on International Civil Aviation relating to aircraft noise control. Some members share a similar view and have urged the Administration to give consideration to the impact of aviation activities on the environment, in addition to the principle of full-cost recovery, in formulating its fees and charges.

15. The Administration has indicated that the suggestion is not in line with the Government's existing policy to set fees and charges at a level sufficient to recover the full cost of providing the services. The Amendment Regulations are made accordingly to achieve full-cost recovery for services provided by the Government. Imposing higher charges for the operation of noisier aircraft could not be effected under the Amendment Regulations, as airport charges schemes are under the ambit of the Airport Authority Ordinance (Cap 483). Moreover, levying airport charges on the basis of the noise level generated by the aircraft might not be an effective tool in mitigating aircraft noise. If it is set at a low level, it would have little effect in discouraging noisy aircraft, and if set too high, it would drive away flights to other regional aviation hubs, and thus undermine Hong Kong's competitiveness as an international and regional aviation hub.

16. On the suggestion of some Subcommittee members that a higher landing charge should be imposed on flights at night, Hong Kong Airlines Limited has pointed out that it may not be effective in reducing night-time flights, as the flights may have to be so scheduled to tie in with connecting flights at other overseas airports.

Flight rescheduling

17. Noting the difference between the number of day-time and night-time all-cargo flights at the Hong Kong International Airport (HKIA), Hon LEUNG Yiu-chung has enquired whether more night-time flights can be re-scheduled to fly with the available slots during daytime. The Administration has advised that the flight schedule of HKIA is determined by

the availability of landing slots for both HKIA and the destination airports, which has been coordinated between HKIA and the airports worldwide. Most passenger flights have in fact been scheduled in the daytime having regard to the convenience of the passengers.

18. The Subcommittee notes the view of Hong Kong Airlines Limited that HKIA at present faces the increasingly intense competition from airports in Shenzhen and Guangzhou. Notwithstanding the relatively higher operating costs of night-time flights, the airlines still have to schedule flights to arrive or depart at night. This is because the air cargo industry operates in a just-in-time mode and it is important to maintain the capabilities of HKIA in scheduling cargo flights in a very coordinated manner such that the trans-shipment of cargoes at the overseas destinations can be made within 60 to 90 minutes after the aircraft had landed. The daytime handling capacity of HKIA also limits the number of night flights that can be rescheduled to daytime. Upon the increased handling capacity made possible by the proposed third runway, the industry would be ready to consider scheduling more of their flights in the daytime as night-time flights were more costly.

Noise monitoring

19. Hon LEUNG Yiu-chung has urged the Administration to explore ways to address the concerns of residents affected by aircraft noise in the vicinity of the airport. The Administration has advised that in accordance with the international practices, aircraft noise is tackled at source, as all aircraft landing in HKIA have to meet the stringent noise standard stipulated in Annex 16 to the Convention on International Civil Aviation promulgated by the International Civil Aviation Organization. Noisy jet aircraft which do not meet the noise standards in Chapter 3, Part II, Volume I of Annex 16 are prohibited from operation in Hong Kong. CAD monitors aircraft noise through the Aircraft Noise and Flight Tracking Monitoring System (ANFTMS) with 16 noise monitoring stations located in the vicinity of the flight paths to closely monitor aircraft noise. The noise data collected by these monitors were made available for public information on CAD's website. Complaints on aircraft noise are investigated by CAD.

Investigation of complaints against aircraft noise

20. In relation to ANFTMS, Hon Paul TSE has asked about the enforcement action taken against aircraft found to have deviated from the designated flight paths. The Administration has advised that in general,

aircraft are required to adhere to the designated flight paths and flight procedures promulgated by CAD for the purpose of noise mitigation, but deviation from designated flight paths may happen, such as for the avoidance of inclement weather conditions. CAD will investigate into each case of flight path deviation, and in cases where the airlines cannot provide reasonable explanation for such deviation or for recurrences, CAD has issued warning letters to airlines in the past requiring them to explain any deviations from the designated flight paths. Cases of unsubstantiated deviations will also be subject to internal disciplinary procedures of individual airline companies. However, CAD has not made any prosecutions against any airline companies in cases of flight-path deviation as none of the cases posed serious threat to aviation safety.

Flight path options

21. The Subcommittee notes that the Administration has considered options of using satellite navigation technology for aircraft noise mitigation recommended by a consultancy study in 2010. Some members of the Subcommittee have enquired whether the Administration would accede to Ma Wan residents' request for implementing Option I which could reduce the number of high noise occurrences to a greater extent for Ma Wan (albeit increasing noise occurrences in other districts). The Administration advised that Option I would inevitably subject other districts to a higher degree of aircraft noise; whereas Option J, which could reduce the noise occurrences at Ma Wan to a lesser extent than Option I without affecting other districts, should be implemented in the meantime to bring about improvement for the time being and the effect of the improvement would be monitored closely. Notwithstanding, the Administration would continue to explore other measures to mitigate the impact of aircraft noise on Ma Wan.

Noise Exposure Forecast contours

22. The deputation of Ma Wan residents has requested an update of the Noise Exposure Forecast (NEF) contours for the reason that there has been a significant increase of night-time flights (from 9.3% since the commissioning of HKIA to the present 20%). The Administration has explained that NEF contours are to facilitate land use planning so that noise-sensitive uses would not be located within the NEF contours. The contours would not be used for measuring or regulating noise level. The NEF contours would be updated if the third runway proposal is to be taken forward.

Conclusion

23. The Subcommittee considers that the Administration should strike a balance between economic development and environmental protection in formulating its aviation policy. Subcommittee members have urged the Administration to explore further ways to effectively address the concerns about aircraft noise mitigation and in particular its impact on the quality of life of residents in Ma Wan. As these concerns involve policy considerations outside the scope of the Amendment Regulations, the Subcommittee agrees that the matter should be referred to the Panel on Economic Development for follow-up, having regard to the information provided by the Administration as requested by the Subcommittee in **Appendix III**.

Recommendations

24. The Subcommittee supports the Amendment Regulations, to which the Administration and the Subcommittee will not move any amendments.

Advice sought

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

Council Business Division 1
Legislative Council Secretariat
4 January 2012

**Subcommittee on
Hong Kong Air Navigation (Fees) (Amendment) Regulation 2011
and Civil Aviation (Aircraft Noise) (Certification)
(Amendment) Regulation 2011**

Membership list

Chairman Hon LEE Cheuk-yan (Chairman)

Members Hon LEUNG Yiu-chung
Hon LEE Wing-tat
Hon CHEUNG Hok-ming, GBS, JP
Hon Tanya CHAN
Hon Albert CHAN Wai-yip

(Total: 6 members)

Clerk Mr Derek LO

Legal Adviser Miss Evelyn LEE

**Subcommittee on
Hong Kong Air Navigation (Fees) (Amendment) Regulation 2011
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**List of organizations and individuals
who have given views to the Subcommittee**

1. Mr LI Wai-hung
2. Ms Loletta LAU Oi-yee
3. Mr LAM Wai-man
4. Mr Raymond SIEW Wai-keung
5. Ms CHAN Chiu-lan
6. Oxford Aviation Academy Hong Kong Limited
7. Hong Kong Airlines Limited
8. Airline Operators Committee, Hong Kong International Airport
9. Board of Airline Representatives Hong Kong
10. Airport Development Concern Network
11. Park Island Owners' Committee

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**Information to be provided by the Administration for consideration of
the Panel on Economic Development**

At the request of the Subcommittee, information to be provided by the Administration to facilitate the Panel on Economic Development to follow up the concerns about aircraft noise –

- (a) the number of cases in which flying aircraft deviated from the designated flight path and the corresponding number of warning letters issued by Civil Aviation Department to the airline companies concerned, and
 - whether such deviation persisted even after the issuance of a warning letter, and
 - the mechanism on penalties in force in dealing with repeated cases of non-compliance;
- (b) the levels of noise generated by the different types of aircraft that land at Hong Kong International Airport;
- (c) the restrictions on the level of noise generated by flying aircraft; and
- (d) the mechanism in setting the Noise Exposure Forecast contour.