
L.N. 158 of 2011

Air Transport (Licensing of Air Services) (Amendment) Regulation 2011

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Air Transport (Licensing of Air Services) (Amendment) Regulation 2011

(Made by the Chief Executive in Council under section 13 of the Civil Aviation Ordinance (Cap. 448))

1. Commencement

This Regulation comes into operation on a day to be appointed by the Secretary for Transport and Housing by notice published in the Gazette.

2. Air Transport (Licensing of Air Services) Regulations amended

The Air Transport (Licensing of Air Services) Regulations (Cap. 448 sub. leg. A) are amended as set out in sections 3 to 29.

3. Regulation 1 amended (interpretation)

(1) Regulation 1, definition of *licence*—

Repeal

“5”

Substitute

“11A”.

(2) Regulation 1, English text, definition of *scheduled journey*—

Repeal the full stop

Substitute a semicolon.

(3) Regulation 1—

Add in alphabetical order

“*air operator’s certificate* (航空營運人許可證) means an air operator’s certificate granted under Article 6 of the Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C);

prescribed fee (訂明費用), in relation to a matter, means the fee prescribed for that matter in the Schedule;
temporary licence (短期牌照) means a licence granted under regulation 15F.”.

4. Regulation 3 amended (penalties)

(1) Regulation 3, heading—

Repeal

“Penalties”

Substitute

“Restriction on use of aircraft on scheduled journeys”.

(2) Regulation 3—

Repeal paragraph (1)

Substitute

- “(1) A person may use any aircraft for the carriage in Hong Kong of passengers, mail or cargo for hire or reward on any scheduled journey between 2 places, one of which is in Hong Kong, only if—
- (a) (where the aircraft is registered in a country or place other than Hong Kong) the person uses the aircraft in accordance with an operating permit granted to the person in respect of the journey; or
 - (b) (where the aircraft is registered in Hong Kong) the person—
 - (i) holds an air operator’s certificate and uses the aircraft in accordance with a licence, provisional licence or temporary licence granted to the person in respect of the journey; or

(ii) holds an equivalent document and uses the aircraft in accordance with an operating permit granted to the person in respect of the journey.”.

(3) Regulation 3—

Repeal paragraph (2)

Substitute

“(2) A person who uses any aircraft in contravention of paragraph (1) commits an offence and is liable—

(a) on summary conviction to a fine at level 6 and to imprisonment for 3 months; or

(b) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 2 years.”.

(4) Regulation 3—

Repeal paragraph (4)

Substitute

“(4) In this regulation—

equivalent document (同等文件) means a document that is—

(a) issued by an appropriate civil aviation authority of a place outside Hong Kong; and

(b) recognized by the Director-General of Civil Aviation as equivalent to an air operator’s certificate.”.

5. Regulation 4 amended (the Air Transport Licensing Authority)

Regulation 4(6)(b)—

Repeal

“Licensing Authority may appoint such other officers and servants as may, in the opinion of the Chief Executive, be necessary to enable them”

Substitute

“Chief Executive may appoint any other person who, in the opinion of the Chief Executive, is necessary to enable the Licensing Authority”.

6. Regulation 5 repealed (issue of licences)

Regulation 5—

Repeal the regulation.

7. Regulations 6 and 7 substituted

Regulations 6 and 7—

Repeal the regulations

Substitute

“6. Applications for licences

- (1) A person may apply to the Licensing Authority for a licence.
- (2) The application must—
 - (a) be made in the form and manner specified by the Licensing Authority;
 - (b) specify the routes on which the scheduled journeys to which the application relates are intended to be undertaken; and
 - (c) be accompanied by—
 - (i) a business plan covering the start-up phase and initial operation phase;
 - (ii) if the applicant is a body corporate, the most recent management accounts and (if available) the latest audited financial statements of the applicant; and
 - (iii) the prescribed fee.

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- (3) The business plan must contain—
- (a) a detailed description of the applicant’s business activities related to the air services to which the application relates during the period to be covered;
 - (b) the expected market development related to the business of those air services, and the investments intended to be carried out by the applicant in relation to this business, during that period; and
 - (c) the implications of the activities, development and investments on the applicant’s financial position.
- (4) Without limiting paragraph (3), the business plan must contain the following information—
- (a) the details of the applicant’s financial interests in any other commercial activities in which the applicant is engaged either directly or through any related undertakings;
 - (b) a projected statement of financial position of the applicant, including a projected statement of comprehensive income;
 - (c) if the applicant is a body corporate—
 - (i) the details of the shareholders of the applicant, including the type of shares held or to be held and any agreement or arrangement entered into by any shareholder which may restrict the future issue or transfer of the applicant’s shares or require any future issue of the applicant’s shares; and
 - (ii) the articles of association of the applicant;
 - (d) (if the applicant is a part of a group of undertakings) information on the relationship between these undertakings;

- (e) the details of the financing of aircraft purchase or leasing, including, in the case of leasing, the terms and conditions of the leasing contract;
 - (f) the basis for any projected figures on the applicant's expenditure and income, in particular, the figures on fuel, fares and rates, salaries, maintenance, depreciation, exchange rate fluctuations, airport charges, air navigation charges, ground handling costs and insurance;
 - (g) a traffic or revenue forecast;
 - (h) the details of the costs incurred during the start-up phase and an explanation of how these costs will be financed;
 - (i) the details of existing and projected sources of finance and supporting documentation; and
 - (j) a projected statement of cash flows and cash flows forecasts and requirements.
- (5) The Licensing Authority may—
- (a) require the applicant to provide any information that the Licensing Authority considers necessary for determining the application; and
 - (b) refuse to proceed with processing the application if the information is not provided to the satisfaction of the Licensing Authority.
- (6) In this regulation—
- initial operation phase*** (營運首階段), in relation to an application under this regulation, means a period of 24 months beginning on the day on which the first scheduled journey to which the application relates is intended to be undertaken;
- management accounts*** (管理帳目), in relation to an applicant, means a document that consists of the following—

- (a) a statement of comprehensive income in which the items are broken down into—
 - (i) amounts concerning the applicant's business activities related to the air services to which the application relates; and
 - (ii) all other amounts;
- (b) a statement of financial position of the applicant; and
- (c) a statement of cash flows of the applicant;

related undertaking (相關企業), in relation to an applicant, means—

- (a) an undertaking that is a subsidiary undertaking, as construed in accordance with the Twenty-third Schedule to the Companies Ordinance (Cap. 32), of the applicant; or
- (b) an undertaking over which the applicant, or the subsidiary undertaking, has a significant influence;

start-up phase (創始階段), in relation to an application under this regulation, means the period beginning on the date of submission of the application to the day immediately before the first day of the initial operation phase.

- (7) For the purposes of the definition of ***related undertaking***, a person is regarded as having a significant influence over another undertaking if—
 - (a) the person holds 20% or more of the shares in the undertaking; or
 - (b) the person is entitled to exercise, or control the exercise, of 20% or more of the voting rights at a general meeting of the undertaking.

7. Publication of applications

- (1) The Licensing Authority must cause to be published in the Gazette on 2 occasions the key particulars relating to an application received by the Licensing Authority under regulation 6.
- (2) In paragraph (1)—
key particulars (主要詳情) includes—
 - (a) the name of the applicant;
 - (b) the date of first publication of the application;
 - (c) the routes on which the scheduled journeys to which the application relates are intended to be undertaken; and
 - (d) a description of the services to be provided.”.

8. Regulation 8 amended (objections and representations)

- (1) Regulation 8—
Renumber the regulation as regulation 8(1).
- (2) Regulation 8(1)—
Repeal
everything after “private or public”
Substitute
“in an application published under regulation 7 may make representations or objections with regard to the application.”.
- (3) After regulation 8(1)—
Add
“(2) The representations or objections must be made—
 - (a) in a form and manner specified by the Licensing Authority; and

- (b) within 14 days after the date of first publication of the application.”.

9. Regulation 9 substituted

Regulation 9—

Repeal the regulation

Substitute

“9. Public and private inquiries

- (1) The Licensing Authority may, if they think fit, hold an inquiry for the purpose of determining an application published under regulation 7.
- (2) Before holding an inquiry in respect of an application, the Licensing Authority must give each interested person a written notice informing each of them of the inquiry.
- (3) An interested person must be given an opportunity of being heard at the inquiry.
- (4) Subject to paragraph (5), the inquiry may be held in public or in private.
- (5) The inquiry must be held in public if any interested person requests the Licensing Authority to do so in writing.
- (6) In this regulation—

interested person (利益攸關者), in relation to an application, means—

 - (a) the applicant; or
 - (b) a person who has made a representation or an objection with regard to the application under regulation 8.”.

10. Regulation 10 substituted

Regulation 10—

Repeal the regulation

Substitute

“10. Emergency grant of licence

- (1) If an application is made under regulation 6 for a licence to remain in force for a period not exceeding 30 days and the Licensing Authority are satisfied that it is in the public interest that the application should be determined with expedition, they may determine the application under this regulation and grant a licence accordingly.
- (2) Regulations 6(2)(c)(i) and (ii), (3) and (4), 7, 8 and 9 do not apply to the application.
- (3) Regulation 11A(2)(b) and (c) does not apply in respect of the grant of the licence.”.

11. Regulation 11 substituted

Regulation 11—

Repeal the regulation

Substitute

“11. General policy of Licensing Authority

- (1) In exercising their discretion to grant, or to refuse to grant, a licence and their discretion to attach conditions to any licence, the Licensing Authority must have regard to—
 - (a) the development of air services with the object of providing effective service to the public; and

- (b) the interests of the public, including those of persons requiring or likely to require facilities for air transport, as well as those of persons providing those facilities.
- (2) Without limiting paragraph (1), the Licensing Authority must have regard to the following matters—
 - (a) the extent to which it is probable that the applicant will be able to provide a satisfactory service in respect of continuity, regularity of operation, frequency, punctuality, reasonableness of charges and general efficiency;
 - (b) the financial resources of the applicant;
 - (c) the type of aircraft proposed to be used;
 - (d) the remuneration and general conditions of employment of aircrew and other personnel employed by the applicant.
- (3) The Licensing Authority must also have regard to any representations or objections made under regulation 8 or at any inquiry held under regulation 9.”.

12. Regulation 11A added

After regulation 11—

Add

“11A. Grant of licences

- (1) The Licensing Authority may grant a licence to undertake scheduled journeys on any or all of the routes to which the application relates.
- (2) The Licensing Authority may grant a licence under paragraph (1) only if the Licensing Authority are satisfied that—
 - (a) the applicant holds an air operator’s certificate;

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- (b) the applicant is able to meet at any time its actual and potential obligations established under realistic assumptions during the initial operation phase; and
 - (c) the applicant is able to meet its fixed and operational costs incurred from the operation according to its business plan submitted under regulation 6 and established under realistic assumptions, for the first 3 months of the initial operation phase, without taking into account any income from the operation.
 - (3) The Licensing Authority may specify in the licence the routes on which scheduled journeys may be undertaken.
 - (4) The Licensing Authority may attach any conditions the Licensing Authority think fit to a licence having regard to the circumstances of the case.
 - (5) Without limiting paragraph (4), every licence must have the following conditions attached to it—
 - (a) the holder of the licence and any person having a financial interest in the business of the holder of the licence must not require any other person to—
 - (i) refuse booking facilities to any other holder of a licence; or
 - (ii) grant those facilities to that other holder only on onerous terms;
 - (b) the holder of the licence must, on any scheduled journey undertaken under the licence, perform all such reasonable services as the Postmaster General may from time to time require in respect of—
 - (i) the conveyance of mails; and

- (ii) the conveyance of any persons who may be in charge of the conveyance of mails;
- (c) the licence is valid only when the air operator's certificate held by the holder of the licence is valid.
- (6) The remuneration for any service mentioned in paragraph (5)(b) is to be determined from time to time by agreement between the Postmaster General and the holder of the licence.
- (7) Any disputes and disagreements regarding the remuneration is subject to arbitration under the Arbitration Ordinance (Cap. 609).
- (8) In this regulation—
initial operation phase (營運首階段), in relation to a licence under this regulation, means a period of 24 months beginning on the day on which the first scheduled journey to which the licence relates is intended to be undertaken.”.

13. Regulation 12 substituted

Regulation 12—

Repeal the regulation

Substitute

“12. Period licences remain in force

- (1) A licence granted under regulation 11A is valid for a period not exceeding 5 years as determined by the Licensing Authority, and that period begins on the day specified as the effective date in the licence.
- (2) If, on the expiry of a licence, an application to the Licensing Authority for the renewal of the licence is pending, the licence continues to be in force until the application is determined by the Licensing Authority.”.

14. Regulation 13 amended (provisional licences pending determination of application)

(1) Regulation 13—

Renumber the regulation as regulation 13(1).

(2) Regulation 13(1)—

Repeal

“which shall remain in force until the application is determined”

Substitute

“to allow the applicant to use any aircraft for the carriage in Hong Kong of passengers, mail or cargo for hire or reward on any scheduled journey to which the application relates”.

(3) After regulation 13(1)—

Add

“(2) Subject to paragraph (7), a provisional licence is valid for a period not exceeding 6 months as determined by the Licensing Authority, and that period begins on the day on which the provisional licence is granted.

(3) If, on the expiry of the provisional licence, an application to the Licensing Authority for the renewal of the provisional licence is pending, the provisional licence continues to be in force until the application is determined by the Licensing Authority.

(4) A provisional licence may be renewed once.

(5) Subject to paragraph (7), a renewed provisional licence is valid for a period not exceeding 6 months as determined by the Licensing Authority, and that period begins on the day immediately after the day on which the existing provisional licence, but for its renewal, would expire.

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- (6) Regulation 11A(3), (4), (5), (6) and (7) applies to a provisional licence as if it were a licence.
 - (7) If, during the validity period of a provisional licence—
 - (a) the licence concerned is granted under regulation 11A, the provisional licence expires on the day immediately before the day on which the licence concerned begins to be valid;
 - (b) the application for the licence is refused by the Licensing Authority, the provisional licence expires on a date decided by the Licensing Authority, which must not be earlier than the day on which the Licensing Authority give a notice in respect of the refusal under regulation 15(2)(b); or
 - (c) the applicant for the licence gives a written notice to the Licensing Authority to withdraw the application, the provisional licence expires on the day on which the notice is given to the Licensing Authority.
 - (8) A provisional licence may be granted or renewed on application to the Licensing Authority under this regulation.
 - (9) The application must—
 - (a) in the case of renewal, be made before the expiry of the provisional licence to be renewed;
 - (b) be in the form and manner specified by the Licensing Authority; and
 - (c) be accompanied by the prescribed fee.”.

15. Regulations 13A and 13B added

After regulation 13—

Add

“13A. Renewal of licences

- (1) The holder of a licence may apply for the renewal of the licence, which may include a request for the variation of the routes on which scheduled journeys may be undertaken.
- (2) The application must—
 - (a) be made within 1 year before the expiry of the licence;
 - (b) be made in the form and manner specified by the Licensing Authority;
 - (c) be accompanied by any information the applicant considers relevant in supporting the position that the applicant is able to meet at any time its actual and potential obligations for a period of 12 months beginning on the renewal date; and
 - (d) be accompanied by the prescribed fee.
- (3) The Licensing Authority may renew the licence, with or without any variation of the routes, only if the Licensing Authority are satisfied that—
 - (a) the applicant holds an air operator’s certificate; and
 - (b) the applicant is able to meet at any time its actual and potential obligations for a period of 12 months beginning on the renewal date.
- (4) A licence renewed under this regulation is valid for a period not exceeding 5 years as determined by the Licensing Authority, and that period begins on the renewal date.
- (5) Regulation 11A(3), (4), (5), (6) and (7) apply to a licence renewed under this regulation.
- (6) Regulations 7, 8, 9 and 11 apply to an application under this regulation as if—

- (a) in regulation 7(1), the words “regulation 6” had been substituted by “regulation 13A”; and
 - (b) in regulation 11(1), the words “grant, or to refuse to grant, a licence” had been substituted by “renew, or to refuse to renew, a licence”.
- (7) In this regulation—
- renewal date* (續牌日期), in relation to the renewal of a licence under this regulation, means the day immediately after the day on which the licence, but for the renewal, would expire.

13B. Variation of licences

- (1) The holder of a licence may apply for the variation of the licence in order to carry passengers, mail or cargo for hire or reward on scheduled journeys not specified in the licence (*new scheduled journey*).
- (2) The application must—
 - (a) be made in the form and manner specified by the Licensing Authority;
 - (b) specify the routes on which the new scheduled journeys are intended to be undertaken;
 - (c) be accompanied by any information the applicant considers relevant in supporting the position that it is able to meet at any time its actual and potential obligations for a period of 12 months beginning on the day on which the first new scheduled journey to which the application relates is intended to be undertaken; and
 - (d) be accompanied by the prescribed fee.

- (3) The Licensing Authority may approve the application, or any part of it, only if they are satisfied that the applicant is able to meet at any time its actual and potential obligations for a period of 12 months beginning on the day on which the first new scheduled journey to which the approval relates is intended to be undertaken.
- (4) Regulations 7, 8, 9 and 11 apply to an application under this regulation as if—
 - (a) in regulation 7(1), the words “regulation 6” had been substituted by “regulation 13B”; and
 - (b) in regulation 11(1), the words “grant, or to refuse to grant, a licence and their discretion to attach conditions to any licence” had been substituted by “approve, or to refuse to approve, an application under regulation 13B”.

16. Regulation 15 substituted

Regulation 15—

Repeal the regulation

Substitute

“15. Publication of decisions by Licensing Authority

- (1) The Licensing Authority must cause to be published in the Gazette the particulars of their decisions regarding—
 - (a) an application for a licence under regulation 6, including an application for the grant of a licence under regulation 10;
 - (b) an application for a provisional licence or for the renewal of a provisional licence under regulation 13;

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- (c) the expiry of a provisional licence under regulation 13(7);
 - (d) an application for the renewal of a licence under regulation 13A;
 - (e) an application for the variation of a licence under regulation 13B;
 - (f) the revocation or suspension of a licence under regulation 15E(2)(a) or 16;
 - (g) the attachment of new conditions to a licence under regulation 15E(2)(b);
 - (h) the variation of existing conditions of a licence under regulation 15E(2)(c);
 - (i) an application for a temporary licence under regulation 15F; or
 - (j) the revocation of a temporary licence under regulation 15F.
- (2) The Licensing Authority must give a written notice of the decision to—
- (a) in the case of paragraph (1)(a), (b), (d), (e) or (i), the applicant;
 - (b) in the case of paragraph (1)(c), the holder of the provisional licence;
 - (c) in the case of paragraph (1)(f), (g) or (h), the holder of the licence; or
 - (d) in the case of paragraph (1)(j), the holder of the temporary licence.”.

17. Regulations 15A to 15F added

After regulation 15—

Add

“15A. Corporate licensees’ duties to provide audited financial statements and other information

- (1) This regulation applies to the holder of a licence who is a body corporate (*corporate licensee*).
- (2) A corporate licensee must provide to the Licensing Authority within 6 months after the end of a financial year the audited financial statements of the corporate licensee relating to that financial year.
- (3) The corporate licensee must notify the Licensing Authority of—
 - (a) any change in the ownership of any single shareholding which represents 10% or more of the total shareholding of the corporate licensee or of a holding company of the corporate licensee;
 - (b) any change in the entitlement to exercise, or control the exercise of, voting rights of any person (either alone or with any associated person) which represents 10% or more of the voting rights at the general meetings of the corporate licensee or of a holding company of the corporate licensee; and
 - (c) any change in the control of the corporate licensee,within 14 days after the change.
- (4) If a person who has control of the corporate licensee has entered into any share pledge agreement or similar arrangement which, as a consequence of an event of default or occurrence of certain circumstances as set out in the agreement or arrangement, is capable of leading to any change referred to in paragraph (3)(a), (b) or (c), the person must, within 14 days after the person has entered into the agreement or arrangement, notify the Licensing Authority of that fact.

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- (5) For the purposes of paragraphs (3) and (4)—
- (a) **control** (控制權), in relation to a corporate licensee, means—
- (i) having the capacity to control, either alone or with any associated person, the composition of the board of directors of the corporate licensee or of a holding company of the corporate licensee; or
- (ii) either alone or with any associated person, being entitled to exercise, or control the exercise of, 30% or more of the voting rights at any general meeting of the corporate licensee or of a holding company of the corporate licensee;
- (b) a change in the control of a corporate licensee occurs if a person who did not control the corporate licensee as at the relevant date controls the corporate licensee subsequent to that date by reason of a transfer or issue of shares, or a transfer of voting rights, in the corporate licensee or a holding company of the corporate licensee to that person.
- (6) For the purposes of paragraph (5), the composition of the board of directors of the corporate licensee or a holding company of the corporate licensee is regarded to be controlled by another person if that other person has the power to appoint or remove all or a majority of the directors without the consent of any other person.
- (7) For the purposes of paragraph (6), a person (**appointer**) is regarded as having power to appoint a director of the corporate licensee or a holding company of the corporate licensee if—

- (a) without the exercise of the power in a person's favour by the appointer, the person cannot be appointed as a director of the corporate licensee or a holding company of the corporate licensee; or
- (b) it necessarily follows from a person being a director or other officer of the appointer that the person is appointed as a director of the corporate licensee or a holding company of the corporate licensee.

(8) In this regulation—

associated person (相聯者) has the meaning given by section 18 of the Securities and Futures Ordinance (Cap. 571);

holding company (控股公司) has the meaning given by section 2 of the Companies Ordinance (Cap. 32).

15B. Licensees' duty to report inability to meet obligations

- (1) If the holder of a licence is likely to become unable to meet any of the holder's obligations to such an extent as to cause a material adverse effect on the operation of the air services being provided by the holder, the holder must forthwith report in writing all relevant facts, circumstances and information to the Licensing Authority.
- (2) If the holder of a licence intends to cease or ceases to operate any air services, the holder must forthwith notify the Licensing Authority in writing of that intention or cessation.

15C. Offences relating to notifications

- (1) The holder of a licence who does not comply with regulation 15A(2) or (3) or 15B(1) or (2) commits an offence and is liable—

- (a) on summary conviction to a fine at level 6 and to imprisonment for 3 months; or
 - (b) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 2 years.
- (2) A person who does not comply with regulation 15A(4) commits an offence and is liable—
- (a) on summary conviction to a fine at level 6 and to imprisonment for 3 months; or
 - (b) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 1 year.
- (3) A person who, in purported compliance with regulation 15A(2), (3) or (4) or 15B(1) or (2), knowingly or recklessly furnishes the Licensing Authority with any information that is false or misleading in a material particular commits an offence and is liable—
- (a) on summary conviction to a fine at level 6 and to imprisonment for 3 months; or
 - (b) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 1 year.

15D. Powers of Licensing Authority to require information

- (1) The Licensing Authority may at any time assess the financial position of the holder of a licence and require the holder to provide any relevant information.
- (2) A person who, in purported compliance with a requirement made under paragraph (1), knowingly or recklessly furnishes the Licensing Authority with any information that is false or misleading in a material particular commits an offence and is liable—
 - (a) on summary conviction to a fine at level 6 and to imprisonment for 3 months; or

- (b) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 1 year.

15E. Licensing Authority may revoke, etc. licences if financial position of licensees is not satisfactory

- (1) The Licensing Authority may take any action under paragraph (2) against the holder of a licence if—
 - (a) on an assessment under regulation 15D, the Licensing Authority are no longer satisfied that the holder is able to meet at any time its actual and potential obligations for a period of 12 months beginning on the date of the assessment;
 - (b) insolvency or similar proceedings are commenced against the holder; or
 - (c) the holder is wound up voluntarily.
- (2) The Licensing Authority may—
 - (a) revoke or suspend the licence;
 - (b) attach any new conditions to the licence; or
 - (c) vary any existing conditions of the licence.

15F. Temporary licences

- (1) If the Licensing Authority revoke a licence under regulation 15E, the holder of the licence may apply for a temporary licence.
- (2) The application must—
 - (a) be made within 1 month after the revocation;
 - (b) be made in the form and manner specified by the Licensing Authority; and
 - (c) be accompanied by the prescribed fee.

- (3) The Licensing Authority may grant a temporary licence only if the Licensing Authority are satisfied that there is a realistic prospect of a satisfactory financial reconstruction being undertaken by the holder of the licence within the validity period of the temporary licence.
- (4) The Licensing Authority may attach any condition the Licensing Authority think fit to a temporary licence.
- (5) Subject to paragraph (6), a temporary licence is valid for a period not exceeding 12 months as determined by the Licensing Authority, and that period begins on the day on which the temporary licence is granted.
- (6) The Licensing Authority may revoke a temporary licence if the Licensing Authority are no longer satisfied that there is a realistic prospect of a satisfactory financial reconstruction being undertaken by the holder of the licence within the validity period of the temporary licence.”.

18. Regulation 16 amended (revocation or suspension of licences)

- (1) Regulation 16(1)—

Repeal

“the provisions of paragraph (2)”

Substitute

“paragraphs (2), (2A), (2B) and (2C)”.

- (2) Regulation 16(1)—

Repeal

“or 22” (wherever appearing).

- (3) Regulation 16—

Repeal paragraph (2)

Substitute

- “(2) Before revoking or suspending any licence under paragraph (1)(c), the Licensing Authority must give the holder of the licence a written notice specifying the ground on which the licence is proposed to be revoked or suspended.
- (2A) Within 7 days after receiving a written notice under paragraph (2), the holder of the licence may, in writing, request the Licensing Authority to hold an inquiry in public for the purpose of determining whether the licence is to be revoked or suspended.
- (2B) If the Licensing Authority receive a request under paragraph (2A), they must not revoke or suspend the licence until after the inquiry is completed.
- (2C) The Licensing Authority may revoke or suspend a licence under paragraph (1)(c) only if they consider that, owing to the frequency of the failure on the part of the holder to comply with any condition of the licence or to the failure having been wilful, the licence should be revoked or suspended.”.

19. Regulation 17 substituted

Regulation 17—

Repeal the regulation

Substitute

“17. Surrender of licences, etc.

A licence, provisional licence or temporary licence may at any time be surrendered by the holder to the Licensing Authority for cancellation.”.

20. Regulations 18 and 19 repealed

Regulations 18 and 19—

Repeal the regulations.

21. Regulation 20A amended (operating permits)

(1) Regulation 20A(1)—

Repeal

everything after “operating permit to”

Substitute

“a person applying for the permit for the purposes of regulation 3(1)(a) or (b)(ii) and, in performing this function, the Director-General of Civil Aviation must have regard to any relevant air services arrangements.”.

(2) Regulation 20A(5)—

Repeal

everything after “by notice to the”

Substitute

“holder of an operating permit, revoke, suspend or vary the operating permit or substitute a new operating permit for a previous operating permit—

- (a) where this is necessary or expedient to give effect to any variation in any relevant air services arrangements;
- (b) on sufficient ground being shown to the satisfaction of the Director-General of Civil Aviation after due inquiry; or
- (c) at the request of the holder of the operating permit.”.

22. Regulation 22 amended (penalties)

(1) Regulation 22, heading—

Repeal

“Penalties”

Substitute

“Restriction on use of aircraft for provision of air services”.

- (2) Regulation 22(1)—

Repeal

“it shall not be lawful for any person to use any aircraft for the provision in Hong Kong or”

Substitute

“a person must not use any aircraft for the provision in Hong Kong”.

- (3) Regulation 22—

Repeal paragraph (2)

Substitute

- “(2) A person who contravenes this regulation commits an offence and is liable—
- (a) on summary conviction to a fine at level 6 and to imprisonment for 3 months; or
 - (b) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 2 years.”.

23. Regulation 27 amended (transfer and assignment of licences, operating permits and permits)

- (1) Regulation 27, heading, after **“licences,”**—

Add

“temporary licences,”.

- (2) Regulation 27, after **“A licence,”**—

Add

“temporary licence,”.

- (3) Regulation 27, proviso—

Repeal

“holder of a licence,” (wherever appearing)

Substitute

“holder of an”.

- (4) Regulation 27, proviso—

Repeal

“the Licensing Authority or the Director-General of Civil Aviation (as the case may be) for a new licence, operating permit or permit, be entitled to provide the air services authorized by the existing licence,”

Substitute

“the Director-General of Civil Aviation for a new operating permit or permit, be entitled to provide the air services authorized by the existing”.

24. Regulation 28 substituted

Regulation 28—

Repeal the regulation

Substitute

“28. Information relating to applicants for licences, etc. to be treated as confidential

- (1) These regulations do not require the disclosure by an applicant for, or the holder of, a licence, temporary licence, operating permit or permit to any person other than the Licensing Authority or the Director-General of Civil Aviation (as the case may be) of information as to the financial resources of the applicant or the holder.

- (2) The Licensing Authority or the Director-General of Civil Aviation must treat the information as confidential.
- (3) Paragraph (2) does not prohibit the disclosure of the information—
 - (a) to a person appointed under regulation 4(6)(b) to assist the Licensing Authority in discharging the duties of the Licensing Authority; and
 - (b) for the purposes of discharging those duties.”.

25. Regulation 29 amended (when provisional licences are deemed to be licences)

Regulation 29—

Repeal

“regulation 5(2) and (3), regulations 19, 26, 27 and 30 shall”

Substitute

“regulations 15A, 15B, 15C, 15D, 16, 26, 27, 28 and 30 are to”.

26. Regulation 30A amended (power of Director-General or authorized person to prohibit flight)

(1) Regulation 30A(1)(a)—

Repeal

“commander”

Substitute

“pilot in command”.

(2) Regulation 30A—

Repeal paragraph (3)

Substitute

“(3) A person who, being the operator or pilot in command of any aircraft, contravenes any direction given to the person under paragraph (1)(a) commits an offence and is liable—

(a) on summary conviction to a fine at level 6 and to imprisonment for 3 months; or

(b) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 2 years.”.

(3) After regulation 30A(3)—

Add

“(4) In this regulation—

pilot in command (指揮飛機的機師) has the meaning given by Article 98(1) of the Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C).”.

27. Regulation 31A added

Part IV, after regulation 31—

Add

“31A. Refund of fees

If—

(a) a prescribed fee is paid in respect of an application under regulation 6 (other than an application for the grant of a licence under regulation 10) or 13A; but

(b) either—

(i) the application is refused by the Licensing Authority; or

(ii) the applicant withdraws the application by giving a written notice to this effect to the Licensing Authority,

the Licensing Authority must refund an amount of \$96,000 to the applicant.”.

28. Regulation 32A added

Part V, before regulation 33—

Add

“32A. Transitional arrangements

- (1) A licence granted under regulation 5 of the Pre-amended Regulation that would have been valid on the commencement date of the Amendment Regulation had the Amendment Regulation not come into operation ceases to have effect under the Pre-amended Regulation on that date.
- (2) Subject to paragraph (3), the licence—
 - (a) is regarded as a licence granted under regulation 11A and these regulations have effect in respect of the licence accordingly; and
 - (b) expires on the date on which the licence would have expired had the Amendment Regulation not come into operation.
- (3) If a person holds more than one licence to which paragraph (1) applies, those licences (*existing licences*) are deemed to have been combined as a single licence and the effects of the single licence are as follows—
 - (a) the scheduled journeys that the person is entitled to undertake under the existing licences will not in any way be affected solely because of the deemed combination;

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- (b) the single licence is deemed to have been granted under regulation 11A in respect of all the scheduled journeys covered by the existing licences and these regulations have effect in respect of the single licence accordingly;
 - (c) the single licence expires—
 - (i) on the date on which the existing licences would have expired had the Amendment Regulation not come into operation; or
 - (ii) if the expiry dates of the existing licences are different, on the latest of those dates; and
 - (d) the conditions attached to each of the existing licences continues to apply only in respect of the scheduled journeys covered by that licence.
- (4) The Licensing Authority may, on application by a person mentioned in paragraph (3), replace, without charge, the existing licences with a single licence the effect of which is the same as a single licence deemed under paragraph (3) to have been granted under regulation 11A.
- (5) If, immediately before the commencement date of the Amendment Regulation, an application for a licence under regulation 6 of the Pre-amended Regulation is still pending—
- (a) the Licensing Authority must not process the application any further after the commencement; and
 - (b) the application is to be regarded as being withdrawn by the applicant.
- (6) In this regulation—
- Amendment Regulation*** (《修訂規例》) means the Air Transport (Licensing of Air Services) (Amendment) Regulation 2011 (L.N. 158 of 2011);

Pre-amended Regulation (《未修訂規例》) means the Air Transport (Licensing of Air Services) Regulations (Cap. 448 sub. leg. A) as in force immediately before the commencement date of the Amendment Regulation.”.

29. Schedule substituted

The Schedule—

Repeal the Schedule

Substitute

“Schedule [reg. 1]

Fees

Item	Matter	Fee
1.	Application for a licence under regulation 6 (other than an application for the grant of a licence under regulation 10)	\$230,500
2.	Application for the grant of a licence under regulation 10	\$91,800
3.	Application for a provisional licence or renewal of a provisional licence under regulation 13	\$31,200
4.	Application for the renewal of a licence under regulation 13A	\$193,700
5.	Application for the variation of a licence under regulation 13B	\$109,100

Air Transport (Licensing of Air Services) (Amendment) Regulation 2011

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Section 29

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Item	Matter	Fee
6.	Application for a temporary licence under regulation 15F	\$72,200”.

Manda CHAN
Clerk to the Executive Council

COUNCIL CHAMBER

8 November 2011

Explanatory Note

This Regulation amends the Air Transport (Licensing of Air Services) Regulations (Cap. 448 sub. leg. A) (*principal Regulation*). The main purposes of the amendments are set out below.

Application for and granting of licences

2. Under the principal Regulation in force immediately before this Regulation comes into operation (*pre-amended Regulation*), a person applying for a licence is required to submit an application form and information as the Air Transport Licensing Authority (*Licensing Authority*) may reasonably require for the purposes of the application.
3. Under the principal Regulation as amended by this Regulation (*amended Regulation*), the applicant is required to submit a business plan together with the application. The business plan must set out the details of the business of the applicant. The Licensing Authority, when determining the application, must have regard to the financial capability of the applicant (see new regulation 6 in section 7 and new regulation 11A in section 12).
4. This Regulation also provides for the procedures regarding applications for the renewal of the licences and revises the provision regarding the grant of provisional licences (see section 14 and new regulation 13A in section 15).

General policy of the Licensing Authority in granting licences

5. Under the amended Regulation, when deciding whether to grant a licence or not, the Licensing Authority are no longer required to concern themselves with the coordination of air services or uneconomical overlapping. Their main concerns will be the financial capability of the applicant (see new regulation 11 in section 11).

From route-based to airline-based

6. Under the pre-amended Regulation, a licence is granted to a person in respect of designated scheduled journeys. If the person wants to use any aircraft on a scheduled journey not covered by the licence (*new scheduled journey*), the person will have to apply for a new licence to use the aircraft on the new scheduled journey. Therefore, a person may hold more than one licences.
7. Under the amended Regulation, the person will no longer need to apply for a new licence. If the person wants to use any aircraft on a new scheduled journey, the person may make an application for the variation of the licence (see new regulation 13B in section 15).

Notification requirements

8. To ensure that the Licensing Authority are in a position to assess the continuing financial capability of a licence holder to operate the air services covered by the licence, the licence holder is required to notify the Licensing Authority of certain matters related to its financial position (for example, a change in the shareholding in the licence holder). The Licensing Authority are also empowered to assess the financial position of the licence holder and to require the licence holder to provide relevant information. Failure to comply with the requirements is an offence (see new regulations 15A, 15B, 15C and 15D in section 17).
9. If the financial position of a licence holder is not satisfactory, the Licensing Authority may revoke or suspend the licence, attach new licence conditions or vary any existing licence conditions. If a licence is revoked, the Licensing Authority may grant a temporary licence to the person who held the licence that has been revoked (see new regulations 15E and 15F in section 17).

Forms

10. This Regulation repeals the forms prescribed in the pre-amended Regulation. Where appropriate, the particulars in the forms are set out in the relevant provisions or a form specified by the Licensing Authority will be used (see new regulations 6(2)(a) and 7 in section 7, section 8(3), new regulation 9 in section 9, new regulation 15 in section 16 and sections 18 and 29).

Fees

11. This Regulation provides for the fees to be paid in respect of applications submitted under the principal Regulation (see new Schedule in section 29).
12. Fees paid in respect of an application for licence and for the renewal of the licence will be partly refunded if the application is refused by the Licensing Authority or withdrawn by the applicant (see new regulation 31A in section 27).

Penalties

13. This Regulation amends the penalties imposed under the principal Regulation (see sections 4(3), 22(3) and 26(2)).

Transitional arrangements

14. Licences granted under the pre-amended Regulation will be regarded as licences granted under the amended Regulation. An application for licence (including an application for an emergency grant of a licence) submitted under the pre-amended Regulation and pending at the commencement of this Regulation will not be processed any further by the Licensing Authority (see new regulation 32A in section 28).

Others

15. Under the pre-amended Regulation, a person (usually an airline) who uses any aircraft registered in Hong Kong to provide air services in Hong Kong must obtain a licence from the Licensing Authority, regardless of whether the person is based in Hong Kong or not. Under the amended Regulation, a person who is not based in Hong Kong may provide the service if the person holds a document equivalent to an air operator's certificate and uses the aircraft in accordance with an operating permit (see section 4(2) and (4)).
16. Regulation 4(6)(b) of the principal Regulation is amended to allow the Chief Executive to appoint other personnel (such as consultants or advisors) to assist the Licensing Authority in discharging their duties (see section 5).
17. Section 24 amends regulation 28 of the principal Regulation to provide that information relating to an applicant for a licence or a holder of a licence may be disclosed in certain circumstances (see new regulation 28 in section 24).
18. Consequential upon the amendments set out above, textual amendments to the principal Regulation are required. This Regulation also makes other minor amendments to the principal Regulation.