

立法會
Legislative Council

LC Paper No. LS43/03-04

**Paper for the House Committee Meeting
on 13 February 2004**

**Legal Service Division Further Report on
Air Transport (Licensing of Air Services) (Amendment) Regulation 2004
(L.N. 4 of 2004) gazetted on 21 January 2004**

The Air Transport (Licensing of Air Services) (Amendment) Regulation 2004 (L.N. 4 of 2004) ("the Regulation") was considered by the House Committee on 30 January 2004. Members may recall that the Legal Service Division had asked the Administration whether it would consider also making express provisions on the way the Air Transport Licensing Authority ("the Licensing Authority") shall determine questions under the Air Transport (Licensing of Air Services) Regulations (Cap. 448 sub. leg. A) ("the principal Regulations"). We informed Members that a further report would be made after we had received the Administration's reply.

2. As amended, regulation 4(6)(c) now reads: "The way in which the Licensing Authority shall determine questions for their decision shall be such as the Chief Executive may prescribe." A marked-up copy of the Regulation is at Annex. According to the Administration, the Chief Executive has not prescribed any procedures for the Licensing Authority. Over the years, the Licensing Authority has developed by itself a set of procedures to consider route licence applications submitted by Hong Kong airlines.

3. As there are no prescribed procedures nor provisions in the principal Regulations that confer on the Licensing Authority the power to make its own procedures, we have asked the Administration to clarify the legal basis of the existing set of procedures. We have also asked the Administration whether the Chief Executive would prescribe the procedures, or whether further amendments would be made to empower the Licensing Authority to determine its own procedure.

4. The Administration's reply is that in the absence of statutory rules, the Licensing Authority is the master of its own procedure at common law. Accordingly, the Administration considers that there is no practical need to prescribe the procedures of the Licensing Authority. The Legal Service Division has doubts on this view given that there is an express provision requiring the Licensing Authority to follow the procedures prescribed by the Chief Executive in determining questions. Moreover, the common law principle appears to relate to the power of a statutory tribunal to "control" its own procedures rather than the making of the procedures themselves.

5. Since the object of the Regulation is to prescribe a quorum of the Licensing Authority, the absence of procedures prescribed by the Chief Executive do not affect the amendments made in the Regulation. On this basis, the drafting of the Regulation presents no problem. Whether or not it is necessary to prescribe procedures under the amended regulation 4(6)(c) would be a matter for the Administration to review.

Encl.

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LS/S/14/03-04

AIR TRANSPORT (LICENSING OF AIR SERVICES)
(AMENDMENT) REGULATION 2004

4. The Air Transport Licensing Authority

(1) The Licensing Authority for the purposes of this Part shall consist of such number of members, not being less than 3, as the Chief Executive may from time to time determine, and shall be known as the "Air Transport Licensing Authority".

(2) Every member of the Licensing Authority shall be appointed by the Chief Executive, and, unless he shall earlier resign his office by writing under his hand addressed to the Chief Executive, shall hold office for such term as the Chief Executive shall at the time of making the appointment determine but shall be eligible for reappointment from time to time on the expiration of his term of office. The Chief Executive shall nominate one of the members to be Chairman.

(3) The Chief Executive may from time to time appoint deputy members to act in the place of members who are ill or absent. Such deputy members may be appointed either for a specified term or to act in the place of a specified member during his illness or absence.

(4) The Chief Executive may remove any member or deputy member from his office for inability or misbehaviour.

(5) Where the Chief Executive proposes to appoint a person to be a member or deputy member of the Licensing Authority, he shall, before making the appointment require that person to declare whether he has any, and if so what, financial interest in any undertaking which provides transport for passengers or goods or which owns or operates aerodromes, manufactures aircraft, aircraft engines or accessories, or supplies aircraft fuel or lubricants. If any member or deputy member of the Licensing Authority acquires any such financial interest he shall, within 4 weeks after so doing, give notice thereof in writing to the Chief Executive specifying the interest so acquired, and the Chief Executive after taking the matter into consideration may, if he thinks fit, declare that the member or deputy member has vacated his office and the seat of such member or deputy member shall thereupon become vacant.

(6) (a) The Chief Executive may appoint a person to be secretary to the Licensing Authority.

(b) The Licensing Authority may appoint such other officers and servants as may, in the opinion of the Chief Executive, be necessary to enable them to discharge their duties.

(c) ~~The number of members which shall form a quorum of the Licensing Authority for the dispatch of business, and the way in which the Licensing Authority shall determine questions for their decision shall be such as the Chief Executive may prescribe.~~

(36 of 1999 s. 3)

(Made by the Chief Executive in Council under section 5(1)(b)
of the Civil Aviation Ordinance (Cap. 448))

(7) The quorum at a meeting of the
Licensing Authority for the dispatch of
business is 3 members.

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