

立法會
Legislative Council

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**Paper for the House Committee meeting
on 20 February 2004**

**Report of the Subcommittee on
Air Transport (Licensing of Air Services) (Amendment) Regulation 2004**

Purpose

This paper reports on the deliberations of the Subcommittee on Air Transport (Licensing of Air Services) (Amendment) Regulation 2004 (L.N. 4 of 2004).

Background

2. The Air Transport Licensing Authority (the Licensing Authority) is a statutory body established under the Air Transport (Licensing of Air Services) Regulations (Cap. 448 sub. leg. A) (the Regulations) and is responsible for issuing route licences to Hong Kong airlines for operation of scheduled air services to and from Hong Kong. Regulation 4(1) of the Regulations provides that the Licensing Authority shall consist of not less than three members appointed by the Chief Executive. Regulation 4(6)(c) confers on the Chief Executive the power to prescribe the quorum of the Licensing Authority for the dispatch of its business and the way in which the Licensing Authority shall determine questions for its decision.

3. In January 2003, in the course of a Licensing Authority's hearing, an inquiry has been raised on whether a quorum has been formally prescribed for the Licensing Authority for the dispatch of business. The Administration is of the view that a discretionary power already existed in regulation 4(6)(c) of the Regulations for the Chief Executive to prescribe such a quorum. Nevertheless, to remove doubt, the Administration proposes that the prescription of quorum should be done by way of legislation.

The Amendment Regulation

4. The purpose of the Air Transport (Licensing of Air Services) (Amendment) Regulation 2004 (the Amendment Regulation) is to provide expressly that the quorum

at a meeting of the Licensing Authority for the dispatch of business is three members.

The Subcommittee

5. The House Committee agreed at its meeting on 13 February 2004 to form a Subcommittee to study the Amendment Regulation. Chaired by Hon SIN Chung-kai, the Subcommittee held a meeting on 18 February 2004 to discuss the Amendment Regulation with the Administration. The membership list of the Subcommittee is in **Appendix I**.

Deliberations of the Subcommittee

6. The Subcommittee notes that when deciding on a quorum of three members, the Administration has taken into account the requirement under regulation 4(1) that the Licensing Authority shall consist of not less than three members. Moreover, an odd-number quorum is preferred to avoid the situation of a hung decision when a consensus cannot be reached. As there are only six serving members of the Licensing Authority, the alternative of five members is an unreasonably high quorum and will create practical difficulties for the Licensing Authority in discharging its duties.

7. The Subcommittee notes that regulation 4(6)(c) also confers on the Chief Executive the power to prescribe the way in which the Licensing Authority shall determine questions for its decision. 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. In short, uncontested applications are circulated to members for consideration and approval, while contested applications are considered by way of inquiries. These inquiries are held in a manner which in many respects resembles civil proceedings. According to the Administration, the Licensing Authority, by convention, has been discharging its duties through a panel of no fewer than three members. The Chairman is traditionally a judge. In the event of an inquiry, the Chairman would confirm with the members on their availability to conduct the inquiry so that the same group of members could attend all sessions of the inquiry. The Administration further explains that in the absence of statutory rules, the Licensing Authority is the master of its own procedures at common law. Accordingly, the Administration does not see a practical need to prescribe the procedures of the Licensing Authority

8. The Subcommittee however considers that the practice and procedures relating to the dispatch of business by the Licensing Authority as explained by the Administration should be set out clearly in legislation. To avoid any uncertainty, it is necessary to give legal status to the existing set of procedures adopted by the Licensing Authority, though not necessarily in the context of the present Amendment

Regulation as it will take time to prepare the draft procedures.

9. On account of members' views and concerns, the Administration undertakes to conduct a separate exercise to prescribe the procedures of the Licensing Authority. The Panel on Economic Services will be consulted on the draft procedures in due course.

Advice sought

10. The Subcommittee supports the Amendment Regulation and invites the House Committee to note its deliberations.

Council Business Division 1
Legislative Council Secretariat
19 February 2004

**Subcommittee on
Air Transport (Licensing of Air Services) (Amendment) Regulation 2004**

Membership list

Chairman	Hon SIN Chung-kai
Members	Hon HUI Cheung-ching, JP Hon Andrew WONG Wang-fat, JP Hon Howard YOUNG, SBS, JP
	(Total: 4 members)
Clerk	Mr Andy LAU
Legal Adviser	Ms Connie FUNG
Date	18 February 2004