

EDBCR

LEGISLATIVE COUNCIL BRIEF

Civil Aviation Ordinance

(Chapter 448)

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

INTRODUCTION

At the meeting of the Executive Council on 13 January 2004, the Council ADVISED and the Chief Executive ORDERED that the Air Transport (Licensing of Air Services)(Amendment) Regulation 2004 at Annex A be made under section 5(1)(b) of the Civil Aviation Ordinance.

Annex A

JUSTIFICATIONS

2. ATLA is a statutory body established under the Air Transport (Licensing of Air Services) Regulations (Cap. 448A) (“the Regulations”) and is responsible for issuing route licences to Hong Kong airlines for operation of scheduled air services to and from Hong Kong. ATLA currently consists of six members.

3. Applications for route licences are normally considered and decided by ATLA in the form of a panel of members through circulation

of papers (for uncontested applications) or hearing (for contested applications). It has been a long and established practice throughout the known history of ATLA (for at least the past 25 years) that it discharges its duties through a panel of no fewer than three members.

4. In January 2003, in the course of ATLA's hearing on Cathay Pacific Airways' application for a route licence to three points in the Mainland of China, an inquiry was made by Dragonair on whether a quorum has been formally prescribed for ATLA for the dispatch of business. The Department of Justice has advised that Regulation 4(6)(c) of the Regulations (a copy at Annex B) provides a discretionary power for the Chief Executive to prescribe a quorum of ATLA for the dispatch of business. To remove any doubt, the prescription of quorum should be done by way of legislation and not through administrative means or by convention. We therefore propose that the Chief Executive should prescribe a quorum for ATLA through legislative means as provided for in Regulation 4(6)(c) of the Regulations.

5. As to the actual quorum, we consider that a minimum of three should suffice for the following reasons:

- (a) Regulation 4(1) of the Regulations provides that ATLA shall consist of not less than three members i.e. three is the minimum number of members required for ATLA to discharge its duties; and
- (b) an odd number of members is preferred to avoid the situation of a hung decision when a consensus cannot be reached. An

alternative choice of an odd-number quorum would be five. However, as there are only six serving ATLA members, a quorum of five is an unreasonably high quorum and will create practical difficulties for ATLA in discharging its duties.

THE AMENDMENT REGULATION

6. The Amendment Regulation specifies that the quorum at a meeting of ATLA for the dispatch of business is three members.

LEGISLATIVE TIMETABLE

7. The Amendment Regulation will be gazetted on 21 January 2004 and tabled at the Legislative Council for negative vetting on 4 February 2004.

IMPLICATIONS OF THE PROPOSAL

8. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the current binding effect of the Regulations. It has no financial, civil service, economic, productivity or environmental implications.

9. The proposal can enhance predictability and transparency of the procedures adopted by ATLA and is therefore supported from the competition policy point of view.

10. A full sustainability assessment system is considered not applicable to the current proposal because it is technical in nature.

PUBLIC CONSULTATION

11. The Aviation Advisory Board has been briefed on this proposal. The Legislative Council Panel on Economic Services was briefed at its meeting on 16 December 2003 and supported the proposal.

PUBLICITY

12. A spokesman will be available to respond to any enquiries.

ENQUIRY

13. Any inquiries on the brief should be addressed to Mr. Darryl Chan, Principal Assistant Secretary for Economic Development and Labour (Economic Development), at 2810 2687.

Economic Development and Labour Bureau

20 January 2004

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

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

1. Commencement

This Regulation shall come into operation on a day to be appointed by the Secretary for Economic Development and Labour by notice published in the Gazette.

2. The Air Transport Licensing Authority

Regulation 4 of the Air Transport (Licensing of Air Services) Regulations (Cap. 448 sub. leg. A) is amended -

- (a) in paragraph (6)(c), by repealing "number of members which shall form a quorum of the Licensing Authority for the dispatch of business, and the";
- (b) by adding -

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

Clerk to the Executive Council

COUNCIL CHAMBER

2004

Explanatory Note

This Regulation amends the Air Transport (Licensing of Air Services) Regulations (Cap. 448 sub. leg. A) to prescribe a quorum of 3 members at a meeting of the Air Transport Licensing Authority for the dispatch of business.

Annex B

Chapter:	448A	Title:	AIR TRANSPORT (LICENSING OF AIR SERVICES) REGULATIONS	Gazette Number:	36 of 1999
Regulation:	4	Heading:	The Air Transport Licensing Authority	Version Date:	01/07/1997

Remarks:

Adaptation amendments retroactively made - see 36 of 1999 s. 3

(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)