

For discussion
on 25 October 2004

Legislative Council Panel on Economic Services

Proposed Amendment to the Air Transport (Licensing of Air Services) Regulations

Introduction

This paper briefs Members on our proposal to amend regulation 4(6)(c) of the Air Transport (Licensing of Air Services) Regulations (Cap. 448A) (“the ATLA Regulations”) to empower the Air Transport Licensing Authority (“ATLA”) to establish its own procedures.

Background

2. The ATLA is a statutory body established under the Regulations and is responsible for issuing licences to Hong Kong airlines for the operation of scheduled air services to and from Hong Kong. The ATLA Regulations contain specific provisions governing the way in which ATLA shall discharge its statutory functions, including :

- (a) publication of applications received (regulation 7);
- (b) holding of inquiries to consider applications (regulation 9);
- (c) procedures for handling emergency applications (regulation 10);
- (d) matters ATLA shall take into account when considering applications (regulation 11); and
- (e) publication of ATLA decisions (regulation 15).

3. However, the Regulations do not specifically provide for the detailed procedures in relation to the actual processing of an application (e.g. different procedures for handling contested and uncontested applications, the manner in which an inquiry is to be conducted, etc.). Regulation 4(6)(c) provides that the way in which ATLA shall determine questions for their decision shall be such as the Chief Executive may prescribe. This is a discretionary power and the Chief Executive has so far not exercised such power. ATLA has all along been operating on the basis of practices and procedures it developed over the years.

4. In the course of an amendment exercise to prescribe the quorum of ATLA in February 2004, the LegCo Sub-committee formed to study the legislative amendment considered that the practice and procedures related to the discharge of duties by ATLA should be given legal backing. The Administration undertook to consider and revert with a proposal.

Considerations

5. Under the common law, in the absence of any statutory provisions, ATLA as a statutory body can determine the manner in which it processes an application, provided that the principle of natural justice and any applicable statutory rules are observed. The current practices and procedures of ATLA are very well-established with a long history and are widely accepted by the local airline industry. They are also being refined by ATLA from time to time in order to cater for any special circumstances but all such changes are fully transparent to all parties concerned. Currently ATLA has six members. For many years, the chairman was a serving judge and its current chairman is a Senior Counsel.

6. After considering the Sub-committee's suggestion, we agree that it would be advisable to introduce a general enabling provision in the Regulations to empower ATLA to establish its own procedures. This would provide a proper legal backing to all the procedures made by ATLA, thus removing any doubts over the credibility of Hong Kong's aviation licensing regime.

Proposed Amendment to the ATLA Regulations

7. It is proposed that the existing regulation 4(6)(c) be replaced with a provision which empowers ATLA to establish its own procedures subject to other provisions in the Regulations.

8. Subject to the approval by the Chief Executive in Council, an amendment regulation will be tabled at the Legislative Council for negative vetting in due course.

9. The Air Transport Licensing Authority and the Aviation Advisory Board have been consulted. They support the proposed amendment.