

LEGISLATIVE COUNCIL BRIEF

Civil Aviation Ordinance (Chapter 448)

AIR TRANSPORT (LICENSING OF AIR SERVICES) (AMENDMENT) (NO.2) REGULATION 2004

INTRODUCTION

At the meeting of the Executive Council on 7 December 2004, the Council ADVISED and the Chief Executive ORDERED that the Air Transport (Licensing of Air Services) (Amendment) (No.2) Regulation 2004 (the Annex A “Amendment Regulation”), at Annex A, be made under section 5(1) of the Civil Aviation Ordinance (Cap.448).

JUSTIFICATIONS

2. The Air Transport Licensing Authority (ATLA) is a statutory body established under the Air Transport (Licensing of Air Services) Regulations (Cap.448A) (“the Regulations”) and is responsible for issuing licences to Hong Kong airlines for the operation of scheduled air services to and from Hong Kong. Currently ATLA has six members. For many years, the chairman was a serving judge and its current chairman is a Senior Counsel. The Regulations contain specific provisions governing the processing of applications by ATLA, including :

- (a) applications for licences (regulation 6);
- (b) publication of applications received (regulation 7);
- (c) holding of inquiries to consider applications, including whether an inquiry shall be held in public or in private (regulation 9);
- (d) streamlined procedures for handling emergency applications (regulation 10);
- (e) general policy of ATLA and matters ATLA shall take into account when considering applications (regulation 11);
- (f) publication of ATLA decisions (regulation 15); and
- (g) specific prescribed forms in the Schedule governing the application for licence, publication of applications received, objection to applications, notification to parties to an inquiry, and publication of ATLA decisions.

3. However, the Regulations do not specifically provide for the detailed procedures in relation to ATLA’s routine operation. 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.

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.

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

7. Under this provision, ATLA would be given statutory power to make necessary procedures governing the routine processing of an application from time to time, such as:

- (a) determining whether applications should be considered by circulation or by meetings;
- (b) setting deadlines for applicants and objectors to file written submissions;
- (c) specifying the sort of information that should be provided in the submissions;
- (d) deciding whether a directions hearing is required before holding an inquiry; and
- (e) serving of notices by ATLA.

To enhance the transparency of ATLA's work, the procedures and any subsequent changes would be made public.

THE AMENDMENT REGULATION

8. The Amendment Regulation replaces the existing discretionary power of the Chief Executive with an express power for ATLA to determine their own procedure subject to other provisions in the Regulations. The existing provisions being amended are at Annex B.

LEGISLATIVE TIMETABLE

9. The Amendment Regulation will be gazetted on 17 December 2004 and tabled at the Legislative Council for negative vetting on 5 January 2005.

IMPLICATIONS OF THE PROPOSAL

10. 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, competition, environmental or sustainability implications.

PUBLIC CONSULTATION

11. The Legislative Council Panel on Economic Services, the Air Transport Licensing Authority, and the Aviation Advisory Board were consulted on the proposed legislative amendment. They all support 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
15 December 2004

**AIR TRANSPORT (LICENSING OF AIR SERVICES)
(AMENDMENT)(NO. 2) REGULATION 2004**

(Made by the Chief Executive in Council under section 5(1) 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) by repealing paragraph (6)(c);

(b) by adding -

“(8) Subject to the provisions of these regulations, the Licensing Authority may determine their own procedure.”.

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 empower the Air Transport Licensing Authority to determine their own procedure.

Chapter:	448A	AIR TRANSPORT (LICENSING OF AIR SERVICES) REGULATIONS	Gazette Number	Version Date
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Regulation:	4	The Air Transport Licensing Authority	L.N. 36 of 2004	05/03/2004
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(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 way in which the Licensing Authority shall determine questions for their decision shall be such as the Chief Executive may prescribe. (L.N. 4 of 2004)

(7) The quorum at a meeting of the Licensing Authority for the dispatch of business is 3 members. (L.N. 4 of 2004)

(36 of 1999 s. 3)