

LEGISLATIVE COUNCIL BRIEF

Civil Aviation Ordinance
(Chapter 448)

AIR TRANSPORT (LICENSING OF AIR SERVICES) (AMENDMENT) REGULATION 2011

INTRODUCTION

A At the meeting of the Executive Council on 8 November 2011, the Council ADVISED and the Acting Chief Executive ORDERED that the Air Transport (Licensing of Air Services) (Amendment) Regulation 2011 (“the Amendment Regulation”), at **Annex A**, should be made under section 13 of the Civil Aviation Ordinance.

JUSTIFICATIONS

2. The Air Transport Licensing Authority (ATLA), established under the Air Transport (Licensing of Air Services) Regulations (“the Regulations”), is responsible for granting licences to local airlines to operate scheduled air services between Hong Kong and any point in the world. ATLA’s existing regulatory regime emphasises co-ordination of air services and makes it an object of ensuring, among other things, the avoidance of uneconomical overlapping of air services. It does not distinguish new airlines’ applications for licences and existing licence holders’, nor impose notification requirements on licence holders, nor does it provide the power for ATLA to intervene when there are signs of any licence holder getting into financial difficulty. To better regulate local airlines, we consider it necessary to improve ATLA’s regulatory regime in a number of areas.

General Policy

3. ATLA's general policy¹, when it comes to considering whether to grant (or refuse) licences and deciding on the licence conditions, with its reference to the coordination of air services and the need to avoid uneconomical overlapping, is not in line with the global liberalisation of air services in recent years, nor with Hong Kong's progressive liberalisation policy on air services².

4. ATLA no longer needs to concern itself with the coordination of air services nor with uneconomical overlapping, as these matters should be addressed through market competition. It is more important for ATLA to satisfy itself that a licence applicant or an existing licence holder is capable of operating air services, primarily with regard to its financial capability.

5. We **propose** to update ATLA's general policy to read "ATLA must have regard to

- (a) the development of air services with the object of providing effective service to the public; and
- (b) the interests of the public, including those of persons requiring or likely to require facilities for air transport, as well as those of persons providing those facilities".

6. Neither does ATLA need to require an endorsement from the Civil Aviation Department (CAD)³ (as at present) certifying that the applicant's operational procedures, maintenance manual and schedule, traffic handling, adequacy and competence of the staff to be employed are satisfactory, provided that the granting and validity at any time of a licence shall depend on the possession of a valid Air Operator's Certificate (AOC)

¹ ATLA's general policy is that ATLA shall have regard to the coordination and development of air services generally with the object of ensuring the most effective service to the public while avoiding uneconomical overlapping and generally to the interests of the public, including those of persons requiring or likely to require facilities for air transport, as well as those of persons providing such facilities.

² Our progressive liberalisation policy emphasises more liberal market access and promotes competition in the interest of the public and Hong Kong's aviation industry.

³ CAD's role is to ensure that Hong Kong's airlines are competent in operating their air services safely and their aircraft are air-worthy.

granted under Article 6(2) of the Air Navigation (Hong Kong) Order 1995⁴. Where an applicant does not hold an AOC from CAD, the applicant may apply for a licence from ATLA and an AOC from CAD in parallel.

Basis for granting licences

7. Under the Regulations, licences are granted on a specific route basis with individual expiry dates. We now **propose** to adopt an airline-based approach under which each airline will only need to obtain one licence specifying the routes to be operated. Airlines wishing to operate new routes will need to apply for the variation of the licence⁵. The licence should be valid for at most five years at ATLA's discretion as at present, subject to renewal upon application. This change seeks to minimise the administrative burden on the airlines and ATLA.

Applications for Licences

8. To ensure that airlines are capable of operating air services, we **propose** that an airline applying for a licence (i.e. the airline is not holding a licence) should be required to satisfy ATLA that –

- (a) it can meet at any time its actual and potential obligations, established under realistic assumptions, for a period of 24 months from the start of operations; and
- (b) it can meet its fixed and operational costs incurred from operations according to its business plan, established under realistic assumptions, for a period of 3 months from the start of operations, without taking into account any income from its operations.

B Detailed requirements are set out in **Annex B**.

⁴ An AOC is granted to a person if the Director-General of Civil Aviation is satisfied that that person is competent, having regard to his previous conduct and experience, his equipment, organization, staffing, maintenance and other arrangements, to secure the safe operation of aircraft.

⁵ Such applications need to be published in the Gazette and be subject to statutory representations or objections in the same way as new or renewal licence applications.

Renewal of Licences

9. We **propose** that for the renewal of a licence upon expiry, the licence holder should be required to satisfy ATLA that it can meet its actual and potential obligations for a 12-month period.

Notification Requirements

10. To ensure that ATLA is in a position to assess the continuing capability of licence holders, we **propose** that a licence holder should be required to notify ATLA of specific events and provide ATLA with the audited financial statements every year. The licence holder should also be required to inform ATLA in the first instance of a licence holder's financial difficulties or intention to cease to operate air services or such cessation. Detailed requirements are set out in **Annex C**.

C

ATLA's General Powers

11. We **propose** that ATLA should be empowered such that –
- (a) it may at any time assess the financial position of a licence holder and require the licence holder to provide relevant information;
 - (b) it may suspend or revoke the licence, attach any new licence conditions, or vary any existing licence conditions if ATLA is no longer satisfied that the licence holder can meet its actual and potential obligations for a 12-month period, insolvency or similar procedures are commenced against the licence holder, or the licence holder is wound up voluntarily; and
 - (c) it may, upon revocation of a licence, grant a temporary licence, not exceeding 12 months, pending financial reorganisation of the licence holder, provided that there is a realistic prospect of a satisfactory financial reconstruction within the validity period of the licence.

Other Matters

12. Under regulation 3 of the Regulations, a person who uses a Hong Kong-registered aircraft to operate scheduled air services between Hong Kong and another place without a licence from ATLA commits an offence. In other words, if an airline other than a local airline would like to lease a Hong Kong-registered aircraft to operate scheduled air services between Hong Kong and another place, the airline has to obtain a licence from ATLA first. This is not consistent with ATLA's role in regulating Hong Kong-based airlines only. We **propose** to amend the law so that the airline need not obtain a licence from ATLA in this scenario as it suffices for the airline to hold a document equivalent to an AOC and use the aircraft in accordance with an operating permit issued by CAD.

13. To facilitate ATLA's work, we **propose** that the Chief Executive should be empowered to appoint other persons such as consultants or advisors to assist ATLA in discharging its duties. The Regulations will be amended for this purpose. By virtue of the appointment, ATLA may disclose to them information submitted by the licence applicants and holders. The cost of hiring these persons to assist in the processing of licence-related applications will be recovered through the licence fees.

14. We **propose** to update the existing penalties⁶ for using any aircraft in contravention of the provisions of the Regulations and introduce new offences in respect of failure to comply with the proposed notification requirements.

Transitional and Consequential Arrangements

15. Because of the proposal to change the basis for granting licences from a route-based approach to an airline-based approach, we need to put in place transitional and consequential arrangements. On the transitional arrangements, we **propose** the following –

- (a) if a licence holder holds only one licence, the licence will continue to have effect under the Regulations as amended by the Air Transport (Licensing of Air Services) (Amendment) Regulation 2011 (the Amendment Regulation);

⁶ The existing penalties were set in 1950 and 1969, and are inadequate (for example, the maximum penalties for a second offence under Regulation 3(2) are \$70,000 and/or imprisonment for 2 years).

- (b) if a licence holder holds more than one licence, the existing licences held by the licence holder will be deemed to have been combined as a single licence and the effect is as follows –
 - (i) the scheduled journeys covered by the existing licences allowed to be undertaken by the licence holder remain unchanged;
 - (ii) the expiry date of this deemed single licence will be the same as the last expiry date of the existing licences held by the licence holder, so as to ensure that the licence holder's rights under the existing licences would not be curtailed;
 - (iii) the conditions attached to each of the existing licences continue to apply only in respect of the scheduled journeys covered by the licence;
- (c) the licence holder may apply for the replacement, free of charge, of the existing licences mentioned in paragraph (b) by a single licence; and
- (d) applications for licences yet to be dealt with by ATLA before the legislative amendments made by the Amendment Regulation come into effect will lapse.

D 16. On the consequential arrangements, we **propose** to revise the fee structure to cater for the proposed airline-based approach and set the fee levels on the basis of the user-pays principle. Details are set out in **Annex D**.

OTHER OPTIONS

17. There are no other options as ATLA's regulatory regime cannot be changed without amending the Regulations.

THE AMENDMENT REGULATION

18. The main provisions of the Amendment Regulation are set out below –

- (a) **Section 1** provides that the Amendment Regulation comes into operation on a day to be appointed by the Secretary for Transport and Housing;
- (b) **Section 4** amends regulation 3 of the Regulations so that a person (usually an airline) who is not based in Hong Kong may use any aircraft registered in Hong Kong to provide air services in Hong Kong if the person holds a document equivalent to an AOC and uses the aircraft in accordance with an operating permit, and amends the penalties imposed in that regulation 3;
- (c) **Section 5** amends regulation 4 of the Regulations to allow the Chief Executive to appoint other personnel (such as consultants or advisors) to assist ATLA in discharging its duties;
- (d) **Sections 7 and 12** contain new regulations 6 and 11A which provide that a licence applicant is required to submit a business plan together with the application. The business plan must set out the details of the business of the applicant. ATLA, when determining the application, must have regard to the financial capability of the applicant;
- (e) **Section 11** contains new regulation 11 which provides that when deciding whether to grant a licence or not, ATLA is no longer required to concern itself with the coordination of air services or uneconomical overlapping. Its main concerns will be the financial capability of the applicant;
- (f) **Sections 14 and 15** provide for the procedures regarding applications for the renewal of licences and revise the provision regarding the issue of provisional licences, and provide that if a licence holder wants to use an aircraft on a scheduled journey not covered by the licence, the licence holder may make an application for the variation of the licence;
- (g) **Sections 7, 8, 9 and 16, 18 and 29** amend certain provisions in the Regulations so as to repeal the forms prescribed in the law. Where appropriate, the particulars in the forms are set out in the relevant provisions or a form specified by ATLA will be used;

- (h) **Section 17** adds new provision to the Regulations to –
- (i) provide that a licence holder is required to notify ATLA of certain matters related to its financial position (for example, a change in the shareholding in the licence holder);
 - (ii) empower ATLA to assess the financial position of the licence holder and to require the licence holder to provide relevant information;
 - (iii) provide that failure to comply with the requirements is an offence;
 - (iv) provide that if the financial position of the licence holder is not satisfactory, ATLA may suspend or revoke the licence, attach new licence conditions or vary any existing licence conditions; and
 - (v) empower ATLA to grant a temporary licence upon revocation of a licence;
- (i) **Sections 22(3) and 26(2)** amend the penalties imposed under the Regulations;
- (j) **Section 24** amends regulation 28 of the Regulations to provide that information relating to an applicant for a licence may be disclosed in certain circumstances;
- (k) **Section 27** contains a new provision to provide that fees paid in respect of an application for licence and for the renewal of the licence will be partly refunded if the application is refused by ATLA or the applicant withdraws the application;
- (l) **Section 28** contains a transitional provision to provide that existing licences will be regarded as licences issued under the new regime. An application for a licence submitted under the Regulations as in force immediately before the commencement of the Amendment Regulation and pending at the commencement of the Amendment Regulation will not be processed any further by ATLA;

(m) **Section 29** contains a table of fees to be paid in respect of applications submitted under the Regulations; and

(n) consequential upon the amendments set out above, textual amendments to the Regulations are required.

E

19. The Regulations being amended by the Amendment Regulation are at **Annex E**.

LEGISLATIVE TIMETABLE

20. The Amendment Regulation will be gazetted on 18 November 2011 and tabled in the Legislative Council on 23 November 2011.

IMPLICATIONS OF THE PROPOSAL

F

21. The Amendment Regulation is in conformity with the Basic Law, including the provisions concerning human rights. The proposal will not affect the binding effect of the existing provisions of the Civil Aviation Ordinance and the Regulations. They have no productivity, sustainability or environmental implications. No additional staff will be required for implementing the proposal. The financial and economic implications are set out in **Annex F**.

PUBLIC CONSULTATION

22. In the first half of 2010, we consulted the relevant stakeholders, the Legislative Council Panel on Economic Development, and the Technical Subcommittee of the Aviation Development Advisory Committee on the proposals arising from the review. We conducted a second round of consultation in early 2011 on the proposed changes to the proposals, and consulted the Legislative Council Panel on Economic Development in April 2011. In general, we received support for the proposals to improve ATLA's regulatory regime and the proposed changes to the proposals.

PUBLICITY

23. A press release will be issued on 16 November 2011. A spokesperson will be available to handle enquiries.

BACKGROUND

24. ATLA is a statutory body responsible for considering applications from local airlines for licences to operate scheduled air services between Hong Kong and any point in the world.

ENQUIRIES

25. Any enquiry on this brief should be directed to Miss Monica Chen, Principal Assistant Secretary (Transport) (telephone number: 2189 7719).

**Transport and Housing Bureau
16 November 2011**

Air Transport (Licensing of Air Services) (Amendment) Regulation 2011

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Air Transport (Licensing of Air Services) (Amendment) Regulation 2011

(Made by the Chief Executive in Council under section 13 of the Civil Aviation Ordinance (Cap. 448))

1. Commencement

This Regulation comes into operation on a day to be appointed by the Secretary for Transport and Housing by notice published in the Gazette.

2. Air Transport (Licensing of Air Services) Regulations amended

The Air Transport (Licensing of Air Services) Regulations (Cap. 448 sub. leg. A) are amended as set out in sections 3 to 29.

3. Regulation 1 amended (interpretation)

- (1) Regulation 1, definition of *licence*—

Repeal

“5”

Substitute

“11A”.

- (2) Regulation 1, English text, definition of *scheduled journey*—

Repeal the full stop

Substitute a semicolon.

- (3) Regulation 1—

Add in alphabetical order

“*air operator’s certificate* (航空營運人許可證) means an air operator’s certificate granted under Article 6 of the Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C);

prescribed fee (訂明費用), in relation to a matter, means the fee prescribed for that matter in the Schedule;

temporary licence (短期牌照) means a licence granted under regulation 15F.”.

4. Regulation 3 amended (penalties)

- (1) Regulation 3, heading—

Repeal

“Penalties”

Substitute

“Restriction on use of aircraft on scheduled journeys”.

- (2) Regulation 3—

Repeal paragraph (1)

Substitute

“(1) A person may use any aircraft for the carriage in Hong Kong of passengers, mail or cargo for hire or reward on any scheduled journey between 2 places, one of which is in Hong Kong, only if—

- (a) (where the aircraft is registered in a country or place other than Hong Kong) the person uses the aircraft in accordance with an operating permit granted to the person in respect of the journey; or
- (b) (where the aircraft is registered in Hong Kong) the person—
- (i) holds an air operator’s certificate and uses the aircraft in accordance with a licence, provisional licence or temporary licence granted to the person in respect of the journey; or
- (ii) holds an equivalent document and uses the aircraft in accordance with an operating

permit granted to the person in respect of the journey.”.

- (3) Regulation 3—

Repeal paragraph (2)

Substitute

“(2) A person who uses any aircraft in contravention of paragraph (1) commits an offence and is liable—

- (a) on summary conviction to a fine at level 6 and to imprisonment for 3 months; or
- (b) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 2 years.”.

- (4) Regulation 3—

Repeal paragraph (4)

Substitute

“(4) In this regulation—

equivalent document (同等文件) means a document that is—

- (a) issued by an appropriate civil aviation authority of a place outside Hong Kong; and
- (b) recognized by the Director-General of Civil Aviation as equivalent to an air operator’s certificate.”.

5. Regulation 4 amended (the Air Transport Licensing Authority)

Regulation 4(6)(b)—

Repeal

“Licensing Authority may appoint such other officers and servants as may, in the opinion of the Chief Executive, be necessary to enable them”

Substitute

“Chief Executive may appoint any other person who, in the opinion of the Chief Executive, is necessary to enable the Licensing Authority”.

6. Regulation 5 repealed (issue of licences)

Regulation 5—

Repeal the regulation.

7. Regulations 6 and 7 substituted

Regulations 6 and 7—

Repeal the regulations

Substitute

“6. Applications for licences

- (1) A person may apply to the Licensing Authority for a licence.
- (2) The application must—
 - (a) be made in the form and manner specified by the Licensing Authority;
 - (b) specify the routes on which the scheduled journeys to which the application relates are intended to be undertaken; and
 - (c) be accompanied by—
 - (i) a business plan covering the start-up phase and initial operation phase;
 - (ii) if the applicant is a body corporate, the most recent management accounts and (if available) the latest audited financial statements of the applicant; and
 - (iii) the prescribed fee.
- (3) The business plan must contain—

- (a) a detailed description of the applicant's business activities related to the air services to which the application relates during the period to be covered;
 - (b) the expected market development related to the business of those air services, and the investments intended to be carried out by the applicant in relation to this business, during that period; and
 - (c) the implications of the activities, development and investments on the applicant's financial position.
- (4) Without limiting paragraph (3), the business plan must contain the following information—
- (a) the details of the applicant's financial interests in any other commercial activities in which the applicant is engaged either directly or through any related undertakings;
 - (b) a projected statement of financial position of the applicant, including a projected statement of comprehensive income;
 - (c) if the applicant is a body corporate—
 - (i) the details of the shareholders of the applicant, including the type of shares held or to be held and any agreement or arrangement entered into by any shareholder which may restrict the future issue or transfer of the applicant's shares or require any future issue of the applicant's shares; and
 - (ii) the articles of association of the applicant;
 - (d) (if the applicant is a part of a group of undertakings) information on the relationship between these undertakings;
 - (e) the details of the financing of aircraft purchase or leasing, including, in the case of leasing, the terms and conditions of the leasing contract;

- (f) the basis for any projected figures on the applicant's expenditure and income, in particular, the figures on fuel, fares and rates, salaries, maintenance, depreciation, exchange rate fluctuations, airport charges, air navigation charges, ground handling costs and insurance;
 - (g) a traffic or revenue forecast;
 - (h) the details of the costs incurred during the start-up phase and an explanation of how these costs will be financed;
 - (i) the details of existing and projected sources of finance and supporting documentation; and
 - (j) a projected statement of cash flows and cash flows forecasts and requirements.
- (5) The Licensing Authority may—
- (a) require the applicant to provide any information that the Licensing Authority considers necessary for determining the application; and
 - (b) refuse to proceed with processing the application if the information is not provided to the satisfaction of the Licensing Authority.
- (6) In this regulation—
- initial operation phase*** (營運首階段), in relation to an application under this regulation, means a period of 24 months beginning on the day on which the first scheduled journey to which the application relates is intended to be undertaken;
- management accounts*** (管理帳目), in relation to an applicant, means a document that consists of the following—
- (a) a statement of comprehensive income in which the items are broken down into—

- (i) amounts concerning the applicant's business activities related to the air services to which the application relates; and
 - (ii) all other amounts;
 - (b) a statement of financial position of the applicant; and
 - (c) a statement of cash flows of the applicant;
- related undertaking** (相關企業), in relation to an applicant, means—
- (a) an undertaking that is a subsidiary undertaking, as construed in accordance with the Twenty-third Schedule to the Companies Ordinance (Cap. 32), of the applicant; or
 - (b) an undertaking over which the applicant, or the subsidiary undertaking, has a significant influence;
- start-up phase** (創始階段), in relation to an application under this regulation, means the period beginning on the date of submission of the application to the day immediately before the first day of the initial operation phase.
- (7) For the purposes of the definition of **related undertaking**, a person is regarded as having a significant influence over another undertaking if—
 - (a) the person holds 20% or more of the shares in the undertaking; or
 - (b) the person is entitled to exercise, or control the exercise, of 20% or more of the voting rights at a general meeting of the undertaking.

7. Publication of applications

- (1) The Licensing Authority must cause to be published in the Gazette on 2 occasions the key particulars relating to an application received by the Licensing Authority under regulation 6.

- (2) In paragraph (1)—
key particulars (主要詳情) includes—
 - (a) the name of the applicant;
 - (b) the date of first publication of the application;
 - (c) the routes on which the scheduled journeys to which the application relates are intended to be undertaken; and
 - (d) a description of the services to be provided.”.

8. Regulation 8 amended (objections and representations)

- (1) Regulation 8—

Renumber the regulation as regulation 8(1).

- (2) Regulation 8(1)—

Repeal

everything after “private or public”

Substitute

“in an application published under regulation 7 may make representations or objections with regard to the application.”.

- (3) After regulation 8(1)—

Add

- “(2) The representations or objections must be made—
- (a) in a form and manner specified by the Licensing Authority; and
 - (b) within 14 days after the date of first publication of the application.”.

9. Regulation 9 substituted

Regulation 9—

Repeal the regulation

Substitute

“9. Public and private inquiries

- (1) The Licensing Authority may, if they think fit, hold an inquiry for the purpose of determining an application published under regulation 7.
- (2) Before holding an inquiry in respect of an application, the Licensing Authority must give each interested person a written notice informing each of them of the inquiry.
- (3) An interested person must be given an opportunity of being heard at the inquiry.
- (4) Subject to paragraph (5), the inquiry may be held in public or in private.
- (5) The inquiry must be held in public if any interested person requests the Licensing Authority to do so in writing.
- (6) In this regulation—

interested person (利益攸關者), in relation to an application, means—

 - (a) the applicant; or
 - (b) a person who has made a representation or an objection with regard to the application under regulation 8.”.

10. Regulation 10 substituted

Regulation 10—

Repeal the regulation**Substitute****“10. Emergency grant of licence**

- (1) If an application is made under regulation 6 for a licence to remain in force for a period not exceeding 30 days and the Licensing Authority are satisfied that it is in the public interest that the application should be determined

with expedition, they may determine the application under this regulation and grant a licence accordingly.

- (2) Regulations 6(2)(c)(i) and (ii), (3) and (4), 7, 8 and 9 do not apply to the application.
- (3) Regulation 11A(2)(b) and (c) does not apply in respect of the grant of the licence.”.

11. Regulation 11 substituted

Regulation 11—

Repeal the regulation**Substitute****“11. General policy of Licensing Authority**

- (1) In exercising their discretion to grant, or to refuse to grant, a licence and their discretion to attach conditions to any licence, the Licensing Authority must have regard to—
 - (a) the development of air services with the object of providing effective service to the public; and
 - (b) the interests of the public, including those of persons requiring or likely to require facilities for air transport, as well as those of persons providing those facilities.
- (2) Without limiting paragraph (1), the Licensing Authority must have regard to the following matters—
 - (a) the extent to which it is probable that the applicant will be able to provide a satisfactory service in respect of continuity, regularity of operation, frequency, punctuality, reasonableness of charges and general efficiency;
 - (b) the financial resources of the applicant;
 - (c) the type of aircraft proposed to be used;

- (d) the remuneration and general conditions of employment of aircrew and other personnel employed by the applicant.
- (3) The Licensing Authority must also have regard to any representations or objections made under regulation 8 or at any inquiry held under regulation 9.”.

12. Regulation 11A added

After regulation 11—

Add

“11A. Grant of licences

- (1) The Licensing Authority may grant a licence to undertake scheduled journeys on any or all of the routes to which the application relates.
- (2) The Licensing Authority may grant a licence under paragraph (1) only if the Licensing Authority are satisfied that—
 - (a) the applicant holds an air operator’s certificate;
 - (b) the applicant is able to meet at any time its actual and potential obligations established under realistic assumptions during the initial operation phase; and
 - (c) the applicant is able to meet its fixed and operational costs incurred from the operation according to its business plan submitted under regulation 6 and established under realistic assumptions, for the first 3 months of the initial operation phase, without taking into account any income from the operation.
- (3) The Licensing Authority may specify in the licence the routes on which scheduled journeys may be undertaken.

- (4) The Licensing Authority may attach any conditions the Licensing Authority think fit to a licence having regard to the circumstances of the case.
- (5) Without limiting paragraph (4), every licence must have the following conditions attached to it—
 - (a) the holder of the licence and any person having a financial interest in the business of the holder of the licence must not require any other person to—
 - (i) refuse booking facilities to any other holder of a licence; or
 - (ii) grant those facilities to that other holder only on onerous terms;
 - (b) the holder of the licence must, on any scheduled journey undertaken under the licence, perform all such reasonable services as the Postmaster General may from time to time require in respect of—
 - (i) the conveyance of mails; and
 - (ii) the conveyance of any persons who may be in charge of the conveyance of mails;
 - (c) the licence is valid only when the air operator’s certificate held by the holder of the licence is valid.
- (6) The remuneration for any service mentioned in paragraph (5)(b) is to be determined from time to time by agreement between the Postmaster General and the holder of the licence.
- (7) Any disputes and disagreements regarding the remuneration is subject to arbitration under the Arbitration Ordinance (Cap. 609).
- (8) In this regulation—

initial operation phase (營運首階段), in relation to a licence under this regulation, means a period of 24 months beginning on the day on which the first scheduled

journey to which the licence relates is intended to be undertaken.”.

13. Regulation 12 substituted

Regulation 12—

Repeal the regulation

Substitute

“12. Period licences remain in force

- (1) A licence granted under regulation 11A is valid for a period not exceeding 5 years as determined by the Licensing Authority, and that period begins on the day specified as the effective date in the licence.
- (2) If, on the expiry of a licence, an application to the Licensing Authority for the renewal of the licence is pending, the licence continues to be in force until the application is determined by the Licensing Authority.”.

14. Regulation 13 amended (provisional licences pending determination of application)

(1) Regulation 13—

ReNUMBER the regulation as regulation 13(1).

(2) Regulation 13(1)—

Repeal

“which shall remain in force until the application is determined”

Substitute

“to allow the applicant to use any aircraft for the carriage in Hong Kong of passengers, mail or cargo for hire or reward on any scheduled journey to which the application relates”.

(3) After regulation 13(1)—

Add

- “(2) Subject to paragraph (7), a provisional licence is valid for a period not exceeding 6 months as determined by the Licensing Authority, and that period begins on the day on which the provisional licence is granted.
- (3) If, on the expiry of the provisional licence, an application to the Licensing Authority for the renewal of the provisional licence is pending, the provisional licence continues to be in force until the application is determined by the Licensing Authority.
- (4) A provisional licence may be renewed once.
- (5) Subject to paragraph (7), a renewed provisional licence is valid for a period not exceeding 6 months as determined by the Licensing Authority, and that period begins on the day immediately after the day on which the existing provisional licence, but for its renewal, would expire.
- (6) Regulation 11A(3), (4), (5), (6) and (7) applies to a provisional licence as if it were a licence.
- (7) If, during the validity period of a provisional licence—
 - (a) the licence concerned is granted under regulation 11A, the provisional licence expires on the day immediately before the day on which the licence concerned begins to be valid;
 - (b) the application for the licence is refused by the Licensing Authority, the provisional licence expires on a date decided by the Licensing Authority, which must not be earlier than the day on which the Licensing Authority give a notice in respect of the refusal under regulation 15(2)(b); or
 - (c) the applicant for the licence gives a written notice to the Licensing Authority to withdraw the application, the provisional licence expires on the day on which the notice is given to the Licensing Authority.

- (8) A provisional licence may be granted or renewed on application to the Licensing Authority under this regulation.
- (9) The application must—
 - (a) in the case of renewal, be made before the expiry of the provisional licence to be renewed;
 - (b) be in the form and manner specified by the Licensing Authority; and
 - (c) be accompanied by the prescribed fee.”.

15. Regulations 13A and 13B added

After regulation 13—

Add

“13A. Renewal of licences

- (1) The holder of a licence may apply for the renewal of the licence, which may include a request for the variation of the routes on which scheduled journeys may be undertaken.
- (2) The application must—
 - (a) be made within 1 year before the expiry of the licence;
 - (b) be made in the form and manner specified by the Licensing Authority;
 - (c) be accompanied by any information the applicant considers relevant in supporting the position that the applicant is able to meet at any time its actual and potential obligations for a period of 12 months beginning on the renewal date; and
 - (d) be accompanied by the prescribed fee.

- (3) The Licensing Authority may renew the licence, with or without any variation of the routes, only if the Licensing Authority are satisfied that—
 - (a) the applicant holds an air operator’s certificate; and
 - (b) the applicant is able to meet at any time its actual and potential obligations for a period of 12 months beginning on the renewal date.
- (4) A licence renewed under this regulation is valid for a period not exceeding 5 years as determined by the Licensing Authority, and that period begins on the renewal date.
- (5) Regulation 11A(3), (4), (5), (6) and (7) apply to a licence renewed under this regulation.
- (6) Regulations 7, 8, 9 and 11 apply to an application under this regulation as if—
 - (a) in regulation 7(1), the words “regulation 6” had been substituted by “regulation 13A”; and
 - (b) in regulation 11(1), the words “grant, or to refuse to grant, a licence” had been substituted by “renew, or to refuse to renew, a licence”.
- (7) In this regulation—
renewal date (續牌日期), in relation to the renewal of a licence under this regulation, means the day immediately after the day on which the licence, but for the renewal, would expire.

13B. Variation of licences

- (1) The holder of a licence may apply for the variation of the licence in order to carry passengers, mail or cargo for hire or reward on scheduled journeys not specified in the licence (*new scheduled journey*).
- (2) The application must—

- (a) be made in the form and manner specified by the Licensing Authority;
 - (b) specify the routes on which the new scheduled journeys are intended to be undertaken;
 - (c) be accompanied by any information the applicant considers relevant in supporting the position that it is able to meet at any time its actual and potential obligations for a period of 12 months beginning on the day on which the first new scheduled journey to which the application relates is intended to be undertaken; and
 - (d) be accompanied by the prescribed fee.
- (3) The Licensing Authority may approve the application, or any part of it, only if they are satisfied that the applicant is able to meet at any time its actual and potential obligations for a period of 12 months beginning on the day on which the first new scheduled journey to which the approval relates is intended to be undertaken.
- (4) Regulations 7, 8, 9 and 11 apply to an application under this regulation as if—
- (a) in regulation 7(1), the words “regulation 6” had been substituted by “regulation 13B”; and
 - (b) in regulation 11(1), the words “grant, or to refuse to grant, a licence and their discretion to attach conditions to any licence” had been substituted by “approve, or to refuse to approve, an application under regulation 13B”.

16. Regulation 15 substituted

Regulation 15—

Repeal the regulation

Substitute

“15. Publication of decisions by Licensing Authority

- (1) The Licensing Authority must cause to be published in the Gazette the particulars of their decisions regarding—
- (a) an application for a licence under regulation 6, including an application for the grant of a licence under regulation 10;
 - (b) an application for a provisional licence or for the renewal of a provisional licence under regulation 13;
 - (c) the expiry of a provisional licence under regulation 13(7);
 - (d) an application for the renewal of a licence under regulation 13A;
 - (e) an application for the variation of a licence under regulation 13B;
 - (f) the revocation or suspension of a licence under regulation 15E(2)(a) or 16;
 - (g) the attachment of new conditions to a licence under regulation 15E(2)(b);
 - (h) the variation of existing conditions of a licence under regulation 15E(2)(c);
 - (i) an application for a temporary licence under regulation 15F; or
 - (j) the revocation of a temporary licence under regulation 15F.
- (2) The Licensing Authority must give a written notice of the decision to—
- (a) in the case of paragraph (1)(a), (b), (d), (e) or (i), the applicant;
 - (b) in the case of paragraph (1)(c), the holder of the provisional licence;

- (c) in the case of paragraph (1)(f), (g) or (h), the holder of the licence; or
- (d) in the case of paragraph (1)(j), the holder of the temporary licence.”.

17. Regulations 15A to 15F added

After regulation 15—

Add

“15A. Corporate licensees’ duties to provide audited financial statements and other information

- (1) This regulation applies to the holder of a licence who is a body corporate (*corporate licensee*).
- (2) A corporate licensee must provide to the Licensing Authority within 6 months after the end of a financial year the audited financial statements of the corporate licensee relating to that financial year.
- (3) The corporate licensee must notify the Licensing Authority of—
 - (a) any change in the ownership of any single shareholding which represents 10% or more of the total shareholding of the corporate licensee or of a holding company of the corporate licensee;
 - (b) any change in the entitlement to exercise, or control the exercise of, voting rights of any person (either alone or with any associated person) which represents 10% or more of the voting rights at the general meetings of the corporate licensee or of a holding company of the corporate licensee; and
 - (c) any change in the control of the corporate licensee, within 14 days after the change.
- (4) If a person who has control of the corporate licensee has entered into any share pledge agreement or similar

arrangement which, as a consequence of an event of default or occurrence of certain circumstances as set out in the agreement or arrangement, is capable of leading to any change referred to in paragraph (3)(a), (b) or (c), the person must, within 14 days after the person has entered into the agreement or arrangement, notify the Licensing Authority of that fact.

- (5) For the purposes of paragraphs (3) and (4)—
 - (a) *control* (控制權), in relation to a corporate licensee, means—
 - (i) having the capacity to control, either alone or with any associated person, the composition of the board of directors of the corporate licensee or of a holding company of the corporate licensee; or
 - (ii) either alone or with any associated person, being entitled to exercise, or control the exercise of, 30% or more of the voting rights at any general meeting of the corporate licensee or of a holding company of the corporate licensee;
 - (b) a change in the control of a corporate licensee occurs if a person who did not control the corporate licensee as at the relevant date controls the corporate licensee subsequent to that date by reason of a transfer or issue of shares, or a transfer of voting rights, in the corporate licensee or a holding company of the corporate licensee to that person.
- (6) For the purposes of paragraph (5), the composition of the board of directors of the corporate licensee or a holding company of the corporate licensee is regarded to be controlled by another person if that other person has the power to appoint or remove all or a majority of the directors without the consent of any other person.

- (7) For the purposes of paragraph (6), a person (*appointer*) is regarded as having power to appoint a director of the corporate licensee or a holding company of the corporate licensee if—
- (a) without the exercise of the power in a person's favour by the appointer, the person cannot be appointed as a director of the corporate licensee or a holding company of the corporate licensee; or
 - (b) it necessarily follows from a person being a director or other officer of the appointer that the person is appointed as a director of the corporate licensee or a holding company of the corporate licensee.
- (8) In this regulation—
- associated person* (相聯者) has the meaning given by section 18 of the Securities and Futures Ordinance (Cap. 571);
- holding company* (控股公司) has the meaning given by section 2 of the Companies Ordinance (Cap. 32).

15B. Licensees' duty to report inability to meet obligations

- (1) If the holder of a licence is likely to become unable to meet any of the holder's obligations to such an extent as to cause a material adverse effect on the operation of the air services being provided by the holder, the holder must forthwith report in writing all relevant facts, circumstances and information to the Licensing Authority.
- (2) If the holder of a licence intends to cease or ceases to operate any air services, the holder must forthwith notify the Licensing Authority in writing of that intention or cessation.

15C. Offences relating to notifications

- (1) The holder of a licence who does not comply with regulation 15A(2) or (3) or 15B(1) or (2) commits an offence and is liable—
 - (a) on summary conviction to a fine at level 6 and to imprisonment for 3 months; or
 - (b) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 2 years.
- (2) A person who does not comply with regulation 15A(4) commits an offence and is liable—
 - (a) on summary conviction to a fine at level 6 and to imprisonment for 3 months; or
 - (b) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 1 year.
- (3) A person who, in purported compliance with regulation 15A(2), (3) or (4) or 15B(1) or (2), knowingly or recklessly furnishes the Licensing Authority with any information that is false or misleading in a material particular commits an offence and is liable—
 - (a) on summary conviction to a fine at level 6 and to imprisonment for 3 months; or
 - (b) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 1 year.

15D. Powers of Licensing Authority to require information

- (1) The Licensing Authority may at any time assess the financial position of the holder of a licence and require the holder to provide any relevant information.
- (2) A person who, in purported compliance with a requirement made under paragraph (1), knowingly or recklessly furnishes the Licensing Authority with any information that is false or misleading in a material particular commits an offence and is liable—

- (a) on summary conviction to a fine at level 6 and to imprisonment for 3 months; or
- (b) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 1 year.

15E. Licensing Authority may revoke, etc. licences if financial position of licensees is not satisfactory

- (1) The Licensing Authority may take any action under paragraph (2) against the holder of a licence if—
 - (a) on an assessment under regulation 15D, the Licensing Authority are no longer satisfied that the holder is able to meet at any time its actual and potential obligations for a period of 12 months beginning on the date of the assessment;
 - (b) insolvency or similar proceedings are commenced against the holder; or
 - (c) the holder is wound up voluntarily.
- (2) The Licensing Authority may—
 - (a) revoke or suspend the licence;
 - (b) attach any new conditions to the licence; or
 - (c) vary any existing conditions of the licence.

15F. Temporary licences

- (1) If the Licensing Authority revoke a licence under regulation 15E, the holder of the licence may apply for a temporary licence.
- (2) The application must—
 - (a) be made within 1 month after the revocation;
 - (b) be made in the form and manner specified by the Licensing Authority; and
 - (c) be accompanied by the prescribed fee.

- (3) The Licensing Authority may grant a temporary licence only if the Licensing Authority are satisfied that there is a realistic prospect of a satisfactory financial reconstruction being undertaken by the holder of the licence within the validity period of the temporary licence.
- (4) The Licensing Authority may attach any condition the Licensing Authority think fit to a temporary licence.
- (5) Subject to paragraph (6), a temporary licence is valid for a period not exceeding 12 months as determined by the Licensing Authority, and that period begins on the day on which the temporary licence is granted.
- (6) The Licensing Authority may revoke a temporary licence if the Licensing Authority are no longer satisfied that there is a realistic prospect of a satisfactory financial reconstruction being undertaken by the holder of the licence within the validity period of the temporary licence.”.

18. Regulation 16 amended (revocation or suspension of licences)

- (1) Regulation 16(1)—
 - Repeal**
 - “the provisions of paragraph (2)”
 - Substitute**
 - “paragraphs (2), (2A), (2B) and (2C)”.
- (2) Regulation 16(1)—
 - Repeal**
 - “or 22” (wherever appearing).
- (3) Regulation 16—
 - Repeal paragraph (2)**
 - Substitute**

- “(2) Before revoking or suspending any licence under paragraph (1)(c), the Licensing Authority must give the holder of the licence a written notice specifying the ground on which the licence is proposed to be revoked or suspended.
- (2A) Within 7 days after receiving a written notice under paragraph (2), the holder of the licence may, in writing, request the Licensing Authority to hold an inquiry in public for the purpose of determining whether the licence is to be revoked or suspended.
- (2B) If the Licensing Authority receive a request under paragraph (2A), they must not revoke or suspend the licence until after the inquiry is completed.
- (2C) The Licensing Authority may revoke or suspend a licence under paragraph (1)(c) only if they consider that, owing to the frequency of the failure on the part of the holder to comply with any condition of the licence or to the failure having been wilful, the licence should be revoked or suspended.”.

19. Regulation 17 substituted

Regulation 17—

Repeal the regulation**Substitute****“17. Surrender of licences, etc.**

A licence, provisional licence or temporary licence may at any time be surrendered by the holder to the Licensing Authority for cancellation.”.

20. Regulations 18 and 19 repealed

Regulations 18 and 19—

Repeal the regulations.**21. Regulation 20A amended (operating permits)**

- (1) Regulation 20A(1)—

Repeal

everything after “operating permit to”

Substitute

“a person applying for the permit for the purposes of regulation 3(1)(a) or (b)(ii) and, in performing this function, the Director-General of Civil Aviation must have regard to any relevant air services arrangements.”.

- (2) Regulation 20A(5)—

Repeal

everything after “by notice to the”

Substitute

“holder of an operating permit, revoke, suspend or vary the operating permit or substitute a new operating permit for a previous operating permit—

- (a) where this is necessary or expedient to give effect to any variation in any relevant air services arrangements;
- (b) on sufficient ground being shown to the satisfaction of the Director-General of Civil Aviation after due inquiry; or
- (c) at the request of the holder of the operating permit.”.

22. Regulation 22 amended (penalties)

- (1) Regulation 22, heading—

Repeal**“Penalties”****Substitute**

“Restriction on use of aircraft for provision of air services”.

- (2) Regulation 22(1)—

Repeal

“it shall not be lawful for any person to use any aircraft for the provision in Hong Kong or”

Substitute

“a person must not use any aircraft for the provision in Hong Kong”.

- (3) Regulation 22—

Repeal paragraph (2)**Substitute**

“(2) A person who contravenes this regulation commits an offence and is liable—

- (a) on summary conviction to a fine at level 6 and to imprisonment for 3 months; or
- (b) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 2 years.”.

23. Regulation 27 amended (transfer and assignment of licences, operating permits and permits)

- (1) Regulation 27, heading, after “
- licences,**
- ”—

Add

“**temporary licences,**”.

- (2) Regulation 27, after “A licence,”—

Add

“temporary licence,”.

- (3) Regulation 27, proviso—

Repeal

“holder of a licence,” (wherever appearing)

Substitute

“holder of an”.

- (4) Regulation 27, proviso—

Repeal

“the Licensing Authority or the Director-General of Civil Aviation (as the case may be) for a new licence, operating permit or permit, be entitled to provide the air services authorized by the existing licence,”

Substitute

“the Director-General of Civil Aviation for a new operating permit or permit, be entitled to provide the air services authorized by the existing”.

24. Regulation 28 substituted

Regulation 28—

Repeal the regulation**Substitute****“28. Information relating to applicants for licences, etc. to be treated as confidential**

- (1) These regulations do not require the disclosure by an applicant for, or the holder of, a licence, temporary licence, operating permit or permit to any person other than the Licensing Authority or the Director-General of Civil Aviation (as the case may be) of information as to the financial resources of the applicant or the holder.
- (2) The Licensing Authority or the Director-General of Civil Aviation must treat the information as confidential.
- (3) Paragraph (2) does not prohibit the disclosure of the information—

- (a) to a person appointed under regulation 4(6)(b) to assist the Licensing Authority in discharging the duties of the Licensing Authority; and
- (b) for the purposes of discharging those duties.”.

25. Regulation 29 amended (when provisional licences are deemed to be licences)

Regulation 29—

Repeal

“regulation 5(2) and (3), regulations 19, 26, 27 and 30 shall”

Substitute

“regulations 15A, 15B, 15C, 15D, 16, 26, 27, 28 and 30 are to”.

26. Regulation 30A amended (power of Director-General or authorized person to prohibit flight)

- (1) Regulation 30A(1)(a)—

Repeal

“commander”

Substitute

“pilot in command”.

- (2) Regulation 30A—

Repeal paragraph (3)

Substitute

“(3) A person who, being the operator or pilot in command of any aircraft, contravenes any direction given to the person under paragraph (1)(a) commits an offence and is liable—

- (a) on summary conviction to a fine at level 6 and to imprisonment for 3 months; or

- (b) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 2 years.”.
- (3) After regulation 30A(3)—

Add

“(4) In this regulation—

pilot in command (指揮飛機的機師) has the meaning given by Article 98(1) of the Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C).”.

27. Regulation 31A added

Part IV, after regulation 31—

Add

“31A. Refund of fees

If—

- (a) a prescribed fee is paid in respect of an application under regulation 6 (other than an application for the grant of a licence under regulation 10) or 13A; but
- (b) either—
 - (i) the application is refused by the Licensing Authority; or
 - (ii) the applicant withdraws the application by giving a written notice to this effect to the Licensing Authority,

the Licensing Authority must refund an amount of \$96,000 to the applicant.”.

28. Regulation 32A added

Part V, before regulation 33—

Add

“32A. Transitional arrangements

- (1) A licence granted under regulation 5 of the Pre-amended Regulation that would have been valid on the commencement date of the Amendment Regulation had the Amendment Regulation not come into operation ceases to have effect under the Pre-amended Regulation on that date.
- (2) Subject to paragraph (3), the licence—
 - (a) is regarded as a licence granted under regulation 11A and these regulations have effect in respect of the licence accordingly; and
 - (b) expires on the date on which the licence would have expired had the Amendment Regulation not come into operation.
- (3) If a person holds more than one licence to which paragraph (1) applies, those licences (*existing licences*) are deemed to have been combined as a single licence and the effects of the single licence are as follows—
 - (a) the scheduled journeys that the person is entitled to undertake under the existing licences will not in any way be affected solely because of the deemed combination;
 - (b) the single licence is deemed to have been granted under regulation 11A in respect of all the scheduled journeys covered by the existing licences and these regulations have effect in respect of the single licence accordingly;
 - (c) the single licence expires—
 - (i) on the date on which the existing licences would have expired had the Amendment Regulation not come into operation; or
 - (ii) if the expiry dates of the existing licences are different, on the latest of those dates; and

- (d) the conditions attached to each of the existing licences continues to apply only in respect of the scheduled journeys covered by that licence.
- (4) The Licensing Authority may, on application by a person mentioned in paragraph (3), replace, without charge, the existing licences with a single licence the effect of which is the same as a single licence deemed under paragraph (3) to have been granted under regulation 11A.
- (5) If, immediately before the commencement date of the Amendment Regulation, an application for a licence under regulation 6 of the Pre-amended Regulation is still pending—
 - (a) the Licensing Authority must not process the application any further after the commencement; and
 - (b) the application is to be regarded as being withdrawn by the applicant.
- (6) In this regulation—

Amendment Regulation (《修訂規例》) means the Air Transport (Licensing of Air Services) (Amendment) Regulation 2011 (L.N. of 2011);

Pre-amended Regulation (《未修訂規例》) means the Air Transport (Licensing of Air Services) Regulations (Cap. 448 sub. leg. A) as in force immediately before the commencement date of the Amendment Regulation.”.

29. Schedule substituted

The Schedule—

Repeal the Schedule
Substitute

“Schedule [reg. 1]

Fees

Item	Matter	Fee
1.	Application for a licence under regulation 6 (other than an application for the grant of a licence under regulation 10)	\$230,500
2.	Application for the grant of a licence under regulation 10	\$91,800
3.	Application for a provisional licence or renewal of a provisional licence under regulation 13	\$31,200
4.	Application for the renewal of a licence under regulation 13A	\$193,700
5.	Application for the variation of a licence under regulation 13B	\$109,100
6.	Application for a temporary licence under regulation 15F	\$72,200”.

Clerk to the Executive Council

COUNCIL CHAMBER

2011

Explanatory Note

This Regulation amends the Air Transport (Licensing of Air Services) Regulations (Cap. 448 sub. leg. A) (*principal Regulation*). The main purposes of the amendments are set out below.

Application for and granting of licences

2. Under the principal Regulation in force immediately before this Regulation comes into operation (*pre-amended Regulation*), a person applying for a licence is required to submit an application form and information as the Air Transport Licensing Authority (*Licensing Authority*) may reasonably require for the purposes of the application.
3. Under the principal Regulation as amended by this Regulation (*amended Regulation*), the applicant is required to submit a business plan together with the application. The business plan must set out the details of the business of the applicant. The Licensing Authority, when determining the application, must have regard to the financial capability of the applicant (see new regulation 6 in section 7 and new regulation 11A in section 12).
4. This Regulation also provides for the procedures regarding applications for the renewal of the licences and revises the provision regarding the grant of provisional licences (see section 14 and new regulation 13A in section 15).

General policy of the Licensing Authority in granting licences

5. Under the amended Regulation, when deciding whether to grant a licence or not, the Licensing Authority are no longer required to concern themselves with the coordination of air services or uneconomical overlapping. Their main concerns will be the financial capability of the applicant (see new regulation 11 in section 11).

From route-based to airline-based

6. Under the pre-amended Regulation, a licence is granted to a person in respect of designated scheduled journeys. If the person wants to use any aircraft on a scheduled journey not covered by the licence (*new scheduled journey*), the person will have to apply for a new licence to use the aircraft on the new scheduled journey. Therefore, a person may hold more than one licences.
7. Under the amended Regulation, the person will no longer need to apply for a new licence. If the person wants to use any aircraft on a new scheduled journey, the person may make an application for the variation of the licence (see new regulation 13B in section 15).

Notification requirements

8. To ensure that the Licensing Authority are in a position to assess the continuing financial capability of a licence holder to operate the air services covered by the licence, the licence holder is required to notify the Licensing Authority of certain matters related to its financial position (for example, a change in the shareholding in the licence holder). The Licensing Authority are also empowered to assess the financial position of the licence holder and to require the licence holder to provide relevant information. Failure to comply with the requirements is an offence (see new regulations 15A, 15B, 15C and 15D in section 17).
9. If the financial position of a licence holder is not satisfactory, the Licensing Authority may revoke or suspend the licence, attach new licence conditions or vary any existing licence conditions. If a licence is revoked, the Licensing Authority may grant a temporary licence to the person who held the licence that has been revoked (see new regulations 15E and 15F in section 17).

Forms

10. This Regulation repeals the forms prescribed in the pre-amended Regulation. Where appropriate, the particulars in the forms are set out in the relevant provisions or a form specified by the Licensing

Authority will be used (see new regulations 6(2)(a) and 7 in section 7, section 8(3), new regulation 9 in section 9, new regulation 15 in section 16 and sections 18 and 29).

Fees

11. This Regulation provides for the fees to be paid in respect of applications submitted under the principal Regulation (see new Schedule in section 29).
12. Fees paid in respect of an application for licence and for the renewal of the licence will be partly refunded if the application is refused by the Licensing Authority or withdrawn by the applicant (see new regulation 31A in section 27).

Penalties

13. This Regulation amends the penalties imposed under the principal Regulation (see sections 4(3), 22(3) and 26(2)).

Transitional arrangements

14. Licences granted under the pre-amended Regulation will be regarded as licences granted under the amended Regulation. An application for licence (including an application for an emergency grant of a licence) submitted under the pre-amended Regulation and pending at the commencement of this Regulation will not be processed any further by the Licensing Authority (see new regulation 32A in section 28).

Others

15. Under the pre-amended Regulation, a person (usually an airline) who uses any aircraft registered in Hong Kong to provide air services in Hong Kong must obtain a licence from the Licensing Authority, regardless of whether the person is based in Hong Kong or not. Under the amended Regulation, a person who is not based in Hong Kong may provide the service if the person holds a document

equivalent to an air operator's certificate and uses the aircraft in accordance with an operating permit (see section 4(2) and (4)).

16. Regulation 4(6)(b) of the principal Regulation is amended to allow the Chief Executive to appoint other personnel (such as consultants or advisors) to assist the Licensing Authority in discharging their duties (see section 5).
17. Section 24 amends regulation 28 of the principal Regulation to provide that information relating to an applicant for a licence or a holder of a licence may be disclosed in certain circumstances (see new regulation 28 in section 24).
18. Consequential upon the amendments set out above, textual amendments to the principal Regulation are required. This Regulation also makes other minor amendments to the principal Regulation.

Detailed Requirements for Applications for Licences

The detailed requirements for applications for licences are as follows –

- (a) each applicant should be required to submit a business plan for, at least, the first 2 years of operation;
- (b) the business plan should be required to also detail the applicant's financial interests in any other commercial activities in which the applicant is engaged either directly or through related undertakings;
- (c) the applicant should also be required to provide all relevant information, in particular the following data –
 - (i) the most recent management accounts and, if available, the latest audited financial statements;
 - (ii) a projected statement of financial position, including a projected statement of comprehensive income, for the start-up phase and the first 2 years of operation;
 - (iii) the basis for projected expenditure and income figures on such items as fuel, fares and rates, salaries, maintenance, depreciation, exchange rate fluctuations, airport charges, air navigation charges, ground handling costs, insurance, etc.;
 - (iv) traffic/revenue forecasts;
 - (v) details of the start-up costs incurred in the period from submission of application to commencement of operations and an explanation of how it is proposed to finance these costs;
 - (vi) details of existing and projected sources of finance and supporting documentation;

- (vii) details of shareholders, including type of shares held or to be held, any agreement(s) or arrangement(s) that shareholder(s) have entered into which may restrict the future issue or transfer of shares (such as a share pledge agreement) or require future issue of shares (such as a share option agreement) and the Articles of Association. If the applicant is part of a group of undertakings, information on the relationship between them;
- (viii) projected statement of cash flows and cash flows forecasts and requirements for the start-up phase and the first 2 years of operation; and
- (ix) details of the financing of aircraft purchase/leasing including, in the case of leasing, the terms and conditions of contract.

Detailed Notification Requirements for Licence Holders

A licence holder should have the onus to notify ATLA –

- (a) within 14 days of any change in the ownership of any single shareholding which represents 10% or more of the total shareholding of the licence holder or a holding company⁷ of the licence holder;
- (b) within 14 days of any change in the entitlement to exercise or control the exercise of the voting rights of any person who either alone or with any associated person⁸ which represents 10% or more of the voting rights at the general meetings of the licence holder or a holding company of the licence holder; and
- (c) within 14 days of any change in the control of the licence holder;

whereas a person having a control in the licence holder should have the onus to notify ATLA –

- (d) within 14 days after it has entered in any share pledge agreement or similar arrangement, which, as a consequence of an event of default or occurrence of certain circumstances as set out in the agreement or arrangement, is capable of leading to any change referred to in (a), (b) or (c) above⁹.

7 “Holding company” has the meaning ascribed to it in section 2(7) of the Companies Ordinance, Cap.32.

8 “Associated person” has the meaning ascribed to it in section 18 of the Securities and Futures Ordinance, Cap. 571.

9 A person who does not comply with the requirement commits an offence and is liable –

- (a) in the case of summary conviction, a fine not exceeding \$100,000 or imprisonment for a term not exceeding 3 months or both such fine and such imprisonment; and
- (b) in the case of conviction on indictment, a fine not exceeding \$1,000,000 or imprisonment for a term not exceeding 1 year or both such fine and such imprisonment.

2. For the purposes of paragraph 1 above,

(a) “control” in a licence holder means –

- (i) to have the capacity to control the composition of the board of directors of the licence holder or a holding company of the licence holder; or
- (ii) to be entitled to exercise, or control the exercise of, 30% or more of the voting rights at the general meetings of the licence holder or a holding company of the licence holder.

“Control” includes control by a person alone or with any associated person.

(b) “a change in the control of a licence holder” occurs if a person or body incorporate who as at the relevant date does not have the ability to do paragraph 2(a)(i) or (ii) above but subsequent to that date that person or body incorporate has the ability to do so by reason of transfer (or issue) of shares or voting rights in the licence holder or in the holding company of the licence holder to that person or body incorporate.

(c) For the purposes of paragraph (2)(a)(i), a person or a person together with any associated persons (“first person”) has control of the composition of the board of directors of a licence holder or a holding company of the licence holder (“second person”) if the first person has the power to appoint or remove all or a majority of the directors of the second person without the consent of any other person.

The first person is regarded to have power to make the appointment if –

- (i) a person cannot be appointed as a director of the second person without the exercise in his favour by the first person of the power of appointment; or
- (ii) it necessarily follows from a person being a director or other officer of the first person that the person is appointed as a director of the second person.

3. A licence holder should be required to provide to ATLA every financial year the audited financial statements relating to the previous financial year no later than six months following the last day of the respective financial year.

4. Where considered necessary by ATLA in exercise of its general power to assess at any time the financial position of a licence holder, a licence holder may be required to submit to ATLA relevant information.

5. If a licence holder is likely to become unable to meet its obligations to such an extent as to cause material adverse effect on its operations, it should be required to forthwith report in writing all relevant facts, circumstances and information to ATLA.

6. If a licence holder intends to cease or ceases to operate air services, it should be required to forthwith notify ATLA in writing of that intention or fact.

Details of Proposed Fees

The proposed fees to be levied under the proposed airline-based regime will replace the existing ones in the Air Transport (Licensing of Air Services) Regulations (Cap 448A)¹⁰ –

Fee Description	HK\$
(1) Application for a new licence (other than application for emergency grant of a licence)	230,500
(2) Application for renewal of a licence	193,700
(3) Application for variation of a licence	109,100
(4) Application for a temporary licence (not exceeding 12 months upon revocation of a licence)	72,200
(5) Application for a provisional licence ¹¹ (not exceeding 6 months)	31,200
(6) Application for emergency grant of a licence	91,800

2. If ATLA does not approve a new licence application or renew a licence, an amount of \$96,000 will be refunded to the applicant or licence holder.

¹⁰ At present a licence fee of \$5,650 plus a fee of \$5,170 in respect of each point on the route or routes authorized by the licence, excluding Hong Kong, are payable by the applicants/licence holders upon the granting of a licence by ATLA.

¹¹ An applicant can only apply for a provisional licence when the applicant has submitted an application for a licence for which the applicant needs to pay a fee.

Chapter:	448A	AIR TRANSPORT (LICENSING OF AIR SERVICES) REGULATIONS	Gazette Number	Version Date
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		Empowering section		30/06/1997
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(Cap 448, sections 12 and 13(6))*

[4 November 1949]

(Originally G.N.A. 238 of 1949)

Note:

* These regulations were originally made under the Air Navigation Act 1936 (1936 c. 44 s. 5 U.K.) as applied by the Colonial Air Navigation (Application of Acts) Order 1937 (S.R. & O. 1937/378 U.K.) and the Colonial Air Navigation (Application of Acts) (Amendment) Order 1947 (S.R. & O. 1947/2738 U.K.). See now sections 12 and 13(6) of the Civil Aviation Ordinance, enacted in 1994 (Cap 448).

Regulation:	1	Interpretation	L.N. 326 of 2000	01/01/2001
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PART I

INTERPRETATION

In these regulations and the Schedule, unless the context otherwise requires-

"air service" (航空服務) means any service performed by any aircraft for hire or reward:

Provided that a member of a club carried in an aircraft belonging to the club for the purposes of instruction shall not, if the instructor is also a member of the club, be deemed to be carried for hire or reward, notwithstanding that payment is made for such instruction or carriage;

"air services arrangements" (航空服務安排) means-

- (a) any inter-governmental air services agreement or arrangements; and
- (b) any agreement between operators concerning air services,

and includes any such agreement or arrangements between the Government of the Hong Kong Special Administrative Region and the Central People's Government; (L.N. 22 of 1985; 36 of 1999 s. 3)

"authorized person" (獲授權人士) means any person authorized by the Director-General of Civil Aviation, either generally or in relation to a particular case or class of cases; (L.N. 140 of 1969; L.N. 326 of 2000)

"Convention on International Civil Aviation" (《國際民用航空公約》) and "International Air Services Transit Agreement" (《國際民用航空運輸過境協議》) mean respectively, the Convention and the Agreement so styled which, on 7 December 1944, were opened for signature at the International Civil Aviation Conference held at Chicago; (36 of 1999 s. 3)

"Director-General of Civil Aviation" (民航處處長) means the person for the time being lawfully discharging in Hong Kong the functions of the office of Director-General of Civil Aviation; (36 of 1999 s. 3; L.N. 326 of 2000)

"licence" (牌照) means a licence granted under regulation 5;

"Licensing Authority" (牌照局) means the Air Transport Licensing Authority constituted by regulation 4;

"operating permit" (經營許可證) means a licence granted under regulation 20A; (L.N. 22 of 1985)

"permit" (許可證) means a permit granted under regulation 23;

"provisional licence" (臨時牌照) means a licence granted under regulation 13; (G.N.A. 165 of 1953; L.N. 105 of 1995)

"scheduled journey" (編定航程) means one of a series of journeys which are undertaken between the same two places and which together amount to a systematic service operated in such a manner that the benefits thereof are available to members of the public from time to time seeking to take advantage of them.

(L.N. 22 of 1985; 36 of 1999 s. 3)

Regulation:	2	Exceptions		30/06/1997
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PART II

LICENCES AND OPERATING PERMITS FOR SCHEDULED JOURNEYS

Part II shall not apply to the carriage of passengers, mail or cargo by air for hire or reward upon journeys other than scheduled journeys.

Regulation:	3	Penalties	36 of 1999	01/07/1997
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Remarks:

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

(1) Subject to the provisions of these regulations, no person shall use any aircraft for the carriage in Hong Kong of passengers, mail or cargo for hire or reward upon any scheduled journey between two places, one of which is in Hong Kong, except under and in accordance with the provisions of-

- (a) in the case of an aircraft registered in a country or place other than Hong Kong, an operating permit which has been granted to the operator of the aircraft; (36 of 1999 s. 3)
- (b) in the case of an aircraft registered in Hong Kong, a licence or provisional licence granted by the Licensing Authority. (36 of 1999 s. 3)

(2) Any person who uses any aircraft in contravention of the provisions of this regulation shall be liable on conviction in the case of a first offence to a fine of \$7000 or to imprisonment for 3 months or to both such fine and such imprisonment, and in the case of a second or subsequent offence to a fine of \$70000 or to imprisonment for 2 years or to both such fine and such imprisonment. (L.N. 140 of 1969)

(3) The provisions of this regulation shall not apply in respect of the aircraft of any State, which is a party to the International Air Services Transit Agreement, which fly across Hong Kong without landing, or land in Hong Kong in accordance with the provisions of that Agreement. (36 of 1999 s. 3)

(4) Notwithstanding the provisions of paragraph (1), a person may use an aircraft under and in accordance with the provisions of-

- (a) a licence granted by the Licensing Authority under regulation 5; or
- (b) a provisional licence granted by the Licensing Authority under regulation 13,

if such licence or provisional licence, as the case may be, was granted before the commencement of the Air Transport (Licensing of Air Service) (Amendment) Regulations 1969 (L.N. 140 of 1969), other than regulation 10 thereof. (L.N. 140 of 1969)

Regulation:	4	The Air Transport Licensing Authority	L.N. 17 of 2005	08/02/2005
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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) (Repealed L.N. 215 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)
- (8) Subject to the provisions of these regulations, the Licensing Authority may determine their own procedure. (L.N. 215 of 2004)

(36 of 1999 s. 3)

Regulation:	5	Issue of licences	L.N. 38 of 2011	01/06/2011
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(1) The Licensing Authority may grant to any person applying therefor a licence to carry passengers, mail or cargo by air for hire or reward on such scheduled journeys, and subject to such conditions, as may be specified in the licence.

(2) The Licensing Authority may attach such conditions to any licence as they may think fit having regard to the nature and circumstances of the application therefor.

(3) It shall be a condition of every licence that-

- (a) the holder of the licence and any person having a financial interest in the business of the holder of the licence shall refrain from stipulating that any other person shall-
 - (i) refuse booking facilities to any other holder of a licence;
 - (ii) grant such facilities to such other holder only on onerous terms; and
- (b) the holder of the licence shall perform all such reasonable services as the Postmaster General may from time to time require in regard to the conveyance of mails (and of any persons who may be in charge thereof) upon journeys made under the licence. The remuneration for any such services shall be such as may from time to time be determined by agreement between the Postmaster General and the holder of the licence:

Provided that any disputes and disagreements shall be subject to arbitration under the Arbitration Ordinance (Cap 609). (17 of 2010 s. 112)

Regulation:	6	Applications for licences		30/06/1997
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Applications for licences shall be made in the form and manner, and shall contain the particulars prescribed in Form 1 in the Schedule. Every applicant shall furnish to the Licensing Authority such further information as the Licensing Authority may reasonably require for the discharge of their duties in relation to the application.

Regulation:	7	Publication of applications		30/06/1997
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The Licensing Authority shall cause to be published, in the manner prescribed in Form 2 in the Schedule such particulars of any applications for licences received by them as are prescribed in the said Form 2.

Regulation:	8	Objections and representations	36 of 1999	01/07/1997
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Remarks:

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

Responsible persons or bodies who may reasonably be considered by the Chief Executive to have an interest private or public in the matter of the issue or refusal of a licence may, in the form and manner, and within the time, prescribed in Form 3 in the Schedule, make representations or objections with regard to any application for a licence.

(36 of 1999 s. 3)

Regulation:	9	Public and private inquires	10 of 2005	08/07/2005
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The Licensing Authority may, if they think fit, for the purpose of determining applications for licences, hold inquiries in public or in private and shall hold an inquiry in public if the applicant, or any person who has duly made an objection, requires the Licensing Authority, by such notice, in such form, as is prescribed in Form 3 in the Schedule so to do. Before holding any such inquiry the Licensing Authority shall give to the applicant and to any person who has duly made representations or objections with regard to the application, such notice, in such form, as is prescribed in Form 4 and shall give the applicant and any such person an opportunity of being heard at the inquiry.

(10 of 2005 s. 206)

Regulation:	10	Emergency applications		30/06/1997
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Where an application is made to the Licensing Authority for a licence to remain in force for a period not exceeding 30 days and they are satisfied that it is in the public interest that the application should be determined with expedition, they may determine the application and grant a licence accordingly; and the provisions of this Part as to the publication of particulars of applications, the making of objections and representations, and the holding of inquiries at the instance of the applicant or an objector shall not in that case apply.

Regulation:	11	General policy of Licensing Authority		30/06/1997
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In exercising their discretion to grant, or to refuse, a licence and their discretion to attach conditions to any licence the Licensing Authority shall have regard to the co-ordination and development of air services generally with the object of ensuring the most effective service to the public while avoiding uneconomical overlapping and generally to the interests of the public, including those of persons requiring or likely to require facilities for air transport, as well as those of persons providing such facilities. In particular the Licensing Authority shall have regard to the following matters-

- (a) the existence of other air services in the area through which the proposed services are to be operated;
- (b) the demand for air transport in that area;
- (c) the degree of efficiency and regularity of the air services, if any, already provided in that area, whether by the applicant or by other operators;
- (d) the period for which such services have been operated by the applicant or by other operators;
- (e) the extent to which it is probable that the applicant will be able to provide a satisfactory service in respect of safety, continuity, regularity of operation, frequency, punctuality, reasonableness of charges, and general efficiency;
- (f) the financial resources of the applicant;
- (g) the type of aircraft proposed to be used;
- (h) the remuneration and general conditions of employment of aircrew and other personnel employed by the applicant,

and the Licensing Authority shall take into consideration any objections or representations duly made in accordance with the provision of these regulations.

Regulation:	12	Period licences remain in force		30/06/1997
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The Licensing Authority may grant licences to remain in force for such period, not exceeding 5 years, as they may in each case determine; commencing on the date on which the licence is expressed to take effect:

Provided that if, on the date of the expiration of a licence, an application to the Licensing Authority is pending for the grant of a new licence in substitution for an existing licence held by the applicant, the existing licence shall continue in force until the application is granted or refused.

Regulation:	13	Provisional licences pending determination of application		30/06/1997
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The Licensing Authority may if they think fit, pending the determination of an application for a licence, grant to the applicant a provisional licence which shall remain in force until the application is determined.

Regulation:	14	(Repealed L.N. 105 of 1995)		30/06/1997
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Regulation:	15	Publication of decisions by Licensing Authority		30/06/1997
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The Licensing Authority shall cause to be published in the manner prescribed in Form 5 in the Schedule such particulars of their decisions on applications for licences and of their decisions to revoke or suspend a licence as are prescribed in the said Form 5.

Regulation:	16	Revocation or suspension of licences		30/06/1997
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- (1) Subject to the provisions of paragraph (2), the Licensing Authority may revoke or suspend a licence if-
- (a) the holder of the licence has, since the licence was granted, been convicted of an offence against regulation 3 or 22; or
 - (b) where the holder of the licence is a body corporate, any officer of that body corporate has, since the licence was granted, been convicted, in his capacity as such officer, of an offence against regulation 3 or 22; or
 - (c) the holder of the licence has failed to comply with any condition subject to which the licence was granted.

(2) Before revoking or suspending any licence under paragraph (1)(c), the Licensing Authority shall give to the holder of the licence such notice as is prescribed in Form 6 in the Schedule specifying the grounds upon which it is proposed to revoke or suspend the licence, and shall not revoke or suspend the licence unless they are satisfied, after holding a public inquiry if the holder of the licence (by such notice, in such form as is prescribed in the said Form 6) requires them so to do, that, owing to the frequency of the failure on the part of the holder to comply with conditions or to the failure having been wilful, the licence should be revoked or suspended.

(3) In paragraph (1)(b), "officer" (高級人員) means a director, general manager, secretary or other similar officer and includes any person, who with the authority of the body corporate, acts as such officer.

Regulation:	17	Surrender of licences		30/06/1997
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A licence may at any time be surrendered by the holder to the Licensing Authority for cancellation. If, during the currency of a licence, the holder applies to the Licensing Authority for a new licence in substitution for the current licence, he shall, if a new licence is granted, surrender the current licence for cancellation on the date from which the new licence is expressed to take effect.

Regulation:	18	Licence fees		30/06/1997
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There shall be paid to the Director of Accounting Services in respect of every licence a fee of \$5650 plus a fee of \$5170 in respect of each point on the route or routes authorized by the licence, excluding Hong Kong.
(L.N. 105 of 1995)

Regulation:	19	Returns from licensees		30/06/1997
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The holder of a licence shall, if required by the Licensing Authority, make a return in writing to the Licensing Authority within a specified time giving in respect of a specified period the particulars set out in Form 7 in the Schedule with regard to all air services authorized by the licence.

(L.N. 28 of 1973)

Regulation:	20	Annual report of Licensing Authority	36 of 1999	01/07/1997
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Remarks:

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

The Licensing Authority shall make an annual report to the Chief Executive as to the exercise of their functions during the year.

(36 of 1999 s. 3)

Regulation:	20A	Operating permits	L.N. 326 of 2000	01/01/2001
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(1) The Director-General of Civil Aviation may grant an operating permit to an operator and, in the exercise of his functions under this paragraph, shall have regard to any relevant air services arrangements.

(2) An operating permit shall contain such conditions as the Director-General of Civil Aviation may consider necessary or expedient including such conditions as he may consider necessary or expedient to give effect to any air services arrangements.

(3) Subject to paragraphs (4) and (5) an operating permit shall be in force for such period as may be specified therein commencing with the date on which the permit is expressed to take effect.

(4) The Director-General of Civil Aviation may, if he thinks fit, provisionally suspend an operating permit pending inquiry into or consideration of the case.

(5) The Director-General of Civil Aviation may, at any time, by notice to the operator, revoke, suspend or vary an operating permit or substitute a new operating permit for a previous operating permit-

(a) where this is necessary or expedient to give effect to any variation in the air services arrangements; or

(b) on sufficient ground being shown to his satisfaction after due inquiry.

(L.N. 22 of 1985; L.N. 326 of 2000)

Regulation:	21	Exceptions		30/06/1997
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PART III

PERMITS FOR JOURNEYS OTHER THAN SCHEDULED JOURNEYS

Part III shall not apply to the carriage of passengers, mail or cargo by air for hire or reward on scheduled journeys.

Regulation:	22	Penalties	L.N. 326 of 2000	01/01/2001
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(1) Subject to the provisions of these regulations, it shall not be lawful for any person to use any aircraft for the provision in Hong Kong or of any air service except under, and in accordance with the conditions of, a permit granted by the Director-General of Civil Aviation. (L.N. 326 of 2000)

(2) Any person who uses any aircraft in contravention of the provisions of this regulation shall be liable on conviction in the case of a first offence to a fine of \$4000 or to imprisonment for 3 months or to both such fine and such imprisonment and in the case of a second or subsequent offence to a fine of \$32000 or to imprisonment for 2 years or to both such fine and such imprisonment.

(3) The provisions of this regulation shall not apply in respect of any journey performed on the authority of Article 5 of the Convention on International Civil Aviation if the aircraft performing the journey flies across Hong Kong without landing or lands in Hong Kong for non-traffic purposes only, but shall apply in respect of any such journey if the aircraft performing the journey takes on or discharges passengers, cargo or mail in Hong Kong. (G.N.A. 187 of 1950)

(36 of 1999 s. 3)

Regulation:	23	Issue of permits	L.N. 326 of 2000	01/01/2001
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(1) The Director-General of Civil Aviation may grant to any person applying therefor a permit to use aircraft for the provision in Hong Kong of such air services (other than such a service as is referred to in regulation 3(1)) for such period and on such conditions as may be specified in the permit. (36 of 1999 s. 3)

(2) The Director-General of Civil Aviation may attach such conditions to any permit as he may think fit having regard to the nature and circumstances of the application therefor.

(L.N. 326 of 2000)

Regulation:	24	Applications for permits	L.N. 326 of 2000	01/01/2001
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Applications for permits shall be made in such form, and shall contain such information as the Director-General of Civil Aviation may require.

(L.N. 326 of 2000)

Regulation:	25	Revocation or suspension of permits	L.N. 326 of 2000	01/01/2001
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- (1) The Director-General of Civil Aviation may revoke or suspend any permit if- (L.N. 326 of 2000)
- (a) the holder of the permit has, since the permit was granted, been convicted of an offence against regulation 3 or 22; or
 - (b) where the holder of the permit is a body corporate, any officer of that body corporate has, since the permit was granted, been convicted, in his capacity as such officer, of an offence against regulation 3 or 22; or
 - (c) the holder of the permit has failed to comply with any condition subject to which the permit was granted.

(2) In paragraph (1)(b), "officer" (高級人員) means a director, general manager, secretary or other similar officer and includes any person who, with the authority of the body corporate, acts as such officer.

Regulation:	26	Compliance with air navigation and transport laws and regulations by licence, operating permit and permit holders	36 of 1999	01/07/1997
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Remarks:

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

PART IV

GENERAL PROVISIONS

It shall be a condition of every licence, operating permit or permit that the requirements of any law or instrument having the force of law, for the time being in force in Hong Kong, relating to air navigation or air transport shall be complied with at all times during the currency of the licence, operating permit or permit in connexion with all journeys made under the licence, operating permit or permit.

(L.N. 140 of 1969; 36 of 1999 s. 3)

Regulation:	27	Transfer and assignment of licences, operating permits and permits	L.N. 326 of 2000	01/01/2001
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A licence, operating permit or permit shall not be capable of being transferred or assigned:

Provided that in the event of the death, incapacity, bankruptcy, sequestration or liquidation of the holder of a licence, operating permit or permit, or of the appointment of a receiver or manager or trustee in relation to the business of the holder of a licence, operating permit or permit the person for the time being carrying on that business shall, if within 14 days of his commencing so to do, he makes application to the Licensing Authority or the Director-General of Civil Aviation (as the case may be) for a new licence, operating permit or permit, be entitled to provide the air services authorized by the existing licence, operating permit or permit subject to the conditions thereof, until the application is determined.

(L.N. 140 of 1969; L.N. 177 of 1971; L.N. 22 of 1985; L.N. 326 of 2000)

Regulation:	28	Information regarding financial resources of an applicant to be treated as confidential	L.N. 326 of 2000	01/01/2001
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Nothing in these regulations shall require the disclosure by any applicant for a licence, operating permit or permit to any person other than the Licensing Authority or the Director-General of Civil Aviation (as the case may be)

of information as to the financial resources of the applicant and any such information received by the Licensing Authority or the Director-General of Civil Aviation from any such applicant shall be treated as confidential.

(L.N. 140 of 1969; L.N. 177 of 1971; L.N. 22 of 1985; L.N. 326 of 2000)

Regulation:	29	When provisional licences are deemed to be licences		30/06/1997
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Any references to a licence in regulation 5(2) and (3), regulations 19, 26, 27 and 30 shall be construed as including references to a provisional licence.

(G.N.A. 165 of 1953)

Regulation:	30	No right to continuance of any benefits		30/06/1997
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Nothing in these regulations shall confer upon the holder of a licence, operating permit or permit or upon any other person any right to the continuance of any benefits arising from the provisions of these regulations or from any licence, operating permit or permit granted thereunder or from any conditions attached to any such licence, operating permit or permit.

(L.N. 140 of 1969)

Regulation:	30A	Power of Director-General or authorized person to prohibit flight	L.N. 326 of 2000	01/01/2001
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(1) Where it appears to the Director-General of Civil Aviation or an authorized person that any aircraft is intended or is likely to be flown in such circumstances that any provision of regulation 3 or 22 would be contravened in relation to the flight, the Director-General of Civil Aviation or an authorized person may-

- (a) direct the operator or commander of the aircraft that he is not to permit the aircraft to make the particular flight or any other flight of such description as may be specified in the direction, until the direction has been revoked by the Director-General of Civil Aviation or by an authorized person; and
- (b) take such steps as are necessary to detain the aircraft.

(2) For the purposes of paragraph (1), the Director-General of Civil Aviation and an authorized person may enter upon and inspect any aircraft.

(3) Any person who, being the operator or commander of an aircraft, contravenes any direction given to him under paragraph (1)(a) shall be guilty of an offence and shall be liable on conviction to a fine of \$7000 or to imprisonment for 3 months.

(L.N. 140 of 1969; L.N. 326 of 2000)

Regulation:	31	Proceedings for an offence against the regulations	L.N. 362 of 1997	01/07/1997
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(1) Proceedings for an offence against these regulations shall not be instituted except with the consent of the Secretary for Justice. (L.N. 362 of 1997)

(2) Where an offence against these regulations has been committed by a body corporate, every person who, at the time of the commission of the offence was a director, general manager, secretary or other similar officer of the body corporate, or was purporting to act in any such capacity, shall be deemed to be guilty of that offence, unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

Regulation:	32	(Repealed 36 of 1999 s. 3)	36 of 1999	01/07/1997
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Remarks:

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

PART V

TRANSITIONAL

Regulation:	33	Citation		30/06/1997
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PART VI

CITATION

These regulations may be cited as the Air Transport (Licensing of Air Services) Regulations.

Schedule:		SCHEDULE	10 of 2005	08/07/2005
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FORM 1

[regulation 6]

Hong Kong

APPLICATION FOR LICENCE TO OPERATE A SCHEDULED SERVICE

(To: The Licensing Authority through the (Director-General of Civil Aviation))

1. APPLICANT (full name)
If a body corporate give full particulars and title of applicant.
2. Nationality of Applicant(s)
3. Country or place in which aircraft are registered
4. Registered business address (a) Head Office:
(b) In Hong Kong:
5. Particulars of Route it is desired to operate (1) Point of Departure
..... (2) Point of final Destination
(3) Intermediate landing points
(a) for traffic purposes:
(b) for non-traffic purposes:
(c) weather alternates:
6. Period for which the Licence is required:
7. Type of aircraft to be used and Passenger Seating Accommodation:
.....
8. Crew to be carried (Number and function):
9. ANNEXURES: A: Proposed schedule of frequencies, with details of intended time tables.
B: Passenger rates (through and intermediate).
C: Freight rates (do.).
D: Airmail conveyance rates (do.).
E: Free baggage allowance and excess baggage rates.
F: Total number of aircraft belonging to applicant (individual types and seating capacity).
G: Total aircrew personnel on pay-roll (e.g. pilots, co-pilots, navigators, radio-operators, etc.).
H: Details of the insurance of the aircraft for the proposed route.

Notice: I hereby give notice that I desire the Licensing Authority to conduct an Inquiry (in Public/in Private) to consider this application.

Date

Signed

Title

CONDITIONS

Note: Before the application overleaf is submitted by the Director-General of Civil Aviation to the Licensing Authority for consideration, the applicant must first satisfy the Director-General of Civil Aviation as regards:

1. Operational procedures to be observed-including Route Capacity Schedules, Operations Manual, Route Book for aircrew, Preparations for flight; such documents as Flight Plans, Log-books, (Aircraft, Engine and Journey), Loadsheets; Radio apparatus to operate on the required frequencies for the proposed Route.
2. Maintenance Manual and Schedule. Information is also required as to where major overhauls are to be done; the checks on aircraft and engines; and the availability of adequate spare parts.
3. Traffic handling
4. The adequacy and competence of the staff to be employed.

ENDORSEMENT OF APPLICATION

(by the Director-General of Civil Aviation)

The Secretary/Chairman,
Licensing Authority,

.....

I CERTIFY that I have verified to the best of my knowledge and ability the particulars given overleaf and in the Annexures; that I have examined the applicant's proposed practices in respect of the Conditions 1, 2, 3, and 4 above, and I am of the opinion that

- (1) they are satisfactory;
- (2) they are satisfactory on condition that;
- (3) they are unsatisfactory for the following reasons:

Date

Signed

Title

(36 of 1999 s. 3; L.N. 326 of 2000)

FORM 2

[regulation 7]

Hong Kong

**PUBLICATION, BY LICENSING AUTHORITY, OF PARTICULARS OF
APPLICATION(S) TO OPERATE SCHEDULED AIR SERVICE(S)**

In accordance with the provisions of regulation 7 of the Air Transport (Licensing of Air Services) Regulations, the Licensing Authority of Hong Kong hereby publish prescribed particulars of the undermentioned application(s) to operate Scheduled Air Service(s) in, to and from Hong Kong.

Any representations regarding, or objections thereto, -in accordance with regulation 8 must be received by the Licensing Authority within 14 days after the date of the first publication of this Notice; and any Notice, requiring the holding of a public inquiry must be received within 14 days after the date of the first publication of this Notice, in Form 3.

**PARTICULARS OF APPLICATION(S) TO OPERATE
SCHEDULED AIR SERVICE(S)**

1. Applicant:
2. Date of first publication of application:
3. Route applied for:
4. Purposes of Services (Passenger, Freight, Mails):
5. Points of departure, final destination and intermediate points of call:
.....
6. Frequency of flights:
7. Provisional time table:
8. Type(s) of aircraft:

Date Signed

Chairman,
Licensing Authority.

(36 of 1999 s. 3)

FORM 3

[regulations 8 & 9]

Hong Kong

Name:
Address:
Date:
Occupation:

The Secretary/Chairman,
Licensing Authority.

**REPRESENTATIONS OR OBJECTIONS REGARDING
PROPOSED SCHEDULED AIR SERVICE(S)**

With reference to the published Notice dated regarding the undermentioned application to operate a Scheduled Air Service-and in accordance with regulations 7 and 8 of the Air Transport (Licensing of Air Services) Regulations-I beg to submit representations/objections relating thereto: *and I hereby give notice (in accordance with regulation 9) that I require the Licensing Authority to hold a public inquiry before the said application shall be determined.

2. The application referred to is that from-
Applicant:
To operate a service from to

3. Representations/Objections are as follows:-

Date Signed

* Delete all the words if a public inquiry is NOT desired. Such Notice must be received by the Licensing Authority within 14 days of the date of the first publication of the application.

(10 of 2005 s. 207)

FORM 4

[regulation 9]

Hong Kong

NOTIFICATION OF INQUIRY BEFORE DETERMINING APPLICATION(S)
TO OPERATE SCHEDULED AIR SERVICE(S)

From: The Secretary, Licensing Authority

Address:

Date:

To:
.....

Sir/Madam:

I am directed to notify you-in accordance with regulation 9 of the Air Transport (Licensing of Air Services) Regulations that the Licensing Authority will hold a private/public inquiry to consider the application by

.....
.....

for a licence to operate the route

.....

and to invite you to attend this inquiry-for the purpose of being heard with regard to the said application.

2. The inquiry will be held on (date) at the hour of at (place of meeting)

..... and I am to request you to notify me at once whether or not you will be present or represented.

Signed
Secretary, Licensing Authority.

REPLY.

Name:

Address:

Date:

The Secretary,
Licensing Authority.

Sir,

I hereby acknowledge receipt of your Notification dated

Delete
whichever is
inapplicable.

I shall
I shall not be present or represented by

..... at the inquiry to be held on
(date)

Signed

FORM 5

[regulation 15]

Hong Kong

PUBLICATION OF DECISIONS OF THE LICENSING AUTHORITY
REGARDING GRANT, REFUSAL, SUSPENSION, OR
REVOCAION OF LICENCES

In accordance with the provisions of regulations 15 and 16 of the Air Transport (Licensing of Air Services) Regulations, the Licensing Authority of Hong Kong hereby publish the following particulars of their decisions regarding the grant, conditional grant, or refusal of a licence to operate the undermentioned proposed Service(s) and/or of their revocation or suspension of existing licence(s) to operate the Service(s) specified.

Applicant or Licence Holder:

Licence No.:

Date of application or licence:

Route(s):

Frequency of flights:

Time table:

Type of aircraft:

DECISION(S)

(The reasons stated are at the discretion of the Licensing Authority)

- (1) Licence granted (no reason)
- (2) Application refused for the following reason(s)
- (3) Licence No. revoked, for the following reason(s)
- (4) Licence No. suspended, for the following reason(s)

Date Signed
Secretary, Licensing Authority.

(36 of 1999 s. 3)

FORM 6

[regulation 16]

Hong Kong

NOTIFICATION OF INQUIRY CONCERNING THE REVOCATION/SUSPENSION
OF A LICENCE TO OPERATE SCHEDULED AIR SERVICE(S)

From: The Secretary, Licensing Authority
Address:
Date:

To:
.....

Sir/Madam:

I am directed to notify you-in accordance with regulation 16(2) of the Air Transport (Licensing of Air Services) Regulations,-that the Licensing Authority of Hong Kong will hold a private/public inquiry to consider the REVOCATION/SUSPENSION of the Licence you hold No. to operate the Route on the grounds set out below, and to invite you to be present. I am also to request you to state (a) if you will be present or represented, and (b) if you desire the inquiry to be held in public. The meeting will take place at (place).on (date) at the hour of

Signed
Secretary, Licensing Authority.

REPLY.
From:
Address:
Date:

The Secretary,
Licensing Authority.

Sir,

I hereby acknowledge receipt of your notification dated and inform you that I shall be present or represented by at the meeting, which I desire should be held in private/public.

Signed

(36 of 1999 s. 3)

FORM 7

[regulation 19]

Hong Kong

RETURNS from
Licensed Operator of Route
Period from to
To:

Subjoined please find the prescribed Returns in respect of Licence No. held by to operate route from with intermediate stages indicated below.

Date Signed

Intermediate Stages	From	To
(1)		
(2)		

(3)		
etc.		

Type of aircraft:

Frequency of services.

	No.		No.
1. Flights scheduled		7. Flights not completed because of-	
2. Flights commenced		(1) Passengers not available	
3. Flights not commenced		(2) Aircraft not available	
4. Uninterrupted flights completed		(3) Weather conditions	
5. Flights completed after interruption		(4) Other reasons (state below)	
6. Flights interrupted, not completed		8. Unpremeditated landings because of-	
		(1) Lack of fuel	
		(2) Weather conditions	
		(3) Failure of aircraft engine	
		(4) Failure of radio	
		(5) Other reasons (state below)	

Stages of Journeys	1	2	3	etc.	Totals
A Stages in land miles					
B Passengers carried No.					
C MAILS carried- Weight in kilos					
,, ,, lbs.					
D FREIGHT carried- Weight in kilos					
,, ,, lbs.					
E TOTAL PAYLOAD- Weight in kilos					
,, ,, lbs.					
F PAYLOAD CAPACITY available (commencement of flights)- Weight in kilos					
,, ,, lbs.					

Flight Personnel Employed	Pilots No.	Co-Pilots No.	Navigator's No.	Radio Operators	Others employed	TOTALS No.

				No.	on flying duties No.	
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OTHER REMARKS.

Signed
 Title
 Date
 (L.N. 28 of 1973)

Financial and Economic Implications

Financial Implications

With the change in the regulatory regime, the estimated revenue will depend to a large extent on the number of licence applications and applications for variations to licences. It is estimated that revenue of \$6.7 million over a five-year period will be generated under the new regime. This compares with the five-year revenue (2006-2010) under the existing regime, i.e. about \$3.8 million. The estimated revenue under the new regime over a five-year period would drop to about \$1.0 million if there are no licence applications or applications for variations to licences.

2. The proposal of issuing single replaced licences free of charge upon application from the licence holders to cover their existing licences with the expiry date same as the last expiry date of the existing licences will have no financial implications.

Economic Implications

3. The requirement that airlines should satisfy ATLA regarding their capability to meet their obligations, coupled with the arrangements that enable ATLA to assess such capability, would help reduce the incidence of air service disruption due to failures of airlines and any economic loss so incurred.
