

**A Document by
Aviation Policy and Research Center
Of the Chinese University of Hong Kong
in response to**

**Proposals arising from
Review of Air Transport (Licensing of Air Services)
Regulations (Cap 448 sub. leg. A)
as prepared by Transport and Housing Bureau of HKSAR (Feb 2010)**

**by
Professor Japhet Law
Dr. CK Law**

(28 April, 2010)

The Air Transport (Licensing of Air Services) Regulations Cap. 448A, provides the framework for licensing of air services in Hong Kong. The system was firstly promulgated in November 1949 and since has only been recorded minor amendments. We support the T&H Bureau of the HKSAR to undertake a review and recommend changes to the Regulations at this point of time mainly because:

- (i) International aviation has significantly changed and liberalized in the last 30 years. A modernized regulatory system is essential for Hong Kong's aviation industry.
- (ii) The collapse of Oasis HK Airlines Ltd in 2008 has prompted concern whether the current regulatory system could provide the necessary financial monitoring regarding the operation of HK airlines, especially for newly incorporated airlines. This is having direct bearing on consumers' interest and HK's reputation as an international aviation centre.
- (iii) The issue of ownership and control for Hong Kong's airlines is complicated, given the historical background, "one-country, two-systems" and possible implications on national security.

In the following, we shall provide our comments on the Consultation Paper directly in accordance with the presentation in the Paper.

(a) In response to point **(2a) on “General Matters”**

We consider that three points should be incorporated explicitly into the “General Policy” statement: (i) sustaining Hong Kong as an international aviation centre, (ii) promoting competition, and (iii) protection of consumers’ interest.

(b) In response to points **(2b) & (2c) on “First-Time Applicants”**

We support that it is essential for a “First-Time Applicant” to commence its business with sufficient financial resources and a realistic business plan. New applicants may tend to be optimistic on traffic forecast, attainable market share, cost, and relevant risk assessment. The HKSAR Government should have adequate expertise and resources to review their applications critically on all relevant aspects of the applications.

The recommendations by the T&H Bureau are mostly based on the current EU/UK system. We consider this as a mature system that has managed various difficult cases in EU/UK in recent years. There are ample experience in EU/UK that HK could draw upon for reference when necessary.

Regarding the required information for the application, it is important for the authority to design the Application Form in details, particularly for breakdowns in cost items. Information on a sustainable capital structure is also vital for the authority’s assessment. The board structure and management control of the airline company should be examined according to Article 134 of the Basic Law, with interpretative guidelines.

(c) In response to point **(2d)** on **“Licences for Licence Holders”**

We support the policy in principle. However, we are not clear whether this policy would require the applicant to commence operation of a certain route within a reasonable period of time once the licence is granted by ATLA. (This seems to be the case in UK.) Currently, many licensed routes have not been under active operation in Hong Kong. If the licence has a mandatory requirement for operation, this is a significant departure from the current policy. How that is to be interpreted and implemented needs to be addressed.

Currently, it makes economic sense for airlines to hold as many licences as possible in order for them to respond quickly to any potential/future business development, even if the licences are not intended to be used immediately. ATLA may need to further investigate how best to balance the need for traditional operators with clear ability and capacity to be able to respond to quick changes in market demand (for both passengers and cargo needs, which can be very different) in an economic way for routes with which they hold ATLA licences, versus the safe guarding of public interest in the application of new routes by new airlines with limited ability, capacity, or track record without adequate scrutiny of their business plans, financial and operational capabilities. Airlines should demonstrate their need for the licenses they hold but not use.

It is also suggested for ALTA to allow for license modifications (such as additional points), since current licenses are typically awarded for a relatively long period of 5 years, within which there may arise needed changes for efficient utilization of the license, without the need to apply for a new license and minimize the expenses incurred on both sides.

(d) In response to point **(2e) to (2g)** on **“Notification Requirements”**

The objective of advanced notification requirement to ATLA for any intended mergers or acquisitions should benefit from further clarification.

(e) In response to points **(2h) to (2k) on “Notification Requirements”**

We support these four new requirements. Moreover, we suggest that appropriate penalty could be imposed for non-compliance.

(f) In response to points **(2l) & (2m) on “ALTA’s General Powers”**

We support that ATLA should be empowered to assess the operational and financial capability of licence holder at any time, and may suspend or revoke the licence. In fact, this is the case in EU/UK. This power would permit ATLA to assist actively in a restructuring of a distressed-airline or its orderly exit from the market, rather than allowing it to hang-on regrettably until the inevitable end of collapse. Consumers’ interest could be better protected under such an arrangement.

This is a significant change in existing policy and will take time to gain the relevant experience. ATLA will become actively monitoring the operation of airlines. This will require a significant amount of additional budget, staff and expertise as Hong Kong’s reputation as an international aviation centre is at stake.

In recent years, the airline industry has become more vibrant for many reasons. It is important to have an orderly and fair “entry” and “exit” mechanism for airlines, while taking the promotion of competition and protection of consumers’ interest into account. Currently, relevant parties in Hong Kong (usually incumbent operators) can make objections to the new route-application by using the argument of “uneconomical overlapping”. ATLA would hold public hearings (there were a couple of hearings in recent years) before making the final decision. Relevant parties can initiate a judicial review to object ATLA’s decision.

Under the proposed arrangement, precise conditions and procedures for a special review, suspension or revoking, or granting a temporary licence should be documented by ATLA. The share of responsibilities and authorities among ATLA, CAD, the T&H Bureau and the Courts on licensing matters should be clearly defined as well for the benefit of the

airline industry. Also, the current “public hearing” system may not be the best check-and-balance system to resolve the conflicting interest among different domestic airlines. Other appeal mechanisms used by other jurisdictions should be examined for their merits.

(g) In response to points **(2n) to (2p) on “Other Matters”**

We strongly suggest that ATLA be permitted to aggressively increase its in-house capability in order to operate the new regime properly. The CAA model in the UK can be a good example to study in detail as to the resources and expertise required for a high quality functioning of such an agency similar to ATLA. Allowing outside consultants to handle these matters will be grossly inadequate, and the issue of confidentiality (including financial and market-sensitive information) cannot be adequately be safeguarded. Such breach will have negative bearing on the competitiveness of our aviation industry.