

Report of Transport Advisory Committee Working Group on Review of Regulation of Non-franchised Bus Operation

Executive Summary

Public Non-franchised Bus Service

Public non-franchised bus (“NFB”) service is a type of service available for hire or reward. Provision of NFB services is regulated by passenger service licence (“PSL”) issued by the Commissioner for Transport (“C for T”). There are eight types of public NFB service:

<u>Types of Service</u>	<u>Code</u>
Tour Service	A01
Hotel Service	A02
Student Service	A03
Employees’ Service	A04
International Passenger Service	A05
Residents’ Service	A06
Multiple Transport Service	A07
Contract Hire Service (to meet ad hoc service demand not covered by the other seven types)	A08

A PSL holder has to obtain separate endorsement as well as approval for individual route operation as appropriate from C for T before operating any of the services.

2. In recent years, there have been concerns among the public transport trades about an oversupply of NFBs in the market in which demand for public transport services has been growing slowly. Moreover, whilst generally most NFB services are operated in a proper manner, some

individual NFB operators provide unauthorised services and some have gone beyond their established scope of operation by providing services which deviate from the transport policy. Such activities undermine the financial viability of regular and legitimate transport services and cause traffic and environmental problems. The third party insurance policy for a vehicle might also be invalidated if the vehicle concerned is used for operating unauthorised services.

The Review

3. In late 2003, the Administration invited the Transport Advisory Committee (“TAC”) to conduct a review on the regulatory framework and licensing system for NFB operation. The TAC set up the Working Group on Review of Regulation of Non-franchised Bus Operation (“the Working Group”) in December 2003.

4. The Working Group has held 11 meetings. To better understand the problems and exchange views on measures to be recommended, the Working Group has held a number of consultation sessions with representatives of the NFB, public light bus (“PLB”) and taxi trades. It has also conducted a site visit to black spots of unauthorised NFB activities and invited opinions and suggestions from various sectors including other transport operators. The Working Group studied the views and suggestions gathered carefully and took them into full account in mapping out the recommendations.

Findings and Recommendations

5. The Working Group has reviewed the role played by NFBs in the public transport system and proposed the following three main categories of measures to address the oversupply problem and to improve the regulatory regime governing NFB operation:

- (a) coordinate the change in NFB services with demand;
- (b) strengthen regulatory control over NFB operation; and
- (c) enhance effectiveness and efficiency of enforcement actions.

6. While the concerns set out in paragraph 2 are mainly related to public NFBs, the Working Group considers that the same proposed measures should also be applied to private NFBs (which are for use other than for hire or reward; or for carriage of passengers who are exclusively the students, teachers and employees of an educational institution or disabled persons and persons assisting them whether or not for hire or reward) as far as practicable. The purpose is to facilitate better regulation of private NFB services and to prevent possible uses of private NFBs for unauthorised operation.

7. The Working Group has adopted the following guidelines in developing the measures:

- (a) stringent control be exercised on new supply (i.e. applications for new PSL including associated endorsements and vehicles from new applicants; applications for additional endorsement and vehicle from existing operators and applications for future renewal of the above PSL and endorsement);
- (b) suitable flexibility be maintained in processing applications for renewal of existing supply (i.e. applications for renewal of PSL or endorsement and replacement of vehicle from existing operators) to provide continuity for current legitimate business operation; and
- (c) the existing regulatory framework be improved to ensure proper service operation and facilitate enforcement.

Role of NFBs

8. The Working Group noted that the existing transport policy is to maintain a balanced public transport system with coordination among the

different modes and to ensure the provision of safe, efficient and cost-effective public transport services to the community. In line with this policy and given the limited road space and community concerns about environmental impact from road transport, the modal hierarchy of the public transport modes is generally based on their relative efficiency and capacity, as follows:

- (a) railways are developed as the backbone of the public transport system at the top of the transport hierarchy;
- (b) franchised buses are main providers of services particularly to areas not conveniently served by railways and as feeders to railways; and
- (c) PLBs, NFBs and taxis perform a supplementary role in the public transport system and each serves their own niche markets.

9. Having regard to the need for a high degree of inter-modal coordination to ensure the effectiveness of the transport hierarchy and to minimise wasteful competition, the Working Group considers that NFBs should continue to play its role as a supplementary transport mode:

- (a) to relieve heavy demand on franchised bus and green minibus services primarily during peak hours; and
- (b) to fill gaps of passenger demand that cannot be met by regular public transport services.

It also affirms NFBs' role in providing tailor-made services to specific groups of passengers and to meet certain market niches such as services for groups of tourists.

Coordinate the Change in NFB Services with Demand

10. The number of NFBs increased rapidly by 23% from 5,900 to 7,200 in the past five years although the daily public transport patronage only grew by 2.7% during the same period. To address the problem of oversupply of NFB services, the Working Group considers that there is a need to contain the

increase in NFBs. It recommends that applications that will result in new supply of NFB vehicles or services should be processed stringently. Processing of applications that will not expand the existing supply may be allowed greater flexibility. On this basis, the Working Group proposes the following measures:

New Supply (i.e. applications for new PSL including associated endorsements and vehicles from new applicants; applications for additional endorsements and vehicles from existing operators and applications for future renewal of the above PSL and endorsement)

- (a) all applications that will result in new supply should be subject to stringent vetting and documentary requirements (including contracts valid for 6 months or more) to prove that there is a genuine long-term need for the services applied for;
- (b) to ensure that the utilisation of the existing fleet of an applicant would be examined in considering applications for new supply, full fleet vetting should apply to applications for:
 - (i) renewal of new PSL and its associated endorsement granted to new applicants;
 - (ii) additional vehicle from existing operators;
 - (iii) additional endorsement from existing operators and future renewal of such additional endorsement;
 - (iv) future renewal of PSL which covers additional vehicle and additional endorsement.

The purpose is to ensure that such new supply should be approved or renewed only if the fleet concerned is well utilised. To avoid undue disruption to existing operation, the Working Group suggests that existing endorsements and existing vehicles approved before the implementation of the new measures should not be affected.

- (c) new NFBs applied for by new applicants and additional vehicles

applied for by existing operators should normally be granted with one type of endorsement only and two endorsements would be approved only under very exceptional circumstances, e.g. when the service under the two endorsements concerned are complementary to each other;

- (d) if an existing operator who only holds contract hire service (A08) endorsement applies for additional endorsement, one additional endorsement (or two if they are complementary in nature) could be granted provided the need for the additional endorsement can be justified to improve their viability. Flexibility in vetting and documentary requirements would be allowed for this type of applications;
- (e) the existing arrangement of full fleet endorsement (i.e. automatic granting of the same endorsement to the full fleet of a PSL holder) and automatic granting of hotel service (A02) endorsement to vehicles with tour service (A01) endorsement should be terminated to avoid excessive supply of service endorsements in the market. The measure implemented since December 2003 to cease automatic granting of contract hire service (A08) endorsement to vehicles currently without such endorsement should also continue;
- (f) for applications involving new or additional vehicles, measures should be taken to encourage applicants to source vehicles from existing fleet in the market without increasing the overall number of NFBs. Applicants who intend to purchase new vehicles would be given a period (say, six months) for them to try to source vehicles from the existing fleet in the market. Their application would be processed as soon as they could source vehicles from the existing fleet or at the end of the period if they could not source such vehicles during the period;

Existing Supply (i.e. applications for renewal of PSL or endorsement and replacement of vehicle from existing operators)

- (g) applications for renewal of PSL or endorsement should be subject to proof of need for service. Contract (including sub-contract) of any duration can be accepted as proof. If such contract is not available at the time of application, a period of six months from the expiry date of the PSL/endorsement can be allowed for applicants to obtain such contract. If a contract cannot be obtained during the six-month period, any application for the same endorsement in future should be processed in the same way as that for new supply;
- (h) replacement vehicle applied for should be of comparable capacity with the one to be replaced unless there is valid justification;

For All Applications (i.e. both new supply and existing supply)

- (i) to ensure that only services that are genuinely in demand will be approved, all applications should be assessed against the criteria stipulated under section 28 of the Road Traffic Ordinance as follow:
 - (i) any policy direction from the Chief Executive with respect to the provision of public transport services;
 - (ii) any limit in force on the number of vehicles that may be registered;
 - (iii) the need for the services to be provided by the applicant;
 - (iv) the level of service already provided or planned by other public transport operators;
 - (v) traffic conditions in the areas and on the roads where the services are to be provided; and
 - (vi) the standard of service to be provided by the applicant; and
- (j) validity period of endorsement should be in line with that of its supporting contract but not exceeding that of the PSL.

11. **Operation of NFB Scheduled Services:** the need for **new services** should be considered on the basis of the criteria stipulated in section 28 of RTO, Cap 374. General principles that should be considered in processing applications for new residents' service and new employees' service are at Annex A. As for **existing services**, in reviewing the need for any adjustment to existing NFB services, the Administration should take into account both the changes in the level of regular public transport services and the changes in passenger demand for the NFB services concerned.

Strengthen Regulatory Control over NFB Operation

12. Generally, most NFB services are operated in a proper manner. However, some individual NFB operators have exploited the loophole of existing licensing conditions to provide unauthorised services or go beyond their established scope of operation to provide services deviating from the NFB policy.

13. The type of service of greatest concern is the contract hire service (A08), particularly free bus service ("FBS"). Whilst FBS provide immediate benefits to passengers and help the sponsors to promote their business, they may undermine regular public transport services. The viability of regular services is important to the public since they provide services during both peak hours and off-peak hours and many of them also operate a package of routes which include socially desirable but not profitable routes. The Working Group has fully taken this into account and recognises that contract hire service (A08) endorsement is to cater for ad hoc demand for services that cannot be met by the other seven types of service. The Working Group recommends that the existing regulatory control over contract hire service (A08) should be revised as follows:

- (a) contract hire services to be provided under A08 endorsement should be classified into two groups, i.e. those which would require prior approval from C for T before the service is operated and those which do not require such prior approval:

- (i) A08 endorsement holders can provide contract hire services without seeking C for T's prior approval if the services are for meeting ad hoc demand such as wedding ceremony, school picnic, and open day of educational institution. Such services should not operate for more than 2 days in a month if they serve same/similar origin and destination area. The Working Group suggests that the Administration should determine the types of service that can be operated without prior approval in consultation with the NFB trade;
 - (ii) other contract hire services that are of a more regular nature or are of greater concern, such as FBS for flat viewing, shopping malls and clubs, etc, regardless of the duration of operation, should require prior approval from C for T. This group also covers any service which serves same/similar origin and destination area and operates for more than 2 days in a month. The Working Group suggests that the Administration should work out arrangements to deal with applications which involve provision of urgent services in exceptional circumstances;
- (b) in processing applications for FBS, the following should be taken into account:
- (i) if an FBS operates between a particular location (e.g. a shopping mall) and a particular destination area would adversely affect regular public transport services in the same area, the FBS may be approved but it should only be allowed to operate for a maximum period of 15 days, either consecutively or intermittently, in a year. FBS between that particular location and substantially different destination areas may be allowed to operate separately provided that each of the services would be subject to the same 15-day maximum period;

- (ii) for places where no regular public transport service is available or where there is no significant adverse impact on regular public transport services, the period of operation of the FBS can be longer and determined on the merit of each case; and
- (iii) an FBS which is not ad hoc in nature, if approved, should be subject to certain conditions in respect of routeing, operating hours, frequency and bus types.

General principles that should be considered in processing applications for FBS are at Annex B.

14. To better regulate the operation of NFB activities and facilitate enforcement actions against unauthorised NFB activities, the Working Group recommends that:

- (a) additional PSL conditions should be imposed to increase the responsibility of PSL holders for ensuring proper use of their vehicles in compliance with their licence. Additional conditions include:
 - (i) driver of an NFB should be in the employ of the PSL holder of that bus;
 - (ii) proper contract should be signed between the PSL holder and the hirer in the case of hiring out an NFB for provision and operation of NFB services;
 - (iii) a copy of document containing the purpose of the hire and basic operational details signed by all parties concerned, including the PSL holder, the hirer and the driver, should be kept in the bus(es) concerned when operating those contract hire services (A08) which require prior approval from C for T;
 - (iv) PSL holder should notify and fully brief the driver of the

purpose of the hiring and the route to be taken and the driver should signify his understanding of the service details;

- (v) PSL holder should keep a daily operation record of each of the buses under the PSL;
 - (vi) the document of hiring and the daily operation record should be produced to C for T upon request; and
 - (vii) PSL holder should take adequate measures such as staff training, inspection and monitoring of the use of the buses to avoid misuse of the buses;
- (b) at present, schedule of service is stipulated for international passenger service (A05) and residents' service (A06). This requirement should be extended to shuttle services provided under hotel service (A02), student service (A03) for tertiary education institutions, employees' service (A04), and certain types of contract hire service (A08) of a regular nature with same/similar origin and destination areas to facilitate better monitoring. The schedule of service should stipulate all relevant operating details including fares, routeing, operating hours, frequency, number and types of buses, stopping points, etc.; and
- (c) at present, hirers of residents' service (A06) are required to submit joint applications together with NFB operators to signify their full knowledge of the details of the proposed service. This requirement should be extended to the following services of a regular nature with same/similar origin and destination areas:
- (i) shuttle services provided under hotel service (A02);
 - (ii) student service (A03) for tertiary education institutions;
 - (iii) employees' service (A04);
 - (iv) international passenger service (A05); and
 - (v) certain types of contract hire service (A08).

If applicable, hirers should also signify that they are responsible for the sponsorship, e.g. full subsidisation in the case of employees' service.

Enhance Effectiveness and Efficiency of Enforcement Actions

15. The Working Group recommends the following measures to enhance the effectiveness of enforcement action in combating unauthorised NFB operation:

- (a) improve the identification system to enable enforcement officers to differentiate easily the types of NFB service being provided by a vehicle. This includes requirement for displaying appropriate signs in standard format in all NFBs to indicate the service being operated and requirement for vehicles subject to single/restrictive endorsement to adopt a livery system to indicate the type of service provided by the vehicles. As for existing vehicles, the operators concerned should be encouraged to adopt the livery scheme on a voluntary basis;
- (b) ban cash payment on board to help pre-empt operation of unauthorised service, so that unless with authorisation by C for T, payment of fares must be made:
 - (i) at designated selling locations approved by C for T; and
 - (ii) in forms of coupons, pre-paid tickets, monthly tickets or any other form as approved by C for T.
- (c) stipulate clearly the power of TD officers to board and ride on any NFBs to facilitate their investigation into suspected unauthorised activities;
- (d) step up enforcement actions and strengthen cooperation between TD and Police to combat all unauthorised NFB services, including provision of service before the necessary approval has been granted

and traffic violations;

- (e) review the current administrative sanctions subsequent to inquiry to impose heavier penalties for repeated offenders so as to ensure sufficient deterrent effect;
- (f) streamline enforcement procedures by creating common breaches of PSL conditions as specified offences that are subject to fixed penalty ticketing system, e.g. not displaying the PSL plate or the stipulated service signs, collecting cash payment on board without C for T's authorisation and not keeping document with service details on bus;
- (g) implement traffic management measures to better regulate the picking up and setting down activities of authorised NFB services and to tackle the irregularities caused by unauthorised NFB activities; and
- (h) improve regular public transport services where justified and plan for transport services at an early stage to cater for transport needs arising from new developments so as to forestall operation of unauthorised NFB services.

Desirability of Imposing a Cap on NFB Fleet

16. The Working Group has examined the desirability of freezing the number of NFBs which is suggested by a number of public transport operators. The Working Group considers that the proposal will restrict the flexibility in meeting the genuine needs of some service sectors which may require additional vehicles to meet demand due to their special circumstances. Moreover, imposing a limit on the number of NFBs may lead to speculation, thus generate premium in NFBs and increase the cost of NFB services which is not in the interest of the users of the services.

17. In view of the above drawbacks, the Working Group does not consider it appropriate to impose a cap on the NFB fleet size or on the number of endorsements for selected types of NFB service. Instead, the Working Group considers that a two-pronged approach should be adopted. First, measures to tighten the licensing regime and vetting procedures should be introduced to coordinate the change in NFB services with demand. Second, the operators of NFB services should be better regulated, with strengthened enforcement, as a way to ensure that NFB operation meet their purpose without encroaching on the function of other transport modes.

Cross-Boundary Coach Service

18. Cross-boundary coach service (“CBCS”) is operated under the PSL regime as a form of international passenger service (A05) and is regulated by a quota system jointly administered by the Hong Kong and Mainland authorities. There have been increasing incidents of cross-boundary coach operators not observing PSL or other licensing conditions. Malpractices include overruns, non-compliance with allocated timeslots and operation of short-haul services terminating at the Huanggang control point without authorisation.

19. The Working Group noted that Hong Kong and Mainland authorities agreed to better regulate the operation of CBCS through the following means:

- (a) further enhance the enforcement actions against those operators who breach PSL or other licensing conditions; and
- (b) introduce five groups of six cross-boundary routes plying between various districts of Hong Kong and the Huanggang control points or its vicinity to meet the proven passenger demand.

20. The Working Group welcomes the authorities’ initiative to tackle the irregularities in the operation of CBCS and address the increasing demand

of cross-boundary travellers.

Expected Effect of Recommendations

21. The recommendations are expected to help coordinate the change in NFB services so that it would be more in line with changes in demand. This will help minimise unhealthy competition both within the NFB trade and with other transport modes.

22. Under the relevant recommendations, adequate flexibility is allowed in processing applications for renewal of PSL and endorsement and replacement of vehicle. This will help minimise the adverse impact on existing NFB operators as well as users of existing services.

23. Proposals to improve the existing regulatory control and strengthen efficiency of enforcement actions will help reduce unauthorised NFB activities and abuses of the regulatory flexibility to provide services deviating from the NFB policy by some individual operators.

24. Through the implementation of the recommended measures, the Working Group hopes that business opportunities and operating environment for both law-abiding NFB operators and regular public transport service providers will improve and commuters can benefit from a well-coordinated public transport system.

**General Principles that should be Considered
in Processing Applications for
New Residents' Service and New Employees' Service**

Applications for **new residents' service** should be processed with due regard to the following:

- (a) the residents' service should facilitate commuters to connect to the nearby rail station or public transport interchange to avoid adding congestion to busy urban districts;
- (b) the residents' service should not pose significant adverse impact on regular public transport services in the area concerned;
- (c) existing or planned public transport services in the area to be served by the proposed residents' service are inadequate or limited;
- (d) residential development served by the proposed residents' service are distant from rail station, public transport interchange or major franchised bus stop or GMB stop and use of alternative services will result in excessive number of interchanges; and
- (e) the residents' service will not operate in congested areas or via local busy road and will not cause traffic congestion.

For processing applications for **new employees' service**, the following factors should be considered:

- (a) the employees' service should be considered if:
 - (i) the service is fully subsidised by the employer; or
 - (ii) existing or planned public transport services in the area or during the period to be served by the proposed service are inadequate or limited; or
 - (iii) the workplace to be served by the proposed service is distant from rail station, public transport interchange or major franchised bus stop or GMB stop and use of alternative services

will result in excessive number of interchanges;

- (b) the employees' service should be to and from the workplace;
- (c) the workplace and/or destination of the employees' service are not within busy urban areas or congested districts and its operation will not cause traffic congestion;
- (d) passengers of the employees' service should be restricted to employees of the employer; and
- (e) the service should be provided to the employees of one employer at any one time.

**General Principles that should be Considered
in Processing Applications for Free Bus Service (“FBS”)**

For applications for FBS, the following factors should be considered:

- (a) services should be to the nearby residential developments or major public transport interchanges;
- (b) the proposed service should not cause or lead to traffic congestion;
- (c) if an FBS operates between a particular location (e.g. a shopping mall) and a particular destination area would adversely affect regular public transport services in the same areas, the FBS may be approved but it should only be allowed to operate for a maximum period of 15 days, either consecutively or intermittently, in a year. FBS between that particular location and substantially different destination areas may be allowed to operate separately provided that they would be subject to the same 15-day maximum period;
- (d) for places where no regular public transport service is available or where there is no significant adverse impact on regular public transport services, the period of operation of the FBS can be longer and determined on the merit of each case; and
- (e) an FBS which is not ad hoc in nature, if approved, should be subject to certain conditions in respect of routeing, operating hours, frequency and bus types. The operating hours of the FBS should generally tie in with the opening hours of the location involved, e.g. shopping malls or clubs.