

**For discussion
on 27 November 2017**

Legislative Council Panel on Economic Development

Incident of flight cancellation of Hong Kong Express Airways

PURPOSE

This paper briefs Members on the latest development of the incident of large-scale flight cancellation by Hong Kong Express Airways (HKE) in early October this year, the Government's follow-up actions, and the regulatory role of the Civil Aviation Department (CAD) on operations of airlines.

BACKGROUND

Update on the incident of large-scale flight cancellation by HKE in the peak travel season in early October

2. The sudden announcement made by HKE in end September of the cancellation of 18 scheduled flights (14 flights of which were cancelled at the end) during the peak travel season in early October raised the attention of the Government and the general public. According to HKE, the reason for the cancellation was that there was insufficient number of standby cabin crew for contingency during the "Golden Week" in early October, as a result of the departures of four safety and emergency and procedures (SEP) trainers within a short period of time.

3. The departures of four SEP trainers of HKE in August this year were brought to CAD's attention through CAD's regular inspection mechanism and the Department had been following up on the issue proactively. Following the sudden and unusual cancellation of a scheduled assessment for an SEP trainer by HKE in mid-August, CAD immediately called for a meeting with HKE's management on August 17 to look into the reasons. During the meeting, CAD was verbally informed by HKE that all of its trainers in the safety training department would leave the company shortly. As HKE was unable to provide detailed information at that time, such as the exact departure dates of those resigned, CAD requested HKE to submit in writing detailed information and resolutions as soon as possible.

4. When CAD proactively followed up with HKE on the latest situation in early September, HKE's management revealed that a short-term contingency plan had been identified, which included employing two resigned trainers on a temporary basis to continue the training services, employing two additional trainers from a third party on a contract basis, and amending the crew's annual training period in its operations manual from 12 months to 13 months permissible under the law.

5. Subsequently, HKE notified CAD in writing in mid-September that the company had formally filled the vacancies in the safety training department and the newly recruited trainers were being arranged to undergo relevant internal training. Upon completion of the training, HKE would file applications to CAD for approval. In the written reply, HKE also confirmed that the recurrent safety training of the crew had resumed and guaranteed that the flight operations would not be affected. Based on the above considerations, CAD had reasonable grounds, at that time, in believing that flight safety and flight operations of HKE would not be affected. Nevertheless, CAD had continued to closely follow up on the issue and requested HKE to submit a long-term solution at the soonest for resolving the situation of tight manpower. It was not until the afternoon on September 28 did HKE suddenly notified CAD that it would cancel a considerable number of flights in two days' time during the long holiday. This action largely deviated from the written reply provided by HKE to CAD earlier on.

Follow-up actions taken by the Government

6. Upon receipt of HKE's sudden notice in the afternoon of September 28 regarding the cancellation of more than ten scheduled flights in the peak travel season in early October, CAD had implemented a number of measures within a short period of time, with a view to minimising the inconvenience and impact brought to the affected passengers. These included urging the Executive Chairman cum Chief Executive Officer of HKE to manage the follow-up of the incident personally to ensure that every affected passenger would be taken good care of; communicating with and summoning the HKE management for a number of times to urge them to protect passengers' interests; requesting HKE to contact all affected passengers as soon as possible; and to inform the public of the details of the flight cancellation incident. Moreover, CAD and the Commerce and Economic Development Bureau had respectively liaised with local airlines and travel agencies to invite them to offer assistance in providing seats for affected passengers. As at October 1, HKE had made necessary arrangements for or recommendations to all the affected passengers,

including providing full refunds, facilitating passengers to change their flights/destinations, and arranging passengers to take other flights to the same destinations by other airlines.

7. CAD had also requested HKE to submit a detailed report on the incident, explaining the root causes and follow-up actions as well as long-term solutions. CAD received the report and revised report from HKE on October 6 and October 24 respectively. CAD has rigorously examined HKE's report and confirmed that the incident did not undermine aviation safety. The report, however, revealed the lapses in HKE's internal management and corporate governance, including poor human resources planning and management, a lack of effective internal communication, as well as underestimation of the impact of the incident and insensitivity to the public concern, etc.

8. HKE's report clearly demonstrated the exigence for HKE to pool resources together to optimise its internal management and corporate governance, and consolidate its fundamentals in order to avoid recurrence of similar incidents. CAD, as the regulatory authority, is not convinced that HKE's current capability of resource deployment and management could cope with further expansion. As such, CAD considers that there is a need for HKE to temporarily suspend the increase in new destinations, number of flights as well as the number of aircraft for new services for the time being. HKE should undergo comprehensive and in-depth reform to tackle the problems at the root, which include revamping its corporate governance structure, reviewing the communication procedures and efficiency with the regulatory authority, improving staff relations, as well as establishing more effective communication channel with the public etc.

9. Taking into account the above, HKE will designate the coming six months (between November 2017 and April 2018) as a "consolidation period", during which HKE will implement a series of improvement measures to raise its quality of service, ranging from revamping its management, improving risk management and human resources management, relaunching safety training, improving rostering system and customer service, and setting key performance indicators (KPIs) such as staff establishment, number of SEP trainers and standby cabin crew etc. HKE has been requested to provide regular reports to CAD on the progress of implementation of the improvement measures during these six months, including the compliance rate of various KPIs. CAD will also continue to keep a close watch on HKE's operations. HKE will be allowed to operate new destinations and flights only when CAD is satisfied that HKE has implemented the improvement measures effectively.

10. The press release issued by CAD on 9 November 2017 is at **Annex**.

CAD's regulation over airline operations

Requirements of Air Operator's Certificate

11. Hong Kong has all along been complying with the standards and requirements established by the International Civil Aviation Organization (ICAO)¹. The safety management system of aviation activities in Hong Kong has been developed in strict compliance with ICAO's standards, and implemented in the local context by means of relevant legislation and CAD's guidance documents. CAD applies the same regulatory and safety standards for all aircraft and airlines, regardless of whether the airline is providing full-service or is low-cost carrier that charges by service items.

12. According to Air Navigation (Hong Kong) Order 1995 (Cap 448C)(AN(HK)O), an aircraft registered in Hong Kong shall not fly on any flight for the purpose of public transport, otherwise than under and in accordance with the terms of an air operator's certificate (AOC) granted to the operator of the aircraft, certifying that the holder of the certificate is competent to secure that aircraft operated by him on such flights as that in question are operated safely. CAD will take into account the AOC applicant's capabilities in various aspects, including his previous conduct and experience, his equipment, organisation, staffing, maintenance and other supporting arrangements, etc, and will only issue an AOC to the applicant when it is satisfied that he could conduct safe operations. AOC holder must operate his flight in accordance with the conditions set out in the AN(HK)O and Air Operator's Certificates Requirements Document² (CAD360).

13. Generally speaking, CAD will conduct routine inspections on AOC operators. These inspections include flight inspections, inspections on maintenance, documents inspections, training inspections, inspection visits at out-stations, inspections on examiners etc. The routine inspection programme on the operator focuses on aviation activities identified at a higher risk level, which is determined on the basis of previous inspection findings and data on operational safety. If required, CAD may step up their oversight on the operator with unscheduled inspections. In addition, to ensure that the expected

¹ China is a contracting party to ICAO. As part of China, Hong Kong also follows the requirements and standards of ICAO.

² http://www.cad.gov.hk/english/publications_cad360.html

safety standard can be achieved, CAD will conduct annual review to ensure the operational capability of an operator continues to meet the expected safety standards in terms of its management structure and organisation, facilities and equipment, training, maintenance and other operational support arrangements, etc. It is the operator's primary obligation to furnish CAD with any changes or amendments made to the operations manual, while CAD is entitled to request the operator to amend its operations manual for purpose of ensuring aviation safety.

14. As mentioned above, the cause of cancellation of flights by HKE is related to trainers for safety training and staffing situation, which are among the two items subject to regular inspections by CAD. The relevant requirements are explained in the following paragraphs.

Safety training

15. Under the AN(HK)O, the operator shall not permit any person to be member of the crew of an aircraft engaged on a flight for the purpose of public transport, unless such person has had safety training, experience, practice, and periodical tests as required within 13 months preceding the flight. The operator shall also ensure that such person is competent to perform his duties in flight, including the use of equipment provided in the aircraft for emergency and life-saving purposes. In terms of training staff, both ICAO and CAD have no requirements on whether they must be employed by the operator or by other third party organisations. It is nonetheless CAD's key concern that the training staff must fulfil the qualification and training requirements as stipulated in CAD 360.

Manpower condition

16. The AN(HK)O stipulates the minimum manning ratio of cabin crew to passengers on each flight, and the requirement applies to all Hong Kong registered aircraft used for public transport. However, it is worth noting that neither ICAO Annex VI nor AN(HK)O mandates a standard for calculating the ratio of standby crew or the minimum number of the overall cabin crew of an airline. Due to different circumstances, such as individual airlines' policies on flight scheduling and rosters, flight hours, routing and sick leave, etc., it is not feasible to devise a standard formula for overall cabin crew for airlines. Instead, CAD considers it more effective to set the standard for the minimum manning ratio per flight. An operator is obliged to and must make available sufficient number of cabin crew to operate the flights.

Cancellation mechanism of airlines

17. The frequency of flight schedule changes or flight cancellations by airlines is not among the routine inspections carried out by CAD on AOC holders. Airlines might change flight schedules or cancel flights from time to time due to various reasons, such as inclement weather, air traffic control, aircraft malfunctioning, incidents related to the prior airport of departure or airport of destination, etc. Nonetheless, the airline concerned must inform all affected passengers timely and provide refunds or make necessary arrangements in accordance with its conditions of carriage. The airline concerned should inform CAD of changes involving slots as soon as possible.

18. Some suggested that the Government should make reference to the practice of the European Union and consider requesting airlines to provide compensation for affected passengers in accordance with the distance of their routes in case of flight delay or cancellation, except for those arising from uncontrollable factors. First, there is no clear definition of what “uncontrollable factors” mean in the context of international aviation. Moreover, we consider that such act might prompt some airlines to take higher operational risk (such as operating under undesirable weather condition), and might exert upward pressure on ticket prices. Furthermore, there are other views that the Government may consider imposing a mandatory requirement such that airlines have to inform CAD and the public of the decision and arrangement of cancelled flights within a stipulated time in advance. Due to the numerous factors (including uncontrollable ones such as inclement weather) which could lead to flight delay or cancellation, it is not feasible from the perspective of airlines’ actual operation to impose such a mandatory requirement. In fact, except for the European Union, such kind of legislation is rarely seen in other countries and the applicability varies. For instance, the United States’ legislation requires airlines to make compensation for denied boarding under certain conditions while Australia and Singapore have no similar legislation. ICAO and the International Air Transport Association (IATA) have no stipulated requirement on compensation for flight delay or cancellation either.

19. There are generally sales conditions for tickets sold by airlines. Irrespective of the reasons, should an airline fail to provide services after the air ticket is sold, the passengers concerned could request the airline to provide refunds or make necessary arrangements in accordance with relevant conditions of carriage. With reference to the Recommended Practice 1724 of IATA concerning general conditions of carriage, these conditions include fares, taxes, fees and charges, details concerning refusal of and limitation on carriage, schedules, arrangement for cancellation of flights as well as details for refunds.

Should the parties fail to reach a consensus, the passenger concerned could seek recourse for consumer protection in general.

20. According to CAD's statistics, the situation of flight cancellation of local airlines is all-in-all not serious and the large-scale flight cancellation by HKE was the only incident in recent years. Given that under the existing mechanism airlines have to provide services/make appropriate arrangement in accordance with the conditions of sale or performance pledge if services are not available regardless of the reasons, and that there is an established and effective mechanism in place in handling consumers' complaints, we are of the view that there are reasonable protections provided to passengers. We consider it not appropriate to change the existing mechanism for one isolated case.

Views Sought

21. Members are invited to note the contents of the paper.

**Transport and Housing Bureau
Civil Aviation Department
November 2017**

Annex

CAD accepts HKE's improvement proposal

The Civil Aviation Department (CAD) today (November 9) announced that it has accepted the report by Hong Kong Express Airways Limited (HKE) in regard to its sudden announcement in late September on the cancellation of multiple flights during the Golden Week peak travel season in early October.

The CAD had requested HKE to submit a detailed report on the flight cancellation incident in order to shed light on the root causes and handling procedures, and to formulate long-term solutions to any problem revealed. HKE subsequently submitted the report on October 6 and, upon the CAD's request to make clarifications on the information provided, submitted a revised version on October 24.

The CAD has rigorously examined HKE's report and confirmed that the flight cancellation incident did not involve any elements that would undermine aviation safety. The incident stemmed from the successive resignations of HKE's safety and emergency and procedures (SEP) trainers within a short period, and the newly recruited SEP trainers were not yet qualified to obtain the necessary approvals from the CAD. Although HKE outsourced the SEP training programme in mid-September, the training progress had been hindered. In late September, HKE made a management decision to cancel flights owing to the insufficient number of standby cabin crew for contingency during the Golden Week in early October. The report revealed the lapses in HKE's internal management and corporate governance, which included poor human resources planning and management, a lack of effective internal communications, underestimation of the impact of the incident and insufficient sensitivity to public concern.

Against such a backdrop, the CAD believes that HKE's management has the responsibility to conduct a comprehensive review of its own corporate governance and governance effectiveness to prevent similar incidents from happening again. The CAD has noted that HKE expressed profound regret over the

disruptions and the inconvenience caused to the affected customers. HKE has also undertaken that there will not be massive flight cancellation of a similar nature in future.

A CAD spokesman today said, "HKE's report demonstrated that, after filling the vacancies and increasing the number of SEP trainers as well as carrying out a leadership reshuffle, HKE has regained its ability to provide steady flight services. To consolidate its services, HKE, however, must suspend the increase of new destinations, additional flights and new aircraft for new services for the time being. HKE should avoid recurrence of similar incidents by pooling resources together to optimise its internal management and corporate governance, and by consolidating its fundamentals. HKE should also undergo comprehensive and in-depth reform on a continual basis, which should include reviewing its corporate governance structure, enhancing human resources management and strengthening its external communications. Further business expansion can only be considered when the management problems are tackled at root."

HKE admitted in its report that the root cause of the incident was inefficiency in internal management and corporate governance. HKE will not add new services (destinations and flights approved before the incident will not be affected) during a "consolidation period", between November 1, 2017, and April 30, 2018. HKE is fully committed to implementing a series of rectifying measures to raise its quality of service. The measures include:

(I) Revamping management, for instance to formulate a comprehensive enterprise risk matrix, which would include public relations, branding, finance and staff engagement, and to regularly review the risk index to strengthen governance and identify potential risks;

(II) Improving human resources management, for instance to hire more SEP trainers, to create managerial posts to oversee the regulatory training and development team, to hire more cabin crew members, to reappoint contract cabin crew and office staff on permanent terms and to advance the publishing date of the crew roster from the end of each month to mid-month to give its staff more time to plan for their rest time; and

(III) Improving external communications and risk management, for instance to enhance its customer hotline services and to engage a consultant to improve customer services and public relations.

The spokesman said HKE had defined a few key performance indicators (KPIs) and aimed at achieving them within the “consolidation period”. The KPIs include reducing roster changes per cabin crew per month to increase the stability of the staff's duty schedule, reducing the SEP trainers' headcount ratio per total crew number, increasing the standby cabin crew level, and augmenting the cabin crew complement. All these would help minimise the need to cancel flights due to insufficient standby.

Having considered HKE's report and the company's proposed rectifying measures, and given the fact that the flight schedule of HKE has been steady in the past few weeks, the CAD has decided to accept the report. The CAD has requested HKE to periodically report on the progress of the implementation of the rectifying measures in the next half year, including the attainment rate of the KPIs. The CAD will continue to closely monitor HKE's operation, especially its performance in the coming travel peak seasons such as Christmas and New Year by the end of this year and the Lunar New Year early next year.

The spokesman stressed that HKE will only be allowed to operate new destinations and flights when the CAD is satisfied that HKE has implemented various rectifying measures effectively.

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