

CHAPTER 4

Transport and Housing Bureau Transport Department

Regulation of non-franchised bus and school private light bus services

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REGULATION OF NON-FRANCHISED BUS AND SCHOOL PRIVATE LIGHT BUS SERVICES

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REGULATION OF NON-FRANCHISED BUS AND SCHOOL PRIVATE LIGHT BUS SERVICES

Executive Summary

1. Public transport services are closely related to the daily life of the public. In 2016, over 12 million passenger trips (representing 90% of the total passenger trips) per day were made through different public transport services in Hong Kong. It is the Government's transport policy to maintain a balanced public transport system with coordination among different modes including railway, franchised buses, public light buses, non-franchised buses (NFBs) and taxis. NFBs play a supplementary role in the public transport system through relieving the demand for franchised bus and green minibus services during peak hours, and providing services to specific passenger groups (e.g. tour groups, hotel guests and students) when the regular public transport services cannot provide appropriate services. In accordance with the Road Traffic Ordinance (RTO — Cap. 374) and the Public Bus Services Ordinance (Cap. 230), there are eight main types of public NFB services (e.g. student service and residents' service) which are intended for use for hire or reward and four types of private NFB services which are free of charge except those for disabled persons and students. Apart from NFBs, school private light buses (SPLBs) are also allowed under the RTO to solely provide student service. As at 31 December 2016, there were 7,043 public NFBs, 651 private NFBs and 1,966 SPLBs. The operation of NFB and SPLB services is regulated by the Transport Department (TD) through the Passenger Service Licence (PSL) system under the RTO and its subsidiary legislation. The Audit Commission (Audit) has recently conducted a review to examine the TD's work in regulating NFB and SPLB services.

Administration of licensing requirements

2. *PSL system.* PSLs authorise licensees to operate vehicles to provide passenger services whereas Passenger Service Licence Certificates (PSLCs) are issued to vehicles operating under the PSLs. A PSL holder is also required to obtain from the TD individual service endorsement(s) for the specific type(s) of service and approval of individual route(s) for regular services (i.e. with fixed schedules and

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routes). In 2016, the TD processed 24,897 licence applications for NFBs and SPLBs, of which 20,894 (84%) were related to PSLs or PSLCs (paras. 1.7, 2.5 and 2.19).

3. ***Measures to coordinate the change in NFB services with demand.*** In 2004, in light of the unhealthy competition with other public transport modes arising from an excessive supply of NFB services, the Transport Advisory Committee (TAC) recommended that the Government should coordinate the change in NFB services with demand in a more effective manner. In January 2005, the Legislative Council (LegCo) Panel on Transport was informed that a package of measures would be implemented to ensure that new NFB services and vehicles would only be approved when there was justified demand, including stringent vetting of NFB applications and requiring PSL applicants to source vehicles from the existing fleet in the market for a period of six months (i.e. the sourcing requirement) (paras. 1.9(a) and 2.7).

4. ***Need to review the implementation of the sourcing requirement.*** According to the Government, although it is not appropriate to impose a cap on the NFB fleet, the sourcing requirement is important for the proper control over NFB operations whilst ensuring the service demand is met. Since the implementation of the sourcing requirement in April 2005, no application for additional public NFBs which involved a net increase in the total number of NFBs had been approved. The number of public NFBs had in fact decreased by 169 (2%) from 7,212 in 2004 to 7,043 in 2016, although the number of private NFBs had increased by 158 (32%) from 493 in 2004 to 651 in 2016, primarily because the sourcing requirement has been relaxed since 2007 with exemption granted to charitable organisations and educational institutions (paras. 2.7(c), 2.10 and 2.13). However, Audit noted that:

- (a) the sourcing requirement was implemented in accordance with the TD's internal guidelines which included a requirement not stated in the 2004 TAC review report and the 2005 LegCo Panel on Transport paper, i.e. an applicant who failed to source a second-hand NFB at the end of the six-month period would be asked to make further efforts to source vehicles from the existing fleet if the TD's annual survey revealed that there was no shortfall in supply of vehicles for NFB services and there were active transactions in the second-hand market (paras. 2.9 and 2.13);

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- (b) according to the TD's annual surveys, the utilisation rate of public NFBs had increased from 81 % in 2004 reaching its peak at 89 % in 2014 before slightly dropping to 86 % in 2016. The number of trips of NFB had increased by 40 % from 40,104 per day in 2004 to 55,970 per day in 2016, indicating service demand had increased (para. 2.11(a)); and
- (c) as regards the second-hand transactions of public NFBs, while the number of second-hand public NFB transfer cases increased from 53 in 2005 to a peak of 362 in 2012, it was generally on a decreasing trend thereafter, falling to 142 in 2016. The average transaction price of a second-hand public NFB had increased from \$0.3 million in 2005 by 200 % to \$0.9 million in 2016 whereas the average price for a new bus normally ranged from \$0.6 million to \$0.9 million (para. 2.11(b)).

In light of the above findings and having regard to the lapse of some 12 years, it is timely for the TD to conduct a review on the implementation of the sourcing requirement (para. 2.13).

5. ***Need to tighten vetting of supporting documents for PSL renewal applications.*** From 2014 to 2016, the TD processed 2,080 PSL renewal applications for public NFBs. To apply for PSL renewal and renewal of service endorsements, a PSL holder shall provide a service contract of any duration to justify the continued need for the service and at least one service contract for renewal of each service endorsement permitted under the PSL respectively. Audit examined 10 PSL renewals involving 41 service endorsements granted to existing PSL holders from 2014 to 2016 and noted that: (a) for 6 (15 %) service endorsements, the PSL holders had not submitted relevant service contracts but only declared that the NFBs would be deployed for the relevant services; and (b) for 26 (63 %) service endorsements, the service contracts submitted could not fully support the number of vehicles required, e.g. in one renewal of service endorsement granted to 76 NFBs, the service contract submitted showed that only 3 NFBs were required (para. 2.14).

6. ***Need to enforce the more stringent vetting requirement on renewal applications of expired PSLs.*** If a PSL holder does not renew his PSL upon the expiry date, the TD will issue a warning letter to inform him that the concerned PSL has been cancelled, and any application for PSL thereafter will be treated as a new application (i.e. requiring the submission of service contracts with at least six-month validity to justify the genuine long-term service need). Audit examined 20 expired

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PSL cases with warning letters issued in 2015 and 2016 and noted that in 11 (55%) cases, the PSL holders subsequently submitted applications for renewal of the expired PSLs. However, all 11 cases were not processed as new applications, contrary to the requirements set out in the warning letters (paras. 2.23 and 2.24).

7. ***Need to consider streamlining the licensing requirements of PSLCs.*** In 2016, there were 17,899 PSLC-related applications. Audit examination has revealed scope for streamlining the licensing requirements of PSLCs, which would simplify the TD's administrative work and facilitate the NFB trade (para. 2.25):

- (a) ***Need to consider merging the two types of PSLC.*** It has been the practice of the TD to issue two types of PSLC, namely the green PSLC for vehicles providing regular services according to a schedule of service and the red PSLC for vehicles providing non-regular services. However, the schedule of service requirement has been extended to all regular NFB services since 2005 and hence four types of public NFB service previously classified as non-regular have been required to operate in accordance with schedules of service for those parts of their services which are of a regular nature (e.g. hotel shuttle service). In other words, public NFBs issued with the red PSLC for these four types of service endorsement may be providing a mix of regular and non-regular services. There is merit to examine the feasibility of merging the two types of PSLC (para. 2.25(a)); and
- (b) ***Need to consider aligning the validity periods of PSLCs and related PSLs for NFB operators.*** At present, an NFB operator normally has to renew his PSL once every two years and the related PSLCs for his NFBs every year. As the main licensing controls over the NFB operation are laid down in the PSL and the application for which is subject to stringent vetting, the issue of a PSLC is based on the approved operation details in the related PSL. Hence, a more frequent renewal cycle of a PSLC than that of a PSL is not warranted. Having regard to the fact that there are over 9,000 PSLCs for NFBs, it is worthwhile to explore the feasibility of aligning the validity periods of PSLCs and related PSLs (para. 2.25(b)).

Regulatory controls over unauthorised operations

8. *Need to strengthen enforcement actions against unauthorised NFB operations.* In 2004, the TAC noted the problems of unauthorised NFB operations, i.e. providing services: (a) without valid service endorsements; or (b) not in accordance with PSL conditions (e.g. operating more trips than permitted and deviating from the approved routeings). Such activities could lead to traffic and environmental problems, and the third party insurance of the NFBs concerned might also be invalidated. The TAC then recommended that the Government should strengthen regulatory controls over NFB operations and enhance the efficiency and effectiveness of enforcement actions. According to the TD's annual surveys from 2004 to 2016, with the exception of residents' service, the number of NFBs suspected to be operating without suitable endorsements for five other types of public NFB services was generally on an increasing trend. There is a need to strengthen enforcement actions to address the issue (paras. 3.4, 3.8 and 3.11).

9. *Need to improve investigative work of the Regional Offices (ROs).* The TD's two ROs conduct investigative surveys on black spots proactively or upon receipt of a complaint or referral. If an unauthorised service detected by the ROs persists and is substantiated after further investigation by the NFB Enforcement Team, the case will be recommended to the Commissioner for Transport for holding an inquiry. Audit test check of the TD's records has revealed the following inadequacies in the ROs' investigative work (paras. 3.12 and 3.13):

- (a) *Inadequate on-board surveys.* While terminal surveys (i.e. observation at the terminal or approved stops) are effective in detecting overrun trips and operations without relevant endorsements, they are less effective than on-board surveys (i.e. taking a ride on the buses in question) in detecting routeing deviation and unauthorised intermediate stops. Audit examined 400 surveys conducted by the ROs from 2012 to 2017 and found that 371 (93%) were terminal surveys and the remaining 29 (7%) were on-board surveys. From April to May 2017, Audit performed 22 on-board surveys on residents' service routes selected on a risk-based approach and found that 21 (95%) of them had been operated with unauthorised stop(s) and/or routeing deviation. There is a need to use a risk-based approach to determine the mix of on-board and terminal surveys for detecting different types of unauthorised NFB operations (para. 3.14);

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- (b) ***Inadequate follow-up actions on investigative surveys.*** In 53 surveys with irregularities found by the ROs' contractors from 2010 to 2017, there had been omissions and delays in taking follow-up actions in 35 (66%) cases. For example, in 10 cases, no clarification letter was sent to the PSL holders and no follow-up survey was conducted to confirm cessation of unauthorised operations (para. 3.15(a));
 - (c) ***Inadequate follow-up actions on complaint cases.*** In 18 complaint cases from 2012 to 2016, the ROs issued letters to inform the operators concerned that complaints had been received and requested them to cease the unauthorised operations. However, the ROs had only conducted follow-up surveys to ascertain cessation of the unauthorised operations in 3 (17%) of the 18 complaint cases (para. 3.15(b)(ii)); and
 - (d) ***Inadequacies in ROs' record keeping.*** The ROs had not maintained a database of all unauthorised NFB services found and information on actions taken and progress, contrary to the internal guideline requirements. For better case management, there is a need to strictly enforce the laid-down requirements and consider making better use of technology in monitoring compliance (paras. 3.15 and 3.19).
10. ***Need to improve the efficiency and effectiveness of enforcement actions.*** The Commissioner for Transport may cancel, suspend or vary a PSL for substantiated inquiry cases. Audit examination of the records of 175 inquiries from January 2012 to mid-May 2017 (paras. 3.2(b) and 3.21) revealed the following issues:
- (a) ***Long time taken to complete inquiries.*** Of the 175 inquiries, 93 had been concluded and 82 were outstanding. Among the 93 concluded cases, 67 cases were sanctioned. For these 67 cases, the time taken from the date of recommending to the Commissioner for Transport for holding an inquiry to the date of implementing sanctions averaged 24 months (ranging from 13 to 46 months). Of the 82 outstanding cases, 20 (24%) had been pending for over 2 years. Audit sample checked 8 of the 82 outstanding cases and found that unauthorised operations had continued in all of them while inquiries were in progress. Given the relatively long processing time for inquiry and the considerable number of breaches of PSL conditions (e.g. failure to display the stipulated service signboards for half or more of their trips was found in 3,048 (52%) of 5,870 NFBs surveyed in 2016),

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there is a need to explore additional enforcement tools against common breaches of PSL conditions (paras. 3.7, 3.22, 3.23(a) and 3.28); and

- (b) ***Sanctions not implemented due to transfer of ownership of NFBs.*** There were 25 (27%) of a total of 93 concluded cases in which the offending PSL holders had avoided sanctions through transfer of ownership of NFBs. For example, in five inquiries on unauthorised services from 2011 to 2015, before the completion of the inquiry process, the ownership of three NFBs was transferred to other PSL holders (i.e. four companies with common director(s) and one individual being a shareholder of one of the companies) at \$1 each and the relevant PSLs under the inquiries were cancelled. As a result, no sanction could be imposed. There is a need to shorten the lead time in completing an investigation and inquiry to minimise the risk of transfer of vehicles, and explore feasible measures to plug the sanction avoidance loophole in the long run (paras. 3.23(b) and 3.25).

11. ***Need to improve the publicity of authorised NFB services.*** Publicity is important for protecting the public from inadvertently using unauthorised NFB services which may not be covered by insurance in the event of accidents, and enhancing public scrutiny of unauthorised operations (para. 3.34). Audit has found room for improvement, as follows:

- (a) ***Stop signs for residents' service.*** To educate the general public not to use unauthorised residents' services, the TD erected stop signs at approved bus stops for some residents' service routes. Audit found that in three selected districts, only 49 (49%) out of 101 authorised NFB stops were erected with these stop signs. Audit inspected 58 stop signs in 6 districts and found that 3 (5%) of them were with outdated information. Audit also found that stop signs were erected by some operators at unauthorised locations without the TD's approval (paras. 3.29 and 3.30); and
- (b) ***Publicising approved schedules of service.*** Currently, the TD publishes on its website operation details stipulated in the schedules of service of all approved residents' service and certain cross-boundary international passenger service. However, the TD has not published similar operation details for other types of regular service (e.g. hotel shuttle service). Audit found suspected cases of non-compliance with the schedules of service under hotel service and contract hire service (including operation without schedules of service, charging of separate route fare, overrun trips and

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unauthorised stopping points), highlighting the need to publicise approved schedules of service for easy identification by the general public (paras. 3.33 and 3.34).

Safety measures of student service vehicles

12. As at 31 December 2016, there were 5,238 student service vehicles, including 3,169 public NFBs and 103 private NFBs with student service endorsements, and 1,966 SPLBs. Notwithstanding the generally satisfactory safety records of student service vehicles, the Government considers it important to explore measures to further enhance their safety. Since 2008, the provision of escort service has become a mandatory requirement for all NFBs and SPLBs carrying kindergarten and primary school students. In 2007, legislative amendment was made to require all student service vehicles registered on or after 1 May 2009 to be equipped with safer seats, i.e. strong and closely spaced seats with high and energy-absorbing backs, to protect children in the event of a crash (paras. 1.9(d), 4.2, 4.3(b) and 4.5).

13. ***Implementation of the safer seat requirements.*** As at 24 July 2017 (some eight years after the safer seat requirements came into operation on 1 May 2009), 3,382 (64%) of 5,261 student service vehicles were fitted with safer seats. Through a normal replacement cycle, it may take up to some 6 years to phase out/replace the remaining 1,879 (36%) student service vehicles without safer seats. There is a need to explore measures to speed up the progress of phasing in student service vehicles with safer seats (para. 4.7).

14. ***Additional safety measures.*** After the implementation of safer seat requirements in 2009, some LegCo Members expressed concern on the adequacy of safety measures on student service vehicles and requested the TD to explore further means for the protection of the passengers of student service vehicles, particularly those at young ages. According to the TD's consultancy study report of 2013, while safer seats were effective in providing protection to occupants on student service vehicles regardless of occupant age and size, their benefit could be further enhanced by the following measures (paras. 4.8 and 4.9):

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- (a) ***Child restraint device (CRD).*** The use of appropriate restraint systems could provide better protection to passengers aged under 4.5 years or weighing 18 kilograms or less in cases involving lateral and side-impact crashes, rollovers and ejections (para. 4.9(b)); and
 - (b) ***Seat belt.*** Passengers should be better protected by seat belts in side-impact and rollout accidents than safer seats alone, provided that seat belts were properly worn. In terms of safety benefits, safer seats with lap-shoulder seat belts were rated as excellent while safer seats alone and safer seats with lap-belts as average. After taking into account other factors (such as cost estimates, operational considerations and implementation issues), the overall performance of safer seat alone option was as good as that of safer seat with a lap-shoulder belt option (paras. 4.8 and 4.14).
15. ***Developments locally and overseas.*** Audit noted the following developments which needed to be taken into account in considering additional measures for enhancing the safety of student service vehicles (para. 4.13):
- (a) ***CRD.*** In 2013, two Members of the LegCo Panel on Transport considered that CRD/seat belt requirements should be imposed on student service vehicles which regularly carried child passengers. Audit's Internet research revealed that the use of CRDs on school buses was recommended for improving the protection of younger children in the United States and Canada which had safer seat requirements similar to those of Hong Kong (paras. 4.11 and 4.12); and
 - (b) ***Seat belt.*** While there was no mandatory requirement on the use of seat belts in student service vehicles, Audit analysis of the TD's records revealed that of the 3,382 student service vehicles fitted with safer seats as of July 2017, 2,094 (62%) had in fact been fitted with both safer seats and seat belts. In a sample check of the TD's records of 30 student service vehicles fitted with both safer seats and seat belts, Audit found that all of them were equipped with lap-belts which according to the 2013 consultancy study report were inferior to lap-shoulder seat belts in reducing the risks of severe head and neck injuries in frontal crashes (paras. 4.16 and 4.17).

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16. ***Unresolved issues.*** According to the TD, there were a number of issues to be thoroughly considered and resolved before a decision could be taken on the types of measures to further enhance the safety of student service vehicles, including safety benefits, cost implications, technical, operational, implementation and legal issues, impact on trade and views of stakeholders. In Audit's view, the TD needs to consider conducting a survey of stakeholders (including the operators, schools and parents) to gauge their views, preference and willingness to pay for various possible enhancement options, and address operational and implementation issues that may arise (paras. 4.18, 4.19 and 4.21(b)).

Audit recommendations

17. **Audit recommendations are made in the respective sections of this Audit Report. Only the key ones are highlighted in this Executive Summary. Audit has *recommended* that the Commissioner for Transport should:**

- (a) **in consultation with the Secretary for Transport and Housing, conduct a review of the implementation of the sourcing requirement (para. 2.15(a));**
- (b) **uphold the supporting document requirements in processing PSL renewal applications (paras. 2.15(b), 2.15(c) and 2.29(c));**
- (c) **consider streamlining the licensing requirements of PSLCs (para. 2.29(d));**
- (d) **strengthen enforcement actions against unauthorised NFB operations, such as using a risk-based approach to determine the mix of on-board and terminal surveys for detecting different types of unauthorised NFB operations (para. 3.35(a));**
- (e) **improve the efficiency and effectiveness of the enforcement actions, including endeavouring to shorten the lead time in completing the investigation and inquiry process, and exploring feasible measures to plug the sanction avoidance loophole in the existing inquiry mechanism (para. 3.35(d));**

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- (f) **consider publicising approved schedules of service of all regular NFB services, in particular for hotel and contract hire services, for easy identification by the general public (para. 3.35(f));**
- (g) **explore measures to speed up the progress of phasing in student service vehicles with safer seats (para. 4.20(a)); and**
- (h) **continue to keep abreast of the latest developments in enhancing the safety of student service vehicles, and consider conducting a survey of stakeholders to gauge their views and willingness to pay for possible enhancement options and address operational and implementation issues that may arise (para. 4.20(b)).**

Response from the Government

18. The Government generally agrees with the audit recommendations.

PART 1: INTRODUCTION

1.1 This PART describes the background to the audit and outlines the audit objectives and scope.

Government's transport policy

1.2 Public transport services are closely related to the daily life of the public. In 2016, over 12 million passenger trips (representing 90% of the total passenger trips) per day were made through different public transport services in Hong Kong. It is the Government's transport policy (Note 1) to:

- (a) maintain a balanced public transport system with coordination among different modes; and
- (b) ensure the provision of safe, efficient and cost-effective public transport services to the community.

It is also the Government's policy that public transport services should be run by the private sector in accordance with commercial principles to enhance efficiency and cost-effectiveness.

1.3 The Third Comprehensive Transport Study of May 2000 has set out a hierarchy of the roles and positioning of different public transport services having regard to their relative efficiency and capacity. According to the Public Transport Strategy Study Report of June 2017, the roles and positioning of different public transport services as set out in the past decades remain the same today, namely:

Note 1: *The policy was first stated in "The White Paper on Transport Policy in Hong Kong" published in January 1990 and reaffirmed by the "Hong Kong Moving Ahead — A Transport Strategy for the Future" of October 1999, the Third Comprehensive Transport Study of May 2000, and the latest Public Transport Strategy Study Report of June 2017.*

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- (a) railway is at the top of the hierarchy as it operates on dedicated rail corridors and provides high-capacity, convenient and emission-free services;
- (b) among the public transport modes other than heavy rail, franchised buses are mass carriers with a high capacity and can be deployed more flexibly, and their service pattern can be adjusted within a relatively short period to meet changes in demand. They serve areas without direct railway access as well as provide feeder service connecting railway network and inter-district service. Light Rail also plays an important role in the public transport system in the Northwest New Territories on feeder services to West Rail and as rail-based transport in the area;
- (c) the role of public light buses (Note 2) is to provide supplementary feeder service and to serve areas with relatively lower passenger demand or where the use of high-capacity transport modes is not suitable;
- (d) non-franchised buses (NFBs) play a supplementary role in the public transport system through relieving the demand for franchised bus and green minibus services during peak hours, and through providing services for districts where the operations of franchised buses and green minibuses are not cost-effective. They provide tailor-made services for specific groups, such as students and tourists. Since October 1999, private light buses which also provide school transport services have been put under the Passenger Service Licence (PSL) system as NFBs (see paras. 1.6 and 1.7); and
- (e) taxis provide a personalised, point-to-point and more comfortable public transport service at a higher fare.

1.4 To make the hierarchy of the public transport modes effective, a high degree of inter-modal coordination is required. The Transport Department (TD) is the authority for administering the Road Traffic Ordinance (RTO — Cap. 374) and

Note 2: *There are two types of public light buses, i.e. the green minibuses which operate regular services with their routes, fares, vehicle allocation and timetable subject to the approval by the Transport Department and the red minibuses which are not required to operate on fixed routes or timetables, and can set their own fares.*

legislation for the regulation of public transport services (Note 3). An extract of the TD's organisation chart is at Appendix A.

Non-franchised buses

1.5 In accordance with the RTO and the Public Bus Services Ordinance (PBSO — Cap. 230), NFBs provide two broad categories of services, as follows:

- (a) ***Public NFB services.*** The RTO defines a public bus as a bus used or intended for use for hire or reward. There are eight main types of services provided by public NFBs (see Appendix B for a brief description of the eight types of services):
 - (i) tour service (administrative code A01);
 - (ii) hotel service (A02);
 - (iii) student service (A03);
 - (iv) employees' service (A04);
 - (v) international passenger service (A05);
 - (vi) residents' service (A06);
 - (vii) multiple transport service (A07 — Note 4); and
 - (viii) contract hire service (A08).

Note 3: *For example, the railway services are regulated under the Mass Transit Railway Ordinance (Cap. 556) while franchised public buses are regulated under the Public Bus Services Ordinance (Cap. 230).*

Note 4: *The TD has not granted approval for multiple transport service for years due to market changes.*

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Public NFBs may be licensed to operate one or more of the above services subject to the operators obtaining the corresponding service endorsements from the TD (see para. 1.7); and

- (b) ***Private NFB services.*** The RTO defines a private bus as a bus used or intended for the carriage of passengers free of charge except when providing a student service and/or a disabled persons' service. There are four types of services provided by private NFBs:
 - (i) student service (B01) for designated schools or school sponsoring bodies;
 - (ii) employees' service (B02);
 - (iii) disabled persons' service (B03); and
 - (iv) any other service (B04) approved by the Commissioner for Transport.

Private NFBs are subject to strict restrictions by way of registration of vehicles (e.g. a private NFB for student service must be registered in the name of an educational institution) and mode of operation (i.e. a private bus used for employees' service and any other service must not be used for hire or reward), with vehicle ownership mostly confined to the institutes or organisations requiring the services. Private NFBs may be licensed to provide one or more of the above four services subject to the operators obtaining the corresponding service endorsements from the TD (see para. 1.7).

School private light buses

1.6 Apart from NFBs, vehicles allowed under the RTO to provide student service include school private light buses (SPLBs) which have 19 seats or less (Note 5). Commonly known as nanny vans, most SPLBs are painted in yellow and

Note 5: *The RTO was amended in July 2017 to increase the maximum passenger seating capacity of light buses from 16 to 19.*

bear the signs (e.g. a continuous horizontal purple stripe — Note 6) in accordance with the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374A) for alerting road users in keeping a safe distance when the SPLB is travelling on the road and when young children are boarding and alighting (see Photograph 1). Unlike NFBs, SPLBs are solely for providing student service.

Photograph 1

An SPLB



Source: Photograph taken by staff of Audit Commission on 6 July 2017

Licensing and regulatory regime

1.7 The operation of NFB and SPLB services is regulated through the PSL system (Note 7) under the RTO and its subsidiary legislation. PSLs authorise licensees to operate vehicles (e.g. NFBs or SPLBs) to provide passenger services whereas Passenger Service Licence Certificates (PSLCs) are issued to vehicles operating under the PSLs. A PSL holder is also required to obtain from the TD individual service endorsement(s) for the specific type(s) of service (see para. 1.5) he/she intends to provide and seek the TD's approval of individual route(s) for regular

Note 6: *The requirements on the signs and the colour of the outside of the vehicle do not apply to SPLBs registered before 1 May 1997.*

Note 7: *In order to exercise better control over the use of SPLBs, the Road Traffic (Amendment) Ordinance was enacted in October 1999 to require SPLBs to operate under the PSL system. In addition to NFB and SPLB services, public light bus service is also regulated under the PSL system.*

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services (see para. 2.5). The numbers of registered vehicles, PSLs, PSLCs and service endorsements issued in respect of NFBs and SPLBs as at 31 December 2016 are shown in Table 1. According to the TD's annual survey (Note 8), the fleet utilisation rate of NFBs and SPLBs in 2016 was about 86%.

Table 1

**Numbers of registered vehicles, PSLs, PSLCs and service endorsements
(31 December 2016)**

Type of vehicles	Registered vehicle	PSL	PSLC	Service endorsement (Note 1)
Public NFB	7,043	1,287	8,769 (Note 2)	17,806
Private NFB	651	200	651	867
SPLB	1,966	705	1,966	1,966

Source: TD records

Note 1: As an NFB can be issued with more than one service endorsement, the number of service endorsements is larger than the number of registered vehicles. An SPLB can only have one service endorsement.

Note 2: There are two types of PSLC, one for vehicles providing regular services and the other for non-regular services (see para. 2.6). As a public NFB providing regular and non-regular services will be issued with separate PSLCs, the number of PSLCs is larger than the number of registered vehicles.

1.8 The Public Vehicles and Prosecution Section of the Administration and Licensing Branch (see Appendix A), in collaboration with the Urban Regional Offices

Note 8: *The TD commissions a consultant to undertake an annual survey to collect operational information and utilisation of NFBs. In view of the public concerns on demand and supply of school bus service, SPLBs have been included in the annual survey since 2015.*

and the New Territories Regional Offices (ROs — Note 9), administers the PSL system, including issuing PSLs and PSLCs and taking enforcement actions against vehicles governed by PSLs operating unauthorised services. The enforcement tools available under the RTO and PBSO against unauthorised NFB services and breaches of the PSL conditions include prosecution and inquiry (see para. 3.2(a) and (b)).

Measures to address the operational problems of NFBs and SPLBs

1.9 Over the years, there have been various operational problems related to NFBs and SPLBs, and the TD has introduced various measures to address these problems:

- (a) ***Measures to address the oversupply of NFBs.*** Between 1998 and 2003, the number of registered NFBs increased from 5,900 to 7,200, representing an increase of 22% whereas public transport patronage only increased by 2.7% from 11.1 million to 11.4 million passengers per day over the same period. As a result, NFB operators faced greater competition among themselves and they also competed more intensively with other public transport modes, in particular public light buses and taxis to obtain passenger share. The unhealthy competition arising from an excessive supply of NFB services was against the inter-modal coordination policy (see para. 1.4). After conducting a review and consulting the transport trade in 2004, the Transport Advisory Committee (TAC — Note 10) recommended that the Government should coordinate the change in NFB services with demand. Accordingly, the TD tightened the licensing regime so that new supply of NFB services and vehicles would only be approved when there was justified demand. In addition, PSL applicants are required to source NFBs from the existing fleet (i.e. the sourcing requirement);

Note 9: *The ROs are responsible for all transport matters within their respective areas. The two ROs are each headed by an Assistant Commissioner for Transport and supported by some 40 Transport Officer grade staff responsible for overseeing public transport matters.*

Note 10: *The TAC comprises 15 non-official members including the chairman and three ex-officio members, i.e. the Permanent Secretary for Transport and Housing (Transport) or his representative, the Commissioner for Transport and the Commissioner of Police or his representative. The TAC's function is to advise the Chief Executive-in-Council on transport matters including broad issues of transport policy with a view to improving the movement of both people and freight.*

- (b) ***Measures to address the unauthorised NFB services.*** The TAC's 2004 review also noted that as a result of the keen competition, some NFB operators had operated unauthorised NFB services, undermining the regular and legitimate transport services and causing traffic problems at some popular spots. The TAC recommended that the Government should strengthen regulatory controls over NFB operation and enhance the efficiency and effectiveness of enforcement actions. To facilitate better monitoring and enforcement against unauthorised NFB operations, schedules of service stipulating all relevant operation details have been extended since 2005 to all NFB services which are of a regular nature with the same origin and destination areas, and appropriate signs in a standardised format have to be displayed in all NFBs to indicate the service being operated. Figure 1 shows the specified format of signboard to be displayed when an NFB is operating an employees' service;

Figure 1

Service signboard of employees' service



Legend: * Indicates the minimum height of the characters

Source: TD records

- (c) ***Measures to address the inadequate provision of student service by NFBs.*** Due to the growing demand from the tourism industry and cross-boundary transport sector, the number of NFBs with student service endorsement decreased by 16% from 4,270 in 2004 to 3,577 in 2011. Meanwhile, the

number of SPLBs (not subject to the sourcing requirement — see (a) above) increased from 1,259 in 2011 to 1,899 in 2014. In 2012, the TD allowed an NFB operator in possession of student service endorsement to use all vehicles meeting the relevant requirements in its fleet for carriage of students upon application. While over 400 additional vehicles had since been granted student service endorsement through this measure, the number of NFBs with student service endorsement continued to decrease from 3,489 in 2012 to 3,286 in 2014. According to a survey conducted by the TD in 2014, about 70% of NFBs with student service endorsement were actually providing student service. On the other hand, the number of kindergarten and primary school students had increased by a total of around 25,000 during the four school years from 2011/12 to 2014/15 although the total student population had decreased by around 2,500 over the same period. The TD expected that there would remain considerable demand for school bus service in the coming years. In 2015, the TD exempted PSL applicants of private NFBs providing student services from the sourcing requirement (see (a) above) but the transport trade objected to a similar relaxation for public NFBs; and

- (d) *Measures to enhance the safety of student service vehicles.* The provision of escorts on student service vehicles can assist school children during boarding and alighting, and help monitor their behaviour when the vehicles are in motion. The mandatory escort requirement was introduced in 1997 for NFBs serving kindergarten and primary school students. The same requirement was extended to SPLBs serving kindergarten students in 2005 and primary school students in 2008. In 2007, legislative amendment was made to require all student service vehicles (NFBs with student service endorsement and SPLBs) registered on or after 1 May 2009 to install safer seats to reduce the risk of students being thrown out of their seats and the extent of their injuries in vehicle collisions.

Audit review

1.10 In 2008, the Audit Commission (Audit) completed a review of “Licensing of vehicles under the passenger service licence system” focusing on the provision of licensing services under the PSL system by the TD. The results were reported in Chapter 4 of the Director of Audit’s Report No. 50 of March 2008. The Government accepted the audit recommendations for implementation. In April 2017, Audit

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commenced a review to examine the TD's work in regulating NFB and SPLB services, focusing on:

- (a) administration of licensing requirements (PART 2);
- (b) regulatory controls over unauthorised operations (PART 3); and
- (c) safety measures of student service vehicles (PART 4).

Audit has found room for improvement in the above areas and has made a number of recommendations to address the issues.

Acknowledgement

1.11 Audit would like to acknowledge with gratitude the assistance and full cooperation of the staff of the TD during the course of the audit review.

PART 2: ADMINISTRATION OF LICENSING REQUIREMENTS

2.1 This PART examines the TD's work in administering the licensing requirements of NFBs and SPLBs, focusing on the:

- (a) measures to coordinate the change in non-franchised bus services with demand (paras. 2.7 to 2.14); and
- (b) processing of applications (paras. 2.18 to 2.28).

Passenger Service Licence system

2.2 ***Passenger Service Licence.*** The operation of NFB and SPLB service is regulated through PSLs issued by the Commissioner for Transport under section 27 of the RTO. In accordance with section 28 of the RTO, when considering any application for a PSL, the Commissioner for Transport shall take into account, in addition to any other matter which she considers relevant to the application:

- (a) any policy direction from the Chief Executive of the Hong Kong Special Administrative Region with respect to the provision of public transport services;
- (b) any limit in force under section 23 of the RTO on the number of vehicles that may be registered (Note 11);
- (c) the need for and the standard of the services to be provided by the applicant;
- (d) the level of service already provided or planned by other public transport operators; and

Note 11: *There is currently no limit in force under section 23 of the RTO on the number of NFBs that may be registered.*

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- (e) traffic conditions in the areas and on the roads where the services are to be provided.

2.3 ***Application requirements.*** Applicants for PSLs have to provide in their applications, amongst others, the following operation details:

- (a) the type of service proposed;
- (b) the route, area or educational institutions to be served;
- (c) the number and type of vehicles to be operated on the service;
- (d) the frequency and the period on each day during which the service shall be operated; and
- (e) proposed fares (if any).

They are also required to submit supporting documents such as service contracts or user group support letters (e.g. letters from educational institutions for PSL applications of SPLBs or student service endorsements of NFBs) to justify the need for the proposed services. The TD will examine the supporting documents to verify whether the service demand is substantiated when considering the applications.

2.4 ***PSL conditions.*** The issue of a PSL and the use of vehicles are subject to PSL conditions. Apart from specifying the approved operation details of each vehicle under the PSL (see para. 2.3(a) to (e)), PSL conditions also require a licensee to comply with certain operating requirements such as:

- (a) keeping operating and maintenance records for a specified period;
- (b) displaying a service signboard for the type of service permitted when the service is in operation; and
- (c) providing an escort when student service to kindergarten or primary school students is in operation.

In accordance with the Road Traffic (Public Service Vehicles) Regulations (Cap. 374D), a PSL may be issued for a period not exceeding five years and may be renewed for further periods of not more than five years each. In practice, the first issue of a new PSL is valid for one year and will be in general renewed for a period of two years for NFBs and one year for SPLBs upon expiry. A PSL is not transferable.

2.5 *Operation of regular services.* Among the eight types of services provided by public NFBs (see para. 1.5(a)), international passenger service and residents' service are issued with schedules of service stipulating all relevant operation details (such as fares, routings, operating hours, frequency, number and types of buses and stopping points) as approved by the Commissioner for Transport. With a view to facilitating better monitoring and enforcement against unauthorised operations, the schedule of service requirement has been extended to other four types of public NFB services including shuttle services provided under hotel service, student service for post-secondary educational institutions, employees' service and contract hire service which is regularly operated with the same origin and destination areas since 2005 (see para. 1.9(b)). As at June 2017, there were around 1,500 approved schedules of service (see Table 8 in para. 3.32).

2.6 *Passenger Service Licence Certificate.* The TD issues two types of PSLC, i.e. one for vehicles providing regular services according to a schedule of service approved by the TD such as residents' service and the other for vehicles providing non-regular services such as tour service. A PSLC is imprinted with the PSL number and the approved operation details of the vehicle, such as the types of service permitted. In accordance with the Road Traffic (Public Service Vehicles) Regulations:

- (a) every NFB or SPLB operating under a PSL shall display a PSLC on the left hand half of the vehicle's windscreen in a manner as to be visible from the front of the vehicle; and
- (b) a PSLC shall be valid for a period of 12 months or until the expiry of the PSL to which the PSLC relates, whichever is the sooner.

Measures to coordinate the change in non-franchised bus services with demand

2.7 In July 2004, to address the oversupply problem of NFBs, the TAC recommended that the Government should coordinate the change in NFB services with demand in a more effective manner (see para. 1.9(a)). In January 2005, the then Environment, Transport and Works Bureau (Note 12) informed the Legislative Council (LegCo) Panel on Transport that it would implement a package of measures based on the TAC's recommendations to ensure that new NFB services and vehicles would only be approved when there was justified demand. These measures included the following:

- (a) ***Stringent vetting of NFB applications and documentary requirements.*** To justify a PSL application related to new supply of NFBs (Note 13), an applicant had to provide relevant supporting documents, e.g. service contracts with validity period of six months or above, to prove the genuine long-term need for the proposed new services;
- (b) ***Single/restrictive service endorsements.*** New supply of vehicles applied for by new PSL applicants and existing operators should normally be granted with one type of service endorsement only. If the vehicle so applied for was sourced from the existing NFB fleet and would not entail a net increase in the total number of NFBs, such vehicle transferred among NFB operators (regardless of whether they were existing or new operators) should normally not be granted more than three service endorsements;
- (c) ***Sourcing vehicles from existing fleet.*** As a further step to contain the growth of total number of NFBs in the market, incentives would be provided to encourage PSL applicants to source vehicles from the existing fleet (which did not require replacement vehicles) in the market, in lieu of purchasing additional vehicles which would entail a net increase in

Note 12: *With the re-organisation of the policy bureaux effective from 1 July 2007, the transport-related policy responsibilities of the then Environment, Transport and Works Bureau were transferred to the Transport and Housing Bureau.*

Note 13: *New supply of NFB services and vehicles refers to applications for new PSLs from new applicants, applications for additional service endorsements and vehicles from existing operators, and applications for future renewal of the above PSLs and service endorsements.*

NFB fleet, to meet new service demand. Applicants who intended to purchase additional vehicles would be given a period of six months to try to source vehicles from the existing NFB fleet. Their applications 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. The length of the period would be kept under review to suit the changing circumstances; and

- (d) ***Imposing a cap on NFB fleet not appropriate.*** The then Environment, Transport and Works Bureau also informed the LegCo Panel on Transport that it was not appropriate to impose a cap on the NFB fleet because it would restrict the flexibility in meeting the genuine needs of some service sectors which might require additional vehicles to meet demand due to their special circumstances. It might also lead to undesirable speculative activities and thus generate premium for PSLs and NFB vehicles, increasing the cost of NFB services which would eventually be passed on to the passengers.

Implementation of the sourcing requirement

2.8 Through the PSL/PSLC application forms, the TD has advised applicants for additional NFBs that they would be given a period of six months to source vehicles from the existing NFB fleet in the market. For applicants who are able to acquire the required NFBs from the existing NFB fleet and the existing owners of the NFBs concerned agree not to purchase replacement vehicles, their applications will be processed immediately. For applicants who are unable to acquire the required NFBs from the existing fleet, their applications will be reviewed at the end of the six-month period instead of being processed as soon as possible as stated in the 2004 TAC review report and the 2005 LegCo Panel on Transport paper (see para. 2.7(c)).

2.9 ***Internal guideline requirements.*** The TD has laid down the following guidelines for staff in processing applications involving additional NFBs:

- (a) upon receipt of an application involving additional NFBs where the applicant has not purchased NFBs from the existing fleet, the TD will issue a notice requiring the applicant to hire or purchase NFBs from the existing fleet. According to the notice, an applicant may seek assistance from three of the five trade associations in the first month after receipt of the notice

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and place an advertisement in two Chinese newspapers every month to source or hire NFBs, or conduct open tenders in six months after receipt of the notice;

- (b) if the applicant fails to source a second-hand NFB at the end of the six-month period, he/she should explain with proof why he/she could not meet the requirement set out in the notice (see item (a) above). Nevertheless, the explanation provided by the applicant shall not necessarily render an approval for an additional NFB entailing a net increase in the NFB fleet. The following factors should be taken into account:
 - (i) the overall utilisation rate of the NFB fleet as observed through the TD's annual surveys (see Note 8 to para. 1.7);
 - (ii) the number of transfers of second-hand NFBs recorded in recent three months or longer period; and
 - (iii) the merits of individual case; and
- (c) if the utilisation survey reveals that there is no shortfall in supply of vehicles for NFB services and there are active transactions in the second-hand market, the applicant would be asked to make further efforts to source vehicles from the existing fleet.

2.10 Since the implementation of the sourcing requirement in April 2005, no application for additional public NFBs which involved a net increase in the total number of NFBs in the market had been approved (Note 14). According to the TD, applicants for additional public NFBs had either successfully sourced public NFBs from the existing fleet or stopped pursuing their applications for reasons unknown to the TD while some eligible organisations opted for private NFBs to serve their own needs. The number of public NFBs decreased by 169 (2%) from 7,212 in 2004 to 7,043 in 2016. For private NFBs, the sourcing requirement has been relaxed since

Note 14: *The only exception was in 2011 when the TD approved an application for reclassifying 14 private NFBs into public NFBs serving a post-secondary educational institution based on the individual merits of the case, resulting in a net increase of 14 public NFBs.*

2007 with exemption granted to charitable organisations which obtain government funding, lottery fund or donations to finance the capital costs of their vehicles and educational institutions (i.e. kindergartens, primary schools and secondary schools). Besides, such exemption has also been granted to other applications based on individual merits. As a result, the number of private NFBs had increased by 158 (32%) from 493 in 2004 to 651 in 2016.

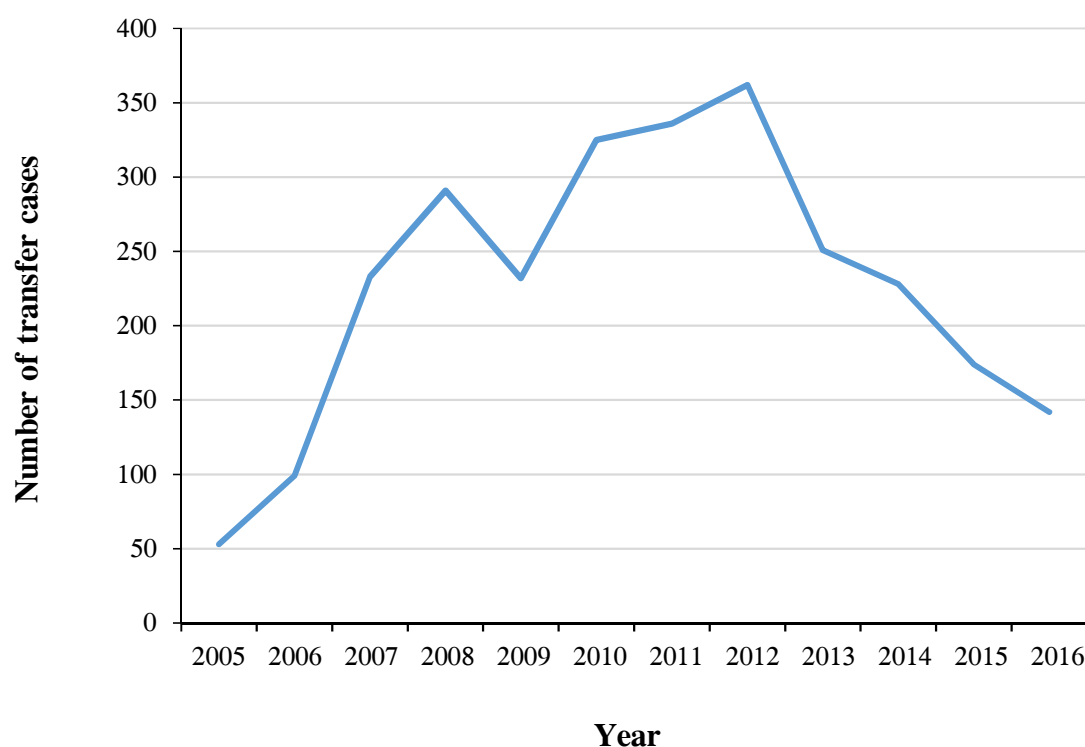
Changes in the public NFB market

2.11 Audit noted that since the implementation of the sourcing requirement in April 2005, there had been changes in the public NFB market, as follows:

- (a) ***Utilisation of public NFBs.*** According to the TD's annual surveys, the utilisation rate of public NFBs had increased from 81% in 2004 reaching its peak at 89% in 2014 before slightly dropping to 86% in 2016. By comparison, the utilisation rates of franchised buses operated by different companies (which did not have sourcing requirement) ranged from 88% to 93% in 2016. The increase in the utilisation rate was also reflected by the number of trips of NFB observed during the annual surveys which had increased by 40% from 40,104 per day in 2004 to 55,970 per day in 2016. Over the same period, the estimated number of passengers using public NFB services had also increased by 19% from 468,684 per day in 2004 to 559,113 per day in 2016;
- (b) ***Transactions of second-hand public NFBs.*** As shown in Figure 2, while the number of second-hand public NFB transfer cases increased from 53 in 2005 to a peak of 362 in 2012, it was generally on a decreasing trend thereafter, falling to 142 in 2016; and

Figure 2

**Number of second-hand public NFB transfer cases
(2005 to 2016)**



Source: TD records

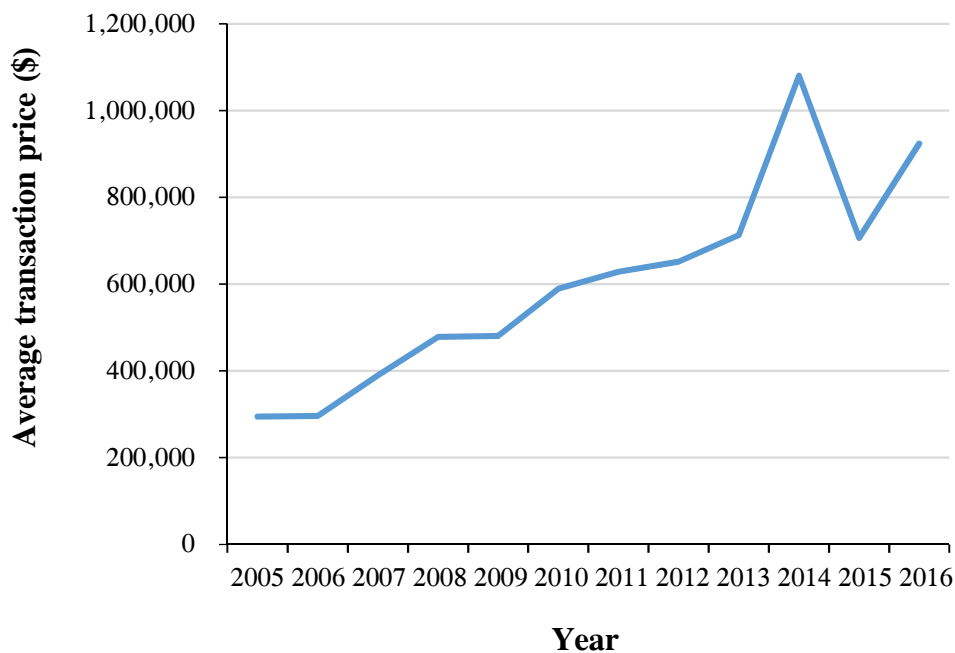
Remarks: The numbers of NFB transfer cases shown are those with transaction prices above \$100,000. Based on the records of the TD, the market value of a second-hand public NFB was usually not less than \$100,000 and those transactions with prices below \$100,000 might be between related parties. The numbers of transactions with prices equal to or below \$100,000 ranged from 39 to 304 a year.

- (c) **Transaction prices of second-hand public NFBs.** As shown in Figure 3, the average transaction price of a second-hand public NFB had increased from \$0.3 million in 2005 by 200% to \$0.9 million in 2016. Based on the TD's records, the average price for a new bus normally ranged from \$0.6 million (for a bus with about 30 seats) to \$0.9 million (for a bus with about 60 seats). Analysis of the 142 transactions in 2016 (see (b) above) showed that the transaction prices of 51 transactions (36%) were below \$0.5 million and 59 transactions (42%) ranged from \$0.5 million to

\$1 million. The remaining 32 (22%) transactions were above \$1 million (up to \$4.9 million each for two second-hand double deck NFBs). According to the TD, factors such as the prevailing economic condition and business prospect of the trade would affect the transaction volume and price.

Figure 3

**Average transaction prices of second-hand public NFBs
(2005 to 2016)**



Source: TD records

Remarks: Based on the records of the TD, the market value of a second-hand public NFB was usually not less than \$100,000. In calculating the average transaction price, to avoid skewed effect of those exceptionally low transaction prices, which might be transactions between related parties, only transactions at price above \$100,000 were counted.

Need to review the implementation of the sourcing requirement

2.12 According to the 2004 TAC review report and the 2005 LegCo Panel on Transport paper, the main measures to coordinate the change in NFB services with

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demand were stringent vetting of NFB applications and documentary requirements, and granting of single/restrictive service endorsements (see para. 2.7(a) and (b)). The sourcing requirement was a further administrative measure to encourage PSL applicants to source vehicles from the existing fleet and thus contain the growth of total number of NFBs in the market. There was no intention to impose a cap on the NFB fleet which would: (a) restrict the flexibility in meeting the genuine needs of some service sectors; and (b) lead to undesirable speculative activities and generate premium for PSLs and NFB vehicles which would eventually be passed on to the passengers (see para. 2.7(c) and (d)).

2.13 Audit understands that the sourcing requirement is important for the proper control over NFB operations whilst ensuring the service demand is met. Such requirement helps prevent excessive supply of NFB services in the market and minimise unhealthy competition in the NFB market and with other public transport modes. With the lapse of some 12 years after the implementation of the sourcing requirement in 2005 and in light of the changes in the NFB market over the years (see para. 2.11), it is timely for the TD to conduct a review to see if there is room for improvement. In this connection, there is a need to re-examine the TD's internal guideline requirement whereby applicants for additional NFBs would be asked to make further efforts to source vehicles from the existing fleet even after having done so for six months (see para. 2.9(c)). Such a requirement was not stated in the 2004 TAC review report and the 2005 LegCo Panel on Transport paper, and may not be flexible enough for some NFB operators in meeting genuine service needs.

Need to tighten vetting of supporting documents for PSL renewal applications

2.14 A PSL holder shall provide a service contract of any duration to justify the continued need for the service to support a PSL renewal application. For renewal of service endorsements, at least one service contract of any duration should be submitted for each type of service permitted under the PSL. The PSL renewal application may not be approved if a PSL holder is unable to provide the relevant supporting documents. From 2014 to 2016, the TD processed 2,080 PSL renewal applications for public NFBs. Audit examined 10 of these renewals (involving 41 service endorsements) granted to existing PSL holders during this period and noted that:

- (a) in 3 approved applications involving 9 service endorsements, the PSL holders concerned submitted service contracts to justify the continued need

for 3 contract hire service endorsements. For the remaining 6 (15%) of 41 endorsements relating to tour and hotel services, the PSL holders had not submitted relevant service contracts but only submitted letters declaring that the NFBs under the concerned PSLs would be deployed for such services. In September 2017, the TD informed Audit that the PSL holders in these 3 approved applications were also registered travel agents and that tour and hotel services were referred to as complementary services (i.e. serving similar clientele) in the 2004 TAC review report. However, according to the TAC report, endorsements for complementary services could be granted provided that the need for such endorsements could be justified. There is a need to uphold such supporting document requirement in processing PSL renewal applications; and

- (b) in 9 approved applications involving 39 service endorsements, the service contracts submitted by the PSL holders could not fully support the number of vehicles required under 26 (63%) of 41 service endorsements. For example, in one renewal of service endorsement granted to 76 NFBs, the service contract submitted by the PSL holder showed that only 3 NFBs were required. Audit noted that it had been the practice of the TD to require a PSL holder to submit at least one contract for each type of service. According to the TD, such arrangement provided flexibility for the PSL holders in vehicle deployment and meeting their operational needs. To strike a balance between providing reasonable flexibility for the NFB trade and maintaining effective regulation of the NFB services, the TD needs to consider tightening the requirements on service contracts provided for each service endorsement to justify the number of vehicles required.

Audit recommendations

2.15 Audit has *recommended* that the Commissioner for Transport should:

- (a) **in consultation with the Secretary for Transport and Housing, conduct a review of the implementation of the sourcing requirement, in particular in relation to the TD's internal guideline requirement on further sourcing when an applicant is unable to source an NFB from the existing fleet for six months;**

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- (b) **uphold the requirement on a PSL holder to submit a service contract or other relevant documents for supporting each service endorsement when applying for PSL renewal; and**
- (c) **consider tightening the requirements on service contracts provided for each service endorsement to justify the number of vehicles required.**

Response from the Government

2.16 The Commissioner for Transport agrees with the audit recommendations. She has said that the TD will:

- (a) conduct a review on the internal guidelines for the implementation of the sourcing requirement;
- (b) uphold the requirement on a PSL holder to submit a service contract or other relevant documents for supporting each service endorsement when applying for PSL renewal; and
- (c) consider drawing up a consistent approach in requiring a PSL holder to provide service contracts to justify the number of vehicles required under each service endorsement, taking into account the deployment flexibility of the NFB operation.

2.17 The Secretary for Transport and Housing agrees with the audit recommendation in paragraph 2.15(a). He has said that:

- (a) as set out in the report of the Public Transport Strategy Study released in June 2017, NFBs would continue to perform its role and positioning as a supplementary public transport facility, achieving the functions of:
 - (i) relieving demand on the franchised bus and green minibus services primarily during the peak hours; and
 - (ii) providing services to specific passenger groups (e.g. tour groups, hotel guests and students) when the regular public transport services cannot provide appropriate services;

- (b) the sourcing requirement has been put in place based on policy considerations for the purpose of exercising proper control over operation of NFBs while ensuring service demand is met. This helps prevent excessive supply of NFB services in the market and minimise unhealthy competition in the NFB market and with other public transport modes; and
- (c) the Transport and Housing Bureau (THB) agrees that the TD should review the implementation of the sourcing requirement, in particular the TD's internal guidelines on the "further sourcing" requirement when an applicant is unable to source an NFB from the existing fleet after the six-month period, whilst ensuring that the policy objective in (b) can continue to be met. In this regard, the TD will report the implementation of the sourcing requirement to the TAC in due course.

Processing of applications

2.18 The Public Vehicles Unit (PVU) under the Public Vehicles and Prosecution Section (see Appendix A and Note 15) is responsible for processing applications in relation to NFBs and SPLBs except those for cross-boundary international passenger service (Note 16), which are processed by the New Territories ROs direct. The PVU's work includes vetting applications and relevant supporting documents, clarifying with applicants on application details, seeking inputs from ROs on operation details (e.g. routeings, timetable and stopping points), issuing replies to applicants and handling the associated licensing matters. The PVU uses a number of registers to monitor the progress of applications (Note 17).

Note 15: *The PVU is headed by a Senior Executive Officer who is supported by a team of 30 staff. The PVU is responsible for processing licensing applications in relation to NFBs, light buses, hire cars and taxis.*

Note 16: *The cross-boundary international passenger service is a form of international passenger service which is regulated by a quota system jointly administered by the Hong Kong and Mainland authorities. The quota system aims at ensuring smooth traffic flow and safe operation at the control points.*

Note 17: *A number of registers are maintained for different types of service (e.g. one register is maintained for all applications relating to public NFBs operating residents' services). The registers may be electronic or paper-based (e.g. in the form of computer spreadsheets and physical log books).*

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2.19 The number of applications processed in 2016 totalled 24,897, of which 20,894 (84%) were related to PSLs or PSLCs (see Table 2). The remaining 4,003 (16%) applications were mainly for the replacement of vehicles, transfer of ownership of vehicles and display of advertisement on vehicles.

Table 2

**Number of PSL and PSLC related applications processed
(2016)**

Type of applications		Type of vehicles			Total
		Public NFB	Private NFB	SPLB	
PSL	First issue	74	16	47	137
	Renewal	701	80	626	1,407
	Others (Note)	619	32	800	1,451
PSLC	First issue	1,957	88	373	2,418
	Renewal	8,168	676	1,771	10,615
	Others (Note)	4,257	60	549	4,866
Total		15,776	952	4,166	20,894

17,899

Source: TD records

Note: These mainly include applications for the amendment, suspension and cancellation of PSLs and PSLCs.

Need to consider publicising the processing time for all types of new applications of NFBs and SPLBs through more channels

2.20 The TD has not advised applicants of the time it may take to process new applications (Note 18) in the relevant application forms except for the operation of new scheduled contract hire service (see para. 2.21). The TD has only publicised on the government portal (www.gov.hk) that an application for a PSL for operation of public NFB services can be processed in about six to eight weeks (Note 19). However, there is no mentioning whether the processing time of six to eight weeks is also applicable to new applications for private NFBs and SPLBs, and all four types of new applications for public NFBs (Note 20). According to the TD, the trade has been fully aware of the normal processing time of six to eight weeks for new applications through its regular meetings with trade representatives and the half-yearly bulletins issued to the trade. Based on an examination of 30 new applications (except those for operation of new scheduled contract hire service — see para. 2.21) in 2015 and 2016, Audit found that 6 (20%) applications were submitted less than six weeks before the intended commencement dates of the service as stated in the service contracts. In the event, 5 (83%) of the 6 applications were approved after the intended service commencement dates which might cause inconvenience to the service users. To facilitate better time planning by prospective applicants to meet their operation needs, the TD should consider publicising the estimated processing time for all types of new applications of public NFBs, private NFBs and SPLBs through more channels (e.g. the application forms).

Note 18: *The TD has stated in the relevant application forms and approval letters that a renewal application shall be submitted: (a) within four months and at least 14 days before the expiry date for the renewal of PSL and/or PSLC; (b) not less than three weeks before the expiry date for the renewal of scheduled contract hire service; and (c) at least two months before the expiry date for the renewal of other regular services.*

Note 19: *The actual processing time would depend on the complexity of each application. The general processing time for PSL applications for NFBs has been publicised on the government portal since 2011.*

Note 20: *The four types of new applications for public NFBs are: (a) application for a new PSL; (b) application for additional vehicles by a PSL holder; (c) application for additional endorsements of an existing NFB by a PSL holder; and (d) application for operation of a new regular service.*

Need to process applications involving operation of scheduled contract hire service in a timely manner

2.21 It is stated in the application forms that an application for operating a new scheduled contract hire service should be submitted at least 14 days prior to the service commencement. Audit analysed 90 such applications approved in 2016 and found that:

- (a) 76 (84%) applications had been submitted at least 14 days prior to the service commencement;
- (b) the TD took more than 14 days to process 64 (84% of the 76) applications (with an average processing time of 30 days and the longest one being 67 days); and
- (c) in 4 of the 64 applications, the TD granted approvals 7 to 31 days (averaging 19 days) after the intended service commencement dates.

2.22 Audit noted that the long processing time taken in some cases was because the PVU had to consult ROs and/or district traffic engineers on the operation details (e.g. the routeings and stopping points) proposed in the applications. However, as a majority of the applicants had submitted their applications within the time as advised by the TD, they would have a reasonable expectation that their applications could be processed in a timely manner. To better meet the applicants' expectation, the TD needs to explore possible measures to expedite the processing of applications for scheduled contract hire service once the applicants have submitted all necessary supporting documents.

Need to enforce the more stringent vetting requirement on renewal applications of expired PSLs

2.23 According to the 2004 TAC review report and the 2005 LegCo Panel on Transport paper, all NFB applications should be subject to stringent vetting to ensure that only services that are genuinely in demand are approved. However, to address the concerns of existing operators about the difficulties to secure future service contracts of sufficiently long period, the TD allows an existing operator to submit a contract of any duration for renewal of a PSL before its expiry. In case a service contract cannot be obtained before the PSL expires, the operator will be required to

submit a new application and provide a service contract with validity period of at least six months to prove the genuine long-term need for the service. Against the above background, the TD will issue a reminder letter to a PSL holder six weeks prior to the expiry of the PSL. If the PSL holder does not renew the concerned PSL upon the expiry date, a warning letter will be sent to inform the PSL holder that:

- (a) vehicles under the concerned PSL could no longer be deployed for provision of service; and
- (b) the concerned PSL has been cancelled upon the expiry date and any application for PSL thereafter will be treated as a new application and subject to a more stringent vetting (i.e. requiring the submission of service contracts with at least six-month validity to justify the genuine long-term service need).

2.24 In 2015 and 2016, a total of 83 warning letters were issued in respect of expired PSLs. Audit examined 20 (24%) of the 83 cases and noted that in 11 (55%) cases, the PSL holders subsequently submitted applications for renewal in 5 to 23 days after the expiry of PSLs. However, all 11 cases were not processed as new applications, contrary to the requirements set out in the warning letters (see para. 2.23(b)). The TD needs to uphold the more stringent vetting requirement on renewal applications of expired PSLs so as to encourage timely submission.

Need to consider streamlining the licensing requirements of PSLCs

2.25 In 2016, there were 17,899 PSLC-related applications (see Table 2 in para. 2.19), which accounted for 72% of all 24,897 applications processed by the PVU. Audit has noted that there is scope for streamlining the licensing requirements of PSLCs as follows:

- (a) ***Need to consider merging the two types of PSLC.*** The Road Traffic (Public Service Vehicles) Regulations require every vehicle operated under a PSL to display a PSLC. There is no stipulation on the format of the PSLC but it has been the practice since its inception that two types of PSLC i.e. green PSLC and red PSLC are issued for vehicles providing regular services and non-regular services respectively (see para. 2.6) for the sake of easy identification at the front of vehicles (see Figure 4) in line with the display of two types of PSL plate (see Figure 5) at the rear of vehicles in

Administration of licensing requirements

accordance with the Road Traffic (Public Service Vehicles) Regulations (Note 21). For public NFBs, green PSLCs are issued for residents' service, international passenger service and multiple transport service, and red PSLCs are issued for the other types of public NFB services (see Appendix B). However, the schedule of service requirement has been extended to all regular NFB services since 2005 (see para. 2.5) and hence four types of public NFB service previously classified as non-regular have been required to operate in accordance with schedules of service for those parts of their services which are of a regular nature, i.e. hotel shuttle service, student service for post-secondary educational institutions, employees' service and certain free shuttle service provided under contract hire service. In other words, public NFBs issued with the red PSLC for these four types of service endorsement may be providing a mix of regular and non-regular services. Under the circumstances, there is merit to examine the feasibility of merging the two types of PSLC which would simplify the TD's administrative work for the issue, renewal and amendment of PSLCs, and facilitate the NFB trade, especially those PSL holders who are issued with two types of PSLC for the same NFB (see Note 21); and

Note 21: *As at 31 December 2016, there were 1,726 public NFBs issued with two types of PSLC. As for private NFBs and SPLBs which only operate non-regular services, they are issued with the red PSLC.*

Figure 4

Two types of PSLC for display at the front of vehicles

Green PSLC for regular services

Red PSLC for non-regular services

運輸署 TRANSPORT DEPARTMENT	
客運營業證證明書 Passenger Service Licence Certificate	
2550133	
車輛登記號碼 Vehicle Registration Mark	
屆滿日期 Expiry Date	27/10/2017
營業性質 Type of Service	A05***** ***** *****
限制事項代碼 Restriction Codes:	MKT,SBP***** *****
***** ***** ***** *****	
編號記錄 Transaction	核發日期 Issued
	18/10/2016

TD 249B (Rev. 10/2015)

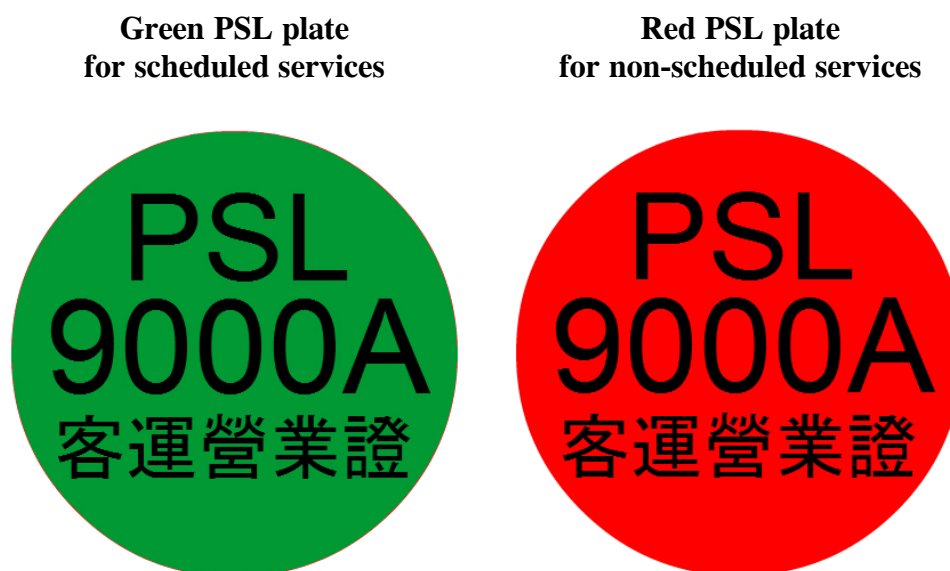
運輸署 TRANSPORT DEPARTMENT	
客運營業證證明書 Passenger Service Licence Certificate	
2550133	[Redacted]
車輛登記號碼 Vehicle Registration Mark	[Redacted]
屆滿日期 Expiry Date	27/10/17
營業性質 Type of Service	A01,A08***** *****
限制事項代碼 Restriction Codes:	*~*~*~*~*~*~*~*~*~*
編號記錄 Transaction	核發日期 Issued 18/10/2016

T.D. 249A (Rev. 9/2015)

Source: TD records

Figure 5

PSL plates required to be displayed at the rear of vehicles



Source: TD records

- (b) *Need to consider aligning the validity periods of PSLCs and related PSLs for NFB operators.* At present, an NFB operator normally has to renew his PSL once every two years and the related PSLCs for his NFBs every year (Note 22). The shorter validity period of PSLCs has caused inconvenience to those operators who have a large fleet of NFBs as they may have to make multiple PSLC renewal applications every year. As shown in paragraphs 2.3 and 2.4, the main licensing controls over the NFB operation are laid down in the PSL, the application for which is subject to stringent vetting. The issue of a PSLC is based on the approved operation details in the related PSL and hence a more frequent renewal cycle of a PSLC than that of a PSL is not warranted. On the other hand, aligning the validity periods of a PSLC and its related PSL could simplify the TD's administrative work and facilitate the NFB trade. In this connection, Audit noted that in 2016, the NFB trade commissioned a consultancy study of the NFB services which also called for, among other things, aligning the validity periods of PSLCs and related PSLs. While Audit understands that

Note 22: *According to the current practice, the first issue of a new PSL is valid for one year and will be in general renewed for a period of two years for NFBs and one year for SPLBs upon expiry (see para. 2.4).*

such alignment may involve legislative amendment (see para. 2.6(b)), it is worthwhile to explore its feasibility having due regard to the fact that there are over 9,000 PSLCs for NFBs and the potential long-term benefits in terms of facilitating the NFB trade.

Need to improve the implementation of performance pledges for licensing services of NFBs and SPLBs

2.26 ***Performance pledges.*** The TD has promulgated three performance pledges to inform the public of the service standards and the performance targets for three types of licensing services involving NFBs and SPLBs. The achievement of the performance targets in 2015 and 2016 as reported by the TD on its website is shown in Table 3.

Table 3

**Achievement of performance targets
for licensing services involving NFBs and SPLBs
(2015 and 2016)**

Type of licensing services	Pledged processing time (working day)	Target	Actual achievement	
			2015	2016
Application for replacement of vehicle of private light buses, taxis, public light buses and hire cars	5	100 %	100 % (see para. 2.28(b))	100 %
Renewal of PSL/PSLC for private NFBs	7	100 %	100 %	100 %
Application for display of advertisements/marketing on NFBs, taxis and public light buses	7	100 %	100 %	100 % (see para. 2.28(b))

Source: TD records

Remarks: The performance targets for renewal of PSL/PSLC for private NFBs and application for display of advertisements/marketing on NFBs were set in response to a recommendation of the 2008 audit review (see para. 1.10).

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2.27 *Need to consider extending the coverage of the performance pledges.* According to the good practices promulgated in Civil Service Bureau (CSB) Circular No. 7/2009, performance pledges should cover all departmental services that have a public interface. However, the licensing services of NFBs and SPLBs covered in the three performance pledges only accounted for 2,069 (8%) of 24,897 licence applications for NFBs and SPLBs processed in 2016. According to the TD, there are difficulties in setting pledged processing times for PSL applications of public NFBs given that multiple service endorsements may be involved. However, the TD may consider extending the scope of the performance pledges to cover the less complex renewal cases (see para. 2.25(b)) of PSL/PSLC of SPLBs and PSLC of public NFBs, which accounted for 10,565 (42%) of 24,897 applications processed in 2016.

2.28 *Need to improve performance measurement.* Audit examination of the existing arrangements for measuring the achievement of the target processing time has revealed the following areas for improvement:

- (a) *Method of measuring the actual processing time.* According to the good practices promulgated in CSB Circular No. 7/2009, bureaux and departments have been advised to use end-to-end measurement for the whole process rather than covering part of it. However, it has been the practice of the TD to count the processing time of an application from the date of the receipt to the date of approval or, in the absence of such date, the issue date of approval letter. Audit sample checked 30 applications processed from 2015 to 2017 and found that the dates of approval were recorded for measuring the actual processing time in 15 cases. On average, it took 9 working days to issue the approval letters after the approval dates but such time would not be taken into account in determining whether the target processing times of 5 and 7 working days were achieved. In Audit's view, the TD needs to take measures to shorten the lead time for issuing approval letters and consider standardising the use of issue date of approval letters for measuring the achievement of the target processing time in line with the good practices promulgated by the CSB; and

- (b) ***Implementation of the prescribed measuring procedures.*** According to the TD's internal guidelines, a survey should be conducted (Note 23) to assess the achievement of the performance targets in meeting the pledged processing times. However, Audit noted that no survey had been conducted since 2014. Audit sample checked 26 applications processed in 2015 and 2016 and found that in two cases, the pledged processing times were not met and hence the reported 100% achievement of the pledged processing times (see Table 3 in para. 2.26) was not supported. The TD needs to take measures to improve the situation.

Audit recommendations

2.29 Audit has recommended that the Commissioner for Transport should:

- (a) **consider publicising the estimated processing time for all types of new applications of NFBs and SPLBs through more channels;**
- (b) **explore possible measures to expedite the processing of applications for scheduled contract hire service to meet the applicants' expectation;**
- (c) **uphold the more stringent vetting requirement on renewal applications of expired PSLs;**
- (d) **consider streamlining the licensing requirements of PSLCs, such as examining the feasibility of:**
 - (i) **merging the two types of PSLC for public NFBs; and**
 - (ii) **aligning the validity periods of PSLCs and related PSLs; and**
- (e) **improve the implementation of performance pledges for licensing services of NFBs and SPLBs, including:**

Note 23: *According to the TD's internal guidelines, the responsible officer should select one week in May and November with five full working days at the beginning of the year for conducting the survey. The processing times of various applications received within this week would be measured against the pledged processing times.*

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- (i) **considering the extension of the scope of the performance pledges to cover renewal cases of PSL/PSLC of SPLBs and PSLC of public NFBs;**
- (ii) **shortening the lead time for issuing approval letters and considering standardising the use of issue date of approval letters for measuring the achievement of the target processing time of licence applications of NFBs and SPLBs; and**
- (iii) **taking measures to ensure that the reported results of performance measurement are fully substantiated.**

Response from the Government

2.30 The Commissioner for Transport agrees with the audit recommendations. She has said that the TD will:

- (a) consider publicising the estimated processing time for all types of new applications of NFBs and SPLBs, if possible, through more channels;
- (b) expedite the processing of applications for scheduled contract hire service and better manage the applicants' expectation within available resources;
- (c) examine viable measures to uphold the more stringent vetting requirement on renewal applications of expired PSLs;
- (d) review the feasibility of merging the two types of PSLC for public NFBs;
- (e) examine the feasibility of extending the validity period of the PSLCs, and if it is considered appropriate to effect such a change, appropriate actions (such as by way of legislative amendments) would be taken to extend the validity of the PSLCs to tally with that of the PSLs; and
- (f) consider extending the scope of the performance pledges to cover renewal cases of PSL/PSLC of SPLBs and PSLC of public NFBs.

2.31 The Commissioner for Transport has also said that, in respect of the audit recommendations in paragraph 2.29(e)(ii) and (iii), the TD has already:

- (a) adopted the use of the date of approval letters for measuring the achievement of the target processing time. The time taken to prepare approval letters has also been compressed with a view to meeting the pledged processing time; and
- (b) taken measures in recording the processing time of all relevant applications electronically with a view to ensuring accurate reporting of the achievement of the pledged processing time. Therefore, the conduct of surveys to assess the achievement of performance targets will no longer be needed.

PART 3: REGULATORY CONTROLS OVER UNAUTHORISED OPERATIONS

3.1 This PART examines the TD's enforcement procedures and measures to address the problem of unauthorised operations, focusing on:

- (a) unauthorised non-franchised bus operations (paras. 3.4 to 3.11);
- (b) investigative work of the Regional Offices (paras. 3.12 to 3.19);
- (c) enforcement actions against unauthorised operations (paras. 3.20 to 3.28);
and
- (d) publicity on authorised non-franchised bus services (paras. 3.29 to 3.34).

Existing regulatory controls

3.2 ***Legislative measures.*** The NFB and SPLB operations are governed by the PBSO and RTO, as follows:

- (a) ***Prosecution.*** Section 52 of the RTO provides for the prosecution for carriage of passengers by an NFB or an SPLB without a PSL or in contravention of any conditions subject to which the vehicle licence was issued. The maximum penalties are a fine of \$5,000 and imprisonment for 3 months for a first conviction, and a fine of \$10,000 and imprisonment for 6 months for a second or subsequent conviction for the same offence. Separately, section 4(2) of the PBSO prohibits the operation of a public bus service without a franchise or unless the service is a type of authorised NFB services or approved by the Commissioner for Transport under section 27(4)(b) of the RTO. The maximum penalty for conviction of the offence is a fine of \$100,000. Since 2004, the TD has focused resources on taking enforcement actions against unauthorised operations by means of inquiry (see (b) below). Accordingly, there was no prosecution made in recent years;

- (b) ***Inquiry.*** Section 30 of the RTO stipulates that if the Commissioner for Transport has reasons to believe that an NFB or an SPLB has been used other than for the purpose authorised by the PSL, or any PSL condition or provision of the RTO has not been complied with, she may appoint a public officer to hold an inquiry. The Commissioner for Transport may cancel, suspend or vary a PSL for substantiated inquiry cases. From January 2012 to mid-May 2017, there were 175 inquiries (see para. 3.20); and
- (c) ***Fixed penalty.*** If an NFB or an SPLB is found picking up/setting down passengers within restriction zones or within designated bus stop areas, the Hong Kong Police Force (HKPF) may issue fixed penalty tickets to the concerned vehicle under sections 59 and 61 of the Road Traffic (Traffic Control) Regulations (Cap. 374G). According to the statistics provided by the HKPF, the numbers of fixed penalty tickets issued to NFBs and SPLBs were 1,111 and 822 in 2015 and 2016 respectively.

3.3 ***Administrative measures.*** In addition to the above legislative measures, the TD has put in place the following administrative measures to regulate NFB/SPLB operations:

- (a) issuing clarification/warning letters to instruct concerned PSL holders to cease unauthorised operations;
- (b) implementing traffic and transport management schemes including bus clearways, and prohibited and restricted zones to help eradicate unauthorised NFB/SPLB services. Since 2004, the TD has implemented 24 traffic and transport management schemes in various regions; and
- (c) improving parallel public transport services.

Unauthorised non-franchised bus operations

3.4 ***TAC's review.*** In 2004, the TAC (see para. 1.9(b)) noted the following problems of unauthorised NFB operations:

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- (a) ***Unauthorised services.*** Some NFBs had provided services without valid service endorsements, which would undermine the financial viability of other regular and legitimate transport services; and
- (b) ***Breaches of PSL conditions.*** Some NFB operators had provided services not in accordance with PSL conditions (e.g. operating more trips than permitted, deviating from the approved routings and picking up or setting down passengers at unapproved locations).

Such activities could lead to traffic and environmental problems. The third party insurance of the NFBs concerned might also be invalidated if the vehicle concerned was used for operating unauthorised services. In its 2004 review report, the TAC recommended that the Government should: (i) strengthen regulatory controls over NFB operations (such as extending the schedule of service requirement to all regular NFB services — see para. 2.5); and (ii) enhance the efficiency and effectiveness of enforcement actions (such as enhancing the identification system of NFB services to facilitate enforcement officers' monitoring and specifying some common breaches of PSL conditions as scheduled offences that would be subject to the fixed penalty ticketing system — see paras. 3.7 and 3.26 respectively).

3.5 *Enforcement actions of TD.* The TD will take enforcement actions against violations of PSL conditions. Examples of violations include unauthorised service trailing along franchised buses to pick up passengers, provision of services without appropriate service endorsement and deviation from approved schedule of service.

Need to strengthen enforcement actions against unauthorised NFB operations

3.6 *Annual surveys.* The TD conducts annual surveys of public NFBs (see Note 8 to para. 1.7) to collect operational information for the purpose of keeping track of the utilisation pattern of existing NFB fleet and services under various service endorsements. The results are also used to facilitate monitoring as well as understanding the implication of the regulatory and licensing measures on their operations. In general, the following information relating to the NFBs observed at various checkpoints is collected during an annual survey:

- (a) vehicle registration mark;

- (b) carrying capacity/seating capacity;
- (c) display of service signboard at the front of NFB when providing service;
- (d) display of PSL plate at the rear end of NFB;
- (e) time passing the checkpoint;
- (f) type of service provided; and
- (g) number of passengers on-board.

With a view to ensuring that accurate results can be obtained from the fieldwork, instructions are given to field workers to facilitate them to distinguish the types of service provided by the NFBs observed with reference to the characteristics of the NFBs and passengers on board. For example, an NFB observed to be displaying the name of a school and carrying mostly young children in school uniforms would be identified as providing student service, while one displaying the name of a company and carrying adults only would be classified as providing employees' service.

3.7 *Failure to display service signboards and PSL plates.* In line with the TAC's recommendation to enhance the identification system of NFB services to facilitate enforcement officers' monitoring, appropriate signboards in a standardised format should be displayed in all NFBs to indicate the types of service being operated (see para. 1.9(b)). The TD's annual surveys found cases of not displaying the stipulated service signboards and/or the PSL plates at the rear of NFBs. For example, of 5,870 NFBs surveyed in 2016:

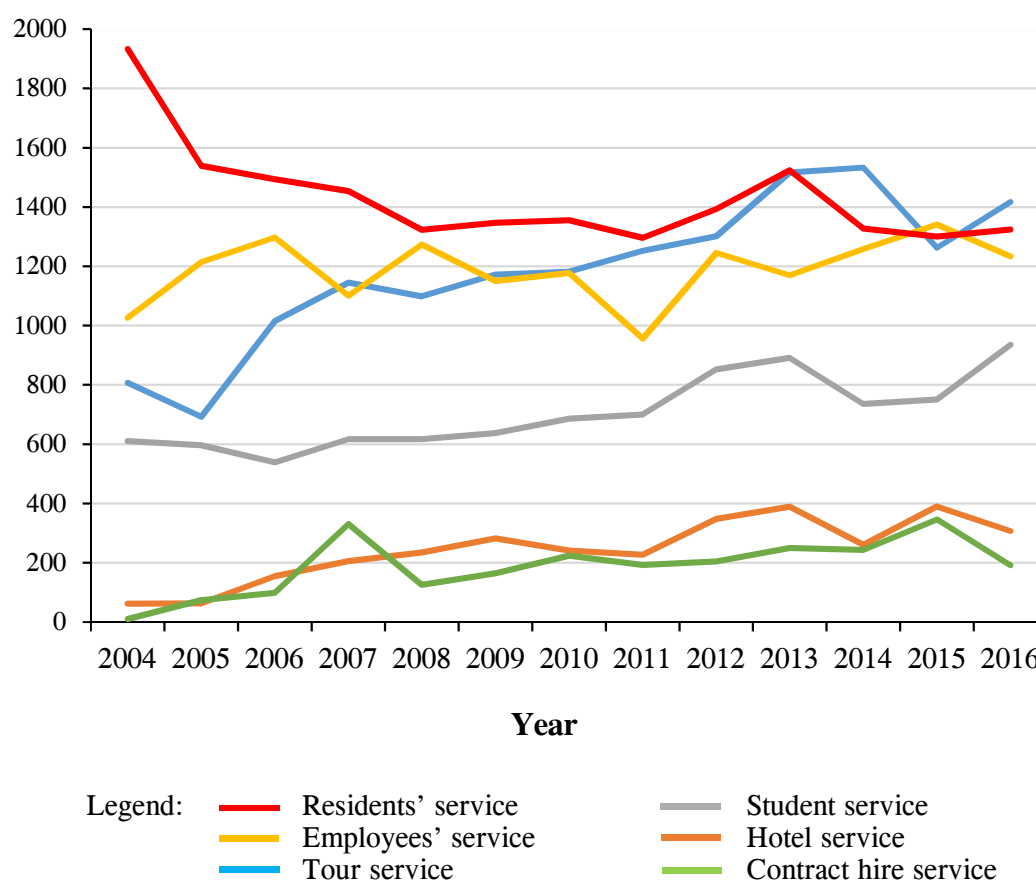
- (a) 3,048 (52%) NFBs were found not displaying the stipulated service signboards for half or more of their trips, contrary to the PSL conditions; and
- (b) 173 (3%) NFBs had not displayed the PSL plates at their rear, contrary to the requirement of the Road Traffic (Public Services Vehicles) Regulations (see para. 2.25(a)).

Regulatory controls over unauthorised operations

3.8 *NFBs suspected to be operating without suitable endorsements.* Based on the characteristics of the NFBs and passengers on board (see para. 3.6), some NFBs were observed during the annual surveys to have operated various types of service without the corresponding service endorsements issued by the TD. As shown in Figure 6, with the exception of residents' service, the number of NFBs suspected to be operating without suitable endorsements for five other services was generally on an increasing trend. Audit's further analysis of the 2016 survey results showed that for residents' service, the number of NFBs suspected to be operating without the relevant endorsement was higher than the number of licensed ones (see Table 4).

Figure 6

Numbers of NFBs suspected to be operating without suitable endorsements found in surveys from 2004 to 2016



Source: TD records

Remarks: There was no observed unauthorised NFB operation for international passenger service. Most of the international passenger service was related to the cross-boundary international passenger service regulated under the quota system (see Note 16 to para. 2.18). The remaining international passenger service was related to free shuttle service to the Airport Express stations.

Table 4

**Comparison of the number of NFBs with and without
corresponding service endorsements in the 2016 survey**

Number of NFBs	Service type					
	Tour	Hotel	Student	Employees'	Residents'	Contract hire
(a) licensed with service endorsement	3,193	1,742	3,181	1,750	1,089	5,495
(b) licensed with service endorsement and observed in survey	2,008	213	2,591	909	621	1,640
(c) suspected to be operating without corresponding service endorsement	1,417	307	935	1,233	1,324	191

Source: TD records

Remarks: The same NFB could be operating different services and be recorded at different checkpoints during the survey period.

3.9 In September 2017 upon Audit's enquiry, the TD informed Audit that:

- (a) the numbers of NFBs suspected to be operating without suitable endorsements as reported in the surveys included those NFBs without displaying the stipulated service signboards or displaying service signboards without the relevant service endorsements;
- (b) failure to display a service signboard or a PSL plate did not necessarily mean that the service operated was indeed unauthorised. However, the survey information would help ascertain the possible number of breaches

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of the PSL conditions or regulations for not displaying the service signboards or PSL plates respectively; and

- (c) the TD had requested NFB operators to comply with the requirements through regular trade meetings and half-yearly bulletins issued to the trade, and would closely monitor the situation and take necessary follow-up actions (such as issuing reminders and conducting follow-up surveys to ascertain the breaches with a view to taking enforcement actions) where appropriate.

3.10 ***Public concerns.*** From time to time, there were media reports about unauthorised NFB services. In February 2017, there was a media report alleging that of some 320 residents' service routes approved by the TD, the operating details of about 80 (25%) shown on the operators' websites or other websites did not tally with the approved schedules of service. In July 2017, the TD informed Audit that it had completed checking on 43 of the 80 alleged routes and found irregularities in 18 (42%) routes. Its checking on the remaining 37 routes would be completed in the next few months. In July 2017, another media report alleged that for a residents' service route in the New Territories, about one-fourth of some 2,000 scheduled trips per month were operating without the TD's approval. Subsequent to the TD's follow-up action, the management of the relevant residential development announced that it had ceased operating the unauthorised trips.

3.11 In light of the considerable number of breaches of PSL conditions and suspected unauthorised NFB operations as revealed in the TD's annual surveys (see paras. 3.7 and 3.8) and the public concerns (see para. 3.10), the TD needs to strengthen enforcement actions to address the issue and ensure that a balanced public transport system is maintained.

Investigative work of the Regional Offices

3.12 ***Investigative and enforcement process.*** In general, investigative surveys are conducted to ascertain that the services are unauthorised before initiating inquiries:

- (a) ***Preliminary investigations by the ROs.*** The two ROs of the TD (see Appendix A) are responsible for the daily monitoring of transport services on a district basis. The relevant ROs will mainly arrange

contractors' staff to conduct investigative surveys on black spots proactively or upon receipt of a complaint or referral. When an unauthorised operation is detected, the ROs will seek clarifications from the PSL holder and conduct follow-up survey(s) whenever deemed necessary. If the violation persists, the case will be referred to the NFB Enforcement Team (NFBET) under the Public Vehicles and Prosecution Section (see Appendix A) for further investigations;

- (b) ***Investigations by the NFBET.*** The NFBET conducts proactive surveys on unauthorised operations and follows up cases referred by the ROs. The investigation proceedings are similar to those of the ROs except that they are mainly carried out by TD in-house staff instead of the contractors' staff. If the unauthorised service is substantiated after surveys, the case will be reported to the NFB Operation and Enforcement Committee (see para. 3.17) and recommended to the Commissioner for Transport for holding an inquiry; and
- (c) ***Inquiry under section 30 of the RTO.*** The inquiry involves appointment of a directorate officer of the TD to conduct hearings and submit an investigation report to the Commissioner for Transport for a decision. If the PSL holder does not accept the decision, he/she may apply for a review of the decision by the Transport Tribunal.

Need to improve investigative work of the ROs

3.13 According to the TD's internal guidelines, in addition to conducting investigative surveys upon receipt of complaints and referrals, the ROs should carry out proactive checks on various black spots at regular intervals, and take proper follow-up actions upon detection of unauthorised services. Audit examination of the ROs' records has revealed inadequacies in their investigative work, as illustrated in paragraphs 3.14 to 3.16 below.

3.14 ***Inadequate on-board surveys.*** To confirm existence of unauthorised operations, investigative surveys are conducted by way of observation at the terminal or approved stops (terminal survey) or taking a ride on the buses in question (on-board survey). While terminal surveys are effective in detecting overrun trips (i.e. operating more trips than approved) and operations without relevant endorsements, they are less effective in detecting routeing deviation and unauthorised intermediate stops. Based

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on an examination of 400 surveys conducted by the ROs from 2012 to 2017, Audit noted that 371 (93%) were terminal surveys and the remaining 29 (7%) were on-board surveys (Note 24). Audit performed 22 on-board surveys on residents' service routes (Note 25) from April to May 2017 and found that 21 (95%) of them had not been operated in accordance with the approved schedules of service, suggesting that such irregularities were not uncommon (see Table 5). However, as a result of the limited number of on-board surveys conducted by the TD, these types of irregularities might not have been detected.

Table 5

Unauthorised operations of 21 residents' service routes

Nature of unauthorised operations	Number of routes
With both unauthorised stop(s) and routeing deviation (see Case 1 for an example)	18 (ranging from 1 to 10 unauthorised stops)
With unauthorised stop(s) but without routeing deviation	2 (ranging from 1 to 4 unauthorised stops)
With routeing deviation but without unauthorised stop	1
Total	21

Source: Audit on-board surveys from April to May 2017

Note 24: *Of the 29 on-board surveys, 21 were for monitoring regular services (i.e. checking if the operations were in accordance with the approved schedules of service), while the other 8 were for identifying unauthorised operations without the TD's approval. Deviations from approved routeings and unauthorised intermediate stops were found in 19 (90%) of the 21 service monitoring surveys.*

Note 25: *Audit selected the routes using a risk-based approach, i.e. after Internet research showing potential irregularities.*

Case 1

NFB operations with unauthorised stops and routeing deviation

1. The NFB residents' service selected for Audit examination was for the carriage of passengers to and from a residential development in Tuen Mun. According to the approved schedule of service, it had two intermediate set-down stops in Central and a terminal point in Admiralty.

2. In an on-board survey of the selected route conducted on 4 May 2017, Audit staff found that there was one additional unauthorised pick-up stop in Tuen Mun, and nine unauthorised set-down stops in Central, Admiralty, Wan Chai and Causeway Bay (i.e. a total of 10 unauthorised stops). The terminal point was also extended from Admiralty to Causeway Bay.

Audit comments

3. While the ROs performed terminal surveys in Tuen Mun and Central annually upon receiving route renewal application, the above irregularities had not been detected. In Audit's view, the ROs need to use a risk-based approach to determine the mix of on-board and terminal surveys for detecting different types of unauthorised NFB operations.

Source: TD records and Audit on-board survey on 4 May 2017

3.15 ***Inadequate follow-up actions on detected unauthorised operations.*** Preliminary findings/reports on unauthorised operations are prerequisite for further investigation leading to possible inquiries. When an unauthorised operation is detected, the ROs will conduct survey(s) and seek clarifications from the PSL holder. If the violation persists, the ROs will refer the case to the NFBET (see para. 3.12(a)). The ROs should maintain a database of all unauthorised NFB services found in the respective regions, recording, inter alia, the operation details of the unauthorised services and background information, such as sources of complaints, actions taken and progress. However, Audit noted the ROs had not maintained such database, contrary to the internal guideline requirements. The TD informed Audit in August 2017 that individual district teams in the ROs might keep their own records of follow-up actions on the unauthorised operations. The records kept might not be

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systematic and updated regularly. Audit conducted case studies and found the following inadequacies in the ROs' follow-up actions:

- (a) ***Investigative surveys.*** In 53 surveys with irregularities found by the ROs' contractors during the surveys from 2010 to 2017, there had been omissions and delays in taking follow-up actions in 35 (66%) cases as summarised in Table 6; and

Table 6

ROs' omissions and delays in taking follow-up actions

Type of omissions/delays	Number of surveys
No clarification letter sent and no follow-up survey conducted to confirm cessation of the unauthorised operations (see para. 3.12(a))	10
Clarification letter sent but no follow-up survey conducted (see Case 2 for an example)	10 (Note 1)
Clarification letter sent but follow-up survey was not arranged in a timely manner	14 (Note 2)
Delay in sending clarification letter (Note 3)	1
Total	35

Source: Audit analysis of TD records

Note 1: According to the TD, for seven surveys conducted from February 2015 to January 2017 concerning an operator of three residents' service routes, a meeting was held in March 2017 to remind the operator to operate the services in accordance with the schedules of service and review the need for any service adjustment.

Note 2: According to the TD, the follow-up surveys were conducted 3 to 15 months after the clarification letters had been sent.

Note 3: The survey was conducted in March 2017. The clarification letter was not sent until July 2017 (4 months later) after Audit's enquiry in June 2017.

Case 2

Inadequate follow-up actions on detected unauthorised operations

1. In a spot check at a residents' service terminal conducted in 2010, the ROs found a service plate placed by a PSL holder and noticed the service operated might have unauthorised stops. The TD issued a clarification letter to the PSL holder. In his reply to the TD, the PSL holder did not provide any explanation about the unauthorised stops. No follow-up survey was conducted to ascertain the cessation of such irregularity.

2. In 2016, after a media report on unauthorised stops of this route, the TD conducted another round of surveys (i.e. on-board surveys) and came up with similar findings. While clarification letters and repeated reminders had been sent by the TD to the PSL holder, Audit's on-board surveys on 2 and 25 May 2017 found that the residents' service still had five to eight unauthorised stops.

Audit comments

3. The TD needs to tighten control to ensure that all preliminary findings/reports on unauthorised NFB operations are properly followed up in accordance with the laid-down procedures.

Source: TD records and Audit on-board surveys on 2 and 25 May 2017

- (b) ***Complaint cases.*** According to the TD, upon receipt of complaints, the ROs will first conduct investigative surveys to collect facts and provide an opportunity to the operators for explanations. When the unauthorised operations are established, the complaint cases will be referred to the NFBET, which will conduct another series of investigative surveys before taking further enforcement actions. In a test check of the TD's records, Audit noted that:
- (i) while the complaints were recorded in the Government's Integrated Call Centre system which would automatically send an alert message to the supervisory staff if a reply was not issued to the complainant within 21 days, the case officers of the ROs only

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recorded the actions taken and progress of selected complaint cases on unauthorised operations for reporting to the NFB Operation and Enforcement Committee (see para. 3.17), rendering it difficult for the supervisory staff to monitor the progress of all complaint cases; and

- (ii) in 18 complaint cases from 2012 to 2016, the ROs issued letters to inform the operators concerned that complaints had been received and requested them to cease the unauthorised operations. However, the ROs had only conducted follow-up surveys to ascertain cessation of the unauthorised operations in 3 (17%) of the 18 complaint cases.

3.16 The inadequacies in the ROs' follow-up actions noted above were also reflected in the small number of cases referred to the NFBET for further enforcement actions (i.e. 12 cases in total since 2012). In Audit's view, the TD needs to tighten control to ensure that all preliminary findings/reports on unauthorised NFB operations are properly followed up in accordance with the laid-down procedures.

Need to improve record keeping for better case management

3.17 To improve the coordination of different branches/offices on NFB related issues, the TD has set up the NFB Operation and Enforcement Committee (Note 26) to provide a regular forum for the discussion of policy issues, operations, and progress of enforcement actions against unauthorised NFB operations. The TD's internal guidelines require the keeping of the following enforcement records and statistics to support the work of the Committee:

- (a) the ROs are responsible for keeping enforcement records at the regional level which include the number of clarification/warning letters issued to PSL holders who are found having operated unauthorised services. The NFBET may coordinate inputs from the ROs from time to time in order to maintain the overall enforcement records and statistics;

Note 26: *The Committee is chaired by the Assistant Commissioner (Bus & Railway) and includes representatives from the Bus and Railway Branch (see Appendix A), ROs and NFBET. In general, the Committee meeting is held half-yearly.*

- (b) the ROs shall maintain a database of all unauthorised operations found, including the operation details of such services, actions taken and progress of the cases, and provide monthly updates of newly identified unauthorised services as well as information of those ceased to the NFBET for coordination;
- (c) the NFBET is responsible for maintaining proper management information in respect of various enforcement statistics, including the summon actions on NFB traffic offences taken by the HKPF, progress of inquiries, Transport Tribunal hearings, etc. with an objective to monitoring the progress of enforcement actions; and
- (d) the NFBET shall compile all cases referred by the ROs for discussion at the NFB Operation and Enforcement Committee meeting. The main roles and functions of the Committee are to review the enforcement progress of unauthorised NFB services and to determine the priority of cases for enforcement.

3.18 ***Inadequacies in ROs' record keeping.*** As mentioned in paragraph 3.15, the ROs' records of unauthorised operations might not be systematically maintained and regularly updated. Hence, the ROs did not provide monthly updates to the NFBET for coordination. For enforcement records such as the number of clarification/warning letters issued, while the NFBET requested the ROs' inputs from 2012 to 2015, it did not do the same from 2016 to June 2017 (Note 27). Hence, the results were not reported to the Committee. While there is no laid-down requirement to report these statistics to the Committee, in the absence of such information, the Committee might not have a comprehensive picture of the unauthorised operations in the territory and the effectiveness of enforcement actions.

3.19 In September 2017, in response to Audit's enquiry, the TD said that while it would be more desirable if comprehensive enforcement statistics had been provided to the Committee, the Committee was still aware of the progress of enforcement actions through other management information, such as updates on the progress of

Note 27: *According to the ROs' records, the number of clarification letters sent to PSL holders on unauthorised operations reached its peak of 274 in 2013, decreasing to some 100 a year in 2015 and 2016.*

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inquiries by the NFBET (including cases referred by the ROs) and briefing of selected complaint cases on unauthorised services by the ROs (see para. 3.15(b)(i)). However, for better case management, Audit considers that the TD needs to strictly enforce the laid-down requirements on maintaining management information and statistics, and consider making better use of technology in monitoring compliance and case progress.

Enforcement actions against unauthorised operations

3.20 The NFBET will initiate an inquiry (see para. 3.12(c)) on a PSL holder when sufficient evidence is collected on unauthorised operations. If the unauthorised operations and/or breaches of PSL conditions are established and the Commissioner for Transport has accepted the inquiry report, the TD will issue a pre-sanction letter to notify the PSL holder of the result of the inquiry. The PSL holder may, within 14 days of being notified, reply in writing to the TD indicating whether he/she would like to provide further information for the consideration of the Commissioner for Transport who will take into account a basket of factors including but not limited to the seriousness and history of the non-compliance before making a decision on the imposition of sanction. Table 7 shows the number of inquiries from January 2012 to mid-May 2017 in relation to NFBs and SPLBs.

Table 7

**Number of inquiries against NFBs and SPLBs
(January 2012 to mid-May 2017)**

Number	2012	2013	2014	2015	2016	2017 (up to 12 May)	Total
Inquiries initiated in the year	32	40	25	39	34	5	175 (Note 1)
Cases concluded	32	33	15	13	0	0	93
Cases with sanctions implemented/to be implemented (Note 2)	18	26	12	11	0	0	67
Cases in which no sanction could be implemented (Note 3)	14	7	3	2	0	0	26

Source: Audit analysis of TD records

Note 1: Of the 175 inquiries, 40 were related to SPLBs. These 40 cases were mainly concerned with providing student services to educational institutions without the Commissioner for Transport's prior permission. Sanctions were implemented on 24 out of 26 concluded SPLB cases.

Note 2: The sanctions imposed/to be imposed ranged from suspension of PSLCs for 7 days to 8 months of the NFBs/SPLBs concerned.

Note 3: No sanction could be implemented in 26 cases due to: (a) cancellation of PSLs in 25 cases (see para. 3.23(b)); and (b) passing away of the PSL holder before hearing in 1 case.

3.21 According to the TD, the objectives of imposing sanctions are to: (a) achieve a just and fair disposal of the inquiry cases in accordance with the law; (b) preserve the integrity of the TD's licensing system of public service vehicles; (c) convey a proper message to operators to comply with statutory legislations and PSL conditions; and (d) give a message to the public and other public transport operators that the Government has a mechanism to deter unauthorised services. Audit examination of the inquiry records from January 2012 to mid-May 2017 revealed room for improvement, as illustrated in paragraphs 3.22 to 3.28.

Need to improve the efficiency and effectiveness of enforcement actions

3.22 ***Long time taken to complete inquiries.*** Of the 175 inquiries from January 2012 to mid-May 2017, Audit noted that:

- (a) among the 93 concluded cases, 67 cases were sanctioned. For these 67 cases, the time taken from the date of recommending to the Commissioner for Transport for holding an inquiry to the date of implementing sanctions averaged 24 months (ranging from 13 to 46 months). This was 1.4 times longer than the average time of 10 months found in the 2008 audit review (Note 28); and
- (b) of the 82 outstanding cases, 20 (24%) had been pending for over 2 years.

Audit selected 18 of the 93 concluded cases to further analyse the time taken on investigative surveys, and noted that the NFBET took on average four months to complete the surveys before recommending a case to the Commissioner for Transport for holding an inquiry. Taken together, it took on average 28 months (4 months on surveys plus 24 months on inquiry) from identifying the unauthorised operations to imposing sanctions on the operators.

3.23 Audit noted the following issues in relation to the lengthy inquiry process:

- (a) ***Continuation of unauthorised operations while inquiries were in progress.*** To ascertain whether a PSL holder had ceased the unauthorised service in the course of an inquiry, Audit conducted a sample check of 8 of the 82 outstanding cases. Audit found that unauthorised operations had continued in all of them; and
- (b) ***Sanctions not implemented due to transfer of ownership of NFBs.*** There were 25 (27% of a total of 93) concluded cases (see Table 7 in para. 3.20)

Note 28: *To ensure a like-with-like comparison with the findings in the 2008 audit review (see para. 1.10), any deferment of sanction implementation due to appeals to the Transport Tribunal was excluded, i.e. the sanction implementation date proposed by the TD was used in the calculation.*

in which the offending PSL holders had avoided sanctions through transfer of ownership of NFBs (Note 29). Case 3 is an example.

Case 3

Avoidance of sanctions by transfer of ownership of NFBs

1. From 2011 to 2015, there were five inquiries on unauthorised services between the New Territories West and Hong Kong Island, in which the PSL holders involved operated successively a residents' service route with a fleet of three NFBs. For the first inquiry in 2011, when the proposed sanction was pending the Commissioner for Transport's endorsement, the PSL holder concerned (Company A) applied to the TD for transferring the ownership of all three NFBs in its fleet at \$1 each to Company B, which would also take over the operation of the residents' service route. In May 2011, the transfer of NFBs and change of service operator were approved by the TD. The PSL of Company A was cancelled and the sanction could not be implemented.

2. Subsequently, four more inquiries were initiated on the unauthorised services. Similarly, before the completion of the inquiry process, the ownership of all three NFBs was transferred to other PSL holders (Note) at \$1 each and the relevant PSLs under the inquiries were cancelled. As a result, no sanction could be imposed.

Audit comments

3. This case highlighted a loophole in the existing enforcement mechanism whereby sanctions could be avoided by repeated transfers of ownership of vehicles with the unauthorised services remaining in operation.

Source: TD records

Note: Of the five PSL holders, one was an individual and four were companies. Company searches showed that the four companies had common director(s). The individual was also a shareholder of one of the companies.

Note 29: *Under the current enforcement mechanism, when there is a change of ownership of the vehicle to be sanctioned before the sanction starts, the penalty would be imposed on another bus of the concerned PSL holder's fleet. However, if the PSL holder does not have any other vehicle, the PSL will be cancelled and no sanction can be implemented.*

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3.24 In the 2008 audit review, Audit had expressed similar concern about the problem of avoidance of sanctions by transfer of ownership of vehicles mentioned in paragraph 3.23(b) and recommended that the TD should review the effectiveness of the sanction. In order to achieve sufficient deterrent effect, the TD has subsequently imposed heavier sanctions on repeated offenders. However, such sanctions could still be avoided by transfer of ownership of vehicles.

3.25 In 2015, the TD informed the THB that the loophole could only be exploited by small NFB operators with just one vehicle but not the large operators as sanctions could still be meted out to other vehicles in their fleet (see Note 29 to para. 3.23(b)). However, Audit noted that of the 25 sanction cases for which sanctions could not be implemented (see para. 3.23(b)), 20 cases involved the transfer of their whole NFB fleets (with 2 to 25 NFBs), indicating that even large NFB operators might exploit the loophole. The TD's annual survey of 2016 showed that 1,236 (96%) of the 1,287 NFB operators held 1 to 25 NFBs in their fleets. In September 2017, the TD informed Audit that it would not be an easy task to plug the loophole. Legal issues (such as property rights of the PSL holders in respect of the concerned buses) would have to be considered if the Government was to:

- (a) impose restrictions on the transfer of vehicles before completion of an inquiry; or
- (b) impose penalty on a transferred NFB when there was a decision to impose sanction after inquiry.

In Audit's view, the TD should adopt both short and long term measures to improve the efficiency and effectiveness of enforcement actions, such as endeavouring to shorten the lead time in completing an investigation and inquiry to minimise the risk of transfer of vehicles during the lengthy enforcement process (see para. 3.22), and exploring feasible measures to plug the sanction avoidance loophole in the long run.

Need to explore more efficient measures for tackling common breaches of PSL conditions

3.26 In 2004, the TAC recommended using a fixed penalty ticketing system instead of the complex and time-consuming inquiry process to streamline the enforcement procedures for common breaches of PSL conditions (see para. 3.4), such as failure to display the service signboards on NFBs. In the 2008 audit review,

Audit urged the TD to expedite implementation of the TAC's recommendation. In this connection, the TD had obtained legal view from the Department of Justice that legislative amendment would be required to implement such proposal.

3.27 While some unauthorised operations (e.g. NFBs picking up or setting down passengers at unauthorised stops) may provide convenience to the passengers, they may also cause inconvenience to the general public as they could lead to traffic congestion and environmental problems. In the absence of an efficient enforcement measure, Audit noted that the problem of non-compliance with PSL conditions had persisted. For example, as reflected by the TD's 2016 annual survey, 52% of the 5,870 NFBs surveyed were found not displaying the stipulated service signboards for half or more of their trips, contrary to the PSL conditions (see para. 3.7). Moreover, based on Audit's on-board surveys, 21 (95%) of 22 residents' service routes were not operated in accordance with the approved schedules of service (see para. 3.14).

3.28 In September 2017, the TD informed Audit that it had further deliberated the effectiveness of the proposed fixed penalty ticketing system, as follows:

- (a) the deterrent effect of the fixed penalty ticketing in combating breaches of PSL conditions might be limited as it would be difficult to prove most breaches on the spot (Note 30); and
- (b) in terms of financial loss to the PSL holders, the impact of fixed penalty would also be limited because it would only penalise the driver instead of the PSL holder even after a penalty ticket had been issued. On the contrary, if the case had gone through the inquiry path, once the non-compliance with PSL conditions was confirmed, the PSLCs of the respective vehicles could

Note 30: *According to the TD, when an NFB picks up passengers at an unauthorised stop under regular service, it may argue that it is in fact operating a non-regular service for that particular trip (since a considerable number of NFBs operate both regular and non-regular services), rendering it extremely difficult if not impossible for the enforcement officer to issue a penalty ticket on the spot. It is even more difficult for fixed penalty tickets to be issued for cases involving unauthorised services, since enforcement officers cannot ascertain the types of service that the NFBs are providing on the spot (i.e. it is not uncommon for incorrect display of service signboards, while this does not necessarily mean that the service is unauthorised).*

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be suspended, cancelled or varied. During the suspension period, the concerned vehicles would be prohibited from providing any service.

However, given the relatively long processing time for an inquiry and the considerable number of breaches of PSL conditions, there is a need to explore additional enforcement tools against common breaches of PSL conditions.

Publicity on authorised non-franchised bus services

3.29 *Stop signs for residents' service.* According to the TD, between 1998 and 2003, the number of unauthorised residents' service rose rapidly, resulting in congestion on main roads in the central business districts, especially in the evening peak hours. To address the problem, the TD had taken some measures to regulate the operation of residents' service. To educate the general public not to use unauthorised residents' services, the TD erected stop signs (see Photograph 2 for an example) at approved bus stops for some residents' service routes in the urban area (e.g. Central, Causeway Bay, Wan Chai and Tsim Sha Tsui) and the New Territories (e.g. Sha Tin and Yuen Long) (Note 31). Up to August 2017, there were 113 stop signs for residents' service in the territory, of which 82 (73%) were erected on Hong Kong Island and in Kowloon.

Note 31: *The TD published a leaflet titled "Don't patronise unauthorised non-franchised bus service" in November 2003 to facilitate passengers in identifying approved residents' service. According to the leaflet, the TD would continue to erect such stop signs in other areas.*

Photograph 2

A stop sign for an NFB residents' service



Source: Photograph taken by Audit staff on 29 June 2017

3.30 In September 2016, there was a media report that the information displayed on some stop signs was outdated. In response to Audit's enquiry, the TD said that all the updating work carried out by the Highways Department at the request of the TD had been completed in April 2017. Audit's site inspections from May to August 2017 found the following inadequacies in managing the stop signs for NFBs:

- (a) **TD's stop signs.** Audit compared the approved schedules of service and the list of stop signs provided by the TD for three selected districts (i.e. Tsim Sha Tsui, Wan Chai and Tuen Mun) and noted that the TD had not erected stop signs for all approved bus stops (i.e. only 49 stop signs (49%) out of 101 authorised NFB stops were erected). Audit also inspected 58 stop signs in 6 districts and found that 3 (5%) of them were still with outdated information; and
- (b) **Operators' stop signs.** Audit conducted site inspections in areas adjacent to Tsuen Wan railway station (being one of the hot spots as NFB stops) in August 2017 and found 15 stop signs erected thereon by some operators for various types of regular services (including hotel service, employees'


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service and residents' service by public or private NFB operators — see Photograph 3 for examples). These stop signs had different designs from the one prescribed by the TD. According to the TD, no approval had been granted to erecting such stop signs. Audit compared the information on these stop signs with the schedules of service approved by the TD and noted that two routes were not authorised to stop at Tsuen Wan railway station (Note 32). The TD needs to take necessary actions against those operators who have erected stop signs on public streets without the TD's approval, especially those signs erected at unauthorised locations which could cause confusion to the public.

Photograph 3

Stop signs erected by operators on a public street adjacent to Tsuen Wan railway station



Legend:  Stop signs erected by operators

Source: Photograph taken by Audit staff on 17 August 2017

Note 32: One of the 15 stop signs was erected by a private NFB operator. While a private NFB service is not issued with a schedule of service stipulating details such as stopping points, a private NFB operator has to apply to the TD for erecting stop signs.

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3.31 In August 2017, the TD informed Audit that it would conduct a review on the need for the provision of residents' service stop signs with due regard to their functions, prevalence of illegal activities of residents' service, and the enforcement arrangement. Pending the result of the review, the TD needs to take measures to keep the information displayed on the authorised stop signs up-to-date.

3.32 ***Publicising approved schedules of service.*** To facilitate better monitoring and enforcement against unauthorised operations, schedules of service stipulating all relevant operation details have been extended since 2005 to shuttle services provided under hotel service, student service of tertiary educational institutions, employees' service and contract hire service which are of a regular nature with the same origin and destination areas (see para. 2.5). As at June 2017, there were around 1,500 approved schedules of service (see Table 8).

Table 8

**Number of approved schedules of service
(June 2017)**

Type of services	Number of approved schedules of service
Hotel service	32
Student service	17
Employees' service	381
International passenger service	750
Residents' service	322
Contract hire service	29
Total	1,531

Source: TD records

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3.33 Currently, the TD publishes on its website operation details (e.g. routeings, stopping points, operating period and fare table) stipulated in the schedules of service of all approved residents' service and certain cross-boundary international passenger service (Note 33). However, the TD has not published similar operation details for other types of regular service. In this connection, Audit noted the following suspected cases of non-compliance with the schedules of service under hotel service and contract hire service:

- (a) ***Operation without schedules of service.*** Audit research and site visits found two cases of suspected regular services without approved schedules of service, i.e. a hotel service on Hong Kong Island and a scheduled contract hire service (i.e. a free shuttle service to and from a shopping mall) in Kowloon;
- (b) ***Charging of separate route fare.*** According to the schedules of service for 30 of the 32 hotel routes (see Table 8 in para. 3.32), collection of separate fare was not allowed. Audit research of the hotel websites revealed that separate fare was charged for 2 (7% of the 30) routes. For the 29 contract hire services (see Table 8 in para. 3.32) which according to the RTO shall not charge separate fare, Audit noted that in 7 (24%) cases, spending receipt was required to redeem a shuttle bus ticket. It is not clear as to whether such arrangement constitutes charging of separate fare which is defined in the PBSO as “a payment made by a person entitling him to be carried as a passenger in a bus notwithstanding that it is made in consideration of other matters in addition to the journey and irrespective of the person by or to whom it is made”; and
- (c) ***Overrun trips and unauthorised stopping points.*** Audit research of the 32 hotel websites also revealed that there might be overrun trips and/or unauthorised stops in 5 (16%) cases.

Note 33: *The TD only publishes on its website operation details of six designated routes of the short-haul cross-boundary coach service to Lok Ma Chau Control Point and the Lok Ma Chau – Huanggang Cross-boundary Shuttle Bus Service. The remaining cross-boundary coach service is long-haul service to various parts of the Mainland via different control points. According to the TD, the schedules of service for long-haul cross-boundary coach service only show routeings and stopping points within Hong Kong boundary and therefore it may not be meaningful to publish such operation details on its website.*

3.34 The suspected non-compliance cases noted above highlight the need to publicise approved schedules of service, in particular for hotel and contract hire services, for easy identification by the general public. This is important for protecting them from inadvertently using such unauthorised services which may not be covered by insurance in the event of accidents, and also enhancing public scrutiny of unauthorised operations.

Audit recommendations

3.35 Audit has *recommended* that the Commissioner for Transport should **strengthen enforcement actions against unauthorised NFB operations**. In particular, the Commissioner for Transport should:

Investigative work of the ROs

- (a) **use a risk-based approach to determine the mix of on-board and terminal surveys for detecting different types of unauthorised NFB operations;**
- (b) **tighten control to ensure that all preliminary findings/reports on unauthorised NFB operations are properly followed up in accordance with the laid-down procedures;**
- (c) **strictly enforce the laid-down requirements on maintaining management information and statistics for better case management, and consider making better use of technology in monitoring compliance and case progress;**

Enforcement actions against unauthorised operations

- (d) **improve the efficiency and effectiveness of the enforcement actions, including:**
 - (i) **endeavouring to shorten the lead time in completing the investigation and inquiry process;**

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- (ii) **exploring feasible measures to plug the loophole in the existing inquiry mechanism whereby an offending PSL holder can avoid sanctions by transfer of ownership of vehicles; and**
- (iii) **exploring additional enforcement tools for tackling common breaches of PSL conditions;**

Publicity of authorised NFB services

- (e) **complete the review on the need for the provision of stop signs for residents' service as soon as possible and in the interim:**
 - (i) **take measures to keep the information displayed on the authorised stop signs up-to-date; and**
 - (ii) **take necessary actions against those operators who have erected stop signs without the TD's approval; and**
- (f) **consider publicising approved schedules of service of all regular NFB services, in particular for hotel and contract hire services, for easy identification by the general public.**

Response from the Government

3.36 The Commissioner for Transport agrees with the audit recommendations. She has said that the TD will:

- (a) **consider conducting more on-board surveys to check compliance of NFB operators in respect of scheduled routings and stopping points;**
- (b) **put in place a mechanism to monitor that findings on unauthorised NFB operations are properly followed up, and to provide management information and statistics for better case management;**
- (c) **endeavour to speed up the investigation and inquiry process within resources constraints;**

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- (d) explore the feasibility of introducing measures to prevent the offending PSL holders to avoid sanctions by transfer of ownership of their vehicles, with due regard to legal complication on the property rights of PSL holders in respect of the concerned buses;
- (e) explore the feasibility and applicability of additional enforcement tools for tackling common breaches of PSL conditions in consultation with the Department of Justice and the HKPF;
- (f) conduct a review on the need for the provision of stop signs for residents' service with due regard to their functions and maintenance, and prevalence of illegal activities;
- (g) during the interim, keep the information on the authorised stop signs up-to-date and take actions against unauthorised stop signs that caused safety problem or serious obstruction; and
- (h) consider publicising approved schedules of service, in particular for hotel and contract hire services, for easy identification by the general public.

PART 4: SAFETY MEASURES OF STUDENT SERVICE VEHICLES

4.1 According to its Controlling Officer's Report, the TD aims to promote road safety through the efficient regulation of vehicles and drivers. The work of the TD in this regard includes promoting safer vehicles through reviewing and updating the relevant regulations and safety standards, and examining and implementing measures to enhance road safety through legislation, publicity and use of technology. This PART examines the TD's work to further enhance the safety of student service vehicles, focusing on:

- (a) implementation of the safer seat requirements (paras. 4.5 to 4.7); and
- (b) additional safety measures (paras. 4.8 to 4.19).

Measures to enhance the safety of student service vehicles

4.2 NFBs and SPLBs play an important role in providing transport services for students. As at 31 December 2016, there were 5,238 student service vehicles, including 3,169 public NFBs and 103 private NFBs with student service endorsements, and 1,966 SPLBs. According to the TD, the safety records of student service vehicles have been generally satisfactory, as indicated by the low numbers of accidents and passenger casualties (see Table 9). Notwithstanding the generally satisfactory safety records of the student service vehicles, the Government considers it important to explore measures to further enhance their safety, given that the passengers are mostly young children who may not be able to take good care of themselves, particularly in emergency situations. The Road Safety and Standards Division of the TD (see Appendix A) is responsible for compiling and monitoring accident statistics, and providing support to the Road Safety Council (Note 34) in the formulation of road safety measures.

Note 34: *The Road Safety Council is a government advisory body (consisting of government officials and community members from various professions appointed by the Secretary for Transport and Housing) to coordinate road safety activities in Hong Kong.*

Table 9

**Number of traffic accidents involving injuries of students
on student service vehicles during school trips
(2012 to 2016)**

Year	Number of traffic accidents	Number of student passenger casualties (Note)
2012	38	147
2013	48	180
2014	37	176
2015	30	112
2016	33	91

Source: TD records

Note: All the affected student passengers suffered slight injuries in these accidents.

4.3 **2001-02 review.** In 2001-02, the then Transport Bureau and the TD reviewed four possible measures to enhance the safety of passengers on student service vehicles and reported the major findings to the LegCo Panel on Transport:

- (a) ***Introduction of passenger seat belts.*** The then existing seat belt legislation only required the fitting and wearing of seat belts for drivers and front seat passengers of all vehicle types, and rear seat passengers of private cars and taxis. Extension of the same requirements to student service vehicles was not recommended at that stage based on the following assessments:
 - (i) ***Safety benefits and overseas practices.*** There were on-going debates overseas on the effectiveness of seat belts on student service vehicles and the findings had been inconclusive (see Appendix C for details of arguments for and against the seat belt requirements). Compulsory fitting and wearing of seat belts on student service vehicles were not common worldwide;

- (ii) ***Impact on operation of school transport trade.*** First, there was concern that drivers or escorts had difficulties to ensure that the seat belts were properly worn throughout the journey and consequently who should be held responsible if the seat belts were not worn. Since it would not be practicable to hold kindergarten and primary school students legally responsible for not wearing seat belts, it might be necessary to impose on the escort a duty to ensure that students had the seat belts fastened. However, the school transport trade had expressed serious reservation over this proposal (see Appendix D for views of the trade on the provision of seat belts on student service vehicles). Second, under the existing legislation, 3 children aged 3 years or above but each not exceeding a height of 1.3 metre shall be counted as 2 passengers. If compulsory fitting and wearing of seat belts were to be introduced to student service vehicles, the “3 for 2” counting rule would need to be cancelled as each child had to be provided with a seat belt. Third, if compulsory fitting and wearing of seat belts were introduced, the increases in capital outlay for a new SPLB and an NFB to be equipped with two-point lap belts were estimated to be about \$30,000 and \$0.2 to \$0.3 million respectively. Given that the “3 for 2” rule would have to be cancelled and a compulsory escort service would have to be provided, it was estimated that parents/guardians had to pay an extra \$150 to \$225 per month for each child; and
 - (iii) ***Parents’/guardians’ views.*** Based on a questionnaire survey, the Government noted that a majority of the parents/guardians supported the provision of seat belts (69% to 88%) and cancellation of the “3 for 2” counting rule (54% to 63%). However, only 20% to 37% of these parents/guardians were willing to pay more than \$100 extra each month for the enhanced services;
- (b) ***Use of safer seats.*** Safer seats referred to strong and closely spaced seats, with high and energy-absorbing backs which could protect children in the event of a crash (see Photograph 4 for an example). They were adopted in the United States and Canada in preference to seat belts on school buses. It was estimated that the cost involved would range from \$5,000 to \$25,000 for SPLBs and \$15,000 to \$60,000 for school buses. In light of their perceived benefits and the relatively lower cost required, it was recommended to further explore the feasibility of this measure for future enhancement of the safety of student service vehicles;

Photograph 4

Safer seats fitted on a student service vehicle



Source: TD records

- (c) ***Compulsory escort service.*** Since February 1997, the provision of escort service had become a mandatory requirement for school buses serving kindergarten and primary school students. In considering the SPLB operators' concerns about the adverse impact on their competitiveness and survival in the business due to the probable increase in operating cost, the Government did not impose the requirement on SPLBs at that time. Based on information provided by the trade, escort service had in fact been provided on about 90% of the SPLBs carrying kindergarten students. With an average monthly salary of \$2,000 for an escort, the additional operating cost per student per month would be around \$100. For the purpose of improving the quality and safety of the service, it was recommended that compulsory escort service should be extended to SPLBs serving kindergarten and primary school students; and
- (d) ***Enhanced training and education.*** It was recommended to liaise with the trade and relevant stakeholders to strengthen driver training and education/publicity for students on safety of student service vehicles.

4.4 In April 2004, the then Environment, Transport and Works Bureau reported to the LegCo Panel on Transport the progress of enhancing education and publicity. In regard to the use of safer seats and provision of escorts, the Panel was informed of the following:

Safety measures of student service vehicles

- (a) *Use of safer seats.* These seats had been in use on student service vehicles in the United States and Canada for more than two decades. In Canada, the number of injuries sustained by school bus occupants had been reduced by about 26% since these safer seats were introduced in 1975. Both the NFB trade and the SPLB trade agreed with the need to enhance the safety of school children on student service vehicles. As regards their three major concerns, first, the proposed safer seats would not lead to any reduction in the carrying capacity of student service vehicles as the “3 for 2” counting rule would remain. Second, in line with the established practice for new safety equipment, the proposed requirements would only apply to newly registered student service vehicles. Retrofitting of the existing fleet would not be required. Third, the new requirements would incur an additional cost of about 6% to 8% of the vehicle cost, i.e. about \$11,000 to \$25,000 for SPLBs and about \$32,000 to \$70,000 for NFBs. Based on a life span of 8 years for a new SPLB and 10 years for a new NFB, the additional amount to be borne by each student would range from \$6 to \$17 per month. Based on the above consideration, it was recommended to require newly registered student service vehicles to be equipped with safer seats according to the TD’s specifications. In this connection, the additional safety requirements recommended by the TD’s consultant would be incorporated, i.e. the provision of only front-facing seats and an energy absorbing barrier for the front-row passengers (see Photograph 5 for an example); and

Photograph 5

An energy absorbing barrier fitted on a student service vehicle



Source: TD records

- (b) ***Compulsory provision of escorts.*** It was noted that some 90% of the SPLBs carrying kindergarten students and 25% of those carrying primary school students had already provided escorts voluntarily. Based on a questionnaire survey, 97% of the parents/guardians of kindergarten students and 89% of those of primary school students supported compulsory provision of escorts. Over 50% of these parents/guardians expressed willingness to pay for the service. The estimated additional operating cost arising from the proposal was about \$100 per student per month. However, the SPLB trade supported the proposed compulsory provision of escorts on SPLBs carrying kindergarten students only. Taking into consideration the trade's view, it was recommended to make provision of escorts compulsory for SPLBs that served kindergartens (see para. 1.9(d)).

Implementation of the safer seat requirements

4.5 In 2007, the Road Traffic (Construction and Maintenance of Vehicles) Regulations were amended to require student service vehicles registered on or after 1 May 2009 to be equipped with safer seats. As the safer seat requirements only apply to newly registered vehicles, the progress of fitting safer seats on existing student service vehicles depends very much on the pace of replacing the existing vehicles by new ones or retrofitting them with safer seats on a voluntary basis. Upon Audit's request, the TD provided a breakdown of 5,261 student service vehicles as at 24 July 2017 by their passenger seat types. As can be seen from Table 10, 1,879 (36%) student service vehicles were without safer seats.

Table 10**Student service vehicles by passenger seat types
(24 July 2017)**

Type of student service vehicles	Number of vehicles		
	with safer seats	without safer seats	Total
Public NFB with student service endorsement	1,899 (59 %)	1,337 (41 %)	3,236 (100 %)
Private NFB with student service endorsement	78 (72 %)	30 (28 %)	108 (100 %)
SPLB	1,405 (73 %)	512 (27 %)	1,917 (100 %)
Total	3,382 (64 %)	1,879 (36 %)	5,261 (100 %)

Source: TD records

Remarks: As NFBs may be licensed to operate one or more types of services, not all NFBs with student service endorsement provide student service in their daily operation. According to the 2014 TD survey, about 70% of public NFBs with student service endorsement were actually providing student service (see para. 1.9(c)).

4.6 To estimate the time needed to phase out the 1,879 student service vehicles without safer seats, Audit analysed their first registration dates and fuel types to see if they fell within the Government's incentive-cum-regulatory scheme (Note 35) to phase out all pre-Euro IV diesel commercial vehicles by 31 December 2019. Audit found that:

Note 35: *The scheme was launched in March 2014 with a view to improving roadside air quality and better protecting public health. Under the scheme, pre-Euro IV diesel commercial vehicles would be phased out by different retirement deadlines according to their first registration dates. Pre-Euro IV diesel commercial vehicles scrapped within the period between 1 March 2014 and the specified payment application deadlines would be eligible for ex-gratia payments. The TD would stop issuing vehicle licences to the relevant diesel commercial vehicles after specified dates, unless they could comply with the emission standards applicable to them as if they were first registered on the date of the vehicle licence application.*

- (a) 851 (45%) were pre-Euro IV diesel vehicles (Note 36). They would be phased out on or before 31 December 2019 under the incentive-cum-regulatory scheme or replaced by new ones which would be required to meet the stipulated emission and safer seat requirements;
- (b) 966 (51%) were diesel vehicles which fell outside the incentive-cum-regulatory scheme (Note 37). Given that NFBs normally had a life span of around 15 years (Note 38), it was estimated that most of these student service vehicles would continue to be in operation in the coming 4 to 6 years. For example, 337 (35%) of 966 such vehicles were public NFBs first registered in 2008 and it was possible that these vehicles would be in operation up to 2023; and
- (c) the remaining 62 (4%) were liquefied-petroleum-gas-fuelled SPLBs with first registration dates between November 2001 and April 2009. As the Government's incentive scheme only covered diesel commercial vehicles, these SPLBs would only be phased out or replaced on a voluntary basis by the vehicle owners. Similar to NFBs, assuming a life span of around 15 years, some of these SPLBs without safer seats were expected to be in operation in the coming years.

4.7 To sum up, it had taken some eight years after the safer seat requirements came into operation on 1 May 2009 to phase in 3,382 (64% of the total of 5,261 as at 24 July 2017) student service vehicles with safer seats. Through a normal replacement cycle, it may take up to some 6 years to phase out/replace the remaining 1,879 student service vehicles without safer seats. In Audit's view, the TD needs to explore measures to speed up the progress of phasing in student service vehicles with safer seats, such as stepping up publicity on the benefits of safer seats so that operators

Note 36: *These vehicles had first registration dates on or before: (a) 30 September 2006 (for NFBs and those SPLBs with permitted gross vehicle weight (PGVW) over 3.5 tonnes); or (b) 31 December 2006 (for those SPLBs with PGVW not over 3.5 tonnes).*

Note 37: *These vehicles had first registration dates between: (a) 1 October 2006 (for NFBs and those SPLBs with PGVW over 3.5 tonnes); or (b) 1 January 2007 (for those SPLBs with PGVW not over 3.5 tonnes) and 30 April 2009.*

Note 38: *The Government limits the service life of diesel commercial vehicles newly registered on or after 1 February 2014 to 15 years.*

would have to respond to the increasing demand for safer student service vehicles by parents or guardians.

Additional safety measures

4.8 After the implementation of safer seat requirements in 2009, some LegCo Members expressed concern on the adequacy of safety measures on student service vehicles and requested the TD to explore further means for the protection of the passengers of student service vehicles, particularly those at young ages. In July 2010, the TD commissioned a consultant to study the feasibility of installing seat belts on student service vehicles and compare the effectiveness and safety merits of seat belts with those of safer seats in the protection of students on student service vehicles. The TD's consultant concluded in its report of March 2013 that, after taking into account the safety benefits, cost estimates, technical feasibility, operational considerations, implementation issues and legislation issues, the overall performance of safer seat alone option was as good as that of safer seat with a lap-shoulder belt option. Based on the findings of the consultancy study, the TD recommended to the THB in February 2015 that there was no imminent need to pursue the mandatory installation of seat belts on student service vehicles.

4.9 Based on various overseas research findings, the TD's consultant found that safer seats were effective in providing protection to occupants on student service vehicles regardless of occupant age and size. However, the consultant also said that the benefit of safer seats could be further enhanced (see Appendix E for a summary of overseas research findings on safer seats in the consultancy study report) as follows:

- (a) safer seats provided less significant protection to passengers aged under 4.5 years or weighing under 18 kilograms (kg) compared to older children. Head size and body weight of children aged under 4.5 years were not appropriate to take full advantage of the energy-absorbing seat back in a frontal collision in cases when the child was not restrained; and
- (b) the benefit of safer seats could be further enhanced through the use of appropriate restraint systems in cases involving lateral and side-impact crashes, rollovers and ejections. In addition to safer seats, appropriate restraint systems could provide better protection to passengers aged under 4.5 years or weighing 18 kg or less.

4.10 The TD did not have statistics on student service vehicle passengers who were aged under 4.5 years or weighing under 18 kg (hereinafter referred to as younger children) for whom safer seats alone might provide less significant protection compared with older children. However, Audit noted from the TD's records that as at February 2017, 982 (50%) of 1,970 SPLBs were serving kindergarten students (Note 39). These 982 SPLBs (Note 40) were likely serving younger children for whom additional measures to enhance their safety should be considered.

Use of child restraint device

4.11 *Use of child restraint devices in private cars.* Under the Road Traffic (Safety Equipment) Regulations (Cap. 374F), a child aged less than 3 must be restrained by an approved child restraint device (CRD — see Figure 7 for two examples) when travelling in the front seat of a private car. In 2013, the THB consulted the LegCo Panel on Transport on a proposal to enhance the safety of child passenger on private cars by raising the mandatory requirement of using CRDs to cover the rear seats. The Panel was informed that a review of 17 jurisdictions revealed that all of them required the use of CRDs in both the front and rear seats of private cars. A number of Panel Members supported the Government's proposal to enhance the safety of child passengers in private cars and two of them also considered that CRD/seat belt requirements should be imposed on student service vehicles which regularly carried child passengers. At present, the TD encourages private car drivers to use appropriate CRDs for young child passengers placed in the rear seats.

Note 39: *Information on the number of NFBs serving kindergarten students was not available because unlike SPLBs which were only allowed to provide services to schools as approved by the TD on a case-by-case basis, most NFBs with student service endorsement (i.e. public NFBs) could serve different schools without the need to obtain the TD's approval.*

Note 40: *According to the Education Bureau, kindergartens provide services to children from 3 to 6 years old (i.e. the younger children are included).*

Figure 7

Two types of CRD

(a) A child safety seat



(b) A booster seat



Source: LegCo Panel on Transport paper

Remarks: According to the TD, a child safety seat is for a passenger aged 9 months to 3 years or weighing 9 to 18 kg while a booster seat is for a passenger aged 4 to 12 years or weighing 15 to 36 kg.

4.12 **Overseas practices.** Audit conducted an Internet research of the practices on improving the protection of younger children on school buses in Canada and the United States as both jurisdictions had safer seat requirements similar to those of Hong Kong. The results are as follows:

- (a) **Canada.** The transport authority in Canada had recommended that younger children be transported in an appropriate CRD while on a school bus. With effect from April 2007, it had required all newly manufactured school buses to have a minimum number of seating positions equipped with anchorages allowing a CRD to be attached although there was no legal requirement mandating the use of CRDs by younger children on school buses; and
- (b) **United States.** According to the regulations on safety features and the safe operation of vehicles used to transport children participating in Head Start and Early Head Start programmes (i.e. a government-funded service to promote school readiness for children from birth to aged 5 in low-income families of the United States), vehicles participating in the programmes should be equipped for use of CRDs. Any child weighing 50 pounds or less should be seated in a CRD appropriate to the height and weight of the

child while the vehicle was in motion although there was no legal requirement mandating the use of CRDs by younger children on all school buses.

Provision of seat belts

4.13 Under the Road Traffic (Safety Equipment) Regulations, seat belts are required for the driver's seat in NFBs and the driver's seat cum the front passenger seat in SPLBs. There are however no seat belt requirements for any other passenger seats in both NFBs with student service endorsement and SPLBs except for public NFBs providing cross-boundary international passenger service (Note 41). In response to an enquiry of a LegCo Member on the provision of seat belts in student service vehicles in 2014, the THB indicated that:

- (a) the views on the provision of seat belts in student service vehicles varied among different overseas jurisdictions;
- (b) while seat belts could protect students in accidents, they might prevent prompt egress from the vehicles as students (especially the younger ones) might not be able to unfasten their seat belts on their own;
- (c) even when seat belts were installed, it might not be possible for the bus drivers or escorts to ensure proper wearing of seat belts by students all the time;
- (d) as student service vehicles were used to carry students of different ages, ranging from kindergarten to early secondary school students, there was practical difficulty to provide one type of seat belts that could suit students of all ages and body sizes; and
- (e) the question of who should be responsible if the seat belts were not worn was yet to be resolved.

Note 41: *Since June 2002, all public NFBs providing cross-boundary international passenger service (i.e. including cross boundary school coaches) have been required to be fitted with seat belts by way of PSL conditions and passengers have been encouraged to wear the seat belts provided on their seats on a voluntary basis.*

Safety measures of student service vehicles

The above line of arguments was similar to that of the 2001-02 review (see para. 4.3(a)). According to the TD, the above views have taken into account the 2013 consultancy study report on the feasibility of installing seat belts on student service vehicles (see para. 4.8). However, Audit noted that there had been developments both locally and overseas which needed to be taken into account in considering additional measures for enhancing the safety of student service vehicles as illustrated in paragraphs 4.14 to 4.17.

4.14 ***Safety benefits of seat belts.*** According to the TD's 2013 consultancy study report (see para. 4.8), the United States National Highway Traffic Safety Administration study had shown that lap-shoulder seat belts were remarkably superior to safer seats and lap-belts in reducing the risks of severe head and neck injuries in frontal crashes. In addition, while there were no established studies quantifying the effectiveness of safer seats, lap-belts and lap-shoulder seat belts in reducing the risks of severe injury and fatality in side-impact and rollover accidents, the TD's consultant opined that passengers should be better protected by seat belts in side-impact and rollout accidents than safer seat alone, provided that seat belts were properly worn. However, as safer seats had the distinguished benefit of being passive protective devices that did not require any action by the passengers whereas the benefits of seat belts could only be realised if worn properly, the consultant considered that safer seats could not be replaced by seat belts alone. In terms of safety benefits, the TD's consultant rated safer seats with lap-shoulder seat belts as excellent while safer seats alone and safer seats with lap-belts as average.

4.15 ***Other jurisdictions' practices.*** The TD's consultant reviewed the application of safer seats and seat belts in student service vehicles of 23 jurisdictions (see Appendix F for details). The review results suggested an increasing trend in the use of seat belts (unlike the position in 2001-02 — see para. 4.3(a)(i)):

- (a) of the 23 jurisdictions reviewed, 16 (70%) had existing or planned legislation regulating the fitting and/or wearing of seat belts on student service vehicles;
- (b) of the 7 jurisdictions with safer seat requirements, 6 (86%) also introduced requirements on the fitting and/or wearing of seat belts; and

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- (c) of the 6 jurisdictions without safer seat and seat belt requirements, 2 (i.e. South Australia and Western Australia) had introduced measures to expedite the fitting of seat belts on school buses and one (i.e. Germany) did not have relevant requirements because school transport services were usually operated on regular public transport vehicles.

As regards the parties who would be held liable for any failure to wear seat belts (para. 4.13(e)), the TD's consultant found that some of the jurisdictions reviewed had addressed this issue by making reference to the age of the passengers (see Table 11).

Table 11

**Overseas practices on parties held responsible
for failure to wear seat belts in student service vehicles
(2010-11)**

Overseas Jurisdiction	Passenger Age	Party held responsible		
		Driver	Passenger	Both driver and passenger
Australia (Queensland)	Aged < 16	✓	✗	✗
	Aged ≥ 16	✗	✓	✗
France	Aged ≤ 18	✓	✗	✗
	Aged > 18	✗	✓	✗
Japan	–	✓	✗	✗
Singapore	–	✗	✗	✓
United Kingdom	Aged < 14	✓	✗	✗
	Aged ≥ 14	✗	✓	✗
United States (New Hampshire)	Aged < 18	✓	✗	✗
	Aged ≥ 18	✗	✓	✗

Source: TD records

Safety measures of student service vehicles

4.16 ***Vehicles fitted with both safer seats and seat belts.*** While there was no mandatory requirement on the use of seat belts in student service vehicles, Audit analysis of the TD's records revealed that of the 3,382 student service vehicles fitted with safer seats as at 24 July 2017 (see Table 10 in para. 4.5), 2,094 (62%) had in fact been fitted with both safer seats and seat belts (see Table 12).

Table 12

**Student service vehicles fitted with both safer seats and seat belts
and those with safer seats only
(24 July 2017)**

Type of student service vehicles	Number of vehicles		
	Fitted with safer seats only	Fitted with both safer seats and seat belts	Total
Public NFB	868 (46%)	1,031 (54%)	1,899 (100%)
Private NFB	20 (26%)	58 (74%)	78 (100%)
SPLB	400 (28%)	1,005 (72%)	1,405 (100%)
Overall	1,288 (38%)	2,094 (62%)	3,382 (100%)

Source: Audit analysis of TD records

4.17 ***Types of seat belt installed.*** Seat belts installed at the operators' discretion might not be subject to certification and approval by the TD. In a sample check of the TD's records of 30 student service vehicles fitted with both safer seats and seat belts, Audit found that all of them were equipped with lap-belts which according to the 2013 consultancy study report were inferior to lap-shoulder seat belts in reducing the risks of severe head and neck injuries in frontal crashes (see para. 4.14). In this connection, Audit noted that the transport authorities in the United States and Canada (both jurisdictions have safer seat requirements similar to those of Hong Kong) had made recommendations on the type of seat belts fitted in student service vehicles:

- (a) in November 2015, the United States National Highway Traffic Safety Administration announced that student service vehicles should have lap-shoulder seat belts and various measures would be taken to achieve this mission; and
- (b) in March 2017, the Transport Canada proposed regulations requiring that seat belts optionally installed on student service vehicles should be of the lap-shoulder type in light of the research result that lap-belts could increase the injury risk in certain collisions.

4.18 ***Unresolved issues.*** In September and October 2017, in response to Audit's enquiry, the TD said that there were a number of technical, operational, implementation and legal issues to be thoroughly considered and resolved before a decision could be taken on the types of measures to further enhance the safety of student service vehicles, including but not limited to the following:

- (a) different types of CRD would be required for different age groups of school children. Given that a student service vehicle tended to carry students of different ages during the same run and there could be more than one run per day, it might not be practicable for operators to procure and store on the vehicle adequate number of different types of CRD so as to cater for different combinations of child passengers during different runs;
- (b) CRDs on student service vehicle seats could offer protection only if they were properly installed and individually adjusted to suit each child passenger. Issues relating to the practicability of properly installing and adjusting the CRD for each student needed to be examined, including the possible adverse impact on the operation due to the extra time required;
- (c) in the event that emergency evacuation from a student service vehicle was required, each child passenger needed to be unfastened from his/her CRD. While the provision of an escort had become a mandatory requirement on student service vehicles, it would not be feasible for the escort to help unfasten seat belts in a split second, rendering prompt evacuation of young children on board difficult;
- (d) there was no practicable method for the driver or the escort of student service vehicles to ensure all passengers on board had their seat belts

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properly worn throughout the journey. It might not be justifiable to place such legal liability on them; and

- (e) the installation of CRDs would require a substantial change of existing mode of operation which could have impacts on the operating cost of, and fee payable for, student service vehicles. There was a need to fully engage various stakeholders if changes were to be introduced.

4.19 Audit understands the complexity in evaluating various possible technologies for further enhancing the safety of student service vehicles. In Audit's view, besides continuously monitoring the latest developments on the use of different technologies, the TD may consider conducting a survey of stakeholders (including the operators, schools and parents) when necessary to gauge their views, preference and willingness to pay for possible enhancement options that suit the Hong Kong's context and address operational and implementation issues that may arise.

Audit recommendations

4.20 **Audit has *recommended* that the Commissioner for Transport should:**

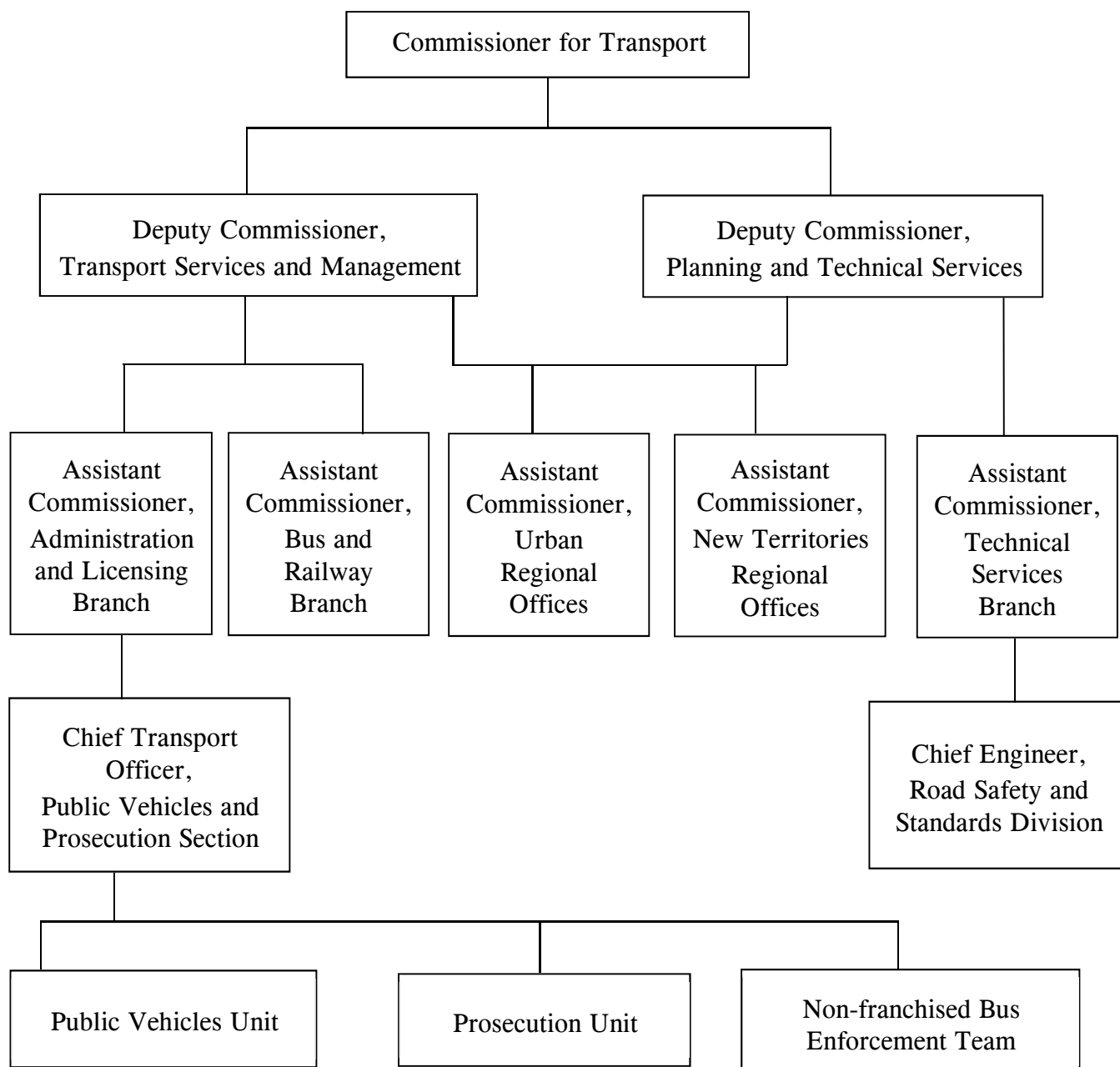
- (a) **explore measures to speed up the progress of phasing in student service vehicles with safer seats, such as stepping up publicity on the benefits of safer seats so that operators would have to respond to the increasing demand for safer student service vehicles by parents or guardians; and**
- (b) **continue to keep abreast of the latest developments in enhancing the safety of student service vehicles, and consider conducting a survey of stakeholders when necessary to gauge their views, preference and willingness to pay for possible enhancement options that suit the Hong Kong's context and address operational and implementation issues that may arise.**

Response from the Government

4.21 The Commissioner for Transport agrees with the audit recommendations. She has said that the TD will:

- (a) continue to monitor the number of student service vehicles installed with safer seats, and step up the publicity on the benefits and use of safer seats; and
- (b) continue to keep abreast of the latest developments in enhancing the safety of student service vehicles. Taking into account various factors such as the safety benefits, cost implications, implementation, operation, impact on trade and views of stakeholders, if any possible enhancement measures are to be proposed and considered suitable for Hong Kong, the TD will conduct a survey of relevant stakeholders to gauge their views, preference and willingness to pay with a view to resolving any operational and implementation issue.

**Transport Department:
Organisation chart (extract)
(30 September 2017)**



Source: TD records

Appendix B
(paras. 1.5(a) and
2.25(a) refer)

**Brief description of eight types of
public non-franchised bus services**

Type of service	Administrative code	Brief description of the service	Colour of passenger service licence certificate
Tour service	A01	A tour service is for the carriage of passengers travelling together on a journey from the places at which they are taken up to other places and back to the places at which they were taken up, such as those provided in conjunction with inbound travel service to tourists.	Red
Hotel service	A02	A hotel service is for the carriage of passengers residing at a hotel where every passenger is taken up or set down at the hotel.	Red
Student service	A03	A student service is for the carriage of students, teachers, persons in charge of the students to and from a school, university or education institution.	Red
Employees' service	A04	An employees' service is provided by an employer for the carriage to or from the place of work of passengers who are persons employed by the employer.	Red
International passenger service	A05	An international passenger service is for the carriage of passengers in either direction between any one or more of the following places, that is to say, the Hong Kong International Airport, Hung Hom Railway Station, Macau Ferry Pier or any other pier, any Hong Kong border crossing, any hotel, airline office or ferry or similar terminal.	Green

Appendix B
(Cont'd)
(paras. 1.5(a) and
2.25(a) refer)

Type of service	Administrative code	Brief description of the service	Colour of passenger service licence certificate
Residents' service	A06	A residents' service is provided by or on behalf of the management, residents or owners of any residential development for the carriage of passengers to or from the residential development.	Green
Multiple transport service	A07	A multiple transport service is for the carriage of passengers in combination with another mode of public transport service from one departure point to one destination (other than to and from a residential development) and where a combined fare is paid for the whole journey at a place other than at the boarding point of the bus or on the bus.	Green
Contract hire service	A08	A contract hire service is for catering ad-hoc demands for services that could not be met by the other seven types of services, e.g. wedding and funeral.	Red

Source: TD records

Remarks: A contract hire service is approved by the Commissioner for Transport in accordance with the RTO while the other types of services are defined in the PBSO.

**Arguments for and against seat belt requirements on
student service vehicles
(2001-02)**

The major arguments overseas in favour of and against seat belts on student service vehicles were as follows:

I. Arguments in favour of seat belts on student service vehicles:

- (a) ***Protecting children in an accident.*** Seat belts would keep children in their seats, and offer superior protection in the event of rollovers, or side impact or angle collision (in contrast to head-on or rear-impact);
- (b) ***Carryover value.*** Use of seat belts in school buses would reinforce the educational messages aimed at school-age youngsters and would have a carryover effect of seat belt usage later in their later lives; and
- (c) ***Passenger behaviour.*** Proper use of seat belts would improve student behaviour on the buses, reduce drivers' distraction, and might reduce the chances of accidents.

II. Arguments against seat belts on student service vehicles:

- (a) ***Ineffective in catastrophic accidents.*** Seat belts were of little use in the types of catastrophic accidents that caused deaths or serious injuries to passengers on-board, e.g. collisions with larger vehicles etc. Seat belts might actually prevent rapid egress from a bus in the case of a bus fire or sinking in a river, lake or other large body of water, as children might be unable to unfasten their seat belts themselves;
- (b) ***Not an effective expenditure.*** The safety record of school buses was already so good that the additional cost per bus to install lap-belts could be better spent on other safety measures;
- (c) ***No guarantee of use.*** Installing seat belts in a school bus did not mean that students would use them. In addition, it was not possible for the bus driver or escort to monitor the proper fastening and adjustment of seat belts during the whole trip. Improperly adjusted belts could prove hazardous; and
- (d) ***Seat belts cause injuries.*** Children had been injured by seat belts used as weapons by other students, and by catching their fingers in the buckles or tripping over loose belts.

Source: LegCo Panel on Transport paper

**Views of the trade on provision of seat belts
on student service vehicles
(2001-02)**

The views of the school transport trade on the provision of seat belts on student service vehicles were as follows:

- (a) the trade expressed concerns about the escorts taking up the responsibility to ensure that each and every student onboard was wearing seat belts properly during the trip. It would be very difficult to recruit escorts who were willing to take up the responsibility for the small income involved;
- (b) the risk of children using the belts as weapons to strike another student;
- (c) young children might not be able to release the buckle without assistance. In case of an emergency/accident, such as fire or submersion in water, use of seat belts could hinder evacuation even if an escort was provided;
- (d) after cancelling the “3 for 2” counting rule, the number of student service vehicles on roads would likely be increased, adding traffic on roads, in particular those in the vicinity of schools;
- (e) increase in boarding and alighting time;
- (f) some parents/guardians could not afford to use the school transport service due to the substantial increase in costs arising from cancellation of the “3 for 2” counting rule and the additional escort services. The service would ultimately serve only the relatively rich group, not the general public. This would pose hardship to the trade also;
- (g) the fact that school trips were usually fairly short and the speed of the vehicle was fairly low, rendering the use of seat belts not so useful;
- (h) insurance might not cover damages/injuries triggered by the provision/wearing of seat belts; and
- (i) more emphasis should be put on educating students to behave properly on student service vehicles during the trip.

Source: LegCo Panel on Transport paper

**Summary of overseas research findings
on safer seats in the consultancy study report of March 2013**

Factors	Findings
Merits	<ul style="list-style-type: none"> • Easy to implement compared with seat belts • Required only the modification of passenger seats and did not require any action on behalf of the student occupant
Demerits	<ul style="list-style-type: none"> • Failed to provide occupant protection in lateral and side-impacted crashes, rollovers and ejections • Failed to provide sufficient protection to occupants aged under 4.5 years or weighing under 18 kg, considering their head size and impact-energy-absorbing performance, although some marginal safety benefits to these occupants could still be achieved
Safety benefits	<ul style="list-style-type: none"> • Effective in protecting occupants in front-rear collisions or during emergency braking • In a collision, the body of the occupant moved forwards, contacting and deforming the energy-absorbing seat back in front. Therefore, the impact force was distributed across the entire upper-body area
Occupant size	<ul style="list-style-type: none"> • Head size and body weight of children aged under 4.5 years were not appropriate to take full advantage of the energy-absorbing seat back in a frontal collision in cases when the child was not restrained • In addition to compartmentalisation, appropriate restraint systems were required for occupants aged under 4.5 years or weighing 18 kg or less • Older children (aged 4.5 years or older) were well protected
Vehicle characteristics	<ul style="list-style-type: none"> • Optimum seat back height had been set out
Collision type	<ul style="list-style-type: none"> • Significant reduction in injury risk in frontal and rear-end collisions only, but not oblique and rollover collisions
Operational considerations	<ul style="list-style-type: none"> • As a passive restraint system, misuse was not really possible • No additional escort required • No adverse effects on efficiency of loading and unloading activities and emergency evacuations or adaptation of 3-for-2 seating arrangement

Source: TD records

**Other jurisdictions with safer seat
and/or seat belt requirements on student service vehicles
(2010-11)**

	Jurisdiction	Safer seats	Seat belts	
			Installation	Wearing
1.	Australia (Commonwealth)	✕	✓	✕
2.	Australia (New South Wales)	✕	✕	✓
3.	Australia (Queensland)	✓	✓ (Note 1)	✓
4.	Australia (South Australia)	✕	✕	✕
5.	Australia (Victoria)	✕	✕	✕
6.	Australia (Western Australia)	✕	✕	✕
7.	Canada	✓	✕	✕
8.	Colombia	✕	✓	✓
9.	European Union	✕	✓	✓
10.	France	✕	✓	✓
11.	Germany	✕	✕	✕
12.	Ireland	✕	✓	✓
13.	Japan	✕	✓ (Note 2)	✓
14.	Korea	✓	✓	✕
15.	Mainland China	✓	✓ (Note 3)	✕

Appendix F
(Cont'd)
(para. 4.15 refers)

	Jurisdiction	Safer seats	Seat belts	
			Installation	Wearing
16.	Singapore	✗	✓ (Note 4)	✓
17.	Sri Lanka	✗	✗	✗
18.	United Kingdom	✗	✓	✓
19.	United States (Federal)	✓	✓ (Note 5)	✗
20.	United States (New Hampshire)	✗	✓	✓
21.	United States (New Jersey)	✓	✓	✓
22.	United States (New York)	✓	✓	✗
23.	Zimbabwe	✗	✗	✗

Source: TD records

Note 1: The requirement applied to buses with 17 seats or more in extreme operation environment only.

Note 2: The requirement did not apply to kindergarten small buses.

Note 3: The requirement applied to student service vehicles serving primary school only.

Note 4: The requirement applied to small buses with seating capacity of 15 or less only.

Note 5: The requirement applied to small student service vehicles with a gross vehicle weight of 4,536 kg or less only.

Remarks: The safer seat and seat belt requirements in the 23 jurisdictions were based on the TD's consultant's research conducted between 2010 and 2011.

Acronyms and abbreviations

Audit	Audit Commission
CRD	Child restraint device
CSB	Civil Service Bureau
HKPF	Hong Kong Police Force
kg	Kilogram
LegCo	Legislative Council
NFB	Non-franchised bus
NFBET	Non-Franchised Bus Enforcement Team
PBSO	Public Bus Services Ordinance
PGVW	Permitted gross vehicle weight
PSL	Passenger Service Licence
PSLC	Passenger Service Licence Certificate
PVU	Public Vehicles Unit
ROs	Regional Offices
RTO	Road Traffic Ordinance
SPLB	School private light bus
TAC	Transport Advisory Committee
TD	Transport Department
THB	Transport and Housing Bureau