

# **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.