

立法會
Legislative Council

LC Paper No. CB(1) 2141/04-05
(These minutes have been seen
with the Administration)

Ref: CB1/BC/11/04/2

**Bills Committee on
Civil Aviation (Amendment) Bill 2005**

**Minutes of second meeting
held on Friday, 15 July 2005, at 8:30 am
in Conference Room B of the Legislative Council Building**

Members present : Hon Margaret NG (Chairman)
Hon SIN Chung-kai, JP
Hon Howard YOUNG, SBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Ronny TONG Ka-wah, SC

Member absent : Hon CHAN Kam-lam, SBS, JP

Public officers attending : Economic Development and Labour Bureau

Mr Wilson FUNG
Deputy Secretary for Economic Development and Labour
(Economic Development)

Mr Darryl CHAN
Principal Assistant Secretary for Economic Development
and Labour (Economic Development)

Department of Justice

Ms Grace LEUNG
Government Counsel
Law Drafting Division

Civil Aviation Department

Mr Stephen KWOK
Assistant Director-General of Civil Aviation
Air Services Division

Mr Jeffrey TO
Chief Operations Officer
Air Services Division

Clerk in attendance : Miss Becky YU
Chief Council Secretary (1)1

Staff in attendance : Miss Kitty CHENG
Assistant Legal Adviser 5

Mrs Mary TANG
Senior Council Secretary (1)2

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- I. Confirmation of minutes**
(LC Paper No. CB(1) 2053/04-05 — Minutes of the meeting held on
8 July 2005)

The minutes of the meeting held on 8 July 2005 were confirmed.

- II. Meeting with the Administration**
(LC Paper No. CB(1) 2057/04-05(01) — Background brief on Civil
Aviation (Amendment) Bill 2005
LC Paper No. CB(1) 2057/04-05(02) — Marked-up copy of the Bill
LC Paper No. CB(1) 2057/04-05(03) — Letter from Hon Howard YOUNG
dated 13 July 2005 (English
version only)
LC Paper No. CB(1) 2057/04-05(04) — Extract from UK Civil Aviation
Act 1982 on which the Bill is
modelled after (English version
only))

2. The Committee deliberated (Index of proceedings attached in **Annex A**).

3. The Administration was requested to -
 - (a) provide a paper explaining the policy intent of exempting passive owners of aircraft from the strict liability under section 8(4) and whether the drafting of the proposed section 8(5) could reflect the policy intent on the one hand and address members' concern on the possible diminution of protection for third parties, such as cargo owners and consumers;
 - (b) advise the improvement which it would suggest to refine the drafting; and
 - (c) provide the findings and relevant reference materials regarding the legal research on past court cases in relation to the interpretation of "management".

4. It was agreed that the date of the next meeting would be decided in consultation with members upon receipt of the requisite information from the Administration.

III. Any other business

5. There being no other business, the meeting ended at 9:40 am.

Council Business Division 1
Legislative Council Secretariat
26 July 2005

**Proceedings of the meeting of the
Bills Committee on Civil Aviation (Amendment) Bill 2005**

**Meeting on Friday, 15 July 2005, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000630	Chairman	Introductory remarks and confirmation of minutes of the meeting held on 8 July 2005 (LC Paper No. CB(1) 2053/04-05)	
000631 - 001134	Chairman Mr Ronny TONG	<p>Discussion on “management”</p> <p>It was pointed out by Mr Ronny TONG that -</p> <ul style="list-style-type: none"> (a) where a loss or damage had incurred, the owner would be held strictly liable if the aircraft was let out under a normal charter where the owner had retained management of the aircraft; (b) the owner would not be held liable if the aircraft was let out under a demise charter where the owner had completely relinquished control of the aircraft; (c) there would be difficulties in determining the liability if the owner of the aircraft had let it out to a charterer but retained some control. As such, there was a need to define the elements of control; and (d) contractors engaged by the owner or the charterer for aircraft maintenance and repair would not be held liable under the Bill 	

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001135 - 001338	Chairman Mr Ronny TONG	Reference to Appendices I and II to LC Paper No. CB(1) 2057/04-05(01) which set out the Administration's letter to Mr Ronny TONG and minutes of meeting of the Panel on Economic Services (ES Panel) on 16 March 2005 respectively	
001339 - 001819	Administration Chairman Mr Ronny TONG	Administration's explanation on "management" and "owner" - (a) "management" was not defined in the Civil Aviation Ordinance (the Ordinance) but "operator" was used in other civil aviation legislation as one having the management of the aircraft; and (b) under section 8(4) and new section 8(5), an operator would have strict liability but not the maintenance and repair agents engaged by the operators	
001820 - 002351	Administration Chairman Mr Ronny TONG	Administration's clarification on the purpose of Bill which was not to redefine or clarify section 8(4) but to provide exemption for passive owners who were not involved with the management of the aircraft from the strict liability Members' agreement on the policy intent of the Bill but question was raised on whether this could be reflected in the drafting of the Bill	
002352 - 002427	Mr Howard YOUNG Chairman Mr Jeffrey LAM	Mr Howard YOUNG pointed out the views of the aviation industry - (a) the industry accepted the present drafting of the Bill; but (b) the aircraft maintenance and engineering contractors were concerned about any changes which might extend the strict liability to cover them	

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002428 - 002656	Mr Ronny TONG	<p>Requests for -</p> <ul style="list-style-type: none"> (a) improvement to the drafting of the Bill to reflect policy intent, and to address the industry's concerns to ensure that these would not be misplaced; (b) removal of the ambiguity of "owner" by providing a definition in simple words 	
002657 - 003008	Administration Chairman	<p>Administration's explanation on the background to the changes in the Bill</p> <ul style="list-style-type: none"> (a) the Bill as originally proposed exempted owners from strict liability on condition that the aircraft had been let out for more than 14 days, and that no member of the crew was in the employment of the owner; (b) further to the ES Panel meeting, an additional condition "that such person did not have the management of the aircraft" was added to new section 8(5) so as to replicate the exact wording of section 8(4) in relation to "owner"; (c) the industry was consulted on the proposed changes and it had no strong views; (d) the industry became concerned after learning that the Bill might be further changed to define the term "management" to include maintenance and repair, which in their view would give rise to uncertainty on the exemption of strict liability; and (e) the options to resolve the problem would include - 	

Time marker	Speaker	Subject(s)	Action required
		<p>(i) maintaining status quo so that section 8(5) would replicate the exact wording of section 8(4) in relation to management of aircraft; or</p> <p>(ii) retaining only the first two exemption criteria under new section 8(5)</p>	
003009 - 004341	Chairman Mr Ronny TONG	<p>Mr Ronny TONG's concerns included -</p> <p>(a) there was a need to protect consumers' interest if anything went wrong;</p> <p>(b) consumers might suffer as the Bill might exempt the owner who retained some control over the aircraft from strict liability if he let out the aircraft to a charterer who operated under a shell company with no assets; and</p> <p>(c) the word "management" should be defined so as to avoid evasion of liability by owners who retained management of the aircraft</p> <p>Administration's response -</p> <p>(a) the phrase "person having the management of the aircraft" was equivalent to "an operator" in other civil aviation legislation. The term "management" would not only include maintenance and repair but a host of different functions;</p> <p>(b) if the owner was not involved at all with the management of the aircraft, he should be exempted from strict liability if the conditions in section 8(5) were met;</p>	

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		<p>(c) if the owner retained management of the aircraft, he would not be exempted from strict liability; and</p> <p>(d) it was difficult to provide an exhaustive definition for management and therefore interpretation would rest with the courts</p>	
004342 - 005134	Mr Ronny TONG Administration Chairman	<p>Mr Ronny TONG's enquiry on whether a charterer who was entrusted with maintenance and repair of an aircraft but did not have overall control would be regarded as the owner. In the absence of a clear definition on management, the charterer might be able to evade liability.</p> <p>Administration's response -</p> <p>(a) the rights to compensation by third parties would not be affected by the absence of definition on management because the owner/operator of the aircraft would in any case be caught under section 8(4);</p> <p>(b) the charterer of the aircraft, who was operating the aircraft at the time, would be held liable under section 8(4) to pay damages to third parties; and</p> <p>(c) the definition of operator, being "the person who has the management of the aircraft", was provided in four regulations under the Ordinance</p>	
005135 - 005331	Mr Ronny TONG	<p>Reiteration on the need to set out clearly the policy intent of the Bill to remove any ambiguity. The clarity in law would obviate the need for cross-referencing with other legislation. It would save a lot of trouble on the part of consumers in seeking interpretation from the courts</p>	

Time marker	Speaker	Subject(s)	Action required
005332 - 005508	Chairman Mr Ronny TONG Administration	Chairman's request for a paper from the Administration setting out the policy intent of the Bill and the improvements which could be made to the drafting of the Bill to address members' concerns	The Administration to provide paper setting out the policy intent of the Bill and the improvements which could be made to the drafting of the Bill to address members' concerns
005509 - 005601	Chairman Mr Ronny TONG	Mr Ronny TONG's request for provision of the findings and relevant reference materials regarding the legal research on past court cases in relation to the interpretation of "management"	The Administration to provide findings and relevant reference materials regarding the legal research on past court cases in relation to the interpretation of "management"
005602 - 005755	Mr Jeffrey LAM Chairman	Mr Jeffrey LAM's view on the need to reflect the policy intent of the Bill and to balance the interest of financiers, consumers and the industry	
005756 - 010408	Administration Chairman Mr Ronny TONG	<p>Administration's clarification -</p> <p>(a) there would be no diminution of protection for third parties as a result of the proposed exemption of strict liability for passive owners as the operators would eventually be held liable; and</p> <p>(b) need to further study whether replacing "management" with "operator" might have the effect of reducing the scope of protection to third parties.</p> <p>Mr Ronny TONG's comments</p> <p>(a) did not request for the replacement of "management" with "operator" but would prefer</p>	

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		<p>adding the phrase “including maintenance and repair”;</p> <p>(b) strict liability was a useful tool and the proposed exemption had indeed constituted a diminution of protection for consumers;</p> <p>(c) not seeking to change the policy but merely trying to improve the drafting of the Bill to reflect its policy intent; and</p> <p>(d) the absence of relevant case laws on definition of management of aircraft was a cause of concern</p> <p>Chairman’s agreement on the need for clarity of the law to avoid future disputes</p>	
010409 - 010657	Mr Howard YOUNG Chairman	Mr Howard YOUNG’s request for clarity of law to avoid ambiguity	
010658 - 010830	Chairman Administration Mr Howard YOUNG	Date of next meeting to be decided in consultation with members upon receipt of the Administration’s paper	