

立法會
Legislative Council

LC Paper No. CB(1) 194/05-06
(These minutes have been seen
by the Administration)

Ref: CB1/BC/11/04/2

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

**Minutes of third meeting
held on Monday, 24 October 2005, at 8:30 am
in Conference Room B of the Legislative Council Building**

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

Member absent : Hon SIN Chung-kai, JP

Public officers attending : Economic Development and Labour Bureau

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

Ms Jenny WONG
Acting 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

I. Meeting with the Administration

(LC Paper No. CB(1) 72/05-06(01) — Submission from Johnson Stokes & Master (English version only)

LC Paper No. CB(1) 72/05-06(02) — Paper provided by the Administration)

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

2. The Administration was requested to -

(a) list out all the references to “owner”, “operator” and “management” in the Civil Aviation Ordinance (Cap. 448) and other applicable ordinances; and

(b) seriously re-consider how best the term “management” could be defined to ensure that there is no diminution of protection of third parties.

3. Members agreed to continue discussion on the Bill at the next meeting scheduled for Friday, 11 November 2005, at 11:30 am.

II. Any other business

4. There being no other business, the meeting ended at 9:30 am.

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

**Meeting on Monday, 24 October 2005, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 – 000238	Chairman	Welcoming remarks	
000239 – 000529	Chairman Administration	The Administration's response to the submission from Johnson Stokes and Master (JSM) (LC Paper No CB(1) 72/05-06(02)	
000530 – 000901	Chairman Mr Jeffrey LAM Administration	<p>Discussion on the current situation on the leasing of aircraft</p> <p>Administration's explanation -</p> <p>(a) although most aircraft were owned by airlines, some were leased under a dry lease where owners did not have the management of the aircraft while others were leased under a wet lease where owners provided for the crew and assumed management functions. The latter arrangement was more common in cargo flights; and</p> <p>(b) the Bill sought to exempt passive owners who did not have the management of the aircraft from strict liability</p>	
000902 – 001320	Mr Ronny TONG Administration Chairman	<p>Mr Ronny TONG opined that -</p> <p>(a) the term "management" should be defined as this would make clear who should be held strictly liable;</p> <p>(b) JSM's suggestions of substituting "owner" with "operator" and adopting the Rome Convention's definition on "operator" were worth supporting; and</p> <p>(c) he was open about whether maintenance and repair organizations (MROs) should be regarded as having management of the aircraft</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>Administration's explanation -</p> <ul style="list-style-type: none"> (a) JSM's suggestion that only "operator" of aircraft should be held liable represented a major departure from the policy intent of the Bill as this would only hold operators strictly liable but not owners; (b) the intention of the Bill was to impose strict liability on operators and owners who have management of the aircraft. As it was difficult to expressly define "management", a negative approach was adopted under new section 8(5) to carve out those owners would not be held liable; and (c) consideration could be given to deleting 8(5)(c) if members were concerned about the uncertainty associated with the section <p>The Chairman pointed out that -</p> <ul style="list-style-type: none"> (a) the proposed substitution of "owner" by "operator" by JSM and the deletion of section 8(5)(c) by the Administration were undesirable as these would result in a substantial diminution of legal protection to third parties; and (b) passive owners could not be relieved of strict liability if "management" was not clearly defined in the Bill 	
001321 – 001803	Mr Howard YOUNG Administration Chairman	<p>Mr Howard YOUNG pointed out that -</p> <ul style="list-style-type: none"> (a) under the existing provisions, only owners would be strictly liable but they could seek indemnity from MROs for negligence, if any; (b) operators and owners did not object to the policy intent of the Bill which was meant to exempt passive owners from strict liability; and (c) MROs were concerned that they might be held strictly liable if the term "management" was defined to include repairs and maintenance 	

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001804 – 002441	Mr Jeffrey LAM Chairman Administration	<p>Discussion on the deletion of section 8(5)(c)</p> <p>The Chairman opined that -</p> <ul style="list-style-type: none"> (a) the deletion would exempt owners who have management functions from strict liability so long as they satisfied the conditions set out in section 8(5)(a) and (b); and (b) the trades could alter their practices to cope with changes in legislation <p>The Administration’s response -</p> <ul style="list-style-type: none"> (a) it was rare for an owner to lease out his aircraft without crew but to assume management functions; (b) there would be no diminution of legal protection to third parties because the owners/operators would ultimately be held strictly liable; and (c) owners/operators could seek indemnity from MROs for negligence under the terms of their contracts 	
002442 – 003250	Mr Ronny TONG Administration Chairman	<p>Mr Ronny TONG stated that -</p> <ul style="list-style-type: none"> (a) he was opposed to the deletion of section 8(5)(c); and (b) there was a need to define “management” which covered a wide spectrum of functions in the aviation industry <p>The Administration explained the difficulties in defining “management” given the extensive scope of functions ranging from technical and safety to commercial aspects</p>	
003251 – 003442	Mr Howard YOUNG Chairman Administration	<p>Mr Howard YOUNG said that the aviation trade was initially supportive of the Bill but MROs became concerned when there was suggestion that “management” should be defined to include maintenance and repair of aircraft</p>	

Time marker	Speaker	Subject(s)	Action required
003443 – 003914	Mr Ronny TONG Administration Chairman	<p>Discussion on need to define “management”</p> <p>Mr Ronny TONG reiterated the need to define “management”, which could be taken to include activities associated with aircraft maintenance;</p> <p>The Administration was concerned that the proposal would give the impression that it was aimed at holding MROs liable which would inevitably attract objection from the trades; and</p> <p>The Chairman pointed out that the Bills Committee did not need to reach a consensus on the Bill. Scrutiny of the Bill would be completed so long as members had examined every legal aspect of the Bill. The Bills Committee would report to the House Committee on its deliberations and it would be up to LegCo to decide on the acceptance of the Bill</p>	
003915 – 004541	Mr Ronny TONG Administration Chairman Mr Howard YOUNG	<p>Discussion on the present provisions of the Bill</p> <p>Mr Ronny TONG said that as the Bill was quite technical, there was a need for clarity in law to avoid future litigations; and</p> <p>The Chairman opined that the Bill as presently drafted would invite litigations as it was unclear about what constituted “management”. It would also be irresponsible on the part of the Administration to delete section 8(5)(c) given its far-reaching implications. The Administration was urged to rethink on the drafting of the Bill to enhance clarity</p>	
004542 – 004933	Administration Chairman	<p>The Administration’s response -</p> <p>(a) there were references to “owner”, “operator” and “management” in civil aviation legislation and had not led to litigations</p> <p>(b) the Administration had no intention to delete section 8(5)(c), but would consider the option if members felt that this could remove any uncertainty; and</p>	<p>The Administration to list out all the references to “owner”, “operator” and “management” in the Civil Aviation Ordinance (Cap. 448) and other applicable ordinances</p>

Time marker	Speaker	Subject(s)	Action required
		(c) consideration could be given to re-drafting section 8(5)(c) to ensure that legal protection to third parties would not be diminished	
004934 – 005323	Chairman Mr Jeffery LAM Administration	Discussion on the re-drafting of the Bill Mr Jeffery LAM agreed to the benefits of retaining section 8(5)(c) and requested the Administration to further look into the drafting of the Bill; The Chairman reiterated that section 8(5)(c) should not be deleted; and The Administration agreed to consult the trades and consider how best the term “management” could be defined	The Administration to seriously re-consider how best the term “management” could be defined to ensure that there is no diminution of protection of third parties
005324 – 010233	Mr Ronny TONG Chairman	Scheduling of meeting	