

Civil Aviation (Amendment) Bill 2005

Discussion Paper for Bills Committee Meeting on 11 November 2005

At the Bills Committee meeting on 24 October 2005, the Administration was requested to re-consider how the term “management” could be better defined to ensure that there is no diminution of protection to third parties. This paper sets out the Government’s preliminary views on possible improvements to the drafting of the Bill.

Operator of Aircraft to be Strictly Liable

2. We have researched into aviation-related legislation in Hong Kong. In most of the legislation, the term “aircraft operator” is defined as “person having the management of the aircraft” (please refer to our letter of 4 November 2005 for the relevant provisions). Without exception, the term “management” is not further defined in the relevant legislation.

3. In the context of section 8 of the Civil Aviation Ordinance, it is rather obvious that the policy intent was to impose strict liability on aircraft owners including operators, although there was no express reference to “operator”. We appreciate that the lack of a reference to “operator” may have inadvertently deprived readers of a useful parameter when construing the meaning of “person having the management of aircraft”. We therefore propose to modify section 8(4) to state expressly that “owner” includes “operator” and that “operator” means “person having the management of the aircraft”. The proposed change would bring section 8 in line with other civil aviation legislation, preserve the existing scope of the parties being held strictly liable, and at the same time put in perspective the possible interpretation of the term “management”.

More Specific Exemption Criteria

4. Whilst supporting the policy objective of exempting passive owners from strict liability, Members are concerned whether the third exemption criterion (i.e. that the lessor should not have the management of the aircraft) is clear enough to hold some lessors who retain repair and maintenance responsibility strictly liable. We have further consulted the industry on this specific point. Under a typical lease arrangement, the responsibility to ensure the airworthiness of the aircraft (i.e. that the aircraft is fit to fly or in good working order) is vested upon the lessee. There are universally-accepted international standards, as reflected in the local Air Navigation (Hong Kong) Order 1995 (Cap. 448C), governing airworthiness, which covers a wide spectrum of aspects including –

- (a) certification concerning aircraft design, construction, workmanship, materials, equipment carried, and results of flying tests;
- (b) regular overhaul, repair and modification of aircraft (including equipment and parts thereof) and the maintenance schedule relating to the aircraft;
- (c) maintenance of aircraft by qualified personnel; and
- (d) keeping of technical log for the aircraft.

It can be seen that proper repair and maintenance is squarely part and parcel of airworthiness.

5. To address Members' concern, we propose modifying the third exemption criterion to the effect that a lessor will be exempted if, under the lease arrangement, the lessee has assumed the responsibility of ensuring the airworthiness of the aircraft. The effect of the revised criteria is such that only genuine passive owners would be exempted from the strict liability, whilst the lessee who is responsible for airworthiness would be held strictly liable. It achieves the policy objective of the Bill without diminution of protection to third parties.

6. We hope that Members would favourably consider the Administration's proposals as set out in paragraphs 2 and 5 above. If Members are agreeable to these proposals, we would revert to the Bills Committee with proposed Committee Stage Amendments after consultation with the industry.

Economic Development and Labour Bureau
November 2005