

EDB CR 1/15/3231/86

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15 September 2005

The Hon Chan Kam-lam, SBS, JP  
Member, Legislative Council  
Rm 523F, West Wing  
Central Government Offices  
11 Ice House Street  
Central, Hong Kong

Dear Mr Chan,

### **Civil Aviation (Amendment) Bill 2005**

Thank you for your letter of 15 July 2005. Our replies to the question raised in the letter are set out in the following paragraphs.

#### Legislation in other jurisdictions

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Relevant legislation in the UK, Singapore, US, Australia and New Zealand regarding exemption of passive aircraft owners from strict liability is extracted at Annex.

#### Liability with respect to the willful act, negligence or default of aircraft owners

Section 8(2) of the Civil Aviation Ordinance (Cap.448) governs the legal liability of aircraft owners for loss or damage caused to persons or property on land or water by the aircraft. Airlines' legal liability in respect of the death or injury of passengers and the loss or damage of baggage and cargo in the course of carriage is governed by the Carriage by Air Ordinance (Cap.500).

#### Leasing arrangements

- (a) The words "bona fide" in the proposed section 8(5)(a) are intended to require that the leasing arrangement is based on the honest intention of the lessor, rather than a means to escape the strict liability.

- (b) The proposed section 8(5)(a) seeks to cover all forms of leasing arrangements. Aircraft leasing involves complicated commercial arrangements and takes various forms. A commonly adopted practice is a charter by demise between an airline and a financier, under which the lessor has the possession and control of the aircraft whilst the financier remains the legal owner. Because of its specific nature, “demise” is separately provided for in the proposed section 8(5)(a), whereas other forms of leasing arrangements are generally captured by the wording “let or hired out”.
- (c) The proposal to adopt a period exceeding 14 days as the qualifying period for exemption from strict liability is consistent with the related local and overseas legislation. Under Hong Kong’s Civil Aviation (Births, Deaths and Missing Persons) Regulations (Cap. 173A), an aircraft owner is exempted from certain legal responsibilities when the aircraft concerned has been leased out for a period exceeding 14 days. The same qualifying period is also adopted in the relevant UK and Singapore legislation for exempting aircraft owners from strict liability.

Please feel free to contact the undersigned if additional information is required.

Yours sincerely,

( Ms WONG Ching-yee, Jenny )  
for Secretary for Economic Development and Labour

c.c. Clerk to Bills Committee (Attn : Miss Becky Yu)  
DoJ (Attn : Ms Rickie Chan & Ms Grace Leung)  
DGCA (Attn : Mr Stephen Kwok)

英國、新加坡、美國、澳洲和新西蘭免除不管理  
飛機的機主的嚴格法律責任的有關條文撮錄  
**Extract of Relevant Legislation in the United Kingdom, Singapore,  
the United States, Australia and New Zealand regarding  
Exemption of Passive Aircraft Owners from Strict Liability**

**UK**

**Civil Aviation Act 1982**

s.76(4) –

“Where the aircraft concerned has been bona fide demised, let or hired out for any period exceeding fourteen days to any other person by the owner thereof, and no pilot, commander, navigator or operative member of the crew of the aircraft is in the employment of the owner, this section shall have effect as if for references to the owner there were substituted references to the person to whom the aircraft has been so demised, let or hired out.”

**Singapore**

**Air Navigation Act**

s.9(2) –

“Where any aircraft has been bona fide demised, let, or hired out for a period exceeding 14 days to any other person by the owner thereof and no pilot, commander, navigator, or operative member of the crew of the aircraft is in the employment of the owner, this section shall have effect as though for references to the owner there were substituted references to the person to whom the aircraft has been so demised, let, or hired out.”

## US

s.44112 of Title 49 – Transportation, US Code

“Liability – A lessor, owner, or secured party is liable for personal injury, death, or property loss or damage on land or water only when a civil aircraft, aircraft engine, or propeller is in the actual possession or control of the lessor, owner, or secured party, and the personal injury, death, or property loss or damage occurs because of –

- (1) the aircraft, engine, or propeller; or
- (2) the flight of, or an object falling from, the aircraft, engine, or propeller.”

## **Australia**

### **Damage by Aircraft Act 1999**

s.10(2A)

“Subsection (2) does not apply to a person if, immediately before the impact happened:

- (a) the person was the owner of the aircraft; and
- (b) the person did not have an active role in the operation of the aircraft; and
- (c) either:
  - (i) there was a lease or other arrangement in force (whether or not with the owner) under which another person had the exclusive right to use the aircraft; or
  - (ii) another person had the exclusive right to use the aircraft and there was an agreement in force under which the owner provided financial accommodation in connection with the aircraft.”

**New Zealand**  
**Civil Aviation Act 1990**

s.97(7) –

“Where an aircraft has been hired out to any other person by the owner thereof, for a period greater than 28 days and no pilot, commander, navigator, or operative member of the crew of the aircraft is in the employment of the owner, this section shall apply as though every reference to the owner were a reference to the person to whom the aircraft has been so hired out.”