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Secretary for Security
(Attention: Mr LAU Wai Ming, AS(S)SD)
Security Bureau
6/F Main and East Wings
Central Government Offices
Hong Kong

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BY FAX

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Dear Mr Lau,

Aviation Security (Amendment) Bill 2005

I am scrutinizing the above Bill with a view to advising Members and should be grateful if you would clarify the following matters:

Clause 2 – Interpretation

As the Bill proposes to add new offences to deal with the issue of unruly passengers on board civil aircraft, is it necessary to make a consequential amendment to include these offences in the definition of “relevant offence” in section 2(1) of the principal Ordinance?

Clause 3

The heading of section 12 of the Aviation Security Ordinance (Cap. 494) is proposed to be amended to “Acts of violence committed during hijacking or attempted hijacking”. However, it seems that the acts referred to in section 12(2)(b) are not necessarily committed during hijacking or attempted hijacking. In the circumstances, please consider whether the proposed heading for section 12 is appropriate.

Clause 4 – new section 12A

- (a) The new section 12A prohibits certain acts done by a person on board an aircraft while outside Hong Kong. If, however, any of those acts is taking place on board an aircraft while in flight in or over Hong Kong, is the person who does the act subject to criminal sanction? Should provisions be made to cover this having regard to section 4(1)(3) of the Model Legislation of the International Civil Aviation Organization (ICAO) (Appendix to Annex B to the LegCo Brief)?

- (b) Apart from sections 17(a), 19, 39 and 40 of the Offences against the Persons Ordinance (Cap. 212), is it necessary to also include section 36(a) and (c) of Cap. 212 given that the offences referred to in that section relate to assault as well?
- (c) Is there any reason why certain offences under the Crimes Ordinance (Cap. 200) which relate to assault, intimidation, damage to property, sexual assault and child molestation are not included in the new section 12A? These offences include those under sections 25, 53, 54, 61, 62, 123 and 124 of the Crimes Ordinance.
- (d) Under section 2(2) of the ICAO Model Legislation, certain acts such as intimidation and damage to property are prohibited subject to the condition that such acts are likely to endanger the safety of the aircraft or of any person on board or if such acts jeopardize the good order and discipline on board the aircraft. Please explain why this condition is not provided in the new section 12A.

Clause 4 – new section 12B

- (a) While section 1 of the ICAO Model Legislation provides for the offence of assaulting, intimidating or threatening a crew member which interferes with the performance of the duties of the crew member or lessens the ability of the crew member to perform their duties, no such provision is proposed in the Bill. Is there any reason why section 1 of the Model Legislation is not incorporated in the Bill?
- (b) As the ICAO Model Legislation does not provide for the offence of disorderly behaviour on board a civil aircraft, why is such offence included in the Bill?
- (c) Under the ICAO Model Legislation, the offence of smoking is confined to smoking in a lavatory of the aircraft, or smoking elsewhere in a manner likely to endanger the safety of the aircraft. The offence relating to smoking proposed in the new section 12B(6), however, appears to be broader than that provided in the Model Legislation. Is there any reason for not adopting the Model Legislation in this regard?

Clause 4 – new section 12C

- (a) In section 12C(2), should the request and undertaking be admissible in evidence in criminal proceedings only, instead of in any proceedings, before a court in Hong Kong?
- (b) Is section 12C(3) intended to save the right of the Secretary for Justice to institute proceedings against the person concerned for any offence under the law of Hong Kong for which he may be liable? If so, should the provision be drafted in terms of a saving provision that is commonly found in existing Ordinances rather than in the apparently wide terms as proposed?

Chinese text

In section 12B(5) to (7), is it necessary to include “該人” before “即屬犯罪”? Please make the Chinese text of these provisions consistent with that of similar provisions in section 12B(2) to (4).

To enable us to report to the House Committee on 11 March 2005, I would appreciate it if you could let us have the Administration’s response in both languages *by 7 March 2005*.

Yours sincerely,

(Connie Fung)
Assistant Legal Adviser

c.c.: DoJ (Attn: Mr Jeffrey GUNTER, SALD and Miss Leonora IP, SGC)
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