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政府總部  
香港下亞厘畢道



GOVERNMENT SECRETARIAT

LOWER ALBERT ROAD  
HONG KONG

本函檔號 OUR REF.: SBCR 7/1476/90 Pt. 17  
來函檔號 YOUR REF.:  
電話號碼 Tel No.: 2810 2641  
傳真號碼 Fax No.: 2877 0636

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By fax: 2877 5029  
Legal Service Division  
Legislative Council Secretariat  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

(Attn: Ms Connie Fung)

Dear Ms Fung,

**Aviation Security (Amendment) Bill 2005**

Thank you for your letter of 28 February 2005. Our response to the questions raised is set out as below.

***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 ?***

The term “relevant offence” is only used in section 14 of the Aviation Security Ordinance (ASO) which provides that “*Proceedings for a relevant offence shall not be instituted except by or with the consent of the Secretary for Justice*”. The offences covered by the definition are of more serious nature - hijacking (section 8), destroying, damaging or endangering the safety of aircraft (section 9), other acts endangering or likely to endanger the safety of aircraft (section 11), violence against persons on board an aircraft (section 12) and endangering the safety at aerodromes (section 15). Most of them are indictable offences punishable by imprisonment for life. This distinguishes them from the

unruly behaviour offences being added by the Bill. We therefore do not propose to amend the definition of "relevant offence". Please note however that under section 3(3) of the ASO the consent of the Secretary of Justice is still required before proceedings are instituted for an offence committed on board an aircraft while in flight outside Hong Kong.

### **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.*

Your comment is noted. To address your comment, we propose to add "etc" at the end of the heading. This is to avoid the heading getting too complicated. This can be done editorially by the Department of Justice's law clerks when the Ordinance is published.

### **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)?*

If the act is committed on board an aircraft while in flight in or over Hong Kong (that is, if the act occurs in Hong Kong), it would be an offence under the law of Hong Kong and no special provisions are needed.

*(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.*

(b)&(c) The ICAO Model Legislation lists certain criminal acts and offences generally referred to as "assault", "intimidation or threat", "sexual assault" and "child molestation". In incorporating these into the ASO, our proposal is to list those existing offences in other Ordinances that fall within the general description of assault, intimidation, sexual assault and child molestation while at the same time limiting such list of offences to those that are more likely to occur in an aircraft and be regarded as unruly or disruptive behaviour. Taking reference from the relevant New Zealand legislation (Civil Aviation Act), we have also included "criminal damage" in the list. As to why the offences under other sections of Cap. 200 and 212 mentioned by you are not listed, we consider that the provisions in the Bill already provide sufficient coverage of unruly passenger incidents that may take place on an aircraft.

(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.*

The ICAO Model Legislation is for guidance only and there is no obligation for us to follow strictly the terms of its provisions. Our policy intent is to incorporate as far as practicable and with necessary adjustment the provisions of the Model Legislation into the ASO. In the case of intimidation and damage to property, we consider it more appropriate to take a broader approach by not including too many restrictions.

**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?*

We have already incorporated section 1 of the ICAO Model Legislation into the Bill. The acts of assaulting, intimidating or threatening crew members are covered by the general offences in section 12A(1) of the Bill; whereas section 12B(1) covers interfering with the performance of the duties of the crew members, etc.

- (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?***

In line with the spirit of the ICAO Model Legislation, we see the need to provide a general provision for maintaining good order in an aircraft and hence the inclusion of section 12B(3) of the Bill. In proposing the above provision, we have also made reference to the Civil Aviation Act of New Zealand which provides for an offence in respect of disorderly behaviour.

- (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?***

Our policy intent is to incorporate as far as practicable and with necessary adjustment the provisions of the ICAO Model Legislation into the ASO. In the case of smoking, we consider it more appropriate to provide for the offence of smoking when instructed not to smoke by a crew member or passenger information signs, which is considered more direct and specific than a provision containing the restriction of "in a manner likely to endanger the safety of the aircraft". Besides, for safety reason, smoking is banned on all international flights.

***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?***

Your comment is noted. While the term "any proceedings" is used in the section, it is not envisaged that the undertaking is likely to be used in proceedings other than criminal proceedings.

- (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?*

Your interpretation of section 12C(3) is correct. There is in fact no usual style to savings provisions and they vary from Ordinance to Ordinance depending on the context. Section 12C(3), as it is presently drafted, is considered appropriate.

***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).*


Section 12B(5) reads as follows -

- (5) 任何人無合理辯解而在神智不清的狀態下登上飛機或在飛機上變得神智不清，而其神智不清的程度足以危及或相當可能會危及 —
- (a) 該飛機的安全或該飛機上的人或財產的安全；或
- (b) 該飛機上的良好秩序和紀律，

該人即屬犯罪。”

The sentence structure is different from those in section 12B(1) to (4) because it starts with "任何人" and then is interrupted by "而其神智不清的程度足以危及或相當可能會 .....". It therefore reads more smoothly to state the subject "該人" clearly in the last sentence. The sentence structure is similar in section 12B(6) and (7) and "該人" is included in those subsections for a similar reason.

Yours sincerely,

  
( LAU Wai-ming )  
for Secretary for Security

c.c.	DoJ	(Attn: Mr Jeffrey Gunter)	Fax: 2869 1302
		(Attn: Ms Leonora Ip)	Fax: 2845 2215
		(Attn: Mr John Reading)	Fax: 2877 0171
		(Attn: Ms Rickie Chan)	Fax: 2869 0670
	DGCA	(Attn: Mr Simon Li)	Fax: 2362 4257