

立法會
Legislative Council

LC Paper No. LS36/04-05

**Paper for the House Committee Meeting
on 11 March 2005**

**Legal Service Division Report on
Aviation Security (Amendment) Bill 2005**

I. SUMMARY

- 1. Objects of the Bill** The main purposes of the Bill are to:

 - (a) impose criminal sanctions against unruly behaviour committed by passengers on board civil aircraft; and
 - (b) extend Hong Kong's jurisdiction over offences regarded as unruly passenger behaviour committed outside Hong Kong in connection with non-Hong Kong-controlled civil aircraft which next land in Hong Kong.

- 2. Comments**

 - (a) The proposals are intended to implement the recommendations of the International Civil Aviation Organization to deal effectively with the problem of unruly passenger offences committed on board civil aircraft.
 - (b) New offences are created to deal with passengers' unruly behaviour.
 - (c) The proposed extended jurisdiction of Hong Kong would apply only if the next place of landing of the aircraft is in Hong Kong and if a request and undertaking in a specified form has been made and given by the aircraft commander to the Hong Kong Police Force.

- 3. Public Consultation** The aviation industry, the Aviation Security Committee and Aviation Advisory Committee have been consulted and they support the proposal.

- 4. Consultation with LegCo Panel** The Panel on Security was consulted on 7 December 2004.

- 5. Conclusion** The Bill has implications on acts of passengers on board civil aircraft and aviation security. Members may wish to form a Bills Committee to consider the Bill in detail.

II. REPORT

Objects of the Bill

The main purposes of the Bill are to amend the Aviation Security Ordinance (Cap. 494) to:

- (a) impose criminal sanctions against unruly or disruptive behaviour committed by passengers on board civil aircraft; and
- (b) extend Hong Kong's jurisdiction over offences regarded as unruly or disruptive passenger behaviour committed outside Hong Kong in connection with non-Hong Kong-controlled civil aircraft which next land in Hong Kong.

LegCo Brief Reference

2. File Ref.: SBCR 7/1476/90 Pt. 16 issued by the Security Bureau on 16 February 2005.

Date of First Reading

3. 9 March 2005.

Background

4. The main purposes of the Aviation Security Ordinance (Cap. 494) ("the Ordinance") are to prohibit acts which pose threat to civil aviation and to give effect to international conventions on aviation security. The existing provisions of the Ordinance deal with very serious offences such as hijacking and sabotage, and do not specifically deal with offences involving passengers' unruly behaviour.

5. Section 3 of the Ordinance provides that any act or omission taking place on board a Hong Kong-controlled aircraft while in flight elsewhere than in or over Hong Kong which, if taking place in Hong Kong, would constitute an offence under the law of Hong Kong shall constitute that offence. A "Hong Kong-controlled aircraft" is defined in section 2(1) of the Ordinance as an aircraft which is for the time being registered in Hong Kong, or a non-Hong Kong registered aircraft, which is chartered by demise to a person, or whose operator is a person, who is qualified to be the owner of an aircraft registered in Hong Kong and who resides or has his principal place of business in Hong Kong. This would mean that while the relevant criminal law of Hong Kong can be invoked against the offenders if the act takes place on board a Hong Kong-controlled

aircraft, wherever the aircraft may be, the same cannot be done if the act takes place on board a non-Hong Kong-controlled aircraft outside Hong Kong.

6. In view of the increase in the number and gravity of reported incidents involving unruly or disruptive passengers in recent years, the International Civil Aviation Organization (“ICAO”) adopted a resolution at its Assembly in Montreal in October 2001. The resolution urges Contracting States to enact law and regulation to deal effectively with the problem of unruly passenger offences, incorporating as far as possible, the provisions of the Model Legislation on Certain Offences Committed on Board Civil Aircraft (“the Model Legislation”). The resolution also encourages the adoption of legal rules enabling States to exercise jurisdiction in appropriate cases to prosecute criminal acts and offences constituting unruly or disruptive behaviour on board aircraft registered in other States. The ICAO’s resolution and the Model Legislation are set out at Annex B to the LegCo Brief.

Comments

7. To give effect to the ICAO Model legislation with a view to enhancing the security of passengers and crew on flights, the Bill proposes a number of new offences in respect of unruly acts by passengers on board civil aircraft. These offences include obstructing crew members in the performance of their duties, failure to comply with instructions given by crew members, tampering or interfering with aircraft apparatus, equipment or systems, intoxication by alcohol, drugs or other intoxicating substances, disorderly behaviour which jeopardises the good order or discipline on board the aircraft, and smoking or operating electronic devices when such acts are prohibited.

8. A person who commits an offence relating to obstruction of crew members or failure to comply with their instructions is liable on summary conviction, to a fine at level 4 (\$25,000) and to imprisonment for 1 year and on conviction on indictment, to a fine at level 6 (\$100,000) and to imprisonment for 5 years. As for the other proposed offences, the maximum penalty for summary conviction is a fine at level 3 (\$10,000) and imprisonment for 6 months and a fine at level 5 (\$50,000) and imprisonment for 2 years for conviction on indictment.

9. Apart from the above acts, the ICAO Model Legislation also refers to other criminal acts and offences, namely assault, intimidation or threat, sexual assault and child molestation. In incorporating these into the Ordinance, the Administration proposes to list the specific offences in existing Ordinances that fall within the general description of the acts and offences referred to in the Model Legislation while at the same time limiting such list of offences to those that are more likely to occur in an aircraft and are regarded as unruly or disruptive behaviour. These offences, as set out in paragraph 10 of the LegCo Brief, are those under the Crimes Ordinance (Cap. 200) and the Offences against the Persons Ordinance (Cap. 212). The Legal Service Division has asked the Administration to explain why certain offences under the above two Ordinances which relate to assault, intimidation, etc. such as assaulting a person with intent to cause such person to do any act which he is not legally bound to do (section 25

of the Crimes Ordinance) and assaulting a person with intent to commit an arrestable offence (section 36(a) of the Offences against the Persons Ordinance) have not been included in the Bill. The Administration has replied that the offences proposed to be listed in the Bill already provide sufficient coverage of unruly passenger incidents that may take place on an aircraft.

10. The Legal Service Division has also asked the Administration to clarify why certain offences proposed in the Bill (for example, the offences of intimidation and damage to property) are broader than those provided in the ICAO Model Legislation. In its reply, the Administration explained that the Model Legislation is for guidance only and hence it has no obligation to follow strictly the terms of the Model Legislation. The Administration's policy intent is to incorporate as far as practicable and with necessary adjustments the provisions of the Model legislation into the Ordinance. Although under the Model Legislation the acts of 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 jeopardise the good order and discipline on board the aircraft, the Administration considers it more appropriate to take a broader approach in the Bill by not including too many restrictions.

11. In response to our enquiry on the reason for including in the Bill the offence of disorderly behaviour which is not included in the Model Legislation, the Administration explained that in line with the spirit of the ICAO Model Legislation, the Administration considers it necessary to provide a general provision for maintaining good order on an aircraft and hence the inclusion of the offence of disorderly behaviour in the proposed section 12B(3). The Administration further explained that in proposing this provision, it has made reference to the Civil Aviation Act of New Zealand which provides for an offence in respect of disorderly behaviour.

12. Apart from creating new offences, the Bill also proposes to extend Hong Kong's jurisdiction over unruly passenger offences committed on board non-Hong Kong-controlled aircraft while in flight outside Hong Kong. In line with the ICAO Model Legislation, this extended jurisdiction would apply only if the next place of landing of the aircraft is in Hong Kong and if a request and undertaking in a specified form has been made and given by the aircraft commander to the Hong Kong Police Force.

13. Other amendments of the Bill relate to improving the Chinese text of certain provisions of the Ordinance and amending the Aviation Security Regulation (Cap. 494 sub. leg. A) to require operators of civil aircraft to report to the Director-General of Civil Aviation incidents involving the commission of unruly passenger offences on board the aircraft.

14. If enacted, the Bill will come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

Public Consultation

15. According to paragraph 18 of the LegCo Brief, the International Air Transportation Association (“IATA”) had been involved in drafting the ICAO Model Legislation. The aviation industry of Hong Kong, including both Hong Kong and foreign aircraft operators that are members of IATA, supports the implementation of the ICAO Model Legislation in Hong Kong. The Aviation Security Committee and Aviation Advisory Board have been consulted and they support the early enactment of the legislation.

Consultation with LegCo Panel

16. The Panel on Security was consulted on the proposal at its meeting on 7 December 2004. While some members expressed support for the proposal, a member queried the need to include the offence of disorderly behaviour. Another member was concerned that the offences relating to the interfering with the performance of the duties of a crew member and the failure to comply with the instructions given by the aircraft commander might be too broad, and he requested the Administration to provide overseas precedents on these proposed offences. The Administration has provided a paper (LC Paper No. CB(2)968/04-05(01)) informing the Panel that similar offences are provided in the Air Navigation Order 2000 of the United Kingdom and the Civil Aviation Act 1990 of New Zealand as amended in June 2004.

Conclusion

17. The Bill has implications on acts of passengers on board civil aircraft and aviation security. Members may wish to form a Bills Committee to consider the Bill in detail.

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