

立法會 *Legislative Council*

LC Paper No. LS72/04-05

Paper for the House Committee Meeting on 3 June 2005

Legal Service Division Report on Civil Aviation (Amendment) Bill 2005

I. SUMMARY

1. **Object of the Bill**

To exempt the owner of an aircraft who has hired out the aircraft without crew for a period exceeding 14 days and who does not have the management of the aircraft from strict liability for loss or damage to persons or property on land or water caused by the aircraft.
2. **Comments**

Section 8(2) of the Civil Aviation Ordinance (Cap. 448) relating to strict liability of aircraft owners was introduced to Hong Kong by an UK Order in 1969. The Bill seeks to add a subsection (5) providing for the exemption with a view to bringing the strict liability regime in line with the common practice overseas such as the UK, United States, New Zealand, Australia and Singapore.
3. **Public Consultation**

According to the Administration, the Aviation Advisory Board, the airline industry and the financial industry have been consulted and they support the Bill (para. 11 of LegCo Brief).
4. **Consultation with LegCo Panel**

The LegCo Panel on Economic Services was consulted on 16 March 2005 on the proposal. Members raised questions on-

 - (a) the criteria for aircraft owner to be eligible for exemption from strict liability;
 - (b) the relevant practice in other jurisdictions;
 - (c) the extent of consultation on the proposed legislative amendment.
5. **Conclusion**

In view of the questions raised at the Panel meeting, members may wish to consider whether to set up a Bills Committee to examine the Bill.

II. REPORT

Object of the Bill

To exempt the owner of an aircraft who has hired out the aircraft without crew for a period exceeding 14 days and who does not have the management of the aircraft from strict liability for loss or damage to person or property on land or water caused by the aircraft.

LegCo Brief Reference

2. EDB CR 1/15/3231/86 issued by the Economic Development and Labour Bureau and dated 18 May 2005.

Date of First Reading

3. 1 June 2005.

Comments

4. Section 8(2) of the Civil Aviation Ordinance (Cap. 448) imposes a strict liability on aircraft owners whereby if material loss or damage is caused to any person or property on land or water by, or by a person in, or an article or person falling from, an aircraft while in flight, taking off or landing, then unless the loss or damage was caused or contributed to by the negligence of the person by whom it was suffered, damages in respect of the loss or damage shall be recoverable without proof of negligence or intention or other cause of action, as if the loss or damage had been caused by the willful act, neglect, or default of the owner of the aircraft. This provision was introduced to Hong Kong by an UK Order in 1969.

5. It is common practice that airlines acquire aircrafts through leasing arrangements with financiers. Financiers are often the legal owners of the aircraft over which they generally do not retain management or operational control. The Administration's view is that as a matter of principle, strict liability should be borne by parties having the actual management, instead of ownership of an aircraft (para. 3 of LegCo Brief).

6. The Bill seeks to add a section 8(5) to Cap. 448 with a view to bringing the strict liability regime in line with the common practice overseas such as the UK, United States, New Zealand, Australia and Singapore.

7. The proposed section 8(5) provides that a person is not the owner of an

aircraft within the meaning of section 8 of Cap. 448 if, at the time the material loss or damage mentioned in section 8(2) was caused-

- (a) the aircraft had been bona fide hired out by such person to any other person under a lease for a term exceeding 14 days;
- (b) no member of the crew of the aircraft was in the employment of such person; and
- (c) such person did not have the management of the aircraft.

8. The Bill also seeks to amend section 8(4) of Cap. 448 to make it subject to the proposed section 8(5). The existing section provides that “owner” of an aircraft includes the person having the management of the aircraft for the time being or, in relation to a time, at that time.

9. Clause 3 of the Bill is a savings provision whereby if a material loss or damage was caused by an incident occurring before the commencement date of the Bill, the provision as in force immediately before that date shall continue to apply in relation to the loss or damage as if this Bill had not been enacted.

Public Consultation

10. According to the Administration, the Aviation Advisory Board, the airline industry and the financial industry have been consulted and they support the Bill (para. 11 of LegCo Brief).

Consultation with LegCo Panel

11. The LegCo Panel on Economic Services was consulted on 16 March 2005 on the proposal to amend Cap. 448 to exempt aircraft owners from strict liability in relation to loss or damage suffered by third parties caused by aircraft owned but not managed by them.

12. At the meeting, members raised the following questions-

- (a) the criteria for aircraft owner to be eligible for exemption from strict liability;
- (b) the relevant practice in other jurisdictions; and
- (c) the extent of consultation on the proposed legislative amendment.

Conclusion

13. In view of the questions raised at the Panel meeting, members may wish to consider whether to set up a Bills Committee to examine the Bill.

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