

立法會
Legislative Council

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**Paper for the House Committee Meeting
on 24 June 2005**

**Legal Service Division Report on
Carriage by Air (Amendment) Bill 2005**

I. SUMMARY

1. **Objects of the Bill** To give effect to the Montreal Convention, which modernizes the regulation of international carriage by air, and to extend it to non-international carriage by air and carriage of postal packages.

2. **Comments**
 - (a) The Bill will add a new Schedule to the principal Ordinance reproducing the Montreal Convention and make other implementing provisions.

 - (b) The existing schedules containing the current regime under the Warsaw system will be retained to govern international carriage between Hong Kong and countries which have yet to ratify the Montreal Convention.

 - (c) The Bill will also apply the requirements of the Montreal Convention to non-international carriage and carriage of postal packages to which the Convention does not apply and introduce a scheme to require mandatory advance payments from Hong Kong carriers to victims or their families in the event of aircraft accidents involving death or injury.

3. **Public Consultation** The Aviation Advisory Board, the airline industry, Consumer Council and trade organizations representing the travel industry, shippers and legal profession have been consulted. They support the proposal in general.

4. **Consultation with LegCo Panel** The Panel on Economic Services was consulted on 24 January 2005. Members were generally in support of the proposal.

5. **Conclusion** Members may wish to express their views on the need to set up a Bills Committee or wait for a further report on the legal and drafting aspects of the Bill.

II. REPORT

Objects of the Bill

To give effect to the Montreal Convention, which modernizes the regulation of international carriage by air, and to extend it to non-international carriage by air and carriage of postal packages to which the Convention does not apply.

LegCo Brief Reference

2. EDB CR 6/951/2001 issued by Economic Development and Labour Bureau on 8 June 2005.

Date of First Reading

3. 22 June 2005.

Comments

4. At present, the Carriage by Air Ordinance (Cap. 500) gives effect to –

- (a) the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw in 1929 (the Warsaw Convention);
- (b) the Protocol to amend the Warsaw Convention signed at the Hague in 1955 (the Hague Protocol); and
- (c) the Convention supplementary to the Warsaw Convention signed at Guadalajara in 1961 (the Guadalajara Convention).

5. The three instruments, commonly referred to as the Warsaw system, provide internationally unified rules which govern the documents of international carriage (i.e. air tickets and air waybills), carriers' liability for injury or death of passengers, damage or loss of baggage and cargo, losses caused by delay and jurisdictions and time limit for bringing proceedings to claim compensation.

6. The Montreal Convention, signed in 1999 and coming into force in 2003, consolidates and modernizes the various instruments under the Warsaw system in response to aviation developments. Its three key features are -

- (a) *Improved compensation levels* – The compensation level for death or injury, capped at \$188,500 equivalent under the Warsaw system, is replaced by a two-tier system (\$1.14 million which airlines cannot exclude or limit and a second tier of fault-based, unlimited liability). The liability limit for baggage damage or loss is increased by 50%;
- (b) *Additional Choice of Jurisdiction* – Apart from the domicile, principal place of business, place of business through which the contract of carriage was made of the carrier and destination of the carriage, a fifth jurisdiction is added by allowing legal action in relation to the death or injury of a passenger to be brought in the place of the passenger's residence;
- (c) *Recognition of Electronic Tickets* – Electronic tickets and air waybills, in addition to physical and air waybills, are recognized as proof of carriage.

7. To apply the Montreal Convention, the Bill adds a new Schedule to the principal ordinance reproducing the Convention. Implementing provisions are also added as necessary.

8. The various instruments of the Warsaw system implemented by way of different existing schedules to the principal ordinance will be retained to govern international carriage between Hong Kong and countries which have yet to ratify the Montreal Convention.

9. The Bill also proposes amendments in two areas. One of the proposals is to apply the requirements under the Montreal Convention, which are to replace the Warsaw provisions as have now been made applicable in Schedule 3, to non-international carriage (mainly carriage within Hong Kong and carriage between Hong Kong and the Mainland, Taiwan and Macau) and carriage of postal packages, to which the Convention does not apply.

10. Another proposal is to introduce a scheme to require Hong Kong carriers to make advance payment in the event of aircraft accidents which result in death or injury of passengers. The payments should be made without delay in order to meet the immediate economic needs of the victims or their families.

Public Consultation

11. According to paragraph 19 of the LegCo Brief, the Aviation Advisory Board, the airline industry, Consumer Council and trade organizations representing the travel industry, shippers and legal profession have been consulted. They support the proposal in general.

Consultation with LegCo Panel

12. The Panel on Economic Services was consulted on 24 January 2005. Members were generally in support of the proposal. Possible impacts on airlines' operating costs and air ticket prices, the requirement for home-based carriers to make advance payments and the applicability of Articles 133 and 134 of the Basic Law were discussed.

Conclusion

13. Scrutiny of the legal and drafting aspects of the Bill is in progress.

14. Members may wish to express their views on the need to set up a Bills Committee or defer their consideration until our further report.

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