

立法會
Legislative Council

LC Paper No. LS93/04-05

**Paper for the House Committee Meeting
on 8 July 2005**

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

Our report on the Bill (LC Paper No. LS84/04-05) was considered by the House Committee at its meeting on 24 June 2005. It was agreed that no decision would be taken on the Bill until a further report was made on the outcome of our scrutiny of the legal and drafting aspects of the Bill.

2. On 4 July 2005, we wrote to the Administration raising a number of queries on the legal and technical aspects of the Bill. These relate to certain obsolete references to “the Crown”, “the Governor” and “the Secretary of State” which have not been dealt with by the proposed amendments, the implementation of changes to the limits of liability resulting from five-yearly reviews, the definition of “international carriage” in Schedule 4, the non-inclusion of certain provisions of the Montreal Convention and the effect of some technical amendments. The letter to the Administration is attached for reference.

3. The Administration’s reply to our queries is pending as at the date of this report.

Prepared by
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Legislative Council Secretariat
6 July 2005

Encl.

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4 July 2005

Mr CHAN Wai-man, Darryl
Principal Assistant Secretary for Economic
Development and Labour (Economic Development)
Economic Development and Labour Bureau
Economic Development Branch
Division A
2/F, East Wing
Central Government Offices
HONG KONG

Dear Mr CHAN,

Carriage by Air (Amendment) Bill 2005

I should be grateful if you could clarify the following legal and drafting points about the Bill to facilitate our making a further report to the House Committee on 8 July 2005 :-

- (a) One of the purposes of the Bill is stated in the long title to be “to repeal certain obsolete references”. However, it is noted that references to “the Governor”, “the Crown” and “Secretary of State” in the principal ordinance will not be repealed by the Bill;
- (b) In the new Part IA, no provision is made which corresponds to the existing section 8 (Power to exclude aircraft in use for military purposes). Does this imply that the whole of section 8, which refers to the Secretary of State issuing instruction to the Governor, has been made obsolete?
- (c) Section 19 of the principal ordinance provides that the Ordinance “binds the Crown”. How is “Crown” to be understood at present in its particular context?

- (d) Article 24 of the new Schedule 1A provides for the review of the limits of liability prescribed in Articles 21, 21 and 23 at five-year intervals. Through which provision or in what manner under the Bill will the outcome of such a review be implemented;
- (e) In paragraph 10 of the LegCo Brief, it is stated that “[We] therefore propose that the requirements under the Montreal Convention should also apply to non-international carriage and carriage of postal packages”. It is noted that for this purpose, “non-international carriage” means carriage which is not “international carriage” as defined in Schedule 4 (section 13(a)). However, the definition of “international carriage” in Schedule 4 is still based on the Warsaw Convention and will not be amended by the Bill;
- (f) In the new Schedule 3, it is noted that Article 24 (Review of Limits) of the Montreal Convention has not been included. Does the non-inclusion mean that the limits of liability for non-international carriage will not be reviewed in step with those for international carriage?
- (g) In the new Schedule 3, it is further noted that Article 33 (Jurisdiction) of the Montreal Convention has not been included. In the absence of that Article, how will jurisdictional matters be resolved in the case of non-international carriage?
- (h) In Schedule 4, it is proposed to replace “amended Convention” by “Warsaw Convention” in two places and in Part II, to repeal the definition of “the Warsaw Convention”. Elucidation of these amendment would be helpful;
- (i) Is the Chinese text of the new Schedule 1A reproduced from an authentic Chinese text of the Montreal Convention?

Yours sincerely,

(Arthur CHEUNG)
Senior Assistant Legal Adviser

c.c. Clerk to House Committee