

For discussion
on 16 March 2005

Legislative Council Panel on Economic Services

Amendment to the Civil Aviation Ordinance to Release Certain Aircraft Owners from Strict Liability

Introduction

This paper briefs Members on the Government's proposal to amend the Civil Aviation Ordinance (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. The proposed amendment, if enacted, would bring Hong Kong laws in line with international practice and facilitate the acquisition or leasing of aircraft by Hong Kong airlines.

Background

Aircraft Strict Liability Regimes in Hong Kong and Other Jurisdictions

2. Section 8(2) of the Civil Aviation Ordinance imposes a strict liability on the owner of an aircraft for loss or damage caused to persons or property on land or water by the aircraft, unless such loss or damage was caused or contributed to by the negligence of the person suffering the loss or damage. The strict liability applies irrespective of whether the owner has the management of the aircraft. A copy of the relevant provisions in section 8 is at **Annex**.

3. Aviation is a highly investment-intensive industry. It is a common practice that airlines acquire aircraft through leasing arrangements with financiers. Under such arrangements, the financiers purchase and own aircraft and then lease them to airlines. While financiers are the legal owners of the aircraft, they have no management or operational control over them. As a matter of principle, liability should be borne by parties having the actual management, instead of ownership, of an aircraft. Therefore, in many other common law jurisdictions (such as the UK, New Zealand and Australia), these owners are relieved of the strict liability if they have leased out the aircraft.

Need for Changing Hong Kong's Aircraft Strict Liability Regime

4. The existing provision governing an aircraft owner's strict liability, introduced to Hong Kong by a UK Order in 1969, is outdated and not consistent with the practice commonly adopted in other jurisdictions. It is undesirable for the following reasons -

- (a) it is unfair to hold owners strictly liable for aircraft operations which are not under their management;
- (b) although financiers may seek indemnity from airlines against any loss or costs they suffered, such indemnity does not offer sufficient protection against the strict liability under the law. The financiers would also need to undergo costly litigations to prove that the loss falls within the scope of such indemnity. This would entail higher lease rates or stricter restrictions in leasing arrangements for Hong Kong airlines. Hence, the existing legal framework does not present a very business-friendly environment for aircraft financing and leasing business; and
- (c) the circumstances noted in (b) above would affect the competitiveness of Hong Kong airlines, and thus Hong Kong's aviation industry, in respect of their plans for upgrading or expansion of their fleets.

Proposed Amendment

5. In view of the above, we propose amending the existing legislation to bring our strict liability regime in line with international practice. Specifically, we propose to exempt an owner who has leased out an aircraft without crew (commonly know as "dry-lease" in the industry) from the strict liability imposed by section 8(2) of the Ordinance. This exemption is similar to that provided in the UK and New Zealand legislation. To qualify for the exemption, the owner has to fulfil the following criteria at the time of the incident causing the loss or damage -

- (a) the aircraft was bona fide demised, let or hired out for a period exceeding 14 days; and
- (b) no member of the crew of the aircraft was in the employment of such owner.

6. The proposed amendment seeks to exempt only those owners who

have leased out the aircraft and assume no management of the aircraft. Parties having the management of an aircraft, e.g. the operating airlines, would continue to be subject to the strict liability. The proposed 14-day qualifying period is consistent with the Civil Aviation (Births, Deaths and Missing Persons) Regulations (Cap. 173A), under which an aircraft owner is exempted from certain legal responsibilities when the aircraft concerned has been leased out for that same period. The same qualifying period is also adopted in the relevant UK legislation governing aircraft strict liability.

7. We will introduce the amendment bill into the Legislative Council during the current legislative year.

Consultation

8. We have consulted the Aviation Advisory Board, local airlines and the financial services industry. They support the proposal. We would further consult them on the wordings of the amendment bill.

Views Sought

9. Members are invited to comment on the proposal.

Economic Development and Labour Bureau
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Chapter:	448	Title:	CIVIL AVIATION ORDINANCE
Section:	8	Heading:	No liability in trespass or nuisance in certain circumstances

(2) Subject to subsection (3), where 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 wilful act, neglect, or default of the owner of the aircraft.

(3) Where material loss or damage is caused as described in subsection (2) and in circumstances in which-

- (a) damages are recoverable in respect of the said loss or damage by virtue only of subsection (2); and
- (b) a legal liability is created in some person other than the owner of an aircraft to pay damages in respect of the said loss or damage,

such owner shall be entitled to be indemnified by that other person against any claim in respect of the said loss or damage.

(4) In this section "owner" (機主) includes, in relation to an aircraft, the person having the management of the aircraft for the time being or, in relation to a time, at that time.