

**For discussion
on 23 May 2011**

Legislative Council Panel on Economic Development

Proposed Amendments to Legislation Relating to the Carriage of Dangerous Goods by Air

Purpose

This paper seeks Members' views on the Government's proposal to amend two sets of subsidiary legislation to give effect to the latest standards promulgated by the International Civil Aviation Organization (ICAO)¹ for the safe transport of dangerous goods (DG)² by air.

Background

International Standards

2. To ensure aviation safety, ICAO promulgates, under Annex 18 to the Convention on International Civil Aviation (generally referred to as "the Chicago Convention"), provisions governing the transport of DG by air. These provisions regulate matters such as the classification, packing, marking, labelling and loading of DG on board aircraft as well as training requirements for airlines, air cargo and security personnel. Detailed requirements are set out in the Technical Instructions for the Safe Transport of Dangerous Goods by Air ("the TIs"). This document is normally updated and published by ICAO biennially. Paragraph 2.2.1 of Annex 18 stipulates that the Contracting States shall take the necessary action to comply with the provisions in the TIs.

¹ ICAO was established by the Convention on International Civil Aviation and is the world's most important organization in the field of civil aviation. At present, it has 190 Contracting States and China is one of them. Its objectives are to promote the development of international civil aviation in a safe and orderly manner, and to ensure that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically.

² According to the Technical Instructions issued by ICAO, DG in the context of air transport include explosives, compressed gas, flammable liquids, flammable solids, oxidizing substances, toxic substances, infectious substances, radioactive materials and corrosives, etc.

Local Legislation

3. The Chicago Convention and its Annexes have been applied to Hong Kong since April 1947. The TIs made under the Convention are given effect through two pieces of local subsidiary legislation made by the Chief Executive in Council (“the CE in Council”), i.e. –

- (a) Air Navigation (Dangerous Goods) Regulations, as Schedule 16 to the Air Navigation (Hong Kong) Order 1995 (Cap 448C) (“AN(DG)R”); and
- (b) Dangerous Goods (Consignment by Air) (Safety) Regulations (Cap 384A) (“DG(CAS)R”).

The former generally regulate the DG operations of airlines and the airport whereas the latter regulate the shippers and freight forwarders in the proper handling of DG before offering them for air transport.

The New Edition of the TIs

4. The new edition of the TIs (i.e. the 2011-2012 edition) was published in November 2010 by ICAO. Most of the changes covered by the new TIs are technical and textual in nature. The more significant changes aim to –

- (a) revise the definition of “Technical Instructions” to align with the latest definition of ICAO;
- (b) add a new general exception to specify that the TIs do not apply to items of excess baggage being sent as cargo subject to certain conditions³;
- (c) require operators of passenger aircraft to provide DG information to passengers on the website prior to the check-in process;

³ The conditions include that the excess baggage must be consigned on behalf of a passenger; that the DG in the baggage are only those that are permitted to be carried in passengers checked baggage; and that the excess baggage is suitably marked. With these conditions, it is considered to be safe to transport the excess baggage as cargo even without complying with the strict requirements of the TIs. The exception aims to facilitate passengers who need to send their excess baggage as cargo which may contain a small quantity of DG.

- (d) require operators to provide DG information to cargo/passenger reservation and sales staff in addition to cargo acceptance and passenger check-in staff, so as to prevent “hidden” DG (i.e. DG inadvertently sent as check-in luggage or general cargo);
 - (e) require operators to provide information of DG forbidden to be taken on board aircraft to passengers at the time of ticket purchase instead of at the time of ticket issuance with effect from 1 January 2013. Such information also has to be provided if the check-in process is done remotely (e.g. via the Internet) or at the airport by a passenger without the involvement of any other person (e.g. using the automated check-in facility); and
 - (f) replace the word “declaration” in regulation 6(3)(b) and regulation 7 of DG(CAS)R with “certification” so as to state clearly that the “certification” contained in the relevant DG transport document is not a “declaration” within the meaning of section 13 of the Oaths and Declarations Ordinance (Cap 11). This would pave the way for electronic filing of the DG transport document in the future when the references to the same in the Electronic Transactions (Exclusion) Order (Cap 553B) are removed⁴.
5. AN(DG)R and DG(CAS)R will need to be amended to give the new requirements legal effect and to align the DG standards of Hong Kong with specifications given under the new TIs.

Consultation

6. We have consulted the stakeholders including the Hongkong Association of Freight Forwarding and Logistics Limited, the Hong Kong Shippers’ Council, the Board of Airline Representatives in Hong Kong and the Technical Sub-Committee of the Aviation Development Advisory Committee. They generally support the proposed amendments.

⁴ In accordance with Schedule 1 to the Electronic Transactions Ordinance (Cap 553), statutory declarations are to be excluded from the application of a number of sections of the Ordinance. At present, the DG transport documents required by DG(CAS)R and AN(DG)R are included in Schedules 1, 2 and 4 to Cap 553B. This has precluded the electronic filing of the DG transport documents by the shippers. Such references to the DG transport documents in Cap 553B are to be removed in due course.

Legislative Timetable

7. Subject to the approval of the CE in Council, we will submit the relevant legislative amendments to the Legislative Council for approval through the negative vetting process in the fourth quarter of 2011.

Views Sought

8. Members' views are invited on the proposed legislative amendments to implement the new TIs.

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