

LEGISLATIVE COUNCIL BRIEF

Civil Aviation Ordinance (Cap. 448)

Air Navigation (Flight Prohibition) Order

INTRODUCTION

At the meeting of the Executive Council on 9 May 2000, the Council ADVISED and the Chief Executive ORDERED that the Air Navigation (Flight Prohibition) Order, at Annex A, should be made under sections 2A(2) and 12(2) of the Civil Aviation Ordinance (Cap. 448) to provide for the creation of an Air Intrusion Limitation Zone (AILZ) at Penny's Bay.

BACKGROUND AND ARGUMENT

Need for Flight Prohibition

2. Government entered into a Master Project Agreement (MPA) with The Walt Disney Company (WD) on 10 December 1999 to proceed with the development of a Disney-branded theme park and associated facilities, to be known as the Hong Kong Disneyland (HKD), at Penny's Bay.

3. The site at Penny's Bay has been chosen after a careful selection process. In terms of civil aviation, none of the approach/departure flight paths to/from the Hong Kong International Airport (HKIA) have nominal tracks directly over the site and very few aircraft need to overfly the area. However, WD expressed concern that the situation might change in the future. To maintain an aura of fantasy at the HKD, visitors must not be subjected to noise and visual disturbances caused by low-flying aircraft. WD has, therefore, requested the creation of an AILZ at Penny's Bay.

4. In view of WD's request and since it would be desirable from a safety point of view to regulate flights over the HKD where large numbers of visitors will be expected, Government supports the creation of an AILZ (map at

Annex B). Under the MPA, Government has agreed to take reasonable steps to procure that on or before 31 December 2000, legislation for the creation of the AILZ shall have been enacted with lawful effect from a date to be determined at a later stage.

5. At the meeting of the Executive Council on 16 November 1999, the Council ADVISED and the Chief Executive ORDERED that, among other things, the creation of an AILZ near the HKD should be approved in principle.

The Air Intrusion Limitation Zone

6. Aircraft will be prohibited from flying within the AILZ. For the purpose of the prohibition, “aircraft” includes, among other things, aeroplanes, gliders, airships, helicopters, balloons, kites, parachutes, parascending parachutes including parasailers (towed by boats or vehicles), remote-controlled and unmanned aircraft and ultra-light aircraft.

7. The prohibition will not apply to flying activities at an altitude of 4 000 feet AMSL (above mean sea level) or above, since flying activities at this altitude would unlikely cause disturbance or pose hazards to the HKD visitors, and aerial advertising, which may be attracted by the HKD, usually does not take place above 4 000 feet AMSL.

8. The AILZ has a radius of 2.5 kilometres, which is small in aviation terms. A helicopter or light aircraft will take approximately two minutes to fly through the AILZ and only 20 seconds to fly into the HKD site from Yam O, an area just outside the AILZ. Taking also into account the hilly topography of the area and the possible expansion of HKD and associated facilities, the size of the AILZ is considered appropriate.

Aircraft to which the Prohibition will not Apply

9. In order not to restrict essential aircraft operations or operations at the HKIA, the prohibition does not apply to -

- (a) aircraft following air traffic control instructions or Civil Aviation Department (CAD) published approach and departure procedures and those deviating from such instructions or procedures for weather avoidance or due to technical problems;
- (b) aircraft flying for life-saving, casualty evacuation, fire fighting and

prevention and police operations;

- (c) Government Flying Service aircraft subject to specific conditions;
- (d) aircraft of the State, including military aircraft operated by the Hong Kong Garrison; or
- (e) aircraft that have been granted specific exemption by the Chief Executive, who may delegate his power to give such an exemption to, say, the Director of Civil Aviation (DCA) or other officers of the CAD under section 63 of the Interpretation and General Clauses Ordinance (Cap. 1).

THE ORDER

10. The main provisions of the Order are -

- (a) Clause 1 provides that the Order shall come into operation on a date to be appointed by the DCA.
- (b) Clause 2 sets out a list of defined terms used in the Order.
- (c) Clause 3 prohibits aircraft from flying over the AILZ at an altitude of less than 4 000 feet AMSL. This prohibition, however, shall not apply to the categories of aircraft listed in paragraphs 9(a), (b), (c) and (e) above.

Section 66 of Cap. 1 provides that “No Ordinance shall in any matter whatsoever affect the right of or be binding on the State unless it is therein expressly provided or unless it appears by necessary implication that the State is bound thereby”. S.13(1) of Cap. 448 provides that nothing in Cap. 448 shall apply to aircraft belonging to or exclusively employed for the time being in the services of the State. The effect of these two provisions is that the Order will not bind the State. There is no need for adding a provision in Clause 3 to explicitly exempt aircraft of the State, as stated in paragraph 9(d) above, from the prohibition.

- (d) Clause 4 provides that where an aircraft flies in contravention of the flying prohibition, the commander and the operator shall be guilty of an offence. It shall be a defence if they prove that the contravention occurred without their consent or connivance and

they exercised reasonable due diligence to prevent the contravention.

PUBLIC CONSULTATION

11. The proposal to establish an AILZ is supported by the Aviation Advisory Board which includes representatives from airlines and the Hong Kong Aviation Club. The Legislative Council Panel on Economic Services was briefed on the proposal on 28 February 2000. It did not raise any objection. A question was raised on whether the size of the AILZ could be reduced. CAD has reviewed the matter and considers that the size is appropriate for the reasons set out in paragraph 8 above.

BASIC LAW IMPLICATIONS

12. The Department of Justice advises that the Order does not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

13. The Department of Justice advises that the Order is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE ORDER

14. The Order does not bind the State.

FINANCIAL AND STAFFING IMPLICATIONS

15. CAD will need additional resources to enforce the Order, such as handling cases of non-compliance with the flight prohibition. However, the financial and staffing implications are not expected to be significant and will be absorbed by CAD.

ECONOMIC IMPLICATIONS

16. According to CAD, the Order will mainly affect a small number of

private light aircraft in Hong Kong and will not have significant economic implications.

LEGISLATIVE TIMETABLE

17. The legislative timetable is as follows –

Publication in the Gazette	19 May 2000
Tabling at the Legislative Council	24 May 2000

COMMENCEMENT

18. The Order will come into effect on a date to be appointed by the DCA, having regard to the progress of the HKD.

PUBLICITY

19. A press release will be issued on 17 May 2000. A spokesman will be available for answering media enquiries.

OTHERS

20. If there are any questions on the Order, please contact Mr Alan Lo, Assistant Secretary for Economic Services (New Airport), at 2810 2235.

17 May 2000
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