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立法會議員
陳鑑林議員, SBS, JP

陳議員：

《2005年民航（修訂）條例草案》

2005年7月15日來函敬悉，現謹就函中所提的問題答覆如下：

其他司法管轄區法律

英國、新加坡、美國、澳洲和新西蘭免除不管理飛機的機主的嚴格法律責任的有關條文撮錄於附件。

機主的故意作為、疏忽或失責的法律責任

《民航條例》（香港法例第448章）第8(2)條是規管飛機機主因飛機造成地上或水上的人或財產的損失或損毀而需要承擔的法律責任。至於在飛行過程中航空公司因乘客傷亡、行李和貨物損毀所承擔的法律責任，則由《航空運輸條例》（香港法例第500章）所規管。

租賃合同

- (a) 在建議的第8(5)(a)條中，“真誠地”一詞旨在要求有關的飛機租賃安排是根據機主誠實的意圖作出，而非以出租飛機作為推卸嚴格法律責任的手段。
- (b) 第8(5)(a)條旨在涵蓋各種形式的租賃安排。飛機租賃涉及複雜的商業安排，其中較常見的做法是航空公司與融資機構訂立轉管租約，即航空公司作為承租人擁有飛機的管有權和控制權，而融資機構則在法律上是飛機的機主。由於轉管租約是有較具體含義的一種租賃安排，故在該條文中予以區分。至於“其他方式出租”以表述，則指非轉管租約形式的租賃安排。
- (c) 建議採納超逾14天的出租期作為豁免機主嚴格法律責任的條件之一，與本港和海外的一些相關法例相符。本港的《民航（生死及失蹤者）規例》（香港法例第173A章）規定，機主將飛機出租14天以上，即可免除若干法律責任。此外，英國及新加坡豁免機主嚴格法律責任的有關法律也是採用同一出租期為準則。

如需進一步資料，可隨時與本人聯絡。

經濟發展及勞工局局長
(黃靜儀 代行)

二零零五年九月十五日

副本送：草案委員會秘書（余麗琼小姐）
律政司（陳蕙芝女士、梁珮琪女士）
民航處（郭桂源先生）

英國、新加坡、美國、澳洲和新西蘭免除不管理
飛機的機主的嚴格法律責任的有關條文撮錄
**Extract of Relevant Legislation in the United Kingdom, Singapore,
the United States, Australia and New Zealand regarding
Exemption of Passive Aircraft Owners from Strict Liability**

UK

Civil Aviation Act 1982

s.76(4) –

“Where the aircraft concerned has been bona fide demised, let or hired out for any period exceeding fourteen days to any other person by the owner thereof, and no pilot, commander, navigator or operative member of the crew of the aircraft is in the employment of the owner, this section shall have effect as if for references to the owner there were substituted references to the person to whom the aircraft has been so demised, let or hired out.”

Singapore

Air Navigation Act

s.9(2) –

“Where any aircraft has been bona fide demised, let, or hired out for a period exceeding 14 days to any other person by the owner thereof and no pilot, commander, navigator, or operative member of the crew of the aircraft is in the employment of the owner, this section shall have effect as though for references to the owner there were substituted references to the person to whom the aircraft has been so demised, let, or hired out.”

US

s.44112 of Title 49 – Transportation, US Code

“Liability – A lessor, owner, or secured party is liable for personal injury, death, or property loss or damage on land or water only when a civil aircraft, aircraft engine, or propeller is in the actual possession or control of the lessor, owner, or secured party, and the personal injury, death, or property loss or damage occurs because of –

- (1) the aircraft, engine, or propeller; or
- (2) the flight of, or an object falling from, the aircraft, engine, or propeller.”

Australia

Damage by Aircraft Act 1999

s.10(2A)

“Subsection (2) does not apply to a person if, immediately before the impact happened:

- (a) the person was the owner of the aircraft; and
- (b) the person did not have an active role in the operation of the aircraft; and
- (c) either:
 - (i) there was a lease or other arrangement in force (whether or not with the owner) under which another person had the exclusive right to use the aircraft; or
 - (ii) another person had the exclusive right to use the aircraft and there was an agreement in force under which the owner provided financial accommodation in connection with the aircraft.”

New Zealand
Civil Aviation Act 1990

s.97(7) –

“Where an aircraft has been hired out to any other person by the owner thereof, for a period greater than 28 days and no pilot, commander, navigator, or operative member of the crew of the aircraft is in the employment of the owner, this section shall apply as though every reference to the owner were a reference to the person to whom the aircraft has been so hired out.”