

EDB CR 1/15/3231/86  
CB1/BC/11/04

Tel No: (852) 2810 2235  
Fax No: (852) 2524 9397

4 November 2005

Miss Becky Yu  
Clerk to Bills Committee  
on Civil Aviation (Amendment) Bill 2005  
Legislative Council Secretariat  
Legislative Council Building  
8 Jackson Road, Central  
Hong Kong

Dear Miss Yu,

**Bills Committee on  
Civil Aviation (Amendment) Bill 2005**

**List of follow-up actions from the discussion  
at the meeting on 24 October 2005**

At the Bills Committee meeting on 24 October 2005 to study the subject Bill, the Administration was requested to provide the following information -

- (a) To list out all the references to “owner”, “operator” and “management” in the Civil Aviation Ordinance (Cap.448) and other applicable ordinances;
- (b) To seriously re-consider how best the term “management” could be defined to ensure that there is no diminution of protection of third parties.

We have conducted a thorough search of the Laws of Hong Kong. References to “owner” and “operator” in the applicable legislations are listed in Annex A and Annex B respectively (Note: if in the same section there are references to both “owner” and “operator”, such references are included in both lists for ease of comparison).

Members would notice from the list that, in legislations of various areas, including civil aviation management, control of chemical weapons, implementation of United Nations Sanctions and public finance management, both “owners” and “operators” are in most cases defined by way of a reference to, amongst other things, the person “having the management of the aircraft”; whereas the term “management” itself has never been further defined. The fact that “management” is not defined in Laws of Hong Kong is consistent with the position of other jurisdictions.

We note the strong views of Members on the need to further qualify the term “management” to remove any possible ambiguities in the law. We are reviewing the detailed drafting of the Bill and would report to Members our consideration at the next Bills Committee meeting.

Yours sincerely,

(Ms WONG Ching-yee, Jenny)  
for Secretary for Economic Development and Labour

## Extract from Laws of Hong Kong where “Owner” Appear

**Chapter:60 Title: IMPORT AND EXPORT ORDINANCE**  
**Section: 2 Heading: Interpretation**

In this Ordinance, unless the context otherwise requires-

"owner" (擁有人) means, other than for the purposes of Part VI-

- (a) in respect of an article, any person being or holding himself out to be the owner, importer, exporter, consignee, agent or person in possession of, or beneficially interested in, or having any control of, or power of disposition over, the article; and
- (b) in respect of a vessel, aircraft or vehicle-
  - (i) the registered owner and any person holding himself out to be the owner thereof;
  - (ii) any person acting as agent for the owner in connexion with the handling of cargo carried in or on the vessel, aircraft or vehicle;
  - (iii) any person to whom the vessel, aircraft or vehicle has been chartered or hired; and
  - (iv) any person having for the time being the control or **management** of the vessel, aircraft or vehicle;

**Chapter: 291A Title: MARINE FISH (MARKETING AND EXPORTATION) REGULATIONS**  
**Regulation:1A Heading: Interpretation**

In these regulations, unless the context otherwise requires-

"owner" (擁有人) , in relation to a vessel, aircraft or vehicle, means-

- (a) the owner and any person holding himself out to be the owner;
- (b) any person to whom the vessel, aircraft or vehicle has been chartered or hired;
- (c) any person having for the time being the control or **management** of the vessel, aircraft or vehicle; and
- (d) any person acting as agent for the owner in connection with the handling of fish carried in or on the vessel, aircraft or vehicle;

**Chapter: 296A Title: RESERVED COMMODITIES  
(CONTROL OF IMPORTS, EXPORTS  
AND RESERVE STOCKS)  
REGULATIONS**

**Regulation:2 Heading: Interpretation**

In these regulations, unless the context otherwise requires-

"owner" (擁有人), in respect of a vessel, aircraft or vehicle, means-

- (a) the registered owner and any person holding himself out to be the owner;
- (b) any person acting as agent for the owner in connection with the handling of cargo carried in or on the vessel, aircraft or vehicle;
- (c) any person to whom the vessel, aircraft or vehicle has been chartered or hired; and
- (d) any person having for the time being the control or **management** of the vessel, aircraft or vehicle;

**Chapter: 312 Title: CIVIL AVIATION (AIRCRAFT NOISE)  
ORDINANCE**

**Section: 2 Heading: Interpretation**

(1) In this Ordinance, unless the context otherwise requires-

"operator" (經營人), in relation to an aircraft, means the person having the **management** of the aircraft for the time being, or in relation to a time, at that time;

"owner" (機主), in relation to an aircraft, means the person in whose name the aircraft is registered in its place of registration;

**Chapter: 448 Title: CIVIL AVIATION ORDINANCE  
Section: 8 Heading: No liability in trespass or nuisance in  
certain circumstances**

(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.

**Chapter: 448B Title: HONG KONG CIVIL AVIATION  
(INVESTIGATION OF ACCIDENTS)  
REGULATIONS**

**Regulation:2 Heading: Interpretation**

(1) In these regulations, unless the context otherwise requires-

"operator" (經營人) in relation to an aircraft means the person for the time being having the **management** of that aircraft;

"owner" (機主) means, where an aircraft is registered, the registered owner;

(2) A person does not contravene paragraph (1) of this Article if he neither knew nor suspected that the aircraft was being or was to be used for a purpose referred to in paragraph (1).

(3) The operator or commander of an aircraft registered in Hong Kong (or, if the operator's principal place of business or permanent residence is in Hong Kong, any other aircraft) which is being flown over any place outside Hong Kong shall comply with any directions given by the appropriate aeronautical authorities of that place whenever-

- (a) the flight has not been duly authorized; or
- (b) there are reasonable grounds for the appropriate aeronautical authorities to believe that the aircraft is being or will be used for a purpose which is prejudicial to the security, public order or public health of, or to the safety of air navigation in relation to, that place;

unless the lives of person on board or the safety of the aircraft would thereby be endangered. (23 of 1998 s. 2)

(4) A person does not contravene paragraph (3) of this Article if he neither knew nor suspected that directions were being given by the appropriate aeronautical authorities.

(5) The requirements in paragraph (3) of this Article is without prejudice to any other requirement to comply with directions of an aeronautical authority.

(6) In this Article "appropriate aeronautical authorities" includes any person, whether a member of military or civil authorities of a place outside Hong Kong, authorized under the law of that place to issue directions to aircraft flying over that place.

**Chapter:578 Title: CHEMICAL WEAPONS  
(CONVENTION) ORDINANCE**  
**Section: 2 Heading: Interpretation**

(1) In this Ordinance, unless the context otherwise requires—

"owner" (擁有人), other than for the purposes of Part 6, means—

- (a) in relation to an article, any person being or holding himself out to be the owner, importer, exporter, consignee, agent or person in possession of, or beneficially interested in, or having any control of, or power of disposition over, the article; and
- (b) in relation to a vessel, aircraft or vehicle—
  - (i) the registered owner and any person holding himself out to be the owner thereof;
  - (ii) any person acting as agent for the owner in connection with the handling of cargo carried in or on the vessel, aircraft or vehicle;
  - (iii) any person to whom the vessel, aircraft or vehicle has been chartered or hired; and
  - (iv) any person having for the time being the control or **management** of the vessel, aircraft or vehicle;

- Ends -

## Extract from Laws of Hong Kong where “Operator” Appear

**Chapter:112 Title: INLAND REVENUE ORDINANCE**  
**Section: 39E Heading: Allowances under this Part in respect of capital expenditure on leased machinery and plant**

(5) In this section-

"operator of a Hong Kong aircraft" (香港飛機的經營者) means a person who-

- (a) holds an air operators' certificate issued under the Air Navigation (Hong Kong) Order 1995 (Cap 448 sub. leg. C); and
- (b) carries on business as an operator of aircraft and the business is controlled and **managed** in Hong Kong;

**Chapter: 140 Title: AIR PASSENGER DEPARTURE TAX ORDINANCE**  
**Section: 2 Heading: Interpretation**

In this Ordinance, unless the context otherwise requires-

"operator" (經營商) means, in relation to any aircraft, the person for the time being having control over the **management** of the aircraft, and includes an agent of such person appointed under section 11;

**Chapter: 312 Title: CIVIL AVIATION (AIRCRAFT NOISE) ORDINANCE**  
**Section: 2 Heading: Interpretation**

(1) In this Ordinance, unless the context otherwise requires-

"operator" (經營人), in relation to an aircraft, means the person having the **management** of the aircraft for the time being, or in relation to a time, at that time;

"owner" (機主), in relation to an aircraft, means the person in whose name the aircraft is registered in its place of registration;

**Chapter: 384A Title: DANGEROUS GOODS (CONSIGNMENT BY AIR) (SAFETY) REGULATIONS**  
**Regulation:2 Heading: Interpretation**

In these regulations, unless the context otherwise requires-

"operator" (經營人) means the operator of an aircraft;

**Chapter: 448B Title: HONG KONG CIVIL AVIATION (INVESTIGATION OF ACCIDENTS) REGULATIONS**  
**Regulation:2 Heading: Interpretation**

(1) In these regulations, unless the context otherwise requires-

"operator" (經營人) in relation to an aircraft means the person for the time being having the **management** of that aircraft;

"owner" (機主) means, where an aircraft is registered, the registered owner;

(2) A person does not contravene paragraph (1) of this Article if he neither knew nor suspected that the aircraft was being or was to be used for a purpose referred to in paragraph (1).



(3) The operator or commander of an aircraft registered in Hong Kong (or, if the operator's principal place of business or permanent residence is in Hong Kong, any other aircraft) which is being flown over any place outside Hong Kong shall comply with any directions given by the appropriate aeronautical authorities of that place whenever-

- (a) the flight has not been duly authorized; or
- (b) there are reasonable grounds for the appropriate aeronautical authorities to believe that the aircraft is being or will be used for a purpose which is prejudicial to the security, public order or public health of, or to the safety of air navigation in relation to, that place;

unless the lives of person on board or the safety of the aircraft would thereby be endangered.

(4) A person does not contravene paragraph (3) of this Article if he neither knew nor suspected that directions were being given by the appropriate aeronautical authorities.

(5) The requirements in paragraph (3) of this Article is without prejudice to any other requirement to comply with directions of an aeronautical authority.

(6) In this Article "appropriate aeronautical authorities" includes any person, whether a member of military or civil authorities of a place outside Hong Kong, authorized under the law of that place to issue directions to aircraft flying over that place.

**Chapter:448C Title: AIR NAVIGATION (HONG KONG)  
ORDER 1995**

**Section: 98 Heading: Interpretation**

(1) In this Order, unless the context otherwise requires-

"Operator" has the meaning assigned to it by paragraph (5) of this Article;  
...

(5) References in this Order to the operator of an aircraft are, for the purpose of the application of any provision of this Order in relation to any particular aircraft, references to the person who at the relevant time has the **management** of that aircraft, and cognate expressions shall be

construed accordingly:

Provided that for the purposes of the application of any provision in Part III of this Order, when by virtue of any charter or other agreement for the hire or loan of an aircraft a person other than an air transport undertaking or an aerial work undertaking has the **management** of that aircraft for a period not exceeding 14 days, the foregoing provisions of this paragraph shall have effect as if that agreement had not been entered into.

**Chapter: 448E Title: AIR NAVIGATION (FLIGHT PROHIBITION) ORDER**  
**Section: 2 Heading: Interpretation**

(1) In this Order-

"operator" (營運者), in relation to an aircraft, means the person who for the time being has the **management** or control of the aircraft;

**Chapter: 448F Title: CIVIL AVIATION (INSURANCE) ORDER**  
**Section: 2 Heading: Interpretation**

In this Order, unless the context otherwise requires-

"operator" (經營人), in relation to an aircraft, means-

(a) the person who for the time being has the **management** or control of that aircraft; and

(b) any other person authorized by that person to use the aircraft to provide air services.

**Chapter: 483A Title: AIRPORT AUTHORITY BYLAW**  
**Section: 2 Heading: Interpretation**

In this Bylaw, unless the context otherwise requires-

"operator of an aircraft" (飛機營運人) means a person, organization or enterprise engaged in or offering to engage in an aircraft operation;

**Chapter:494 Title: AVIATION SECURITY ORDINANCE**  
**Section: 2 Heading: Interpretation**

(1) In this Ordinance, unless the context otherwise requires-

"operator" (經營者), in relation to an aircraft, means the person who for the time being has the **management** or control of the aircraft;

**Chapter: 537B Title: UNITED NATIONS SANCTIONS (IRAQ) REGULATION**  
**Section: 1 Heading: Interpretation**

(1) In this Regulation, unless the context otherwise requires-

"operator" (營運人), in relation to an aircraft or to a vehicle, means the person for the time being having the **management** of the aircraft or the vehicle; (L.N. 132 of 2004)

**Chapter:537E Title: UNITED NATIONS SANCTIONS (ARMS EMBARGOES) REGULATION**  
**Section: 1 Heading: Interpretation and application**

(1) In this Regulation, unless the context otherwise requires-

"operator" (營運人), in relation to an aircraft or vehicle, means the person for the time being having the **management** of the aircraft or vehicle;

**Chapter: 537K Title: UNITED NATIONS SANCTIONS (AFGHANISTAN) REGULATION**  
**Section: 1 Heading: Interpretation**

In this Regulation, unless the context otherwise requires-

"operator" (營運人), in relation to an aircraft, means the person for the time being having the **management** of the aircraft;

**Chapter:537W Title: UNITED NATIONS SANCTIONS  
(SUDAN) REGULATION**

**Section: 1 Heading: Interpretation**

In this Regulation, unless the context otherwise requires—

"operator" (營運人), in relation to an aircraft or a vehicle, means the person for the time being having the **management** of the aircraft or the vehicle;

**Chapter:537X Title: UNITED NATIONS SANCTIONS  
(LIBERIA) REGULATION 2005**

**Section: 2 Heading: Interpretation**

In this Regulation, unless the context otherwise requires-

"operator" (營運人), in relation to an aircraft or a vehicle, means the person for the time being having the **management** of the aircraft or the vehicle;

**Chapter: 537Y Title: UNITED NATIONS SANCTIONS  
(COTE D'IVOIRE) REGULATION**

**Section: 2 Heading: Interpretation**

In this Regulation, unless the context otherwise requires—

"operator" (營運人), in relation to an aircraft or a vehicle, means the person for the time being having the **management** of the aircraft or the vehicle;

- Ends -