

**For discussion
on 18 July 2007**

**Legislative Council Panel on Economic Services
Proposed Amendments to the Air Navigation (Hong Kong) Order 1995**

Purpose

This paper seeks Members' views on the Government's proposal to amend the Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C) (hereinafter "the Order") to implement updated requirements of the International Civil Aviation Organization (ICAO).

Background

2. Section 2A of the Civil Aviation Ordinance (Cap. 448) empowers the Chief Executive in Council to make subsidiary legislation to give effect to the Convention on International Civil Aviation (the Chicago Convention) and any Annex thereto relating to international standards and recommended practices, and generally for regulating air navigation. The Order was made under section 2A of Cap 448 to this effect for the regulation of registration and marking of aircraft, certification of air operators, airworthiness and equipment of aircraft, operation of aircraft, control of air traffic, rules of the air, aerodromes and aeronautical lights, licensing of aviation personnel, documents and records etc.

Need for Amendments

3. The Annexes to the Chicago Convention contain Standards and Recommended Practices (SARPs) and contracting states are required to comply with the Standards and should endeavour to achieve compliance with the Recommended Practices. The SARPs are updated from time to time by ICAO and the relevant changes are promulgated to contracting states for implementation. Over the past decade, most of these changes are being implemented in Hong Kong through administrative measures such as notices, circulars and the Aeronautical Information Publication issued by the Civil

Aviation Department (CAD). Whilst the requirements set out in these administrative documents are generally observed by the industry, in the long run it is desirable to put them on a firm legal footing by incorporating them into the Order.

4. In 2000 and 2004, ICAO conducted audits on Hong Kong under the Universal Safety Oversight Audit Programme (“USOAP”) to ascertain our compliance with SARPs in the aspects of aircraft operations, airworthiness and personnel licensing. The audits concluded that Hong Kong maintained a high standard of aviation safety and commented favourably on our policies, regulations, organisation etc. relating to aviation safety. The audits also identified the need for amending the Order to bring Hong Kong’s legal provisions in line with the latest ICAO SARPs.

The Proposal

5. Amendments are required mainly in the areas of airworthiness, aircraft equipment, safety management, data preservation, personnel licensing, and introduction of new definitions. The more significant changes are summarised below –

(a) Airworthiness

- to ensure aircraft airworthiness, new provisions are required so that an aircraft, having sustained damage of such a nature that it is no longer considered airworthy, shall not fly and its certificate of airworthiness or certificate of validation shall cease to have effect;

(b) Aircraft Equipment

- to prohibit a Hong Kong-registered aircraft from flying if it is not carrying the equipment specified for the intended flight or if such equipment is not in a fit condition;
- to require an aircraft to carry area navigation equipment and height keeping systems to enhance navigation safety;

- to ensure the proper use and functioning of airborne collision avoidance systems, to require that such systems should be operated in accordance with the applicable operations manuals (for Hong Kong-registered aircraft) or the procedures required by the law of the country in which the aircraft is registered;

(c) Safety Management

- to introduce the requirement for the implementation of a safety management system by airline operators, aircraft maintenance organisations, air traffic service providers and airport operators;

(d) Data Preservation

- to facilitate air accident investigations, to require that in the case of an accident, the operator or the pilot-in-command of the aircraft concerned shall ensure that all related flight recorder records are in safe custody and that the flight recorders shall not be re-activated unless agreed by the investigation authority;

(e) Personnel Licensing

- to specify the conditions and experiences required for acting as a pilot-in-command of a balloon during flying tests;
- to specify the language ability required of pilots and air traffic controllers for operating radio telephony;
- to introduce a new type of pilot licence;
- to prohibit a holder of aircraft maintenance engineer licence from exercising the privileges of the licence when he is unfit or is under the influence of psychoactive substances;
- to prohibit an air traffic controller from exercising the privileges of his licence when he is under the influence of psychoactive substances, or when he is suffering from fatigue; and

(f) Definitions

- to introduce new or modified definitions for terms such as “aeroplane”, “aircraft”, “cabin crew”, “pilot-in-command”, etc. in line with ICAO definitions.

Other Changes

6. In view of the development of the aviation industry and the experience of implementing the Order, some provisions of the Order have become obsolete/redundant or require further clarification. For example -

- (a) there is no longer the need to require modern aircraft, which are equipped with advanced navigation and communication equipment, to carry a flight navigator and a flight radio operator as members of the flight crew;
- (b) the provision prohibiting an air traffic controller to operate a manual direction-finding equipment is outdated as such equipment is no longer in use in Hong Kong;
- (c) the provision prohibiting smoking in an aircraft has been rendered redundant by the Aviation Security (Amendment) Ordinance 2005 that came into operation on 10 November 2005;
- (d) reference to the term “saving life” requires further elaboration to clearly cover fire fighting or prevention, life-saving or law enforcement operations undertaken by the disciplined services;
- (e) in Hong Kong, there is no requirement to hold an “aerodrome flight information officer licence” to provide aerodrome flight information service. Therefore, the provisions concerning “aerodrome flight information officer licence” are not required;
- (f) it is desirable to make an express provision empowering Air Traffic Flight Services Officers and Aeronautical Communications Officers to relay, under the directions of licensed air traffic controllers, flight instructions or information to aircraft; and

- (g) it is desirable to differentiate between free balloons and captive balloons when defining the conditions under which a balloon is deemed to be in flight.

7. The opportunity is also taken to rectify certain textual errors in the existing Order.

Consultations

8. When drawing up the proposed amendments, CAD has consulted the Technical Subcommittee of the Aviation Development Advisory Committee and the aviation industry including the local airlines, the Board of Airline Representatives, the International Air Transport Association, Government Flying Service, maintenance organizations, the Hong Kong Aviation Club as well as other related organisations such as the Hong Kong Air Traffic Control Association, the Hong Kong Aircrew Officers Association, the Hong Kong Airline Pilots' Association and Cathay Pacific Airways Flight Attendants Union. They are generally in support of the proposal.

Legislative Timetable

9. Subject to Members' views and the approval of the Chief Executive in Council, we plan to submit the relevant legislative amendments to the Legislative Council for approval through the normal negative vetting process in the first quarter of 2008.

Views Sought

10. Members' views are invited on our legislative amendment proposal for the implementation of updated ICAO requirements.