

LEGISLATIVE COUNCIL BRIEF

Civil Aviation Ordinance
(Chapter 448)
Dangerous Goods (Consignment by Air) (Safety) Ordinance
(Chapter 384)

**Air Navigation (Hong Kong) Order 1995
(Amendment of Schedule 16) Order 2011**

**Dangerous Goods (Consignment by Air)
(Safety) (Amendment) Regulation 2011**

INTRODUCTION

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B At the meeting of the Executive Council on 18 October 2011, the Council ADVISED and the Chief Executive ORDERED that the Air Navigation (Hong Kong) Order 1995 (Amendment of Schedule 16) Order 2011 at **Annex A**, and the Dangerous Goods (Consignment by Air) (Safety) (Amendment) Regulation 2011 at **Annex B**, should be made to implement the latest requirements of the International Civil Aviation Organization (ICAO)¹ for the safe transport of dangerous goods (DG)² by air.

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 ICAO's Technical Instructions for the Safe Transport of Dangerous Goods by Air, dangerous goods in the context of air transport include explosives, compressed gas, flammable liquids, flammable solids, oxidizing substances, toxic substances, infectious substances, radioactive material and corrosives, etc.

JUSTIFICATIONS

ICAO's Latest Requirements

2. The ICAO's Technical Instructions for the Safe Transport of Dangerous Goods by Air (TIs) set out the ICAO's requirements. The new edition of 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) 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;
- (b) require operators of passenger aircraft to provide DG information to passengers on the website prior to the check-in process;
- (c) require operators of aircraft to provide DG information to cargo reservations and sales staff as well as passenger reservations 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); and
- (d) require operators of passenger aircraft 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).

³ The conditions include that the excess baggage must be consigned on behalf of a passenger; that 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.

THE AMENDMENT ORDER

3. The main provisions of the Air Navigation (Hong Kong) Order 1995 (Amendment of Schedule 16) Order 2011 are set out below –

- (a) section 1 provides that the Amendment Order comes into operation on 1 January 2012 except for section 3(7), which comes into operation on 1 January 2013; and
- (b) section 3 provides that –
 - (i) subject to certain conditions, the TIs do not apply to dangerous goods contained within items of excess baggage being sent as cargo;
 - (ii) the operator of an aircraft is required to ensure that information as to which categories of dangerous goods must not be taken on board the aircraft or may be carried by passengers of the aircraft is provided or made available to them in the specified manner; and
 - (iii) the operator of an aircraft is required to ensure that specified information in respect of dangerous goods is also provided to cargo reservations and sales staff as well as passenger reservations and sales staff.

THE AMENDMENT REGULATION

4. The main provisions of the Dangerous Goods (Consignment by Air) (Safety) (Amendment) Regulation 2011 are set out below –

- (a) section 1 provides that the Amendment Regulation comes into operation on 1 January 2012;
- (b) section 3 repeals “stores” in the definition of cargo to bring the meaning of the definition into line with the same definition in the new edition of the TIs;
- (c) section 4 and section 5 replace the term “declaration” with “certification” to clarify that what should be contained in a dangerous goods transport document under regulation 6(3)(b) and regulation 7 of the Dangerous Goods (Consignment by Air)

(Safety) Regulations (the Regulations) is not a statutory declaration within the meaning of section 13 of the Oaths and Declarations Ordinance. 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 are removed⁴; and

- (d) section 6 amends the Schedule to the Regulations to refer to the new edition of the TIs and to specify the appropriate provisions of that edition for the purposes of regulation 4(1)(e) and (2)(b) of the Regulations.

LEGISLATIVE TIMETABLE

5. The Amendment Order and Amendment Regulation will be gazetted on 21 October 2011 and tabled in the Legislative Council on 26 October 2011.

IMPLICATIONS OF THE PROPOSAL

6. The proposal has no financial, economic, civil service, productivity, sustainability and environmental implications. The new TIs have not introduced any substantially new requirements.

7. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It does not affect the binding effect of the existing legislation.

⁴ In accordance with Schedule 1 to the Electronic Transactions Ordinance, statutory declarations are to be excluded from the application of a number of sections of the Ordinance. The DG transport documents required by the Regulations and Air Navigation (Dangerous Goods) Regulations (schedule 16 to the Air Navigation (Hong Kong) Order 1995) are included in Schedules 1, 2 and 4 to the Electronic Transactions (Exclusion) Order. This has precluded the electronic filing of the DG transport documents by the shippers. Such references to the DG transport documents in the Electronic Transactions (Exclusion) Order are to be removed as soon as possible.

PUBLIC CONSULTATION

8. The Civil Aviation Department has 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 on the new TIs. They generally support the proposed amendments. On 23 May 2011, we consulted the Legislative Council Panel on Economic Development. The Panel generally supported the proposed amendments.

PUBLICITY

9. A press release will be issued on 19 October 2011. A spokesman will be available to handle enquiries.

BACKGROUND

10. To ensure aviation safety, the ICAO promulgates, under the Convention on International Civil Aviation (generally referred to as the "Chicago Convention"), a set of requirements regarding the carriage of DG by air. These requirements 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. Under the Chicago Convention, such requirements are set out in the TIs which is normally updated and published by ICAO biennially.

11. The Chicago Convention applies to Hong Kong. The TIs made under the Convention are given effect through two pieces of local subsidiary legislation made by the Chief Executive in Council, i.e. –

- (a) Air Navigation (Dangerous Goods) Regulations, as Schedule 16 to the Air Navigation (Hong Kong) Order 1995; and
- (b) Dangerous Goods (Consignment by Air) (Safety) Regulations.

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

ENQUIRIES

12. Any enquiry on this brief should be directed to Miss Monica Chen, Principal Assistant Secretary (Transport) (telephone number: 2189 7719).

**Transport and Housing Bureau
19 October 2011**

Air Navigation (Hong Kong) Order 1995 (Amendment of Schedule 16) Order 2011

(Made by the Chief Executive in Council under section 2A of the Civil Aviation Ordinance (Cap. 448))

1. Commencement

- (1) This Order (except section 3(7)) comes into operation on 1 January 2012.
- (2) Section 3(7) comes into operation on 1 January 2013.

2. Air Navigation (Hong Kong) Order 1995 amended

The Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C) is amended as set out in section 3.

3. Schedule 16 amended (the Air Navigation (Dangerous Goods) Regulations)

- (1) Schedule 16, regulation 2(1), definition of *States concerned*—
 - Repeal**
 - “1.1.2”
 - Substitute**
 - “1.1.3”.
- (2) Schedule 16, regulation 2(1), definition of *Technical Instructions*—
 - Repeal**
 - “2009–2010”
 - Substitute**
 - “2011–2012”.
- (3) Schedule 16, regulation 3(2)(c), after “beneath”—
 - Add a comma.**

- (4) Schedule 16, regulation 3(3)—

Repeal subparagraph (c)

Substitute

“(c) of a type specified in Chapter 1.1.4 of Part 1 of the Technical Instructions;”.

- (5) Schedule 16, regulation 3(3)—

Repeal subparagraphs (d), (e), (f), (g) and (h).

- (6) Schedule 16, regulation 3—

Repeal paragraphs (3A), (3B), (3C), (3D), (3E) and (3F).

- (7) Schedule 16, regulation 8(2B)—

Repeal

everything after “aircraft shall”

Substitute

“also ensure that information required to be provided under paragraph (2) and information as to which categories of dangerous goods may be carried by passengers of the aircraft is provided or made available to them in accordance with the provisions in Chapter 5.1 of Part 7 of the Technical Instructions.”.

- (8) Schedule 16, regulation 8(2D)(a)—

Repeal

“cargo acceptance staff”

Substitute

“cargo reservations and sales staff, cargo acceptance staff, passenger reservations and sales staff”.

Clerk to the Executive Council

COUNCIL CHAMBER

2011

Explanatory Note

This Order amends Schedule 16 to the Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C) to give effect to certain amendments introduced by the 2011–2012 edition of the Technical Instructions for the Safe Transport of Dangerous Goods by Air (*TIs*) approved and published by decision of the Council of the International Civil Aviation Organization.

2. The amendments include—
- (a) providing that subject to certain conditions, the 2011–2012 edition of the *TIs* also do not apply to dangerous goods contained within items of excess baggage being sent as cargo;
 - (b) requiring the operator of an aircraft to ensure that information as to which categories of dangerous goods must not be taken on board the aircraft or may be carried by passengers of the aircraft is provided or made available to them in the specified manner; and
 - (c) requiring the operator of an aircraft to ensure that specified information in respect of dangerous goods is also provided to cargo reservations and sales staff as well as passenger reservations and sales staff.

Dangerous Goods (Consignment by Air) (Safety) (Amendment) Regulation 2011

(Made by the Chief Executive in Council under section 3 of the Dangerous Goods (Consignment by Air) (Safety) Ordinance (Cap. 384))

1. Commencement

This Regulation comes into operation on 1 January 2012.

2. Dangerous Goods (Consignment by Air) (Safety) Regulations amended

The Dangerous Goods (Consignment by Air) (Safety) Regulations (Cap. 384 sub. leg. A) are amended as set out in sections 3 to 6.

3. Regulation 2 amended (interpretation)

(1) Regulation 2, definition of *cargo*, paragraph (a), after the semicolon—

Add

“and”.

(2) Regulation 2, definition of *cargo*—

Repeal paragraph (b).

4. Regulation 6 amended (documents required)

Regulation 6(3)(b)—

Repeal

“declaration”

Substitute

“certification”.

5. Regulation 7 amended (person signing transport document to be trained)

(1) Regulation 7(1)—

Repeal

“declaration”

Substitute

“certification”.

(2) Regulation 7(2)—

Repeal

“declaration”

Substitute

“certification”.

6. Schedule amended

(1) The Schedule, Part I—

Repeal

“2009–2010”

Substitute

“2011–2012”.

(2) The Schedule, Part II, item relating to regulation 4(1)(e)—

Repeal

“(paragraphs (e) to (i))”

Substitute

“(paragraphs (e) to (j))”.

(3) The Schedule, Part II, item relating to regulation 4(1)(e)—

Repeal

“4.1.5.7.4”

Substitute

“4.1.5.6.4”.

(4) The Schedule, Part II, item relating to regulation 4(2)(b)—

Repeal

“1.1.3”

Substitute

“1.1.4”.

Clerk to the Executive Council

COUNCIL CHAMBER

2011

Explanatory Note

This Regulation amends the Dangerous Goods (Consignment by Air) (Safety) Regulations (Cap. 384 sub. leg. A) (*the principal Regulations*) to implement certain new requirements introduced by the 2011–2012 edition of the Technical Instructions for the Safe Transport of Dangerous Goods by Air (*TIs*). The TIs are approved and published by decision of the Council of the International Civil Aviation Organization.

2. Section 3 of the Regulation repeals “stores” in the definition of *cargo* to bring the meaning of the definition into line with the same definition in the 2011–2012 edition of the TIs.
3. Section 4 of the Regulation replaces the term “declaration” with “certification” to clarify that what should be contained in a dangerous goods transport document under regulation 6(3)(b) of the principal Regulations is not a statutory declaration.
4. Section 6 of the Regulation amends the Schedule to the principal Regulations to refer to the 2011–2012 edition of the TIs and to specify the appropriate provisions of that edition of the TIs for the purposes of regulation 4(1)(e) and (2)(b) of the principal Regulations.