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Paper for the House Committee

**Report of the Subcommittee on
Air Navigation (Hong Kong) Order 1995 (Amendment of
Schedule 16) Order 2013 and Dangerous Goods (Consignment by Air)
(Safety) Regulations (Amendment of Schedule) Order 2013**

Purpose

This paper reports on the deliberations of the Subcommittee on Air Navigation (Hong Kong) Order 1995 (Amendment of Schedule 16) Order 2013 and Dangerous Goods (Consignment by Air) (Safety) Regulations (Amendment of Schedule) Order 2013 ("the Amendment Orders").

Background

2. The International Civil Aviation Organization ("ICAO")¹ promulgates under the Convention on International Civil Aviation ("the Chicago Convention") a set of requirements for carriage of dangerous goods by air. These requirements regulate matters such as the classification, packing, marking, labelling and loading of dangerous goods 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 Technical Instructions for the Safe Transport of Dangerous Goods by Air ("TI"). This document is normally updated and published by ICAO biennially. TI is given effect locally through two pieces of subsidiary legislation: –

- (a) the Air Navigation (Dangerous Goods) Regulations ("the AN Regulations") provided in Schedule 16 to the Air Navigation (Hong Kong) Order 1995 (Cap. 448C); and

¹ ICAO was established by the Convention on International Civil Aviation. At present, it has 191 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.

- (b) the Dangerous Goods (Consignment by Air) (Safety) Regulations (Cap. 384A) ("the DG Regulations").

The AN Regulations generally regulate the handling of dangerous goods by airlines and airport authorities whereas the DG Regulations regulate the shippers and freight forwarders in the proper handling of dangerous goods before offering them for air transport, through making direct references to the relevant requirements under TI.

The Air Navigation (Hong Kong) Order 1995 (Amendment of Schedule 16) Order 2013 (L.N. 182 of 2013)

3. L.N. 182 is made under section 2A of the Civil Aviation Ordinance (Cap. 448) by the Chief Executive in Council to amend the AN Regulations to give effect to the amendments introduced by the 2013-2014 edition of TI. The amendments made by L.N. 182 include –

- (a) specifying the time before which the operator of an aircraft has to provide the commander of the aircraft with the required information of dangerous goods to be carried by the aircraft;
- (b) requiring the operator to -
 - (i) also provide the required information to the ground personnel for flight operations responsible for the operational control of the aircraft; and
 - (ii) ensure that a copy of the required information (on or with which there is an indication that it has been received by the commander), or the information contained in the copy, is readily accessible to the ground personnel for flight operations until after the landing of the aircraft at the aerodrome of intended destination;
- (c) requiring the operator to preserve a copy of -
 - (i) the dangerous goods transport document and any other document; and
 - (ii) any acceptance check list,

in respect of any dangerous goods not accepted by the operator for not less than six months; and

- (d) requiring the operator to ensure that when any dangerous goods are carried or loaded for carriage by, or suspended from, a helicopter, certain matters are taken into consideration in relation to the helicopter and the goods.

The Dangerous Goods (Consignment by Air) (Safety) Regulations (Amendment of Schedule) Order 2013 (L.N. 183 of 2013)

4. L.N. 183 is made under regulation 9 of the DG Regulations by the Director-General of Civil Aviation to amend the Schedule to the DG Regulations to give effect to amendments introduced by the 2013-2014 edition of TI. The amendments made by L.N. 183 are to update the applicable edition of TI and the list of provisions of TI that is specified in the Schedule for the purposes of regulation 4(1)(b), (c), (d) and (e) and (2)(b) of the DG Regulations.

5. L.N. 182 and L.N. 183 will come into operation on a day to be appointed by the Director-General of Civil Aviation by notice published in the Gazette.

The Subcommittee

6. At the House Committee meeting held on 22 November 2013, members agreed to form a Subcommittee to study the Amendment Orders. Hon CHAN Kam-lam was elected Chairman of the Subcommittee. The membership list of the Subcommittee is in **Appendix**.

7. To allow time for the Subcommittee to report its deliberations to the House Committee and members to study the Amendment Orders, a resolution was passed at the Council meeting of 18 December 2013 to extend the scrutiny period to 8 January 2014. The Subcommittee has held one meeting with the Administration to examine the Amendment Orders.

Deliberations of the Subcommittee

Impact of the Amendment Orders on the relevant industries

8. The Subcommittee has examined the new requirements for the shipment of lithium batteries under the new edition of TI. The Administration has explained that there are only minor amendments to the labelling and packing

requirements for lithium batteries, for example, the maximum number of batteries per package has been reduced to enhance the safety of air transport and this should have no significant impact on the operation of the relevant industries.

9. The Subcommittee has enquired whether all relevant stakeholders, including the import/export and manufacturing industries, have been properly consulted on the new requirements for air transport of dangerous goods. The Administration has advised that the airline industry has already adopted the new requirements in accepting lithium batteries for air transport with effect from 1 January 2013 as such requirements have been incorporated into the latest edition of the Dangerous Goods Regulations published by the International Air Transport Association. Moreover, in October 2012, after ICAO had approved the 2013-2014 edition of TI, a summary of the major changes in the new edition was uploaded onto the website of the Civil Aviation Department ("CAD") to facilitate the relevant industries to make preparation for the new international requirements. CAD has also conducted a briefing for the air cargo industry on the new requirements on the carriage of lithium batteries. Before introducing the Amendment Orders, the Administration has consulted relevant stakeholders such as the Board of Airline Representatives in Hong Kong, the two Hong Kong helicopter operators, Government Flying Service and the Technical Sub-Committee of the Aviation Development Advisory Committee on the amendments.

Requirements on preserving records on unaccepted dangerous goods

10. The Subcommittee has noted that under the 2013-2014 edition of TI, the operator is required to preserve a copy of the dangerous goods transport document and any other documents, and the acceptance checklist for not less than three months if any dangerous goods are not accepted for carriage by the operator. The Subcommittee has enquired the reason for the Administration to adopt a more stringent requirement in L.N. 182 that the relevant documents have to be preserved for not less than six months.

11. The Administration has explained that a more stringent standard has been adopted in L.N. 182 in order to tie in with the requirement under the AN Regulations for the operators to retain the dangerous goods transport document in respect of the carriage of dangerous goods for not less than six months.

Information to be provided in the Legislative Council Brief

12. In response to members' enquiry, the Administration has explained about the new dangerous goods item allowed to be carried by passengers on board aircraft under the 2013-2014 edition of TI, namely a maximum of four small cartridges (50 millilitres each) of non-flammable and non-toxic gas for fitting

into safety vests. The Subcommittee has noted that the AN Regulations and the DG Regulations have adopted a "direct reference approach" in which references to the chapter/section numbers of the relevant provisions in TI are made in the Regulations and details of these new provisions could not be found in the Legislative Council ("LegCo") Brief for the Amendment Orders nor the Amendment Orders.

13. While members of the Subcommittee have no objections to the amendments in the Amendment Orders, they consider that both the Amendment Orders and the relevant LegCo Brief do not provide details relating to the changes for them to scrutinize the amendments in the Amendment Orders. The Subcommittee requests that the Administration should, for tabling in future of similar subsidiary legislation in which a "direct reference approach" is adopted, consider including in the relevant LegCo Brief a detailed explanation of the new/amended provisions and the associated details (such as extracts of TI in this case, where appropriate). The Administration notes the Subcommittee's request.

Chinese text of the Air Navigation (Hong Kong) Order 1995 (Cap. 448C)

14. During the scrutiny of the Amendment Orders, the Subcommittee has enquired why there is still no Chinese text for the Air Navigation (Hong Kong) Order 1995 which has only been enacted in the English language. The Administration has explained that under section 4 of the Official Languages Ordinance (Cap. 5), the requirement to enact ordinances in both the English and Chinese languages does not apply to subsidiary legislation. The Subcommittee has noted a reply from the Administration to the Legal Service Division in November 2011 relating to the Air Navigation (Hong Kong) Order 1995 (Amendment) Order 2011, in which the Administration has explained that due to the length of the Air Navigation (Hong Kong) Order 1995 and the numerous technical terms involved, the introduction of the Chinese text would require careful drafting and consultation with the stakeholders. According to the Administration, the relevant bureau and department have already started the preparatory work in this respect.

Recommendation

15. The Subcommittee raises no objection to the Amendment Orders and will not propose any amendments to the Amendment Orders. The Chairman of the Subcommittee made a verbal report on the deliberations of the Subcommittee at the House Committee meeting on 13 December 2013.

Advice sought

16. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 1
Legislative Council Secretariat
30 December 2013

**Subcommittee on Air Navigation (Hong Kong) Order 1995
(Amendment of Schedule 16) Order 2013 and
Dangerous Goods (Consignment by Air) (Safety) Regulations
(Amendment of Schedule) Order 2013**

Membership list

Chairman	Hon CHAN Kam-lam, SBS, JP
Members	Hon Abraham SHEK Lai-him, GBS, JP
	Hon Andrew LEUNG Kwan-yuen, GBS, JP
	Hon Frankie YICK Chi-ming
	Hon SIN Chung-kai, SBS, JP
	(Total : 5 members)
Clerk	Mr Anthony CHU
Legal Adviser	Mr Timothy TSO