

**For discussion
on 24 March 2016**

Legislative Council Panel on Economic Development

Proposed Amendments to Legislation Relating to the Carriage of Dangerous Goods by Air

Purpose

This paper seeks Members' views on the Government's proposal to amend two sets of subsidiary legislation to give effect to the latest standards promulgated by the International Civil Aviation Organization ("ICAO")¹ for the safe transport of dangerous goods ("DG")² by air.

Background

International Standards

2. To ensure aviation safety, ICAO has developed a set of provisions governing the transport of DG by air under Annex 18 to the Convention on International Civil Aviation ("the Chicago Convention"). These provisions regulate matters such as the classification, packing, marking, labelling and loading of DG on board aircraft and other matters such as training requirements for related aviation personnel. The detailed specifications are set out in the Technical Instructions for the Safe Transport of Dangerous Goods by Air ("the TIs"), which are updated and published by ICAO biennially. Annex 18 to the Chicago Convention stipulates that the Contracting States shall take necessary actions to comply with the provisions in the TIs.

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.

² According to the Technical Instructions issued by ICAO, DG in the context of air transport include explosives, compressed gas, flammable liquids, flammable solids, oxidizing substances, toxic substances, infectious substances, radioactive materials and corrosives, etc.

Local Legislation

3. The Chicago Convention and its Annexes apply to Hong Kong, where the TIs are given legal effect through two pieces of local subsidiary legislation made by the Chief Executive in Council (“the CE in Council”), viz –

- (a) Air Navigation (Dangerous Goods) Regulations, as Schedule 16 to the Air Navigation (Hong Kong) Order 1995 (Schedule 16 to Cap 448C, “AN(DG)R”); and
- (b) Dangerous Goods (Consignment by Air) (Safety) Regulations (Cap 384A, “DG(CAS)R”).

4. AN(DG)R regulate the DG operations of aircraft and airport operators, whereas DG(CAS)R regulate shippers and freight forwarders in respect of the proper handling of DG before offering them for air transport.

5. Whenever an updated edition of the TIs is published by ICAO, the Civil Aviation Department (“CAD”) will review the new requirements promulgated therein, and pursue necessary amendments to the above two pieces of subsidiary legislation in order to keep Hong Kong’s regulatory regime in line with the ICAO standards. On the last occasion, the TIs were issued in December 2012, and the amended subsidiary legislation came into effect from April 2014 to reflect the latest requirements at the time.

The New Edition of the TIs

6. The new edition of the TIs (i.e. the 2015-2016 edition) was issued in December 2014 by ICAO. Major changes that require legislative amendments are summarised in paragraphs 7 and 8 below.

(a) Acceptance check of DG to be carried by air as cargo

7. To clarify the responsibilities of aircraft operators for conducting DG acceptance checks where a DG air cargo consignment is carried in a series of journeys, operators are required to verify the compliance of the DG air cargo consignment with the TIs by using a checklist³ before the consignment is first accepted for carriage by air. For the subsequent journeys, irrespective of

³ Airline operator may develop their own checklist or adopt checklist templates of other entities (e.g. The International Air Transport Association) for conducting DG acceptance check, provided that the acceptance check is conducted in accordance with the requirements of the TIs in respect of documentation, quantity, marking, labelling, shipping names, special handling instructions, packaging, etc.

whether there is any change in the operator of the aircraft, verification of the DG air cargo consignment will only be required in respect of marking, labelling and inspection of damage of the packaging of the DG without the need of a checklist.

(b) Presentation of DG information to passengers

8. To ensure that passengers are clearly presented with information on DG forbidden to be carried by passengers aboard an aircraft:

At the point of ticket purchase

- (i) an aircraft operator is required to present (instead of “provide”⁴) the information on the types of DG which are forbidden to transport aboard an aircraft at the point of ticket purchase or, if that is not practical, make available the information to passengers prior to the check-in process. If the ticket purchase process is conducted via internet, the process cannot be completed until passengers or persons acting on their behalf have been presented with this information and they have indicated that the restrictions are understood; and

At the point of check-in

- (ii) if the check-in process is conducted remotely, for example via internet or at an airport without the involvement of any airline staff or handling agents, an operator is required to ensure that the information on the types of DG which passengers are forbidden to transport aboard an aircraft is presented (instead of “provided”) to passengers; and the check-in process cannot be completed until passengers or persons acting on their behalf have been presented with this information and they have indicated that the restrictions are understood.

⁴ The 2013-2014 edition of TIs required forbidden DG information to be “provided” to passengers when purchasing tickets or checking in on-line. However, there were different approaches and interpretations as to how the information is “provided”, e.g. some operators placed the information on their website, but not necessarily apparent to the passengers. In the 2015-2016 edition of TIs, “provided” is changed to “presented” by ICAO to clarify the arrangements.

Amendments to Local Legislation

9. To give legal effect to the latest requirements of the TIs, AN(DG)R and DG(CAS)R will need to be amended. Subject to the approval of the CE in Council, we plan to submit the relevant legislative amendments to the Legislative Council for approval through the negative vetting process according to section 34 of the Interpretation and General Clauses Ordinance (Cap 1) in the second quarter of 2016. The amendments to AN(DG)R and DG(CAS)R shall take effect immediately upon the completion of the legislative process.

Consultation

10. In the meantime, the international air transport industry is already operating in accordance with the latest requirements of the TIs in handling the transport of DG by air and in disseminating the relevant information to the passengers. The International Air Transport Association (“IATA”) has updated its Dangerous Goods Regulations (“DGR”) on 1 January 2015 to promulgate the latest amendments to the TIs. The IATA DGR is the globally recognised reference for transporting DG by air. It is the established industry practice that in handling DG, airlines, freight forwarders and shippers will adhere to the DGR. Airlines would not accept non-compliant DG for air carriage due to safety consideration of the aircraft operations.

11. Locally, CAD has already published ICAO’s amendments on its website and written to stakeholders to provide details of the amendments, and briefed the air cargo industry accordingly. We also consulted the Aviation Development and Three-runway System Advisory Committee about the proposal in November 2015. The stakeholders and the Committee generally support the proposed amendments. The legislative proposals as set out in paragraph 9 are to formalise and localise the requirements of the TIs.

Views Sought

12. Members’ views are invited on the proposed legislative amendments to implement the new TIs.

**Transport and Housing Bureau
Civil Aviation Department
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