

HONG KONG

While Hong Kong has a considerable number of ordinances and regulations relating to aircraft and air navigation, the only legislation pertaining specifically to charter flights is to be found in the Air Transport (Licensing of Air Services) Regulations, which were first issued in 1949.

The Regulations define a scheduled journey as meaning

...one of a series of journeys which are undertaken between the same two places and which together amount to a systematic service operated in such a manner that the benefits thereof are available to members of the public from time to time seeking to take advantage of them. 1/

For scheduled journeys, licenses and operating permits have to be obtained in accordance with the regulations contained in Part II of the Regulations.

Part III of the Regulations deals with journeys other than scheduled journeys, and charter flights would fall into this category. Regulation 22, in Part III, states as below:

22. (1) Subject to the provisions of these regulations, it shall not be lawful for any person to use any aircraft for the provision in the Colony or of any air service except under, and in accordance with the conditions of, a permit granted by the Director of Civil Aviation.

1/ 19 Laws of Hong Kong App. I (rev. ed. 1969), G 4.

(2) Any person who uses any aircraft in contravention of the provisions of this regulation shall be liable on conviction in the case of a first offence to a fine of four thousand dollars or to imprisonment for three months or to both such fine and such imprisonment and in the case of a second or subsequent offence to a fine of thirty-two thousand dollars or to imprisonment for two years or to both such fine and such imprisonment.

(3) The provisions of this regulation shall not apply in respect of any journey performed on the authority of Article 5 of the Convention on International Civil Aviation if the aircraft performing the journey flies across the Colony without landing or lands in the Colony for non-traffic purposes only, but shall apply in respect of any such journey if the aircraft performing the journey takes on or discharges passengers, cargo or mail in the Colony. 2/

Permits are issued for specified periods and on specified conditions. The Director of Civil Aviation may attach conditions to the permit as he thinks fit under the circumstances. Applications for permits are to be made in the prescribed form. They may be revoked or suspended if, for example, the holder of the permit has failed to comply with any condition subject to which the permit was granted.

Part IV of the Regulations contains general provisions applicable to all licenses, operating permits, and permits. Regulation 27 provides that they cannot be transferred or assigned except under certain specified circumstances. Regulation 30 A empowers the Director of Civil Aviation or an authorized person to direct the operator or commander of an aircraft not to permit the aircraft to make the particular flight or any other flight as may be specified

2/ Id. at G 10-G 11.

in the direction. Power is also granted to detain aircraft. This is allowed when it appears to the Director or to an authorized person that an aircraft is intended or is likely to be flown in such circumstances that any provision of Regulation 3 or 22 would be contravened in relation to the flight. Under the same circumstances, they may enter upon and inspect any aircraft. Any person who, being the operator or commander of an aircraft, contravenes a direction given to him as described above is guilty of an offense for which he is liable on conviction to a fine of HK\$7,000 or to imprisonment for three months.

Regulation 31 relates to proceedings for an offense against the regulations, and states as below:

31. (1) Proceedings for an offence against these regulations shall not be instituted except with the consent of the Attorney General.

(2) Where an offence against these regulations has been committed by a body corporate, every person who, at the time of the commission of the offence was a director, general manager, secretary or other similar officer of the body corporate, or was purporting to act in any such capacity, shall be deemed to be guilty of that offence, unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances. 3/

3/ Id. at G 13