

**THE REGULATION OF
UNMANNED AIRCRAFT SYSTEMS IN HONG KONG**

SUBMISSIONS

INTRODUCTION

1. The Civil Aviation Department of HKSAR ("CAD") commissioned an overseas consultant in March 2017 to conduct a study on the regulation of Unmanned Aircraft Systems ("UAS"). The consultant finalized its report in March 2018 ("Consultancy Report"). It made six key recommendations on the regulation of UAS in Hong Kong.
2. In April 2018, the CAD issued a consultation paper on this matter. The consultation paper, entitled "*Regulation of Unmanned Aircraft Systems in Hong Kong: Consultancy Study and Way Forward*" ("Consultation Paper") seeks public views on the directions for regulating UAS in Hong Kong.
3. The Law Society of Hong Kong has considered the Consultation Paper. Most of the recommendations in the Consultation Paper are policy-oriented, and as such, we prefer not to comment (at this stage). Instead, we provide views only on those matters which are more law-related and/or have legal implications. We reserve comments on any draft bill or legislation to be produced.

GENERAL OBSERVATION

4. We set out our general observations in the following.
 - (a) We agree that under the current law there is not a comprehensive regime governing the operation of UAS in Hong Kong. Such could not cope with the regulatory challenges brought by technological advancements and proliferation of UAS in private and commercial use. Among other things, we notice the demands for the use of UAS have been increasingⁱ.

- (b) There should be a fundamental review of the current legislation, including not only civil aviation legislation but also other relevant legislative provisions. In the light of the fast-growing industry, and the large potential the UAS could bring forth to the community, this review should be expedited.
- (c) The safety in the use of UAS should be one of the overriding principles in formulating the regulatory regime for UAS.
- (d) The CAD should take into account those applicable principles laid down in the relevant conventions, e.g. the Chicago Convention on International Civil Aviation and the “Riga Declaration (on drones)”ⁱⁱ.
- (e) Neither the Consultation Paper nor the CAD’s Consultancy Report has discussed, in detail or otherwise, possible abuses of UAS, safety or security issues posed thereby, and criminal sanctions associated with the use of UAS. We anticipate further studies and consultations by the CAD or other Government Departments on these matters in due course.

RESPONSES TO SOME OF THE CONSULTATION QUESTIONS

5. Our responses to some of the consultation questions are as follows.

A1. Do you agree that UAS owners should be required to register on the Government’s registration system, and registered UAS be labelled, before the UAS can be operated?

Law Society’s Response:

- 6. Yes. We could see some parallel with the registration requirement for road transport, in respect of where e.g. accessibility of UAS to the general public, the needs for monitoring, compliance and policing, the risks of operations and the requirement of insurance are concerned.
- 7. We suggest the CAD should give due consideration to the regulation and licensing of commercial operations (in particular, for transportation purposes). The regulatory framework to be put forward should help the private sector to take well-informed investment decisions, and to provide a basic set of rules for private as well as non-recreational operators and service providers.

A2. Do you agree that exemptions from registration requirements should be granted to certain UAS? Examples are UAS weighing 250 grams or less, model aircraft (e.g. radio-controlled aeroplane, helicopter, etc.), DIY or privately-built/assembled UAS, UAS owned by tourists and visitors.

Law Society's Response:

8. Yes. We agree in principle that there could be justifications for excluding certain UAS from registration, *consistent with the risk assessment*. We are however not in a position to formulate views on where, *from a safety point of view*, the line should be drawn given that, absent any in-depth discussions on risk assessment, the exemption proposed seemingly are merely on the basis of the type of UAS, the technology and the intended use (see para 10-13 of the Consultancy Report).

B1. Do you agree that regulation should not be differentiated by purpose (i.e. current regulatory framework) but by operational risks under a risk-based approach?

Law Society's Response:

9. We agree that regulation should *not* be differentiated by purpose only – e.g. no exemption should be accepted simply on the basis of personal / leisure use. However, for purely commercial operations (in particular, for transportation), we suggest that consideration should be given to the imposition of additional licensing requirements for the purpose of ensuring reasonable safety.

E1. Do you agree that operators of higher risk operations shall be subject to insurance requirements? Should “Category A2” and “Category B” be subject to requirements?

Law Society's Response:

10. Yes. Insurance placements and services should form a core part of the general industry infrastructure for sustainable development of the UAS industry.

CONCLUSION

11. In parallel with this consultation, we ask the CAD and other Government Departments thoroughly to consider those issues identified by the CAD Consultant in the regulation of UASⁱⁱⁱ, including
 - (a) regulation of radio frequencies by the Office of Communications Authority;
 - (b) privacy protection by the Privacy Commissioner for Personal Data;
 - (c) property/land managers' rules where applicable; and
 - (d) product safety.
12. We suggest when the legislation is to be put forward, personal privacy issues and disturbance of livestock, wild animals and endangered birds nesting in the Mai Po wetlands should be addressed. These issues are currently outside the scope of the consultation exercise.
13. All in all, we welcome the Consultation Paper by the CAD, but the review following this consultation should be expedited. In the light of the fast growing use of UAS both privately and (in particular) commercially, any regulatory regime to be proposed, and the legislation that underscore the regime, should facilitate and not hinder the development of UAS. Where Hong Kong has strategically positioned itself as an international trade and finance centre, policies backed up by legislation that encourage innovation and technology regulation and development for the burgeoning UAS industry should be put in place and in good time.

The Law Society of Hong Kong

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ⁱ We understand that for example plans for commercial operation of UAS for freight have reportedly been announced by a number of companies, including Deutch Post (DHL), Zookal, Inc. (an Australian textbook service), and Amazon, Inc., (which stated it has plans for a UAS-based home package delivery program within 5 years). On the other hand, according to the Consultancy Report, Dubai's Road and Transport Authority has announced the operation of flying taxis in Dubai; Uber has also announced their plan to deploy flying UAS taxis in Dallas-Fort Worth, Texas and Dubai by 2020.

ⁱⁱ Riga Declaration on Remotely Piloted Aircraft (Drones): "Framing the Future Of Aviation", § 1 (Mar. 6, 2015).

ⁱⁱⁱ See paras 3.6 and 3.7 of the Consultancy Report.