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Mr Daniel Sin
Clerk to Subcommittee on Hong Kong Civil Aviation (Investigation of
Accidents) (Amendment) Regulation 2017 and Air Navigation (Hong Kong)
Order 1995 (Amendment) Order 2017
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

30 June 2017

Dear Mr Sin,

**Legislative Council
Subcommittee on Hong Kong Civil Aviation (Investigation of Accidents)
(Amendment) Regulation 2017 and
Air Navigation (Hong Kong) Order 1995 (Amendment) Order 2017**

I refer to your list of follow-up actions arising from the discussion at the meeting on 26 June 2017 dated 27 June 2017. Our consolidated reply to paragraphs 1 and 2 of the list is provided as follows:

2. As regards the specific question (a) of “whether the proposed Independent Air Accident Investigation Authority would be in charge of an investigation into an accident occurred in or over Hong Kong but at the same time within the flight information region of another jurisdiction”, our response is affirmative. The proposed regulation 3(2)(b)(i) clearly provides that the Hong Kong Civil Aviation (Investigation of Accidents) Regulations (the “Regulations”) (as amended) apply to an accident or incident that occurs to a civil aircraft in or over Hong Kong. In this connection, the provisions in the Regulations as amended would apply to this scenario. The Air Navigation (Hong Kong) Order 1995 (the “Order”) is only being amended consequential to

the amendments to the Regulations and is not directly relevant to accident investigation.

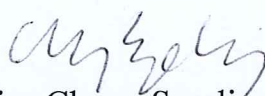
3. As regards the specific question (b) of “whether the proposed Independent Air Accident Investigation Authority would be in charge of an investigation into an accident occurred within the flight information region of HKSAR but in or over another jurisdiction”, our response is negative except for the case where the aircraft to which the accident or incident occurred is a civil aircraft registered in Hong Kong as provided for in the proposed regulation 3(2)(b)(ii). In such a case, the provisions in the Regulations as amended would apply. It should be noted that a flight information region is not necessarily congruent to a country/administration’s territory.

4. In connection with the issue raised in paragraph 3 above concerning the applicability of the Regulations to the flight information region of HKSAR, Members of the Subcommittee quoted Article 130 of the Basic Law, which reads: “*The Hong Kong Special Administrative Region shall be responsible on its own for matters of routine business and technical management of civil aviation, including the management of airports, the provision of air traffic services within the flight information region of the Hong Kong Special Administrative Region, and the discharge of other responsibilities allocated to it under the regional air navigation procedures of the International Civil Aviation Organization.*” (emphasis added). The term “air traffic services” mentioned in Article 130 is defined in the Order to include both air traffic control service and flight information service. While “air traffic control service” is provided by ground-based controllers for directing aircraft to ensure their safe operations, “flight information service” is defined by the International Civil Aviation Organization (“ICAO”) as “a service provided for the purpose of giving advice and information useful for the safe and efficient conduct of flights”. Similarly, according to the Annex 11 to the Convention on International Civil Aviation (the “Convention”), “air traffic service” is a generic term meaning flight information service, alerting service, air traffic advisory service and air traffic control service. Based on the above understanding, the reference “provision of air traffic services within the flight information region” in Article 130 of the Basic Law is unlikely to be intended to cover civil aviation accident investigation.

5. As regards the specific question (c) of “whether the proposed Independent Air Accident Investigation Authority would be in charge of an investigation into an accident involving a civil aircraft and a military aircraft”, Article 3 of the Convention provides that the Convention is applicable only to civil aircraft and shall not be applicable to state aircraft (including military aircraft). Hence, Annex 13 to the Convention is not applicable to accidents or serious incidents in relation to military aircraft. In the local context, given the

express provisions in the Regulations as amended that “these regulations apply only to civil aviation” (proposed regulation 3(1)), the inspectors’ powers and duties under the Regulations are confined to the extent that concerns the civil aircraft. In a case where the accident or incident involves both a civil aircraft and a military aircraft, the investigation under the Regulations could be carried out with respect to the civil aircraft only.

Yours sincerely,



(Miss Cheng Sze-ling)

for Secretary for Transport and Housing

c.c.:

Hon Jeremy Tam (Chairman of Subcommittee on Hong Kong Civil Aviation (Investigation of Accidents) (Amendment) Regulation 2017 and Air Navigation (Hong Kong) Order 1995 (Amendment) Order 2017)

Civil Aviation Department (Attn.: Mr Alan Shum, Assistant Director-General of Civil Aviation (Air Services and Safety Management))