

LEGISLATIVE COUNCIL BRIEF

Hong Kong Civil Aviation
(Investigation of Accidents) Regulations
(Chapter 448 sub. leg. B)

Air Navigation (Hong Kong) Order 1995
(Chapter 448 sub. leg. C)

Hong Kong Civil Aviation (Investigation of Accidents) (Amendment) Regulation 2017

Air Navigation (Hong Kong) Order 1995 (Amendment) Order 2017

INTRODUCTION

A At the meeting of the Executive Council on 6 June 2017, the Council **ADVISED** and the Chief Executive **ORDERED** that the Hong Kong Civil Aviation (Investigation of Accidents) (Amendment) Regulation 2017 (the Amendment Regulation) at **Annex A** should be made to implement the latest relevant requirements of the International Civil Aviation Organisation (ICAO) on civil aviation accident investigation; and that the Air Navigation (Hong Kong) Order 1995 (Amendment) Order 2017 (the Amendment Order) at **Annex B** should be made consequentially.

JUSTIFICATIONS

Existing practice of civil aviation accident investigation

2. According to the long standing requirements of ICAO and international practices, the objective of civil aviation accident investigation is to identify the causes of accidents or serious incidents

involving civil aircraft, so as to facilitate lesson learning and improvement of mechanism to prevent similar event from happening again. The purpose of investigation is not to apportion blame or liability. This is to encourage the parties involved to be forthcoming in providing information to the accident investigation authorities such that the authorities may identify the underlying causes of the accidents or serious incidents concerned.

3. In Hong Kong, civil aviation accident investigation is conducted in accordance with the Hong Kong Civil Aviation (Investigation of Accidents) Regulations (Chapter 448 sub. leg. B) (Regulations) with reference to ICAO's requirements in this respect. ICAO stipulates its Standards and Recommended Practices on the manner of civil aviation accident investigation in "Annex 13 to the Convention on International Civil Aviation – Aircraft Accident and Incident Investigation" (Annex 13). According to Annex 13, an ICAO Contracting State is obliged to conduct investigation into civil aviation accidents or serious incidents which occur in its territory. It is also entitled to participate in the investigation of accidents or serious incidents which occur outside its territory but involve aircraft under its registry. A State may also participate in the investigation of aircraft accidents or serious incidents where fatalities or serious injuries to its citizens are involved. Hong Kong, being part of China which is one of the 191 Contracting States of ICAO, has an obligation to secure the highest practicable degree of uniformity with the Standards set by ICAO on the investigation of civil aviation accidents.

4. Under the Regulations, the Chief Executive (CE) is the authority for appointing the Chief Inspector (CI), who is responsible for the investigation of civil aviation accidents and serious incidents which occur in Hong Kong or which involve Hong Kong-registered aircraft outside Hong Kong. Over the years, the Director-General of Civil Aviation (DGCA) is appointed by the CE as CI. Under the current arrangement, for each investigation of accident or serious incident, CI will assign a dedicated team for the investigation work. Typically, each investigation team comprises a number of qualified Inspectors temporarily deployed from different divisions in the Civil Aviation Department (CAD), among whom one will be the Inspector-in-charge¹. Usually, the Inspectors would work on the investigations on a part-time basis. The investigation team will also invite, as necessary the State of

¹ Depending on the seriousness and the level of complexity of the incident, the Inspector-in-charge will usually be a CAD staff whose rank is Senior Operations Officer or above, possessing the qualification required for accident investigation.

Registry, the State of Design, the State of Manufacture, the State of the Operator, the airline and the aircraft manufacturer, etc. to participate in the investigation. Moreover, CAD has established an Accident Investigation Office, comprising two permanent posts (i.e. one Senior Operations Officer and one Operations Officer) whose full-time duties are to co-ordinate all the administrative and logistics support work of investigations.

5. An investigation team conducts investigation in accordance with the Regulations. For instance, the Inspector-in-charge/Inspector may summon any person to examine and take statements as he/she thinks fit, require any aircraft involved to be preserved unaltered pending investigation, and is accountable to and reports directly to the CI. According to the Regulations, the DGCA (currently also the CI) will submit report to the CE upon completion of an investigation. Generally speaking, the CE will ask the Inspector concerned to publish the investigation report on the CAD website (Web link: <http://www.cad.gov.hk/english/reports.html>).

Need for an Independent Air Accident Investigation Authority

6. From time to time, ICAO would introduce new requirements on the manner of civil aviation accident investigation through amending Annex 13. One of the major amendments to Annex 13 adopted by the Council of ICAO in February 2016 requires the Contracting States to establish an independent air accident investigation authority, i.e. an investigation authority which should be independent from the state aviation authorities and other entities that could interfere with the conduct or objectivity of an investigation. The new Standard has become applicable since November 2016. ICAO recommended Contracting States to implement this new Standard within two years (i.e. by the end of October 2018).

7. Despite the fact that CAD has all along closely complied with the Standards and Recommended Practices of Annex 13 in its past accident investigation work, there might be occasions where an investigation may need to look into the regulatory functions and services provided by CAD. These could include, for example, CAD's safety oversight on airlines and airworthiness of aircraft, and the provision of air traffic control service by CAD. Under the existing arrangement whereby the DGCA is also the CI, the impartiality of investigations may be perceived to be compromised, and to this extent the continuation of the present arrangement could not meet the latest requirement of ICAO. Although CAD has in place an internal mechanism to deal with real or perceived conflict of interests², the existing arrangement still cannot fully comply with the objective or spirit of the amended Annex 13.

Organisational Structure and Functions of the Independent Air Accident Investigation Authority

8. In order to comply with the new Standard of ICAO as mentioned in paragraph 6, we will establish an independent air accident investigation authority (independent investigation authority) under the Transport and Housing Bureau (THB), which will be fully segregated from CAD's organisational structure. The new authority will be responsible for conducting investigation into all accidents and serious incidents related to civil aircraft that happen within the Hong Kong territory, and also those involving Hong Kong-registered civil aircraft which happen outside Hong Kong. The new authority will also perform safety management and accident prevention initiatives. The new authority will be led by a full-time CI³ who will no longer be DGCA or other serving officers of CAD. The CI will spearhead accident investigation with the support of seven non-directorate staff (civil service posts), including two to be deployed from CAD⁴, and five new posts to be created. The CI will be appointed by the CE under the Regulations, and be directly accountable to the Secretary for Transport and Housing (STH). This arrangement is to ensure the neutrality of the investigation authority vis-à-vis CAD, and the impartiality and credibility of investigation

² CI (who currently is also the DGCA) is liable to transfer out those Inspectors who may have conflicting roles or conflict of interests from the investigation posts to ensure the impartiality of the investigation.

³ The CI will be a new non-civil service position equivalent to the rank of D2.

⁴ The two staff members will be deployed from the existing Accident Investigation Office of CAD dedicated for the administrative and logistics support work of investigations to ensure smooth transition of the on-going investigations from CAD and prepare for the prompt establishment of the new authority.

findings. The CI position will last for about three years with immediate effect upon approval of the Finance Committee up to 31 March 2020. The set-up, including staffing provision, will be reviewed before expiry of the three-year period in the light of actual experience.

Experience of Overseas Independent Investigation Authorities

9. At present, many countries (including the United States of America (USA), United Kingdom, France, etc.) have established their own air accident investigation authorities which are independent from the civil aviation authorities. Generally speaking, most of the investigation authorities fall under the purview of ministry/department in charge of transport management, or form part of the government. Some examples are as follows:

- USA: the National Transport Safety Board is an independent government agency and accountable to the President and Congress on accident investigations;
- United Kingdom: the Air Accident Investigation Branch is a unit under the Department of Transport. Except for staff establishment and finance which are supervised by the Department of Transport, it enjoys independent investigative powers; and
- France: Le Bureau d'Enquetes et d'Analyses pour la Securite de l'Aviation civile (BEA – France) is an independent unit under the Ministry of Transport. It is directly financed by the Parliament.

10. The aviation system of Hong Kong is vastly different from that of the above countries. For instance, there is no domestic flight in Hong Kong while domestic flight is the dominating market segment in the USA; the USA and France are two major aircraft manufacturers and have more frequent involvement in accident investigations, etc. The organisational structure and scope of work of the independent investigation authority draw reference to overseas experiences, while taking local circumstances and operational needs into account. The ultimate goal is to establish an effective independent investigation authority as per international standards, with a view to reinforcing the status and reputation of Hong Kong as an international aviation hub.

11. In order to give legal backing to the independent investigation authority and provide the new CI with statutory powers to execute his/her duties, corresponding amendments to the Regulations need to be made. We propose the addition of provision(s) in the Regulations to make clear

that the authority will fall under the purview of THB and will be headed by a CI directly accountable to the STH. In addition, to ensure independence in investigation, we propose to transfer to the CI all existing functions and powers⁵ related to accident investigation conferred on the DGCA under the existing Regulations. The powers conferred on the CE by the existing Regulations, including the appointment of the CI and Inspectors, will remain basically unchanged.

12. Concerning the scope of investigation, the current practice is for the CI to conduct investigations into accidents and serious incidents involving civil aircraft. We propose to suitably amend or introduce the definitions of “accident” and “serious incident” with reference to Annex 13 in the Regulations. Besides, we recommend that the CI may investigate any incident of civil aircraft if the CI expects that air safety lessons can be drawn from the investigation, which aligns with the spirit of Annex 13 and basically reflects the actual practice over the years.

13. There are other new Standards promulgated in Annex 13, such as the entitlements and obligations of representatives from foreign countries participating in local air accident investigation, enhancing protection of investigation record and evidence etc. Whilst these new Standards should also be incorporated in our legislation, as necessary, ICAO has not stipulated a definite deadline. Since the establishment of an independent investigation authority is time critical, we propose that, for the current legislative amendment exercise, we adopt a focused approach with the primary objective of establishing the new authority and making only consequential legislative amendments which are essential. We will separately conduct a comprehensive review of the Regulation vis-a-vis the latest ICAO Standards, with a view to proceeding with any necessary legislative amendments in the 2018-19 legislative session. In the meantime, these new Standards of Annex 13 will be implemented through administrative guidelines and published for public information.

14. ICAO requires Contracting States to take necessary measures to achieve compliance with Annex 13. To empower the CI to execute his/her duties effectively, the making of the Amendment Regulation is the only option.

⁵ For example, the DGCA is empowered by the Regulations to allow an authorised person to access or remove the aircraft concerned or its contents, while the CI is enabled by the Regulations to require the owner, operator, commander or hirer of the aircraft to send such information as is in the person’s possession or control with respect to the accident to the CI.

THE AMENDMENT REGULATION AND AMENDMENT ORDER

15. The main provisions of the Amendment Regulation are set out below –

- (a) section 1 provides that the Amendment Regulation comes into operation on a day to be appointed by the STH by notice published in the Gazette;
- (b) section 3 amends or introduces definitions relevant to civil aviation accident investigation (including definitions of “accident” and “serious incident”) with reference to Annex 13;
- (c) section 9 provides that the CI who is directly accountable to the STH, together with the Inspectors, is the accident investigation authority in Hong Kong which is under the purview of THB;
- (d) section 24 provides that the newly appointed CI has the functions and powers under the existing Regulations as amended by the Amendment Regulation in relation to, among others, the investigation of an accident (as defined under the existing Regulations) that occurred before the commencement date of the Amendment Regulation;
- (e) various sections provide that the existing functions and powers related to civil aviation accident investigation conferred on the DGCA be transferred to the CI. The key functions and powers include the following –
 - (i) to authorise access to the aircraft involved in investigation;
 - (ii) to appoint any person (such as external expert) to assist the Inspector in investigation;
 - (iii) to receive investigation report from Inspectors;
 - (iv) to receive notice for the purpose of reviewing investigation report in the case that any person whose

reputation is likely to be adversely affected by the report or to represent the best interest of the deceased in the matter, and to inform the CE that a notice of review has been served for appointing a board of review to review the investigation report;

(v) to extend the period of making representation in regard to the investigation report;

(vi) to authorise inspector appointed by overseas competent authority to conduct investigation in Hong Kong where aircraft registered outside Hong Kong is involved; and

(vii) to allow expenses, with the concurrence of the STH, for witness summoned by an Inspector or a board of review.

16. The Amendment Order contains four consequential amendments arising from the amendment made to the definition of “accident” in the Regulations.

LEGISLATIVE TIMETABLE

17. The Amendment Regulation and Amendment Order will be gazetted on 9 June 2017 and tabled in the Legislative Council (LegCo) on 14 June 2017. The target commencement date of the Amendment Regulation and Amendment Order is a day to be appointed by the STH by notice published in the Gazette.

IMPLICATIONS OF THE PROPOSAL

18. The civil service implications for the initial setup of the independent air accident investigation authority are set out in paragraph 8 above. We will review its long-term setup and manpower requirements in the light of operational experience.

19. Subject to the approval by the Finance Committee, the total remuneration package for the proposed non-civil service CI position will not exceed the full annual average staff cost for a civil service post ranked at D2 level. Together with the five additional non-directorate posts mentioned in paragraph 8 above, the full annual average staff cost,

including salaries and staff on-cost, is about \$9,628,000.

20. The proposal has no economic, productivity, sustainability, environmental, family and gender implications.

21. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It does not affect the binding effect of the existing legislation.

PUBLIC CONSULTATION

22. CAD has consulted stakeholders (e.g. airlines, helicopter operators, general aviation/business aviation operators, aircrew associations, etc.) and the Aviation Development and Three-runway System Advisory Committee on the proposal of setting up the independent air accident investigation authority and related legislative amendments in March/April 2017. The stakeholders and the Committee generally supported the proposed set-up and legislative amendments. On 27 March 2017, we consulted the LegCo Panel on Economic Development. The Panel generally supported the relevant proposal, with comments on the manpower provision and mode of operation of the independent investigation authority. Specifically, some Panel members questioned whether the independent investigation authority warranted having seven full-time staff under the CI, and whether an ad hoc set-up (i.e. one to be convened as and when required) could also serve the purpose. These issues will be addressed in the context of the LegCo Establishment Subcommittee of Finance Committee⁶.

PUBLICITY

23. A press release will be issued on 7 June 2017. A spokesperson will be available to handle enquiries.

⁶ We have explained in the paper to be discussed at the Establishment Subcommittee that the independent investigation authority has to ensure its readiness for investigation and fulfilment of requirements of the Regulations at all times, similar to other emergency services, as and when an accident or serious incident occurs. Thus, a permanent set-up is essential. Besides, it is expected that the authority will be fully engaged in handling the outstanding investigations to be passed on from CAD for follow-up, while handling other key tasks e.g. the on-going review of the Regulations to comply with the latest standards in Annex 13. The set-up, including the staffing provision, will be reviewed before the expiry of the three-year period on 31 March 2020 in the light of actual experience.

BACKGROUND

24. ICAO is a specialised agency of the United Nations established in 1944 by virtue of the Convention on International Civil Aviation. At present, it has 191 Contracting States and China is one of them. China assumes responsibility for the international rights and obligations arising from the application of the above Convention and the relevant requirements also apply to Hong Kong. ICAO's 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.

25. To ensure aviation safety, ICAO promulgates Standards and Recommended Practices on the manner of investigation of civil aircraft accidents and serious incidents in Annex 13, which has been updated and published by ICAO from time to time. The relevant requirements made under Annex 13 are given legal effect in Hong Kong through the Regulations which stipulate the procedures of civil aviation accident investigation and duties and powers of relevant parties in investigation in Hong Kong as and when required.

26. Subject to the progress of legislative amendment exercise and the time needed for the recruitment work upon the Finance Committee's approval of funding for creation of the non-civil service CI position, we plan to officially establish the independent investigation authority and appoint the CI in 2017 at the earliest.

ENQUIRIES

27. Any enquiry on this brief should be directed to Miss Cheng Sze Ling, Acting Principal Assistant Secretary (Transport) (telephone number: 3509 8241).

Transport and Housing Bureau
7 June 2017

Hong Kong Civil Aviation (Investigation of Accidents) (Amendment) Regulation 2017

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Hong Kong Civil Aviation (Investigation of Accidents) (Amendment) Regulation 2017

(Made by the Chief Executive in Council under section 13 of the Civil Aviation Ordinance (Cap. 448))

1. Commencement

This Regulation comes into operation on a day to be appointed by the Secretary for Transport and Housing by notice published in the Gazette.

2. Hong Kong Civil Aviation (Investigation of Accidents) Regulations amended

The Hong Kong Civil Aviation (Investigation of Accidents) Regulations (Cap. 448 sub. leg. B) are amended as set out in sections 3 to 24.

3. Regulation 2 amended (interpretation)

(1) Regulation 2(1)—

Repeal the definition of *accident*

Substitute

“*accident* (意外)—see regulation 2A;”.

(2) Regulation 2(1)—

Repeal the definition of *Chief Inspector*

Substitute

“*Chief Inspector* (總調查主任) means the Chief Inspector appointed under regulation 8;”.

(3) Regulation 2(1)—

Repeal the definition of *incident*

Substitute

“*incident* (事故) means an occurrence, other than an accident, associated with the operation of an aircraft that affects or could affect the safety of the operation;”.

- (4) Regulation 2(1), definition of *Inspector*—

Repeal

“of Accidents”.

- (5) Regulation 2(1), definition of *serious injury*—

Repeal

“a reportable”

Substitute

“an”.

- (6) Regulation 2(1), definition of *serious injury*, paragraph (a)—

Repeal

“his stay in hospital”

Substitute

“hospitalization”.

- (7) Regulation 2(1), definition of *serious injury*, paragraph (e)—

Repeal

“surface,”

Substitute

“surface; or”.

- (8) Regulation 2(1), definition of *serious injury*, after paragraph (e)—

Add

“(f) involves verified exposure to infectious substances or injurious radiation.”.

- (9) Regulation 2(1)—

- (a) definition of *commander*;
- (b) definition of *pilot in command*;
- (c) definition of *reportable accident*—

Repeal the definitions.

- (10) Regulation 2(1)—

Add in alphabetical order

“*accident investigation authority* (意外調查當局) means the authority designated by the government of a country, territory or place to be responsible for the investigation of aircraft accidents and incidents;

Inspector-in-charge (主事調查主任), in relation to an investigation, means—

- (a) if the Chief Inspector is in charge of carrying out the investigation himself or herself—the Chief Inspector; or
- (b) the Inspector directed under regulation 8(6) to be in charge of carrying out the investigation;

investigation (調查) means, except in regulation 20(1) and (1A), an investigation carried out under these regulations;

pilot in command (機長), in relation to an aircraft, means the pilot who is—

- (a) designated by the aircraft’s operator or owner, as appropriate, as being in charge of the aircraft without being under the direction of another pilot in the aircraft; and
- (b) charged with the safe conduct of a flight;

serious incident (嚴重事故) means an incident that—

- (a) is associated with the operation of an aircraft involving circumstances indicating that there was a high probability of an accident; and
- (b) takes place after the time any person boards the aircraft with the intention of flight and no later than the time all persons who boarded with that intention have disembarked;”.

(11) After regulation 2(1)—

Add

“(1A) In these regulations, in the context of an aircraft involved in an accident or incident, a reference to the owner, operator, hirer or pilot in command is a reference to the aircraft’s owner, operator, hirer or pilot in command at the time of the accident or incident.”.

4. Regulation 2A added

After regulation 2—

Add

“2A. Meaning of *accident*

- (1) An accident is an occurrence associated with the operation of an aircraft that takes place after the time any person boards the aircraft with the intention of flight and no later than the time all persons who boarded with that intention have disembarked, if applicable, in which—
 - (a) a person is fatally or seriously injured as described in paragraph (2);
 - (b) the aircraft sustains structural failure or damage as described in paragraph (3); or
 - (c) the aircraft is missing or is completely inaccessible.
- (2) For paragraph (1)(a)—

- (a) the death or injury must result from the person’s—
 - (i) being in the aircraft;
 - (ii) direct contact with any part of the aircraft, including parts that have become detached from the aircraft; or
 - (iii) direct exposure to jet blast;
 - (b) the death or injury must not be from a natural cause, self-inflicted or inflicted by another person; and
 - (c) the person must not be a stowaway hiding outside the areas normally available to the passengers and crew.
- (3) For paragraph (1)(b), the failure or damage must—
- (a) adversely affect the structural strength, performance or flight characteristics of the aircraft;
 - (b) be such as would normally require major repair or replacement of the affected component; and
 - (c) be none of the following—
 - (i) engine failure or damage that is limited to a single engine (including its cowlings or accessories);
 - (ii) damage that is limited to propellers, wing tips, antennas, probes, vanes, tires, brakes, wheels, fairings, panels, landing gear doors, windscreens or the aircraft skin (such as small dents or puncture holes);
 - (iii) minor damage to main rotor blades, tail rotor blades, landing gear, or resulting from hail or bird strike (including holes in the radome).”.

5. Regulations 3 and 4 substituted

Regulations 3 and 4—

Repeal the regulations**Substitute****“3. Application**

- (1) These regulations apply only to civil aviation.
- (2) These regulations apply to an accident or incident—
 - (a) that arises out of or in the course of air navigation; and
 - (b) that—
 - (i) occurs to a civil aircraft in or over Hong Kong; or
 - (ii) occurs elsewhere to a civil aircraft registered in Hong Kong.

4. Objective of investigation

- (1) The sole objective of the investigation of an accident or incident under these regulations is the prevention of accidents and incidents.
- (2) It is not the purpose of an investigation to apportion blame or liability.”.

6. Part II heading amended (accident investigation)

Part II, heading—

Repeal

“ACCIDENT INVESTIGATION”

Substitute

“INVESTIGATION OF ACCIDENTS AND INCIDENTS”.

7. Regulation 5 amended (duty to furnish information relating to accidents)

- (1) Regulation 5, heading—

Repeal

“Duty to furnish information relating to accidents”

Substitute

“Notice of accidents and incidents”.

- (2) Regulation 5—

Repeal paragraph (1)**Substitute**

- “(1) If an accident or a serious incident occurs, the pilot in command or (if the pilot in command is killed, missing or incapacitated) the operator must as soon as practicable—
- (a) give notice of the accident or serious incident to the Chief Inspector by the most suitable means of communication available; and
 - (b) for an accident or a serious incident occurring in or over Hong Kong—also notify the Commissioner of Police of the accident or serious incident, and of the place where it occurred.
- (1A) Without limiting paragraph (1), for an accident or a serious incident occurring on or adjacent to an aerodrome in or over Hong Kong, the aerodrome authority concerned must as soon as practicable—
- (a) give notice of the accident or serious incident to the Chief Inspector by the most suitable means of communication available; and

- (b) notify the Commissioner of Police of the accident or serious incident, and of the place where it occurred.”.
- (3) Regulation 5(2)—
Repeal
 “notice to the Chief Inspector referred to in paragraph (1) shall”
Substitute
 “notice to the Chief Inspector referred to in paragraphs (1) and (1A) must”.
- (4) Regulation 5(2)(a)—
Repeal
 “ACCID”
Substitute
 “(for an accident) ACCID or (for a serious incident) INCID”.
- (5) Regulation 5(2)(b)—
Repeal
 “type, model and the nationality and registration marks”
Substitute
 “manufacturer, model, nationality and registration marks, and serial number”.
- (6) Regulation 5(2)—
Repeal subparagraph (d)
Substitute
 “(d) the name and qualification of the pilot in command, and the nationalities of the crew and passengers;”.
- (7) Regulation 5(2)(e)—

- Repeal**
 “Co-ordinated Universal Time of the accident”
Substitute
 “time (local time or Coordinated Universal Time) of the accident or serious incident”.
- (8) Regulation 5(2)(h)(i) and (ii), after “time of the accident”—
Add
 “or serious incident.”.
- (9) Regulation 5(2)(i)—
Repeal
 “the nature of the accident”
Substitute
 “a description of the accident or serious incident”.
- (10) Regulation 5(2)(i)—
Repeal
 “known.”
Substitute
 “known;”.
- (11) After regulation 5(2)(i)—
Add
 “(j) physical characteristics of the accident or serious incident area, as well as an indication of any access difficulties or special requirements to reach the site; and
 (k) the presence and descriptions of any dangerous goods on board the aircraft at the time of the accident or serious incident.”.
- (12) Regulation 5—

Repeal paragraph (3)**Substitute**

- “(3) If an accident or incident occurs, a person specified in paragraph (4) must, if required by the Chief Inspector by notice in writing, send to the Chief Inspector, in the form and within the time specified in the notice, the information relating to the accident or incident that is in the person’s possession or control.
- (4) A person specified for paragraph (3) is the owner, operator, hirer or pilot in command.”.

8. Regulation 6 amended (information relating to accident)

- (1) Regulation 6, heading—

Repeal

“accident”

Substitute

“accidents and incidents”.

- (2) Regulation 6—

Repeal

“whether or not such an accident is the subject of an investigation by an Inspector,”

Substitute

“or incident, whether or not the accident or incident is the subject”.

9. Regulations 7 and 8 substituted

Regulations 7 and 8—

Repeal the regulations**Substitute****“7. Access to and removal of damaged aircraft**

- (1) Subject to regulation 9, if an accident or a serious incident occurs in or over Hong Kong—
- no person other than an authorized person may have access to the aircraft involved in the accident or serious incident; and
 - neither the aircraft nor its contents may, except under the authority of the Chief Inspector, be removed or otherwise interfered with.
- (2) However, the aircraft may be removed or interfered with as far as necessary for—
- extricating persons or animals;
 - removing any mail, valuables or dangerous goods carried by the aircraft;
 - preventing destruction by fire or other cause;
 - preventing any danger or obstruction to the public, or to air navigation or other transport; or
 - removing other property from the aircraft under the supervision of an Inspector, or with the agreement of an Inspector or a police officer.
- (3) Moreover, if an aircraft is wrecked on the water, the aircraft or any of its contents may be removed as far as necessary for bringing it or them to a place of safety.
- (4) In this regulation—
- authorized person** (獲授權人士) means a person authorized by the Chief Inspector either generally or specifically to have access to any aircraft involved in an accident or a serious incident, and includes—
- any police officer; and
 - any officer of the Customs and Excise Service.

8. Inspectors

- (1) For the purpose of carrying out investigation into the circumstances and causes of aircraft accidents and incidents, the Chief Executive may from time to time appoint—
 - (a) a suitably qualified person to be Chief Inspector; and
 - (b) the number of other suitably qualified persons that the Chief Executive considers necessary to be Inspectors.
- (2) The Chief Inspector, together with the Inspectors, is the accident investigation authority in Hong Kong under the Transport and Housing Bureau.
- (3) The Chief Inspector is directly accountable to the Secretary for Transport and Housing.
- (4) The Chief Inspector is to ensure that an investigation into an accident or a serious incident is carried out.
- (5) The Chief Inspector may decide that an investigation is to be carried out into an incident that is not a serious incident if the Chief Inspector expects that air safety lessons can be drawn from the investigation.
- (6) The Chief Inspector may be in charge of carrying out an investigation himself or herself, or direct an Inspector to be in charge of carrying out an investigation.
- (7) Without limiting the power of an Inspector to seek the advice or assistance the Inspector considers necessary in carrying out an investigation, the Chief Inspector may appoint persons to assist in a particular investigation.
- (8) The persons appointed under paragraph (7) have the powers of an Inspector under these regulations as specified in their appointment.”.

10. Regulation 9 amended (powers of Inspectors)

- (1) Regulation 9—

Repeal
“accident to which these regulations apply”

Substitute
“accident or incident”.
- (2) Regulation 9(c)—

Repeal
“and the place where the accident”

Substitute
“or incident and the place where the accident or incident”.
- (3) Regulation 9(d)(i), after “accident”—

Add
“or incident”.

11. Regulation 10 amended (Inspector’s investigation and report)

- (1) Regulation 10, heading—

Repeal
“Inspector’s investigation and report”

Substitute
“Investigation”.
- (2) Regulation 10(1)—

Repeal
“by an Inspector (hereinafter called an “Inspector’s investigation”)”.
- (3) Regulation 10(1), after “accident”—

Add

“or incident”.

- (4) Regulation 10(2)—

Repeal

“Inspector’s”.

- (5) Regulation 10(3)—

Repeal

“Inspector”

Substitute

“Inspector-in-charge”.

- (6) Regulation 10(4)—

Repeal

“Inspector”

Substitute

“Inspector-in-charge”.

- (7) Regulation 10(4)—

Repeal

“Director”

Substitute

“Chief Inspector”.

- (8) Regulation 10—

Repeal paragraphs (5) and (6)

Substitute

“(5) The Chief Inspector may decide that an investigation being carried out into any accident or incident be discontinued.

- (6) If an investigation is discontinued, the Chief Inspector must give public notice, in the way the Chief Inspector considers appropriate, of the discontinuation.”.

- (9) Regulation 10—

Repeal paragraph (7).

12. Regulation 10A added

After regulation 10—

Add

“10A. Investigation report

- (1) Subject to regulation 11, on completion of an investigation, the Inspector-in-charge must make an investigation report to be submitted by the Chief Inspector to the Chief Executive.
- (2) The report must contain—
 - (a) the facts relating to the accident or incident concerned;
 - (b) an analysis of the facts;
 - (c) the conclusions as to the causes of, and any contributing factors to, the accident or incident; and
 - (d) any recommendations the Inspector-in-charge considers appropriate for the preservation of life and the prevention of accidents or incidents.
- (3) If an investigation is discontinued under regulation 10(5), no report is required to be made under this regulation.”.

13. Regulation 11 amended (notice of Inspector's report and representations thereon)

- (1) Regulation 11, heading—

Repeal**“Inspector's report and representations thereon”****Substitute****“report and representations”.**

- (2) Regulation 11—

Repeal paragraph (1)**Substitute****“(1) The Inspector-in-charge must, before making an investigation report under regulation 10A—**

- (a) if it is practicable to do so and subject to paragraph (1A), serve a notice on—**
 - (i) the operator and pilot in command; and**
 - (ii) any person whose reputation is, in the Inspector-in-charge's opinion, likely to be adversely affected by the report; and**
- (b) consider any representations made in accordance with paragraph (3) by or on behalf of the persons served with the notice.**

(1A) If any of the persons referred to in paragraph (1)(a) is deceased, the notice must be served on the persons that the Inspector-in-charge considers at the time to best represent the interest of the deceased in the matter.”.

- (3) Regulation 11—

Repeal paragraph (2)**Substitute****“(2) The notice must—**

- (a) include particulars of any proposed analysis of facts that may affect the person on whom, or in respect of whom, the notice is served; and**
- (b) include any conclusions as to the causes of the accident or incident that may affect that person.”.**

- (4) Regulation 11(3)—

Repeal

everything before “or within”

Substitute**“(3) A representation must be in writing and be served on the Inspector-in-charge within 28 days of service of the notice”.**

- (5) Regulation 11(4)—

Repeal**“report made to the Director under regulation 10(6) shall be served by the Chief Inspector”****Substitute****“investigation report under regulation 10A must be served by the Inspector-in-charge”.**

- (6) Regulation 11(4)—

Repeal**“pursuant to paragraph (1)”****Substitute****“under paragraph (1) or (1A)”.****14. Regulation 12 amended (notice of review)**

- (1) Regulation 12(1), after “11(1)—”

Add

“or (1A)”.

- (2) Regulation 12(1)—

Repeal

“Director”

Substitute

“Chief Inspector”.

- (3) Regulation 12(3)—

Repeal

“Director”

Substitute

“Chief Inspector”.

- (4) Regulation 12(4)—

Repeal

“Inspector” (wherever appearing)

Substitute

“Inspector-in-charge”.

- (5) Regulation 12(4), after “11(1)”—

Add

“or (1A)”.

15. Regulation 13 amended (appointment of board of review)

- (1) Regulation 13(1)—

Repeal

“Director”

Substitute

“Chief Inspector”.

- (2) Regulation 13(1)(a), English text—

Repeal

“with”

Substitute

“within”.

- (3) Regulation 13(3)—

Repeal

“the Inspector has served a notice under regulation 11(1),”

Substitute

“a notice has been served under regulation 11(1) or (1A)”.

- (4) Regulation 13(4), proviso—

Repeal

“Inspector who made the report”

Substitute

“Inspector-in-charge”.

16. Regulation 14 amended (proceedings of board of review)

- (1) Regulation 14(1)—

Repeal

“Inspector who made the report”

Substitute

“Inspector-in-charge”.

- (2) Regulation 14(5)(a)—

Repeal

“Inspector’s”.

- (3) Regulation 14(5)(b), English text—

Repeal

“are”

Substitute

“is”.

- (4) Regulation 14(5)(b)—

Repeal

“Inspector’s”

Substitute

“investigation”.

- (5) Regulation 14(5)(c)—

Repeal

“(8)”

Substitute

“(9)”.

- (6) Regulation 14(6)—

Repeal

“Director”

Substitute

“Chief Inspector”.

- (7) Regulation 14(9)—

Repeal

“Inspector”

Substitute

“Inspector-in-charge”.

17. Regulation 15 amended (publication of reports)

- (1) Regulation 15—

Repeal

“Inspector’s” (wherever appearing)

Substitute

“investigation”.

- (2) Regulation 15, proviso, paragraph (a), after “11(1)”—

Add

“or (1A)”.

18. Regulation 16 amended (reopening of investigation or review)

Regulation 16(1) and (3)—

Repeal

“Inspector’s”.

19. Regulation 17 amended (holding of public inquiries)

- (1) Regulation 17—

Repeal paragraph (1)

Substitute

“(1) If it appears to the Chief Executive that it is in the public interest to hold a public inquiry into the circumstances and causes of an accident or incident, or into any particular matter relating to the prevention of accidents or incidents, the Chief Executive may appoint a commission of inquiry for the purpose.

- (1A) If a commission is appointed under paragraph (1), any investigation into the accident or incident, or into the particular matter, must be discontinued except for rendering assistance required under paragraph (3).”.

- (2) Regulation 17(4)—

Repeal

“commander of any aircraft involved in the accident”

Substitute

“pilot in command”.

- (3) Regulation 17(5), English text—

Repeal

“commander”

Substitute

“pilot in command”.

- (4) Regulation 17(12), before “Inspector”—

Add

“Chief Inspector or an”.

- (5) Regulation 17(12)—

Repeal

“(1)”

Substitute

“(1A)”.

- (6) Regulation 17(12)—

Repeal

“Inspector’s investigation into an accident”

Substitute

“investigation into the accident or incident”.

20. Regulation 18 amended (proceedings of public inquiries)

- (1) Regulation 18(5), after “accident” (wherever appearing)—

Add

“or incident”.

- (2) Regulation 18(5)—

Repeal

“avoidance of accidents in the future”

Substitute

“prevention of accidents or incidents”.

21. Regulation 20 amended (accidents to aircraft registered outside Hong Kong)

- (1) Regulation 20, heading, after “**Accidents**”—

Add

“**or incidents**”.

- (2) Regulation 20—

Repeal paragraph (1)**Substitute**

“(1) If an accident or incident has occurred in or over Hong Kong to an aircraft registered in any country, territory or place other than Hong Kong, the Chief Inspector may authorize a person appointed by the accident investigation authority of that country, territory or place to carry out an investigation in Hong Kong.

- (1A) The Chief Inspector must as far as possible facilitate an investigation by the person authorized under paragraph (1).”.

- (3) Regulation 20(2)—

Repeal

“Inspector’s”.

- (4) Regulation 20(2), after “accident” (wherever appearing)—

Add

“or incident”.

22. Regulation 21 amended (extension of time)

- (1) Regulation 21—
Repeal
 “Inspector”
Substitute
 “Inspector-in-charge”.
- (2) Regulation 21—
Repeal
 “Director”
Substitute
 “Chief Inspector”.

23. Regulation 22 amended (obstruction of investigation)

- (1) Regulation 22(1), before “an Inspector”—
Add
 “the Chief Inspector or”.
- (2) Regulation 22(2)—
Repeal
 “Inspector’s”.

24. Part VI added

After Part V—
Add

“Part VI

**Transitional Provision—Hong Kong Civil
 Aviation (Investigation of Accidents)
 (Amendment) Regulation 2017**

24. Incomplete procedures

- (1) In this regulation—
amended regulations (《經修訂的規例》) means these regulations as amended by the amending Regulation;
amending Regulation (《修訂規例》) means the Hong Kong Civil Aviation (Investigation of Accidents) (Amendment) Regulation 2017;
commencement date (生效日期) means the commencement date of the amending Regulation;
existing procedure (既有程序) means any investigation, review, inquiry, proceeding or other procedure—
- (a) that relates to an accident as defined in the pre-amended regulations that occurred before the commencement date; and
- (b) that, immediately before the commencement date, has not commenced or is not completed;
- pre-amended regulations* (《修訂前的規例》) means these regulations as in force immediately before the commencement date.
- (2) In relation to an existing procedure, despite section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), on and after the commencement date—
- (a) the amended regulations apply;

- (b) the Director ceases to have the functions or powers under the pre-amended regulations;
- (c) the Chief Inspector has the functions and powers under the amended regulations;
- (d) anything done before the commencement date under the pre-amended regulations is regarded as having been done under the amended regulations; and
- (e) anything that is in the process of being done immediately before the commencement date under the pre-amended regulations may continue to be done under the amended regulations.”.

Clerk to the Executive Council

COUNCIL CHAMBER

2017

Explanatory Note

This Regulation amends the Hong Kong Civil Aviation (Investigation of Accidents) Regulations (Cap. 448 sub. leg. B) (*principal Regulations*) to implement certain requirements on aircraft accident and incident investigation in Annex 13 to the Convention on International Civil Aviation (*Annex 13*).

2. The main amendments include—
 - (a) transferring the functions and powers of the Director-General of Civil Aviation to the Chief Inspector;
 - (b) providing that the Chief Inspector, together with the Inspectors, is the accident investigation authority in Hong Kong;
 - (c) providing that the Chief Inspector is directly accountable to the Secretary for Transport and Housing;
 - (d) introducing the definitions of *accident*, *serious incident* and *incident* to align with those in Annex 13; and
 - (e) extending the provisions in the principal Regulations on investigations and other procedures to apply to accidents, serious incidents or incidents.
3. The Regulation also makes certain textual amendments.

Air Navigation (Hong Kong) Order 1995 (Amendment) Order 2017

(Made by the Chief Executive in Council under section 2A of the Civil
Aviation Ordinance (Cap. 448))

1. Commencement

This Order comes into operation on a day to be appointed by the Secretary for Transport and Housing by notice published in the Gazette.

2. Air Navigation (Hong Kong) Order 1995 amended

The Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C) is amended as set out in sections 3 and 4.

3. Article 37 amended (use of flight recording systems and preservation of records)

(1) Article 37(7)—

Repeal

“as defined in regulation 2(1)”

Substitute

“, or a serious incident, within the meaning”.

(2) Article 37(8), after “accident”—

Add

“or serious incident”.

(3) Article 37(9), after “accident”—

Add

“, or a serious incident,”.

4. Article 86 amended (mandatory reporting)

Article 86(2), proviso, after “accident”—

Add

“, or a serious incident,”.

Clerk to the Executive Council

COUNCIL CHAMBER

2017

Explanatory Note

This Order amends the Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C) to revise certain cross-references relating to the Hong Kong Civil Aviation (Investigation of Accidents) Regulations (Cap. 448 sub. leg. B) as a result of the amendments made to those Regulations by the Hong Kong Civil Aviation (Investigation of Accidents) (Amendment) Regulation 2017.