

L.N. 115 of 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

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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—

(a) no person other than an authorized person may have access to the aircraft involved in the accident or serious incident; and

(b) 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—
- (a) extricating persons or animals;
  - (b) removing any mail, valuables or dangerous goods carried by the aircraft;
  - (c) preventing destruction by fire or other cause;
  - (d) preventing any danger or obstruction to the public, or to air navigation or other transport; or
  - (e) 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—
- (a) any police officer; and
  - (b) 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”)”.

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- (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)”.

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**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

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- (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.”.

Kinnie WONG  
Clerk to the Executive Council

COUNCIL CHAMBER

6 June 2017

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## 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.