



Hong Kong Airline Pilots Association

香港民航機師總會

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Mr. Chan Fan, Frank JP
Secretary for Transport and Housing
20/F - 22/F, East Wing,
Central Government Offices,
2 Tim Mei Avenue,
Tamar, Hong Kong

By email & post

Dear Sir.

RESTRUCTURING OF HONG KONG'S AIR ACCIDENT INVESTIGATION AUTHORITY

1. In 2016 we wrote to your department seeking the Hong Kong Government's intentions with regards to the setting up of an independent Air Accident Investigation Authority in accordance with ICAO Doc 9962, "Manual of Accident and Incident Investigation" and ICAO Annex 13/Section 3.2 which states that:

"A State shall establish an accident investigation authority that is independent from State aviation authorities and other entities that could interfere with the conduct of objectivity of an investigation"

We were delighted and fully supported the Government's decision to set up the Air Accident Investigation Authority (AAIA) and have been following its performance closely.

2. The AAIA has been doing excellent work and is gaining an increased reputation internationally by running ICAO working groups and engaging in international policy. The re-assessment of previous Hong Kong accident reports has highlighted the difficulty the HKCAD had in assessing the Human Performance and Regulatory Oversight aspects of accidents and incidents. It is unfortunate that the AAIA has been denied access to the CAD's Mandatory Occurrence Report (MOR) database. As an integral part of a State's Safety Management System, it is unprecedented in an ICAO-compliant State for this information to be withheld from its accident investigation authority. The process of setting up a truly independent air accident investigation authority in HK is still incomplete and it is generally accepted that the process will take up to 3 years.
3. We have received a copy of a paper to be put forward to LegCo's Panel on Economic Development - "*Permanent set-up and staffing proposals of the Air Accident Investigation Authority*". It was concerning to discover that the THB had



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failed to secure funding for the AAIA beyond 31 March 2020 and that a flawed reorganisation plan had been constructed for LegCo's consideration.

4. What particularly concerns us is paragraph 19, "Transitional Arrangements" which, in our opinion, will lead to Hong Kong being assessed as an ICAO non-compliant State because, under the proposal, the air accident investigation authority will lack independence and the leadership will have conflicts of interest. The independence of a State's accident investigation authority is an ICAO requirement mandated for States/Regions for completion by November 2018 and is satisfied by the present Hong Kong AAIA. However, if a State becomes non-compliant, a difference is to be filed with ICAO. As the requirement is mandated, any audit of the Hong Kong AAIA would have a Level One (1) finding which would lead to its compliance downgrading by ICAO. Hong Kong presently has a fully operational AAIA (albeit with some constraints) led by an eminently qualified CASI. Of course, the THB has every right to replace the present CASI by another suitably qualified individual but, as the paper admits, this process will be time-consuming.
5. The THB's change management process at this crucial juncture of Hong Kong's aviation history seems contradictory in intent. The THB is advocating the continuation of the AAIA; however, the mitigating strategy of recruiting a CAD officer to stand in for a two-year duration until a replacement CASI and Deputy CASI is recruited is in direct contravention to the requirements of ICAO. For the benefit of continuity of the change management process, it would be logical to keep the current incumbent CASI in situ during the recruitment process for a replacement, and LegCo could approve the funding to retain the present position, enabling the AAIA to continue to investigate according to CAP448B and ICAO Standards. The temporary substitution of the CARI with a CAD posted Senior Inspector does not comply with the requirements of the Chief Inspector (CI) in accordance with CAP448B or with the independence requirements of ICAO.
6. The consultation document stipulates that to avoid perceived conflicts of interest or implications of impartiality, the supernumerary Assistant Director General of Civil Aviation (ADGCA) post holder "*will not be given the option to revert to the CAD...*". The ADGCA is presently a CAD employee; that is the conflict of interest. The THB's contention that the non-reverting to the CAD mitigates the conflict of interest omits the consideration that, as a previous senior officer of the HK CAD, the ADGCA appointed to be the interim CASI will demonstrably have conflicts of interest, particularly in regard to the re-opening of past investigations. The conflict of interest is not perceptual, it is actual. The paper tacitly states that an appointee from the CAD will not fulfil the proper requirements of a CASI and the statement that his or her independence is guaranteed by the non-employment of that individual by the CAD subsequent to their time as CASI firstly, does not acknowledge the conflict of interest caused by a CAD officer taking over the AAIA and, secondly, will be difficult to write



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into an existing Civil Service contract; it would appear to be a voluntary arrangement only. Both of these failings would be apparent during an ICAO Audit.

7. Should a present employee of the HKCAD be appointed as an interim CASI, then filing a non-compliance difference with ICAO is mandatory. Alternatively, ICAO may be called upon to audit Hong Kong's compliance with ICAO requirements for an independent accident investigation authority and, if such an audit is carried out, it is probable that a Level One finding will be made, leading to the downgrading of Hong Kong for non-compliance with ICAO Standards.
8. Non-compliance with ICAO standards may have major implications for all stakeholders in Hong Kong as well as the reputation of Hong Kong internationally. Given the current geopolitically complex operating environment in Asia, particularly in relation to Hong Kong, operational limitations could be enforced onto local airlines by regulators such as the US Federal Aviation Administration (FAA). Malaysia was recently downgraded by ICAO, leading to operational limitations on Malaysian Airlines' transpacific flights into US airspace. Insurance premiums for local carriers might also be increased if the State in which they are registered become non-ICAO compliant.
9. The incumbent CASI has vast international investigation experience at Directorate level, is an ICAO AIG Expert panel member, a qualified ICAO Universal Safety Oversight Audit Programme (USOAP) Continuous Monitoring Approach (CMA) auditor, and is recognised by ICAO as one of the SMEs States can contract to set up an independent AIG. He has established the AAIA as an effective operational authority and, if the THB's intent is to maintain an effective ICAO-compliant AAIA, we consider his removal before a suitably qualified independent replacement is recruited a counterproductive, short-term expediency. The recommendations for the Transitional Arrangements were constructed without consulting the present ICAO-qualified CASI and it is questionable whether the consultants from the CAD had the necessary expertise to manage an ICAO-compliant change management process. On this basis, and for reasons of transparency I would invite the THB to make public the "*researches on international practices*" mentioned in the paper.
10. It is clear to us that if the Transitional Arrangements go through as proposed, the HK AAIA will no longer fulfil the requirements of ICAO, firstly because the CASI will be inadequately qualified and, secondly, because there will be a real or perceived conflict of interest in appointing a CASI directly from the Regulator. I would remind you of Section 2.1.2 of ICAO Doc. 9756, which states:

"The accident investigation authority must be strictly objective and totally impartial and must also be perceived to be so". (Our emphasis.)

We believe that the proposed Transitional Arrangements will not fulfil this requirement. HKALPA is a member of the International Federation of Airline Pilots



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(IFALPA) which has permanent representation at ICAO and we will be passing our concerns to IFALPA.

11. The HK aviation industry is presently in crisis and does not need another problem – particularly one which could lead to financial and operational penalties. The present AAIA is functional and compliant with qualified leadership. If a transition period is required before the final structure of the AAIA is developed, then continuity needs to be maintained. This period should also be used to further develop the AAIA into a fully ICAO-compliant body which has access to all of the data which is required for it to undertake its ICAO requirements.
12. In summary, it is our opinion that for continuity and in the best interests of Hong Kong, its airlines and the travelling public, the THB should:
 - (i) Secure funding for the AAIA for its continuation and any necessary restructuring through LegCo.
 - (ii) Invite LegCo and the CE to extend the incumbent CASI for the duration of the recruitment process of a replacement CASI.
 - (iii) Expedite the recruitment process to have CASI/Dep CASI in place as soon as practical.
 - (iv) Have the present CASI assist in the restructuring and recruitment process.
 - (v) Recognise and accept that the proposed ADGCA supposition is flawed and contradictory to the best interests of Hong Kong's reputation, the operator's potential economic liabilities and the inevitable accusations from the international community that will be directed at the THB.

Yours faithfully

Captain Russ Fryett
President

cc.: Mrs. Carrie Lam, Chief Executive of Hong Kong SAR
Mr. Mr. Li Tin-chui, Simon, DGCA
Captain Jack Netskar, President of IFALPA
Mr. Jeremy Tam, Legco Member
Mr Richard Howell, GSORM, Cathay Pacific Airways
Captain Alex LINHARES, CSD, Hong Kong Airlines
Panel of Legco Economic Development