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**By email and post**

30 March 2020

Captain Russ Fryett  
President  
Hong Kong Airline Pilots Association  
5/F Daily House  
35-37 Haiphong Road  
Tsim Sha Tsui  
Kowloon, Hong Kong

Dear Captain Fryett,

**Hong Kong's Air Accident Investigation Authority**

Thank you for the Hong Kong Airline Pilots Association (“HKAPA”)’s letter of 9 March 2020 to the Secretary for Transport and Housing (“STH”). We noted the key issues raised in the letter in relation to the Air Accident Investigation Authority (“AAIA”) of the Hong Kong Special Administrative Region, namely (i) AAIA’s access to the Mandatory Occurrence Report (“MOR”) database, (ii) the continuity of AAIA’s leadership, and (iii) the transitional arrangement we proposed in our paper submitted to the Legislative Council (“LegCo”) Panel on Economic Development. Our responses to the above issues are as follows.

***AAIA’s access to the MOR database***

At present, the Mandatory Occurrence Reporting Scheme (“MOR Scheme”) and the statutory powers of AAIA to receive notices for air accident and incident investigations are governed by two different pieces of legislation, namely the Air Navigation (Hong Kong) Order 1995 (Cap. 448C) and the Hong Kong Civil Aviation (Investigation of Accidents) Regulations (Cap. 448B).

The MOR Scheme provided for under Cap. 448C has been devised and operated as a dedicated mechanism to complement the function of the Civil Aviation Department (“CAD”) **as the safety regulator of civil aviation in Hong Kong**, in accordance with the relevant Standards and Recommendations in Chapter 5 of “International Standards and Recommended Practices, Safety Management (Annex 19 to the Convention on International Civil Aviation)”. Article 86 of Cap. 448C requires pilots in command, aircraft operators and other specified persons to report to CAD any incidents that are classified as reportable occurrences under Regulation 16 in Schedule 15 to Cap. 448C. As you are well aware, reportable occurrences vary in nature and severity, ranging from those involving damage to an aircraft, injury to a person and failure of an aircraft system or of any equipment of an aircraft, to those arising from the loading or the carriage of passengers, cargo (including mail) or fuel, as well as any other incidents that a relevant person considers as endangering, or which if not corrected would endanger, the safety of an aircraft, its occupants or any other person. They are required to be reported to CAD for the purpose of facilitating the Department’s on-going monitoring of the industry’s overall performance in keeping up with regulatory standards and requirements. It is not the original intention for these occurrences to be reported for the purpose of air accident and incident investigations.

On the other hand, AAIA, **as the accident investigation authority in Hong Kong**, are equipped with statutory powers to receive notices and to solicit information for instigating and conducting air accident and incident investigations under Cap. 448B. Specifically, Regulation 5 of Cap. 448B sets out the obligations of pilots in command, aircraft operators and aerodrome authorities concerned to report accidents and serious incidents as soon as practicable to AAIA. By the definition of Cap. 448B, serious incident means an incident which is associated with the operation of an aircraft involving circumstances indicating that there was a high probability of an accident. In addition, with the statutory power provided under Cap. 448B, the Chief Inspector (who has been renamed as the Chief Accident and Safety Investigator (“CASI”) administratively) may also require a person specified in Cap. 448B to furnish him with relevant information in the person’s possession or control if an accident or incident occurs. In compliance with the relevant paragraphs in the “International Standards and Recommended Practices, Aircraft Accident and Incident Investigation (Annex 13 to the Convention on International Civil Aviation)” (“Annex 13”) that requires all accidents and serious incidents (involving an aircraft of a maximum mass of over 2 250 kg) be investigated, the existing legal framework under Cap. 448B has equipped AAIA with the necessary statutory powers to receive notices for the purpose of instigating and conducting relevant investigations effectively and independently.

As regards other incidents, the International Civil Aviation Organization (“ICAO”) does not mandate an investigation under Annex 13. Notwithstanding, we have built in statutory powers under Cap. 448B for AAIA to investigate into incidents should there be any safety lesson likely to be learned.

Acknowledging the common goal of CAD and AAIA in the prevention of accidents and continuous improvement of aviation safety, shortly after the establishment of AAIA, CAD wrote to airlines operating in Hong Kong to encourage them to share a copy of MORs to AAIA in parallel to their submission to the Department. Meanwhile, in addition to the requirements of our local legislation, CAD and AAIA have mutually agreed a reporting mechanism under which CAD would inform AAIA of certain occurrences, with a view to facilitating AAIA’s determination of whether such occurrences may be considered as serious incidents or incidents that may warrant investigations. As a matter of fact, **there is no binding requirement from ICAO or under our local legislation that specifically mandates the sharing of MOR database with AAIA.** Depending on their local circumstances, air accident investigation authorities in different ICAO Contracting States have varying arrangements with their civil aviation authorities on the reporting and sharing of information on occurrences, as set out under their legal frameworks or mutually-agreed protocols. We trust the legislative framework under Cap. 448B and the abovementioned information-sharing arrangement between CAD and AAIA have already adequately empowered AAIA to be duly informed of air accident and serious incidents, as well as incident occurrences agreed between AAIA and CAD.

### *Continuity of AAIA’s leadership*

Our policy and legislative intention has always been very clear, i.e. establish a permanent AAIA as reflected in our amendments to Cap. 448B, which have already been effected in December 2018. The independence of AAIA from CAD has also been enshrined in the said piece of legislation. As explained in our earlier LegCo submission<sup>1</sup>, the reason for setting up a time-limited CASI position back in 2017 was to allow flexibility to review and determine the long-term organisational set-up of AAIA in the light of its actual operational needs and experience. As you are aware, we have recently

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<sup>1</sup> Link to the paper submitted by the Transport and Housing Bureau to the LegCo Panel on Economic Development in March 2017:  
<https://www.legco.gov.hk/yr16-17/english/panels/edev/papers/edev20170327cb4-711-3-e.pdf>

Link to the paper submitted by the Transport and Housing Bureau to the Establishment Subcommittee under the Finance Committee of LegCo in April 2017:  
<https://www.legco.gov.hk/yr16-17/english/fc/esc/papers/e17-02e.pdf>

submitted a manpower proposal to LegCo<sup>2</sup> for approval to convert the CASI position into a permanent post, and create a new permanent Deputy CASI position, who will be supported by four full-time investigators. In accordance with the internal rules and procedures of the Government, we have already budgeted for the permanent organisational set-up of AAIA with effect from 1 April 2020. The creation of the abovementioned four investigator posts, which are permanent civil service posts, is within the remit of the Government and will be created with effect from 1 April 2020.

As the permanent CASI and Deputy CASI positions of AAIA are directorate positions, according to established rules and procedures, they may only be created with the approval of LegCo. While we have been working at full steam with a view to seeking the necessary approval of LegCo for the proposed permanent CASI and Deputy CASI positions, the discussion of the proposal concerned has been delayed since January 2020 for various reasons out of our control, including the outbreak of COVID-19 which led to the postponement of scheduled meetings of the LegCo Panel on Economic Development. According to the latest schedule, the proposal concerned will be discussed at a Panel meeting in April 2020, subsequent to which we would need to further seek the approval of the Establishment Subcommittee and the Finance Committee of LegCo.

Given the constraints and factors as mentioned above, the existing funding for the time-limited CASI position will lapse on 31 March 2020. As a result, the contract of the incumbent CASI must end on the same date, taking into account all applicable rules and regulations of the Government (including the due process to seek LegCo's endorsement).

Prior to LegCo's consideration and endorsement of our proposal detailed in the latest paper we submitted, as an interim arrangement, Mr Manfred Leung, the most experienced investigator in the existing team of AAIA, will stand in as CASI with effect from 1 April 2020. Mr Leung has around 40 years of experiences in civil aviation in Hong Kong, and has been involved in 9 air accident and incident investigations over the years. He is one of the Senior Accident and Safety Investigators underpinning the incumbent CASI since the establishment of AAIA.

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<sup>2</sup> Link to the paper submitted by the Transport and Housing Bureau to the LegCo Panel on Economic Development in January 2020:  
<https://www.legco.gov.hk/yr19-20/english/panels/edev/papers/edev20200120cb4-257-4-e.pdf>

### *The transitional arrangement*

As detailed in the paper we submitted to the LegCo in January 2020, we propose creating a supernumerary Assistant Director-General of Civil Aviation (“ADGCA”) position to be filled by an existing civil servant in CAD at directorate level with relevant accident and safety investigation experiences to lead AAIA strictly as a **temporary measure** before successful open recruitment(s) of the permanent CASI and Deputy CASI positions are completed. This is the most practicable option, among various stop-gap measures we have evaluated, to address the uncertain and potentially long gap before the creation and filling of the permanent CASI and Deputy CASI positions through open recruitment(s).

Due consideration has been given and proper institutional arrangements will be in place to avoid any perceived conflict of interests or implications on the impartiality of AAIA’s investigations under the proposed transitional arrangement. Same as the incumbent CASI, the ADGCA post holder will be completely separated from CAD and report directly to STH. The CAD officer to be identified for the post concerned will not be given the option to revert to CAD after leading AAIA on a temporary basis. The performance appraisal of the post holder concerned will be done by STH or senior management member of the Transport and Housing Bureau designated by STH.

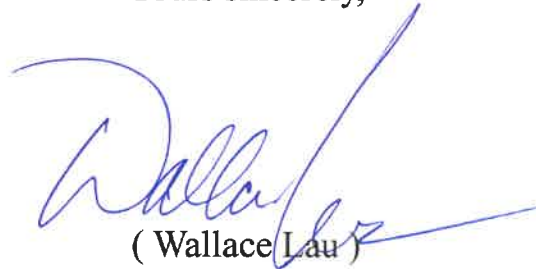
We must emphasise that the ADGCA position is proposed to be created on a strictly temporary basis. It will lapse with effect from the date of the formal appointment of CASI through open recruitment, and in any case not later than 31 March 2022. Riding on the robust organisational and legislative framework of AAIA clearly embedded in Cap. 448B, as well as learning from the experiences and practices of some of the overseas AAIA-equivalent authorities, we are confident that the functional independence of AAIA will not be affected under the transitional arrangement.

As the transitional arrangement entails no change to the established organisational and legislative framework of AAIA, Hong Kong’s continued compliance with Annex 13 will not be affected. Understandably, vacancy would arise from time to time for any organisations. The key is how to ensure the proper functioning of the organisation concerned during the relevant period. This is exactly why we have come up with the transitional arrangement to fill the gap, recognising the important statutory functions of AAIA. The independence of AAIA has already been reflected in Cap. 448B, which will not change because of the vacancy situation that will arise. We have every confidence that the robustness of Hong Kong’s safety oversight regime would not be implicated by a pure administrative matter as such.

For the sake of transparency, we have also written to the ICAO Secretariat to inform them of the above transitional arrangement, and assure them of our clear policy intention to establish a permanent AAIA independent of CAD as already clearly reflected in Cap. 448B. We would like to assure you of our firm and on-going commitment in further developing AAIA into an independent and full-fledged air accident investigation authority, and trust that our responses above have adequately addressed your concerns.

Should HKAPA have any further question regarding the above, please feel free to contact me or Ms Joyce Chan, Principal Assistant Secretary for Transport and Housing (Transport) 9 (Tel: 3509 8195; Email: joyce\_chan@thb.gov.hk).

Yours sincerely,



(Wallace Lau)

for Secretary for Transport and Housing

c.c.

Chief Executive's Office

Civil Aviation Department

Air Accident Investigation Authority

Legislative Council Panel on Economic Development

Honourable Jeremy TAM Man-ho

International Federation of Air Line Pilots' Associations

(Attn: Captain Jack Netskar)

Cathay Pacific Airways Limited

(Attn: Mr Richard Howell)

Hong Kong Airlines Limited

(Attn: Captain Alex Linhares)