



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$12.00

WINDHOEK - 12 November 2020

No. 7383

CONTENTS

Page

GOVERNMENT NOTICE

No. 274 Regulations relating to investigation of aircraft accidents and incidents: Civil Aviation Act, 2016 1

Government Notice

MINISTRY OF WORKS AND TRANSPORT

No. 274

2020

REGULATIONS RELATING TO INVESTIGATION OF AIRCRAFT ACCIDENTS AND INCIDENTS: CIVIL AVIATION ACT, 2016

Under section 54(1) of the Civil Aviation Act, 2016 (Act No. 6 of 2016) read with Part II of that Act, after consultation with the Board of Directors of the Namibia Civil Aviation Authority, I have -

- (a) made the regulations set out in the Schedule;
- (b) determined that the said regulations come into effect on the date of publication of this notice; and
- (c) repealed Government Notice No. 82 of 27 March 2000 with effect from the date of publication of this notice.

J. MUTORWA
MINISTER OF WORKS AND TRANSPORT

Windhoek, 2 November 2020

SCHEDULE**ARRANGEMENT OF REGULATIONS**

1. Definitions
2. Application of regulations
3. Scope of investigation
4. State Safety Programme for accident prevention
5. Role of Director
6. Investigators' training
7. Investigation
8. Powers of investigators
9. Observers, participants and accredited representatives
10. Mandatory notification of accidents and incidents
11. Responses to notifications
12. Unlawful interference
13. Crew statements
14. Voluntary reporting
15. Assistance to survivors and families of victims of aircraft accidents
16. Decision on types of investigation
17. Delegation of investigations
18. Foreign investigations
19. Privileged investigation records
20. Investigation interim statement
21. Draft Final Report on investigations
22. Final Report on investigations
23. Safety recommendations
24. Reopening an investigation
25. Transitional provisions
26. Offences and penalties

Annexure A: Granting of observer or participant status

Annexure B: Contents of initial notification

Definitions

1. In these regulations, a word or an expression to which a meaning has been assigned in the Act has that meaning, and unless the context otherwise indicates -

“accident” means an occurrence associated with the operation of an aircraft which, in the case of a manned aircraft, takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked or, in the case of an unmanned aircraft, takes place between the time the aircraft is ready to move with the purpose of flight until such time that it comes to rest at the end of the flight and the primary propulsion system is shut down, in which -

- (a) a person is killed or seriously injured as a result of -
 - (i) being in the aircraft;
 - (ii) direct contact with any part of the aircraft, including parts which have become detached from the aircraft; or
 - (iii) direct exposure to jet blast,

except when the death is from natural causes or the injuries are self-inflicted or inflicted by other persons or when the injuries are to stowaways hiding outside the areas normally available to the passengers and crew;

- (b) the aircraft sustains damage or structural failure which -
 - (i) adversely affects the structural strength, performance or flight characteristics of the aircraft, and
 - (ii) would normally require major repair or replacement of the affected component, except for engine failure or damage, when the damage is limited to a single engine including its cowlings or accessories, to propellers, wing tips, antennas, probes, vanes, tires, brakes, wheels, fairings, panels, landing gear doors, windscreens, the aircraft skin such as small dents or puncture holes or for minor damages to main rotor blades, tail rotor blades, landing gear and those resulting from hail or bird strike including holes in the radome; or
- (c) the aircraft is missing where the official search has been terminated and the wreckage has not been located or is completely inaccessible;

“accident investigation authority” means the authority designated by a State as responsible for aircraft accident and incident investigations and in the case of Namibia it is the Directorate;

“accredited representative” means a person designated by a State, on the basis of his or her qualifications, for the purpose of participating in an investigation conducted by another State;

“advisor” means a person appointed by a State on the basis of his or her qualifications for the purpose of assisting its accredited representative in an investigation;

“airport operator” means a person, organisation or enterprise engaged in the operation of an airport;

“Annex 13” means the Annex to the Chicago Convention that contains the International Standards and Recommended Practices related to Aircraft Accident and Incident Investigation;

“Director” means the Director of Investigations referred to in section 1 of the Act;

“Draft Final Report” means a draft investigation report that is sent in confidence to a Government entity in Namibia, other States and organisations involved in the investigation, inviting their significant and substantiated comments on the report;

“Final Report” means a conclusive report by the Directorate on its investigation into an aircraft accident or incident, made with the intention of preventing accidents or incidents and not to apportion blame or liability and includes the pertinent factual information, analysis, conclusions and, when appropriate, associated safety recommendations;

“flight recorder” means any type of recorder installed in the aircraft for the purpose of complementing aircraft accident, serious incident and incident investigations;

“Government entity” means a Government entity referred to in section 72(3) of the Act;

“incident” means an occurrence, other than an accident, associated with the operation of an aircraft which affects or could affect the safety of operation;

“investigation” means a process conducted for the purpose of accident prevention which includes the gathering and analysis of information, the drawing of conclusions, including the determination of causes and contributing factors and, when appropriate, the making of safety recommendations;

“investigation interim statement” means the public communication used by the Directorate on each anniversary of the accident or incident for informing those having a direct interest in the investigation regarding the progress of an on-going investigation and any safety issues raised during the investigation;

“investigator” means the Director or a person designated as an investigator under section 73(4) of the Act;

“investigator-in-charge” means a person appointed as an investigator-in-charge under section 73(5) of the Act;

“maximum mass” means a maximum certificated take-off mass;

“observer” means a representative of a concerned Government entity who is authorised by the Director to attend an investigation as an observer or an investigator authorised to attend an investigation being conducted by another concerned State, Government entity or accident investigation authority;

“operator” means a person, organisation or enterprise engaged in or offering to engage in operating an aircraft;

“participant” means a person authorised by the Director to participate in an investigation being conducted by the Directorate and, in the opinion of the Director, has the expertise to contribute to achieving the Directorate’s mandate;

“preliminary report” means the communication used for the prompt dissemination of data obtained during the early stages of the investigation;

“safety recommendation” means a proposal of an accident investigation authority of the State conducting the investigation, based on information derived from the investigation, made with the intention of preventing accidents or incidents and which may result from diverse sources, including safety studies;

“safety recommendation of global concern” means a safety recommendation made to a State’s civil aviation authority, to a regional aviation safety organisation or to ICAO regarding a systemic deficiency having a probability of recurrence with potential for significant consequences and requiring timely action to improve safety;

“serious incident” means an incident involving circumstances indicating that there was a high probability of an accident and associated with the operation of an aircraft which, in the case of a manned aircraft, takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked or, in the case of an unmanned aircraft, takes place between the time the aircraft is ready to move with the purpose of flight until such time as it comes to rest at the end of the flight and the primary propulsion system is shut down;

“serious injury” means an injury which is sustained by a person in an accident and which -

- (a) requires hospitalisation for more than 48 hours, commencing within seven days from the date the injury was sustained;
- (b) results in a fracture of any bone except simple fractures of fingers, toes or nose;
- (c) involves lacerations which cause severe haemorrhage, nerve, muscle or tendon damage;
- (d) involves injury to any internal organ;
- (e) involves second or third degree burns or any burns affecting more than five per cent of the body surface; or

(f) involves verified exposure to infectious substances or injurious radiation;

“State of Design” means the State having jurisdiction over the organisation responsible for the type design of the aircraft, engine or propeller;

“State of Manufacture” means the State having jurisdiction over the organisation responsible for the final assembly of the aircraft, engine or propeller;

“State of Occurrence” means the State in the territory of which an accident or incident occurred;

“State of Operator” means the State in which the operators principal place of business is located or, if there is no such place of business, the operator’s permanent residence;

“State of Registry” means the State on whose register the aircraft is entered;

“State Safety Programme” means the State Safety Programme referred to in Subpart 3 of Part 11 of the Namibian Civil Aviation Regulations published under Government Notice No. 1 of 2 January 2001; and

“the Act” means the Civil Aviation Act, 2016 (Act No. 6 of 2016).

Application of regulations

2. (1) These regulations apply in respect of accidents and incidents as contemplated in section 72 of the Act and they may apply to accidents or incidents occurring in or over -

- (a) Namibia, if the location of the accident or the incident cannot definitely be established as being in the territory of any other State; or
- (b) Namibia, if the accident or the incident has occurred in the territory of a non-contracting State which does not intend to conduct an investigation in accordance with Annex 13.

(2) The conduct of the investigation referred to in subregulation (1)(b) must be in accordance with any agreement entered into between Namibia and the foreign State.

Scope of investigation

3. (1) The Director must determine the scope of the investigation and the size and composition of the investigation team based on the following factors:

- (a) the extent of injuries, deaths, damage to aircraft and equipment, third party claims and environmental factors;
- (b) identified and potential safety issues underlying the accident or incident;
- (c) the likelihood of recurrence, the probability of adverse consequences and the severity of adverse consequences;
- (d) accident and incident history related to the type of operation, size and type of aircraft, the operator, manufacturer and regulator; and
- (e) actual and potential deviations from industry safety and operational regulations, standards, procedures and practices.

(2) Despite the factors referred to in subregulation (1), the Director may still decide to investigate incidents as well as accidents or serious incidents on any type of aircraft, when the Directorate expects to draw safety lessons from them.

(3) The foreign State of Occurrence is responsible for the investigation if an accident or incident happens in a foreign State involving a civil aircraft registered in the Civil Aviation Registry or operated by a Namibian operator, where the provisions of Annex 13 bind the foreign State.

State Safety Programme for accident prevention

4. The Directorate must -
- (a) collaborate with the Authority to develop, maintain and implement a State Safety Programme (SSP) to achieve an acceptable level of safety performance in Namibia;
 - (b) maintain a database to facilitate the effective collection, analysis and management of information on actual or potential safety deficiencies and to determine any preventative action steps for the SSP;
 - (c) maintain a record of safety recommendations arising from accident and incident investigations or safety studies and where safety recommendations are addressed to an organisation in another State, such recommendations must be transmitted to that State's accident investigation authority.

Role of Director

5. (1) The Director may develop a Manual of Policy and Procedures to implement the provisions and future amendments of Annex 13 or any other procedures necessary to advance aviation safety.

- (2) The Director must -
- (a) ensure that the Directorate carries out the powers and functions contemplated in sections 74 and 75 of the Act;
 - (b) establish and implement a process of mandatory accident and incident reporting system for Namibia to facilitate collection of information on actual or potential safety deficiencies by adopting the European Co-ordination Centre for Aviation Accident Incident Reporting System (ECCAIRS);
 - (c) establish and implement a voluntary incident reporting system for Namibia that -
 - (i) is non-punitive; and
 - (ii) affords protection to the sources of information,to facilitate the collection of information that may not be captured by a mandatory incident reporting system; and
 - (d) ensure that the Directorate engages stakeholders in adopting predictive safety information exchanges which include -
 - (i) analysis of flight operations;
 - (ii) flight data analysis or flight operation quality analysis;

(iii) the State Safety Programme; and

(iv) safety management systems,

implemented by the industry and service providers as part of accident prevention efforts.

Investigators' training

6. (1) A person may not be appointed as an investigator unless he or she has experience and possesses an appropriate qualification in -

- (a) the civil or military aviation industry as a pilot, aeronautical engineer or aircraft maintenance engineer;
- (b) flight operations, airworthiness, air traffic management or aviation safety related management; or
- (c) any other experience that the Director considers relevant.

(2) Investigators must undertake a four phased training process that includes -

- (a) an initial training;
- (b) on the job training;
- (c) a basic accident investigation course;
- (d) an advanced accident investigation course supplemented by specialised courses;
- (e) human factors, witness interviewing and media training; and
- (f) attendance as an observer on investigations carried out by other accident investigation authorities.

(3) Aircraft operators that acquire a new aircraft in their fleet must conduct familiarisation training for investigators, through the Directorate, in line with the training phases provided in subregulation (1).

(4) Investigators may periodically access an aircraft's flight operations quality analysis or the flight data analysis as part of predictive safety efforts.

(5) The Director must ensure that investigators attend recurrent courses every 24 months to retain knowledge and expertise required to carry out an investigation.

Investigation

7. (1) The Director must ensure that the investigation procedures and practices that it follows in relation to accidents and incidents are compatible with the Namibian obligations contained in Annex 13.

(2) The Director must ensure that the investigation procedures and practices that it follows in relation to aircraft accidents and incidents are as far as possible compatible with investigation requirements, procedures and practices followed by other Government entities as contemplated in section 77 of the Act.

(3) The Director must make all reasonable efforts to enter into agreements to provide for the coordination of activities between the Directorate and the entities referred to in subregulation (2) in relation to -

- (a) investigation procedures and practices;
- (b) requirements for reporting aircraft accidents and incidents; and
- (c) procedures to be followed in the event that conflicting interests arise during their activities with respect to aircraft accidents or incidents.

(4) The Director must ensure that the Directorate coordinates its' investigation activities with any other on-going investigations by other Government entities, if any, when investigating State or civil aircraft accidents and incidents.

(5) If a Government entity is notified of an aircraft accident or incident that the Directorate has the power to investigate under the Act the Government entity must -

- (a) notify the Director with particulars of the aircraft accident or incident; and
- (b) advise the Director of any investigation and remedial measures that the Government entity plans to undertake.

Powers of investigators

8. (1) Subject to sections 84 and 85 of the Act, an investigator when investigating an aircraft accident or incident -

- (a) must have immediate and unrestricted access to and control over the aircraft, wreckage, all its contents and wreckage site and all available evidential materials, including the detailed examination and use of the recorded data, flight recorders, air traffic services and any other recordings without delay;
- (b) may not be impeded by authorised personnel participating in the investigation or administrative or judicial investigations or proceedings;
- (c) may require the protection and preservation of -
 - (i) the aircraft accident or incident site;
 - (ii) the aircraft and any parts of the aircraft; and
 - (iii) all records and documents associated with the occurrence;
- (d) must have free and unrestricted access to enter and search any place where an investigator believes on reasonable grounds that there is anything relevant to the conduct of an investigation of an accident or incident and to seize anything that is found in the course of that search; and
- (e) may prohibit or limit access to the area immediately surrounding the place at which anything involved or likely to have been involved in an accident or incident is located for such period as is necessary for the purposes of preserving and protecting evidence.

(2) Subject to section 86 of the Act, an investigator may, after seizing an item in accordance with subregulation (1), cause such tests of anything that was seized for the purposes of the investigation to be conducted.

- (3) The investigator may -
- (a) permit an owner of the component being tested in terms of subregulation (2) and any person who appears on reasonable grounds to be entitled to it to -
- (i) record or cause to be recorded the condition of the component being tested prior to, during and after the test; and
- (ii) be represented by a person having technical knowledge and expertise in the subject matter of the test;
- (b) cause an immediate listing, photographing or copying of evidence and controlled removal of debris or components for examination or analysis purposes or preparing a study for the purpose of prevention of accidents and may require the provision of copies of any documents that the investigator may consider relevant to the accident or incident;
- (c) retain any such documents until the completion of the investigation or until it is determined that an investigation will not be carried out;
- (d) call on the services of Government entities or other persons to ensure protection of the accident site, including the aircraft and its contents, until such time as the Directorate is able to directly take over custody and security of the aircraft and its contents.
- (4) The investigator must produce his or her credentials as proof of his or her identity, when requested to do so by a person in respect to whom the powers are to be exercised before exercising any of the powers contemplated in subregulation (1), (2) or (3).

Observers, participants and accredited representatives

9. (1) The Director may grant a person permission to attend as an observer at an investigation by the Directorate on the form contained in Annexure A, if the person is designated as an observer by an organisation having a direct interest in the subject matter of the investigation.

(2) The Director may grant a person permission to attend as a participant at an investigation by the Directorate on the form contained in Annexure A, if in the opinion of the Director that person has the expertise to contribute to achieving the Directorate's mandate.

- (3) A person referred to in subregulation (1) or (2) may -
- (a) attend at the occurrence site;
- (b) examine the aircraft and its component parts involved in the occurrence;
- (c) unless otherwise prohibited by law, examine any document and any other relevant evidence relating to -
- (i) the aviation activity during which the occurrence took place;
- (ii) the crew members involved in the occurrence; and
- (iii) the aircraft, its component parts and contents; and
- (d) attend laboratory tests or analyses.

(4) A person appointed in terms of subregulation (1) or (2) may not attend an interview of a witness during an investigation, unless authorised by the Director.

(5) The State of Registry, State of Operator, State of Design and State of Manufacture may each appoint an accredited representative to participate in the investigation.

(6) The State of Registry or the State of Operator may appoint one or more advisors proposed by the operator, to assist its accredited representative appointed in terms of subregulation (5).

(7) A State which has an interest in an accident by virtue of fatalities or serious injuries to its citizens or on request provides information, facilities or experts to the State conducting the investigation is entitled to appoint an expert to participate in an investigation conducted by the Directorate.

(8) A person appointed in terms of subregulation (5) may be granted the status of an accredited representative who may participate in all aspects of the investigation, under the control of the investigator-in-charge.

(9) The accredited representative referred to in subregulation (8) may -

- (a) visit the scene of the accident;
- (b) examine the wreckage;
- (d) obtain witness information and suggest areas of questioning;
- (e) have full access to all relevant evidence as soon as possible;
- (f) receive copies of all related documents;
- (g) participate in read-outs of recorded media;
- (h) participate in off-scene investigative activities such as component examinations, technical briefings, tests and simulations;
- (i) participate in investigation progress meetings including deliberations related to analysis, findings, causes, contributing factors and safety recommendations; and
- (j) make submissions in respect of the various elements of the investigation.

(10) The Directorate may engage, on a temporary basis, the services of persons having technical or specialised knowledge to assist in its investigations.

Mandatory notification of accidents and incidents

10. (1) The owner, operator, pilot-in-command and any crew member of an aircraft, the operator of the airport and any air traffic controller, having knowledge of an accident or incident must notify the Directorate of such accident or incident and provide as much information as soon as possible as contemplated in section 90 of the Act.

(2) The notification referred to in subregulation (1) must -

- (a) be in English;
- (b) contain as much of the information specified in Annexure B;

- (c) be made on the Directorates' website; and
- (d) not be delayed due to incomplete information.

Responses to notifications

11. (1) If the Director is notified of an aircraft accident, a serious incident or an incident to be investigated within the context of Annex 13, the Director must forward a notification containing the information specified in Annexure B to -

- (a) any concerned Government entity;
- (b) the States having a direct interest in the accident or incident, including the State of Registry, State of Operator, State of Design, State of Manufacture and, when required, to a regional aviation safety organisation and to ICAO;
- (c) involved air operators, operators of airports and air traffic control units and aircraft manufacturers; and
- (d) any other Government entities and organisations that could assist the Directorate in its investigation.

(2) The Director must advise the entities referred to in subregulation (1)(a) and (b) of any investigation that the Directorate plans to conduct, including the type and scope of the investigation.

(3) If the State of Occurrence does not institute and conduct an investigation and does not delegate the investigation to another State or a regional aviation safety organisation the following entities may request in writing that the State of Occurrence delegate the conducting of such an investigation:

- (a) the State of Registry;
- (b) the State of Operator;
- (c) the State of Design; or
- (d) the State of Manufacture.

(4) If Namibia is the State referred to in paragraphs (a), (b), (c) or (d) of subregulation (3), the request must be made by the Director.

(5) Subject to subregulation (4), if the State of Occurrence gives express consent to the delegation contemplated in subregulation (3) or does not reply to such a request within 30 days, the Directorate must institute and conduct the investigation with the available information.

(6) If the State of Occurrence delegates the conducting of an investigation in terms of subregulation (3) to the Directorate, the Director must further obtain the right to access the accident site, wreckage or any other evidence or information situated within the territory of the State of Occurrence.

(7) The State of Registry must institute and conduct any necessary investigation of the accident or serious incident, if the location of the accident or the serious incident cannot definitely be established as being in the territory of any State.

(8) If the State of Registry gives express consent or does not reply to a request within 30 days to conduct the investigation referred to in subregulation (7), the Directorate must institute and conduct the investigation with the information available.

Unlawful interference

12. If the Director, in the course of an investigation, becomes aware of or suspects that an act of unlawful interference was involved, the Director must immediately inform the Executive Director, the Namibian Police and the State of Registry, the State of Operator, the State of Design or the State of Manufacture.

Crew statements

13. (1) Each surviving crew member of an aircraft involved in an accident or incident being investigated by the Directorate must forward to the Director a statement setting forth the facts, conditions and circumstances relating to the accident or incident as they appear to the member as soon as possible after the accident or serious incident.

(2) If the crew-member is temporarily incapacitated the member must submit the statement referred to in subregulation (1) as soon as the member is physically able to do so.

Voluntary reporting

14. (1) Subject to section 110 of the Act, a person having knowledge of any safety-related event, other than an accident or incident, may make a voluntary report to the Directorate and provide any information that the person believes is relevant.

(2) A person who has access to the voluntary report referred to in subregulation (1) may not release the identity of the person making the report or any information that could reasonably be expected to reveal that person's identity, unless the person making the report authorises the release of the identity in writing.

(3) The Directorate may not use the information obtained under a voluntary report against the person who made the report in any disciplinary, civil, administrative and criminal proceedings.

(4) Subregulations (2) and (3) do not apply -

(a) to a person if the voluntary report involves unlawful acts, gross negligence or intentional infractions by that person in accordance with Namibian laws; or

(b) unless the Director determines that the value of the disclosure or use of the information in any particular instance outweighs the adverse impact such action may have on aviation safety.

Assistance to survivors and families of victims of aircraft accidents

15. (1) The Director must ensure that survivors and the families of victims of an accident that is the subject of an ongoing investigation by the Directorate receive assistance by -

(a) making public any information on the factual observations, the proceedings of the safety investigation, possible preliminary reports or conclusions and safety recommendations, provided that the disclosure does not compromise the objectives of the safety investigation and fully complies with applicable legislation on the protection of personal data;

(b) forwarding the information referred to in paragraph (a) to the survivors and the relatives of victims in a way which does not compromise the objectives of the safety investigation, before making the information public;

(c) facilitating the entry into and exit from the country of any survivors or relatives of victims and the repatriation of victims; or

- (d) coordinating assistance efforts by the government, airlines, humanitarian and other organisations.

Decision on types of investigation

16. The Director must adhere to the following criteria when making a decision as to the types of investigations the Directorate may undertake:

- (a) all accidents must be investigated;
- (b) all serious incidents involving aircraft of a maximum mass of over 2 250 kilograms must be investigated;
- (c) all serious incidents must be investigated; and
- (d) other types of incidents may be investigated.

Delegation of investigations

17. (1) Subject to section 98 of the Act, the Directorate may delegate the whole or any part of an investigation to -

- (a) another State;
- (b) a regional aviation safety organisation; or
- (c) a Government entity,

by mutual arrangement and consent, where Namibia as a State is responsible under the provisions of Annex 13 to institute an investigation into an aircraft accident or incident, in accordance with section 72(1) of the Act.

(2) Where the Director has delegated the investigation to a Government entity under subregulation (1) -

- (a) the delegated entity is required to investigate the accident or incident under the provisions of the Act and to provide its Final Report and recommendations to the Directorate; and
- (b) the Director may appoint an observer, accredited representative or participant to such an investigation.

Foreign investigations

18. (1) If the Directorate is notified of an aircraft accident, serious incident or other safety occurrence that occurred outside the territory of Namibia involving a Namibian aircraft or an aircraft operated by a Namibian operator the Director must -

- (a) acknowledge receipt of the notification;
- (b) provide the notifying State with any relevant information regarding the aircraft and flight crew involved in the accident or incident and details of any dangerous goods on board the aircraft if Namibia is the State of Operator;
- (c) inform the notifying State whether Namibia intends to appoint or has appointed an accredited representative and if such accredited representative will be travelling to

the State in which the investigation is being carried out and the contact details and the expected date of arrival of the accredited representative in such State;

- (d) appoint an accredited representative into the accident or any investigable occurrence.

Privileged investigation records

19. (1) The Director must ensure that the non-disclosure of privileged records referred to in section 100 of the Act applies from the time an accident or incident occurs and continues after the publication of the Final Report.

- (2) The Directorate may not make the -

- (a) cockpit voice recordings and airborne image recordings and any transcripts from such recordings; and
- (b) records in the custody or control of the Directorate,

available for purposes other than accident or incident investigation, unless the disclosure is made pursuant to an order made under section 103 or 108 of the Act that their disclosure or use outweighs the likely adverse impact such action may have on that or any future investigations.

- (3) The records referred to in subregulation (2)(b) include -

- (a) all statements taken from persons by the Directorate in the process of the investigation;
- (b) all communications between persons having been involved in the operation of the aircraft;
- (c) medical or private information regarding persons involved in an accident or incident;
- (d) recordings and transcripts of recordings from air traffic control units;
- (e) analysis of and opinions about information, including flight recorder information, made by the Directorate and accredited representatives in relation to the accident or incident;
- (f) the Draft Final Report of an accident or incident investigation;
- (g) any other records or information obtained or generated by the accident which the Directorate determines as a part of an accident or incident investigation need to be protected in the same way as the records referred to in subregulation (1).

(4) If a person requests for records in the custody or control of the Directorate, such a request must be directed to the person or entity who made the disclosure.

(5) The records referred to in subregulation (1) must be included in the Final Report or its appendices only when pertinent to the analysis of the accident or incident.

(6) The Directorate may not disclose the names of the persons involved in an accident or incident to the public.

(7) The Directorate must ensure that audio content of cockpit voice recordings as well as image and audio content of airborne image recordings are not disclosed to the public.

Investigation interim statement

20. (1) The Director must issue an investigation interim statement annually, on each anniversary of the accident or incident, detailing the progress of the investigation and any safety issues raised, if the Final Report on an investigation cannot be made publicly available within 12 months of the occurrence.

(2) The Director must provide the investigation interim statement referred to in subregulation (1) to -

- (a) any concerned Government entity;
- (b) the States having a direct interest in the occurrence and, if appropriate, to ICAO;
- (c) a State that has suffered fatalities or serious injuries to its citizens; and
- (d) the public.

Draft Final Report on investigations

21. (1) The Director must send a copy of the Draft Final Report to -

- (a) any concerned Government entity;
- (b) the States having a direct interest in the occurrence in accordance with Annex 13; and
- (c) any other organisations involved in the investigation,

inviting their comments on the report.

(2) All comments to the Draft Final Report must be received within 60 days from the date of the transmittal letter sending the draft report, unless an extension of that period has been agreed to by the Director and the entities referred to in subregulation (1).

(3) A person may not communicate or use the Draft Final Report or permit its communication or use, for any purpose not strictly necessary to the study of the report and the preparation of comments concerning the report.

(4) If the Directorate receives comments within the time limits specified in the transmittal letter the Directorate must either amend the Final Report to include the substance of the comments received or, if desired by the State that provided comments, append the comments to the Final Report.

Final Report on investigations

22. (1) The Director must send the Final Report on its investigation with a minimum of delay to -

- (a) any concerned Government entity;
- (b) States having a direct interest in the occurrence in accordance with Annex 13 and, if appropriate, to ICAO;
- (c) a State that has suffered fatalities or serious injuries to its citizens; and
- (d) any other organisations or persons who, in the opinion of the Director, have a direct interest in the investigation.

(2) The Director must make all Final Reports public and publish them on the Directorates' website.

(3) In cases where Namibia participates in a foreign investigation, the Director may in writing request from the State conducting the investigation express consent to release a statement containing safety issues raised with such information as is available, if the State conducting the investigation does not make the Final Report or an interim statement publicly available within a reasonable timeframe.

(4) If the State conducting the investigation gives express consent or does not reply to a request made under subregulation (3) within 30 days, the Directorate may release such a statement after coordinating with the participating States.

Safety recommendations

23. (1) The Directorate must issue safety recommendations at any stage of the investigation of an accident or incident to -

- (a) those persons or organisations of the aviation community that have a direct interest in the safety issue that was the basis for the safety recommendation; and
- (b) other members of the aviation community who would benefit from the information.

(2) The persons and entities to which safety recommendations may be sent to in terms of subregulation (1) include -

- (a) action addressees for the safety recommendation;
- (b) involved Government entities;
- (c) involved States and accident investigation authorities;
- (d) stakeholders, such as the airline, maintenance organisation, manufacturer, air traffic services provider and airport operator; and
- (e) others who may benefit from the lessons learned.

(3) The entities referred to in subregulations (1) and (2) to which a safety recommendation has been issued must within 90 days after being notified of the safety recommendation, advise the Directorate in writing of -

- (a) any action taken or proposed to be taken in response to the recommendations and where appropriate of the time necessary for their completion; or
- (b) the written reasons as to why no action will be taken.

(4) The Director must ensure that responses to its safety recommendations are recorded and reviewed and the degree to which the risks underlying the safety recommendation have been mitigated have been assessed.

(5) The Director must implement procedures to monitor the progress of the action taken in response to a safety recommendation that the Directorate receives.

(6) The Director must inform ICAO of safety recommendations of global concern issued as well as the responses received to these recommendations.

(7) The Director must ensure that the safety recommendations issued to Namibia as a State are sent to the Authority through the office of the Executive Director and action is taken within a specified period or response on why no action will be taken is communicated.

(8) The State conducting the investigation has precedence over issuing safety recommendations from an accident or incident investigation however, in the interest of safety, other States participating in the investigation may be entitled to issue safety recommendations after coordinating with the State conducting the investigation.

Reopening an investigation

24. (1) The Directorate may reopen an investigation if, after the investigation has been closed, new and significant evidence becomes available.

(2) The Directorate must obtain the consent of the State that instituted the investigation if Namibia conducts an investigation but did not institute it.

(3) If an aircraft that was previously considered missing following an official search is subsequently located, the Directorate may consider reopening the investigation.

Transitional provision

25. Subject to section 236 of the Act, anything done under the repealed regulations and which could have been done under a corresponding provision of these regulations is deemed to have been done under that corresponding provision.

Offences and penalties

26. A person -

- (a) who refuses to give an investigator periodic access to an aircraft's flight operations quality analysis or the flight data analysis in terms of regulation 6(4);
- (b) other than the operator or pilot-in-command, having knowledge of an accident or incident who fails to notify the Directorate of an accident or incident in terms of regulation 10(1); or
- (c) involved in an accident or incident being investigated by the Directorate who fails to forward a statement to the Directorate in terms of regulation 13,

commits an offence and is on conviction liable to a fine not exceeding N\$20 000 or a period not exceeding two years imprisonment or to both such fine and such imprisonment.

ANNEXURE A

GRANTING OF OBSERVER/PARTICIPANT STATUS

(Regulation 9(1) and (2))



Ministry of Works and Transport

Directorate of Aircraft Accident and Incident Investigations

File Reference:

Day *Month* *Year*

Dear _____

OCCURRENCE FILE NO: **DATE:** **TIME:**

AIRCRAFT INVOLVED _____

OCCURRENCE LOCATION _____

The Directorate of Aircraft Accident and Incident Investigations (DAAII) of Namibia is empowered in terms of the Aviation Act, 2016 (Act No. 6 of 2016) to investigate aircraft accidents and incidents in Namibia. The sole objective of the Directorate is to prevent accidents. It is not the purpose of this activity to apportion blame or liability. The goal of the investigation is to advance aviation safety by identifying safety deficiencies and making safety recommendations designed to eliminate or reduce such deficiencies.

During the course of an investigation, the Directorate may authorise a person to attend as an ***observer*** when the person is designated as such by a Government entity having a direct interest in the investigation or as a ***participant*** when, in the opinion of the Director, the person has the expertise to contribute to achieving the Directorates' objective.

By this document, you are granted the status of an observer or participant to this occurrence and, subject to any conditions, the Director may impose and under the supervision of an investigator, you may:

- (a) attend at the occurrence site(s);
- (b) examine the aircraft, its component parts and contents involved in the occurrence;
- (c) unless otherwise prohibited by law, examine any document as defined in regulation 3 of the regulations and any other relevant evidence relating to:
 - (i) the aviation activity during which the occurrence took place;
 - (ii) the crew members involved in the occurrence;
 - (iii) the aircraft, its component parts and contents; and
- (d) attend laboratory tests or analyses.

Your attendance as an observer participant is subject to the following conditions:

- (a) You must limit your activities at the occurrence site to those outlined by the Investigator-in-charge;
- (b) You must ensure that your activities do not restrict, endanger or otherwise interfere with the Directorates investigators in the performance of their duties;
- (c) The sole purpose of the Directorates' investigation is the advancement of aviation safety. Consequently, any information you gain as a result of your observer/participant status may only be used for that purpose. Until the investigation report is released to the public, you may not disclose or otherwise use this information without the expressed consent of the.
- (d) To be permitted on the occurrence site, you must have the appropriate inoculations against disease and biohazards (refer to the national immunisation guide, health department directives or equivalent publications);
- (e) To be permitted on the occurrence site, you must have the appropriate biohazard and occupational safety and health training and the appropriate safety clothing and equipment, for operating on biohazard, remote and dangerous sites (refer to the national immunisation guide, health department directives or equivalent publications); and
- (f) You must on request provide proof of compliance with the training and inoculation requirements in (d) and (e) above.

The rights and privileges granted to an observer or participant may not include attendance at an interview of a witness during an investigation.

Failure to comply with any of the above responsibilities could result in the immediate revocation of your observer/participant status.

You should also understand that the privileges of an observer/participant will be exercised at your own risk.

Please sign and return this letter to the Investigator-in-charge, indicating your understanding and acceptance of the above-mentioned conditions and responsibilities.

regards,

<i>Investigator-in-charge</i>		
-------------------------------	--	--

ACCEPTANCE OF OBSERVER/PARTICIPANT STATUS

I understand and accept the conditions outlined above with respect to my attendance as an observer/participant at the subject investigation.

I also understand that the privileges of an observer/participant will be exercised at my own risk and

I hereby agree to indemnify and save harmless the DAAI for any damage or injuries I may suffer as a result of my attending the investigation as an observer/participant.

Signed:

Date:

(Observer/Participant)

ANNEXURE B

CONTENTS OF INITIAL NOTIFICATION

(Regulation 10(2)(b) and 11(1))

As specified in Annex 13, the notification is to be in plain language (English) and contain as much of the following information as is readily available, but its dispatch may not be delayed due to the lack of complete information:

- (a) for accidents the identifying abbreviation ACCID, for incidents INCID;
 - (b) manufacturer, model, nationality and registration marks and serial number of the aircraft;
 - (c) names of the owner, operator and hirer, if any, of the aircraft;
 - (d) qualification of the pilot-in-command and nationality of crew and passengers;
 - (e) date and time (local time or UTC) of the accident or serious incident;
 - (f) last point of departure and point of intended landing of the aircraft, including the date and time of the departure;
 - (g) position of the aircraft with reference to some easily defined geographical point and latitude and longitude;
 - (h) number of crew and passengers; aboard, killed and seriously injured; others, killed and seriously injured;
 - (i) description of the accident, serious incident or other safety occurrence and the extent of damage to the aircraft so far as is known;
 - (j) an indication to what extent the investigation will be conducted or is proposed to be delegated by the State of Occurrence;
 - (k) physical characteristics of the accident or incident area, as well as an indication of access difficulties or special requirements to reach the site;
 - (l) identification of the originating authority and means to contact the investigator-in-charge and the accident investigation authority of the State of Occurrence at any time; and
 - (m) presence and description of dangerous goods on board the aircraft.
1. A list of addresses of aircraft accident and incident investigation authorities can be found on the DAAII website (<http://www.mwt.gov.na/aircraft-accidents-and-investigation>) and App, ICAO/AIG website (<https://www.icao.int/safety/AIA/Pages/default.aspx>) or in ICAO *Manual of Aircraft Accident and Incident Investigation*, Part I - *Organisation and Planning* (Doc 9756), Chapter 4, Appendix 2.
-