

## **AAIA Circular 02/2021**

# **INSPECTORS AND PERSONS PARTICIPATING IN AN INVESTIGATION UNDER CAP. 448B**

## **1 Introduction**

- 1.1 Inspectors<sup>1</sup> are appointed by the Chief Executive<sup>2</sup> per the Regulation 8 of the Hong Kong Civil Aviation (Investigation of Accidents) Regulations (CAP. 448B) and possess necessary powers as defined in the Regulation 9 of the CAP. 448B for the purpose of investigating an aircraft accident or a serious incident to which the CAP. 448B applies.
- 1.2 Without prejudice to the power of an Inspector to seek such advice or assistance as the Inspector considers necessary in carrying out an investigation, persons may be appointed per the Regulation 8(7) to assist an Inspector in a particular investigation and such persons shall for the purpose of so doing have such powers of an Inspector under CAP. 448B as specified in their appointment.
- 1.3 The purpose of this Circular is to make the respective Air Accident Investigation Authority (AAIA) policies and procedures public when AAIA institutes and conducts an investigation.

## **2 Powers of Inspectors**

- 2.1 Regulation 9 of the CAP. 448B defines the powers of an Inspector which are sufficiently broad to ensure that no evidence can be lawfully withheld if its disclosure is deemed necessary to complete the investigation.
- 2.2 When exercising such powers, an Inspector shall have unhampered access to and control over all relevant material / evidence, including flight recorders and air traffic service records.

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<sup>1</sup> i.e. the posts of Chief Accident and Safety Investigator (CASI), Deputy CASI, Senior Accident and Safety Investigator, and Accident and Safety Investigator.

<sup>2</sup> The power was delegated to the Secretary for Transport and Logistics under Section 63 of the Interpretation and General Clauses Ordinance (CAP. 1).

- 2.3 It should be recognised that subject to the Regulation 9 of the CAP. 448B, no person other than an authorised person shall have access to the aircraft involved in an accident or a serious incident and neither the aircraft nor its contents shall be removed or otherwise interfered with without the authority of the Chief Inspector<sup>3</sup>.

### **3 Persons Participating in an Investigation**

- 3.1 According to the Regulation 8(7) of the CAP. 448B, the following persons would be appointed to assist an Inspector and are allowed to participate in an investigation:

#### **3.2 Accredited Representatives**

- a) The State of Registry, the State of the Operator, the State of Design and the State of Manufacture shall each be entitled to appoint an accredited representative to participate in the investigation.
- b) When a State was requested to provide information, facilities or experts to the AAIA, the State shall be entitled to appoint an accredited representative to participate in the investigation.

#### **3.3 Advisers**

- a) The State of Registry or the State of the Operator shall have the right to appoint one or more advisers, proposed by the operator, to assist its accredited representative. When neither the State of Registry, nor the State of the Operator appoints an accredited representative to participate in the investigation, AAIA should invite the operator to participate.
- b) The State of Design and the State of Manufacture shall have the right to appoint one or more advisers, proposed by the organisations responsible for the type design and the final assembly of the aircraft, to assist their accredited representatives. When neither the State of Design nor the State of Manufacture appoints an accredited representative to participate in an investigation, AAIA should invite the organisations responsible for the type design and final assembly of the aircraft to participate.

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<sup>3</sup> i.e. the post of CASI, and includes his or her deputy.

### **3.4 Experts / Specialists**

- a) A State which has a special interest in an accident by virtue of fatalities or serious injuries to its citizens shall be entitled to appoint an expert.
- b) Where necessary, officers from the other Hong Kong Special Administrative Region Government bureaux/departments, specialists from industry and overseas agencies may be invited by AAIA to assist in a particular investigation.

### **3.5 Entitlement of Persons Participating in an Investigation**

- a) Subject to the circumstances of an investigation and under the control of the Inspector-in-charge of the investigation, Accredited Representatives and Advisers are entitled to the following to make their participation effective:
  - (i) visit the scene of the accident;
  - (ii) examine the wreckage;
  - (iii) obtain witness information and suggest areas of questioning;
  - (iv) have full access to all relevant evidence as soon as possible;
  - (v) receive copies of all pertinent documents;
  - (vi) participate in read-outs of recorded media;
  - (vii) participate in off-scene investigative activities such as component examinations, technical briefings, tests and simulations;
  - (viii) participate in investigation progress meetings including deliberations related to analysis, findings, causes, contributing factors and safety recommendations; and
  - (ix) make submissions in respect of the various elements of the investigation.
- b) Subject to the circumstances of the accident investigation and under the control of the Inspector-in-charge, an expert appointed by a State which has a special interest in an accident by virtue of fatalities or serious injuries to its citizens are entitled to:
  - (i) visit the scene of the accident;
  - (ii) have access to the relevant factual information which is approved for public release by the Chief Inspector, and the information on the progress of the investigation; and
  - (iii) receive a copy of the Final Report.

This will not preclude the State from also assisting in the identification of victims and in meetings with survivors from that State.

- c) Subject to the circumstances of an investigation and under the control of the Investigator-in-charge of the accident investigation, the extent of the participation of the persons other than those mentioned in paragraph 3.5 a) and b) would be subject to the discretion of the Inspector-in-charge to make their participation effective.

### **3.6 Obligation of Persons Participating in an Investigation**

Persons participating in an investigation would be required to sign a Letter of Agreement which would specify their respective rights and entitlement and obligations in the investigation. In particular, they would be obliged:

- a) to provide the Chief Inspector with all relevant information available to them;
- b) not to divulge information on the progress and the findings of the investigation without the express consent of the Chief Inspector; and
- c) not to disclose, under any circumstances, any names of persons involved in the accident or incident to the public.

### **3.7 Exchange and Protection of Investigation Information**

AAIA shall liaise and work with the States concerned and persons participating in the investigation to determine the limitations on disclosure or use that will apply to information before it is exchanged between them for the purposes of an accident or incident investigation.

## **4 Identification**

### **4.1 Inspectors**

Inspectors appointed under CAP. 448B are issued with a government warrant card.

## 4.2 Other Appointed Persons

Appointed persons are issued with authorisations by the Inspector-in-charge of an investigation or the Chief Inspector, specifying their respective entitlements.

**K C MAN**  
**Chief Inspector**