

REPUBLIC OF NAMIBIA

MINISTRY OF WORKS AND TRANSPORT

GOVERNMENT NOTICE

No.

CIVIL AVIATION (INVESTIGATION OF AIR ACCIDENTS AND INCIDENTS) REGULATIONS 2019.

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PURPOSE

1. These regulations, made pursuant to Part 11 section 73 (1) of the Civil Aviation Act ,Act No.6 of 2016, prescribe:
 - (a) the manner of exercising and carrying out DAAI's powers, duties and functions under the Act, and
 - (b) the standards that the Aviation system needs to achieve in compliance with the provisions of the Act.

TITLE

2. These regulations may be cited as the CIVIL AVIATION (INVESTIGATION OF AIR ACCIDENTS AND INCIDENTS) REGULATIONS 2019

a) Revocations

The following Regulations are revoked—
Government Notice No.82 of 2000. Regulations Regarding the Investigation of Aircraft Accidents 2000-082

DEFINITIONS

3. For the purpose of implementing the provisions of these Regulations, the following terms shall have the following meanings:

Accident: 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 as it comes to rest at the end of the flight and the primary propulsion system is shut down, in which:

- a) a person is fatally or seriously injured as a result of:
 - being in the aircraft, or
 - direct contact with any part of the aircraft, including parts which have become detached from the aircraft, or
 - direct exposure to jet blast,except when the injuries are from natural causes, 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; or
- b) the aircraft sustains damage or structural failure which:
 - adversely affects the structural strength, performance or flight characteristics of the aircraft, and
 - 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 or is completely inaccessible. *(An aircraft is considered to be*

missing when the official search has been terminated and the wreckage has not been located)

Act: The Namibia Civil Aviation Act, Act 6 of 2016.

Accident investigation authority. The authority designated by a State as responsible for aircraft accident and incident investigations.

Accredited representative: 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. Where the State has established an accident investigation authority, the designated accredited representative would normally be from that authority.

Adviser: 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: A person, organization or enterprise engaged in the operation, of an airport.

Air traffic control unit: A generic term meaning variously, area control centre, approach control unit, or aerodrome control tower.

Aircraft: Any machine that can derive support in the atmosphere from the reactions of the air, other than the reactions of the air against the earth's surface.

Annex 13: The Annex to the Convention on International Civil Aviation that contains the International Standards and Recommended Practices related to Aircraft Accident and Incident Investigation.

Appointed Head: A competent government official who is appointed by the Minister to be responsible for the accident and incident investigations within the meaning of the Act.

Balancing test. The determination whereby the competent authority(ies) assesses competing public interests and decides which interest should prevail leading to the determination referred to in Standard 5.12.

Causes: Actions, omissions, events, conditions, or a combination thereof, which led to the accident or incident. The identification of causes does not imply the assignment of fault or the determination of administrative, civil or criminal liability.

Collision: An impact between aircraft, or between an aircraft and another object.

Competent Authority. The governmental entity(ies) that has the power and authority to administer the balancing test. The High court

Contributing factors: Actions, omissions, events, conditions, factors or a combination thereof, which, if eliminated, avoided or absent, would have prevented or reduced the probability of the accident or incident occurring, or would have mitigated the severity of the adverse consequences of the accident or incident.

Crew member: A person assigned by an air operator to duty on an aircraft during a flight duty period.

Dangerous goods: Articles or substances which are capable of posing a risk to health, safety, property or the environment. More information related to dangerous goods can be found in ICAO Annex 18 — *The Safe Transport of Dangerous Goods by Air*, and in ICAO *Technical Instructions for the Safe Transport of Dangerous Goods by Air* (Doc 9284).

Department: Any ministry, authority, organization or other concerned body of the government of Namibia that has a direct interest in aircraft accidents or incidents.

Directorate of Aircraft Accident Investigation (DAAI): The authority designated by Namibia as responsible for aircraft accident and incident investigations

Document: Includes any correspondence, memorandum, book, plan, map, drawing, diagram,

pictorial or graphic, film, sound recording, video tape, electronic files and data, and any copy thereof.

Draft Final Report: Draft investigation report that is sent in confidence to departments in Namibia, States, and organizations involved in the investigation, inviting their significant and substantiated comments on the report.

Final Report: A State's conclusive report on its investigation into an aircraft accident or incident. The Final Report is issued by DAAI and includes the pertinent factual information, analysis, conclusions and, when appropriate, associated safety recommendations. This report is made with the intention of preventing accidents or incidents and in no case has the purpose of creating a presumption of blame or liability.

Flight recorder: Any type of recorder installed in the aircraft for the purpose of complementing aircraft accident, serious incident and incident investigation.

Incident: An occurrence, other than an accident, associated with the operation of an aircraft which affects or could affect the safety of operation.

Investigation: 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/or contributing factors and, when appropriate, the making of safety recommendations.

Investigation Interim Statement: 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 ongoing investigation and any safety issues raised during the investigation.

Investigator: A person delegated by DAAI to conduct its investigations.

Investigator-in-charge: A person charged, on the basis of his or her qualifications, with the responsibility for the organization, conduct and control of an investigation.

Maximum Mass" means maximum certificated take-off mass;

Observer: A representative of a concerned department of Namibia who is authorized by DAAI to attend an investigation as an observer, or DAAI investigator authorized to attend an investigation being conducted by another concerned department or AAI authority.

Occurrence: Any accident or incident associated with the operation of an aircraft.

OMA: Namibian government **Offices, Ministries and Agencies**

Operator: A person, organization or enterprise engaged in or offering to engage in an aircraft operation.

Other reportable incident: An occurrence, other than an accident or serious incident, which affects or could affect the safety of operations.

Participant: A person authorized by DAAI to participate in an investigation being conducted by the DAAI because in the opinion of DAAI that person has the expertise to contribute to achieving the Directorate's mandate.

Pilot-in-command: The pilot designated by the operator, or in the case of general aviation, the owner, as being in command and charged with the safe conduct of a flight.

"Preliminary Report" means the communication used for the prompt dissemination of data obtained during the early stages of the investigation;

Regulations: Civil Aviation (Investigation of Air Accidents and Incidents) Regulations of Namibia enabled by Civil Aviation Act, Act 6 of 2016.

Safety recommendation: A proposal of an accident investigation authority based on information derived from an investigation, made with the intention of preventing accidents or incidents and which in no case has the purpose of creating a presumption of blame or liability for an accident

or incident. In addition to safety recommendations arising from accident and incident investigations, safety recommendations may result from diverse sources, including safety studies.

Safety recommendation of global concern: A safety recommendation made to a State civil aviation authority, to a regional certification authority, 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: 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: An injury which is sustained by a person in an accident and which:

- (a) requires hospitalization for more than 48 hours, commencing within seven days from the date the injury was received; or
- (b) results in a fracture of any bone (except simple fractures of fingers, toes or nose); or
- (c) involves lacerations which cause severe haemorrhage, nerve, muscle or tendon damage; or
- (d) involves injury to any internal organ; or
- (e) involves second or third degree burns, or any burns affecting more than 5 per cent of the body surface; or
- (f) involves verified exposure to infectious substances or injurious radiation.

State: A Member State of the International Civil Aviation Organization (ICAO).

State of Design: The State having jurisdiction over the organization responsible for the type design.

State of Manufacture: The State having jurisdiction over the organization responsible for the final assembly of the aircraft, engine or propeller.

State of Occurrence: The State in the territory of which an accident or incident occurs.

State of the Operator: The State in which the operator's principal place of business is located or, if there is no such place of business, the operator's permanent residence.

State of Registry: The State on whose register the aircraft is entered.

Statement: The whole or any part of an oral, written or recorded statement relating to an aircraft accident or incident given by the author of the statement to the Authority.

State safety program (SSP): An integrated set of regulations and activities aimed at improving safety.

APPLICATION

4. This regulations applies in respect of aircraft accidents and incidents:
 - (a) in and over Namibia
 - (b) when Namibia is the State of Registry and:
 - (i) the location of the accident or the serious incident cannot definatly established as being in the territory of any other State; or
 - (ii) the accident or the serious incident has occurred in the territory of a non-contracting state which does not intend to conduct an investigation in accordance with Annex 13.

5. The Directorate of Accident Investigation Authority (hereinafter refered to as DAAI) shall take all reasonable measures to ensure that the investigation procedures and practices that it follows in relation to accidents and incidents are compatible with the Namibian obligations under the Convention on International Civil Aviation, and the International Civil Aviation Organization (ICAO) Standards and Reccomended Practices contained in Annex 13.

OBJECTIVE

6. The sole objective of the investigation of an accident or incident under these Regulations shall be the prevention of accidents and incidents. It shall not be the purpose of such an investigation to apportion blame or liability.

7. The DAAI shall have independence in the conduct of the investigation and unrestricted authority over its conduct consistent with the provisions of the Annex 13 to the Convention on International Civil Aviation. The DAAI is independent from the regulatory aviation authorities and other entities that could interfere with the conduct or objectivity of an investigation. The accident investigation authority must be strictly objective and totally impartial and must also be perceived to be so.

STATE SAFETY PROGRAMME (SSP) FOR ACCIDENT PREVENTION

8. Incident Reporting Systems and Accident and Incident Database

1. a). In pursuance of accident and incident investigations, DAAI shall collaborate with the Namibia Civil Aviation Authority (NCAA) to maintain and implement a State Safety Programme to achieve an acceptable level of safety performance in Namibia.

DAAI shall

- b) Maintain a database to facilitate the effective collection, analysis and management of information on actual or potential safety deficiencies and to determine any preventive action required in accordance with the relevant Regulations;
- c). maintain a record of safety recommendations arising from accident and incident investigations; where safety recommendations may result from diverse sources including safety studies and where safety recommendations are addressed to an organisation in another State, such recommendations shall be transmitted to that State's investigation authority.

The Director shall direct and deploy follow-up measures to monitor the Safety recommendations issued by DAAI

2. (a.) Director: DAAI shall establish and implement the process of mandatory incident reporting system for Namibia to facilitate collection of information on actual or potential safety deficiencies and shall adopt the European Co-ordination Centre *for Aviation Incident Reporting System (ECCAIRS)*

(b.) DAAI shall establish and implement a voluntary incident reporting system for Namibia to facilitate the collection of information that may not be captured by a mandatory incident reporting system; the voluntary incident reporting system shall be non-punitive and afford protection to the sources of the information;

3. The Director shall ensure DAAI engage stakeholders in adopting predictive safety information exchange, which includes the analysis of Flight Operations /Flight Data Analysis (FOQA/FDA), States' Safety Programme (SSP) and Safety Management Systems (SMS) implemented by the industry, aviation products and service providers as part of accident prevention efforts.

ADMINISTRATION

9. Procedures for Amendment of Regulations

- (a) These Regulations shall be amended from time to time to conform to the Civil Aviation Act, the provisions of ICAO Annex 13 and any amendment thereto.
- (b) The Director in the exercise of his powers may develop and approve Manual of Policy and Procedures to implement the provisions and future amendments of ICAO Annex 13 or any other procedures necessary to advance aviation safety.

10. Training for Air Safety Investigators

Aircraft accident investigation is a specialized task which should be undertaken by qualified investigators only. Potential accident investigators must have considerable practical experience and solid Academic knowledge in aviation safety as a foundation on which to build their investigation skills. This experience can be acquired from civil or military qualification as a pilot, aeronautical engineer or aircraft maintenance engineer. Personnel qualified in flight operations, airworthiness, air traffic management, or aviation safety -related management may also be suitable for accident investigator training.

- i. The Air Safety investigators shall be required to undertake four phase process these phases include
 - a. Initial training,
 - b. On-the-job training,
 - c. Basic accident investigation course and an
 - d. Advanced accident investigation course supplemented by specialized courses
 - e. and attend courses on new equipment to acquire system knowledge of aircraft for accident prevention purpose;
- ii. In pursuance of the provisions of paragraph 10 (I) of this regulation, Airline operators that acquire new aircraft in the fleet shall conduct familiarisation training for the air safety investigators and may periodically access their Flight Operations Quality Analysis/Flight Data Analysis (FOQA/FDA) as part of predictive safety efforts.
- iii. Recurrent courses should be attended within every 24 months so as to retain knowledge and expertise required to carry out an investigation.

INVESTIGATION

11. DAAI shall take all reasonable measures to ensure that the investigation procedures and practices that it follows in relation to aircraft accidents and incidents are compatible to the degree possible with investigation requirements, procedures and practices followed by other OMA and the Namibian Police (NAMPOL).
12. The Director shall make all reasonable efforts to enter into agreements to provide for the coordination of activities between DAAI and the entities noted in Section 18, with respect to:
 - a. investigation procedures and practices;
 - b. requirements for reporting aircraft accidents and incidents;
 - c. procedures to be followed in the event that conflicting interests arise during their activities with respect to aircraft accidents or incidents.
13. DAAI may investigate aircraft accidents and incidents that involve both State and civil aircraft and facilities. For such situations, DAAI shall take all reasonable measures to ensure that its investigation activities are coordinated with those other on-going investigations, if any.
14. Where a OMA is notified of an aircraft accident or incident that DAAI has the power to investigate under the Act, the department shall:
 - a. notify the DAAI with particulars of the aircraft accident or incident; and
 - b. advise the Director of any investigation that the department plans to conduct and of any remedial measures that the department plans to take.

INVESTIGATION — POWERS OF INVESTIGATORS

15. Investigators appointed under Part 11 section 84 (1) of the Act may exercise the following powers for the purpose of investigating aircraft accidents or incidents:
 - a. have immediate and unrestricted access to and control over the aircraft, wreckage, all its contents and/or wreckage site and all relevant evidential materials, including the detailed examination and use of the flight recorders, Air Traffic Services and any other recordings without delay and shall not be impeded by authorised personnel participating in the investigation or administrative or judicial investigations or proceedings;
 - b. to require the protection and preservation of:
 - i. the aircraft accident or incident site(s);
 - ii. the aircraft and any parts thereof, and;
 - iii. all records and documents associated with the occurrence;
 - c. to 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. (An investigator shall not exercise the powers in relation to a particular place without the consent of the person in charge of that place unless those powers are so exercised under the authority of a warrant, or by reason of exigent circumstances, it would not be practical for the investigator to obtain a warrant.)
 - d. to 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. (The investigator shall have regard to the desirability of minimizing any resulting

disruption to transportation services.);

- e. to cause such tests, including tests to destruction, of anything that was seized for the purposes of the investigation. (To the extent that it is practical and safe to do so, and does not unreasonably impede the progress of the investigation, the investigator shall take all reasonable measures to invite the owner and any person who appears on reasonable grounds to be entitled to the component being tested to be present at any such tests.);
 - f. ensure an immediate listing, photographing or copying of evidence thereof and controlled removal of debris, or components for examination or analysis purposes or preparing a study for the purpose of prevention of accidents; to require the provision and to make copies of any documents that the investigator may consider relevant to the accident or incident;
 - g. to retain any such documents until the completion of the investigation, or as the case may be, it is determined that an investigation shall not be carried out;
 - h. to call out and take statements from all such persons as the investigator thinks fit and to require any such person to make and sign a declaration of the truth of the statements made by the person;
 - i. to require a person(s) who was(were) directly or indirectly involved in the operation of an aircraft to submit to a medical examination, where the investigator believes on reasonable grounds that the medical condition is, or may be, relevant to the investigation:
 - the notice for medical examinations shall be made in writing and signed by the investigator; and
 - this requirement shall not be construed as a requirement that the person submit to any procedure involving surgery, perforation of the skin or any external tissue or the entry into the body of any drug or foreign substance
 - j. to require a physician or other practitioner to provide medical information concerning a patient where the investigator believes on reasonable grounds that such information is relevant to the investigation. (The notice for medical information shall be made in writing and signed by the investigator);
 - k. to cause an autopsy or medical examination to be performed on a body of a deceased person where the investigator believes on reasonable grounds that the information derived from the autopsy and examination is, or may be, relevant to the conduct of the investigation. (The notice for medical information shall be made in writing and signed by the investigator);
 - l. to require the person having custody of the body of the deceased person or other human remains to permit the performance of that autopsy or that medical examination. (The notice for medical information shall be made in writing and signed by the investigator); and
 - m. to call on the services of local authorities or other authorised persons to ensure protection of the accident site, including the aircraft and its contents, until such time as the Authority is able to directly take over custody and security of the aircraft and its contents.
- 16.** Before acting under Section 15, the investigator shall produce the investigator's credentials as proof of his identity and powers, when requested to do so by an involved person.
- 17.** No person shall refuse or fail to produce information to an investigator, or to attend before an investigator and give a statement, or to provide information, to submit to a medical examination, or to make the body of a deceased person or other human remains available for the performance of an autopsy or medical examination imposed in Section 15
- 18.** Investigators appointed under Part 11 section 84 (1) of the Act may apply for a court order from the responsible government department to compel compliance with orders or directives issued under Section 15.

OBSERVERS/PARTICIPANTS/ACCREDITED REPRESENTATIVES

19. Subject to any conditions that DAAI may impose, a person may attend as an **observer** at an investigation by DAAI if the person is designated as an observer by organization having a direct interest in the subject matter of the investigation.
 20. Subject to any conditions that DAAI may impose, a person may attend as a **participant** in an investigation by DAAI, if in the opinion of the Directorate that person has the expertise to contribute to achieving the Directorate's mandate.
 21. Subject to the Standards and Recommended Practices contained in ICAO Annex 13, **accredited representatives and advisers** appointed by States are entitled to participate in an investigation conducted by DAAI.
 22. Subject to the Standards and Recommended Practices contained in ICAO Annex 13, a State which has a special interest in an accident by virtue of fatalities or serious injuries to its citizens is entitled to appoint an expert to participate in an investigation conducted by DAAI.
 23. DAAI may engage, on a temporary basis, the services of persons having technical or specialized knowledge to assist in its investigations.
 24. DAAI may remove or ask to have removed an observer or a participant from an investigation:
 - a. if that person contravenes a condition imposed by DAAI on the person's presence, or
 - b. if, in DAAI's opinion, the person has a conflict of interest that impedes the conduct of the investigation.
 25. Where a person referred to in Sections 19, 20 and 21 of the Regulations attends as an observer or a participant at the investigation of an occurrence conducted by DAAI, the person may, subject to the conditions and limitations imposed by DAAI and under the supervision of DAAI investigator:
 - a. attend at the occurrence site(s);
 - b. examine the aircraft and its component parts and contents involved in the occurrence;
 - c. unless otherwise prohibited by law, examine any document as defined in Section 3 of the Regulations, and any other relevant evidence, relating to:
 1. the aviation activity during which the occurrence took place,
 2. the crew members involved in the occurrence, and
 3. the aircraft, its component parts and contents;
 - d. attend laboratory tests or analyses.
- Note: Attachment A is an example of a form for "Granting of Observer/Participant Status" on the investigation.
26. Where a person referred to in Sections 21 of these Regulations attends an investigation of an accident or incident conducted by DAAI, that person, unless otherwise prohibited by law, shall be granted the rights and entitlements expressed in the Standards and Recommended Practices set out in ICAO Annex 13.
 27. The rights and entitlements granted to an observer or participant shall not, unless otherwise authorized by the Director: DAAI, include attendance at an interview of a witness during an investigation.
 28. Pursuant to Subsection 15 (e), where the owner of the component being tested, and any person who appears on reasonable grounds to be entitled to it are invited to observe such tests, these persons may:
 - a. record or cause to be recorded the condition of the component being tested prior to, during and after the test; and
 - b. be represented by a person having technical knowledge and expertise in the subject-matter of the test.

MANDATORY NOTIFICATION OF ACCIDENTS AND INCIDENTS

29. Where an aircraft accident or incident takes place, the owner, operator, pilot-in-command and any crew member of the aircraft, the operator of the airport, and any air traffic controller having knowledge of an accident or incident shall notify DAAI and provide as much information as is possible as soon as possible and by the quickest means available.
30. The notification to DAAI shall be in English and contain as much of the information specified in Schedule 1 to these Regulations as is readily available; but, the dispatch of the notification shall not be delayed due to the lack of complete information. One can report via
 - I. DAAI website <http://www.mwt.gov.na/notification-of-all-accidents-and-incidents>
 - II. Eccairs system

RESPONSES TO NOTIFICATIONS

31. Where DAAI is notified of an aircraft accident or serious incident specified in Schedule 2, DAAI with a minimum of delay shall and quickest mean available:
 - e. forward a notification to:
 - iv. any concerned department, directorate ;
 - v. the States having a direct interest in the accident or incident, including the State of Registry, State of the Operator, State of Design, State of Manufacture, and when required to ICAO;
 - vi. involved air operator, operators of airports and air traffic control units, and aircraft manufacturer; and
 - vii. any other local authorities and organizations that could assist DAAI in its investigation.
 - f. provide the information as specified in Schedule 1 of the Regulations; and
 - g. advise the entities noted in Subsection (i) and (ii) of any investigation that DAAI plans to conduct, including the type and scope of the investigation.
32. If in the course of an investigation, DAAI becomes aware or it suspects that an act of unlawful interference was involved, the Directorate shall immediately initiate action to ensure that the Namibian Police (NAMPOL) is informed and of the states concerned are informed.

CREW STATEMENTS

33. As soon as possible after the accident or serious incident, each crew member shall forward to DAAI, a statement setting forth the facts, conditions, and circumstances relating to the accident or serious incident as they appear to the member. (If the crew member is incapacitated, the member shall submit the statement as soon as the member is physically able to do so.)

VOLUNTARY REPORTING

34. Any person having knowledge of any safety-related event, other than an accident or incident, may make a voluntary report to DAAI and provide any information that the person believes is relevant.
35. Where a voluntary report is made to DAAI, no person shall 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 authorizes, in writing, its release.
36. A report made to DAAI under a voluntary reporting system shall not be used against the person who made the report in any disciplinary, civil, administrative and criminal proceedings.
37. The protection provided in Sections 35 and 36 regarding the identity of the person making the voluntary report shall not apply to situations involving unlawful acts, gross negligence or wilful infractions by that person, or unless an appropriate authority determines in accordance with national legislation, the value of its disclosure or use in any particular instance, outweighs the adverse impact such action may have on aviation safety.

ASSISTANCE TO VITIMS AND FAMILIES OF AIRCRAFT ACCIDENTS

38. The Director will designate the IIC or any other person to provide timely update on the progress of the report to the victims and families of aircraft accidents. It shall be done before notifying to the public.

DECISION AS TO THE TYPES OF INVESTIGATION

39. The Director of AAI shall establish policies respecting the types of aircraft accidents or incidents to be investigated. The following criteria shall apply when DAAI makes its decision as to the types of its investigations:
- a. all accidents shall be investigated;
 - b. all serious incidents involving aircraft of a maximum mass of over 2 250 kg shall be investigated;
 - c. all serious incidents should be investigated; and
 - d. other types of incidents may be investigated.

DELEGATION OF INVESTIGATIONS

40. Where the Namibia is responsible under the provisions of Annex 13 to institute an investigation into an aircraft accident or serious incident, in accordance with Section 72 (1) of the Act, DAAI may delegate the whole or any part of an investigation to another State, to a regional accident and incident investigation organization or to a department by mutual arrangement and consent. In any event, DAAI shall use every means to facilitate the investigation.
41. Where the Directorate has delegated the investigation to department:
- a. the delegated department is required to investigate under the provisions of the Act, and to provide its Final Report and recommendations to DAAI; and
 - b. the Directorate should appoint an observer to such an investigation.

FOREIGN INVESTIGATIONS

42. Where DAAI has been notified of an aircraft accident or serious incident that occurred outside the territory of Namibia involving a Namibian aircraft, an aircraft operated by a Namibian operator.
43. DAAI shall:
- c. acknowledge receipt of the notification
 - d. provide the notifying State with the following information with the least possible delay:
 - i. any relevant information regarding the aircraft and flight crew involved in the accident or serious incident; and
 - ii. if Namibia is the State of the Operator, details of any dangerous goods on board the aircraft;
 - e. inform the notifying State as to:
 - i. whether Namibia intends to appoint or has appointed an accredited representative; and
 - ii. if such accredited representative will be or has been appointed and will be travelling to the State in which the investigation is being carried out, the contact details and the expected date of arrival of the accredited representative in such State.
 - f. appoint an accredited representative, if requested to do so by the State conducting an investigation into an accident, or a serious incident involving an aircraft of a maximum mass of over 2 250 kg.

PROTECTION OF ACCIDENT AND INCIDENT INVESTIGATION RECORDS

- 44.** The protections in Annex 13, 5.12 shall apply from the time an accident or incident occurs and continue after the publication of the Final Report.
- 45.** DAAI shall not make the following records available for purposes other than accident or incident investigation, unless the High Court of Namibia determines that their disclosure or use outweighs the likely adverse domestic and international impact such action may have on that or any future investigations:
- (a) Cockpit voice recordings and airborne image recordings and any transcripts from such recordings and
 - (b) Records in the custody or control of DAAI being:
 - 1. All statements taken from persons by DAAI in the cause of the investigation;
 - 2. All communications between persons having been involved in the operation of the aircraft;
 - 3. Medical or private information regarding persons involved in an accident or incident.
 - 4. Recordings and transcripts of recordings from air traffic control units;
 - 5. Analysis of and opinion about information, including flight recorder information, made by the DAAI and accredited representatives in relations to the accident or incident.
 - 6. The draft Final Report of an accident or incident investigation.
 - 7. Any other records/Information obtained or generated by the accident which DAAI determines, as a part of an accident or incident investigation, need to be protected in the same way as the records listed in section 45.
- 46.** The requests for records in the custody or control of the Directorate shall be directed to the original source of the information, where available.
- 47.** The records specified in Annex 13, 5.12 and section 45 of these regulations shall be included in the Final Report or its appendices only when pertinent to the analysis of the accident or incident. Parts of the records not relevant to the analysis shall not be disclosed.
- 48.** The names of the persons involved in an accident or incident shall not be disclosed to the public by DAAI
- 49.** DAAI shall take measures to 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

- 50.** If the Final Report on an investigation cannot be made publicly available within twelve months of the accident or incident, DAAI shall issue an Investigation Interim Statement on each anniversary of the occurrence, detailing the progress of the investigation and any safety issues raised.
- 51.** The Directorate shall provide the Investigation Interim Statement referred to in Section 50 to the following:
- a. any concerned government department
 - b. the States having a direct interest in the occurrence, and if appropriate to ICAO; and
 - c. States having suffered fatalities or serious injuries to its citizens.

52. DAAI shall make the Investigation Interim Statement publicly available.

DRAFT FINAL REPORTS ON INVESTIGATIONS

53. In accordance with the provisions Annex 13 and the Act, DAAI shall send a copy of the Draft Final Report to the following, inviting their significant and substantiated comments on the report:
- a. any concerned government department/directorate;
 - b. the States having a direct interest in the occurrence in accordance with Annex 13; and
 - c. any other organizations involved in the investigation.
54. The time limit for providing comments on the Draft Final Report shall be sixty (60) days from the date of the transmittal letter sending the draft report, unless an extension of that period has been agreed to by those concerned.
55. No person shall 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.
56. DAAI shall not disclose any Draft Final Report, either issued or received, to the public.
57. If the Directorate receives comments within the time limit specified in the transmittal letter, it shall 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 REPORTS ON INVESTIGATIONS

58. DAAI shall send the Final Report on its investigation with a minimum of delay to:
- a. any concerned government department /directorate
 - b. States having a direct interest in the occurrence in accordance with Annex 13, and if applicable to ICAO;
 - c. States having suffered fatalities or serious injuries to its citizens; and
 - d. any other organizations or persons who, in the opinion of the Directorate , have a direct interest in the investigation.
 - e. All final reports shall be made public and published at the DAAI WEBSITE.

SAFETY RECOMMENDATIONS

59. Safety recommendations issued by DAAI shall be sent to those persons or organizations of the aviation community that have a direct interest in the safety issue that was the basis for the safety recommendation, as well as to other members of the aviation community who would benefit from the information, including but not limited to the following:
- a. action addressee for the safety recommendation;
 - b. involved government departments/directorate;
 - c. involved States and accident investigation authorities;
 - d. involved stakeholders, such as but not limited to the airline, maintenance organization, manufacturer, air traffic services provider, and airport operator; and
 - e. others who may benefit from lessons learned.
60. The concerned department, State, or any other authority to which a safety recommendation has been issued, shall, within ninety (90) days after being so notified, advise the Authority in writing of:
- a. any action taken, or proposed to be taken, in response to the recommendations; or

b. provide written reasons as to why no action will be taken.

61. DAAI shall record and review responses to its safety recommendations and assess the degree to which the risks underlying the safety recommendation have been mitigated.
62. The Directorate shall implement procedures to monitor the progress of the action taken in response to a safety recommendation that DAAI receives.
63. DAAI shall inform ICAO of safety recommendations of global concern issued, as well as the responses received to these recommendations.
64. The Director of Aircraft Accident Investigations shall ensure that the safety recommendations issued to Namibia as a state are sent to NCAA through the office of the Executive Director of Civil Aviation and action is taken within a specified period or response on why no action will be taken is communicated.
65. If, after the investigation has been closed, new and significant evidence becomes available, DAAI shall reopen it. However, when Namibia conducts the investigation but did not institute it, then DAAI shall first obtain the consent of the State which instituted the investigation.

CONTRAVENTIONS

66. Failure to notify accident or serious incident

Any person involved who—

has knowledge of the occurrence of an accident or serious incident in or over the Namibia fails, without reasonable excuse, to notify it without delay to the DAAI and, in the case of an accident, occurred, contravenes these Regulations.

A pilot-in-command or operator who, without reasonable excuse, fails to comply with section 64 section 90(1), (2) or (3), relating to the notification of an accident or incident, commits an offence and is liable -

(a) in the case of an individual, to a fine not exceeding N\$50 000 or to imprisonment for a period of two years and, if the offence is a continuing one, to a further fine not exceeding N\$10 000 for every day or part of a day during which the offence is continued; or

(b) in the case of a juristic person, to a fine not exceeding N\$250 000 and, if the offence is a continuing one, to a further fine not exceeding N\$50,000 for every day during which the offence is continued

67. Obstruction

Any person who, without reasonable excuse, obstructs or impedes an Investigator in the exercise of any duties, powers or entitlements imposed or conferred by the Aviation Act 2016, Annex 13 or by these Regulations, contravenes these Regulations. commits an offence and is liable to a fine not exceeding N\$5 000 or to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment.

68. False Information

Any person who knowingly provides false or misleading information to an Investigator in connection with a safety investigation contravenes these Regulations.

69. Failure to comply with witness summons

Any person who fails, without reasonable excuse, to comply with a witness summons contravenes these Regulations.

70. Offences relating to disclosure of privileged information

A person who -

(a) knowingly communicates or permits to be communicated to any other person

i.) cockpit voice recordings and airborne image recordings and any transcripts from such recordings;

ii.) records in the custody or control of DAAI being:

- iii) all statements taken from persons by DAAI in the course of their investigation;
- iv) all communications between persons having been involved in the operation of the aircraft;
- iv) medical or private information regarding persons involved in the accident or incident; iv) recordings and transcripts, of recordings from air traffic control units;
- v) analysis of and opinions about information, including flight recorder information, made by the Bureau and accredited representatives in relation to the accident and incident; and
- vi) The draft Final Report of an accident or incident investigation

(b) knowingly communicates or permits to be communicated to any person a privileged statement in breach of section 106(2); or

(c) knowingly communicates or permits to be communicated to any person privileged identity information in breach of section 112(a), commits an offence and is liable -

(i) in the case of an individual, to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment; or

(ii) in the case of a juristic person, to a fine not exceeding N\$500 000. Subject to section 44 any relevant person who knowingly contravenes any of the prohibitions in Aviation Act section 174 also contravenes these Regulations.

71. Failure to preserve evidence

(1) Any person involved in an aviation occurrence who fails, without reasonable excuse, to take the necessary steps to preserve evidence described in Annex 13 also contravenes these Regulations.

72. Offences against accident and incident investigation under Part 11

A person who -

(a) without lawful excuse, wilfully resists or otherwise obstructs a member or an investigator in the execution of powers or functions under Part 11 of the Aviation Act;

(b) knowingly gives false or misleading information at any investigation or public inquiry under Part 11;

(c) makes a report in terms of section 111 or 112 of the Act that the person knows to be false or misleading; or

(d) without lawful authority removes, conceals or withholds, or attempts to remove, conceal or withhold any part of an aircraft involved in an accident or incident, or any property on board an aircraft at the time of an accident or incident in breach of section 115, commits an offence and is liable to a fine not exceeding N\$100,000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment

SCHEDULE 1

CONTENTS OF THE INITIAL NOTIFICATION

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

- a. for accidents the identifying abbreviation ACCID, for serious 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 or serious incident 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 serious 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 DAAI website and App, ICAO/AIG website or in ICAO *Manual of Aircraft Accident and Incident Investigation*, Part I — *Organization and Planning* (Doc 9756), Chapter 4, Appendix 2.

SCHEDULE 2

REPORTABLE AIRCRAFT ACCIDENTS/INCIDENTS

Reportable accidents

- All aircraft accidents are reportable.

Reportable serious incidents

- Near collisions requiring an avoidance manoeuvre to avoid a collision or an unsafe situation, or when an avoidance action would have been appropriate.
- Collisions not classified as accidents.
- Controlled flight into terrain only marginally avoided.
- Aborted take-offs on a closed or engaged runway, on a taxiway¹ or unassigned runway.
- Take-offs from a closed or engaged runway, from a taxiway¹ or unassigned runway.
- Landings or attempted landings on a closed or engaged runway, on a taxiway¹ or unassigned runway.
- Gross failures to achieve predicted performance during take-off or initial climb.
- Fires and/or smoke in the cockpit, in the passenger compartment, in cargo compartments or engine fires, even though such fires were extinguished by the use of extinguishing agents.
- Events requiring the emergency use of oxygen by the flight crew.
- Aircraft structural failures or engine disintegrations, including uncontained turbine engine failures, not classified as an accident.
- Multiple malfunctions of one or more aircraft systems seriously affecting the operation of the aircraft.
- Flight crew incapacitation in flight.
- Fuel quantity level or distribution situations requiring the declaration of an emergency by the pilot, such as insufficient fuel, fuel exhaustion, fuel starvation, or inability to use all usable fuel on board.
- Runway incursions classified with severity A. The *Manual on the Prevention of Runway Incursions* (Doc 9870) contains information on the severity classifications.
- Take-off or landing incidents. Incidents such as under-shooting, overrunning or running off the side of runways.
- System failures, weather phenomena, operations outside the approved flight envelope or other occurrences which caused or could have caused difficulties controlling the aircraft.
- Failures of more than one system in a redundancy system mandatory for flight guidance and navigation.
- The unintentional or, as a precautionary or emergency measure, the intentional release of a slung load or any other load carried external to the aircraft.

Note: The incidents listed above are typical examples of incidents that are likely to be serious incidents. The list is not exhaustive and only serves as guidance to the definition of serious incident.



Ministry of works and Transport

Directorate of Aircraft Accidents Investigations

File Reference

Day Month Year

Dear _____

OCCURRENCE FILE NO: ____

DATE: _____ **TIME:** _____

AIRCRAFT INVOLVED _____

OCCURRENCE LOCATION _____

The Accident Investigation Authority (DAAI) of Namibia is empowered to investigate aircraft accidents and incidents in Namibia. The sole objective of the DAAI 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 authorize a person to attend as an “observer” when the person is designated as such by a Minister responsible for Office, Ministry or Agency (OMA) having a direct interest in the investigation, or as a “participant” when, in the opinion of DAAI, the person has the expertise to contribute to achieving DAAI’s objective.

By this document, you are granted the status of an observer or participant to this occurrence and, subject to any conditions, the DAAI may impose and under the supervision of DAAI 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 Section 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 shall limit your activities at the occurrence site to those outlined by the Investigator-in-charge;
- (b) You shall ensure that your activities do not restrict, endanger, or otherwise interfere with DAAI investigators in the performance of their duties;
- (c) The sole purpose of the DAAI investigation is the advancement of aviation safety. Consequently, any information you gain as a result of your observer/participant status shall only be used for that purpose. Until the investigation report is released to the public, you shall not disclose or otherwise use this information without the expressed consent of the Investigator-in-charge.
- (d) To be permitted on the occurrence site, you shall have the appropriate inoculations against disease and biohazards (refer to the national immunization guide, health department directives, or equivalent publications);
- (e) To be permitted on the occurrence site, you shall 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 immunization guide, health department directives, or equivalent publications); and
- (f) You shall 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/participant shall 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.

Yours truly,

<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 Accident Investigation Authority for any damage or injuries I may suffer as a result of my attending the investigation as an observer/participant.			
	Signed:		Date:
	<i>(Observer/Participant)</i>		