



International Civil Aviation Organization

**Asia Pacific Regional Aviation Safety Team - Third Meeting of the
Accident Investigation Ad hoc Working Group (APRAST-AIG AWG/3)**
(Bangkok, Thailand, 11-12 March 2013)

Agenda Item 4: Asia-Pacific Code of Conduct on Cooperation Relating to Civil Aviation
Accident/Incident Investigation

**Clarification on the Asia-Pacific Code of Conduct on Cooperation Relating to Civil Aviation
Accident/Incident Investigation**

(Presented by Chairman/Vice-Chairman of APRAST-AIG AWG)

SUMMARY

This paper clarifies and affirms that the Asia-Pacific Code of Conduct (CoC) on
Cooperation Relating to Civil Aviation Accident/Incident Investigation is not meant
to be legally binding.

1. INTRODUCTION

1.1 At its Second Meeting in New Delhi on 8-9 October 2012, the RASG-APAC agreed to the development and implementation of a written framework, such as a Code of Conduct, that will promote mutual cooperation in accident/incident investigation.

1.2 The APRAST-AIG AWG has produced an Asia-Pacific Code of Conduct (CoC) on Cooperation Relating to Civil Aviation Accident/Incident Investigation for the RASG-APAC. The ICAO APAC Office has sent out State Letter ref. T 6/13.9- AP 012/13 (FS) dated 25 January 2013 to encourage States/Administrations to support this cooperation initiative of the Asia and Pacific regions and to invite States/Administrations to pledge their support to the CoC by completing an accession form by their investigation agencies.

2. DISCUSSION

2.1 In its State Letter, the ICAO APAC Office indicates that the CoC is not meant to be legally binding. The APRAST-AIG AWG was aware that, on the one hand, the term “Memorandum of Understanding” could be interpreted by some States/Administrations as a form of official treaty and thus would require a government approval process at a very high level and that, on the other hand, the term “Code of Conduct” was used within the community of the European Civil Aviation Conference (ECAC) to suggest a document that would not require such a high-level approval process. Thus, the term “Code of Conduct” was chosen by the APRAST-AIG AWG with a view to facilitating the acceptance of the CoC by the investigation agencies in the respective States/Administrations as the term “Code of Conduct” should entail much less formality than the term “Memorandum of Understanding” would.

2.2 Nevertheless, it appears that some States/Administrations have reservation over completing the accession form as they deem the language of the CoC legal in nature and thus the CoC legally binding.

2.3 It has to be noted that the CoC was crafted by investigation practitioners (and not by lawyers) in the APRAST-AIG AWG and is meant to be a practical document to embody the spirit of cooperation in investigation matters. The language used in the CoC may not be perfect. On the one hand, there are words like *shall* which may inadvertently give a binding or legalistic connotation. So it is understandable that some investigation agencies have reservations over the language of the CoC. However, on the other hand, the CoC is also mostly expressed in a non-mandatory form and in a manner consistent with an intention for it not to be legally binding (e.g. with words like *will*). In addition, the CoC stipulates that any differences ‘will be settled amicably through mutual consultation or negotiations.....without reference to any third party’.

2.4 The language of the CoC can be improved though future deliberations of the APRAST-AIG AWG or the APAC Group of Experts on Accident/Incident Investigation (APAC-ACC), the formation of the latter having been approved by the RASG-APAC. In the meantime, it is hoped that States/Administrations will consider favourably their accession to the CoC in the light of the clarification above. States/Administration still having reservation may consider using a variant of the accession form as enclosed in **Attachment A**, which a State has used when acceding to the CoC.

3. ACTION BY THE MEETING

3.1 The meeting is invited to:

- a) Note the clarification on and affirm the non-legally binding nature of the Code of Conduct on Cooperation Relating to Civil Aviation Accident/Incident Investigation; and
- b) Recommend to the ICAO APAC Office that it communicates with States/Administrations to clarify on the non-legally binding nature of the Code of Conduct and to advise States/Administrations of the option of using a variant of the accession form as enclosed in **Attachment A**.

— END —

Asia-Pacific Code of Conduct on Cooperation Relating to Civil Aviation Accident/Incident Investigation

Response form to be completed and returned to ICAO Asia and Pacific Office

To: Regional Director
ICAO Asia and Pacific Office
Email address: APAC@icao.int

(State / Administration) _____

I have the honour to refer to the letter Ref.: T 6/13.9 – AP 012/13 (FS) of 25 January 2013 from the ICAO Asia and Pacific Office.

I write to advise you that **(name of investigative body)**, which is the authority in charge of investigations into civil aviation accidents and incidents in **(name of State)**, wishes to accede to the Asia-Pacific Code of Conduct on Cooperation Relating to Civil Aviation Accident/Incident Investigation, as enclosed with the letter under reference.

In acceding, **(repeat name of State)** makes clear that it does so in reliance on the statement in the letter under reference that this Code of Conduct is not legally binding. **(Repeat name of State)** confirms that it does not consider this Code of Conduct to be binding in any way at international law, or otherwise mandatory. While **(repeat name of State)** is not bound by the Code, the **(repeat name of investigative body)** will have regard to it, as appropriate, in circumstances as they may arise.

Please add to the list of Signatories to the Code of Conduct the following name and title, and record the date of your receipt of this Response Form as the date of accession of **(repeat name of State)**:

*(Name and position of senior official of
aviation accident/incident investigation body)*

I would be grateful for confirmation of your receipt of this notification of accession to the Code of Conduct.