



Model Accident Investigation Authority Act

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International Civil Aviation Organization

[STATE] ACCIDENT INVESTIGATION AUTHORITY ACT

PURPOSE

1. The purpose of this Act is to establish:
 - (a) the Accident investigation authority of [STATE]; and
 - (b) the laws and regulations related to the conduct of investigations into aircraft accidents and incidents.

TITLE

2. This Act may be cited as the Accident Investigation Authority Act of [STATE].

DEFINITIONS

3. For the purpose of implementing the provisions of this Act, 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.

Accident investigation authority (Authority): The authority designated by [State] as responsible for aircraft accident and incident investigations within the context of Annex 13 — *Aircraft Accident and Incident Investigation*.

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 commissioner, or other competent government official who is appointed by *[STATE]* to be responsible for the accident and incident investigations within the meaning of the Act.

Balancing test: It refers to the determination by the competent authority of the impact the disclosure or use of accident and incident investigation records may have on current or future investigations.

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.

Competent authority: The authority designated to administer the balancing test.

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.

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

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 *[STATE]*, 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 the Authority 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 accident/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.

Investigator: A person delegated by the Authority 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.

Material fact in question: It refers to a fact that is significant or essential to the matter at hand, that one party alleges and that the other controverts, and is to be determined by the competent authority administering the balancing test.

Observer: A representative of a concerned department of [STATE] who is authorized by the Authority to attend an investigation as an observer, or an Authority investigator authorized to attend an investigation being conducted by a concerned department.

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

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

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

Regulations: The Aircraft Accident and Incident Investigation Regulations of [STATE] enabled by the Accident Investigation Authority Act of [STATE].

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.

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. (Schedule 2 of the Regulations provides a list of examples of serious incidents.)

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.

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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.

APPLICATION

4. This Act applies in respect of aircraft accidents and incidents:
 - (a) in or over [STATE];
 - (b) when [STATE] is the State of Registry and:
 - (i) the location of the accident or the serious incident cannot definitely be 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 Accident investigation authority (hereinafter referred to as Authority) 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 [STATE's] obligations under the Convention on International Civil Aviation, and the International Civil Aviation Organisation (ICAO) Standards and Recommended Practices contained in Annex 13.

OBJECTIVE

6. The sole objective of the investigation of an aircraft accident or incident conducted under this Act shall be the prevention of accidents and incidents. It is not the purpose of this activity to apportion blame or liability.
7. Investigations by the Authority shall be conducted separate from investigations conducted for the purposes of establishing blame or civil or criminal liability.
8. The Authority shall have independence in the conduct of the investigation and have unrestricted authority over its conduct, consistent with the provisions of Annex 13.
9. Any investigations conducted under the provisions of this Act shall have unrestricted access to all evidential material without delay and shall not be impeded by administrative or judicial investigations or proceedings.
10. The Authority shall be functionally independent from other State aviation authorities and other entities that could interfere with the conduct or objectivity of an investigation.
11. The mandate of the Authority is to conduct independent investigations, including:
 - a) the gathering, recording and analysis of all relevant information of an accident or incident;
 - b) if appropriate, the issuance of safety recommendations;
 - c) if possible, the determination of the causes and/or contributing factors; and
 - d) as appropriate, the completion of the Final Report.
12. No one shall circulate, publish or give access to a draft report or any part thereof, or any documents obtained during an investigation of an accident or incident, without the express consent of the Authority, unless such reports or documents have already been published or released by the Authority.
13. Final reports shall not be used as evidence in any court proceeding or in other proceedings related to apportioning blame or liability.
14. No finding, cause or contributing factor determined under this Act shall be construed as assigning fault or determining civil or criminal liability.

15. No safety recommendation made under this Act shall be construed as assigning fault or determining civil or criminal liability
16. The State shall make and promulgate regulations for carrying out the purposes and provisions of this Act.

APPOINTMENTS

17. [STATE] shall:
 - (a) designate an Appointed Head of the Authority who shall be responsible for aircraft accident and incident investigations within the meaning of this Act; and
 - (b) ensure that sufficient funds are available to enable the Authority to properly investigate accidents and incidents that fall within the Authority's area of responsibility.

DUTIES OF THE APPOINTED HEAD

18. The Appointed Head of the Authority has the authority to:
 - (a) establish policies and procedures to be followed in the conduct of investigations;
 - (b) institute investigations into the circumstances of accidents and incidents;
 - (c) delegate the investigation, in whole or in part, to another State or a regional accident and incident investigation organization, when deemed to be appropriate;
 - (d) designate an Investigator-in-charge for each investigation;
 - (e) delegate the powers of investigation to the members of the investigation team, and provide each member with a certificate of appointment; and
 - (f) release a Final Report on its investigations.

DUTIES OF THE INVESTIGATOR-IN-CHARGE

19. The Investigator-in-charge has exclusive authority to direct the conduct of an investigation under this Act on behalf of the Appointed Head.
20. The Investigator-in-charge shall:
 - (a) report to the Appointed Head on the investigation, including proposing findings as to causes and contributing factors, and safety recommendations related to investigations conducted by the Authority; and
 - (b) be responsible for appointing observers and participants required for the investigation.

CONFLICTS OF INTEREST

21. To achieve functional independence of the Authority, and to ensure the credibility of its investigations, members of the Authority shall avoid actual and potential conflicts of interest.

INVESTIGATION – JURISDICTIONS

22. Notwithstanding any other Act, no department may commence an investigation under this Act if the accident or incident has been investigated, is being investigated, or is going to be investigated by the Authority.

23. Nothing in Section 22 of the Act prevents a department of *[STATE]* from commencing an investigation into or continuing to investigate an aircraft accident or incident for any purpose other than that of the Act.
24. Nothing in Section 22 of the Act prevents any law enforcement department in the *[STATE]* from investigating an aircraft accident or incident for any purpose for which it is empowered to conduct investigations.
25. For any investigation conducted under the provisions of this Act, and in consideration of Section 24, the Authority shall:
 - (a) have unhampered access to and unrestricted control over the scene of the accident or incident, including the wreckage and any material relevant to the investigation;
 - (b) have unhampered access to and control of the wreckage and all relevant material, including flight recorders and air traffic services recordings and records;
 - (c) have unrestricted control over wreckage and parts to ensure that detailed examinations can be made without delay;
 - (d) take all reasonable measures to protect the evidence and to maintain safe custody of the aircraft and its contents for such a period as may be necessary for the purposes of the investigation; and
 - (e) relinquish control of the accident or incident site(s) and release custody of the aircraft, its contents or any parts thereof as soon as they are no longer required by the investigation.

REPORTING OF ACCIDENTS AND INCIDENTS

26. Subject to the provisions of the Accident investigation authority Regulations of *[STATE]*, the owner, operator, pilot-in-command, crew members, operator of an airport, air traffic controller, or any other person having knowledge of an accident or incident shall report to the Authority and provide as much information as soon as possible and by the quickest means available.

DECISION AS TO THE EXTENT OF INVESTIGATION

27. Where the Authority is notified of an aircraft accident or incident, the Authority will decide as to the extent of the investigation required and the procedures to be followed in carrying out the investigation, based on the lessons it expects to draw from the investigation for the improvement of safety.

PRESERVATION OF EVIDENCE

28. Where an aircraft accident or incident takes place, the owner, operator, and crew members shall, to the extent possible, and until otherwise instructed by the Authority or except as otherwise required by this Act, take all reasonable measures to protect the evidence, including documents defined in this Act, and to maintain safe custody of the aircraft and its contents for such a period as may be necessary for the purposes of an investigation.
29. Section 28 shall not be construed as preventing any person from taking necessary measures to ensure the safety of any person and property.
30. Where evidence relevant to an accident or incident has to be interfered with pursuant to Section 29, the person directing, supervising or arranging the interference shall, to the extent possible in the circumstances, and prior to the interference, record the evidence by the best means available.

PROTECTION OF ACCIDENT AND INCIDENT INVESTIGATION RECORDS

31. When conducting the investigation of an accident or incident, *[State]* shall not make the following records available for purposes other than accident or incident investigation, unless the designated competent authority 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;
 - b) records in the custody or control of the accident investigation authority being:
 - a. all statements taken from persons by the Authority in the course of their investigation;
 - b. all communications between persons having been involved in the operation of the aircraft;
 - c. medical or private information regarding persons involved in the aircraft 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 Authority and accredited representatives in relation to the accident or incident; and
 - f. the draft Final Report of an accident or incident investigation.
32. Audio content of cockpit voice recordings as well as image and audio content of airborne image recordings shall not be disclosed to the public.

ADMINISTRATION OF THE BALANCING TEST

33. Where the request is for a record listed under Section 31 to be disclosed or used in a criminal, civil, administrative or disciplinary proceeding, the competent authority shall be satisfied that a material fact in question in the proceedings cannot be determined without that record, before administering the balancing test.

EVIDENCE OF INVESTIGATORS

34. Authority investigators shall not be compellable to appear as a witness in any judicial, administrative or disciplinary proceedings related to apportioning blame or liability.

DRAFT FINAL REPORTS ON INVESTIGATIONS

35. Before releasing the Final Report on its investigation, the Authority shall send a draft Final Report to departments, States, and other organizations that participated in the investigation, inviting their significant and substantiated comments.

FINAL REPORTS ON INVESTIGATIONS

36. In the interest of accident and incident prevention, the Authority shall make a Final Report on its investigation publicly available as soon as possible and, if possible, within twelve months.

SAFETY RECOMMENDATIONS

37. At any stage of the investigation of an accident or incident, the Authority shall recommend in a dated transmittal correspondence to the appropriate authorities, including those in other States any preventive action that it considers necessary to be taken promptly to enhance aviation safety.
38. The Authority shall address, when appropriate, any safety recommendations arising out of its investigations in a dated transmittal correspondence to the accident investigation authorities of other State(s) concerned and, to ICAO when ICAO documents are involved.

RE-OPENING OF INVESTIGATIONS

41. If new and significant evidence becomes available after the investigation has been closed, the Authority shall reopen it.