



APAC States AAIIAs experience on the process to independence

Hong Kong AAIA

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Previously, air accident investigations in Hong Kong were carried out by the Civil Aviation Department (CAD), which was also responsible for both aviation regulation and air traffic services.

As a result, there was a concern about the CAD's lack of independence, given the potential for conflict of interest when conducting investigations.

The need for impartiality was a global challenge, which led the International Civil Aviation Organisation (ICAO) to require all Contracting States (and Regions) to establish independent air accident investigation authorities by November 2018.

The establishment of Hong Kong's new AAIA meets that requirement. In order to provide the AAIA and the Chief Inspector with the necessary statutory powers, amendments to the existing legislation were made, which came into force on 3 December 2018.

The new AAIA is independent from the CAD, and forms part of the Transport and Housing Bureau, with the Chief Inspector reporting to Hong Kong's Secretary for Transport.

Changes to the legislation have been made in order to align it with the international standards set out in ICAO Annex 13 to the Convention on International Civil Aviation, which addresses aircraft investigation.

Additional legislation is still required in order to shield from further disclosure information obtained by the AAIA during the course of an investigation, such as interview statements and cockpit voice recordings (as required by chapter 5.12 of Annex 13)

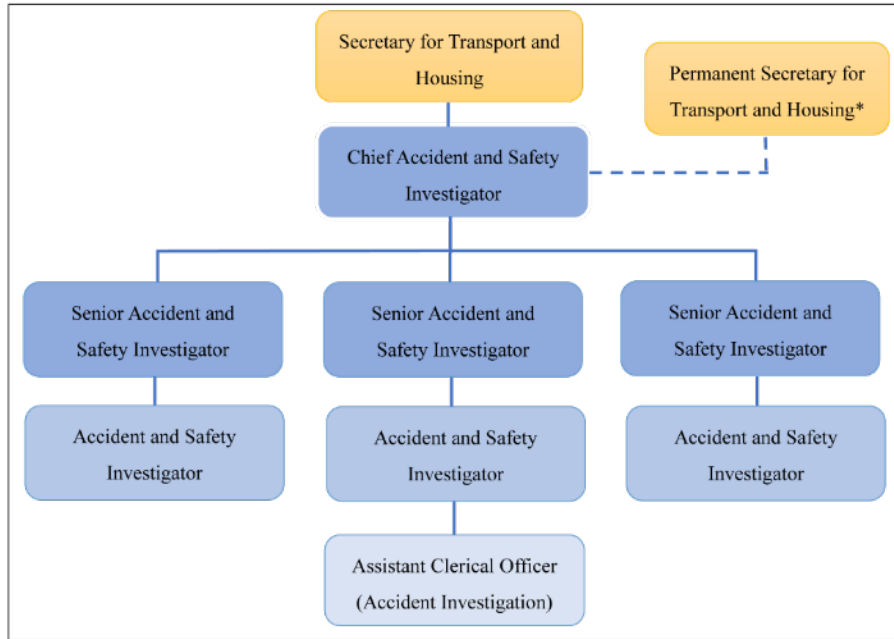
The independent AAIA is only funded up to March 31 2020 and the organizational structure including the CI is only approved to the same date.

Permanent funding and legal approval for the AAIA and CI position require Legislation Council approval from March 31 onwards.



Established Sept 2018.

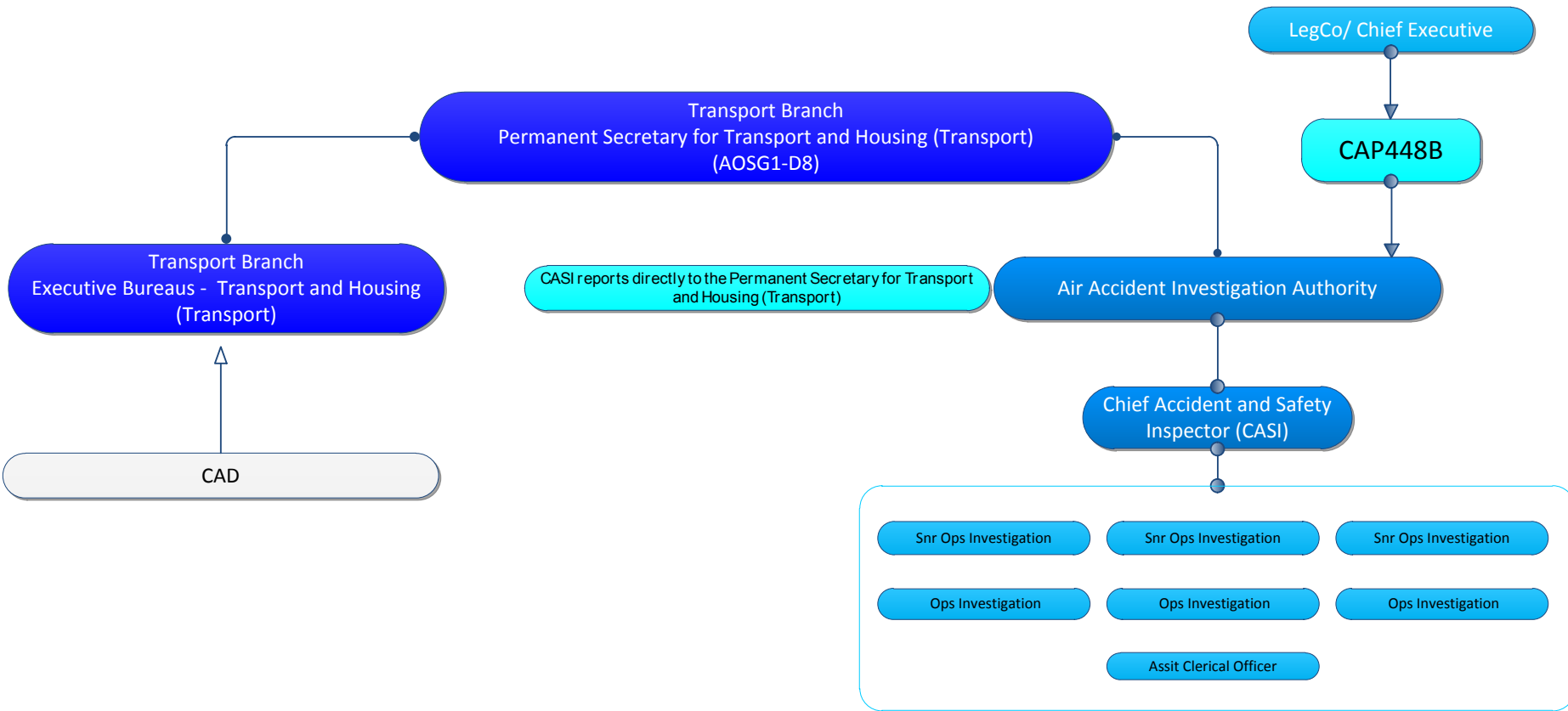
Organization Chart of the Air Accident Investigation Authority,
Transport Branch, Transport and Housing Bureau



* Report to the Permanent Secretary for Transport and Housing (Transport) on administrative matters



Transport Branch of the Transport and Housing Bureau
 Secretary For Transport and Housing



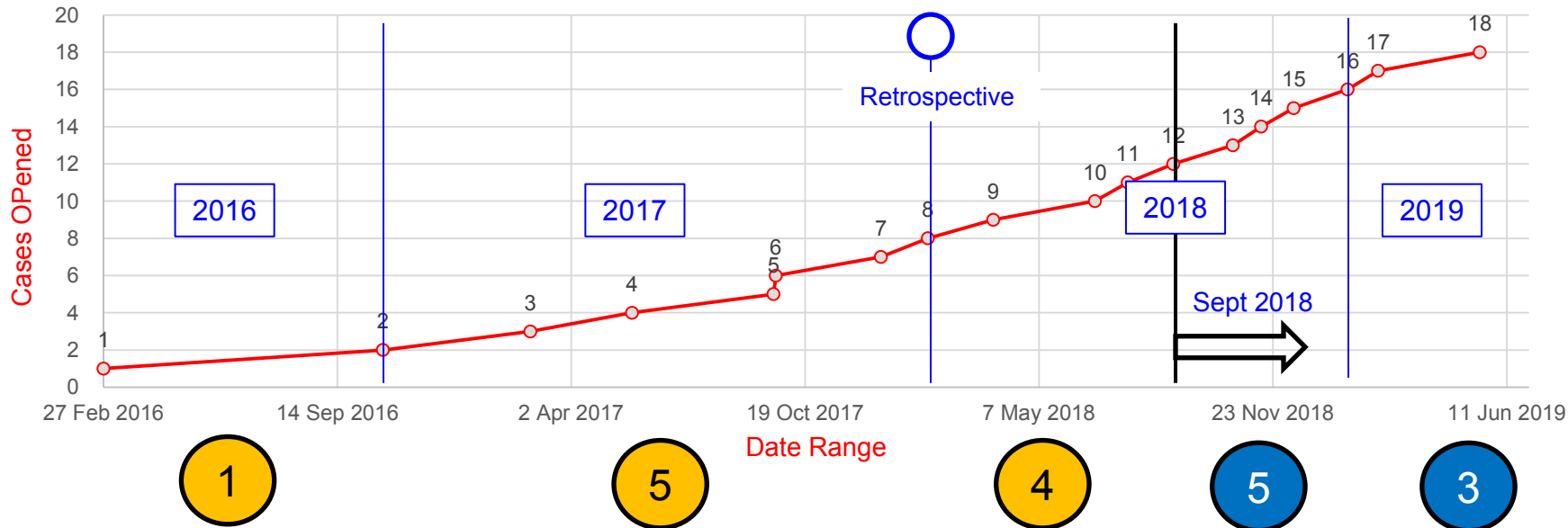
- Hong Kong] CAD 15 year average = 1.7 p.a.
- AAIA extrapolated 1 year average = 12

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 Serious Incidents

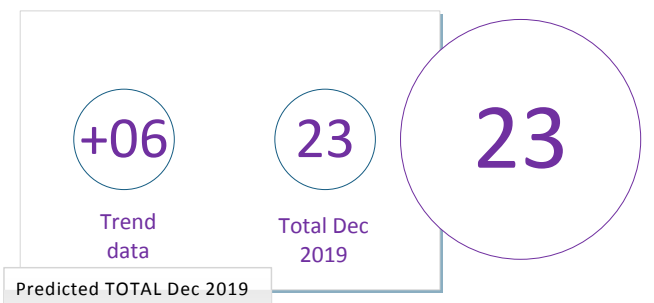
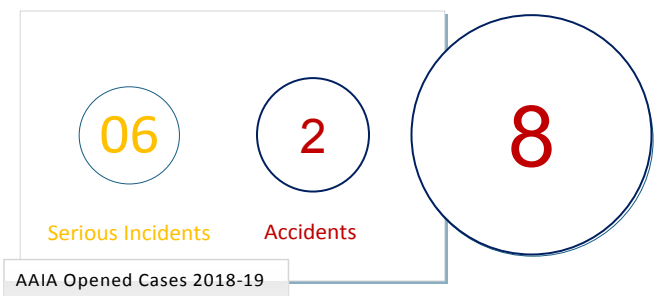
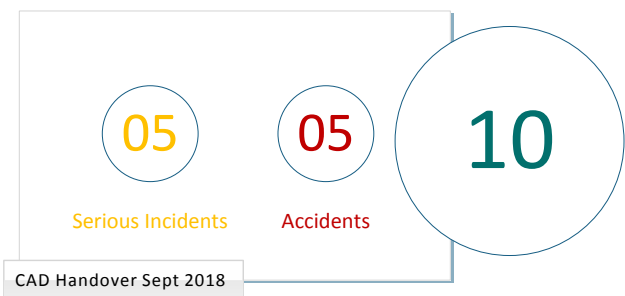
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 Accident(s)

CAD Opened Investigations 2016 -18

Investigations opened from 2016 - May 2019



- Hong Kong CAD investigation 15 year average = 1.7 p.a.
- AAIA average is one per month, which is within the boundary of 12-20 cases for a fleet size of HKG (per annum)
- extrapolated 1 year average = 12



Feb 2020=24

•ICAO key criteria for an Independent Accident Investigation Authority (AIA):

1. Functional independence

It must be demonstrated that there are no real or perceived examples of influence by the ministry concerned on the conduct of the accident investigation authority's investigations, the issuance of findings, safety recommendations, interim report(s) and the Final Report. In other words, the ministry must not have the organizational means to influence the conduct of the investigation and its results, nor can it demand access, or give judgement about the investigation's source materials.

2. Autonomous investigation

It must be demonstrated that the accident investigation authority, during the conduct of its investigations, neither seeks nor takes instructions from other authorities and has unrestricted authority over the conduct of investigations.

3. Unrestricted authority to publish information

It must be demonstrated that the accident investigation authority can issue interim statements or report(s), findings, safety recommendations and the Final Report under its signature, without having to obtain approval from any outside authority. Of course, this does not affect the accident investigation authority's routine consultation during the course of the investigation with team members as part of the investigation party system, nor the

4. Independent funding and staffing

It must be demonstrated that funding and staffing of the accident investigation authority cannot be influenced by the ministry concerned or any other organizations. This includes

5. Critical elements embedded in legislation

The criteria listed above need to be outlined in legislation and need to be apparent in the operation of the accident investigation authority in order for it to be considered functionally independent.

•Hong Kong Civil Aviation (Investigation of Accidents) Set up.

General observations

Control conflict of Interest:

- *Do not have an organisation set up through the Regulator with staff posted from the Regulator.*
- *If during the initial stages Regulator staff are posted, set a time limit of 6 months to ensure a smooth transition, then organize a permanent transfer or post the staff back to the regulator.*
- *Set up the organisation from an open recruitment process*
- *Clearly establish with the Govt Transport Secretary (or equivalent) or the designated point of contact, the limitations of influence and the strict boundaries of functional independence that are acceptable.*
- *Clearly establish the role and function of external advisors and the limitations of their input.*
- *Challenge all attempts to undermine the independence of the AIA and the position of the Chief Inspector using the available law and the Legal depts in the Govt administration.*
- *Process map all areas of concern and provide a working framework document to comply with the requirements for an independent AIA.*

1. Functional independence

It must be demonstrated that there are no real or perceived examples of influence by the ministry concerned on the conduct of the accident investigation authority's investigations, the issuance of findings, safety recommendations, interim report(s) and the Final Report. In other words, the ministry must not have the organizational means to influence the conduct of the investigation and its results, nor can it demand access, or give judgement about the investigation's source materials.

- Imperative that the Authority is not influenced or adversely affected by interference in the conduct of investigations or any other extant functions which are independent of the central govt.
- Clearly define the scope of the acceptable level of administrative influence the Govt reporting organisation has over or to the AIA.
- Ensure any advisors or consultants to the Transport secretary are:
 - Qualified to comment on AIA matters (ICAO AIG qualified for example)
 - Do not have any conflict of interest concerns
 - That an ethics process to screen for 'undue influence' has followed a due process
 - All comments raised by external advisor(s) are qualified for truth and accuracy
- Seek Dept of Justice (or equivalent) confirmation regarding the scope of the legality of influence the Govt reporting organisation has to influence outcomes.

2. Autonomous investigation

It must be demonstrated that the accident investigation authority, during the conduct of its investigations, neither seeks nor takes instructions from other authorities and has unrestricted authority over the conduct of investigations.

- Imperative that all areas of conflict of interest are mitigated and controlled, using the law if necessary.
- Identify all areas where conflict of interest are possible
- Limit the scope the Govt reporting organisation has to influence decision making and interfere in the process of reporting.
- Limit the scope the Regulator has to administratively delay or manage the report progression.

3. Unrestricted authority to publish information

It must be demonstrated that the accident investigation authority can issue interim statements or report(s), findings, safety recommendations and the Final Report under its signature, without having to obtain approval from any outside authority. Of course, this does not affect the accident investigation authority's routine consultation during the course of the investigation with team members as part of the investigation party system, nor the

- Imperative that direct reporting process is not arbitrarily coerced through an administrative process not under the AIA's control
- Seek DoJ or equivalent clarification on the legality of processes which can amend or alter final reports.
- Once established, publish the revised process in the AIA's documentation.

4. Independent funding and staffing

It must be demonstrated that funding and staffing of the accident investigation authority cannot be influenced by the ministry concerned or any other organizations.

- Do not have posted staff from the Regulator that are not under the direct control of the AIA.
- Recruit all staff under an open recruitment process
- Do not allow the Regulator to position staff without the CI's involvement in the selection process
- Establish the contractual basis on which they are in the AIA with a clear understanding of the posting requirements or terms of service.
- Establish a mechanism to return Regulator posted staff back to their original position
- If Regulator inspectors have the skills required to support the AIA and the staff concerned are interested in a permanent transfer, have the mechanism for transfer agreed.
- Control all external advisors ability to influence the functioning of the AIA where conflict of interest is a concern.

5. Critical elements embedded in legislation

The criteria listed above need to be outlined in legislation and need to be apparent in the operation of the accident investigation authority in order for it to be considered functionally independent.

- Have the operational requirements defined in the legislation
- Fast track the legal amendments to align the State or Region with ICAO Annex 13
- Identify areas where legal stipulations can provide a justification for the elimination of conflict of interest; embed these requirements in the legislation

All Central Govt Planning Concerns

AIA planning and continuation

- Insist that all central Govt planning involving AIA's include the input from the head of the Authority
- Challenge all proposed changes which are clearly not aligned with the ICAOP SARP's, including conflict of interest and organizational changes not functionally aligned with the ICAO definition of independence.

AAIA Funding and Legal Establishment 2020

The AAIA (HKG) was established up until March 31 2020.

Further funding and legal approval to operate as a Govt Authority is required beyond March 2020.

Funding and approvals will not be approved at the cut off date of March 31, 2020 as the submission process delay will not meet the target deadline.

Consequently the Authority funding and the Chief Inspector position – required under law to exercise the ability to investigate – will cease March 31 2020.

A temporary back up plan involving substitution of a Regulator's inspector to run the AAIA from April 2020 was devised at Govt level with a longer term proposal to the Legislation Council to allow a Regulator's Director level manager to assume control on the independent AAIA up until a point in 2022 was put forward in the submission document.

A permanent organisation and CI with Dep CI was proposed in the submission document which would take effect in or around 2022.

To the best of my knowledge, this is the first 'independent AIA' to have progressed from functional independence and reversion back to a regulator controlled 'independent AIA'.

Safety Investigation

JOURNAL N° 1



民航意外調查機構

AAIA
Air Accident Investigation Authority



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ISSUE



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What do we do?..

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What governs how the Authority operates..

PG. 4

Give us a blurb about a story on page 4. Make this your own!..

MESSAGE FROM THE CHIEF ACCIDENT AND SAFETY INVESTIGATOR

AIR ACCIDENT INVESTIGATION AUTHORITY ESTABLISHED.

Welcome to the Air Accident Investigation Authority information journal, a publication which the Authority will produce to update the industry and general public on a periodic basis..

The Air Accident Investigation Authority was established on September 10th 2018, is situated in the dedicated investigation headquarters near the airport and is staffed by experienced aviation professional investigators from a broad spectrum of disciplines..

The facilities, including a flight data analysis center, a command center, secure evidence hangers and an investigation equipment center, state of the art, elevating Hong Kong's ability to support safety investigation onto an international footing..