



MINISTER OF TRANSPORT DIRECTIVES

INVESTIGATION OF AIRCRAFT ACCIDENT AND INCIDENT

- (1) In exercise of the powers conferred by Regulation 186 of the Civil Aviation Regulations 2016, the Minister makes these Directives.
- (2) The Minister of Transport Directives No: 001/2016 dated 16 April 2016 is revoked.

PART A INTERPRETATION

Interpretation and Application

1. (1) In these Directives—

“accident” means 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:

- (i) being in the aircraft;
- (ii) direct contact with any part of the aircraft, including parts which have become detached from the aircraft; or
- (iii) 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;

(b) the aircraft sustains damage or structural failure which:

- (i) adversely affects the structural strength, performance or flight characteristics of the aircraft; and
- (ii) 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.

"accredited representative" means a person designated by the Minister, on the basis of his or her qualifications, for the purpose of participating in an investigation conducted by another contracting state;

“adviser” means any person appointed by the IIC on the basis of his qualifications, for the purpose of assisting its accredited representative in an investigation;

“causes” means 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;

“contributing factors” means “actions, omissions, events, conditions, or a combination thereof, which, if eliminated, avoided or absent, would have reduced the probability of the accident or incident occurring, or mitigated the severity of the consequences of the accident or incident. The identification of contributing factors does not imply the assignment of fault or the determination of administrative, civil or criminal liability;

"contracting state" means any state other than Malaysia which is a party to the Chicago Convention;

“dangerous goods” mean articles or substances which are capable of posing a risk to health, safety, property or the environment and which are shown in the list of dangerous goods in the Technical Instructions or which are classified according to those Instructions;

“flight recorders” means any type of recorder installed in the aircraft for the purpose of complementing accident or incident investigation;

“incident” means an occurrence, other than an accident, associated with the operation of an aircraft which affects or could affect the safety of operation;

“investigation” means 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 contributing factors and, when appropriate, the making of safety recommendations;

“investigation material” means anything that may be relevant to an investigation;

“investigator” means investigator appointed under Civil Aviation Regulations 2016;

“investigator-in-charge” means investigator-in-charge (IIC) designated by the Minister under Civil Aviation Regulations 2016 on the basis of his qualifications with the responsibility for the organization, conduct and control of an investigation;

“maximum mass” means maximum certificated take-off mass;

“operator” means a person engaged in or offering to engage in an aircraft operation;

“preliminary report” means the communication used for the prompt dissemination of data obtained during the early stages of the investigation;

“safety recommendation” means a proposal of an IIC 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” means an incident involving circumstances indicating that there was a high probability of an accident and associated with the operation of an aircraft such as—

- (a) collisions not classified as accident;
- (b) controlled flight into terrain only marginally avoided;
- (c) aborted take-offs on a closed or engaged runway, on a taxiway (excluding authorized operations by helicopters) or unassigned runway;
- (d) take-offs from a closed or engaged runway, from a taxiway (excluding authorized operations by helicopters) or unassigned runway;
- (e) landings or attempted landings on a closed or engaged runway, on the taxiway (excluding authorized operations by helicopters) or assigned runway;
- (f) gross failures to achieve predicted performance during take-off or initial climb;
- (g) fires and 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;
- (h) events requiring the emergency use of oxygen by the flight crew;
- (i) aircraft structural failures or engine disintegrations, including uncontained turbine engine failures, not classified as an accident;
- (j) multiple malfunctions of one or more aircraft systems seriously affecting the operation of the aircraft;
- (k) flight crew incapacitation in flight;

- (l) 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;
- (m) runway incursions classified with severity;
- (n) take-off or landing incidents such as under-shooting, overrunning or running off the side of runways;
- (o) system failures, whether phenomena, operations outside the approved flight envelope or other occurrences which caused or could have caused difficulties controlling the aircraft;
- (p) failures of more than one system in a redundancy system mandatory for flight guidance and navigation;
- (q) the unintentional or, as an emergency measure, the intentional release of a slung load or any other load carried external to the 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” means 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;

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

"State of Design" means the state having jurisdiction over the organisation responsible for the type design;

"state" means the contracting state;

"State of Manufacture" means the state having jurisdiction over the organisation responsible for the final assembly of the aircraft;

"State of Occurrence" means the state in the territory of which an accident or incident occurs;

"State of the Operator" means 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; and

"State of Registry" means the state on whose register the aircraft is entered.

(2) Application

- (a) These Directives shall apply to an accident or incident which—
- (i) occurs to any aircraft in Malaysia;
 - (ii) involves Malaysian aircraft elsewhere;
 - (iii) occurred between civil aircraft and military aircraft;
 - (iv) involves a military aircraft while the aircraft was on, or in the course of taking off from or landing on, an aerodrome used wholly or mainly for the purpose of civil aviation; or
 - (v) the Minister with the concurrence of the Minister of Defence, instruct the investigator to conduct an investigation which involve, or related with, military aircraft which he considers desirable for the purpose of safety of aircraft interest.
- (b) In these Directives, the provisions concerning the State of the Operator apply only when an aircraft is leased, chartered or interchanged and when that state is not the State of Registry and if it discharges, in respect of these Directives, in part or in whole, the functions and obligations of the State of Registry.

PART B NOTIFICATION

Notification of accident and incident

2. (1) If a responsible person has a knowledge regarding any accident or incident occurred in Malaysia, the responsible person shall immediately notify the

accident or incident in the form as specified in Appendix 1, to the IIC as soon as practicable.

(2) For the purpose of this paragraph, “responsible person” means the pilot-in-command of the aircraft involved in the accident or incident, or if the pilot-in-command is killed or incapacitated, then the owner, operator or hirer.

Notification when Malaysia as the State of Occurrence

3. (1) This paragraph applies to accident or serious incident occurred in Malaysia.

(2) Upon receiving notification under paragraph 2 or receiving notification of accident or serious incident from the State of Registry or the State of the Operator or if such accident or serious incident comes to the knowledge of the IIC, the IIC shall forward a notification of such accident or serious incident to:

- (a) the State of Registry;
- (b) the State of the Operator;
- (c) the State of Design;
- (d) the State of Manufacture; and
- (e) the ICAO, when the aircraft involved is of a maximum mass of over 2, 250 kilogrammes or is a turbojet powered aeroplane,

in a format and content as specified in the Annex 13, with a minimum of delay and by the most suitable and quickest means available.

Notification when Malaysia as the State of Registry, State of the Operator, State of Design or State of Manufacture

4. (1) This paragraph applies to accident or serious incident occurred in a contracting state involving an aircraft of which Malaysia is a State of Registry, State of the Operator, State of Design or State of Manufacture.

(2) Upon receiving a notification of the accident or serious incident from State of Occurrence, the IIC shall provide to the State of Occurrence —

- (a) with any relevant information available regarding the aircraft and flight crew which involved in the accident or serious incident;
- (b) information of its intention whether to appoint an accredited representative or otherwise; and
- (c) in the case of Malaysia as the State of the Operator, the details of dangerous goods on board the aircraft.

(3) In case the Minister appoints an accredited representative, the IIC shall provide name, contact details and the expected date of arrival of such accredited representative to the State of Occurrence.

Notification when Malaysia as the State of Registry in relation to accident or serious incident occurred in Malaysia, a non-contracting state or outside the territory of any state

5. (1) This paragraph applies to accident or serious incident occurred in Malaysia, a non-contracting state or outside the territory of any state and Malaysia is the State of Registry.

(2) The IIC shall forward a notification of an accident or serious incident in a format as specified in Annex 13, with a minimum of delay and by the most suitable and quickest means available to—

- (a) the State of the Operator;
- (b) the State of Design;
- (c) the State of Manufacture; and
- (d) the ICAO, when the aircraft involved is of a maximum mass of over 2, 250 kilogrammes or is a turbojet powered aeroplane.

Notification when Malaysia as the State of the Operator, State of Design or State of Manufacture in relation to accident or serious incident occurred in the territory of State of Registry, a non-contracting state or outside the territory of any state

6. (1) This paragraph applies to accident or serious incident occurred in the territory of State of Registry, a non-contracting state or outside the territory of any state and Malaysia is the State of the Operator, State of Design or State of Manufacture.

(2) The IIC shall, upon notification of accident or serious incident and request, provide to the State of Registry —

- (a) with any relevant information available regarding the aircraft and flight crew which involved in the accident or serious incident;
- (b) information of its intention whether to appoint an accredited representative or otherwise; and

- (c) in the case of Malaysia is the State of the Operator, provides the details of dangerous goods on board the aircraft.

(3) In case the Minister appoints an accredited representative, the IIC shall provide name, contact details and the expected date of arrival of such accredited representative to the State of Registry.

PART C INVESTIGATION

Objective of investigation

7. (1) The fundamental objective of investigation under this Part shall be for the prevention of accident and incident in the future and not for the purpose of apportioning blame or liability.

(2) The conduct of the investigation under subparagraph (1) shall be separated from any other investigation by other authorities for the purpose of apportioning blame or liability.

Independence of the investigation

8. The investigator shall be independent in the conduct of the investigation and shall not be subjected to any direction from any person.

Co-ordination of investigation

9. In conducting the investigation, the investigator shall coordinate with the authorities which conduct an investigation for the purpose of apportioning blame or liability such as Royal Malaysia Police.

Institution and conduct of an investigation when Malaysia as the State of Occurrence

- 10.** (1) The IIC shall immediately institute an investigation into any—
- (a) accident; or
 - (b) serious incident when the aircraft is of a maximum mass of over 2,250 kilogrammes.
- (2) The Minister may, upon the advice of the IIC, delegate the whole or any part of the investigation to another state or a regional accident investigation organization by mutual arrangement and consent.
- (3) For the purpose of subparagraph (2), the IIC shall use every means to facilitate the investigation which has been delegated.

Institution and conduct of an investigation when Malaysia as the State of Registry

- 11.** (1) If it comes to the knowledge of the IIC that the location of the accident or serious incident involving Malaysian aircraft cannot definitely be established as being in the territory of any state, IIC shall immediately, cause an investigation of the accident or serious incident.
- (2) The Minister may, upon the advice of the IIC, delegate the whole or any part of the investigation to another state by mutual arrangement and consent.

Duty to provide assistance to the State of Registry

12. The IIC shall provide assistance and response to requests by the State of Registry if Malaysia is the nearest state to the scene of an accident in international waters.

Close and reopen investigation

13. (1) In case Malaysia is the state conducting an investigation, the IIC may, at any time—

(a) in the event of no significant investigation material becomes available, close an investigation; or

(b) in the event of new and significant investigation material becomes available, reopen an investigation.

(2) For the purpose of subparagraph 1(a), the investigator shall make a statement by setting out the reasons for closing the investigation within fourteen days from the date of closing an investigation and such statement shall be made publicly available, by an electronic media or other media.

(3) In case Malaysia is not the state conducting the investigation, the IIC shall obtain the consent from the state conducting the investigation to institute an investigation if such state decides not to reopen the investigation.

PART D
POWERS OF THE INVESTIGATOR

Authority card

14. (1) The Minister may issue the authority card to be carried by the investigator for the performance of the functions and powers—

- (a) under Part XXVI; and
- (b) any notice, circular, directive and information issued under Part XXVI;

of the Civil Aviation Regulations 2016.

(2) The investigator issued with the authority card under subparagraph (1), when acting against any person under Part XXVI of the Civil Aviation Regulations 2016 or these directives shall, on demand declare his office and produce to the person against whom he is acting the authority card.

(3) The investigator issued with the authority card under subparagraph (1), shall have the right of access at all reasonable time to any aircraft, aerodrome including any premises for the purpose of performing the functions and powers under these directives.

Special Investigator

14A. (1) The Minister may, upon the recommendation of the IIC, appoint any person other than regulator, in writing, as a special investigator for the purpose of the investigation.

(2) The special investigator appointed under subparagraph (1) shall satisfy at least one of the following criteria:

- (a) having experience or technical expertise in relation to civil aviation or associated with matters being investigated;
- (b) having accident or serious incident investigation experience or qualifications;
- (c) being employed in the civil aviation industry; or
- (d) having experience or expertise relevant to the matter being investigated.

(3) The special investigator shall have all the powers conferred to the investigator under paragraphs 15 and 17 of these Directives.

(4) Notwithstanding subparagraph (3), the exercise of such powers by the special investigator shall be subject to the direction and supervision of the IIC.

(5) For the purpose of this paragraph, “regulator” means any Malaysian government agency, department, body or authority that regulates matters relating to civil aviation.

Powers of the investigator

15. (1) For the purpose of investigation, the investigator shall have the powers—

- (a) to require information under paragraph 16;

- (b) to administer caution to any person, record statements from any person as he thinks fit, and to require any such person to make and sign a declaration of the truth of the statement made by him;
- (c) to have access to and inspect, or examine any place or building whereof appears to the IIC to be requisite for the purpose of the investigation;
- (d) to have access to and inspect, collect, examine, remove or test—
 - (i) the aircraft or investigation material; or
 - (ii) any motor vehicle, or any part of such motor vehicle, or anything contained therein, where it appears to the investigator to be requisite for the purpose of the investigation; and
- (e) to stop and detain any aircraft if the investigator has reasonable ground to believe that investigation material is in or on an aircraft and to prevent investigation material from being removed from Malaysia or from being interfered with or to prevent its concealment, loss, deterioration or destruction.

(2) For the purpose of subparagraph 1 (e), if the investigator is satisfied that the detaining of the aircraft is no longer necessary after the completion of the investigation, the investigator shall return the aircraft to its owner.

(3) The investigator may enter any place, building, aircraft or motor vehicle with such assistance, and by such force, as is necessary and reasonable.

(4) For the purpose of this paragraph, “motor vehicle” means a vehicle of any description, propelled by means of mechanism contained within itself, constructed or adapted so as to be capable of being used on road and includes a trailer.

Power to require information and document

16. (1) The investigator may make an order in writing against any person if he has reasonable grounds to believe that the person—

- (a) has any information or any document that is relevant to the investigation; or
- (b) is capable of giving any information which the investigator has reasonable grounds to believe that the information is relevant to the investigation.

(2) The order under subparagraph (1) may require the person—

- (a) to give the investigator any such information;
- (b) to produce to the investigator any such documents in whatever form, including physical or electronic form;
- (c) to make copies of any such documents and to produce those copies to the investigator;
- (d) if the person is an individual, to appear, before the investigator at a time and place specified in the order to give any information, either orally or in writing, and produce any such documents in whatever form, including physical or electronic form;
- (e) if the person is a body corporate or a public body, to cause a competent officer of the body corporate or the public body to appear, before the investigator at a time and place specified in the order to give any such information, either orally or in writing,

and produce any documents in whatever form, including physical or electronic form; or

- (f) if the person is a partnership, to cause an individual who is a partner in the partnership or an employee of the partnership to appear, before the investigator at a time and place specified in the notice to give any information, either orally or in writing, and produce any documents in whatever form, including physical or electronic form.
- (3) The person so ordered under subparagraph (1) shall—
- (a) provide the required information or documents within such time as specified in the order or such extended time as the investigator may grant; and
 - (b) ensure that the information or documents provided are true, accurate and complete and shall provide a representation to that effect, including a representation that he is not aware of any other information or document which would make the information or document provided untrue or misleading.

Power to take sample

17. (1) The investigator may, without payment, demand, select, take or collect any sample from any person in possession of such sample, which he believes such sample may contain information that is connected to or relevant for the purpose of investigation.

(2) For the purpose of this paragraph, “sample” means any amount, part or quantity taken from an investigation material.

Securing accident or incident site

18. (1) The investigator may secure the perimeter of an accident or incident site by any means which the investigator considers appropriate unless such accident or incident site has been secured by the Royal Malaysia Police.

(2) Any person shall not enter the perimeter of an accident or incident site which has been secured by the investigator without the authorization of the investigator unless the person is specified under the First Schedule.

(3) In the case where the accident or incident site has been secured by the Royal Malaysia Police, the Royal Malaysia Police shall allow the investigator to enter the accident or incident site.

(4) For the purpose of this section, "accident site" means any of the following sites associated with the accident or incident:

- (a) a site containing the aircraft or any of its wreckage;
- (b) a site where there is an impact point associated with the accident or incident;
- (c) in a case where the accident or incident involves destruction or serious damage to property, other than the aircraft, site containing that property or any of its wreckage; or
- (d) such area around the site as the investigator determines to be reasonably necessary to facilitate the investigation and securing of the site.

Investigation material to remain undisturbed

19. (1) If the State of the Operator, the State of Registry, the State of Design or the State of Manufacture has requested for an aircraft, its contents and other investigation material to remain undisturbed pending inspection by their accredited representative, the investigator shall take all necessary steps to comply with such request so far as this is reasonably practicable and compatible with the proper conduct of the investigation.

(2) Notwithstanding subparagraph (1), the aircraft may be moved to the extent necessary to extricate persons, animals, mail and valuables to—

- (a) prevent destruction by fire or other causes; or
- (b) to eliminate any danger or obstruction to air navigation to other transport or to the public,

provided that it does not result in undue delay in returning the aircraft to service where this is practicable.

Preservation of investigation material

20. (1) The investigator shall take all reasonable measures to protect and maintain safe custody of the investigation material for the purpose of an investigation.

(2) In the event of the investigation material is no longer required in the investigation, the investigator may—

- (a) return to the owner of the investigation material where the owner can be located; or

- (b) dispose the investigation material in any manner as the investigator thinks appropriate where the owner cannot be located despite making reasonable efforts to do so.

Flight recorders

21. (1) The investigator shall effectively use the flight recorders in the investigation and arrange for the read-out of flight recorders without delay.

(2) If the investigator does not have adequate facilities to read-out the flight recorders, the investigator may use the facilities made available to the investigator by other state.

Duty to furnish flight recorders

22. (1) This paragraph applies when an aircraft involved in an accident or a serious incident lands in a state other than the State of Occurrence, and Malaysia is the State of Registry or the State of the Operator.

(2) The investigator shall, upon request by the state conducting the investigation, furnish flight recorder and if necessary, the associated flight recorders, to such state.

Duty to provide information

23. (1) The IIC shall, on request from the state conducting the investigation of an accident or an incident, provide such state with all the relevant information available to it.

(2) The IIC shall provide to the state conducting the investigation the information in relation to the facilities or services in Malaysia of which have been, or would normally have been, used by an aircraft prior to an accident or an incident, and which has information pertinent to the investigation.

(3) In case Malaysia is the State of Registry and the State of the Operator, the IIC shall, on request from the state conducting the investigation, provide pertinent information on any organization whose activities may have directly or indirectly influenced the operation of the aircraft.

Autopsy examination

24. In case of fatal accident, the investigator shall arrange for a complete and expeditious autopsy examination of fatally injured flight crew, passengers and cabin attendants by a pathologist which is preferably experienced in accident investigation.

Notification of unlawful interference

25. (1) If in the course of an investigation it becomes known, or it is suspected, that an act of unlawful interference was involved, the investigator shall immediately notify the Royal Malaysia Police.

(2) For the purpose of this paragraph, “unlawful interference” has the same meaning assigned to it under Annex 17 to the Chicago Convention.

PART E
PARTICIPATION IN THE INVESTIGATION

Power to appoint accredited representative

26. (1) If Malaysia is a State of Registry, State of the Operator, State of Design or State of Manufacture, the Minister may appoint one or more accredited representatives to participate in the investigation.

(2) The Minister may appoint one or more accredited representatives to participate in the investigation conducted by any state which has requested Malaysia to provide information, facilities or experts.

Duty to appoint accredited representative

27. (1) This paragraph shall apply to investigation of an accident to an aircraft of a maximum mass of over 2, 250 kilogrammes and Malaysia is a State of Registry, State of the Operator, State of Design or State of Manufacture.

(2) The Minister shall appoint one or more accredited representatives to participate in the investigation if requested by the state conducting the investigation.

Permission in regard to the participation of accredited representative

28. If Malaysia is a state conducting the investigation, the IIC shall permit the accredited representative of –

- (1) the State of Registry, State of the Operator, State of Design or State of Manufacture; and

- (2) any state which has been requested by Malaysia to provide information, facilities or experts,

to participate in the investigation.

Power to appoint adviser and the extent of its participation

29. (1) When the Minister appoints one or more accredited representatives under these Directives, the IIC may appoint advisers for the purpose of assisting the accredited representative.

(2) The IIC may appoint one or more advisers as proposed by the operator to assist its accredited representative, in the case of Malaysia is a State of Registry or State of the Operator.

(3) The IIC may appoint one or more advisers as proposed by the organization responsible for the type design and the final assembly of the aircraft to assist its accredited representative, in the case of Malaysia is a State of Design or State of Manufacture.

(4) The advisers assisting accredited representatives shall be permitted, under the accredited representatives' supervision, to participate in the investigation to the extent necessary to enable the accredited representatives to make their participation effective.

Permission in regard to the participation of the adviser and the extent of its participation

30. If Malaysia is a state conducting the investigation, the IIC shall permit an adviser to assist the accredited representative of the—

- (a) the State of Registry, State of the Operator, State of Design or State of Manufacture; and
- (b) any state which has been requested by Malaysia to provide information, facilities or experts,

to participate in the investigation to the extent necessary to make the accredited representatives' participation effective.

Powers of the accredited representative

31. The accredited representative shall, subject to the control of the IIC, have the power to participate in all aspects of the investigation as follows—

- (1) visit the scene of the accident or serious incident;
- (2) examine the wreckage;
- (3) obtain witness information and suggest areas of questioning;
- (4) have full access to all investigation material;
- (5) receive copies of all pertinent documents;
- (6) participate in read-outs of recorded media;
- (7) participate in off-scene investigation activities such as component examinations, technical briefings, tests and simulations;
- (8) participate in investigation progress meetings including deliberations related to analysis, findings, causes, contributing factors and safety recommendations; and
- (9) make submission in respect of the various elements of the investigation.

Duties of the accredited representative and its advisers

- 32.** Accredited representative and its adviser shall—
- (a) provide the state conducting the investigation, with all relevant information available to them; and
 - (b) not divulge information on the progress and the findings of the investigation without the written consent of the state conducting the investigation.

Appointment of expert when Malaysia having suffered fatalities or serious injuries to its national

33. In case of an accident involving fatalities or serious injuries of Malaysia's nationals, the Minister may, upon the advice of the IIC, appoint an expert who shall be entitled to:

- (a) visit the scene of the accident;
- (b) have access to the relevant factual information which is approved for public release by the state conducting the investigation, and information on the progress of the investigation; and
- (c) receive a copy of the final report.

Participation of state (other than Malaysia) having suffered fatalities or serious injuries to its national

34. In case of an accident involving fatalities or serious injuries of any states' nationals, the IIC shall permit the participation of an expert appointed by such state and such expert shall be entitled to:

- (a) visit the scene of the accident;
- (b) have access to the relevant factual information which is approved for public release by the IIC, and information on the progress of the investigation; and
- (c) receive a copy of the final report.

PART F

INVESTIGATION INVOLVING MILITARY AIRCRAFT

35. (1) The investigator shall not investigate any accident or incident involving or relating to military aircraft.

(2) Notwithstanding subparagraph (1), the investigator shall investigate any accident or serious incident if—

- (a) such accident or serious incident is between civil aircraft and military aircraft;
- (b) such accident or serious incident involves military aircraft while the aircraft was on, or in the course of taking off from or landing on, an aerodrome used wholly or mainly for the purpose of civil aviation; or
- (c) the Minister with the concurrence of the Minister of Defence, instruct the investigator to conduct an investigation which involves, or related with, military aircraft which he considers desirable for the purpose of safety of aircraft interest.

(3) For the purpose of investigation under subparagraph (2)(a), the investigator shall only investigate the civilian aircraft unless the competent authority in the Armed Forces has consented in writing for such investigation to include the military aircraft.

(4) If the competent authority in the Armed Forces has not consented under subparagraph (3), the competent authority in the Armed Forces shall provide information which is relevant to the investigation, to enable the investigator to complete the investigation.

(5) Any reports under paragraphs 37, 39, 40, interim statement under paragraph 38 produced by the investigator, and the response to final report under paragraph 41 in relation to the investigation under subparagraph (2), shall be subject to prior consultation with the competent authority of the Armed Forces and the investigator shall take into consideration the opinion of the competent authority of the Armed Forces.

(6) For the purpose of this paragraph, “competent authority” has the meaning assigned to it by the Armed Forces Act 1972 [Act 77].

PART G

SAFETY RECOMMENDATION AND REPORTS

Safety recommendation

36. (1) At any stage of the investigation of an accident or serious incident, the IIC shall recommend in writing to the appropriate authorities, including those in other states, any preventive action that it considers necessary to be taken promptly to enhance aviation safety.

(2) The IIC shall address, when appropriate, any safety recommendations arising out of its investigations in writing to the accident investigation authorities of other states concerned and, when ICAO documents are involved, to ICAO.

Preliminary, accident or incident data report

37. (1) Upon receiving immediate notification under paragraph 2 of these Directives or if it comes to the knowledge of the IIC regarding any accident or serious incident, the IIC shall submit—

- (a) a preliminary report when the aircraft is involved in an accident for a mass of 2,250 kilogrammes or less to the parties specified in the Second Schedule;
- (b) preliminary report to the parties as specified in the Third Schedule or an accident data report to the parties as specified in the Fourth Schedule when the aircraft is involved in an accident for a maximum mass of over 2,250 kilogrammes; or
- (c) an incident data report for incident to an aircraft for a maximum mass over 5,700 kilogrammes to the parties as specified in the Fourth Schedule.

(2) The submission of such report under subparagraph (1)(a), (b), or (c) shall be made within thirty days from the date of the accident or serious incident occurs, whichever applicable.

(3) In the case of matters directly affecting the safety of the aircraft, the submission of the report under paragraph (1)(a), (b), or (c), shall be made as soon as practicable after the information is received.

Interim statement

38. (1) In the event of the draft report and final report cannot be completed within twelve months from the date of the occurrence of accident or serious incident of an aircraft, the IIC shall publish an interim statement annually by electronic or other means.

(2) For the purpose of this paragraph, “interim statement” means a statement detailing the progress of the investigation and any safety issues identified during the investigation.

Draft report

39. (1) Upon the completion of an investigation, the IIC shall provide a draft report, on a confidential basis, to the parties as specified in the Fifth Schedule for the purpose of—

- (a) allowing the parties to make submissions to the IIC in relation to the draft report; or
- (b) giving the parties advance notice of the likely form of the final report.

(2) For the purpose of subparagraph (1)(a), the submissions shall be made within sixty days from the date of effective service.

(3) Any party who receives a draft report under subparagraph (1) shall not—

- (a) make a copy of the whole or any part of the draft report; or
- (b) disclose any of the contents of the draft report to—

- (i) any other person; or
- (ii) a court, tribunal or arbitration established under any written law.

(4) Notwithstanding subparagraph (3)(a) and subparagraph 3(b)(i) the parties may make a copy and disclose any of the contents of the draft report for the purpose of—

- (a) preparing submissions of the draft report; or
- (b) taking steps to remedy safety issues that are identified in the draft report.

(5) Subparagraph (3) shall apply to any person who assists, contributes or advises in respect of the matter referred by a person who receives a draft report under subparagraph (1), for the purpose of preparing submissions or taking steps to remedy safety issues that are identified in the draft report.

(6) Any party who receives a draft report under subparagraph (1) shall not take any disciplinary action against an employee of the person on the basis of information in the draft report.

(7) A draft report provided under subparagraph (1) shall not include any name of an individual unless the individual has consented to that inclusion.

(8) In the case of the IIC receives submission within the period specified under subparagraph (2) or an extension of time under subparagraph (9), the investigator may—

- (a) amend the draft report to include the substance of the submission received; or

- (b) append the submission to the final report, if requested by any person to whom the investigator considers appropriate under subparagraph (1).

(9) In the case of the IIC receives no submission within the period specified under subparagraph (2), the IIC shall issue the final report unless an extension of the period has been mutually agreed by the IIC and the parties as specified in the Fifth Schedule.

Final report

40. (1) After taking an action under subparagraph 39(8) or after receiving no submission under subparagraph 39(9), the IIC shall, as soon as practicable—

- (a) publish a final report by electronic or other means; and
 - (b) submit a copy of the final report to the parties as specified in the Sixth Schedule.
- (2) The format of the final report shall be as specified in Annex 13.

Response to final report containing safety recommendation

41. (1) Any person to whom the recommendation is made in the final report under paragraph 40, shall give a written response to the IIC, within ninety days from the date of the final report being received.

(2) For the purpose of the written response under subparagraph (1), the person shall—

- (a) in the case of the acceptance of the recommendation, either wholly or partly, state the details of any proposed action to be undertaken to give effect to the recommendation; or
 - (b) in the case of non-acceptance of the recommendation, either wholly or partly, state the reasons for the non-acceptance of the recommendation.
- (3) For the purpose of subparagraph 2(a), the IIC may—
- (a) publish the acceptance of the recommendation and proposed action to be undertaken to give effect to the recommendation by electronic or other media; and
 - (b) monitor the progress of the proposed action to be undertaken to give effect to the recommendation and may publish its progress of such proposed action from time to time by electronic or other means.
- (4) For the purposes of subparagraph (2)(b), the investigator may publish reasons for the non-acceptance of the recommendation by electronic or other means.

PART H MISCELLANEOUS

Non-disclosure of records

42. (1) The investigator shall not make the following records available for purposes other than accident or incident investigation, unless the appropriate authority for the administration of justice in Malaysia determines that their disclosure outweighs the adverse domestic and international impact such action may have on that or any future investigations:

- (a) all statements taken from persons by the investigators 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 accident or incident;
- (d) cockpit voice recordings and transcripts from such recordings;
- (e) recordings and transcriptions of recordings from air traffic control units;
- (f) cockpit airborne image recordings and any part or transcripts from such recordings; and
- (g) opinions expressed in the analysis of information, including flight recorder information.

(2) The records under subparagraph (1) shall be included in the final report or its appendices if they are pertinent to the analysis of the accident or incident.

Reports not admissible in evidence

43. (1) Notwithstanding any other written law, any report of the investigation is not admissible as evidence in any civil or criminal proceedings, tribunal or arbitration established under any written law by third party.

(2) For the purposes of this paragraph, “evidence” has the meaning assigned to by the Evidence Act 1950 [Act 56].

Voluntary incident reporting system

44. (1) Any person having knowledge of any occurrences that are not captured by the Mandatory Occurrences Reporting System under Part XXII of the Civil Aviation Regulations 2016, may make a voluntary report to the IIC.

(2) Where a voluntary report is made to the IIC, 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.

(3) A report made to the IIC under a voluntary reporting system shall not be used against the person who made the report in any disciplinary, civil, administrative and criminal proceedings.

(4) The protection provided in subparagraphs (2) and (3) regarding the identity of the person making the voluntary report shall not apply to situation involving unlawful acts or gross negligence by that person, unless an appropriate authority determines the value of its disclosure or use in any particular instance, outweighs the adverse impact such action may have on aviation safety.

FIRST SCHEDULE

[paragraph 18]

Authorized parties to enter the accident or incident site

1. Royal Malaysia Police
2. Fire and Rescue Department of Malaysia
3. Malaysia Civil Defence Department
4. Marine Department of Malaysia
5. Malaysian Maritime Enforcement Agency
6. Malaysian Armed Forces

SECOND SCHEDULE

[paragraph 37]

Preliminary report in relation to aircraft

In relation to accident involving aircraft for a mass of 2, 250 kilogrammes or less:

1. State of Registry or State of Occurrence
2. State of the Operator
3. State of Design
4. State of Manufacture
5. Any State that provided relevant information, significant facilities or experts

THIRD SCHEDULE

[paragraph 37]

Preliminary report in relation to aircraft

In relation to accident involving aircraft for a mass of over 2,250 kilogrammes:

1. State of Registry or State of Occurrence
2. State of Operator
3. State of Design
4. State of Manufacture

5. Any State that provided relevant information, significant facilities or experts
6. ICAO

FOURTH SCHEDULE

[paragraph 37]

Accident or incident data report in relation to aircraft

In relation to accident involving aircraft for a maximum mass over 2,250 kilogrammes or incident involving aircraft for a maximum mass over 5,700 kilogrammes:

1. ICAO

FIFTH SCHEDULE

[paragraph 39]

Draft report

1. State of Registry
2. State of the Operator
3. State of Design
4. State of Manufacture
5. Any state that participated in the investigation
6. Any appropriate person as may be determined by the IIC

SIXTH SCHEDULE

[paragraph 40]

Final report


- A. All aircraft
 1. State of Registry
 2. State of the Operator
 3. State of Design

4. State of Manufacture
5. Any state that participated in the investigation
6. Any state having suffered fatalities or serious injuries to its citizen
7. Any state that provided relevant information, significant facilities or expert
8. Any appropriate person as may be determined by IIC

B. Aircraft over 5,700 kilogrammes

1. ICAO

Appendix 1 – Format of the notification

		AAIB (Malaysia) Notification		Ref No MOT/BSKU(S)600
Ministry of Transport Malaysia (Air Accidents Investigation Bureau) No 26, Jalan Tun Hussein, Presint 4, 62100 Putrajaya, Malaysia		Telephone: +603 8892 1071 Facsimile: +603 8888 0163 Website: www.mot.gov.my Email: yahaya@mot.gov.my		
A. Classification accident/Incident (Serious)/Incident (Minor)	ACCID	INCID (Serious)	INCID	
B. Detail of Aircraft/Flight	Manufacturer : Model : Nationality : Registration : Flight Number : Serial Number :			
C. Detail of Owner/Operator/ Lessee (If applicable)	Owner : Lessee (If Applicable) : Operator :			
D. Date and Time (Local/UTC) of the event i.e. accident or serious incident	Date : Time :			
E. Last point of departure and point of intended landing of the aircraft	Last point of departure : Point of intended landing :			
F. Last known position	Latitude : Longitude : <u>Descriptions</u> :			

G. No of crew and passengers; aboard, killed and seriously injured	Total occupant on board: <ul style="list-style-type: none"> • Pilot : • Passengers : Conditions Example: Pilot managed to vacate during fire.				
H. Qualification of the pilot in command and nationality of the crew and passengers	Pilot in Command qualification : Pilot in Command nationality : First Officer nationality : Passengers nationality :				
I. Description of the accident or serious incident and the extent of damage to the aircraft so far as is known:	Example: Extensive burn, tail broken, body damage.				
J. An indication to what extent the investigation will be conducted or is proposed to be delegated by the State of Occurrence	The Air Accidents Investigation Bureau (Malaysia) has classified this as an Accident and will be conducting an investigation in accordance with the provisions of Annex 13 to the Convention on International Civil Aviation.				
K. Presence and description of dangerous goods on board the aircraft	No	Yes (Please describe)	Unknown		
L. Operation Type	Commercial Aviation General Aviation Others	Scheduled Non Scheduled	Passenger Cargo Others		
M. Level of damage to aircraft (If information is available)	Destroyed	Substantial	Minor	None	Unknown
The State of Occurrence shall forward a notification of an accident or serious incident with a minimum of delay and by the most suitable and quickest means available to: a) the State of Registry b) the State of the Operator c) the State of Design d) the State of Manufacture and e) the International Civil Aviation Organisation, when the aircraft involved is of a maximum mass of over 2,250 kg.					

Directive No: D 002/2016	Effective Date: 9 May 2016
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9 May 2016

DATO' SRI LIOW TIONG LAI

Minister of Transport