



Our Ref: BCAA/

24th July, 2018

The Honourable Dionisio D'Aguilar MP
Minister of Tourism, Aviation and Bahamasair
Ministry of Tourism, Aviation and Bahamasair
#1 Bay Street Centre of Commerce
British Colonial Hilton
Nassau, NP The Bahamas

Dear Minister,

Re: The Bahamas Civil Aviation Authority (BCAA) Response to Aircraft Accident Report (AAID#A18-000004) issued by the Air Accident Investigation Department of The Bahamas (AAID) on Piper Aztec PA-23-250 N62769, which crashed in waters off Mastic Point, Andros, The Bahamas on the 17th January, 2018.

Further to your extension of time granted to the Bahamas Civil Aviation Authority (BCAA) to respond to the captioned Report, enclosed please find a copy of the BCAA's Response to the Aircraft Accident Report (AAID#A18-000004) to be issued by the Air Accident Investigation Department of The Bahamas (AAID).

In accordance with your extension of time, and ICAO Annex 13 Chapter 6.3 (Note 2), the BCAA will respectfully require that the AAID Append the BCAA's comments, in response to the AAID's technical and regulatory Findings and Safety Recommendations which the BCAA does not agree with in the Report.

Sincerely,

Captain Charles B. Beneby
Director General
Bahamas Civil Aviation Authority

(Enclosure)

cc: Mr. Charles Albury - Permanent Secretary, Ministry of Tourism, Aviation and Bahamasair
Mrs. Wendy Craigg – Chairperson, The Bahamas Civil Aviation Authority
Mrs. Juliea Brathwaite-Rolle – Manager Safety Oversight (BCAA)

CHAPTER 6. FINAL REPORT

6.1 **Recommendation.**— *The format of the Final Report in Appendix 1 should be used. However, it may be adapted to the circumstances of the accident or incident.*

RESPONSIBILITY OF ANY STATE

Release of information — Consent

6.2 States shall not 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 State which conducted the investigation, unless such reports or documents have already been published or released by that latter State.

RESPONSIBILITY OF THE STATE CONDUCTING THE INVESTIGATION

Consultation

6.3 The State conducting the investigation shall send a copy of the draft Final Report to the following States inviting their significant and substantiated comments on the report as soon as possible:

- a) the State that instituted the investigation;
- b) the State of Registry;
- c) the State of the Operator;
- d) the State of Design;
- e) the State of Manufacture; and
- f) any State that participated in the investigation as per Chapter 5.

If the State conducting the investigation receives comments within sixty days of the date of the transmittal letter, it shall either amend the draft 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. If the State conducting the investigation receives no comments within sixty days of the date of the first transmittal letter, it shall issue the Final Report in accordance with 6.4, unless an extension of that period has been agreed by the States concerned.

Note 1.— Nothing in this Standard is intended to preclude the State conducting the investigation from consulting other States, such as those States which provided relevant information, significant facilities, or experts who participated in the investigation under 5.27.

Note 2.— Comments to be appended to the Final Report are restricted to non-editorial-specific technical aspects of the Final Report upon which no agreement could be reached.



BAHAMAS CIVIL AVIATION AUTHORITY
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Your Ref: AAID#A18-000004
Our Ref: BCAA/

24th July, 2018

Air Accident Investigation Department
2nd Floor, Manx Corporate Center
#45 West Bay Street
P.O. Box CB-11702
Nassau N.P
The Bahamas

Attention: Mr. Delvin R. Major - Chief Investigator of Air Accidents

Dear Mr. Major,

Re: The Bahamas Civil Aviation Authority (BCAA) Response to Aircraft Accident Report (AAID#A18-000004) issued by the Air Accident Investigation Department of The Bahamas (AAID) on Piper Aztec PA-23-250 N62769, which crashed in waters off Mastic Point, Andros, The Bahamas on the 17th January, 2018.

Further to the extension of time granted by the Minister of Transport, Aviation and Bahamasair, the Honourable Dionisio D' Aguilar MP, to the Bahamas Civil Aviation Authority to respond to the Air Accident Investigation Department of The Bahamas Aircraft Accident Report (AAID#A18-000004), involving Piper Aztec PA-23-250 N62769, which crashed in waters off Mastic Point, Andros, The Bahamas on the 17th January, 2018, enclosed please find the official response by the Bahamas Civil Aviation to the subject Report.

In accordance with the extension granted to respond to this Report, and ICAO Annex 13 Chapter 6.3 (*Note 2*), the Bahamas Civil Aviation Authority respectfully requires the Air Accident Investigation Department to append the Bahamas Civil Aviation Authority's comments in response to this Report, which involve the specific technical and regulatory aspects of the Report, upon which the Bahamas Civil Aviation Authority does not agree with the Air Accident Investigation Department' in regard to its Findings and Safety Recommendations in the subject Report.

Re: Bahamas Civil Aviation Authority (BCAA) Response to Aircraft Accident Report (AAID#A18-000004)

Sincerely,



Captain Charles B. Beneby
Director General
Bahamas Civil Aviation Authority

(Enclosure)

cc: Mr. Charles Albury – Permanent Secretary, Ministry of Tourism, Aviation and
Bahamasair
Mrs. Wendy Craigg – Chairperson, The Bahamas Civil Aviation Authority
Mrs. Juliea Brathwaite Rolle – Manager Safety Oversight (BCAA)

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- a) the State that instituted the investigation;
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- d) the State of Design;
- e) the State of Manufacture; and
- f) any State that participated in the investigation as per Chapter 5.

If the State conducting the investigation receives comments within sixty days of the date of the transmittal letter, it shall either amend the draft 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. If the State conducting the investigation receives no comments within sixty days of the date of the first transmittal letter, it shall issue the Final Report in accordance with 6.4, unless an extension of that period has been agreed by the States concerned.

Note 1.— Nothing in this Standard is intended to preclude the State conducting the investigation from consulting other States, such as those States which provided relevant information, significant facilities, or experts who participated in the investigation under 5.27.

Note 2.— Comments to be appended to the Final Report are restricted to non-editorial-specific technical aspects of the Final Report upon which no agreement could be reached.



The Bahamas Civil Aviation Authority (BCAA) response to the Aircraft Accident Report (AAID#A18-000004) issued by the Air Accident Investigation Department of The Bahamas (AAID), in regard to the loss of control and impact with terrain (water) of a Piper Aztec PA-23-250 aircraft, being registration number N62769, in waters off Mastic Point, Andros, The Bahamas on the 17th January, 2018.

Re: The Bahamas Civil Aviation Authority (BCAA) response to the Aircraft Accident Report (AAID#A18-000004) issued by the Air Accident Investigation Department of The Bahamas (AAID) on Piper Aztec PA-23-250 N62769, which crashed in waters off Mastic Point, Andros The Bahamas on the 17th January, 2018.

Introduction

In accordance with an extension of time granted to The Bahamas Civil Aviation Authority (BCAA) by the Minister responsible for aviation and accident investigation, BCAA hereby formally responds to the Air Aircraft Accident Report prepared by the Air Accident Investigation Department (AAID) in regard to the loss of control and impact with terrain (water) of a Piper Aztec PA-23-250 aircraft, being registration number N62769, in waters off Mastic Point, Andros, The Bahamas on the 17th January, 2018 (the Report) and in particular to the AAID's findings involving the BCAA and its safety recommendations made to the BCAA stemming from the accident.

The BCAA also responds to certain "factual information" reported by the AAID in regard to the activities of the pilot of the aircraft, the ownership of the aircraft, and notes other material observations in regard to the Report.

Forward

In The Bahamas, the Civil Aviation Authority of The Bahamas is responsible for civil air safety, i.e. the establishment and monitoring of standards, including the licensing of flight crews, aircraft engineers, air traffic controllers and aerodromes and the certification of airlines and aircraft.

The Air Accident Investigation Department (AAID), a branch of the Ministry of Tourism and Aviation, is responsible for the investigation of all civil aircraft accidents and serious incidents (collectively referred to as 'accidents' in this document) occurring in or over The Bahamas.

The two functions, and associated responsibilities, of accident investigation and safety regulation are clearly different and the two organisations are deliberately kept independent of each other. However, the evaluation of the findings of an accident investigation and the determination of the need for, and the initiation of, appropriate action to maintain and enhance safety is an important part of safety regulation, and is the responsibility of the BCAA.

A good working relationship between the two (2) organisations is essential, while in no way jeopardising the independence of the accident investigation.

Re: BCAA's response to Accident Report prepared by AAID on N62769.

Background

The Civil Aviation Authority of The Bahamas was established on October 3, 2016, under the Civil Aviation Act, 2016, with responsibility for regulating, monitoring and promoting the safety, security, economic viability and reliability of the aviation sector in The Bahamas. The Authority also has an independent division, the Bahamas Air Navigation Services Division (BANSD), which provides air navigation services, i.e. air traffic services, flight services, aeronautical information services, aircraft communications, aircraft navigation and surveillance services.

The AAID was established by section 43(1) of the Civil Aviation Act 2016 and is responsible for advancing transportation safety in civil aviation by conducting investigations, identifying safety deficiencies found in civil aviation occurrences and reporting its findings and making recommendations to the Minister designated to eliminate or reduce safety deficiencies.

The Purpose of the AAID accident investigation

By virtue of section 48 of the Act, the sole purpose of an air accident investigation shall be to establish the probable cause of the accident or incident and shall not be to apportion blame or liability for this accident.

This is confirmed by virtue of section 4 of the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 2017 (as amended), which states that:

“The sole purpose of an investigation of an accident or incident under these regulations is the prevention of future accidents and incidents and in no case is the purpose of such an investigation to apportion blame or liability”.

The International Civil Aviation Organization (ICAO) in Annex 13 “Aircraft Accident and Investigation” (Eleventh edition, July 2016) mandates that the sole objective of the investigation of an aircraft accident or incident shall be the prevention of accidents and incidents, and that its purpose is not to apportion blame or liability and that the investigation shall be separate from any judicial or administrative proceedings to apportion blame or liability. ICAO also expects that Member States will ensure that the accident investigation authority is strictly objective, totally impartial and is also be perceived to be so.

The BCAA takes note that the AAID states in the Accident Report that it does not investigate for the purpose of apportioning blame or to provide a means for determining liability, and that the AAID performs its functions in accordance with the provisions of the Bahamas Civil Aviation Act 2016, the Civil Aviation (Investigations of Air Accidents and Incidents) Regulations 2017 (as amended) and International Civil Aviation Organization (ICAO) Annex 13.

The BCAA acknowledges that AAID's investigation is intended neither to apportion blame, nor to assess individual or collective liability, and that its sole objective is to draw lessons from the occurrence which may help to prevent future accidents, and that consequently, the use of this

Re: BCAA's response to Accident Report prepared by AAID on N62769.

Accident Report for any purpose other than for the prevention of future accidents could lead to erroneous conclusions, which should be avoided.

The BCAA also acknowledges that the AAID is required by Bahamian law and ICAO Standards to determine the causes and/or contributing factors of aircraft accidents or incidents and to make safety recommendations.

"Causes" is defined in ICAO Annex 13 as:

"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" is defined in ICAO Annex 13 as:

"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".

The BCAA's relationship with the AAID

The BCAA acknowledges its responsibility to address, and when considered appropriate, implement safety recommendations it receives from the AAID, as the BCAA has overall responsibility for the regulatory framework of aviation and its development in The Bahamas.

"Safety recommendation" is defined in ICAO Annex 13 as:

"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".

The AAID Report and Findings

Factual information

The AAID states at page 4 of the Report that:

Re: BCAA's response to Accident Report prepared by AAID on N62769.

“Between 31 October, 2017 and 16 January, 2018 one day before the fatal crash, the pilot documented 129 commercial flights in aircraft N62769 totaling 59.7 hours”.

“Unlike the previous 129 flights documented as commercial operations, no documented evidence was found to prove the fateful flight (#130) was for compensation or hire”.

The BCAA states that the AAID has confirmed in its Report that the pilot of this aircraft was not a licenced commercial pilot and that the owner operator of this aircraft did not possess an Air Operator Certificate (AOC), which would have lawfully permitted the pilot and owner to operate the aircraft for compensation or hire. Accordingly the 129 flights referred to by the AAID in its Report cannot, in the BCAA's opinion, be classified by the AAID or considered by the BCAA to be “commercial flights” or “documented as commercial operations”.

The BCAA is of the opinion that the 130 flights were General Aviation flights, and if any of the 130 flights referred to in the AAID Report were carried out by the pilot of the aircraft for compensation or hire, that those flights were conducted illegally in breach of Bahamian and US civil aviation laws.

The AAID states at page 4 of the Report that:

“N62769 was registered in the United States of America to Kingdom Airways LLC of Sussex County, Lewes Delaware, USA”.

The BCAA notes that the AAID has not indicated in its Report whether it has identified and interviewed the beneficial owner(s) of this aircraft or what the connection was between the pilot and its registered and beneficial owners.

The BCAA notes that neither the pilot or owner or operator of this aircraft had notified the BCAA that the aircraft had been based and operating in The Bahamas for more than thirty (30) days as required under Schedule 20.125 of the Civil Aviation (General) Regulations 2017 (CAGR 2017), and as such, the BCAA was not aware that this aircraft was operating within The Bahamas prior to or at the time of the accident, nor were such operations authorised and approved by the BCAA.

The AAID states at page 12 of the Report:

“1.17 Regulatory Oversight”

“The Bahamas Civil Aviation Authority (BCAA) provides no mandatory oversight over private aircraft”.

“The BCAA provided no information to confirm that the pilot was in possession of a Bahamas issued pilot license as is required by Bahamas law”.

Re: BCAA's response to Accident Report prepared by AAID on N62769.

“In accordance with Civil Aviation (General Regulations), Schedule 10, Section 10.075 b) “No Bahamas citizen may act as the flight crew member of a foreign registered aircraft in the airspace of the Bahamas unless they have been issued a Bahamas pilot license for the category, class and type of aircraft”.

“While the Civil Aviation General Regulations, 2017 require the issuance of Bahamas License to Bahamas citizens, BCAA guidance meets this requirement via the process of conversion or validations. However, the BCAA does not have a documented structured process that requires Bahamas citizens or any other nationalities (requesting a validation or conversion of a foreign license) to be familiar with the rules, air law and procedures of flying in the Bahamas airspace. The BCAA also has no documented requirements or procedures that require applicants for a converted or validated license to complete a knowledge or skill testing, (as is normal in other States), prior to the license of a foreign State being validated or converted to a standalone Bahamas license”.

The BCAA's response to the AAID comments under 1.17 Regulatory Oversight.

The Bahamas Civil Aviation Authority (BCAA) provides no mandatory oversight over private aircraft.

The BCAA does not agree with this statement. The BCAA does provide mandatory oversight over private aircraft operating within The Bahamas. Section 3 of the Civil Aviation Act, 2016 states that:

“The provisions of this Act and the regulations shall, except where expressly excluded under this Act or such regulations, apply to every – (a) foreign registered aircraft whilst in or over any part of The Bahamas: (b) aircraft registered in The Bahamas, whether within or outside of The Bahamas”.

The Bahamas Civil Aviation (General) Regulations 2017 (CAGR 2017) Subpart A schedule 1.001, confirms that the relevant provisions of CAGR 2017 are applicable to all aircraft operating within The Bahamas.

At present the Bahamas Civil Aviation has a number of private aircraft listed on the Bahamas Aircraft Registry.

Re: BCAA's response to Accident Report prepared by AAID on N62769.

The BCAA provided no information to confirm that the pilot was in possession of a Bahamas issued pilot license as is required by Bahamas law.

The BCAA does not agree with this statement or that the AAID has jurisdiction to reach this conclusion.

The Pilot of this aircraft held a US private pilot's licence, and was flying a US-registered aircraft in general aviation operations. The Pilot was not required to possess a Bahamas-issued pilot licence under Bahamian law to conduct private general aviation operations within The Bahamas.

The BCCA's response to the AAID's Findings 20 and 21.

The pilot did not possess a Bahamas license as required by CAGR 10.075.

The BCAA does not agree with this statement or that the AAID has jurisdiction to reach this conclusion.

The AAID has confirmed in its report that Mr. Darren Clarke was the sole pilot of this private aircraft and that he was the holder of a private pilot's licence issued by the Federal Aviation Administration (FAA). The AAID's report also confirms that the Piper Aztec is certified as a single pilot aircraft, which does not operationally require other flight crew.

CAGR Schedule 10, Section 10.075 (b) states that *"No Bahamas citizen may act as the flight crew member of a foreign registered aircraft in the airspace of the Bahamas unless they have been issued a Bahamas pilot license for the category, class and type of aircraft"*.

"Flight Crew member" is defined under CAGR 2017 Schedule 1 Appendix 1 as *"a licenced crew member charged with duties essential to the operation of an aircraft during flight time."*

"Crew Member" is defined under CAGR 2017 Schedule 1 Appendix 1 as *"a person assigned by an operator to duty on an aircraft during a flight duty period"*.

"Operator" is defined under CAGR 2017 Schedule 1 Appendix 1 as *"a person, organisation or enterprise engaged in or offering to engage in an aircraft operation, including any person who causes or authorises the operation of an aircraft, such as the owner, lessee, or bailee of an aircraft"*.

For the sake of completeness, "Member" is defined by Webster's Dictionary as *"one who belongs to a group or organisation"*.

Additionally Schedule 10.001(a) of CAGR 2017 prescribes the requirements for *"(1) Operations conducted by airmen licenced in The Bahamas while operating aircraft registered in The Bahamas"* and *"(2) Operations of foreign registered aircraft by AOC holders"*.

Re: BCAA's response to Accident Report prepared by AAID on N62769.

"Air operator certificate (AOC)" is defined under CAGR 2017 Schedule 1 Appendix 1 as "a certificate authorising an operator to carry out specified commercial air transport operations".

Accordingly the BCAA does not consider Schedule 10.075(b) of CAGR 2017 to be applicable to this investigation, as Mr. Clarke was not acting as a "flight crew member" as defined under these regulations, and he was not operating the aircraft under an Air Operator Certificate (AOC) issued by the BCAA. Accordingly Mr. Clarke was not required to hold, nor was he eligible to be issued, a Bahamian pilots licence under Schedule 10.075(b) of CAGR 2017.

"Despite being a regulatory requirement to render valid other contracting States licenses for Bahamas citizens, as well as foreign license holders, the BCAA does not have a structured process that requires applicants to have knowledge of Bahamas air laws, procedures or processes when flying in Bahamas airspace".

The BCAA does not agree with this statement or that the AAID has jurisdiction to reach this conclusion as there is no regulatory requirement under Bahamian or international law that mandates that the BCAA validates personnel licences issued by foreign states to Bahamian Citizens.

Notwithstanding same, the BCAA can and does validate airmen licences issued by other contracting States by virtue of Schedule 8 of CAGR 2017. The process for validating a licence is not however mandatory or automatic, and in fact requires personnel who wish to have his/her foreign licence validated by the BCAA to submit a formal application to the BCAA for its consideration. The process of validation of personnel licences can therefore only be initiated by the applicant for that licence.

As a private pilot with a US pilot licence, Mr. Clarke was not required under Bahamian civil aviation law to have his US pilot's licence validated by the BCAA because he was a private pilot. Moreover Mr. Clarke had not submitted an application to the BCAA to validate his private pilot's licence in any event. In the circumstances the BCAA respectfully fails to see the relevance of the process of validation of a foreign pilot's licence to this accident report and considers any reference to the process of validation of foreign licences in this report to be confusing, inappropriate and somewhat misleading.

Re: BCAA's response to Accident Report prepared by AAID on N62769.

“Additionally, BCAA does not have a requirement or process that requires applicants to at least undergo a knowledge or skill testing before allowing them access to the Bahamas airspace to conduct flights”.

The BCAA does not agree with this statement or that the AAID has jurisdiction to reach this conclusion, as the BCAA does require eligible applicants for validated or converted licences to undergo knowledge and skill based testing by virtue of Subpart C Schedule 8 of CAGR 2017. Schedule 8.125(e) CAGR 2017 states that;

“(e) The Authority will decide, after a review of the applicant's licence, supporting documents, interview and contact with the civil aviation authority of the issuing State, what further showing of knowledge or proficiency will be required”.

Whilst Subpart C Schedule 8 of CAGR 2017 confirms that the BCAA does in fact have legal requirements and processes that require applicants for converted or validated licences to undergo knowledge and skill testing, and does have a structured legal process that requires applicants to have knowledge of Bahamas air laws, procedures or processes when flying in Bahamas airspace, Mr. Clarke was not required under Bahamian law to have his US private pilot's licence validated or converted by the BCAA, and he had not in fact submitted an application to the BCAA for its consideration in any event.

In the circumstances the BCAA fails to see the relevance of the AAID's comments and purported findings in regard to Mr. Clarke's private pilot's licence, and considers the inclusion of these findings erroneous and somewhat misleading.

The BCAA wishes to stress that it is a requirement under international civil aviation law that all pilots have a personal responsibility to be familiar and comply with the laws and regulations of the Countries within which they operate their aircraft. This personal requirement is confirmed by ICAO Annex 6 “Operation of Aircraft”, Part II “International General Aviation” under Standard 2.1.1.1 which mandates that:

“the pilot-in-command shall comply with the laws, regulations and procedures of those States in which operations are conducted”;

and Standard 2.1.1.2, which mandates the pilot in command

... “be familiar with the laws, regulations and procedures, pertinent to the performance of his or her duties, prescribed for the areas to be traversed, the aerodromes to be used and the air navigation facilities relating thereto”.

Re: BCAA's response to Accident Report prepared by AAID on N62769.

The BCAA's response to the AAID's Safety Recommendations.

Safety Recommendations 1 and 2.

The Bahamas Civil Aviation Authority (BCAA) accepts these safety recommendations.

The BCAA through its Safety Oversight Department (SOD) has commenced several initiatives geared towards eliminating all illegal air charter activities at the Lynden Pindling International Airport (LPIA) and a number of Family Island Airports. SOD Inspectors are conducting heightened surveillance activities at general aviation facilities involving three (3) daily shifts. SOD Inspectors are now conducting surveillance operations at certain Family Island Airports where illegal air charter activities are known to be occurring. SOD Inspectors are lawfully empowered to intercept and detain all aircraft suspected of conducting illegal air charter activities. Pilots caught conducting illegal air charter activities will have their pilot licence suspended or revoked by the BCAA and may also be prosecuted for criminal offences.

As many of the aircraft believed to be involved in illegal air charter operations are registered in the United States of America, the BCAA has commenced surveillance and inspection initiatives involving US-registered aircraft involved in general aviation activities being operated by Bahamian Citizens, through joint operations with the Federal Aviation Administration (FAA) and SOD at general aviation facilities at LPIA. The first joint operation was conducted in early 2018. Another joint operation will be conducted shortly. These initiatives are aimed at ensuring that all US-registered aircraft being operated in The Bahamas and their pilots are operating within the law, and not involved in illegal air charter operations. All US-registered aircraft found to be conducting illegal air charter activities will be reported to the FAA and are subject to detention and confiscation. Pilots caught conducting illegal air charter activities in US-registered aircraft will have their pilot licence revoked by the BCAA or FAA, and may also be prosecuted for criminal offences.

The BCAA has also established an aviation industry working group which includes representatives from the BCAA, the Royal Bahamas Defence Force, the Royal Bahamas Police Force, Bahamas Customs, Bahamas Immigration, the Airport Authority, and Family Island Administrators. This working group intends to meet on a regular basis to collaborate and develop joint initiatives and multi-pronged strategies and surveillance activities to eliminate illegal air charter activities from all airports throughout The Bahamas.

The BCAA presently conducts quarterly industry meetings with industry stakeholders and general aviation pilots to discuss the issue of illegal charter activities and to obtain industry feedback, comments and recommendations on addressing and eradicating these illegal activities. SOD has conducted three (3) such meetings thus far in 2018, with the next Industry Meeting to be held on July 24th, 2018. The BCAA intends to embark on an aggressive public awareness campaign to

Re: BCAA's response to Accident Report prepared by AAID on N62769.

inform the travelling public of the risks associated with travelling on unlicensed aircraft for hire and to discourage them from engaging in such activities.

SOD has launched its revamped Single Pilot Air Operator Certificate initiative to encourage those involved in general aviation activities in The Bahamas, and who may be involved in illegal air charter activities, to legitimize such activities through regulation and certification, which would lawfully permit them to conduct commercial air taxi and air charter operations.

The BCAA has drafted amendments to the Civil Aviation Act, 2016 and the Civil Aviation (General) Regulations, 2017 to eradicate illegal air charter activities for submission to the Attorney General. These amendments will require Bahamian general aviation pilots operating US-registered aircraft to possess Bahamas-issued pilot's licences, general aviation operating certificates and airport security pass badges, before being permitted access to secured areas of airports and to their aircraft. Additional amendments to the Civil Aviation (General) Regulations 2017, will require all US-registered aircraft that are based in the Bahamas to be listed with the BCAA, and in certain circumstances to be placed on The Bahamas Aircraft Registry. The Civil Aviation (General) Regulations 2017 will also be amended to provide effective civil penalty enforcement provisions and processes. Amendments to the Civil Aviation Act, 2016 will also include stiffer enforcement and penalty provisions and increased prison terms and fines for those convicted of illegal air charter activities.

Safety Recommendation 3.

The BCAA partially accepts this safety recommendation.

Pilots of aircraft who are citizens of The Bahamas and who operate any aircraft within The Bahamas, whether those aircraft are foreign-registered or registered in The Bahamas, are required under Bahamian and international civil aviation laws to be in possession of a valid medical certificate at all times whilst operating any aircraft within The Bahamas.

The BCAA accepts the AAID's recommendation and will increase its surveillance and records inspection activities, to ensure that all pilots who are Bahamian citizens possess the valid licences and certificates they are required to hold when operating any aircraft within The Bahamas. The BCAA does not permit any pilot to operate an aircraft within The Bahamas that does not possess the required operational licences and certificates.

Re: BCAA's response to Accident Report prepared by AAID on N62769.

General comments on Safety Recommendations 4, 5 and 6.

The BCAA makes the following general comments in regard to the Conversion and Validation of foreign personnel licences for use within The Bahamas civil aviation system.

The issuance of a licence requires the issuing State to ensure that the applicant meets all the requirements contained in its national regulations and in the relevant provisions of ICAO Annex 1 (such as age, knowledge, experience, skill, training and medical fitness). The two options for the issuance of a licence are (1) direct issuance of a licence or (2) conversion of a foreign licence.

The Bahamas does not presently directly issue personnel licences, as it does not presently have the financial resources or operational capacity to develop and effectively oversee its own personnel licencing system to directly issue Bahamian airmen licences for use within the Bahamas civil aviation system. The Bahamas recognizes that direct issuance of licences provides the highest level of control for the issuing State, and hopes that in the future it will have the capacity to directly issue personnel licences for use in The Bahamas civil aviation sector.

The Bahamas does however presently issue Bahamas personnel licences based on foreign direct issued licences for use within the Bahamas civil aviation system by way of a process referred to as a "conversion of licence", thereby accepting the fact that holding a licence issued by another contracting State is a way to demonstrate compliance with The Bahamas licensing regulations.

The Bahamas also validates foreign licences for use within its system. Validation of a foreign licence is defined in ICAO Annex 1 "Personnel Licencing" as "*the action taken by a Contracting State, as an alternative to issuing its own licence, in accepting a licence issued by any other Contracting State as the equivalent of its own licence*".

A validated licence cannot be used without the supporting licence, and the privileges of the validation are always conditional upon the continued validity of the supporting licence, and may not exceed the privileges of the supporting licence. ICAO Annex 1 requires that the BCAA confirm the validity of the foreign licence prior to issuing a validation for use in Bahamas commercial air transport operations and the BCAA also ensures that the applicable Bahamas and ICAO requirements have also been met by the applicant for the validated licence.

The validation of a foreign pilot's licence does not require the organization of a system for assessing the competency of the applicant, but rather, requires the establishment of a system of assessment of the foreign licence supporting the validation of the licence to assess its validity and privileges, and to ensure that it is genuine and complies with ICAO Standards.

The Bahamas has an established and acceptable system for assessing foreign licences, and as the majority, if not all, of the licences it validates are issued by the United States Federal Aviation Administration (FAA), The Bahamas is satisfied that the licences validated by the BCAA are genuine and were obtained in compliance with the FAA's civil aviation laws and regulations and the applicable ICAO standards.

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The conversion of a foreign pilot's licence by the BCAA allows The Bahamas to issue its own licence without establishing a full licensing system, and may expedite the process for a foreign licence holder to obtain a Bahamas licence. Once the foreign licence has been converted, the procedures set out in CAGR 2017 Schedule 8 ensure the continuing validity of the converted licence once it is issued, and also provides for additional ratings to be added to the converted licence.

The BCAA confirms that either method is a lawfully recognized and equally valid as a nationally and internationally acceptable method of licencing for use of foreign issued licences within the Bahamas civil aviation system, and has been an established and nationally and internationally recognized practice in The Bahamas for more than forty (40) years. The Bahamas has, concurrently, effectively and safely used the methods of conversion and validation of foreign licences within the Bahamas civil aviation system for decades with the acceptance of the FAA and ICAO.

The BCAA acknowledges that whether a licence is obtained by direct issuance, conversion or validation, that The Bahamas remains responsible for ensuring compliance with its national civil aviation laws and international obligations under the Chicago Convention.

The Bahamas also acknowledges that by issuing a licence directly or by conversion or validating a foreign licence, that it certifies to all the other Contracting States that the licence holder is competent to exercise the privileges of the licence within The Bahamas, and that they have met the applicable ICAO and national requirements.

The BCAA continues to strive to ensure that Bahamian civil aviation laws and regulation and ICAO Standards are complied with by all licence holders within the Bahamas civil aviation system, and intends to consider and where deemed appropriate, incorporate the AAID's recommendations into its licencing laws and regulations, and into its licencing processes and procedures. The BCAA appreciates the AAID's applicable Safety Recommendations it has received to date in this regard.

Safety Recommendation 4.

The BCAA partially accepts Safety Recommendation 4.

Subpart C Schedule 8 of CAGR 2017 sets out the legal requirements, and the processes and procedures for converting or validating a foreign personnel licence. This schedule does provide a structured process that requires applicants to have knowledge of Bahamas air laws, procedures or processes when flying in Bahamas airspace.

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The BCAA re-states that it is a requirement under Bahamas and international civil aviation law that all personnel licence holders have a personal responsibility to be familiar with and comply with the civil aviation laws and regulations of the Bahamas.

As an added measure of safety oversight and improving standards, the BCAA has considered and intends to introduce a national knowledge and testing database on Bahamian civil aviation laws and regulations, which will require new applicants for converted and validated personnel licences, and existing Bahamas personnel licence holders, to be tested and examined on The Bahamas civil aviation laws and regulations generally and those specifically applicable to their particular areas of operation. The BCAA anticipates that this knowledge and testing platform will be an operational requirement within the next six (6) to twelve (12) months.

Safety Recommendation 5.

The BCAA does not accept Safety Recommendation 5, and does not agree with the AAID, that it should discontinue the issuance of validating or converting foreign licences. The BCAA considers the AAID's recommendation in this regard to be irrational, ill conceived, impractical and totally unnecessary. The BCAA has a lawful and acceptable process and procedure for issuing valid licences by way of conversion or validating licences by way of validation.

The BCAA re-states that either method is a lawfully recognized and equally valid as a nationally and internationally acceptable method of licencing for use of foreign-issued licences within the Bahamas civil aviation system, and has been an established and nationally and internationally recognized practice in The Bahamas for more than forty (40) years. The Bahamas has, concurrently, effectively and safely used the methods of conversion and validation of foreign licences within The Bahamas civil aviation system for decades with the acceptance of the FAA and ICAO.

The BCAA re-states that it intends to require that all new applicants for converted and validated personnel licences, and existing Bahamas personnel licence holders, to be tested and examined on The Bahamas civil aviation laws and regulations generally, and those specifically applicable to their particular areas of operation.

Safety recommendation 6.

The BCAA does not accept safety recommendation 6, and does not agree with the AAID, that it should audit all previously issued converted and validated foreign licences. The BCAA considers the AAID's recommendation in this regard to be irrational, ill-conceived, impractical and

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unnecessary. The BCAA re-states that it follows lawful and acceptable processes and procedures for issuing Bahamian licences by way of the process of conversion or accepting foreign licences by way of the process of validation.

The BCAA re-states that either method is a lawfully recognized and equally valid as a nationally and internationally acceptable method of licencing for use of foreign-issued licences within The Bahamas civil aviation system, and has been an established nationally and internationally recognized practice in the Bahamas for more than forty (40) years. The Bahamas has, concurrently, effectively and safely used the methods of conversion and validation of foreign licences within The Bahamas civil aviation system for decades with the acceptance of the FAA and ICAO.

The BCAA re-states that it intends to require that all new applicants for converted and validated personnel licences, and existing Bahamas personnel licence holders, to be tested and examined on The Bahamas civil aviation laws and regulations generally, and those specifically applicable to their particular areas of operation.

Other Safety Recommendations

The BCAA notes that the AAID did not issue any Safety Recommendations to the Airport Authority who, by virtue of the Airport Authority Act 2016, manages and controls all Government-owned Airports within The Bahamas, or the Federal Aviation Administration (FAA), which is the State of Registry of the pilot and the aircraft in question.

Submitted this 24th day of July, 2018



Captain Charles B. Beneby
Director General
Bahamas Civil Aviation Authority

Re: BCAA's response to Accident Report prepared by AAID on N62769.

References:

- 1) Civil Aviation Act, 2016
- 2) Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 2017
- 3) Bahamas Civil Aviation (General) Regulations 2017 (CAGR 2017)
- 4) International Civil Aviation Organization (ICAO) Annex 13 (11th Ed, July 2016)
Aircraft Accident Investigation
- 5) International Civil Aviation Organization (ICAO) Annex 1 (11th Ed, July 2011)
Personnel Licencing
- 6) International Civil Aviation Organization (ICAO) Annex 6 Part 11 (9th Ed, July, 2016)
International General Aviation - Aeroplanes
- 7) ICAO Manual (Doc 9756) - Aircraft Accident and Incident Investigation
- 8) ICAO Manual (Doc 9962) - Accident and Incident Investigation Policies and Procedures