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AIRCRAFT ACCIDENT INVESTIGATION AUTHORITY ACT, 2019

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SCHEDULE **21**



No. 44 of 2019

AIRCRAFT ACCIDENT INVESTIGATION AUTHORITY ACT, 2019

AN ACT TO ESTABLISH THE AIRCRAFT ACCIDENT INVESTIGATION AUTHORITY OF THE BAHAMAS AND CODIFY THE LAWS AND REGULATIONS RELATED TO THE CONDUCT OF INVESTIGATIONS INTO AIRCRAFT ACCIDENTS AND INCIDENTS IN THE BAHAMAS OR CONCERNING BAHAMIAN REGISTERED AIRCRAFT

[Date of Assent – 19th December, 2019]

Enacted by the Parliament of The Bahamas

PART I - PRELIMINARY

1. Short title and commencement.

- (1) This Act may be cited as the Aircraft Accident Investigation Authority Act, 2019.
- (2) This Act shall come into force on a date to be appointed by the Minister by notice to be published in the Gazette.

2. Interpretation.

In this Act, unless the context otherwise requires —

“**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) the aircraft is missing or is completely inaccessible;
- (b) a person is fatally or seriously injured as a result of —
 - (i) being in the aircraft; or
 - (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; or
- (c) 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, windcreens, 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);

“Aircraft Accident Investigation Authority” means the authority designated by The Bahamas as responsible for aircraft accident and incident investigations within the context of Annex 13;

“Accredited representative” means a person designated by a State, on the basis of his or her qualifications, for the purpose of participating in an investigation conducted by another State and where a State has established an accident investigation authority, the designated accredited representative would normally be from that authority;

“Advisor” means a person appointed by a State, on the basis of his or her qualifications, for the purpose of assisting its accredited representative in an investigation;

“Aerodrome authority” means, in relation to an aerodrome, the person by whom the aerodrome is managed;

- “**Aircraft**” means any machine that can derive support in the atmosphere from the reactions of the air, other than the reactions of the air against the earth's surface;
- “**Annex 13**” means the Annex to the Convention on International Civil Aviation that contains the International Standards and Recommended Practices related to Aircraft Accident and Incident Investigation;
- “**Appointed Head**” means a commissioner, or other competent government official who is appointed to be responsible for the accident and incident investigations within the meaning of the Act;
- “**Authority**” means the Aircraft Accident Investigation Authority;
- “**Bahamas Civil Aviation Authority**” means the Bahamas Civil Aviation Authority established under section 4 of the Civil Aviation Act, 2016 (No. 22 of 2016);
- “**Balancing test**” means the test used by the Competent Authority to determine the impact the disclosure or use of accident and incident investigation records may have on current or future investigations;
- “**Causes**” means actions, omissions, events, conditions, or a combination thereof, which led to the accident or incident, and the identification of a cause does not imply the assignment of fault or the determination of administrative, civil or criminal liability;
- “**Chief Investigator**” means the Chief Investigator of Air Accidents and the designated Appointed Head;
- “**Commander**” means, in relation to an aircraft, the member of the flight crew designated as commander of such aircraft by the operator of the aircraft or, failing such a person, the person who is for the time being the pilot in command of the aircraft;
- “**Competent Authority**” means the Attorney-General;
- “**Contributing factors**” means actions, omissions, events, conditions, factors or a combination thereof, which, if eliminated, avoided or absent, would have prevented or reduced the probability of the accident or incident occurring, or would have mitigated the severity of the adverse consequences of the accident or incident;
- “**Contracting State**” means any State, including The Bahamas, which is party to the Chicago Convention;
- “**Crew member**” means a person assigned by an air operator to duty on an aircraft during a flight duty period;
- “**Department**” means any ministry, authority, organization or other concerned body of the government of The Bahamas that has a direct interest in aircraft accidents or incidents;

“Document” means any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic, film, sound recording, video tape, electronic files and data, and any copy thereof;

“Draft Final Report” means a draft investigation report that is sent in confidence to departments in The Bahamas, other States, and organizations involved in the investigation, inviting their significant and substantiated comments on the report;

“Fatal injury” means an injury which is sustained by a person in an accident and which results in his death within thirty days of the date of the accident;

“Final Report” means a State’s conclusive report on its investigation into an aircraft accident or incident which is —

- (a) issued by the Authority and includes the pertinent factual information, analysis, conclusions and, when appropriate, associated safety recommendations; and
- (b) made with the intention of preventing accidents or incidents and in no case has the purpose of creating a presumption of blame or liability;

“Flight recorder” 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;

“International Civil Aviation Organization” or **“ICAO”** means the International Civil Aviation Organisation, a specialized organisation of the United Nations formed on the 4 April 1947;

“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;

“Investigator” means a person delegated by the Authority to conduct its investigations;

“Investigator-in-charge” means a person charged, on the basis of his or her qualifications, with the responsibility for the organization, conduct and control of an investigation;

“Material fact in question” means a fact that is significant or essential to the matter at hand, that one party alleges and that the other controverts, and is to be determined by the competent authority administering the balancing test;

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

- “Minister”** means the Minister responsible for aircraft accident investigations and shall be —
- (a) the Minister responsible for transport where he is not also the Minister responsible for civil aviation; or
 - (b) a Minister who is not also the Minister responsible for civil aviation;
- “Observer”** means a representative of a concerned department of The Bahamas or other State who is authorized by the Authority to attend an investigation as an observer, or an Authority investigator authorized to attend an investigation being conducted by a concerned department or other State;
- “Occurrence”** means any accident or incident associated with the operation of an aircraft;
- “Operator”** means a person, organization or enterprise engaged in or offering to engage in an aircraft operation;
- “Owner”** means, where an aircraft is registered, the registered owner;
- “Pilot in command”** means, in relation to an aircraft, a person who for the time being is in charge of the piloting of the aircraft without being under the direction of any other pilot in the aircraft;
- “Police officer”** means any person who is a member of the Royal Bahamas Police Force;
- “Preliminary Report”** means the communication used for the prompt dissemination of data obtained during the early stages of the investigation;
- “Regulations”** means the Aircraft Accident Investigation Authority Regulations, 2018 and any other further regulations made hereunder;
- “Safety recommendation”** —
- (a) means a proposal of an aircraft 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;
 - (b) 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 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 hospitalisation for more than forty-eight 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 haemorrhaging, 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 five per cent of the body surface; or
- (f) involves verified exposure to infectious substances or injurious radiation;

“State” means a Member State of the International Civil Aviation Organization (ICAO);

“State of Design” means the State having jurisdiction over the organization responsible for the type design;

“State of Manufacture” means the State having jurisdiction over the organization responsible for the final assembly of the aircraft, engine or propeller;

“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;

“State of Registry” means the State on whose register the aircraft is entered;

“State Safety Program (SSP)” means an integrated set of regulations and activities aimed at improving safety;

“Statement” means the whole or any part of an oral, written or recorded statement relating to an aircraft accident or incident given by the author of the statement to the Authority.

3. Application of Act.

This Act applies in respect of aircraft accidents and incidents —

- (a) in or over The Bahamas;
- (b) when The Bahamas is the State of Registry and —

- (i) the location of the accident or the serious incident cannot definitely be established as being in the territory of any other State; or
- (ii) the accident or the serious incident has occurred in the territory of a non-Contracting State which does not intend to conduct an investigation in accordance with Annex 13.

4. Objective.

- (1) The sole objective of the investigation of an aircraft accident or incident conducted under this Act shall be the prevention of accidents and incidents.
- (2) Investigations by the Authority shall be conducted separate from investigations conducted for the purposes of establishing blame, civil or criminal liability.
- (3) Any investigations conducted under the provisions of this Act shall have unrestricted access to all evidential material without delay and shall not be impeded by administrative or judicial investigations or proceedings.
- (4) Final reports shall not be used as evidence in any court proceeding or in other proceedings related to apportioning blame or liability.
- (5) No finding, cause or contributing factor determined under this Act shall be construed as assigning fault or determining civil or criminal liability.
- (6) No safety recommendation made under this Act shall be construed as assigning fault or determining civil or criminal liability.

PART II – ESTABLISHMENT AND FUNCTIONS OF THE AIRCRAFT ACCIDENT INVESTIGATION AUTHORITY

5. Establishment of the Aircraft Accident Investigation Authority.

- (1) The body formally known as the Air Accident Investigation Department established under section 43 of the Civil Aviation Act, 2016 (*No. 22 of 2016*) is hereby continued and preserved as a body to be known as the Aircraft Accident Investigation Authority of The Bahamas which shall be responsible for the investigations into civil aviation accidents and incidents.
- (2) The *Schedule* shall have effect as to the constitution and procedure of the Board of the Authority.

6. Functions of Authority.

- (1) The mandate of the Authority is to conduct independent investigations, including —
 - (a) the gathering, recording and analysis of all relevant information of an accident or incident;
 - (b) the protection of certain accident and incident investigation records in accordance with 20(1);
 - (c) if appropriate, the issuance of safety recommendations;
 - (d) where possible, the determination of the causes and contributing factors; and
 - (e) as appropriate, the completion of the Final Report referred to in section 25.
- (2) The Authority shall have independence in the conduct of the investigation and have unrestricted authority over its conduct, consistent with the provisions of Annex 13.
- (3) The Authority shall be functionally independent from other State aviation authorities and other entities that could interfere with the conduct or objectivity of an investigation.

7. Powers of Authority.

- (1) The Authority shall have such power as may be requisite or incidental for or in connection with the performance of its functions.
- (2) Without prejudice to the generality of subsection (1), the Authority shall take all reasonable measures to ensure that the investigation procedures and practices that it follows in relation to accidents and incidents are compatible with The Bahamas' obligations under the Convention on International Civil Aviation, and the International Civil Aviation Organization (ICAO) Standards and Recommended Practices contained in Annex 13.
- (3) No person shall circulate, publish or give access to a draft investigation report or any part thereof, or any documents obtained during an investigation of an accident or incident, without the express consent of the Authority, unless such reports or documents have already been published or released by the Authority.

PART III – RESPONSIBILITIES FOR ADMINISTRATION OF ACT

8. Responsibilities of the Minister.

The Minister shall —

- (a) appoint a Chief Investigator of Air Accidents, who shall be responsible for aircraft accident and incident investigations within the meaning of this Act;
- (b) ensure that sufficient funds are available to enable the Authority to properly investigate accidents and incidents that fall within its area of responsibility; and
- (c) not interfere with the conduct or conclusions of the investigation.

9. Responsibilities of Chief Investigator.

- (1) The Chief Investigator of Air Accidents shall —
 - (a) be responsible for the day-to-day administration of the affairs of the Authority;
 - (b) institute investigations into the circumstances of accidents and incidents;
 - (c) designate the Investigator-in-charge of each investigation;
 - (d) create, adopt or establish policies and procedures to be followed in the conduct of investigations and the required qualifications of an investigator;
 - (e) delegate the powers of investigation to the members of the investigation team, and provide each member with a certificate of appointment; and
 - (f) release the Final Report on an investigation.
- (2) The Chief Investigator may delegate an investigation, in whole or in part, to another State or a regional accident and incident investigation organization, when deemed to be appropriate.

10. Responsibilities of Investigator-in-Charge.

- (1) The Investigator-in-charge shall —
 - (a) report to the Chief Investigator on the investigation, including proposing findings as to causes and contributing factors, and safety recommendations related to investigations conducted by the Authority; and
 - (b) be responsible for appointing observers and participants required for the investigation.

- (2) The Investigator-in-charge has exclusive authority to direct the conduct of an investigation under this Act on behalf of the Chief Investigator.

PART IV – INVESTIGATIONS AND REPORTING

11. Exemption from import taxes.

The Chief Investigator may apply in writing to the Minister of Finance for an exemption from customs duties on the import of goods, vehicles or equipment required for investigation, search and rescue or salvage and recovery purposes.

12. Investigation jurisdiction.

- (1) Notwithstanding any other Act, no department may commence an investigation under this Act if the accident or incident has been investigated, is being investigated, or is going to be investigated by the Authority.
- (2) Nothing in subsection (1) shall prevent —
 - (a) the Authority from referring an accident or incident to another department or law enforcement department for the purposes provided in paragraphs (b) or (c);
 - (b) a department from commencing an investigation into or continuing to investigate an aircraft accident or incident for any purpose other than that of the Act; and
 - (c) any law enforcement department from investigating an aircraft accident or incident for any purpose for which it is empowered to conduct investigations.
- (3) For any investigation conducted under the provisions of this Act, and in consideration of (2)(b), the Authority shall —
 - (a) have unhampered access to and unrestricted control over the scene of the accident or incident, including the wreckage and any material relevant to the investigation including statements taken from witnesses;
 - (b) have unhampered access to and control of the wreckage and all relevant material, including flight recorders and air traffic services recordings and records;
 - (c) have unrestricted control over wreckage and parts to ensure that detailed examinations can be made without delay;
 - (d) take all reasonable measures to protect the evidence and to maintain safe custody of the aircraft and its contents for such a period as may be necessary for the purposes of the investigation; and

- (e) relinquish control of the accident or incident site(s) and release custody of the aircraft, its contents or any parts thereof as soon as they are no longer required for the investigation.

13. Voluntary reporting.

- (1) The Authority shall encourage and facilitate voluntary reporting based on the same criteria across the whole spectrum of civil aviation operations.
- (2) The Authority's organisation and procedures for processing and recording reports shall not substantially differentiate from voluntary and mandatory reports.
- (3) For the purposes of this section, a "voluntary occurrence report" is that report made by a person or organisation who is not required to report in accordance with the requirements of this section.
- (4) The occurrences reported and trends developed shall be retained in a limited format which removes information and data which is likely to identify the person reporting.
- (5) The confidentiality of a voluntary report shall be protected by the Authority and information disclosed in these reports shall be inadmissible for any future proceedings relating to the person reporting.
- (6) No servant or agent or employee shall suffer any detriment, loss of employment, loss of hope of advancement or other penalty by virtue of having made a voluntary occurrence report in respect of any matter reasonably believed by him to be a safety concern.

14. Self disclosure of non-compliance.

- (1) The Authority shall encourage self-disclosure of non-compliance with regulations through a voluntary reporting process.
- (2) In evaluating whether an apparent non-compliance is covered by this section, the Authority shall ensure that the following conditions are met —
 - (a) the regulated entity has notified the Authority of the apparent non-compliance immediately after detecting it and before the Authority has learned of it by other means;
 - (b) the notification did not occur during, or in anticipation of, an investigation or inspection by the Authority or in association with an accident or incident;
 - (c) the apparent non-compliance with the regulations was inadvertent;
 - (d) the apparent non-compliance with regulations does not indicate a lack, or reasonable question, of qualification of the regulated entities;

- (e) immediate action, satisfactory to the Authority was taken upon discovery to terminate the conduct that resulted in the apparent non-compliance;
- (f) the regulated entity has developed or is developing a comprehensive fix and the schedule of implementation, is satisfactory to the Authority;
- (g) the comprehensive fix includes a follow-up self-audit to ensure that the action taken corrects the non-compliance; and
- (h) this self-audit is in addition to any audits conducted by the Authority.

15. Assurance against prosecution.

The Authority shall not institute proceedings in respect of an unpremeditated or inadvertent breach of the law which may come to its attention only because they have been reported under the voluntary reporting provisions of this sections 13 and 14.

16. Reporting of accidents and incidents.

Subject to regulations made hereunder, the owner, operator, pilot-in-command, crew members, operator of an airport, air traffic controller, or any other person having knowledge of an accident or incident shall report to the Authority and provide as much information as soon as possible and by the quickest means available.

17. Extent of investigation.

- (1) Where the Authority is notified of an aircraft accident or incident, the Authority shall determine the extent of the investigation required and the procedures to be followed in carrying out the investigation.
- (2) In determining the extent under subsection (1), the Authority shall take into considerations the possible findings that can result from the investigation and apply such information for the improvement of safety.
- (3) The Authority, on the advice of the Investigator-in-Charge shall have the authority to call on and receive the assistance of any government agency, service or department to assist in search and rescue operations for so long as is necessary to ensure the timely location of any crash site, wreckage and the rescue or recovery of any human beings.

18. Functional cooperation.

- (1) The Authority and the Bahamas Civil Aviation Authority shall ensure mutual cooperation in respect of the requirements of subsections (2) and (3).

- (2) The Bahamas Civil Aviation Authority shall immediately upon the notification of an accident or incident by the Authority, forthwith supply all necessary information in its possession which is necessary to assist the investigation.
- (3) The Authority shall supply, in the interest of public safety, any information obtained during the course of any investigation which will likely have a material impact or result in a change in the regulations or operational procedures of the Bahamas Civil Aviation Authority.

19. Preservation of evidence.

- (1) To the extent possible, and until otherwise instructed by the Authority or except as otherwise required by this Act, where an aircraft accident or incident takes place, the owner, operator, and crew members shall —
 - (a) take all reasonable measures to protect the evidence, including the documents referred to in section 20(1) defined in this Act; and
 - (b) to maintain safe custody of the aircraft and its contents for such a period as may be necessary for the purposes of an investigation.
- (2) Subsection (1) shall not be construed as preventing any person from taking necessary measures to ensure the safety of any person and property during or after an accident, incident or the investigation thereto.
- (3) Where evidence relevant to an accident or incident has to be interfered with pursuant to subsection (2), the person directing, supervising or arranging the interference shall, to the extent possible in the circumstances, and prior to the interference, record the evidence by the best means available.
- (4) In preserving the evidence of an accident or incident —
 - (a) no person other than an authorized person shall have access to the aircraft involved in the accident or serious incident;
 - (b) neither the aircraft nor its contents shall, except under the authority of the Chief Investigator or Investigator-in-Charge, be removed or otherwise interfered with;
 - (c) the Chief Investigator, or persons authorized on his behalf, shall take all reasonable measures to protect the aircraft and the evidence and to maintain safe custody of the aircraft and its contents for such a period as may be necessary for the purpose of an investigation; and
 - (d) the Chief Investigator or his designee shall take all necessary steps to protect the aircraft and the evidence pending an inspection by an accredited representative, pursuant to a request from the State of Registry, State of Design, State of Manufacture or State of the

Operator, so far as it is reasonably practicable and compatible with the proper conduct of the investigation.

- (5) Notwithstanding subsection (4) —
 - (a) the aircraft may be removed or interfered with so far as may be necessary for the purpose of —
 - (i) extricating persons or animals;
 - (ii) removing mail, valuables and dangerous goods carried by the aircraft;
 - (iii) preventing destruction by fire or other causes;
 - (iv) preventing any danger or obstruction to the public, air navigation or to other transport; or
 - (v) removing other property from the aircraft under the supervision of an Investigator or with the agreement of an Investigator or a police officer.
 - (b) where an aircraft is wrecked on the water, the aircraft or any of its contents may be removed to such extent as may be necessary for bringing the aircraft or the contents to a place of safety;

20. Protection of records.

- (1) When conducting the investigation of an accident or incident, unless the designated competent authority determines that their disclosure or use outweighs the likely adverse domestic and international impact such action may have on that or any future investigations, the Authority shall not make the following records available for purposes other than accident or incident investigation —
 - (a) cockpit voice recordings, airborne image recordings whether installed, attached or available for whatever purpose and any transcripts from such recordings (visual and aural), even if determined to be used in judicial proceedings, must never be released to the public; and
 - (b) records in the custody or control of the Authority being —
 - (i) all statements taken from persons by the Authority in the course of their investigation;
 - (ii) all communications between persons having been involved in the operation of the aircraft;
 - (iii) medical or private information regarding persons involved in the aircraft accident or incident;
 - (iv) recordings and transcripts of recordings from air traffic control units;
 - (v) air traffic control intra-facility communications;

- (vi) analysis of and opinions about information, including flight recorder information, made by the Aircraft Accident Investigation Authority and accredited representatives in relation to the accident or incident;
 - (vii) information exchanged among States or institutions during investigations;
 - (viii) information provided by stakeholders in the investigation, including industry proprietary information;
 - (ix) information obtained using statutory powers of compulsion by the accident investigator; and
 - (x) the draft Final Report of an accident or incident investigation.
- (2) Requests for records in the custody or control of the Authority should be directed to the original source of the information, where available.
 - (3) The names of the persons involved in the accident or incident shall not be disclosed to the public by the Authority.
 - (4) The Authority should retain, where possible, only copies of records obtained in the course of an investigation.
 - (5) Audio content of cockpit voice recordings as well as image and audio content of airborne image recordings shall not be disclosed to the public.

21. Administration of the balancing test.

- (1) Where there is a request for a record listed under section 20 to be disclosed or used in a criminal, civil, administrative or disciplinary proceeding, the Competent Authority shall be satisfied that a material fact in question in the proceedings cannot be determined without that record, before administering the balancing test.
- (2) When administering the balancing test, the Competent Authority shall take into consideration factors such as —
 - (a) the purpose for which the record was created or generated;
 - (b) the requester's intended use of that record;
 - (c) whether the rights or interests of a person or organization will be adversely affected by the disclosure or use of that record;
 - (d) whether the person or organisation to whom that record relates has consented to make that record available;
 - (e) whether suitable safeguards are in place to limit the further disclosure or use of that record;
 - (f) whether that record has been or can be de-identified, summarised or aggregated;
 - (g) whether there is an urgent need to access that record to prevent a serious risk to health or life;

- (h) whether that record is of a sensitive or restrictive nature; and
 - (i) whether that record reasonably indicates that the accident or incident may have been caused by an act or omission considered, in accordance with national laws and regulations, to be gross negligence, wilful misconduct, or done with criminal intent.
- (3) The Competent Authority shall record the reasons for its determination when administering the balancing test and the reason should be made available and referred to as necessary for subsequent decisions.

22. Investigators are not compelled.

Members of the Authority —

- (a) are not compellable to appear as a witness in any judicial, administrative or disciplinary proceedings related to apportioning blame or liability unless the court or other person or body before whom the proceedings are conducted so orders for special cause;
- (b) are not compellable to give an expert opinion in any civil or criminal proceedings in relation to a matter related to transport safety.

23. Re-opening of investigations.

- (1) Where new and significant evidence becomes available after the investigation has been closed, the Authority may reopen it.
- (2) However, if the Authority is conducting an investigation that it did not institute, the Authority shall first obtain the consent of the State which instituted the investigation.

PART V – REPORTS AND RECOMMENDATIONS

24. Draft Final Reports.

- (1) Before releasing the Final Report on its investigation, the Authority shall send a draft Final Report to departments, States, and other organisations that participated in the investigation, inviting their significant and substantiated comments.
- (2) The Authority shall not disclose any Draft Final Report, either issued or received, to the public.

25. Final Reports.

- (1) In the interest of accident and incident prevention, the Authority shall make a Final Report on its investigation publicly available as soon as

possible but no later than within twelve months from the date of the accident or incident, where practicable.

- (2) A copy of the Final Report is required to be sent to the States that participated as required in Annex 13.

26. Confidentiality of reports.

- (1) Without prejudice to the proper discharge of its responsibilities in this regard, the Authority shall not disclose the name of the person submitting any voluntary reports or of a person to whom it relates unless required to do so by law or unless, in either case, the person concerned authorises disclosure.
- (2) Where any flight safety follow-up action arising from a report be necessary, the Authority shall take all reasonable steps to avoid disclosing the identity of the reporter or of those individuals involved in the reportable occurrence.

27. Safety recommendations.

- (1) At any stage of the investigation of an accident or incident, the Authority shall recommend in a dated transmittal correspondence to the appropriate authorities, including those in other States, any preventive action that it considers necessary to be taken promptly to enhance aviation safety.
- (2) Where the safety recommendations are addressed to an organization in another State, the recommendations shall also be transmitted to that State's air accident investigation authority.
- (3) A safety recommendation shall in no case create a presumption of blame or of liability for an accident or incident.
- (4) The Authority shall address, when appropriate, any safety recommendations arising out of its investigations in a dated transmittal correspondence to the accident investigation authorities of other State(s) concerned and to ICAO when ICAO documents are involved.
- (5) An organisation or authority to which a safety recommendation is communicated shall, without delay —
 - (a) take the safety recommendation into consideration and, where appropriate, act upon it;
 - (b) send to the Authority one of the following —
 - (i) full details of the measures, if any, it has taken or proposes to take to implement the recommendation without delay and, where it proposes to implement measures, the timetable for securing that implementation;

- (ii) a full explanation as to why the recommendation is not to be the subject of measures to be taken to implement it; and
- (iii) give written notice to the Chief Investigator where at any time information provided to him, pursuant to subparagraph (b)(i), concerning the measures it proposes to take or the timetable for securing their implementation, is rendered inaccurate by any change of circumstances.

PART VI - MISCELLANEOUS

28. General penalty.

Any person who contravenes any provisions of this Act shall be liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding twenty-four months or to both such fine and imprisonment.

29. Regulations.

The Minister shall make regulations for carrying out the purposes and provisions of this Act and prescribing the manner of investigation of any civil aviation accident or incident.

30. Repeal.

Part VIII of the Civil Aviation Act, 2016 (*No. 22 of 2016*) is hereby repealed.

SCHEDULE

(section 5(2))

CONSTITUTION OF THE AIRCRAFT ACCIDENT INVESTIGATION AUTHORITY

1. Incorporation.

- (1) The Authority is a body corporate having perpetual, a common seal and a Board (“the Board”), with power to purchase, lease or otherwise acquire and hold and dispose of land and other property of whatsoever kind.
- (2) The Authority may sue and be sued in its corporate name and may for all purposes be described by such name, and service upon the Authority of any document of whatsoever kind must be made by delivering the document to the Secretary of the Board at the office of the Authority.

2. Functions of the Board.

- (1) The principal functions of the Board shall be to develop policies and to give general directions on the implementation and achievement of the objectives and functions of the Authority.
- (2) Without limiting the generality of subsection (1), the Board shall —
 - (a) review the performance of the Chief Investigator;
 - (b) approve the staff service rules, policies and procedures for the Authority;
 - (c) consider annual activities and financial reports and any other reports as may be required by the Board or the Minister;
 - (d) approve the institutional structure and programmes including, among other things, the State Safety Programme and the National Aviation Security Programme and projects for the Authority on an annual basis or as and when is required;
 - (e) examine and approve the budget of the Authority;
 - (f) review and approve the budget of the Authority;
 - (g) consider and approve matters relating to the acquisition and disposal of assets of the Authority; and
 - (h) exercise such other powers and perform such other functions as may be conferred on it by the Minister, from time to time, or that may be necessary for the implementation of this Act.

3. Seal.

- (1) The seal of the Authority must be kept in the custody of any officer of the Authority as the Authority may approve, and may be affixed to instruments pursuant to a resolution of the Authority and in the presence of the Chairman or a member of the Authority designated by the Chairman and one other member.
- (2) The seal of the Authority must be authenticated by the signature of the Chairman and one other member, and the seal shall be officially and judicially noticed.
- (3) All documents, other than those required by law to be under seal, made by and all decisions of the Authority may be signified under the hand of the Chairman or a member of the Authority designated by the Chairman.

4. Chairman and Members.

- (1) The Board shall consist of a Chairman and two other members appointed by the Minister from persons appearing to him to be qualified as having had experience of or having shown capacity in matters relating to civil aviation affairs, aeronautical engineering, environmental or meteorological matters, administration or air transportation.
- (2) The Chief Investigator shall be an ex officio member of the Board.

5. Tenure.

A member of the Board shall hold office for such period, not exceeding three years, as the Minister may direct in the instrument appointing such member but such member shall be eligible for reappointment.

6. Resignation.

Any member of the Board other than an ex officio member may at any time resign his office by instrument in writing addressed to the Minister and from the date of receipt by the Minister of such instrument such member shall cease to be a member of the Board.

7. Removal.

The Minister by instrument in writing, may at any time revoke the appointment of the Chairman or any other appointed member of the Board if he thinks it expedient so to do.

8. Publication.

The appointment, removal, death or resignation of any member of the Board shall be notified in the Gazette.

9. Remuneration.

There shall be paid from the funds of the Authority to the Chairman and other members of the Board such remuneration as the Minister may determine.

Proceedings

10. Meetings.

- (1) The Board shall meet at such times as may be necessary or expedient for the transaction of business, and such meetings shall be held at such places and times and on such days as the Chairman may determine.
- (2) The Chairman, or in the Chairman's absence, any member as he may designate, shall preside at all meetings of the Board.
- (3) A quorum shall be formed —
 - (a) by the Chairman, two other members of the Board and the Chief Investigator;
 - (b) in the absence of the Chairman, his designate together with one other member of the Board and the Chief Investigator.
- (4) The decisions of the Board are by a majority of votes and in addition to an original vote, in any case in which the voting is equal, the Chairman or the presiding member at the meeting has a casting vote.
- (5) Minutes of each meeting in proper form are to be kept by the secretary or any officer the Board may appoint for that purpose, and confirmed by the Board at the next meeting and signed by the Chairman or a member of the Board designated by the Chairman as the case may be.
- (6) The Board may co-opt any one or more persons to attend any particular meeting of the Board for the purpose of assisting or advising the Authority in any matter with which the Board is dealing, but no co-opted person has the right to vote.
- (7) Provided a quorum is present, the validity of any proceeding of the Board shall not be affected by any vacancy amongst the members thereof or by any defect in the appointment of a member thereof.

11. Authority to regulate own proceedings.

Subject to the provisions of this Schedule, the Board has the power to regulate its own proceedings.

Staff

12. Appointment of staff.

- (1) The Authority may, in consultation with the Minister, appoint and employ on a contractual basis any officers, servants or agents as it considers necessary for the proper carrying out of the provisions of this Act.
- (2) Any appointment or employment in accordance with paragraph (1) shall be done in accordance with the public service conditions of service for contractual workers.

13. Protection against actions, etc.

The Crown Proceedings Act (*Ch. 68*) shall apply to any action, suit, prosecution or other proceeding against the Authority or against any member, officer or servant of the Authority in respect of any act, neglect or default done or committed by him in such capacity.