

Statutory Instrument No. 74 of 2022

CIVIL AVIATION ACT
(Cap. 71:01)

**CIVIL AVIATION (ACCIDENT AND INCIDENT INVESTIGATION)
REGULATIONS, 2022**
(Published on 13th June, 2022)

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SCHEDULES

IN EXERCISE of the powers conferred on the Minister of Transport and Public Works by sections 68 (3) and 89 of the Civil Aviation Act, the following Regulations are hereby made —

PART I — Preliminary

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|----------------|---|
| Citation | 1. These Regulations may be cited as the Civil Aviation (Accident and Incident Investigation) Regulations, 2022. |
| Interpretation | 2. In these Regulations, unless the context otherwise requires — |

- “accident investigation authority” means the authority designated by a State as responsible for aircraft accident and incident investigations;
- “accredited representative” means a person designated by a State, on the basis of his or her qualifications, for the purposes of participating in an investigation conducted by another State;
- “adviser” means a person appointed by a State on the basis of his or her qualifications for the purpose of assisting the State’s accredited representative in an investigation;
- “Air Traffic Service” means air traffic services and includes flight information service, alerting service, air traffic advisory service, air traffic control service, area control service, approach control service and aerodrome service;
- “automatic deployable flight recorder” means a combination flight recorder installed on the aircraft which is capable of automatically deploying from the aircraft;
- “causes” means actions, omissions, events, conditions or a combination thereof which lead to an accident or incident, it does not imply the assignment of fault or the determination of administrative, civil or criminal liability;
- “contracting State” means any State which is a party to the Chicago Convention;
- “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 and the identification of contributing factors does not imply the assignment of fault or the determination of administrative, civil or criminal liability;
- “flight recorder” means any type of recorder installed in an aircraft for the purpose of complementing accident and incident investigation;
- “investigation” means a process conducted for the purpose of finding out the cause of an accident which includes the gathering and analysis of information, the drawing of conclusions including the determination of causes and contributing factors, when appropriate, the making of safety recommendations;
- “investigator-in-charge” means an accident investigator charged with the responsibility for the organisation, conduct and control of an investigation;
- “maximum mass” means maximum certificated take-off mass;
- “non-contracting State” means any State which is not party to the Chicago Convention;
- “pilot-in-command” means the pilot designated by the operator, or in the case of general aviation, the owner, as being in command and charged with the safe conduct of a flight;
- “preliminary report” means the communication used for the prompt dissemination of data obtained during the early stages of an investigation;
- “safety recommendation” means a proposal by the investigator-in-charge, based on the information derived from the investigation and made with the intention of preventing future accidents or incidents;

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- “serious injury” means an injury which is sustained by a person in an accident and which —
- (a) requires hospitalisation for more than 48 hours, commencing within seven days from the date the injury was sustained;
 - (b) results in a fracture of any bone and excludes simple fractures such as 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 five per cent of the body surface; or
 - (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 of the aircraft, engine or propeller;
- “State of manufacture” means the State having jurisdiction over the organisation 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 has entered; and
- “State Safety Programme (SSP)” means an integrated set of regulations and activities aimed at improving safety.

PART II — *Investigations General*

Application

- 3.** (1) These Regulations shall apply to activities following accidents and incidents involving Botswana registered aircraft wherever they occur and any accidents and incidents that occur within Botswana.
- (2) The specifications concerning the State of the operator apply only when —
- (a) an aircraft is leased, chartered or interchanged; and
 - (b) the State is not the State of registry,
- and if it discharges, in respect of these Regulations, in part or in whole, the functions and obligations of the State of registry.
- (3) The sole objective of the investigation of an accident or incident shall —
- (a) be the prevention of accidents and incidents; and
 - (b) not be to apportion blame or liability.

Accident investigations

- 4.** (1) Subject to section 75 of the Act, an investigation may be conducted to reveal hazards or deficiencies within the aviation system not directly connected with the causes of the accident or incident.
- (2) An investigation into an accident or incident shall include among other things —
- (a) the gathering, recording and analysis of all available information and evidence on the accident or incident;
 - (b) the determination of the facts, conditions and circumstances pertaining to the survival or non-survival of the occupants of the aircraft;

- (c) where possible, the determination of the cause or contributing factors of an accident or incident;
 - (d) where appropriate, the issuance of safety recommendations; and
 - (e) the completion of the final report required under regulation 38.
- 5.** (1) An investigation shall not be open to the public.
- (2) An Accident Investigator shall have independence and unrestricted authority in the conduct of an investigation in accordance with these Regulations.
- (3) The extent of investigations and the procedure to be followed in carrying out investigations required or authorised under these Regulations shall be determined by the Director, taking into account —
- (a) the objective of investigation as provided by the Act;
 - (b) the lessons expected to be drawn from the aircraft accident or incident;
 - (c) the complexity of the investigation; and
 - (d) the provision of Annex 13 to the Chicago Convention.
- (4) Where, in the course of an investigation into an accident or a serious incident, it becomes known or is suspected that an act of unlawful interference was involved, an investigator-in-charge shall, after consultation with the Director —
- (a) immediately inform all aviation security authorities and the police; or
 - (b) take steps to ensure that the aviation security authorities of other States concerned are informed of the fact.
- (5) Any investigation conducted in accordance with these Regulations shall be independent from any judicial or administrative proceedings to determine blameworthiness or liability.
- 6.** (1) The Director shall prepare an Accident and Incident Investigation Manual which shall outline in detail the policies and procedures of the functions of the accident investigation.
- (2) The manual shall also contain information and instructions on planning, investigation and reporting and any other information or instructions necessary to enable the Accident Investigators to perform their duties.

Form and
conduct of
investigationsAccident and
Incident
Investigation
Manual

*PART III — Accident Investigations, Advisers and Other
Support Personnel*

- 7.** (1) The Director may, where —
- (a) more than one Accident Investigator has been appointed to carry out an accident or incident investigation, appoint one of the Accident Investigators as an investigator-in-charge; and
 - (b) appropriate, appoint one Accident Investigator who shall be the investigator-in-charge.
- (2) The investigator-in-charge shall be the first point of call on any issue regarding an accident or incident investigation to which he or she is in charge of.
- (3) The Director may appoint any person or call upon the best technical expertise from any source to assist the investigator-in-charge or any other Accident Investigator in carrying out an investigation under these Regulations.
- 8.** (1) In addition to the powers provided under section 72 of the Act, the Director and an investigator-in-charge shall have power to —
- (a) order for immediate listing of evidence and the removal of debris or components for examination or analysis purposes;
 - (b) immediately access and use the contents of flight recorders, Air Traffic Services records and any other recording, which access shall be unrestricted;

Accident
InvestigatorsPowers of
Accident
Investigators

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- Conflict of interest
- (c) require the flight crew, passengers and aviation personnel involved in the accident or incident to undergo such other tests including breathalyser test within a reasonable time for the purposes of the investigation; and
 - (d) take measures, including the removal or the testing, for the preservation of or otherwise deal with any aircraft other than an aircraft involved in the accident or incident, where it appears to the Director, an investigator-in-charge or an Accident Investigator to be necessary for the purposes of the investigation.
- (2) Without prejudice to the generality of subregulation (1), the Director may request another contracting State to provide such information, facilities or experts as the Director may consider necessary for the purposes of an investigation.
- 9.** (1) The Director shall not appoint a person as an Accident Investigator if the person is directly or indirectly, as the owner, shareholder, director, officer, partner or otherwise, engaged in —
- (a) an air transportation undertaking or business; or
 - (b) the manufacture or distribution of air transportation plant or equipment, except where the distribution is merely incidental to the general merchandising of goods.
- (2) During the term of office of an Accident Investigator, in addition to the prohibitions under subregulation (1), the Accident Investigator shall not —
- (a) accept or hold any office or employment; or
 - (b) carry on any activity, inconsistent with the performance of the Investigator's duties.

PART IV — *Manner of Carrying Out Investigations*

- Who may carry out investigations
- 10.** (1) The Director may, with the approval of the Minister, delegate the task of carrying out an investigation into an accident or a serious incident to another contracting State or accident investigation authority by mutual consent or arrangement made in a Memorandum of Understanding for a specified period of time, or on *ad hoc* basis.
- (2) Where the Director delegates the task of carrying out an investigation to another contracting State or accident investigation authority, he or she shall facilitate investigation carried out by the Accident Investigator appointed by the contracting State or accident investigation authority conducting the investigation.
- (3) The Director may carry out, or cause an Accident Investigator to carry out, an investigation into an accident or incident where the task of carrying out the investigation has been delegated to Botswana by another contracting State.
- Notification of accidents and incidents
- 11.** (1) Any person who becomes aware of an accident or a serious incident that occurs in or over Botswana or outside Botswana which involves a Botswana registered aircraft or an aircraft operated by a Botswana operator, shall, as soon as is practicable after he or she becomes aware of the accident or serious incident, notify by indicating the place where the accident has occurred, to any of the following persons by the quickest means of communication available —
- (a) the Director,
 - (b) the nearest air traffic service or airport authority,
 - (c) the Police,
 - (d) military personnel, or
 - (e) the nearest local government authority.

(2) The persons listed in subregulation (1) (b) to (e), shall, on being notified of an accident or serious incident, immediately notify the Director.

(3) Subject to subregulation (1), the Director shall, not later than 24 hours after becoming aware of the accident or serious incident, record the following information —

- (a) in the case of an accident, the identification abbreviation “ACCID” or, in the case of a serious incident, the identification abbreviation “INCID”;
 - (b) the manufacturer, model, nationality, registration marks and serial number of the aircraft;
 - (c) the name of the owner, operator or hirer, if any, of the aircraft;
 - (d) qualification of the pilot-in-command;
 - (e) nationality of crew and passengers;
 - (f) the date and time (local time or UTC) of the accident or serious incident;
 - (g) the last point of departure and the point of intended landing of the aircraft;
 - (h) the location of the accident or incident with reference to some easily defined geographical point and the latitude and longitude;
 - (i) the number of crew members, passengers or other persons respectively killed or seriously injured as a result of the accident;
 - (j) a description of the accident or serious incident and the extent of damage to the aircraft;
 - (k) an indication as to the extent of the conduct of the investigation or the extent of the investigation proposed to be delegated by the Director;
 - (l) the physical characteristics of the area in which the accident or serious incident occurred and an indication of access difficulties or special requirements to reach the site;
 - (m) identification of the originating authority and means to contact the investigator-in-charge and the accident investigation authority of the State of occurrence at any time; and
 - (n) presence and description of dangerous goods on board the aircraft.
- (4) Where an incident, other than a serious incident, occurs —
- (a) in or over Botswana; or
 - (b) outside Botswana,

which involves a Botswana registered aircraft or an aircraft operated by a Botswana operator, the relevant person or hirer of the aircraft shall send to the Director, such information as is in his or her possession or control with respect to the incident.

(5) In this regulation “relevant person” means —

- (a) the pilot-in-command, operator or the owner of the aircraft at the time of the accident or incident; or
- (b) where the incident occurs on or adjacent to an aerodrome in Botswana, the owner or operator of the aerodrome.

12. (1) Where an accident or a serious incident occurs in Botswana involving a civil aircraft, the Director shall —

- (a) with the least possible delay and by the quickest means of communication available, forward a notification of the accident or serious incident containing information referred to in regulation 11 (3) as may be available to —
 - (i) the State of registry,
 - (ii) the State of operator,
 - (iii) the State of design or the State of manufacture, and

Notification of
accident or
incident
involving
civil aircraft
by State of
occurrence

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- (iv) where the aircraft is of a maximum certificated take-off mass of more than 2 250 kilograms or a turbo jet powered aircraft, to the International Civil Aviation Organization;
 - (b) inform the State of registry, State of operator, State of design or State of manufacture either in the communication forwarding the notification or with a minimum of delay and by the most suitable and quickest means available to —
 - (i) whether, and the extent to which, an investigation may be conducted or is proposed to be delegated to another contracting State, and
 - (ii) the means by which the Director and the investigator-in-charge may be contacted; and
 - (c) as soon as is practicable to do so, provide the State of registry, operator, design or manufacture with any other information referred to in regulation 11 (3) which subsequently becomes available to the Director and any other relevant information pertaining to the accident or serious incident.
- (2) The Director shall acknowledge receipt of notification of an accident or serious incident involving a Botswana registered or operated aircraft.
- (3) The Director shall, upon receipt of a notification of an accident or an incident which occurs outside Botswana involving a Botswana registered aircraft or an aircraft operated by a Botswana operator —
- (a) acknowledge receipt of the notification;
 - (b) where the State of occurrence, the State of registry or the State of the operator which is investigating the accident or serious incident is a contracting State, provide the State as soon as is practicable with the following information —
 - (i) any relevant information regarding the aircraft and flight crew involved in the accident or serious incident, and
 - (ii) where Botswana is the State of the operator, details of any dangerous goods on board the aircraft; and
 - (c) inform the State of occurrence, registry or of the operator —
 - (i) whether the Minister intends to appoint or has appointed an accredited representative, and
 - (ii) where the accredited representative has been appointed and may be travelling to the State in which the investigation is being carried out, the contact details and the expected date of arrival of the accredited representative in such State.
- (4) The Director may from time to time prescribe a list of incidents, in Schedule 1, to be regarded as serious incidents.
- (5) Where the State of occurrence is not aware of a serious incident, the State of registry or the State of the operator, as appropriate, shall forward a notification of such an incident to the State of design, the State of manufacture and the State of occurrence.
- (6) The notification shall be prepared in one of the working languages of International Civil Aviation Organization, taking into account the language of the recipient, whenever it is possible to do so without causing undue delay.
- (7) The State of occurrence shall dispatch the details omitted from the notification as well as other known relevant information as soon as it is available.

13. (1) Where the Director is of the opinion that it would be desirable for a public notice to be given that an investigation is taking place, he or she may do so in such manner as he or she may deem fit. Notice to public

(2) The notice referred to in subregulation (1) may, if the Director thinks appropriate, state that any person who desires to make representations concerning the circumstances or causes of the accident or incident may do so orally or in writing within a time to be specified in the notice.

14. (1) The Minister may appoint an accredited representative to participate in the investigation into an accident or incident which occurs in another contracting State and one or more advisers to assist the accredited representative where Botswana — Appointment of accredited representative, adviser, etc.

(a) is the State of registry, State of the operator, State of the manufacture or State of design of the aircraft involved in the accident or incident; or

(b) has, at the request of the contracting State conducting the investigation, provided information, facilities or experts to the State in connection with the investigation.

(2) The Minister may appoint an expert to participate in the investigation into an accident which occurs in another contracting State where Botswana has a special interest in the accident by virtue of fatalities or injuries to citizens of Botswana.

(3) The accredited representative and an adviser appointed by the Minister under subregulation (1) may, for the purposes of the investigation in which they are participating in, exercise all or any of the rights and powers of an Accident Investigator specified under section 72 of the Act and under regulation 8.

(4) The Minister may, if he or she deems appropriate, authorise the Director to exercise the Minister's power under subregulation (1) either generally or in any specific manner.

15. (1) Where an investigation into an accident or a serious incident is being carried out, each of the following States that is a contracting State shall be invited to appoint an accredited representative to participate in the investigation and one or more advisers to assist the accredited representative — Accredited representatives and advisers from contracting States

(a) the State of registry;

(b) the State of the operator;

(c) the State of the manufacture;

(d) the State of design;

(e) a State which has provided information, facilities or experts to assist in connection with the investigation; and

(f) a State having suffered fatalities or serious injuries to its citizens.

(2) The operator shall be invited to participate in the investigation, when neither the State of registry nor the State of the operator appoints an accredited representative.

(3) The organisations responsible for the type design and the final assembly of the aircraft shall be invited to participate in the investigation, when neither the State of design nor the State of manufacture appoints an accredited representative, subject to the procedures approved by the Director.

(4) When the State conducting an investigation of an accident to an aircraft of a maximum mass of over 2 250 kg specifically requests participation by the State of registry, the State of the operator, the State of design or the State of manufacture, the State concerned shall each appoint an accredited representative.

(5) An accredited representative shall participate in all aspects of an investigation under the control of the investigator-in-charge and shall have the same powers as those of an Accident Investigator set out in section 72 of the Act.

(6) Notwithstanding sub-regulation (4), participation of the accredited representative of a contracting State referred to in subregulation (1) (e) may be limited to those matters in respect of which that State has provided information, facilities or experts to the investigator-in-charge in connection with the investigation.

(7) An adviser assisting an accredited representative shall participate in the investigation under the accredited representative's supervision and to the extent necessary to make the accredited representative's participation effective.

(8) The accredited representative and his or her adviser appointed under subregulation (1) shall —

- (a) provide the investigator-in-charge with all relevant information available for the investigation; and
- (b) not disclose any information on the progress and findings of the investigation without the express consent in writing of the Director.

(9) Nothing in this regulation shall preclude prompt release of facts when authorised by the State conducting the investigation, nor does this regulation preclude accredited representatives from reporting to their respective States in order to facilitate appropriate safety actions.

Participation

16. (1) An accredited representative shall be conferred with entitlement to participate in all aspects of the investigation, under the control of the investigator-in-charge, in particular to —

- (a) visit the scene of the accident;
- (b) examine the wreckage;
- (c) obtain witness information and suggest areas of questioning;
- (d) have full access to all relevant evidence as soon as possible;
- (e) receive copies of all pertinent documents;
- (f) participate in read-outs of recorded media;
- (g) participate in off-scene investigative activities such as component examinations, technical briefings, tests and simulations;
- (h) participate in investigation progress meetings including deliberations related to analysis, findings, causes, contributing factors and safety recommendations; and
- (i) make submissions in respect of the various elements of the investigation.

(2) The participation of States other than the State of registry, the State of the operator, the State of design and the State of manufacture may be limited to those matters which entitled such States to participation.

Observers

17. An accredited representative of a State or an air accident investigation authority from a State other than the State specified in regulation 13 (1) may, on request, and with written permission of the Director participate in an investigation as an observer.

Assistance to families and survivors

18. (1) The Director shall ensure assistance to the survivors and to the families of victims and survivors of an accident which is the subject of an ongoing investigation by —

- (a) communicating all relevant information on time;
- (b) facilitating their entry into and exit from the country;
- (c) facilitating the repatriation of victims to their country; and
- (d) coordinating assistance efforts by the government airlines and humanitarian organisations.

(2) The Director shall develop guidelines for the better implementation of subregulation (1).

19. (1) Where an accident or serious incident occurs in Botswana, no person shall —

Removal of
damaged
aircraft

(a) have access to the aircraft involved in the accident or serious incident, its contents or the site of the accident or serious incident other than the Director, investigator-in-charge or an authorised person; or

(b) move or interfere with the aircraft, its contents or the site of the accident or serious incident except under the authority of the Director or the investigator-in-charge.

(2) Notwithstanding subregulation (1) —

(a) the aircraft involved in an accident or a serious incident may be moved or interfered with to such extent as may be necessary for all or any of the following purposes —

(i) extricating persons or animals,

(ii) removing any mail, valuables or dangerous good carried by the aircraft,

(iii) preventing destruction by fire or other cause, and

(iv) preventing any danger or obstruction to the public, air navigation or other transport; or

(b) where the aircraft is wrecked in water, the aircraft or any of its contents may be moved to such extent as may be necessary for bringing the aircraft or its contents to a place of safety.

(3) Where the Director or an investigator-in-charge has authorised any person to remove any goods or passenger baggage from the aircraft or to release any goods or passenger baggage from the custody of the Director or an investigator-in-charge, that person may —

(a) remove the goods or passenger baggage from the aircraft subject to the supervision of a police officer; and

(b) release the goods or passenger baggage from the custody of the Director or the investigator-in-charge subject to clearance by or with the consent of the Botswana Unified Revenue Service, if the aircraft has come from a place outside Botswana.

(4) In the absence of the owner, operator or hirer, or in the event of non-compliance with the instruction given under subregulation (3), the Director or an investigator-in-charge may remove or cause the removal of the aircraft and shall not be liable for any further damage that may occur during the removal.

(5) In this regulation, “authorised person” means any police officer or any officer of the Botswana Unified Revenue Service and includes any person authorised by the Director or the investigator-in-charge, either generally or specifically, to have access to any aircraft involved in an accident or a serious incident.

20. (1) An investigator-in-charge shall 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 an investigation.

Protection of
evidence,
custody and
removal of
aircraft

(2) Any person in possession of any item which may constitute evidence for purposes of an investigation under these Regulations shall hold and preserve the item and shall promptly hand the item over to an investigator-in-charge.

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- (3) Protection of evidence shall include the preservation, by photographic or other means of any evidence which might otherwise be removed, effaced, lost or destroyed.
- (4) Subject to subregulation (1), safe custody shall include protection against further damage, access by unauthorised persons, pilfering and deterioration.
- Request from State of registry, State of the operator, State of design or State of manufacture
- 21.** (1) The Director shall take all necessary steps to honor requests received from the State of registry, the State of the operator, the State of design or the State of manufacture involving the aircraft, its contents, and any other evidence remain undisturbed pending inspection by an accredited representative of the requesting State.
- (2) The Director shall, in honoring such requests, ensure that it is in so far as is reasonably practicable and compatible with the proper conduct of the investigation provide that the aircraft may be moved to the extent necessary to extricate persons, animals, mail and valuables, to prevent destruction by fire or other causes, or to eliminate any danger or obstruction to air navigation, to other transport or to the public, and provided that it does not result in undue delay in returning the aircraft to service where this is practicable.
- Flight recorders read-out
- 22.** (1) The Director shall make effective use of flight recorders in the investigation of an accident or an incident.
- (2) The investigator-in-charge shall arrange for the read-out of the flight recorders without delay.
- (3) Where there are no adequate facilities to read-out the flight recorders, such facilities available from other States may be used taking into consideration the —
- (a) capabilities of the read-out facility;
 - (b) timelines of the read-out; and
 - (c) location of the read-out facility.
- Autopsy examination
- 23.** (1) An investigator-in-charge shall arrange for complete and expeditious autopsy examination of fatally injured flight crew and, subject to particular circumstances, of fatally injured passengers and cabin crew members, by a pathologist, preferably experienced in accident or serious incident investigation.
- (2) The investigator-in-charge shall, when appropriate, arrange for expeditious medical examination of the crew, passengers and involved aviation personnel, by a physician, preferably experienced in accident investigation in accordance with Annex 13 (5.9) of the Chicago Convention
- Coordination – judicial authorities
- 24.** Where during an investigation, there is an application before a court relating to victim examination, identification and read-outs of the flight recordings, the court shall treat such application urgently to enable the investigator-in-charge to expeditiously analyse same for purposes of investigation.
- Re-opening of investigation
- 25.** (1) The Director may recommend to the Minister to re-open an investigation where new and significant evidence becomes available after an accident or serious incident investigation has been closed.
- (2) The Director may cause the investigation of an accident or incident other than a serious incident to be re-opened if evidence has been disclosed after the completion of the investigation which, in his or her opinion, is new and significant.
- (3) Where the investigation of an accident or a serious incident has been instituted by another contracting State, the Minister shall obtain the consent of the State before causing the investigation to be re-opened under subregulation (1).

(4) Where an aircraft which was considered missing following an official search is subsequently located, consideration may be given to reopening the investigation.

(5) Any investigation which is re-opened shall be carried out in accordance with these regulations and Annex 13 of the Chicago Convention.

PART V — Investigation-Responsibility for Instituting and Conducting the Investigation

26. (1) The Director shall institute an investigation into the circumstances of an accident and be responsible for the conduct of the investigation.

Accidents or Incidents in the Territory of Botswana

(2) Notwithstanding subregulation (1), the Director may delegate the whole or any part of the conducting of such investigation to another State or a Regional Accident and Incident Investigation Organization by mutual arrangement and consent.

(3) The Director shall institute an investigation into the circumstances of a serious incident when the aircraft is of a maximum mass of over 2 250 kg, and may delegate the whole or any part of the conducting of such investigation to another State or a regional accident and incident investigation organization by mutual arrangement and consent.

(4) When 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, the Director or, failing that, the State of the operator, the State of design or the State of manufacture should endeavour to institute and conduct an investigation in cooperation with the State of occurrence.

27. (1) The Director shall institute and conduct any necessary investigation of the accident or serious incident when an accident or a serious incident involving a Botswana registered aircraft occurs in a territory that cannot definitely be established as being in the territory of any State.

Accidents or incidents outside the territory of any State

(2) The investigation in subregulation (1) may be delegated in whole or any part of the investigation to another State by mutual arrangement and consent.

28. (1) The Director shall have independence in the conduct of the investigation and have unrestricted authority over its conduct, consistent with the provisions of these Regulations.

Independence in conducting investigation

(2) The investigation in subregulation (1) shall include —

- (a) the gathering, recording and analysis of all relevant information on that accident or incident;
- (b) the protection of certain accident and incident investigation records;
- (c) the issuance of safety recommendations, where necessary;
- (d) the determination of the causes or contributing factors, if possible; and
- (e) the completion of the Final Report.

(3) The Director shall visit the scene of the accident, the wreckage examined and statements taken from witnesses, where feasible.

(4) The Director shall determine the extent of the investigation and the procedure to be followed in carrying out an investigation, depending on the lessons it expects to draw from the investigation for the improvement of safety.

(5) Any investigation conducted in accordance with the provisions of these Regulations shall be separate from any judicial or administrative proceedings to apportion blame or liability.

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- (6) The Director shall develop documented policies and procedures detailing its accident investigation duties which include the following —
- (a) organisation and planning;
 - (b) investigation; and
 - (c) reporting.
- 29.** (1) The Director shall designate the investigator-in-charge of the investigation and shall initiate the investigation immediately.
- (2) The investigator-in-charge shall have unhampered access to the wreckage and all relevant material, including flight recorders and ATS records, and shall have unrestricted control over it to ensure that a detailed examination can be made without delay by authorised personnel participating in the investigation.
- 30.** (1) The Director shall, on request from the State conducting the investigation of an accident or an incident, provide that State with all the relevant information available to it.
- (2) The Director shall, while cooperating with such request, determine the limitations on disclosure or use that will apply to information before it is exchanged with the requesting State for the purposes of an accident or incident investigation.
- (3) Any State, the facilities or services 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, shall provide such information to the State conducting the investigation.
- 31.** (1) When an aircraft involved in an accident or a serious incident lands in a State other than the State of occurrence, the State of registry or the State of the operator shall, on request from the State conducting the investigation, furnish the latter State with the flight recorder records and, if necessary, the associated flight recorders.
- (2) The State of registry and the State of the operator, on request from the State conducting the investigation, shall provide pertinent information on any organisation whose activities may have directly or indirectly influenced the operation of the aircraft.
- 32.** (1) The State of registry, the State of the operator, the State of design and the State of manufacture shall each be entitled to appoint an accredited representative to participate in the investigation.
- (2) The State of registry or the State of the operator shall appoint one or more advisers, proposed by the operator, to assist its accredited representative.
- (3) The State of design and the State of manufacture shall be entitled to appoint one or more advisers, proposed by the organisations responsible for the type design and the final assembly of the aircraft, to assist their accredited representatives.
- 33.** (1) The Director shall facilitate the participation of other States in the investigation of an accident being undertaken in Botswana.
- (2) States referred to in subregulation (1) shall be entitled to participation in all aspects of the investigation, under the control of the investigator-in-charge, in particular to —
- (a) visit the scene of the accident;
 - (b) examine the wreckage;
 - (c) obtain witness information and suggest areas of questioning;
 - (d) have full access to all relevant evidence as soon as possible;
 - (e) receive copies of all pertinent documents;
- Designation of the investigator-in-charge
- Responsibility to the State conducting the investigation
- Responsibility of the State of registry and the State of the operator
- Participation in the investigation
- Participation of other States

- (f) participate in read-outs of recorded media;
- (g) participate in off-scene investigative activities such as component examinations, technical briefings, tests and simulations;
- (h) participate in investigation progress meetings including deliberations related to analysis, findings, causes, contributing factors and safety recommendations; and
- (i) make submissions in respect of the various elements of the investigation.

(3) Participation of States referred to in subregulation (1) other than the State of registry, the State of the operator, the State of design and the State of manufacture may be limited to those matters which entitled such States to participation under regulation 15.

34. (1) A State which has a special interest in an accident by virtue of fatalities or serious injuries to its citizens shall be entitled to 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;
- (c) receive a copy of the final report;
- (d) participate in the identification of the victims; and
- (e) assist in questioning surviving passengers who are citizens of the state.

(2) A State referred to in subregulation (1) shall also assist in the identification of victims and in meetings with survivors from their State.

Participation of States having suffered fatalities or serious injuries to their citizens

PART VI — *Investigation reports*

35. (1) Where an aircraft involved in an accident is of a maximum mass of over 2 250 kilograms, the Director shall send the preliminary report, by facsimile or electronic mail within 30 days of the date of the accident, to —

- (a) the State that instituted the investigation;
- (b) the State of registry;
- (c) the State of occurrence;
- (d) the State of the operator;
- (e) the State of design;
- (f) the State of manufacture;
- (g) any State that provided relevant information, significant facilities or experts;
- (h) the International Civil Aviation Organization; and
- (i) any other entities that the Director deems necessary.

(2) Where an aircraft involved in an accident —

- (a) is of a maximum mass of 2 250 kilograms or less; and
- (b) has airworthiness related matters or matters considered as matters of interest by other States involved, the Director shall send a preliminary report by facsimile or electronic mail, within 30 days, to the organisations listed in sub-regulation (1), except to the International Civil Aviation Organization.

(3) The Director shall send the preliminary report referred to in sub-regulation (1) by facsimile or electronic mail within 30 days of the date of the accident to the International Civil Aviation Organisation, unless the investigator-in-charge has sent the Accident or Incident Data Report by that time.

Investigation reports

(4) Where the accident involves matters directly affecting safety, the Director shall send by facsimile or electronic mail, the Accident or Incident Data Report to the International Civil Aviation Organization, as soon as the information is available.

(5) Where aircraft involved in an accident is of a maximum mass of over 2 250 kilograms, the Director shall send, as soon as practicable after the investigation, the Accident Data Report to the International Civil Aviation Organization.

(6) When the Director has conducted an investigation into an accident or an incident involving an aircraft of a maximum mass of over 5 700 kg and has released a Final Report, the Director shall send to the International Civil Aviation Organization a copy of the final report.

(7) On completion of an investigation into an accident or incident, the Director shall prepare a final report in the format set out in Schedule 2, of the investigation in a form appropriate to the type and seriousness of the accident or incident.

(8) Where it appears to the investigator-in-charge that the investigation of any accident or incident —

- (a) involving a collision between a civil aircraft and a state aircraft; or
- (b) occurring while a civil aircraft was in the course of taking off from, or landing on, an aerodrome controlled by any of the military or air forces of Botswana or by the naval, military or air forces of any country, has been completed, but for the investigation of matters affecting the discipline or internal administration of any of those forces which are more appropriate for the investigation by some other person or body, the investigation may be treated for the purposes of subregulation (7), as if it had been completed without such matters being investigated under these Regulations.

(9) Where any of the circumstances described in subregulation (8) exist or occur, the report of the investigation into the accident or incident shall state those matters to which the investigation has not extended by reason of subregulation (8).

(10) The report of an investigation into an accident shall state the sole objective of the investigation as provided for under section 75 of the Act.

(11) The report of an investigation into an accident or incident shall, subject to section 75 of the Act —

- (a) where appropriate, contain relevant safety recommendations;
- (b) protect the anonymity of the persons involved in the accident or incident; and
- (c) be published by the Director to the parties likely to benefit from its findings with regard to safety.

(13) The Director shall submit a copy of every final report prepared under this regulation to the Minister before dissemination to any State, person or entity as may be required under these Regulations.

(14) A copy of every final report under sub-regulation (13) shall be served by the Director, 10 days after the final report was submitted to the Minister, on any State, person or entity required to be served with a notice under regulation 36.

(15) The Director shall not circulate, publish or give access to a final 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.

36. (1) A report prepared under regulation 35 (7) and regulation 38 shall not be published unless the Director has — Service of notice

- (a) served notice in writing and a copy of the draft final report to all the Contracting States that participated in the investigation in accordance with regulation 14 and requested for their significant and substantiated comments thereon; and
- (b) served a notice in writing and a copy of the draft final —
 - (i) report to any person or entity if, in the Director’s opinion, it is likely to adversely affect the reputation of the person or entity and requested for their significant and substantiated comments thereon, and
 - (ii) where that person is a deceased individual, upon the person who appears to the Director, at the time the Director proposes to serve notice pursuant to this subparagraph, to represent best the interest of the deceased in the matter and requested for their significant and substantiated comments thereon.

(2) Notwithstanding the requirements of subregulation (1), the notice referred to in subregulation (1) (a) shall include particulars of any proposed analysis of facts and conclusions as to the cause or causes of the accident or incident which may affect the person or entity on whom or in respect of whom the notice is served.

(3) Any comments made in terms of subregulation (1) (a) and (b) shall be in writing and shall, subject to subregulation (4), be served on the Director within 60 days of service of the notice referred to in subregulation (1) (a).

(4) The Director may extend the period of 60 days prescribed in subregulation even where that period has expired.

(5) Where comments are received within 60 days of the date of the service of notice or such longer period as may be agreed upon, the Director shall —

- (a) amend the draft final report to include the substance of the comments received, as deemed appropriate; or
- (b) where the comments are from a Contracting State and it is desired by the Contracting State that the comments be included, append the comments to the final report.

(6) A person shall not disclose or permit to be disclosed any information contained in the notice or draft final report served to him or her under this regulation, to any person without the prior consent, in writing, of the Director.

(7) The Director 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.

(8) Where the Director receives comments within 60 days of the date of the transmittal letter, the Director 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.

Publication of
final report

(9) Where the Director does not receive comments within 60 days of the date of the first transmittal letter, the Director shall issue the Final Report in accordance with regulation 37, unless an extension of that period has been agreed by the States concerned.

(10) The Director shall send the Final Report of the investigation of an accident with minimum delay to the State that instituted the investigation.

37. (1) The Director shall, in accordance with section 74 of the Act, cause a final report of an investigation into an accident or incident to be made public in such manner as he or she thinks fit within 12 months of the date from the accident or incident.

(2) Where the report cannot be made publicly available within 12 months, the Director shall make an interim statement publicly available on each anniversary of the occurrence, detailing the progress of the investigation and any safety issues raised.

(3) The final report referred to in subregulation (1) shall not be made public within 30 days after it has been sent out to the relevant Contracting States, persons or entities referred to in regulation 35.

PART VI — Reporting Systems and Databases, etc.

Incident
reporting
systems

38. (1) There shall be established by the Director a —

- (a) mandatory incident reporting system to facilitate the collection of information on actual or potential safety deficiencies; and
- (b) voluntary incident reporting system to facilitate the collection of information that may not be captured by a mandatory incident reporting system.

(2) An incident reporting system established under subregulation (1) shall be non-punitive and shall afford protection to the information and to the sources of the information:

Provided that this subregulation shall not apply in cases where there is evidence that the occurrence was caused by an act considered, in accordance with the law, to be conducted —

- (i) with an intent to cause damage
- (ii) with the knowledge that damage would probably result, or
- (iii) in a manner equivalent to recklessness, gross negligence or wilful misconduct.

(3) The Director shall not use information gathered through an incident reporting system inappropriately.

(4) A person seeking public disclosure of the information referred to in subregulation (3) shall apply to the court for an order for the release of the information and shall satisfy the court that such disclosure —

- (a) is necessary to correct conditions that compromise safety or to change policies and regulations;
- (b) does not inhibit its future availability in order to improve safety;
- (c) where relevant personal information included in the safety information, complies with applicable privacy laws; and
- (d) shall be made in a de-identified, summarised or aggregate form.

(5) For purposes of this regulation, “inappropriate use” refers to the use of safety information for purposes different from the purposes for which it was collected, namely, aviation safety.

39. (1) The Director shall establish and maintain an accident and incident database to facilitate the effective analysis of information on actual or potential safety deficiencies obtained, including those from its incident reporting systems, and to determine any preventive actions required.

Accident and
incident
database

(2) The Director may disseminate information received under subregulation (1) to users of the aviation system within and outside Botswana in order to facilitate the free exchange of information on actual and potential safety deficiencies.

40. (1) At any stage of the investigation of an accident or incident, the Director shall recommend in a dated transmittal correspondence to the appropriate authorities, including those in other States, any preventive action that he or she considers necessary to be taken promptly to enhance aviation safety.

Safety
recommendations

(2) The Director shall address any safety recommendations arising out of an accident or incident investigations in a dated transmittal correspondence to the accident investigation authorities of other State concerned and, when International Civil Aviation Organization documents are involved, to the International Civil Aviation Organization.

(3) A State participating in the investigation shall be entitled to issue safety recommendations after coordinating with the Director.

(4) The Director shall communicate to relevant persons or authorities in Botswana, the recommendations referred to in subregulation (1) or those received from another contracting State.

(5) Any person or authority in Botswana to whom a recommendation has been communicated under subregulation (2) shall, within 90 days —

- (a) take the recommendation into consideration and, where appropriate, act upon it;
- (b) send to the Director —
 - (i) full details of the measures, if any, such person or authority has taken or proposes to take to implement the recommendation, and
 - (ii) a full explanation as to why no measures shall be taken to implement the recommendation; and
- (c) give notice to the Director if at any time any information provided to the Director in paragraph (b) is rendered inaccurate by any change of circumstances.

(6) A recommendation for preventive action or safety recommendation shall, in no case, create a presumption of blame or liability for an accident or incident.

(7) An opinion of an investigator-in-charge is not admissible in evidence in any legal, disciplinary or other proceedings.

(8) The Directorate shall, upon receiving safety recommendations inform the proposing State, within 90 days of the date of the transmittal correspondence, of the preventive action taken or under consideration, or the reasons why no action will be taken.

(9) The Directorate shall implement procedures to record the responses to the safety recommendation issued.

(10) The Directorate shall implement procedures to monitor the progress of the action taken in response to the safety recommendation.

PART VII — *Public Inquiries*

Manner of
carrying out
public inquiries

41. (1) Where, in terms of section 77 of the Act, it appears to the Minister expedient in the public interest to hold a public inquiry into the circumstances and causes of, or into any particular matter relating to, an accident to which these Regulations apply, the Minister shall direct that a public inquiry be held.

(2) The Minister shall not, unless in his or her opinion exceptional circumstances exist, direct the holding of a public inquiry until such time as he or she has received a report from Director relating to the accident in question and made to him or her in accordance with regulation 36 (13).

(3) Where the Minister directs the holding of a public inquiry before he or she has received the report referred to sub-regulation (2), any investigation in progress, by an investigator-in-charge or an Accident Investigator into an accident, shall be discontinued.

(4) The Minister shall appoint a Commissioner to direct the public inquiry.

(5) The Commissioner shall be a person who is qualified to —

(a) be appointed as a judge of the High Court; or

(b) practise as an attorney in a court having unlimited jurisdiction in civil and criminal matters in the Commonwealth or in any country outside the Commonwealth that may be determined by Parliament, or in a court having jurisdiction in appeals from such a court and, has been so qualified for not less than 10 years.

(6) The Commissioner shall be assisted in every case by not less than two assessors possessing aeronautical, engineering or other special skills or knowledge and appointed by the Minister.

(7) Where the Minister has directed a public inquiry to be held, he or she shall remit the case to the Commissioner and the preparation and presentation of the case shall be conducted by the Commissioner and his or her assessors and, an Accident Investigator shall be designated by the Minister to render such assistance to the Commissioner as may be necessary.

Notice of
inquiry

42. (1) Where the Minister has directed a public inquiry to be held, the Commissioner may cause a notice of inquiry (in this regulation referred to as “the notice”) to be served on the owner, operator, hirer or commander of any aircraft involved in the accident and on any person who, in his or her opinion, ought to be served with the notice.

(2) The notice shall contain a statement of the questions which the Commissioner intends to raise on the hearing of the inquiry basing on the information in his or her possession, and he or she may, by a subsequent notice, amend, add or omit any of the questions specified in the notice.

(3) The Commissioner and the owner, operator, hirer or commander of any aircraft involved in the accident, and any other person on whom the notice of inquiry has been served shall be deemed to be parties to the public inquiry proceedings.

(4) Any person, including the Minister, may, by leave of the Commissioner, appear in the public inquiry proceedings, and any person who so appears shall become a party to the proceedings.

(5) An application for leave to appear may be made to the Commissioner at a preliminary meeting such as is referred to in subregulation (6).

(6) Before the date of the holding of the public inquiry, the Commissioner may hold a preliminary meeting at which any directions may be given, or any preliminary or interlocutory order as to the procedure may be made, and any person intending to make application to the Commissioner at such a preliminary meeting shall give notice to the Director of Public Prosecutions.

43. (1) For the purposes of the public inquiry, the Commissioner shall have the powers of a magistrate and, without prejudice to those powers, the Commissioner may –

Powers of
Commissioner

- (a) enter and inspect, or authorise any person to enter and inspect, any place or building inspection of which appears requisite to the Commissioner;
- (b) by summons under his or her hand, require the attendance before him or her, as witnesses, of all such persons as the Commissioner thinks fit to call and examine, and require such persons to –
 - (i) answer any question,
 - (ii) furnish any information, or
 - (iii) produce any books, papers, documents and other articles whatsoever that he or she considers relevant and retain such books, papers, documents and other articles until the completion of the public inquiry; and
- (c) administer an oath to any such witness or require any witness to make and sign a declaration of the truth of the statement made by him or her on the Commissioner's examination.

(2) The assessors appointed to assist the Commissioner shall have the same powers of entry and inspection as are conferred on the Commissioner by subregulation (1) (a).

(3) An affidavit may, by the permission of the Commissioner and saving all exceptions, be used as evidence at the public inquiry proceedings.

44. (1) During the proceedings of the public inquiry, the Commissioner may proceed whether the parties on whom a notice of inquiry has been served or any of them are present or not.

Proceedings at
public inquiry

(2) The proceedings of the inquiry shall be in public unless the Commissioner determines, in relation to the whole or part of the inquiry, that it is to be held in private in the interest of justice or the public.

(3) The proceedings of the inquiry shall begin with the production and examination of witnesses by the Commissioner followed by the cross-examination of the witnesses by the other parties to the proceedings if need be and then re-examined by the Commissioner.

(4) Questions asked and documents tendered as evidence in the course of examination of the witnesses by the Commissioner shall not be open to objection merely on the ground that they do or may raise questions which are not contained in or vary from the questions specified in the notice of inquiry or in a subsequent notice such as is referred to in subregulation (7).

(5) When the examination of the witnesses is concluded, the Commissioner shall state the questions in reference to the accident and to the conduct of persons connected with the accident on which the Commissioner's opinion is desired.

(6) In framing the questions for the Commissioner's opinion, the Commissioner shall make such amendments, additions or omissions from the questions specified in the notice of inquiry or a subsequent notice referred to in sub regulation (7) as the Commissioner, having regard to the evidence that has been given, thinks fit.

(7) After the questions for the Commissioner's opinion have been stated by the Commissioner, each party to the proceedings may address the Commissioner for the purpose of opening the evidence he or she intends to adduce or produce and, examine witnesses on his or her behalf and recall any of the witnesses who have already been examined for further examination and generally to adduce evidence, and these witnesses may be cross-examined by the other parties and then re-examined by the party producing them.

(8) The parties shall be heard and their witnesses examined, cross-examined and re-examined in such order as the Commissioner shall direct.

(9) Witnesses may be produced and examined by the Commissioner, cross-examined by the other parties in such order as the Commissioner shall direct and then re-examined on behalf of the Commissioner.

(10) When all evidence in relation to the questions on which the Commissioner's opinion is desired has been concluded, any of the parties, other who wishes to address the Commissioner on that evidence may do so in such order as the Commissioner may direct, and the Commissioner may then be addressed in reply upon the whole case.

(12) The Commissioner may adjourn the inquiry from time to time and from place to place and, where an adjournment is requested by any party to the inquiry, the Commissioner may impose such terms as to the payment of costs or otherwise as he or she thinks just as a condition of granting the adjournment.

(13) Every person attending as a witness before the Commissioner shall be allowed such expenses as would to a witness attending before the High Court and, in the case of a dispute as to the amount to be allowed, the same shall be referred to the Registrar of the High Court who, on request signed by the Commissioner, shall determine and certify the proper amount of the expenses:

Provided that in the case of any party to the proceedings or any person in the employment of such a party any such expenses may be disallowed by the Commissioner.

Submission of
report by
Commissioner

45. (1) The Commissioner shall submit a report to the Minister stating fully the circumstances of the case and his or her opinion on the questions on which the opinion is desired and adding any observations and recommendations which he or she thinks fit to make with a view to the preservation of life and the avoidance of similar accidents in future.

(2) Each assessor appointed to assist the Commissioner shall, if he or she –
(a) assents to the Commissioner's report without reservations, subscribe the report to that effect and sign it;

(b) assents to the Commissioner's report but with reservations, subscribe the report to that effect, sign it and state in writing in a separate document the nature of his or her reservations and sign the document; or

(c) dissents from the Commissioner's report, decline to sign it and state in writing in a separate document his or her dissent and the reasons for it, and sign the document.

(2) Where an assessor assents to the Commissioner's report with reservations or dissents from the report, the separate document prepared and signed by him or her in accordance with subregulation (2) shall be annexed to the Commissioner's report and submitted, together with the report, to the Minister.

(3) The Minister shall, unless in his or her opinion there are good reasons to the contrary, cause the report of the Commissioner, together with the contents of the separate documents, if any, annexed to it in accordance with subregulation (3), to be made public in whole or in part in such manner as he thinks fit.

46. (1) The Minister may, in any case where a public inquiry has been held, direct the inquiry to be re-held, either generally or part of it, and the Minister shall do so if —

- (a) new and important evidence has been discovered; or
- (b) for any reason there is, in his opinion, ground for suspecting that a miscarriage of justice has occurred.

(2) Where the Minister directs any public inquiry to be re-held, he or she may direct that the inquiry shall be re-held either by the Commissioner by whom it was held in the first instance or by a new Commissioner appointed by him or her to re-hold the inquiry.

(3) A public inquiry that is re-held shall be subject to and conducted in accordance with this Part.

Re-opening of public inquiry

PART VIII — *General Provisions*

47. (1) The Director shall on the advice of the High Court not make the following records available for purposes other than accident or incident investigation —

- (a) cockpit voice recordings and airborne image recordings and any transcripts from such recordings;
- (b) records in the custody or control of the accident investigation authority being;
- (c) all statements taken from persons by the accident investigation authority in the course of their investigation;
- (d) all communications between persons having been involved in the operation of the aircraft;
- (e) medical or private information regarding persons involved in the accident or incident;
- (f) analysis of and opinions about information, including flight recorder information, made by the accident investigation authority and accredited representatives in relation to the accident or incident; and
- (g) the draft Final Report of an accident or incident investigation.

(2) A record of the information referred to in subregulation (1) shall be included in the final report, in its appendices or in any other report only when it is relevant to the analysis of the accident or incident.

(3) The names of the persons involved in the accident or incident, audio content of cockpit voice recordings as well as image and audio content of airborne image recordings shall not be disclosed to the public.

(4) The accident investigation authority should retain, where possible, only copies of records obtained in the course of an investigation.

(6) A State receiving a draft Final Report shall take measures to ensure that it is not disclosed to the public.

48. (1) Where the retention of the aircraft involved in an accident or incident, parts of the aircraft or aircraft wreckage, or any contents of the aircraft is no longer necessary for the purposes of an investigation, the Director shall release custody of the aircraft, parts, wreckage or contents of the aircraft to the following person or persons —

- (a) if it is a Botswana registered aircraft —
 - (i) the owner of the aircraft, parts, wreckage or contents of the aircraft,
 - (ii) where the owner is dead, his or her personal representative, or

Protection of accident and incident investigation records

Release and disposal of aircraft and wreckage

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- (iii) a person authorised in writing by the owner or his or her personal representative to take custody on behalf of the owner or the owner's personal representative; or
- (b) in any other case, to the person or persons designated by the State of registry or the State of the operator, as the case may be.

(2) The Director shall —

- (a) where he or she intends to release aircraft wreckage, issue a notice to persons referred to in subregulation (1); or
- (b) where such persons cannot be traced, by publishing such notice in at least two daily newspapers of wide circulation in the State of occurrence giving details of the aircraft wreckage and specifying the period during which it should be removed.

(3) The person to whom the notice has been issued may, before the expiry of the notice and for a good cause, apply in writing to the Director for an extension of the period within which the wreckage may be removed.

(4) Where a person to whom the custody of the aircraft, parts, wreckage or contents of the aircraft is to be released fails to take custody within the period specified in the notice, the aircraft, parts, wreckage or contents of the aircraft may be disposed of in such manner as the Director considers fit.

(5) The expenses incurred by the Director in disposing of the aircraft, parts, wreckage or contents of the aircraft shall be recoverable from the owner or operator of the aircraft or both.

Return and disposal of records

49. (1) The Director shall, after the completion of the investigation or at any time return the aircraft records or any documents containing factual information concerning an accident or incident to the persons from whom they were obtained, unless they are still required for judicial proceedings or other proceedings.

(2) The records and information referred to in subregulation (1) not claimed by or returned to the persons from whom they were obtained may be disposed of in any manner that the Director considers fit after a period of three years.

Penalties

50. (1) Any person who contravenes the provisions of these regulations commits an offence and is liable to the fines set out in section 76 of the Act.

(2) Without prejudice to the generality of subregulation (1), a person who commits the following offences is liable to the following penalties not exceeding —

- (a) P50 000 or to imprisonment for a term not exceeding six months for failure —
 - (i) to notify or make notification of accident or incident in accordance with regulation 11,
 - (ii) to submit for medical and toxicological examination or to issue samples in accordance with the Act,
 - (iii) to appear for examination or interview, or
 - (iv) to make a signed statement in accordance with the Act;
- (b) P100 000 or to imprisonment for a term not exceeding one year for —
 - (i) interference with evidence in accordance with the Act, or
 - (ii) failure to answer any question or furnish information, or produce any books, papers, documents in accordance with the Act; and
- (c) P150 000 or to imprisonment for a term not exceeding two years for hindering —
 - (i) access to the contents or wreckage of an aircraft in accordance with the Act,

- (ii) access to information and records held by the owner or operator, maintenance contractor, hirer, designer, manufacturer, air traffic service, airport operator or Authority in accordance with the Act,
- (iii) the removal, testing, taking measures for the preservation of or otherwise deal any aircraft other than an aircraft involved in an accident or incident in accordance with the Act,
- (iv) the taking possession of, examining, removing, testing or taking measures for the preservation of any object or evidence considered necessary for aircraft investigation in accordance with the Act,
- (v) the removal of debris or components for examination or analysis purposes in accordance with regulation 8 (1) (a), or
- (vi) access to results of examination of the bodies of victims or tests made on samples taken from the bodies of victims in accordance with the Act; or
- (vii) P300 000 or to imprisonment for a term not exceeding three years for hindrance from entering and inspecting any place, building or aircraft for the purpose of accident or incident investigation in accordance with the Act.

51. (1) The Civil Aviation (Accident and Incident Investigation) Regulations, are hereby revoked. Revocation and savings

(2) Notwithstanding subregulation (1), any investigation, review or inquiry commenced under the regulations revoked under subregulation (1) shall be continued as if it was instituted under these Regulations.

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SCHEDULE 1
(Regulation 12 (4))

LIST OF EXAMPLES OF SERIOUS INCIDENTS

The following is a list of incidents which are typical examples of incidents that are likely to be serious incidents. The list is not exhaustive and only serves as guidance to the definition of serious incident.

1. Near collisions requiring an avoidance manoeuvre to avoid a collision or an unsafe situation or when an avoidance action would have been appropriate.
2. Controlled flight into terrain only marginally avoided.
3. Aborted take-offs on a closed or engaged runway, on a taxiway or unassigned runway.
4. Take-offs from a closed or engaged runway, from a taxiway or unassigned runway.
5. Landings or attempted landings on a closed or engaged runway, on a taxiway or unassigned runway.
6. Gross failures to achieve predicted performance during take-off or initial climb.
7. Fire and smoke in the passenger compartment, in cargo compartments or engine fires, even though such fires were extinguished by the use of extinguishing agents.
8. Events requiring the emergency use of oxygen by the flight crew, cabin crew or passengers.
9. Aircraft structural failures or engine disintegrations, including uncontained turbine engine failures, not classified as an accident.
10. Multiple malfunctions of one or more aircraft systems seriously affecting the operation of the aircraft.
11. Flight crew incapacitation in flight.
12. Fuel quantity requiring the declaration of an emergency by the pilot.
13. Runway incursions classified with severity A as defined in ICAO Doc 9870, Manual on the Prevention of Runway Incursions.
14. Take-off or landing incidents such as under-shooting, overrunning or running off the side of runways.
15. System failures, weather phenomena, operations outside the approved flight envelope or other occurrences which could have caused difficulties controlling the aircraft.
16. Failures of more than one system in a redundancy system mandatory for flight guidance and navigation.

SCHEDULE 2
(Regulation 35 (7))

FORMAT OF THE FINAL REPORT FORMAT

Title

The final report begins with a title comprising of the name of the operator, manufacturer, model, nationality and registration marks of the aircraft; place and date of the accident or incident.

Synopsis

A synopsis should describe briefly all relevant information regarding notification of an accident to national and foreign authorities, identification of the accident investigation authority and accredited representation, organisation of the investigation, authority releasing the report and date of publication; and concluding with a brief résumé of the circumstances leading to the accident.

Body

The body of the final report comprises of the following main headings —

1. Factual information
2. Analysis
3. Conclusions
4. Safety recommendations

Appendices

Include as appropriate.

Note: In preparing a final report using this format ensure that —

- (a) *all information relevant to an understanding of the factual information, analysis and conclusions is included under each appropriate heading.*
- (b) *where information in respect of any of the items in Factual information is not available, or is irrelevant to the circumstances leading to the accident, a note to this effect is included under the appropriate sub-headings.*

Each heading consisting of a number of sub-headings as outlined in the following —

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1. FACTUAL INFORMATION

1.1 History of the flight

A brief narrative giving the following information —

1.1.1 Flight number, type of operation, last point of departure, time of departure (local time or UTC) and point of intended landing.

1.1.2 Flight preparation, description of the flight and events leading to the accident including reconstruction of the significant portion of the flight path if appropriate.

1.1.3 Location (latitude, longitude, elevation) and time of the accident (local time or UTC), whether day or night.

1.2 Injuries to persons

A completion of the following in numbers —

1.2.1 Injuries to crew, passengers and others Fatal Serious Minor/None

Note: Fatal injuries include all deaths determined to be a direct result of injuries sustained in the accident. Serious injury is defined in regulation 2.

1.3 Damage to aircraft

This includes a brief statement of the damage sustained by an aircraft in the accident (destroyed, substantially damaged, slightly damaged, no damage).

1.4 Other damage

This covers a brief description of the damage sustained by objects other than the aircraft.

1.5 Personal information

This includes the following —

1.5.1 Pertinent information concerning each of the flight crew members including age, validity of licences, ratings, mandatory checks, flying experience (total and on type) and relevant information on duty time.

1.5.2 Brief statement of qualifications and experience of other crew members.

1.5.3 Pertinent information regarding other personnel such as air traffic services, maintenance, etc., when relevant.

1.6 Aircraft information

This includes the following —

1.6.1 Brief statement on airworthiness and maintenance of the aircraft (indication of deficiencies).

1.6.2 Brief statement on performance, if relevant, and whether the mass and centre of gravity were within the prescribed limits during the phase of operation related to the accident. (If not and if of any bearing on the accident, give details.)

1.6.3 Type of fuel used.

1.7 Meteorological information
This includes the following —

1.7.1 Brief statement on the meteorological conditions appropriate to the circumstances including both forecast and actual conditions, and the availability of meteorological information to the crew.

1.7.2 Natural light conditions at the time of the accident (sunlight, moonlight, twilight, etc.).

1.8 Aids to navigation
This includes pertinent information on navigation aids available including landing aids such as ILS, MLS, NDB, PAR, VOR, visual ground aids, etc., and their effectiveness at the time.

1.9 Communications
This includes pertinent information on aeronautical mobile and fixed service communications and their effectiveness.

1.10 Aerodrome information
This includes pertinent information associated with the aerodrome, its facilities and condition, or with the take-off or landing area if other than an aerodrome.

1.11 Flight recorders
This includes location of the flight recorder installations in the aircraft, their condition on recovery and pertinent data available.

1.12 Wreckage and impact information
This includes general information on the site of the accident and the distribution pattern of the wreckage; detected material failures or component malfunctions. Details concerning the location and state of the different pieces of the wreckage are not normally required unless it is necessary to indicate a break-up of the aircraft prior to impact. Diagrams, charts and photographs may be included in this section or attached in the Appendices.

1.13 Medical and pathological information
This includes brief description of the results of the investigation undertaken and the pertinent data available.

Note: Medical information related to flight crew licences should be included in personnel information.

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1.14 Fire

If fire occurred, include information on the nature of the occurrence and of the firefighting equipment used and its effectiveness.

1.15 Survival aspects

This includes brief description of search, evacuation and rescue, location of crew and passengers in relation to injuries sustained and failure of structures such as seats and seatbelt attachment.

1.16 Tests and research

This includes brief statements regarding the results of tests and research.

1.17 Organisational and management information

This includes pertinent information concerning the organisation and their management involved in influencing the operation of the aircraft. The organisations include, for example, the operator, the air traffic services, airway, aerodrome and weather service agencies; and the regulatory authority. The information can include, but not limited to, organisational structure and functions, resources, economic status, management policies and practices and regulatory framework.

1.18 Additional information

This includes relevant information not already included in 1.1 to 1.17.

1.19 Useful or effective investigation techniques

When useful or effective investigation techniques have been used during an investigation, briefly indicate the reason for using these techniques and refer to the main features as well as describing the results under the appropriate sub-headings 1.1 to 1.18.

2. ANALYSIS

Analyse, as appropriate, only the information documented in Factual information and which is relevant to the determination of conclusions and causes.

3. CONCLUSIONS

List the findings and causes established in the investigation. The list of causes should include both the immediate and the deeper systemic causes.

4. SAFETY RECOMMENDATIONS

As appropriate, briefly state any recommendations made for the purpose of accident prevention and any resultant corrective action.

5. APPENDICES

Include, as appropriate, any other pertinent information considered necessary for the understanding of the report.

MADE this 10th day of June, 2022.

ERIC MOTHIBI MOLALE,
Minister of Transport and Public Works.