

27th COSCAP SA STEERING COMMITTEE MEETING

COSCAP SA Phase V
Level 2 Activities – Legal Framework
Discussion Paper 7 (DP-7)

(Presented by the CTA)

SUMMARY

The Purpose of this paper is to introduce a methodical approach in clarifying, reviewing and enhancing the COSCAP SA Level 2 functions to Member States. Level 2 functions primarily involves the provision of oversight related types of activities such as inspections and audits conducted by the COSCAP SA on behalf of the State through a formal written agreement.

1.0 Phase V Objectives where it is Desirable to Enhance Level 2 Types of Activities:

1.1 In the COSCAP SA Phase V, more emphasis will be provided in the actual **implementation** of the ICAO Annexes and associated National Regulations. In order to assist in achieving this goal, it would be desirable for the COSCAP SA to clarify and enhance its provision of Level 2 types of activities. To achieve this, a methodical approach is suggested.

1.2 As a first step, it is important to understand the different types of classification of the “level of services” a COSCAP can provide. ICAO has identified the classification of the functions of the RSOO/COSCAP as being Level 1, 2 and 3. Detailed explanations of those levels may be found in Appendix I.

1.3 Currently the COSCAP SA operates mostly under Level 1 with a smaller portion in Level 2 functions as specified below:

1.3.1 Level 1:

- Under Level 1, advisory assistance is provided to a member State or a group of States.
- No formal agreement is established directly between the COSCAP and the State, for oversight functions.
- The COSCAP may coordinate the use or release of an inspector to carry out inspections and audits for a State’s civil aviation authority (CAA). In this case,

the inspector acts in his/her individual capacity and the member State grants all required authorizations. The recent utilization of the SACBM tool is a good example of this in practice.

- Level 1 functions also include training, the harmonization of the aviation safety regulations of member States and the development of guidance manuals and other documentation

1.3.2 Level 2:

- Under Level 2, in addition to carrying out all Level 1 functions, the COSCAP would also provides operational assistance to a State or group of States on the basis of a formal and binding agreement.
- The operational assistance includes the conduct of audits, inspections and other investigations on industry entities.
- The State issues certificates, licences and approvals on the basis of the operational assistance provided.
- Under Level 2, the COSCAP employed experts are empowered or granted delegated authority to carry out inspectorate activities that support the certification and surveillance responsibilities of the State.

2.0 Step– by-Step Approach

2.1 Identification of Phase V Objectives: First step would be to identify those Phase V Programme Document objectives where it is desirable to introduce level 2 types of activities. Five of these objectives have been identified as such:

NOTE: underlined areas demonstrate the areas where level 2 activities are required.

➔ 1.0 IMMEDIATE OBJECTIVE 1– HIGH PRIORITY

***Objective:** Develop the South Asia State’s regulatory human resources capacity for medium to long-term consolidation and succession through strengthening of to pool resources and standardize to support the efficient and effective implementation of safety oversight among all the SA sub-region States. The SACBM is the tool to facilitate this cooperation and collaboration between States*

➔ 4.0 IMMEDIATE OBJECTIVE 4 – HIGH PRIORITY

***Objective:** Increase safety oversight capability of Member States in Air Navigation Services (ANS). ANS is the area with second lowest average EI in the SA sub-region and should therefore be improved in order for the GASP safety oversight targets to be met in all areas.*

➔ 5.0 IMMEDIATE OBJECTIVE 5 – HIGH PRIORITY

***Objective:** Assist within available resources, Member States in their resolution of SSCs, correction of high-risk safety deficiencies, improvement of safety oversight*

*systems, and preparations for USOAP – CMA audits, ICVMs, off-site validations, self-assessments, and developing and implementing Corrective Action Plans for strengthening safety oversight capabilities in respective States, including increasing the effective implementation of the critical elements of safety oversight system as identified by ICAO. Conduct implementation missions to determine the service providers’ level of regulatory **compliance** and the regulators’ (CAA/DGCA) level of ICAO SARPs, including National Regulations (NR) (as deemed applicable) **implementation**. Assistance to increase the USOAP EI for States in the SA region will support achieving the GASP safety oversight goals and targets in all States.*

→ **7.0 IMMEDIATE OBJECTIVE 7 – MEDIUM PRIORITY**

Objective: *Increase safety oversight capability of Member States in Aerodromes and Ground Aides (AGA). Implementation of aerodrome certification, aerodrome SMS, and aerodrome Runway Safety Teams (RSTs) is below the global average and requires improvement in the SA sub-region States.*

→ **8.0 IMMEDIATE OBJECTIVE 8 – MEDIUM PRIORITY**

Objective: *Assist Member States with the implementation of provisions of Annex 19 – Safety Management. In order to implement Amendment No. 1 to Annex 19 and prepare for the USOAP audits of corresponding new PQs, SA sub-region States need assistance in Safety Management. This is to be focused on the implementation of SSP and regulation and oversight of service providers SMS.*

2.2 Determine if Member States have Proper Delegation of Power within their Key Legislation

2.2.1 If a CAA/DGCA wishes to delegate certain oversight functions including any powers, duties and *other functions* to a person other than those employed (and duly authorized) by the CAA/DGCA/State, the authority to do so must be clearly outlined within the hosting State’s aeronautical legislation.

An example of a proper Delegation of Power Clause:

*4.3 (1) The Minister may authorize **any person or class of persons** to exercise or perform, subject to any restrictions or conditions that the Minister may specify, any of the powers, duties or functions of the Minister under this Part, other than the power to make a regulation, an order, a security measure or an emergency direction.*

States chose to place this delegation within their Aeronautics Act (AA) or Core Regulation. The important thing about this clause is that it is open to “any person or class of persons” hence can be easily delegated to anybody. The CAA/DGCA may restrict the scope of the delegation as deemed necessary. NOTE: This is subject to any other State legislation as deemed applicable (i.e. immigration laws etc...)

2.2.2 If the Minister/DGCA/CAA decides to delegate any powers, duties or functions to “any person or class of persons”, a **Letter of Delegation** must be issued to that person(s) that is **pursuant to the Delegation Clause**. This delegation letter may contain any restrictions or conditions accordingly. Without this letter, a person cannot exercise any powers, duties or functions of the Minister/DGCA/CAA. In addition, a delegation credential (card) must be issued to this person if conducting oversight activities in the field (i.e. inspections, audits). Note that the card can be temporary in nature depending on the duration of the oversight related activities.

2.2.3 As part of the legal tools, a formal legal agreement between parties can also meet legal “delegation” requirements accordingly. Note: The “Bilateral Agreement Between the COSCAP SA and States (for the purpose of providing oversight functions) template located within the IFAPM (Appendix II) needs to be reviewed and amended as required to ensure legality.

2.2.4 At a COSCAP SA SC side meeting which was held on October 23, 2018 (during the 55th DGCA Conference in Fiji), the Chairman of COSCAP SA requested that the CTA obtain a legal opinion from ICAO in regards to the possible inclusion of an addendum to the COSCAP SA Phase V Programme Document. The wording of the proposed addendum that was submitted to ICAO can be found in Appendix III. ICAO’s subsequent response may be found in Appendix IV.

2.2.5 In relation to this discussion paper, the ICAO’s response in Appendix IV, makes mention that **States may lawfully delegate safety oversight functions**. Therefore, provided that States have legal tools in place and have lawfully delegated oversight functions (as described in 2.0 of this paper), there is nothing that prevents the CAA/DGCA to establish an arrangement with “any person(s) or class of persons” accordingly.

2.2.6 In relation to 2.2.5 above, provided that States have lawfully delegated safety oversight, it would not be in the prevue and/or rights of any organization to “not recognize” the oversight activity provided to the State accordingly.

2.2.7 A commitment on ICAO’s part to recognize oversight assistance provided by the COSCAP SA will place ICAO in a potential actual or perceived conflict of interest in view of ICAO’s role in the USOAP-CMA.

2.3 Identify gaps Within the Legal Framework and Propose Corrective Actions as Necessary:

Pending approval from the SCM the following steps would be conducted by the CTA in order ensure that the proper legal framework is in place as described above:

- a) Conduct a research of each Member State Delegation of Power legal instruments
- b) Identify gaps within the legal instruments that are currently in place.
- c) Make recommendations on how to address the gaps
- d) Review other legal tools which could enable a formal Delegation of Power
- e) Develop Delegation of Power template for the purpose of delegating oversight function to “another person”
- f) Review and amend as deemed necessary the current COSCAP SA: “Bilateral Agreement Between the COSCAP SA and States” in regards to obtaining Services of Technical Experts from COSCAP SA to perform Oversight functions of the States. Note: this template is located within the IFAPM
- g) Coordinate with ICAO to validate legal framework including the bilateral agreement between the COSCAP SA and States in f) above

3.0 Actions of the Steering Committee

The SC is invited to:

- 1) Review the identified objectives and determine if enhancing Level 2 types of activities are desirable within the COSCAP SA.
- 2) Review and approve the steps in **2.3** above so that the CTA may begin the research and activities required to enhance level 2 types of activities as specified in Appendix I.