

No. 7292

**SOUTH AFRICA
and
PORTUGAL**

**Agreement (with annex) relating to air services. Signed at
Lisbon, on 7 May 1963**

Official texts: English and Portuguese.

Registered by the International Civil Aviation Organization on 8 June 1964.

**AFRIQUE DU SUD
et
PORTUGAL**

**Accord (avec annexe) relatif aux services aériens. Signé à
Lisbonne, le 7 mai 1963**

Textes officiels anglais et portugais.

Enregistré par l'Organisation de l'aviation civile internationale le 8 juin 1964.

No. 7292. AGREEMENT¹ RELATING TO AIR SERVICES BETWEEN THE REPUBLIC OF SOUTH AFRICA AND PORTUGAL. SIGNED AT LISBON, ON 7 MAY 1963

The Governments of the Republic of South Africa and of Portugal, duly represented by the respective Ministers of Foreign Affairs, decided to conclude an agreement relating to the air services between the two countries in the following terms :

1. For the purposes of the present Agreement, which shall include the Annex hereto, the term—

(a) “aeronautical authority” means—

- (i) in the case of the Republic of Portugal, the Minister of Communications or the Minister of Overseas (Director-General of Civil Aviation); and
 - (ii) in the case of the Republic of South Africa, the Minister of Transport;
- or in both cases any other person authorized to perform the functions exercised by the said authority;

(b) “air service” means any air service performed by aircraft for the public transport of passengers, mail or cargo;

(c) “designated airline” means an airline which one Party has designated in writing to the other Party in accordance with the provisions of this agreement;

(d) “Party” or “Parties” means a Party or Parties, as the case may be, to this agreement;

(e) “stop for non-traffic purposes” means a landing for any purposes other than picking-up or setting down passengers, mail or cargo;

(f) “territory” in relation to a Party means the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection, administration or trusteeship of that Party.

2. (1) The Parties grant to each other the rights specified in the Annex hereto for the operation of scheduled international air services therein described to and from their respective territories.

(2) Each Party may designate airlines for the operation of the air services specified for that Party in the Annex.

3. (1) Each Party shall, subject to the provisions of paragraph 6, without undue delay deliver appropriate operating permissions to the designated airlines of the other Party.

¹ Came into force on 7 May 1963, the date of signature, in accordance with paragraph 8 (1).

(2) A designated airline may, however, before being authorized to inaugurate an air service specified in the Annex, be required to satisfy the aeronautical authority of the other Party that it is qualified to comply with the conditions prescribed in the laws and regulations normally applied by that aeronautical authority.

(3) Each Party reserves the right to withhold or revoke the grant of an operating permission to a designated airline of the other Party when it is not satisfied that substantial ownership and effective control of that designated airline are vested in that other Party or in citizens of that other Party.

4. (1) The tariffs to be charged by the designated airlines of one Party for carriage to or from the territory of the other Party shall be established at reasonable levels due regard being paid all relevant factors including cost of operation, reasonable profit, and the tariffs of other airlines.

(2) The tariffs referred to in sub-paragraph (1) shall, if possible, be agreed by the designated airlines concerned of both Parties, in consultation with other airlines operating over the whole or part of the route, and such agreement shall, where possible, be reached through the rate-fixing machinery of the International Air Transport Association.

(3) The tariffs so agreed shall be submitted for the approval of the aeronautical authorities of the Parties at least thirty days before the proposed date of their introduction, and in special cases this limit may be reduced, subject to the agreement of the said authorities.

(4) If the designated airlines cannot agree on any of these tariffs, or if for some other reason a tariff cannot be fixed in accordance with the provisions of sub-paragraph (2), or if during the first fifteen days of the thirty days' period referred to in sub-paragraph (3) one Party gives the other Party notice of its dissatisfaction with any tariff agreed in accordance with the provisions of sub-paragraph (2), the aeronautical authorities of the Parties shall try to determine the tariff by agreement between themselves.

(5) Subject to the provisions of sub-paragraph (3), no tariff shall come into force if the aeronautical authority of either Party has not approved it.

(6) The tariffs established in accordance with the provisions of this paragraph shall remain in force until new tariffs have been established in accordance with the provisions of this paragraph.

5. In a spirit of close co-operation, the aeronautical authorities of the Parties shall consult each other from time to time with a view to ensuring the implemen-

tation of, and satisfactory compliance with, the provisions of this Agreement and the Annex thereto.

6. Notwithstanding the provisions of paragraph 3 a Party shall have the right to revoke, suspend or limit by the imposition of conditions, the operating permission granted to a designated airline of the other Party if that designated airline, in operating its air service in terms of this Agreement, fails to comply with any law or regulation of the firstmentioned Party or fails to comply with any term or condition prescribed in this Agreement or in the Annex : Provided that unless immediate suspension is essential to prevent further infringement of a law or regulation or term or condition abovementioned, this right shall be exercised only after consultation with the other Party.

7. (1) If either of the Parties consider it desirable to modify any provision of this Agreement, it may request consultation with the other Party and such consultation, which may be between aeronautical authorities, shall begin within a period of sixty days of the date of the request.

(2) Any modifications agreed upon in terms of sub-paragraph (1) shall come into force when they have been confirmed by an exchange of diplomatic notes.

(3) Amendments to the Annex may be agreed upon between the aeronautical authorities of the Parties.

(4) This Agreement and its Annex shall be modified to accord with any multilateral convention which may hereafter become binding on both Parties.

8. (1) This Agreement shall come into force on the date of its signature and shall remain in force indefinitely unless six months' notice in writing of termination in terms of sub-paragraph (2) is given by either Party to the other.

(2) Either Party may at any time give notice to the other Party of its decision to terminate this Agreement and such notice shall at the same time be communicated to the International Civil Aviation Organization.

(3) In the case of notice given in terms of sub-paragraphs (1) and (2), this Agreement shall terminate six months after the date of receipt of the notice by the other Party, unless the notice is withdrawn by agreement before the expiry of this period.

(4) In the absence of acknowledgement of receipt by the other Party, notice given in terms of sub-paragraphs (1) and (2) shall be deemed to have been received fourteen days after the receipt of the notice by the International Civil Aviation Organization.

9. The agreements entered into between the Parties at Pretoria on 18 June 1937¹ and at Lisbon on 28 October 1938 relating, respectively, to air services between Germiston and Lourenço Marques and between South Africa and Angola, are abrogated as from the date on which this Agreement is signed.

DONE at Lisbon in duplicate original on the 7th May, 1963 in the English and Portuguese languages, both texts being equally authentic.

For the Government
of the Republic of South Africa :
Eric H. LOUW

For the Government
of the Republic of Portugal :
A. FRANCO NOGUEIRA

A N N E X

1. (1) The air services undertaken by the designated airlines of the Government of the Republic of South Africa shall be operated on the following routes in both directions :

Trunk Route

(a) Route A

Johannesburg – Brazzaville/Luanda – Kano/Sal – Lisbon – Paris/Amsterdam – London.

Regional Routes

(b) Route B

Windhoek – Luanda.

(c) Route C

Johannesburg – Lourenço Marques.

(d) Route D

Durban – Lourenço Marques.

(2) The air services undertaken by the designated airlines of the Government of the Republic of Portugal shall be operated on the following routes in both directions :

(a) Route A

(See paragraph 9 of the Annex)

(b) Route B

Luanda – Windhoek.

(c) Route C

Lourenço Marques – Johannesburg.

(d) Route D

Lourenço Marques – Durban.

¹ League of Nations, *Treaty Series*, Vol. CLXXXIX, p. 121.

(3) Any or all of the intermediate points on a route specified for it may be omitted on any or all its flights at the option of the designated airline concerned : Provided that any change in the points served, other than an occasional change, shall be published beforehand in the time tables of that designated airline.

2. The points on the routes specified in sub-paragraph (1) of the Annex at which, subject to the concurrence of any third country that may be involved, traffic from or for the territory of the Republic of Portugal—

(a) may be set down or picked up, i.e., are agreed traffic stops;

(b) may not be set down or picked up, i.e., are stops for non-traffic purposes, by the designated airline of the Government of the Republic of South Africa are the following :

<i>Traffic Stops</i>	<i>Stops for non-traffic purposes</i>
(i) Route A	
Johannesburg	Brazzaville or Luanda.
Lisbon	Kano or Sal.
	Paris or Amsterdam.
	London.
(ii) Route B	
Windhoek	
Luanda	
(iii) Route C	
Johannesburg	
Lourenço Marques	
(iv) Route D	
Durban	
Lourenço Marques	

3. The points on the routes specified in sub-paragraph (2) of paragraph 1 of the Annex at which, subject to the concurrence of any third country that may be involved, traffic from or for territory of the Republic of South Africa—

(a) may be set down or picked up, i.e., are agreed traffic stops;

(b) may not be set down or picked up, i.e., are stops for non-traffic purposes, by the designated airline of the Republic of Portugal are the following :

<i>Traffic Stops</i>	<i>Stops for non-traffic purposes</i>
(i) Route A	
(See paragraph 9 of the Annex)	
(ii) Route B	
Luanda	
Windhoek	
(iii) Route C	
Lourenço Marques	
Johannesburg	
(iv) Route D	
Lourenço Marques	
Durban	

4. (1) Notwithstanding the provisions of paragraph 2 of the Annex, the designated airline of the Republic of South Africa shall not—

- (a) in respect of Route A at Lisbon pick up or set down more than 50 passengers on any one flight;
- (b) in respect of Route B at Luanda pick up or set down more than 30 passengers on any one flight;
- (c) in respect of Route C at Lourenço Marques pick up or set down more than 120 passengers per week;
- (d) in respect of Route D at Lourenço Marques pick up or set down more than 40 passengers on any one flight.

(2) Notwithstanding the provisions of paragraph 3 of the Annex, the designated airlines of the Government of the Republic of Portugal shall not—

- (a) in respect of Route A at Johannesburg pick up or set down more than (See paragraph 9 of the Annex) passengers on any one flight;
- (b) in respect of Route B at Windhoek pick up or set down more than 30 passengers on any one flight;
- (c) in respect of Route C at Johannesburg pick up or set down more than 120 passengers per week;
- (d) in respect of Route D at Durban pick up or set down more than 40 passengers on any one flight.

(3) There shall be no carry-over of unused passenger capacity from one flight to any other flight or from one week to any other week, as the case may be.

5. (1) The frequency of the air services provided by the designated airline of the Government of the Republic of South Africa shall be—

- (a) in respect of Route A, one per week;
- (b) in respect of Route B, one per week;
- (c) in respect of Route C, three per week;
- (d) in respect of Route D, one per week;

(2) The frequency of the air services provided by the designated airlines of the Government of the Republic of Portugal shall be—

- (a) in respect of Route A, per week (See paragraph 9 of the Annex);
- (b) in respect of Route B, one per week;
- (c) in respect of Route C, three per week;
- (d) in respect of Route D, one per week.

6. In order to meet an unexpected traffic demand of a temporary character a designated airline may apply to the aeronautical authority of the other Party for such temporary increase of capacity or frequency as may be necessary to meet such traffic demand.

7. With a view to ensuring compliance with the general policy adopted by the Government of the Republic of Portugal in accordance with article 7 of the Convention on Inter-

national Civil Aviation, signed in Chicago on 7 December 1944,¹ of refusing permission to the aircraft of the other States to take on in Portuguese territory traffic destined for another point within the same territory, the Parties have agreed that—

- (a) Notwithstanding the provisions of sub-paragraph (a) of paragraph 4 of the Annex the designated airline of the Government of the Republic of South Africa shall not pick up or set down in Lisbon on any one flight more than 5 Portuguese nationals not resident in the Republic of South Africa;
- (b) The designated airlines of the Government of the Republic of South Africa :
 - (i) shall not in Portuguese overseas territories in Africa publish or cause to be published any advertisement and distribute or cause to be distributed promotional material referring to its air services to and from Europe;
 - (ii) shall not publish or cause to be published any advertisement and distribute or cause to be distributed promotional material likely to encourage or promote on its services traffic between any two points in Portuguese territory.

8. (1) In the operation by the designated airline of one Contracting Party of the air services on the specified routes, the interests of the designated airline of the other Party shall be taken into consideration so as not to affect unduly the services which the latter provides on the whole or part of the same or parallel routes.

(2) Furthermore, the designated airlines may consult together to arrive at a formula of co-operation for the carriage of traffic on the said routes and any agreed formula will be submitted for approval to the aeronautical authorities of both Parties.

9. (1) A route connecting Lisbon and Johannesburg may be specified to the aeronautical authority of the Republic of South Africa by the Portuguese aeronautical authorities at a later stage and this route, which may also link metropolitan Portugal and the Portuguese Overseas Provinces in Africa, shall be inserted in sub-paragraph (2) (a) of paragraph 1 and paragraph 3 of the Annex.

(2) If either of them deem it necessary the aeronautical authorities of the Parties shall consult and, in that case, unless agreement is reached on a trunk route for the designated airline of the Government of the Republic of Portugal within a period of sixty days from the date on which the route description is received by the aeronautical authority of the Government of the Republic of South Africa in terms of sub-paragraph (1), the operating permission granted to the designated airline of the Government of the Republic of South Africa in respect of the trunk route specified in sub-paragraph (1) (a) of paragraph 1 of the Annex, shall be regarded as revoked.

(3) The designated airline of the Government of the Republic of Portugal, while it operates on a route specified in terms of sub-paragraph (1), shall operate at the same frequency and at the same passenger quota as those specified for the designated airline of the Republic of South Africa for its Route A in this Agreement and, as far as traffic coming from or destined for territory of the Republic of South Africa is concerned, exercise only third and fourth freedom traffic rights in respect of Lisbon and Johannesburg.

¹ See footnote 2, p. 5 of this volume.