

No. 7869

**MALAWI
and
GHANA**

**Agreement concerning international air transport (with
annex). Signed at Accra, on 4 May 1965**

Official text: English.

Registered by Malawi on 2 August 1965.

**MALAWI
et
GHANA**

**Accord relatif aux transports aériens internationaux (avec
annexe). Signé à Accra, le 4 mai 1965**

Texte officiel anglais.

Enregistré par le Malawi le 2 août 1965.

No. 7869. AGREEMENT¹ BETWEEN THE GOVERNMENT OF MALAWI AND THE GOVERNMENT OF THE REPUBLIC OF GHANA CONCERNING INTERNATIONAL AIR TRANSPORT. SIGNED AT ACCRA, ON 4 MAY 1965

The Government of Malawi and the Government of the Republic of Ghana being parties to the Convention on International Civil Aviation opened for signature at Chicago on the Seventh day of December, 1944² and desiring to promote the development of air transport by the establishment of scheduled air services between and beyond their respective territories have, in addition to the said Convention, agreed as follows :

Article 1

For the purpose of the present Agreement and any Annex attached hereto unless the context otherwise requires :

(a) the term “ the Convention ” means the Convention on International Civil Aviation opened for signature at Chicago on the Seventh day of December, 1944 and includes any Annex adopted under Article 90 of that Convention and any amendment of the Annexes or Convention under Articles 90 and 94 thereof;

(b) the term “ aeronautical authorities ” means, in the case of Malawi, the Minister responsible for Civil Aviation and any person or body authorized to perform any functions at present exercised by the said Minister or similar functions, and, in the case of Ghana, the Minister responsible for Civil Aviation and any person or body authorized to perform any functions at present exercised by the said Minister or similar functions;

(c) the term “ designated airline ” means an airline which one Contracting Party shall have designated, by written notification to the other Contracting Party, in accordance with Article 3 of the present Agreement, for the operation of air services on the routes specified in such notification;

(d) the term “ territory ” in relation to a state shall have the meaning assigned to it by Article 2 of the Convention;

(e) the terms “ air service ”, “ international air service ”, “ airline ” and “ stop for non-traffic purposes ” have the meanings respectively assigned to them in Article 96 of the Convention; and

¹ Came into force on 4 May 1965, upon signature, in accordance with article 13.

² United Nations, *Treaty Series*, Vol. 15, p. 295. For the texts of the Protocols amending this Convention, see Vol. 320, pp. 209 and 217; Vol. 418, p. 161, and Vol. 514, p. 209.

(f) the terms “ aircraft equipment ”, “ stores ” and “ spare parts ” have the meanings respectively assigned to them in Annex 9 of the Convention.

Article 2

(1) Each Contracting Party grants to the other Contracting Party the rights specified in the present Agreement for the purpose of establishing air services on the routes specified in the appropriate section of the Schedule included in the Annex thereto (hereinafter called “ the agreed services ” and “ the specified routes ”).

(2) Subject to the provisions of the present Agreement, the airlines designated by each Contracting Party shall enjoy, while operating an agreed service on a specified route, the following privileges :

(a) to fly without landing across the territory of the other Contracting Party;

(b) to make stops in the said territory for non-traffic purposes; and

(c) to make stops in the said territory at the points specified for that route in the Schedule of the Annex to the present Agreement for the purpose of putting down and taking on international traffic in passengers, cargo and mail.

Article 3

(1) Each Contracting Party shall have the right to designate in writing to the other Contracting Party one or more airlines for the purpose of operating the agreed services on the specified routes.

(2) On receipt of the designation, the other Contracting Party shall, subject to the provisions of paragraphs (3) and (4) of this Article, without delay, grant to the airline or airlines designated the appropriate operating authorization.

(3) The aeronautical authorities of one Contracting Party may require an airline designated by the other Contracting Party to satisfy them that it is qualified to fulfil the conditions prescribed under the laws and regulations normally and reasonably applied by them in conformity with the provisions of the Convention to the operation of international commercial air services.

(4) Each Contracting Party shall have the right to refuse to accept the designation of an airline and to withhold or revoke the grant to an airline of the privileges specified in paragraph (2) of Article 2 of the present Agreement or to impose such conditions as it may deem necessary on the exercise by an airline of those privileges in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in nationals of the Contracting Party designating the airline. Recognizing however that the structure of Air Malawi is such that substantial ownership and effective control of the Company is not vested in the Government

of Malawi or its nationals alone, the Government of the Republic of Ghana agrees that, provided it is satisfied that any substantial ownership and the effective control of Air Malawi is and remains vested in the Governments or nationals of the countries participating in the Higher Authority for Civil Air Transport, no objection will be raised by reason of Articles 3 (3) and 3 (4) of the present Agreement to the designation of Air Malawi to operate the route in the Schedule included in the Annex to the present Agreement. The countries participating in the Higher Authority for Civil Air Transport are Malawi, Zambia and Rhodesia.

(5) At any time after the provisions of paragraphs (1) and (2) of this Article have been complied with, an airline so designated and authorized may begin to operate the agreed services provided that a service shall not be operated unless a tariff established in accordance with the provisions of Article 6 of the present Agreement is in force in respect of that service.

(6) Each Contracting Party shall have the right to suspend the exercise by an airline of the privileges specified in paragraph (2) of Article 2 of the present Agreement or to impose such conditions as it may deem necessary on the exercise by an airline of those privileges in any case where the airline fails to comply with the laws or regulations of the Contracting Party granting those privileges prescribed in the present Agreement provided that, unless immediate suspension or imposition of conditions is essential to prevent further infringements of laws or regulations, this right shall be exercised only after consultation with the other Contracting Party.

Article 4

(1) The aircraft used by the designated airlines of either of the Contracting Parties and introduced into the territory of the other Contracting Party as well as fuel, lubricating oil, spare parts, stores and general equipment exclusively for use by the said aircraft will be exempt from customs duties and other fees and taxes levied on goods upon entering and leaving the territory.

(2) Fuel, lubricating oil, spare parts, regular aircraft equipment and stores for the use of the said aircraft mentioned in paragraph (1) above will be exempt from customs duties, inspection fees or other similar fees and taxes on arriving in or leaving the territory of the other Contracting Party.

(3) Fuel and lubricating oil taken on board the said aircraft by the designated airlines on the territory of the other Contracting Party and re-exported shall remain exempt from customs duties, consumption duties and other fees and national taxes.

(4) The normal equipment on board as well as the materials and supplies which are on board the aircraft of a Contracting Party shall be discharged on the territory of the other Contracting Party and placed under the supervision of the customs authorities of the territory until they are re-exported or form an object of customs declarations in accordance with Article 24 of the Convention.

Article 5

(1) There shall be fair and equal opportunity for the airlines of both Contracting Parties to operate the agreed services on the specified routes between their respective territories.

(2) In operating the agreed services, the airlines of each Contracting Party shall take into account the interests of the airlines of the other Contracting Party so as not to affect unduly the services which the latter provide on the whole or part of the same routes.

(3) The agreed services provided by the designated airlines of the Contracting Parties shall bear close relationship to the requirements of the public for transportation on the specified routes and shall have as their primary objective the provision, at a reasonable load factor, of capacity adequate to carry the current and reasonably anticipated requirements for the carriage of passengers, cargo and mail originating from or destined for the territory of the Contracting Party which had designated the airline. Provision for the carriage of passengers, cargo and mail both taken up and put down at points on the specified routes in the territories of States other than that designating the airline shall be made in accordance with the general principles that capacity shall be related to :

(a) traffic requirements between the country of origin and the country of destination;

(b) traffic requirements of the area through which the airlines pass, after taking account of other transport services established by airlines of the States comprising the area; and

(c) the requirements of through airline operation.

Article 6

(1) The tariffs on any agreed service shall be established at reasonable levels, due regard being paid to all relevant factors including cost of operation, reasonable profit, characteristics of service (such as standards of speed and accommodation) and the tariffs of other airlines for any part of the specified route. These tariffs shall be fixed in accordance with the following provisions of this Article.

(2) The tariffs referred to in paragraph (1) of this Article, together with the rates of agency commission used in conjunction with them shall, if possible, be agreed in respect of each of the specified routes between the designated airlines concerned, in consultation with other airlines operating over the whole or part of that route, and such agreement shall, where possible, be reached through the rate-fixing machinery of the International Air Transport Association. The tariffs so agreed shall be subject to the approval of the competent authorities of both Contracting Parties.

(3) If the designated airlines cannot agree on any of these tariffs, or if for some other reason a tariff cannot be agreed in accordance with the provisions of paragraph (2) of this Article the competent authorities of the Contracting Parties shall try to determine the tariff by agreement between themselves.

(4) If the competent authorities cannot agree on the approval of any tariff submitted to them under paragraph (2) of this Article or on the determination of any tariff under paragraph (3), the dispute shall be settled in accordance with the provisions of Article 8 of the present Agreement.

(5) No tariff shall come into force if the competent authorities of either Contracting Party are dissatisfied with it except under the provisions of paragraph (3) of Article 8 of the present Agreement.

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

Article 7

The aeronautical authorities of either Contracting Party shall supply to the aeronautical authorities of the other Contracting Party at their request such periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the agreed services by the designated airlines of the first Contracting Party. Such statements shall include all information required to determine the amount of traffic carried by those airlines on the agreed services and the origins and destinations of such traffic.

Article 8

(1) Each Contracting Party may at any time require consultation between the competent authorities of both Contracting Parties on any matter concerning the interpretation, application or alteration of the present Agreement. Such consultation shall begin within 30 days from the date of the request and shall be completed within 60 days of commencement. Thereupon any such decisions agreed shall come into force by the immediate exchange of Diplomatic Notes.

(2) In the event of agreement not being reached within the 60 days referred to in paragraph (1) of this Article the matter in dispute shall be referred to an Arbitral Tribunal as provided for in paragraph (3) of this Article, upon the request of either Contracting Party.

(3) The Arbitral Tribunal referred to in paragraph (2) of this Article shall consist of three members, one each to be designated by the Contracting Parties and the third, who shall be a national of a third state, shall be President and whose election shall be agreed between the members designated by the Contracting Parties. The President's decision shall be final.

(4) If the designated arbitrators have not agreed upon a President or if the President has not reached a decision within 60 days of the designation of the arbitrators then either Contracting Party may submit the dispute for decision to any tribunal competent to decide it which may hereafter be established within the International Civil Aviation Organization or if there is no such tribunal to the Council of the said Organization and the Contracting Parties undertake to comply with any decision so reached.

(5) Each Contracting Party will be responsible for the cost of its designated arbitrator and subsidiary staff provided and both Contracting Parties shall share equally all such further expenses involved in the activities of the tribunal including those of the President.

(6) If and so long as either Contracting Party or a designated airline of either Contracting Party fails to comply with a decision given under this Article, the other Contracting Party may limit, withhold or revoke any rights or privileges which it has granted by virtue of the present Agreement to the Contracting Party in default or to the designated airline or airlines of that Contracting Party or to the designated airline in default.

Article 9

Each Contracting Party grants to the designated airlines of the other Contracting Party the right of free transfer at the official rate of exchange in sterling of the excess of receipts over expenditure earned by those airlines in its territory in connection with the carriage of passengers, mail and cargo.

Article 10

Either Contracting Party may at any time give notice to the other if it desires to terminate the present Agreement. Such notice shall be simultaneously communicated to the International Civil Aviation Organization. If such notice is given, the present Agreement shall terminate twelve months after the date of receipt of the notice by the other Contracting Party unless the notice to terminate

is withdrawn by agreement before the expiry of this period. In the absence of acknowledgment of receipt by the other Contracting Party, notice shall be deemed to have been received fourteen days after the receipt of the notice by the International Civil Aviation Organization.

Article 11

The present Agreement and any Exchange of Notes in accordance with Article 8 (1) shall be registered with the International Civil Aviation Organization.

Article 12

In the event of the conclusion of any General Multilateral Agreement concerning air transport by which both or either Contracting Party become bound, the present Agreement shall be amended so as to conform with the provisions of such Agreement.

Article 13

The present Agreement shall come into force on the date of signature.

IN WITNESS WHEREOF the undersigned being duly authorized thereto by their respective Governments have signed the present Agreement.

DONE in the English language at Accra this Fourth day of May, One thousand Nine Hundred and Sixty-Five.

For the Government
of the Republic of Ghana :

A. J. DOWOUNA-HAMMOND
Minister of Communications

For the Government
of Malawi :

V. H. B. GONDWE
Malawi High Commissioner
Accra

A N N E X

SCHEDULE

1. The Government of the Republic of Ghana grants that the designated airline(s) of the Government of Malawi shall be entitled to operate Air Services in both directions on the routes specified, and to land for traffic purposes in the territory of Ghana at the point specified in this paragraph :

Blantyre–Ndola or Elizabethville–Leopoldville or Brazzaville–Douala–Lagos*–Accra.

2. The Government of Malawi grants that the designated airline(s) of the Government of the Republic of Ghana shall be entitled to operate Air Services in both directions on the routes specified, and to land for traffic purposes in the territory of Malawi at the point specified in this paragraph :

Accra–Lagos–Douala–Brazzaville or Leopoldville–Elizabethville–Ndola† or Lusaka†–Blantyre.

* No traffic rights may be exercised between Lagos and Accra. Traffic rights between Lagos and points beyond are subject to negotiation and agreement with the Nigerian Government.

† Traffic rights at points in Zambia are subject to separate negotiation and agreement with the Government of Zambia.