

MEMORANDUM OF UNDERSTANDING ON THE BILATERAL AIR SERVICES AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GOVERNMENT OF INDIA

Delegations representing the Government of the Republic of Kenya and the Government of India met in Nairobi, Kenya on the 26th and 27th April 2006 to review the existing Air Services Agreement and Confidential Memoranda of Understanding between the two States.

The negotiations were held in a cordial and friendly atmosphere characteristic of the good relations that exist between the Contracting Parties.

The list of both delegations is attached hereto as Appendix A.

The delegations agreed to amend and include the following Articles in the Air Services Agreement attached hereto as "Appendix B."

ARTICLE	SAFETY (New Article in ASA)
ARTICLE	AVIATION SECURITY (Amendment to Article 14 of ASA)
ARTICLE	TARIFFS (Amendment to Article 11 of ASA)
ARTICLE	CO-OPERATIVE MARKETING ARRANGEMENTS (Amendment to Para 3 (h) of CMU of 10 December 2002)

The following issues were discussed and agreed on: -

1. FREQUENCY AND CAPACITY

It was agreed that the *designated airlines of Kenya* shall be entitled to operate upto 7 frequencies per week in each direction with any aircraft type each to/through Mumbai and New Delhi. *The designated airlines of India shall be entitled to operate upto 14 frequencies per week in each direction with any aircraft type to/through the available points of call.*

2. DESIGNATION OF AIRLINES

Both delegations accepted multiple designation of Airline(s). However, at the instance of the Kenyan delegation, it was agreed that each Country shall

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designate only up to 2 airlines each during the next three years. Each side will notify the other on the names of their designated airline(s) through Diplomatic channels. This issue will be reviewed at the next meeting.

3. **ROUTE SCHEDULES**

Both delegations agreed on the following route schedules:

a) For the designated airlines of Kenya:

Points of Origin - Any points in Kenya

Points in India - Mumbai, New Delhi,

Points Beyond - Beyond Mumbai: Hong Kong and Bangkok
Beyond Mumbai or Delhi: 1 additional point in Asia to be notified through diplomatic channels

b) For the designated airlines of India:

Points of origin - Any points in India

Points in Kenya - Nairobi and any one additional point to be notified through diplomatic channels

Points Beyond- Beyond Nairobi: Dar es Salaam and Johannesburg
Beyond Nairobi or Additional Point in Kenya: 1 additional point in Africa to be notified through diplomatic channels.

Both delegations agreed that the beyond points in the route schedule can be served with full beyond 5th Freedom Traffic Rights, without any restrictions on frequency or capacity.

4. **COMMERCIAL AGREEMENTS**

Both delegations agreed that operations by the designated airlines in accordance with the agreed Route Schedule, including the exercise of 5th freedom traffic rights, shall not be subject to any mandated commercial arrangements between the designated airlines of the two sides.

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5. **ENTRY INTO FORCE**

Both delegations agreed that this Memorandum of Understanding shall supercede previous Memoranda of Understanding, to the extent applicable, and shall enter into full force and effect on the date of its signature.

6. **FURTHER DISCUSSIONS**

Both delegations agreed to meet again to continue discussions on other issues of mutual interest.

Done at Nairobi this 27th day of April 2006.



**MR. CHARLES N. KIMEMIA
FOR THE GOVERNMENT
OF THE REPUBLIC OF KENYA**



**MR. R. K. SINGH
FOR THE GOVERNMENT
OF INDIA**

APPENDIX 'A'

LIST OF INDIAN DELEGATION

1. Mr. R. K. Singh
Joint Secretary
Ministry of Civil Aviation
Head of Delegation
2. Mr. P. K. Chattopadhyay
Joint Director General
Civil Aviation
3. Mr. Manpreet Vohra
Deputy High Commissioner
High Commission of India, Nairobi
4. Ms. Shirin Lalwani
Executive Director – Planning & International Relations
Air India
5. Ms. Orchid Raikhan
Assistant General Manager – International Relations
Air India

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LIST OF KENYAN DELEGATION

1. Mr. Charles N. Kimemia
Director, Air Transport Department
Ministry of Transport
Head of Delegation
2. Mr. Nicholas E. Bodo
Senior Assistant Secretary
Ministry of Transport
3. Mrs. Elizabeth C. Choge
Legal Officer
Ministry of Foreign Affairs
4. Ms. Margaret Munene
Legal Officer
Kenya Airports Authority
5. Mr. Robert Kungu
State Counsel
Office of the Attorney General
6. Mrs. Mercy Awori
Senior Air Transport Officer
Kenya Civil Aviation Authority
7. Mr. Wilson H. O. Okanga
Manager Government and Industry Affairs
Kenya Airways Ltd.
8. Mr. Anthony Mwangi
Kenya Airways Ltd.
9. Mr. Emmanuel Chepkong'a
Country Manager-India
Kenya Airways Ltd.

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APPENDIX 'B'

ARTICLE (New) SAFETY

1. Each Party shall recognize as valid, for the purpose of operating the air transportation provided for in this Agreement, certificates of airworthiness, certificates of competency, and licenses issued or validated by the other Party and still in force, provided that the requirements for such certificates or licenses are at least equal to the minimum standards that may be established pursuant to the Convention.
2. Each Party reserves the right, however, to refuse to recognize, for the purpose of flights undertaken pursuant to rights granted under Article 2 (Rights and Privileges of Designated Airline, certificates of competency and licenses granted to its own nationals by the other Contracting Party).
3. Either Party may request consultation concerning the Safety Standards maintained by the other Party relating to aeronautical facilities, air crews, aircraft and operation of the designated Airline. If, following such consultations, one Party finds that the other Party does not effectively maintain and administer safety standards and requirements in these areas that are at least equal to the minimum standards that may be established pursuant to the Convention, the other party shall be notified of such findings and the steps considered necessary to conform with these minimum standards, and the other party shall take appropriate corrective action.
4. Each Party reserves the right to withhold, revoke, or limit the operating authorization or technical permission of an Airline designated by the other party in the event the other Party does not take such appropriate corrective action within fifteen (15) days.
5. Any action by one Party in accordance with Paragraph 3 shall be discontinued once the basis for that action ceases to exist.

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ARTICLE 14 AVIATION SECURITY

1. In accordance with their rights and obligations under international law, the Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Parties shall in particular act in conformity with the provisions of the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, done at Tokyo on September 14, 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, done at the Hague on December 16, 1970, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation done at Montreal on September 23, 1971, and its protocol done at Montreal on February 24, 1988 and any other convention on aviation security to which both Parties shall become members.
2. Upon request the Parties shall provide each other with all necessary assistance to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, of their passengers and crew, of airports and air navigation facilities, and address any other threat to the security of civil air navigation.
3. The Parties shall, in their mutual relations, act in conformity with all aviation security standards and appropriate recommended practices established by the International Civil Aviation Organization and designated as Annexes to the Convention; they shall require that operators of aircraft of their registry, operators of aircraft who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions.
4. Each contracting party agrees to observe the aviation security provisions required by the other Party and to take adequate measures to protect aircraft and to inspect passengers, crew, and their baggage and carry-on items, as well as cargo and aircraft stores, prior to and during boarding or loading. Each Party shall also give positive consideration to any request from the other Party for special security measures to meet a particular threat.
5. When an incident or threat of an incident of unlawful seizure of civil aircraft or

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other unlawful acts against the safety of passengers, crew, aircraft, airports or air navigation facilities occur, the Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat.

6. When a Party has reasonable grounds to believe that the other Party has departed from the aviation security provisions of this Article, the aeronautical authorities of that Party may request immediate consultations with the aeronautical authorities of the other Party. Failure to reach a satisfactory agreement within 15 days from the date of such request shall constitute grounds to withhold, revoke, limit, or impose conditions on the operating authorization and technical permissions of an airline or airlines of that Party. When required by an emergency, a Party may take interim action prior to the expiry of 15 days.

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ARTICLE 11 TARIFFS

1. Each party shall allow prices for air services to be decided by each designated airline based upon commercial considerations in the market place. Intervention by the Parties shall be limited to:-

- a) prevention of unreasonably discriminatory prices or practices;
- b) protection of consumers from prices that are unreasonably high or restrictive due to the abuse of a dominant position; and
- c) protection of Airlines from prices that are artificially low due to direct or indirect governmental subsidy or support.

2. Prices for international air services between the territories of the Parties shall not be required to be filed. Notwithstanding the foregoing, the designated airlines of the Parties shall continue to provide immediate access, on request, to information on historical, existing, and proposed prices to the aeronautical authorities of the Parties in a manner and format acceptable to those aeronautical authorities.

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1. When operating or holding out the agreed services on the specified route(s), any designated airline of either Party may enter into cooperative marketing arrangements, whether as the operating or marketing airline, with

- a. an airline or airlines of the same Party;
- b. an airline airlines of the other Party; or
- c. an airline or airlines of a third country

2. When a designated airline of a Party performs air services under cooperative marketing arrangements as the operating airline, the total capacity operated by that airline will be counted against the capacity entitlements of that Party designating the airline.

3. When a designated airline of a Party performs air services under Cooperative marketing arrangements as the marketing airline with the airline of its own country or the airline of the other party, the total capacity offered by the former airline will not be counted against the capacity entitlements of that Party designating that airline.

4. When a designated airline of a Party performs air services under cooperative marketing arrangements as the marketing airline with an airline from a third country, the total capacity offered will be counted against the capacity entitlements of both the marketing airline and operating airline.

5. All airlines operating or holding out the above services must hold the appropriate authority including route rights, traffic rights and capacity entitlement and meet the requirements normally applied to such arrangements.

6. The designated airlines of both Parties will, when holding services out for sale, in terms of code-share, blocked-space or other joint venture arrangements, make it clear to the purchaser at the point of sale which airline will be the operating airline on each sector of the service and with which airline(s) the purchaser is entering into a contractual relationship.

