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### REPORT ON THE EAST AFRICAN AIRWAYS CORPORATION

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## FOREWORD

1. Among the aims and objectives of ICAO is to foster the planning and development of international air transport so as to meet the needs of the peoples of the world for safe, regular, efficient and economical air transport, to prevent economic waste caused by unreasonable competition, and to avoid discrimination between Contracting States. To that end the Council is authorized to conduct research into all aspects of air transport which are of international importance and to study any matters affecting the organization and operation of international air transport, including the international ownership and operation of international air services on trunk routes. The Convention specifically authorizes Member States to participate in joint operating organizations or in pooling arrangements, and the Council is even authorized to suggest to Contracting States the formation of such organizations.

2. The introduction of a new generation of aircraft, namely, high capacity and supersonic aircraft, is going to increase the problems of competition in international air transport, particularly with regard to small airlines. Some of these airlines might wish to participate in various forms of co-operative arrangements as a means of solving their present and future competition problems. The availability of information on the various forms of co-operation in international air transport that exist might be of assistance to States interested in forming international operating organizations or participating in other co-operative arrangements.

3. This Circular contains an article on the constitutional and organizational framework in which the East African Airways Corporation has developed and is operating. The article has been received from the Representative of the United Republic of Tanzania to ICAO. Appendix 1 gives a graphical presentation of the constitutional framework in which EAAC operates. Appendix 2 presents the legislation establishing the East African Airways Corporation.

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Note: This Circular has been translated into French and Spanish by ICAO.

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## THE EAST AFRICAN AIRWAYS CORPORATION (EAAC)

1. East African Airways Corporation (EAAC) is an airline owned by the Governments of Tanzania, Kenya and Uganda. It operates internal air services in the three East African States and international services between East Africa and other States in Africa, Europe including the United Kingdom, and Asia. Its present fleet consists of five Super VC10, three Comet 4, four Fokker F. 27, six DC3 and four Twin Otter DH6. Three Douglas DC9 aircraft have been ordered.

### Formation and Growth

2. EAAC was formed on 1st. January 1946 by the then four East African territories of Tanganyika, Uganda, Kenya and Zanzibar with a capital of £50,000. It began operations on 3rd. April 1946 with a fleet of six hired DH 89s. In its first ten years it developed local and regional international air services mainly with a fleet of DC-3s and DH 89s. In 1957, with three four-engine pressurized Canadair aircraft leased (subsequently purchased) from BOAC, it commenced international air services once a week to the United Kingdom and twice a week to Pakistan and India.

3. In 1960 two Comet 4 jetliners were purchased and entered into service. The Comets improved significantly the international services which previously were operated with Canadair aircraft. The Comet covered the 3,271 statute miles to Bombay via Karachi in 9 hours against the Canadair which took 17 1/2 hours with an extra route stop at Aden. In the first twelve months of their introduction the two Comets flew 1, 836, 484 miles, carried 27,000 passengers and earned a total revenue of £2,400,000. In May 1962 the third Comet was delivered. The Canadairs have since been sold and the main international services are operated with Super VC10 while the Comets are being replaced by DC9 aircraft on the regional international routes.

4. In order to improve its internal services EAAC purchased four F.27 aircraft which are ideally suited to the exacting conditions imposed by East Africa's climatic contrasts, such as varying altitudes and far flung centres. The Twin Otter aircraft, each with nineteen passenger seats, were introduced in August 1967 to replace the DH89s and to take over some of the DC-3 operations at small airports in East Africa.

5. Since its formation East African Airways Corporation has continued to improve and increase its internal and international air services and to contribute significantly to East Africa's economic development. As a jointly owned airline it has been able to provide to each of the East African States services which are superior in all major respects to anything that an airline of any one of these States could have offered. It has been operating at a profit since 1955. Its operating revenue figures since 1946 are given in the following table:

|      |           |   |            |
|------|-----------|---|------------|
| 1946 | . . . . . | £ | 85,862     |
| 1949 | . . . . . | £ | 743,144    |
| 1952 | . . . . . | £ | 959,187    |
| 1955 | . . . . . | £ | 1,357,522  |
| 1956 | . . . . . | £ | 1,524,647  |
| 1957 | . . . . . | £ | 1,884,632  |
| 1958 | . . . . . | £ | 2,732,038  |
| 1959 | . . . . . | £ | 3,322,140  |
| 1960 | . . . . . | £ | 4,340,069  |
| 1961 | . . . . . | £ | 4,925,785  |
| 1962 | . . . . . | £ | 6,411,695  |
| 1963 | . . . . . | £ | 7,623,084  |
| 1964 | . . . . . | £ | 8,280,561  |
| 1965 | . . . . . | £ | 8,852,815  |
| 1966 | . . . . . | £ | 10,411,674 |
| 1967 | . . . . . | £ | 13,060,458 |
| 1968 | . . . . . | £ | 14,890,610 |
| 1969 | . . . . . | £ |            |

### Constitutional Development

6. EAAC was first established by the East African (Air Transport) Order in Council 1946. This Order also created the East African Air Authority consisting of the Governors of Tanganyika, Uganda and Kenya and the British Resident of Zanzibar, with powers to regulate commercial air services. The Air Authority appointed the Board of Directors of the Corporation. The functions of the East African Air Authority were transferred to the East Africa High Commission when the latter was established in 1947. Broadly speaking, the powers of the Commission in civil aviation were the same as those of the East African Community which is referred to later. Structurally, there were substantial differences mainly because it was an inter-colonial rather than an inter-national body. One major difference was that the Commission was not financially autonomous.

7. The initial and subsequent capital for EAAC was provided by the territorial Governments. It consisted of loans and overdraft guarantees. In 1964 the Corporation's capital structure was as follows:-

|            | (1)                     | (2)                    | (3)                                  |
|------------|-------------------------|------------------------|--------------------------------------|
|            | 3.5% Loan Stock<br>1975 | Overdraft<br>guarantee | Total<br>contribution<br>(1) and (2) |
|            | £                       | £                      | £                                    |
| Kenya      | 150,000                 | -                      | 150,000                              |
| Uganda     | 50,000                  | 100,000                | 150,000                              |
| Tanganyika | 20,000                  | 130,000                | 150,000                              |
| Zanzibar   | 1,500                   | -                      | 1,500                                |

In addition BOAC held 3.5 per cent 1975 Loan Stock to the value of £250,000. In return for this investment BOAC was given a right to nominate a person to represent it on the Board of East African Airways Corporation. Under the East Africa High Commission any losses incurred by EAAC, other than those caused by the actions of an individual territory, were to be shared among the four territories as follows:-

|                      |      |
|----------------------|------|
| Kenya . . . . .      | 8/21 |
| Tanganyika . . . . . | 8/21 |
| Uganda . . . . .     | 4/21 |
| Zanzibar . . . . .   | 1/21 |

It appears however that this formula was not used before 1955 and the need to use it after that year did not arise since EAAC was continuously profitable.

8. EAAC was placed under the East African Common Services Organization (EACSO) when the latter was established in 1961 to replace the East Africa High Commission. Broadly speaking, EACSO was a politicized version of the High Commission with, in the field of civil aviation, powers and functions similar to those of the East African Community, but its relation with the EAAC were substantially identical to those between the Commission and EAAC. With the establishment of EACSO the East African (Air Transport) Order in Council was repealed and replaced by new constitutive legislation, the East African Airways Corporation Act, 1963. The main change in this legislation was to authorize the appointment of some of the members of the Board of Directors by the member States. The EACSO has since 1 December 1967 been superseded by the East African Community and EAAC has been reconstituted by the Treaty for East African Cooperation which establishes the Community.

9. During the EACSO period the constitutional status of EAAC was reviewed in order to:-

"a) clearly establish it as the common carrier of the three territories;

- b) create the conditions in which a reasonable balance can be held between, on the one hand, the essential powers of the Authority to ensure that national interests are pursued and, on the other hand, the commercial autonomy of airline management which must be given maximum freedom to operate efficient and profitable services; and
- c) provide an appropriate degree of public accountability for all the activities of the national airline."\*

10. Among the matters that led to the review of the constitutional position of EAAC was the need to remove any misconception that the Corporation was a subsidiary of BOAC and to clarify the position that it was owned jointly by the three East African States. As shown in paragraph 7 BOAC held £250,000 while the Governments held £221,500 of the total subscribed £471,500 of EAAC 3.5 per cent Loan Stock 1975. BOAC's Stock holding gave it a right to be represented on the Board of EAAC - an arrangement which the East African Governments felt was no longer appropriate. Therefore, following the review of EAAC's constitutional position, the Governments redeemed BOAC's Loan Stock and consequently terminated BOAC's right to nominate a member of the EAAC Board of Directors. With regard to the amounts of the Loan Stock held by each of the East African Governments there were significant differences. Originally it was intended that the Governments would each take up to £150,000 of the Loan Stock. Although Tanzania and Uganda agreed to guarantee EAAC overdrafts for the balance of £150,000 which they had not subscribed and to compensate EAAC for the difference between 3.5 per cent interest and that payable on the bank overdrafts, the fact of joint ownership was frequently misunderstood. In order to clarify the position the Governments of Tanzania and Uganda increased their subscription of the Loan Stock so as to have equal participation of all the three Governments at £150,000 each.

#### The Treaty Establishing EAAC

11. The East African Airways Corporation is reconstituted by the Treaty for East African Cooperation signed on 6 June 1967 by the Governments of Tanzania, Uganda and Kenya, referred to in the Treaty as the Partner States. The Treaty establishes the East African Community and, as an integral part of that Community, an East African Common Market. The Community comprises a number of Institutions including Corporations such as East African Airways. The most important Institutions, however, are those for exercising the executive powers (the East African Authority and the Councils) and the legislative powers (the East African Legislative Assembly). Most of the Community Institutions and their respective locations in the Partner States are shown in the disposition chart attached as Appendix 1.

12. The East African Authority is the principal executive organ of the Community. It comprises the Heads of State of the Partner States. It is responsible for, and has the general direction and control of the performance of the executive functions of the Community. It is assisted in the performance of these functions by a series of Councils and by the East African Ministers all of whom are subject to its direction and control. Decisions of the Authority are by unanimous agreement. If any member records an objection to a proposal submitted for decision, the Authority may not proceed with that proposal.

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\* Report on the Constitutional position of East African Airways - CATC (66)38.

13. There are three East African Ministers, one nominated by each Partner State but all are appointed by the Authority. They have no national responsibilities in their respective governments. However, each Partner State grants to the East African Minister nominated by it a status within its territory commensurate with that of a Cabinet Minister of its Government and permits him to attend and speak at meetings of the Cabinet. The East African Ministers are permanently stationed at the headquarters of the Community at Arusha in Tanzania and are responsible for the day to day exercise of the executive functions of the Authority. They advise the Authority generally in respect of the affairs of the Community and carry out such other particular responsibilities as may be conferred upon them by the Authority. With regard to EAAC, they sift the proposals coming from it before submission to the Communications Council and they are members of that Council. Their most important specific function in relation to EAAC is their responsibility, with the assistance of representatives of EAAC and such other persons as may be appropriate, to negotiate bilateral air services agreements on behalf of the Partner States and to conduct such negotiations in accordance with the criteria approved by the Communications Council.

14. The Communications Council consists of the three East African Ministers together with nine other Ministers of whom three are designated by each Partner State. Three of the Ministers designated by the Partner States are responsible for matters relating to communications in their respective Governments. Subject to the general direction and control by the East African Authority, the Communications Council is the principal executive organ responsible for the communications services provided by the East African Community. When business relating to any of the Corporations is being considered by the Communications Council, the Chairman of the Board and the Director General of that Corporation are entitled to attend and speak. If a member of the Council records an objection to a proposal submitted for a decision, the proposal has to be submitted to the Authority for decision. Also if a decision taken by the Council is contrary to a proposal submitted by the Board of Directors of a Corporation, the Board may refer the question at issue through the East African Ministers to the Authority for a decision and no action may be taken on the proposal while it is under consideration by the Authority.

15. The Treaty for East African Co-operation establishes for the Community a legislative body known as the East African Legislative Assembly. Broadly, the task of the Assembly is to enact legislation for the Community on specified matters and to exercise financial control. Bills passed by the Assembly become Acts of the Community when assented to by the Heads of State of the Partner States. The Partner States are obliged under the Treaty to enact laws to give effect, within their territories, Acts of the Community. The Legislative Assembly is the source of part of the rules regulating the internal operation of EAAC and is also the source of the law which regulates EAAC generally as an airline engaging in civil aviation activities in East Africa. The Corporation's annual report and accounts are submitted to this Assembly by the Communications Council.

16. These are the principal Institutions of the Community which exercise authority over EAAC. As EAAC is itself an Institution of the Community it is required to perform the functions and act within the limits of the powers conferred upon it by the Treaty or by any other law. Its establishment and constitution (the equivalent of the memorandum and articles of association of a company) is provided for in part in the Treaty and in part in the East African Airways Corporation Act 1967 which is reproduced in full at Appendix 2. The Treaty and the Act define its powers and duties and its relation to the other Institutions of the Community and the Partner States.