

**IN THE FOURTH SESSION OF THE SECOND  
PARLIAMENT OF THE FOURTH REPUBLIC OF GHANA**

**REPORT OF THE FINANCE COMMITTEE  
ON THE AGREEMENT BETWEEN  
THE GOVERNMENT OF GHANA AND GALLEN LIMITED  
FOR THE LEASE OF THE GULFSTREAM III AIRCRAFT**

**1.0 INTRODUCTION**

The Lease Agreement for the GulfStream III Aircraft was laid in the House on Friday 5<sup>th</sup> November, 1999 in accordance with Article 181 (5) of the Constitution and referred to the Finance Committee pursuant to Order No. 169 of the Standing Orders for consideration and report.

Due to the interest generated in the country as a whole following the acquisition of the aircraft by the Government, the Committee availed itself of materials in the media on the subject matter. The Committee also met with the Minister of Finance and his technical officers.

Representatives of the Chief of Air staff were also in attendance to give further insight into the Lease Agreement. The Committee reports as follows:

## **2.0 REFERENCES**

The Committee referred to the following documents:

- (i) The 1992 Constitution of Ghana
- (ii) The Standing Orders of the House
- (iii) The Memorandum of the Agreement between the Government of Ghana and Gallen Limited for the Lease of the GulfStream III Aircraft
- (iv) The Lease Agreement on (iii) above

## **3.0 BACKGROUND INFORMATION**

The transport needs of the Government have in the past been provided by the Communication Squadron of the Ghana Air Force. Included in the fleet are aircrafts suitable for foreign travels. With the increasing demand for longer range aircraft coupled with the decreasing reliability of the old flagship of the fleet (the Fokker 28) due to aging, Government decided to acquire an aircraft with the right characteristics to complement the fleet.

After careful review by experts it was decided to acquire the Gulf Stream III Aircraft. In view of the cash flow constraints of Government, it was decided to lease the aircraft rather than purchase it outright.

#### **4.0 PURPOSE OF THE LEASE AGREEMENT**

The purpose of the Lease Agreement is to enable the Government of Ghana acquire interest in Gulf Stream Model G III Aircraft with manufacturer's serial number 493 and registration mark G540 to be used for the mobility of the Executive and other Organs of State.

#### **5.0 TERMS OF THE LEASE AGREEMENT**

The terms of the lease is five (5) years, during which period Government will make semi-annual rental payments to the lessor as follows:

- Delivery Date(20<sup>th</sup> Aug 1999)      US\$2,950,800.00  
Made up of \$1,450,800 down  
payment and 1<sup>st</sup> semi-annual payment  
of \$1,500,000
  
- 2<sup>nd</sup> Semi-annual payment      US\$1,500,000.00
- 3<sup>rd</sup>      “      “      US\$1,500,000.00
- 4<sup>th</sup>      “      “      US\$1,500,000.00
- 5<sup>th</sup>      “      “      US\$1,500,000.00
- 6<sup>th</sup>      “      “      US\$1,500,000.00

● 7 <sup>th</sup>	“	“	US\$1,500,000.00
● 8 <sup>th</sup>	“	“	US\$1,500,000.00
● 8 <sup>th</sup>	“	“	US\$1,500,000.00
● 9 <sup>th</sup>	“	“	US\$1,500,000.00
● Expiry Date			<u>US\$3,528,048.95</u>

The Agreement made provision for the outright purchase of the aircraft should the Government elect that option at any time during the life-span of the lease by paying the termination sum as provided for.

## **6.0 ISSUES RAISED AT COMMITTEE SITTINGS**

During its deliberations a number of issues were raised, discussed and responded to by the Hon. Minister of Finance and his technical team, as well as representatives of the Chief of Air Staff .

They include the following:

### **6.1 Approval Of Lease Agreement**

Some Members of the Committee expressed the view that the Lease Agreement should have been presented for parliamentary scrutiny and approval before its execution in accordance with Article 181 of the Constitution. Explaining, the Minister of Finance intimated that the purchase Agreement was a preliminary step in a lengthy negotiation process. It was, therefore, important to exercise discretion and secrecy in order not to

alert other competitors interested in the same aircraft before the conclusion of the negotiations. In his intimation this was the reason why the lease could not be submitted to Parliament early. Besides, the Lease Agreement was transacted under Article 181 (5) of the Constitution which does not provide any clear-cut guidelines with regards to the Constitutional procedure to deal with Lease Agreements and exactly when Parliament should be informed.

## **6.2 Constitutional Authority To Enter Into Lease Agreement**

The Committee exchanged views at length over the constitutional provision under which the lease Agreement should be considered.

Some Members contended that, the lease agreement should be considered under Article 181 (2) of the Constitution which states that "An Agreement entered into... shall be laid before Parliament and shall not come into operation unless it is approved by a resolution of Parliament". In effect these Hon. Members were of the view that by the grant of the above provision the lease agreement which the Government has entered into, should be considered as a Loan Agreement, which would require parliamentary approval before its execution. Since the above procedure had not been followed before the acquisition of the aircraft, the Hon. Members

were of the view that the transaction entered into by Government was in contravention of the constitution of the country.

Other Hon. Members referred to Article 181 (5) which states.... "This article shall, **with the necessary modifications by Parliament**, apply to an international business or economic transaction to which the Government is a party as it applies to a loan".

In their reasoning, the Lease Agreement being an international business or economic transaction should be considered under Article 181 (5) of the Constitution. According to them, Article 181 (5) of the Constitution enjoins Parliament to fashion out modalities for considering agreements such as the Lease Agreement before the House.

The Committee noted the varied views expressed on Article 181 (5) of the Constitution and in its candid opinion wishes to state that, there was the urgent need for Parliament to address whatever limitations Article 181 (5) imposes. That notwithstanding the Committee took note of the explanation by the Minister of Finance that the transaction for the lease of the Aircraft was based on the conviction that there is a marked difference between a **Lease Agreement** and a **Loan Agreement**. As explained by the Minister, under a loan agreement, the borrower is obliged to honor the terms and conditions in its entirety, until the entire loan is repaid. In effect the

borrower cannot “walk out” from his obligations under a loan Agreement. On the other hand, in a lease agreement as in the Gulf Stream III, the lessee can “walk out” of the lease agreement after having given the appropriate notice to the lessor and would therefore be no more obliged to make further payment.

### **6.3 Source Of Contract Money**

It was the considered opinion of the Committee that any money to be appropriated by Government should come from the consolidated fund which has been appropriately approved by Parliament for the purpose. In this vein therefore the Committee requested to know the item under the consolidated fund from which funds were procured for the acquisition of the aircraft. The Committee was informed that the down payment and the 1<sup>st</sup> semi-annual payment for the lease agreement was drawn from the **contingency vote** of the 1999 appropriation Act (Act 568). This is quite distinct from the **contingency fund** provided for by the Constitution under article 177.

### **6.4 Negotiations And Nature Of Transactions**

The primary concern of some Members was how the transaction was conducted, the parties involved and the alleged discrepancies involving the

addresses of various companies all purported to be linked with the Lease Agreement.

The Minister of Finance informed the Committee that the Purchase Agreement was entered into on 4<sup>th</sup> February, 1999. The Purchase Agreement was negotiated between Ghana Government and Trans Air Trade S.A. Thereafter, Trans Air Trade S.A. the Government of Ghana and Gallen Ltd. entered into a Novation Agreement which released and discharged the Government of Ghana from buying the plane from Trans Air Trade S.A. The Purchase Agreement with Trans Air Trade S.A. was entered into to commit the latter not to sell the aircraft to another competitor during the period of negotiations. According to the Minister the Novation Agreement (the tripartite agreement) gave the right of purchase of the aircraft to Gallen Limited, which then paid for the aircraft thus becoming the owner.

#### **6.5 Loan Agreement Between The Government Of Ghana And HBSC/ Gallen Limited**

The issue of the alleged acquisition of the aircraft using a loan from Midland Bank generated a lot of interest. The Committee took some time in discussing the issue. The Committee noted that the Government never entered into any contractual loan agreement with HBSC, and that the source



of money for the acquisition of the aircraft was the Midland Bank U.S, an affiliate of HBSC, which lent the money to Gallen Ltd (the company set up purposely by HBSC for the aircraft transaction). The Committee noted further that Gallen Ltd. was incorporated in the Cayman Islands.

**6.6 Why Government Did Not Source For a Loan For The Purchase Of The Aircraft**

There was concern as to why Government itself did not take a loan but rather allowed Gallen Ltd to contract the loan for the purchase of the aircraft. The Committee was informed that since the decision of the Government was to lease the aircraft, the question of a loan to purchase it did not arise.

**6.7 Condition Of The Gulf Stream III Aircraft**

The Committee noted that the aircraft, Gulf Stream III Model (GIII) with Serial No.493 and registration mark G540 is a used one and its choice was based on recommendations and expert advice from personnel of the Ghana Airforce and Wings Aviation who confirmed its suitability (air worthiness). The Committee had confirmation that the G.III can conveniently airlift 14 passengers and has a range of 3000 nautical miles i.e. Accra-London distance. The standard crew is 4 i.e. 2 pilots, 1 engine technician and 1 cabin attendant.

## **6.8 Additional Works On The Aircraft**

The attention of the Committee was drawn to additional installation works carried out on the aircraft by the Gulfstream Company with specification from the Government, based on the advice given by the experts in the aviation industry, to increase its capabilities and life span.

The experience with the F28 as well as knowledge of international standards prompted the Government to request the modification works. These included the following:

- (i) new avionic equipment e.g. radios, navigational equipment;
- (ii) interior changes e.g. upholstery, automatic cabin information system;
- (iii) exterior e.g. repainting;
- (iv) proximity warning system;
- (v) installation of Traffic Collision Avoidance System (TCAS);
- (vi) the frequency spacing was changed to 8.33 in consultation with the National Communication Authority;
- (vii) Global Navigation system was installed;
- (viii) Emergency locator transmitter was installed.

Also Members took note of the component of training the crew, maintenance of the aircraft and acquisition of spare parts. The Committee observed that

as part of the contract Agreement, 5 pilots and 5 technical engineers are to be trained. The Committee was informed that there are currently 3 avionics and 3 technical engineers manning the jet. There are also 2 pilots qualified to handle the jet. 2 additional pilots are however currently undergoing training. The Committee noted that the Gulf Stream Company is training one of the avionics technicians free of charge.

**6.9 Cost Of Aircraft**

The Committee noted that the total cost of the aircraft would be made up as follows:

Cost Price	-	US\$13,500,000.00
Provision for training of 5 pilots, 5 mechanics, spare parts and Modification works	-	US\$3,180,000.00
<b>Grand Total</b>	-	<b><u>US\$16,680,000.00</u></b>

**6.10 Down - Payment**

The Committee further noted that after the successful conclusion of the agreement, the Government made a deposit of US\$2,950,800.00 representing a down-payment of \$1,450,800 and 1<sup>st</sup> semi annual payment of \$1,500,000 in accordance with the terms of the lease agreement, to secure

the aircraft. The Committee was informed that subsequent payments would be provided for, under respective annual budgets. The period of the lease spans five (5) years.

#### **6.11 Priority Of Acquisition**

The Committee took note of the varied views expressed about the acquisition of the aircraft in terms of the current national priorities. Majority of the Members were of the view that it would be more cost effective and convenient to acquire a private aircraft for official state travels rather than using commercial flights. In this vein the acquisition of the GIII aircraft by the Government would enhance the effectiveness, efficiency and mobility of various Organs of the State. Others indicated that taking cognisance of the precarious state of the national economy at the moment, the decision to acquire the aircraft represented one of misplaced priority.

#### **7.0 RECOMMENDATIONS**

The Committee having thoroughly considered the Agreement between the Government of Ghana and Gallen Limited for the Lease of the Gulf Stream III Aircraft and noting that its obligations are quite different from a loan agreement recommends that:

- (i) The House put in place without delay, modalities under which such international business or economic transactions would be dealt with by the House as provided under article 181 (5) of the Constitution.
- (ii) Notwithstanding the recommendation in (i) above, majority of the Members of the Committee are satisfied that the Lease Agreement is for a good course and therefore recommends for approval by Parliament by a Resolution, the Lease Agreement between the Government of Ghana and Gallen Limited for the Lease of the Gulf Stream III Aircraft with manufacturer's serial No. 493 and registration mark G.540 for the Republic of Ghana in accordance with Article 181 (5) of the 1992 Constitution.

Respectfully submitted,

**HON. CDRE S.G. OBIMPEH (RTD)**  
**CHAIRMAN**

**CEPHAS AMEVOR**  
**CLERK TO THE COMMITTEE**

<sup>th</sup>  
**10 FEBRUARY, 2000**