

REPUBLIC OF KENYA



KENYA NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – SECOND SESSION - 2014

REPORT OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND
HOUSING

ON
THE CONSIDERATION OF BILATERAL AIR SERVICES AGREEMENTS BETWEEN THE
GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GOVERNMENTS OF THE
REPUBLICS OF ANGOLA; MOZAMBIQUE; CANADA AND THE STATE OF KUWAIT

CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

MARCH, 2014

TABLE OF CONTENTSPAGE

1.0	Preface	2
2.0	Consideration of Air Services Agreement between the Governments of the Republics of Kenya and Mozambique	9
3.0	Consideration of Air Services Agreement between the Governments of the Republics of Kenya and Mozambique	13
4.0	Consideration of Air Services Agreement between the Governments of the Republics of Kenya and Mozambique	17
5.0	Consideration of Air Services Agreement between the Governments of the Republics of Kenya and Mozambique	22
6.0	Committee Recommendations	26

Annexes

Bilateral Air Agreements
Minutes

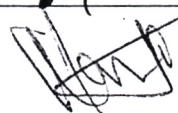
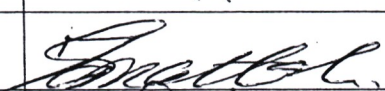
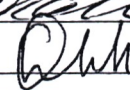
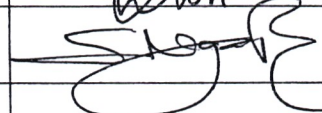
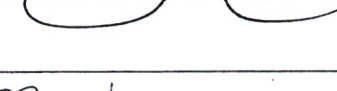
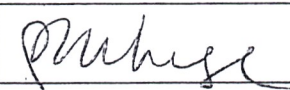
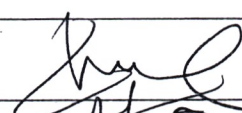
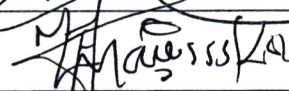
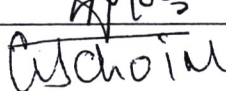
THE NATIONAL ASSEMBLY

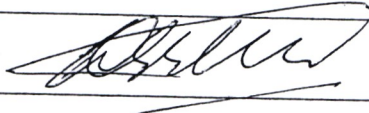
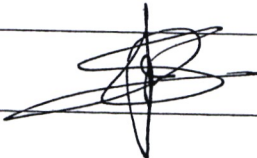
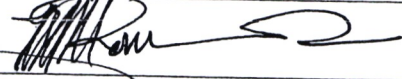
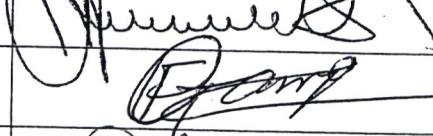
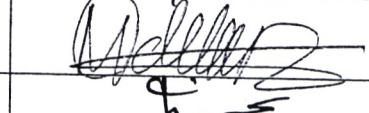
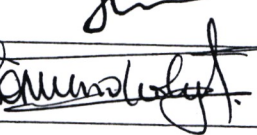
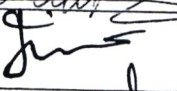
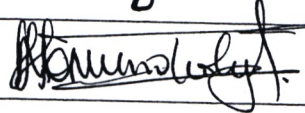


ELEVENTH PARLIAMENT – 2NDSESSION

DEPARTMENTAL COMMITTEE – L: TRANSPORT, PUBLIC WORKS AND HOUSING

ADOPTION OF THE REPORT ON THE CONSIDERATION OF BILATERAL AIR SERVICES AGREEMENTS BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GOVERNMENTS OF THE REPUBLIC OF ANGOLA; MOZAMBIQUE, CANADA AND THE STATE OF KUWAIT

NO.	MEMBER	SIGNATURE
1.	Hon. Maina Kamanda (Chairperson,) MP	
2.	Hon. (Eng.) Mohamed Maalim (Vice Chairperson) MP	
3.	Hon. KK Stephen Kinyanjui Mburu, MP	
4.	Hon. Christopher Omulele, MP	
5.	Hon. (Eng.) Stephen Ngare, MP	
6.	Hon. Johnson M. Naicca, MP	
7.	Hon. (Eng.) John Kiragu, MP	
8.	Hon. Stephen K. Manoti, MP	
9.	Hon. Joseph Lomwa, MP	
10.	Hon. (Capt.) Clement M. Wambugu, MP	
11.	Hon. Emmanuel Wangwe, MP	
12.	Hon. Grace J. Kipchoim, MP	
13.	Hon. Cecily M. Mbarire, MP	

14.	Hon. MishiJumaKhamis, MP	
15.	Hon. Peter Shehe,MP	
16.	Hon. Omar Mwinyi, MP	
17.	Hon. Suleiman Dori, MP	
18.	Hon. Edick O. Anyanga, MP	
19.	Hon. AdumaOwuor, MP	
20.	Hon. Gideon Konchella, MP	
21.	Hon. Abass Ahmed Ibrahim ,MP	
22.	Hon. Ali Wario, MP	
23.	Hon. David Kiaraho, MP	
24.	Hon. BarchileiKipruto, MP	
25.	Hon. Simon NyaundiOgari, MP	
26.	Hon. ChachuGanya, MP	
27.	Hon. Mathias N. Robi, MP	
28.	Hon. Mukwe James Lusweti, MP	
29.	Hon. Mark LomunokoLMPI	

Mr. Samuel Kalama – First Clerk Assistant

For: CLERK OF THE NATIONAL ASSEMBLY

1.0. PREFACE

Hon. Speaker,

The Departmental Committee No. L on Transport, Public Works and Housing is established pursuant to the provisions of Standing Order No.

216, with the following terms of reference: -

- a. to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
- b. to study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
- c. to study and review all legislation referred to it;
- d. to study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- e. to investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House or a Minister; and
- f. to make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

Hon. Speaker,

1.1. The Committee, according to Schedule II of the Standing Orders is mandated to consider the following **subjects**:-

- i) Transport
- ii) Roads
- iii) Public works
- iv) Construction

KNA: Report of the Departmental Committee on Transport, Public Works and Housing on the Consideration of Bilateral Air Services Agreements between the Government of the Republic of Kenya and the Governments of the Republic of Angola; Mozambique; Canada and The State of Kuwait.

- v) Maintenance of roads, rails and buildings, air, seaports and housing.

The Committee oversees the following Government Ministry and State Department, namely: -

- i. Ministry of Transport and Infrastructure;
- ii. State Department for Housing and Public Works

Hon. Speaker,

The Parliamentary Departmental Committee on Transport, Public Works and Housing was constituted on May 20th 2013 and its membership is as follows:-

- 1) The Hon. Maina Kamanda, M.P. – **(Chairperson)**
- 2) The Hon. Eng. Mahamud Maalim, M.P. – **(Vice Chairperson)**
- 3) The Hon. Eng. Stephen Ngare, M.P.
- 4) The Hon. Ali Wario, M.P.
- 5) The Hon. Arch. David Kiaraho, M.P.
- 6) The Hon. Cecily Mbarire, M.P.
- 7) The Hon. Capt. Clement Wambugu, M.P.
- 8) The Hon. Eng. John Kiragu, M.P.
- 9) The Hon. Gideon Konchella, M.P.
- 10) The Hon. Barchilei Kipruto, M.P.
- 11) The Hon. Mark Lomunokol, M.P.
- 12) The Hon. Grace Kipchoim, M.P.
- 13) The Hon. Mathias Robi, M.P.
- 14) The Hon. Joseph Lomwa, M.P.
- 15) The Hon. Peter Shehe, M.P.
- 16) The Hon. Stephen Manoti, M.P.
- 17) The Hon. Emmanuel Wangwe, M.P.
- 18) The Hon. K.K. Stephen Kinyanjui Mburu, M.P.
- 19) The Hon. Suleiman Dori, M.P.

- 20) The Hon. Edick Omondi Anyanga, M.P.
- 21) The Hon. Simon Nyaundi Ogari, M.P.
- 22) The Hon. Johnson Many Naicca, M.P.
- 23) The Hon. Mishi Juma, M.P.
- 24) The Hon. Aduma Owuor, M.P.
- 25) The Hon. Chachu Ganya, M.P.
- 26) The Hon. Omar Mwinyi, M.P.
- 27) The Hon. Ahmed Abbas Ibrahim, M.P.
- 28) The Hon. Omulele Christopher, M.P.
- 29) The Hon. Mukwe James Lusweti, M.P.

Hon. Speaker,

The Bilateral Air Services Agreements between the Government of the Republic of Kenya and the Government of The Republic of Angola; Mozambique; the Government of Canada and the State of Kuwait were tabled in the House by the Majority whip on Tuesday 19th November, 2013 and were subsequently committed to the Committee on Transport, Public Works and Housing.

Pursuant to Section 8 of the Treaty Making and Ratification Act, No. 45 of 2012 which provides for consideration of treaties by Parliament, the committee considered the Agreement forthwith.

Committee Meetings

The Committee held three Sittings during which the representatives of the Ministry of Transport and infrastructure appeared before the Committee and the considerations of the Agreements were conducted in accordance with the Treaty Making and Ratification Act, No. 45 of 2012.

Hon. Speaker,

In considering the Agreements, the Committee was guided by the following provisions of the Treaty Making and Ratification Act, No. 45 of 2012:-

- (1) Where the Cabinet approves the ratification of a treaty, the Cabinet Secretary shall submit the treaty and a memorandum on the treaty to the Speaker of the National Assembly.
- (2) A treaty approved for ratification by the Cabinet under section 7 of the Act shall, depending on its subject matter, be considered by both or the relevant House of Parliament paying due regard to Part 1 and Part 2 of Chapter Eight of the Constitution.
- (3) The relevant parliamentary committee shall, during its consideration of the Treaty, ensure public participation in the ratification process in accordance with laid down parliamentary procedures.
- (4) Parliament may approve the ratification of a treaty with or without reservations to specific provisions of the treaty.
- (5) A proposed reservation shall be introduced as a provision into the treaty in accordance with the procedure set out in the Standing Orders.
- (6) Where one House approves the ratification of a treaty and the other House refuses to approve the ratification of a treaty, the treaty shall be referred to the mediation committee in accordance with Article 112 of the Constitution.
- (7) Where the both Houses refuse to approve the ratification of a treaty, the Speakers of the two Houses shall submit their decision to the relevant Cabinet Secretary within fourteen days of the decision.
- (8) Nothing in this Act precludes the resubmission of a treaty to National Assembly and where applicable the Senate, where approval for the ratification of the treaty had been refused.
- (9) Parliament shall not approve the ratification of a treaty or part of it if its provisions are contrary to the Constitution, nor shall the House approve a reservation to a treaty or part of it if that reservation negates any of the provisions of the Constitution even if the reservation is permitted under the relevant treaty.
- (10) Approval for ratification
 - (1) Where the ratification of a treaty referred to in section 7 of the Act is approved by Parliament without any reservations to the treaty, the relevant Cabinet Secretary shall, within thirty days from the date of the approval of the ratification of treaty request the Cabinet Secretary to prepare the instrument of ratification of the treaty.
 - (2) Where a treaty referred to in section 7 is approved for ratification

KNA: Report of the Departmental Committee on Transport, Public Works and Housing on the Consideration of Bilateral Air Services Agreements between the Government of the Republic of Kenya and the Governments of the Republic of Angola; Mozambique; Canada and The State of Kuwait.

with reservations to some provisions of the treaty, the treaty shall be ratified with those reservations to the corresponding article in the treaty.

- (3) Where Parliament refuses to approve the ratification of the treaty referred to in section 7, the Government shall not ratify the treaty.”

Hon. Speaker,

Bilateral Air Agreement refers to an Agreement in which two nations sign to allow international commercial air transport services between their territories. Before an airline can operate international services to another country, the government must first negotiate a treaty level agreement with the destination country's government.

During the consideration of the Agreements the Committee established that the Bilateral Air Services Agreements/Arrangements contains the following provisions:-

1. Traffic rights that are the routes airline can fly, including cities that can be served within, between and beyond the bilateral partners.
2. Capacity- that is, the number of flights that can be operated or passengers that can be carried between the bilateral partners.
3. Ownership and control. As regards this, the Agreement elaborates on the number of airlines the bilateral partners can nominate to operate services and the ownership criteria airlines must meet to be designated under the bilateral Agreement.
4. Tariffs/prices. The Agreements require airlines to submit ticket prices to aeronautical Authorities for approval. In a nutshell, the Agreements contain Articles addressing competition policy, safety and security.

It is worth mentioning that international aviation is regulated by a complex web of over three thousand (3000) interlocking bilateral Air Service Agreements. In the recent years, groups of countries have come together to negotiate air services agreements commonly known as plurilateral agreements. However, the majority of them are bilateral air Service agreement.

Hon. Speaker

KNA: Report of the Departmental Committee on Transport, Public Works and Housing on the Consideration of Bilateral Air Services Agreements between the Government of the Republic of Kenya and the Governments of the Republic of Angola; Mozambique; Canada and The State of Kuwait.

Bilateral Air Services Agreements (BASA) are useful in that they are used by States to enable scheduled air carriers operate between two or more States. In summary, some of the benefits of BASAs include:

1. Allow scheduled air carriers to fly between territories – i.e. between Kenya and other states – hence leading to construction of required infrastructure/facilities such as airports that creates employment;
2. Facilitation of trade between States – ease of movement of persons and goods between Kenya and other States, that is more than 80% of tourists use air transport;
3. Creates cooperation arrangements between States' competition authorities hence facilitating joint assessment of alliances between Kenyan and other States' carriers – i.e. KQ/KLM;
4. Creates market access on flights between Kenya and other States thus creating a level playing field between Kenyan and other carriers;

Hon. Speaker,

The Committee therefore recommends that:-

Pursuant to Section 8 of the Treaty Making and Ratification Act No. 45 of 2012, the House Approves the ratification of:-

1. The Bilateral Air Services Agreement between the Government of the Republic of Kenya And the Government of the Republic of Mozambique;
2. The Bilateral Air Services Agreement between the Government of the Republic of Kenya and the Government of the Republic of Angola;
3. The Bilateral Air Services Agreement between the Government of the Republic of Kenya and the Government of Canada; and
4. The Bilateral Air Services Agreement between the Government of the Republic of Kenya and the State of Kuwait.

Hon. Speaker,

May I acknowledge that;

1. The Committee is grateful to the Office of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its Sittings.
2. On behalf of the Committee, and pursuant to Standing Order 199(5), it is now my pleasant duty to table in the House the **REPORT** of the Departmental Committee on Transport, Public Works and Housing on the consideration of Bilateral Air Services Agreements between the Government of the Republic of Kenya and the Governments of the Republics Of Angola; Mozambique; Canada and the State of Kuwait.

Signed..... 26/3  Date..... 26/3/2014.....

Hon. Maina Kamanda, EGH, MP,
Chairperson of the Departmental Committee on Transport, Public Works and
Housing

KNA: Report of the Departmental Committee on Transport, Public Works and Housing on the Consideration of Bilateral Air Services Agreements between the Government of the Republic of Kenya and the Governments of the Republic of Angola; Mozambique; Canada and The State of Kuwait.

2.0. COMMITTEE'S CONSIDERATION OF THE AIR SERVICES AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GOVERNMENT OF THE REPUBLIC OF MOZAMBIQUE

The Committee deliberated on the Agreement and the detailed analysis of the Article is provided below:

Article	Highlights	Comments
Preamble		
1	Definitions of terms	
2	Grant of rights-The Airline designated by each contracting party shall enjoy, while operating the agreed services on the specified route, the following rights: i) To fly without landing across the territory of other contracting party. ii) To make stops in the said territory for non-traffic purposes iii) To make stops in the points specified for that route in the schedules to the agreement for the purpose of putting down and taking up international traffic in passengers, cargo and mail, coming from or destined for the territory of that other contracting party.	The committee observed that this Article is in order since it does not confer privilege of taking up in the territory of the other contracting party, passengers and cargo destined for another point in the territory of that other contracting party.
3	Designation of airlines and operating authorizations-confers right to each contracting party to designate in writing to other contracting party one or more Airlines for the purpose of operating the agreed services on the specified routes, and to withdraw or alter such designations through diplomatic channels.	The Committee agreed to the Article since it confers right to each contracting party to write to the other party seeking designation of airlines for purpose of operating on the specified routes. The Article also provides timeline of 30 days for which such operating authorization shall be granted to the Airline designated.
4	Revocation and suspension of operating Authorization-it gives each contracting Party right to revoke or suspend an operating authorization for the exercise of the rights	The Committee agreed to it since it is essential in preventing infringements of laws or regulations of the

	specified in Article 2 of this Agreement by the designated Airline of other contracting Party, or to impose such condition as it may deem necessary on the exercise of these rights.	provisions of the agreement. Two, the right of revocation or suspension shall only be exercised only after consultation with the aeronautical authorities of other contracting Party.
5	Applicability of National Laws and Regulations-Party relating to admission to, flight within or departure from its territory of aircraft of its designated Airline engaged in international air navigation, or to the operation or navigation of such aircraft of the designated Airline of the other contracting party shall be complied with by such aircraft upon entering or departing from or while within the territory of that contracting party.	The Committee agreed to the Article. It recognizes the laws of the contracting party relating to admission to flight within or departure from its territory of aircraft of its designated Airline engaged in international air navigation.
6	Recognition of Certificate and Licences- Aeronautical authorities of each contracting Party have been granted right to withhold the authorization s referred to in Article 3 on designations of Airlines and operating authorizations of this Agreement.	The Article is essential in that it confers right to Aeronautical authorities such as the Kenya Civil Aviation (KCA) to revoke authorization or impose conditions if a designated airline fails to comply with the domestic laws and regulations applied by the aeronautical authorities of that contracting party.
7	Safety-Each party for the purpose of operating the air transportation, shall recognize as valid certificates of airworthiness, certificate of competency, and Licences issued or validated by other party.	The Article is in order since the issue of safety in the air transport is critical and need for parties to ensure airworthiness of the aircrafts.
8	Aviation Security-Affirmation of obligation s under international law to each other to protect the security of civil aviation against acts of unlawful interference.	The Committee agreed to the Article since it intends to ensure that contracting parties conforms to the provisions of the convention on offences and other acts committed on board Aircraft.
9	Tariffs- provides for tariffs to be charged by Airlines of contracting parties be subject to	The Committee agreed to the Article as it currently

KNA: Report of the Departmental Committee on Transport, Public Works and Housing on the Consideration of Bilateral Air Services Agreements between the Government of the Republic of Kenya and the Governments of the Republic of Angola; Mozambique; Canada and The State of Kuwait.

	approval by the aeronautical authorities of the contracting party from whose territory they are to be applied. In determining the tariffs the aeronautical authorities should take into account the cost of operation, reasonable profit, the prevailing conditions of competition and of the market as well as the interests of transport users.	worded. The Committee however, expressed concerns of the high charges levied by Airlines operators such as the Kenya Airways.
10	Customs duties and other charges-provides for all aircraft operated international air services by the designated Airline of either contracting party, as well as their regular equipment supplies of fuel and lubricants and aircraft stores on board such aircraft shall be exempted from all customs duties, taxes, inspection fees and other similar charges on arriving in the territory of the other contracting party, provided equipment, and supplies remain on board the aircraft up to such time as they are re-exported or are used on the journey performed over that territory.	The Committee agreed to the Article as currently worded.
11	Commercial Activities-It allows for designated airlines of both contracting parties to establish in the territory of other contracting party offices for the promotion of air transportation and sale tickets as well as other facilities required for the provision of air transport.	The Committee observed that the article is critical since it intends to provide for the establishment of offices and other facilities to facilitate provision of air transportation.
12	Computer Reservation system (CRS)-Provides that contracting Parties do agree on the interest of consumers of air transport products be protected from misuse of such information including misleading presentation thereof.	The Committee agreed to the Article it as worded.
13	Submission of time table-provides for each designated airline of each contracting party submit to the Aeronautical authority of other contracting party for approval , thirty days in advance the timetable of its intended services, specifying the frequency type of aircraft, configuration and number of seats to be made available to the public.	The Committee acceded to it as worded.
14	Frequencies-This Article provides for fair and equal opportunity for the designated airlines of both contracting Parties to operate the agreed	The Committee agreed to the Article as currently worded.

	services on the specified routes.	
15	Submissions of statistics-This article provides for each aeronautical authorities of one Contracting Party to supply 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 operations of the designated Airline of the Contracting Party.	The Committee agreed to the Article as currently worded.
16	Currency Exchange-It provides for each Contracting Party to undertake to grant to the designated airline of the other Contracting Party, the rights to remit to its head office at the prevailing or current rate of exchange in accordance with the respective applicable domestic law governing current payments, the excess of receipts over expenditure earned by such airline in connection with the agreed services on the specified routes, according to the exchange control regulations in force, in the territory of each contracting Party.	The Committee agreed to the Article as currently worded.
17	Settlement of Disputes- Article provides for the mechanism in which the contracting parties will settle disputes arising from the interpretation or application of the agreement. It recognizes negotiation as the first mechanism to settle such disputes when arises.	The Committee agreed to the Article as currently worded.
18	Consultations- it provides for exchange of views between the aeronautical authorities of the Contracting Parties with a view to achieve closer cooperation and agreement in all matters pertaining to the application of this agreement.	The Committee agreed to the Article as currently worded.
19	Registration of Agreement and Amendments-It provides for all Agreements as well as Amendments thereto to be registered with the international Civil Aviation Organization	The Committee agreed to the Article as currently worded.
20	Conformity with Multilateral Conventions- the Agreement and its Annex shall be deemed to be amended to the extent necessary so as to conform to any multilateral convention, which may become binding on both Contracting Parties.	The Committee agreed to the Article as currently worded.
21	Termination- It provides for each Contracting	The Committee agreed to

KNA: Report of the Departmental Committee on Transport, Public Works and Housing on the Consideration of Bilateral Air Services Agreements between the Government of the Republic of Kenya and the Governments of the Republic of Angola; Mozambique; Canada and The State of Kuwait.

	Party at any time to give notice to the other Contracting Party of its decision to terminate this Agreement. Moreover, such notice need to be communicated to the International Civil Aviation Organization	the Article as currently worded.
22	Entry into force	The Committee agreed to the Article as worded.

The Committee observed that:-

- (i) The Agreements lack Articles that provide for review and validity of the bilateral Agreements.
- (ii) The bilateral Agreement lacks provisions for the protection of passengers and cargo.

3.0. COMMITTEE'S CONSIDERATION OF THE AIR SERVICES AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GOVERNMENT OF THE REPUBLIC OF ANGOLA

The Committee deliberated on the Agreement and the detailed analysis of the Articles is as provided below:

Article	Highlights	Comments
Preamble		
1	Definitions of terms	
2	Grant of rights-The Airline designated by each contracting party shall enjoy, while operating the agreed services on the specified route, the following rights: i) To fly without landing across the territory of other contracting party. ii) To make stops in the said territory for non-traffic purposes	The committee observed that this Article is in order since it does not confer privilege of taking up in the territory of the other contracting party, passengers and cargo destined for another point in the territory of that other contracting party.
3	Designation of airlines and authorizations of Airlines-confers right to each contracting party to designate in writing to other contracting party one or more Airlines for the purpose of	The Committee agreed to the Article since it confers right to each contracting party to write to the other

	operating the agreed services on the specified routes, and to withdraw or alter such designations through diplomatic channels.	party seeking designation of airlines for purpose of operating on the specified routes. The Article also provides timeline of 30 days for which such operating authorization shall be granted to the Airline designated.
4	suspension and Revocations-it gives each contracting Party right to revoke or suspend an operating authorization for the exercise of the rights specified in Article 2 of this Agreement by the designated Airline of other contracting Party, or to impose such condition as it may deem necessary on the exercise of these rights.	The Committee agreed to the Article since it is essential in preventing infringements of laws or regulations of the provisions of the agreement. Two, the right of revocation or suspension shall only be exercised only after consultation with the aeronautical authorities of other contracting Party.
5	Applicability of National Laws and Regulations-Party relating to admission to, flight within or departure from its territory of aircraft of its designated Airline engaged in international air navigation, or to the operation or navigation of such aircraft of the designated Airline of the other contracting party shall be complied with by such aircraft upon entering or departing from or while within the territory of that contracting party.	The Committee agreed to the Article. It recognizes the laws of the contracting party relating to admission to, flight within or departure from its territory of aircraft of its designated Airline engaged in international air navigation.
6	Recognition of Certificate and Licences-Aeronautical authorities of each contracting Party have been granted right to withhold the authorizations referred to in Article 3 on designations of Airlines and operating authorizations of this Agreement.	The Article is essential in that it confers right to Aeronautical authorities such as the Kenya Civil Aviation (KCA) to revoke authorization or impose conditions if a designated airline fails to comply with the domestic laws and regulations applied by the aeronautical authorities of that contracting party.
7	User Charges- user charges may reflect, but shall not exceed, the full cost to the competent	Agreed to the Article as currently worded.

KNA: Report of the Departmental Committee on Transport, Public Works and Housing on the Consideration of Bilateral Air Services Agreements between the Government of the Republic of Kenya and the Governments of the Republic of Angola; Mozambique; Canada and The State of Kuwait.

	charging authorities of providing appropriate airport and navigation facilities and services, and may provide for a reasonable rate of return on assets after depreciation.	
8	Exemption from customs duties, inspection fees and other similar charges- provides for all aircraft operated international air services by the designated Airline of either contracting party, as well as their regular equipment supplies of fuel and lubricants and aircraft stores on board such aircraft shall be exempted from all customs duties, taxes, inspection fees	The Committee agreed to the Article as currently worded.
9	Principles governing the operation of the Agreed Services- provides that there shall be fair and equal opportunity for the designated Airlines of both Contracting Parties to operate the Agreed Services on the specified Routes	The Committee agreed to the Article as currently worded.
10	Tariffs- provides for tariffs to be charged by Airlines of contracting parties be subject to approval by the aeronautical authorities of the contracting party from whose territory they are to be applied. In determining the tariffs the aeronautical authorities should take into account the cost of operation, reasonable profit, the prevailing conditions of competition and of the market as well as the interests of transport users.	The Committee agreed to the Article as it currently worded. The Committee however, expressed concerns of the high charges levied by Airlines operators such as the Kenya Airways.
11	Submission of time tables-provides for each designated airline of each contracting party submit to the Aeronautical authority of other contracting party for approval , thirty days in advance the timetable of its intended services, specifying the frequency type of aircraft, configuration and number of seats to be made available to the public.	The Committee agreed to the Article as Worded.
12	Aviation Security-Affirmation of obligation s under international law to each other to protect the security of civil aviation against acts of unlawful interference	The Committee agreed to the Article since it intends to ensure that contracting parties conforms to the provisions of the convention on offences and other acts committed on board Aircraft.
13	Aviation Safety-provides for Contracting Parties	Agreed to the Article since

	to request for consultations at any time concerning the safety standards by the other contracting Party relating to aeronautical facilities, aircrew, aircraft and the operation of aircraft.	the issue of safety in the air transport is critical and need for parties to ensure airworthiness of the aircrafts and safety standards be maintained all the time.
14	Provision of statistics-This article provides for each aeronautical authorities of one Contracting Party to supply 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 operations of the designated Airline of the Contracting Party	The Committee agreed to the Article as currently worded.
15	Earnings-It provides for each Contracting Party grants to the designated Airline of the Contracting Party the right of free transfer excess of receipts over expenditure earned by that airline in its territory in connection with the carriage of passengers, baggage, mail and cargo	The Committee agreed to the Article as currently worded.
16	Commercial Activities-It allows for designated airlines of both contracting parties to establish in the territory of other contracting party offices for the promotion of air transportation and sale tickets as well as other facilities required for the provision of air transport.	The Committee observed that the article is critical since it intends to provide for the establishment of offices and other facilities to facilitate provision of air transportation.
17	Settlement of Disputes- Article provides for the mechanism in which the contracting parties will settle disputes arising from the interpretation or application of the agreement. It recognizes negotiation as the first mechanism to settle such disputes when arises.	The Committee agreed to the Article as currently worded.
18	Consultations- it provides for exchange of views between the aeronautical authorities of the Contracting Parties with a view to ensuring the implementation of and satisfactory compliance with, the provisions of this agreement and the Annex thereto.	The Committee agreed to the Article as currently worded.
19	Amendment-If contracting Parties desires to amend the Agreement , or any provision thereof, such amendment , if agreed between the Contracting Parties, shall enter into force	The Committee agreed to the Article as currently worded.

KNA: Report of the Departmental Committee on Transport, Public Works and Housing on the Consideration of Bilateral Air Services Agreements between the Government of the Republic of Kenya and the Governments of the Republic of Angola; Mozambique; Canada and The State of Kuwait.

	when confirmed by an exchange of diplomatic notes	
20	Entry into force	The Committee agreed to the Article as currently worded.
21	Registration of Agreement with the International Civil Aviation Organization-It provides for the Agreement as well as Amendments thereto to be registered with the international Civil Aviation Organization	The Committee agreed to the Article as currently worded.
22	Termination- Either Contracting Party may at any time give notice in writing through diplomatic channels to the other contracting Party of its intention to terminate the Agreement. Such notice shall be communicated to the International Civil Aviation Organization. In such case the Agreement shall terminate twelve months after the date of receipt of the notice by the contracting party.	The Committee agreed to the Article as worded.
23	Signature of Agreement	The Committee agreed to the Article as worded.

4.0. COMMITTEE'S CONSIDERATION OF THE AIR SERVICES AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GOVERNMENT OF CANADA

The Committee deliberated on the Agreement and the detailed analysis of the Articles is provided below:-

Article	Highlights	Comments
Preamble		
1	Headings and Definitions	
2	Grant of rights-The Airline designated by each contracting party shall enjoy, while operating the agreed services on the specified route, the following rights: iv) To fly without landing across the territory of other contracting party. v) To make stops in the said territory for non-traffic purposes vi) To make stops in the points in the territory on the routes specified in the Agreement for the purpose of taking up	The committee observed that this Article is in order since it does not confer privilege of taking up in the territory of the other contracting party, passengers and cargo destined for another point in the territory of that other contracting party.

KNA: Report of the Departmental Committee on Transport, Public Works and Housing on the Consideration of Bilateral Air Services Agreements between the Government of the Republic of Kenya and the Governments of the Republic of Angola; Mozambique; Canada and The State of Kuwait.

	and discharging international traffic in passengers, cargo and mail separately or in combination.	
3	Designation -confers right to each contracting party to designate, by diplomatic note, an airline or airlines to operate the agreed services on the routes specified in the Agreement for that contracting Party and to withdraw a designation or to substitute another airline for one previously designated.	The Committee agreed to the Article since it confers right to each contracting party to write to the other party seeking designation of airlines for purpose of operating on the specified routes.
4	Authorization-provides for aeronautical authorities of the other Contracting Party to issue without delay to the airline so designated the required authorization to operate the agreed services for which that airline has been designated upon receipt of a notice of designation or substitution pursuant to Article 3 of the Agreement .	The Committee agreed to it as currently worded.
5	Withholding, Revocation, suspension and limitation of Authorization- Confers aeronautical authorities of each Contracting Party right to withhold the authorization referred to Article 4 with respect to an airline designated by the Contracting Party, and to revoke , suspend or impose conditions on such authorizations, temporarily or permanently.	The Committee agreed to the Article. It allows aeronautical authorities of Contracting Party powers to revoke authorization in the event of failure by an airline to qualify under the laws and regulations applied by the aeronautical authorities of the Contracting Parties.
6	Application of laws-Laws, regulations and procedures relating to admission to, flight within or departure from its territory of aircraft of its designated Airline engaged in international air navigation, or to the operation or navigation of such aircraft of the designated Airline of the other contracting party shall be complied with by such aircraft upon entering or departing from or while within the territory of that contracting party.	The Committee agreed to the Article. It recognizes the laws of the contracting party relating to admission to, flight within or departure from its territory of aircraft of its designated Airline engaged in international air navigation.
7	Safety Standards, Certificates and Licences-Each party for the purpose of operating the air transportation, shall recognize as valid certificates of airworthiness, certificate of competency, and Licences issued or validated	The Article is in order since the issue of safety in the air transport is critical and need for parties to ensure airworthiness of the aircrafts.

KNA: Report of the Departmental Committee on Transport, Public Works and Housing on the Consideration of Bilateral Air Services Agreements between the Government of the Republic of Kenya and the Governments of the Republic of Angola; Mozambique; Canada and The State of Kuwait.

	by other party.	
8	Aviation Security-Affirmation of obligations under international law to each other to protect the security of civil aviation against acts of unlawful interference.	The Committee agreed to the Article since it intends to ensure that contracting parties conforms to the provisions of the convention on offences and other acts committed on board Aircraft.
9	Customs Duties and other Charges- provides for all aircraft operated international air services by the designated Airline of either contracting party, as well as their regular equipment supplies of fuel and lubricants and aircraft stores on board such aircraft shall be exempted from all customs duties, taxes, inspection fees and other similar charges on arriving in the territory of the other contracting party, provided equipment, and supplies remain on board the aircraft up to such time as they are re-exported or are used on the journey performed over that territory.	The Committee agreed to it as worded.
10	Statistics-The aeronautical authorities of each Contracting Party shall provide, or shall cause their designated airlines to provide, the aeronautical authorities of the other Contracting Party, upon request periodic or other statement of statistics for the purpose of reviewing the operation of the agreed services.	The Committee agreed to it as worded.
11	Tariffs-It recognizes that the primary consideration for establishing prices for transportation on the agreed services is market forces, however the Contracting parties shall permit the tariffs to be developed by the designated airlines individually or, or at the option of the designated airlines, through coordination with each other or with other airlines	The Committee agreed to the Article as it currently worded. The Committee opined that market forces, i.e. demand and supply, are critical in setting prices for air transportation.
12	Availability of Airports and Aviation Facilities and Services-Each Contracting Party to ensure that airports, airways, air traffic control and air navigation services, aviation security and other related facilities that are provided in the territory of one Contracting Party shall be	The Committee agreed to the Article as currently worded.

	available for use by the airlines of other Contracting Party on terms no less favourable than the most favourable terms available to any other airline at the time arrangements for use are made.	
13	Charges for Airports and aviation Facilities and Services-Provides for each Contracting Party to ensure that user charges that may be imposed by the competent bodies of each Contracting Party on the airlines of the Contracting Party for the use of airport, aviation security and related facilities and services reasonable and unjustly discriminatory.	The Committee agreed to the Article as currently worded.
14	Capacity-provides for each Contracting Party to allow for a fair and equal opportunity for the designated airlines of both Contracting Parties to provide the agreed services on the routes specified in the Agreement.	The Committee agreed to it as worded.
15	Airline Representatives-Each Contracting Party to permit designated airlines of the other Contracting Party, on the basis of reciprocity into and to maintain in its territory their representatives and commercial, operational and technical staff as required in connection with the operation of the agreed services.	The Committee agreed to it as worded.
16	Ground handling-provides for each Contracting Party to permit the designated airlines of the other Contracting Party when operating in its territory on the basis of reciprocity, to perform their own ground handling in its territory and, at their option, to have ground handling service provided in whole or in part by any agent authorized by its competent authorities to provide such services.	The Committee agreed to the Article as currently worded.
17	Sales and transfer of Funds-Each Contracting Party shall permit the designated airlines of the other Contracting Party to i) Engage in sale of air transportation in its territory directly or, or at the discretion of the designated airlines, through their agents. ii) Convert and remit abroad, on demand funds obtained in the normal course of their operations.	The Committee agreed to the Article as currently worded.

KNA: Report of the Departmental Committee on Transport, Public Works and Housing on the Consideration of Bilateral Air Services Agreements between the Government of the Republic of Kenya and the Governments of the Republic of Angola; Mozambique; Canada and The State of Kuwait.

	iii) Pay local expenses, including purchases of fuel, in its territory in local currency. Or at the discretion of the designated airlines, in freely convertible currencies.	
18	Taxation-profits or income from the operation of aircraft in international traffic derived by an airline of a Contracting Party, including participation in inter-airline agreements or joint business ventures shall be exempt from any tax on profits or income imposed by the government of the other Contracting Party.	The Committee agreed to the Article as currently worded.
19	Applicability to Charter/ Non scheduled Flights-Provisions contained in the Agreement shall apply to Charters and other non-scheduled flights	The Committee agreed to the Article as currently worded.
20	Consultations- it provides for either Contracting Party at any time request through diplomatic channels consultations on the implementation, interpretation, application or amendment of the Agreement or compliance with the Agreement. Such consultations, which may be between aeronautical authorities of the Contracting Parties, will begin within a period of sixty (60) days from the date the other Contracting Party receives a written request.	The Committee agreed to the Article as currently worded.
21	Amendment-Provides for any amendment to the Agreement is mutually determined pursuant to consultations held in conformity with Article 20 of the Agreement, which shall come into force on the date of the last written notification, through diplomatic channels, by which Contracting Parties have notified each other that all necessary internal procedures for entry into force of the amendment have been completed.	The Committee agreed to the Article as currently worded.
22	Settlement of Disputes- Article provides for the mechanism in which the contracting parties will settle disputes arising from the interpretation or application of the agreement. It recognizes consultations as the first mechanism to settle such disputes.	The Committee agreed to the Article as currently worded.
23	Termination- It provides for each Contracting Party at any time to give notice to the other Contracting Party of its decision to terminate	The Committee agreed to the Article as currently worded.

	this Agreement. Moreover, such notice need to be communicated to the International Civil Aviation Organization	
24	Registration with ICAO-It provides for all Agreements as well as Amendments thereto to be registered with the international Civil Aviation Organization	The Committee agreed to the Article as currently worded.
25	Multilateral Conventions-if a multilateral convention comes into force in respect of both Contracting Parties, consultations may be held in accordance with Article 20 of the Agreement with a view to determining the extent to which the Agreement is affected by the provisions of the multilateral convention.	The Committee agreed to the Article as currently worded.
26	Entry into Force-The Agreement shall only enter into force on the date when of the last notification, through diplomatic channels , by which contracting Parties shall have notified each other that all necessary internal procedures for entry into force of the Agreement have been completed.	The Committee agreed to the Article as currently worded.

5.0. COMMITTEE'S CONSIDERATION OF THE AIR SERVICES AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE STATE OF KUWAIT

The Committee deliberated on the Agreement and the detailed analysis of the Articles is provided below:-

Article	Highlights	Comments
Preamble		
1	Definitions of terms	
2	Applicability of Rights of the Chicago Conventions-provisions of the Agreement shall be subject to the provisions of the Chicago Conventions so long as those provisions are applicable to international air service	The Committee agreed to the Article as currently worded
3	Grant of rights and Privileges-The Airline designated by each contracting party shall enjoy, while operating the agreed services on the specified route, the following rights:	The committee observed that this Article is in order since it does not confer privilege of taking up in the

KNA: Report of the Departmental Committee on Transport, Public Works and Housing on the Consideration of Bilateral Air Services Agreements between the Government of the Republic of Kenya and the Governments of the Republic of Angola; Mozambique; Canada and The State of Kuwait.

	i) To fly without landing across the territory of other contracting party. ii) To make stops in the said territory for non-traffic purposes iii) To make stops in the points specified for that route in the schedules to the agreement for the purpose of putting down and taking up international traffic in passengers, cargo and mail, coming from or destined for the territory of that other contracting party.	territory of the other contracting party, passengers and cargo destined for another point in the territory of that other contracting party.
4	Designation and authorizations-confers right to each contracting party to designate in writing to other contracting party one or more Airlines for the purpose of operating the agreed services on the specified routes, and to withdraw or alter such designations through diplomatic channels.	The Committee agreed to the Article since it confers right to each contracting party to write to the other party seeking designation of airlines for purpose of operating on the specified routes. The Article also provides timeline of 30 days for which such operating authorization shall be granted to the Airline designated.
5	Revocation, limitation and imposition of conditions-it gives each contracting Party right to revoke or suspend an operating authorization for the exercise of the rights specified in Article 2 of this Agreement by the designated Airline of other contracting Party, or to impose such condition as it may deem necessary on the exercise of these rights.	The Committee agreed to the Article since it is essential in preventing infringements of laws or regulations of the provisions of the agreement. Two, the right of revocation or suspension shall only be exercised only after consultation with the aeronautical authorities of other contracting Party.
6	Airports and facility user charges- provides that neither part shall impose or permit to be imposed on the designated airlines of the other Party user charges higher than those imposed on its own airlines operating similar international services.	The Committee agreed to the Article as currently worded
7	Exemptions from Customs duties and other Charges-Aircraft operated in international air services by designated airline or airlines of	The Committee agreed to the Article as currently worded

	either Contracting Party shall be relieved from all customs duties, national excise taxes and similar national custom inspection fees on items used for repair, maintenance, passenger handling equipment, cargo handling equipment and among others.	
8	Financial provisions-Either contracting Party undertakes to grant the designated airlines of the other Contracting Party the right of free transfer, at the applicable rate of exchange, of the excess, of receipts over expenditure.	The Committee agreed to the Article as currently worded
9	Commercial Activities-It allows for designated airlines of both contracting parties to establish in the territory of other contracting party offices for the promotion of air transportation and sale tickets as well as other facilities required for the provision of air transport.	The Committee agreed to the Article as currently worded
10	Entry and Clearance Regulations-Laws, rules and regulations relating to admission to, flight within or departure from its territory of aircraft of its designated Airline engaged in international air navigation, or to the operation or navigation of such aircraft of the designated Airline of the other contracting party shall be complied with by such aircraft upon entering or departing from or while within the territory of that contracting party.	The Committee agreed to the Article. It recognizes the laws of the contracting party relating to admission to flight within or departure from its territory of aircraft of its designated Airline engaged in international air navigation.
11	Capacity provisions-Each designated airline shall have a fair and equal opportunity to compete in providing the international air transportation governed by the Agreement.	The Committee agreed to the Article as currently worded
12	Time-Table submission (Slot)-Designated airlines are required to submit to the relevant authorities of the Contracting Parties not later than sixty (60) days prior to the initiation of the agreed services on the specified routes in accordance with Article 3 of the Agreement, the type of the service, aircraft, and the time slots.	The Committee agreed to the Article as currently worded
13	Information and statistics- This article provides for each aeronautical authorities of one Contracting Party to supply the aeronautical authorities of the other Contracting Party at their request such periodic or other statements	The Committee agreed to the Article as currently worded

KNA: Report of the Departmental Committee on Transport, Public Works and Housing on the Consideration of Bilateral Air Services Agreements between the Government of the Republic of Kenya and the Governments of the Republic of Angola; Mozambique; Canada and The State of Kuwait.

14	Establishment of Tariffs-Each Contracting Party to allow tariffs for air services to be established by each designated airline based on commercial considerations in the market place, including the cost of operation, the characteristics of the service among other factors	The Committee agreed to the Article as currently worded
15	Aviation Safety-Each Contracting party may request consultations at any time concerning safety standards in any area relating to aircrew, aircraft or their operation adopted by the other Contracting party.	The Article is in order since the issue of safety in the air transport is critical and need for parties to ensure airworthiness of the aircrafts
16	Aviation Security- Affirmation of obligation s under international law to each other to protect the security of civil aviation against acts of unlawful interference.	The Committee agreed to the Article since it intends to ensure that contracting parties conforms to the provisions of the convention on offences and other acts committed on board Aircraft.
17	Consultations and Modifications- it provides for exchange of views between the aeronautical authorities of the Contracting Parties with a view to achieve closer cooperation and agreement in all matters pertaining to the application of this agreement.	The Committee agreed to the Article as currently worded
18	Settlement of Disputes- Article provides for the mechanism in which the contracting parties will settle disputes arising from the interpretation or application of the agreement. It recognizes negotiation as the first mechanism to settle such disputes when arises.	The Committee agreed to the Article as currently worded
19	Termination- It provides for each Contracting Party at any time to give notice to the other Contracting Party of its decision to terminate this Agreement. Moreover, such notice need to be communicated to the International Civil Aviation Organization	The Committee agreed to the Article as currently worded
20	Conformity with Multilateral Conventions- the Agreement and its Annex shall be deemed to be amended to the extent necessary so as to conform to any multilateral convention, which may become binding on both Contracting Parties.	The Committee agreed to the Article as currently worded

21	Registration-Registration of the Agreement with the International Civil Aviation organization	The Committee agreed to the Article as currently worded
22	Titles- provides for insertion of titles in the Agreement at the head of each Article for purpose of reference and convenience.	The Committee agreed to the Article as currently worded
23	Entry into force- Agreement shall only enter into force when all the internal legal requirements by each Contracting Party have been fulfilled, and notification of each other of the fulfillment of such requirements through exchange of diplomatic notes.	The Committee agreed to the Article as currently worded

6.0. COMMITTEE RECOMMENDATIONS

Pursuant to Section 8 of the Treaty Making and Ratification Act No. 45 of 2012, the Committee recommends that the House Approves the ratification of:-

1. The Bilateral Air Services Agreement between the Government of the Republic of Kenya And the Government of the Republic of Mozambique (attached hereto);
2. The Bilateral Air Services Agreement between the Government of the Republic of Kenya and the Government of the Republic of Angola (attached hereto);
3. The Bilateral Air Services Agreement between the Government of the Republic of Kenya and the Government of Canada (attached hereto); and
4. The Bilateral Air Services Agreement between the Government of the Republic of Kenya and the State of Kuwait (attached hereto)

End

KNA: Report of the Departmental Committee on Transport, Public Works and Housing on the Consideration of Bilateral Air Services Agreements between the Government of the Republic of Kenya and the Governments of the Republic of Angola; Mozambique; Canada and The State of Kuwait.

MINUTES OF THE TWELFTH SITTING OF THE TRANSPORT, PUBLIC WORKS AND HOUSING COMMITTEE HELD ON TUESDAY 18TH FEBRUARY, 2014 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS, AT 11: 00AM

PRESENT:

The following Members of the Committee were present: -

1. Hon. Maina Kamanda, M.P. –Chairperson
2. Hon. (Eng.) Mahamud Maalim, M.P. - Vice-Chairperson
3. Hon. K.K. Stephen Kinyanjui Mburu, M.P.
4. Hon. Omulele Christopher, M.P.
5. Hon. (Eng.) Stephen Ngare, M.P.
6. Hon. Grace Kipchoim, M.P.
7. Hon. (Capt.) Clement Wambugu, M.P.
8. Hon. Johnson Many Naicca, M.P.
9. Hon. Chachu Ganya, M.P.
10. Hon. Emmanuel Wangwe, M.P.
11. Hon. Mishi Juma, M.P.
12. Hon. Mathias Robi, M.P.
13. Hon. Ahmed Abbas Ibrahim, M.P.
14. Hon. Peter Shehe, M.P.
15. Hon. Cecily Mbarire, M.P.

ABSENT WITH APOLOGY

1. Hon. Suleiman Dori, M.P.
2. Hon. Mukwe James Luswet, M.P.
3. Hon. Ali Wario, M.P.
4. Hon. Simon Nyaundi Ogari, M.P.
5. Hon. Gideon Konchella, M.P.
6. Hon. Aduma Owuor, M.P.
7. Hon. Omar Mwinyi, M.P.
8. Hon. Barchilei Kipruto, M.P.
9. Hon. Eng. John Kiragu, M.P.
10. Hon. Joseph Lomwa, M.P.
11. Hon. Mark Lomunokol, M.P.
12. Hon. Stephen Manoti, M.P.
13. Hon. Edick Omondi Anyanga, M.P.
14. Hon. (Arch.) David Kiaraho, M.P.

IN ATTENDANCE

Mr. Samuel Kalama

- NATIONAL ASSEMBLY

- First Clerk Assistant

IN ATTENDANCE

Mr. Benjamin Enyenze

- MINISTRY OF TRANSPORT & INFRASTRUTURE

-Senior Air Transport Officer

MIN/DC-L/2014/043

PRELIMINARIES

The Chair called the meeting to order at 11.00am and opened it with a word of prayer.

MIN/DC-L/NO/2014/044

CONSIDERATION OF THE BILATERAL AIR
SERVICES AGREEMENTS BETWEEN THE
GOVERNMENT OF THE REPUBLIC OF KENYA
AND THE GOVERNMENT OF THE REPUBLIC
OF ANGOLA; MOZAMBIQUE AND THE
GOVERNMENT OF CANADA

The Chair invited the representative from the Ministry of Transport and Infrastructure to brief the Committee on the Bilateral Air Agreements. The Committee was briefed as follows:-

That:-

1. Bilateral Air Agreements are drafted by stakeholders from various ministries and organizations which include but not limited to; the office of the Attorney General, Ministry of Foreign Affairs, Ministry of Transport and Infrastructure, Kenya Civil Aviation Authority, Kenya Airways Limited, Kenya Airports Authority and the Ministry of Tourism. He further informed the Committee that the Tourism Board of Kenya is now part of the team that is involved in the drafting of the agreements.
2. The drafting of the bilateral agreement is guided by:-
 - (i) Templates from the International Civil Aviation organization(ICAO)
 - (ii) Legal Notice No. 2 from COMESA
3. Bilateral Air Agreements more often than not does not cover the regulations of Chartered planes. They are left out to the operators.

Air Service Agreement between the Government of the Republic of Kenya and the Government of the Republic of Mozambique

The following is Article by Article Analysis of the Agreement by the Committee:

Article	Highlights	Comments
Preamble		
1	Definitions of terms	
2	Grant of rights-The Airline designated by each contracting party shall enjoy, while operating the agreed services on the specified route, the following rights: i) To fly without landing across the territory of other contracting party. ii) To make stops in the said territory for non-traffic purposes iii) To make stops in the points specified for that route in the schedules to the agreement for the purpose of putting down and taking up international traffic in passengers, cargo and mail, coming from or destined for the territory of that other contracting party.	The committee observed that this Article is in order since it does not confer privilege of taking up in the territory of the other contracting party, passengers and cargo destined for another point in the territory of that other contracting party.
3	Designation of airlines and operating authorizations-confers right to each contracting party to designate in writing to other contracting party one or more Airlines for the purpose of operating the agreed services on the specified routes, and to withdraw or alter such designations through diplomatic channels.	The Committee acceded to the Article since it confers right to each contracting party to write to the other party seeking designation of airlines for purpose of operating on the specified routes. The Article also provides timeline of 30 days for which such operating authorization shall be granted to the Airline designated.
4	Revocation and suspension of operating Authorization-it gives each contracting Party right to revoke or suspend an operating authorization for the exercise of the rights specified in Article 2 of this Agreement by the designated Airline of other contracting Party, or to impose such condition as it may deem necessary on the exercise of these rights.	The Committee acceded to it since it is essential in preventing infringements of laws or regulations of the provisions of the agreement. Two, the right of revocation or suspension shall only be exercised only after consultation with the aeronautical authorities of

		other contracting Party.
5	Applicability of National Laws and Regulations- Party relating to admission to, flight within or departure from its territory of aircraft of its designated Airline engaged in international air navigation, or to the operation or navigation of such aircraft of the designated Airline of the other contracting party shall be complied with by such aircraft upon entering or departing from or while within the territory of that contracting party.	The Committee acceded to the Article. It recognizes the laws of the contracting party relating to admission to , flight within or departure from its territory of aircraft of its designated Airline engaged in international air navigation.
6	Recognition of Certificate and Licences- Aeronautical authorities of each contracting Party have been granted right to withhold the authorizations referred to in Article 3 on designations of Airlines and operating authorizations of this Agreement.	The Article is essential in that it confers right to Aeronautical authorities such as the Kenya Civil Aviation (KCA) to revoke authorization or impose conditions if a designated airline fails to comply with the domestic laws and regulations applied by the aeronautical authorities of that contracting party.
7	Safety-Each party for the purpose of operating the air transportation, shall recognize as valid certificates of airworthiness, certificate of competency, and Licences issued or validated by other party.	The Article is in order since the issue of safety in the air transport is critical and need for parties to ensure airworthiness of the aircrafts.
8	Aviation Security-Affirmation of obligations under international law to each other to protect the security of civil aviation against acts of unlawful interference.	The Committee acceded to the Article since it intends to ensure that contracting parties conforms to the provisions of the convention on offences and other acts committed on board Aircraft.
9	Tariffs- provides for tariffs to be charged by Airlines of contracting parties be subject to approval by the aeronautical authorities of the contracting party from whose territory they are to be applied. In determining the tariffs the aeronautical authorities should take into account the cost of operation, reasonable profit, the prevailing conditions of competition and of the market as well as the interests of transport users.	The Committee agreed to the Article as it currently worded. The Committee however, expressed concerns of the high charges levied by Airlines operators such as the Kenya Airways.

		other contracting Party.
5	Applicability of National Laws and Regulations- Party relating to admission to, flight within or departure from its territory of aircraft of its designated Airline engaged in international air navigation, or to the operation or navigation of such aircraft of the designated Airline of the other contracting party shall be complied with by such aircraft upon entering or departing from or while within the territory of that contracting party.	The Committee acceded to the Article. It recognizes the laws of the contracting party relating to admission to , flight within or departure from its territory of aircraft of its designated Airline engaged in international air navigation.
6	Recognition of Certificate and Licences- Aeronautical authorities of each contracting Party have been granted right to withhold the authorization s referred to in Article 3 on designations of Airlines and operating authorizations of this Agreement.	The Article is essential in that it confers right to Aeronautical authorities such as the Kenya Civil Aviation (KCA) to revoke authorization or impose conditions if a designated airline fails to comply with the domestic laws and regulations applied by the aeronautical authorities of that contracting party.
7	User Charges- user charges may reflect, but shall not exceed, the full cost to the competent charging authorities of providing appropriate airport and navigation facilities and services, and may provide for a reasonable rate of return on assets after depreciation.	The Article is in order and the Committee acceded to it as currently worded.
8	Exemption from customs duties, inspection fees and other similar charges- provides for all aircraft operated international air services by the designated Airline of either contracting party, as well as their regular equipment supplies of fuel and lubricants and aircraft stores on board such aircraft shall be exempted from all customs duties, taxes, inspection fees	The Committee acceded to the Article as currently worded.
9	Principles governing the operation of the Agreed Services- provides that there shall be fair and equal opportunity for the designated Airlines of both Contracting Parties to operate the Agreed Services on the specified Routes	The Committee acceded to the Article as currently worded.
10	Tariffs- provides for tariffs to be charged by Airlines of contracting parties be subject to approval by the aeronautical authorities of the contracting party from whose territory they are	The Committee agreed to the Article as it currently worded. The Committee however, expressed concerns

Members of the Committee expressed the following concerns

That:-

- (i) The Agreements lacks Articles that provides for review and validity of the bilateral Agreements.
- (ii) The bilateral Agreement lacks provisions for the protection of passengers and cargo.

Air Service Agreement between the Government of the Republic of Kenya and the Government of the Republic of Angola

Article	Highlights	Comments
Preamble		
1	Definitions of terms	
2	Grant of rights-The Airline designated by each contracting party shall enjoy, while operating the agreed services on the specified route, the following rights: i) To fly without landing across the territory of other contracting party. ii) To make stops in the said territory for non-traffic purposes	The committee observed that this Article is in order since it does not confer privilege of taking up in the territory of the other contracting party, passengers and cargo destined for another point in the territory of that other contracting party.
3	Designation of airlines and authorizations of Airlines-confers right to each contracting party to designate in writing to other contracting party one or more Airlines for the purpose of operating the agreed services on the specified routes, and to withdraw or alter such designations through diplomatic channels.	The Committee acceded to the Article since it confers right to each contracting party to write to the other party seeking designation of airlines for purpose of operating on the specified routes. The Article also provides timeline of 30 days for which such operating authorization shall be granted to the Airline designated.
4	suspension and Revocations-it gives each contracting Party right to revoke or suspend an operating authorization for the exercise of the rights specified in Article 2 of this Agreement by the designated Airline of other contracting Party, or to impose such condition as it may deem necessary on the exercise of these rights.	The Committee acceded to it since it is essential in preventing infringements of laws or regulations of the provisions of the agreement. Two, the right of revocation or suspension shall only be exercised only after consultation with the aeronautical authorities of

	Contracting Party to undertake to grant to the designated airline of the other Contracting Party, the rights to remit to its head office at the prevailing or current rate of exchange in accordance with the respective applicable domestic law governing current payments, the excess of receipts over expenditure earned by such airline in connection with the agreed services on the specified routes, according to the exchange control regulations in force, in the territory of each contracting Party.	the Article as currently worded.
17	Settlement of Disputes- Article provides for the mechanism in which the contracting parties will settle disputes arising from the interpretation or application of the agreement. It recognizes negotiation as the first mechanism to settle such disputes when arises.	The Committee acceded to the Article as currently worded.
18	Consultations- it provides for exchange of views between the aeronautical authorities of the Contracting Parties with a view to achieve closer cooperation and agreement in all matters pertaining to the application of this agreement.	The Committee acceded to the Article as currently worded.
19	Registration of Agreement and Amendments-It provides for all Agreements as well as Amendments thereto to be registered with the international Civil Aviation Organization	The Committee acceded to the Article as currently worded.
20	Conformity with Multilateral Conventions- the Agreement and its Annex shall be deemed to be amended to the extent necessary so as to conform to any multilateral convention, which may become binding on both Contracting Parties.	The Committee acceded to the Article as currently worded.
21	Termination- It provides for each Contracting Party at any time to give notice to the other Contracting Party of its decision to terminate this Agreement. Moreover, such notice need to be communicated to the International Civil Aviation Organization	The Committee acceded to the Article as currently worded.
22	Entry into force	The Committee acceded to the Article as worded.

10	Customs duties and other charges-provides for all aircraft operated international air services by the designated Airline of either contracting party, as well as their regular equipment supplies of fuel and lubricants and aircraft stores on board such aircraft shall be exempted from all customs duties, taxes, inspection fees and other similar charges on arriving in the territory of the other contracting party, provided equipment, and supplies remain on board the aircraft up to such time as they are re-exported or are used on the journey performed over that territory.	The Committee acceded to the Article as currently worded.
11	Commercial Activities-It allows for designated airlines of both contracting parties to establish in the territory of other contracting party offices for the promotion of air transportation and sale tickets as well as other facilities required for the provision of air transport.	The Committee observed that the article is critical since it intends to provide for the establishment of offices and other facilities to facilitate provision of air transportation.
12	Computer Reservation system (CRS)-Provides that contracting Parties do agree on the interest of consumers of air transport products be protected from misuse of such information including misleading presentation thereof.	The Committee acceded to it as worded.
13	Submission of time table-provides for each designated airline of each contracting party submit to the Aeronautical authority of other contracting party for approval , thirty days in advance the timetable of its intended services, specifying the frequency type of aircraft, configuration and number of seats to be made available to the public.	The Committee acceded to it as worded.
14	Frequencies-This Article provides for fair and equal opportunity for the designated airlines of both contracting Parties to operate the agreed services on the specified routes.	The Committee acceded to the Article as currently worded.
15	Submissions of statistics-This article provides for each aeronautical authorities of one Contracting Party to supply 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 operations of the designated Airline of the Contracting Party.	The Committee acceded to the Article as currently worded.
16	Currency Exchange-It provides for each	The Committee acceded to

	to be applied. In determining the tariffs the aeronautical authorities should take into account the cost of operation, reasonable profit, the prevailing conditions of competition and of the market as well as the interests of transport users.	of the high charges levied by Airlines operators such as the Kenya Airways.
11	Submission of time tables-provides for each designated airline of each contracting party submit to the Aeronautical authority of other contracting party for approval , thirty days in advance the timetable of its intended services, specifying the frequency type of aircraft, configuration and number of seats to be made available to the public.	The Committee acceded to the Article as Worded.
12	Aviation Security-Affirmation of obligation s under international law to each other to protect the security of civil aviation against acts of unlawful interference	The Committee acceded to the Article since it intends to ensure that contracting parties conforms to the provisions of the convention on offences and other acts committed on board Aircraft.
13	Aviation Safety-provides for Contracting Parties to request for consultations at any time concerning the safety standards by the other contracting Party relating to aeronautical facilities, aircrew, aircraft and the operation of aircraft.	The Article is in order since the issue of safety in the air transport is critical and need for parties to ensure airworthiness of the aircrafts and safety standards be maintained all the time.
14	Provision of statistics-This article provides for each aeronautical authorities of one Contracting Party to supply 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 operations of the designated Airline of the Contracting Party	The Committee acceded to the Article as currently worded.
15	Earnings-It provides for each Contracting Party grants to the designated Airline of the Contracting Party the right of free transfer excess of receipts over expenditure earned by that airline in its territory in connection with the carriage of passengers, baggage, mail and cargo	The Committee acceded to the Article as currently worded.
16	Commercial Activities-It allows for designated airlines of both contracting parties to establish	The Committee observed that the article is critical since

	in the territory of other contracting party offices for the promotion of air transportation and sale tickets as well as other facilities required for the provision of air transport.	it intends to provide for the establishment of offices and other facilities to facilitate provision of air transportation.
17	Settlement of Disputes- Article provides for the mechanism in which the contracting parties will settle disputes arising from the interpretation or application of the agreement. It recognizes negotiation as the first mechanism to settle such disputes when arises.	The Committee acceded to the Article as currently worded.
18	Consultations- it provides for exchange of views between the aeronautical authorities of the Contracting Parties with a view to ensuring the implementation of and satisfactory compliance with, the provisions of this agreement and the Annex thereto.	The Committee acceded to the Article as currently worded.
19	Amendment-If contracting Parties desires to amend the Agreement , or any provision thereof, such amendment , if agreed between the Contracting Parties, shall enter into force when confirmed by an exchange of diplomatic notes	The Committee acceded to the Article as currently worded.
20	Entry into force	The Committee acceded to the Article as currently worded.
21	Registration of Agreement with the International Civil Aviation Organization-It provides for the Agreement as well as Amendments thereto to be registered with the international Civil Aviation Organization	The Committee acceded to the Article as currently worded.
22	Termination- Either Contracting Party may at any time give notice in writing through diplomatic channels to the other contracting Party of its intention to terminate the Agreement. Such notice shall be communicated to the International Civil Aviation Organization. In such case the Agreement shall terminate twelve months after the date of receipt of the notice by the contracting party.	The Committee acceded to the Article as worded.
23	Signature of Agreement	The Committee acceded to the Article as worded.

And the time being 13.10PM, the Chairperson adjourned the Meeting to Monday, 24th February, 2014 at 10:00am.

Signed: _____



Date: _____

25/2/14

Hon. Maina Kamanda, M.P., Chairperson

MINUTES OF THE THIRTEENTH SITTING OF THE TRANSPORT, PUBLIC WORKS AND HOUSING COMMITTEE HELD ON MONDAY 24TH FEBRUARY, 2014 IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDINGS, AT 11: 00AM

PRESENT:

The following Members of the Committee were present: -

1. Hon. Maina Kamanda, M.P. –Chairperson
2. Hon. (Eng.) Mahamud Maalim, M.P. - Vice-Chairperson
3. Hon. K.K. Stephen Kinyanjui Mburu, M.P.
4. Hon. Omulele Christopher, M.P.
5. Hon. (Eng.) Stephen Ngare, M.P.
6. Hon. Grace Kipchoim, M.P.
7. Hon. (Capt.) Clement Wambugu, M.P.
8. Hon. Johnson Many Naicca, M.P.
9. Hon. Mishi Juma, M.P.
10. Hon. Ahmed Abbas Ibrahim, M.P.
11. Hon. Peter Shehe, M.P.
12. Hon. (Arch.) David Kiaraho, M.P.
13. Hon. Barchilei Kipruto, M.P.
14. Hon. Joseph Lomwa, M.P.
15. Hon. Stephen Manoti, M.P.
16. Hon. Edick Omondi Anyanga, M.P.
17. Hon. Suleiman Dori, M.P.
18. Hon. Mukwe James Lusweti, M.P.
19. Hon. Omar Mwinyi, M.P.
20. Hon. Aduma Owuor, M.P.

ABSENT WITH APOLOGY

1. Hon. Ali Wario, M.P.
2. Hon. Simon Nyaundi Ogari, M.P.
3. Hon. Gideon Konchella, M.P.
4. Hon. Eng. John Kiragu, M.P.
5. Hon. Mark Lomunokol, M.P.
6. Hon. Cecily Mbarire, M.P.
7. Hon. Emmanuel Wangwe, M.P.
8. Hon. Chachu Ganya, M.P.

9. Hon. Mathias Robi, M.P.

IN ATTENDANCE

Mr. Samuel Kalama

IN ATTENDANCE

Ms. Irene Ileri

Mr. Samuel Karanja

- NATIONAL ASSEMBLY

- First Clerk Assistant

- MINISTRY OF TRANSPORT & INFRASTRUCTURE

- Assistant Director, Air Transport

- Air Transport officer

MIN/DC-L/2014/046

PRELIMINARIES

The Chair called the meeting to order at 11.00am and opened it with a word of prayer.

MIN/DC-L/NO/2014/047

CONSIDERATION OF THE BILATERAL AIR
SERVICES AGREEMENTS BETWEEN THE
GOVERNMENT OF THE REPUBLIC OF KENYA
AND THE GOVERNMENT OF CANADA AND
THE STATE OF KUWAIT

The Chair invited t Ms. Irene Ileri, Assistant Director, Air Transport from the Ministry of Transport and Infrastructure to brief the Committee on the Bilateral Air Agreements. The Committee was briefed as follows:-

That:-

1. Bilateral Air Agreements are not different from the Agreement between Kenya and Mozambique and the Government of Angola.
2. The agreements have been pending for a while but this has not affected business of the contracting parties since the Memorandum of understanding/ Agreed Minutes are useful in the operationalization of the Agreements pending the ratification of the Agreements by the concerned governments.

Air Service Agreement between the Government of the Republic of Kenya and the Government of Canada

The Committee considered the Agreement and Article by Article Analysis of the Agreement is as presented below:

Article	Highlights	Comments
Preamble		
1	Headings and Definitions	
2	Grant of rights-The Airline designated by each contracting party shall enjoy, while operating the agreed services on the specified route, the following rights: i) To fly without landing across the territory of other contracting party. ii) To make stops in the said territory for non-traffic purposes iii) To make stops in the points in the territory on the routes specified in the Agreement for the purpose of taking up and discharging international traffic in passengers, cargo and mail separately or in combination.	The committee observed that this Article is in order since it does not confer privilege of taking up in the territory of the other contracting party, passengers and cargo destined for another point in the territory of that other contracting party.
3	Designation -confers right to each contracting party to designate, by diplomatic note, an airline or airlines to operate the agreed services on the routes specified in the Agreement for that contracting Party and to withdraw a designation or to substitute another airline for one previously designated.	The Committee acceded to the Article since it confers right to each contracting party to write to the other party seeking designation of airlines for purpose of operating on the specified routes.
4	Authorization-provides for aeronautical authorities of the other Contracting Party to issue without delay to the airline so designated the required authorization to operate the agreed services for which that airline has been designated upon receipt of a notice of designation or substitution pursuant to Article 3 of the Agreement .	The Committee acceded to it as currently worded.
5	Withholding, Revocation, suspension and limitation of Authorization- Confers aeronautical authorities of each Contracting Party right to withhold the authorization referred to Article 4 with respect to an airline designated by the Contracting Party, and to revoke , suspend or impose conditions on such authorizations, temporarily or permanently.	The Committee acceded to the Article. It allows aeronautical authorities of Contracting Party powers to revoke authorization in the event of failure by an airline to qualify under the laws and regulations applied by the aeronautical authorities of the Contracting Parties.
6	Application of laws-Laws, regulations and procedures relating to admission to, flight within or departure from its territory of aircraft	The Committee acceded to the Article. It recognizes the laws of the contracting party

	of its designated Airline engaged in international air navigation, or to the operation or navigation of such aircraft of the designated Airline of the other contracting party shall be complied with by such aircraft upon entering or departing from or while within the territory of that contracting party.	relating to admission to, flight within or departure from its territory of aircraft of its designated Airline engaged in international air navigation.
7	Safety Standards, Certificates and Licences-Each party for the purpose of operating the air transportation, shall recognize as valid certificates of airworthiness, certificate of competency, and Licences issued or validated by other party.	The Article is in order since the issue of safety in the air transport is critical and need for parties to ensure airworthiness of the aircrafts.
8	Aviation Security-Affirmation of obligations under international law to each other to protect the security of civil aviation against acts of unlawful interference.	The Committee acceded to the Article since it intends to ensure that contracting parties conforms to the provisions of the convention on offences and other acts committed on board Aircraft.
9	Customs Duties and other Charges- provides for all aircraft operated international air services by the designated Airline of either contracting party, as well as their regular equipment supplies of fuel and lubricants and aircraft stores on board such aircraft shall be exempted from all customs duties, taxes, inspection fees and other similar charges on arriving in the territory of the other contracting party, provided equipment, and supplies remain on board the aircraft up to such time as they are re-exported or are used on the journey performed over that territory.	The Committee acceded to it as worded.
10	Statistics-The aeronautical authorities of each Contracting Party shall provide, or shall cause their designated airlines to provide, the aeronautical authorities of the other Contracting Party, upon request periodic or other statement of statistics for the purpose of reviewing the operation of the agreed services.	The Committee acceded to it as worded.
11	Tariffs-It recognizes that the primary consideration for establishing prices for transportation on the agreed services is market forces, however the Contracting parties shall permit the tariffs to be developed by the	The Committee agreed to the Article as it currently worded. The Committee opined that market forces that is demand and supply

	designated airlines individually or, or at the option of the designated airlines, through coordination with each other or with other airlines	forces is critical in setting prices for air transportation.
12	Availability of Airports and Aviation Facilities and Services-Each Contracting Party to ensure that airports, airways, air traffic control and air navigation services, aviation security and other related facilities that are provided in the territory of one Contracting Party shall be available for use by the airlines of other Contracting Party on terms no less favourable than the most favourable terms available to any other airline at the time arrangements for use are made.	The Committee acceded to the Article as currently worded.
13	Charges for Airports and aviation Facilities and Services-Provides for each Contracting Party to ensure that user charges that may be imposed by the competent bodies of each Contracting Party on the airlines of the Contracting Party for the use of airport, aviation security and related facilities and services reasonable and unjustly discriminatory.	The Committee acceded to the Article as currently worded.
14	Capacity-provides for each Contracting Party to allow for a fair and equal opportunity for the designated airlines of both Contracting Parties to provide the agreed services on the routes specified in the Agreement.	The Committee acceded to it as worded.
15	Airline Representatives-Each Contracting Party to permit designated airlines of the other Contracting Party, on the basis of reciprocity into and to maintain in its territory their representatives and commercial, operational and technical staff as required in connection with the operation of the agreed services.	The Committee acceded to it as worded.
16	Ground handling-provides for each Contracting Party to permit the designated airlines of the other Contracting Party when operating in its territory on the basis of reciprocity, to perform their own ground handling in its territory and , at their option, to have ground handling service provided in whole or in part by any agent authorized by its competent authorities to provide such services.	The Committee acceded to the Article as currently worded.
17	Sales and transfer of Funds-Each Contracting Party shall permit the designated airlines of the	The Committee acceded to the Article as currently

	other Contracting Party to i) Engage in sale of air transportation in its territory directly or, or at the discretion of the designated airlines, through their agents. ii) Convert and remit abroad, on demand funds obtained in the normal course of their operations. iii) Pay local expenses, including purchases of fuel, in its territory in local currency. Or at the discretion of the designated airlines, in freely convertible currencies.	worded.
18	Taxation-profits or income from the operation of aircraft in international traffic derived by an airline of a Contracting Party, including participation in inter-airline agreements or joint business ventures shall be exempt from any tax on profits or income imposed b the government of the other Contracting Party.	The Committee acceded to the Article as currently worded.
19	Applicability to Charter/ Non scheduled Flights-Provisions contained in the Agreement shall apply to Charters and other non-scheduled flights	The Committee acceded to the Article as currently worded.
20	Consultations- it provides for either Contracting Party at any time request through diplomatic channels consultations on the implementation, interpretation, application or amendment of the Agreement or compliance with the Agreement. Such consultations, which may be between aeronautical authorities of the Contracting Parties, will begin within a period of sixty (60) days from the date the other Contracting Party receives a written request.	The Committee acceded to the Article as currently worded.
21	Amendment-Provides for any amendment to the Agreement is mutually determined pursuant to consultations held in conformity with Article 20 of the Agreement, which shall come into force on thedate of the last written notification, through diplomatic channels, by which Contracting Parties have notified each other that all necessary internal procedurtes for entry into force of the amendment have been completed.	The Committee acceded to the Article as currently worded.
22	Settlement of Disputes- Article provides for the mechanism in which the contracting parties will settle disputes arising from the interpretation or	The Committee acceded to the Article as currently worded.

	application of the agreement. It recognizes consultations as the first mechanism to settle such disputes.	
23	Termination- It provides for each Contracting Party at any time to give notice to the other Contracting Party of its decision to terminate this Agreement. Moreover, such notice need to be communicated to the International Civil Aviation Organization	The Committee acceded to the Article as currently worded.
24	Registration with ICAO-It provides for all Agreements as well as Amendments thereto to be registered with the international Civil Aviation Organization	The Committee acceded to the Article as currently worded.
25	Multilateral Conventions-if a multilateral convention comes into force in respect of both Contracting Parties, consultations may be held in accordance with Article 20 of the Agreement with a view to determining the extent to which the Agreement is affected by the provisions of the multilateral convention.	The Committee acceded to the Article as currently worded.
26	Entry into Force-The Agreement shall only enter into force on the date when of the last notification, through diplomatic channels , by which contracting Parties shall have notified each other that all necessary internal procedures for entry into force of the Agreement have been completed.	The Committee acceded to the Article as currently worded.

The Committee expressed concerns that Kenya as a country is giving out business to foreigners since most airlines do not have ability to fly to Canada.

As regard to why Kenya Airways limited is the only airline which participates in the negotiations of bilateral agreements, the Committee was informed that all airlines are invited for the negotiations but its only Kenya Airways which send representatives to the meetings.

Subsequently, the Committee made the following recommendation:-

That:-

- ✓ The government of Kenya should put measures to support the local airlines.

Air Service Agreement between the Government of the Republic of Kenya and the State of Kuwait

The following is Article by Article Analysis of the Agreement:

Article	Highlights	Comments
Preamble		
1	Definitions of terms	
2	Applicability of Rights of the Chicago Conventions-provisions of the Agreement shall be subject to the provisions of the Chicago Conventions so long as those provisions are applicable to international air service	The Committee acceded to the Article as currently worded
3	Grant of rights and Privileges-The Airline designated by each contracting party shall enjoy, while operating the agreed services on the specified route, the following rights: i) To fly without landing across the territory of other contracting party. ii) To make stops in the said territory for non-traffic purposes iii) To make stops in the points specified for that route in the schedules to the agreement for the purpose of putting down and taking up international traffic in passengers, cargo and mail, coming from or destined for the territory of that other contracting party.	The committee observed that this Article is in order since it does not confer privilege of taking up in the territory of the other contracting party, passengers and cargo destined for another point in the territory of that other contracting party.
4	Designation and authorizations-confers right to each contracting party to designate in writing to other contracting party one or more Airlines for the purpose of operating the agreed services on the specified routes, and to withdraw or alter such designations through diplomatic channels.	The Committee acceded to the Article since it confers right to each contracting party to write to the other party seeking designation of airlines for purpose of operating on the specified routes. The Article also provides timeline of 30 days for which such operating authorization shall be granted to the Airline designated.
5	Revocation, limitation and imposition of conditions-it gives each contracting Party right to revoke or suspend an operating authorization for the exercise of the rights specified in Article 2 of this Agreement by the designated Airline of other contracting Party, or to impose such condition as it may deem necessary on the exercise of these rights.	The Committee acceded to it since it is essential in preventing infringements of laws or regulations of the provisions of the agreement. Two, the right of revocation or suspension shall only be exercised only after

		consultation with the aeronautical authorities of other contracting Party.
6	Airports and facility user charges- provides that neither part shall impose or permit to be imposed on the designated airlines of the other Party user charges higher than those imposed on its own airlines operating similar international services.	The Committee acceded to the Article as currently worded
7	Exemptions from Customs duties and other Charges-Aircraft operated in international air services by designated airline or airlines of either Contracting Party shall be relieved from all customs duties, national excise taxes and similar national custom inspection fees on items used for repair, maintenance, passenger handling equipment, cargo handling equipment and among others.	The Committee acceded to the Article as currently worded
8	Financial provisions-Either contracting Party undertakes to grant the designated airlines of the other Contracting Party the right of free transfer, at the applicable rate of exchange, of the excess, of receipts over expenditure.	The Committee acceded to the Article as currently worded
9	Commercial Activities-It allows for designated airlines of both contracting parties to establish in the territory of other contracting party offices for the promotion of air transportation and sale tickets as well as other facilities required for the provision of air transport.	The Committee acceded to the Article as currently worded
10	Entry and Clearance Regulations-Laws, rules and regulations relating to admission to, flight within or departure from its territory of aircraft of its designated Airline engaged in international air navigation, or to the operation or navigation of such aircraft of the designated Airline of the other contracting party shall be complied with by such aircraft upon entering or departing from or while within the territory of that contracting party.	The Committee acceded to the Article. It recognizes the laws of the contracting party relating to admission to , flight within or departure from its territory of aircraft of its designated Airline engaged in international air navigation.
11	Capacity provisions-Each designated airline shall have a fair and equal opportunity to compete in providing the international air transportation governed by the Agreement.	The Committee acceded to the Article as currently worded
12	Time-Table submission (Slot)-Designated airlines are required to submit to the relevant authorities of the Contracting Parties not later	The Committee acceded to the Article as currently worded

	than sixty (60) days prior to the initiation of the agreed services on the specified routes in accordance with Article 3 of the Agreement, the type of the service, aircraft, and the time slots.	
13	Information and statistics- This article provides for each aeronautical authorities of one Contracting Party to supply the aeronautical authorities of the other Contracting Party at their request such periodic or other statements	The Committee acceded to the Article as currently worded
14	Establishment of Tariffs-Each Contracting Party to allow tariffs for air services to be established by each designated airline based on commercial considerations in the market place, including the cost of operation, the characteristics of the service among other factors	The Committee acceded to the Article as currently worded
15	Aviation Safety-Each Contracting party may request consultations at any time concerning safety standards in any area relating to aircrew, aircraft or their operation adopted by the other Contracting party.	The Article is in order since the issue of safety in the air transport is critical and need for parties to ensure airworthiness of the aircrafts
16	Aviation Security- Affirmation of obligation s under international law to each other to protect the security of civil aviation against acts of unlawful interference.	The Committee acceded to the Article since it intends to ensure that contracting parties conforms to the provisions of the convention on offences and other acts committed on board Aircraft.
17	Consultations and Modifications- it provides for exchange of views between the aeronautical authorities of the Contracting Parties with a view to achieve closer cooperation and agreement in all matters pertaining to the application of this agreement.	The Committee acceded to the Article as currently worded
18	Settlement of Disputes- Article provides for the mechanism in which the contracting parties will settle disputes arising from the interpretation or application of the agreement. It recognizes negotiation as the first mechanism to settle such disputes when arises.	The Committee acceded to the Article as currently worded
19	Termination- It provides for each Contracting Party at any time to give notice to the other Contracting Party of its decision to terminate this Agreement. Moreover, such notice need to	The Committee acceded to the Article as currently worded

	be communicated to the International Civil Aviation Organization	
20	Conformity with Multilateral Conventions- the Agreement and its Annex shall be deemed to be amended to the extent necessary so as to conform to any multilateral convention, which may become binding on both Contracting Parties.	The Committee acceded to the Article as currently worded
21	Registration-Registration of the Agreement with the International Civil Aviation organization	The Committee acceded to the Article as currently worded
22	Titles- provides for insertion of titles in the Agreement at the head of each Article for purpose of reference and convenience.	The Committee acceded to the Article as currently worded
23	Entry into force- Agreement shall only enter into force when all the internal legal requirements by each Contracting Party have been fulfilled, and notification of each other of the fulfillment of such requirements through exchange of diplomatic notes.	The Committee acceded to the Article as currently worded

MIN/DC-L/2014/048

ADJOURNMENT

And the time being 12.20PM, the Chairperson adjourned the Meeting to Monday, 24th February, 2014 at 2.00PM.

Signed: _____



Date: _____

25/3/2014

Hon. Maina Kamanda, M.P., Chairperson

AIR SERVICES AGREEMENT
BETWEEN THE
GOVERNMENT OF
THE REPUBLIC OF
KENYA AND THE
GOVERNMENT OF
THE REPUBLIC OF
MOZAMBIQUE

MB

MB

AIR SERVICES AGREEMENT BETWEEN THE GOVERNMENT OF THE
REPUBLIC OF KENYA AND THE GOVERNMENT OF THE REPUBLIC OF
MOZAMBIQUE

PREAMBLE

The Government of the Republic of Kenya and the Government of the Republic of Mozambique; (hereinafter referred to as the "Contracting Parties");

Being parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh day for December, 1944;

Acknowledging the importance of air transport as a means of creating and preserving friendship, understanding and co-operation between peoples of the two countries;

Desiring to contribute to the progress of international civil aviation;

Desiring to conclude an Agreement for the purpose of establishing air services between and beyond their respective territories;

Have agreed as follows:-

ARTICLE 1
DEFINITIONS

For the purpose of this Agreement and any annex attached hereto, unless the context otherwise requires the term;

- a) "Aeronautical Authorities" means in the case of each Contracting Party its Minister/Cabinet Secretary in charge of Civil Aviation or any person or body authorized under its laws to perform a particular function to which this Agreement relates;
- b) "Agreed Services" means scheduled air services on the routes specified in the Annex to this Agreement for the transport of passengers, cargo;
- c) "Agreement" means this Agreement, its Annex drawn up in application thereof, and any amendments to the Agreement or to the Annex;
- d) "Air Service", "international air service", "Airline(s)" and "stop for non-traffic purposes" have the meaning respectively assigned to them in Article 96 of the Convention;

- e) "Airborne Equipment" means articles other than stores and spare parts of a removable nature, for use on board an aircraft during flight, including first aid and survival equipment;
- f) "Cargo" includes mail;
- g) "Code-sharing" means a commercial arrangement whereby passengers of two or more Airline(s) travel together on one aircraft bearing the Airline(s) flight code of two or more Airline(s);
- h) "Computer Reservation System" (CRS) means a computerized system containing information about Airlines schedules, seat availability, fares and related services and through which reservations can be made and/or tickets can be issued and which makes some of all these facilities available to travel agents;
- i) "Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on 7th December, 1944 and includes; (i) any amendment thereto which has entered into force under Article 94 (a) thereof and has been ratified by both Contracting Parties and (ii) any Annex or any amendment thereto adopted under Article 90 of that Convention, in so far as such amendment or annex is at the given time effective for both Contracting Parties;
- j) "Designated Airline" means an Airline which has been designated and authorized in accordance with Article 3 of this Agreement;
- k) "Specified Routes" means the air routes as set forth in the Annex thereto on which the agreed service may be operated;
- l) "Spare Parts" means articles of a repair or replacement nature for incorporation in an aircraft, including engines;
- m) "Tariff" means the prices or charges to be paid for the carriage of passengers, baggage and cargo and the conditions under which those prices or charges apply, including prices or charges and conditions for agency and other auxiliary services, but excluding remuneration and conditions for the carriage of mail;
- n) "Territory" in relation to a State means the land areas and territorial waters adjacent thereto under the sovereignty or protection of that State;
- o) "Traffic" means the carriage of passengers, cargo and mail; and
- p) "User Charges" means fees or rates levied for the use of airports, navigational facilities and other related services offered by one Contracting Party to the other.

ARTICLE 2 GRANT OF RIGHTS

1. Each Contracting Party grants to the other Contracting Party, the rights specified in this Agreement for the purpose of establishing the agreed services on the specified routes in the annexes to this Agreement. The Airline designated by each Contracting Party shall enjoy, while operating the agreed services on the specified route, the following rights:
 - 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 schedules to this Agreement for the purpose of putting down and taking up international traffic in passengers, cargo and mail, coming from or destined for the territory of the other Contracting Party.
2. Nothing in paragraph (1) shall be deemed to confer on the Airline of one Contracting Party the privilege of taking up in the territory of the other Contracting Party, passengers and cargo or mail destined for another point in the territory of that other Contracting Party.

ARTICLE 3 DESIGNATION OF AIRLINES AND OPERATING AUTHORIZATIONS

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, and to withdraw or alter such designations through diplomatic channels and shall identify whether the Airline or airlines are authorized to conduct the type of air transportation specified in the Annex.
2. On receipt of such designation, the other Contracting Party shall, subject to the provisions of paragraph (3) and (4) of this Article, without delay but not later than 30 days, grant to the Airline designated the appropriate operating authorization.
3. The Aeronautical Authority of a Contracting Party may require the Airline designated by the other Contracting Party to satisfy them that it is qualified to fulfill the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of international air services by such authorities in conformity with the provisions of the Convention.
4. Each Contracting Party shall have the right to refuse to grant the operating authorization referred to in paragraph (2) of this Article or to impose such



conditions as it may deem necessary on the exercise by a designated Airline of the rights specified in Article 2 of this Agreement.

5. The party designating the Airline(s) is maintaining and administering the standards set forth in Article 7 (Safety) and Article 8 (Aviation Security).
6. When an Airline has been so designated and authorized it may begin at any time to operate the agreed services provided that a tariff established in accordance with the provisions of Article 9 (Tariffs) of this Agreement is in force in respect of that service.

ARTICLE 4

REVOCATION AND SUSPENSION OF OPERATING AUTHORIZATION

1. Each Contracting Party shall have the right to revoke or suspend an operating authorization for the exercise of the rights specified in Article 2 of this Agreement by the designated Airline of the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise of these rights;
 - a) In any case where it is no longer satisfied that place of incorporation or principal place of business is not in accordance with Article 3 (4) of this Agreement.
 - b) In the case where it is no longer satisfied that the place of incorporation or principal place of business is not accordance with the laws or the regulations in force in the territory of the Contracting Party granting these rights; or
 - c) In case the Airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.
 - d) The other Party is not maintaining and administering the standards as set forth in Article 7 (Safety) of this Agreement.
2. Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph 1 of this Article is essential to prevent further infringements of the laws or the regulations of the provisions of this Agreement, such right of revocation or suspension shall be exercised only after consultation with the aeronautical authorities of the other Contracting Party.

ARTICLE 5
APPLICABILITY OF NATIONAL LAWS AND REGULATIONS

1. The laws and regulations of one Contracting Party relating to admission to, flight within or departure from its territory of aircraft of its designated Airline engaged in international air navigation, or to the operation or navigation of such aircraft while within its territory shall likewise apply to the aircraft of the designated Airline of the other Contracting Party and shall be complied with by such aircraft upon entering or departing from or while within the territory of that Contracting Party.
2. The laws and regulations of one Contracting Party relating to admission to, stay in, or departure from its territory of passengers, crew or cargo, such as regulations relating to entry, exit, emigration, immigration, passports as well as customs and sanitary measures, shall apply to passengers, crew or cargo including mail carried by the aircraft of the designated Airline of the other Contracting Party upon entry into or departure from or while within the territory of the said Contracting Party.
3. Neither Contracting Party may grant any preference to its own Airline with regard to the designated Airlines of the other Contracting Party in the application of the laws and regulations indicated in this Article

ARTICLE 6
RECOGNITION OF CERTIFICATE AND LICENCES - KCA

1. The aeronautical authorities of each Contracting Party shall, with respect to a designated airline of the other Contracting Party, have the right to withhold the authorizations referred to in Article 3 (Designation of Airlines and Operating Authorizations) of this Agreement, to revoke or suspend such authorizations or impose conditions, at any time during the exercise of the rights by the designated airline concerned in the event:
 - a) of failure by the airline to qualify under or to comply with the domestic law and regulations normally applied by the aeronautical authorities of that Contracting Party in conformity with the Convention;
 - b) that the aeronautical authorities of that Contracting Party are not satisfied that substantial ownership and effective control of the airline are vested in the Contracting Party designating the airline or in its nationals; or
 - c) the airline fails to operate in accordance with the conditions prescribed under this Agreement.
2. Unless immediate action is essential to prevent further infringement of the domestic law referred to above, the rights enumerated in sub-article (1) shall be

exercised only after consultations with the aeronautical authorities of the other Contracting Party, in accordance with Article 18 (Consultations).

ARTICLE 7 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 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 (Grant of Rights), 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 Airlines. 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 or Airlines designated by the other Party in the event the other Party does not take such appropriate corrective action within reasonable time.

ARTICLE 8 AVIATION SECURITY

1. Consistent with their rights and obligations under international law, the Contracting 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.
2. Without limiting the generality of their rights and obligations under international law, the Contracting Parties shall in particular act in conformity with the provisions of the Convention on offenses and Certain Other Acts Committed on

board Aircraft; signed at Tokyo on 14th September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft signed at the Hague on 16th December 1970 and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on 23rd September, 1971, and any other Convention on Aviation Security to which the Contracting Parties shall become party.

3. The Contracting Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.
4. The parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organization and designated as Annexes to the Convention on International Civil Aviation to the extent that such security provisions are applicable to the Parties; they shall require that 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.
5. Each Contracting Party agrees that such operations of aircraft may be required to observe the aviation security provisions referred to in paragraph (3) above required by the other Contracting Party for entry into, departure from, or while within, the territory of that other Contracting Party.
6. Each Contracting Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Contracting Party shall also give sympathetic consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat.
7. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occur, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

ARTICLE 9 TARIFFS

1. The tariffs to be charged shall be subject to approval by the aeronautical authorities of the Contracting Party from whose territory they are to be applied. They should take into account the cost of the operation, a reasonable profit, the



prevailing conditions of competition and of the market as well as the interests of transport users.

2. The tariff shall be submitted by the designated airlines to the aeronautical authorities referred to in sub-article (1) for approval at least one month prior to the envisaged date of their introduction.
3. If the aeronautical authorities do not consent to a tariff submitted for their approval in accordance with sub-article (2), they shall inform the airline concerned within twenty-one (21) days after the date of submission of the tariff. The tariff applied up to that time which was to be replaced by the new tariff shall continue to be applied.
4. The designated airlines of both Contracting Parties may not offer, sell or advertise tariffs different from those, which have been established in accordance with the provisions of this Article.

ARTICLE 10 CUSTOMS DUTIES AND OTHER CHARGES

1. Aircraft operated international air services by the designated Airline of either Contracting Party, as well as their regular equipment supplies of fuel and lubricants and aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempted from all customs duties, taxes, inspection fees and other similar charges on arriving in the territory of the other Contracting Party, provided equipment, and supplies remain on board the aircraft up to such time as they are re-exported or are used on the journey performed over that territory.
2. There shall also be exempt from the same duties, taxes, fees and charges with the exception of charges corresponding to the service performed;
 - a) Aircraft stores taken on board in the territory of a Contracting Party, within limits fixed by the Customs Authorities of the said territory and for use on board outbound aircraft of the other Contracting Party engaged on international air services.
 - b) Spare parts introduced into the territory of either Contracting Party for maintenance or repair of aircraft used on international air services by the designated airlines of the Contracting Party.
 - c) Fuel and lubricants supplied in the territory of a Contracting Party to an outbound aircraft of the designated Airlines of the other Contracting Party, engaged on an international air service even when these supplies are to be used on the part of the journey performed over the territory of the Contracting Party in which they will have been taken on board.

- d) Materials referred to in sub-paragraphs a, b, and c above may be required to be kept under Customs supervision or control.
- e) The regular airborne equipment as well as the material and supplies retained on board the aircraft of either Contracting Party may be unloaded in the territory of the other Contracting Party only with the approval of Customs Authorities of that territory. In such cases they may be placed under the supervision of the said authorities up to such time as they may be placed under the supervision of the said authorities of that territory.

ARTICLE 11 COMMERCIAL ACTIVITIES

1. The designated airlines of both Contracting Parties shall be allowed to establish in the territory of the other Contracting Party offices for the promotion of air transportation and sale tickets as well as other facilities required for the provision of air transportation.
2. A designated airline of one Contracting Party shall be allowed to bring in and maintain in the territory of the other Contracting Party its managerial, commercial, operational and technical staff as it may require in connection with the provision of air transportation.
3. These staff requirements may, at the option of a designated airline, be satisfied by its own personnel or by using the services of any other organization, company or airline operating in the territory of the other Contracting Party, and authorized to perform such services in the territory of that Contracting Party.
4. Each Contracting Party grants to a designated airline of the other Contracting Party the right to engage in the sale of air transportation in its territory and, at the airline's discretion, through its agents.
5. The above activities shall be carried out in accordance with the laws and regulations of the Contracting Party.
6. Each designated Airlines shall have a right to select among competing agents for ground handling services in the territory of the other Party. Ground handling services shall be available on equal basis to all Airlines; charges shall be based on costs of services provided.
7. Any Airline of each Party may engage in the sale of air transportation in the territory of the other Party directly and, at the Airline's discretion through its agents. Each Airline shall have the right to sell such transportation, and any person shall be free to purchase such transportation, in the currency of that territory or in freely convertible currencies.

MB

LD

8. Each designated Airline shall have the right to remit to its country receipts in excess of sums locally disbursed in due proportion to the carriage of passengers, baggage, cargo and mail. Such transfers shall be effected on the basis of the foreign exchange regulations in force. If payments between the Contracting Parties are regulated by a special Agreement, this special Agreement shall apply.
9. Both parties agree that in operating the Agreed Services on the Routes Schedule, the designated airline(s) may enter into co-operative marketing arrangements such as blocked space, code-sharing with;
 - a) The Airline or the other Party; and/or
 - b) An airline or Airlines of a third country provided that all Airlines in such arrangements hold appropriate authorizations for such arrangements from the other Contracting Party.

ARTICLE 12 COMPUTER RESERVATION SYSTEM (CRS)

1. The Contracting Parties agree that:
 - a) The interest of consumers of air transport products will be protected from any misuse of such information including misleading presentation thereof;
 - b) A designated Airline of a Contracting Party and the Airline(s) agents will have unrestricted and non-discriminatory access to and use of CRS in the territory of the other Contracting Party;
 - c) Both Parties agree to abide by any applicable codes of Conduct with regards to the use of CRS.
2. Each Contracting Party guarantees to the other Contracting Party free and unimpaired access in its territory, the CRS chosen as its primary system by the designated Airline of the other Contracting Party. Neither Contracting Party shall, in its territory, impose or permit to be imposed on the CRS of the designated Airline of the other Contracting Party more stringent requirements than those imposed on the CRS of its own designated Airline, such as with respect to:
 - a) The operation and sale of the CRS services including CRS display and editing rules; and
 - b) The access to and use of communications facilities, selection and use of technical hardware and software or the installation of hardware.

ARTICLE 13
SUBMISSION OF TIME TABLE

1. The designated airline of each Contracting Party shall submit to the aeronautical authority of the other Contracting Party for approval, thirty (30) days in advance, the timetable of its intended services, specifying the frequency type of aircraft, configuration and number of seats to be made available to the public.
2. Any subsequent changes to the approved timetable of a designated airline shall be submitted for approval to the aeronautical authority of the other Contracting Party.
3. If a designated airline wishes to operate flights supplementary to those covered in the approved timetables, such flights shall be agreed to between the designated airlines, prior to permission being requested from the aeronautical authorities of the Contracting Party concerned.

ARTICLE 14
FREQUENCIES

1. There shall be fair and equal opportunity for the designated airlines of both Contracting Parties to operate the agreed services on the specified routes.
2. In operating the agreed services, the designated airline of each Contracting Party shall take into account the interests of the designated airline of the other Contracting Party so as not to affect unduly the services, which the latter provides on the whole, or part of the same routes.
3. The frequency of services to be operated and the nature of air service of the agreed services on the specified routes shall be agreed between the designated airlines in accordance with the provisions of this Article. Such agreement shall be submitted for the approval of the aeronautical authorities, at least sixty (60) days before the intended date for the beginning of such services.
4. Any increase in frequency of services to be operated by the designated airline of either Contracting Party shall be agreed between the designated airlines and shall be submitted for the approval of the aeronautical authorities on the basis of the estimated requirements of traffic between the territories of the two Contracting Parties and any other traffic to be jointly agreed and determined. Pending such agreement or settlement, frequency entitlements already in force shall prevail.
5. If the designated airlines of the Contracting Parties fail to agree on any matter on which their agreement is required under the provisions of this Article, the aeronautical authorities shall endeavor to reach agreement thereon.

NRB

A

ARTICLE 15 SUBMISSION OF STATISTICS

The aeronautical authorities of one 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 operations of the designated Airline of the first Contracting Party. Such statements shall include all information required to determine the amount of traffic carried by the Airline on the agreed services and the origins and destinations of such traffic.

ARTICLE 16 CURRENCY EXCHANGE

Each Contracting Party undertakes to grant to the designated airline of the other Contracting Party, the right to remit to its head office at the prevailing or current rate of exchange in accordance with the respective applicable domestic law governing current payments, the excess of receipts over expenditure earned by such airline in connection with the agreed services on the specified routes, according to the exchange control regulations in force, in the territory of each Contracting Party.

ARTICLE 17 SETTLEMENT OF DISPUTES

1. If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first place endeavor to settle it by negotiation.
2. If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to some person or body; if they do not so agree, the dispute shall, at the request of either Contracting Party, be submitted for decision to a tribunal of three arbitrators one to be nominated by each Contracting Party and the third to be appointed by the two so nominated.
3. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty (60) days from the date of receipt by either Contracting Party from the other of a notice through diplomatic channels requesting arbitration of the dispute by such a tribunal and the third arbitrator shall be appointed within a further period of sixty (60) days.
4. If either of the Contracting parties fails to nominate an arbitrator within the period specified or if the third arbitrator is not appointed within the period specified, the International Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case may be within a period of

thirty (30) days. In each case, the third arbitrator shall be a national of a third State and shall act as President of the arbitral tribunal.

5. Except as otherwise agreed, the arbitral tribunal shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedural rules and shall determine the place of arbitration having regard to the circumstances of the case. The tribunal, once formed, may recommend interim relief measure pending its final determination. At the direction of the tribunal or at the request of either of the Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held not later than 15 days after the tribunal is fully constituted.
6. The Contracting Parties shall comply with any decision given under paragraph (2) of this Article.
7. Each Contracting Party shall 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.
8. Either Contracting Party or the designated Airline of either Contracting Party may limit, withhold or revoke any rights or privileges, which it has granted by virtue of this Agreement to the Contracting party in default hereof.

ARTICLE 18 CONSULTATIONS

1. Exchange of views shall take place as needed between the aeronautical authorities of the Contracting Parties in order to achieve closer cooperation and agreement in all matters pertaining to the application of this Agreement.
2. Either Party may, at any time, request consultations relating to this Agreement. Such consultations shall begin at the earliest date, but not later than 60 days from the date the other Party receives the request unless otherwise agreed.



ARTICLE 19
REGISTRATION OF AGREEMENT AND AMENDMENTS

1. This Agreement, its Annex, as well as any amendments thereto shall be registered with the International Civil Aviation Organization.
2. If either of the Contracting Parties considers it desirable to modify any provision of this Agreement, such modification, if agreed between the Contracting Parties, shall come into effect when confirmed by an Exchange of Diplomatic Notes.

ARTICLE 20
CONFORMITY WITH MULTILATERAL CONVENTIONS

This Agreement and its Annex shall be deemed to be amended to the extent necessary so as to conform to any multilateral convention, which may become binding on both Contracting Parties.

ARTICLE 21
TERMINATION

1. Either Contracting Party may at any time give notice to the other Contracting Party of its decision to terminate this Agreement; such notice shall be simultaneously communicated to the International Civil Aviation Organization.
2. In such case this Agreement shall terminate twelve (12) 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.
3. In the absence of acknowledgement of receipt by the other Contracting Party, such notice shall be deemed to have been received fourteen (14) days after receipt of the notice by the International Civil Aviation Organization.

NB

ARTICLE 22
ENTRY INTO FORCE

1. The Provisions of the present Agreement shall apply on a provisional basis on the date of its signature.
2. The present Agreement shall enter into force when both Contracting Parties shall have notified each other through the diplomatic channel of compliance with their nationally required legal procedures.
3. IN WITNESS WHEREOF, the undersigned, thereunto duly authorized by their respective Governments, have signed.
4. DONE in duplicate in English and Portuguese languages, both languages being equally authentic, at Nairobi, Kenya on thisday of.....2012.

FOR THE GOVERNMENT
OF THE REPUBLIC OF
KENYA

FOR THE GOVERNMENT
OF THE REPUBLIC OF
MOZAMBIQUE

AMOS KIMUNYA
MINISTER FOR TRANSPORT

PAULO FRANCISCO ZUCULA
MINISTER FOR TRANSPORT
AND COMMUNICATIONS



ANNEX 1

ROUTE SCHEDULE

SECTION 1

ROUTES AND TRAFFIC RIGHTS

Airline(s) of each Party designated under Annex shall, in accordance with the terms of their designation, be entitled to perform scheduled International Air Transport between points on the following routes:

FOR THE DESIGNATED AIRLINE OF THE REPUBLIC OF KENYA

POINTS OF DEPARTURE	INTERMEDIATE POINTS	POINTS IN MOZAMBIQUE	POINTS BEYOND
Points in Kenya Nairobi Mombasa Eldoret Kisumu	Any	Maputo Beira Nampula Pemba	Any

FOR THE DESIGNATED AIRLINE OF THE REPUBLIC OF MOZAMBIQUE

POINTS OF DEPARTURE	INTERMEDIATE POINTS	POINTS IN KENYA	POINTS BEYOND
Points in Mozambique Maputo Beira Nampula Pemba	Any	Nairobi Mombasa Eldoret Kisumu	Any

NOTES:

Any point on the above routes may, at the option of the airline concerned, be omitted on any or all flights that either begin or terminate in the territory of the country designating the airline.

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

1. Representatives of the Aeronautical Authorities of the Government of the Republic of Kenya and the Government of the Republic of Mozambique met in Nairobi, Kenya on the 8th of August, 2012 to discuss matters relating to Air Services between their respective countries and sign this Confidential Memorandum of Understanding (CMU) and to initial the Air Services Agreement prepared for signature by their respective Ministers in charge of Civil Aviation. This CMU will be read together with the CMU of 24th August, 2005.
2. The negotiations were conducted in a cordial and friendly atmosphere characteristic of the friendly relations that exist between Kenya and Mozambique.
3. The list of both delegations is attached hereto as appendix A.
4. **AIR SERVICES AGREEMENT**

The two delegations reviewed the Air Services Agreement of 2nd November, 2007 annexed hereto as Appendix B. The following amendments were made to the Agreement:

- Paragraph 1 of the Preamble was corrected;
- Article 1 Definitions "Aeronautical Authorities" changed to read "means in the case of each Contracting Party its Minister/ Cabinet Secretary in charge of Civil Aviation...";
- Article 11(8), third line changed to read "Such transfers shall be effected"; and
- Annex 1 Route Schedule, Points in Kenya are Nairobi, Mombasa, Eldoret and Kisumu.

4.1 FREQUENCIES AND CAPACITY

Both delegations agreed to increase the number of frequencies allowed for each entry/exit point from 3 to 5. However, for

additional frequencies beyond those authorized provisions of Article 14 "Frequencies" shall be applied.

4.2 ROUTE SCHEDULE

4.2.1 Both delegations agreed on the following Route Schedule: -

a. For the designated airlines of Kenya: -

Points of Origin – Nairobi, Mombasa, Eldoret and Kisumu

Points in Mozambique – Maputo, Beira, Nampula and Pemba

Intermediate Points- Any points

Points Beyond- Any points

b. For the designated airlines of Republic of Mozambique:-

Points of Origin – Maputo, Beira, Nampula and Pemba

Points in Kenya – Nairobi, Mombasa, Eldoret and Kisumu

Intermediate Points- Any points

Points Beyond- Any points

A table on the route schedule is in the Air Services Agreement in Appendix B.

4.3 CODE SHARE

Both delegations agreed that Article 11(9) as below adequately covered code share:

"Both parties agree that in operating the Agreed Services on the Routes Schedule, the designated airline(s) may enter into co-operative marketing arrangements such as blocked space, code-sharing with;

- The Airline or the other Party; and/or
- An airline or Airlines of a third country provided that all Airlines in such arrangements hold appropriate authorizations for such arrangements from the other Contracting Party".

4.4 ENTRY INTO FORCE

Both delegations agreed that this Confidential Memorandum of Understanding and its Appendices shall enter into force and effect on the date of its signature pending the signature of the Air Services Agreement. This CMU will be read together with the CMU of 24th August, 2005.

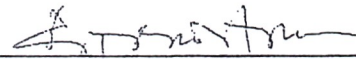
This Confidential Memorandum of Understanding was done in English.

DONE at Nairobi this 8th day of August 2012.



Nicholas E. Bodo

FOR THE DELEGATION
OF THE GOVERNMENT
THE REPUBLIC OF
KENYA



Afonso Sande Cuinhane

FOR THE DELEGATION
OF THE GOVERNMENT
THE REPUBLIC OF
MOZAMBIQUE

APPENDIX 'A'

NAMES OF KENYAN DELEGATION

- | | |
|---------------------------|---|
| 1. Nicholas E. Bodo | Ag. Director Air Transport
Ministry of Transport
Head of Delegation |
| 2. Irene Ileri | Assistant Director Air Transport
Ministry of Transport |
| 3. Mercy Awori | Chief Air Transport Officer
Kenya Civil Aviation Authority |
| 4. Benjamin Enyenze | Senior Air Transport Officer
Ministry of Transport |
| 5. Christine Kanini Ileli | State Counsel
State Law Office |
| 6. Phyllis Wakiaga | Coordinator
Government and Industry Affairs
Kenya Airways |



NAMES OF MOZAMBIQUE DELEGATION

1. Afonso Sande Cuinhane President of the Board
Civil Aviation Authority Mozambique
Head of Delegation
2. Delfim De Deus Advisor
Civil Aviation Authority Mozambique
3. Eduardo Mutereda Director of Operations
Aeroportos De Mocambique
4. Luiciano Geneu Chief Air Transport Officer
Civil Aviation Authority Mozambique
5. Claudio Banze Commercial Director
Mozambique Airlines
6. Launinda Antonio Gimo International Technical Cooperation
Ministry of Transport and
Communications
7. Adnito Maure Counsellor
Mozambique High Commission, Nairobi



AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF ANGOLA
AND THE GOVERNMENT OF THE REPUBLIC OF KENYA FOR THE OPERATION
OF AIR SERVICES BETWEEN AND BEYOND THEIR RESPECTIVE TERRITORIES

The Government of the Republic of Angola and the Government of the Republic of Kenya hereinafter referred to as the Contracting Parties;

Being parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944;

Acknowledging the importance of air transportation as a means of creating and preserving friendship, understanding and co-operation between the peoples of the two countries;

Desiring to contribute to the progress of international civil aviation; and

Desiring to conclude an Agreement, supplementary to the said Convention, for the purpose of establishing and operating air services between and beyond their respective territories;

Have agreed as follows:

ARTICLE 1

DEFINITIONS

For the purpose of this Agreement and its Annex unless the context otherwise requires:

- (a) "Aeronautical Authority" means, in the case of the Republic of Angola the Minister responsible for Civil Aviation or any person or body authorised to perform any particular function to which this Agreement relates and, in the case of the Republic of Kenya the Minister responsible for Civil Aviation or any person or body authorised to perform any particular function to which this agreement relates;
- (b) "Agreed Services" means a scheduled international air service on the routes specified in the Annex to this Agreement for the transport of passengers, baggage, cargo and mail in accordance with agreed Capacity entitlements;
- (c) "Agreement" means this Agreement, the Annex attached thereto, and any amendment of the Agreement or the Annex adopted in accordance with Article 18 of this Agreement;
- (d) "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;

- (e) "Annex" means the Annex attached to this Agreement or as amended in accordance with the provisions of Article 19 thereof, and for the purposes of this Agreement, the Annex forms an integral part hereof and all references to the Agreement shall include reference to the Annex unless the context otherwise requires;
- (f) "Capacity" in relation to an aircraft means the payload of that aircraft available on a route or section of a route; and in relation to an Agreed Service means the Capacity of the aircraft used on such service, multiplied by the frequency operated by such aircraft over a given period on a route or section of a route;
- (g) "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 to the Convention or Annexes under Articles 90 and 94 thereof in so far as those Annexes and amendments have become effective for or have been ratified by both Contracting Parties;
- (h) "Designated Airline" means an airline which has been designated and authorised in accordance with Article 3 of this Agreement;
- (i) "Specified Route" means a route specified in the Annex to this Agreement;
- (j) "Tariff" means the prices to be charged for carriage of passengers, baggage and cargo and the conditions under which those prices apply, including prices and conditions for agency and other auxiliary services, but excluding remuneration and conditions for the carriage of mail;
- (k) "Territory" in relation to a State has the meaning assigned to it in Article 2 of the Convention;
- (l) "User Charge" means a charge made to airlines for the provision for aircraft, their crews and passengers of airport and air navigation facilities, including related services and facilities.

ARTICLE 2

GRANT OF RIGHTS

1. Each Contracting Party grants to the other Contracting Party the following rights in respect of its scheduled international air services and non-scheduled services:
 - (a) The right to fly across its Territory without landing;
 - (b) The right to make stops in its Territory for non-traffic purposes;
2. Each Contracting Party grants to the other Contracting Party the rights hereinafter specified in this Agreement for the purpose of operating scheduled International Air Services on the routes specified in the appropriate section of the

Annex to this Agreement. While operating an Agreed Service on a Specified Route respectively the airline(s) designated by each Contracting Party shall enjoy in addition to the rights specified in paragraph (1) of this Article and subject to the provisions of this Agreement, the right to make stops in the Territory of the other Contracting Party at the points specified for that route in the Annex to this Agreement for the purpose of taking on board and discharging passengers, baggage and cargo including mail.

3. Nothing in paragraph 2 of this Article shall be deemed to confer to a Designated Airline of one Contracting Party the right of taking up, in the Territory of the other Contracting Party, passengers, baggage, cargo or mail carried for remuneration or hire and destined for another point in the Territory of that other Contracting Party.
4. If because of armed conflict, serious political disturbance or other similar developments, or special and unusual circumstances, a Designated Airline of one Contracting Party is unable to operate a service on its normal routes, the other Contracting Party shall use its best efforts to facilitate the continued operation of such service through appropriate temporary rearrangement of any such routes, including the temporary granting of alternative rights for such time as may be necessary to facilitate, subject to national requirements, continued operations.
5. For the purpose of the application of paragraphs 1, 2 and 4 of this Article, each Contracting Party may specify the routes to be followed above its Territory by any Designated Airline of the other Contracting Party and the airport(s) which may be used. When applying paragraph 2 and 4 of this Article, the provisions of this paragraph shall be applied without discrimination between the Designated Airlines of both Contracting Parties. However, nothing in this paragraph shall supersede the provisions contained in Article 5 of this Agreement or any agreed limitation on the operation of air services under this Agreement.

ARTICLE 3

DESIGNATION AND AUTHORISATION OF AIRLINES

1. Each Contracting Party shall have the right to designate one or more airlines for the purpose of operating the Agreed Services on the Specified Routes. Such designation(s) shall be effected by written notification between the Aeronautical Authorities, through diplomatic channels.
2. On receipt of such designation, the other Contracting Party shall, subject to the provisions of paragraph 3 and 4 of this Article, without unreasonable delay grant to the airline so designated the appropriate operating authorisations(s)
3. For the purpose of granting the appropriate operating authorisations, the Aeronautical Authority of one Contracting Party may require an airline designated by the other Contracting Party to satisfy it that it is qualified to fulfil the conditions prescribed under the laws and regulations normally and reasonably applied to

the operation of international air services by such authorities in conformity with the provisions of the Convention.

4. Where a Contracting Party is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in its nationals, or that the said airline is incorporated and has its principal place of business in the Territory of the Contracting Party designating it, it shall have the right to:
 - (a) refuse to grant the operating authorisation referred to in paragraph(2), or
 - (b) Impose such conditions as it may deem necessary on the exercise by a Designated Airline of the rights specified in Article 2 of this Agreement.
5. When an airline has been so designated and authorised it may begin at any time to operate the Agreed Services, provided that:
 - a) A tariff established in accordance with the provisions of Article 10 of this Agreement is in force; and
 - b) A timetable has been filed in accordance with the provisions of Article 11 of this Agreement and has not been disapproved.
6. Each Contracting Party shall have the right by written notification between the Aeronautical Authorities of the Contracting Parties to replace an airline it has designated with another Designated Airline. The substitute airline shall have the same rights and be subject to the same obligations as the airline which it replaces.

ARTICLE 4 SUSPENSIONS AND REVOCATIONS

1. Each Contracting Party shall have the right to revoke an operating authorisation or to suspend the exercise of the rights specified in Article 2 of this Agreement by a Designated Airline of the other Contracting Party or to impose such conditions as it may deem necessary on the exercise of these rights:
 - a) In any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party or in nationals of such Contracting Party or that the said airline is incorporated and has its principal place of business in the Territory of the Contracting Party designating it;
 - b) In the case of failure by that airline to comply with the laws or regulations in force in the Territory of the Contracting Party granting these rights; or
 - c) In any case where that airline fails to comply with a decision given under Article 17 of this Agreement; or
 - d) In any case where that airline otherwise fails to operate the Agreed Services in accordance with the conditions prescribed under this Agreement.
2. Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph 1 of this Article is essential to prevent further

infringements of laws or regulations, such right shall be exercised only after consultation with the other Contracting Party.

ARTICLE 5

APPLICATION OF LAWS AND REGULATIONS

1. The laws and regulations of one Contracting Party relating to the admission to or departure from its Territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its Territory, shall apply to the aircraft of the airline(s) designated by the other Contracting Party as they are applied to its own and shall be complied with by such aircraft upon entrance into or departure from and while within the Territory of the first Contracting Party.
2. The laws and regulations of one Contracting Party relating to the admission to or departure from its Territory of passengers, baggage, crew, mail or cargo of aircraft, including laws and regulations relating to entry, clearance, immigration, passports, customs, quarantine and sanitary measures shall be complied with by or on behalf of such passengers, baggage, crew, mail or cargo of the airline(s) of the other Contracting Party upon entrance into or departure from and within the Territory of the first Contracting Party.
3. Notwithstanding the provisions of paragraph 2 of this Article, each Contracting Party agrees to make provision by means of direct transit areas, direct transit arrangements, or otherwise, whereby crew, passengers, baggage, cargo, stores and mail continuing their journey on the same through-flight of a Designated Airline of the other Contracting Party may remain temporarily within their Territory without undergoing any examination except for reasons of aviation security, narcotics control or in special circumstances.

ARTICLE 6

RECOGNITION OF CERTIFICATES AND LICENCES

Certificates of airworthiness, certificates of competency and licences issued or rendered valid by one Contracting Party, and still in force, shall be recognised as valid by the other Contracting Party for the purpose of operating the Agreed Services, provided that requirements under which such certificates or licences were issued or rendered valid were equal to or above the minimum standards established pursuant to the Convention. Each Contracting Party reserves the right, however, to refuse to recognise, for the purpose of flights above its own Territory, certificates of competency and licences granted to its own nationals by the other Contracting Party.

ARTICLE 7

USER CHARGES

1. User Charges may reflect, but shall not exceed, the full cost to the competent charging authorities of providing appropriate airport and air navigation facilities and services, and may provide for a reasonable rate of return on assets after depreciation. In the provision of facilities and services, the competent authorities shall have regard to such factors as efficiency, economy, environmental impact and safety of operation.
2. Neither Contracting Party shall impose or permit to be imposed on the Designated Airline of the other Contracting Party User Charges higher than those imposed on its own Designated Airline operating similar international air services using similar aircraft and associated facilities and services.
3. Each Contracting Party shall encourage consultations between its responsible charging bodies and the Designated Airline using the facilities and services. Where practicable, such consultations should be through the appropriate representative airline organisation.
4. Reasonable advance notice shall, whenever possible, be given to the Designated Airline of any proposals for changes to charges referred to in this Article, together with relevant supporting information and data, to enable it to express and have its views taken into account before any changes are made.

ARTICLE 8

EXEMPTION FROM CUSTOMS DUTIES, INSPECTION FEES AND OTHER SIMILAR CHARGES

1. Aircraft of one Contracting Party which land in the Territory of the other Contracting Party on international scheduled or non-scheduled services, as well as their regular and spare equipment, supplies of fuel, lubricants and other consumable technical supplies and aircraft stores, including food, beverages, tobacco and any items intended for sale to or for the entertainment of passengers during flight, shall be exempt from all customs duties, inspection fees and other similar national or local duties or charges, except for charges for provision of services.
2. Upon arrival of the aircraft, the customs authorities shall seal the compartments where stores are retained, and these customs seals can only be broken after the aircraft departure for a place outside the Territory of that Contracting Party.
3. The exemptions in paragraph 1 of this Article shall also apply to aircraft stores taken on board in the Territory of the other Contracting Party, within the usually allowable limits of quantity and variety, and shall also apply to spare and replacement parts and equipment necessary to flight safety, maintenance, repair

and handling, which are obtained in the Territory of that other Contracting Party, as well as to fuel, lubricants and other consumable technical supplies, destined to supply such aircraft, including those used during over flight of the Territory of the Contracting Party where they were obtained, on condition that their entry on board may be controlled by the customs authorities concerned.

4. The exemptions provided for in paragraph 1 of this Article shall also apply baggage and cargo in direct transit, to equipment referred to in Annex 17 to the Convention, and to documentation and advertising material of the Designated Airlines and other commercial air transport operators, in accordance with the relevant laws and regulations of the Contracting Party concerned.
5. The exemptions provided for in the previous paragraphs of this Article may also be applicable to such items obtained by the Designated Airlines and other commercial air operators from aircraft maintenance organizations or aircraft handling agents, on condition that all such operations are controlled by the local customs authorities.
6. The regular airborne equipment, as well as the materials and supplies normally retained on board the aircraft of either Contracting Party, may be unloaded in the Territory of the other Contracting Party only with the approval of the customs authorities of that Territory. In such case, they may be placed under the supervision of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.
7. In order to determine their correct utilisation and/or existence, the customs authorities of each Contracting Party shall be entitled at any reasonable time to effect a direct inspection of any item exempted by them from custom duty which is stored or stationed, whether temporarily or permanently, in their Territory.
8. The exemptions provided for in this Article shall be available in situations where a Designated Airline of a Contracting Party has entered into arrangements with another airline or airlines for the loan or transfer in the Territory of the other Contracting Party of the items referred to in this Article, provided that such other airline similarly enjoys such exemptions from the other Contracting Party.
9. In all situations not provided for in the previous paragraphs of this Article, imported items shall be subject to customs duties according to the laws and regulations in force in the Territory of the Contracting Party concerned.

ARTICLE 9

PRINCIPLES GOVERNING THE OPERATION OF THE AGREED SERVICES

1. There shall be fair and equal opportunity for the Designated Airlines of both Contracting Parties to operate the Agreed Services on the Specified Routes between their respective territories.

507

1157

2. In operating the Agreed Services, the Designated Airline(s) of each Contracting Party shall take into account the interest of the Designated Airline(s) of the other Contracting Party so as not to affect unduly the services which the latter provide(s) 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, including seasonal variations, for the carriage of passengers, baggage, cargo and mail both taken up and down at points on the Specified Routes in the Territories of the Contracting Parties which have designated the airlines.
4. Any provision for the carriage of passengers, baggage, cargo and mail both taken up and discharged 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 to and from the Territory of the Contracting Party which has designated the airline;
 - b) traffic requirements of the area through which the Agreed Services 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.
5. The airlines designated to operate on any particular route shall agree on the total Capacity to be provided on such route.
6. Each Designated Airline shall submit to the Aeronautical Authorities of both Contracting Parties, for approval, the Capacity to be provided by it on the services on those routes for which it is designated.
7. The total Capacity to be provided on any particular route by the airlines of the Contracting Parties designated to operate on that route shall be approved by the Aeronautical Authorities of the Contracting Parties before commencement of operations, and thereafter according to anticipated traffic requirements. Such approval shall take into consideration any written submissions as to Capacity made by the Designated Airlines concerned.
8. In the event that the Aeronautical Authority of one Contracting Party does not approve the Capacity submitted, it shall request consultation in accordance with Article 18 of this Agreement.
9. If, on review, Contracting Parties fail to agree on Capacity to be provided on any particular route, the Capacity that may be provided on that route shall not exceed the total Capacity, including seasonal variations, previously agreed to be provided on that route.

ARTICLE 10

TARIFFS

1. Tariffs shall be submitted, for the approval of the Aeronautical Authorities of both Contracting Parties, at least sixty (60) days before the proposed date of their introduction (hereinafter referred to as the "period of notice"). In special cases, the period of notice may be reduced, subject to the agreement of the said authorities.
2. The approval referred to in paragraph (1) may be given expressly. The Tariffs shall be considered to be approved unless both Aeronautical Authorities have expressed disapproval of the Tariffs within thirty (30) days from the date of submission in accordance with paragraph(1).
3. In the event of the period of notice being reduced as provided for in paragraph (1), the Aeronautical Authorities may agree that the period within which any disapproval must be notified shall be less than thirty (30) days.
4. The Aeronautical Authorities of the Contracting Parties shall ensure that the Designated Airlines conform to the Tariffs approved by the Aeronautical Authorities of the Contracting Parties and that no airline reduces any portion of such Tariffs by any means directly or indirectly.

ARTICLE 11

SUBMISSION OF TIMETABLES

1. The timetables of the Designated Airline(s) of each Contracting Party shall be filed with the Aeronautical Authority of the other Contracting Party for approval.
 2. The timetables shall be filed at least forty five (45) days before they are due to become effective and shall include information pertaining to schedules, frequency of service and types and configuration of aircraft to be operated.
 3. Any modification to a timetable already submitted other than an ad hoc modification, shall be filed with the Aeronautical Authorities at least twenty (20) days before such modification is to become effective. An ad hoc modification shall be filed with the Aeronautical Authorities at least one (1) working day before such modification is to become effective. Nevertheless the Aeronautical Authorities shall endeavour to expedite the decision relating to any ad hoc modification.
 4. If no notice of disapproval is received before the effective date of a timetable or a timetable modification, it shall be regarded as approved, always provided that such tacit approval shall become void automatically if applicable limitations as to the Capacity and frequency which may be offered will be exceeded.
- 2010

5. In exceptional cases the periods specified in paragraphs 2 and 3 of this Article may be reduced if agreed to by both Aeronautical Authorities

ARTICLE 12

AVIATION SECURITY

1. Consistent with their rights and obligations under international law, the Contracting 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.
2. Subject to applicable domestic law and without derogating from the generality of their rights and obligations in terms of international law, the Contracting Parties shall in particular act in conformity with the provisions of the Convention on offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970 and the Convention for the Suppression of Acts against the safety of Civil Aviation, signed at Montreal on 23 September 1971; and the Protocol for the Suppression of Unlawful Acts of Violence at the Airports Serving International Civil Aviation Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 of September of 1971, signed at Montreal on 24 February 1988 and any other multilateral agreement governing civil aviation security binding upon both Contracting Parties.
3. The Contracting Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of their civil aircraft and other acts of unlawful interference against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other relevant threat to the security of civil aviation.
4. The Contracting Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organization and designated as Annexes to the Convention to the extent that such security provisions are applicable to both Parties; they shall require that operators of aircraft of their registry or 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.
5. Each Contracting Party agrees that such operators of aircraft may be required to observe the aviation security provisions referred to in paragraph 3 of this Article required by the other Contracting Party for entry into, departure from, or while within, the Territory of that other Contracting Party. Each Contracting Party shall ensure that measures are effectively applied within its Territory to protect the aircraft and to security screen their passengers, crew and carry-on items and to carry out appropriate security checks on baggage, cargo and aircraft stores prior to boarding or loading. Each Contracting Party also agrees to give sympathetic

consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat.

6. When an incident or threat of an incident of unlawful seizure of civil aircraft or other acts of unlawful interference against the safety of such aircraft, their passengers and crew, airports or other air navigation facilities occurs, the Contracting Parties shall in mutual consultation, assist each other by facilitating communications and other appropriate measure intended to terminate, as rapidly as possible, commensurate with minimum risk to life, such incident or threat thereof.
7. Each Contracting Party shall take such measures as it may find practicable to ensure that an aircraft of the other Contracting Party subjected to an act of unlawful seizure or other act(s) of unlawful interference which is on the ground in its Territory is detained thereon unless its departure is necessitated by the overriding duty to protect the lives of its crew and passengers. Wherever practicable, such measures shall be taken on the basis of consultations with the other Contracting Party.
8. Notwithstanding the provisions of paragraph 2 of Article 18 of this Agreement, should one Contracting Party have reasonable grounds to believe that the other Contracting Party has deviated significantly from any of the provisions of this Article, it may request immediate consultations with that other Contracting Party.

ARTICLE 13

AVIATION SAFETY

1. A Contracting Party may request consultations at any time concerning the safety standards maintained by the other Contracting Party relating to aeronautical facilities, aircrew, aircraft and the operation of aircraft. Such consultations shall take place within thirty (30) days of such request.
2. If, following such consultations, a Contracting Party finds that the other Contracting Party does not effectively maintain and administer safety standards in the areas referred to above which are at least equal to the minimum standards established at that time pursuant to the Convention, the Contracting Party shall notify the other Contracting Party of those findings and the steps considered necessary to conform with those minimum standards. Such Contracting Party shall take appropriate corrective action and failure to take appropriate action within thirty (30) days of being notified thereof, or such longer period as may be agreed upon, shall be grounds for the application of Article 4.
3. Notwithstanding the obligations mentioned in Article 33 of the Convention, it is agreed that any aircraft operated by the Designated Airline of one Contracting Party on services to or from the Territory of the other Contracting Party, may, while within the Territory of the other Contracting Party, be subject to an examination by the authorised representative of that Contracting Party. The purpose of such examination shall include the verification of the validity of the

aircraft documents and those of its crew and the apparent condition of the aircraft and its equipment (hereinafter referred as "ramp inspection"), provided this does not lead to unreasonable delay.

4. If any such ramp inspection or series of ramp inspections gives rise to serious concerns that:

- (a) an aircraft or the operation of an aircraft does not comply with the minimum standards established at that time pursuant to the Convention; or
- (b) there is a lack of effective maintenance and administration of safety standards established at that time pursuant to the Convention,

the Contracting Party carrying out the ramp inspection shall, for the purposes of Article 33 of the Convention, be free to conclude that the requirements under which the certificate or licences in respect of that aircraft or in respect of the crew of that aircraft had been issued or rendered valid, or that the requirements under which that aircraft is operated, are not equal to or above the minimum standards established pursuant to the Convention.

5. In the event that access for the purpose of undertaking a ramp inspection of an aircraft operated by the Designated Airline of one Contracting Party in accordance with paragraph 3 above is denied by the representatives of that Designated Airline, the other Contracting Party may infer that serious concerns of the type referred to in paragraph 4 above arise and draw conclusions referred to in that paragraph.

6. Each Contracting Party reserves the right to immediately suspend or vary the operating authorisation of a Designated Airline of the other Contracting Party in the event the Contracting Party concludes, whether as a result of a ramp inspection or consultation, that immediate action is essential to the safety of airline operation.

7. Any action by one Contracting Party in accordance with paragraphs (2) and (6) above shall be discontinued upon compliance by the other Contracting Party with the safety provisions of this Article.

ARTICLE 14

PROVISION OF STATISTICS

The Aeronautical Authority of a Contracting Party shall upon request, provide or shall cause its Designated Airline(s) to provide the Aeronautical Authority of the other Contracting Party with such periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the operation of the Agreed Services, including, but not limited to, statements of statistics related to the traffic carried by its

Designated Airline(s) between points in the Territory of the other Contracting Party and other points on the Specified Routes.

ARTICLE 15

EARNINGS

1. Each Contracting Party grants to the Designated Airline of the other Contracting Party the right of free transfer excess of receipts over expenditure earned by that airline in its Territory in connection with the carriage of passengers, baggage, mail and cargo. Such transfers shall be effected in accordance with foreign exchange regulations and requirements at the official exchange rate or the prevailing foreign exchange market rate for current payments, and shall not be subject to any charges other than charges normally collected by banks for such operations.
2. The transfer of earnings between the Designated Airlines shall be effected in such hard convertible currency as may be agreed to between them for this purpose from time to time.
3. Each Contracting Party shall, on the basis of reciprocity, exempt from income tax and all other taxes on income imposed by it, all income derived by the Designated Airline of the other Contracting Party from the operation of the Agreed Services.
4. In the event that an agreement or convention dedicated to the avoidance of double taxation with respect to taxes to income and capital becomes effective between Angola and Kenya those provisions of such agreement or convention which are binding on both Contracting Parties shall, mutatis mutandis, supersede the provision in paragraph 3 of this Article.

ARTICLE 16

COMMERCIAL ACTIVITIES

1. A Designated Airline of a Contracting Party shall, on a reciprocal basis, be allowed to establish in the Territory of the other Contracting Party offices for the promotion and sale of air transportation services.
2. A Designated Airline of one Contracting Party shall be entitled, in accordance with the laws and regulations relating to entry, residence and employment of the other Contracting Party, to bring in and maintain in the Territory of the other Contracting Party its own managerial, technical, commercial, operational and other specialist staff who are required for the provision of air services. These staff requirements may, at the option of a Designated Airline, be satisfied by its own personnel or by using the services of any other organisation, company or airline operating in the Territory of the other Contracting Party, and authorised to perform such services in the Territory of that Contracting Party.

3. Each Contracting Party agrees to use its best efforts to ensure that the Designated Airline of the other Contracting Party is offered the choice, subject to the law and regulations of each Contracting Party and reasonable limitations which may be imposed by airport authorities of;
 - (a) providing its own services for ground handling operations; or
 - (b) having such operations performed entirely or in part by a national airline, or a servicing agent, as authorised by the Aeronautical Authorities; or
 - (c) having such operations performed by the airport authority.
 4. In operating or holding out the authorised services on the Agreed Routes, any Designated Airline of one Contracting Party may enter into cooperative marketing arrangements like code-sharing and franchising, with;
 - (a) an airline or airlines of the other Contracting Party;
 - (b) an airline or airlines of a third country, provided that such third country authorises or allows comparable arrangements between the airlines of the other Party and other airlines on services to, from and via such third country;
- provided that all airlines in such arrangements;
- (i) possess the necessary traffic rights and the permission of the Aeronautical Authorities of the contracting states concerned;
 - (ii) meet the requirements normally applied to such arrangements; and
 - (iii) must in respect of any ticket sold by it, make it clear to the purchaser at the point of sale which airline will actually operate each sector of the service and with which airline or airlines the purchaser is entering into a contractual relationship.

Each code sharing service operated by the Designated Airlines of either country will count as one (1) frequency, whereas the code sharing services of the marketing carrier will not be counted as a frequency.

5. Each Contracting Party grants to the Designated Airlines of the other Contracting Party the right to engage in the sale of air transportation in its Territory directly and, at the airline's discretion, through its agents. Each Designated Airline shall have the right to sell such transportation, and any person shall be free to purchase such transportation in the currency of that Territory.
6. Any Designated Airline of a Contracting Party shall have the right, to pay for local expenses in the Territory of the other Contracting Party in local currency, or in freely convertible currencies, provided that this accords with local currency regulations.

25-14

ARTICLE 17

SETTLEMENT OF DISPUTES

1. If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first place endeavour to settle such dispute by negotiation.
2. If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute to some competent person or body for mediation.
3. If settlement is not reached in accordance with paragraphs 1 or 2 of this Article the dispute shall, at the request of either Contracting Party, be submitted for decision to a tribunal of three arbitrators.
4. Each Contracting Party shall appoint one arbitrator and the third arbitrator, to be jointly appointed by the two arbitrators so appointed, shall act as President of the tribunal.
5. Each Contracting Party shall appoint its arbitrator within a period of sixty (60) days from the date of receipt of a notice by either Contracting Party from the other, through diplomatic channels, requesting arbitration of the dispute by such a tribunal and the third arbitrator shall be appointed within a further period of sixty (60) days commencing on the day immediately following the last calendar day of the period allowed for the appointment of the first two arbitrators.
6. If either Contracting Party fails to appoint an arbitrator within the specified period or if the third arbitrator is not appointed within the specified period, the President of the Council of the International Civil Aviation Organisation may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case requires, provided that the President is not a national of either Contracting Party, in which case the Vice President of the Council may be so requested. In such a case, the arbitrator or arbitrators appointed by the said President or Vice President, as the case may be, shall not be nationals or permanent residents of the respective States of the Contracting Parties.
7. The Contracting Parties shall comply with any decision given under this Article.
8. Each Contracting Party shall meet the cost of remuneration and the expenses of its arbitrator. The remuneration and the expenses of the third arbitrator and the expenses of the tribunal, the nature and limits of which shall be agreed beforehand by the Contracting Parties, shall be shared equally between and shall be met by the Contracting Parties. Any question concerning the division of costs of the arbitral tribunal or the procedure for payment of such costs shall be determined by the arbitral tribunal.
9. If and for as long as either Contracting Party fails to comply with a decision contemplated in paragraph 7 of this Article the other Contracting Party may limit, suspend or revoke any rights or privileges which it has granted under this Agreement to the Contracting Party in default.

2-5 15

file 7

ARTICLE 18
CONSULTATION

1. In a spirit of close co-operation, the Aeronautical Authorities of the Contracting Parties may consult each other from time to time with a view to ensuring the implementation of and satisfactory compliance with, the provisions of this Agreement and the Annex thereto.
2. Either Contracting Party may request consultation, which may be through discussion or by correspondence, and such consultation shall begin within a period of sixty (60) day from the date of receipt of the request, unless both Contracting Parties agree to an extension of this period.

ARTICLE 19
AMENDMENT

1. If either of the Contracting Parties considers it desirable to amend this Agreement, or any provision thereof, such amendment, if agreed between the Contracting Parties, shall enter into force when confirmed by an exchange of diplomatic notes.
2. Notwithstanding the provisions of paragraph 1 of this Article, amendments to the Annex of this Agreement may be agreed to directly between the Aeronautical Authorities of the Contracting Parties. Such amendments shall apply administratively from the date they have been agreed upon and enter into force when confirmed by an exchange of diplomatic notes.

ARTICLE 20
ENTRY INTO FORCE

1. This Agreement shall enter into force on the date on which both Contracting Parties have notified each other in writing through the diplomatic channel, of their compliance with the constitutional requirements necessary for the implementation thereof. The date of entry into force shall be the date of the last notification.
2. This Agreement supersedes any Agreement in force between the Contracting Parties in relation to Air Services between and beyond their respective territories.

ARTICLE 21

REGISTRATION WITH THE INTERNATIONAL CIVIL AVIATION ORGANIZATION

This Agreement and any amendment thereto shall be registered with the International Civil Aviation Organization.

ARTICLE 22

TERMINATION

Either Contracting Party may at any time give notice in writing through diplomatic channels to the other Contracting Party of its intention to terminate this Agreement; such notice shall simultaneously be communicated to the International Civil Aviation Organization. In such case the Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Contracting Party, unless the notice to terminate is withdrawn by mutual agreement before the expiry of this period. In the absence of acknowledgement of receipt by the other Contracting Party notice shall be deemed to have been received by that other Contracting Party fourteen (14) days after the receipt of the notice by the International Civil Aviation Organization.

ARTICLE 23

SIGNATURE OF AGREEMENT

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement in two originals in English and Portuguese languages, all texts being equally authentic.

Done at.....on this.....day
of..... Two Thousand.....

.....
FOR THE GOVERNMENT OF
THE REPUBLIC OF KENYA

.....
FOR THE GOVERNMENT OF
REPUBLIC OF ANGOLA

17

ANNEX

ROUTE SCHEDULE

a) For the Republic of Kenya

Points of Origin	Intermediate points	Points in the Republic of Angola	Points Beyond
Any Point	Any Point	Any Point	Any Point

b) For the Republic of Angola

Points of Origin	Intermediate points	Points in the Republic of Kenya	Points Beyond
Any Point	Any Point	Any Point	Any Point

Note: Fifth freedom traffic rights between any intermediate and/or beyond points shall be subject to the approval of the Aeronautical Authorities of both Contracting Parties.

57

MEMORANDUM OF UNDERSTANDING (MoU) BETWEEN THE REPUBLIC OF KENYA AND THE REPUBLIC OF ANGOLA

Delegations representing the Aeronautical Authorities of the Governments of the Republic of Kenya and the Republic of Angola met on the 20th and 21st July 2011 in Luanda, Angola, to negotiate the Bilateral Air Services Agreement between their respective countries.

The negotiations were held in a friendly and cordial atmosphere and a list of the two delegations appears as Attachments "A" and "B".

The honorable Ambassador-Designate H. E. Mr Peter M. Gitau attended the opening session of the negotiations.

The Delegations discussed and reached agreement on the following matters:

1. Air Services Agreement Text

The Delegations negotiated, agreed upon and initialled the text of the Air Services Agreement which is attached as Attachment "C".

The Delegations decided to recommend to their respective Governments the formal signing of the initialled Air Services Agreement.

Pending the completion of the national requirements necessary to formalize this Agreement, it was decided that the initialled Air Services Agreement be implemented administratively from the date hereof. The Delegations agreed to inform each other in writing through diplomatic channels when the national requirements to bring the initialled Air Services Agreement in force have been satisfied.

2. Designation

The Delegation of Kenya designated Kenya Airways. Additional Kenyan airline(s) may be designated in due course by the Aeronautical Authority of Kenya.

The Delegation of Angola designated TAAG Angola Airlines. Additional Angolan airline(s) may be designated in due course by the Aeronautical Authority of Angola.

3. Principles Governing Operations of Agreed Services

Both Delegations agreed to grant each other up to three frequencies per week.

The Delegations confirmed that the Designated Airlines may increase Capacity and frequencies on the Agreed Routes provided that the Designated Airlines agree and the Aeronautical Authorities do not disapprove any such increase.

The capacity for all cargo services shall be established by a specific agreement between the Designated Airlines. While the mentioned agreement is not

KJ

Plw

established, both Aeronautical Authorities agree to grant mutual occasional authorizations for charter cargo flights.

4. Fifth Freedom Rights

Fifth freedom traffic rights between any intermediate and/or beyond points shall be subject to the approval of the Aeronautical Authorities of both Contracting Parties.

5. Settlement of Disputes

Any dispute between the Contracting Parties that may arise from the interpretation or implementation of this MoU will be settled amicably through negotiations and consultations in accordance with Article 18 of the initialled Air Services Agreement.

6. Termination

This MoU may be terminated at any time by either Contracting Party after giving twelve (12) months written notice to the other in accordance with Article 22 of the initialled Air Services Agreement.

7. Coming into Effect

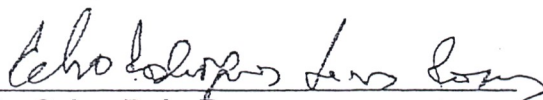
This MoU will come into effect on the date of its signature.

In witness whereof the undersigned, being duly authorised thereto, have signed this Memorandum of Understanding in two originals in English and Portuguese languages, all texts being equally authentic.

Signed in Luanda, Angola, on the 21st of July 2011



Eng. Reuben J. Lubanga
FOR THE AERONAUTICAL AUTHORITY OF
THE REPUBLIC OF KENYA



Mr. Celso R. L. Rosas
FOR THE AERONAUTICAL AUTHORITY
OF THE REPUBLIC OF ANGOLA

Delegation of Kenya

- | | |
|----------------------|---|
| 1. Reuben J. Lubanga | Director Air Navigation
Kenya Civil Aviation Authority
Head of the Delegation |
| 2. Irene W. Ireri | Assistant Director of Air Transport,
Ministry of Transport |
| 3. Robert Kungu | Senior State Counsel
State Law Office |
| 4. Daniel W. Wambura | Minister Counselor II
Ministry of Foreign Affairs |
| 5. Joseph K. Koech | Air Transport Officer
Kenya Civil Aviation Authority |
| 6. Anthony G. Mwangi | Manager Government & Industry
Affairs - Kenya Airways |
| 7. George K. Kamau | Legal Officer
Kenya Airports Authority |

ATTACHMENT "B"

Delegation of the Republic of Angola:

- | | | |
|----|--------------------------|---|
| 1. | Celso R. L. Rosas | Deputy Director General of INAVIC –
Head of Delegation |
| 2. | Manuel dos A. J. da Rosa | Director Air Transport – INAVIC |
| 3. | Illasandra I. C. Faria | Director Legal Office – INAVIC |
| 4. | Francisco A. de Carvalho | Director IT Office - INAVIC |
| 5. | Isabel P. G. Ribeiro | International Relations Technician –
Ministry of Foreign Affairs |
| 6. | Josefa Joaquim | Technical Adviser of International
Relations Office - Ministry of
Transport |
| 7. | Joelson Vasconcelos | Technical Adviser of International
Relations Office - TAAG Angola
Airlines |
| 8. | Marinela S. Chingango | International Relations Technician -
INAVIC |

Agreed Minute

1. Delegations representing the Government of Canada and the Government of the Republic of Kenya met in Mumbai, India, in the context of the 4th ICAO Air Services Negotiation Conference on October 21, 2011, to initiate negotiation of an Agreement between the Government of Canada and the Government of the Republic of Kenya On Air Transport (the Agreement). Discussions continued by correspondence thereafter, concluding on September 12, 2012, in Montreal, Canada, on the margins of the ICAO High-Level Conference on Aviation Security. Delegation lists are attached as Appendix A.
 2. The discussions took place in a cordial and constructive atmosphere, reflective of the excellent relations between the two countries on a wide range of issues.
 3. Delegations reached an understanding, *ad referendum*, on the Agreement, which is attached as Appendix B. 
 4. Delegations agreed to submit the text of the Agreement to their respective authorities with a recommendation that the Contracting Parties adopt the Agreement as amended, subject to any necessary adjustments for legal and textual consistency, as authentic and definitive by signature and bring it into force in accordance with their respective legal requirements.
 5. Acknowledging that ratification of the Agreement may take some time, and pending definitive entry into force of the Agreement, Negotiators agreed that, effective from the signing of this Agreed Minute and the initialling of the Agreement by respective Parties, pending the Agreement coming into force definitively, air services will be permitted to be operated under the Agreement, and the provisions of the Agreement will be applied administratively to the fullest extent possible under national laws and regulations.
 6. The Canadian delegation undertook to provide a draft French language version of the amended Agreement to the Kenyan authorities for their review as soon as possible.
- 

7. Delegations agreed to remain in contact in the future to review the implementation of the agreement and related market developments, for consideration of possible amendment of the Agreement.

Signed in duplicate, this 12th day of September, 2012, in Montreal, Canada



Robert Ready
Chief Air Negotiator
Canada



Benjamin Kiguhi Enyenze
Senior Air Transport Officer
Ministry of Transport
The Republic of Kenya

RR

Appendix A

Canadian Delegation

Robert Ready
Chief Air Negotiator
Government of Canada

Marc Rioux
Executive Director, Policy Initiatives
Transport Canada

Nuno Bellem
Senior Advisor
Canadian Transportation Agency

Martin Loken
Trade Policy and Negotiations Branch
Department of Foreign Affairs &
International Trade

Eelco (Ed) Jäger
Senior Trade Policy Analyst - Air Transport
Department of Foreign Affairs &
International Trade

Kenyan Delegation

Benjamin Kiguhi Enyenze
Senior Air Transport Officer
Ministry of Transport

Lawrence K. Amukono
Senior Legislation & Enforcement Officer
Kenya Civil Aviation Authority

Mohamed Nur Adan
First Counsellor
Kenya High Commission
Ottawa

Enock Aroni
Second Secretary
Kenya High Commission
Ottawa

Mogire Chweya
Manager Aviation Security
Kenya civil aviation authority
Kenya

Richard Ngovi
Ag. General Manager Safety and Security
Kenya Airports Authority
Kenya



AGREEMENT
BETWEEN THE GOVERNMENT OF CANADA
AND
THE GOVERNMENT OF THE REPUBLIC OF KENYA
ON AIR TRANSPORT

A handwritten signature in black ink, consisting of a stylized 'A' followed by a horizontal line and a small flourish.

TABLE OF CONTENTS

<u>ARTICLE</u>	<u>HEADING</u>
1	Headings & Definitions
2	Grant of Rights
3	Designation
4	Authorization
5	Withholding, Revocation, Suspension and Limitation of Authorization
6	Application of Laws
7	Safety Standards, Certificates and Licences
8	Aviation Security
9	Customs Duties and Other Charges
10	Statistics
11	Tariffs
12	Availability of Airports and Aviation Facilities and Services
13	Charges for Airports and Aviation Facilities and Services
14	Capacity
15	Airline Representatives
16	Ground Handling
17	Sales and Transfer of Funds
18	Taxation
19	Applicability to Charter/Non-scheduled Flights
20	Consultations
21	Amendment
22	Settlement of Disputes
23	Termination
24	Registration with ICAO
25	Multilateral Conventions
26	Entry into Force



AGREEMENT BETWEEN THE GOVERNMENT OF CANADA .

AND THE GOVERNMENT OF THE REPUBLIC OF KENYA .

ON AIR TRANSPORT

The Government of Canada and the Government of the Republic of Kenya, hereinafter referred to as the "Contracting Parties",

Being parties to the *Convention on International Civil Aviation*, done at Chicago on 7 December 1944;

Desiring to ensure the highest degree of safety and security in international air transportation;

Recognizing the importance of international air transportation in promoting trade, tourism and investment;

Desiring to promote their interests in respect of international air transportation; and

Desiring to conclude an agreement on air transport, supplementary to the said Convention;

Have agreed as follows:



PR

ARTICLE 1
Headings & Definitions

1. Headings used in this Agreement are for reference purposes only.

2. For the purpose of this Agreement, unless otherwise stated:

"aeronautical authorities" means, in the case of Canada, the Minister of Transport of Canada and the Canadian Transportation Agency, and, in the case of the Republic of Kenya, the Minister/Cabinet Secretary in charge of aviation, or, in both cases, any other authority or person empowered to perform the functions exercised by the said authorities;

"agreed services" means scheduled air services on the routes specified in this Agreement for the transport of passengers and cargo, including mail, separately or in combination;

"Agreement" means this Agreement, any Annex attached thereto, and any amendment to this Agreement or to any Annex attached thereto;

"air service", "international air service" and "airline" shall have the meanings respectively assigned to them in Article 96 of the Convention;

"Convention" means the *Convention on International Civil Aviation*, done at Chicago on 7 December 1944 and includes any Annex adopted under Article 90 of that Convention and any amendment of the Convention or of the Annexes under Articles 90 and 94 thereof so far as those Annexes and amendments have been adopted by both Contracting Parties;

"designated airline" means an airline which has been designated and authorized in accordance with Articles 3 and 4 of this Agreement;

"territory" means for each Contracting Party, its land areas (mainland and islands), internal waters and territorial sea as determined by its national law, and includes the air space above these areas.



FL

ARTICLE 2
Grant of Rights

1. Each Contracting Party grants to the other Contracting Party the following rights for the conduct of international air services by the airlines designated by that other Contracting Party:

- a) the right to fly across its territory without landing;
- b) the right to land in its territory for non-traffic purposes; and
- c) to the extent permitted in this Agreement, the right to make stops in its territory on the routes specified in this Agreement for the purpose of taking up and discharging international traffic in passengers and cargo, including mail, separately or in combination.

2. Each Contracting Party also grants the rights specified in subparagraphs 1(a) and (b) of this Article to airlines of the other Contracting Party, other than those designated under Article 3 of this Agreement.

3. Nothing in paragraph 1 of this Article shall be deemed to confer on a designated airline of one Contracting Party the right of taking up, in the territory of the other Contracting Party, passengers and cargo, including mail, carried for remuneration or hire and destined for another point in the territory of that other Contracting Party.



R.R

ARTICLE 3

Designation

Each Contracting Party shall have the right to designate, by diplomatic note, an airline or airlines to operate the agreed services on the routes specified in this Agreement for that Contracting Party and to withdraw a designation or to substitute another airline for one previously designated.



LR

ARTICLE 4
Authorization

1. Following receipt of a notice of designation or of substitution pursuant to Article 3 of this Agreement, the aeronautical authorities of the other Contracting Party shall, consistent with the laws and regulations of that Contracting Party, issue without delay to the airline so designated the required authorizations to operate the agreed services for which that airline has been designated.
2. The Contracting Parties confirm that, upon receipt of such authorization, the designated airline may begin at any time to operate the agreed services, in whole or in part, provided that the airline complies with the provisions of this Agreement.

A handwritten signature, possibly reading 'A', is located on the right side of the page.Handwritten initials 'PR' are located in the bottom left corner of the page.

ARTICLE 5

Withholding, Revocation, Suspension and Limitation of Authorization

1. Notwithstanding paragraph 1 of Article 4, the aeronautical authorities of each Contracting Party shall have the right to withhold the authorizations referred to in Article 4 of this Agreement with respect to an airline designated by the other Contracting Party, and to revoke, suspend or impose conditions on such authorizations, temporarily or permanently:

- a) in the event of failure by such airline to qualify under the laws and regulations normally applied by the aeronautical authorities of the Contracting Party granting the rights;
- b) in the event of failure by such airline to comply with the laws and regulations of the Contracting Party granting the rights;
- c) in the event that they are not satisfied that substantial ownership and effective control of the airline are vested in the Contracting Party designating the airline or its nationals; and
- d) in the event the airline otherwise fails to operate in a manner consistent with the conditions set out in this Agreement.

2. The rights enumerated in paragraph 1 of this Article shall be exercised only after consultations between the aeronautical authorities of the Contracting Parties in conformity with Article 20 of this Agreement, unless immediate action is essential to prevent infringement of the laws and regulations referred to above or unless safety or security requires action in accordance with the provisions of Articles 7 or 8 of this Agreement.



RR

ARTICLE 6
Application of Laws

1. Each Contracting Party shall require compliance with:
 - a) its laws, regulations and procedures relating to the admission to, remaining in, or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft, by the designated airlines of the other Contracting Party upon entrance into, departure from and while within the said territory; and
 - b) its laws and regulations relating to the admission to, remaining in, or departure from its territory of passengers, crew members and cargo including mail (such as regulations relating to entry, clearance, transit, aviation security, immigration, passports, customs and quarantine) by the designated airlines of the other Contracting Party and by or on behalf of such passengers and crew members, and applicable to the cargo including mail carried by the designated airlines of the other Contracting Party, upon transit of, admission to, departure from and while within the said territory.
2. In the application of such laws and regulations, a Contracting Party shall, under similar circumstances, accord to the designated airlines of the other Contracting Party treatment no less favourable than that accorded to its own or any other airline engaged in similar international air services.



ARTICLE 7

Safety Standards, Certificates and Licences

1. Certificates of airworthiness, certificates of competency and licences, issued or rendered valid by the aeronautical authorities of one Contracting Party and still in force, shall be recognized as valid by the aeronautical authorities of the other Contracting Party for the purpose of operating the agreed services provided that such certificates or licences were issued or rendered valid pursuant to, and in conformity with, as a minimum, the standards established under the Convention. The aeronautical authorities of each Contracting Party reserve the right, however, to refuse to recognize, for the purpose of flights above its own territory, certificates of competency and licences granted to its own nationals by the other Contracting Party.
2. If the privileges or conditions of the certificates or licences referred to in paragraph 1 above, issued by the aeronautical authorities of one Contracting Party to any person or designated airline or in respect of an aircraft used in the operation of the agreed services, should permit a difference from the minimum standards established under the Convention, and which difference has been filed with the International Civil Aviation Organization, the other Contracting Party may request consultations between the aeronautical authorities of the Contracting Parties in conformity with Article 20 of this Agreement with a view to clarifying the practice in question.
3. Consultations concerning the safety standards and requirements maintained and administered by the aeronautical authorities of the other Contracting Party relating to aeronautical facilities, crew members, aircraft, and operation of the designated airlines shall be held within fifteen (15) days of receipt of a request from either Contracting Party, or such other period as may be mutually determined by the Contracting Parties. If, following such consultations, the aeronautical authorities of one Contracting Party find that the aeronautical authorities of the other Contracting Party do not effectively maintain and administer safety standards and requirements in these areas that are at least equal to the minimum standards established pursuant to the Convention, the aeronautical authorities of the other Contracting Party shall be notified of such findings and the steps considered necessary to conform with these minimum standards. Failure to take appropriate corrective action within fifteen (15) days, or such other period as may be accepted by the aeronautical authorities of the Contracting Party that made the findings, shall constitute grounds for withholding, revoking, suspending or imposing conditions on the authorizations of the designated airlines of the other Contracting Party.
4. Pursuant to Article 16 of the Convention, each Contracting Party agrees that any aircraft operated by or, where approved, on behalf of, an airline of one Contracting Party, may, while within the territory of the other Contracting Party, be the subject of an examination by the aeronautical authorities of the other Contracting Party, on board and around the aircraft to verify the validity of the relevant aircraft documents and those of its crew members and the apparent condition of the aircraft and its equipment (in this Article called a ramp inspection), provided such ramp inspection does not cause an unreasonable delay in the operation of the aircraft.
5. If the aeronautical authorities of one Contracting Party, after carrying out a ramp inspection, find that:
 - a) an aircraft or the operation of an aircraft does not comply with the minimum standards established at that time pursuant to the Convention; and/or

RK



- b) there is a lack of effective maintenance and administration of safety standards established at that time pursuant to the Convention,

the aeronautical authorities of that Contracting Party may, for the purposes of Article 33 of the Convention and at their discretion, determine that the requirements under which the certificates or licences in respect of that aircraft or its crew members had been issued or rendered valid, or that the requirements under which that aircraft is operated, are not equal to or above the minimum standards established pursuant to the Convention. This same determination may be made in the case of denial of access for ramp inspection.

6. The aeronautical authorities of each Contracting Party shall have the right, without consultation, to withhold, revoke, suspend or impose conditions on the authorizations of an airline of the other Contracting Party in the event the aeronautical authorities of the first Contracting Party conclude that immediate action is essential to the safety of airline operations.

7. Any action by the aeronautical authorities of one Contracting Party in accordance with paragraphs 3 or 6 above shall be discontinued once the basis for the taking of that action ceases to exist.



22

ARTICLE 8
Aviation Security

1. Consistent with their rights and obligations under international law, the Contracting 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.
2. Without limiting the generality of their rights and obligations under international law, the Contracting Parties shall act in conformity with the provisions of the *Convention on Offences and Certain Other Acts Committed on Board Aircraft*, done at Tokyo on 14 September 1963, the *Convention for the Suppression of Unlawful Seizure of Aircraft*, done at The Hague on 16 December 1970, the *Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation*, done at Montreal on 23 September 1971, the *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation*, done at Montreal on 24 February 1988, and the *Convention on the Marking of Plastic Explosives for the Purpose of Detection*, done at Montreal on 1 March 1991 and any other multilateral agreement governing aviation security binding upon both Contracting Parties.
3. The Contracting Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew members, airports and air navigation facilities, and any other threat to the security of civil aviation.
4. The Contracting Parties shall act in conformity with the aviation security provisions established by the International Civil Aviation Organization and designated as Annexes to the Convention to the extent that such security provisions are applicable to the Contracting Parties; 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 located in their territory act in conformity with such aviation security provisions. Accordingly, each Contracting Party, upon request, shall provide the other Contracting Party notification of any difference between its national laws, regulations and practices and the aviation security standards of the Annexes referred to in this paragraph. Either Contracting Party may at any time request consultations, to be held without delay, with the other Contracting Party to discuss any such differences.
5. Each Contracting Party agrees that its operators of aircraft may be required to observe the aviation security provisions referred to in paragraph 4 above required by the other Contracting Party for entry into, departure from, or while within the territory of that other Contracting Party. Each Contracting Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew members, carry-on items, baggage, cargo, mail and aircraft stores prior to and during boarding and loading.
6. Each Contracting Party shall, as far as may be practicable, meet any request from the other Contracting Party for reasonable special security measures to meet a particular threat. These special security measures shall remain in effect until alternative equivalent measures have been accepted by the Contracting Party requesting the measures.
7. Each Contracting Party shall have the right, within sixty (60) days following the serving of a notice, for its aeronautical authorities to conduct an assessment in the territory of the other Contracting Party of

KK



the security measures being carried out, or planned to be carried out, by aircraft operators in respect of flights arriving from, or departing to the territory of the first Contracting Party. The administrative arrangements, including the setting of specific dates for the conduct of such assessments, shall be mutually determined between the aeronautical authorities of both Contracting Parties and applied without delay so as to ensure that assessments will be conducted expeditiously.

8. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew members, airports or air navigation facilities occurs, the Contracting Parties shall assist each other by facilitating communications and taking other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

9. When a Contracting Party has reasonable grounds to believe that the other Contracting Party has departed from the provisions of this Article, it may request consultations. Such consultations shall start within fifteen (15) days of receipt of such a request. Failure to reach a satisfactory agreement within fifteen (15) days from the start of consultations shall constitute grounds for the Contracting Party that requested the consultations to withhold, revoke, suspend or impose conditions on the authorizations of the designated airlines of the other Contracting Party. When justified by an emergency, or to prevent further non-compliance with the provisions of this Article, the Contracting Party that believes that the other Contracting Party has departed from the provisions of this Article may take interim action at any time.



ARTICLE 9
Customs Duties and Other Charges

1. Each Contracting Party shall, to the fullest extent possible under its national laws and regulations on a basis of reciprocity, exempt the designated airlines of the other Contracting Party from import restrictions, customs duties, excise taxes, inspection fees and other national duties and charges on aircraft, fuel, lubricating oils, consumable technical supplies, spare parts including engines, regular aircraft equipment, aircraft stores (including liquor, tobacco and other products destined for sale to passengers in limited quantities during the flight) and other items intended for use or used solely in connection with the operation or servicing of aircraft of that airline as well as printed ticket stock, air waybills, any printed material which bears the insignia of the company printed thereon and usual publicity material distributed without charge by that airline.

2. The exemptions granted with respect to items listed in paragraph 1 of this Article shall apply when those items are:

- a) introduced into the territory of one Contracting Party by or on behalf of a designated airline of the other Contracting Party;
- b) retained on board aircraft of a designated airline of one Contracting Party upon arriving in or leaving the territory of the other Contracting Party; or
- c) taken on board aircraft of a designated airline of one Contracting Party in the territory of the other Contracting Party,

whether or not such items are used or consumed wholly within the territory of the Contracting Party granting the exemption, provided such items are not alienated in the territory of the said Contracting Party.

3. The regular airborne equipment, as well as the materials and supplies normally retained on board the aircraft of a designated airline of either Contracting Party, may be unloaded in the territory of the other Contracting Party only with the approval of the Customs authorities of that territory. In such case, they may be placed under the supervision of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with the Customs regulations applicable in the territory of the other Contracting Party.

4. Baggage and cargo in direct transit across the territory of either Contracting Party shall be exempt from customs duties and other similar charges.

RR



ARTICLE 10

Statistics

The aeronautical authorities of each Contracting Party shall provide, or shall cause their designated airlines to provide, the aeronautical authorities of the other Contracting Party, upon request, periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the operation of the agreed services, including statistics showing the initial origins and final destinations of the traffic.



RR

ARTICLE 11

Tariffs

1. For the purposes of this Article:
 - (a) "tariff" means a publication containing prices and general terms and conditions of carriage related to the air transportation of passengers and their baggage and cargo but excluding remuneration and conditions for the carriage of mail;
 - (b) "price" means any fare, rate or charge (including frequent flyer plans or other benefits provided in association with air transportation) for the carriage of passengers (including their baggage) or cargo (excluding mail) and the conditions directly governing the availability or applicability of the fare, rate or charge;
 - (c) "general terms and conditions of carriage" means those terms and conditions which are broadly applicable to the air transportation and not directly related to any price.
2. Recognizing that the primary consideration for establishing prices for transportation on the agreed services is market forces, the Contracting Parties shall permit the tariffs referred to in this Article to be developed by the designated airlines individually or, at the option of the designated airlines, through coordination with each other or with other airlines. A designated airline shall be responsible only to its own aeronautical authorities for the justification of its prices.
3. The Contracting Parties shall not require designated airlines to file prices for transportation between each other's territory with their aeronautical authorities. Each Contracting Party may require designated airlines of the other Contracting Party to provide immediate access, on request, to information on prices to its aeronautical authorities in a manner and format acceptable to those aeronautical authorities.
4. The Contracting Parties shall, tacitly or explicitly, permit prices for transportation between each other's territory to come into and remain in effect unless the aeronautical authorities of both Contracting Parties are dissatisfied.
5. If the aeronautical authorities of one Contracting Party are dissatisfied with a price for transportation between each other's territory, they shall so notify the aeronautical authorities of the other Contracting Party and the designated airline concerned. The aeronautical authorities receiving the notice of dissatisfaction shall acknowledge the notice and indicate their concurrence or disagreement with it within ten (10) working days of receipt of the notice. The aeronautical authorities shall cooperate in securing information necessary for the consideration of a price on which a notice of dissatisfaction has been given. If the aeronautical authorities of the other Contracting Party have indicated their concurrence with the notice of dissatisfaction, aeronautical authorities of both Contracting Parties shall take immediate action to ensure that the price is withdrawn and no longer charged.

[Handwritten signature]

6. Each Contracting Party may require a designated airline of the other Contracting Party to file prices for transportation between its territory and third countries. Such filing shall be required not more than thirty (30) days before the proposed effective date.

7. A price for carriage by a designated airline of one Contracting Party between the territory of the other Contracting Party and a third country shall not be lower than the lowest publically available lawful price for scheduled international air services offered by the airlines of the other Contracting Party in that market, unless otherwise authorized by the aeronautical authorities of that other Contracting Party.

8. Any designated airline of one Contracting Party shall have the right to match any publically available lawful price of the airlines of the other Contracting Party on scheduled services between the territory of the other Contracting Party and any third country. The aeronautical authorities of the other Contracting Party may require the designated airline proposing the price to provide satisfactory evidence of the availability of the price being matched and of the consistency of matching with the requirements of this Article. A price introduced for matching purposes shall remain in effect only for the period of availability of the price being matched.

9. The aeronautical authorities of each Contracting Party may request technical discussions on prices at any time. Unless otherwise jointly decided by the aeronautical authorities, these discussions shall take place no later than ten (10) working days following the receipt of the request.

10. The general terms and conditions of carriage shall be subject to each Contracting Party's national laws and regulations. Each Contracting Party may require notification to or filing with its aeronautical authorities of any general terms and conditions of carriage of a designated airline not more than thirty (30) days before the proposed effective date. If one Contracting Party takes action to disapprove any terms or conditions, it shall promptly inform the other Contracting Party and the designated airline concerned.

11. The Contracting Parties may require that the designated airlines make full information on prices and the general terms and conditions of carriage available to the general public.

22

ARTICLE 12

Availability of Airports and Aviation Facilities and Services

Each Contracting Party shall ensure that airports, airways, air traffic control and air navigation services, aviation security, and other related facilities and services that are provided in the territory of one Contracting Party shall be available for use by the airlines of the other Contracting Party on terms no less favourable than the most favourable terms available to any other airline at the time arrangements for use are made.



ARTICLE 13

Charges for Airports and Aviation Facilities and Services

1. For the purposes of this Article, "user charge" means a charge imposed on airlines for the provision of airport, air navigation, or aviation safety or security facilities or services including related services and facilities.
2. Each Contracting Party shall ensure that user charges that may be imposed by the competent charging authorities or bodies of each Contracting Party on the airlines of the other Contracting Party for the use of air navigation and air traffic control services shall be just, reasonable, and not unjustly discriminatory. In any event, any such user charges shall be assessed on the airlines of the other Contracting Party on terms not less favourable than the most favourable terms available to any other airline.
3. Each Contracting Party shall ensure that user charges that may be imposed by the competent charging authorities or bodies of each Contracting Party on the airlines of the other Contracting Party for the use of airport, aviation security and related facilities and services shall be just, reasonable, not unjustly discriminatory, and equitably apportioned among categories of users. In any event, any such user charges shall be assessed on the airlines of the other Contracting Party on terms not less favourable than the most favourable terms available to any other airline at the time the charges are assessed.
4. Each Contracting Party shall ensure that user charges imposed under paragraph 3 of this Article on the airlines of the other Contracting Party may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, aviation security and related facilities and services at the airport or within the airport system. Such charges may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis.
5. Each Contracting Party shall encourage consultations between the competent charging authorities or bodies in its territory and the airlines or their representative bodies using the services and facilities, and shall encourage the competent charging authorities or bodies and the airlines or their representative bodies to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles of paragraphs 2, 3 and 4 of this Article. Each Contracting Party shall encourage the competent charging authorities to provide users with reasonable notice of any proposal for changes in user charges to enable users to express their views before changes are made.

PR



6. Neither Contracting Party shall be held, in dispute resolution procedures pursuant to Article 22 of this Agreement, to be in breach of a provision of this Article, unless (a) it fails to undertake a review of the charge or practice that is the subject of complaint by the other Contracting Party within a reasonable amount of time; or (b) following such a review it fails to take all steps within its power to remedy any charge or practice that is inconsistent with this Article.



FR

ARTICLE 14

Capacity

1. Each Contracting Party shall allow a fair and equal opportunity for the designated airlines of both Contracting Parties to provide the agreed services on the routes specified in this Agreement.
2. Each Contracting Party shall allow any designated airline of the other Contracting Party to determine the frequency and capacity of the agreed services it offers based on the airline's commercial considerations in the marketplace. Therefore, neither Contracting Party shall unilaterally impose any restriction with respect to capacity, frequency, or type of aircraft on a designated airline selling transportation under its own code on flights operated by another airline. Neither Contracting Party shall unilaterally limit the volume of traffic, frequency or regularity of service, or of the aircraft type or types operated by the designated airline of the other Contracting Party, except as may be required for customs and other government inspection services, technical, or operational reasons under uniform conditions consistent with Article 15 of the Convention.
3. The aeronautical authorities of the Contracting Parties may require, for information purposes, the filing of schedules or timetables not later than ten (10) days, or such lesser period as those authorities may require, prior to the operation of new or revised services. If the aeronautical authorities of a Contracting Party require filings for information purposes, they shall minimize the administrative burden of filing requirements and procedures on the designated airlines of the other Contracting Party.



RR.

ARTICLE 15
Airline Representatives

1. Each Contracting Party shall permit:

- a) the designated airlines of the other Contracting Party, on the basis of reciprocity, to bring into and to maintain in its territory their representatives and commercial, operational and technical staff as required in connection with the operation of the agreed services; and
- b) these staff requirements at the option of the designated airlines of the other Contracting Party, to be satisfied by their own personnel or, by using the services of any other organization, company or airline operating in its territory and authorized to perform such services for other airlines.

2. Each Contracting Party shall :

- a) with the minimum of delay and consistent with its laws and regulations, grant the necessary employment authorizations, visitor visas or other similar documents to the representatives and staff referred to in paragraph 1 of this Article; and
- b) facilitate and expedite the requirement of employment authorizations for personnel performing certain temporary duties not exceeding ninety (90) days.



f R

ARTICLE 16
Ground Handling

1. Each Contracting Party shall permit the designated airlines of the other Contracting Party when operating in its territory:

- a) on the basis of reciprocity, to perform their own ground handling in its territory and, at their option, to have ground handling services provided in whole or in part by any agent authorized by its competent authorities to provide such services; and
- b) to provide ground handling services for other airlines operating at the same airport in the territory of the other Contracting Party.

2. The exercise of the rights set forth in subparagraphs 1(a) and (b) of this Article shall be subject only to physical or operational constraints resulting from considerations of airport safety or security. Any such constraints shall be applied uniformly and on terms no less favourable than the most favourable terms available to any airline engaged in similar international air services at the time the constraints are imposed.



RR

ARTICLE 17
Sales and Transfer of Funds

1. Each Contracting Party shall permit the designated airlines of the other Contracting Party:
- a) to engage in the sale of air transportation in its territory directly or, at the discretion of the designated airlines, through their agents and to sell transportation in the currency of that territory or, at the discretion of the designated airlines, in freely convertible currencies of other countries, and any person shall be free to purchase such transportation in currencies accepted by those airlines;
 - b) to convert and remit abroad, on demand, funds obtained in the normal course of their operations. Such conversion and remittance shall be permitted without restrictions or delay at the foreign exchange market rates for current payments prevailing at the time of submission of the request for transfer, and shall not be subject to any charges except normal service charges collected by banks for such transactions; and
 - c) to pay local expenses, including purchases of fuel, in its territory in local currency, or at the discretion of the designated airlines, in freely convertible currencies.



RR:

ARTICLE 18
Taxation

1. Profits or income from the operation of aircraft in international traffic derived by an airline of a Contracting Party, including participation in inter-airline commercial agreements or joint business ventures, shall be exempt from any tax on profits or income imposed by the Government of the other Contracting Party.
2. Capital and assets of an airline of a Contracting Party pertaining to the operation of aircraft in international traffic shall be exempt from any tax on capital and assets imposed by the Government of the other Contracting Party.
3. Gains from the alienation of aircraft operated in international traffic and movable property pertaining to the operation of such aircraft derived by an airline of a Contracting Party shall be exempt from any tax on gains imposed by the Government of the other Contracting Party.
4. For the purposes of this Article:
 - a) the term "profits or income" includes gross receipts and revenues derived directly from the operation of aircraft in international traffic, including:
 - i) the charter or rental of aircraft;
 - ii) the sale of air transportation, either for the airline itself or for any other airline; and
 - iii) interest on sums generated directly from the operation of aircraft in international traffic provided that such interest is incidental to the operation;
 - b) the term "international traffic" means the transportation of persons and/or cargo, including mail, except where such transportation is principally between points in the territory of a Contracting Party; and
 - c) the term "airline of a Contracting Party" means, in the case of Canada, an airline resident in Canada for purposes of income taxation and, in the case of the Republic of Kenya, an airline resident in the Republic of Kenya for purposes of income taxation.
5. This Article shall not have effect when an agreement for the avoidance of double taxation with respect to taxes on income is in effect between the two Contracting Parties.

FR



ARTICLE 19
Applicability to Charter/ Non-scheduled Flights

1. The provisions set out in Articles 6 Application of Laws, 7 Safety Standards, Certificates and Licences, 8 Aviation Security, 9 Customs Duties and Other Charges, 10 Statistics, 12 Availability of Airports and Aviation Facilities and Services, 13 Charges for Airports and Aviation Facilities and Services, 15 Airline Representatives, 16 Ground Handling, 17 Sales and Transfer of Funds, 18 Taxation and 20 Consultations of this Agreement apply as well to charters and other non-scheduled flights operated by the air carriers of one Contracting Party into or from the territory of the other Contracting Party and to the air carriers operating such flights.
2. The provisions of paragraph 1 of this Article shall not affect national laws and regulations governing the authorization of charters or non-scheduled flights or the conduct of air carriers or other parties involved in the organization of such operations.



rk.

ARTICLE 20
Consultations

1. Either Contracting Party may at any time request through diplomatic channels consultations on the implementation, interpretation, application or amendment of this Agreement or compliance with this Agreement. Such consultations, which may be between aeronautical authorities of the Contracting Parties, shall begin within a period of sixty (60) days from the date the other Contracting Party receives a written request, unless otherwise mutually determined by the Contracting Parties or unless otherwise provided for in this Agreement.



RR.

ARTICLE 21
Amendment

Any amendment to this Agreement mutually determined pursuant to consultations held in conformity with Article 20 of this Agreement shall come into force on the date of the last written notification, through diplomatic channels, by which the Contracting Parties shall have notified each other that all necessary internal procedures for entry into force of the amendment have been completed.



22.

ARTICLE 22
Settlement of Disputes

1. If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first place endeavour to settle it by consultations held in conformity with Article 20 of this Agreement.
2. If the dispute is not resolved within 60 days of the commencement of consultations pursuant to Article 20 of this Agreement, the Contracting Parties may agree to refer the dispute for decision to some person or body, or either Contracting Party may submit the dispute for decision to a Tribunal of three arbitrators, one to be nominated by each Contracting Party and the third to be appointed by the two arbitrators. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty (60) days from the date of receipt by either Contracting Party from the other of a written notice through diplomatic channels requesting arbitration of the dispute and the third arbitrator shall be appointed within a further period of sixty (60) days. If either of the Contracting Parties fails to nominate an arbitrator within the period specified, or if the third arbitrator is not appointed within the period specified, the President of the Council of the International Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case requires. If the President is of the same nationality as one of the Contracting Parties, the most senior vice-president who is not disqualified on that ground, shall make the appointment. In all cases the third arbitrator shall be a national of a third State, shall act as President of the Tribunal and shall determine the place where arbitration will be held.
3. The Contracting Parties shall comply with any decision given under paragraph 2 of this Article.
4. The expenses of the Tribunal shall be shared equally between the Contracting Parties.
5. If and so long as either Contracting Party fails to comply with any decision given under paragraph 2 of this Article, the other Contracting Party may limit, withhold or revoke any rights or privileges which it has granted by virtue of this Agreement to the Contracting Party in default or to the designated airline in default.

RP.



ARTICLE 23
Termination

Either Contracting Party may at any time from the entry into force of this Agreement give notice in writing through diplomatic channels to the other Contracting Party of its decision to terminate this Agreement. Such notice shall be communicated simultaneously to the International Civil Aviation Organization. This Agreement shall terminate one (1) year after the date of receipt of the notice by the other Contracting Party, unless the notice to terminate is withdrawn by mutual consent before the expiry of this period. In the absence of an acknowledgement of receipt by the other Contracting Party, the notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organization.



ARTICLE 24
Registration with ICAO

This Agreement and any amendment thereto shall be registered with the International Civil Aviation Organization.

RR

A handwritten signature, possibly reading "J. H.", is located in the lower right quadrant of the page.

ARTICLE 25
Multilateral Conventions

If a multilateral convention comes into force in respect of both Contracting Parties, consultations may be held in accordance with Article 20 of this Agreement with a view to determining the extent to which this Agreement is affected by the provisions of the multilateral convention.

fl.



ARTICLE 26
Entry into Force

This Agreement shall enter into force on the date of the last written notification, through diplomatic channels, by which the Contracting Parties shall have notified each other that all necessary internal procedures for entry into force of this Agreement have been completed.

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

DONE in duplicate at _____ on this _____ day of _____, 20____ in the English, French and _____ languages, each version being equally authentic.

For the Government of Canada

For the Government of the Republic of Kenya

RR



Points in Kenya under the code of each designated airline of Canada shall only be available as part of an international journey.

(4) The aeronautical authorities of Kenya may require designated airlines of Canada to apply for authorization prior to the operation of the proposed code-sharing services

(5) The aeronautical authorities of Kenya shall not withhold permission for designated airlines of Canada to operate code-sharing services on flights operated by airlines of any third countries or for any third country airlines operating flights to/from Kenya to carry traffic under the codes of the designated airlines of Canada on the basis that (i) the airlines operating the flights are not appropriately authorized or (ii) air services arrangements between Kenya and the countries of the airlines operating the flights do not provide or permit code sharing.

(6) The aeronautical authorities of both Contracting Parties may require all participants in such code-sharing arrangements to ensure that passengers are fully informed of the identity of the operator and the mode of transportation for each segment of the journey.

(7) For the purpose of code-sharing services, airlines shall be permitted to transfer traffic between aircraft without limitation.

RR



ANNEX

ROUTE SCHEDULE

Code sharing services may be operated on the following applicable routes with traffic rights and operational flexibilities identified in the associated Notes.

SECTION I

The following route shall be available for the operation of code sharing services in either or both direction by airlines designated by the Government of Canada.:

Points in Canada	Intermediate Points	Points in Kenya	Points Beyond
Any point(s)	Any point(s)	Any point(s)	Any point(s)

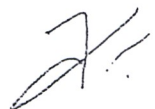
Notes:

1. Points in Kenya may be served separately or in combination on the same service.
2. Any Intermediate Points, Points in Kenya and/or Points Beyond may be omitted on any or all services, provided that all services originate or terminate in Canada.
3. Transit and own stopover rights shall be available at Intermediate Points and at Points in Kenya. Stopover rights shall not be available between Points in Kenya.
4. (1) Subject to the regulatory requirements normally applied to such operations by the aeronautical authorities of Kenya, the Government of Kenya grants the right for designated airlines of Canada to enter into cooperative arrangements for the purposes of allowing multiple airline codes on single flights and specifically to hold-out the agreed services on the specified routes by code-sharing (i.e. selling transportation under its own code) on flights operated by any airlines of Canada, of Kenya, and/or of any third countries.

(2) All airlines involved in code-sharing arrangements shall hold the appropriate underlying route authority to provide air services to and from Kenya.

(3) Code-sharing services by each designated airline of Canada involving transportation between the Points in Kenya shall be restricted to flights operated by airlines authorised by the aeronautical authorities of Kenya to provide services between the Points in Kenya. All transportation between the

RR



SECTION II

The following route shall be available for the operation of code sharing services in either or both direction by airlines designated by the Government of Kenya:

Points in Kenya	Intermediate Points	Points in Canada	Points Beyond
Any point(s)	Any point(s)	Any point(s)	Any point(s)

Notes:

1. Points in Canada may be served separately or in combination on the same service.
2. Any Intermediate Points, Points in Canada and/or Points Beyond may be omitted on any or all services, provided that all services originate or terminate in Kenya.
3. Transit and own stopover rights shall be available at Intermediate Points and at Points in Canada. Stopover rights shall not be available between Points in Canada.
4. (1) Subject to the regulatory requirements normally applied to such operations by the aeronautical authorities of Canada, the Government of Canada grants the right for designated airlines of Kenya to enter into cooperative arrangements for the purposes of allowing multiple airline codes on single flights and specifically to hold-out the agreed services on the specified routes by code-sharing (i.e. selling transportation under its own code) on flights operated by any airlines of Kenya, of Canada, and/or of any third countries.

(2) All airlines involved in code-sharing arrangements shall hold the appropriate underlying route authority to provide air services to and from Canada.

(3) Code-sharing services by each designated airline of Kenya involving transportation between the Points in Canada shall be restricted to flights operated by airlines authorised by the aeronautical authorities of Canada to provide services between the Points in Canada. All transportation between the Points in Canada under the code of each designated airline of Kenya shall only be available as part of an international journey.

(4) The aeronautical authorities of Canada may require designated airlines of Kenya to apply for authorization prior to the operation of the proposed code-sharing services.

RL



(5) The aeronautical authorities of Canada shall not withhold permission for designated airlines of Kenya to operate code-sharing services on flights operated by airlines of any third countries or for any third country airlines operating flights to/from Canada to carry traffic under the codes of the designated airlines of Kenya on the basis that (i) the airlines operating the flights are not appropriately authorized or (ii) air services arrangements between Canada and the countries of the airlines operating the flights do not provide or permit code sharing.

(6) The aeronautical authorities of both Contracting Parties may require all participants in such code-sharing arrangements to ensure that passengers are fully informed of the identity of the operator and the mode of transportation for each segment of the journey.

(7) For the purpose of code-sharing services, airlines shall be permitted to transfer traffic between aircraft without limitation.

ff.



AIR SERVICES AGREEMENT
BETWEEN
THE GOVERNMENT OF THE STATE OF KUWAIT
AND
THE GOVERNMENT OF THE REPUBLIC OF KENYA

Air Services Agreement (ASA)

Table of Contents

<u>Preamble</u>	.....
<u>Article 1</u> – Definitions	.....
<u>Article 2</u> – Applicability of the Chicago Convention	.....
<u>Article 3</u> – Granting of Rights and Privileges	.....
<u>Article 4</u> – Designation and Authorization	.....
<u>Article 5</u> – Revocation, Limitation and Imposition of Conditions	.....
<u>Article 6</u> – Airport Facility User Charges	.....
<u>Article 7</u> – Exemptions from Custom Duties and other Charges	.....
<u>Article 8</u> – Financial Provisions	.....
<u>Article 9</u> – Technical and Commercial Representation	.....
<u>Article 10</u> – Entry and Clearance Regulations	.....
<u>Article 11</u> – Capacity Provisions	.....
<u>Article 12</u> – Time Table Submission (Slots)	.....
<u>Article 13</u> – Information and Statistics	.....
<u>Article 14</u> – Establishment of Tariffs	.....
<u>Article 15</u> – Aviation Safety	.....
<u>Article 16</u> – Aviation Security	.....
<u>Article 17</u> – Consultations and Modifications	.....
<u>Article 18</u> – Settlement of Disputes	.....
<u>Article 19</u> – Termination	.....
<u>Article 20</u> – Conformity with Multilateral Convention	.....
<u>Article 21</u> – Registration	.....
<u>Article 22</u> – Titles	.....
<u>Article 23</u> – Entry into Force	.....
<u>Article 24</u> – Annex - Route Schedule	.....

**AIR SERVICES AGREEMENT
BETWEEN
THE GOVERNMENT OF THE STATE OF KUWAIT
AND
THE GOVERNMENT OF THE REPUBLIC OF KENYA**

The Government of the State of Kuwait and the Government of the Republic of Kenya hereinafter called the Contracting Parties,

Desiring to foster the development of Air Services between the State of Kuwait and the Republic of Kenya and to promote in the greatest possible measure international co-operation in this field,

Desiring to apply to these services the principles and provisions of the Convention on International Civil Aviation and of the International Air Services Transit Agreement opened for signature at Chicago on the seventh day of December 1944,

Desiring to ensure the highest degree of safety and security in international air services and reaffirming their grave concern about acts or threats against the security of aircraft which jeopardize the safety of persons or property, adversely affect the operation of air services and undermine public confidence in the safety civil aviation.

Have agreed as follows:

**Article 1
DEFINITIONS**

For the purpose of this Agreement, unless the text otherwise requires: -

- a) **"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 so far as these Annexes and amendments have been adopted by both Contracting Parties;
- b) **"Agreement"** means this Agreement, the Annex attached thereto, and any modifications to the Agreement or to the Annex;

- c) **"Aeronautical Authorities"** means in the case of the State of Kuwait, the Directorate General of Civil Aviation, in the case of the Republic of Kenya, the Cabinet Secretary in charge of Civil Aviation, or in both cases any other person or agency authorized to perform the functions exercised at present by the said authorities;
- d) **"Designated Airline"** means any airline that one Contracting Party has designated in writing to the other Contracting Party in accordance with Article 4 of this Agreement as being an airline which is to operate the agreed air services on the routes specified in accordance with Article 3 of this Agreement;
- e) **"Air Service" "International Air Service" "Stop For Non Traffic Purposes" and "Airline"** shall for the purpose of this Agreement, have the meaning laid down in Articles 3 and 96 of the Convention;
- f) **"Territory"** in relation to a State means the land areas and territorial waters adjacent thereto and the airspace above them under sovereignty of that State has the meaning assigned to it in Article (2) of the Convention;
- g) **"Tariff"** means the prices to be paid for the carriage of passengers, baggage and cargo and the conditions under which those prices apply, including prices and conditions for agency and other auxiliary services, but excluding remuneration and conditions for the carriage of mail;
- h) **"Route Schedule"** means the Route Schedule annexed to this Agreement or as amended in accordance with the provisions of Article 17 of this Agreement. The Route Schedule forms an integral part of this Agreement and all references to the Agreement shall include reference to the Route Schedule except where provided in this Agreement.
- i) **"User Charge"** means a charge made to airlines for the provision of airport, air navigation or aviation security property, or facilities.



Article 2
APPLICABILITY OF THE CHICAGO CONVENTION

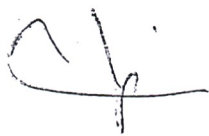
The provisions of this Agreement shall be subject to the provisions of the Chicago Convention insofar as those provisions are applicable to international air services.

Article 3
GRANTING OF RIGHTS AND PRIVILEGES

1. Each Party grants to the other Party the rights specified in this Agreement for the purpose of operating international air services on the routes specified in the Route Schedule.
2. Subject to the provisions of this Agreement, the airline or airlines designated by each Party shall enjoy the following rights:
 - a) The right to fly without landing across the territory of the other Party;
 - b) The right to make stops in the territory of the other Party for non-traffic purposes; and
 - c) The rights otherwise specified in this Agreement.
3. The airlines of each Party, other than those designated under Article (4) of this Agreement, shall also enjoy the rights specified in paragraphs (2) a) and b) of this Article.
4. Nothing in paragraph 2 shall be deemed to confer on the designated airline or airlines of one Party the privilege of taking on board, in the territory of the other Party, passengers, cargo and mail for remuneration and destined for another point in the territory of the other Party.

Article 4
DESIGNATION AND AUTHORIZATION

1. Each Party shall have the right to designate in writing to the other Party one or more airlines to operate the agreed services [in



accordance with this Agreement] and to withdraw or alter such designation.

2. On receipt of such a designation, and of application from the designated airline, in the form and manner prescribed for operating authorization [and technical permission], each Party shall grant the appropriate operating authorization with minimum procedural delay to exercise the rights specified in Article (3) of this agreement, provided that:
 - a) Substantial ownership and effective control are vested in the Party designating the airline, nationals of that Party.
 - b) The Party designating the airline is in compliance with the provisions set forth in Article (15) and Article (16); and
 - c) The designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation.
3. On receipt of the operating authorization of paragraph (2), a designated airline may at any time begin to operate the agreed services for which it is so designated, provided that the airline complies with the applicable provisions of this Agreement.

Article 5

REVOCATION, LIMITATION AND IMPOSITION OF CONDITIONS

1. The aeronautical authorities of each Party shall have the right to withhold the authorizations referred to in paragraph (1) of Article 4 of this Agreement with respect to an airline designated by the other Party, and to revoke, suspend or impose conditions on such authorizations, temporarily or permanently when:
 - a) Substantial ownership and effective control are not vested in the Party designating the airline, nationals of that Party.



- b) In the event of failure of the Party designating the airline to comply with the provisions set forth in Article (15) and Article (16); and
 - c) In the event of failure that such designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation.
2. Unless immediate action is essential to prevent infringement of the laws and regulations referred to above or unless safety or security requires action in accordance with the provisions of Articles (15) or (16), the rights enumerated in paragraph (1) of this Article shall be exercised only after consultations between the aeronautical authorities in conformity with Article (17) of this Agreement.

Article 6

AIRPORTS AND FACILITY USER CHARGES

1. Neither Party shall impose or permit to be imposed on the designated airlines of the other Party user charges higher than those imposed on its own airlines operating similar international services.
2. Each Party shall encourage consultations on user charges between its competent charging authority and airlines using the service and facilities provided by those charging authorities [or service provider], where practicable through those airlines' representative organizations. Reasonable notice of any proposals for changes in user charges should be given to such users to enable them to express their views before changes are made. Each Party shall further encourage its competent charging authority [or service provider] and such users to exchange appropriate information concerning user charges.

Article 7

EXEMPTIONS FROM CUSTOM DUTIES AND OTHER CHARGES

1. Aircraft operated in international air services by the designated airline or airlines of either Contracting Party shall be relieved from



all customs duties, national excise taxes and similar national custom inspection fees on the items set out below:

- a) The following items introduced by a designated airline by one Contracting Party into the territory of the other Contracting Party:
 - i. Repair, maintenance and servicing equipment and components parts;
 - ii. Passenger handling equipment component parts;
 - iii. Cargo-loading equipment and component parts;
 - iv. Security equipment including component parts for incorporation into security equipment;
 - v. Instructional material and training aids;
 - vi. Airline and operators' documents; and
- b) The following items introduced by a designated airline of one Contracting Party into the territory of the other Contracting Party and supplied to a designated airline of one Contracting Party in the territory of the other Contracting Party:
 - i. Aircraft stores (including but limited to such items as food, beverages and tobacco) whether introduced into or taken onboard in the territory of the other Contracting Party
 - ii. Fuel, lubricants and consumable technical supplies;
 - iii. Spare parts including engines; and
- c) Computer equipment and components introduced by a designated airline by one Contracting Party into the territory of the other Contracting Party to assist in one or more of the following matters;
 - i. The repair, maintenance or servicing of aircraft
 - ii. The handling of passengers at the airport or onboard the aircraft

iii. The loading of cargo onto or the unloading of cargo from aircraft

iv. The carrying of security checks on passengers or cargo

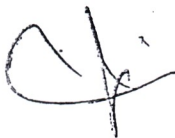
Provided that in each case that they are for use onboard an aircraft or within the limits of an international airport in connection with the establishment or maintenance of an international air service by a designated airline.

2. The relief from custom duty, national custom inspection fees, excise taxes and similar national fees shall not extend to charges based on the cost of services provided to the designated airline or airlines of a Contracting Party in the territory of the other Contracting Party.
3. Equipment and supplies referred to in paragraph (1) of this Article may be required to be kept under the supervision or control of the appropriate authorities.
4. In the event that the designated airline or airlines of one Contracting Party owing to an emergency situation enter into arrangement with another airline or airlines for the loan or use of any of the items specified in paragraph (1) of this Article, the relieves provided in this article shall be available to such airline.

Article 8

FINANCIAL PROVISIONS

Either Contracting Party undertakes to grant the designated airline or airlines of the other Contracting Party the right of free transfer, at the applicable rate of exchange, of the excess of receipts over expenditure (including any interest earned on deposit awaiting remittance) achieved in its territory in connection with the carriage of passengers, baggage, mail shipments and cargo by the designated airline or airlines of the other Contracting Party. Whenever the payments system between the Contracting Parties is governed by a special agreement, that agreement shall apply.



Article 9
TECHNICAL AND COMMERCIAL REPRESENTATION

1. The designated airline or airlines of one Contracting Party shall have the right to maintain its own representation in the territory of the other Contracting Party.
2. The designated airline or airlines of one Contracting Party may, in accordance with the laws and regulations of the other Party relating to entry, residence and employment, bring in and maintain in the territory of the other Contracting Party managerial sales, technical, operational and other specialist staff required for the provision of air services.
3. Subject to the exclusion in paragraph (4) herein, the designated airline or airlines of each Contracting Party shall have the right to use the services and personnel of any other organization, company or airline operating in the territory of the other Contracting Party.
4. In case of nomination of a general agent or general sales agent, this agent shall be appointed in accordance with the relevant applicable laws and regulations of each Contracting Party.
5. In accordance with the national laws and regulations applicable at each Contracting Party, each designated airline shall have the right to engage in the sale of air transportation in the territory of the other Contracting Party directly or through its agents and any person shall be able to purchase such transportation.

Article 10
ENTRY AND CLEARANCE REGULATIONS

1. The laws, rules and regulations in force at one Contracting Party relating to entry into or departure from its territory of passengers, crew, cargo and mail of aircraft (such as regulation relating to entry, clearance, immigration, passports, customs and quarantine) shall be applicable to the passengers, crew, cargo and mail of the

aircraft of an airline designated by the other Contracting Party while in the territory of the first Contracting Party.

2. The laws and regulations of a Contracting Party relating to the admission to, stay in, or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory, shall be applied to the aircraft of both Contracting Parties without distinction as to nationality, and shall be complied with by such aircraft upon entering or departing from or while within the territory of that Contracting Party.

Article 11

CAPACITY PROVISIONS

1. Each designated airline shall have a fair and equal opportunity to compete in providing the international air transportation governed by the agreement;
2. To take action to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of a designated airline of the other Party;
3. The air transport facilities available to the travelling public should bear a close relationship to the requirements of the public for such transport;
4. The designated airline or airlines of each Party shall have a fair and equal opportunity to [compete] [operate] on any agreed route between the territories of the two Parties;
5. Each Party shall take into consideration the interests of the airlines of the other Party so as not to affect unduly their opportunity to offer the services covered by this Agreement;
6. Services provided by a designated airline under the Agreement shall retain as their primary objective the provision of capacity adequate to the traffic demands between the countries of which such airline is a national and the country of ultimate destination of the traffic. The right to embark or disembark on such services international traffic destined for and coming from third countries at a point or points on the routes specified in this Agreement shall be exercised in accordance with the general principles of orderly

development of international air transport to which both Parties subscribe and shall be subject to the general principle that capacity should be related to:

- a) The traffic requirements between the country of origin and the countries of ultimate destination of the traffic;
- b) The requirements of through airline operations; and
- c) The traffic requirements of the area through which the airline passes, after taking account of local and regional services.
- d) Consultations between the Parties shall be arranged whenever a Party requests that the capacity provided under the Agreement be reviewed to ensure the application of the principles in the Agreement governing the conduct of the services.

Each Contracting Party shall allow each designated airline to determine the frequency and capacity of the international air transport it offers, according to commercial and market-based considerations. Consistent with this right, neither Contracting Party shall unilaterally restrict the operations of the designated airlines of the other, except according to the terms of this Agreement or as may be required for customs, technical, operational or environmental reasons, under uniform conditions consistent with Article (15) of the Convention.

Article 12
TIME – TABLE SUBMISSION
(SLOTS)

1. The designated airlines shall submit to the relevant authorities of the Contracting Parties not later than sixty (60) days prior to the initiation of the agreed services on the specified routes in accordance with Article (3) of this Agreement, the type of service, aircraft and the Time Slots likewise apply to later changes.
2. The relevant authorities receiving such Time Slots shall normally approve the Time Slots or suggest modifications thereto. In any case the designated airlines shall not commence their services before the Time Slots are approved by the relevant authorities concerned. This provision shall likewise apply to later changes.

Article 13
INFORMATION AND STATISTICS

The Aeronautical Authorities of either Contracting Party shall furnish to the Aeronautical Authorities of the other Contracting Party at their request such periodic or other statistical data as may be reasonably required for the purpose of reviewing the capacity provided by the designated airline or airlines of the first Contracting Party on the specified routes in accordance with Article (3) of this Agreement. Such data shall include all information required to determine the amount of traffic carried.

Article 14
ESTABLISHMENT OF TARIFFS

1. Each Contracting Party shall allow tariffs for air services to be established by each designated airline based on commercial considerations in the market place, including the cost of operation, the characteristics of the service, the interests of users, a reasonable profit and other market considerations.
2. Each Contracting Party may require notification to or filing with its aeronautical authorities of tariffs to be charged to or from its territory by airlines of the other Contracting Party. Such notification or filing by the airlines of both Contracting Parties may be required to be made no later than the initial offering of a price.
3. Without prejudice to the applicable competition and consumer protection laws prevailing in each Contracting Party, neither Contracting Party shall take unilateral action to prevent the commencement or continuation of a tariff proposed to be charged or charged by a designated airline of the other Contracting Party in connection with the international air services provided for under this Agreement. Intervention, as described in paragraph (4) below, by the Contracting Parties shall be limited to;
 - a) Prevention of unreasonably discriminatory prices or practices;
 - b) Protection of consumers from prices that is unreasonably high or restrictive due to the abuse of a dominant position or due to concerted practice among airlines.
 - c) Protection of airlines from prices that are artificially low due to direct or indirect subsidy or support;

- d) Protection of airlines from prices that is artificially low, where evidence exists as to an intent to eliminate competition.
4. Without prejudice to the provisions of paragraph (3) of this Article, the aeronautical authorities of either Contracting Party may expressly disapprove tariff submitted by the designated airlines of the other Contracting Party, where such aeronautical authorities find that a tariff proposed to be charged by such airlines falls within the categories set forth in paragraph 3.a), 3.b), 3.c) or 3.d). In such event, the concerned aeronautical authority
- a) Shall send notification of its dissatisfaction to the aeronautical authorities of the other Contracting Party, and to the airline involved, as soon as possible, and in no event later than thirty (30) days after the date of notification or filing of the tariff in question; and
 - b) May request consultations in accordance with the procedures established under paragraph 5 of this Article. Unless both aeronautical authorities have agreed to disapprove the tariff in question in writing, the tariff shall be treated as having been approved.
5. The aeronautical authorities of each Contracting Party may request consultations with the aeronautical authorities of the other Contracting Party on any tariff charged by an airline of the other Contracting Party for international air services to or from the territory of the first Contracting Party, including tariffs for which a notice of dissatisfaction has been given. These consultations shall be held no later than fifteen (15) days after receipt of the request. The aeronautical authorities of both Contracting Parties shall cooperate in securing the necessary information for a reasoned resolution of the issue. If an agreement is reached with respect to a tariff for which a notice of dissatisfaction has been given, the aeronautical authorities of each Contracting Party shall use their best efforts to put that agreement into effect. If such mutual agreement is not reached, the tariff shall go into effect or continue in effect.

Article 15

AVIATION SAFETY

1. Each Contracting Party may request consultations at any time concerning safety standards in any area relating to aircrew, aircraft or their operation adopted by the other Contracting Party. Such

consultations shall take place within thirty (30) days of that request.

2. If following such consultations, one Contracting Party finds that the other Contracting Party does not effectively maintain and administer safety standards in any such area that are at least equal to the minimum standards established at that time pursuant to the Convention, the first Contracting Party shall notify the other Contracting Party of those findings and the steps considered necessary to conform with those minimum standards and that other Contracting Party shall take appropriate corrective action. Failure by the other Contracting Party to take appropriate action within fifteen (15) days or such longer period as may be agreed shall be grounds for the application of Article (4) of this Agreement.
3. Notwithstanding the obligations mentioned in Article (33) of the Convention it is agreed that any aircraft operated by the airline or airlines of one Contracting Party on services to or from the territory of the other Contracting Party may, while within the territory of the other Contracting Party, be made the subject of an examination by the authorised representatives of the other Contracting Party, on board and around the aircraft to check both the validity of the aircraft documents and those of its crew and the apparent condition of the aircraft and its equipment (in this Article called "Ramp Inspection"), provided this does not lead to unreasonable delay.
4. If any ramp inspection or series of ramp inspections gives rise to:
 - a) Serious concerns that an aircraft or the operation of an aircraft does not comply with the minimum standards established at that time pursuant to the Convention, or
 - b) Serious concerns that there is a lack of effective maintenance and administration of safety standards established at that time pursuant to the Convention;

The Contracting Party carrying out the inspection shall, for the purposes of Article (33) of the Convention, be free to conclude that the requirements under which the certificate or licenses in respect of that aircraft or in respect of the crew of that aircraft had been issued or rendered valid, or that the requirements under which that aircraft is operated, are not equal to or above the minimum standards established pursuant to the Convention.

5. In the event that access for the purpose of undertaking a ramp inspection of an aircraft operated by the airline or airlines of one Contracting Party in accordance with paragraph (3) of this Article above is denied by the representative of that airline, the other Contracting Party shall be free to infer that serious concerns of the type referred to in paragraph (4) of this Article above arise and draw the conclusions referred in that paragraph.
6. Each Contracting Party reserves the right to suspend or vary the operating authorization of an airline of the other Contracting Party immediately in the event the first Contracting Party concludes, whether as a result of a ramp inspection, a series of ramp inspections, a denial of access for ramp inspection, consultation or otherwise, that immediate action is essential to the safety of an airline operation.
7. Any action by one Contracting Party in accordance with paragraphs (2) or (6) of this Article above shall be discontinued once the basis for the taking of that action ceases to exist.
8. Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by one Contracting Party, and still in force, shall be recognized as valid by the other Contracting Party for the purpose of operating services provided for in this Agreement, provided that the requirements under which such certificates or licenses were issued or rendered valid are equal to or above the minimum standards which are or may be established pursuant to the Convention. Each Contracting Party reserves the right, however to refuse to recognize, for the purpose of flights above its own territory, certificates of competency and licenses granted to its own operators or rendered valid for them by the other Contracting Party or by any other State.
9. If the privileges or condition of the licenses or certificates referred to in paragraph (8) of this Article above, issued by the Aeronautical Authorities of one Contracting Party to any person or designated airline or airlines or in respect of an aircraft operating the agreed services on the specified routes would permit a difference from the standards established under the Convention, and which difference has been filed with the International Civil Aviation Organization, the Aeronautical Authorities of the other Contracting Party may request consultations in accordance with Article (17) of this Agreement with the Aeronautical Authorities of

that Contracting Party with a view to satisfying themselves that the practice in question is acceptable to them. Failure to reach a satisfactory agreement will constitute grounds for the application of Article (5) of this Agreement.

Article 16

AVIATION SECURITY

1. The Contracting Parties reaffirm, consistent with their rights and obligations under international law, that their obligations 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 Contracting Parties shall in particular act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on the 14th of September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on the 16th of December 1970, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on the 23rd of September 1971, its Supplementary Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on the 24th of February 1988, the Convention on the Marking of Plastic Explosives for the Purposes of Detection signed at Montreal on the 1st of March 1991, and any other convention on aviation security to which the Contracting Parties shall become party.
2. The Contracting Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.
3. The Contracting Parties shall, in their mutual relations, act in conformity with the aviation security standards and, so far as they are applied by them, the Recommended Practices established by the International Civil Aviation Organization and designated as Annexes to the Convention; and shall require that operators of aircraft of their registry, operators 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

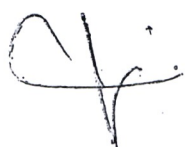
security provisions. In this paragraph the reference to aviation security Standards includes any difference notified by the Contracting Party concerned.

4. Each Contracting Party shall ensure that effective measures are taken within its territory to protect aircraft, to screen passengers and their carry-on items, and to carry out appropriate checks on crew, cargo (including hold baggage) and aircraft stores prior to and during boarding or loading and that those measures are adjusted to meet the increase in the threat. Each Contracting Party agrees that its designated airline or airlines may be required to observe the aviation security provisions referred to in paragraph (3) required by the other Contracting Party for entrance into, departure from, or while within, the territory of that other Contracting Party. Each Contracting Party shall also act favorably upon any request from the other Contracting Party for reasonable special security measures to meet a particular threat.
5. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate as rapidly as possible commensurate with minimum risk to life such incident or threat.
6. Each Contracting Party shall take such measures, as it may find practicable, to ensure that an aircraft subject to an act of unlawful seizure or other acts of unlawful interference which has landed in its territory is detained on the ground unless its departure is necessitated by the overriding duty to protect human life. Wherever practicable, such measures shall be taken on the basis of mutual consultations.

Article 17

CONSULTATIONS AND MODIFICATIONS

1. Exchange of views shall take place as needed between the Aeronautical Authorities of the Contracting Parties in order to achieve closer cooperation and agreement in all matters pertaining to the application of this Agreement.



2. Each Contracting Party may at any time request consultations with the other Contracting Party for the purpose of amending this Agreement or the Schedule. Such consultations shall begin within a period of Thirty (30) days from the date of receipt of such request. Any amendment to this Agreement agreed to as a result of such consultations shall be approved by each Contracting Party in accordance with its constitutional procedures and shall enter into force on the date of exchange of diplomatic notes indicating such approval.
3. If the amendment relates only to the Schedule, the consultations shall be between the Aeronautical Authorities of both Contracting Parties. When these authorities agree on a new or revised Schedule, the agreed amendments shall come into force as soon as they have been confirmed by an exchange of diplomatic notes.

Article 18

SETTLEMENT OF DISPUTES

1. If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first place endeavor to settle it by negotiations between themselves.
2. If the Contracting Parties fail to reach within sixty (60) days a settlement by negotiations they shall refer the dispute for decision to a person or body or at the request of one of the Contracting Parties to an arbitration tribunal. The arbitration tribunal shall be composed as follows:
 - a) Each Contracting Party shall nominate an arbitrator; if one Contracting Party fails to nominate its arbitrator within sixty (60) days, such arbitrator shall be nominated by the President of the Council of the International Civil Aviation Organization at the request of the other Contracting Party.
 - b) The third arbitrator, who shall be a national of a third state and who shall preside over the arbitration tribunal, shall be nominated either,
 - i. By agreement between the Contracting Parties; or
 - ii. If within sixty (60) days the Contracting Parties do not so agree, by appointment of the President of the

Council of the International Civil Aviation Organization by the request of either Contracting Party.

3. The arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member as well as of its representation in the arbitral proceedings; the cost of the chairman and any other costs shall be borne in equal parts by the Contracting Parties. In all other respects, the arbitral tribunal shall have its own procedure.
4. The arbitral tribunal shall attempt to give a written decision within sixty (60) days after completion of the hearing or, if no hearing is held, sixty (60) days after the date both replies are submitted.

Article 19 **TERMINATION**

Either Contracting Party may at any time notify the other Contracting Party in writing through diplomatic channels of his decision to terminate this Agreement. A copy of the notice shall be sent simultaneously to the Secretary General of the International Civil Aviation Organization. If such notice is given, this Agreement shall terminate twelve (12) months after the date of receipt by the other Contracting Party of the notice to terminate, unless by agreement between the Contracting Parties the notice under reference is withdrawn before the expiry of that period. If the other Contracting Party fails to acknowledge receipt, notice shall be deemed to have been received fourteen (14) days after the date of the receipt by the Secretary General of the International Civil Aviation Organization of his copy.

Article 20 **CONFORMITY WITH MULTILATERAL CONVENTIONS**

In the event of a general multilateral air transport convention accepted by the Contracting Parties entering into force, the provisions of such convention shall prevail. Any discussions with a view to determining the extent to which this Agreement is terminated, superseded, amended or supplemented by the provisions of the



multilateral convention, shall take place in accordance with paragraph (2) of Article (17) of this Agreement.

Article 21
REGISTRATION

This Agreement shall be registered with the International Civil Aviation Organization.

Article 22
TITLES

Titles are inserted in this Agreement at the head of each Article for the purpose of reference and convenience and in no way to define, limit or describe the scope or intent of this Agreement.

Article 23
ENTRY INTO FORCE

This Agreement shall enter into force after the fulfillment of the internal legal requirements by each Contracting Party, which shall notify each other of the fulfillment of such requirements through exchange of the diplomatic notes.

The Agreement shall come into force on the first day of the next month from the date of the receipt of the last notification.

IN WITNESS, WHEREOF; the undersigned being duly authorized by their respective Governments have signed this Agreement.

Done at ----- this ---- day of -----, in two originals, each in the Arabic and English languages, all texts being equally authentic. However, in case of divergence of interpretation of this Agreement or its Annex the English text shall prevail.

**For The Government
of The State of Kuwait**

**For The Government
of the Republic of Kenya**



ANNEX
ROUTE SCHEDULE

Section 1

Routes to be operated by the Designated Airline or Airlines of the State of Kuwait

FROM	INTERMEDIATE POINTS	TO	BEYOND POINTS
Any Point in Kuwait	Any Point	Any Point in Kenya	Any Point

Section 2

Routes to be operated by the Designated Airline or Airlines of the Republic of Kenya

FROM	INTERMEDIATE POINTS	TO	BEYOND POINTS
Any Point in Kenya	Any Point	Any Point in Kuwait	Any Point

NOTES:-

Each designated airline of either Contracting Party may, on any or all flights and at its option:

1. Operate flights in either or both directions;
2. Combine different flight numbers within one aircraft operation;
3. Omit stops at any point or points; and



**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE GOVERNMENT OF THE STATE OF KUWAIT
AND
THE GOVERNMENT OF THE REPUBLIC OF KENYA**

1. Representatives of the Government of the State of Kuwait and the Government of the Republic of Kenya, have met in Mumbai on the 21st of October 2011, to discuss and to initial an Air Services Agreement (herein and after referred to as the 'ASA') between the Government of the State of Kuwait and the Government of the Republic of Kenya. List of Delegations attached as Appendix 1.

2. The discussions were held in a cordial and friendly atmosphere, and both governments expressed their desire to further promote their aeronautical relations in a spirit of cooperation and complete understanding for their mutual benefits.

3. Both Governments agreed on the following:

3.1. ASA Agreement:

The two delegations agreed to an ASA text between the State of Kuwait and The Republic of Kenya initialled today by the heads of the two delegations. The text of ASA is attached as Appendix (2). The aeronautical authorities of both Contracting Parties will endeavour within their authority to apply the initialled Agreement provisionally until it comes into force subject to Article (23) of the Agreement.

3.2. Designation of Airlines:

i. The Government of the State of Kuwait has designated Kuwait Airways Corporation, Jazeera Airways Company, Kuwait National Airways and "Load Air" International Cargo Airlines Company to operate the agreed air services on the specified routes, and the Government of the Republic of Kenya has acknowledged and accepted these designations.

ii. The Government of the Republic of Kenya has designated Kenya Airways and others to be named, and the Government of the State of Kuwait has acknowledged and accepted these designations.



3.3. Frequency and Traffic Rights:

The designated airlines of each Contracting Party shall be entitled to operate unlimited number of frequencies in each direction with full third and fourth freedom traffic rights with any type of aircraft for passenger/ combi/ dedicated cargo flights.

3.4. Fifth Freedom Traffic Rights:

The designated airlines of each Contracting Party shall be entitled to operate (2) frequencies per week in each direction with full fifth freedom traffic rights with any type of aircraft for passenger/ combi/ dedicated cargo flights.

3.5. Code-share Arrangement:

In operating or holding out the agreed services on the specified routes, any designated airline of one Contracting Party may enter into co-operative marketing arrangements like code-sharing, with:

- an airline(s) of the same Contracting Party,
- an airline(s) of the other Contracting Party;
- an airline(s) of a third country, provided that such third country authorizes or allows comparable arrangements between the airlines of the other Contracting Party and other airlines on services to, from and via such third country,

provided that all airlines in such arrangements:

- hold the appropriate authority;
- meet the requirements normally applied to such arrangements; and
- must, in respect of any ticket sold by it, make it clear to the purchaser at the point of sale which airline or airlines the purchaser is entering into a contractual relationship.



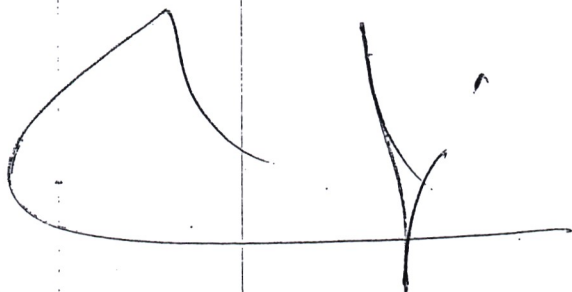
All code-share arrangements shall have the prior approval of the appropriate aeronautical authorities before implementation.

4. Entry Into Force:

Both Governments decided that this Memorandum of Understanding will enter into effect on the date of signature. This Memorandum of Understanding shall supersede corresponding provisions in the previous Memorandum of Understanding signed between both aeronautical authorities on 4 of April 2000.

Done on the 21st of October 2011 in Mumbai, India

**Head of the delegation
of the Government of the
State of Kuwait**

A handwritten signature in dark ink, consisting of a large, sweeping loop on the left and a series of vertical strokes on the right.

Nader M. Al-Buloushi
Director of Air Transport
Department

**Head of the delegation
of the Government of the Republic
of Kenya**

A handwritten signature in dark ink, featuring a large, stylized 'B' followed by a series of loops and a final horizontal stroke.

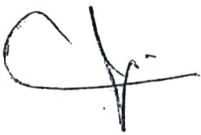
Nicholas Bodo
Ag. Director Air Transport

Foreign Affairs

APPENDIX 1

The Kenyan Delegation

1. Mr. Nicholas Bodo
Head of Delegation •
Ag. Director, Air Transport
Ministry of Transport
2. Colonel (Rtd) Hillary Kioko, OGW, MBS
Director General
Kenya Civil Aviation Authority
3. Ms. Dorcas Achapa, MBS
Deputy Solicitor General
State Law Office
4. Mr. Robert Kungu
Senior State Counsel
State Law Office
5. Ms. Joy Nyaga
Ag. Corporation Secretary
Kenya Airports Authority
6. Ms. Edith K. Ngungu
Third Secretary
Ministry of Foreign Affairs
7. Mr. James Ndung'u
Air Transport Officer
Kenya Civil Aviation Authority
8. Mr. Anthony Mwangi
Manager Govt. & Industry Affairs
Kenya Airways
9. Ms. Phyllis Wakiaga
Coordinator Govt. & Industry Affairs
Kenya Airways



APPENDIX 1

Delegation of the State of Kuwait

Mr. Nader Al-Buloushi

Head

Director of Air Transport Department

DGCA

Mr. Abdullah Al-Rajhi

Member

Superintendent of Air Transport for

International Relations

DGCA

Mrs. Shoug Alkoot

Member

Air Transport Researcher

DGCA

Ms. Dalal Bouresli

Member

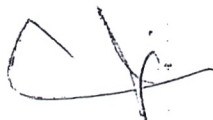
Air Transport Researcher

DGCA

Mr. Ibdah Al-Dousari

Member

Counselor





ATTACHMENT "C"

Initialled Air Services Agreement Text

R.J.