Approved for tabling.

SNA
18/6/19

REPUBLIC OF KENYA

HARAMBEE

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – THIRD SESSION

THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING

REPORT ON THE INQUIRY INTO THE PROPOSED KENYA AIRWAYS' PRIVATELY INITIATED INVESTMENT PROPOSAL TO KENYA AIRPORTS AUTHORITY

DIRECTORATE OF COMMITTEE SERVICES
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

JUNE, 2019

D.P.

TABLE OF CONTENTS

ANNEXES

VOLUME I

I—Proposal by Kenya Airways PLC

I—The Speaker's Communication

III—Minutes of the meetings of the Committee

IV—Correspondence by the Committee

V—Advertisement inviting submission of Memoranda

VOLUME II

VI—Written Submissions received by the Committee

VII—Joint Recommendations to the Committee from The Ministry of Transport, The Office of the Attorney General and Department of Justice and The National Treasury

LIST OF ABBREVIATIONS AND ACRONYMS

AFD	Agence Française de Développement.
ANS	Air Navigation Service.
ASK	Available Seat Kilometre.
CAPEX	Capital Expenditure.
CASK	Cost per Available Seat Kilometre.
CBA	Collective Bargaining Agreement.
CEO	Chief Executive Officer.
DTB	Diamond Trust Bank.
ET	Ethiopian Airlines.
IATA	International Air Travel Association
ICAO	International Civil Aviation Organization.
I&M	I & M Bank.
KAA	Kenya Airports Authority.
KAAO	Kenya Association of Air Operators.
KALPA	Kenya Airline Pilots Association.
KAWU	Kenya Aviation Workers Union.
KCB	Kenya Commercial Bank.
KQ	Kenya Airways PLC.
KRA	Kenya Revenue Authority.
NBK	National Bank of Kenya.
NIC	National Industrial Credit Bank.
OPEX	Operating Expenses
PIC	Public Investments Committee.
PIIP	Privately Initiated Investment Proposal.
PPP	Public Private Partnership.
SAATM	Single African Air Transport Market.
USA	United States of America.

LIST OF STATUTES

State Corporations Act, Cap. 446

Kenya Airports Authority Act, 1991.

East African Community Customs Management Act, 2004.

Civil Aviation Act, 2013.

Public Private Partnerships Act, 2013.

Value Added Tax Act, 2013.

Excise Duty Act, 2015.

Companies Act, 2015.

Public Procurement and Asset Disposal Act, 2015.

Miscellaneous Fees and Levies Act, 2016

Public Service Commission Act, 2017.

LIST OF REGULATIONS

Public Private Partnership Regulations, 2014

D.P.

LIST OF CASES

ELRC Case Number 68 of 2019 Kenya Airports Authority vs Kenya Aviation Workers Union

Constitutional Petition Number 57 of 2019

CHAIRPERSON'S FOREWORD

The Departmental Committee on Transport, Public Works and Housing is established and mandated under Standing Order No. 216 to;

(a) *investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments; and*

(g) *make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.*

Pursuant to its general power of inquiry, and in response to the concerns raised by the general public, the Committee resolved to inquire into the Kenya Airways' (KQ) Privately Initiated Investment Proposal (PIIP) to Kenya Airports Authority (KAA) with a view of presenting to a report to the House under the following terms of reference;

1. Policy issues;
2. Human resource issues;
3. Legal compliance; and
4. General issues of concern to the people.

THE AFOREMENTIONED ARE TOO BROAD FOR TORs

The Committee wrote to key stakeholders in the transport subsector and placed an advert in the local dailies on Friday, March 29, 2019 inviting them to submit their views on the Proposal. Thereafter, the Committee held several meetings where it met with the stakeholders to consider the submissions received as incorporated in this report. Memoranda were received from members of the public and key stakeholders in the aviation sector through the Office of the Clerk of the National Assembly. The Committee further held meetings with Officials from the State Department of Transport, Kenya Airways, Kenya Airports Authority, Kenya Civil Aviation Authority (KCAA), the Kenya Aviation Workers Union (KAWU), the Kenya Airline Pilots Association (KALPA) and the Kenya Association of Air Operators (KAAO), the National Treasury and the Officer of the Attorney General, among others.

Thereafter, the Committee proceeded for a report writing retreat which provided the opportunity to consider the submissions of the public and stakeholders and to further draft, consider and approve its Report.

D.P.

The Committee appreciates the assistance provided by the Office of the Speaker and of the Clerk of the National Assembly that enabled it to conduct its inquiry.

I take this opportunity to thank all Members of the Committee for their input and valuable contributions during the deliberations on the inquiry.

Pursuant to provisions of Standing Order 199 (6), and on behalf of the Departmental Committee on Transport, Public Works and Housing, it is my pleasant privilege and honor to present to this House the Report of the Committee for adoption.

HON. DAVID PKOSING, MP
CHAIRPERSON
COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING

1.0 PREFACE

Committee Mandate

1. The Departmental Committee on Transport, Public Works and Housing is established under **Standing Order 216** whose mandate pursuant to the Standing Order 216(5) is as follows—

    (a) 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) Study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;

    (c) Study and review all legislation referred to it;

    (d) 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) 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;

    (f) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (*Committee on Appointments*);

    (fa) examine treaties, agreements and conventions;

    (g) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;

    (h) consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and

    (i) Examine any questions raised by Members on a matter within its mandate.

2. The Second Schedule to the Standing Orders mandates the Committee to consider matters relating to the following subjects:-

    a) Transport;
    b) Roads;
    c) Public works;

d) Construction and maintenance of roads, rails and buildings;
e) Air and seaports; and
f) Housing.

3. In executing this mandate, the Committee oversees various State Departments, namely:

i. The State Department of Transport;
ii. The State Department of Infrastructure;
iii. The State Department of Housing and Urban Development;
iv. The State Department of Public Works; and
v. The State Department of Shipping and Maritime Affairs.

Membership of the Committee

4. The Committee was constituted by the House on Thursday, 14th December, 2017 comprising of the following Members:-

	Names	Party	Constituency
1.	Hon. David Pkosing (Chairman)	Jubilee	Pokot South
2.	Hon. Moses Kuria (Vice Chair)	Jubilee	Gatundu South
3.	Hon. Dominic Kipkoech Koskei	Jubilee	Sotik
4.	Hon. Peris Pesi Tobiko	Jubilee	Kajiado East
5.	Hon. Kulow Maalim Hassan	EFP	Banissa
6.	Hon. Mugambi Murwithania Rindikiri	Jubilee	Buuri
7.	Hon. Samuel Arama	Jubilee	Nakuru Town West
8.	Hon. Shadrack John Mose	Jubilee	Kitutu Masaba
9.	Hon. Rigathi Gachagua	Jubilee	Mathira
10.	Hon. Rehema Dida Jaldesa	Jubilee	Isiolo
11.	Hon. Ahmed Bashane Gaal	PDP	Tarbaj
12.	Hon. David Njuguna Kiaraho	Jubilee	Ol Kalou
13.	Hon. Johnson Manya Naicca	ODM	Mumias West
14.	Hon. Tom Mboya Odege	ODM	Nyatike
15.	Hon. Suleiman Dori Ramadhani	ODM	Msambweni
16.	Hon. Ahmed Abdisalan Ibrahim	ODM	Wajir North
17.	Hon. Gideon Mutemi Mulyungi	WDP	Mwingi Central

18.	Hon. Savula Ayub Angatia	ANC	Lugari
19.	Hon. Vincent Kemosi Mogaka	Ford K	West Mugirango

Committee Secretariat

5. The following officers facilitate the Committee in its activities -

1. Ms. Chelagat Tungo Aaron	**Clerk Assistant I**
2. Mr. Ahmed Salim Abdalla	**Clerk Assistant III**
3. Ms. Mercy Wanyonyi	**Legal Counsel I**
4. Mr. Walala Ronald	**Legal Counsel I**
5. Mr. James Muguna	**Research Officer III**
6. Mr. Abdinasir Moge Yusuf	**Fiscal Analyst I**
7. Mr. Collins Mahamba	**Audio Officer**
8. Ms. Zainabu Wario	**Sergeant at Arms**

CHAPTER TWO

2.0 BACKGROUND

6. The Kenya Airways PLC (KQ) submitted a Privately Initiated Investment Proposal (PIIP) to Kenya Airports Authority (KAA) in a document dated 3rd October, 2018 dubbed "*Project Simba Public Private Partnership (PPP) for Jomo Kenyatta International Airport (JKIA)*". **Annex I**
7. In the PIIP document, KQ noted that the Proposal was informed by the fact that the aviation sector is critical to the development of the Kenyan economy. According to KQ estimations, the aviation industry contributed USD 3.2 billion and supported 620,000 jobs in 2014 alone. KQ further noted that despite the strategic importance of the aviation sector, the sector faced numerous challenges in the past which have limited its potential to compete internationally for business customers and tourist traffic.
8. KQ noted that it is in light of this challenging background that it proposes a takeover of the Jomo Kenyatta International Airport (JKIA) operations and management through a 30-year concession agreement. The objective of the proposal was given as ensuring efficiency of both JKIA and KQ operations through central management and leveraging on possible synergies to support JKIA's desire for becoming a regional hub and positively impacting the aviation sector's contribution to the economy.
9. The expected outcome from the implementation of the PIIP is given as the growth of the Country's Gross Domestic Product (GDP), development in different segments of the economy, job creation within airline-related industries, increased support for export of goods and services, and transfer of Capital Expenditure (CAPEX) and Operating Expenses (OPEX) risks from the public sector to the PPP partner. KQ further noted that their proposal is in line with practices of other countries which use aviation sector and in particular national airlines and flagship airports as a catalyst for economic growth as seen in Ethiopia, the United Arab Emirates and Qatar. In summary, the PIIP highlights the following areas—

<u>*KAA Inefficiencies*</u>

10. According to Kenya Airways, some of the inefficiencies proposed to be resolved by the PIIP include JKIA failing to compete and losing its role as the international hub for Kenya. KQ noted that—

    (a) Nairobi airport is operating in a competitive environment dominated by the increasing role of neighbouring Addis Ababa and Gulf airports.

(b) Over the last few years Doha and Dubai have become world-class airports with best-in-class infrastructure to serve millions of passengers per year as a result of massive investment by the respective countries in the airports assets both in terms of the airport capacity and quality of infrastructure to serve passengers.

(c) JKIA is losing its status to competition and it may soon become a hub for East Africa region only and if no significant changes are made its role might be then taken over by Addis Ababa, followed by the new airport, to be constructed in Ethiopia, which will mainly serve its national carrier, Ethiopian Airlines (ET).

(d) JKIA has been under-invested over the years and requires significant CAPEX to improve the quality of services provided both to passengers and airlines which operate to and from Nairobi. The assets requiring upgrade include: runway, aircraft parking and aprons; terminals and commercial areas.

(e) Lack of investments within the next 5 years will result in a drastic reduction of JKIA's capacity from the current 7.2 Million passengers to approximately 5 Million passengers per year (30% drop in traffic). The PIIP and realization of its planned CAPEX investments will spur traffic growth (up to 11 million passengers in 2022, 16 million in 2030 and 34 million in 2050).

(f) Significant upgrade of JKIA infrastructure and need for growth of the capacity requires significant investments within the concession period. JKIA generates significant profit to Kenya Airports Authority (KAA). It is, however, consumed and eroded through losses generated every year by local airports and airstrips. JKIA's profitability is 45% compared to KAA's 24%. The gap is a consequence of losses incurred by 17 financially unviable airports and airstrips.

(g) the current setup does not allow efficient accumulation of funds sufficient for development of the hub in Nairobi and making it a prime aviation asset in Kenya.

(h) the slower growth or decline of passengers at JKIA will negatively impact size of revenues and profits of local domestic airlines and airports. Although this would mean temporary problems with financing local airports in the short run, it will definitely support their financial sustainability in the long-term perspective.

11. KQ further noted that the PIIP seeks to resolve the inefficiency of KAA's improper balance of revenue sources. In this regard, it notes that

(a) Modern, world-class airports earn their profits mainly from passenger-related sources and it is for this reason that some of the international airports do not charge traditional landing fees in order to attract as many customers as possible.

(b) However, JKIA is highly-dependent on aeronautical revenues from Airport Passenger Service Charge (APSC), landing fees, air bridge and fuel concessions which constitute around 80% of its total revenues. JKIA is not utilizing its potential to generate revenue from commercial areas and other non-aeronautical fees charged from companies operating at the airport. According to best-practices, KAA should build its own profit centres acquiring margin from serving end-customers. As such, utilization of the non-aeronautical revenues shall bring additional income which can significantly support financing the CAPEX investments required to grow the airport's capacity and improvement of its service quality.

12. Additionally, KQ stated that it has the potential to increase the efficiency of JKIA operations through introduction of world-class standards.

Transaction Structure

13. KQ noted that it considered various options to address the inefficiencies identified. The PIIP proposes the concession of JKIA to Kenya Airways, accompanied by sectoral reforms to allow Kenya's aviation to shift from a defensive strategy to a strategy focused on gaining market share. According to KQ, the most efficient way of using national assets to work for the long-term benefit of the Country, and to this end the overriding objective that led to its proposal under the PIIP, was to ensure KQ's control over the operations of JKIA to enable it to make unhindered investments in the airport.

14. KQ therefore proposes to form a Special Purpose Vehicle (SPV) specifically dedicated to operating, managing and developing JKIA for a period of 30 years. KQ and the SPV are to fall under one management structure while other Kenyan aerodromes are to continue operations under KAA.

15. The concession to be granted to the SPV mandates it to operate, maintain and develop JKIA; operate and control JKIA assets, all revenue sources and operating costs; ensure

compliance with local, regional and international standards and norms; and collect charges for the use of JKIA by various users. It is structured in line with the provisions of section 61(1)(d) of the Public Private Partnerships Act, 2013 which allows for such a framework. The SPV is to operate, maintain, rehabilitate and upgrade existing JKIA infrastructure and facilities and charge user fees while paying concession fees to KAA.

Key Transaction elements

16. In the PIIP, KQ proposes that current JKIA-related liabilities remain in KAA. It notes that the adequacy of the concession fee will ensure that KAA is able to repay existing loans and interests.

17. As regards JKIA staff, KQ proposes to engage KAA, the Government, the employees, the union to ensure that an acceptable solution is arrived at in relation to the employees. As an initial proposal, KQ commits to second all the current JKIA staff to the SPV on the same terms for a period of 12 months. After the secondment period, the KQ is to give the employees the option of being transferred to the SPV upon which the employees will receive the transfer proposal. Potential employees not transferred to the SPV after secondment period will be reallocated by KAA to other airports and airstrips. Responsibility for any employee related costs is to be defined by parties in the process of negotiations.

18. As per the proposal, the SPV will be 100% owned by KQ but will allow for potential minority investments by other parties in the future. KQ commits not to lose control over the SPV during the whole concession duration.

19. For the management of the SPV, KQ is to rely on current JKIA management, staff and an external Airport Advisor to implement world-class solutions and best practices in running the airport. Some of the its pre-selected Airport Advisors include TAV Airports, the leading airport operator in Turkey, Groupe ADP ,an international airport operator based in Paris, Schiphol Amsterdam Airport, Egis Group, a French engineering and consulting group and Flamingo International ,a Dubai based global duty free and travel retail operator.

20. KQ further commits to pay a regular concession fee for disposing the defined assets. Concession fee will consist both of a fixed component (to cover KAA liabilities) and a variable one based on the revenue generated by JKIA in the last, audited financial year (revenue-sharing mechanism). KQ noted that the proposed project is self-financing and

does not require additional Viability Gap Funding (VGF), such funding only potentially becoming necessary to support KAA with financing any deficit with regard to the operations of the other local airports and airstrips.

21. KQ also commits to minimum CAPEX investments in runway, parking, aprons and terminals. The minimum investment requirements are subject to negotiations and agreement with KAA. KQ further assumes a capital structure for the project of 80: 20 of debt to equity ratio. Attached to the PIIP is a financial model estimating the expected profitability of the Project and calculating the value of concession fee to be paid to KAA on annual basis.

22. For the successful implementation of the PIIP, KQ notes that it will require various regulatory amendments and tax exemptions, the PIIP defines regulatory amendments necessary to execute the Project as well as other changes and tax exemptions which will significantly support achievement of Project objectives. These included amendments to—

   i. Section 2, 8, 12, 17A, 17B, 17C and 19 of the KAA Act to exclude charges that will be collected by the SPV from the funds that must be remitted to KAA; to exclude JKIA from the administration, management and control of KAA and exclude JKIA property from the exclusive administration, control and management by KAA; to enable KAA delegate its powers to administer, control, operate and maintain JKIA to the SPV; to expressly allow KAA to enter into concession agreements with any person to operate, administer, control and manage one or more aerodromes; to exclude the remitting of charges collected from JKIA to the KAA Fund and direct the collections to the SPV and to release all JKIA assets from any existing security in favour of KAA lenders and exclude them from automatically being charged during the period of the concession.

   ii. Paragraph 2 of the Kenya Airports Authority Concession Order to exempt tariffs collected from JKIA from being remitted to the KAA and direct the tariffs to the SPV.

   iii. Section 3 and 6A of the Air Passenger Service Charge Act to allow for the collection of the charge by the SPV or its payment into a Fund created for the benefit of the SPV, to ring-fence the APSC collected at JKIA from other airports and to make it mandatory for the Commissioner to pay the APSC collected from passengers at JKIA directly to the SPV or a Fund established for the benefit of the SPV.

iv. revoke the Air Passenger Service Charge Act (Apportionment) Order and gazettement of a new order for the SPV to benefit APSC.

v. Section 639 (1) of the Companies Act and the Income Tax Act to enable KQ offset its tax losses from the profits of the SPV.

vi. Section 5 of the First Schedule to the Value Added Tax Act to zero-rate the value added tax on all taxable supplies made to and by the SPV and KQ.

vii. Section 5 Part A of the Second Schedule to the Excise Duty Act to exempt all excisable goods imported by the SPV and KQ from excise duty; and

viii. Section 59 of the Public Private Partnerships Act to provide for circumstances where a special dispensation may be given for the use of vehicles other than a limited liability company and allow for the registration of the SPV as a limited liability company.

23. KQ further proposes a number of key investment requirements including, in the first instance, rehabilitation of Taxiways and Parking Aprons to reduce the time an aircraft remains on the runway and as a consequence increase the capacity of the airport; remodeling of Terminal 1B, C, D to increase the capacity of the terminal by 3 million passengers annually; and upgrading of the Category 1 runway to Category 2 thus increasing the capacity of the airport. As a second priority, KQ proposes to commence Phase I of Terminal 2 construction which is expected to result in a capacity of approximately 10 million passengers annually when completed and thereafter Phase II construction which is expected to result in a capacity of around 20 million passengers.

24. Additionally KQ stated that it will consider investing in private jets and VIP terminals to satisfy the market needs and enlarge the functionalities of JKIA.

2.1 Oversight role of the National Assembly and jurisdiction of the Departmental Committee of Transport Public Works and Housing, to undertake inquiry

25. Article 95 of the Constitution mandates the National Assembly amongst others to oversight state organs and deliberate issues of concern to the people.

26. The Departmental Committee on Transport, Public Works and Housing is established pursuant Standing Order 216 and mandated amongst others to, "*investigate, inquire into and report on all matters relating to the mandate, management, activities and estimates of the assigned Ministries and departments*".

27. During a meeting held by the Committee, Members deliberated on reports concerning a proposed take-over of JKIA operations by KQ or a merger of KQ and KAA in response to various media reports and concerns raised by members of the public. In light of the alarm and confusion caused by the reporting, the Committee resolved to inquire into the alleged proposed takeover between KQ and KAA with a view of securing the interests of the public over the running of JKIA, Kenya's principal international airport.

2.2 Speaker's Ruling on the mandate of the Committee vis-à-vis that of the Public Investments Committee

28. In response to a Point of Order raised by the Leader of the Majority Party on alleged conflict of mandate between the Public Investments Committee (PIC) and Departmental Committees, the Speaker of the National Assembly issued a Communication on Tuesday, 21st March, 2019. **Annex II**

29. In the Communication which touched on the place of a progress report tabled by PIC on *The Inquiry into the Proposed Takeover of Jomo Kenyatta International Airport (JKIA) by Kenya Airways (KQ)*, the Speaker noted that the Chairpersons of PIC and the Departmental Committee on Transport, Public Works and Housing had separately written to him on February 20, 2019 and February 21, 2019, respectively, claiming exclusive jurisdiction of their respective Committees to examine the proposed merger between the two institutions.

30. The Speaker noted that his office responded to the Chairperson of the Departmental Committee on Transport, Public Works and Housing and proceeded to broadly outline the thrust of the response including the question of whether the proposed commercial arrangement between KAA and KQ regarding the management of the Jomo Kenyatta International Airport is a matter falling under the mandate of the Public Investments Committee or the relevant Departmental Committee.

31. The Speaker guided Members that Parliament's involvement in the conclusion of the Kenya Airways proposal could not be overlooked, irrespective of the nature of the commercial arrangement. In addition, the Speaker noted that consideration of the matter fell into two categories. On one hand, on account of KAA being a state corporation wholly owned by the Government, PIC was at liberty to procedurally invoke the provisions of Standing Order 206(6)(c) and examine whether the affairs of the public investments made or being made by the KAA, are in accordance to sound financial or

business principles and prudent commercial practices. On the other hand, the Speaker noted that, in view of the provisions of Standing Order 216(5), the Departmental Committee on Transport, Public Works and Housing is mandated to inquire into the policy aspects of the commercial arrangement between KAA and KQ.

32. In allowing the two inquiries to proceed alongside each other, the Speaker confined the activities of PIC to the financial and expenditure aspects of the reservations of the Auditor General on the proposed transaction as well as omissions and/or commissions on the part of the KAA and the Departmental Committee on Transport, Public Works and Housing, to matters of *policy, human resource, compliance with due process of law and generally addressing any issues of concern to the people as contemplated under Article 95 of the Constitution*. In conclusion the Speaker called on both Committees Members to uphold high standards, be mindful of the strategic interests of the nation and the welfare of the present and future generations.

2.3 The Inquiry and terms of reference

33. The Committee, pursuant to the Communication from the Speaker issued on Tuesday, 21st March, 2019 and the resolution made during its meeting held on Tuesday, 26th March, 2019 proceeded to conduct an inquiry on Kenya Airways' (KQ) Privately Initiated Investment Proposal (PIIP) to Kenya Airports Authority (KAA) with the following Terms of Reference (ToR's) –

i. the policy,
ii. human resource,
iii. legal compliance and
iv. issues of concern to the people as contemplated under Article 95 of the Constitution,

2.4 Method of Work

34. In conducting the Inquiry, the Committee undertook a number of activities including requesting for and receiving written submissions, conducting research and analysis on various aspects of the inquiry as defined by the terms of reference, conducting meetings with various stakeholders and receiving oral submissions among others.

2.4.1 Meetings of the Committee

35. The Committee held its first meeting with regard to the Inquiry on Tuesday, 26th March, 2019 where it adopted a work plan, identified relevant stakeholders for engagement with

the Committee and prepared a framework for meetings with the identified stakeholders. The Committee held eight (8) meetings with stakeholders and thereafter proceeded for a working retreat to consider the submissions by the stakeholders and the public and to further draft, consider and approve its Report. The Report of the Committee contains a number of recommendations based on the Terms of Reference adopted by the Committee. The Minutes of the meetings of the Committee are annexed as **Annex III.**

2.4.2 Stakeholder Meetings and Public Participation

36. The Committee, through the Office of the Clerk of the National Assembly formally invited the Cabinet Secretary and Principal Secretary, Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works; the Chairperson and Chief Executive Officer of Kenya Airways; the Chairperson and Chief Executive Officer of Kenya Airports Authority; the Kenya Civil Aviation Authority (KCAA); the Kenya Aviation Workers Union (KAWU); the Kenya Airline Pilots Association (KALPA); and the Kenya Association of Air Operators (KAAO) to appear and make submissions with regard to the Inquiry. The letters are annexed as **Annex IV.**

37. In addition, the Committee invited interested members of the public to make representations addressing the ToRs of the Inquiry vide an advert in the dailies of Friday, March 29, 2019. The advertisement is annexed as **Annex V.**

In response to the invitations and advertisement, the stakeholders duly appeared before the Committee and made both oral and written submissions. The Committee received fifty two (52) written submissions from the Public. The written submissions are annexed as **Annex VI**

2.5.3 Report lay out

38. The report is divided into chapters which cover the various aspects of the inquiry's terms of reference.

CHAPTER THREE

3.0 POLICY ISSUES

3.1 Submissions Received

Stakeholders made submissions on policy issues as follows—

Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works

39. The Cabinet Secretary (CS) for Transport, Infrastructure, Housing, Urban Development and Public Works submitted that the Cabinet, during its meeting held on 29th May, 2018 considered a Memorandum he jointly submitted with the CS for the National Treasury and Planning aimed at consolidating Kenya's aviation assets, **Annex VII.**

The meeting resolved to grant policy approval for KQ and KAA to negotiate and agree on a framework to restore Nairobi as the civil aviation hub of choice in Africa. The meeting further required a substantive Memorandum to be submitted to Cabinet for consideration and approval upon conclusion of the proposed framework and directed the two CSs and the Attorney General to take appropriate action.

40. The Cabinet Secretary further submitted that the Cabinet Memorandum and the White Paper on "*Strategy for Continuous and Sustainable operations of Kenya Airways PLC*" sought to restore Nairobi to its place as the civil aviation hub of choice in Africa and enhance Kenya's economic competitive edge. The CS noted that Kenya has failed to adapt to the rapidly evolving global aviation landscape leading to the current turbulence experienced by KQ as well as loss of business by Jomo Kenyatta International Airport (JKIA) to other competing hubs. This market situation, in his view, has therefore created a need for a comprehensive restructuring of the entire aviation sector.

41. The CS noted that KQ has over time been pushed out of the market by competitive airlines which are very strongly protected by their own Governments. Within a period of nine (9) years, Ethiopian Airlines (ET) has grown from half the size of KQ to three times the size of KQ.

42. The CS further submitted that Kenya's aviation model does not facilitate the growth of both KQ and local airports, especially JKIA. This evidences an urgent need to find a solution that will establish KQ as one of the biggest African carriers and JKIA as a leading international aviation hub. It was his view that KQ and JKIA should be treated as national assets and the proposed restructuring be viewed in geopolitical rather than financial terms. In

light of this, the two parties opted to engage in a Concession Agreement framework under the PPP Act, 2013 in order to enjoy the advantage of executing the project rapidly and efficiently.

Kenya Airways

43. The KQ CEO, Mr. Sebastian Mikosz, accompanied by KQ Chairperson, Mr. Michael Joseph, appeared before the Committee. The CEO informed the Committee that the next few years will determine which airlines dominate the African skies and which airline will be regional carriers feeding passengers to the main hubs. He further noted that the Kenyan market is among the most interesting in Africa owing to significant number of companies with headquarters in Kenya and a liberalized market with a large number of premium leisure tourists.

44. However, the CEO noted that the conditions surrounding KQ and JKIA are alarming. It was his submission that Kenyan aviation has lost its market share over the last couple of years to its competitors, especially the Ethiopian Airlines (ET) which has gradually grown and currently has 153 destinations and a fleet of 100 aircrafts and 59 on order, compared to KQ which has 53 routes and a fleet of 40 aircrafts with none on order.

45. The CEO further submitted that the Kenyan aviation sector is facing a steady decline, characterized by the turbulence experienced by the national carrier as well as job loss of business at JKIA to other competing hubs. He noted that the key reasons for this situation include different mandate of Kenya aviation and competition, liberalization of aviation market in Africa and Kenya, aviation asset(s) not being integrated and opposing interests between the national airline and the local airport hub. According to KQ, if no positive changes are made to consolidate the Country's aviation assets, whole market growth will be consumed by foreign airlines.

46. The CEO noted the important contribution of airlines to the GDP of a country and that majority of African and Middle Eastern carriers have opted to use their airlines and airports as instruments of economic development and geopolitical presence, rather than as instrument to maximize the benefits and dividends for airline shareholders. In this regard, it was his submission that KQ currently competes with airlines whose mandate is to grow the economy rather than focus on profit. These airlines are strongly protected by their Government and operate in an integrated model with the airport hub making it easy to lower their ticket prices.

47. The CEO enumerated the benefits of growing a Country's aviation market as job creation, stimulation of economic growth, increased competitiveness of the economy,

DO

improved connectivity, skills development for Kenya and the region, growth of the tourism industry, establishment and sustenance of Nairobi as a Financial Centre and as a hub for, support for exports of horticultural produce and other goods and imports, among others.

48. As an alternative option, KQ proposed the creation of an aviation holding company wholly owned by the Government of Kenya with KQ and an Airports SPV as its fully owned subsidiaries. To this end, KQ would have to be nationalized with an appropriate guarantee being issued to KQ shareholders to allow for its delisting. In its proposal, KQ noted that the Aviation Holding Company would ensure synchronization of goals and growth plans in the best interest of Kenya. Additionally, KQ noted that the proposed Airports SPV would accommodate selected, strategic airports in Kenya and allow it to build strong hub and sub-hubs while Kenya Airports Authority would remain a parastatal outside the Holding Company and support the development of remaining aerodromes through an Airports and Airstrips Development Fund. The proposed structure is as shown in Figure 1 below.

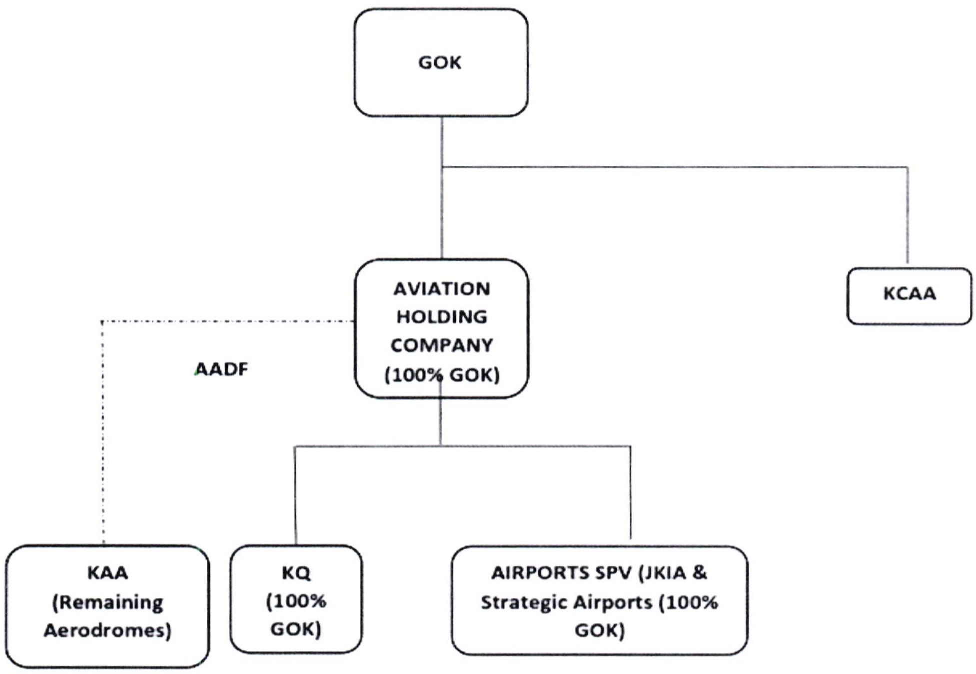


Figure 1.

49. For the proposed structure to work, KQ noted that apart from its nationalization and delisting, the companies in the proposed structure would have to benefit from exemptions from the State Corporations Act, the Public Procurement and Asset Disposal Act, the Public Finance Management Act and the Public Service Commission Act to enable them run as

commercial enterprises with minimal bureaucracy. In addition, it was their view that the entities under the Holding Company would have to benefit from concessional rates of taxation and exemption from a number of taxes to lower their costs and improve their liquidity.

Kenya Airports Authority

50. The Chief Executive Officer of Kenya Airports Authority, Mr. Jonny Andersen, appeared before the Committee accompanied by the KAA Chairperson, Mr. Isaac Awuonda. The CEO noted that the rationale for the PIIP is the implementation of a Government Policy to consolidate key aviation assets and realize significant operational efficiencies and synergies, restore the aviation sector's regional and international competitiveness, protect JKIA's regional hub status, improve diversification and utilization of JKIA resources and support KQ's turnaround programme. He further noted that as a key partner for JKIA, KQ's success is aligned to the success of KAA.

51. According to the CEO, the Kenyan aviation sector should be restructured due to the fact that despite East Africa's national airports registering capacity growth measured by Available Seat Kilometers (ASK) of nearly 41% between 2013 and 2017, JKIA's market share has declined steadily from a high of 47% to 34%. In contrast, the market share of Bole International Airport, Ethiopia has grown from 34% to 44% over the same period.

52. It was the CEO's further submission that KQ accounts for over 40% of KAA's business and revenues. He demonstrated the level of the symbiotic relationship between KAA and KQ by noting that as at 31st March, 2019, KQ owed KAA more than Kshs 5.54 billion in relation to unpaid Air Passenger Service Charge, landing fees, rent and other charges.

53. Noting the strategic contribution of the aviation sector to the Country's economic development, the need to protect JKIA's regional competitive position and KAA's commercial interests, the CEO submitted that KAA supports an engagement with KQ geared towards optimizing the Country's aviation assets.

54. As an alternative option and based on strategic and efficiency considerations, KAA proposed a Holding Company Structure under which the country's main aviation assets will be brought under one roof with the separate entities operating as subsidiaries to leverage on the balance sheet value of the assets and to optimize on their performance. In their proposal, the Kenya Aviation Holding Company Limited (KAHCL) would be fully owned by the Government and initially have four separate subsidiaries, KQ, JKIA Company, Kenya

Airports Company and Kenya Aviation Academy Limited. In their opinion, the structure will allow KAA to focus on improving the financial and operational performance of the facilities under its mandate without being subsidized by JKIA as is currently the case. In addition, it was their view that the Holding Company will also consider establishing other aviation subsidiaries in the future, including a Maintenance Repairs and Operations (MRO) Centre for Africa.

55. With regard to the role of the Kenya Airports Company Limited under the proposed structure, KAA submitted that the company mandated to run the other aerodromes would not be cannibalized and left without resources as the Holding Company will be under obligation to fund all entities in the structure. For purposes of harnessing economies of scale and creating a regional centre of excellence in aviation training, KAA proposed the establishment of the Kenya Aviation Academy Limited as a subsidiary to the KAHC bringing together the KQ Pride Centre, the East African School of Aviation run by KCAA and the KAA Training Academy.

56. The proposed structure, benchmarked with jurisdictions such as South Africa, Egypt, Morocco, Ethiopia and Rwanda, is represented in Figure 2 below.

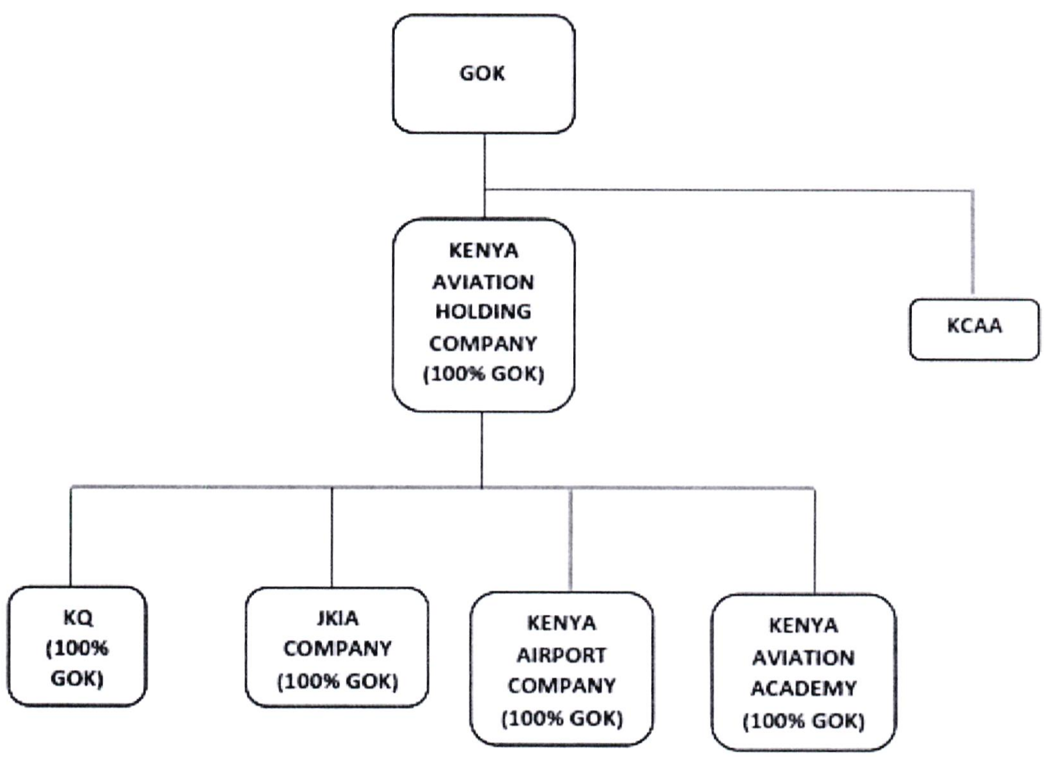


Figure 2.

Kenya Civil Aviation Authority

57. The Director General of KCAA, Capt. Gilbert Kibe, appeared before the Committee. He submitted that the concession of JKIA to Kenya Airways would result in re-allocation of resources to strengthen airline business operations but compromise safety and security of the operations of the SPV with less resources allocated to the Air Navigation Service Provider (ANSP) and aerodrome operations. The loss of revenue by KAA would negatively impact on the development of the other airports in Kenya and slow the growth of domestic aviation.

58. He further submitted that the PIIP does not clearly define the aviation assets and non-aviation assets it intends to cover. According to KCAA, all assets at the airports are aviation assets including land and as such clarity is required on the assets that would be vested in the SPV. Additionally, he submitted that the PIIP is not clear with regard to the specific KCAA functions the SPV is to take over at JKIA. He noted that other services are also offered at JKIA such as Area Control Centre Service, Meteorological Services and Search and Rescue which all serve the entire airspace and not just JKIA. Further, Air Navigation Services facilities and equipment are interconnected and interdependent hence opening up provision of services by more than one provider would be difficult to implement.

59. It was KCAA's further submission that with regard to restructuring security at JKIA, the PIIP proposal to create an autonomous body reporting to the Cabinet Secretary Immigration in charge of security and border control would result in a conflict of interest thus compromising security at JKIA.

60. With regards to the SPV model, KCAA submitted that the model as proposed in the PIIP is profit oriented while ANS are provided on the basis of cost recovery as per the Chicago Convention leading to an apparent conflict in objectives.

61. The Director General further submitted that, the organization of air navigation services in Kenya is guided by ICAO requirements with the key objective being safety and security rather than commercial activities. In this regard, he noted that the PIIP proposal to exempt KQ from payment of ANS charges would directly impact safety as investment in critical infrastructure would not be realized in the planned time frames in the KCAA Strategic Plan.

62. The Director General also submitted on the regulatory issues that would affect the proposed SPV. He noted that Certificates it issues under ICAO guidelines are not transferrable hence the implementation of the PIIP would instantly result to the loss of the certificate for the provision of ANS at JKIA and that this would have an impact on international aircraft operations before the SPV obtains certificate.

63. The Director General additionally noted that airspace is a national asset touching on the sovereignty of the State to regulate and manage and secure its use and therefore the SPV as a private entity should not be entrusted with such a key fundamental State right. He submitted that there is no precedent globally where an airline has been merged with an ANSP as it would result in conflict of interest.

64. The Director General noted that KCAA is currently funded using ANS charges and the Air APSC yet in the PIIP, the APSC is proposed to fund the SPV. Diverting the APSC would have serious implications on KCAA oversight capacity as the resultant under funding would make it difficult for it to attract and retain qualified and competent technical personnel, hence making it unable to meet and comply with ICAO Standards and Recommended Practices (SARPs). Lack of qualified personnel would create the possibility of a Serious Safety Concern (SSC) on the part of ICAO and result in grounding of all international flights.

65. In terms of options, KCAA recommended the establishment of a Government Holding Company to own several agencies including a national airline such as KQ, KAA, ground handling service providers and catering as is the case in Ethiopia, UAE and Qatar. Each agency under the Holding Company would operate independently but generate synergies with the other agencies. It was KCAA's view that the agency providing ANS should not be included under the Holding Company to avoid a conflict of interest due to the strong links of ANS to State sovereignty and security of the airspace and the serious implication to a State if the services are interrupted or not operated as per the international regulations. The Director General noted that in the UAE, Singapore and Qatar, ANS is part of the Ministry responsible for Transport, while in South Africa, Nigeria and Rwanda ANS are provided by autonomous State agencies. In KCAA's view, their proposed Holding Company model with a separate ANS provider will ensure a balanced growth in the aviation sector. The proposed structure, benchmarked with jurisdictions such as Singapore and the United Arab Emirates is as shown in Figure 3 below.

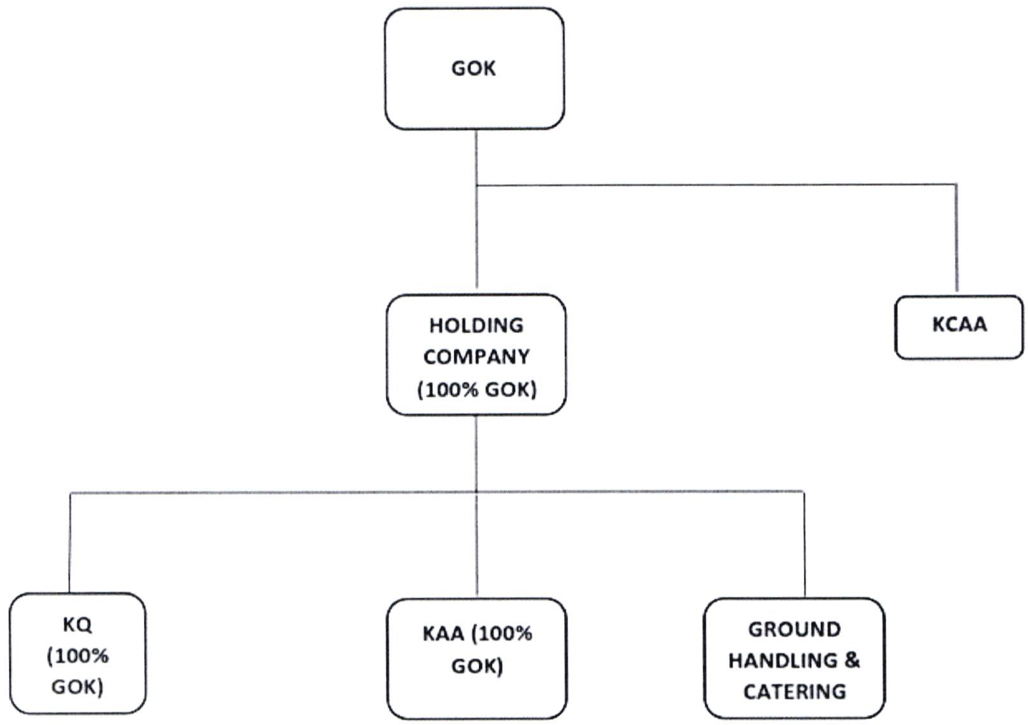


Figure 3.

Kenya Aviation Workers Union

66. The KAWU Secretary General, Mr. Moss Ndiema, appeared before the Committee together with several KAWU officials. He submitted that KAWU was opposed to the PIIP because KQ is a private company operating as the nation's flag carrier while KAA is wholly owned by the government. Further, he noted that the proposed PIIP model had no inbuilt risk sharing element making it resemble a take-over rather that a Public Private Partnership. In addition, he submitted that the PIIP would possibly lead to a viability gap funding affecting the other airports which is contrary to the PPP Act, 2013 and the KAA Act, 1991.

67. With regards to revenue, the Secretary General further submitted that JKIA generates over 90% of KAA's revenue and that by ceding the business unit that generates the largest share of their revenue to KQ, KAA would remain a shell of its former self since it would not only be against public interest but also a poor and misinformed business decision. Further, KAA would not be able to execute its mandate of expanding and growing more aerodromes and airports in Kenya due to lack of sufficient funding.

68. KAWU noted that KPMG, an audit and consulting firm contracted by KAA as its transaction advisor on the PIIP, had observed that it had not received detailed financial information from KQ to ascertain whether it would be able to fund the PIIP. Further, it was observed that KQ's five year plan does not cover the concessionary period it proposes to run JKIA and that such rescheduling would detrimentally impact on KQ's cash flow, consequently impacting on their ability to fund the PIIP; that KQ was in breach of certain financial covenants as at June, 2018 and had received waivers from lenders covering the period up to 31st December, 2018; and that KQ had not provided the detailed SPV organization structure that is essential in determining the fate of majority of KAA employees, the selection criteria used and clarity on the policies and procedures that will apply to the SPV.

69. KAWU submitted that KPMG had noted that despite KQ having restructured their debt in 2017, it had continued to experience difficulties in restructuring its debts and that its non-equity participating lenders had not been apprised of the PIIP which would adversely affect KQ's existing loan arrangements.

70. KAWU further submitted that KPMG had concluded that KQ lacks the credentials and the competence to run an airport like JKIA and that without JKIA revenues, KAA would require funding for the other aerodromes and its liabilities such as environmental remediation and pension deficit funding.

71. It was the view of KAWU that, the take-over of JKIA was not the only option available to turn around KQ. KAWU noted that in February, 2017 KQ contracted Seabury Group to advise it on a viable turn-around strategy. Seabury recommended the conversion of debts owed to local banks and the Government to equity, the negotiation of productivity based Collective Bargaining Agreements (CBAs), engaging the Government to waive taxes on imported aircraft materials used for aircraft maintenance and jet fuel to save Kshs. 7 Billion annually; and the enactment of a law to ensure all Government employees and contractors use KQ for their travel. KQ only implemented the recommendation to convert debt to equity.

72. In addition, KAWU was of the view that the sale-lease-back of the aircraft owned by KQ would allow it to raise Kshs. 50 to 70 Billion. It recommended the formation of a Kenya Aviation Holding Group (KAHG) to replicate the operating models of other airlines like the Ethiopian Airline Group, Rwandair, Royal Air Morac and Egypt Air. To this end KQ would have to be delisted and fully owned by the Government. The proposed KAHG

08
2

would then incorporate KQ, KAA, KCAA, catering, Ground handling, Cargo and other air operators that would facilitate robust concessions. The proposed structure is as shown in Figure 4 below.

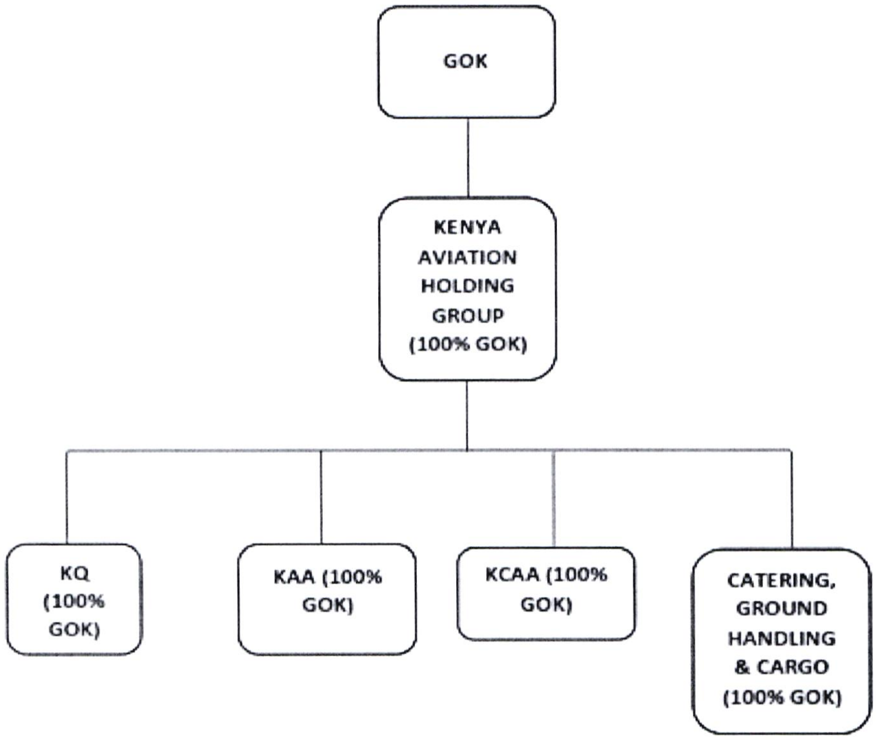


Figure 4.

Kenya Airline Pilots Association

73. The Kenya Airlines Pilots Association (KALPA) General Secretary and CEO, Capt. Muriithi Nyagah, appeared before the Committee accompanied by other KALPA officials. He noted that KALPA had not had access to the PIIP and was not able to comment in detail. He noted that KQ was established as a fully owned Government entity with the objective of being Kenya's main flag carrier, thus giving visibility to the country. This was a significant step in enhancing and promoting tourism, a key sector in the economy. When it was privatized the Government's intention was to improve its efficiency and get value for money. In KALPA's view, KQ remains an important pillar in the development of tourism and aviation in Kenya and in the East African region. Further, KQ offers various quality jobs that have significant impact in other areas of the economy which need to be protected.

74. The General Secretary submitted that the aviation industry contributes 5% to the GDP, and supports an estimated 620,000 jobs. He noted that the industry can contribute more if both KQ and Kenya Airports Authority (KAA) experience growth and that the future of KAA growth is not assured in the event KQ was to collapse. In KALPA's view, KQ's growth is similarly not assured without significant financial injection from investors and shareholders. As the Government is now the largest shareholder and guarantor in KQ, the Kenyan taxpayer would be at great risk in the event KQ were to collapse.

75. The General Secretary submitted that KALPA's outlook is that the proposal suggests an avenue of improving KQ's cash position without additional financial injection. If implemented, the proposal would develop the aviation industry and grow JKIA as a regional hub while improving KQ's cash flow. This will spur growth and, in effect, increase traffic into JKIA and improve revenue for KAA. They noted the need for thorough due diligence on the proposal and the conclusion of a well-crafted agreement.

76. KALPA further submitted that, part of what could be ailing KQ is its skewed agreement with KLM which allows one KLM-appointed director to veto the decision of the rest of the members of the KQ Board and the formula of sharing monies for routes flown by the KQ which largely favours KLM.

77. In the view of KALPA, nationalization of KQ would be in order as long as such a process adequately caters for the obligations agreed to in their CBA with KQ.

Kenya Association of Air Operators

78. The Kenya Association of Air Operators (KAAO) CEO, Col. (Rtd.) Eutychus Karumba Waithaka appeared before the Committee. He submitted that air operators under KAAO wish Kenya Airways all the best in their regional quest to re-establish its dominance noting that such an endeavor must be done without jeopardizing the rest of the industry which is vibrant and plays a pivotal role in tourism, cargo as well as international humanitarian aviation operations, and also employs many Kenyans.

79. The CEO noted that apart from KQ, Kenya currently has 13 other national carriers who meet the requirements and have been granted such status in line with Kenyan aviation policy.

80. KAAO further noted that, they are yet to see the PIIP and that despite having been called for a public consultative forum over the document, the forum was indefinitely postponed. KAAO urged the Committee to interrogate the following areas of the transaction—

(a) The shareholding and structure of the proposed venture, considering that KAA is a Government institution;
(b) The operational and financial management of the other 300 aerodromes under KAA, considering that most do not have the traffic sufficient to fund their operations and have been supported by revenues from JKIA;
(c) Assurances that the other aerodromes will retain the requisite standards as prescribed by the International Civil Aviation Organization (ICAO) without an additional cost to the already over-burdened operators;
(d) The current revenue and expenditure per airport for KAA and whether the proposal will lead to a shortfall in KAA's operating budget post takeover that will affect the management, maintenance and development of the other national airports;
(e) The exact scope of the PIIP in terms of the areas to be ceded to KQ by KAA;
(f) The applicable capital expenditure plan and funding during the concession period including development and/or redevelopment of JKIA to enable it compete with Bole International Airport and the new Rwanda airports;
(g) The expected relationship between the proposed SPV and other existing Kenyan operators at JKIA during the tenure of the concession;
(h) How the concession would run in line with current Government policies governing the aviation industry as well as the existing competition laws;
(i) Whether other options of reviving or strengthening KQ have been considered, and how critical the concession is to KQ's business plan going forward;
(j) Whether there are any examples of PIIPs in other jurisdictions and how successful have they been;
(k) The regional and global competitive context of the proposal in the light of the treaties that Kenya has signed in the past, including within the African Union; and
(l) Whether KQ, an international flights operator, running JKIA would pose a conflict of interest in provision of airport services to its competitors in International flight operations in light of the ICAO principle of encouraging fair and healthy competition in international commercial air operations.

Views from Members of the public

The Committee received various memoranda from members of the public with regard to the inquiry.

81. The Member for Embakasi East Constituency, Hon. Babu Owino opposed the PIIP noting that there would be massive job losses, KQ would be unable to fund the PIIP and that KQ is a private company seeking to benefit from a public asset. He further submitted that there was need for re-negotiation or nullification of the joint venture agreement between KQ and KLM/Air France.

82. The County Government of Uasin- Gishu submitted a memoranda dated 16th April, 2019 proposing a number of recommendations which the Committee took note of.

83. Dorcas Makena opposed the PIIP and proposed that KQ be nationalized.

84. Peter Mbatha opposed the PIIP noting that it would lead to the death of other airports and airstrips. He further noted that the PIIP would lead to the risk of using other airlines operating out of JKIA as it would give KQ an unfair advantage over other airlines.

85. Wilfred Momanyi opposed the PIIP questioning how an entity which does not have the capacity to run an airport could take over JKIA operations. He proposed the nationalization of the airline borrowing from the example of Ethiopian airlines and Emirates.

86. Denis Oseko opposed the PIIP noting that KAA has been running JKIA successfully and maintained its profitability. He proposed the nationalization of KQ instead.

87. Evans Mwangi proposed the nationalization of KQ before any merger with KAA

88. Debrah Kemunto opposed the PIIP and proposed that any merger between KQ and KAA should only be concluded in the event KQ is nationalized.

89. Harrison Mlamba on behalf of the Chartered Institute of Logistics and Transport (CILT) proposed that the Privatization Commission establishes an a

90. Advisory Committee to examine the pros and cons of the issue of JKIA and consider retaining public ownership but introducing management expertise. He additionally proposed that the part privatization of KAA to avoid its financial bondage and attract much needed funds. He opposed the subsidization of airports and air services and proposed that this be anchored in law.

91. Tony Kajiita submitted that the PIIP will not work as the current ownership of KQ constitutes a conflict of interest which will affect KQ employees and the aviation industry. He proposed the nationalization of KQ to enable a scrutiny and termination of the arrangement between KLM and KQ.

92. Joyce Kebati questioned the logic of the PIIP and whether KQ, a loss making private company should be left to manage KAA a profitable public entity.

93. Jared Mosota questioned whether KQ, a loss making company should be left to manage KAA, a profitable entity. He proposed that any merger between KQ and KAA should only be concluded in the event KQ is nationalized.

94. Jane Gichia opposed the PIIP questioning whether a loss making company should be allowed to take over a profit making company.

95. Festus Kalu opposed the PIIP questioning how a loss-making entity could take over operations of a profit-making one. He proposed the nationalization of KQ instead.

96. JK Waweru proposed the nationalization of KQ noting that as a loss-making private entity, KQ cannot be trusted with a profitable public entity.

97. Dennis Mutua opposed the PIIP questioning how a loss-making private entity could take over operations of a profit-making one.

98. Michael Kevin opposed the PIIP questioning how a loss-making private entity could take over operations of a profit-making one. He called for the consideration of the employees in the transaction.

99. John Matu opposed the PIIP. He proposed the nationalization of KQ.

100. Samuel Odunga opposed the PIIP. He proposed the nationalization of KQ.

101. Edward Gitonga submitted that the PIIP does not present any value for money to KAA and that the public, stakeholders and KQ shareholders have not commented on the document which is currently inaccessible.

102. Walter Mocha questioned the rationale of KQ as a private company seeking to benefit from a public asset and the reason why despite recommendations during the KQ restructuring, the renegotiation or nullification of the Joint Venture Agreement between KQ and KLM had not been implemented. He noted that the examples of airlines given by KQ are all owned by their respective governments

103. Raymond Muthomi opposed the PIIP noting that a loss making private entity ought not to take over a profit making Government entity and claim to develop it.

104. Edwin Mango opposed the PIIP noting that KQ has continued to make losses even after being bailed out by the Government and owing levies to KAA for the past four years.

105. Desmond Kiprotich opposed the PIIP noting that KQ is not capable of managing JKIA as they are unable to manage themselves and that such a move would kill the aviation industry. He proposed that KAA manage KQ.

106. Ebu Loter opposed the PIIP noting that KQ is a private entity and its revival should not be tied to the take-over of JKIA

107. Paul Wamai submitted that KQ's proposed involvement in KAA matters will affect other operators with investments at the airport who have legal agreements with KAA. According to him, such operators have not been included in the PIIP discussions and any new management of JKIA should absorb all liabilities before the transfer of JKIA assets.

108. Boniface Mugambi opposed the PIIP noting that KQ is poorly managed and cannot account for its resources given the fact that KQ tickets are the most expensive, their flights always full and in some instances overbooked yet they continue to make losses. He further noted that KQ has many managers earning huge salaries and that as a loss-making private company should not take over a profit making public entity.

109. Ronald Odhiambo opposed the PIIP noting that KAA has not demonstrated that it is unable to run JKIA and that it does not make sense to hand over JKIA, which is a strategic national asset to a privately owned, loss-making poorly run and financially crippled entity.

110. John Waweru opposed the PIIP on the basis of KQ being a poorly managed private company.

111. Alloys Siaya, ICT Manager KAA opposed the PIIP noting that KQ management has failed in terms of business strategy and innovation to tum around the KQ's fortunes, and will not be able to manage JKIA, a totally different kind of business. It was his further submission that the management of KQ have not been held to account for its huge losses and should not be allowed to oversee JKIA operations. In addition, it was his submission that the rescue of KQ in the national interest is a wrong premise for the consideration of a PPP. It was his view that the operations of JKIA as a border control point incorporate complex interactions between several state institutions which a private entity cannot execute and that airports are highly regulated and must comply with international civil aviation statutes and regulations and, by necessity, should be

88

managed by the Government to ensure compliance. He proposed that if KQ is technically insolvent, the Government should consider its natural death and that another airline take over as the national carrier.

112. Capt. Gad Kamau opposed the PIIP noting that the agreement will deny other airports revenue and the fact that KQ has failed in its core business does not support its proposal to run an airport without any experience in running airports. He noted that KQ and JKIA are not joined as JKIA can easily survive without KQ given new players will step in and fill the void. In his view, the implementation of the PIIP will kill the aviation industry as other KAA airports will be open to safety and security challenges due to lack of revenue while development of new airports will cease

113. Julius Kinyua opposed the PIIP noting that KQ is owned by unknown individuals, including KLM which is a foreign airline and the implementation of the PIIP will result in Government money being directed into private hands. He proposed the nationalization of KQ before any such discussions continue.

114. Siddy Jepkirui proposed a 100% take-over of the aviation industry and that the industry should be viewed as a facilitator of economic growth.

115. Omache Violet, Everlyne Khayega, Juliet Wawira, Kalinga Charles, Hellen Nyamai, Jacinta Njeri, Jeremiah Suter and Susan Njenga opposed the PIIP.

116. Frank Lekaldale opposed the PIIP, noting that no UK or US airline manages an airport.

117. Maria Mbugua opposed the PIIP and proposed that KAA run KQ instead.

118. Richard Lumett opposed the PIIP, submitting that a loss-making private entity cannot take over a profitable public entity.

119. John Waweru opposed the PIIP noting that it could destabilize KAA.

120. Pius Victor opposed the PIIP noting that a Private individual should not be allowed to take over public properties through mismanagement of their business.

121. Stephen Mwangi opposed the PIIP submitting that JKIA is a public facility which should not be handed over to private hands. He proposed nationalization of KQ.

122. Lydia Munene opposed the PIIP and proposed that KQ be nationalized instead.

123. Antone Haukwa opposed the PIIP noting that it is not viable much like KQ's project Mawingu which was not well thought out. He proposed that KQ be nationalized like Qatar Airways and Emirates and its management issues sorted out first.

124. Kenedy Lumet Chumba opposed the PIIP submitting that it amounts to a loss-making private entity taking over a profit making public entity.

125. Lucy Kagambo opposed the PIIP. She proposed that KQ be nationalized.

3.2 Committee Observations

126. From the submissions of the stakeholders, the Committee observed that—

(1) KQ is losing its competitiveness and market share to other competing airlines in the region like Ethiopian Airlines and Rwandair. Currently in Africa, KQ operates 45 routes, ET 77 routes, Turkish Airlines 44 routes, Qatar Airways 23 routes and Emirates 21 routes. Secondly with regard to airport size, Bole International Airport, Ethiopia has a capacity of 22 million passengers annually, JKIA a maximum capacity of 7.4 million passengers**,** Kigali Airport 1.5 million passengers, Doha Airport 35 Million passengers, Istanbul Ataturk Airport 37 Million passengers and Dubai Airport 90 Million passengers. Third, with regard to the number of aircraft, Ethiopian Airlines has approximately 100 aircraft and 59 on order, Rwanda Air has 12 aircraft with four on order, Qatar Airways has 222 aircraft with 207 on order, Turkish Airlines has 335 aircraft with 205 on order, Emirates has 254 aircraft with 234 on order while KQ has 40 aircraft and currently no aircraft on order. Fourth, with regard to market share of the hubs in the region, between 2013 and 2017 JKIA's market share declined from 50% to 34% while the share of Bole International Airport and Kigali International Airport increased from 30% to 44% and 1% to 4 percent, respectively.

(2) KQ is operating using a different model, as it is a private company as compared to its competitors like Ethiopian Air and Qatar Air which are wholly Government owed.

(3) Other competing airlines like Ethiopian Airlines, Qatar Airways, Emirates, EgyptAir, Singapore Airlines and RwandAir enjoy Government subsidies as compared to KQ which does not.

(4) There is need to protect JKIA's regional competitive position in order to re-establish its regional dominance and KAA's commercial interests. In the event the current decline of Kenya's competitiveness in the aviation sector continues, Nairobi could be replaced by Addis Ababa as an aviation hub leading to loss of revenue and employment and the potential collapse of KQ which shall ultimately expose the Kenyan taxpayers to the Government guarantees of Kshs. 75 Billion issued to KQ's creditors;

(5) From the submissions to the Committee all successful airlines operate on a model which consolidates and shares aviation assets.

(6) The PIIP is not an appropriate vehicle for the implementation of the Government's Policy of consolidating key aviation assets and restoring the aviation sector's regional and international competitiveness as KQ and the proposed SPV are private companies which are proposed to benefit from public funds, facilities and concessions;

(7) The concession of JKIA to Kenya Airways as proposed in the PIIP will result in re-allocation of resources to strengthen airline business operations but could compromise safety and security of the operations of the SPV with less resources allocated to the Air Navigation Service Provider (ANSP) and aerodrome operations; and negatively impact the development of the other airports/airstrips in Kenya and slow the growth of domestic aviation as a result of loss of revenue by KAA since JKIA generates over 90% of KAA's revenue.

(8) The implementation of the PIIP will result to the loss of the certificate for the provision of ANS at JKIA and this will have a negative impact on international aircraft operations since Certificates under ICAO guidelines are not transferrable.

(9) Kenya Airways and KAA have a symbiotic relationship and KQ accounts for over 40% of KAA's business and revenues and as at 31st March, 2019, KQ owed KAA more than Kshs 5.54 billion in relation to unpaid Air Passenger Service Charge, landing fees, rent and other charges.

(10) The proposed role of KQ in the PIIP of operating JKIA creates a conflict of interest with regard to its dealings with other airline operators at the airport and may lead to the oppression of such operators.

(11) Most of the successful airlines in the aviation sector like Ethiopian Airlines, Emirates and Qatar Airways offer non-aeronautical services such as hospitality and catering.

(12) In terms of exemptions, section 5A of the State Corporations Act, Cap. 446 allows the President to exempt a state corporation from any of the provisions of the State Corporations Act by notice in the Gazette. Further, Section 114A of the Public

Procurement and Asset Disposal Act, 2015 allows a procuring entity to use a procurement procedure specially permitted by the National Treasury.

(13) The shares of KLM and any other foreign investors in KQ are protected by any existing Shareholder's Agreement, the provisions of the Foreign Investments Protection Act and Article 75 of the Constitution which precludes the Government from compulsorily acquiring property except for cause. To comply with Article 75 of the Constitution, the Government must demonstrate that compulsory acquisition of an asset is intended to promote the public benefit and promptly pay fair compensation.

(14) The nationalisation of KQ under the stated policy of consolidating Kenya's aviation assets qualifies as an exercise intended to promote the public benefit.

(15) Nationalisation of KQ shall entail its delisting and negotiation and buy-out of other shareholders after the valuation of KQ shares. The buy-out may require appropriate and adequate budgetary arrangements to be made by the National Treasury, including consideration of issuing a long-term Bond or Guarantee to the other shareholders to expedite the process.

(16) Nationalisation of KQ shall affect its currently existing contractual obligations in respect of aircraft leasing and employment.

CHAPTER FOUR

4.0 IMPACT OF THE PIIP ON HUMAN RESOURCE

4.1 Submissions Received

Stakeholders made submissions on human resource issues as follows—

Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works

127. The Cabinet Secretary submitted that in the event the PIIP was approved, it would not lead to the loss of employment. He noted that he had given the affected trade unions a similar guarantee in talks held when JKIA staff recently took industrial action protesting against the PIIP.

Kenya Airways

128. The CEO submitted that KQ is a global company operating in a complex airline market where word wide standards must be fulfilled. He noted that KQ employs around 3,700 employees who need to be protected at whatever cost. He informed the Committee that implementation of the PIIP will result in increased employment in aviation-related and other industries through creation of between 25,000 to 30,000 jobs for Kenyans. According to him, more employees will be required once KQ traffic increases as a result of the proposal.

129. The CEO further submitted that in the PIIP, KQ has committed to second all the current JKIA staff to the SPV on terms equal to those offered at KAA for a period of 12 months. After the secondment period, KQ has undertaken to transfer employees to the SPV and that no jobs will be lost in the process.

130. The CEO noted that of KQ's 3,700 employees, 14 are expatriates whereas of the top 50 managers, 5 are expatriates thus representing 10% of the leadership team. He noted that 2 expatriates are managers, the Chief Operating Officer and the Head of Global Sales, seconded from KLM.

131. In terms of remuneration of staff, the CEO noted that it constitutes 19% of KQ's total costs. He informed the Committee that he earns Kshs. 4 Million in salary, allowances and benefits, before tax as reported in KQ's financial statements. He submitted that on average, Airline Captains and First Officers earn Kshs. 1.6 Million and Kshs 900,000/- per month, respectively. It was his submission that on average, staff in flight operations

earn Kshs. 225,000/- while technical, ground services, cargo and commercial staff earn Kshs. 150,000/- per month.

132. With regard to pilots, the CEO noted that their remuneration is substantial in comparison to their counterparts from wealthy, developed economies such as the United Arab Emirates, Kuwait, Lebanon, Mauritius, Qatar, and South Africa. Locally, the CEO noted that, KQ pilot remuneration was equivalent to 29 times the private sector average, 12 times the average of the earnings of workers in the electricity and gas sector and 11 times the average remuneration of workers in the financial and insurance services sector.

133. The CEO noted that the remuneration is not, however, commensurate to their productivity submitting that KQ pilots flew an average of 533 hours per year, much lower than the 859 hours flown by ET pilots who, he submitted, are paid half the remuneration.

Kenya Airports Authority

134. The CEO submitted that the implementation of the PIIP will not lead to any job redundancies or adverse changes to the existing terms and conditions for KAA staff as clarified by the CS Transport, Infrastructure, Housing & Urban Development in a press release dated 5th February, 2019.

135. With regard to the current KAA staffing structure, the CEO submitted that as at 31st March 2019, KAA employed a total of 1,945 staff, with 753 being in management. Out of those numbers, JKIA contributed 993 employees comprising 318 management and 675 non-management staff. In terms of remuneration, the CEO submitted that the management staff of KAA earn a total of Kshs. 2.316 Billion while non-management staff earn a total of Kshs. 1.92 Billion, annually.

136. The CEO noted that the Kenya Aviation Workers Union (KAWU) issued a strike notice dated 29th January, 2019 which prompted KAA to file ELRC Case Number 68 of 2019 ***Kenya Airports Authority vs Kenya Aviation Workers Union*** to restrain KAWU from calling for the strike. The Court issued temporary orders on 5th February, 2019 suspending the strike notice and referring the matter to conciliation. He noted that the matter is currently under conciliation. On the advice of the Director of Public Prosecutions, (DPP) KAA withdrew a contempt of court application against KAWU officials.

137. The CEO further noted that KAWU has separately filed Constitutional Petition Number 57 of 2019 against the PIIP. The matter is pending in Court and is scheduled for directions on 4th June, 2019.

Kenya Civil Aviation Authority

138. KCAA submitted that the concession does not adequately address industrial relations issues which if not properly acted upon would lead to a complete halt in airport operations.

139. It was KCAA's further submission that with regard to the secondment of staff to the SPV, the 12 month period does not address the issue of job security and staff may decline to take up the offer with the SPV. Further, it was their view that ANS technical staff like Air Traffic Controllers, Communication, Navigation and Surveillance engineers and technicians, and Aeronautical Information Services are highly specialized and that in the event such staff do not take up the SPV offer, it would result to loss of critical services at JKIA. KCAA was also concerned with the provision of ANS in the same airspace and different remuneration by two different entities would result to conflict and an increase in safety incidents

Kenya Aviation Workers Union

140. The Secretary General submitted that KQ's declining business performance over the past seven years spells doom to the Country and its employees whose jobs have always been at risk. He noted that both KQ and KAA neither informed nor engaged their employees on the PIIP which is a sensitive issue with a great potential to affect their jobs. He submitted that KAWU's efforts to seek information on the PIIP had been futile and that if the take-over proceeds, there would definitely be redundancies mainly affecting KAA staff currently working at JKIA and the head office.

141. The Secretary General further submitted that KAWU was apprehensive and convinced that like many other previous attempts of resuscitating KQ since 2012, the PIIP could also fail and could lead to the retrenchment of many employees as was the case in 2012 where 600 employees were retrenched. He also noted that in 2016, another restructuring exercise had been carried out, being spearheaded by McKinsey Consultants in which over 100 employees had been retrenched.

142. As regards KQ management, KAWU submitted that KQ had continued to sink in losses even after engaging a foreign Chief Executive Officer and other foreign airline experts and consultants. The Secretary General submitted that KAWU and most KQ employees had lost confidence in the stewardship of the current KQ CEO, Mr. Sebastian Mikosz, under whose tenure KQ had sunk into deeper losses. He noted that some of the foreign airline consultants contracted by KQ had questionable credentials and that there was high number of expatriates employed by KQ despite there being sufficient local talent to perform the same roles. It was further submitted that the current KQ CEO had recruited and appointed managers without any regard to the established recruitment policy which advocates for transparency and openness.

Kenya Airline Pilots Association

143. The Kenya Pilots association submitted that KQ is currently haunted by various pitfalls which it needs to address. The General Secretary noted that KQ has a poorly motivated work force, especially for the customer care staff who are outsourced and have very poor working condition, in terms of their contract which are short term contracts and low in pay. Further, he informed the Committee that KQ has contracted several consultants like McKinsey who made a total of Kshs. 2.3 Billion for 10 months work and still recommended the retrenchment of KQ staff, sale of prime KQ assets such as the KQ slot in London, Heathrow and the sale of KQ fully owned aircraft equipment.

144. With regard to the remuneration paid to pilots, KALPA submitted that the information provided to the Committee by KQ was misleading. They submitted that their remuneration is the subject of a comprehensive CBA entered into between them and KQ and that the CBA does not cover the number of hours pilots are required to work. They submitted that the current pilots working for KQ do not meet the required ratio per aircraft as agreed in the CBA and that KQ actually lacks sufficient pilots to crew their aircrafts. As a result of this shortage of pilots and suitable aircraft, pilots are currently working their maximum allowed hours and KQ owes each pilot an average of 100 leave days. They noted that some flights have had to be cancelled due to inadequate crew. They submitted that on average they fly approximately 780 hours per year.

145. KALPA submitted that under the CBA, KQ agreed to have 12 pilots to crew each narrow body aircraft and 16 pilots or each wide-body aircraft and as per those numbers, the airline currently has an operating shortage of 200 pilots. They further noted that in

terms of computing the average hours flown by a pilot should be viewed in the context of the statutory requirements and that they similarly are entitled to leave days and training every 6 months.

146. KALPA noted that in the past three years, KQ has lost more than 130 pilots to the Middle East owing to their uncompetitive remuneration. They submitted that the current CBA shows that on the higher side, a Captain and a First Officer earn an average of Kshs. 1,584,719/- and Kshs. 1,506,789/- respectively in salary and monetary allowances.

Views from Members of the public

The Committee received various memoranda from members of the public with regard to the inquiry -

147. Edward Gitonga submitted that the PIIP could lead to job losses.

148. Walter Mocha noted that there shall be massive job losses to both KAA employees and other operators who have invested heavily at JKIA if the PIIP is implemented as KQ proposes to consolidate all the businesses at JKIA through its SPV. He further noted that with the current deficit at which KQ is being run, it will be unable to fund the PIIP. He noted that KQ is afflicted with managerial problems that ought to be solved first, including the importation of Polish expatriates who are paid exorbitantly as compared to local KQ employees.

149. Roy Kinyanjui opposed the PIIP noting that it does not have the interest and welfare of KAA employees at heart. It was his view that as a performing parastatal, KAA should be allowed to continue managing JKIA.

150. KAA staff at JKIA submitted that the Committee should pay critical attention on staff welfare in its consideration of the PIIP and that if any retrenchment is to be considered, the exit package for KAA staff be significantly higher as the retrenchment shall not be for purposes of cost cutting.

151. Capt. Gad Kamau noted that the PIIP will lead to layoffs as most positions will be scrapped.

152. Plonyang Atudo opposed the PIIP noting that its implementation will lead to job losses.

153. Peter Mbalanya opposed the PIIP submitting that it would lead to retrenchment of employees.

4.2 Committee Observations

154. The Committee observed that—

(1) Kenya Airways and KAA neither informed nor engaged their employees on the PIIP which is a sensitive issue with a great potential to affect their jobs.

(2) In the PIIP, though KQ has committed to second all the current JKIA staff to the SPV on terms equal to those offered at KAA for a period of 12 months after which they will be transferred to the SPV, it does not address the issue of job security and could result in the loss of ANS technical staff since staff could decline taking up the SPV offer, a situation that could result in loss of critical services at JKIA;

(3) There is an over-reliance on expatriates for the core management operations of KQ. Out of KQ's 3,700 employees, 14 are expatriates whereas of the top 50 managers, 5 are expatriates thus representing 10% of the leadership team.

(4) The key union representing aviation workers has lost confidence in the stewardship of the current KQ management;

(5) Operations at JKIA constitute majority of KAA's work. As at 31st March 2019, KAA employed a total of 1,945 staff, with 753 being in management. Out of those numbers, JKIA contributed 993 employees comprising 318 management and 675 non-management staff;

(6) The current remuneration of the KQ management, senior staff and pilots is relatively high and does not accord with the financial performance of the company.

CHAPTER FIVE

5.0 LEGAL COMPLIANCE ISSUES

5.1 Applicable Legal Provisions

155. The Public Private Partnerships Act, No. 15 of 2013 was enacted by Parliament to provide for the participation of the private sector in the financing, construction, development, operation, or maintenance of infrastructure or development projects of the Government through concession or other contractual arrangements, the establishment of the institutions to regulate, monitor and supervise the implementation of project agreements on infrastructure or development projects and for related purposes. The Act establishes three key organs to assist in the evaluation of PPPs, namely the PPP Committee, the PPP Unit and PPP nodes.

156. The PPP Committee comprises the Principal Secretaries responsible for matters relating to finance, national planning, land, county government; transport, infrastructure and energy, the Attorney General and the Director of the PPP Unit who are tasked with—

(a) ensuring that each project agreement is consistent with the provisions of the Act;

(b) formulating policy guidelines on PPPs;

(c) ensuring that all projects are consistent with the national priorities specified in the relevant policy on PPPs;

(d) approving project proposals submitted to the Committee by a contracting authority;

(e) approving project lists submitted to the Committee by contracting authorities

(f) authorizing allocations from the Project Facilitation Fund established under section 68 of the Act;

(g) formulating or approving standards, guidelines and procedures for awarding contracts and standardized bid documents;

(h) examining and approving a feasibility study conducted by a contracting authority under the Act;

(i) reviewing the legal, institutional and regulatory framework of public PPPs;

(j) overseeing the monitoring and evaluation by contracting authorities of a PPP from the commencement to the post completion stage;

(k) ensuring approval of, and fiscal accountability in the management of, financial and any other form of support granted by the Government in the implementation of projects under the Act; and

(l) ensuring the efficient implementation of any project agreement entered into by a contracting authority. [1]

157. Section 11 of the PPP Act, 2013 established the PPP Unit within the State Department responsible for matters relating to finance which, as provided under section 14 of the Act is to serve as the secretariat and technical arm of the PPP Committee and to support contracting authorities to identify, appraise, procure, negotiate, contract and monitor the operation of PPP projects.

158. The Act requires any public contracting authority which intends to enter into a PPP arrangement to establish a PPP node headed by the authority's accounting officer assisted by a number of financial, technical, procurement and legal personnel as the authority, in consultation with the PPP Unit, consider necessary.[2] A PPP node is responsible for project selection and development, procurement and contracting as well as the day to day management of a project. It reports administratively to the Contracting Authority and functionally to the PPP Unit.[3]

159. Section 19, as read together with the Second Schedule to the Act, outlines the 13 forms of PPP arrangements that a contracting authority may enter into with a private party, each subject to unique conditions. These are—

(a) Management contracts;

(b) Output performance-based contracts

(c) Leases not exceeding thirty years;

(d) Concessions at a fee;

(e) Build-Own-Operate-Transfer schemes;

(f) Build-Own Operate schemes;

(g) Build-Operate-and-Transfer schemes for a period not exceeding thirty years;

(h) Build-Lease-and-Transfer schemes;

(i) Build-Transfer-and-Operate schemes;

(j) Develop-Operate-and-Transfer Schemes;

[1] Section 7, PPP Act, 2013.
[2] Section 16 PPP Act, 2013.
[3] Section 17 PPP Act, 2013.

(k) Rehabilitate-Operate-and-Transfer schemes;

(l) Rehabilitate-Own-and-Operate schemes; and

(m) Land Swaps.

160. The Act requires each contracting authority to prepare a list of projects that it intends to undertake on a priority basis under the Act and shall submit the list to the PPP Unit for assessment.[4] The projects submitted must be part of the development program of the authority. Upon submission, the list is assessed and transmitted, together with recommendations, to the PPP Committee for approval which similarly reviews it and transmits it to the Cabinet in a national priority list.[5]

161. The Act allows for a contracting authority to solicit for proposals, subject to a transparent and competitive bidding process, with successful bids being subjected to a feasibility study before consideration by the PPP Unit, the PPP Committee and Cabinet. [6] In addition, the Act allows a private party to propose a Privately Initiated proposal for the construction or development of a project or the performance of a service by negotiation outside the normal requirement for the authority to and undertake a competitive procurement process. A contracting authority may only consider a PIIP where—

(a) there is an urgent need for continuity in the construction, development, maintenance or operation of a facility or provision of a service and engaging in the competitive procurement process would be impractical on condition that the circumstances giving rise to the risk of disruption were not foreseeable by the contracting authority or the result of an unreasonable failure to act by the contracting authority;

(b) the costs relating to the intellectual property in relation to the proposed design of a project are substantial;

(c) there exists only one person or firm capable of undertaking the project, maintaining the facility or providing the service or such person or firm has exclusive rights over the use of the intellectual property, trade secrets or other exclusive rights necessary for the construction, operation or maintenance of the facility or provision of the service; or

---

[4] Section 23 PPP Act, 2013.

[5] Section 24 PPP Act, 2013.

[6] Section 37-60 PPP Act, 2013.

(d) there exists any other circumstance as the Cabinet Secretary may prescribe.[7]

162. Before commencing any negotiations with the proponent of a PIIP, a constricting authority is required to prescribe a criteria against which the outcome of negotiations shall be evaluated, submit the proposal to the PPP Unit for consideration and recommendation, apply for and obtain approval from the PPP Committee to negotiate the contract.

163. A contracting authority is expressly precluded from considering a PIIP unless it is satisfied that the project shall provide value for money and be affordable and that the appropriate risks of the project are transferred to the private party.[8]

164. Regulation 51 of the Public Private Partnerships Regulations, 2014 allows a contracting authority to consider a privately initiated investment proposal which is not specified in section 61 (1) (a), (b) or (c) of the Act on condition that the project which the proposal covers is included in the contracting authority's development programme. In considering such a proposal, the contracting authority is required, through the Unit, to apply to the Cabinet Secretary for approval.

165. With regard to negotiations, Regulation 52 of Public Private Partnerships Regulations, 2014 requires a contracting authority to develop criteria for the negotiation of a PIIP and submit it to the Unit for review and recommendation where it is of the opinion that the proposal meets the requirements of section 61 (3) of the Act with regard to the affordability and value for money to be derived from the project; and the transfer of any project risks to the proponent. The contracting authority is allowed to engage a transaction advisor to assist it in developing negotiation criteria and appraising the proposal. The Regulations further require a contracting authority to take all reasonable steps to prevent a conflict of interest by its officers and prevent any impropriety during negotiations.[9]

166. A PIIP proponent is required to submit both a financial and technical bid as part of the proposal. In the event of negotiations, the contracting authority may request for more information in relation to the proposal or a modification of the privately initiated investment proposal. At the close of negotiations, a contracting authority is required to prepare a project risk assessment report specifying the terms agreed with the proponent and submit the report to the PPP Unit for review and transmission to the Debt Management Office to confirm the accuracy of the contingent liabilities and the risk matrix contained in the proposal. Any award

[7] Section 61 PPP Act, 2013.
[8] Section 61(3) PPP Act, 2013.
[9] Regulation 54, Public Private Partnerships Regulations, 2014.

granted to the proponent of a PIIP after the conclusion of negotiations and verification of the project risk assessment report of must be approved by the PPP Committee.[10]

5.2 Submissions Received

Stakeholders made submissions on legal and compliance issues as follows—

Ministry of Transport, Infrastructure, Urban Development, Housing and Public Works

167. The CS submitted that for purposes of implementing the resolution of the Cabinet during its meetings, the Public Private Partnership Act, 2013 was identified as the suitable legal framework which allowed KQ to submit a PIIP to KAA. As required under the provisions of the Act, the PIIP has been submitted to the PPP Unit for consideration.

168. The CS however noted that following the concerns raised by the Public over the PIIP, the Ministry is exploring other options of enabling the Government to consolidate all aviation assets for approval by Cabinet.

Kenya Civil Aviation Authority

169. The Director General submitted that from the regulatory perspective, the current financial position of Kenya Airways could significantly affect the airline's capacity to comply with civil aviation regulations as provided for in the air operator certification and that the PIIP does not meet the criteria of the PPP concept which entails the concession of a public service to a private entity which has the technical expertise and financial capacity to manage, operate and undertake investment.

170. It was the further submission of the Director General that implementation of the PIIP would result in the loss of the regulatory certificate to operate JKIA and consequently loss of the FAA IASA Category I status that the airport currently enjoys with regard to its direct flights to USA and that it would take years for Kenya to be audited again and similar approval granted to the SPV. As per the International Standards and Recommended Practices (SARPs), Certificates and Licenses issued by a civil aviation authority are not transferrable and hence, locally, the SPV would be required to undertake the processes of getting new certifications, a process that could take more than one year. The Air Service License (ASL) currently held by Kenya Airways would

[10] Regulation 53, Public Private Partnerships Regulations, 2014.

have to be revoked and the SPV would have to apply for a new ASL with the scope of services being an Air Operator and Airport Operator combined.

171. In addition, for the implementation of the PIIP, the Director General noted that there would be need to renegotiate MOUs and Letters of Procedures previously signed with neighboring States and Agencies in respect to ANS coordination activities which were entered into on the strength of the ANS being part of the KCAA's mandate.

172. KCAA further submitted that with regard to the use of SPV for the PIIP, there is need to establish clear legal mechanisms of resolving ownership especially for funds to be used for the purpose of any CAPEX activities.

5.3 Committee Observations

173. The Committee observed that—

(1) The Public Private Partnerships Act, No.15 of 2013 allows a private party to propose a Privately Initiated proposal for the construction or development of a project or the performance of a service by negotiation outside the normal requirement for the authority to undertake a competitive procurement process on condition that the project is included in the development programme of the contracting authority;

(2) The concession of JKIA was not and is currently not included in the development programme of KAA;

(3) Kenya Airways has not demonstrated that it has the financial capacity, relevant experience and the relevant expertise to manage JKIA as required by section 23 of the Public Private Partnerships Act, No.15 of 2013;

(4) The implementation of the PIIP would result in the loss of the regulatory certificate to operate JKIA and consequently loss of the FAA IASA Category I status the airport currently enjoys with regard to its direct flights to USA and it would take years for Kenya to be audited again and similar approval granted to the SPV. The current regulatory certificates issued with regard to JKIA are not transferable to a third party;

(5) There would be need to renegotiate MOUs and Letters of Procedures previously signed with neighboring States and Agencies in respect to ANS coordination activities which were entered into on the strength of the ANS being part of KCAA's mandate if the PIIP is implemented.

CHAPTER SIX

6.0 GENERAL ISSUES OF CONCERN TO THE PEOPLE

6.1 Submissions Received

Stakeholders made submissions on issues of concern as follows—

Status of the PIIP

174. The CS, Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works noted that at present the PIIP is just a proposal that must be subjected to the rigorous process outlined in the PPP Act including a review and consideration by the PPP Committee and negotiations between KQ and KAA over any issues of concern for the mutual benefit of the parties. Such negotiations would include, staff matters, the concession fees payable, investments to be made over the concession period, service standards, transaction structure, roles and responsibilities of each party and competition with other airlines. It was his view that the running of the other airports and airstrips would constitute a critical part of the negotiations.

175. The CS further noted that Kenya has to start viewing its aviation assets more strategically as key contributors to the Gross Domestic Product (GDP) where having a world class airline and world class airports enables the country to achieve its objective of being an aviation hub in the region. In this regard, the aim of the PIIP is the creation of operational synergies between Kenya's main hub, JKIA and the national carrier, KQ to establish the two institutions as drivers of economic growth. This same structure is the one utilized by Kenya's main competitors in the global aviation industry.

Whether Kenya Airways is a public or private company

176. The KQ CEO submitted that KQ is a publicly listed company with Government of Kenya owning the majority of shares. In terms of shareholding, currently, the Government owns 48.9%, KQ Lenders Company 38.1% , KLM 7.8% , the Employee Share Ownership Plan 2.4%, and other individual shareholders own 2.8%.

The impact of fuel hedging on KQ performance

177. The KQ CEO submitted that Fuel hedging is a contractual tool used by airlines as an industry standard to reduce exposure to volatile fuel prices. He informed the Committee that the fuel hedge in place at the moment guarantees KQ's purchase of fuel at a set

price while protecting it against rises above a certain price. He noted that KQ is benefiting from fuel hedging as the current fuel prices are above $70 while its volumes are hedged at rates lower than $68. In addition, it was his submission that KQ is expected to reap benefits in the month of April going forward as the fuel curve projections point to an increase in fuel prices. He was of the view that KQ is not losing money through fuel hedging.

The impact of aircraft leases on KQ performance

178. The KQ CEO submitted that even though an outright purchase is an option in acquiring an aircraft, it is not a wise and financially sound option. According to him, the core competence of an airline is flying and not owning assets and tying up money in the form of aircraft. He submitted that the purchase of aircraft requires huge capital outlay, that the older an aircraft is, the less efficient it is, both fuel and maintenance wise and that passengers prefer to fly on newer aircraft.

179. The CEO submitted that the estimated cost of buying the entire 37 aircraft in KQ's fleet would cost Kshs. 486.4 Billion, representing 16% of the entire country's budget. He noted that the benefits of leasing an aircraft clearly outweigh those of outright purchase as it allows faster access to aircraft, a reduced capital outlay, access to fuel efficient aircraft, flexibility, access to latest technology, and not having to deal with residual value in aircraft.

180. The KQ CEO further submitted that leasing is not a case unique to KQ, but is the trend world over and more so in airlines that are a lot larger than Kenya Airways both in terms of fleet, revenue, as well as passenger numbers. He noted that the fleets of Emirates, Delta Air Lines, and Air France contain 62%, 22% and 64% leases respectively. The CEO submitted that KQ has a fleet of 40 Aircraft of which it wholly owns 20, and 20 are under operating leases. The breakdown of the fleet is shown in Table 1 below and the list of lessors for the leased aircraft is shown in Table 2.

AIRCRAFT TYPE	Owned	Leased	TOTAL
Boeing 777-300 ER	1	2	3
Boeing 787-8	6	3	9
Boeing 737-800	-	8	8
Boeing 737-700	-	2	2
Boeing 737-300	1	-	1
Boeing 737-300F	2	-	2
Embraer 190	10	5	15
TOTAL	20	20	40

Table 1: Kenya Airways Fleet Breakdown
Source: Kenya Airways.

Lessor Name	Lessor Headquarters	Lessors Total Fleet	No. Leased to KQ	Aircraft Type
Aviation Capital Group	California, USA	297	3	Boeing 737-800
GE Capital Aviation Services (GECAS)	Dublin Ireland & Connecticut, USA	931	1	Boeing 737-800
			1	Boeing 787-8
China Development Bank (CDB) Leasing	Beijing, China	151	1	Boeing 737-800
MACQUIRIE AirFinance	Sydney, Australia	202	1	Boeing 737-800
Goshawk Aviation	Dublin Ireland	223	2	Boeing 737-800
AERCAP	Dublin, Ireland	1,153	1	Boeing 787-8
Dubai Aerospace Enterprise (DAE)	Dubai, UAE	350	1	Boeing 787-8
Bank of China (BOC) Aviation	Singapore	285	1	Boeing 777-300 ER
Cross Ocean Partners	London, UK	N/A	2	Boeing 737-700
China Development Bank (CDB) Leasing	Beijing, China	151	1	Boeing 777-300 ER
Nordic Aviation Capital	Billund, Denmark	468	5	Embraer 190

Table 2: List of lessors of KQ Aircraft
Source: Kenya Airways

181. The CEO noted that the leasing companies do not usually lease a large number of aircraft to one airline as a mechanism of limiting their exposure to risk and that it would not be possible for KQ to lease its entire fleet from one leasing company or bank. Of the 20 aircraft owned by KQ, the CEO submitted that 6 Boeing 787-8 and one Boeing 777-300 were purchased from proceeds of a syndicated loan from City Bank NA, JP Morgan Chase Bank, and Afrexim Bank through Tsavo Limited. In addition 10 Embraer 190 were purchased from proceeds of a syndicated loan from Standard Chartered Bank International and Afrexim Bank through Samburu Limited. The 3 remaining Boeing 737-300 aircraft are fully paid for.

182. The KQ CEO noted that due to the current KQ network structure, specific commercial needs and cost efficiency analysis, KQ had decided to sublease three of the 777-300ER to Turkish Airlines and one 787-8 Dreamliner to Oman Air to avoid the burden of costs of aircraft that cannot be utilized efficiently at the moment.

183. He further submitted that currently none of the two aircraft manufacturers, Boeing and Airbus are directly involved in leasing, which is the preserve of leasing companies and banks.

Public views

184. Walter Mocha called for the disclosure and review of any aircraft leasing agreements to ascertain their value as compared to other arrangements made internationally.

185. Joyce Kebati questioned the ownership of KQ aircraft.

186. Capt. Gad Kamau noted that what ails KQ is the internal procurement procedures and the leasing of aircraft through brokers and middlemen which has bled the airline over time. It was his view that this should be addressed before any bailout of KQ is considered.

The financial health status of KQ

187. The KQ CEO submitted that KQ had diagnosed the root causes of its previous poor financial results which enabled it to establish fundamentals for the turnaround plan currently being implemented to assist it to achieve operational profitability, first, and in the long run, ability to generate profit before tax and dividends for its shareholders. He noted that KQ is currently engaged in activities geared towards boosting revenues, reducing costs and efficient governance. He refereed the Committee to the KQ 2018 half year figures which showed KQ generated Kshs. 52 Billion in revenue, held a Kshs. 1 Billion operating loss with a Kshs. 4 Billion profit before tax.

188. The CEO noted that KAA charges KQ annual fees of up to USD 22 Million annually comprising of landing fees of USD 16 Million, Building and rent utilities of USD 4 Million and concession fees of USD 2 Million. In addition, he noted that KQ pays KAA the Air Passenger Service Charge (APSC) which is dependent on the number of passengers departing from Kenya with the airline. The APSC KQ pays annually amounts to USD 43 Million accounting for approximately 50% of JKIA's total revenue from APSC per year. In addition, he noted that KQ is charged various taxes and levies

by Kenya Revenue Authority (KRA). Import Declaration Fees and Railway Development Levy.

189. The KQ CEO submitted details on the company's other financial information, noting that the airline owed Kshs. 84.8 Billion in non-current liabilities and Kshs. 53.6 Billion in current liabilities financed by Kshs. 113.1 Billion in non-assets and Kshs. 21.3 Billion current assets, thereby leading to a cash-flow of Kshs. 5.9 Billion.

190. With regard to the nature of securities held by foreign and local banks in relation to KQ operations, the CEO submitted that the Government of Kenya has issued a sovereign guarantee to the Exim Bank for USD 525 Million for the loan taken by KQ to purchase one Boeing 777-300 Aircraft, 6 Boeing 787-8 Aircraft and one GEnx engine. In addition, the Government of Kenya has issued a further sovereign guarantee to a consortium of local banks comprising the Commercial Bank of Africa (CBA), NIC Bank Limited, Kenya Commercial Bank Limited (KCB), I&M Bank, National Bank of Kenya (NBK), Diamond Trust Bank (DTB), Ecobank, Jamii Bora Bank, Chase Bank, and Equity Bank, for a USD 225 Million debt that was converted into 38.1% equity in KQ held by KQ Lenders 2017 Limited (KQ Lenders) as part of the 2017 deal to restructure the airline. Under the terms of the restructuring, KQ Lenders may hold the equity for up to 10 years.

191. The CEO further noted that the banks whose debt was converted to the equity held by KQ Lenders, with the exception of Chase Bank and Jamii Bora Bank extended KQ a further loan of USD 44 Million for purposes of liquidity which amount is not guaranteed by the Government and KQ is currently only obligated to service the interest element over time.

192. With regard to KQ revenues, the CEO noted that for the financial years 2015, 2016 and 2017, KQ had generated revenues of Kshs. 110. 1 Billion, Kshs. 116.1 Billion and Kshs. 106.2 Billion, respectively. For the 2018 half year, he noted that KQ had generated Kshs. 52 Billion. The CEO submitted projections of revenue for the years 2019, 2020, 2021 and 2022 as USD 1.36 Billion, USD 1.64 Billion, USD 1.81 Billion and USD 1.98 Billion, respectively.

193. The Director General, KCAA submitted that KQ owes it Kshs. 516,195,794/- in outstanding Air Navigation Service fees and the PIIP would have to address how KQ's debts would be managed.

Collection of ANS charges

194. KCAA submitted that the PIIP was not clear with respect to the collection of ANS charges, on whether the SPV would collect ANS charges at JKIA or the entire country.

Ticket prices

195. KALPA submitted that KQ ticket prices are very expensive and passengers are opting for other cheaper airlines like Emirates and ET thus contributing to its decline.

196. On this issue, the KQ CEO noted that currently, his remit is the maximization of shareholder profits and that therefore requires him to negotiate the highest ticket price he can obtain for the airline. He however noted that in the even the PIIP is implemented and the aviation assets consolidated to streamline synergies between JKIA and KQ, the increased investment, traffic and routes would automatically bring down the prices of tickets

197. The Member for Embakasi East Constituency, Hon. Babu Owino questioned KQ's rationale for allowing ticketing software to be controlled and managed from India.

KQ Baggage Policy

198. KALPA questioned the rationale behind KQ's policy of reducing check-in baggage allowance from two bags to one bag weighing 23Kilograms, thus charging for any extra baggage while ET allows passengers an allowance of two bags, each double the weight of KQ's one bag. This, in their view acts to drive customers away from KQ.

199. The Member for Embakasi East Constituency, Hon. Babu Owino questioned KQ's one-bag baggage policy noting that the policy has decimated KQ's market share and benefited ET and other Airlines serving its African routes.

200. Walter Mocha questioned KQ's one-bag baggage policy noting that the policy has decimated KQ's market share and benefitted ET and other Airlines serving its African routes.

Deployment of inappropriate aircraft

201. KALPA also question KQ's deployment of smaller aircraft on their West African routes despite the route having being fully booked and the need for larger aircraft to ensure that passenger baggage is not left behind. The General Secretary noted that in many cases passengers have been forced to travel without their bags since the smaller aircraft

cannot carry the luggage plus the passengers. This has led to dissatisfaction amongst their customers who have opted for other airlines. Further, it was KALPA's view that this particular failure has led to the decline of routes that could have been very profitable for KQ such as Douala, Yaoundé, Lagos and Accra.

Due Diligence on PIIP

202. The KAA CEO submitted that KAA engaged a consortium of transaction advisors comprising MMC Africa Law, KPMG and Saracen to provide transaction advisory services on the PIIP, including—

(a) a review of the PIIP, Heads of Terms and Financial Model;

(b) advice on the applicable legal and regulatory matters including approvals to be secured and the potential legal and operational risks to be managed;

(c) assessment of the financial deliverability of the transaction including KQ's legal, financial and operational capacity to enter into the proposed transaction;

(d) due diligence on the adequacy of the proposed operating, maintenance and investment plans in relation to the traffic growth assumptions made by KQ;

(e) a review of the terms and structure of the PIIP and a scenario analysis of the different possible transaction structures to evaluate and determine the deal structure most beneficial to the KAA;

(f) a Fiscal Commitments and Contingent Liability analysis of the PIIP under various transaction structure options;

(g) a review and stress-test of the Public Sector Comparator, Value for Money and affordability components of the financial model submitted by KQ to assess its robustness.

(h) a review of the structure and adequacy of the consideration offered by KQ and an investigation into structuring of contingent payouts that enhance value for money to KAA;

(i) advice on the tax structuring of the transaction and the subsequent tax impact on KAA;

(j) an assessment of and advice on matters related to possible staff redundancy, severance and pension liabilities arising out of the PIIP; and

(k) environmental, social and economic analyses of the project; and

(l) negotiation support throughout the deal execution phase.

203. The engagement of the transaction advisors was done through a restricted tendering process in light of the urgency of the matter and the fees of Kshs. 15 Million quoted by

the winning bid of MMC Law Africa were paid out of KAA's Legal budget. KAA is to shoulder all the costs of the transaction paid to its transaction advisors whether or not the PIIP is approved and implemented.

204. The CEO noted that apart from a review of certain key KQ agreements, the due diligence phase of the transaction advisory engagement had been completed and that KAA had already submitted a draft negotiation criteria to the PPP Unit and is awaiting approval from the Unit and from the National Treasury as envisaged under section 61(1) of the PPP Act for it to proceed to the negotiation phase.

205. The CEO submitted that, arising from the due diligence, KAA had identified significant gaps in the PIIP that would have to be addressed in its negotiations with KQ. These gaps include KQ's capacity to undertake the PIIP, the value of the PIIP to KAA, compliance of the PIIP with the viability gap funding requirements under the PPP Act and the financing gap left in KAA once JKIA and its assets are concessioned out under the PIIP.

206. The CEO further noted that KAA is yet to formally respond to KQ on the PIIP as it awaits the outcome of the due diligence and the statutory negotiation process under the PPP Act.

Standard of JKIA operations

207. The KAA CEO submitted that JKIA facilities are being operated within the required International Standards. He noted that JKIA has been granted an aerodrome certificate by the Kenya Civil Aviation Authority (KCAA) as evidence that the airport meets the design, operations and safety management systems of an international Airport. Further, he noted that JKIA has been granted Certification by the United States Department of Transport as a Last Point of Departure enabling direct flights from Nairobi to the United States of America (USA).

KAA Finances

208. The CEO submitted that as at 30th June 2018, KAA assets stood at Kshs. 82.78 Billion comprising Kshs. 50.845 Billion in fixed assets and Kshs. 31.935 Billion in current Assets. With regard to the fixed assets, the CEO submitted that the value submitted was based on a 2004 valuation and that KAA assets are slated to be revalued afresh by the Ministry of Lands with the current valuation of its prime portfolio of land and building

expected to be in excess of Kshs. 1 Trillion. The CEO further submitted that KAA's current assets include Cash and Bank balances of Kshs. 14.1 Billion in investment reserves for the financing of its priority projects which include runway upgrades, remodeling of terminals B, C and D, a second runway and a new terminal building.

209. The CEO noted that KAA owes long term liabilities of Kshs. 8.997 Billion comprising a World Bank loan of Kshs 2.2 Billion and a Kshs. 7.9 Billion loan from Agence Française de Développement (AFD) whose proceeds were used to finance JKIA's aviation infrastructure including the construction of Terminal 1A.

KAA Revenue and Sources

210. The CEO submitted that for the years 2015/2016, 2016/2017 and 2017, 2018, KAA generated total revenues of Kshs. 12 Billion, Kshs. 17. 2 Billion and Kshs. 17.624 Billion, respectively, from the Air Passenger Service Charge, landing and parking charges, air bridge charges, fuel uplift charges, rentals, concessions and other sources. The Air Passenger Service Charge contributed the single largest portion to KAA revenue during this period, generating Kshs. 6.719 Billion, Kshs. 9.567 Billion and Kshs. 10.147 Billion in the respective financial years.

211. The CEO further submitted that, as per its projections for the years 2018/2019, 2019/2020 and 2020/2021, KAA expected to generate revenues of Kshs. 17.429 Billion, Kshs. 16.889 Billion and Kshs. 18.332 Billion, respectively. In its projections, the Air Passenger Service Charge is similarly expected to contribute the single largest portion of more than half of KAA revenue in each year.

Contribution of KAA to the economy

212. The CEO submitted that according to the International Air Transport Association (IATA) KAA's contribution to GDP for the 2017/2018 financial year comprised Kshs. 18 Billion in income, Kshs 352 Million in corporation tax, Kshs 2.7 Billion in capital expenditure, Kshs. 13 Billion in spending, Kshs. 128 Million in dividend paid to the government, a Kshs. 79.8 Billion proportion of earnings from tourism and direct and indirect employment of 1,946 and 9730 persons, respectively.

Conflict of Interest

213. JK Waweru questioned why the KAA Chairperson should continue serving as Group CEO Commercial Bank of Africa, one of the banks which converted its loans to KQ into equity thus being in a position of conflict of interest.

214. The Chairperson of KAA, Mr. Isaac Awuonda, submitted that his dual roles of KAA Chairperson and Group General Manager of Commercial Bank of Africa Limited, one of the banks whose debt was converted into equity held by KQ Lenders in the 2017 in the restructuring of KQ could be perceived as a conflict of interest with regard to the consideration of the PIIP. He however noted that he is not engaged in the day-to-day operation of Commercial Bank of Africa (K) Limited and that he had at a very early stage declared the issue to the KAA Board and received no objection to his presence during deliberations over the PIIP.

6.2 Committee Observations

215. The Committee observed that—

(1) KQ is a private company which is listed at the Nairobi Securities Exchange. In terms of shareholding, currently, the Government of Kenya owns 48.9%, KQ Lenders Company 38.1%, KLM 7.8%, the Employee Share Ownership Plan 2.4%, and other individual shareholders 2.8%.

(2) KQ currently leases aircraft at an exorbitant cost, putting into question the manner in which the leases were negotiated;

(3) The fuel hedging model adopted by KQ is one of the areas of financial leakages in the company;

(4) The PIIP is not clear with respect to the collection of air navigation service charges especially on whether the SPV will collect the charges at JKIA only or the entire country.

(5) KQ ticket prices are very expensive and passengers are opting for other cheaper airlines like Emirates and ET thus contributing to its loss of market share.

(6) KQ's policy of reducing check-in baggage allowance from two bags to one bag weighing 23Kilograms, thus charging for any extra baggage drives customers away since other airlines like ET give passengers an allowance of two bags, each double the weight of KQ's one bag.

(7) KQ's deployment of smaller aircraft to busy routes has led to customer dissatisfaction since customers fail to secure seats and passenger baggage is left behind.

(8) There is a conflict of interest with regard to the consideration of the PIIP, since the Chairperson of KAA is also the Group CEO of Commercial Bank of Africa, one of the banks whose debt was converted into equity held by KQ Lenders in the 2017 restructuring of KQ.

CHAPTER SEVEN

7.0 COMMITTEE RECOMMENDATIONS

216. The Committee considered the submissions made by the stakeholders and noted that the PIIP does not present a viable option for restoring Nairobi as the civil aviation hub of choice in Africa and treating KQ and JKIA as strategic national assets. In addition, the Committee noted that taking into account KQ's current financial status and the current lack of competitiveness of Kenya's aviation industry, the Government and the people of Kenya stand to lose the most in the event the trend is left to continue, noting that KQ debtors enjoy a sovereign guarantee of Kshs. 75 Billion. Appreciating the policy adopted by the Cabinet with regard to the consolidation of the country's aviation assets and re-establishing Nairobi as a competitive international aviation hub, the Committee recommends—

(1) That Kenya Airways be nationalized.

(2) The government establishes an Aviation Holding Company with four wholly owned subsidiaries, namely,—

(a) JKIA company incorporated to manage JKIA as an international hub, ground handling and catering services;

(b) Kenya Airports Authority with a revised mandate of managing the remaining airports and airstrips. Under its new mandate KAA shall maintain at least one serviceable airstrip in each county for purposes of security, health and other emergencies;

(c) KQ as the national carrier; and

(d) a centralised Aviation Services College/Institute.

(3) The resources of the Aviation Holding Company and any revenue generated from such resources must be utilized for the mutual benefit and development of all its subsidiaries.

(4) All Air Navigation Services shall remain within the exclusive mandate of the Kenya Civil Aviation Authority. KCAA shall, in addition, collect en-route charges and aerodrome and approach charges.

(5) Upon nationalization of KQ, amendments be made to include exemptions in the State Corporations Act, the Public Finance Management Act, the Public Procurement and Asset

Disposal Act and the Public Service Commission Act; or a specific legislation be enacted to provide for the governance and operations, financial matters, procurement and disposal of goods and services, designation of certain air transport services as essential services and management of human resource in the Aviation Holding Company and all its subsidiaries in a manner that allows the entities to function as accountable going concerns without restrictive bureaucracy;

(6) Upon nationalization of KQ, priority legislation be enacted—

(a) to grant the Aviation Holding Company and its subsidiaries favourable tax concessions for a specified period;

(b) to amend the Miscellaneous Fees and Levies Act, 2016 to exempt the Aviation Holding Company, and KQ from paying Import Declaration Fees on aircraft, aircraft parts, utilities, commercial/on-board products and related goods and equipment, and imported Jet A-1 fuel for a specified period;

(c) to amend the East African Community Customs Management Act to exempt the Aviation Holding Company and its subsidiaries from paying customs duty on aircraft related parts and accessories including jet lubricants, grease, adhesives, aircraft specific detergents used for aircraft maintenance, aircraft seats and other related goods for a specified period;

(d) to amend the Excise Duty Act to exempt the Aviation Holding Company and its subsidiaries from excise duty on all excisable goods including imported Jet A-1 fuel for a specified period;

(e) to amend the Second Schedule to the Value Added Tax Act to Zero-rate all supplies made or received by the Aviation Holding Company and KQ, including supplies of Jet A-1 fuel for both domestic and international flights for a specified period;

(f) to amend the Kenya Airports Authority Act to—

(i) transfer the management and assets of JKIA to the JKIA Company; and

(ii) allow the Aviation Holding Company to collect tariffs and other airport user charges, including landing charges and parking charges;

(g) to amend the Air Passenger Service Charge Act to—

(i) allow the Aviation Holding Company to collect the Air Passenger Service Charge for distribution to its subsidiaries subject to subparagraphs (ii) and (iii);

(ii) allocate at least 6% of the Air Passenger Service Charge to the Kenya Civil Aviation Authority to finance its operations; and

(iii) allocate and ring-fence at least 20% of the Air Passenger Service Charge to KAA for the management of the remaining airports and airstrips; and

(h) to amend the Civil Aviation Act to allow the transfer of any JKIA licenses to the SPV incorporated to manage JKIA;

(7) Upon nationalization of KQ, the government undertakes a staff rationalization programme with a view of retaining existing staff and harmonizing the terms of service and remuneration thereof under the Aviation Holding Company, including a review of the existing Collective Bargaining Agreements.

(8) Upon nationalization of KQ, the government reviews the aircraft leasing agreements entered into by KQ with a view to renegotiating better terms on account of the consolidated balance sheet of the Aviation Holding Company, improved KQ cash flow and a lowered risk profile of Kenyan aviation assets. Any future leasing arrangements for aircraft must be cost-effective.

SIGNED:.. **DATE:** 17/06/2019.

HON. DAVID PKOSING, CBS, MP - CHAIRPERSON

DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING

Adoption of the Report

We, the members of the Departmental Committee on Transport, Public Works and Housing have today 11th June, 2019 adopted this Report on the Inquiry into the Policy, Human Resource, Legal Compliance and Issues of Concern to the People as contemplated under Article 95 of the Constitution, in relation to the Kenya Airways' Privately Initiated Investment Proposal to Kenya Airports Authority, for consideration and approval by the House Pursuant to Standing Order 199.

1.	Hon. David Pkosing, M.P. -Chairperson	…………………………………
2.	Hon. Moses Kuria, M.P. -Vice Chairperson	…………………………………
3.	Hon. Samuel Arama, M.P.	…………………………………
4.	Hon. Johnson Manya Naicca, M.P.	…………………………………
5.	Hon. Peris Pesi Tobiko, M.P.	…………………………………
6.	Hon. Savula Ayub Angatia, M.P.	…………………………………
7.	Hon. Suleiman Dori Ramadhani, M.P.	…………………………………
8.	Hon. Ahmed Abdisalan Ibrahim, M.P.	…………………………………
9.	Hon. Ahmed Bashane Gaal, M.P.	…………………………………
10.	Hon. David Njuguna Kiaraho, M.P.	…………………………………
11.	Hon. Dominic Kipkoech Koskei, M.P.	…………………………………
12.	Hon. Gideon Mutemi Mulyungi, M.P.	…………………………………
13.	Hon. Kulow Maalim Hassan, M.P.	…………………………………
14.	Hon. Mugambi M. Rindikiri, M.P.	…………………………………
15.	Hon. Rehema Dida Jaldesa, M.P.	…………………………………
16.	Hon. Rigathi Gachagua, M.P.	…………………………………
17.	Hon. Shadrack John Mose, M.P.	…………………………………
18.	Hon. Tom Mboya Odege, M.P.	…………………………………
19.	Hon. Vincent Kemosi Mogaka, M.P.	…………………………………

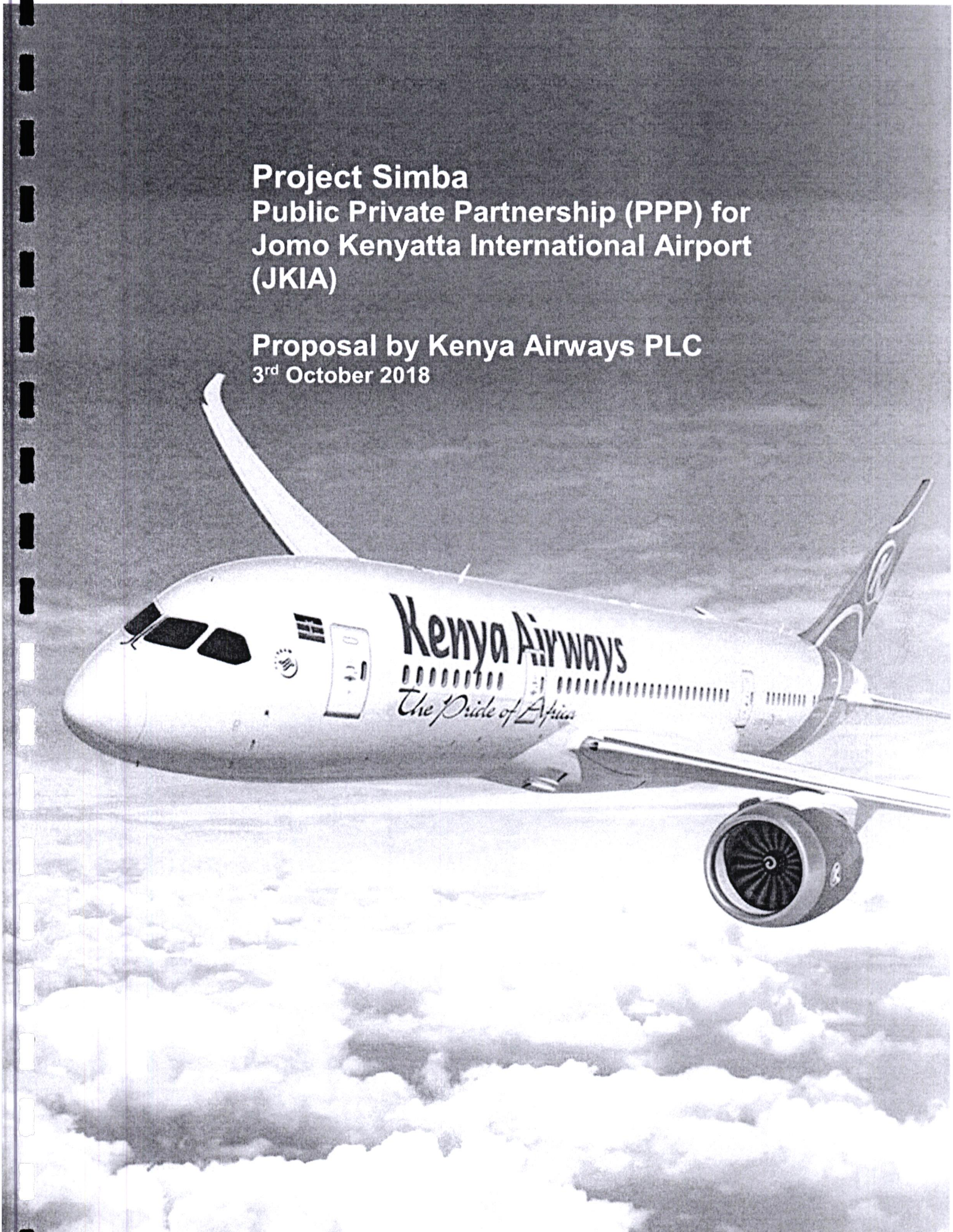
ANNEX I

VOLUME I

Proposal by Kenya Airways PLC

Project Simba
Public Private Partnership (PPP) for Jomo Kenyatta International Airport (JKIA)

Proposal by Kenya Airways PLC
3rd October 2018



This Privately Initiated Investment Proposal (PIIP) address the Project Need for upgrade of operations of Jomo Kenyatta International Airport (JKIA) to strengthen its role in the market and generate positive impact on Country's GDP and its citizens

Purpose and contents of the document

The primary goal of this Privately Initiated Investment Proposal (PIIP) is to demonstrate the main benefits for Kenya and its economy as well as Kenya Airports Authority (KAA) and Kenya Airways PLC resulting from the introduction of a Public Private Partnership (PPP) for the operations, management and development of Jomo Kenyatta International Airport (JKIA).

The purpose of this Proposal is to demonstrate the rationale for granting Kenya Airways PLC a concession to operate, maintain and develop Kenya's main airport, JKIA and how this will better position, support and grow the aviation sector in Kenya in general. The Proposal in particular outlines why this concession should be granted to Kenya Airways over any other party by highlighting the synergies that the proposed arrangement will have on efficiency of operations at JKIA.

The Proposal discusses a wider economic contribution of the aviation sector to the country's GDP and shows other economic benefits that the country will enjoy and why this is in line with the sector policies.

The document contains the following chapters:

- Chapter 1: Executive Summary
- Chapter 2: Project Overview: Description and Investment Decision
- Chapter 3: Project Need Analysis
- Chapter 4: Proposed Technical and Commercial Solution
- Chapter 5: Investment and Financing Plan
- Chapter 6: Operating and Management Strategy
- Chapter 7: Environmental and Social Issues
- Chapter 8: Financial and Economic Analysis
- Chapter 9: Proposed Risk and Value for Money Analysis
- Chapter 10: Legal, Tax and Institutional Framework
- Chapter 11: Implementation and Approvals
- Chapter 12: Annexes

Contents

List of Figures

List of Tables

Abbreviations

Abbreviation	Meaning
AFD	Agence Française de Développement
APSC	Airport Passenger Service Charges
ASK	Available Seat Kilometre
ATM	Air Traffic Movement
AU	African Union
BHS	Baggage Handling System
BOD	Board Of Directors
CA	Contracting Authority
CAGR	Compound Annual Growth Rate
CAPEX	Capital Expenditure
CASK	Cost Per Available Seat Kilometre
CBA	Collective Bargaining Agreement
CEO	Chief Executive Officer
CPI	Consumer Price Index
DOC	Direct Operating Cost
EU	European Union
EUR	Euro
FCCL	Fiscal Commitment Or Contingent Liabilities
FDI	Foreign Direct Investments
FOREX	Foreign Exchange
FTE	Full Time Equivalent
GDP	Gross Domestic Product
GOK	Government Of Kenya
GVA	Gross Value Added
IATA	International Air Transport Association
ICAO	International Civil Aviation Organisation
IMF	International Monetary Fund
INTP	Integrated National Transport Policy
IPSAS	International Public Sector Accounting Standards
IRR	Internal Rate Of Return
JKIA	Jomo Kenyatta International Airport
KAA	Kenya Airports Authority
KAWU	Kenya Aviation Workers Union
KCAA	Kenya Civil Aviation Authority
KES	Kenya Shillings
KPC	Kenya Pipeline Company
KPI	Key Performance Indicators
KQ	Kenya Airways
KRA	Kenya Revenue Authority
LLC	Limited Liability Company
MRO	Maintenance Repairs & Overhaul
MTOW	Maximum Take Off Weight
NASP	National Airports System Plan

Abbreviation	Meaning
NAVAIDS	Navigation Aids
NEMA	National Environmental Management Authority
NOCK	National Oil Corporation Of Kenya
NPC	Net Present Cost
NPV	Net Present Value
NSSF	National Social Security Fund
OPEX	Operating Expenses
PBB	Passenger Boarding Bridges
PIIP	Privately Initiated Investment Proposal
PLC	Public Limited Company
PPP	Public Private Partnership
PS	Permanent Secretary
PSC	Passenger Service Charge
PSP	Public Sector Participation
RASK	Revenue Per Available Seat Kilometre
RETS	Rapid Take-off Taxiways
SAATM	Single African Air Transport Market
SARPS	Standard And Recommendation Practices
SEA	Strategic Environmental Assessment
SES	Single European Sky
SEZ	Special Economic Zone
SMS	Safety Management Systems
SPV	Special Purpose Vehicle
SSE	Security Screening Equipment
T1A	Terminal 1A
UAE	United Arab Emirates
USA	United States Of America
USD	United Sates Dollars
VAT	Value Added Tax
VFM	Value For Money
VGF	Viability Gap Funding
WACC	Weighted Average Cost Of Capital
WLU	Workload Units

1. EXECUTIVE SUMMARY

1.1 Introduction

U$3.2bn

Kenya's aviation sector contribution to the economy in 2014.

Aviation sector is critical to development of Kenyan economy. According to estimations it contributed USD 3.2 billion and supported 620,000 jobs in 2014 alone[1]. Infrastructure industry is a focus area for the Government, hence is a vital part of the Vision 2030. It presents framework for the investments which is in line with Kenya's long term socio-economic improvement plan.

Despite its strategic importance, the sector faced numerous challenges in the past. They limited industry's potential to compete internationally for the business customers and tourist traffic. Internal challenges were coupled with growing competition in the region that was driven by liberation of the airspace – Kenya is a signatory for both the Yamoussukro Agreement and SAATM.

In order to deliver Vision 2030 objectives, the Government of Kenya is keen on consolidation of the aviation sector as a first step towards its radical modernisation.

To support the reforms, Kenya Airways proposes a takeover of the Jomo Kenyatta International Airport operations and management through a 30-year concession agreement. The objective is to ensure efficiency of both JKIA and Kenya Airways operations by central management that leverages on possible synergies. Moreover, efficient operations will support JKIA's desire for becoming a regional hub, as well as positively impact sector's contribution to the economy.

The PPP is expected to result in a number of financial and economic benefits:

- Growth of the Country gross domestic product;
- Development in different segments of the economy;
- Job creation within airline-related industries;
- Increased support for export of goods and services, and
- Transfer of CAPEX and OPEX risks from the public sector to the PPP partner.

With proper organisation, Kenya can achieve the 7% contribution to the GDP achieved by Ethiopian Airlines.

This Proposal is also in line with practices of other countries who used aviation sector – and in particular national airlines and flagship airports – as a catalyst for economic growth.

[1] Source: Oxford Economics (2016): The importance of the air transport to Kenya's growth.

This PIIP aims at improvement of all aspects of JKIA operations and full utilization of airport's potential

1.2 Project Need Definition

The main impetus for the proposed Project is related to the JKIA's current position in East Africa. Its regional significance has been challenged as a regional hub by multiple international competitors and the Proponent – Kenya Airways PLC – diagnosed internal efficiencies. Their improvement can lead to strengthening of the airport's stance – they are discussed in this Privately Initiated Investment Proposal (PIIP). The Proponent believes that implementation of the Project shall result in benefits to JKIA and address its all inefficiencies related to current operations as well as future challenges.

Below graph outlines key identified inefficiencies.

Figure 1: Summary of the Project Need Definition.

THIS PIIP AIMS AT RESOLVING KEY INEFFICIENCIES OF JOMO KENYATTA INTERNATIONAL AIRPORT (JKIA)

1. LOSING POSITION IN THE MARKET
   - JKIA failing to compete and losing its role as the international hub for Kenya
2. CONDITION OF INFRASTRUCTURE
   - Poor quality of the current airport infrastructure
3. LIMITED CAPACITY GROWTH POTENTIAL
   - Capacity constraints to ensure growth
4. REQUIRED CAPEX
   - Necessity of funds consolidation to invest in growth of the hub that will increase traffic of local airports
5. REVENUE STRUCTURE
   - Improper balance of revenue sources
6. INTERNAL INEFFICIENCIES
   - Potential to increase the efficiency of JKIA operations through introduction of world-class standards

JKIA is unable to successfully compete in its current setup with other, heavily-invested international airports. Addis Ababa, Doha and Dubai have been defined as appropriate benchmarks

- **JKIA failing to compete and losing its role as the international hub for Kenya.** The Nairobi airport is operating in competitive environment dominated by increasing role of neighbouring Addis Ababa as well as Gulf airports. Over the last few years, particularly Doha and Dubai became world-class airports with best-in-class infrastructure to serve millions of passengers per year. The following figures describe the difference in annual passengers traffic:

Table 1: Benchmarks of JKIA in terms of passenger traffic.

Airport	PAX number (2016 / 2017)
Jomo Kenyatta International Airport (Nairobi)	**7.2 mil. PAX**
Addis Ababa Bole International Airport (Addis Ababa)	**8.9 mil. PAX**
Hamad International Airport (Doha)	**37.3 mil. PAX**

Airport	PAX number (2016 / 2017)
Dubai International Airport (Dubai)	**88.0 mil. PAX**

In order to achieve the above results, the respective countries have massively invested in the airports assets both in terms of the airport capacity as well as quality of infrastructure to serve passengers. One of the key reasons for that, which is strongly emphasised by the Proponent, is the perception of aviation sector as the enabler of GDP growth and jobs creation mechanism. The presented benchmarks clearly indicate that investment in the airport hub is a key prerequisite for dynamic development of related industries such as manufacturing, logistics and warehousing, or world-wide financial services.

JKIA is losing its status to competition and it may soon become a hub for East Africa region only, if no significant changes are made. Its role might be then taken over by Addis Ababa, followed by the new airport, to be constructed in Ethiopia, which will mainly serve its national carrier – Ethiopian Airlines.

Ethiopian Airlines plans to build a new airport with annual capacity of 80 million passengers in Bishoftu, about 48km southeast of the capital Addis Ababa

- **Poor quality of the current airport infrastructure.** Another reason for the Proponent to enter into this Project Agreement is a poor state of current JKIA infrastructure. Kenya Airways which is currently serving more than 4 million passengers per year through its hub in JKIA can provide examples of second-rate quality of the airport's assets. The Proponent states therefore that JKIA has been underinvested over the years and requires significant capital expenditures to improve quality of the services provided both to passengers (end-users) and airlines which operate to and from Nairobi. The assets requiring upgrade include in particular:
  - **Runway, aircraft parking and aprons;**
  - **Terminals** (check-in areas, immigration, gates etc.);
  - **Commercial areas** (duty-free, restaurants & cafes, lounges, car parks etc.).

For this reason the Proponent assumes in this PIIP additional Capex investments for deferred maintenance to upgrade state of existing infrastructure. It is also worth mentioning that the investment will have immediate pay-back due to increased revenues from PAX-related sources.

Lack of Capex investments in JKIA may lead to shrinking PAX traffic of approximately 30% by 2024

- **Capacity constraints to ensure growth.** Besides the insufficient state of existing infrastructure at JKIA, the Proponent clearly states that the airport requires further Capex investments to retain and grow its capacity in the future. As a result of the fire that broke out at JKIA in 2013, significant part of the airport has been constructed on a temporary, 10-years basis (life time up to 2024). It means that lack of investments within the next 5 years will result in a drastic reduction of JKIA capacity from current 7.2 to approximately 5 million passengers per year (30% drop in traffic). Furthermore, current state of the infrastructure at JKIA prevents growth of airport's capacity due to bottlenecks and constraints related to the runway and most of all terminals.

However, the Proponent believes that introduction of this Project Agreement and realisation of most of planned Capex investments will enable release of the potential for further traffic growth (up to 11 mil. passengers in 2022,16 mil. in 2030 and 34 mil. in 2050).

Due to necessity of serious investments there is no "do nothing scenario" as this approach would further weaken JKIA importance in international passengers and cargo traffic in East Africa.

JKIA profits

should be reinvested in growth of the hub instead of simple subsidising unprofitable, local airports and airstrips

- **Necessity of funds consolidation to invest in growth of the hub that will increase traffic of local airports.** Significant upgrade of JKIA infrastructure and need for growth of the capacity require significant investments within the concession period.

  JKIA generates significant profit to Kenya Airports Authority (KAA). It is, however, consumed and eroded through losses generated every year by local airports and airstrips. JKIA's profitability is 45% compared to KAA's 24%. The gap is a consequence of losses incurred by 17 financially unviable airports and airstrips.

  Current setup does not allow efficient accumulation of funds sufficient for development of the hub in Nairobi and making it a prime aviation asset in Kenya. It may also become the biggest barrier for successful realisation of necessary Capex program in years to come. Moreover, the slower growth or decline of passengers at JKIA will negatively impact size of revenues and profits of local domestic airlines and airports.

  Therefore the proposed Project Agreement aims at strengthening focus on JKIA as a hub and consolidation of funds necessary to afford planned Capex investments. Although it would mean temporary problems with financing local airports in the short run, it will definitely support their financial sustainability in the long-term perspective.

- **Improper balance of revenue sources.** Modern, world-class airports earn their profits mainly from passenger-related sources. Duty free, commercial areas and lounges are the perfect stream of funds provided that a regular customer spends numerous hours waiting for the departing flight or transfer to another location. For this reason some of the international airports do not charge traditional landing fees in order to attract as many customers as possible.

  Analysis of JKIA P&L clearly shows that the Nairobi airport is still highly-dependant on aeronautical revenues which constitute around 80% of its total revenues. The key sources of its funds are: Airport Pax Service Charge (APSC), landing fees, airbridge and fuel concessions. At the same time JKIA is not utilising its potential to generate revenue from commercial areas (underinvested duty free, lounges etc.) as well as other non-aeronautical fees charged from companies operating at the airport. JKIA's current business model in regards to those areas is based on simple concessions awarded to catering, PAX & cargo ground handling operators. However, according to best-practices it should build its own profit centres acquiring margin from serving end-customers.

  The Proponent clearly states that utilization of the non-aeronautical revenues shall bring additional income which can significantly support financing the Capex investments required to grow the airport's capacity and improvement of its service quality. Kenya's attractiveness and perception as a "must go" location is further increasing this potential to generate profits from passengers transferring at the airport.

Approx. 80% of JKIA revenue comes from traditional aeronautical sources while commercial, non-aeronautical income is still a highly-unutilized potential

Knowledge transfer

Is essential to introduce and sustain world-class standards and increase efficiency of the airport's operations

- **Potential to increase the efficiency of JKIA operations through introduction of world-class standards.** One of the root causes of current performance of JKIA is the limited adaptation of external, best-in-class solutions used worldwide. JKIA staff is able to perform all the operational duties to ensure undisrupted operations of the airport, but it is struggling to implement long-term solutions to structurally change the way JKIA is managed. At the same time there is a number of benchmarks available globally which can be adopted by JKIA.

  For this reason, the Proponent puts emphasis on building internal capabilities supported by transferring external knowledge to operate JKIA in much more efficient way in accordance with international standards. This includes appointment of the Airport Advisor with vast experience built by running most productive airports in the world.

1.3 Proposed Transaction Structure

1.3.1 Key principles of the transaction

There is a number of options that were considered to address inefficiencies defined in the above Project Need Definition. The concession of JKIA to Kenya Airways, accompanied by sectoral reforms appears to be best suited as it will allow Kenya's aviation to shift from a defensive strategy to a strategy focused on gaining market share. It will be also the most efficient way of using national assets to work for the long-term benefit of the Country.

To implement the proposed concession, Kenya Airways has considered a number of contracting options. The evaluation of the PPP options considered, among other factors, the overriding objectives to ensure that Kenya Airways has control over the operations of JKIA and is able to make unhindered investments in the airport.

Given the novelty and strategic national importance of this transaction, it is proposed that the transaction be considered under Section 61(1)(d) of the PPP Act 2013.

Under this Proposal, Kenya Airways will form a **Special Purpose Vehicle (SPV)** specifically dedicated to operating, managing and developing JKIA for a period of **30 years (the Concession)**. Kenya Airways and SPV will be managed under one management structure while other Kenyan airports will continue operations in KAA structure.

The scope of the concession is primarily comprised of rights and duties of the SPV (the Concessionaire) under a concession agreement and is proposed to include the following points:

a) operate, maintain and develop JKIA;

b) operate and control JKIA assets, revenue sources (both aeronautical and non-aeronautical) and operating costs;

c) ensure compliance with local, regional and international standards and norms;

d) collect charges for the use of JKIA by various users.

The proposed transaction is a Privately Initiated Investment Proposal. The methodology applied is the non-compete / unsolicited bid process. Given the novelty and strategic national importance of this transaction, it is suggested that the transaction will be considered under Section 61(1)(d) of the PPP Act 2013.

Section 61(1) provides for circumstances when a contracting authority may consider a PIIP for a project and procure the construction or development of a project or the performance of a service by negotiation without subjecting the proposal to a competitive procurement process.

Subsection 61(1)(d) states that where "there exists any of the circumstance as the Cabinet Secretary may prescribe".

The Contracting Authority will therefore, seek the necessary approvals from the Cabinet Secretary in accordance with Regulation 51 of the PPP Regulations 2014 on Preliminary assessment of private proposals.

Subsection 51(1) of the Regulation states that "a contracting authority may consider a privately initiated investment proposal, if it is not a proposal specified in section 61 (1) (a), (b) or (c) of the Act".

1.3.2 Highlight of key transaction elements

The PPP is intended to be a Concession where the Contracting Authority will concede usufructuary and development rights to the Private Party. The Private Party will operate, maintain, rehabilitate and upgrade existing infrastructure and facilities and charge user fees while paying concession fees to the Contracting Authority.

This PIIP assumes that the concession is managed through the dedicated SPV established and controlled by Kenya Airways

The SPV is set up to undertake the contracted airport functions in line with the contractual relationship between the SPV and the Government. There are however, other contractual relationships that are critical and interdependent, in particular loan agreements / direct agreements.

The debt and equity injections into the SPV will fund the development obligations and initial working capital requirements. The SPV will typically receive all revenues and pay all costs related to airport operations and pay a concession fee to the Kenya Airports Authority.

The proposed contractual structure is in line with the key legal and regulatory framework for PPPs in Kenya. The PPP Act defines contracting authorities as those including "a state department, agency, state corporation or county government that intends to have a function performed undertaken by it performed by a private party". The contracting arrangements envisaged can be therefore done by KAA established as the authority responsible for management of aerodromes in Kenya.

The Proponent presents in the table below highlights of key transaction elements. They have been described in details in next chapters of this Privately Initiated Investment Proposal.

Table 2: Highlight of key transaction elements.

Subject	Solution proposed in PIIP
1. Concession governance	▶ Proponent offers to establish a **Special Purpose Vehicle (SPV)** to become the Concessionaire under the proposed concession agreement with Kenya Airports Authority (KAA).
2. Assets included in the concession	▶ Assets included in the proposed Concession will be limited to **aviation infrastructure only** (i.e. runway, terminals, parking and aprons, car parks etc.); the detailed list of the assets and property included in the

Subject	Solution proposed in PIIP
	concession **will be enumerated in the Project Agreement** (i.e. after finalisation of the legal and financial Due Diligence); ▶ Other, non-aviation assets and property **will remain in KAA;** ▶ Assets included in the concession **will be disposed to the SPV and secured through long-term lease** to ensure bankability of the concession agreement.
3. KAA liabilities	▶ Current JKIA-related liabilities **will remain in Kenya Airports Authority (KAA),** however the concession fee adequacy will ensure that KAA is able to repay existing loans and interests.
4. JKIA staff	▶ The Proponent is committed to ensure that there are no job losses. In this regard, the Proponent shall engage KAA, GoK, the employees, the union to ensure that an acceptable solution is arrived at in relation to the employees. ▶ As an initial proposal, the proponent commits to **second all the current JKIA staff to the SPV** on the same terms for a period of 12 months; ▶ After the secondment period, Proponent **will give the employees the option of being transferred to the SPV** upon which the employees will receive the transfer proposal; ▶ Potential employees not transferred to the SPV after secondment period **will be reallocated by KAA to other airports and airstrips;** ▶ Responsibility for any employee related costs **will be defined by parties in the process of negotiations**;
5. SPV legal form	▶ SPV will be registered as the **limited liability company (LLC)** as requested by the PPP Act.
6. SPV shareholding structure	▶ SPV **will be 100% owned by the Proponent** (Kenya Airways PLC) but will allow for potential minority investments by other parties in the future (external investor); ▶ The Proponent commits, however, **not to lose control over the SPV** during the whole concession duration.
7. SPV capabilities	▶ The Proponent **will rely on various sources of competences** including current JKIA management and staff; ▶ The Proponent, however, **commits to contract an external Airport Advisor** to implement world-class solutions and best practices in running the airport; ▶ Profiles and capabilities of the preselected Airport Advisors **have been presented in this PIIP.**
8. Concession fee structure	▶ The Proponent **commits to pay KAA a regular concession fee** for disposing the defined assets; ▶ Concession fee **will consist both of a fixed component** (to cover KAA liabilities) and **a variable one** based on the revenue generated by JKIA in the last, audited financial year (revenue-sharing mechanism).
9. VGF	▶ The proposed project is **self-financing and does not require** additional Viability Gap Funding (VGF);

Subject	Solution proposed in PIIP
	▶ **VGF might be, however, necessary** to support KAA with financial deficit of local airports & airstrips remaining in KAA (in case it is not covered by the variable part of the concession fee).
10. Investment plan	▶ Proponent **commits to minimum Capex investments** in runway, parking, aprons and terminals; ▶ Minimum investment requirements **will be subject to negotiations with KAA** and will be defined in the Project Agreement; ▶ Additionally, the Proponent **commits to prepare and present to KAA annual investment plans** in order to acquire assets' owner approval for the planned upgrades of the airport infrastructure.
11. Capital structure	▶ Capital structure for the project **has been assumed as 80 : 20 ratio of debt to equity.**
12. Project financial model	▶ **Financial model has been created as the inherent part of this PIIP** in order to estimate expected profitability of the Project as well as to calculate the value of concession fee paid to KAA on annual basis.
13. Regulatory amendments and tax exemptions	▶ **This PIIP defines regulatory amendments necessary to execute the Project** as well as other changes and tax exemptions which will significantly support achievement of Project objectives.

1.4 Impact of The Transaction

JKIA requires significant Capex investments to accommodate projected growth in traffic and passengers number as well as increase the quality of service provided to its customers

Projected financial figures of the Project as well as assumed Capex investments in airport infrastructure are based on the assumption of the traffic growth. Base case scenario assumes that passenger number and air traffic will increase by 5% for the next ten years and by 4% for the remaining twenty years of the proposed concession. Therefore, JKIA will require a significant investment program to meet the expected increase in traffic.

The most recent detailed infrastructure review and investment plan was performed in 2011. Therefore, an updated review of the infrastructure and investment must be undertaken before signing the Project Agreement. The Proponent assumes appointment of the preselected Airport Advisor prior to the Due Diligence phase in order to rationalize investment needs defined by KAA.

Proposed investment program has been divided under two major priorities. Realisation of **Priority One** Capex expenditures will enable the airport to reach up to 10.5 million passengers per year. **Priority Two** investments will aim at further increasing of JKIA capacity which will however require validation in course of the concession.

Key investment requirements are listed below:

- Priority One investments:
  - **Rehabilitation of Taxiway and Parking Apron** – This investment will reduce the time an aircraft remains on the runway

and as a consequence increase the capacity of the airport. **Remodelling of Terminal 1B, C, D** – This remodelling will increase the capacity of the terminal by 3 million passengers annually.

- **Upgrading of Category 1 runway to Category 2** – Upgrading the runway to Category 2 will increase the capacity of the airport.

- Priority Two investments:
  - **Terminal 2 – Phase I** – The 1st phase of Terminal 2 construction is expected to result in a capacity of approximately 10 million passengers annually when completed.
  - **Terminal 2 – Phase II** – The 2nd phase of Terminal 2 construction is expected to result in a capacity of around 20 million per annum once completed. Construction is expected to commence in the year 2029.
  - **Vehicle Parking -** The JKIA airport has a capacity of around 2,300 parking spaces hence there is a shortage of parking space.

Financial modelling shows that the SPV will be able to increase profit before tax up significantly while growing value of the annual concession fee paid to KAA

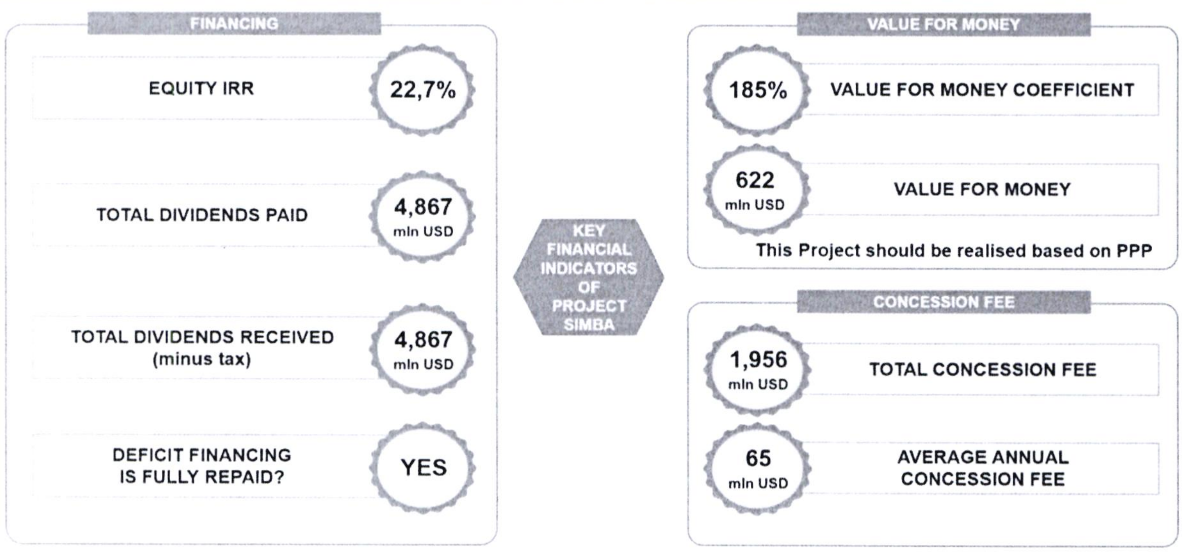
The Proponent will consider additionally investing in **private jets and VIP terminals** to satisfy the market needs and enlarge the functionalities of JKIA.

The proposed investment program needs to be supported by strong financials of the Concessionaire. Therefore the SPV-related financial model has been developed to assess the financial and commercial viability of the Project as a candidate for the concession. It also facilitates discussions concerning the choice of best financing structure and cost of capital assumptions.

Modelling conducted by the Proponent proves the financial viability of the Project in terms of the Value for Money (VfM) to the Government of Kenya and public interest.

High-level results of financial modelling are presented on the graph below.

Figure 2: SPV returns.



Source: Financial model

2. PROJECT OVERVIEW: DESCRIPTION AND INVESTMENT DECISION

2.1 Project Background: Rationale and Genesis

Aviation assets in Kenya should be broadly viewed as a key tool in the Country's development

Strong Kenya

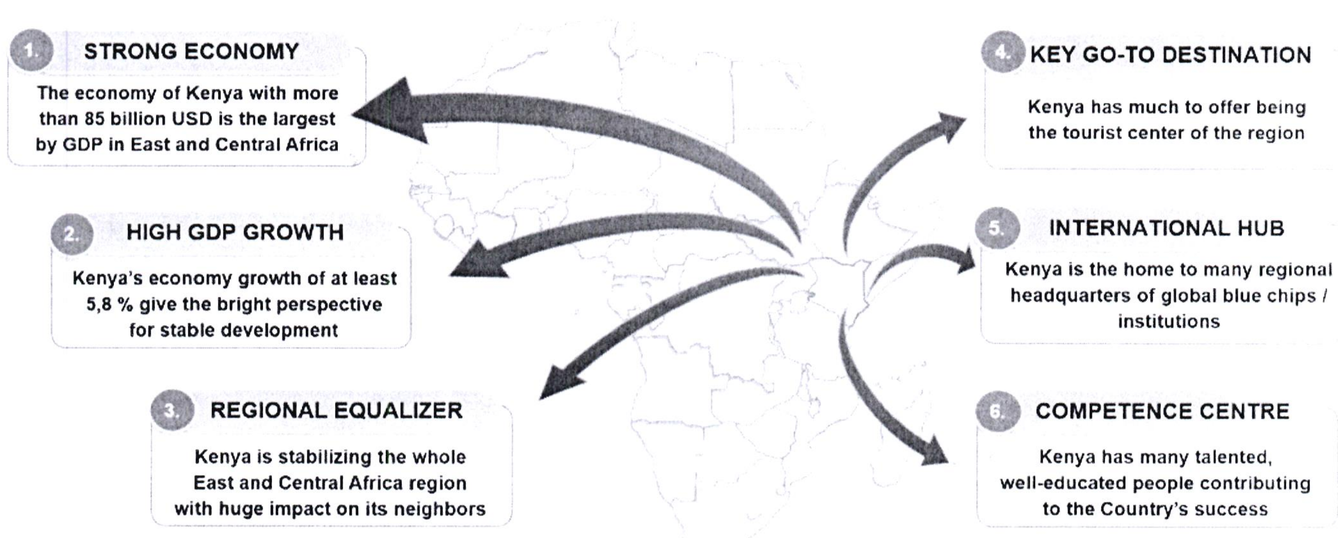
constitutes solid fundamentals for growth of aviation sector

For many years, Kenya has been regarded as an international leader of the entire Eastern Africa region. During this time, the Country has built a strong economy with the estimate of total 85 billion USD of GDP in 2018 and 1,790 USD per capita with significant growth rate. Due to Kenya's stability, it is also playing a role of a regional 'stabilizer', having a positive impact on foreign affairs in surrounding countries. One of the biggest advantages of Kenya is also the growing tourism market, largely propelled by a number of unique "go-to" destinations, attracting tourists from all over the world. Tourism contributes significantly to the Kenyan economy and is the second-largest source of foreign exchange revenue. Due to the importance of Kenya in the region, it is regarded as an international hub, which is reflected by the number of international corporations locating their regional headquarters, production plants and service centres in Nairobi. All these aspects accelerate needs for educated, well-trained staff to meet the demand from growing Kenyan and international corporations.

These advantages constitute solid fundamentals for the present Proposal, aimed at strengthening and consolidating the civil aviation assets in Kenya. Basing on international proof of concept, it is clear that strong airports and airlines can significantly contribute the Country's rapid development, resulting in thousands of new jobs and businesses created around aviation assets.

The robust advantages of Kenya create unique opportunities for further growth of the Country and its citizens which will ultimately lead to strengthening its position on the international trade arena, as well as in tourism and manufacturing sectors.

Figure 3: Key competitive advantages of Kenya.



Source: Kenya Airways analysis.

Key focus

The key focus of this project is the long-term sustainability of Kenya's core aviation assets, JKIA and Kenya Airways, to support economic growth.

> Seamless connectivity through the provision of efficient and effective airport facilities and services is key to achievement of Vison 2030. However, the sector is not fully autonomous in making key operational, financial and investment decisions.
> It is on this basis that this project has been conceptualised.

The most significant benefits of consolidated aviation assets for Kenya are:

- **Contributing to the GDP growth**
- **Supporting the Four Pillars of Kenya development**
- **Serving as an accelerator for the Vision 2030**

H.E. President Uhuru Kenyatta on December 12th, 2017 announced a very ambitious plan for Kenya development which will result in significant benefits for the Kenya citizens and improvement of social status of the nation. Four pillars of the administration highlight the priorities of the government actions in the coming years. The four pillars have been constituted by:

- Expansion of the Manufacturing Sector
- Affordable Housing
- Affordable Healthcare
- Food Security

A hypothesis strongly emphasised in this Proposal assumes that the consolidation of Kenyan aviation industry may significantly help realise these ambitious goals. The strategic decision of various governments to support the national airlines is usually paid back through increasing positive impact on the GDP growth and development of different segments of the economy.

Kenya's aviation sector is vital for the country's development through the provision of air transport services and hence facilitation of tourism and promotion of trade and earning of foreign exchange. Indeed Oxford Economics have estimated that the sector contributed USD 3.2 billion and supported 620,000 jobs in 2014[1], therefore showcasing the importance of the air transport to the country's growth.

For this reason, clear development strategies to improve the sector have been outlined under the economic pillar, in the country's Vision 2030 document. The pillar presents a framework for investment in infrastructure which is being prioritised by the Kenyan Government and is consistent with the Country's social and economic development activities. The key objective is to achieve a country that is firmly interconnected through a network of roads, railways, ports, airports, water and sanitation facilities, and telecommunications.

The vision anticipates that all regions will be accessible through aviation services and seeks to make Kenya the aviation hub in the African region. The document outlines strategies to achieve an annual capacity of 45 million passengers by the year 2030. The impact of facilitating the aviation sector was evident during the Second Medium Term Plan, 2013 – 2017 of Vision 2030, the theme of which was "*Transforming Kenya: Pathway to Devolution, Socio–Economic Development, Equity and National Unity.*"

The targeted enhancements and development strategies outlined for the sector will facilitate the achievement of improved access to services, creation of employment opportunities for youth and increased GDP.

Public Private Partnership is the recommended framework to achieve the Project Need of improving JKIA operations

2.2 Overview of the Proposed Project

The project described in this Privately Initiated Investment Proposal (PIIP) concerns improvement and upgrade of Jomo Kenyatta International Airport operations through introduction of the Public Private Partnership (PPP) between Kenya Airports Authority and Kenya Airways PLC.

Scope of this Project includes only Jomo Kenyatta International Airport (JKIA), while the rest of airports and airstrips in Kenya remain under sole management of Kenya Airports Authority.

Proposed PPP is based on the following 8 (eight) key assumptions:

Intention of The Parties

1) Kenya Airports Authority (Public Partner) and Kenya Airways PLC (Private Partner) will intend to enter into the Public Private Partnership in relation to Jomo Kenyatta International Airport (JKIA).

Concession Agreement

2) The Concession Agreement to be signed between both Parties according to the presented schedule will constitute the basis of the cooperation within this Public Private Partnership.

Concession Period

3) The Concession Agreement will be valid for a period of 30 years with defined conditions for its early termination and extension.

Concessionaire

4) The legal entity to accommodate Public Private Partnership will be a Special Purpose Vehicle (SPV) owned by Kenya Airways PLC – Concessionaire.

JKIA Assets

5) Kenya Airports Authority will delegate defined Jomo Kenyatta International Airport assets to the Special Purpose Vehicle (SPV).

Concession Fee

6) Special Purpose Vehicle (SPV) will pay Kenya Airports Authority (KAA) negotiated, annual Concession Fee.

JKIA Revenues

7) Special Purpose Vehicle (SPV) will acquire revenue and cash-flow from everyday operations of Jomo Kenyatta International Airport both in aeronautical and non-aeronautical areas.

PPP Requirements

8) Privately Initiated Investment Proposal (PIIP) will ensure the viable business case of the Public Private Partnership for the Public Partner (Kenya Airports Authority) in particular proving project's:

- Value for money, Affordability and Risk allocation.

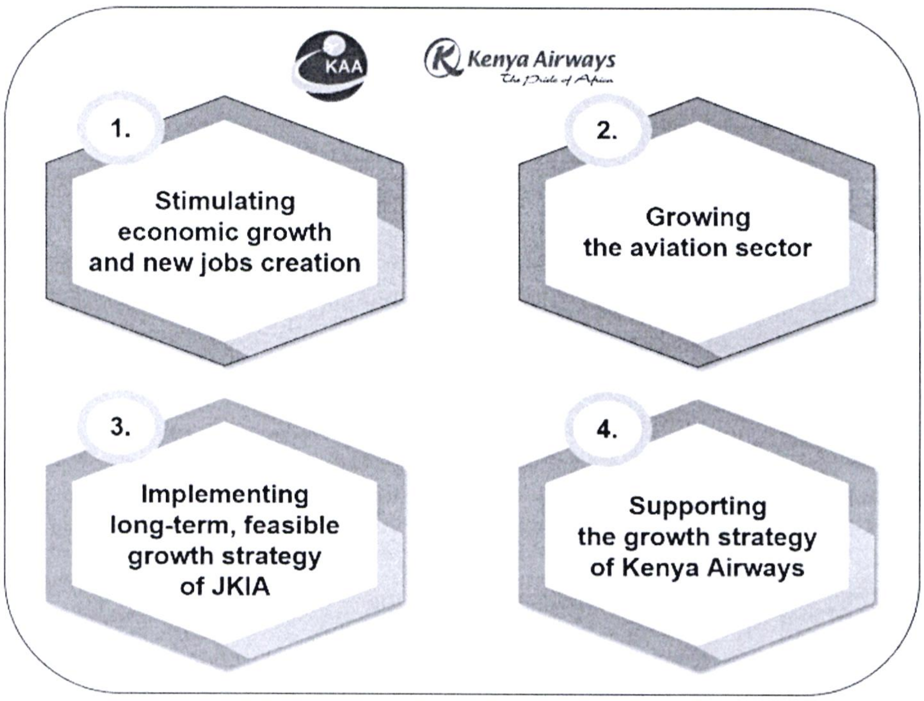
2.3 Project Objectives

2.3.1 General Overview

This Privately Initiated Investment Proposal (PIIP) has been structured on the basis of four major objectives which **address the Project Need Definition** described in Chapter 1. Executive Summary. The common factor of these plans is the improvement of JKIA operations, elimination of identified inefficiencies and transformation of Nairobi airport into the world-class aviation hub. Achievement of these goals will be possible through implementation of the detailed concept described in this document.

Four objectives of the Project have been presented in the graph below.

Figure 4: Key objectives of the Project in relation to Project Need Definition.



Source: Kenya Airways analysis.

JKIA & Kenya Airways are the key assets in the plan and should be treated as the national treasure

Realisation of national goals is highly dependent on the introduction of industry reforms

20m plus

The level of passengers that the airport would be able to handle per annum with this proposal

Proposed Public Private Partnership between Kenya Airways and KAA for JKIA supports the consolidation agenda. The objective is to ensure that both JKIA and Kenya Airways are run efficiently to maximise the symbiotic benefits from centrally run operations that benefits Kenya's aviation sector in general.

This proposal will first of all support the long-term development of JKIA as Kenya Airways proposes to make the operations more efficient and expand the facilities to be able to handle more than 20 million passengers by 2035. The efficient operations support the desire for JKIA to be the international hub for Africa and go towards increasing the sectors' contribution to the economy.

This consolidation is also important for Kenya Airways that has been implementing a turnaround transformation plan necessitated by changes in the aviation market dynamics to ensure its long-term sustainability.

1st

Objective

Generating positive and tangible impact on the Country's economy

With proper organisation, Kenya can achieve 7% contribution to the GDP, achieved by Ethiopian Airlines

2.3.2 Stimulating Economic Growth and New Jobs Creation

The Public Private Partnership proposed within this Proposal is expected to result in the following benefits for the Kenyan economy:

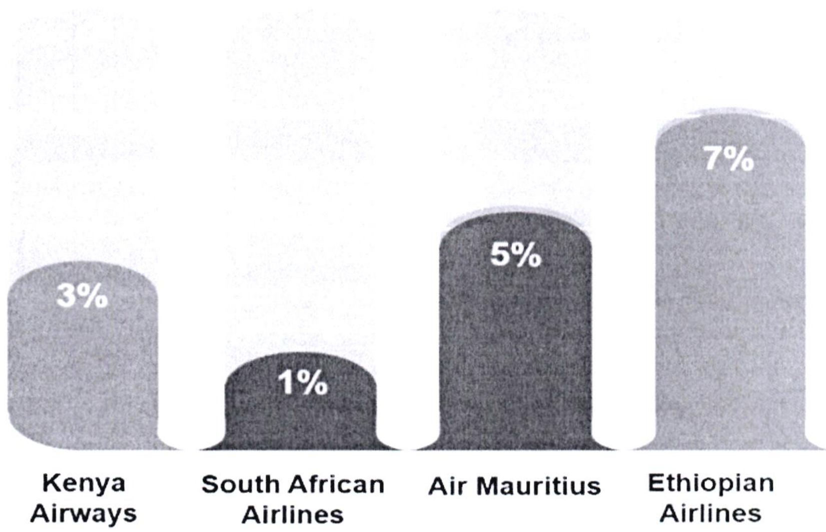
- Growth in the country gross domestic product;
- Development in different segments of the economy;
- Job creation within airline-related industries;
- Increased support for export of goods and services.

This Proposal is also in line with policies that have been adopted by various countries that have intentionally sought to use the aviation sector and in particular growth of their national airlines and the flagship airports as a catalyst for economic growth. Some of these countries include:

- Ethiopia – Ethiopian Airlines;
- South Africa – South African Airways;
- Egypt – Egyptair;
- Morocco – Royal Air Maroc;
- Rwanda – Rwanda Air;
- UAE – Emirates;
- Qatar – Qatar Airlines.

Due to these deliberate policies to consolidate their aviation assets, it is clear that some of the countries have benefited more than Kenya from their aviation assets as shown in the diagram below.

Figure 5: Impact of selected airlines on country GDP.



Source: Kenya Airways analysis.

The economic analysis section shows that this project should by 2050 be able to generate more than 1 million new jobs and indirectly contribute about US 3 billion to the Kenyan economy if properly implemented.

2nd Objective

Growing the aviation sector

2.3.3 Growing the Aviation Sector

The international benchmarking clearly shows a direct relationship between the performance of the national airline and deliberate policies to amalgamate the aviation assets.

In Africa, Ethiopian Airlines appear to benefit more from deliberate policies of the Ethiopia Government to consolidate the aviation assets as shown in the diagram below. It should be noted that it was until only recently (2017) did the government merge the operations of the Addis Ababa Airport with those of the national airline under a consolidated group as shown in the diagram below.

Figure 6: Comparison of African economies GDP with size of national carriers (IMF data, 2017).

GDP per country 2017 (USD billions)	
Nigeria	376,3
South Africa	349,3
Egypt	237,1
Algeria	178,3
Morocco	109,8
Angola	124,2
Ethiopia	80,9
Kenya	**79,5**
Sudan	58,2
Tanzania	51,7

Airline / place in global rank (revenue)		Revenue (USD millions)	Passengers (PAX millions)	Net profits (USD millions)
57	Ethiopian	2 537	7,6	279
65	South African Airways	2 168	6,9	-135
76	EGYPTAIR	1 700	7,2	-132
80		1 575	6,1	53
100	Kenya Airways	**1 043**	**4,5**	**-100**

KQ TOGETHER WITH JKIA MAY IMPROVE ITS OPERATIONS AND BRING FINANCIAL BENEFITS TO THE GOVERNMENT

Source: Kenya Airways analysis.

By supporting a well thought-through and systematic growth in the aviation assets, this proposal ensures that JKIA and Kenya Airways are well placed to support the growth of Kenya's aviation traffic.

As a direct result of implementing this Proposal, JKIA traffic is expected to grow from 7.2 million passengers in 2017 to 10.5 by 2022. Further growth has been projected for the following years to match the expected demand in the market. At the same time, Kenya Airways sees this symbiotic relationship with JKIA as a key to growing its network and passenger traffic from 4.5 million passengers in 2017 to over 6.9 million over the next five years, thus increasing the airlines profitability and long term sustainability. As a consequence, growth of Kenya Airways traffic will support achievement of JKIA traffic targets and goals of this Proposal.

3rd Objective

Growing JKIA as an aviation hub

2.3.4 Implementing Long-Term, Feasible Growth Strategy of JKIA

The third objective of this proposed project is to fully support the growth of JKIA. The airport as the aviation asset, is the largest international aerodrome in the country and plays a key role as a regional aviation hub for the national carrier. JKIA has, however been losing its status to regional competitors like Addis Ababa, Kigali, Doha or Dubai mainly due to insufficient investments in the infrastructure.

There is therefore a clear need to continue upgrading the current infrastructure facilities in particular via:

- Long-term investment plan based on the projected number of aircrafts and passengers in relation to aviation assets such as runway, terminals, parking areas and aprons;
- Strategy for improving the quality and proper maintenance of the infrastructure especially in passenger-related areas such as duty free, leisure and accommodation;
- Productivity improvement plan aimed at increasing efficiency of operations, as well as utilization of resources.

2.3.5 Supporting the Growth Strategy of Kenya Airways

4th Objective

Supporting the growth of Kenya Airways

This Proposal clearly states that the major project need is related to upgrading operations of JKIA as the national aviation hub in Kenya. This should not however be disconnected from implementation of Kenya Airways growth strategy and turnaround program. In practice, supporting the national, Kenyan carrier will become a key enabler for growing passenger and cargo traffic in Nairobi airport.

Kenya Airways PLC has in recent years experienced financial distress that culminated in a series of poor financial results that topped a record KES 26.2bn (US$258m) for 2015-16 financial period.

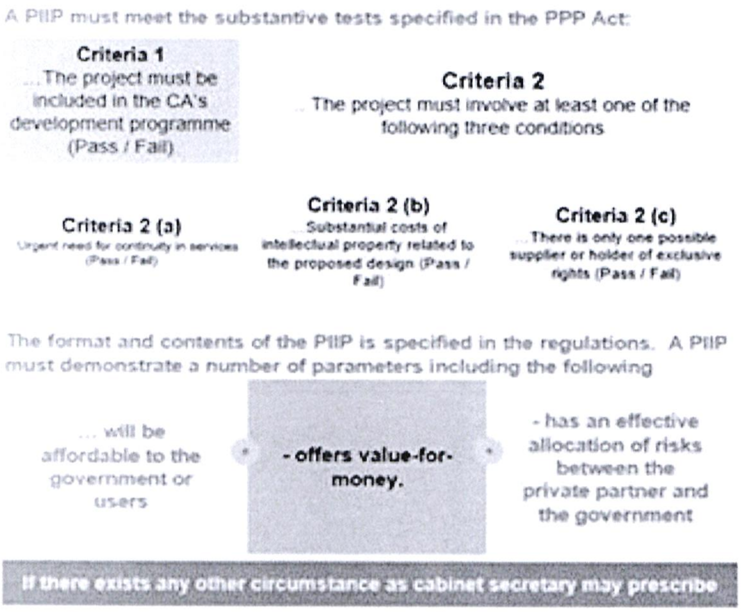
The root cause of this distress is the increasing competition in aviation sector which has resulted in drop of RASK (Revenue per Available Seat Kilometre), low yields, as well as depressed cabin factor of seats in KQ flights. One of the reasons of this situation is the limited cost-competitiveness of Kenya Airways versus international, highly-subsidised rivals operating in majority of cases based on holding structures with their local hubs.

The proposed PPP transaction will therefore result in beneficial synergies of JKIA with Kenya Airways as both entities would be able to save costs through sharing some of the resources and cooperate closely. In the end, it will result in operational excellence and profitability of both JKIA and Kenya Airways.

From the perspective of the Project Need Definition, the financial recovery of Kenya Airways will have a very positive impact on JKIA. Network growth and fleet expansion plans will generate additional revenue and profits for the airport both from aero- and non-aeronautical sources. It will fully justify planned investments in commercial facilities to serve millions of passengers per year.

2.4 Approach to Preparing This Proposal

Figure 7: PIIP considerations.



Source: EY analysis

PPPs in Kenya are procured and governed in accordance with the PPP Act (2013). The Act sets out the procedures to be followed for procuring PPPs including PIIPs. In particular, the Act (Article 61.1) specifies the minimum criteria that PIIP should meet before being considered for evaluation (as shown in the diagram opposite).

This Kenya Airways PIIP Proposal on JKIA has been prepared in accordance with the PPP Act. This document sets to show that the PIIP proposal meets the set criteria and therefore is eligible for consideration by KAA and the PPP unit.

In preparing the Proposal, Kenya Airways has adopted a step-by-step approach that included the following:

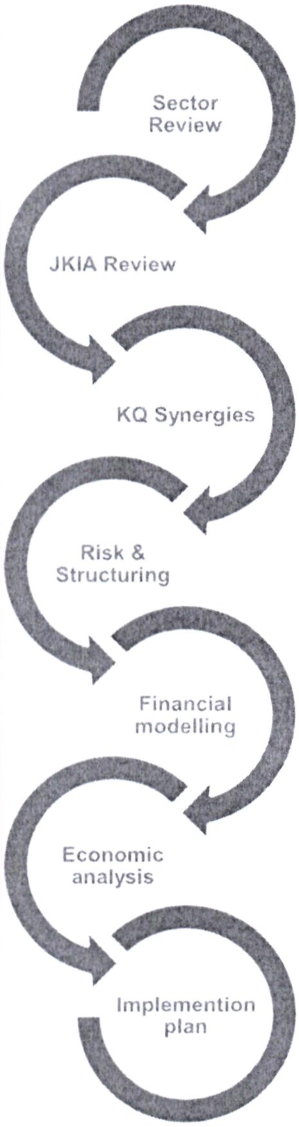
1) *Sector Review.* The first task was to conduct a sector review to better understand the issues impacting the aviation sector. This includes review of the evolution of the aviation sector and how best to address sector threats to achieve long-term government objectives of a long-term sustainable and aviation sector.

2) *High level analysis of JKIA operations.* The Proposal Team also carried out a high level review of the JKIA based on the available information. The review sought to understand the current constraints and opportunities for growth. This review was conducted at a high level given the limited information available on the operations and assets of JKIA. A more detailed analysis will be required, if and when the concession is approved, to confirm the Proposal's assumptions regarding the condition of assets, operations and contingent liabilities. Kenya Airways proposes that adverse findings from this detailed diligence be factored in the terms of the concession agreement.

3) *Review of potential synergies that would benefit Kenya Airways if granted the JKIA concession.* Empirical evidence suggests there is a symbiotic relationship between the health of a national carrier and the state of the aviation sector. An efficient JKIA will save costs for Kenya Airways and allow it to grow; that in turn allows the airport to expand. The Proposal therefore seeks to outline the synergies that are available for exploitation.

4) *Structuring considerations.* The Team has reviewed a number of options that were available to deliver the envisaged benefits. The aim was to understand how to best organise the services offered by JKIA to promote the sector and make the operations more efficient. This also includes allocation of responsibilities, how to deal with potential complications arising from the envisaged arrangements including potential risks, how Kenya Airways envisages running the airport and how it will be measured.

F ıre 8: General approach in ɪ ɔaring this proposal



S..rce: EY Analysis

5) *Undertaking financial modelling*. The principal purpose of financial modelling was to examine or estimate the likely financial benefits of the concession to Kenya Airways on a standalone and consolidated basis. This is also used to explore options for an optimal concession structure (considering concession fees), as well as the potential impact to KAA operations when JKIA is hived off.

6) *Economic and value for money analysis*. The Proposal outlines value for money (VFM) from the proposed arrangement that largely compares the benefits of Concessionaire operating the airport versus current state.

7) *Implementation plan.* The Proposal outlines a broad implementation plan that factors in the limited time available to complete the initial Proposal and the difficulty in conducting a thorough review of the JKIA operations, especially asset condition and contingent liabilities. The Proposal therefore envisages a detailed due diligence phase once the initial Proposal has been approved to provide for an opportunity for refinement. This is particularly important since the condition of the infrastructure is critical to the establishment of a comprehensive investment plan to support efficient operations. Whereas broad estimates have been included as part of this Proposal, it is important to review these after a detailed technical review of the needs of the airport has been ascertained. For this reason, a second phase – implementation planning – is foreseen that is proposed to include a more detailed review of the JKIA operations to firm up the assumptions contained in this Proposal.

The implementation plan outlines conditions that will make the concession more successful, including necessary approvals, suggested legal and regulatory changes, assumptions and key discussion areas.

2.4.1 Support Received from KAA and Other Parties

While preparing this Proposal, Kenya Airways held a number of meetings with KAA senior management in order to receive historical data and understand the operations of JKIA. The limited historical information received includes:

- Financial information;
- Airport operational and technical data;
- Current investment and draft master plan for JKIA.

At the moment of submitting this PIIP, Kenya Airways has however not received any other assistance from KAA in preparation of this Proposal. For avoidance of doubt, KAA were not part of the Proposal preparation team.

2.4.2 How Data Were Used

The data received from KAA were used to identify the potential opportunities to optimise the operations of JKIA. This is important to understand the impact which the proposed arrangement is likely to have on KAA operations. The Proponent assumes that more detailed information will be accessible during Due Diligence phase prior to signing the Project Agreement.

3. PROJECT NEEDS ANALYSIS

3.1 Sector Situation Analysis

3.1.1 Introduction

Context

It is important to understand the dynamics of the Kenyan and international airlines that provide the context for this Proposal

The aviation industry is important for the country's development as it facilitates tourism, promotes trade, creates employment, and contributes to foreign exchange earnings. The need to create an efficient air transport hub for both, international and domestic passengers is critical for the development of the country.

The proposed project should therefore be considered in the context of the wider sector reforms that are geared towards not only improving the operations of the airport and the national airline, but also supporting the improvement of the aviation sector as a whole, as explained above under Chapter 2. Project overview: Description and Investment Decision.

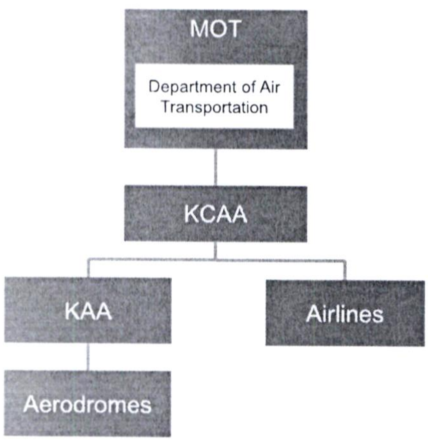
Consequently, and in order to fully understand the background of the proposed Kenya Airways PPP concept, it is necessary to start with the overview and dynamics of the Kenyan and international airline market which impacts significantly both, JKIA and Kenya Airways operations.

3.1.2 Institutional Structure of the Aviation Sector

The air transport sub-sector in Kenya is made up of the following:

- KAA, which provides aviation infrastructure facilities and services;
- Kenya Civil Aviation Authority (KCAA), which is the regulator and also provides air navigation services;
- The Department of Air Transport under the Ministry of Transport and Infrastructure which is the aeronautical authority with policy and legislative responsibility;
- Local and international airlines that are registered and/or operate in Kenya.

Figure 9: Structure of Aviation Sector in Kenya.



Source: EY Analysis

The roles of the Airports Operator, Regulator and Aeronautical authority have both, statutory and executive basis. KAA and KCAA are both entities of statute under the custodial mandate of the Ministry of Transport as per Executive Order No.1 of June 2018.

The airlines operating within the Kenyan airspace provide services that can broadly be divided into the following categories:

1. Scheduled transport services which is the air transport service undertaken between two or more places and operated according to a published timetable. This would include the home-based airlines like Kenya Airways, Fly 540 etc. and international airlines like Ethiopian Airline, British Airways etc.

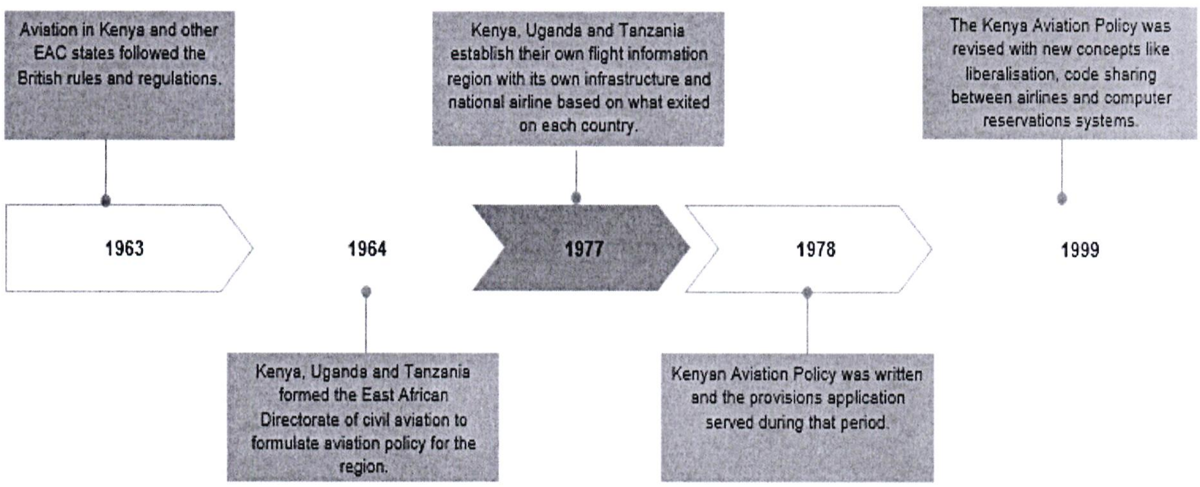
2. Non-scheduled transport services which is the air transport service different from the scheduled one and may be on charter basis and/or ad-hoc basis. The operator is not permitted to publish times and schedules or to issue tickets to passengers.

3. Cargo Specific services are the air cargo services for cargo and mail. It may be on scheduled or non-scheduled basis. These operations are to destinations within or outside Kenya.

3.1.3 Historical Development

The diagram below presents a chronological timeline of key events since the regaining of independence in 1963 that highlight the changes that have taken place within the regions sector in Kenya.

Figure 10: Evolution of air transport policy.



Source: EY Analysis

3.1.4 Aviation Policy

Following the liberalisation of the air transport subsector in 1990s, a need emerged for the Government to create an environment conducive to the efficient operation of air transport for passengers and freight. This was premised on the necessity for accommodating the needs of both, domestic and international air operators through the provision of efficient and reliable services at all aerodromes. This resulted in the formulation of an aviation policy.

3.1.5 Sector Challenges

The aviation policy is aimed at addressing the problems afflicting the aviation sector to promote safety, security and better management and operations of the supporting infrastructure

The aviation policy seeks to address the issues identified in the aviation sector and in particular safety and security, management of transport and other supporting infrastructure. Other challenges identified include:

- The need for human resource development and equipment upgrading to meet the industry's obligation nationally, regionally and internationally. The capacity of this subsector to compete regionally and internationally for traffic needs strengthening through effective subsector coordination.

- All public aerodromes are managed by KAA. However, only large airports including JKIA, Moi International Airport and Wilson are financially viable. The rest are financially unviable, resulting in major challenges in their operations and maintenance. These challenges are manifested in the form of lack of comprehensive maintenance management systems, congestion in the terminal buildings, lack of air control systems with own dedicated frequencies, lack of modern functional information systems, unserviceable navigational aids, inadequate infrastructure security systems and inadequate support services, such as water and electricity. Whereas there is a draft policy and regulation on the management of manned aerodromes, it lacks a clear policy on their maintenance and long-term sustainability.

The table below shows some of the sector's challenges and reforms needed to make it more efficient.

Table 3: Challenges and reforms facing Kenya aviation sector.

Sector	Reforms
1. Aviation Infrastructure	▶ Ensuring sufficient and effective linkages between airports and other transport modes, in particular railways and ports. For example, roads that serve airports need to be improved to provide optimal linkages between the airport and other centres of economic activities. Currently, aviation transport infrastructure is not well linked to other transport modes; hence it does not fully facilitate trade. ▶ Adequate ongoing expansion and capacity upgrading programmes of major airports, given the projected growth in traffic volumes. ▶ Appropriate mechanisms to exploit business opportunities that are value-adding investments such as hotels, sports facilities, industrial parks, business parks and shopping centres, among others and ensure they have adequate, well-trained technical personnel.
2. Management of Airports	▶ Most of the aerodromes are considered to be financially and economically unviable. This manifests itself in the serious problems seen their operation and maintenance. ▶ Most aerodromes are affected by some safety, security and operational issues. These include bird strikes, lack of comprehensive maintenance management systems, congestion at terminal buildings, encroachment of land for airport expansion, lack of up-to-date functional information systems (for weather, flights, etc.), lack of adequate support services, including back-up support for services, e.g. water, and serviceability of ground NAVAIDS, not fully compliant with required standards.
3. Airspace Management.	▶ There is insufficient requisite managerial and operational capacity to oversee optimal airspace utilization. ▶ Large portions of airspace are prohibited, restricted or declared danger areas for civilian use making it cost inefficient to users. ▶ Economic potential of outer airspace has not yet been fully exploited through participation in airspace programmes.
4. Safety Audits.	▶ Frequent safety audits done by ICAO have noted flight safety related deficiencies which Kenya needs to address to ensure conformity with ICAO Standards and Recommended Practises (SARPs). ▶ This includes lack of adequate qualified and well-trained technical personnel, inadequate funding, inadequate national regulatory provisions, inadequate facilities and irregularities by some air operators such as under-logging of hours and under-pricing.

Sector	Reforms
5. Security	▶ The current aviation security arrangements at the airport are not ideal since the airport management has no direct control over the national police who provide back-up to Authority's own security personnel.

Source: NITT

3.1.6 The Impact of Global Trends to Local Aviation Sector

3.1.6.1 Airlines

The current contribution of aviation to the global economy is approximately equivalent to the overall GDP of the United Kingdom

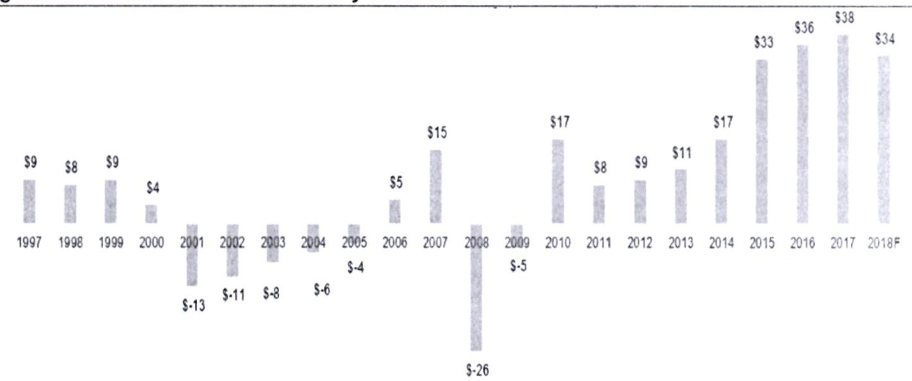
The global aviation industry has continued to expand in the recent past, weathering crises and demonstrating long-term resilience. The industry has remained a major contributor to global economic prosperity with regards to generation of economic growth, job creation and facilitation of international trade and tourism. By 2034, the industry is forecasted to support 99 million jobs and to contribute $5.9 trillion in economic benefit (GDP), a growth from 62.7million jobs and $2.7trillion in GDP contribution.

In 2017, the airline sector recorded impressive performance. The industry recorded revenues of $764 billion, which are forecasted to grow at 10.7% to reach $834 billion in 2018. On the back of strong demand and a healthy economic backdrop, the airline industry generated an estimated net post-tax profit of $38Billion, the 3rd consecutive year of robust financial outcomes.

In 2017 African airlines made combined losses in net income.

Net profit per Region | 2017	
North America	$18.4Bn
Europe	$ 8.1Bn
Asia-Pacific	$ 10.1Bn
Middle East	$ 1.0Bn
Latin America	$0.5Bn
Africa	($0.1Bn)

Figure 11: Global Airlines Profitability 1997-2018F.



Source: CAPA - Centre for Aviation & OAG via Airline Leader

4 Billion – Number of passengers in 2017 globally

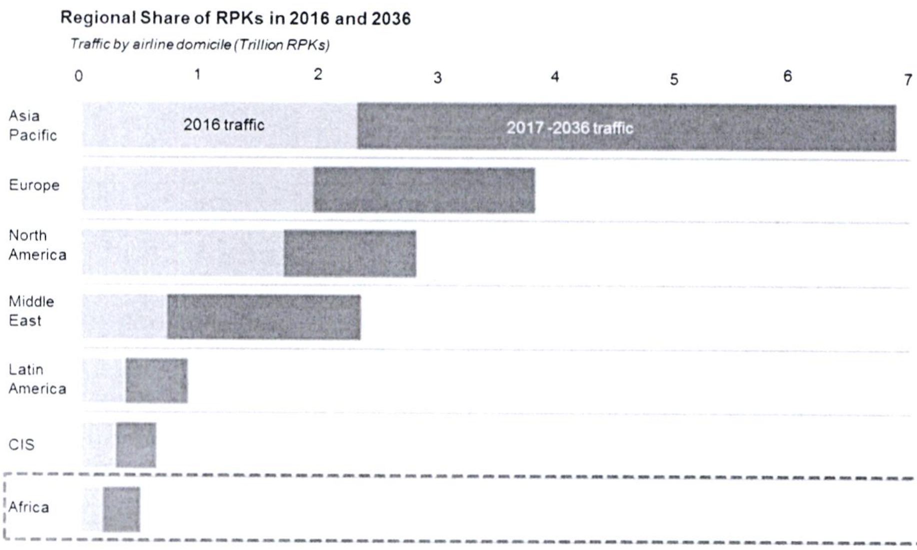
Historically, air transport has doubled in size every fifteen years and has grown faster than most other industries. In 2016, airlines recorded 7.1trillion in RPKs, 205billion in FTKs globally. By 2034, both air passenger traffic and air freight traffic are expected to more than double, compared to 2016. Passenger traffic is expected to reach over 14trillion RPKs with a growth rate of 4.5% per annum and freight will expand by 4.2% annually over the same time period, reaching 466billion FTKs.

81.5% global passenger load factor in 2017

70% Africa passenger load factor

The growth of passenger traffic and load factors achieved by African airlines has been systematically below the world average since 2011. However, the region has one of the highest potentials for growth. The African market has the 3rd highest forecasted 20-year CAGR across all global regions. This growth will be fuelled by a young industry and a large and increasing population. In two decades, it is forecasted that the industry will have grown to support 12 million jobs (78% more than 2014) and USD 198Billion contribution to GDP (173% increase from 2014).

Figure 12: Regional share of RPKs in 2016 and 2036.



Region	Share of 2016 RPKs	20-year CAGR	Share of 2036 RPKs
Asia Pacific	30%	5.6%	38%
Europe	26%	3.4%	21%
North America	22%	2.6%	16%
Middle East	10%	6.1%	13%
Latin America	5%	4.5%	5%
CIS	4%	4.0%	4%
Africa	3%	5.3%	3%

Source: Airbus GMF 2017, Aviation Benefits 2017

Challenges

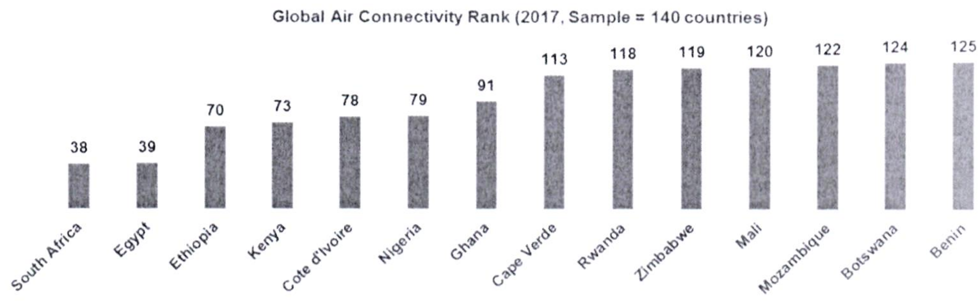
Achieving the growth in aviation traffic in Africa is fraught with challenges. This includes quality of aviation infrastructure to address concerns emanating from the implementation or lack thereof aviation tripartite agreements including Yamoussukro Agreement and the SAATM.

However, this potential may not be translated into real air traffic growth. A critical condition to realising the growth and benefits highlighted above is improved compliance with ICAO's global standards. It is vital to establish infrastructure at national and regional levels that is consistent with ICAO's strategic plans for aviation, including simulating common and interoperable air transport systems.

A major hindrance to improved compliance remains access to funds for the modernization and expansion of infrastructure (airports, runways, telecommunication equipment, air cargo etc.). In addition, the slow implementation of the Yamoussoukro Agreement creates regulatory impediments to operational freedom and investments in aviation which results in lower connectivity in the region and less competitiveness of African airlines.

Expanding connectivity on the continent is one of the priority areas to unlock the potential of the aviation sector in Africa. The launch of the Single African Air Transport Market (SAATM) initiative by the African Union (AU) opens up Africa's skies and improves intra-African air connectivity. As of now, 23 nations have signed up for SAATM, however higher benefits can only be achieved if the remaining 32 AU nations also sign up.

Figure 13: Global Air Connectivity Rank.



Source: World Economic Forum

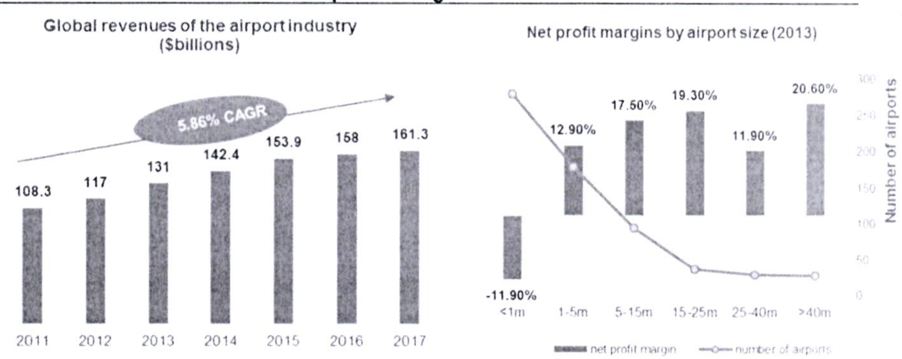
3.1.6.2 Airports

Global airport revenues remained stable in the recent past, recording an upward trend at a CAGR of 5.86% for the past seven years to achieve revenues of $161 billion in 2017. Net profit margins for the industry have also grown from 16% in 2013 to 22% in 2017.

Industry data indicate that airport size plays an important role in determining profitability; as airport markets expand in term of traffic the margins increase. Consequently, smaller airports with fewer than a million passengers tend to have negative margins.

International examples and market data clearly indicate a positive outlook for the airports industry, offering stable revenue flows and high profitability of operations

Figure 14: Global revenues and net profit margin.



Source: 2018 ACI Airport Key Performance Indicators, ACI Airport Economics Survey 2014

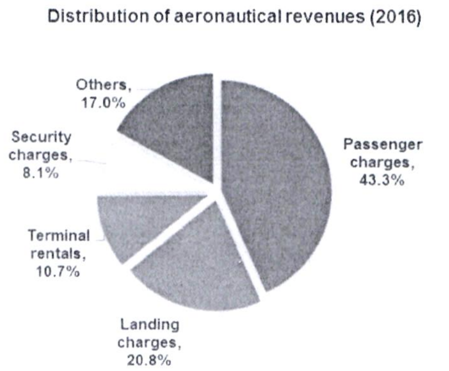
In 2017, aeronautical revenues accounted for 56% of the industry's revenues and non-aeronautical revenues accounted for 39% of the revenues, while non-operating revenues accounted for 4%. The year-on-year passenger charges have been growing at a faster pace (8.6%) than landing charges (3.4%). The different growth rates have created a distribution of revenue where passenger charges represent a single largest component among aeronautical charges.

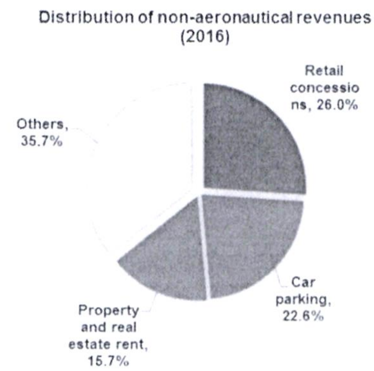
Modern and well-managed airports increase the share of non-aeronautical, passenger-related revenues, gradually substituting the traditional income sources

KAA

faces the challenge of transforming its revenue sources not to rely greatly on traditional aeronautical incomes

Figure 15: Distribution of revenues.





Source: 3rd Annual ACI-World Bank Aviation Conference Report

Non-aeronautical revenues, with retail concessions, car parks and property and real estate rent as the largest components, have been on an upward trajectory as the profit expectations of shareholders rise. Market liberalization has put considerable pressure on aeronautical-related revenues, which has constituted the main traditional revenue source for airports. On the one hand, growing competition among airlines is forcing them to operate on limited margins and on the other hand, there is stagnation in the airfares of regulated airlines and emergence of LLC. Also, the privatization of airports, coupled with a steady decline in state control and funding, is pushing for the need to generate additional revenue for business sustenance.

The growth trend of non-aeronautical revenues over the years also underscores the importance of transforming airports into multi-faceted facilities to keep up with customer demands.

Trends and Challenges Facings Todays' (Including Local) Airports

Airports are transitioning from infrastructure providers to service providers; and with the transition, they are now focusing on:

1. Improving passenger services
2. Better revenue generation
3. Increasing shareholders' value.

Airport trends

1. From government-held to standalone commercial corporatized organizations.
2. More focus on non-aeronautical revenues and digitalization.
3. Increased competition with new global hubs and airline alliances.
4. New challenges by low cost carriers (LCC) requiring to fulfil different needs from those of full service carriers.
5. Increased security, safety and environmental imperatives.
6. Passenger experience, processing times, queues at immigration and customs, long transit times and long walks to gates remain challenges to be addressed.

The table below shows top challenges facing airports

Table 4: Top challenges facing airports today.

Challenge	Explanation
Raising and sustaining capital	The aviation industry needs to be upgraded and expanded with airside, terminal and surface links to airports. Large capital expenditure required to provide airport infrastructure and the need to increase profitability is one of the major challenges faced by airports.
Shareholders' profit expectations	With the expansion of the aviation industry, the profit expectations of shareholders are also on the rise. In order to meet the expectations, airports have to focus on all revenue generating opportunities and increased efficiency through improved automation. Shareholders are demanding more value and this remains a key challenge for airports.
Increased regulatory pressure on safety security and environment	Safety and security costs have risen by almost 60% in air operating costs. Some new environmental regulations are likely to cause significant changes to airport operations such as those related to air spill prevention planning and directives to monitor and control noise pollution, toxic air pollutants and carbon emissions.
Airline changes to network and capacity and new global alliances	With most airlines in developing markets expanding in both capacity and networks, this increasing demand often exceeds supply in terms of airport capacity.
Fluctuating and dynamic passenger needs and dynamics	With the evolving technologies, the expectations towards airport services by customers are also dynamically changing. Rapid improvements in travel comfort and technology have elevated passengers' expectations pertaining to the airport experience. In this highly competitive environment, meeting the customer needs remains to be a key challenge for the airports.
Need to grow non-aeronautical revenue	Market liberalization has put considerable pressure on aeronautical-related revenues. Growing competition among airlines, stagnation in the airfares of regulated airlines and emergence of LLC is pushing airlines to generate additional revenue for business sustenance.
Carrier demands for lower charges with upgraded facilities	Volatile fuel prices and shifts in economic environment are putting pressure on airlines and these pressures are being transferred onto the airports. Airlines are beginning to shift aircraft and personnel to most profitable routes which leads to increased competition level among airports.
Need to improve efficiency, meet higher customer service expectations and reduce queue time	With the increase in air traffic, rise in fuel prices, increasing security concerns and increasing congestion at the airports, the need for efficient airport operations is a crucial one. Additionally, in the era when delivering excellence on passenger service quality is a top-most priority for airports, inefficient operations resulting in delayed flights, long queue times, lost baggage and wasted time are very costly.
Massive competition among airports and new emerging transit hubs	New emerging travel hubs created by expanding airlines and new airline alliances create new pressures for established airports. Airports are competing with each other for airline and passenger traffic and the challenge is to make them more attractive to airlines, passengers and the larger air travel stakeholder.

All

African and Middle East countries national carriers are heavily financially supported and legally protected from competition to maintain the lowest possible cost base

3.1.7 Competition for Aviation Assets in Kenya

3.1.7.1 Different Mandates of International Aviation Sectors

Competition in the aviation sector in Kenya has increased significantly, driven by the liberation of the airspace as Kenya is both signatory for the Yamoussoukro Agreement and the SAATM. This, together with other operational challenges, has pushed Kenya's national airline close to bankruptcy.

Kenya Airways has been competing in a market where its main competitors are owned and controlled by the respective states and receive some form of protection from competition from their own markets.

The table below presents the major differences between Kenya Airways and its competitors.

Table 5: Comparison of Kenya Airways and competitors' business model.

Category	Ethiopian	QATAR Airways	Emirates	RwandAir	Kenya Airways
Ownership	100 % government	100 % government	100 % government	100 % government	Public-listed company
Aircraft number	100 (59 on order)	203 (100 on order)	200+ (100 on order)	12 (12-15 on order)	33 (no orders yet)
Destinations number	131 (77 in Africa)	150+ (23 in Africa)	140 (20 in Africa)	21 (17 in Africa)	53 (45 in Africa)
Integrated airline & airport	✓	✓	✓	✓	✗
Subsidies - Direct and indirect (no taxes)	✓	✓	✓	✓	✗
Regulations preventing employees from strikes	✓	✓	✓	✓	✗
Preference in booking by local travel agents	✓	✓	✓	✓	✗
Competitors' flights to Kenya	4 daily (3 x NBO, 1 x MBA)	4 daily (3 x NBO, 1 x MBA)	2 daily (2 x NBO)	3 daily (2 x NBO, 1 x MBA)	Not applicable
KQ Flights to the respective hubs	2 daily	0 daily	2 daily	2 daily	Not applicable

Source: Kenya Airways (2018)

* Cargo aircrafts not included in the table

Source: Kenya Airways analysis.

The same benefits in the table are replicated in the home markets of two other major competitors, namely Etihad and Turkish Airlines.

Kenya Airways is the only airline that does not benefit from state subsidy or protection. There are also other structural differences, including controlled labour markets and operating environment that all conspire to make Kenya Airways less profitable than its main competitors, as shown in the diagram below.

Wide Access

to Kenyan market has been given to KQ competitors

This Proposal is focused on boosting operations of JKIA as the national aviation hub, however it also places Kenya Airways in the same footing as other airlines it competes with.

Approvals will be required from the Competition Authority of Kenya and potentially the COMESA Competition Commission with respect to:

- Transaction approval depending on whether the applicable thresholds under both regimes are met;
- Restrictive trade practices that lessen competition during the operations of the SPV including preferential allocation of slots,

Because of the current market structure, Kenya Airways is struggling to compete with low-CASK airlines which offer cheaper tickets.

These elements have a direct influence on the structure of revenues and costs of KQ.

Difference with KQ competitors:

In all African and Middle East countries, airlines have a mandate not focused on benefits, but on the economic growth of their countries.
In Africa, the best example of this policy is the Pan-African role of Ethiopian airlines.

Nairobi

Presents an interesting destination for many carriers because of its strategic location, tourism and presence of large number of business carriers and expatriate community.

Combined with an open sky policy, this has seen may carriers increase

exclusive or restrictive arrangements or agreements with third parties such as cargo and ramp handling, etc.

To maintain a competitive edge, other airlines are increasing their networks by opening new routes and new frequencies. The Kenyan market presents an attractive destination for airlines for the following reasons:

- A large number of business travellers;
- A market with many premium leisure tourists;
- Growing middle class.

This attention is particularly focused on JKIA, being the largest in the country and increasingly Moi International Airport Mombasa. The policy of Kenyan Government to allow all interested carriers to operate into Nairobi has served to spur this interest.

This has resulted in a number of foreign and state protected airlines that operate to Nairobi and Mombasa, thereby increasing competition. Most of these airlines fly to Nairobi with high frequencies and carry passengers from the Kenyan market into their own hubs with the primary objective to transport them to other destinations.

The table illustrates the African and Middle East carriers to JKIA airport.

Table 6: Frequency of operations of Kenya Airways and competitor's at JKIA airport.

Airline	Freq. (NBO)	Freq. (MBA)	Aircraft type	KQ freq.
Ethiopian	3 daily	1 daily (+1)	Boeing 737 Boeing 787	2 daily
QATAR AIRWAYS	3 daily	0 daily (+1)	Airbus 320 Boeing 787	0 daily
Emirates	2 daily	0 daily	Boeing 777	2 daily
RwandAir	2 daily	1 daily	Boeing 737	1 daily
TURKISH AIRLINES	1 daily	1 daily	Boeing 737	0 daily
ETIHAD	1 daily	0 daily	Airbus 320	0 daily

Source: Kenya Airways analysis.

Despite this large imbalance in the offered connectivity between state protected carriers and Kenya Airways, most of those airlines continue to demand traffic rights to increase their presence on the Kenyan market. Below, are a few examples of those demands:

- Emirates: the airline keeps asking to have a 3rd and 4th frequency restored;
- Qatar Airways: interested in opening daily flights from Doha to Mombasa (already granted).
- Ethiopian: the airline wants to increase its number of daily flights to Mombasa and is lobbying to be allowed into fly destinations from Nairobi

to other cities out of Kenya. Ethiopian is also interested in opening the Lamu domestic destination;

- Etihad: launched cargo operations from Nairobi to Amsterdam and London Stansted;

- Oman Air: interested in flying into Mombasa.

Access and landing rights at JKIA are at a level above the levels prevailing in the US markets where anti-competition laws are much stronger and subsidised carriers are not authorized to grow. The US market is broadly considered as the most mature market in the world.

3.1.7.2 Threat from Ethiopian Airlines

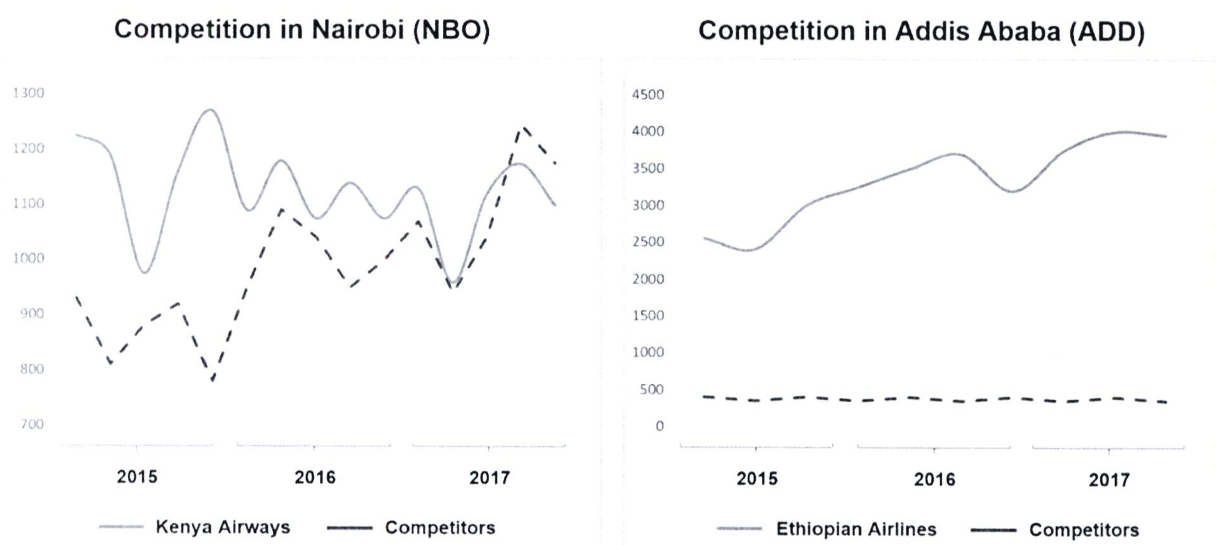
The biggest threat to Kenyan Civil aviation system comes from the current position and the announced development strategy of Ethiopian Airlines

About 15 years ago, Ethiopian state decided to turn Ethiopian Airlines into a strategic asset with the mandate of becoming a Pan-African airline, competing not only with Kenya Airways, but also with all major regional carriers. To achieve it, the Ethiopian State has implemented several initiatives helping an extremely impressive development of Ethiopian Airlines.

The graph below presents different approaches towards competition in Jomo Kenyatta International Airport and Addis Ababa. In Ethiopia, the government simply blocks other airlines entry or increases their costs significantly to eliminate them from the market. On the contrary, Kenya Airways is continuously pushed out of the market by international players including Ethiopian Airlines, which plans to dominate this market too.

Figure 16: Comparison of competition models between KQ and Ethiopian.

(ASK number: available seats per kilometre = "production" in the airport).



Source: Kenya Airways analysis.

1st

Ethiopia is protecting its home market

The diagram above indicates that, in general, more than 50% of flights departing from JKIA are made by competitors' airlines. Kenya Airways' share in the hub has significantly reduced over the last 3 years. On the contrary, Ethiopian Airlines is highly protected in its own airport – competition is consistently prevented from increasing their operations.

The key reason for Ethiopian Airlines success in achieving a better RASK compared to KQ is being the dominant carrier at their hub, Addis Ababa market, compared to its competitors. From the graph above, it can be seen that the Ethiopian Airlines ASK deployment is eight times that of the combined competitors from the Addis Ababa hub.

Ethiopian Airlines also enjoys a lower CASK than Kenya Airways due to a lower cost structure in their hub because of, for example, no interest on aircraft loans, no charges for infrastructure, controlled salary increases, and monopolies of airport services, such as handling etc. The model of operations for Ethiopia Airlines as stated above lowers the level of CASK and makes it difficult for other competitors, including Kenya Airways, to survive in their market. It is therefore not a surprise that the level of competitors' presence in the Addis Ababa hub is minimal.

Ethiopian Airlines is overall seen as a "sustainable" model going forward through introduction of a robust strategy based on 4 pillars:

2nd

Ethiopian is implementing a new and aggressive growth strategy

- A strong government support that views aviation as a success showcase with translated plans and actions to build a complete aviation ecosystem, including infrastructure, new airport, logistics hub, training centre, maintenance etc.
- A Pan-African outlook with increasing participation in other airlines in addition to its massive growth of network;
- A competitive cost position as described throughout this document;
- A long-term fleet and network strategy; Kenya Airways with its fleet of 38 aircrafts and revenues of 1 billion USD has a limited chance to compete against the biggest carriers in the world. Ethiopian Airlines has announced the plan to expand its fleet to 159 aircraft from 100 currently, as well as to increase its revenue to 10 billion USD by 2025.

This is despite the fact that Kenya Airways was twice as big as Ethiopia Airlines in 2010 in terms of number of aircrafts and revenues. However, the airline has been more successful in implementing its 5 pillars strategy and is now three times bigger than Kenya Airways.

Ethiopian has also adopted a strategy that relies on customers from numerous markets and on limiting local risks by making direct investments in its own network and various types of partnerships with smaller airlines operating on smaller African markets.

3rd

Ethiopian has adopted a policy of Pan-African expansion.

It is necessary to mention that many airlines in the region have been acquired or are controlled by Ethiopian. The characteristic of each of the markets are outlined below:

- Rwanda – Ethiopian Airlines initially founded the airline; currently the airlines have signed an agreement with RwandAir to operate in each other's airspace and becoming strategic partners;
- Ghana, Uganda, Zambia, Zimbabwe – Ethiopian Airlines in talks with governments to assist them with establishing new national carriers;
- South Sudan – Ethiopian Airlines signed a Memorandum of Understanding with the government to set up a national carrier;
- Nigeria – Ethiopian Airlines has been shortlisted by the Nigerian government as a possible strategic partner for a national flag carrier;
- Togo – ASKY hub, Carrier is 40 % owned by Ethiopian Airlines providing success to Western Africa;

The **competition** to Kenyan civil aviation comes from all African and other carriers.

- DR Congo – ongoing discussions between Ethiopian Airlines and Congo Airways to further expand their cooperation;
- Malawi – main base of Malawian Airlines with 49 % of Ethiopian Airlines stake;
- Fourth, Ethiopian wants to win the Pan-African development strategy thanks to the political support of Yamoussoukro Decision on the Single African Air Market (SAATM).

3.1.7.3 Impact of International Aviation Regulations

Adoption of international aviation regulations such as SAATM may significantly hurt Kenyan aviation sector

The implementation of the various tripartite agreements appears to be hurting Kenya Airways and promoting its key competitor, Ethiopian Airlines.

The Yamoussoukro Decision system is comparable to the liberalization of the air transport within the European Union (EU) called Single European Sky (SES). It should however be noted that liberalization of the air transport within the EU is accompanied by a very strict control of public subsidies given to airlines both, by State authorities and indirectly by airports. The consumer protection related to delays, cancellations and luggage damages has also been harmonized and enforced throughout all European Union Countries.

In 2015, the African Union Summit adopted the Declaration on the establishment of the Single African Air Transport Market, commonly known as SAATM. The African Union also issued a solemn commitment to the immediate implementation of the Yamoussoukro Decisions towards the establishment of a single African air transport market by 2017. The implication was that, for example, Rwandair would be granted the right to fly from Mombasa to Dar es Salam and Ethiopian Airlines could fly from Nairobi to Entebbe without any restrictions.

Kenya Airways faces unfair competition and is unlikely to survive unless instantaneous deregulation occurs. It is noteworthy that one of the principal proponents of the SAATM initiative is Ethiopia which is promoting this idea through an active support of the African Union institutions.

3.2 Making JKIA Operations More Efficient

3.2.1 Mandate and the Role of KAA in Managing JKIA

KAA's mandate is stipulated within the Kenya Airports Authority Act, Act No.3 of 1991.

The key functions of the Authority are to:
- Construct, operate and maintain aerodromes
- Provide the requisite facilities for passengers as required by duties of the Authority.

The Kenya Airports Authority is a public authority established by statute. Section 3 of the Kenya Airports Authority Act confers to KAA the status of a body corporate and all attendant rights and obligations of a body corporate.

KAA has the power to:

- Construct, operate and maintain aerodromes and other related facilities
- Construct or maintain aerodromes on an agency basis upon the request of any Government department;
- Provide such other amenities or facilities for passengers and other persons making use of the services or the facilities provided by the Authority as may appear to the Board necessary or desirable;
- The governance structure of KAA is through a Board of Directors established under Section 5 of the Act. The power to take actions in the

interest of KAA is vested in the Board, the Minister and the Authority under Sections 10, 11 and 12 of the Act.

The Contracting Authority is also subject to the State Corporations Act as well as the Public Finance Management Act, 2012. It is however to be noted that the current proposed transaction is outside the application of the Public Procurement and Asset Disposal Act, 2015 as provided for under Section 4(2)(e) of the said Act.

3.2.2 Improving the Operations of JKIA

Passengers number and aircraft movements are key drivers to measure JKIA's operational performance

The introduction of operational efficiencies with best in class talent management practices while remaining aligned to the Government's agenda around creation of employment is a key point of justification for the recommended establishment of KAA & Kenya Airways Public Private Partnership for JKIA operations, maintenance and development.

An airport's key performance indicators can be categorised based on the following six performance areas:

a) **Core**: These are core measures used to characterize and categorize airports, such as the number of passengers, aircraft movements, destinations – non-stops and operations. The measures are pointer to operational efficiency.

b) **Safety and Security**: These are the most important airport responsibilities and are categorized separately from the performance areas.

c) **Service Quality:** The measures reflect the evolution of airport management from having a primary focus on facilities and operations to having a strong customer service focus in an increasingly competitive environment.

d) **Productivity/efficiency:** are measures of an airport's performance.

e) **Financial/Commercial:** are measures relating to airport charges, airport financial strength and sustainability, and the performance of individual commercial functions.

f) **Environmental** measures focus on airport management striving to minimize environmental impacts.

3.2.3 JKIA current operations diagnosis

Initial JKIA diagnosis reveals significant room for improvement in airport's operations affecting both airlines and passengers

In seeking to manage JKIA, Kenya Airways' vision is to upgrade and develop Nairobi as the regional hub and recover the market share it has lost to some of the neighbouring countries in particular Addis Ababa, Kigali and Johannesburg. Within this ambitious project Kenya Airways seeks to develop JKIA as the efficient, world-class airport offering unique, Kenyan-touch travel experience to millions of passengers.

Presented improvement plans originate directly from the diagnosis of current weak points and areas for improvement in Jomo Kenyatta International Airport. Results of this assessment include in particular points described in the table below.

Table 7: Initial results of JKIA diagnosis.

JKIA area of operations	Potential improvements, innovations, new management model
SLOTS MANAGEMENT	**Jomo Kenyatta International Airport is currently a non-regulated airport in terms of slots management. Introduction of regular slots could be the important improvement initiative taking into account projected traffic growth.**
AIRPORT MAINTENANCE	**Introduction of airline level maintenance for KAA infrastructure and equipment:** ▶ Currently significant part of the airport equipment is not operational or suffers from frequent break-downs; ▶ One of the main reasons for the current state is lack of service agreements with equipment providers while the internal maintenance staff lacks skills and most of all training to resolve the issue; ▶ Automated aircraft marshalling system took two years to commission, broke down after less than 6 months of operations and hasn't been repaired since. KAA reverted to having man-operated aircraft marshalling. ▶ Currently baggage system suffers frequent malfunctions and inefficiency due to lack of maintenance and servicing agreements. Up to 60% of baggage system is suffering from malfunctions. this results in staff and process inefficiency e.g. 16 counters are not able to process baggage properly due to belt failure. ▶ Airlines are renowned for their rigorous approach to aircraft maintenance, adherence to protocols & check lists, creating redundancy & failsafe measures as well as swift malfunctions removal. Extending this methodology to airport operations will increase both efficiency & safety.
AIRCRAFT PARKING SYSTEM	**Introduction of automated aircraft parking system:** ▶ Currently aircraft parking process is operated manually which limits overall operational efficiency of the airport and airlines flying to and out of NBO. ▶ Aircraft parking management has significant impact on fuel consumption, connectivity, disruptions, on time performance and customer satisfaction. ▶ Introduction of an IT solution which automates this process will increase efficiency and operational capacity of JKIA.
TAXIWAY & RUNWAY MAINTENANCE	**Resolving reoccurring taxiways potholes problem:** ▶ Currently taxiways at JKIA suffer from reoccurring potholes issue, which causes planes to take longer routes and burn more fuel, but does not have substantial impact on JKIA operations, hence no urgency in solving the problem. ▶ Having KQ-owned SPV as a concessionaire responsible for operating the airport will result in investment & maintenance decisions that take into account costs & benefits for both the airport & the airline. In this case the decision to modernize the taxiways to limit potholes problem.

GROUND HANDLING	**Introduction of policies regulating Ground Handling operations** ▶ Currently there are 6 GHA's at JKIA with KQ being the biggest player. ▶ No proper SLA's are in place to ensure GHA's quality of service, sufficient capex investments, staff training etc. ▶ Additionally, there are no minimal handling fees (e.g. per aircraft type) which leads to bidding wars between GHA's. ▶ There is a potential to consolidate this market and generate higher revenues from airlines present at JKIA. **Ground Handling assets management / synergy** ▶ The growing trend in the GHA services sector is assets & equipment optimisation. At some airports tugs, tractors and buses are shared across all GHA's or provided by a third party. ▶ This trend indicates the potential for such optimisations at JKIA.
HUMAN RESOURCES MANAGEMENT	**Introduction of employee shifts management aligned with the operations** ▶ Currently security operates based on flat 12h shifts resulting in insufficient staffing during peak hours and idle employees during off-peak hours. This results in delays, disruptions and overall customer dissatisfaction ▶ Introduction of more flexible shifts schemes should result in increased efficiency and customer satisfaction. **Potential of outsourcing or reducing some of the functions** ▶ Potential of outsourcing selected services (more flexibility in shifts management). ▶ Airport customer service employees (tasked with e.g. giving directions) can be utilised to perform other functions due to improvements of PAX flow management and signage. **Potential for KAA & KQ functions synergies** ▶ Currently turnaround coordinator is idle during aircraft marshalling – with proper training turnaround coordinator will be able to execute both functions. ▶ The above applies also to passenger steps & bridge operators (each late arrival of the bridge operator is resulting in disruptions and inefficiencies). **Provide airline level customer service training for KAA employees** ▶ In order to attract and retain passengers Kenya Airways has to strive to maintain high level of customer service. This expertise can be transferred to JKIA operations (e.g. provide training to cleaning crews, security, immigration).
TERMINAL PAX CAPACITY	**Introducing Improvements to PAX flows & PAX capacity** ▶ Utilisation of Terminal 1B to transfer excess passenger numbers during peak hours at Terminal 1A. ▶ Revision of security scrutiny levels and entry points.

	▶ Potential for remodelling Level 0 of Terminal 1A to encompass also KQ domestic flights (increased capacity).
COMMERCIAL & ADVERTISING	**Introduction of Marketing Plan for JKIA** ▶ There is potential to increase revenues from advertising & promotional activities. **Duty free and other commercial services** ▶ There is potential to increase revenues from other services providers.
PROCUREMENT PROCESS	**Introduction of airline level procurement process** ▶ Each day airlines procure vast range of goods, spare parts and services. Procurement processes have to take into account both the quality of purchased goods (rigorous requirements enforced by aviation authorities) & time efficiency of the process (e.g. in case of emergency or Aircraft On the Ground situations). ▶ Extending this methodology to airport procurement processes will increase the quality and timeliness of purchased goods and services.

4. RESPONSE: PROPOSED TECHNICAL AND COMMERCIAL SOLUTION

4.1 Introduction

The selected technical and commercial solution needs to answer the defined **Project Need**

Previous chapters of this PIIP have identified a number of issues afflicting Kenya's aviation and stipulated why operational and structural changes are necessary.

Any technical and commercial solution available to facilitate the Project must address the Project Need Definition concentrated on upgrading operations and developing JKIA as the national aviation hub.

Project Need Definition answers the key identified inefficiencies and improvement potentials in JKIA. This includes in particular points defined in the following table.

Table 8: Summary of the Project Need Definition.

Area	Project Need
1. JKIA losing position in the market	▶ **Preventing JKIA from failing to compete and losing its role as the international hub for Kenya.**
2. Insufficient condition of JKIA infrastructure	▶ **Upgrading and improving inadequate quality of current airport infrastructure.**
3. Limited capacity growth potential	▶ **Eliminating the capacity constraints to ensure growth.**
4. Required Capex investments	▶ **Necessity of consolidating funds to invest in growth of the hub to increase traffic of local airports.**
5. Revenue structure	▶ **Improving current improper balance of revenue sources and boosting all income sources.**
6. Internal inefficiencies	▶ **Potential to increase the efficiency of JKIA operations through introduction of world-class standards.**

Options

- Sector Reforms
- Commercial KAA
- Transfer of JKIA
- JKIA Private Concession
- KQ Concession
- KQ Separate

4.2 Options Considered to Achieve These Objectives

A number of options are available to achieve the objectives outlined above. These include the following:

A. **Effect comprehensive reforms** to the aviation sector, including reviewing strategies that support growth of JKIA as an African hub and sustainability of Kenya Airways.

B. **Reform Kenya Airports Authority** to fully commercialise all of its operations and provide a more efficiency-oriented service.

C. **Transfer JKIA to a separate entity**, either owned or operated by KAA or Government directly.

D. **Concession JKIA to another private entity** other than Kenya Airways.

E. **Concession JKIA to Kenya Airways.**

F. **Reform Kenya Airways separately by:**

- **Downsizing the airline** to a level where it once more becomes profitable;
- **Merging Kenya Airways** with another international airline

G. **Nationalisation of Kenya Airways** followed by the merger with KAA.

Table 9: Analysis of options

Option	Advantages	Disadvantages
Effect comprehensive reforms to the aviation sector. Formulating rules that will skew the market in JKIA and Kenya Airways favour	▶ Results in great improvement of the aviation sector services which are a great matter of national interest. ▶ This idea would be welcomed by both, the public and the government as it would result in KAA's efficiency in running all airports. ▶ Improve both KAA's and KQ's performance, but not to the levels which other national carriers achieve.	▶ For this idea to have an impact, drastic changes would have to occur and may result in confusion and no clear indication that a significant change has been achieved at the end of the process. ▶ Targeted reforms for both, the airport and national airline would be required to promote financial and operation health of all players and in particular JKIA and Kenya Airways. ▶ Due to the lack of certainty of results, if this option is undertaken, the ability to finance the option may be of great concern, ▶ Long implementation time of this option due to necessary regulatory amendments.
Commercialise Kenya Airports Authority on how it runs JKIA	▶ This would be in accordance with national objectives as the increase in income would impact the GDP positively. ▶ This option may increase the performance levels of KAA, but will not generate the required synergies to positively impact the performance of KQ.	▶ It would require a lot of lobbying and political goodwill as it is an attempt to alter the status quo. ▶ It might be difficult to implement as KAA is a parastatal thereby a lot of changes would be required to achieve commercialization. ▶ This option will aim to impact JKIA as an individual entity thereby leaving out a lot of stakeholders in the aviation sector. This does not make it financeable. ▶ Limited synergies for Kenya Airways operations who is unlikely to get competitive edge over other competitors.
Transfer JKIA to a separate entity either owned or operated by KAA or government directly	▶ This option would be acceptable as it means JKIA would improve its performance, however that is not a clear guarantee. ▶ Opportunity for executing necessary improvements in JKIA operations	▶ This option would strive to improve the performance of JKIA, however the effect would be minimal due to the lack of synergy. ▶ This option would encounter a lot of challenges in execution as only KAA is mandated to run civilian airports as per the current law.

	would require Government of Kenya ensure efficient management structure.	▶ It would not achieve much as it does not effectively address the inefficiency at JKIA.
Concession JKIA to another private entity other than the national airline	▶ It would be a good opportunity for private investors as they would have control of their investment and have the ability to drive it in a way they seem fit to achieve profitability. ▶ This option might be reluctantly acceptable as it brings change to how JKIA is run, however there is no real reason to think that it will greatly impact the performance of the airport.	▶ This option does not go hand-in-hand with the national values as it implies that KAA cannot run the airport efficiently and there might not be any additional value at the end of it all. ▶ This option would be a political and legally complex issue since JKIA is currently managed by KAA which is a government parastatal. ▶ There will be limited synergies with Kenya Airways operations and no competitive edge over other competitors. ▶ This option aims to assist JKIA directly, but is of no benefit to the national carrier which would still stand at a disadvantage in its own hub.
Concession of JKIA to Kenya Airways	▶ It would be viable as it would put all the key aviation entities under one management, thereby greatly increasing efficiency. ▶ This option would be acceptable due to the massive synergies that would be created thus improving the country's GDP. ▶ Potential financial benefits to both KQ and KAA. ▶ It would benefit both KQ and JKIA greatly as well as improve Kenya's global position as a tourist, economic and transport hub in Africa. ▶ It would be greatly endorsed by the private sector as they would easily cash in on their investment.	▶ This option presents a unique challenge as it involves changes in the law and also great lobbing to both institutions to ensure its success. ▶ Implementation of this options requires taking care of fair competition regulations to promote Kenya Airways while at the same time become attractive to other international carriers. ▶ Kenya Airways would need to build capacity to manage airports as well as to design strategies to deal with operational complexities of running an airport.
Reform Kenya Airways separately	▶ In long-run this options could effect in improving Kenya Airways financial situation however not solving the root causes for its weak performance at the moment. ▶ Introduction of this options would focus only on Kenya Airways and not touching KAA issues which significantly limits difficulties of implementation.	▶ This option may not be in line with public objectives as Kenya Airways is seen as a national symbol. ▶ This option would also not be acceptable to the public and the government due to the role that KQ serves by being the national carrier. ▶ This option would not be straightforward to execute as it would require disposal of assets, laying off of staff etc. ▶ This option would result in great reduction of income generated by KQ as well as additional suits that will result in laying off of workers and return of the purchased aircrafts. All that will be quite costly. ▶ Government of Kenya would need to introduce mechanisms of financial support for Kenya

		Airways to be able to compete with subsidised rivals.
Nationalisation of Kenya Airways followed by a merger with KAA	▸ It may not produce the desired results as per its objectives as most nationalised companies do not turn out to enjoy financial success. ▸ The option might go through a bit of hurdles as it would mean that Kenya Airways would require the government to bail them out every time there is a crisis. ▸ It only focuses on the running together of the airports in Kenya and the National airline, this would result in spreading of some of the inefficiencies to the whole aviation industry in Kenya.	▸ This might not resonate well with investors as nationalised institutions are subject to government bureaucracy with little regard to financial performance. ▸ It would require significant changes to the law through acts of parliament. Additional required changes in the management structure at both organizations. ▸ This process would be costly as it involves buying out of the existing shareholders.

4.3 Evaluation of Options: Why PIIP for JKIA

4.3.1 The Evaluation Criteria

The selection of the best option requires not only the review of different objectives and interests to be balanced, but should also take into account the needs and economics of the two entities. An option will be attractive if it generates a positive response to the following questions:

A good PPP strategy takes into account the needs and economics of the business (including its customers) and recognises the difficulties of implementation of the proposed projects through a PPP

a) ***Does the option satisfy national objectives?*** – This should consider account the objectives for sector as contained in the INTP. This includes any specific objectives set for the specific projects themselves and in addition, the broader sectoral or economic objectives that may be of relevance. Broadly, the objective of the INTP is to improve the aviation sector services as a matter of national interest.

b) ***Is the option politically acceptable?*** - Under this objective, political acceptability is by the public and the national government. There is a general reluctance to let national aviation assets to be controlled by foreign airlines.

c) ***Does the option meet the needs of the aviation sector and the entities involved (i.e. Kenya Airways and JKIA)***? – As discussed above, the overriding objective for the project is to improve service provision across the aviation sector and more specifically, to improve performance of JKIA and Kenya Airways.

d) ***Will it be possible to implement the option and manage the PPP arrangement going forward without undue difficulty?*** - The complexities of implementation and in particular the burden of legislative change and the complexity of the regulatory and contractual framework, would need to be addressed in the strategy. For example, it is important to determine how potential legal and regulatory hurdles will be dealt with, whether the new regulations need to be issued to facilitate the project. Kenya's legislation framework governing PPPs appears quite robust. However, it is still in its infancy in terms of implementation and not yet thoroughly tried and tested out, especially in the aviation sector.

e) ***Will the option enhance the financial viability of the businesses and is the option bankable?*** - There are a number of financial aspects to be evaluated by the PPP. Generally, governments will prefer options which have a positive budgetary impact. However, private sector investors will aim to achieve a return on investment commensurate with the risks they will be assuming. Although the share of risk and proceeds is an issue to be dealt with at the transaction stage, it is relevant to recognise that different business structures are more or less likely to create profitable operations as a result of economies of scope and scale. Furthermore, it is important to ensure bankability – i.e. that the projected cash flows of the business support a particular PPP option.

4.3.2 Evaluation of the Options

This proposal uses a scoring matrix to evaluate whether the identified options meet the desired objectives:

Evaluation scoring under the evaluation criteria

5 – Very Good/Strong match with criteria

4 – Good / Strong match

3 – Neutral

2 – Poor/Weak match

1 – Very Poor/Does not meet criteria

5 This shows a **Very Good** match and reflects the ability of the option to largely meet the objectives of the set criteria and possibly exceed them.

4 This shows **Good** match and the ability of the option to largely meet most of the requirements of the criteria being considered, with a few minor ones not met.

3 **Neutral** match means there is no discernible difference pre and post the option implementation under the criteria.

2 Means that there is **Poor** match and perhaps some negative or undesirable impacts under the criteria when the option is considered.

1 Means that there is **Very Poor** and obvious disadvantages that outweigh the advantages under the criteria for the option implementation.

The table below summarises the results of the option evaluation and the rationale behind the scoring thereafter.

Table 10: The evaluation of options

No.	PSP Option	Public Objectives	Acceptable?	Business Needs (KQ & KAA)	Private Sector Interest	Complexity	Financeable	Overall	Comment
a)	Effect comprehensive reforms to the aviation sector. This includes formulating rules that will skew the market towards JKIA and Kenya Airways favour.	5	5	4	4	1	1	20	The government has ambitious plans for reforming and growing the aviation sec in view of the challenging an evolving environment. With more pressure fr regional counties to move to open skies, only the airlines and aviation sectors tl are efficient are likely to succeed. From the review of the regional markets, Rwanda, Ethiopia and Emirat the traditional competing markets it appears that the local sector is the only c more open than others. Sector reforms are therefore required. It is howe unlikely that the reforms alone, without corresponding measures target the airport and national airline will promote the required financial and operati health of all players and in particular JKIA and Kenya Airways.
b)	Commercialise Kenya Airports Authority on how it runs JKIA.	5	2	2	3	1	1	14	Commercialisation of JKIA could be a long and publicly not accepted soluti due to importance of control over the biggest airport in the Country. Whereas t will benefit all players in the sector, there will be limited synergies for Ker Airways operations who is unlikely to get competitive edge over other competitc Therefore this option would not be strengthening all aviation assets in Kenya.
c)	Transfer JKIA to a separate entity either owned or operated by KAA or Government directly.	3	4	3	3	2	2	17	To make JKIA more efficient, it could be spinned off to a new entity that is own by government through KAA or otherwise. If this entity is not KAA, then signific legal waivers would be required since only KAA is legally mandated to manage civilian airports in Kenya. In addition, unless there is complete char in management and reporting structures, the operations of the airport is unlik to change. There will be limited synergies for overall aviation assets in Kenya.

d)	Concession JKIA to another private entity other than national airline.	2	3	3	5	1	1	15	This option assumes limitation of Government of Kenya control over JK as the international hub. Granting external entity with the concession would me introduction of foreign operator with experiences in running the airpo Like Option C above there will be limited synergies with Kenya Airways operatic and no competitive edge over other competitors
e)	Concession JKIA to Kenya Airways.	5	5	5	5	2	3	25	This option requires Kenya Airways to build capacity to manage airports as well design strategies to deal with operational complexities for running an airp The group structure becomes more complex, but this is accompanied by rela financial benefits to both the airline and the airport. Only this option is in pract strengthening overall Kenya aviation assets and enables real, controlled imp on Country's GDP.
f)	Reform Kenya Airways separately	1	1	1	1	1	1	6	Downsizing the airline to a level where it once more becomes profitable will invo significant reduction in staff, return of aircraft (at a cost) and a reduction destinations and routes flown. Essentially it will mean KQ becoming a regio player rather than an international airline. Disadvantage of this scenario wo include significant slump in revenue of Kenya Airports Authority due to lov number of flights and passengers. Other options like merging KQ with another, international airline company co mean the loss of national Kenyan airline brand as well as bring potential finan losses due to poor KQ financial results.
g)	Nationalisation of Kenya Airways followed by merger with KAA	4	4	4	1	1	1	15	This option involves a number of legislative and other steps that all seek to ma KQ a state corporation. It includes a. Shareholder buyout; b. Legislative amendments to effect nationalization and transfer of certain st functions to the aviation holding; c. Legislative amendments to effect changes in taxation and labour relations; d. GOK bailout.

4.3.3 The Preferred Option

Overall assessment of options considered leads to the conclusion that **granting the concession to Kenya Airways to operate Jomo Kenyatta International Airport** is the most favourable solution to reactivate Kenyan aviation industry

Based on the above analysis, **the option to concession JKIA to Kenya Airways accompanied by sectoral reforms appears to be best suited given the diverse interests.** As discussed, in order to conduct a successful restructuring of Kenyan Civil aviation assets, it is necessary to look at it not as a stand-alone entity, but through the national interest of Kenya, aviation contribution to the GDP, competitiveness of Kenya and the geopolitical role of airlines in East Africa.

Key reasons for establishing JKIA and Kenya Airways Public Private Partnership include the following arguments:

- Proposed business model where the national aviation hub is run under the same group structure with the national airline has been proven successful in other countries such as Ethiopia and United Arab Emirates (Dubai);
- Public Private Partnership will allow Kenya's aviation sector to shift from a defensive strategy to a strategy of competing for the market shares again;
- Recommended solution is the most efficient way of using national assets to work for the Country;
- The proposed setup can bring benefits to the economy as well as the aviation sector as it is able to bring huge economic benefits to the Country;
- Strong aviation structure will much better resist any systemic shock like Ebola virus or a terrorist attack.

A significant number of airlines have moved into a structure where they have many subsidiaries in a bid to better manage costs and increase revenues. This kind of arrangement provides greater autonomy, which enables the company to be more profitable. Introduction of the above structure is one of the reasons for success in hubs such as Addis Ababa.

It is critical that the arrangement ensures improvements in functioning of JKIA and Kenya Airways, such as actions aimed at immediate increase of revenue generated from airline-related and other revenue sources as well as limitation of Kenya Airways costs to ensure profitability of flights and efficient competitive position in the market. These benefits will be accessible due to the introduction of the PPP concept. The proposed structure is discussed under operating structure later in this document.

4.4 Meeting the Criteria for PIIP Consideration

Given the novelty and strategic national importance of this transaction, it is proposed that the transaction be considered under Section 61(1)(d) of the PPP Act 2013

This section provides the rationale for the application of the non-compete process in this project.

The proposed transaction is a privately initiated investment proposal. The methodology applied is the non-compete / unsolicited bid process. Given the novelty and strategic national importance of this transaction, it is proposed that the transaction be considered under Section 61(1) (d) of the PPP Act 2013 as read with Regulation 51 of the PPP Regulations.

Section 61(1) provides for circumstances when a contracting authority may consider a PIIP for a project and procure the construction or development of a project or the performance of a service by negotiation without subjecting the proposal to a competitive procurement process.

Subsection 61(1)(d) states that where *"there exists any of the circumstance as the Cabinet Secretary may prescribe"*

It is therefore proposed that the Contracting Authority will, seek the necessary approvals from the PPP Unit and the Cabinet Secretary in accordance with Regulation 51 of the PPP Regulations on Preliminary assessment of private proposals.

Further details of how the project meets the PIIP eligibility criteria are discussed under Chapter 10 of this PIIP.

5. INVESTMENT AND FINANCING PLAN

5.1 Introduction

2011

The date of last detailed master and investment plan for JKIA

This chapter outlines the investment requirements for the airport over the concession period. The information is based on discussions with KAA management as no recent detailed master plan was available. However, the airport has an old master plan prepared in 2011 it is only right now being updated. We understand that KAA is planning on commissioning a technical adviser to update this plan.

The investment proposal contained in this chapter would therefore need to be revised at the implementation stage. At that period, Kenya Airways proposed to carry out a detailed technical review of the airport as well as the infrastructure requirements as part of the preparation of a detailed investment plan.

5.2 Description of the Facilities

JKIA Airport currently has two operating terminals, namely: terminal 1 ("T1") and terminal 2 ("T2").

T1 was constructed in the year 1978 and has a crescent-shaped design. It is further sub-divided into five terminals, namely: 1A, 1B, 1C, 1E, which are currently used for international arrivals and departures whereas terminal 1D is used for domestic departures and arrivals.

T1A was commissioned in 2014 and is used exclusively by Kenya Airways and other Sky Team member airlines. T1B and T1C are exclusively for departures while T1A and T1C are used for both arrivals and departures. T1E is located to the south of T1D and is used by all international airlines except for Kenya Airways and Sky Team members.

10.5m

The number of passengers the airport should be able to handle annually upon completion of the remodelling of terminals 1A, 1B, 1C & 1D

T2 which is a fabricated structure at the east side of the airport with a short lifespan of around ten years. It was opened in 2015 and is a temporary terminal that is used by domestic and international low-cost airlines.

Currently, KAA has an ongoing improvement project of JKIA airport facility including passenger terminal building T1A. According to KAA, the existing terminal building will have a total capacity of 8 million annually upon the completion of remodelling of terminals T1B, T1C and T1D.

Terminal 2 opened in July 2015, is a fabricated structure with a capacity of 2.5 million bringing the total capacity of the airport to 10.5 million once the remodelling is completed. However, the capacity is expected to reduce to 8 million upon the decommissioning of terminal 2 in 2024/25.

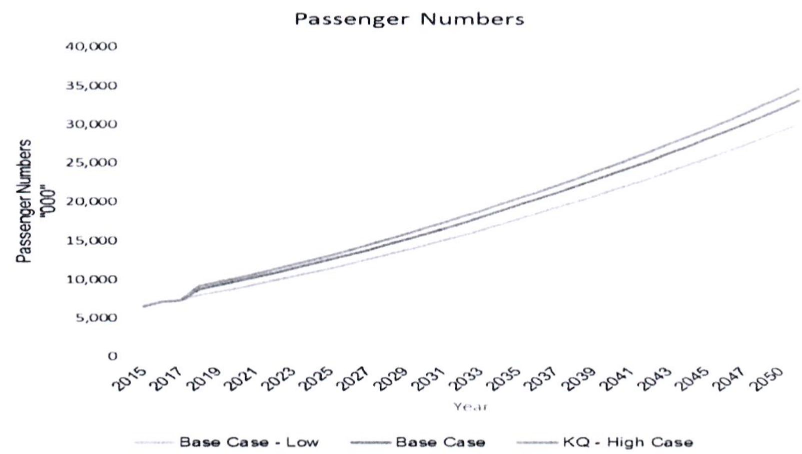
7.m pax

is the current level of passengers traffic at Jomo Kenyatta International Airport

5.3 Projected Passenger Demand and User Requirements

In the year 2017 total passenger number in JKIA was 7.m million. These numbers are expected to increase in the year 2018, according to the base case scenario. The passenger numbers and ATM are expected to increase by 5% per year for the next ten years followed by a 4% growth rate for the remaining 20 years of the proposed concession period.

Figure 17: Projected passenger numbers.



Growth potential of both aero- and nonaeronautical revenues
is assumed basing on benchmarking with other international airports

The projected financial figures of the proposed PPP, as well as assumed Capex investments in airport infrastructure are based on the assumption of growth in the number of passengers. This will contribute to the overall financial success of the PPP as well as each of the Partners, in particular via:

- Growth of JKIA-related revenue and profits due to increased inflows from Airport Pax Service Charges (APSC) being a part of each single airline ticket as well as Landing Fees;
- Growth of KQ-related revenue and profits due to higher fleet utilisation, decreased costs and ability to lower tickets prices;
- Development of new business infrastructure to provide services to passengers such as catering, ground handling and fuel distribution;
- Development of new business areas to provide services to other airlines such as Maintenance Overhaul and Repairs (MRO) or Training Academy.

Capex

investments are required to increase or even maintain current passenger traffic

One of the key assumptions of the proposed PPP is to invest in upgrading the current airport infrastructure (terminals, existing runway) in order to gradually increase passenger traffic at JKIA from 7.4 mil. PAX today to 10.5 mil. PAX in 2022.

What is more, the above growth will be achieved mainly due to the development of Kenya Airways fleet and network evolving from 4.1 mil. PAX to 6.9 mil. PAX within next 5 years.

5.4 Overview of the Future Investments in the Airport Infrastructure

USD
3-5 m.
per year are additionally needed for deferred maintenance to refine the current state of infrastructure at JKIA

We have received limited information on the status of the current existing infrastructure and facilities. Based on our discussions with the management of KAA, no recent technical audit has been carried out to review the state of the infrastructure and there is evidence of insufficient maintenance of the facilities and insufficient records on the state of infrastructure.

There is therefore a high probability of deferred maintenance when expenditures on repairs and maintenance are benchmarked against similar facilities. It is however difficult to ascertain the quantum and extent of the deferred maintenance. This deferred maintenance needs to be factored in the capital investment plan to restore the facility to its peak design capacity. **The management estimates this to be between USD 3m and 5m per annum over the next five years.**

A detailed infrastructure review and preparation of an investment plan would be required to be undertaken at the Due Diligence phase, i.e. before signing the Project Agreement.

5.5 Investment Requirements

5.5.1 Rehabilitation of Taxiway and Parking Apron

Project 1.
Investment in taxiway and parking aprons

JKIA has a shorter parallel taxiway than the runway length and has no rapid exit taxiway. This increases the time an aircraft takes on the runway. A parallel taxiway needs to be expanded to increase the capacity of the runway and to reduce the occupancy time.

The airport has three parking aprons. The first apron is at the passenger terminal 1, the second apron is in the cargo terminal while the third apron is at the opposite side of the passenger terminal area.

There are around 68 parking slots at JKIA. A number of aircrafts are parked at JKIA every night which creates a shortage of parking space. Therefore, some aircrafts share a single parking space while others are parked in an open space that is not allocated for parking spot.

5.5.2 Remodelling of Terminal 1B, 1C, 1D

Project 2.
Investment in remodelling terminals 1B, 1C, 1D

Remodelling of Terminal 1B, 1C, and 1D will increase the capacity of the terminal by 3 million passengers annually. Therefore, the total capacity of Terminal 1 will be 8 million passengers annually. The financier for the remodelling could be e.g. the World Bank.

It will take approximately 36 months to complete this project without factoring around nine to twelve months for the tendering process. Therefore, the earliest the project can be completed, if it commences in the year 2019, is the year 2023.

The remodelling will also improve the efficiency and outlook of the terminal. It will help provide world class passenger satisfaction and convenience through use of technology, managing passenger numbers in peak periods and having a good layout of the airport.

The projected passenger numbers for the year 2018 for base case and high case show that the current capacity of the terminals might not be sufficient.

Terminal 2 is expected to be decommissioned in the year 2024, hence the drop in terminal capacity in 2025.

Remodelling of Terminal 1B, C, and D can potentially begin immediately after the concession is awarded. The SPV will also initiate plans to build a new terminal in anticipation of the reduction in capacity expected in 2024 when terminal 2 is decommissioned.

Current runway upgrade to Category 2 may become more viable solution than building the new one

Project 3.

Investment in runway upgrade

5.5.3 Upgrading of Category 1 Runway

JKIA operates a 06/24 category one runway that is 4,117 meters long by 45 meters wide. **The planned expansion will include:**

- Upgrading of Runway from category 1 to category 2;
- Constructing two Rapid Exit Taxiways – RETS;
- Overlaying an anti-skid runway surface.

If the large and small aircrafts are separated, this will increase the capacity of JKIA runway air traffic movement (ATM), approaching full capacity during peak hours.

The current runway has a capacity to handle significant number of ATM per annum, but due to the expansion the runway capacity per annum will increase. This is assuming higher ATM per hour during the peak hours after the upgrade. The upgrading of the current runway will be sufficient to sustain ATM at least up to the year 2025.

Project 4.

Investment in Terminal 2 – Phase I project

5.5.4 Terminal 2 – Phase I

We have discussed the importance of completing the remodelling of Terminal 1B, 1C, and 1D to the success of operations of JKIA. Construction of Terminal 2 – Phase I is equally important, if JKIA is to achieve the passenger numbers envisaged in the proposed concession. **This however is subject to the Due Diligence which may result in defining alternative solutions to grow the terminal capacity such as extending the lifetime of the temporary T2 at rationalised Capex investments.**

The second terminal is expected to have a capacity of approximately ten million passengers annually when completed. The tendering process is expected to take one year, and the construction is expected to take three years.

Terminal 1 has a maximum capacity of 8 million passengers after remodelling, which is lower than the expected passenger number. Therefore, it is proposed that the tendering and construction of Terminal 2 commence in first years of the concession to ensure that the airport has sufficient capacity to handle passengers. The total capacity for JKIA will then reach 18 million with the additional terminal and this will be sufficient till the passenger level is expected to exceed eighteen million according to the projection.

Project 5.

Investment in Terminal 2 – Phase II project

5.5.5 Terminal 2 – Phase II

Terminal 2 is expected to have a total capacity of around 20 million per annum once completed. Assuming that tendering will take one year and the construction is expected to take three years, just like the other projects, the tendering process for Terminal 2 - phase II should commence around the year 2029.

The total capacity for JKIA will be then 28 million per annum which will be sufficient to take the airport up to year 2043 when the capacity is expected to exceed 28 m. A new terminal or expansion of terminal 1 or 2 will be required after 2043.

The projected period for the concession is thirty years, therefore Kenya Airways has to consider passenger number up to the year 2050. The passenger numbers for 2050 is expected to be 30.1 million for the base case and 34.6 million for the high case. JKIA will need to be further expanded to handle the additional seven million passengers that will push the total capacity to around 35 million per annum.

5.5.6 Second Runway

JKIA currently has one runway, a new category 2 runway can be constructed to increase the capacity of JKIA and improve reliability. There have been proposals to construct a 05/23 runway with the length of 4,900 meters and the width of 60 meters.

Investment in runway should be however deeply analysed as upgrade of current runway could become a more viable option. It would also enable to rationalise the Capex investments and invest in terminals which are the real capacity bottleneck at JKIA. Therefore the construction of second runway has not been assumed in the financial model of the SPV.

5.5.7 Vehicle Parking

The JKIA airport has a capacity of around 2,300 parking spaces which results in a shortage of free slots. The total capacity of the multi-storey car park will be 1,500, but the roof space has offices therefore reducing the capacity to around 1,100. JKIA does not have an automatic parking payment system therefore causing unnecessary traffic jam at the exits.

Under the PPP Concession Kenya Airways will need to design how to adjust the vehicle parking so that it accommodates growing traffic in the airport. There are also possibilities of rearranging the parking to increase revenue without significant Capex investments.

5.5.8 Annual maintenance

Some of the maintenance cost has been deferred over the year, therefore this cost may be much higher. A detailed technical review will be required to ascertain the extent of deferred Capex. Proposed budget for deferred maintenance has been however assumed in the financial model of the SPV.

6. OPERATING AND MANAGEMENT STRATEGY

6.1 Key Success Factors in Running JKIA

In seeking to manage JKIA, Kenya Airways' vision is to upgrade and develop Nairobi as the regional hub and to recover the market share it has lost to some of the neighbouring countries in particular Addis Ababa, Kigali and Johannesburg. Within this ambitious project Kenya Airways seeks to develop JKIA as an the efficient, world-class airport offering unique, Kenyan-touch travel experience to millions of passengers.

The key objectives will therefore include:

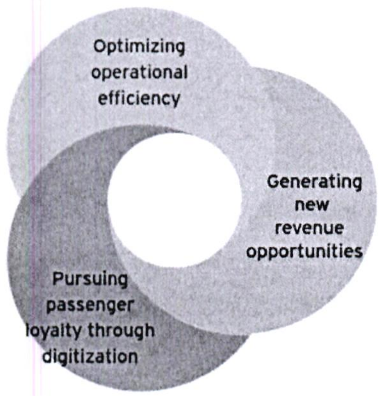
- Improving quality of current infrastructure for servicing passengers in all key areas;
- Improving airlines-related infrastructure;
- Expanding the current infrastructure to accommodate projected traffic growth in the future;
- Boosting all revenue categories in particular aeronautical and non-aeronautical incomes;
- Increasing internal JKIA efficiency and productivity metrics;
- Introducing cost reduction initiatives;
- Improving overall customer experience.

All these actions will be carried out in accordance with local civil aviation regulations, international norms and standards as well as global benchmarks proving the concept of how the airport should be managed efficiently and profitably.

Defining the efficient operating and management strategy is key to the success of the proposed JKIA airport concession. The key focus within the PPP setup will be to handle an increasing number of flights, while improving quality, punctuality, safety and security of the airport users. In particular reduction of aircraft turnaround times, flight delays and the reliability of the airport capacity during peak hours will enable maximum utilisation of all airport resources and facilities.

However, Kenya Airways being an international airline is fully aware of how a well-managed airport should be run while currently playing only the role of the biggest customer of JKIA services. Past experiences show that both Partners have had some coordination difficulties which resulted mainly from different perspectives and definition of goals. This hand-in-hand cooperation can be significantly improved under the joint management and will bring benefits both for JKIA and Kenya Airways.

Figure 18: Key operational strategy.



Source: EY Analysis

The overall Operating and Management Strategy for JKIA will aim at transforming it into the biggest hub in Africa by 2030 through efficient operations and fit for purpose world class investments

Kenya Airways possess unique airline knowledge that helps introducing target vision for JKIA under the Concession Agreement

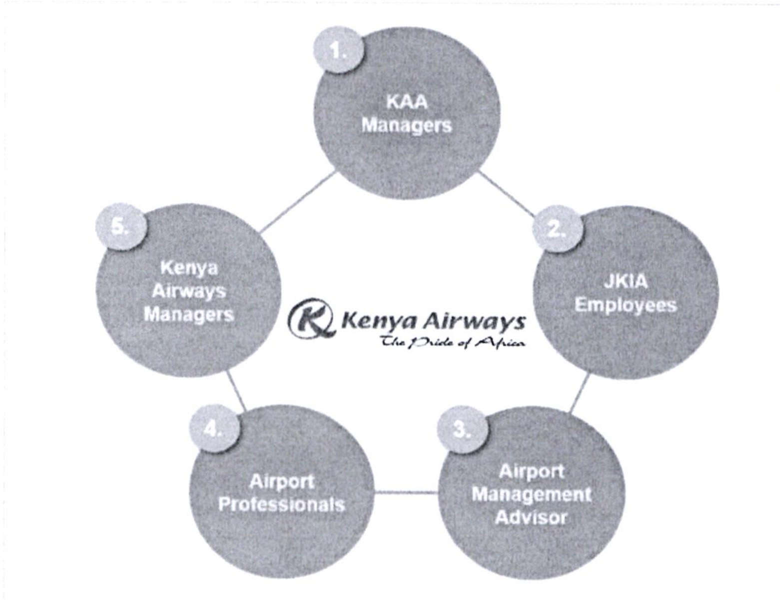
Capabilities Growth Plan has been defined to strengthen current resources and bring in new skills from various sources of intellectual capital

6.2 Kenya Airways capabilities to run JKIA operations

6.2.1 Capabilities Growth Plan: overview

Kenya Airways applies in this Privately Initiated Investment Proposal (PIIP) to run operations of Jomo Kenyatta International Airport which represents the business strongly related to operating an airline, however possessing its own specificity and characteristic. For that reason the Concessioner has developed the Capabilities Growth Plan of building and utilising internal competences basing on parallel sources of intellectual capital as illustrated on the graph below.

Figure 19: Sources of intellectual capital in Capabilities Growth Plan.



Source: Kenya Airways analysis.

Kenya Airways include in this Proposal the following assumptions related to each of the groups:

- KAA Managers. Due to the fact that JKIA represents the biggest and most complex airport in the Country, Kenya Airways assumes retaining Managers involved in current operations of Jomo Kenyatta International Airport. This approach will ensure smooth transition and undisrupted operations under the Concession setup. Knowledge of current managerial staff will be supplemented with external skills brought in as a part of the Capabilities Growth Plan.

- JKIA Employees. The assumption towards KAA Managers will apply also to medium-management JKIA staff as well as employees involved in everyday operations of the airport. Their broad experience and involvement in running this airport will become the critical success factor of this venture.

- Airport Advisor. Kenya Airways in the process of preparing this PIIP has started the selection process of Airport Advisor which will assist internal SPV resources in day-by-day operational

Qualified staff will become the key project enabler and success factor

activities bringing in significant international experience from other airports in the world. This move will enable transfer of knowledge and benchmarking with the best global practices as well as ensure objective assessment of major JKIA problems and challenges. Initial indication assumes support from two types of entities:

- Specialised airport management advisory;
- Airports Operators.

- **Airport Professionals.** Involvement of external, high-qualified and skilful staff in SPV will become the key success factor of the project. Although majority of the managers and employees will be constituted by current JKIA team, it will be also essential to recruit qualified specialists both from within Kenya and international airports. This joint approach should result in increasing the management efficiency and ability to grow the airport infrastructure.

- **Kenya Airways Managers.** Possibility of operating both hub and the national airline create a unique chance to utilise knowledge from both sides. However, most of Kenya Airways staff is focused on turning around the airline, some of the Managers can be also involved in improving JKIA efficiency. This applies especially to Kenya Airways managers in the following areas:
  - Operations;
  - Technical maintenance (MRO).

Both of these group of managers have everyday contact with JKIA management and employees possessing significant knowledge of weak points and room for improvement from the perspective of the biggest customer.

6.2.2 Airport Advisors: preliminary selection

Support of Airport Advisor will enable bringing in external knowledge & expertise to optimize current operations of JKIA as well as rationalize planned Capex investments

One of the key assumptions of this PIIP is the introduction of world-class standards and therefore necessity of on-boarding skilled professionals to upgrade airport's operations from Day 1 of the concession. Therefore the Proponent has intensified his efforts to preliminarily contract the Airport Advisor to support seconded JKIA staff in running the day-to-day operations. Final selection of the professional airport-industry partner will be concluded after signing the concession agreement.

Some of the preselected Airport Advisors have been presented on the graph below.

Figure 20: Prequalified Airport Advisors.

TAV Airports | PARIS AEROPORT | Schiphol Amsterdam Airport | egis | FLEMINGO THE DUTY FREE PEOPLE

► TAV Airports.

TAV Airports is the leading airport operator in Turkey. TAV's history dates back to 1997, with the official call for tenders for the Istanbul Atatürk Airport International Terminal Building. TAV was established as a joint venture between Tepe and Akfen groups who won the tender. Put into operation in 2000, Istanbul Atatürk Airport is amongst the very first examples of "Build-Operate-Transfer" projects in the world.

TAV has become a global brand in airport construction projects as well as airport operations; a brand new area, thanks to its know-how, highly skilled human resources and advanced technology in a very short time.

Currently TAV Airports operates 13 airports across three continents:

- Istanbul Ataturk (Turkey) - 15th busiest in the World,
- Ankara Esenboga (Turkey),
- Izmir Adnan Menderes (Turkey),
- Gazipasa Alanya (Turkey),
- Milas Bodrum (Turkey),
- Tbilisi Airport (Georgia),
- Batumi Airport (Georgia),
- Monastir Airport (Tunisia),
- Enfidha-Hamammet Airport (Tunisia),
- Skopje Airport (Macedonia),
- Ohrid Airport (Macedonia),
- Medinah Airport (Saudi Arabia)
- Zagreb Airport (Croatia).

TAV Airports is involved at each stage of the airport value chain: duty-free sales, food and beverage services, ground handling services, information technologies, security, and operation services.

Together with its subsidiaries, the Company provided services to 836,000 flights and 115 million passengers in 2017.

► Paris Aeroport (Groupe ADP).

Groupe ADP is an international airport operator based in Paris. It owns and manages Parisian international airports:

- Charles de Gaulle Airport - 10th busiest in the World,
- Orly Airport,
- Le Bourget Airport,

The operations of the Group are divided into five segments:

Aeronautical activities - Include all of the operations carried out by Groupe ADP as airport manager in three main airports with respect to the circulation of passenger and cargo.

Shops and services - Business activities (shops, restaurants, parking, car rental companies, rentals in terminals) and the activities of joint ventures for commercial distribution in airports (Société de Distribution Aéroportuaire, and Relay@ADP).

Real estate - includes airport property (aircraft maintenance hangars, cargo terminals at the first edge or industrial areas) and real estate diversification (offices, hotels, shops, and business and logistic locations).

Airport investment - encompasses all shareholdings foreign airports (Schiphol, TAV Airports, all ADP Management's stakeholdings).

Other activities – this segment covers all activities carried out by Groupe ADP subsidiaries, which operate in areas as varied as security services, or telephony.

► Schiphol Amsterdam Airport.

Schiphol is the main international airport of the Netherlands (3rd in Europe, 11th worldwide).

Schiphol
Amsterdam Airport

The operation of Amsterdam Airport Schiphol remains one of the main activities of Royal Schiphol Group. In addition, it owns and operates both Rotterdam The Hague Airport and Lelystad Airport and holds a majority share in Eindhoven Airport. It also has a share in and/or collaborates closely with a broad range of international airports.

Every year, its Dutch airports welcome 70 million passengers and process 1.7 million tonnes of cargo.

► Egis.

Egis Group is a French engineering and consulting group involved in the areas of infrastructure and transport systems, planning, water and environment. Egis is also involved in project financing and in the business of setting up projects and operations for airports and roads.

egis

Egis operates 17 airports including those located in Africa:

- Abidjan (Ivory Coast),
- Libreville (Gabon),
- Brazzaville, Pointe-Noire & Ollombo (Congo),
- Tahiti and its islands (French Polynesia),
- Campinas (Brazil),
- Ostend-Bruges and Antwerp (Belgium),
- Pau-Pyrénées, Brest and Quimper (France),
- Larnaca and Paphos (Cyprus)

making up an annual traffic of more than 27M passengers & 270,000 tonnes of freight.

Egis provides a holistic vision of airports; from preliminary planning through to operation:

Institutional, organisational or regulatory advice - feasibility studies for the creation of airport installations, development studies for extension or overhaul projects and master plans.

Full range of engineering services for airport construction - operational and technical studies prior to the construction or development of an airport, audit and design of aeronautical pavements, terminal buildings and other facilities (air terminals, accommodation, hangars, control tower, communications centre etc.).

Modular air terminal turnkey solutions - air terminal turnkey solutions able to accommodate exceptionally high passenger numbers. This temporary infrastructure becomes operational very quickly and is able to deal with seasonal air-traffic increases or ensure that passenger services are still provided during renovation phases.

Innovative integrated systems - tailor-made solutions, from security and safety systems to baggage-handling facilities and integrated data-processing systems. Implementation of high-performance systems: self-service check-in and boarding, real-time information displays etc.

► Flemingo.

FLEMINGO
THE DUTY FREE PEOPLE

Flemingo International is a Dubai based global duty free and travel retail operator with a focus on emerging markets.

Flemingo is one of the most diverse travel retail operators with business across several different channels:

- Duty Free operations at Airports, Seaports and Border crossings,
- Cruise Retail,
- Inflight Retail,
- Food and Beverage services,
- Speciality retail like fashion, luxury, electronics, supermarkets and convenience,
- UN commissary shops,
- Downtown diplomatic duty free stores.

Flemingo is present in 34 countries with over 200 operations in Asia, Africa, Europe and LATAM. That includes:

- South Africa,
- Mozambique,
- Mauritius,
- Zambia,
- Burundi,
- Rwanda
- Uganda

as well as in India, UAE, UK, Belgium, Netherlands, France, Italy, Poland, Ukraine and others.

6.2.3 Airport Advisors: scope and proposed remuneration rules

Role of the selected Airport Advisor will be critical to achievement of the project objectives. This however does not limit the overall responsibility of SPV to run the concession agreement. For this reason, role of the Airport Advisor will be concentrated on sharing best-practices and transferring knowledge to SPV staff. The Proponent strongly believes that such a setup will ensure efficient operations of JKIA while building internal competences to professionally run the airport.

Recommended scope of cooperation with Airport Advisor shall include in particular:

- Optimisation of airline traffic in the airport to fully utilise available slots, recommendation towards implementation of formal slot management in JKIA;
- Objective assessment of planned Capex investments including rationalization of needs versus planned traffic assumptions;
- Identification of bottlenecks and other operational inefficiencies limiting the capacity of the airport;
- Assessment of resources efficiency in particular related to the staff allocation and utilisation;
- Proposing changes in strategic and operational governance of the airport infrastructure.

Due to the above scope of services the Proponent considers to models of Airport Advisor's remuneration:

- Fixed fee for onboarding at JKIA full-time employees to support the project (solely advising function or filling define positions in the org structure); value will be calculated based on days worked locally in Nairobi;
- Success fee depending on achievement of defined performance metrics such as completion of Capex investments and construction phases, achievement of traffic capacity, increasing operational efficiency of staff (employees / PAX) etc.

The Proponent commits in this PIIP to conduct scope and remuneration negotiations immediately after approval of the transaction. It is also considered to involve the Airport Advisor at the Due Diligence phase prior to signing the project agreement.

Kenya Airways has drawn conclusions from the past failures and is currently undergoing turnaround strategy to **return to profitability**

6.2.4 Kenya Airways turnaround strategy

In recent years, Kenya Airways PLC has experienced financial distress that culminated in a series of poor financial results that topped a record KES 26.2bn (US$258m) for 2015-16 financial period.

Diagnosis of the root causes laid fundamentals to the turnaround plan, currently being implemented in the Company. The prime goal of this program is to achieve operational profitability and in the long run, ability to generate profit before tax and dividends for its shareholders.

Kenya Airways successfully closed financial restructuring as the first step in recovery plan

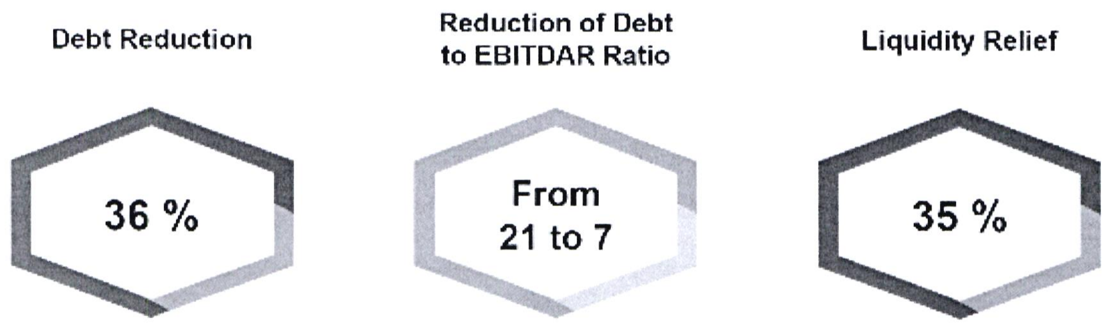
Current restructuring activities are carried out in three major areas:

- Restructuring of debt;
- Boosting revenues;
- Cost reduction and efficient governance.

The first step undertaken to cure Kenya Airways internal situation was based on the restructuring of accumulated debts impacting Company's day to day operations through high finance costs. For this reason, Kenya Airways conducted and finalised the negotiations with its debtors whose interests had been secured with Sovereign Guarantees ensured by the Government of Kenya. Debt-for-equity restructuring terms led to modification of shareholding structure with majority share of: Government of Kenya (48.9 %), KQ Lenders 2017 Ltd. (38.1 %) and KLM / Air France (7.8 %).

Most of all the financial restructuring closed on November 13th, 2017 significantly improved Kenya Airways stability. It resulted in debt reduction as well as improvement of financial indicators and finally liquidity relief.

Figure 21: Results of financial restructuring.



Source: Kenya Airways analysis.

KQ 5-year plan goals:

- Back-to-profitability
- New network and fleet plan
- Revenue boosting
- Cost reduction
- Operational efficiency
- Safety and security of operations
- Excellent customer service

Twenty+

new Kenya Airways connections in USA, Europe, Asia and Africa

The financial restructuring resulted in a positive impact on the Company's situation but it did not address the real challenges Kenya Airways had been facing in order to return to profitability. Achievement of this goal is only possible through strengthening operational fundaments both on revenue and cost side. For that reason, structural changes that need to be introduced have been grouped in the form of 37 (thirty seven) optimisation projects distributed throughout the whole organization.

Based on strategic goals and drivers identified as crucial for efficient turnaround process, Kenya Airways developed a 5-year plan built on realistic assumptions towards revenue increase and costs reduction.

The key element of this ambitious 5-year plan is the new fleet plan and network approach based on airline data and algorithms provided by airlines experts from Sabre. The key assumption of this bottom-up analysis was maximisation of revenues and profitability through:

- Efficient network planning including shutdown of unprofitable routes, launch of new prospective connections as well as upgrade or downgrade of equipment used to operate flights;

- Increased connectivity of the network resulting in growth of number of passengers carried on Kenya Airways flights;

- Increase of average yield including introduction of new high-coupon value destinations;

- Increase of overall Kenya Airways RASK level.

Consequently, Kenya Airways assumes introduction of 20 (twenty) new connections within a period 2018 – 2022 which has been phased-out and synchronised with corresponding fleet growth.

Realisation of the ambitious Kenya Airways network plan will mean necessary increase of fleet size from current 33 (thirty three) aircrafts to the target figure of 55 (fifty five) in 5-years perspective. This will

Cost reduction projects in all spend categories

include utilisation of wide-bodies for ultra-long-hauls (USA) and long-haul flights (Europe, Asia) as well as a number of narrow-bodies to operate medium-hauls and regional connections.

Last, but not least, one part of Kenya Airways 5-year plan has been focused on cost reduction across all spend categories including Direct Operating Costs, Overheads and Finance Costs. Cost efficiency initiatives play crucial role in a successful realisation of the plan as it increases competitiveness of Kenya Airways flights versus its main competitors. Most important cost efficiency initiatives include in particular:

- Reduction of fuel charges accounting for approximately 30 % of overall Company's cost through: negotiations of fuel differentials for into-plane services, optimisation of fuel transportation and storage fees as well as fuel efficiency and consumption reduction initiatives.
- Consolidation of suppliers in aircraft maintenance area, leading to more efficient spare parts rotation which increases planes availability for operations and renegotiations of unit prices of key maintenance materials and services;
- Renegotiation of contracts in ground handling, landing and navigation fees;
- Cost efficient passengers handling both on board (e.g. catering, inflight products) and on the ground (accommodation);
- Increase in productivity measures of human resources including in particular cockpit and cabin crew leading to undisrupted operations across the whole network plan; new salary schemes based on individual and group targets and KPIs;
- Reduction of general company's expenditures related to facility management, global marketing, professional services etc.

Due to the complexity of the airline business and tough competition on the market, the process of Kenya Airways turnaround will take time. Consolidation of aviation assets according to the proposed Public Private Partnership will however significantly support JKIA and Kenya Airways position in the market.

6.3 Maximising revenue and profit streams of JKIA

Significant growth of airport revenue is one of the key objectives of this proposed concession agreement

As it has been indicated in this Proposal one of the key root causes for its submission is high-revenue growth potential in JKIA in case of joint operations of the airline and the airport. Kenya Airways is fully committed to work with the various parties including the regulator, Government entities, airlines and other service providers to increase the incomes from core and non-core operations.

Initial analysis of financials clearly shows that JKIA is highly-dependant on core airport services while commercial revenue streams are marginalised accounting only for approx. 19% of the total income. Modern, well-managed airports at the same time concentrate mostly on boosting passenger-related revenues through development of infrastructure for satisfying passenger's needs. This transformation of revenue share will be one of the priorities under the Concession

Agreement. The strategy of boosting JKIA revenues and profits will include:

- Aeronautical revenue:
  - Increasing inflows from Airport Pax Service Charge (APSC) through growth of Kenya Airways fleet size, network and consequently number of passengers who pay APSC for using the airport infrastructure. At the same time, it is assumed to further encourage other airlines to increase their frequencies to Nairobi to escalate revenue from this source of income;
  - Increasing landing fees revenue through introduction of Kenya Airways growth strategy, but also benchmarking of tariffs versus other airports in Africa and outside the continent. That could lead to the conclusion that landing charges are below the market and are subject to increase for all airlines operating to / from Nairobi;
  - Increasing other aeronautical revenues including aviation fuel concessions, airbridge and parking fees.
- Non-aeronautical revenue:
  - Benchmarking and potentially increasing tariffs charged from operators providing non-aeronautical services in JKIA in order to equalise the rates with external benchmarks;
  - Increasing revenue from services such as ground handling and cargo handling, duty free and catering. These actions could include, in the future, creating separate profit centres under the SPV to perform some of these services internally.
  - Increasing income from other revenue sources such as building and land rental, advertisements and car park; rental income in the future will include in addition revenue-sharing mechanisms (fee based on % of turnover).
  - Introducing new non-aeronautical revenues not provided so far in JKIA.
- Cost efficiency:
  - Decreasing the cost base in various categories in relation to the growing traffic of passengers i.e. increasing the productivity metrics such as number of employees per PAX without reduction in service quality;
  - Implementing overall cost efficiency program including verification of existing contracts and validation of terms and charges with the market.

Costs optimization initiatives both in SPV and Kenya Airways will be introduced to impact financial results and enhance productivity

6.4 Operating Strategy

6.4.1 Introducing expertise in all aspects of Airport Operations

Under the new Operations and Management Strategy JKIA operations need to be dynamic, proactive, innovative and flexible. The operations will be focused on upgrading airline and passenger services as well as improved revenue generation.

In best-in-class international airports the passenger is at the centre of interest and most of the facilities are designed to attract his attention and offer a variety of options to spend time in the airport in the most pleasant and comfortable way.

Achievement of this goal in JKIA is possible due to concentration of six major areas of focus:

Figure 22: How Kenya Airways JKIA strategies will help airline operations.

Source: EY Analysis

1. Improved turnaround times

- Fewer late arriving passengers
- More efficient ground-handling and maintenance
- Better on-time schedule management for airlines

2. Improved collaboration through enhanced practices

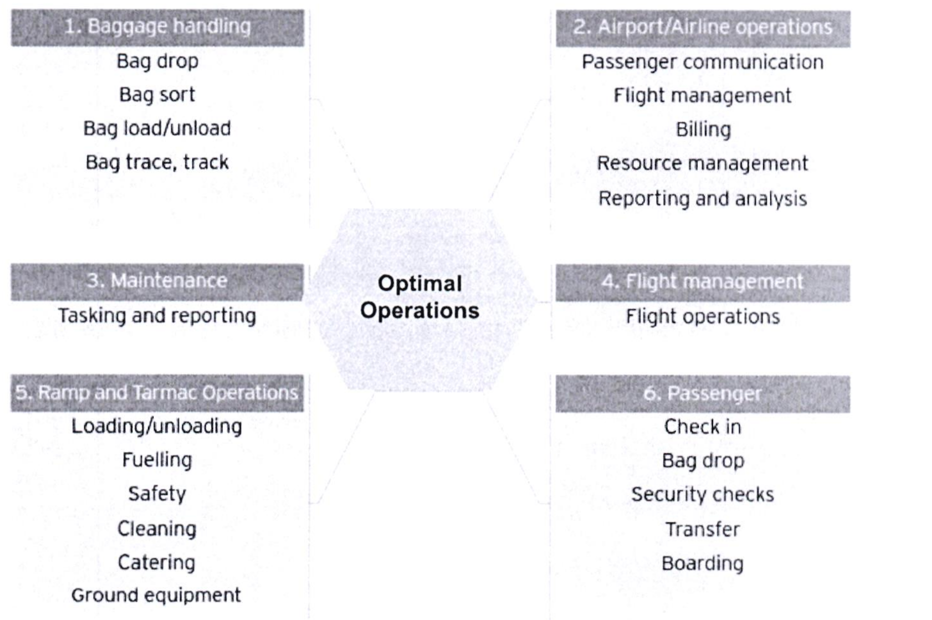
- Standardized reporting
- Reduces unambiguous task allocation
- Better teamwork and achievement of results

3. Enhanced safety and security More productive airport workers

- Reduced administrative burden
- Fewer mistakes
- Improved transit times
- Happy customers
- Satisfied staff

Source: EY Analysis

Figure 23: Improving JKIA operations.



Source: EY Analysis

Passenger & baggage handling

Baggage handling at JKIA is largely still manual. JKIA needs to have a faster baggage processing capability from check-in through collection. Kenya Airways will evaluate the use of location aware tags in which passengers will know that their bag is on the airplane which will enable both airport and airline staff to locate lost bags or offload baggage easily when required, thereby improving departure times. In case of flight cancellation passengers will know when their baggage is offloaded. Improved baggage passenger notification will save time of airlines, airport, ground handlers, passengers and shippers.

Airline and flight operations.

Kenya Airways expects to improve the efficiency and flexibility of ground handling to decrease operating costs and reduce flight schedule delays. Mobility is the critical technology to deliver this concept of integrated and efficient ground operations. It will enable to adjust allocation of resources to the most critical activities – at the right location, with the right information and at the right time. This in turn will result in improved disruption management with a significant transformation of workforce operations.

Ramp Services

There are many procedures to be carried out by various teams of employees to perform the ramp services. Kenya Airways will seek ways to enhance operations that facilitate the relevant and latest information to be shared between operational systems and field workers on the apron. It will enable proper organisation of work and shortening ram services lead-times.

Facilities maintenance

Initial diagnosis of infrastructure state at JKIA clearly show a serious component of deferred maintenance in airport's facilities. There is a range of reasons for this situation including budget constraints, not proper allocation of funds as well as inefficient internal procedures including procurement of materials and services.

Kenya Airways strategy is to ensure deferred maintenance is resolved in the first five years with a seamless maintenance program.

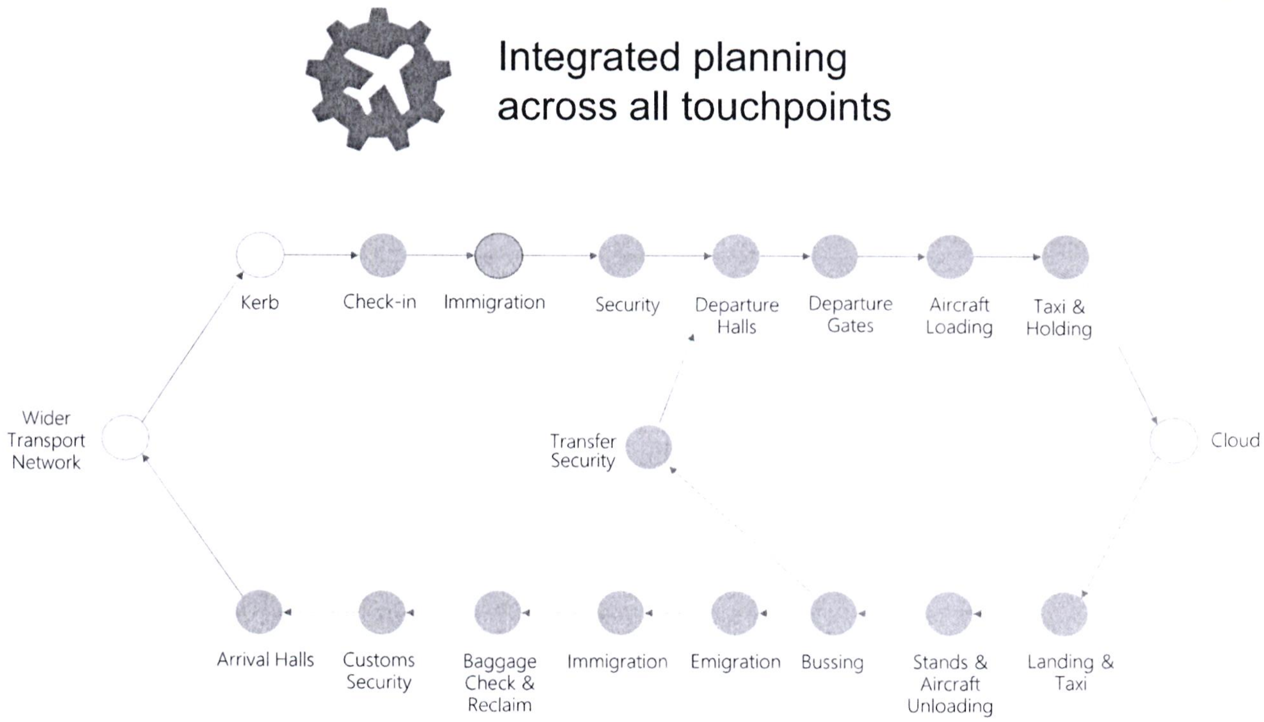
Passengers

The overall strategy for Kenya Airways as a part of transformation of JKIA is to improve all touch-points with passengers from check-in, through security and immigration as well as baggage handling and on-boarding the aircraft.

Some of these improvements do not require significant CAPEX investments and base mainly on proper organisation and management of the whole process. Others such as expand passenger-related areas and facilities to propose a variety of services in particular in a duty free zone may require reconfiguration. This plan will assume also upgrading current shops, cafes and restaurants to accommodate passengers in their transit time.

All touch-points determining overall experience of the passenger have been presented on the graph below.

Figure 24: Airport operations.



Source: EY Analysis

6.4.2 Improvement of Airport Facilities

Proposed Investment Strategy has been defined to describe details of airport infrastructure improvements under the Concession Agreement

An airport terminal is at the centre of airport operations and is usually the first interface for overall interaction with customers and, therefore, airport's image is critically important. Kenya Airways is therefore committed to rolling out the required investment upgrades, particularly for Terminals 1 A-D to enhance customer experience. This expansion will increase the capacity of the airport by three million passengers with an additional fourteen permanent gates upon completion.

Kenya Airways will review existing reports and will conduct an independent study to ascertain whether expansion of the current runway shall increase the overall airport capacity without the need to build a new runway. It is fundamental to increase the ATM so as to achieve the projections defined in this Proposal.

Rehabilitation of the taxiways to increase the capacity of the runway and reduce the occupancy time of aircrafts will become the key priority. The parking aprons will also need to be expanded to increase the number of aircrafts that can be parked at a time.

Other important facilities that will need improvement and increase in capacity are:

- General technical state of the infrastructure ensuring that annual maintenance for all facilities is followed to reduce wear and tear;

- Upgrade the vehicle parking and automatic parking payment system.

6.4.3 Use of digital technologies to maximise the Airport Operations

Kenya Airways plans to implement operational optimization and implementation of new digital technologies to support efficient JKIA operations.

Kenya Airways is continuously exploring ways to use technology to support airline business and recently introduced mobile based technologies to support ticketing and check-in systems. It will bring this experience to bear in addressing both short-term needs of reducing costs and maximizing service availability and long-term goals like improving workforce productivity, etc.

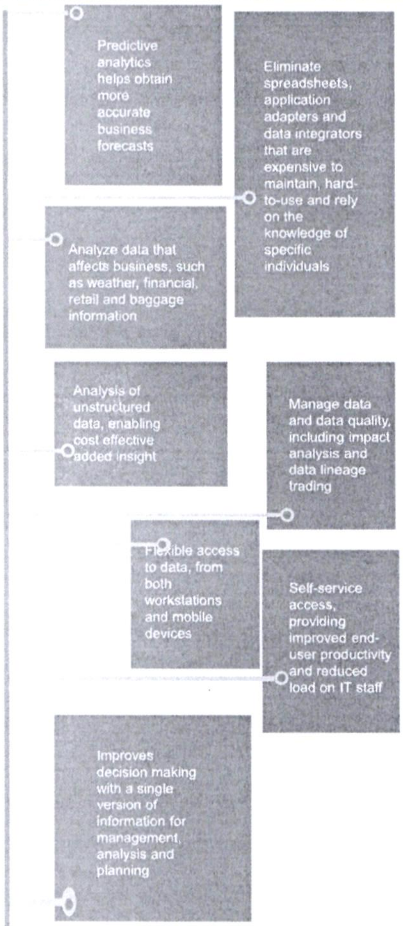
We understand that KAA uses SAP as its core ERP software. We believe there are however more opportunities for use of IT infrastructure for enabling and facilitating business performance. Optimizing operational efficiency, generating new revenue opportunities and pursuing passenger loyalty will bring in the future growth of JKIA. Digitalization will be the key factor to succeed in all these areas. Kenya Airways will look for ways of having real-time information, deep cross-functional collaboration and airport-wide process integration.

The IT operations closely aligned with airports' development strategies can expand efficiency, enhance passenger experience and consequently generate more revenue across the sector.

Sharing information between airlines and airport is critical to enable smooth operations. Kenya Airways will seek to ensure that all airlines operating from JKIA adopt interconnected Departure Control System (DCS) and Passenger Service System (PSS) technology and share critical passenger information with the airport. This will eliminate silos of standalone automation with integrated systems that enable exchange of information between the airline, airport ground handlers and customers. The technologies that can be implemented include Near Field Communication (NFC) and Radio Frequency identification, RFID tags, Advance Passenger Information System (APIS). All of them may be used to streamline and manage efficiently immigrations, customs and security.

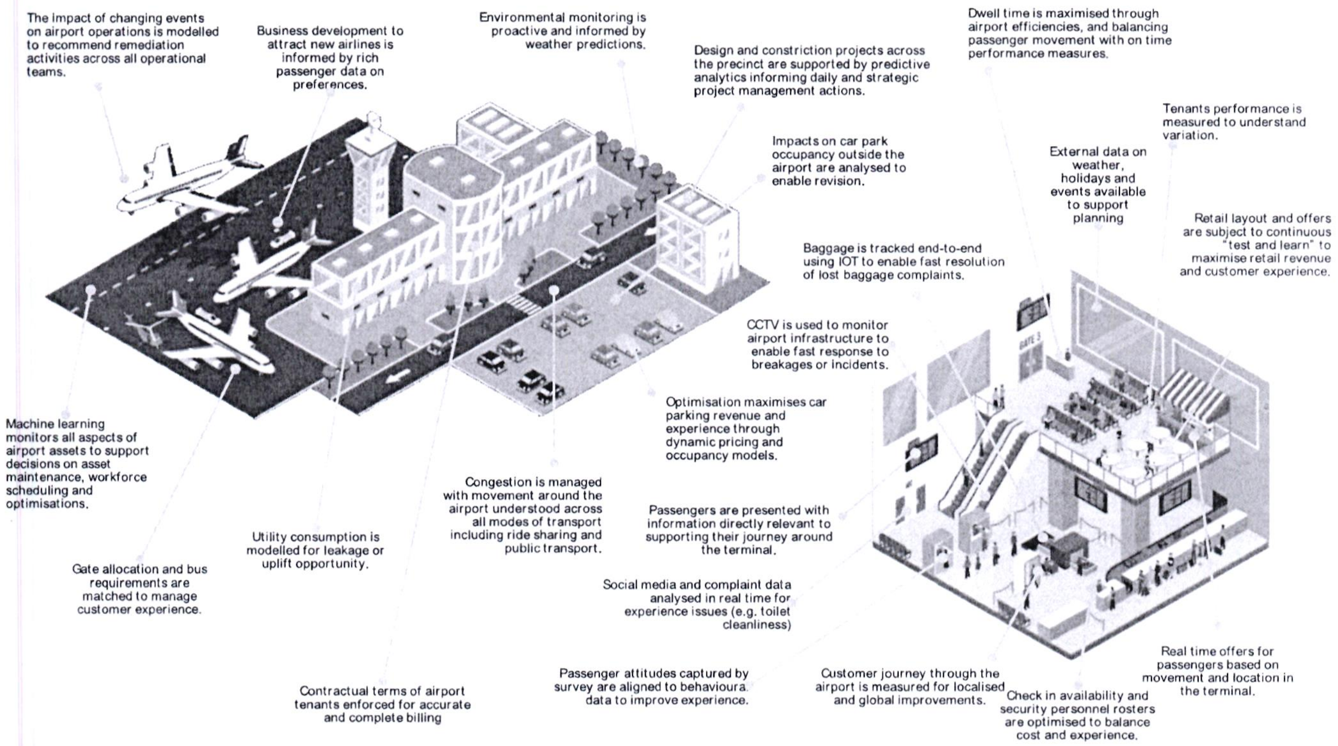
The diagram below shows how Kenya Airways will seek to utilise information technology to optimise the operations of JKIA.

Figure 25: How use of digital technologies may benefit JKIA.



Source: EY Analysis

Figure 26: Using technology to improve operations.



Source: EY Analysis

6.4.4 Improvement of Airport Management Services

Capabilities Growth Plan has been defined to strengthen current resources and bring in new skills from various sources of intellectual capital

One of the crucial elements in the efficient management of the airport relies on non-aeronautical services that are provided internally or in the form of cooperation with specialised companies. Proper performance of these services has equally significant impact on overall functioning of the airport as they affect airlines and most of all passengers.

These services can be broadly classified into three groups:

- **Essential services**: These include maintenance of airport infrastructure including runways, terminals, hangars and buildings, as well as telecommunication, technology support, security, air traffic control systems, fire prevention, ambulance services and maintenance repairs of the aircrafts.

- **Traffic handling services:** These include loading and unloading of baggage/cargo, movement of baggage through conveyor belts and other services required for passenger's luggage and cargo handling.

- **Commercial activities:** These include retailing and catering services such as duty-free shops, restaurants and bars, car parking spaces, offices of travel agencies and airlines, tourist information centres and foreign currency exchange facility.

Kenya Airways will roll out an implementation strategy that will ensure that all of the above functions are efficiently coordinated, ensuring that JKIA airport meets international standards.

In particular Kenya Airways intends to analyse all existing contracts at the Due Diligence stage to fully understand in what ways all of the above non-aeronautical services are managed. It will lead to the implementation of one of the two options per each area:

Insourcing of selected services could increase revenue and profits from selected operations of the airport such as fuel distribution, catering, ground handling etc.

- Services to be further provided by external companies. This strategy may be introduced especially at the beginning of the project implementation due to the need for mitigating any risks of disrupting airport operations. This however may assume potential rationalisation of a number of service providers to increase and unify quality and efficiency of operations.

- Services to be in-sourced as separate profit centres. Maximisation of revenues and profits from airport operations as well as unification of quality of service may require building of internal capabilities and taking over selected areas especially in the medium to long-term. This strategy assumes creating partnerships with external companies to revert the revenue streams from concession to profit-sharing.

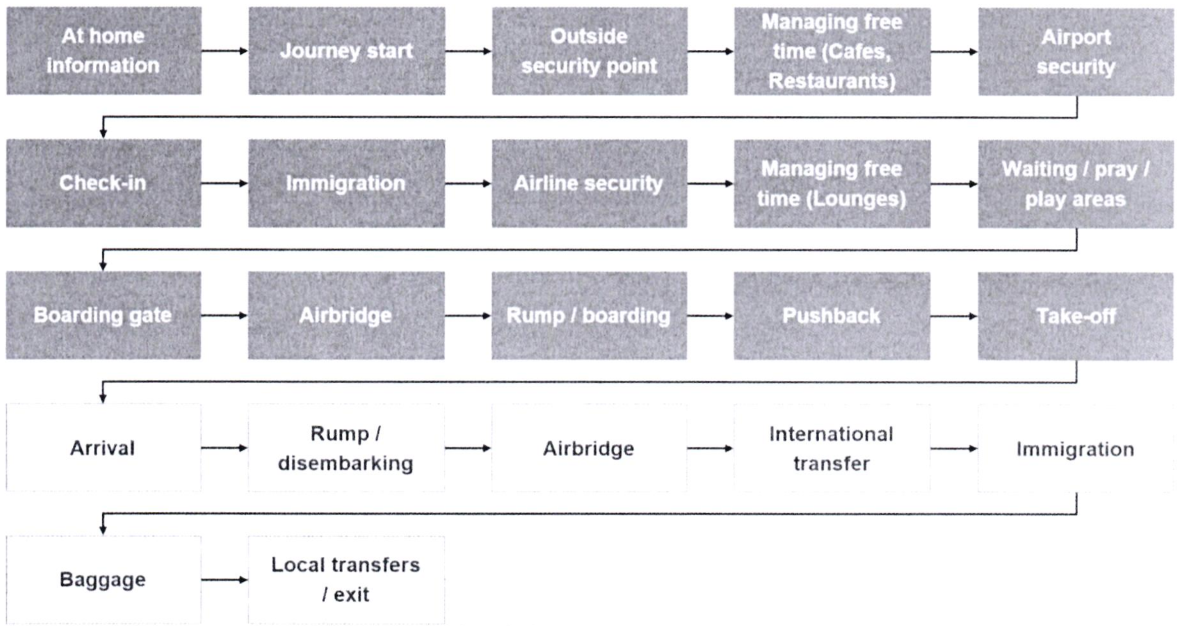
6.4.5 Efficiency of Operations and Customer Satisfaction

Kenya Airways understands the local conditions and has significant interest in the long-term success and high-quality of service provided by JKIA as its hub. The commitment of Kenya Airways to offer safe, secure, efficient operations of the airport while providing passengers with outstanding experience will be one of the primary objectives.

At any best-in-class international airport, the passengers are at the centre of interest and most of the facilities are designed to attract their attention and make their stay at the airport premises pleasant and comfortable. That is especially applicable to passengers transiting to other airports and subsequently spending number of hours at JKIA.

All touch-points determining overall experience of the passenger have been presented in the graph below.

Figure 27: Looking at all aspects of passengers' satisfaction.



Source: EY analysis

Kenya Airways as a part of the transformation of JKIA intends therefore to undertake the following, exemplary actions:

- Improve all touch-points with passengers from check-in, through security and immigration, to baggage handling and on-boarding the aircraft. Some of these improvements do not require significant CAPEX investments and depend mainly on proper organisation and management of the entire process.

- Expand passenger-related areas and facilities to provide a variety of services, in particular in the duty free zone. This plan will also assume upgrading current shops, cafes and restaurants to make passengers' waiting time more comfortable.

6.5 Governance Strategy

6.5.1 Governance Model Assessment Criteria

Governance model of the concession and SPV

will become a key for successful realisation of project objectives

Proper governance and management structure will become the key success factor of this proposed JKIA & Kenya Airways Pubic Private Partnership. The organisational setup chosen to accommodate this venture will impact key stakeholders, including the Government of Kenya, both Kenya Airport Authority and Kenya Airways, employees as well as all partners dealing with the airport operations. A significant part of conceptual work has been therefore focused on development of the most suitable solution for this particular transaction. The following criteria have been taken into consideration:

- To develop organisational setup that fulfils PPP criteria;

- To propose the optimal solution for separating JKIA from other airports and airstrips that will continue being under the management of KAA;

- To establish setup, initiate, coordinate and finalise necessary

CAPEX investments including obtaining access to external financing;

- To ensure coordination and synergy between JKIA and Kenya Airways;
- To implement a solution optimal to handle the employees-related constraints and mitigate disruption risks;
- To establish a concept mitigating major legal risks including existing contracts with companies operating in JKIA as well as optimising taxation.

6.5.2 Description of the Proposed SPV Model

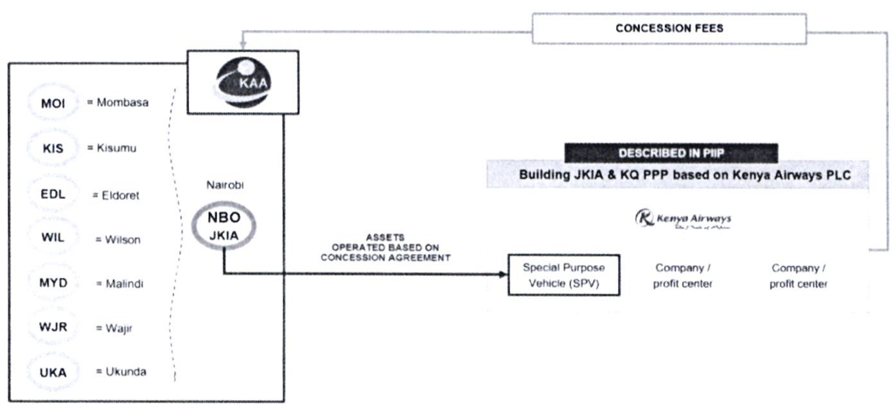
SPV

is a proposed legal entity to facilitate the recommended concession-based PPP

Based on the above considerations it has been proposed in this Privately Initiated Investment Proposal to introduce a Special Purpose Vehicle (SPV) model to facilitate this Public Private Partnership in relation to JKIA.

The proposed legal entity shall be a private limited liability company (LLC) established in accordance with the provisions of the Companies Act, 2015. The SPV shall be the Concessionaire responsible for all operations in JKIA. High-level proposed governance structure has been presented on graph below:

Figure 28: High-level governance structure.



Source: Kenya Airways analysis.

The proposed governance setup assumes the following factors:

- SPV as the Concessionaire will be held responsible for all operations at JKIA, which are not restricted to Kenya Civil Aviation Authority or any other government agencies;
- all aviation-related assets agreed with Kenya Airports Authority in the Concession Agreement shall be taken over by the SPV;
- SPV will fully control all of the aeronautical, non-aeronautical and other revenues and will be held responsible for all JKIA-related costs;

- SPV will operationally manage JKIA-related cash-flow;
- SPV will initiate and coordinate all CAPEX investments in JKIA infrastructure, as agreed in the Concession Agreement.

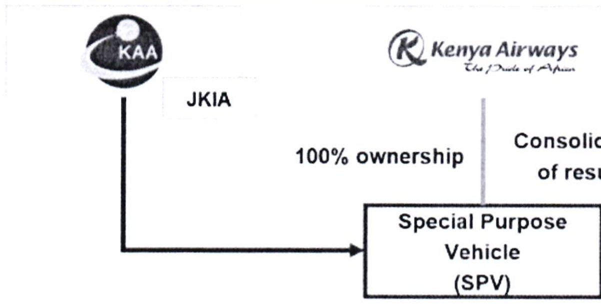
6.5.3 SPV Shareholding Structure

100%
of shares in SPV will be owned by Kenya Airways
subject to minor changes in case external investor is required to co-finance CAPEX investments. However, Kenya Airways will remain in control of the SPV over the whole period of the concession

It has been assumed that Kenya Airways shall hold 100% of the shares in the SPV subject to potential minor changes in the future as described below.

High-level shareholding structure has been presented on graph below:

Figure 29: Proposed SPV Shareholding Structure.



Source: Kenya Airways analysis.

Potential changes in SPV Shareholding structure may happen in the future in case it is justified to introduce strategic third-party investors.

Such investors could include:

- International airports interested in investing in new ventures and transferring operating knowledge;
- International airlines building their growth capabilities in Africa;
- Finance institutions willing to finance Capex investments in JKIA.

The above options remain however a theoretical option at this stage and will depend on the selected range of Capex investments in JKIA infrastructure. The financial model of SPV has been designed the way to afford assumed plans with its own resources.

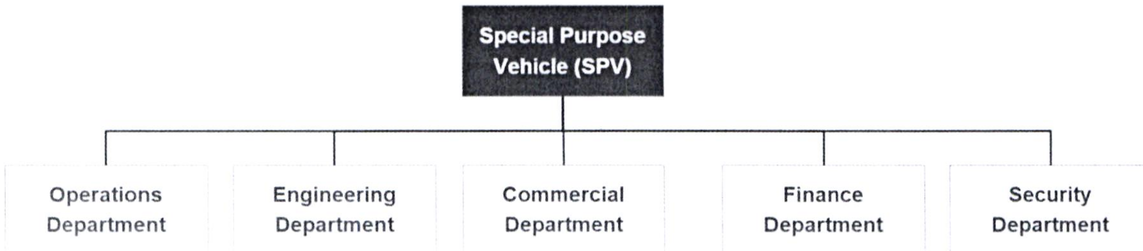
6.5.4 SPV Governance Structure

When considering the options available for operating and managing JKIA, the SPV favours options that allow the airport flexibility in conducting business and to ensure that the interests of the airport users are protected by the application of sound economic principles to the airport's operations.

The SPV proposes an organisation structure that will support increasing customer needs (passengers, airlines, Government and other clients) as well as promote efficiency and effectiveness.

Basing on external benchmarking the following general org structure has been proposed subject to modifications after the Due Diligence of Kenya Airports Authority.

Figure 30: Initial SPV organisational structure.



Source: Kenya Airways analysis.

Proposed departments in SPV org structure shall have the following high-level roles & responsibilities:

This preliminary org structure will be filled with employees once Due Diligence phase results in full knowledge about current JKIA operations

- Operations Department. This unit will be responsible for everyday operations in the airport including ground operations and terminals. Internal organisation of this department could assume split between each terminal to create clear accountability of management for efficient operations in respective areas of the airport. This department will accommodate most of SPV employees working in 24/7 mode.
- Engineering Department. Major objective of employees working in this department will be related to technical maintenance of the airport infrastructure in a shape ensuring undisrupted operations. In this way, Engineering Department will be serving all areas of airport operations both on the ground and in respective terminals. This unit shall be divided according to specificity of tasks to be conducted e.g. mechanical, electrical, ground services, information systems and technology.
- Commercial Department. Although the characteristic of airport business significantly limits traditional commercial activities, high focus on boosting revenues shall be coordinated by the dedicated group of employees. Therefore commercial department shall deal with serving all airlines as well as all other business partners operating in the airport or procuring services from JKIA (e.g. advertising, buildings rental etc.).
- Finance Department. Importance of finance unit will not be limited to traditional account and book-keeping. Provided that JKIA will need to go through significant revenue and costs transformation, it is necessary to build a strong controlling function to support management decisions with proper set of data and information.

- Security Department. Last, but not least the security unit will be held responsible for safety of operations in the airport as well as passengers travelling through JKIA. This department will ensure all activities are performed according to procedures including staff-related regulations.

The SPV will be driven by a well-defined and documented standard roles. Teams are to be clustered by process and management function provided with end to end ownership of the performance management cycle.

The proposed organisation structure rests on the following key roles:

- **Chief Executive Officer (CEO)**

The CEO will be accountable in front of the Board of Directors of the SPV and will be responsible for providing overall strategic leadership to the organisation. The CEO will plan, direct, coordinate and control all airport operations and will be responsible for overall performance of JKIA.

- **Chief Operations Officer (COO)**

Chief Operations Officer (COO) will be responsible for supervising airport operations and ensuring seamless coordination between all the functions at JKIA. These will include overseeing the planning and execution of security protocols / strategy, compliance and enforcement of aviation rules and regulations, management of human resources, staffing and administrative functions. This role will have the sole responsibility of ensuring that all airport functions are properly running and are well coordinated.

Top management of the SPV

will be constituted based on current JKIA managers to be supplemented with recruited external airport professionals

- **Chief Commercial Officer (CCO)**

Chief Commercial Officer (CCO) will oversee the day-to-day sales and business development activities including product development, identifying new market opportunities, determining the optimal pricing for services to balance profit with customer experience and directing marketing operations at JKIA. He will be specifically responsible for ensuring that targets for Aeronautical revenues and Non-Aeronautical Revenues (Duty Free, Cargo Revenues, Ground handling, Fuel revenues, Advertising, Rental income, Retail income etc) are achieved.

- **Infrastructure and Maintenance Manager**

This Infrastructure and Maintenance Manager will provide leadership to the engineering team in ensuring sound operation of the infrastructure through planning, design, construction and maintenance of all infrastructure at JKIA. This position will have the overall responsibility for efficient operations of the assets, optimising the use of the core infrastructure to meet the current and future forecasted aviation demand and providing technical advice to the leadership in relation to maintenance of all roads, runways, taxiways and aprons including airport buildings / terminals.

6.5.5 Human Resources: Utilisation of Existing Staff From JKIA

6.5.5.1 General overview

Human Resource Plan considering available options for JKIA staff:

- Secondment;
- Transfer;
- Redundancy.

Under the proposed PIIP, it is envisaged that KAA will second the eligible JKIA employees to the SPV, under the current terms and conditions. This will not only ensure continued institutional memory, but also the necessary expertise to operate and manage the airport from day one.

Kenya Airways transition of the staff to the SPV will fill in any capacity gaps that may be identified during a capacity assessment review.

The Public Service Commission Act, the PPP Act and labour laws of Kenya allow three main options:

- Secondment;
- Transfer; and
- Redundancy as a last resort.

The first option is secondment. Secondment is a process by which employees from one organisation are transferred temporarily to another organisation, to provide skills that are needed by the temporary employer. The process of secondment is effected by the current employer (KAA) and the temporary employer (SPV), entering into a contractual agreement, with regard to the hosting of the seconded employees during the relevant period. At the end of the secondment, the seconded employees return to KAA, unless otherwise agreed between the relevant employee, KAA and SPV.

The second option is for the existing employees at JKIA to agree to be transferred to the SPV without KAA making them redundant. This would require a tripartite agreement to be entered into between KAA, SPV and each employee consenting to the transfer of his/her employment on the same terms to SPV. The relevant union's consent would also be required before the transfers are effected.

The third option, which is not the recommended option in this PIIP. Redundancy option would require KAA to make all its JKIA employees redundant at the outset. SPV would then have the option of recruiting the former KAA employees under fresh contracts of employment with SPV.

Below is an outline of the key issues that will need to be considered in relation to the manner in which the transition of KAA employees should be dealt with.

1st Option is related to secondment of JKIA employees to the SPV

.5.2 Secondment of eligible JKIA employees to the SPV

Secondment of employees is referred to in the Public Private Partnership Act, No. 15 of 2013 (the **PPP Act**) and the Public Service Commission Act, 2017 (**PSC Act**). In addition, there are references to this process in the Code of Regulations of Civil Service, 2006 (**2006 Code**) and the Human Resource Policies and Procedures Manual for the Public Service, 2016 (the **2016 HR Manual**).

However, the secondment provisions contained in these documents are inconsistent. Our advice therefore is that KAA and the SPV should adhere to the provisions of the PPP Act and the PSC Act, but the provisions of the 2006 Code and the 2016 HR Manual will also need to be taken into account because KAA employees can point to those provisions as being part of their employment contracts. We assume that KAA employees are in the public service and therefore that the PSC Act, the 2006 Code and the 2016 HR Manual apply.

Secondment of employees to the SPV

must factor in both Kenyan labour legal acts as well as internal KAA regulations. SPV will fulfil all obligations and propose JKIA employees fair treatment in this transition process

Key issues for consideration

- **What constitutes secondment**: The PSC Act is the only relevant law that offers a definition of secondment. Secondment is defined as an arrangement in which **a pensionable employee is temporarily released from an organisation within the public service to another organisation which does not have reciprocal pension arrangements, to provide critical skills or acquire new skills while preserving the pension** rights of the employee. The PSC Act, therefore, contemplates that the releasing authority should maintain the pensionable status of an employee who has been released to an organisation which does not have such a benefit in place.

- **Consent**: KAA requires the consent of the Public Service Commission (PSC) in writing to second its employees to the SPV. The advice of the State Corporations Advisory Committee (**SCAC**) would not need to be sought in relation to the transfer of employees to the SPV.

  However, the PSC cannot approve secondment of an employee if he/she has not served in the public service for at least 3 consecutive years. Those employees would not be eligible for secondment under the PSC Act. The PSC Act, the 2006 Code and the 2016 HR Manual provide that only pensionable employees can be seconded, but there is no such stipulation under the PPP Act.

  Under the PPP Act the seconded employees are deemed to be employees of the SPV and have to be engaged on the same or improved terms of service.

- **Secondment period:** The secondment period under the 2006 Code is 3 years without renewal. However, the 2016 HR Manual provides that it cannot exceed 3 years, but is renewable once. The PSC Act does not restrict the period of the secondment, but requires a public officer to retire from public service if he has been on secondment for 6 consecutive years.

- **Fulfilment of Secondment conditions:** The PSC Act sets out certain conditions for secondment and provides that it will not be approved by the Commission if:

  (a) the public officer to be seconded has not served in the public service for at least 3 consecutive years after the initial appointment;

  (b) the organization to which the public officer is to be seconded presents a conflict of interest with the public office held by the public officer or the core functions of the public body in which the public officer is employed;

(c) the public officer may be exposed to undesirable experience in view of the core functions of the organization to which the public officer is to be seconded; and

(d) the secondment, if permitted, would bring the public service or the public officer into disrepute.

These conditions must therefore be met in order for the secondments to be approved.

- **SPV may take on all the responsibilities of KAA:** The PSC Act provides that unless there is an agreement to the contrary, the organization to which a public officer is seconded shall bear all the costs, remuneration, allowances and other benefits due to the officer during the period of secondment. The wording suggests that there can be some other arrangement on what benefits the SPV will be responsible for paying. This is critical to the transaction given the generous benefits that public officers are entitled to.

- **Pension Contributions:** The 2006 Code provides that the entity to which the public officers are seconded to is required to make pension contributions at the rate of 31% of an officer's basic salary during the term of the secondment taking into account annual increments to which the employees are entitled to. However, the 2016 HR Manual which was supposed to replace the 2006 Code, refers to the seconding entity paying pension "at the prevailing rate" to maintain a public officer's pensionable status and provides that the Government will contribute 15% of an employee's monthly basic salary drawn from the Consolidated Fund towards the employee pension while the employee will contribute 7.5% of his monthly basic salary. What we need clarity on is whether employees employed whilst the 2006 Code was operational can argue that the liability to pay 31% contribution cannot be reduced in this way. In addition, details of the pension contributions in respect of the KAA employees is necessary to obtain as this can significantly increase the cost to SPV. However, since the PSC Act allows for an agreement to be reached between the parties as to whether all costs, remuneration, allowances and other benefits due to a seconded officer shall be paid by the organization to which the officer is seconded, KAA and SPV can agree on which costs each should bear. Further, since the PSC Act contemplates secondment to take place where an employee is released to an organisation with no reciprocal pension arrangements, the responsibility of paying pension dues will remain with KAA.

- During the secondment period, if SPV decides not to retain some of the employees seconded to it, the mechanism to return them to KAA needs to be agreed upfront. Similarly, the mechanism for employing the seconded employees that SPV wishes to retain must also be agreed upfront.

Human Resource Plan
assumes selection of the most viable employees-related solution mitigating identified labor risks

Key Risks

- It is essential that SPV factors in all the employment costs that it will be responsible for paying as otherwise the law deems that on secondment, all employee benefits are taken up by the SPV.

- Given that hidden employment costs can significantly impact the financial deal, the costs that SPV will be responsible for need to be documented in the agreement with the PSC and that it is expressly agreed that any other costs will be the responsibility of KAA.

- The agreement between the parties and the PSC in relation to what is payable by SPV and what will remain a liability for KAA (e.g. historic costs like accrued leave days and pension obligations) will likely need approval by the unions in respect of union employees without which law suits are likely to ensue.

6.5.5.3 Transfer of Employees

Key issues for consideration

2nd Option is the transfer of JKIA employees to the SPV

- The terms of employment offered by the SPV would have to be similar to or better than the terms of employment with KAA;

- The transfers can only be undertaken with the consent of each individual employee. In the event that any of the employees do not consent to the transfer, they may have to be declared redundant if they cannot be deployed elsewhere by KAA;

- For the employees who are unionized, the union should be engaged and informed about the intended transfers and their consent to the same should be obtained.

Key risks:

- SPV will not be able to match the entitlements of the employees under their existing contracts with KAA and therefore will not be able to fulfil the requirement to match or improve on their existing terms of employment.

- Negotiation with the union may prolong the process as their approval is necessary;

- Employees who do not consent to the transfers may have to be declared redundant by KAA and paid their termination dues which is costly;

- The SPV and KAA would have to develop a clear criteria of selecting employees that meets the Constitutional principles of fair process and non-discrimination.

6.5.5.4 Redundancies

Key issues for consideration

3rd Option considered as least favourable is the redundancy process which is not recommended

- The transfer of a business to another entity is a redundancy situation as there are no automatic provisions relating to transfer of employment contracts. In determining the employees to be declared redundant, KAA will be required to consider seniority in time, skill, ability and reliability of the employees. It is also important that KAA is able to demonstrate that it has applied objective criteria in the selection of employees to be declared redundant. So for example, deciding that JKIA employees only are subject to redundancy is not sufficient and KAA will need to consider if other employees at other airports should be made redundant instead and certain JKIA employees be moved to other stations.

- The Employment Act gives a non-exhaustive list of criteria that an employer must consider in the selection process including: the last in first out principle (LIFO), disciplinary issues which have not been resolved with warnings documented in the employee's file; performance failures; skills and required capabilities for positions.

- The following process must be followed in a redundancy (these are the statutory minimum provisions which may be enhanced by contract or under a CBA): (a) provision of 1 month's notice to the relevant union for unionised employees, (b) provision of at least 1 month's notice to the employees and the labour office of the proposed redundancy (c) provision of 1 month's termination notice to the employees on expiry of the one 1 month notice period; (d) payment of termination dues to the employees including payment for: salary up to the last day of work; leave earned but not taken; not less than 1 month's notice or 1 month's wages in lieu of notice; severance pay at the rate of not less than 15 days' pay for each completed year of service.

- Under the PIIP, it is proposed that the selected employees will be seconded to the SPV for a maximum of 3 years after which they would return to their employment with KAA. It is after the secondment period that redundancy may be considered if the law is not amended. In the event this happens, KAA as the legal employer, would be responsible for undertaking any redundancy in respect of the returning employees.

Key risks

Although assurances have been given that there will be no job losses it is necessary to understand the relevant risks if redundancies will be considered;

- The employees may institute claims of unfair termination of employment on account of redundancy;

- The employees may seek an injunction from the court to stop KAA from proceeding with the transaction;

- Carrying out redundancy is costly.

6.5.6 Information Technology (IT)

Information Technology Strategy

will be at the centre of JKIA transformation into well-managed international hub. Moreover, both the airport and Kenya Airways will benefit from joint operations

Kenya Airports Authority and Kenya Airways will realize multiple IT related synergies as a result of the Concession, spanning across various segments of the information systems portfolio.

Typically, there are several distinct areas that are tightly supported by technology within airlines and/or airports industry:

- Operation management (inclusive of flights and schedule planning);

- Maintenance, repair and operations;

- Business Support Services;

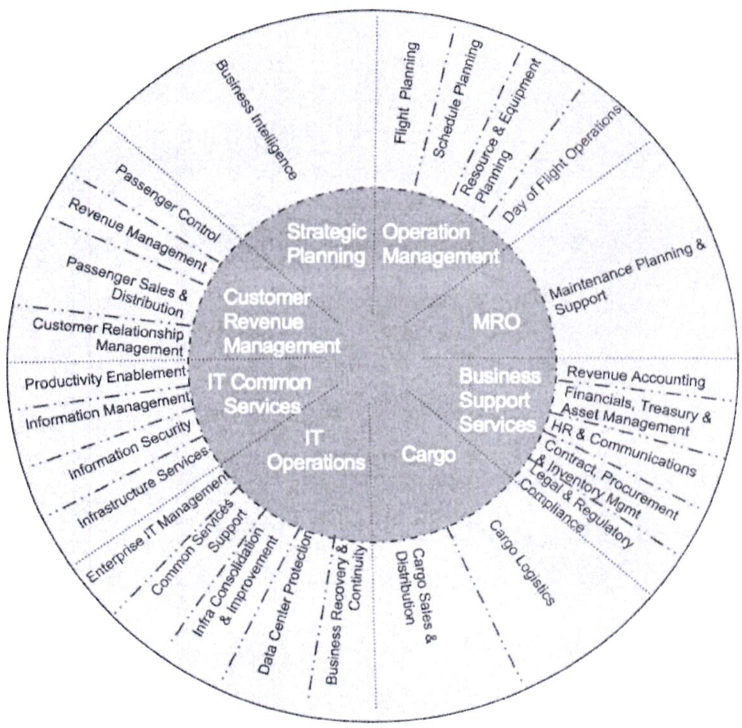
- Cargo logistics, sales and distribution;

- IT operations and common services;
- Customer management;
- Strategy planning;
- Airport operations.

Further, a yet non-exhaustive breakdown is depicted in the graph presented below.

IT Investment Strategy will prioritize CAPEX allocated to upgrades of existing systems or implementation of new, best-in-class solutions

Figure 31: Example of a typical airline IT portfolio.



Source: EY analysis

First and foremost, both entities will benefit from the possibility of utilization of common IT assets for the part of technology that is directly related to the Concession and will be subject of the agreement. That may include technologies such as network, data centre, servers and storage, database, middleware and applications.

Total Cost of Ownership will drastically drop due to the possibility of both platforms' consolidation on joint infrastructure as well as usage of shared resources in terms of operations and human labour. Such move will also lead to better commercial conditions when entering new partnerships with technology suppliers, due to economies of scale.

Business Support Services will be centralized on a common platform, which will bring further cost efficiencies in the area of various functions: accounting, financials, human resources, procurement, supply chain etc.

IT

is one the biggest synergy areas within proposed PPP concept affecting both quality of service

Having one platform will ease the process of IT management and will enable SPV to introduce a transparent governance framework to increase the level of compliance within the organization.

Consecutively, relevant parts of IT departments will merge resulting in a unique industry knowledge transfer. Although members of the departments have similar experience in terms of technology that they work with, their understanding of a business reality is complementary.

Exchange of past experiences may result in multiple innovative projects, such as:

- Improved coordination of flights and schedule planning;
- Enhanced passenger experience pre-flight and at the airport itself;
- Holistic passenger relationship management.

Ability to collect passengers' information from multiple sources (such as Wi-Fi, beacons or POS at the counters, in addition to digital channels and agencies) also opens up an opportunity for new revenue streams. That is possible thanks to better understanding of the customers' decision making processes and their buying behaviours.

By building a central data repositories, such as a full-fledged data warehouse and big data lake fuelled by non-structured data from social media and Internet, SPV can replace scattered view of its' customers with a holistic one. This is a significant step towards building a comprehensive digital strategy and improving planning at a strategic level.

Potential outcomes of such investment include, but are not limited to:

- Increase in online sales through addressing very specific customer needs, voiced via social channels;
- Profiling of customers to propose products suitable for their needs.

6.5.7 Benchmarking of JKIA Operations

JKIA is subjected to both internal and external constraints that depend on various factors like aviation activities, commercial activities, site constraints, governance, ownership structure, etc., Hence, no single set of cost performance indicators are applicable to all airports rather individual airport assesses its performance based on indicators which it finds to be most useful. Even among airports with similar characteristics, airport managers have differing views on the most important indicators for the operations.

Key Performance Indicators

must be put in place to equip KAA with tools for verification of Concessionaire's performance in

In our initial assessment we have looked at three broad parameters for benchmarking of JKIA operations:

a) **Employee Productivity Measures:** These measures will provide an indication of how effectively the airport uses its staff. The measures covered under this category include:

- Number of passengers per employee;
- Number of aircraft movements per employee;
- Number of Work Load Units (WLU) per employee.

b) Capital Productivity Measures: These measures provide an indication of how effectively the airport uses its capital assets. The measures covered under this category include:

- Number of passengers per gate;
- Number of passengers per square meter of terminal space;
- Number of aircraft movements per runway.

c) Airport Cost Performance: These measures track the airport outcomes on a cost basis. The measure covered under this category include:

- Labour cost share;
- Labour cost per passenger;
- Labour cost per aircraft movement;
- Labour cost per work load units;
- Operating cost per passenger;
- Operating cost per aircraft movement;
- Operating cost per work load units;
- Total cost per passenger;
- Total cost per aircraft movement.

KPIs
will base on projected traffic growth in the airport. They will also include performance-based metrics in relation to revenue, costs and productivity of staff

The organisational structure will have few layers and broader spans of control, which will encourage quicker decision making with a shift of accountability downward throughout the organization. In addition, less layers allow upper management closer alignment to the needs of JKIA operation hence increase efficiency. However, it is important to note that it the structure of the SPV will not be too flat, nor roles too broadly spanned.

Principles that will be used to establish the organisational structure are shown below:

Table 11: Principles on organisational structures.

Strategy and business outcomes	☑ The design enables delivery of Airport's Vision, Mission and Strategy ☑ The business case for the design enables delivery of stated business performance goals
Structure	☑ The structure is in line with the Airport's guidance on appropriate span of control and managerial layering ☑ Where there are matrix reporting relationships, the structure includes clear matrix reporting lines and accountabilities ☑ The design enables appropriate communication lines and networks to prevent siloed working
Roles	☑ Roles and responsibilities do not create overlap and duplication of effort
Capability	☑ The requisite skills and competencies required to fill the roles have been identified ☑ If not available, there is a clear strategy to build/acquire new capabilities

Resources	☑ Resource requirements have been appropriately sized ☑ Employee relations considerations have been factored into the design
Processes	☑ The design drives more efficient and streamlined business / operational processes and workflows
Governance	☑ There is a clear chain of command (or influence) and well defined authority for decision making ☑ There is a well-defined budgeting process with appropriate approval levels ☑ Compliance considerations have been factored into the design
Talent	☑ Proposed roles are aligned with Airport's Level Descriptors, Performance for Growth and Talent Management ☑ Airport's Leadership Qualities have been factored into capability requirements ☑ Proposed roles are aligned with Compensation and Benefits policies
Systems	☑ The system and planning implications on design have been identified (aligned to Airport information system strategy) and incorporated into the business case (where applicable)
Location	☑ The infrastructure and real estate (location of the new terminal) implications of the proposed design have been assessed and incorporated into the business case (where applicable)
Performance	☑ The new Organisation promotes Airport's Performance for Growth and Leadership Qualities
Culture	☑ There is a clear articulation of what the new way of working will be in line with Airport's culture

6.5.8 The Future of Airport Management

The future airports as part of the civil aviation system is certainly "an open book, with no foreseeable conclusion". The future outlook of the airport will focus on airport management issues in two ways.

1. **Short Term Future Issues**
2. **Long Term Issues**

The SPV that will be managing the operations of JKIA will use this approach to manage operations and to deal with disruptions in the aviation sector.

1. Short term future issues.

- **Enhanced safety**. Airport operating under Safety Management System (SMS) and Enhancement of airfield infrastructure. Modification of runway safety areas.

Innovative solutions

can be immediately implemented in JKIA rather than slowly adopting practices used in the industry.

JKIA can benchmark with the best airports in the world from day one.

- **Environmental Sustainability.** Minimize the use of fuels and conserve energy. Green airport terminals. Conserving water & preserving water quality. Recycle material, reduce the noise impact of airport operations

- **Compliance issues.**
- **Financial Flexibility.**

2. Long term future issues.

- **Next Generation Implementation**. Revolutionise air traffic management. Newly designed instrument approach and departure procedures.

- **Globalisation**. Managing airports internationally, includes longer runways, larger passenger facilities, enhanced security & customs process. Supersonic/ hypersonic air travel, low-earth orbit space travel. Creating urban development. Take on greater roles in the land-use planning and economic development.
- **Airport City.**
- **Commercial space transportation.**

7. ENVIRONMENTAL AND SOCIAL ISSUES

7.1 Introduction

The conclusion of this chapter is subject to the joint investment project plan. The joint investment plan will determine what approvals shall be required for any planned projects.

With regards to the ongoing projects, the full EIA diligence will be conducted after the negotiations phase, when Kenya Airways has been granted formal access to the documents on the existing projects.

7.2 Policy, Legal and Regulatory Framework

Environmental Regulations

- Aviation Policy
- Environmental Policy
- NEMA Act
- Environmental Regulations
- Sectoral Legislations on environmental matters
- International Treaties and Conventions on environment

There are a number of policies and other legal and regulatory frameworks that concern aviation in Kenya. This includes:

- Aviation Policy: KAA was established as an Act of Parliament. The Kenya Airports Authority Act Cap 395 provides the powers and functions of the authority.
- The Kenya Government Environmental policy: Aims at integrating environmental aspects into all national development plans.
- The Environmental Management and Co-ordination Act of 1999 provided the establishment of National Environmental Management Authority (NEMA) that has statutory mandate to coordinate all environmental activities in the country.
- The Environmental (Impact Assessment and Audit) Regulations 2003 provides basis for procedures for carrying out Environmental Impact assessments (EIAs) and Environmental Audits.
- Relevant Sectoral Legislations on environmental matters influencing various aspects and activities of the project include:
    - The Civil Aviation Act, Cap 394
    - Air Passengers Tax Act, Cap 475
    - Electricity Power Act No. 11 of 1997
    - Building code (1907)
    - Petroleum Act Cap 116 (rev 1972)
    - Water Act (2002) Cap 272
    - Public Health Act Cap 424 (rev 1986)
    - Local Government Act (rev. 1986) Cap 265
    - Local Government Regulations (1963) Cap 265
    - Workmen's Compensation Act (rev. 1988) Cap 254
    - Employment Act & Other labour related laws
    - Use of Poisonous Substance Act, Cap 247 (rev 1983)
    - Local Authority Act (Cap. 265)
    - Physical Planning Act,1999
    - Premise and other places of work Act Cap 514
    - Food Drugs and Chemicals Substances Act Cap 254
    - Wildlife Conservation and Management Amendment Act of 1989.

- International Treaties and Conventions: Vienna Convention for the protection of the Ozone layer; Montreal Protocol on Substance that Deplete the Ozone layer, The Basel Convention, Kyoto Protocol.

7.3 Environmental and Social Issues Identified

Infrastructure and PPP projects can present various environmental issues that can affect the viability of the projects. Detailed technical due diligence is typically required to identify these issues and the requirement always presented in a separate draft volume that can later be made available to the National Environment Management Authority (NEMA).

This review has not been carried out and is scheduled under Phase two of this project. However, the Proposal team has reviewed reports available from the previous studies carried out by KAA on their planned expansion to identify key issues that will affect this project going forward.

The last comprehensive JKIA development was carried out by The Louis Berger Group who also undertook a Strategic Environmental Assessment (SEA) of KAA's National Airports System Plan (NASP) that was prepared for the future development of the airports in Kenya.

The aim of SEA was to:

- Identify the potential impact of options proposed in a master plan in terms of their environmental economic and social impacts;
- Inform the decision making process regarding which master plan development options should be taken forward, such that it avoids negative effects and optimises any positive effect;
- Identify other relevant policy and legal frameworks and other environmental protection objectives to establish how they might affect NASP;
- Identify other environmental protection objectives which NASP could contribute to and help fulfil SEA objectives;
- Identify potential impacts associated with the implementation of a master plan, determine significance and propose a range of mitigating measures where appropriate;
- Identify those current strategies, policies and baseline conditions that are relevant to the plan and are an essential part of SEA process.

Key issues that were considered include: Biodiversity; Fauna and Flora; Soil, Geology and Land use; Air and Climate; Material Assets and Resource Use; Archaeology and Cultural Heritage; Landscape and Visual Amenity (Aesthetics), Population and Health and Encouraging economic growth.

2011

The date of the last comprehensive EISA report on JKIA as part of the master plan

A EISA will be required as part of the investment plan under phase two

Environmental hazards identified are not unsurmountable

- Air pollution
- Waste
- Storm water
- Noise
- Impact on biodiversity

All environmental issues need to be precisely addressed to mitigate negative impact on areas surrounding the airport

Potential environmental issues identified include:

- Air pollutants emitted by aircrafts, airport vehicles and road transport that access the airport may increase and affect the quality in the immediate and regional environments through global warming, ozone depletion and human health;
- Waste pollution: JKIA has a high turnover waste that are both hazardous and non-hazardous waste that will increase with expansion. Proposed Ruai Dumpsite will also be a hazard by attracting scavenging birds that could cause bird strikes to low flying aircrafts during take-off and landing;
- Storm water pollution: storm water used at the airport for various purposes will increase with expansion. The waste water from the airport is discharged to the existing Nairobi City Council sewer that is often overloaded;
- Noise pollution affecting the immediate environment;
- Biodiversity: The environment around the airport is made up of grassland with trees and shrubs and animal species, this poses a problem to the air path over the Nairobi National Park where noise, air pollution and vibrations may affect the resident animal population.

7.4 Social Issues Identified

Generally, air transport enhances connectivity, both locally and internationally. In Kenya's case, airports such as JKIA have enabled the Country's regional integration and enhanced accessibility on a global scale. The establishment and continued development of JKIA has had various social impacts on Kenya. These impacts are both positive and negative, thus there is a need to develop policies and procedures to mitigate the negative impacts.

Social impact of growing the airport can be very positive including in particular the need for skilled workforce to be employed in aviation-related industries

Some of the positive impacts identified include:

Transfer of skills and knowledge

Labour that has been contracted during the expansion of the airport has been able to gain exposure to new world class practices in construction. This has led to a more skilled labour force. Aviation-related businesses built around JKIA such as MRO centre or logistics & warehousing hub will require extensive staff training, development of education facilities and upgrade of skills of potential employees.

Reducing the poverty

As a consequence, growth of JKIA will result in significant increase of jobs available in the market and therefore help limiting the poverty in the society. Competition for the most skilled and reliable resources will raise the salaries and support well-being of the community. This relates also to non-skilled labour force willing to apply for jobs in supporting, less-complex areas of the businesses created based on aviation assets at JKIA.

Nairobi

will increase its connectivity both within Kenya as well as with other, international destinations

Improved connectivity and movement

JKIA has led to easy connections to other local towns such as Mombasa and Kisumu. The airport has also been the main entry hub to Central and East Africa regions, making Kenya an economic hub in the region. Improved connectivity will also support labour force mobility and promote employment.

Social cohesion and cultural integration

The airport receives passengers from all over the world. This has led to social integration of persons of different social and cultural backgrounds.

Despite the above mentioned positive impacts, JKIA has had negative social impacts which can be mitigated. Some of these issues include:

Conflict of interest with local communities

Some local communities used to use the land where JKIA is situated as grazing areas. The expansion of the airport is likely to lead to conflict with these communities. This could jeopardise safety of aircraft as well as airport staff.

Conflict with public amenities

There is expected to be a conflict of public amenities, especially during construction works at the airport. The airport has also led to increased traffic on Mombasa road and adjacent roads which has inconvenienced other users of these public amenities.

7.5 Mitigation Plans

The following are measures to be considered in addressing environmental and social issues:

Table 12: Potential Mitigation for Negative Effects

Impact	Mitigation Measures
Air Quality and Climate Change	▶ Monitor local background air quality ▶ Monitor the effects of road traffic and surface access ▶ Investigate changes in aircraft types and dispersion patterns around the airport ▶ Ensure air quality is maintained or enhanced and that emissions of air pollutants are kept to a minimum ▶ Minimizing emissions of greenhouse gases that may cause climate change ▶ Encouraging sustainable transport and reducing the need to travel
Waste Pollution	▶ Minimizing food risk and improving flood control infrastructure ▶ Protecting and enhancing all water supplies and resources ▶ Promoting the efficient use of water ▶ Institute an environmental plan to reduce accumulation of solid pollutants and garbage that may attract birds and other scavengers

Impact	Mitigation Measures
	▶ Airport drainage system should be designed with interceptors that enable the flows to be diverted to dedicated foul sewers in the event of a major spillage or incident
Storm Water Pollution	▶ Airport drainage system should be designed with interceptors that enable the flows to be diverted to dedicated foul sewers in the event of a major spillage or incident
Noise Pollution	▶ Manage the timing slots of the flights ▶ Continued operation and enhancement of the Noise Management Scheme ▶ Restriction of aircraft types operating at the airport (i.e. only aircrafts that adhere to the categories set out in the Noise Categorisation) ▶ Continued operation of a Noise Monitoring and Flight Track Keeping System ▶ Encouraging aircraft operators to adopt quiet operating procedures and to observe published noise abatement procedures ▶ Maintaining a public noise complaint handling service ▶ Maintain an Airport Consultative Committee ▶ Purchase offer for any properties that are exposed to 69dB Leg, 16h or higher air noise levels
Body Diversity Loss	▶ Keep vegetation clearance to absolute minimum ▶ Institute an environmental plan to reduce accumulation of solid pollutants and garbage that may attract birds and other scavengers that may be killed by control measures ▶ Protecting and enhancing the levels and variety of biodiversity, including designated sites, priority species and habitats
Wasteful Use of Material Assets and Resource Use	▶ Promoting the use of sustainable design and construction and encouraging energy efficiency ▶ Minimizing waste production, promoting re-use of natural resources ▶ Promoting the most effective and efficient use of natural resources ▶ Promoting the use of sustainable/renewable energy
Loss of Landscape and Visual Amenity (Aesthetics)	▶ Protecting and enhancing the quality and distinctiveness of natural landscapes and environmental resources
Population and Health Issues	▶ Promoting improvements to health and well-being for members of the community ▶ Ensuring social equality and prosperity ▶ Providing high quality services, community facilities and social infrastructure that is accessible to all

8. FINANCIAL AND ECONOMIC ANALYSIS

8.1 Financial Modelling

8.1.1 Introduction

The purpose of this chapter is to document the assumptions used in the financial model (hereafter referred to as the "Financial Model" or "Model"), which has been prepared to assist Kenya Airways in assessing the various options for structuring and operating the proposed concession ("the Project' or 'the Airport').

Objectives

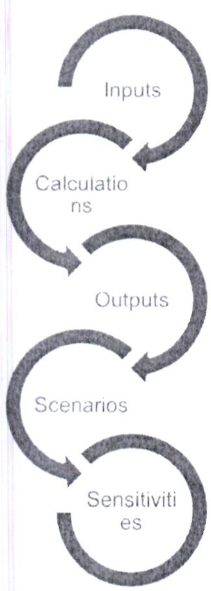
The model allows pulling together of the investment and operating regime (capital and operating costs) resource base (physical and human) and financial position to assess the different scenarios of viability and assess the PPP as a mode of implementation.

The chapter describes the structure of the Model. The Financial Model has been prepared by EY LLP as a financial advisor to the Kenya Airways in connection with the proposed concession of JKIA.

The Financial Model has been prepared to meet the following objectives:

- To assess the financial and commercial viability of the Project as a candidate for concession and support the PIIP by Kenya Airways;
- To facilitate discussions for the selection of a financing structure and cost of capital assumptions incorporated into the Model;
- To assist Kenya Airways in understanding the level of funding support it would need to provide under various PPP arrangements;
- To facilitate discussions concerning the selection of alternative options;
- To model sensitivities in the business plan to support investment risk analysis.

Figure 32: Workbook of the financial model.



8.1.2 Structure of the Financial Model

The Model is populated with a set of data inputs and assumptions which are varied to support a number of scenarios, operating and funding structures. The assumptions are developed based on the 30-years forecast period and then run through the coded calculation in relevant sheets to produce a set of various data outputs. The scenarios impact both traffic indicators and financing assumptions. The model also includes a series of macros that are required to be run to "optimize" the model and solve for the highest possible financial results whilst satisfying a range of criteria, required under the relevant funding structures.

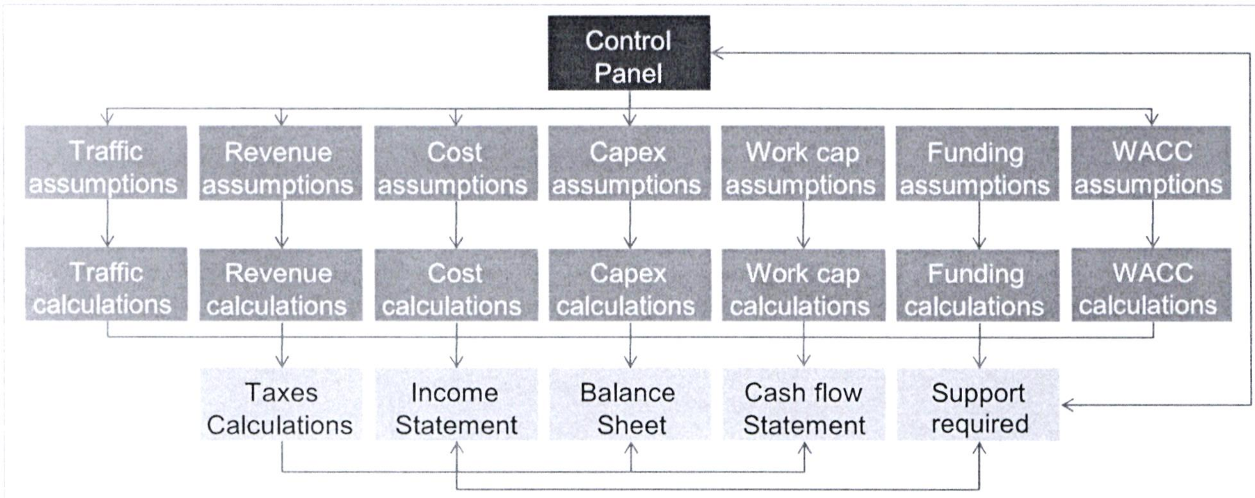
The Model comprises one Excel workbook with the following key modules:

- Input entry of relevant assumptions, scenarios and other input data;
- Calculation coded part of the Financial Model used to calculate output results;

- Output reporting the results, financial statements, debt ratios and IRR;
- Sensitivities;

The diagram below illustrates the general architecture of the Model and outlines the dependencies among the Input sheets, Calculation sheets and finally the Output sheets:

Figure 33: Model architecture



Source: The Financial Model

The Draft Model consisted of the following sheets that will form part of the submission documents.

- Title Disclaimer
- Description of parameters
- Control panel – Dashboard
- Profit and loss statement with KQ
- Traffic
- Input
- Revenue
- Expenses
- Capex
- Depreciation and amortisation
- Working capital
- Taxes
- Financing
- Profit and loss statement
- Balance sheet statement
- Cash flow
- Effects and Value for money calculations
- Check sheet

8.1.3 Model Periods

The model assumes a start date of January, 1st 2019. The duration of the model has an effective end date of December, 31st 2050, which allows for a PPP with the length of up to 30 years to be modelled.

The Model is constructed on an annual basis.

The historical period in the model is between 2015 and 2017, and is used for information purposes only (doesn't affect calculation of SPV's financial forecasts).

8.1.4 Description of the parameters used

The Model will provide for the parameters used within the model a shown below:

Table 13: Model parameters

Parameter	Description
Traffic Scenario	The parameter determines the forecast of the passenger traffic laid down in this model. The following scenarios are used: 1) The most likely scenario - optimistic - this scenario is based on calculations from JKIA; 2) Scenario of average growth - calculation based on the mean values of the base scenario and the KQ scenario. 3) KQ scenario - this calculation is based on project growth provided by Kenya Airways according to its 5-year plan for 2018 – 2022 period (growth of fleet and network).
CAPEX scenario	The parameter determines the forecast of Capex investments laid down in this model. The following scenarios are used: ▶ Scenario 1 ▶ Scenario 2 ▶ Scenario 3 Currently all scenarios are the same however they will be varied according to findings of KAA Due Diligence and prioritization of required investments within the Concession duration.
Change in charges and tariffs	The parameter determines the change in charges and fees in the forecast period. The key charges and tariffs includes: ▶ Landing charges ▶ Passenger service charge: domestic ▶ Passenger service charge: international ▶ Parking charges ▶ Air bridge charges ▶ Commercial revenues ▶ Ground handling revenues Passenger service charges and commercial revenue are linked to the investment plan. The model forecasts all charges and fees in line with CPI forecasts. Additionally, the following scenarios are used: 1) Increase of aeronautical and non-aeronautical - tariffs based on the KES to the US CPI; 2) The most likely scenario – the financial model will increase in tariffs based on KQ inputs; 3) Additional functionality of the model allows for an assumption based on one time growth of charges and fees in a given period (Control panel).
Concession fees	The parameter determines the amount of concession fee in the forecast period. The following scenarios are used: 1) A fixed concession fee; 2) A variable concession fee based on 5% of excess revenue till the end of 2032 and 10% starting from 2033. The revenue threshold will be set and agreed upon.
Operating efficiency assumptions	The parameter determines operating efficiency on expenses in the forecast period. The following efficiencies are assumed for expenses effective 2024: ▶ Staff costs efficiency; ▶ Administrative expenses efficiency.

Parameter	Description
Financing assumptions	▶ The parameter assumed 100% private financing for the SPV. ▶ The private financing will be split between debt and equity with 80% debt and 20% equity.

Source: The Financial Model

8.1.5 Indexation Assumptions

Indexing allows factoring inflation in order to compare costs and revenues over the whole period of the concession

The Model supports the following inflationary indices:

For costs / expenses:

- Capex is denominated in USD and escalated by US CPI;
- All OPEX is escalated in line with consensus projections of Kenya CPI.

For revenues:

- Both, aeronautical and non-aeronautical revenues have been escalated by US CPI on the basis that airport tariffs are generally USD-based.

The indexation or inflationary uplifts are summarized below:

- The USD CPI is estimated at 2.0% per annum. This is expected to remain constant throughout the forecast period;
- The KES CPI is estimated at 5.0% per annum from 2019. This is expected to remain constant throughout the forecast period;
- The EUR CPI is estimated at 4.0% per annum from 2021 (prior to 2021, the CPI EUR is estimated at 3.05% in 2019 and 1.20% in 2020). This is expected to remain constant throughout the forecast period.

Table 14: Indexation assumptions

Object:Jomo Kenyatta International Airport General parameters	Unit	Source (Check: Ok)	1/1/2019 31/12/2019 Forecast	1/1/2020 31/12/2020 Forecast	1/1/2021 31/12/2021 Forecast	1/1/2022 31/12/2022 Forecast	1/1/2023 31/12/2023 Forecast	1/1/2024 31/12/2024 Forecast	1/1/2025 31/12/2025 Forecast	1/1/2026 31/12/2026 Forecast
CPI USA	%	Oxford Economics July 2018	1.9%	1.9%	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%
Oil price index in USD	%	Oxford Economics July 2018	(1.2%)	(8.0%)	(1.1%)	0.7%	2.1%	1.8%	1.6%	1.4%
CPI Kenya	%	Oxford Economics July 2018	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%
CPI EUR	%	consensus	3.05%	1.02%	4.09%	4.00%	4.00%	4.00%	4.00%	4.00%
CPI KE in USD	%	consensus	0%	(1%)	(0%)	1%	2%	2%	2%	2%
KES/USD Exchange rate	KES/USD	consensus	107.00	113.60	119.70	124.97	129.09	133.34	137.57	141.65
KES/EURO Exchange rate	KES/EURO	OE	130.54	142.00	149.63	156.21	161.36	166.68	171.96	177.07

Currency of the Financial Model

All prices and other monetary inputs to the Financial Model are denominated in 000's US Dollars unless otherwise specified.

Tax Assumptions

For financial modelling purposes the provisions of the Income Tax Act 475 on direct taxes on income has been used. The following taxes, payments and period are calculated in the Model:

Taxation

has been factored in the model to reflect incremental benefits for the Government of Kenya

- Corporate income tax at 30% of net profits before tax;
- Allowable deduction (tax losses) of 100%;
- Tax losses carry forward period is 10 years;
- Dividend tax is assumed at 5%. In case of ownership exceeding 12.5%, the dividends received shall be exempt from dividend tax.

For the purposes of financial modelling, the assumption was made that all taxes and payments are paid in the period of their accruals.

Other taxes are not estimated due to their immateriality for financial modelling purposes. There has been no analysis of which cost categories could qualify for tax relief.

Accounting Assumptions

Depreciation of all fixed assets has been estimated on a straight-line basis over the lifespan of the concession. The table below shows the depreciation rates and periods used.

Table 15: Depreciation rates

Depreciation rates		Rate
1	Class 1: Civil works and buildings	2.5%
2	Class 2: Computers and peripheral computer hardware, copiers, calculators and duplicating machines	25.0%
3	Class 3: Self propelling vehicles including aircraft	25.0%
4	Class 4: Furniture and fittings and other machinery	10.0%
5	Software	20.0%
Life cycle		
1	Class 1: Civil works and buildings	40
2	Class 2: Computers and peripheral computer hardware, copiers, calculators and duplicating machines	4
3	Class 3: Self propelling vehicles including aircraft	4
4	Class 4: Furniture and fittings and other machinery	10
5	Software	5

Source: The Financial Model

8.1.7 Traffic Assumptions

The traffic assumptions within the model are based on the following points:

Table 16: Traffic basis

Traffic	Unit	Traffic detail	Measures
Flights	# of flights	Take-off and landing Arriving flights	▸ Passenger flights – domestic and international flights ▸ Cargo flights ▸ Military and government flights
Passenger	Thousand PAX	Domestic flights International flights	▸ Departing passengers
Cargo	Thousand tons		▸ Belly freight ▸ Full freighter

Source: The Financial Model

Three alternative growth scenarios have been analysed to examine sensitivity of financial results on the basis of various passengers and flights growth rates

The scenarios for the traffic are based on:

1) The most likely scenario – optimistic – this scenario is based on calculations from JKIA;

2) Scenario of average growth - calculation based on the mean values of the base scenario and the KQ scenario;

3) KQ scenario - this calculation is based on Kenya Airways 5-year plan assuming fleet growth by 20 aircrafts and new 20 destinations over 2018 – 2022 period.

The first scenario has been calculated using linear regression model based on JKIA traffic data while **the third** one factors in Kenya Airways 5-year plan. Finally **the second scenario** seeks mean values

Scenario 1: JKIA base case

The following methodology was adopted in estimating the traffic forecast within the financial model in order to determine the JKIA base case. Detailed traffic projections for the airline as well as the airport were considered. A Univariate Linear Regression model has been applied to project traffic till 2040. GDP is considered as an independent variable that explains the growth of dependent variable (traffic). The regression was run separately for domestic and international traffic using Kenya GDP and international traffic using World GDP. GDP data for Kenya as well as the world are referred from World Bank and IMF respectively.

To project the GDP numbers for Kenya, IMF forecast till 2023 was used, which is further extended till 2030 and after that growth rate is trimmed down by 1% for next period from 2030 to 2040. This assumption is primarily considered in the absence of long-term GDP forecast for Kenya. IMF has projected world GDP data till 2023 and the same growth rates were considered to project the world GDP for that period. GDP projection for further period were trimmed down according to the pattern used by IMF.

Scenario 2: Scenario of average growth - (++-M case)

This case considers the projected calculation based on the mean values of the base scenario and the Kenya Airways scenario. It secures the case in which KQ will not fully realise its 5-year growth plan.

Scenario 3: KQ Scenario

This case considered the passenger numbers, cargo and air traffic movements based on Kenya Airways growth projections. This is based on detailed route plan developed by Sabre for the next five years to 2022 for Kenya Airways. This plan is directly linked with current and future fleet operated by KQ and look forward at increasing number of PAX from 4.1 million in 2018 towards 6.9 million in 2022. Realisation of this ambitious strategy will have significant impact on JKIA as a dynamic passengers growth would need to be matched with improvement of the airport infrastructure.

8.1.8 Revenue Assumptions

Revenue calculations became critical success factor to correctly assess impact of growth in airport traffic

As was the case with Traffic, we have also been provided with assumptions for revenues. Revenues consist of aeronautical (covering revenues from, for example, landing and parking charges) and non-aeronautical charges (covering revenues from, for example, airport shopping concessions).

The revenues consist of the following components:

1) Aeronautical revenues comprise:

- Landing charge revenue;
- Air Passenger service charge revenue;
- Parking charge revenue;
- Fuelling revenue (JKIA margin) and fuelling uplift fee;
- Airbridge revenue.

2) Non-aeronautical charges comprise:

- Ground handling revenue;
- Commercial revenue;
- Cargo revenue;
- Other revenue.

The changes in tariffs for charges and fees within the financial model are assumed to increase by a percentage based on the consumer price index of the KE in USD.

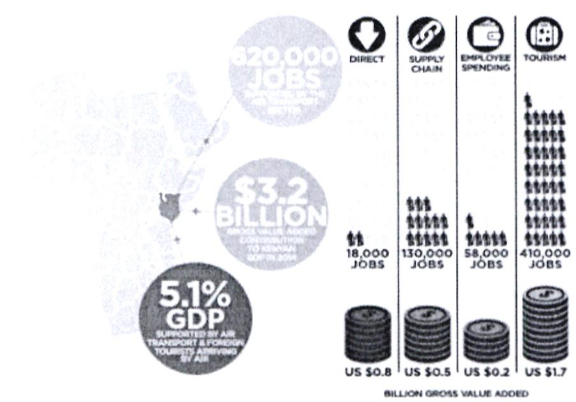
8.2 Economic and Social Cost Benefit Analysis of the Projects

8.2.1 Introduction

Development of the aviation sector, JKIA and Kenya Airways for that matter is likely to support the development of the Kenyan economy, beyond any revenues generated by the airport itself and/or synergies benefiting Kenya Airways. These economic benefits will not translate directly into income streams that can be captured by the airport or the airline, but by enhancing the overall economy will assist in generating prosperity which will, indirectly, lead to higher tax revenues for the Government of Kenya.

Infrastructure developments, such as airports, are important factors in attracting foreign direct investment (FDI). A recent paper by Khadaroo and Seetanah focuses specifically on the roles of transport infrastructure availability in improving the investment climate and determining the attractiveness of FDI flows. They confirm, with an analysis of 20 African economies for the period between 1986 and 2000, that transport has a positive and significant impact on FDI, higher than other infrastructures. Similarly, a number of African countries, including Kenya, export significant quantities of fruit and vegetables by air to the European markets relying on consistent, fast and efficient air transport. It is important that aviation facilities continue to support this market to provide a wide ranging benefits to the economy.

Figure 34: Contribution of Aviation industry to the Kenyan economy.



Source: IATA, Oxford Economics

Graph opposite shows that aviation sector has been able to contribute significantly to Kenya's GDP directly or indirectly through creation of jobs and facilitating other economic outputs to the economy to a tune of USD 3.2 billion in 2014.

This Project is aimed at making the operations of JKIA more efficient. It is therefore expected to generate direct and indirect economic benefits in a number of ways, including:

- Additional visitors to the country;
- Supporting foreign direct investment;
- Employment and source of income for individuals;
- Enabling new export markets by air.

3,000+ employees

will be hired in JKIA in 2050 according to the projections

With the increasing traffic flow and operations at the airport, the current airport facilities may soon be no longer in a position to meet the current demand, which may discourage and eventually prevent further expansion of air services to the country.

In contrast, improved operations not only increase the capacity of the airport, but also allow air traffic to expand in an unconstrained manner for the foreseeable future, therefore allowing additional visitors to the country.

Tourists and foreign visitors, especially those from Europe, the Americas and Asia, tend to spend significant amounts of money during their trips (on hotels, conferences, domestic travel and leisure activities, to name a few), which contributes to economic activity in the country.

Since the project clearly aims at increasing the number of passengers travelling to Nairobi, it will not only benefit JKIA financially, but also boost the economy and tourism.

8.2.2 Cost Benefit Analysis

The direct capital costs and operating costs have been outlined in the financial analysis chapter above, showing the project with a net positive IRR of 22.70%. This goes to contribute to the financial results of JKIA in general.

In addition, the number of people directly employed by the airport will increase from 980 to 3,000 by 2050, largely due to increase in the traffic numbers driven by airport's growth and expansion of the facilities.

There are also wider economic benefits that would contribute to the economy because of the growth of the aviation sector following this investment. These can be largely broken down in direct effects and induced effects. These effects result from the amounts visitors spend during their trips.

Direct Effects:

By considering the proportion of expenditure that is on the factors of production (principally labour and capital expenditure), as opposed to purchases from other sectors or imports, it is possible to derive the direct (Gross Value Add) GVA effect associated with incremental visitor spend. Similarly, looking only at the labour cost element allows the income effect to be calculated. Using economic input–output tables, it is possible to calculate a direct effect of a hypothetical incremental USD 1 output in each economic sector on that sector's GVA, income and employment levels due to aviation sector growth .

Induced Effects:

Since each sector of the economy to some extent purchases from or sells to other sectors in the economy, an increase in activity in one sector is likely to lead to knock-on increases in activity in other sectors. These knock-on increases in activity are known as "induced effects". By using the data in the input-output table, it is possible to estimate the overall knock-on effect across the whole economy for an increase in revenue in any particular sector of the economy. These factors are known as "multipliers" and are calculated separately for the effects on output, GVA, income and employment, in relation to a given increase in output in a particular sector. For example, an output multiplier of 3.5 for a particular sector implies that, for every 1USD output in that sector, the output of the economy as a whole will increase by 3.5USD.

Visitors to Kenya bring revenue to the country through the money that they spend on goods and services. The amount spent by each visitor varies, depending on the reason for their visit as well as their country of origin and duration of stay in the country.

Foreign visitors' expenditure is, as may be expected, mainly observed in the tourism (60%) and transport sectors (37%), with the remainder in the trade sector of the economy. In order to estimate the overall benefits to the economy, it is necessary to consider:

- Direct expenditure by visitors in each economic sector;
- The direct effect of this expenditure;
- Gross Value Added (GVA), which measures the contribution to Gross Domestic Product (GDP) of the sector;
- The level of employment in the sector.

The 2017, Economic Survey estimated that there were 1.3 m visitors in 2016 averaging 13 days of stay each. Visitors' direct expenditure is simply the average spend per visitor multiplied by the number of (additional) visitors permitted by the new airport. With an average of 13 days' stay mentioned above, an average spent by visitors is expected to be in the region of USD 1,200. An additional 2 million visitors would therefore result in USD 2.4 billion to the economy. With the number of visitors expected to increase substantially, the direct spend it expected to increase exponentially. By 2040, JKIA is expected to handle about 12m arriving passengers, 40% of which are expected to be foreigners bringing direct foreign expenditure to over USD 5.8 billion.

Because of the lack of economic input-output data and time required to build these for Kenya, it is difficult to estimate the direct and induced effects of the travellers passing through JKIA with a good degree of certainly. The input-output tables show linkages that allow the interdependencies between industries to be analysed in order to understand the long-term supply chain effects from an increase in demand. The input-output table also shows the factors of production important for each industries' output, including components of GVA, such as labour and capital, as well as taxes and tariffs.

However, using the proxy data from various economic reports it is possible to perform high level estimates to demonstrate the perceived economic benefits.

By 2040 JKIA is expected to:

- Double the number of people directly employed by the airport from 980 to around 2200;
- Provide employment to another 2000 people by supporting supply of goods and services;
- Further support 6,000 jobs by paying wages to its employees, some or all of which are subsequently spent on consumer goods and services;
- By directly being the key gateway through which tourists arrive in Kenya, contribute to a further 1 million jobs;
- Directly and indirectly contribute USD 6 billion to the Country's GDP.

Other direct and indirect benefits are summarised below

Table 17: Expected other benefits from the project

Benefit	Characteristic
Short-term financial benefits	▶ Both KQ and the Kenyan Government can benefit short-term from integrated JKIA & KQ Public Private Partnership existence. It will bring synergies between airline and airport, possibility to increase incomes on serving other airlines, as well as boost the number of passengers travelling through Kenyan Hub and Sub-Hub.
Kenya as an African Centre of Airline Pilots	▶ One of world's consequences of the booming airline sector is the shortage of pilots. African Centre of Airline will be able to prepare pilots not only for African airlines, but also for airlines from all over the world.
Connectivity to Kenya	▶ Developing KQ HUBs based in Kenya (e.g. Nairobi, Mombasa) will significantly increase the Country's connectivity with the world (intra-Africa traffic, Europe, Asia and Americas).
Modern and technology driven Company	▶ Creating PPP structure will enable better and more efficient knowledge management – knowledge sourcing and knowledge flow among companies within PPP. New technologies including IT solutions is nowadays mandatory for those who aim for expansion and development.
Nairobi as MRO for Africa	▶ Kenya Airways engineers possess unique knowledge and skills in servicing different types of aircrafts. The concept assumes investment in technology and infrastructure to increase JKIA & KQ Public Private Partnership capabilities to serve international airlines bringing their fleets for service and checks in Nairobi. The direct result of that move will be a high demand for hiring new engineers and training them at a learning & development centre. It will also create opportunities for increasing cooperation with Kenyan educational system, which means development of schools specialized in the aviation sector. ▶ The critical requirement for development of "MRO Centre for Africa" is establishing the Tax Free Zone which will enable JKIA & KQ Public Private Partnership to import spare parts and aircraft components at the lowest possible cost. That will significantly increase the MRO cost competitiveness.
Increase of Tourism	▶ As it stands, tourism contributed KES 257.4bn to Kenya's GDP which translates to a 3.6% of the GDP in 2016. The future outlook is promising with predictions indicating a 6.0 % rise between 2017 and 2027, according to the World Travel and Tourism Council. The positive outlook is further buoyed by Kenya being feted as the top safari destination in the world in the 2017 World Travel awards, for the fourth time in a row. ▶ This optimistic outlook in the tourism sector translates to a projected increase in tourist numbers. With air travel contributing the lion's share of the international tourists into the country, JKIA and Kennya Airways growth prospects are bright as well.
Additional inflow of currency	▶ Ethiopian Airlines is the major company that brings foreign currency to Ethiopia. JKIA & KQ Public Private Partnership may play a similar role and ensure inflow of FOREX into the Country through boosted tourism and international trade.

Benefit	Characteristic
Financial services	▶ Special economic zone alluring new companies to start up their activities in Nairobi will, as a result, create business opportunities for establishing financial services centre for the whole region in Nairobi (multinational corporations, shared service centres).
Security Service	▶ Establishing JKIA & KQ Public Private Partnership will result in expanding the operations to different locations in the world (including United States, Israel etc.), which will require increasing security levels as well as enable expansion of companies in the security segment.
Oil and Gas Industry	▶ Petrochemical industry in Kenya with significant growth potential may highly benefit from consolidated aviation assets that will enable import of technology and experts from all around the world to build Kenyan oil & gas infrastructure.
Support for General Aviation	▶ Establishing strong Kenya Airways fundamentals and its role as regional leader will become an enabler for development of the whole aviation segment. ▶ Kenya with its number of famous tourist locations should develop a network of airstrips enabling tourists travel all around the country much faster and more comfortably than any other way of transport. ▶ This will also support smaller airlines operating locally and carrying increased number of tourists brought to the Country.
Domestic connectivity	▶ The fastest way to improve domestic connectivity, without huge investments in road or railway, can start with improving airline connectivity. ▶ Considering the development of new airports surrounding Kenya (especially new airport in Ethiopia), current airports infrastructure both in Nairobi and Mombasa require significant quality upgrade to match the increasing passenger's requirements. ▶ Consolidation of airline assets in Kenya is a great opportunity to develop existing infrastructure. ▶ This would include in particular: ▶ Building additional, modern terminal at JKIA; ▶ Upgrade of airport in Mombasa to play the role of sub-hub; ▶ Adopting and Integrating local airports into KQ domestic system.
Improvement of regional airports	▶ Existing regional airports are door openers for improving local economies and further development of those regions by making them accessible to Kenyans and foreign tourists. ▶ Consolidation of Kenyan aviation segment will lead to the introduction of the airline system including construction of new airstrips all around the Country.
Lower ticket fares	▶ Having more aircrafts, destinations and passengers, KQ will be able to lower unit price which will result in higher traffic and connectivity of Kenya as a "go-to destination". Consequently, it will also result in increasing RASK and revenue of the Company.
Regain of the Cargo capacity	▶ The viable fundament of JKIA & KQ Public Private Partnership development will be boosting cargo revenues. Our goal is to regain the position of Nairobi as the

Benefit	Characteristic
	regional leader for transportation of goods. The bulk of the Cargo handled in Nairobi originates from Europe, Asia and Middle East transiting into other African countries. ▶ Most of the major carriers such as KLM, Emirates, Etihad, and Martin Air deploy larger and wider planes, while KQ Cargo operates B737 with maximum 15 tones against a B777 of four times the tonnage. It means that we cannot do long-haul flights to access cargo from Europe and Far East. KQ is still operating with old ground and ramp operations equipment in dire need of upgrade or replacement. ▶ To remain competitive and to access the sources of cargo from Europe and Asia, a mid- to long-haul aircraft is required. ▶ The government and its agencies move lots of goods ranging from exam papers to medical supplies and construction equipment. This area should be prioritized to the national carrier as is the case for the Ethiopian Governments arrangement with ET. ▶ Data collected over the years show a direct relationship between political stability, business growth and movement of goods, people and services. The government has a pivotal obligation to enable the environment that can favour trade and related economic activities and export and import business.
Introduction of cross-subsidising by other airlines	▶ Non-Kenyan carriers will continue to fly mainly into Nairobi and Mombasa airports. Services that other airlines will procure from JKIA & KQ Public Private Partnership will in a way subsidise its development (service rates to be defined solely by the aviation PPP). Thanks to an integrated P&L, the benefits from handling, fuel distribution, cargo and other services will support growth of the airline.
Nairobi as a pan-African Warehousing & Logistics Hub	▶ The goal of development of special economic zone around JKIA is not only to grow airline-related businesses, but most importantly to create favourable conditions for bringing investments to Kenya. ▶ We believe that one of the key potential industries is Warehousing and Logistics: that could mean transformation of Nairobi into the international hub with a focus on Africa as the rapidly growing market for consumer products. Companies like Amazon, Ikea or FedEx could become very interested in developing their activities in JKIA special economic zone as centres for sub-Saharan Africa.
Creation of more than 30.000 new jobs	▶ Our estimates show that more than 30.000 new jobs may be created directly and indirectly through development of JKIA & KQ Public Private Partnership. This includes new positions in: ▶ Directly aviation-related industries such as MRO, cargo, ground services, catering – all developed within JKIA & KQ Public Private Partnership; ▶ Development of small and medium enterprises supplying aviation industry; ▶ Warehousing & logistics centre located in JKIA special economic zone; ▶ Hotels & accommodation sector which will need to grow significantly to accommodate the incoming traffic; ▶ Other industries located in JKIA special economic zone; ▶ Comparison of Ethiopian Airlines size of 14.000 employees in 2017 versus 5.000 in JKIA and Kenya Airways shows a huge potential to increase employment rate in Kenya through investments in the aviation segment.

Benefit	Characteristic
Stable employment and redistribution of wealth	► JKIA & KQ Public Private Partnership, as a stable and growing employer, will support redistribution of wealth among its employees and partners. Developing aviation sector will support all companies specialized in the industry as well as encourage global suppliers to establish their operations in Kenya.
Branding element of JKIA and Kenya Airways	► National airlines, with their strong brands can serve as an advertisement for investment, tourism, and trade; successful JKIA & KQ represents an opportunity to raise awareness about Kenya. ► Although not easily measured, the branding merits of JKIA & KQ are substantial and could be a significant benefit for Kenya.

9. PROPOSED RISK ALLOCATION AND VALUE FOR MONEY ANALYSIS

Risk is central to the evaluation of the PPP project and appropriate risks need to be identified, quantified, allocated and shared

9.1 Risk Analysis and Allocation

9.1.1 Introduction

Methodology used to identify, allocate and evaluate project risks is outlined below. These steps helped to ensure that risks were systematically recorded and quantified for the project.

Step 1: Identify risks

Step 2: Categorise risks

Step 3: Estimate the likelihood of the occurrence of each risk

Step 4: Estimate the financial impact of the occurrence of each risk

Step 5: Allocate risks as transferred or retained

Step 6: Finalise the formation of the risk register

Step 7: Incorporate quantifiable risks into the PSC financial model discounted cash flow analysis

9.1.2 Risk Identification and Categorisation for the Selected Options

This Proposal reviews potential risks that could afflict the concession and proposes an initial risk allocation between the various parties involved in the concession. The aim is to identify the 'material risks' – i.e. the risks that could have a significant cost impact if they occur.

The risks are allocated, on a preliminary basis, according to the PPP principles. It is difficult to estimate the likely cost of the risk when it materialises and the proposal uses estimates based on the past experience. As the project is further structured at the transaction phase, the risk valuation exercise will need to be reviewed since the allocation may change based on the final structuring and negotiations with the private sector operator. Certainly the risks need to be reviewed after detailed due diligence of JKIA and Kenya Airways.

The identified risks can be broadly categorised as follows:

- Political, regulation, legal & similar risks
- Design and construction risk
- Commercial risks
- Commissioning and operating risks
- Financial
- Force majeure events

The table below provides a broad summary of risks and their applicability for this project. However, risks are particular to each project and we have included detailed risk matrix under Appendices of this report.

Table 18: Broad risks and applicability

	Group	Description	Applicability and mitigation	Allocation
a)	Political, Regulation, Legal & Similar Risks.	These include the possibility of action by any government authority that materially and adversely affects the completion and/or operation of a Project, or the expected return on investment of the Private Party's founders including the necessary approvals, and change in law that substantially changes the nature of the contract. This risk overlaps with some financial risks (e.g. tax rate change risk) and other risks such as operating risk. For an airport project, this includes the ability of the political establishment to influence the level of tariff for airport services which is significant given these are regulated.	This risk will apply to the concession of the airport and, in particular the Government's treatment of the changes in law and treaties it has signed that give access to various carriers to the Kenyan airspace. It also includes the delivery of the required approvals to ensure a concession is successful. This may affect the performance of the concession in terms of its ability to meet the long-term sector objectives. This classification is therefore appropriately reflected in the risk matrix in this document. The contract should spell out the key risks defined under change in law to cover specific circumstances such as expropriating actions on the services or assets of the private party as well as events that distinguish between general and discriminatory changes in law. A clear identification of the requited approvals reduces the risks of regulatory and approvals risks.	The Political, Regulator Legal Risk are shared bet the Proponent and Government of K The party acting for an behalf of the public would the risks in terms discriminatory changes ir and expropriating actions. Where possible, ge changes in law are assum the Private Party. The Public Party should d the required approvals, pe before commencement, e where the private sect unable to meet licensing other operating obliga either spelt in the co or general law.
b)	Airport Infrastructure Design, Construction and Investment Risk	This risk relates to the matters affecting the delivery of airport services – from design to completion - and would include risks such as: • The design may not achieve the required output specifications. • Not able to deliver the required service levels • Non-compliance to agreed standards e.g. ICAO, construction, safety etc. • Deficiencies relating to technical requirements	These risks may negatively affect airport services. The implications can be significant in both cases. • The PPP contract should include compensation mechanism should the risk materialize. • Clear output specifications • Design warranty • Patent and latent defect liability • Consultation with and review by Institution (but review must not lead to input specifications by Institution). • Independent Expert appointment to resolve disputes on expedited basis.	Private Party.

	Group	Description	Applicability and mitigation	Allocation
		• External influencers e.g. environmental, political, social etc.		
c)	Commercial Risks	Commercial risks relate to the variability of demand for the services that the Kenya Airways is unable to influence. This would include risks such as low demand for air travel, making the asset unable to earn adequate revenues.	There is a real risk with the current regional airport development that significant expansion may not be utilised. This can be mitigated by having comprehensive demand forecast and strategies to promote JKIA as a hub.	Private Party.
d)	Commissioning and operating risks	There is always a possibility that the design, procurement construction and commissioning of the facilities required for the Project may be delayed for various reasons. Most infrastructure contracts delivered for the public in Kenya under typical construction contracts often suffer delays. Delays in construction cost the public huge amounts in contract variations and other costs. During operations, the operating requirements of the projects (including projected operating expenditure and skills requirements, e.g. labour disputes, employee competence, employee fraud, technology failure, environmental incidents and any failure to obtain, maintain and comply with necessary operating permits) may be different from what is expected. It is anticipated that the introduction of the PPP will reduce the possibility of contract delays and improve operations and management.	Both types of contracts would suffer from the similar commissioning and operating risks. Mitigation measures would include: • Special insurance (delay in start-up insurance) • Liquidated damages, construction bonds and other appropriate security from the Private Party to achieve completion, unless caused by the Institution • Clear output specifications • Penalty regime and performance monitoring • Adequate O&M contract • Substitution rights • Security and special insurance	Private Party, unless del[illegible] operations risk is caused [illegible] Public Party.

	Group	Description	Applicability and mitigation	Allocation
e)	Financial	This includes the risk that financing costs are higher than expected due to unanticipated changes of interest rates, exchange rates, risk that when debt and/or equity is required by the private party for the project it is not available then and in the amounts and on the conditions anticipated. Given the dynamic financial markets, it is possible that the Private Party will not get good terms for the debt or equity funding. The dynamic cost of finance, including interest rates, exchange rate risk, inflation, insurance etc. may increase the cost of finance. The risk is strengthened due to the fact that no VGF has been assumed to support the project.	For large infrastructure projects, the contractor will need to raise some debt and equity to fund the development of the infrastructure envisaged, in return for an ongoing stream of revenue. It is likely that required, minimal subscribed equity would be provided for the projects. Sub-debt (or quasi-equity) would be provided by equity providers. This sub-debt would rank as junior to senior debt repayments because payments to senior debt providers would have the first call on cash-flows. Lenders will look for real robustness for the operator selected – because the lifecycle risks presented by this development are very real. In particular, the ability of the operator to complete the development will be scrutinized heavily – and the strength of the balance sheet will be a key consideration. For the project finance bit, market is currently heavily focused on delivering 15-20 year projects – hence a 25+ year PPP could be more challenging. It is also conceivable that an operator could seek to finance the development through relationship with banks who might focus on the corporate risks of the operator itself, as opposed to the specific project risks for the bulk supply – hence providing finance on more attractive terms. Most civil works design life is longer 40-50 years while the PPP Act provides concession period of up to 30 years (although renewals are possible). Financing 30 year under the current financial markets could raise more challenging financing issues as it could be difficult for project finance to secure over such a long period, since there are few project finance banks that would consider such a long commitment. However, the refinancing markets are quite dynamic and almost all operating project finance deals entered pre-credit crunch of 2008 have been refinanced.	Private Party
f)	Force Majeure events	This may overlap with operating risk or completion risk and includes certain unexpected factors outside the control of the PPP operators (whether natural or "man-made"), which may affect the construction or operation of the PPP.	This will affect both of the projects similarly. Mitigation measures include: • Defining "Force Majeure" narrowly to exclude risks that can be insured against or are dealt with more adequately by other mechanisms such as Relief Events or Compensation Events	If risks are not insurable, risk is shared insofar Institution may pay compensation

	Group	Description	Applicability and mitigation	Allocation
			• Relief and Compensation Events • Insurance (to eliminate from force majeure definition) • Termination.	

9.1.3 Qualitative Assessment of Risks

The first part of the risk assessment process involved the qualitative review and ranking of project risks. Each risk is assessed in terms of its likelihood of occurrence. The consequence of risks materialising is scaled from "insignificant" to "catastrophic".

The likelihood and consequence ratings are combined to produce risk maps from "negligible" to "significant or extreme" for the key risk categories described above; the following scoring has been used.

Figure 35: Risk mapping criteria

Risk Assessment						Risk Management	
			Probability			Score	Risk management strategy
			High	Medium	Low	9	Action required
			3	2	1	6	Contingency plan prepared
Impact	High	3	9	6	3	3,4	Review and address
	Medium	2	6	4	2	2	Monitor
	Low	1	3	2	1	1	Accept and Ignore

Figure 36: Risk map

No	Risk Group	Impact	Public/KAA	KQ	Shared	Probability	Score: Impact	Score: Probability	Score: Overall	Risk management comments
1	Political, Regulation, Legal & Similar Risks	M			✓	✓	2	2	4	Monitor - Follow up on recommended PPP procurement approach should reduce likelihood of occurring
2(a)	Site Related Risks	M	✓			✓	2	2	4	Review – Public party to secure site access
2(b)	Design Related Risks	M		✓			3	3	9	Review - Significant design obstacles
2(c)	Construction Risks	M		✓			3	2	6	Review- construction supervision expertise required
3	Commercial Risks	H		✓		✓	3	3	9	Develop an action plan to expand network, review and index tariffs
4	Commissioning and operating risks	M		✓			2	2	4	Medium - monitor commission & delivery schedule
5	Financing	H		✓			3	3	9	Develop an action plan to secure financing of the project. KQs ability to raise funding in limited.
6	Force Majeure events	L			✓		1	1	1	Low - monitor contract execution. Both entities controlled by state.

Further evaluation of the risk including Risk Allocation Matrix has been provided in Chapter 10 of this PIIP.

9.1.4 Quantitative assessment of the risks

Risks with a rating of "medium risk" and above have been carried forward to the quantitative assessment. Risks with a rating of "low risk" or "negligible risk" are considered to have minimal quantitative impact and are consequently excluded from the quantitative assessment.

The second part of the risk analysis process involves the quantitative assessment of each material risk identified in the previous step. This is based on the proposed best estimate of the following quantification factors for each risk:

- Probability of occurrence;
- Risk values for best case, most likely and worst case scenarios;
- Cost base that underpins the estimate of risk values;
- Risk profile or timing.

The results of the quantitative risk assessment were then reviewed to determine the relativities and correlations between categories, any obvious gaps or overlaps and reasonableness against other similar projects/experiences.

9.1.5 Allocate Risks as Transferred or Retained

Proposed risk allocation is discussed above and in the detailed register. Risk allocation is at the heart of project structuring and pricing. Whereas the table above suggests possible allocations, this will need to be revisited at the transaction stage and especially during contract negotiations as the allocations may move to address project pertinent issues.

9.1.6 Incorporate Quantifiable Risks into the PSC

The quantifiable risks have been incorporated in the PSC to determine value for money for the project. The results of this analysis are contained in the public sector comparator analysis below.

9.2 Value for Money Analysis

9.2.1 Introduction

Does the nature and structure of the proposed PPP transaction incentivise sufficient benefits from the Kenya Airways to justify choosing the PPP delivery route?

This chapter sets out the compilation and calculation of the projects Public Sector Comparator (PSC). The PSC provides the base case conventional delivery scenario against which the PPP funding options will be assessed. The purpose of the PSC is to assess whether the nature and structure of the proposed PPP transaction incentivise sufficient benefits from the private sector to justify choosing the PPP delivery route. If so, this would show "value for money" for the public when measured against the public qualitative and quantitative objectives.

The PSC represents the estimated total cost to the public of meeting the output specifications under a public procurement delivery method. The PSC has been developed using the following broad approach:

1) Creating a raw PSC financial model which covers the following:

   - General assumptions such as timing, inflation assumptions etc.
   - Direct revenues
   - Direct capital costs

- Capital receipts
- Maintenance and lifecycle costs
- Direct operating costs
- Indirect operating costs
- Procurement costs
- Project revenues.

2) Using the cost estimates for retained and transferred risks obtained from the risk assessment process, constructing the risk-adjusted PSC model.

3) Using an appropriate discount rate to calculate the Net Present Cost of the PSC and PPP models.

4) Developing the PPP financial model.

5) Assessing value for money.

9.2.2 The raw PSC

9.2.2.1 Building the raw PSC

The Raw PSC is equivalent to the basic public procured life-cycle project cash flows and reflects the estimated costs of the PPP Concession undertaking the project on a conventional delivery model basis over the life of the project, without adjusting for the project risks.

It therefore calculates the net present cost (NPC) of a project, based on an appropriate discount rate for the public sector. The Excel-based cash flow model contains all the capital, operating costs and expected revenues and excludes non-cash items such as depreciation and amortisation. The detailed assumptions have been included in the financial modelling chapter.

9.2.2.2 Discount rate

The Raw PSC has been discounted by 10.6% – being the risk free rate for a long term (30 years) government issued bond used as a discount rate for similar public sector assignments in Kenya.

10.6%

The discount rate for the raw PSC

The risk free rate is estimated using the five-year monthly average nominal government bond yield rate over a term similar to that of the project. The PSC is presented in Net Present Cost (NPC) terms. The NPC is based on the 'time value of money' concept and takes into account the effects of the timing of different cash flows over the project lifespan by calculating the total net amount of all cash flows in the equivalent present-day values.

9.2.3 Assessing Value for Money (VFM)

PPP projects aim to improve the delivery of infrastructure services to the community in a way which provides VFM and protects the public interest. Value for money is maximised by allocating risk optimally. In general terms, this means allocating each risk to the party best able to manage that risk. In theory, this reduces individual risk premiums and the overall cost of the project because the party in the best position to manage a particular risk should be able to do so at the lowest price.

The main drivers behind potential VFM are:

(i) Risk allocation. Pricing risk with the party who is better able to manage it at the lowest cost.

(ii) Whole-of-life costing. Full integration of up-front design and construction costs with ongoing service delivery, operational, maintenance and refurbishment costs.

(iii) Innovation. Focuses on output specifications, providing wider opportunity and using competition as an incentive for bidders to develop innovative solutions in meeting these specifications.

(iv) Asset utilisation. In some instances, private sector providers are motivated to develop opportunities for revenue generation beyond the government payment stream and this may be used in part to reduce the cost of services to government.

The JKIA concession is expected to deliver the following results on a regular basis:

- Focus on service delivery. Allows KAA to enter into a long-term contract for services to be delivered at JKIA at specified standards.
- Predictability of costs and funding. Ensures that whole-of-life costing and budgeting are considered, providing the airport infrastructure and related ancillary services to specification for a significant period, including any growth or upgrade requirements.

Value for money is determined by comparing the risk-adjusted PSC model to the risk adjusted PPP financial model on an NPV basis. Based on the preceding examples, the PPP model achieves improved value for money compared to conventional public procurement by 25% return.

Table 19: VFM Summary analysis

Budget discount rate	%	8.29%
NPV of accepted risks	ths USD	(49,270)
Total Public party costs for PPP		
NPV for budget	ths USD	1,006,804
NPV of accepted risks	ths USD	(49,270)
Total	ths USD	**957,534**
Public sector comparator calculation		
Total Public party costs (-) and profits (+) for Public procu	ths USD	336,005
Total Public party costs (-) and profits (+) for PPP	ths USD	957,534
Value for money coefficient	%	**185%**
Value for money	ths USD	621,530
Project scheme		
The project should be realised based on PPP		

Source: Financial model

9.3 Assessment of Fiscal Impact

This section of the proposal assesses the fiscal impact of the proposed JKIA concession projects. The impact can be in the form of fiscal commitment or contingent liabilities (FCCL), depending on the agreement that is eventually signed. The chapter therefore, draws input from the PPP procurement and structuring analysis, the risk allocation and the recommended contractual structures.

Typically, PPP projects involve some form of public support that include assistance with finance raising, guarantees and direct responsibilities. Currently, KAA and Kenya Airways have received some form of government guarantees including loan guarantees for sub-sovereign and non-sovereign borrowings the entities have accessed. It is envisaged that this type of support would continue in some form. These types of involvements require the government to bear explicit direct and contingent liabilities.

Explicit direct liabilities will arise in any event and are therefore certain and will include liabilities and/or obligations specifically cited in the PPP contract agreement, for example, the fixed or periodic payments. Similarly, the proposed contract structures have obligations that are dependent on some certain outcomes, for example guarantees in case the WSP defaults on fees payment, and are therefore uncertain in nature and difficult to predict.

These risks need to be accounted for by the government in accordance with the International Public Sector Accounting Standards No 32, Service Agreements (IPSAS 32) which provide guidance on how the fiscal liabilities related to PPP arrangements ought to be recognised.

9.4 Airport Competitiveness and Affordability Analysis

One of the most crucial goals of this Proposal is to present the impact of recommended JKIA and Kenya Airways on the performance of JKIA and, indirectly, also Kenya Airports Authority as the owner of the assets disposed to PPP. This assumption has been treated as key transaction enabler being calculated in each of the analysed scenarios.

Due to efficient improvements in the overall service provision, JKIA would, on the whole, become a cheaper airport. These benefits would be passed on by Kenya Airways in its ticket sales and in the process, spur more air travel through JKIA. The benefits would also accrue to other airlines resulting in more traffic to JKIA.

This is reflected through:

- Significant growth of Airport Pax Services Charges (APSC) due to development of KQ fleet, network and therefore PAX number (charge per passenger remained AS-IS at the level of USD 50 per PAX).

- Significant growth of other revenues including Duty Free income and other concessions due to obtaining full control over this revenue stream, upgrade in existing infrastructure and growth of PAX number.

On average, JKIA is cheaper than other competing airports for the more popular types of aircraft, B787, B737 and E90. However, the increase in charges which is sought would not make the airport less competitive than the regional airports.

10. LEGAL, TAX AND INSTITUTIONAL FRAMEWORK

10.1 Institutional structure, sectoral framework and key policies

The aviation industry is regulated by the following institutions:

a) The State Department for Transport in the Ministry of Transport, Infrastructure, Housing and Urban Development; and

b) The Kenya Civil Aviation Authority (KCAA) established under Section 4 of the Civil Aviation Act, No. 21 of 2013, Laws of Kenya as amended by the Civil Aviation (Amendment) Act, No. 42 of 2016, Laws of Kenya;

The Ministry makes policies in respect of the industry and KCAA regulates the industry. KCAA is responsible for, amongst other functions, air navigation services, security and advising the Government on matters concerning civil aviation.

The Kenya Airports Authority (KAA) was established in 1991 to, inter alia, administer, control, and manage aerodromes and other property vested in it under the Kenya Airports Authority Act.

The legislation for the sector includes numerous regulations promulgated under the Civil Aviation Act which cover various matters including tariffs, security, safety management and licencing of aerodromes.

There are also statutes regulating other aspects of the industry including the Civil Aviation Act, the Carriage by Air Act that gives effect to the Warsaw Convention and the Air Passenger Service Charge Act which provides for charging of service charge on passengers. Further details are discussed below.

The Carriage by Air Act No. 2 of 1993 gives effect to the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12 October 1929 as amended by the Hague Protocol 1955 (the Warsaw Convention). The Carriage by Air Act establishes a liability regime for the death or injury of passengers, loss of or damage to cargo and damage occasioned by delay that occurs during carriage by air.

Kenya domesticated the Convention on International Interests in Mobile Equipment (the Cape Town Convention) and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (the Cape Town Protocol) by enacting the International Interests in Aircraft Equipment Act (No. 27 of 2013), which gives the High Court of Kenya jurisdiction in respect of claims brought under the Cape Town Convention or the Cape Town Protocol, or to grant relief and award damages as provided under the same.

Kenya ratified the Convention on International Aviation, 1944 (the Chicago Convention) on 1 May, 1964. The Chicago Convention details the rights of the signatories to the Convention including the right to: fly across another's territory without landing; land for non-traffic purposes; put down passengers and cargo taken on in the territory of the aircraft's nationality; take passengers and cargo destined for the territory of the aircraft's nationality; and take on passengers and cargo, and to drop-off passengers and cargo destined for, or coming from the territory of any signatory state. The Chicago

Convention also establishes the International Civil Aviation Organization (ICAO) which is responsible for coordinating and regulating international air travel.

10.2 Legal framework governing KAA

The Contracting Authority KAA is a public authority established by under Section 3 of the Kenya Airports Authority Act and confers to it the status of a body corporate and all attendant rights and obligations of a body corporate. The Kenya Airports Authority (Vesting) Order vests all properties previously owned by the Department of Aerodromes in KAA.

The governance structure of KAA is through a Board of Directors established under Section 5 of the Act. The Powers pertaining to actions that can be undertaken by KAA are vested in the Board, Minister and Authority itself under Sections 10, 11 and 12 of the Act. The statutory powers conferred under the Authority suffice for it to undertake the current transaction.

Control and executive management of the Contracting Authority is vested in the Managing Director under Section 9. The Private party has engaged with the Contracting Authority by way of request for information.

Under the Kenya Airports Authority Act, no execution or attachment can be issued against any land of KAA, vessels, aircraft, other operating equipment, machinery, fixtures or fittings. The SPV should be provided with similar protection.

KAA being an entity established by statute is subject to the State Corporations Act which sets out certain restrictions on state corporations including restrictions on disposal of assets. Approvals will therefore have to be obtained from the Ministry of Transport and the National Treasury in respect of a transfer of assets and the granting of a long term lease to the SPV. KAA is also subject to the Public Finance Management Act, 2012.

The Public Procurement and Asset Disposal Act, 2015 applies to all state organs and public entities, including KAA, with respect to all procurement and asset disposal matters. It is however to be noted that the current transaction is outside the application of the Public Procurement and Asset Disposal Act, 2015 as provided for under Section 4(2)(e) of the said Act which excludes procurements under the PPP Act.

10.3 Legal and regulatory framework covering Kenya Airways

Kenya Airways is a public company incorporated in Kenya and is the national airline carrier of the Republic of Kenya. Its hub for domestic and international operations is the Jomo Kenyatta International Airport.

Kenya Airways is not a state corporation and it is a public company which is listed and part of its share capital is publically traded on the Nairobi Securities Exchange, the Ugandan Securities Exchange and the Dar-Es-Salaam Stock Exchange.

Kenya Airways will require the following Kenyan capital markets approvals to implement various steps of the proposed transaction:

Table 20: Necessary capital markets approvals

Capital Markets	Section Number	Description
Capital Markets Act	Section 30F	KQ, is required to keep the Capital Markets Authority, the members of KQ and the holders of its securities, the Nairobi Securities Exchange and the general public informed as soon as is reasonably practicable of the information relating to the proposed transaction which might be reasonably expected to materially affect market activity in the price of its securities. The Capital Markets Authority must approve the wording of such notice. It should therefore be noted that KQ will be required to make public the proposed transaction potentially when the PIIP is approved by the PPP Committee.
Capital Markets (Public Offers, Listing and Disclosures), Regulations	Regulations 19 (2) and 19 (3)	Every listed company is required to disclose any transaction that is likely to lead to a material change in the price of its securities listed on the Nairobi Securities Exchange within 24 hours of the signing of the transaction documents. KQ shall therefore be required to notify the Nairobi Securities Exchange, the Capital Markets Authority the members of KQ and the holders of its securities and the general public of the fact of the signing of the concession agreement and the heads of terms within 24 hours of the relevant signing. Such disclosure will need to be in aligned with the requirements for prior approval from the Capital Markets Authority as set out above.
Capital Markets (Public Offers, Listing and Disclosures), Regulations	Paragraph A.02 to the Fifth Schedule	All recipients of information relating to the Project are required to receive written notice of its confidentiality. An issuer may give information in strict confidence to its advisers and to persons with whom it is negotiating with a view to effecting a transaction or raising finance. With respect to the fact that KQ shall be giving information and documents to third parties relating to the proposed transaction, we propose that the following wording should be provided by KQ in the written notice to the recipients of the confidential information: *"The information contained in these documents are confidential, privileged and only for the information of the intended recipient and may not be used, published or redistributed without the prior written consent of Kenya Airways Plc."*
Capital Markets (Public Offers, Listing and Disclosures), Regulations	Paragraph A.04 to the Fifth Schedule	Paragraph A.04 stipulates that where the information relates to a proposal by the issuer which is subject to negotiations with employees or trade union representatives, the issuer may defer publication of the information until such time as an agreement has been reached as to the implementation of the proposal. It is proposed that the employees of KAA will be seconded and subsequently be transferred to the SPV. Negotiations with the KAA employees or union need not be disclosed and such disclosure may be deferred until such time as an agreement has been reached as to the implementation of the proposal
Capital Markets (Public Offers, Listing and Disclosures), Regulations	Paragraph G.06 to the Fifth Schedule	Shareholder approval is required to enable KQ register and own the SPV. Paragraph G.06 provides that an issuer shall obtain approval of shareholders and make a disclosure in the annual report, for any acquisition of shares of another company or any transaction resulting in such other company becoming a subsidiary or related company of the issuer. In this regard KQ should obtain approval of its shareholders and make a disclosure in the annual report for the transaction resulting in the SPV becoming a subsidiary of KQ.

Capital Markets	Section Number	Description
Capital Markets (Public Offers, Listing and Disclosures), Regulations	Paragraph G.07 to the Fifth Schedule	The concession agreement must be lodged with the Capital Markets Authority and the Nairobi Securities Exchange and be made available for inspection at KQ's registered office. Paragraph G.07 provides that where any agreement has been entered into in connection with any acquisition or realisation of assets or any transaction outside the ordinary course of business of the issuer and/or its subsidiaries, a copy each of the relevant agreement must be lodged with the Capital Markets Authority and the Nairobi Securities Exchange and be made available for inspection at the issuer's registered office. In this regard KQ would be required to lodge the Concession Agreement with the Capital Markets Authority and the Nairobi Securities Exchange. The Concession Agreement should also be made available for inspection at KQ's registered office.
Capital Markets (Public Offers, Listing and Disclosures), Regulations	Regulation 22	We understand that KQ is considering delisting from the Nairobi Securities Exchange, this would require approval from the Capital Markets Authority. Regulation 22 provides that no security shall be de-listed by a securities exchange without the prior approval of the Capital Markets Authority. The Capital Markets Authority may require the Nairobi Securities Exchange to de-list KQ's securities where a recommendation has been made by the directors to the shareholders to have the securities de-listed and where the shareholders of such securities through a special resolution at which a minimum of 75% of such security holders are represented without objection to the proposed withdrawal from at least 10% of the holders of securities resolve to have the KQ's securities de-listed. The advantage of delisting KQ with respect to the transaction is that there would be fewer regulatory reporting obligations. KQ would no longer be required to follow the rules of the Capital Markets Authority or the Nairobi Securities Exchange and KQ would not be obligated to abide by the requirements of full disclosure obligations of listed companies and de-listing will give KQ maximum flexibility to make decisions about the company.

As part of Kenya Airways' share capital is publicly traded on the Ugandan Securities Exchange and the Dar-Es-Salaam Stock Exchange, Kenya Airways will also be required to comply with the continuous listing obligations pursuant to the Dar es Salaam Stock Exchange Public Limited Company Rules 2016 and the Uganda Securities Exchange Listing Rules, 2003. Similar obligations in terms of approvals and disclosures would thus be required in both Tanzania and Uganda.

Table 21: Shareholding of Kenya Airways as of June 2017.

Shareholder	Number of shares (issued and unissued)	Shareholding % (rounded to one decimal)
Government of Kenya	2,847,844,811	48.9%
KQ Lenders Company 2017 Limited	2,219,285,317	38.1%
KLM Royal Dutch Airlines	451,661,470	7.8%
Employee Share Ownership Scheme	142,164,558	2.4%
Other Shareholders	162,632,113	2.8%
Total	5,823,588,269	100%

10.4 Legal framework for implementing the proposed structure

10.4.1 Criteria to qualify as a public private partnership

The PPP Act is the legal framework pursuant to which government entities may undertake PPPs.

The PPP Act is applicable to "...*every contract for the financing, construction, operation, equipping or maintenance of a project or for the provision of public services (the **First Requirement**) undertaken as a public private partnership (the **Second Requirement**).*".

For the PPP Act to apply to the Project, both the First Requirement and the Second Requirement must be satisfied.

In our view, the First Requirement is satisfied for purposes of the present transaction as KAA is a public entity which performs a public function pursuant to statutory powers provided to it under the KAA Act and the SPV would be performing the relevant functions on behalf of KAA as part of the proposed transaction.

With respect to the Second Requirement, the definition of a Public Private Partnership must be taken into consideration. Section 2 of the PPP Act defines a PPP as "...*an arrangement between a Contracting Authority and a private party, where the private party:*

- *undertakes to perform a public function or provide a service on behalf of the Contracting Authority;*
- *receives a benefit for performing a public function by way of:*
  - *<u>compensation from a public fund;</u>*
  - *<u>charges or fees collected by the private party from users or consumers of a service provided to them; or</u>*
  - *<u>a combination of such compensation and such charges or fees; and</u>*
- *is generally liable for risks arising from the performance of the function in accordance with the terms of the project agreement."*

For the Second Requirement to be satisfied, the arrangements between the KQ SPV and the Contracting Authority must satisfy the criteria set out above.

- <u>A Public Function</u>
  - The PPP Act does not define what constitutes a "public function". The Fourth Schedule of the Constitution of Kenya, 2010 (the Constitution) sets out the distribution of functions between the National Government and the County Governments, and as such provides guidance on the intended meaning of a public function for the purposes of the PPP Act.
  - Under the Constitution, the functions of the National Government and the County Government are for the benefit of the public and could arguably constitute public functions.
  - The Fourth Schedule of the Constitution sets out the distribution of functions between the National Government and the County Government.

- The following are listed as National Government functions under the Fourth Schedule of the Constitution:
  - Transport and communications, including, in particular, civil aviation;
  - National public works; and
  - Public investment.

➤ Benefit Received by the Third Party

- The PPP Act defines a PPP as an arrangement between a Contracting Authority and a private party pursuant to which a private party:
  - "receives a benefit for performing a public function either by way of *compensation from a public fund or charges/fees collected by the private party from users/consumers of a service provided* to them or a combination of both; and
  - is liable for risks arising from the performance of the function in the agreement ".

TYPE OF PPP ARRANGEMENTS

The PPP Act sets out thirteen (13) types of PPP arrangements that can be entered into between a Contracting Authority and a private party. Where an arrangement is sought to be entered into *which is not listed*, the Cabinet Secretary's approval is required in respect of such an arrangement.

The PPP Act defines a concession as, "a contractual licence formalised by a *project agreement*, which *may be linked to a separate interest or right over real property*, entitling a person who is granted the licence to make use of the specified infrastructure or undertake a project and to charge user fees, receive availability payments or both such fees and payments during the term of the concession". Under the PPA Act, a concession need not be the only standalone arrangement entered into between the parties, and to the extent addition rights linked to real property are required (e.g. a lease), such supplemental arrangements can be entered into. As part of the implementation of the proposed transaction, the KAA will transfer assets and enter into a long-term leasing arrangement with the SPV in respect of the land relating to the Jomo Kenyatta International Airport.

In addition to the rights granted to the SPV under the concession, a transfer of assets and long term lease arrangement is required in connection with the proposed transaction because such transfers:

i) will give the SPV the ability to raise third party debt/equity financing to implement the proposed transaction and the develop the Jomo Kenyatta International Airport in the medium to long term;

ii) allow the SPV to directly undertake and implement the development and upgrading of the Jomo Kenyatta International Airport;

iii) enable the SPV to directly procure requisite consents in order for it to manage, maintain, develop and operate the Jomo Kenyatta International Airport;

iv) enable the SPV to directly enter into contracts and arrangements with third parties with respect to various activities linked to the operations and management of the Jomo Kenyatta International Airport. Further details relating to the proposed transaction structure are set out in the Term Sheet;

v) align the project with international best practice in airport concessions projects thereby enhancing the bankability of the transaction. Examples of similarly structured transactions include: JFK International Airport - Delta Airlines entered into a 33 year lease for terminals C and D (2017), Chhatrapati Shivaji International Airport (CSIA) in Mumbai 30 year lease (2003), Kuala Lumpur International Airport 50 year lease (1998) etc.

Additionally, to provide the necessary comfort to a contracting authority granting long-term leases to a concessionaire such long-term leases are structured in a manner such that the provisions of the lease are back-to-back with the provisions of the project agreement. Therefore, for example, the user rights under the land lease would be directly linked to the Concessionaire's rights under the project agreement. Further appropriate cross default provisions would be set out in both the lease and the project agreement.

A concession is further described in the Schedule to the PPP Act (as a type of PPP) and this definition provides as follows, "where contracting authority issues a contractual licence to the private party to operate, maintain, rehabilitate or upgrade an infrastructure facility and to charge a user fee <u>while paying a concession fee to the contracting authority</u>".

UNDERTAKING A PIIP UNDER THE PPP ACT

In initiating a PPP project, a Contracting Authority may either conceptualise the project before inviting private parties to bid for the project on a competitive basis, or a private party may approach the Contracting Authority with a privately initiated proposal for a project (in which case no competitive bidding is required to be undertaken). The PPP Act refers to the former as a "Solicited Proposal" and the latter as a "**Privately Initiated Investment Proposal** (**PIIP**)".

A PIIP is a proposal that is originated by a private party without the involvement of a Contracting Authority.

It should be noted that a under the PPP Regulations a Contracting Authority may only consider a project (whether as a PIIP or otherwise) *<u>if it is part of the development programme of the Contracting Authority</u>*. As such, the Project will have to be included (to the extent it is not already) in KAA's development programme before it can be implemented as a PIIP.

Section 61 (1) of the PPP Act provides that a Contracting Authority may consider a PIIP in the following non-cumulative situations:

a) "where there is an urgent need for continuity in the construction, development, maintenance or operation of a facility or provision of a service and engaging in the competitive procurement process would be impractical; provided that the circumstances giving rise to the risk of disruption were not foreseeable by the Contracting Authority or the result of an unforeseeable failure to act by the Contracting Authority;

b) where the costs relating to the intellectual property in relation to the proposed design of the project is substantial;

c) where there exists only one (1) person or firm capable of undertaking the project, maintaining the facility or providing the service or such *person or firm has exclusive rights over the use of the intellectual property, trade secrets or other exclusive rights necessary for the construction, operation or maintenance of the facility or provision of the service; or*

d) in such other circumstances as the Cabinet Secretary may prescribe."

We note that the Project may not meet the criteria contemplated under Sections 61 (1) (a) to (c) above. Based on our understanding of the proposed arrangement, the Project would have to be developed on the basis of the last condition. Section 61 (1) (d) allows the Cabinet Secretary of the National Treasury to issue special dispensation to a contracting authority to consider implementing a project through a PIIP.

Given the strategic national importance of this Project and the value for money proposition set out in this PIIP, it is proposed that the transaction be considered under Section 61(1) (d) of the PPP Act.

In this regard we would note as follows:

e) The PPP Regulations provide that:

- The contracting authority shall, through the Unit, apply to the Cabinet Secretary to use the privately initiated investment proposal for a project that is not a project specified in section 61(1) (a), (b) or (c) of the Act;
- The Unit shall review the privately initiated investment proposal made in accordance with this regulation and make recommendations to the Committee in relation to the proposal.
- The Cabinet Secretary shall make a decision on an application made in in accordance with this regulation after taking into consideration the recommendations of the Committee in relation to the application.

f) Based on the above, it can be concluded that the process of prescription is as set out above (i.e. the Cabinet Secretary makes a determination on the basis of the recommendations made by the PPP Unit and the PPP Committee.)

10.5 Structure of the proposed Legal Engagement between the Parties

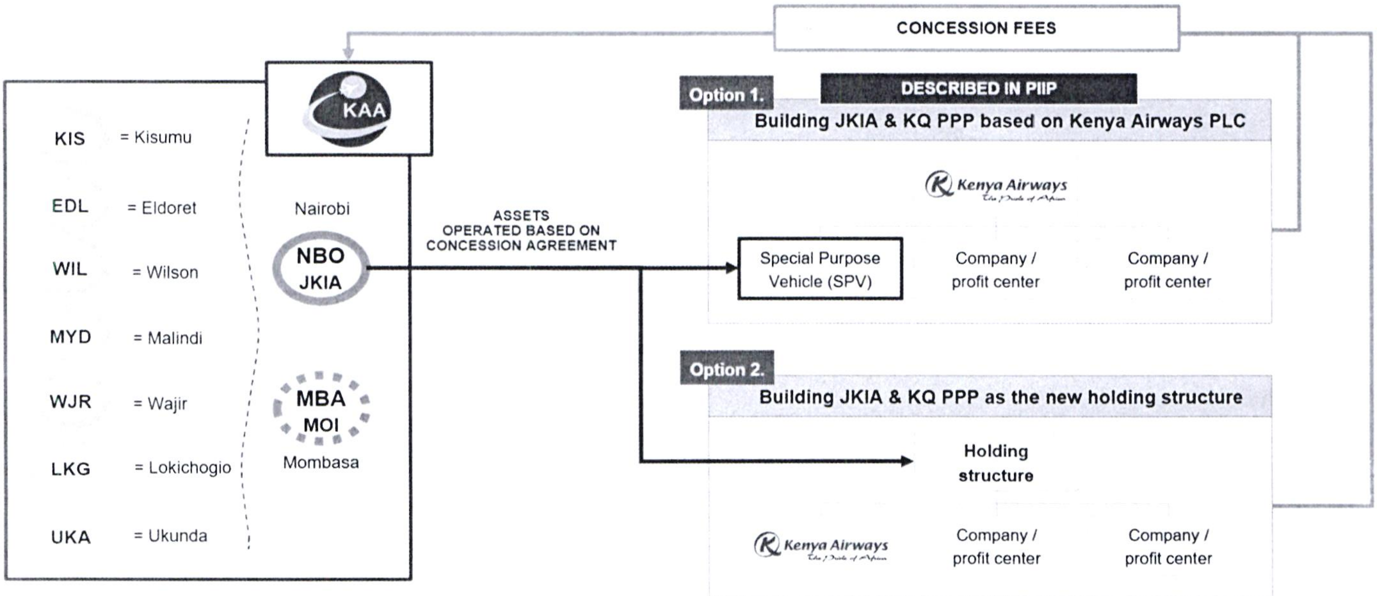
10.5.1 Overview of the legal structure

The PPP is intended to be a Concession where the Contracting Authority will concede usufructuary and development rights to the Private Party. The Private Party will operate, maintain, rehabilitate and upgrade existing infrastructure and facilities, and charge user fees while paying concession fees to the contracting authority.

Section 59 of the PPP Act 2013 requires the establishment of a project company by the bidder in accordance with the Companies Act, 2015, for the purposes of undertaking the Project. The Project Company is authorized to pledge its shares for the purposes of financing the Project.

The proponent of this project will constitute the project/SPV as a subsidiary wholly owned by the Kenya Airways. Further details relating to the proposed transaction structure are set out in detail in the Term Sheet.

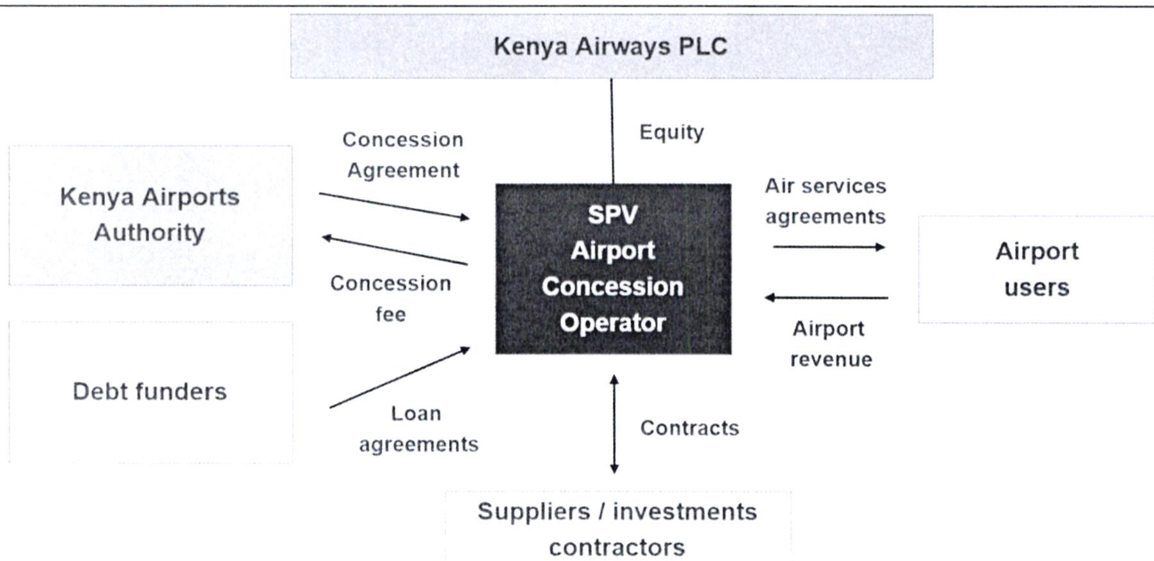
Figure 37: Schematic of the Proposed Project Contractual Structure.



The SPV is set up to undertake the contracted airport functions in line with the contractual relationship between the SPV and the Government. There however other contractual relationships that are critical and interdependent, particularly Loan Agreements / Direct Agreements (financing is typically limited recourse to SPV equity providers).

The debt and equity injections into the SPV will fund the development obligations and initial working capital requirements. The SPV will typically receive all revenues in respect of the provision and performance of various services (as set out in detail in the transaction documents) and pay all costs relating to airport operations, and pay a concession fee to the government. This relationship is shown in the diagram below.

Figure 38: SPV structure.



The Scope of services for the SPV will cover all aspects of the Airport Services and will include the following:

- Terminal Operations
- Ground Services
- Aircraft and Airport Catering Services
- Cargo Services
- Engineering and Maintenance Services

To deliver these services, the SPV will also be required to fund and invest in airport facilities as detailed in the proposed investment plan as agreed before the implementation. The investment plan will cover:

- Upgrading of the Runway
- Remodelling of Terminals 1B, C and D
- New Terminal 2

The table below summarises the other terms.

Table 22: Selected transaction details.

Category	Characteristic
Legal setup of Public Private Partnership (PPP)	Concession Agreement under PPP Framework, S.19 PPP Act 2013, Schedule 2
Public Private Partnership vehicle	Project Company / SPV
JKIA assets and liabilities	Contracting Authority – Transfer of Usufructuary and development rights as well as assets and enter into a long-term lease with the SPV with respect to the land where the Jomo Kenyatta International Airport is situated.
JKIA employees	Secondment / Transfer and implementation of various options to be considered.
Cash management	TBD
Tax shield	Designation of the concession Project as a special operating framework arrangement with the Government under section 11 (a) of the Finance Bill 2018 pursuant to which a concessional tax rate of a maximum of 10% will be granted by the Government to the SPV. In addition, further consideration to be given to structuring the SPV and the wider Concession Project under the SEZ framework. Obtaining exemptions from customs duty, excise duty, import declaration fee, Railway development levy and zero rating of value added tax on services procured and provided by the SPV and on goods to be imported and purchased by the SPV.
Concession Fee: contribution of private partner to public entity	Fixed and Variable Components
CAPEX investments	SPV Obligation both on Airport and Airline

10.5.2 Actions Necessary to Support Successful Contracting.

This proposal being the first of its kind for this sector in Kenya presents a challenge in that there are no local benchmarks to draw experience from, in terms of the irreducible minimums required for successful contracting. It is proposed that the Unit and Committee consider this item open for the duration of the project and provide conditional approvals that will support the progressing of actions that will be vital for sustaining the existence of the project. The private party has identified certain issues that are critical to the project and these are tabulated below. Further actions required for successful contracting will be canvassed during the negotiations phase.

Please find below the list of regulatory changes necessary to execute the proposed PPP.

Table 23: Regulatory amendments necessary to execute the Project.

Act Name	Section Number	Issue	Status
Kenya Airports Authority Act	Section 2	Amendment to the definitions of "charges" and "rates" to exclude charges that will be collected by the SPV from the funds that must be remitted to KAA.	Critical
Kenya Airports Authority Act	Sections 8 (1) (b) and 8 (2) (d) and 8 (3) (d)	Amendments to this section to: 1) exclude JKIA from the administration, management and control of KAA; and 2) exclude JKIA property from the exclusive administration, control and management by KAA.	Critical
Kenya Airports Authority Act	Section 8	Section 8 and the Kenya Airports Authority Act to enable: a. KAA delegate its powers to administer, control, operate and maintain JKIA; and b. the SPV levy and collect charges and rates relating from JKIA.	Critical
Kenya Airports Authority Act	Section 12 (1) (a)	An amendment be made to expressly allow KAA to enter into concession agreements or agreements with any person to operate, administer, control and manage one or more aerodromes.	Critical
Kenya Airports Authority Act	Section 12	Section 8 and the Kenya Airports Authority Act be amended to enable: a. KAA delegate its powers in relation to JKIA to the SPV including the administration, control, operation and maintenance of JKIA; and b. the SPV levy and collect charges and rates relating at JKIA.	Critical
Kenya Airports Authority Act	Section 17A, 17B and 17C	With respect to the Kenya Airports Authority Fund, the amendment of these sections to exclude the remitting of charges collected from JKIA to the Fund such that the same is remitted to the SPV by the collecting agents.	Critical

Act Name	Section Number	Issue	Status
Kenya Airports Authority Act	Section 19	The amendment of Section 19 which creates and automatic security on KAA's assets, including JKIA, in favour of lenders such that: a. all JKIA assets are released from any existing security in favour of KAA's lender; and b. all JKIA assets are excluded from automatically being charged during the period of the concession.	Critical
Kenya Airports Authority Concession Order	Paragraph 2	The Kenya Airports Authority Concession Order be amended or a new order exempting tariffs collected from JKIA from being remitted to the KAA, rather they should be remitted to the SPV.	Critical
Air Passenger Service Charge Act	Section 3 (3)	The amendment of the Air Passenger Service Charge Act to allow for the collection of the service by the SPV.	Critical
Air Passenger Service Charge Act	Section 3	An amendment to Section 3 to provide for the ring-fencing of the service charge collected at JKIA from other airports and to allow for such funds to be paid to the SPV or a fund created for the benefit of the SPV.	Critical
Air Passenger Service Charge Act	Section 6A	An amendment to Section 6A to exclude service charge collected from JKIA from being deposited into the Fund and to include a new provision that makes it mandatory for the Commissioner to pay the service charge collected from passengers at JKIA directly to the SPV or a fund established for the benefit of the SPV.	Critical
The Air Passenger Service Charge Act (Apportionment) Order		The revocation of the Air Passenger Service Charge and a new order made for the SPV to benefit from the Fund or the passenger service charge collected.	Critical
Companies Act	Section 639 (1)	Amendments to the Companies Act and to the Income Tax Act to enable KQ offset its tax losses from the profits of the SPV.	Critical for project financial viability
Value Added Tax Act	Section 5 First Schedule	The Second Schedule to the Value Added Tax Act to provide for zero-rating of value added tax on all taxable supplies made to and by the SPV and KQ.	Critical for project financial viability
Excise Duty Act	Section 5 Part A of the Second Schedule	To be amended to provide for an exemption from excise duty for all excisable goods imported by the SPV and KQ.	Critical for project financial viability
Public Private Partnerships Act	Section 59	Section 59 should be amended to provide for circumstances where a special dispensation may be given for the use of other vehicles other than a limited liability company. In particular, to allow for the registration of the SPV as a limited liability company.	Critical for project financial viability

The above list of regulatory amendments has also been extended in the next table defining issues critical to the project implementation.

Table 24: Issues critical to project implementation.

	ACTION	RATIONALE	CHALLENGE	CATEGORY
1.	**Management of the political environment**	The interest groups that will be affected must be managed	• Sustained political will	Political
2.	**Review of Kenya's Aviation Policy and Strategy**	Creation of a policy and legislative framework environment that will ensure the optimal functioning of the Project. Includes appointment of relevant aviation experts in the Executive to effectively manage sector	• Process involves Executive and Legislature alignment	Policy Political Legal
3.	**Review of Kenya's engagement on the Single African Air Transport Market**	SAATM is an instantaneous deregulation framework without the attendant competition and consumer protection regime	• The Commitment was made at Head of State Level	Policy Political Legal
4.	**Review of the Fiscal Regime affecting Aviation in Kenya**	The Aviation sector in Kenya is subject to numerous taxes and levies that erode the bottom line for airlines, leaving little room for growth	• This is a long term engagement – a balance has to be struck between the sustainability of the airlines and the impact on government revenues. The extinction of the airlines would impact national revenues negatively.	Policy Political Legal
5.	**Implementation and application of the Fly Kenya Policy of April 2016**			
6.	**Amendment of KAA Concession Order, 1996**	Positive impact on the revenues to be generated by the JKIA-KQ PPP	• Amendment subject to the **Statutory Instruments Act, 2013**; • Prioritization before the National Assembly	Policy Political Legal
7.	**Perpetual Tax Exemption of KQ from specific Taxes**	Improvement of KQ liquidity position to engage in project	• Amendment of **Miscellaneous Fees and Levies Act, 2016**, which imposes the Railway Development Levy and Import Declaration Fees on Aircraft, Aircraft parts and utilities	Policy Political Legal

	ACTION	RATIONALE	CHALLENGE	CATEGORY
8.	**Review of Air Passenger Service Charge Recipients**	Proceeds arising out of APSC should be fully allocated to KAA to improve its position to engage in the project	• Amendment subject to the **Statutory Instruments Act, 2013**; • Prioritization before the National Assembly	Policy Political Legal
9.	**Contract Risk Management Plan**	Apart from the Statutory Requirements of S.65 of the PPPA pertaining to the actual project management, Parties must formulate and agree on a concrete management plan for all risks.	• This requires full government support	Political
10.	**Letter of support from the GOK to the Concessionaire**	The Concessionaire will be requesting that GOK provides a letter of support to the SPV pursuant to the PPPA as is the practice in PPP transaction of this nature. The Letter of support shall set out the nature of GOK support that will be required in relation to various matters including the provision of support relating to (i) the occurrence of various political events which may affect the Concessionaire (e.g. change in law, change in tax, expropriation), (ii) legislative amendments that will be required to permit the implementation of the Project and further to provide appropriate fiscal support to the Project, (iii) dealing with legacy matters, and (iv) such other matters that may be required to ensure the bankability of the Project.	• Bankability of the project requires GOK support in relation to certain political risks	Political

10.6 Proposed risk allocation

It is proposed that parties discuss and agree on risk allocation during the negotiation phase.

CA = Contracting Authority = KAA

PP = Private Party =KQ

GOK = Government of Kenya

Table 25: Proposed risk allocation.

	IDENTIFIED RISK	RISK ALLOCATED TO	IMPACT
1.	Political Risk	GOK/PP	High
2.	Financing Risk	PP/CA	High
3.	Change in Law and Tax	GOK/PP	Medium
4.	Project Planning Risk	PP	Medium
5.	Approvals Risk	PP	High
6.	Operation and Maintenance	PP	Medium
7.	Demand Risk	PP	High
8.	Revenue Risk	PP	High
9.	Pricing Risk	PP	High
10	Performance Risk	PP	High
11.	Contingent Liability Risk	CA	High
12.	Renegotiation	PP/CA	Medium
13.	Governance Risk	PP	Medium
14.	Project Termination Risk	PP/CA	Medium
15.	Design and Construction (new)	PP	High
16.	Insurance	PP/CA	Medium
17.	Technology Risk	PP/CA	Medium
18.	Labour Relations Risk	PP/CA	High

10.7 Taxes

10.7.1 Tax implications on the transfer of assets from KAA to the SPV under the Concession

a) Stamp duty

(a) Stamp duty is payable by a purchaser on the transfer of immovable property at the rate of 4% (if the property is situated within a municipality) and 2% (if the property is situated outside a municipality) pursuant to Paragraph 12A and 11 of the Schedule to the Stamp Duty Act respectively. However, the transfer of moveable property is exempt from stamp.

(b) The Cabinet Secretary for the National Treasury on the recommendation of the Cabinet Secretary for Land, may direct that any instrument be exempted from stamp duty if he is satisfied that the transaction is in the public interest. In this regard, by virtue of section 106 of the Stamp Duty Act, an application can be made by the SPV for exemption from stamp duty on the transfer of property from KAA to the SPV.

b) Value Added Tax (VAT)

(a) If KAA is registered for value added tax, the transfer of movable and immovable property (excluding vacant land) from KAA to the SPV will be treated as a taxable supply and therefore subject to value added tax at the rate of 16%. The VAT charged on the transfer could however be claimed as input VAT by the SPV to the extent that the SPV will be registered for VAT.

(b) The First Schedule to the Value Added Act provides for certain supplies that are exempt from value added tax. Pursuant to Paragraph 94 of Section A of Part 1, a transfer of business as a going concern (**TOGC**) by a registered person to another registered person is an exempt supply. In this regard, if KAA transfers its business as a going concern to the SPV, such transfer will be exempt from value added tax. For the exemption to apply, both the transferor and the transferee should be registered persons for purposes of value added tax at the time of the transfer. Further analysis would be required to ascertain whether the transaction would qualify as a TOGC.

c) Capital Gains Tax

(a) CGT is chargeable at the rate of 5% on the gain which will accrue to KAA on the transfer of property, pursuant to section 3(2) (f) and the Eighth Schedule to the ITA. The CGT cost of transferring any real estate owned by KAA would be prohibitive (although this cost would be incurred by KAA).

(b) A CGT exemption can be granted where a transaction is undertaken in public interest, at the discretion of the Cabinet Secretary for the National Treasury. In this regard, an application for exemption from CGT should be sought with respect to the transfer of assets from KAA.

11. IMPLEMENTATION AND APPROVALS

11.1 Detailed review of JKIA operations and preparation of an investment plan

This proposal assumes that there will be a detailed Due Diligence of JKIA by Kenya Airways that will cover financial, technical and operations, legal and finance areas. The findings from that review will help prepare a detailed investment plan for the project under which Kenya Airways will be responsible for implementing.

11.2 Required Legislative Amendments relating to the Project

Having undertaken a review of the applicable aviation laws in Kenya, KQ has identified a number of regulatory challenges that will have to be resolved for the successful implementation of the Project. KQ will in this regard be seeking the assistance of KAA and drawing on KAA's experience and expertise as the statutory body mandated with the task of overseeing aeronautical facilities in Kenya on how to best tackle these challenges.

Where amendments to existing laws, regulations, guidelines or orders are required KQ and the KAA will work together to lobby the relevant authorities (including KCAA, Parliament, KRA, National Treasury, Ministry of Transport, the Attorney General's Office among others) to implement the required changes.

We have set out below a number of the amendments which KQ believes are critical to the implementation of the concession.

- Amendments to the Kenya Airports Authority Act are necessary to give KAA express power to transfer KAA's powers to operate JKIA to the SPV:

  - The Kenya Airports Authority Act does not give KAA express authority to transfer its powers to operate an aerodrome to any other person whether by way of concession or by other methods. It is recommended that the law be amended to give KAA this express authority.

  - To operate JKIA, the SPV will take over functions of KAA and KCAA. The SPV will need to take over the following duties/authority from KAA:

    a) administration, control and management of JKIA (including the property/land) and related facilities;

    b) provision of rescue and fire-fighting equipment and services;

    c) construction, alteration or maintenance of buildings at JKIA;

    d) grant of authority to carry on any trade or business at JKIA; and

    e) power to carry on such activities as are necessary or desirable for the performance of its functions.

  The SPV may additionally require to take over the provision of air navigation services at JKIA from KCAA. Air navigation services include air traffic services, communication, navigation and surveillance, and aeronautical information services.

- Slot allocation

  - There are currently no legal regulations in Kenya on slot allocation. As indicated above, slot allocation at JKIA is coordinated by the Ground Flight Safety Section of KAA on what appears to be an informal basis. It is therefore not clear how the SPV would manage and assign slots at JKIA during the concession.

- Charges, rates, tariffs and payments out of the KAA Fund

  - With respect to the KAA Fund under the Kenya Airports Authority Act, clarity is required on what payments can be made out of the KAA Fund. Under the Kenya Airports Authority Act, payments can only be made for purposes of "expenditure" by KAA and KCAA. The KAA Fund includes monies that KAA receives from other sources including tariffs and charges from users of all airports managed by KAA.

  - It is intended that one of the SPV's revenue streams shall be the passenger service charge (PSG) collected pursuant to the Air Passenger Service Charge Act. Agreement needs to be reached on the apportionment of the PSG to JKIA for passengers coming in from other airports in and outside Kenya. The PSG collected in relation to JKIA should be ring-fenced and the payment such portion of the PSG to the SPV will need to be agreed. The June 2018 Air Passenger Service Charge Act (Apportionment Order) which requires a portion of the PSG to be paid to Tourism Promotion Fund is possibly ultra vires. We need to see appropriate evidence to confirm otherwise.

  - The rates and charges which KAA receives in respect of JKIA need to be paid directly to SPV. We note that the currently applicable rates have not been revised since 1996 and would need to be updated to reflect prevailing rates and as revenue stream for the SPV. The SPV should ideally have the requisite authority to amend such rates without reference to KAA or to the Cabinet Secretary of Transport. The relevant legal provisions would need to be reviewed for purposes of the Project.

  - Currently, KAA and KCAA control the collection of the charges as follows:

    a) KAA

      - landing charges;
      - parking charges;
      - airbridge charges; and
      - passenger departure tax.

    b) KCAA

      - aerodrome and approach charges; and
      - en-route charges.

The SPV ideally needs to take over collection of all KAA charges listed above.

- Approval required for the disposition of JKIA Property by KAA

  Any disposition of land vested in KAA (including transfers and leases) requires approval from the Government of Kenya (GoK).

- Section 19 of the KAA Act creates an automatic charge over KAA's assets

  KAA's creditors who have the benefit of the statutory automatic charge on assets of KAA need to release such charges from JKIA property in order to implement the Project. Further, Section 19 of the KAA Act should be reviewed to exclude any KAA assets that are subject to the concession.

- Review of the Air Passenger Service Charge Act, to amend the recipients of Air Passenger Service Charge and allocate it fully to KAA, thereby improving its position to engage in the Project

- Amendment of the Air Passenger Service Charge Act, to allow the SPV to collect and retain the Air Passenger Service Charge portion associated with the Concession Agreement for this Project

- SPV will need to obtain certain licences from KCAA in order to operate JKIA

  The SPV would need to obtain the following fresh licences from KCAA as the transfer or assignment of licences currently held by KAA in relation to JKIA is not allowed by law:

  - License to operate an aerodrome issued by KCAA pursuant to the Civil (Certification, Licensing and Registration of Aerodromes) Regulations, 2018; and

  - Licence to provide air navigation services issued by KCAA pursuant to the Civil Aviation (Air Navigation Services) Regulations, 2013.rr

- Urgent review and amendment of Kenya Airports Authority Concession Order, 1996 to facilitate the increase in profitability of JKIA.

- Amendment of the Miscellaneous Fees and Levies Act, 2016, to perpetually exempt KQ and the SPV from paying Railway Development Levy and Import Declaration Fees, on Aircraft, Aircraft parts, utilities and all goods and equipment to be used imported for purposes of implementing the Project, thereby lowering KQ and SPV's costs and improving KQ liquidity and ability to engage in the Project.

- Amendment of the East African Community Customs Management Act to exempt all goods imported by KQ and the SPV for purposes of the Project from customs duties

- Amendment of the Value Added Tax, 2013, Second Schedule to include zero rating of value added tax for the operations of the SPV and all supplies made or received by the SPV.

- Designation of the Concession Project as a special operating framework arrangement with the Government, pursuant to which a concessional income tax rate of a maximum of 10% can be imposed to the SPV under the provisions of section 11 (a) of the Finance Bill 2018 (subject to the Finance Bill 2018 being passed into law in its current form). In addition, further consideration to be given to structuring the SPV and the wider Concession Project under the SEZ framework.

- Introduction of a group taxation regime through an amendment to the Income Tax Act.

11.3 Other actions required for successful implementation

Full introduction of proposed concept of JKIA & KQ Public Private Partnership will require a series of changes to enable Kenyan Civil aviation to enhance its operations and regain the position in the region. Actions mentioned in the table below must be implemented to achieve defined objectives:

Table 26: Actions needed to introduce the project concept.

Required actions	Benefits
Integration of airline and Jomo Kenyatta International Airport.	▶ Much higher connectivity of Kenya with the world; ▶ Defending United Nations presence in Kenya; ▶ Growth of investments and number of jobs in airline industry; ▶ Integrated airport – airline balance sheet; ▶ Possibility to control competition in our own market and limit other airlines' profits; ▶ Increased profits from tourism and exports of goods.
Investing in the airport nearby areas (development of the Silicon Savannah Valley in Nairobi, creating international airline MRO hub etc.).	▶ Supporting economic growth through profitable investments; ▶ Strengthening companies working for airline industry; ▶ Creating jobs in airline-related industries.
Expansion in the market (building sub-hubs, control over / acquisition of other airlines, e.g. Air Seychelles).	▶ Much higher connectivity and control over international markets, growth of traffic in JKIA; ▶ Development of strong Kenyan airline and outperform competition (especially Ethiopian Airlines).
Support from state-owned companies Kenya Pipeline Company (KPC) and National Oil Corporation of Kenya (NOCK) to lower fuel prices.	▶ Controlled fuel costs in the hub versus competition; ▶ Enabling development of fuel distribution profit centre at JKIA; ▶ Expanding the network and increasing number of passengers carried by KQ.
Support from Kenya Revenue Authority (KRA) through tax exemptions.	▶ Lowering costs in the hub and increasing JKIA and KQ competitiveness.

Required actions	Benefits
Governmental support in KQ investments in new fleet, revenue boosting IT systems and tools, fuel hedging etc.	▶ Development and upgrade of KQ fleet; ▶ Modern technologies and systems used to increase KQ profitable operations.
Appropriate amendments to Foreign Policy and use of diplomacy to influence the direction of aero politics in favour of the Kenyan aviation industry with a focus on the national carrier.	▶ Protection of JKIA as the national hub; ▶ Protection of KQ as the national carrier.
Full implementation of fly Kenya Policy	▶ Enact fly Kenya act

Below are further proposals to restructure and revitalize the aviation sector and create an enabling environment for KQ to operate in:

Short-term:

a) Alignment between current aviation and foreign policy frameworks with the objective of facilitate growth of the Kenyan aviation sector;

b) Aggressive aerial diplomacy policy with specific function of ensuring the fair treatment of Kenyan airlines in foreign jurisdictions, including solving the issues of blocked funds and double taxation;

c) Waiver on a percentage of outstanding airport use and air navigation fees to enable airlines to reinvest the amounts saved in their operations;

d) Inclusion of aviation as a key pillar to facilitate the principal four areas that GOK wishes to focus on, particularly manufacturing. Aviation can be a catalyst for the creation of high income generators such as industrial and business parks. Aviation can also aid the achievement of the affordable healthcare objective by facilitating connectivity within the country, thereby reducing costs associated with accessing medical facilities;

e) Creation of an Aviation Fund to facilitate the transformation, modernization and growth of the Kenyan aviation sector. This fund can be carved out from current revenues of the airport operator. The fund will ensure a fall back for support of airlines and the aviation industry in times of difficulty;

f) Granting the national carrier and other domestic carrier's priority status for the use of the airport as opposed to giving the best to foreign carriers. A matter of policy, for example, the best airport slots should be given to KQ first;

g) Development of tax exemption regime specific to the aviation sector to facilitate growth of the airport and airlines.

Long-term in sequence:

a) Development of a concrete and strategic long-term aviation policy to replace the current framework which has been overtaken by time;

b) Massive investment in Human Resource Development for the aviation sector, particularly in policy and regulation formulation;

c) Investment and utilization of modern technology in the aviation sector;

d) Linking air transport facilities to the other transport modes to create a seamless system that is key stimulant to the economy.

e) Development of framework to mitigate costs associated with jet fuel costs; Realignment of designation of security officers charged with border control and immigration matters. This office should be autonomous and report directly to the Cabinet Secretary in charge of Immigration.

11.4 Implementation program and timelines

11.4.1 Overview of the Project execution strategy.

The proposed undertaking is under the auspices of a Privately Initiated Investment Proposal as described under Section 61 of the Public Private Partnerships Act 2013. The modalities of preparation prior to implementation include proposal preparation by the private party without the involvement of the Contracting Authority save for requests for information that is crucial for the crafting of a plausible proposal. The Contracting Authority will engage fully upon the approval to enter negotiations. During negotiations, the parties will refine the proposal based on the negotiation agenda and outcomes. The negotiated outcomes will require Board Approval prior to crystallization into the Concession Agreement. The conclusion and execution of the concession agreement will mark the close of the first phase.

The second phase of the project is implementation and will commence with engagement on the investment plan. The Joint Investment Plan will be concluded within 12 months of the conclusion of the Concession Agreement.

The third phase of this proposal is the creation of the Special Economic Zone and this is to be considered as a separate project in line with the Executive Approvals already in place.

11.4.2 Required approvals

- (Optional) Confirmation / legal opinion from the Government that KQ, and consequently the SPV, is not a state corporation within the meaning of the State Corporations Act.

- Inclusion of the Project in KAA's Development Programme as required by the Public Private Partnerships Act.

- Where the transaction involves a transfer of KAA's assets, approval from the Cabinet Secretary for Transport as well as the National Treasury pursuant to the State Corporations Act.

- Approval from the Cabinet Secretary for the National Treasury for the Project to be implemented as a PIIP under Limb (d) of Section 61 (1) of the Public Private Partnerships Act

- The approval of the Public Private Partnerships Committee to the PIIP before negotiations with KAA can commence on the concession agreement.

- Approval of the Public Private Partnership Committee to the negotiated concession agreement prior to signing.

- Mandatory public consultations as required under Section 114 of the County Government Act for the development of nationally significant projects.

- Shareholder approval to this project including the establishment of the SPV as a subsidiary of KQ pursuant to the Capital Markets (Public Offers, Listing and Disclosures) Regulations.

- Approval by KQs board of directors to this project.

- In the event KAA holds an Environmental Impact Assessment Licence in relation to JKIA, approval from the National Environmental Management Authority to transfer the Environmental Impact Assessment Licence to the SPV.

- Where it is intended that KQ be delisted from the Nairobi Stock Exchange as part of this project, the prior approval of the Capital Markets Authority and the shareholders of KQ by special resolution.

- Tax exemptions from the National Treasury including:

  - Where this project involves a transfer of immovable property, stamp duty exemption in relation to the instruments of transfer by virtue of Section 106 of the Stamp Duty Act.
  - Where this project involves a transfer of immovable property, exemption from payment of any capital gains tax on transfer of such property.
  - Import Declaration Fee in relation to imports by KQ and the SPV.
  - Railway Development Levy in relation to imports by KQ and the SPV.

- Transaction approval from the Competition Authority of Kenya.

- Exemptions under the Competition Act issued by the Competition Authority of Kenya in relation to restrictive trade practices by the SPV during its operations.

- Transaction approval from the COMESA Competition Commission (if required).

- Authorisation from the COMESA Competition Commission in relation to restrictive trade practices by the SPV during its operations (if required);

11.4.3 Implementation schedule.

The table below shows proposal project implementation timetable.

Abbreviations:

PPPA	- Public Private Partnerships Act No. 15 of 2013
PPPR	- Public Private Partnerships Regulations 2014
PIIP	- Privately Initiated Investment Proposal
PPPC	- Public Private Partnerships Committee
PPPU	- Public Private Partnerships Unit
CA	- Contracting Authority

Table 27: Implementation timelines

	Description of Work	Start Date	End Date	Responsibility	Legal Provision supporting Requirement
1.	Preparation of PIIP: technical and financial components			KQ	S. 61 PPPA R. 53 PPPR
2.	Development of Negotiation Agenda by each party.			KQ and KAA individually	R. 52 PPPR

	Description of Work	Start Date	End Date	Responsibility	Legal Provision supporting Requirement
	This Agenda is driven by the risk allocation matrix				
3.	Registration of Project Company			KQ	S. 59 and S.66 PPPA
4.	Board Approval for Private Party			KQ	Constituting Documents of private party – This transaction if a Board Reserved matter
5.	Submission of PIIP to CA			KQ	S.61 PPPA R.51 PPPR
6.	Submission to CA Board for Approval			KAA	S.10 KAA Act
7.	Application by CA to CS Treasury through PPPU to proceed with the use of a PIIP for Project Simba			KAA	S. 61 PPPA R. 51 PPPR
8.	Submission of PIIP to PPPU			KAA	S.61 PPPA R. 53 PPPR
9.	Assessment of PIIP by PPPU			PPPU	S.61 PPPA R. 53 PPPR
10	Submission of PIIP to PPPC by PPPU			PPPU	S.24, S. 61 PPPA R. 53 PPPR
11.	Approval of Proposal by PPPC and authority for parties to proceed to negotiations			PPPC	S.24, S. 61 PPPA R. 53 PPPR
12	Appointment of Transaction Advisor and Finalization of project due diligence based on recommendations by PPPC.			KAA is required to appoint a TA on the advice of the PPPU to support the internal capacity during negotiations	S.36 PPPA R. 17 PPPR
13.	Negotiations by parties and preparation of Project Negotiation Report (which must meet the criteria required of the Feasibility Report).			KAA +KQ	S.61 PPPA R. 53 PPPR
14.	Board Approvals for Negotiated outcomes			KQ+KAA	Constituting Documents/ Statute of each entity
15.	Submission of Project Report that contains outcome of Negotiations as			KAA	R. 53 PPPR

	Description of Work	Start Date	End Date	Responsibility	Legal Provision supporting Requirement
	well as Risk Assessment Report to PPPU				
16.	Submission of Project Report to PDMO for concurrence on risk assessment			PPPU	R. 53 PPPR
17.	Post PDMO clearance, Submission for PPPC approval			PPPU	S.24, S. 61 PPPA R. 53 PPPR
18.	Preparation and Submission of Joint Cabinet Memorandum based on PPPC recommendations			Cabinet Secretary National Treasury Cabinet Secretary Ministry of Transport	S. 24 PPPA (Format available is under S. 54 PPPA)
19.	Cabinet Approval of the Project			Cabinet	S. 24 PPPA (Format available is under S. 54, S.56 PPPA)
20.	Communication of Cabinet Approval to CA			PPPU	(Format available is under S.56 PPPA)
21.	Communications to Shareholders and Stakeholders			KQ + KAA + GOK	(Format available is under S. 60 PPPA)
22	Execution of Concession Agreement			KQ+KAA	(Format available is under S. 57 PPPA)
23.	Formulation and actualization of Joint Investment Plan			KQ+KAA	This is to be done in line with the commitments and obligations contained in the Concession Agreement

12. ANNEXES

12.1 Detailed Situation Analysis of KAA/JKIA

The following can be stated in the PIIP, with an indication that the actual due diligence will be conducted once the authorization to engage in negotiations is granted by the PPP Committee.

12.1.1 Legal Due Diligence for the project

Legal Overview of KAA Structure

The Contracting Authority KAA is a public authority established by statute. Section 3 of the Kenya Airports Authority Act establishes KAA and confers to it the status of a body corporate and all attendant rights and obligations of a body corporate. The governance structure of KAA is through a Board of Directors established under Section 5 of the Act. The Powers pertaining to actions that can be undertaken by KAA are vested in the Board, Minister and Authority itself under Sections 10, 11 and 12 of the Act. The statutory powers conferred under the Authority suffice for it to undertake the current transaction.

The determination of the Management Structure is a prerogative of the Managing Director under Section 9. A Private party has engaged with the Contracting Authority by way of requesting information on the internal structure and has been provided with the following organogram.

The Contracting Authority is also subject to the State Corporations Act as well as the Public Finance Management Act, 2012. It is however to be noted that the current transaction is outside the application of the Public Procurement and Asset Disposal Act, 2015 as provided for under Section 4(2)(e) of the said Act.

Proposed Initial Due Legal Diligence Matrix
It is the intention of the Private Party to carry out a detailed due diligence during the negotiation phase. The initial diligence matrix is as outlined below:

Table 28: Initial Due Legal Diligence Matrix

Types	Item	Name of documents/information required	Yes	No	Remarks
A. Constitution and Incorporation	A1	Name of the Corporation			
	A2	Enabling laws setting it up			
	A3	Statutory Duties and Obligations of the Corporation			
	A4	Copy of Board Decisions in relation to the project			
B. Corporate Matters and Structure	B1	Details of the names and addresses of the Directors and Board Secretary of the Corporation (including directors' job titles and other directorships and business interests)			

Types	Item	Name of documents/information required	Yes	No	Remarks
	B2	Location of the Corporation's registered offices, trading address and branches			
	B3	Details of all bank accounts maintained by the Corporation			
	B4	Tax details including VAT registration, PAYE and all applicable taxes. Details of last tax return. Copies of tax clearances and exemptions where applicable. Details of any disputes with KRA			
	B5	Copies of all charges, debentures, guarantees, indemnities, facility letters and all other loan and banking documents which relate to the Corporation			
	B6	Details in the form of a group structure (chart) of holding, subsidiary and associated companies and of any interests held in other companies or firms and particulars of such companies or firms, including details of investments stating whether or not there are quoted securities			
	B7	A list of all creditors (other than trade creditors and bank overdrafts) showing the repayment dates, outstanding balances and amount and rate of interest			
	B8	The parties with which the Corporation has entered into any partnership or joint venture and copies of any documents concerning such partnerships or joint venture agreements, to which the Corporation is party (relevant to the project)			
	B9	Full inventory of the Corporations' assets and liabilities. (Copies of any titles, leases mortgages, debentures and/or charges over any assets owned by the Corporation.)			
	B10	Confirmation that the statutory books/returns of the Corporation are written up-to-date and the location at which they are kept and can be inspected/compliance certificate			
	B11	Details of any contracts that materially alter the structure of the Corporation			
	B12	Details of any Director under any disability including bankruptcy			
	B13	Details of whether the Corporation, subsidiaries or its holding companies have been deregistered in any other jurisdiction			
	B14	Any existing Agreements with other parties that may have an impact on the project			

Types	Item	Name of documents/information required	Yes	No	Remarks
	B15	Domestic laws governing the business of the Corporation and evidence of compliance (licences, intellectual property, etc)			
C. Commercial, Trading and Business Arrangements	C1	Copies of any current powers of attorney granted by the Corporation that may impact the project			
	C2	Statement/details of all outstanding commitments of the Corporation and whether they will impact the project			
	C3	Particulars and details of any: undischarged guarantees, related party transactions, or change in the control of the Corporation that may affect the project			
	C4	Details of: all ongoing long-term contracts above 5 years, Contracts entered into other than in the ordinary course of the business of the Corporation			
	C5	Particulars of any joint venture/consortium that the Corporation is engaged in; copies of: joint venture/consortium Agreement, Board approval of the Joint venture/Consortium, Power of Attorney for the person authorized to sign documents on behalf of the Joint Venture/Consortium			
D. Employment Matters	D1	Tabulation of all service agreements, consultancy agreements and any particulars of appointment/employment issued to directors and employees			
	D2	An up-to-date list of all employees' statutory contributions			
	D3	A list of all persons to whom payments are made without any deduction for PAYE or National Insurance Contributions			
	D4	A list of all directors, consultants and others engaged in whatever capacity in connection with the Corporation, together with details of applicable payment or commission arrangements			
E. Claims, Disputes and Litigation	E1	All current, pending or threatened litigation, judgement, arbitration or action by a regulatory body, authority or agency relating to the operation, businesses or assets and the amounts involved in any claims			
	E2	Any violation of any law, order, ruling or regulation which might lead to a judgement, decision, ruling or finding materially and adversely affecting it			
	E3	Any breach or default under the terms of any agreement or licence to which it is a party			

Types	Item	Name of documents/information required	Yes	No	Remarks
	E4	Any bankruptcy or insolvency proceedings involving the Corporation, its parent Corporation or subsidiaries in the past 5 years			
F. Foreign Exchange Controls	F1	Any Fiscal Regulatory measures governing the use of Foreign Exchange by the corporation			
G. Competition Legislation	G1	All municipal and international legislation and frameworks applicable to the corporation			

The detailed legal due diligence covers the following headings:

- Use and user rights
- Relevant aviation sector laws and regulations
- Relevant financial laws and regulations
- Relevant environmental laws
- Tax legislations
- Foreign exchange legislations
- Competition legislation
- Building and fire codes
- Zoning rights and land use regulations
- Review of legal aspects of existing labour legislations and arrangements in the context of the proposed structure
- Review of existing contractual arrangements to ensure compatibility with proposed arrangement
- List of likely project agreements
- Dispute settlement mechanism and legal jurisdiction.

12.1.2 Operational Review

The airport management service industry includes airport operators (public and private companies) and national airport authorities (public company). The services underlying Airport management are technology support, security services and traffic handling. They also include operators that support airports offering aircraft refuelling, aircraft parking, hangar space rental, air traffic control services, baggage-handling services, cargo handling services and others.

According to the International Civil Aviation Organization's Airport Economic Manual, airports should "create a structure that enables the airport to meet its objectives and carry out its functions in the most efficient and cost-effective manner while maintaining a high standard of service". This manual identifies the following main operational functions:

- Operation of airport facilities: operation of the passenger and freight terminals, including air bridges, and runways, taxiways and aprons including ramp equipment, buses and other airport vehicles, and automobile parking.
- Engineering, construction works and maintenance: provide maintenance services for airport installations and equipment, and also perform civil engineering work at the airport.
- Marketing and public relations: promote the airport to aircraft operators and the general public, as well as to potential users of airport services.
- Ground Handling: the function may be separated into terminal handling (passenger check-in, baggage and freight handling, flight plan processing) and apron handling (aircraft handling, cleaning and servicing).
- Air traffic operations: movement of aircraft within the airport and its vicinity, air traffic operations, including air traffic control and related associated procedures, firefighting and rescue services, meteorological services, and the operation of pilot briefing offices, which are usually also responsible for the provision of aeronautical documentation and information.
- Security, immigration, health and customs.

Airport managers face constant challenges to optimize their operations and provide an adequate customer experience. Key trends in the sector include increasing service expectations (from both passengers and airlines) and constraints on aeronautical charges due to regulations.

The first step for an airport to understand its performance and identify improvement opportunities is to measure its operations and track, benchmark and improve key performance indicators.

Airports Council International has developed a Guide to Airport Performance measures. This guide identifies 42 performance indicators in Six Key Performance Areas. The following diagram presents a summary of the key performance areas and the identified performance indicators.

Figure 39: Key performance areas

Core

- Passengers
- Origin and Destination Passengers
- Aircraft Movements
- Freight or Mail Loaded/Unloaded
- Destinations—Nonstop

Safety and Security

- Runway Accidents
- Runway Incursions
- Bird Strikes
- Public Injuries
- Occupational Injuries
- Lost Work Time from Employee Accidents and Injuries

Service Quality

- Practical Hourly Capacity
- Gate Departure Delay
- Taxi Departure Delay
- Customer Satisfaction
- Baggage Delivery Time
- Security Clearing Time
- Border Control Clearing Time
- Check-in to Gate Time

Productivity/Cost Effectiveness

- Passengers per Employee
- Aircraft Movements per Employee
- Aircraft Movements per Gate
- Total Cost per Passenger
- Total Cost per Movement
- Total Cost per WLU
- Operating Cost per Passenger
- Operating Cost per Movement
- Operating Cost per WLU

Financial/ Comercial

- Aeronautical Revenue per Passenger
- Aeronautical Revenue per Movement
- Non-Aeronautical Operating Revenue as Percent of Total Operating Revenue
- Non-Aeronautical Operating Revenue per Passenger
- Debt Service as Percentage of Operating Revenue
- Long-Term Debt per Passenger
- Debt to EBITDA Ratio
- EBITDA per Passenger

Environmental

- Carbon Footprint
- Waste Recycling
- Waste Reduction Percentage
- Renewable Energy Purchased by the Airport (Percent)
- Utilities/Energy Usage per Square Meter of Terminal
- Water Consumption per Passenger

SOURCE: Airports Council International (2012), Guide to Airport performance measures,

Figure 40: KPAs and KPIs.

The table below presents JKIA's current KPIs.

CORE		SAFETY & SECURITY	
KPI	JKIA's Performance	KPI	JKIA's Performance
Passengers	-	Runway Accidents	-
O & D Passengers	-	Runway Incursions	-
Aircraft movements - landings	-	Bird Strikes	-
Aircraft movements – take off	-	Public Injuries	-
Destinations - Nonstop	-	Occupational Injuries	-
Freight/Mail - Loaded/unloade d	-	Lost work time from employee accidents	-

SERVICE QUALITY		PRODUCTIVITY/COST EFFECTIVENESS	
KPI	JKIA's Performance	KPI	JKIA's Performance
Practical hourly capacity	-	Passengers per employee	-
Gate departure delay	-	Aircraft movements per employee	-
Taxi departure delay	-	Aircraft movements per gate	-
Customer satisfaction	-	Total cost per passenger	-
Baggage delivery time	-	Total cost per movement	-
Security clearing time	-	Total cost per WLU	-
Border control clearing time	-	Operating cost per passenger	-
Check-in to gate time	-	Operating cost per movement	-
		Operating cost per WLU	-

FINANCIAL/COMMERCIAL		ENVIRONMENTAL	
KPI	JKIA's Performance	KPI	JKIA's Performance
Aeronautical revenue per passenger	-	Carbon footprint	-
Aeronautical revenue per movement	-	Waste recycling	-
Non-aeronautical revenue per	-	Waste reduction percentage	-

FINANCIAL/COMMERCIAL	
KPI	**JKIA's Performance**
Debt service as a % of operating revenue	-
Long term debt per passenger	-
Debt to EBITDA ratio	-
EBITDA per passenger	-
Non-aeronautical revenue as a % of total operating revenue	-

ENVIRONMENTAL	
KPI	**JKIA's Performance**
Renewable energy purchased by the airport (%)	-
Utilities/Energy usage per Square meter of terminal	-
Water consumption per Passenger	-

Source: JKIA 2017/2018 budget, KAA financial statements 2016/2017. JKIA figures not indicated in the KAA financial statements were estimated proportionately using the 2017/2018 budget. JKIA was estimated to account for 86.3% of KAA revenues, 45% of operating costs and 48% of total costs in 2016/17

In order to improve their performance, airports need to be able to focus on actionable levers such as costs and investments. A framework to help airports understand their costs and get a high level understanding of airport's expenditures breakdown has been developed. The framework identifies 4 types of costs as follows:

- Inherent costs: These are determined by the nature and design of the airport and the industry itself. The nature and design include the airport's location, the number of runways it has, the regulatory regime under which it operates, and the products and services it is able to offer (including lounges, retail services, and large-scale cargo warehousing). These are strategically critical issues that have a significant impact on costs but are often outside the near- and medium-term control of management.

- Structural costs: These are determined by the type of business the airport engages in and how it provides its services and products. This includes the mix of airlines served by the airport, whether it operates at constrained capacity rate levels (at potential bottleneck points, such as landing slots, gates, and check-in desks), and the extent to which it maintains its own staff versus outsourcing different activities and operations.

- Systemic costs: These involve the organization, processes, policies, and infrastructure the airport uses to manage its product and service delivery. They include people management processes, overhead and the technologies that support the business.

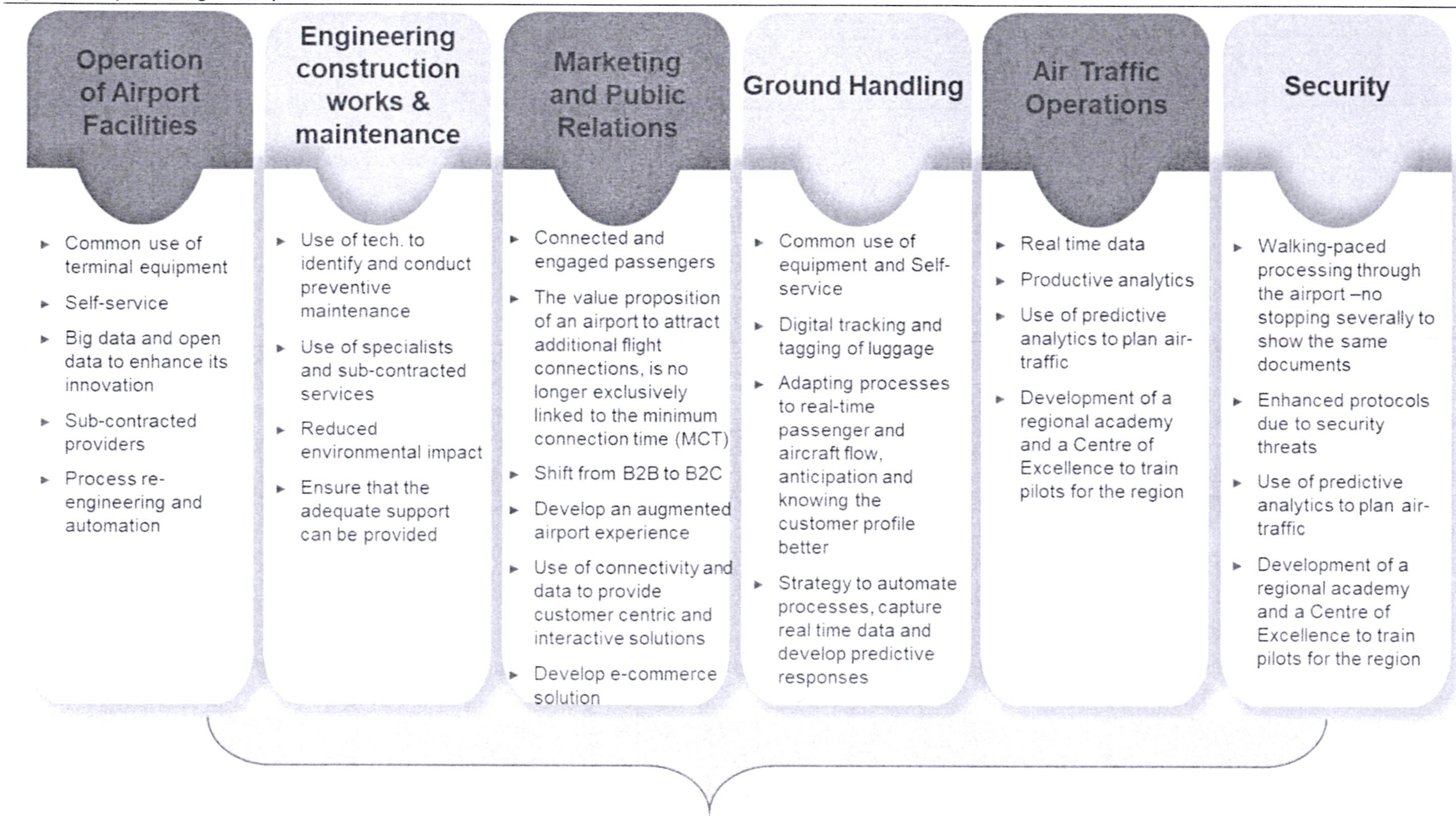
- Realized costs: These are a function of how well the airport handles its operation and work practices. They are tactical in nature, making them easier to increase or decrease than inherent and structural costs.

The consolidation of JKIA as an international hub requires the strengthening and consolidating the airport's operations. Based on the analysis of the previous chapters, JKIA has the challenge and opportunity to implement operational initiatives that are in line with the sector trends, making JKIA the preferred airport of the region.

The following diagram presents trends in the different airport management functions. These trends lead to initiatives that will help JKIA achieve efficiencies and improve the customer experience.

As a conclusion, JKIA is a profitable entity that is facing a steep competition from its neighbours (especially Ethiopia). JKIA needs to understand and adapt to the above trends and challenges in order to provide a better customer experience, attract more tourists to Kenya and be identified as a connection hub.

Figure 41: Airport management operations



End

ANNEX II

VOLUME I

Speaker's Communication

REPUBLIC OF KENYA

TWELFTH PARLIAMENT– (THIRD SESSION)

THE NATIONAL ASSEMBLY

COMMUNICATION FROM THE CHAIR

________(No. 12 of 2019)____

ON MANDATE OF AUDIT COMMITTEES *VIS-À-VIS* THAT OF DEPARTMENTAL COMMITTEES AND THE PLACE OF PROGRESS REPORTS IN INQUIRY PROCESSES

Honourable Members,

You will recall that on Thursday, 7th March, 2019, the Leader of the Majority Party rose on a *Point of Order* citing Standing Orders 83, 206, and 216 and sought the guidance of the Speaker on alleged conflict of mandate between the Public Investments Committee and those of the Departmental Committees. He also sought guidance on the role of the Auditor General in so far as special audits are concerned and the place of the progress report of the Public Investments Committee on *The Inquiry into the Proposed Takeover of Jomo Kenyatta International Airport (JKIA) by Kenya Airways (KQ)*, which was laid on the table of the House by the Chairperson on *Wednesday, February 27, 2019*. In particular, the Leader of the Majority Party invited the Speaker to pronounce himself on two key issues-

(a) whether it would be procedurally in order for a Committee of the House to **order** stay of progress, or indeed to **recommend** stay of progress on an ongoing government-initiated policy or project **which is at infancy stage** citing ongoing inquiry by the House; and,

(b) whether the Auditor General could carry out *ex-ante* or anticipatory investigations into a matter to establish adherence to the law and government policy.

Honourable Members, in his submission, the Leader of the Majority Party observed that the matter of the ongoing arrangements between the Kenya Airways and the Kenya Airports Authority (KAA) is a matter of Government policy that does not fall within the remit of the Public Investments Committee and by extension, the Auditor- General.

He further contended that the Constitution gives the functions of the Auditor-General, as amongst other things, the examination of the accounts of the national and county governments; the accounts of all funds and authorities; the accounts of all courts and the accounts of the National Assembly and the Senate. The Leader of the Majority Party and indeed a section of other Members who spoke, pointed out that, the nature of the work of the Auditor-General is to a great extent, **post-mortem**, that is, limited to expenditure already incurred and that the Auditor General should not audit a government policy, particularly at conceptualization stage.

Honourable Members, you will indeed recall that these very weighty procedural issues raised by the Leader of the Majority Party elicited reactions from the floor, with very valuable input from the Chairperson of Public Investments Committee (the Hon. Abdulswamad Sharriff Nassir); the Chairperson of the Departmental Committee on Transport, Public Works and Housing (the Hon. David Pkosing); the Majority Party Whip (the Hon. Benjamin Washiali); the Minority Party Whip (the Hon. Junet Mohamed), amongst others, who advanced varying positions on the matter.

The Minority Party Whip expressed concern that formulation and implementation of public policy is a function of the executive arm of Government and the House has no role, nor does it participate in the formulation and implementation of Government policy. In his view, the involvement of the House at this stage would amount to pre-emption, interference and abuse of the doctrine of separation of powers. A section of the House supported the need for the House and its Committees to get to the bottom of the matter, irrespective of the stage at which the policy is.

Honourable Members, may I also, at this point, inform the House that the Chairpersons of the Departmental Committee on Transport, Public Works and Housing and the Departmental Committee on Finance and National Planning had also separately written to the Speaker on February 20, 2019 and February 21, 2019, respectively, claiming **exclusive** jurisdiction of their respective Committees to examine the same matter. In this regard, my Office did respond to the letter from the Chairperson of the Departmental Committee on Transport, Public Works and Housing, outlining broadly the issues in question which I will similarly address shortly.

Honourable Members, having reviewed the content and substance of the submissions by the Leader of the Majority Party and the procedural arguments by other Members who spoke to the *Point of Order* on 7th March, 2019, I have identified the following as the primary issues to address myself to in providing guidance to the House-

(i) what is the nature of and at what stage is the arrangement between Kenya Airports Authority (KAA) and Kenya Airways (KQ) regarding the management of the Jomo Kenyatta International Airport, and what is the applicable legal framework to the proposed management of the Airport by Kenya Airways?

(ii) whether the proposed commercial arrangement between Kenya Airports Authority and Kenya Airways regarding the management of the Jomo Kenyatta International Airport is a matter falling under the mandate of the Public Investments Committee or the relevant Departmental Committee;

(iii) whether the Auditor General can audit the merits or demerits of a Government policy;

(iv) the procedure for requesting a special Audit of a Government project; and,

(v) whether the Committee could submit a progress report to the House and, if so, what the is House expected to do with such a report;

(vi) in view of the motion for adoption of the *Progress Report of the Public Investments Committee on the Inquiry into the Proposed Takeover of Jomo Kenyatta International Airport by Kenya Airways, laid on the Table of the House on Wednesday, February 27, 2019,* whether it would be procedurally in order for a motion on an interim report to be moved in the House and for the House to proceed to debate it.

Honourable Members, the first issue that calls for my determination is the question of **what is the nature of and at what stage is the arrangement between Kenya Airports Authority and Kenya Airways regarding the management of the Jomo Kenyatta International Airport, and what is the applicable legal framework to the proposed management of Jomo Kenyatta International Airport by Kenya Airways?** To address this question, it is important to first determine whether the House is properly seized of the said Policy or issues. Obviously, the actual Policy itself is not before the House or its Committees. Indeed, it is clear that the House is seized of the matter only in so far as the parallel inquiries of the Public Investments Committee and the Departmental Committee on Transport, Public Works and

Housing are concerned. You will note that the two Committees, separately and rightly under the authority vested in them by the law and the Standing Orders, instituted inquiries on their own motion, which inquiries I will be addressing later.

Honourable Members, as your Speaker, if I am called upon to answer the question of "what is the nature of the commercial arrangement between the Kenya Airports Authority and Kenya Airways?", I may not be able to respond appropriately. This is because I am not privy to contents of the commercial arrangement between the two entities. However, based on information presented in my chambers by the Chairperson of the Departmental Committee on Transport, Public Works and Housing and the Chairperson of the Public Investment Committee and having read the Special Audit Report of the Auditor-General on the matter, which I will be speaking to at a later stage in this communication, I am guided that the commercial arrangement between the Kenya Airports Authority and Kenya Airways is a proposed Privately Initiated Investment Proposal (PIIP) within the ambit of the Public Private Partnership Act, 2013.

Honorouble Members, a clear reading of section 2 of the Public Private Partnership Act, 2013 defines a **"privately initiated investment proposal"** as "*a proposal that is originated by a private party without the involvement of a contracting authority and may include information that enables a complete evaluation of the proposal as if it were a bid.*"

This definition in itself demonstrates the inappropriateness of the application of the term "take over" as used by the two Committees and indeed by a section of Members who spoke in the House on the matter. Consequently, Committees and indeed this House should restrict themselves to terms used in the evidence adduced so far and the expressions used in the relevant laws.

This is in keeping with our Standing Order 91 on responsibility for statement of facts, which behooves all Members to speak with accuracy based on facts.

Honourable Members, Permit me at this point to refresh your memory on the Policy making process and the nexus between the Executive and the Legislature in this process. By practice, a policy of this magnitude and importance, like many others before or after it, would have to obtain Cabinet consideration. The relevant Cabinet Secretary would then undertake other preliminary processes with the relevant bodies and, at the appropriate stage, submit to the House a *Sessional Paper*. It then follows that, the people's elected representatives would at this point exercise their oversight function by giving their views in considering the particular *Sessional Paper*. In noting the *Paper*, the House may make reservations, comments or acquiesce to it unconditionally.

Honourable Members, As regards the legal framework that underlies the proposed management of JKIA operations by the Kenya Airways, the question that now begs is- *"Is the proposed commercial arrangement an arrangement under the Public Private Partnerships Act, No. 15 of 2013, or the Privatization Act, No. 2 of 2005?"*

Honourable Members, If the proposed commercial arrangement is to be governed by the Public Private Partnerships Act, No. 15 of 2013, the Act provides for the procedure for entering into a public private partnership agreement. It contemplates for an elaborate process, including preparation of a the privately initiated investment proposal, consideration by the target public entity, submission of the initiative to the public private partnership unit established in the National Treasury and approval for the parties to enter into negotiations. The law also contemplates that the said unit shall submit a project report, a financial risk assessment report and its recommendations to the Public Private Partnership Committee for consideration.

Section 54(3) of the Act provides that the Cabinet Secretary for Finance and the Cabinet Secretary in the State department responsible for the implementation of the project shall prepare a joint cabinet memorandum based on the recommendations of the Public Private Partnership Committee and submit the memorandum to the Cabinet for approval before any execution.

Honourable Members, Section 55 of the Act provides for the only instance in which Parliamentary approval may be sought in respect of public private partnerships, and that is where the partnership is for the exploitation of natural resources under Article 71 of the Constitution, and this approval would be made through a ratification process. Parliament in its wisdom, during the legislative process leading up to the enactment of the Public Private Partnerships Act, No. 15 of 2013, removed itself from the requirement of parliamentary approval of public private partnerships.

Honourable Members, Irrespective of the absence of the requirement of parliamentary approval in the Act, as your Speaker I ask myself- "*is it possible for the Kenya Airways Privately Initiated Investment Proposal to be complete without Parliament's knowledge?"* In my view, the realistic implementation of the proposal, if and when approved by the Cabinet, would require various legislative interventions, including amendments to various statutes. Ultimately, there may be need to amend different statutes including the Kenya Airports Authority Act (No. 3 of 1991) , the Labour Relations Act (No. 14 of 2007), the Air Passenger Service Charge Act (Cap. 475) and possibly taxation related laws amongst others. As you are all aware, an amendment to any of these statutes is a matter which squarely falls within the legislative mandate of Parliament.

Honourable Members, It is important to note that Article 95(2) of the Constitution provides that one of the roles of the National Assembly is to deliberate on and resolve issues of concern to the people.

Whereas the Kenya Airports Authority is a state corporation fully owned by the government, the Kenya Airways is a company in which the government has a 48.9% stake in terms of shareholding. Kenya Airways is therefore a company in which the government has substantial shareholding both for strategic and national interest.

Honourable Members, You will also agree with me that, Kenya Airways being a listed company at the Nairobi Securities Exchange cannot be devoid of public scrutiny in as far as its operations are concerned. Any major restructuring or reorganization of the Kenya Airways will therefore attract deserved attention of the people of Kenya. On the other hand, **Honourable Members**, should the Kenya Airways proposal fall under the purview of the Privatization Act, No. 2 of 2005, section 23(3) of the Act provides-

> *(3) The Cabinet Secretary shall submit a report in form of a Sessional Paper on a privatization proposal approved by the Cabinet to the National Assembly for consideration.*
> *(4) Upon laying before the National Assembly, a report under subsection (3) shall stand referred to the relevant committee.*

Honourable Members, it is clear from the foregoing that Parliament's involvement in the conclusion of the Kenya Airways proposal cannot be overlooked, irrespective of the nature of the commercial arrangement. It is therefore not a matter of "if Parliament will be involved", rather it is **<u>when</u>** is the right stage for Parliament to be involved. It is inconceivable, in parliamentary parlance, that the House or its Committees would become part of **policy execution**, as that may prejudice the oversight function of the House as enshrined in Article 95(5)(b) of our Constitution. It is for this reason that I found it inappropriate for the Departmental Committee on Transport, Housing and Public Works to attempt to undertake what it termed as "public participation" of the Privately Initiated Investment Proposal between KQ and KAA **at this infancy stage.**

At this stage, that exercise is obligation of the Kenya Airports Authority and/or the relevant state department, which are expected to thereafter apprise the House on the progress of the initiative through the said Departmental Committee.

Honourable Members, Let me now turn my focus to the second issue requiring my determination, namely, ***whether or not the proposed PIIP between the Kenya Airports Authority and Kenya Airways is a matter under the purview of Public Investments Committee or Departmental Committees***. In doing so, permit me to refer the House to the ruling made by the Speaker on 5th December, 2013. Then, as now, the question arose, in similar framing, as to the delineation of the mandates of the watchdog committees of the House, namely the Public Investments and the Public Accounts Committees on the one hand, and Departmental Committees on the other. In sum, the Speaker then guided that indeed the mandates of Departmental Committees were clearly distinct from those of the Public Accounts Committee (PAC) and the Public Investments Committee (PIC). That, as a matter of fact, PAC or PIC ought not delve into such matters as review of legislation, vetting of appointments or matters of administration of ministries or State corporations. This finding, **Honourable Members**, was on the basis of Standing Orders 205 and 206, which preclude the Public Investments Committee from examining matters of day-to-day administration of state corporations. In the same vein, the Speaker did then caution Departmental Committees from veering into the province of the Public Accounts Committee and the Public Investments Committee, save for the manner contemplated under Standing Order 216.

For avoidance of doubt, **Honourable Members**, the said Standing Order 216 under paragraph (5) provides that the functions of a Departmental Committee shall be to-

(a)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)study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;

(c)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;

On the other hand, Standing Order 206(2) provides that *"the Public Investments Committee shall be responsible for the examination of the working of the public investments on the basis of their audited reports and accounts."*

Honourable Members, additional functions of the Public Investments Committee as highlighted under Standing Order 206(6), include –

(a) to *examine the reports and accounts of the public investments;*

(b) to *examine the reports, if any, of the Auditor General on the public investments; and*

(c) to *examine, in the context of the autonomy and efficiency of the public investments, whether the affairs of the public investments, are being managed in accordance with sound financial or business principles and prudent commercial practices.*

Under Standing Order 206 (7), the Public Investments Committee is prohibited from examining any of the following—

(a) *matters of major Government policy as distinct from business or commercial functions of the public investments;*

(b) *matters of day-to-day administration; and,*

(c) *matters for the consideration of which machinery is established by any special statute under which a particular public investment is established.*

In this regard, **Honourable Members**, I find that, when examined in totality, the matter in question at this point falls into two categories. On one hand, the Kenya Airports Authority is a state corporation, 100% percent owned by the Government. The Public Investments Committee is therefore at liberty to **procedurally** invoke the provisions of Standing Order 206(6)(c) and examine whether the ***affairs of the public investments made or being made by the KAA, are being managed in accordance with sound financial or business principles and prudent commercial practices.*** However, in doing so, the Committee ought to follow the usual procedure, particularly as guided in my *Communication of 5th December 2013.* In that Communication, I did guide that, and I quote- *"Should the Committee intend to examine matters of procurement, I would expect them to order a special audit by the Auditor General* ***after being satisfied that the matter requires a special audit"*** This means that, whenever the Committee requests for a special audit, the examination of the matters before the Committee is discontinued, until the special audit is undertaken and tabled in the House. This is informed by the universal dictum that, when a party asks another party to carry out forensic inspection or any other specialized task, then the work of the first party becomes *functus officio.* This means that, any further examination or even debate in the Committee on the same matters for which a special audit has been requested may vitiate or injure the process of the special audit. In addition, it would be important to note that the Public Investments Committee may also examine this matter if it was an audit issue or query arising from the examination of audited reports and accounts of the Kenya Airports Authority or a special audit.

The second aspect of this matter regards the contention that, the **policy** aspects of the inquiry fall within the mandate of the Departmental Committee on Transport, Public Works and Housing. In view of the provisions of Standing Order 216(5) as enumerated earlier, the Departmental Committee on Transport, Public Works and Housing is at liberty to proceed and inquire into the policy aspects of the commercial arrangement between KAA and KQ.

Honourable Members, May I, at this juncture inform the House that, the Auditor General has since submitted to me a report titled *"Special Audit Report on the Proposed Privately Initiated Proposal (PIIP) Between Kenya Airports Authority (KAA) and Kenya Airways (KQ)"*. The particular report was received in my office on 14th March, 2019 and I will be asking the Leader of the Majority Party to lay that Report on the Table of the House, later during this sitting in keeping with the requirements of sections 39 and 49 of the Public Audit Act, 2015. Having perused the Report, it is evident that this matter is still at infancy. However, the Auditor General has raised several operational and policy audit issues as well as two financial audit issues. Upon tabling of the Report, the Public Investments Committee will be at liberty to resume its inquiry on the matter, but the Committee **must confine itself** to the financial and expenditure aspects of the reservations of the Auditor General as well as omissions and/or commissions on the part of the Kenya Airports Authority. As for the Departmental Committee on Transport, Public Works and Housing, the Committee is also at liberty to proceed with its inquiry. The Departmental Committee must confine itself to matters of policy, human resource, compliance with due process of law and generally addressing any issues of concern to the people as contemplated under Article 95 of the Constitution.

Honourable Members, the third matter requiring my determination is ***whether the Auditor General can audit the merits of policy issues of Government.*** Those who were in the 11th Parliament may recall that, this matter was a subject of heated debate during consideration of the Public Audit Bill, 2014 in both Houses, which is today the Public Audit Act (No. 34 of 2015). Indeed, when passing the Bill, Parliament did include section 42, which provided that, and I quote:-

> *s.42. "Notwithstanding the provisions of this Act, in an examination under this Act, the Auditor-General shall not question the merits of a policy objective of the National Government or county government or any other public entity."*

The foregoing was the prevailing position in law until 16th February, 2018, when the High Court did make a pronouncement in so far as the application of that section was concerned.

Honourable Members, in Petition No. 388 of 2016 (*Transparency International Kenya vs The Attorney General and Two others*[1]) the learned Judge, Hon. E. Chacha Mwita, in his judgment held that, a statute could not impose conditions on the performance of the Auditor General's functions where the Constitution did not impose them. Section 42 of the Public Audit Act, 2015 was therefore declared a violation of Article 10 of the Constitution which provides for national values and principles of governance which include integrity, transparency and accountability and also Article 201 of the Constitution which provides for financial openness. This decision has implication on the business of the House and its Committees, in so far as the scope of requests for special audit is concerned.

---

[1] High Court at Nairobi (Petition No 388 of 2016), Transparency International (TI Kenya) v Attorney General & 2 others [2018] eKLR.

In this regard, based on this finding by the Hon. Judge, I need not dwell on the question as to *"whether the Auditor General is excluded by law from examining a government policy"* any further. I nonetheless remind the House that, in the last two years, the Auditor General has submitted several audit reports to this House touching on performance and policy issues. These reports include the following-

(a) Performance Audit Report from the Office of the Auditor General on the provision of Mental Healthcare Services in Kenya for the period December, 2017;

(b) Performance Audit Report on the implementation of the National School Upgrading Programme by the Ministry of Education, Science and Technology for the period, March, 2018;

(c) Performance Audit Report on Effectiveness of Measures put in place by Kenya Wildlife Services in Protecting Wildlife by the Ministry of Tourism and Wildlife for the period, June, 2018; and,

(d) Performance Audit Report on Provision of Housing to Prison Officers in Kenya.

These reports, having been tabled are now before the respective Departmental Committees for examination and consideration by the House. This implies that the Auditor General is **NOT** precluded by any law from auditing matters of government policy.

Honourable Members, I will now turn to the fourth issue of my consideration, which regards the ***procedure for requesting for a special audit from the Auditor General.*** **Honourable Members**, to address this issue, it is important that we revisit the core mandate of the Public Investments Committee, as enumerated under Standing Order 206(6)(b), which is to *examine the reports, if any, of the Auditor General on the public investments.*

As we all know, the Auditor General invariably submits audit reports on an annual basis. These reports are mostly post mortem reports on a range of subject areas under which public funds have been spent. Nonetheless, Committees are not precluded from requesting the Auditor-General to undertake a special audit and submit a report thereof to the Committee, as and when need arises. Indeed, the Public Investments Committees of successive Parliaments have always been alive to this reality and have carefully navigated the path of getting seized of investigation into allegations of misuse of public funds before the release of the reports on audited accounts.

Honourable Members, the established practice of the House is that a Committee may resolve to request the Auditor General to carry out a special audit and furnish a report to the Committee before the said Committee carries out further examination. Indeed, I have had the benefit of perusing the confirmed minutes of the 6th sitting of the Public Investments Committee which was held on 19th February, 2019, during which the Committee resolved as that, and I quote-

> *"The Office of the Auditor General should conduct a special audit on the proposed concession arrangement with a view to establishing adherence to the relevant laws, the risks that KAA and the public face if the takeover is implemented and the procurement process for the services of the transaction advisor[2]".*

It is evident from the foregoing, **Honourable Members,** that the Committee did fairly follow procedure in requesting for the special audit. However, whereas we applaud the Public Investments Committee for bringing this matter to the attention of the House by way of a progress report, it is important that I also address the basis of any future requests for special audits, going forward.

2 Excerpt of the Minutes of the 6th sitting of the Public Investments Committee held on 19th February, 2019, page 4.

Honourable Members, As you are aware Article 229 of the Constitution establishes the office of the Auditor General as an independent office subject only to the Constitution and law and not subject to direction or control by any person or authority. In light of this Article as read together with Article 249(2) as well as the reasoning of the Court in declaring section 42 of the Public Audit Act, 2015 unconstitutional, whenever Committees desire to benefit from the specialized expertise of the Auditor General by way of **special audits**, they must be conscious that they cannot order or compel the Auditor General to do so. *What steps therefore should a committee follow to seek for a special audit from the Auditor General?* In absence of parameters in the Public Audit Act, 2015 and our Standings Orders, as your Speaker, I will resort to invoking provisions of Standing Order 1 which provides that, and I quote-

In cases for not provided for, the Speaker to decide

> *In all cases where matters are not expressly provided for by these Standing Orders or by other orders of the House, any procedural question shall be decided by the Speaker.*

Honourable Members, I therefore give the following guidance with respect to the manner of requesting for special audits-

A committee wishing to request for special audits from the Auditor General shall-

(a) *indicate **how** the matter came before the Committee. This is to be supported by, amongst others, the agenda and the minutes of the Committee;*

*(b) indicate any preliminary information or evidence adduced before the Committee on the matter to justify the request and outline the **compelling** issues that have necessitated request for a special audit;*

*(c) indicate whether the Committee has confirmed the **absence** of any other audit report on the same matter and absence of an ongoing one;*

(d) *state the **nature** of the audit requested, e.g. compliance audit, financial or value for money audit, operational audit, ordinary investigative audit;*

(e) *state the **specific** matters to be covered in the audit. The Committee is to be specific and accurate where there are names of people, places, projects or programmes; and,*

(f) *state the preferred **timeline** within which the report is required by the Committee.*

Honourable Members, In keeping with the provisions of Standing Order 206(7)(c), a special audit shall not be sought on any mattes for which machinery is established by any special statute. Similarly, the provisions of Standing Order 199(2) with respect to the special majority of members required to adopt a report of a Committee shall apply to a resolution of a Committee requesting for a Special Audit. Further, it is inconceivable that the attention of the Speaker on a special audit by a Committee would only be drawn at the point of tabling of its report. The Clerk is henceforth required to satisfy himself, without exception that any request for a special audit complies with these guidelines before conveying the request to the Auditor General. Thereafter, the particular Committee shall not be properly seized of the matter until the special audit is tabled before the House, unless the House is in recess, in which case the Speaker may refer the report to the Committee and inform the House upon resumption. May I hasten to add that, the nature of the final report of the Auditor General shall determine the Committee to which the report is to be referred, notwithstanding that a particular committee made the request. These guidelines take effect immediately.

Honourable Members, the fifth matter requiring my determination is **whether the Committee is at fault to make a progress report to the House and what is the House expected to do with such a report.** I will address this issue together with the last question requiring my attention, which is **whether it would be procedurally in order for the House to be moved on a motion to debate the particular Progress Report of the Public Investments Committee as *laid on the Table of the House on Wednesday, February 27, 2019,* given that the report is interim.**

Honourable Members, The progress report of the Public Investments Committee on *Inquiry into the Proposed Takeover of Jomo Kenyatta International Airport (JKIA) by Kenya Airways (KQ)*, which was laid on the Table of the House by the Chairperson on *Wednesday, February 27, 2019* was meant to inform the House that, amongst other issues, the Committee was seized of the matter and that it had requested for a special audit. The widely held meaning of a progress report is that *"an interim report on progress made to date on a job, project, etc*[3]*"* Indeed, a progress report is an information report, usually prepared for several purposes, amongst them being to inform the House on salient issues awaiting completion of an inquiry and to keep the public updated on what is before a committee or schedule of activities so as to avoid speculations on a matter. ***Can we fault the Committee for informing the House at this stage?*** Certainly not. According to Rule 177 of The Rules of Procedure and Conduct of Business of the Legislative Assembly of National Capital Territory of Delhi, *"A Committee may, if it thinks fit, make a special report to the House on any matter that arises or comes to light <u>in the course of its working</u> which it may consider necessary to bring to the notice of the Speaker or the House, notwithstanding that such matter is not directly connected with, or does not fall within or is not incidental to, its terms of reference*[4]*."* This authority is further amplified by David McGee in the Third Edition of the Parliamentary Practice in New Zealand, which provides that "a *committee has used a special report to the House; ...to announce that it had initiated a major inquiry*[5]*".*

What is the House then supposed to do with such a progress report? **Honourable Members**, in discussing interim or progress reports, the Fifth Edition of the Australia House of Representatives Practice notes the following-

3 Derived from the Advanced Oxford Dictionary

4 Rule 177 of Rules of Procedure and Conduct of Business of the Legislative Assembly of National Capital Territory of Delhi, 2009

5 Parliamentary Practice in New Zealand (Third Edition), page 293

"This procedure (of interim report) provides a cost and time- effective way for a committee's views to be placed before Parliament, but <u>should be used with care</u>, as the committee could leave itself open to criticism that some community, government, or interest group have been excluded from the process. In addition, the committee runs the risk that its conclusions and recommendations could be based on incomplete or incorrect information[6]."

Further, **Honourable Members**, Robert's Rules of Order, an authority in Parliamentary Procedure applied in State Assemblies of the United States of America states the following with respect to a report containing only information, which is essentially a progress report "Even *if a report contains only an account of work done or a statement of facts or opinion for the assembly's information,* ***it should be in writing.*** *Apart from filing such report, however,* ***no action on it is necessary*** *and usually none should be taken."*[7]

In addition, **Honourable Members**, the Canadian House of Commons Procedure and Practice notes that, *"since the early 1990s, a number of take-note motions have been debated in the House or in Committee of the Whole. These debates solicit the views of Members on some aspect of government policy and allow Members to participate in policy development, making their views known before the government makes a decision[8]".* In our case, take-note motions are similar to the usual motions for noting.

Honourable Members, you will indeed recall that last year on 5th July, 2018 I did allow the Departmental Committees on Trade, Industry and Co-operatives and that of Agriculture and Livestock to present a progress or interim report on their *Inquiry into the Alleged Importation of Illegal & Contaminated Sugar in the Country.*

6 House of Representatives Practice, (Fifth Edition), page 684

7 Robert's Rules of Order, (11th Edition), page 525

8 The House of Commons Procedure and Practice (Canada) (Third Edition 2017), Page 706

However, that particular progress report was made through a statement to the House- and rightly so. The progress report was not debated by the House. Nonetheless, I did allow a few Members to make comments on it and thereafter allowed the Committee to resume its work, with an extended deadline. In the same vein, the Public Investments Committee will automatically be granted leave to resume its sittings and consideration of the subject matter, once the special audit report of the Auditor General is Tabled in the House as I will later direct.

Honourable Members, as cited from the three legislative authorities, a progress report is seldom discussed and if so it has to be debated without calling the House to make a resolution, give orders or directions. A resolution based on an interim report may certainly prejudice the outcome of the actual inquiry. Moreover, it should not be lost to the House that, a motion governed by Part XII of our Standing Orders and which seeks a resolution of the House ultimately **ends with a question being put**, the result of which may be that "Ayes" or the "Nays" have it. This begs the question; *what would be the procedural implication if the "Nays" had it (for instance), meaning that the progress report is rejected?* Obviously, such a decision, which is probable in a parliamentary set up, would render worthless the incomplete work of the Committee and any related special audit. It is for these reasons that most commonwealth legislatures have resorted to only allowing comments on progress reports or statements, instead of debate upon a motion. Allowing comments is meant to accord the Committee an opportunity to inform the House on the progress of the inquiry before it, while cushioning the remaining work from possible criticism, prejudices and binding directive that would arise if the House was to debate the report by way of an ordinary Motion.

In summary, **Honourable Members**, I wish to guide the House as follows-

1. **THAT**, I have established that the commercial arrangement between the Kenya Airports Authority and Kenya Airways regarding the Jomo Kenya International Airport is a Privately Initiated Investment Proposal under the Public Private Partnership Act, 2013 **which is still at initiation stage**. This is evidenced from the information provided by the Chairpersons of the Public Investments Committee and the Departmental Committee on Transport, Public Works and Housing and the Report of the Auditor General submitted to my office on 14^{th} March, 2019;

2. **THAT**, the Leader of the Majority Party or another Member designated by the House Business Committee may hereupon proceed to lay the Report of the Auditor General titled *"Special Audit Report on the Proposed Privately Initiated Proposal (PIIP) Between Kenya Airports Authority (KAA) and Kenya Airways (KQ)"*, which was submitted to my office on 14^{th} March, 2019. Upon tabling, the Report will stand referred to the Public Investments Committee, which shall, in its examination of the matters contained therein, confine itself to the financial and expenditure aspects of the reservations of the Auditor General as well as omissions and/or commissions on the part of the Kenya Airports Authority;

3. **THAT**, as for the Departmental Committee on Transport, Public Works and Housing, it is also at liberty to proceed with its inquiry. However, the Departmental Committee is to confine itself to matters of policy, human resource, compliance with due process and the law, benefits to the society and the nation and generally addressing any issues of concern to the people as contemplated under Article 95(2) of the Constitution.

The Committee is expected to offer oversight on the stages of implementation contemplated to complete the process and be apprising the House on the progress of the matter, should it proceed as initiated. This is also in tandem with my letter of 21st February, 2019 to the Chairperson of the Committee;

4. **THAT**, since the Investment Proposal is at its infancy, it may in due course, become inevitable for Parliament to be involved, particularly if there are any legislative interventions required as part of the process. In this regard, the House ought to exercise **restraint** at the current initial stages so as not to become prejudiced should the legislative intervention stage become inevitable;

5. **THAT**, henceforth, any Committee of the House which is desirous of benefiting from the specialized expertise of the Office of the Auditor General by way of requests for **special audits** must comply with the parameters contained in this Communication. The Auditor General, in considering the request may accede to the request, based on his reasoned judgment and inform the Committee through the established channels;

6. **THAT,** notwithstanding my earlier approval of the notice of Motion in respect of the adoption of the Progress Report of the Public Investments Committee on *The Inquiry into the Proposed Takeover of Jomo Kenyatta International Airport (JKIA) by Kenya Airways (KQ)*, laid on the table of the House by the Chairperson on *Wednesday, February 27, 2019,* I am constrained **NOT** to allow the motion to proceed. This is because, by doing so, the House will be offending its own established practice and

indeed the practice in many other comparative jurisdictions regarding treatment of progress reports. I will however allow the Chairperson of the Committee to present his report to the House by way of a statement as contemplated under Standing Order 44. In so doing, he is expected to speak to the progress of the matter before the Committee, which is essentially the substance of the said Report;

7. **THAT**, following the statement of the Chairperson of the Public Investments Committee, I will allow other Members of the House to make comments on the Progress Report. This is in keeping with the precedent set by the House on Thursday, July 5th, 2018, when the Chairperson of the Departmental Committee on Agriculture & Livestock and the Chairperson of the Departmental Committee on Trade, Industry & Cooperatives presented a joint progress report on the *Inquiry into Alleged Importation of Illegal and Contaminated Sugar in the Country*, which was an active matter before the joint Committee. This practice is however distinct from the procedure contemplated under Standing Order 200 providing for *half-yearly progress reports* which are to be submitted to the Liaison Committee and thereafter tabled in the House; and,

8. **THAT**, since a progress report is intended for information and to elicit comments without resolution, and may **not** be amended, the proposed amendment by the Chairperson of the Departmental Committee on Transport, Public Works and Housing to the subject progress report is also inadmissible.

Finally, Honourable Members, as I conclude, I wish to laud the Public Investments Committee for bringing this matter to the attention of the House. **Nevertheless, even as the two Committees resume their examination and the House makes comments on the progress report, may I caution the two committees and indeed the House that, in examining this investment proposal, we must be conscious that it is at its infancy. All of us must uphold high standards, be mindful of the strategic interests of the nation and the welfare of the present and future generations. This behoves all of us to exercise sobriety, patriotism and reasonable confidentiality as servants who "have been called to the performance of important trusts in this Republic.[9]"**

The House is accordingly guided.

I thank you!

THE HON. JUSTIN B. MUTURI, E.G.H., MP
SPEAKER OF THE NATIONAL ASSEMBLY

Thursday, March 21, 2019

9 Derived from the prayer contained in the National Assembly Standing Orders, Fourth Edition, page xxiii

ANNEX III

VOLUME I

Minutes of the meetings of the Committee

MINUTES OF THE TWENTY FIRST (21ST) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON 10TH FLOOR, CDF BOARDROOM, HARAMBEE SACCO, PARLIAMENT BUILDINGS ON TUESDAY, 26TH MARCH 2019 AT 10.00 A.M.

MEMBERS PRESENT

1. Hon. David Pkosing, M.P. - **Chairperson**
2. Hon. David Njuguna Kiaraho, M.P.
3. Hon. Johnson Manya Naicca, M.P.
4. Hon. Peris Pesi Tobiko, M.P.
5. Hon. Ahmed Abdisalan Ibrahim, M.P.
6. Hon. Dominic Kipkoech Koskei, M.P.
7. Hon. Gideon Mutemi Mulyungi, M.P.
8. Hon. Rigathi Gachagua, M.P.
9. Hon. Shadrack John Mose, M.P.
10. Hon. Tom Mboya Odege, M.P.
11. Hon. Vincent Kemosi Mogaka, M.P.

MEMBERS ABSENT WITH APOLOGY

1. Hon. Moses Kuria, M.P. - **Vice Chairperson**
2. Hon. Samuel Arama, M.P.
3. Hon. Savula Ayub Angatia, M.P.
4. Hon. Suleiman Dori Ramadhani, M.P.
5. Hon. Ahmed Bashane Gaal, M.P.
6. Hon. Kulow Maalim Hassan, M.P.
7. Hon. Mugambi Murwithania Rindikiri, M.P.
8. Hon. Rehema Dida Jaldesa, M.P.

SECRETARIAT

1. Ms. Chelagat Aaron Tungo - Clerk Assistant I
2. Mr. Ahmed Salim - Clerk Assistant III
3. Ms. Christine Odhiambo - Legal Counsel I
4. Mr. James Muguna - Research Officer III
5. Mr. Collins Mahambe - Audio Officer
6. Ms. Zainab Wario - Sergeant at Arm II

MIN No. TPWH 096/2019: PRELIMINARIES

The meeting was called to order at ten minutes past ten o'clock, with a word of prayer from the Hon. Vincent Kemosi, MP. Members confirmed the agenda as consideration of the Speaker's ruling and way forward on Kenya Airways/ Kenya Airport Authority PIIP. Agenda was proposed by Hon. Dominic Koskei, MP and Seconded by Hon. Shadrack Mose, MP.

The Principal Secretary for Housing had been invited for a consultative meeting on National Housing Scheme which was to be part of the agenda, but the Committee had received written request to have the meeting postponed to a later date since the accounting office was away on official duty.

MIN No. TPWH 097/2019: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

The agenda item was differed to the next committee meeting.

MIN No. TPWH 098/2019: BRIEFING BY THE LEGAL COUNSEL ON SPEAKER'S RULING ON THE INQUIRY INTO THE PROPOSED TAKEOVER OF JKIA BY KENYA AIRWAYS

The Committee noted that on Thursday, 21st March, 2019, The Hon. Speaker of the National Assembly issued a Communication on mandate of Audit Committees Vis a Vis that of Departmental Committees and the place of progress reports in inquiry processes of the takeover of JKIA by KQ.

Key issues and directives given in the Communication included;

i. The Committee to confine itself to matters of policy, human resource, compliance with due process of law and generally address any issues of concern to the people as contemplated under Article 95 of the Constitution;
ii. Restricting the Committee in carrying out public participation of the privately initiated Invested Proposal between KQ and KAA at this infancy stage. That at this stage, the exercise is obligation of the Kenya Airports Authority and / or the relevant state department, which are expected to thereafter apprise the House on the progress of the initiative through the said Departmental Committee.
iii. Upholding high standards, being mindful of the strategic interests of the nation and the welfare of the present and future generations. Thus this behooves everyone to exercise sobriety, patriotism and reasonable confidentiality as servants who "have been called to the performance of important trust in the Republic".

The Committee however thought it right to carry out an open inquiry and engage members of the Public in order to get their view before reporting its findings to the House.

MIN No. TPWH 099/2019: WAY FORWARD ON KQ/KAA PIIP

In developing the roadmap to a successful inquiry, the Committee after considering the Speaker's Communication identified four key issues which could assist the Committee in developing the Terms of Reference for questions under the inquiry. These four are:

1. Policy issues;
2. Human resource issues;
3. Legal compliance; and

4. General issues of concern to the people.

The following is a breakdown of the four items around which the inquiry process is proposed to be built and upon which the pertinent questions are supposed to be addressed:

A. Policy Issues

1. What did the Cabinet Memo and the White Paper seek to address regarding aviation policy?
2. What is PIIP in summary? What is it attempting to address in line with the Cabinet Memo?
3. Is PIIP the best proposal to address the policy aviation problems? Why?
4. What options exist to address the matters of aviation policy if not PIIP?

B. Human Resource Issues

1. Should it go as proposed, what is the implication of PIIP to human resource?
2. PIIP as it is may lead to redundancy, sooner or later. What are the mitigating measures?
3. What is the current staffing formation structure for KAA?
4. What about the future of the staff who are on Permanent and Pensionable scheme of service?

C. Legal Compliance Issues

1. Did the PIIP follow the due process of the law? What are the legal regimes covering the PIIP process and any other related matters?

D. Issues of Concern to the Public in General

1. Is KQ a Public or Private Company and who are the shareholders?
2. How can a loss making company like KQ take over a profit making company like KAA?
3. If KQ takes over JKIA, what happens to other airports?
4. Is there conflict of interest between the current KAA chairman who happens to be the CEO of CBA Bank which is currently in the process of acquiring NIC bank?
5. Is the current model of KQ causing hemorrhage in terms of;
   - Wage bill and expatriate issue
   - Fuel hedging
   - Aircraft Leasing
6. How many Aircraft has KQ leased and who are the owners? Are there alternatives to leasing? Are there any other Airlines that have leased aircrafts directly from Manufacturers?
7. What is the financial health status of KQ/ KAA respectively, in terms of;
   - Its balance sheet
   - Debt held by KQ/ KAA
   - Cash flow of KQ/ KAA
   - Assets and Equities
   - Securities by EXIM Bank and local banks
8. What is the optimum revenue generation from JKIA?
9. What amount of the revenue generated by JKIA is used to maintain other Airports?

10. What is the respective contribution of KQ/ KAA to the economy?
    - In terms of the GDP; and
    - The number of people employed by KQ/ KAA?

<u>MIN No. TPWH 100/2019:</u> **<u>ANY OTHER BUSINESS</u>**

1. Arising from the deliberations made on processes of successful inquiry , Members proposed that a roadmap for the inquiry process be outlined as follows;
    i. Advertisement for the public to submit views on the inquiry to be out by 28th March 2019
    ii. Members of the public to submit their views by 4th April 2019
    iii. Hearing to be conducted between 8th and 12th April 2019
    iv. Committee Secretariat to prepare the first draft report between 15th and 18th April 2019
    v. Committee to retreat from 18th to 21st April 2019
    ~~vi. Committee to meet selected stakeholders from 23rd and 24th April 2019~~
    vii. Committee to retreat gain for the final report writing from 25th to 28th April 2019
    viii. Committee to table its report on 2nd May 2019

2. The Committee came up with a List of witnesses/stakeholders to be invited so as to submit their views and they included;
    i. Ministry of Transport
    ii. Kenya Airways
    iii. Kenya Airports Authority
    iv. State Corporations Advisory Committee
    v. Transaction consultants
    vi. Kenya Civil Aviation Authority
    vii. Public Service Commission

The Secretariat were tasked to prepare invitations to stakeholders, prepare a newspaper advert to run in the dailies from Thursday, 28th March, 2019 and to further make all the arrangements necessary for the Committee to carry out Public hearings.

<u>MIN No. TPWH 101/2019:</u> **<u>ADJOURNMENT</u>**

There being no other business, the sitting was adjourned at twenty minutes to one o'clock. The next meeting to be held on notice

Signed...

(Chairperson)

Date.........02/04/2019...

MINUTES OF THE TWENTY THIRD (23RD) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON TUESDAY, 9TH APRIL 2019 AT 10.30 A.M. MINI CHAMBER, COUNTY HALL

MEMBERS PRESENT

1. Hon. David Pkosing, M.P. - Chairperson
2. Hon. Samuel Arama, M.P.
3. Hon. Savula Ayub Angatia, M.P.
4. Hon. Ahmed Abdisalan Ibrahim, M.P.
5. Hon. Dominic Kipkoech Koskei, M.P.
6. Hon. Johnson Manya Naicca, M.P.
7. Hon. Kulow Maalim Hassan, M.P.
8. Hon. Mugambi Murwithania Rindikiri, M.P.
9. Hon. Peris Pesi Tobiko, M.P.
10. Hon. Rigathi Gachagua, M.P.
11. Hon. Shadrack John Mose, M.P.
12. Hon. Tom Mboya Odege, M.P.

MEMBERS ABSENT WITH APOLOGY

1. Hon. Moses Kuria, M.P. - Vice Chairperson
2. Hon. David Njuguna Kiaraho, M.P.
3. Hon. Suleiman Dori Ramadhani, M.P.
4. Hon. Gideon Mutemi Mulyungi, M.P.
5. Hon. Ahmed Bashane Gaal, M.P.
6. Hon. Rehema Dida Jaldesa, M.P.
7. Hon. Vincent Kemosi Mogaka, M.P.

SECRETARIAT

1. Ms. Chelagat Aaron Tungo - Clerk Assistant I
2. Mr. Ahmed Salim - Clerk Assistant III
3. Mr. Ronald Walala - Legal Counsel I

4. Mr. Abdinasir Moge - Fiscal Analyst
5. Mr. James Muguna - Research Officer
6. Mr. Collins Mahambe - Audio Officer
7. Ms. Noelle Chelagat - Media Relations Officer

IN ATTENDANCE

1. Mr. James Macharia, EGH - Cabinet Secretary, MOTIHUD&PW
2. Mrs. Esther Koimett, CBS - Principal Secretary, Transport

MIN No. TPWH 107/2019: PRELIMINARIES

The meeting was called to order at thirty minutes past ten o'clock, with a word of prayer from the chairperson. Members confirmed the agenda as meeting with the Cabinet Secretary and the Principal Secretary for Transport as the Committee starts an inquiry into the aviation sector in Kenya. The Chairperson of the Committee informed the Cabinet Secretary that the meeting follows a Committee meeting of 19th February 2019 where the Ministry submitted a copy of the Kenya Airways PIIP and subsequent events that followed, including a communication from the Speaker of the National Assembly on mandate of the House Committees.

MIN No. TPWH 108/2019: SUBMISIONS FROM THE CABINET SECRETARY FOR TRANSPORT, INFRASTRUCTURE, HOUSING, URBAN DEVELOPMENT AND PUBLIC WORKS

The Committee largely interrogated the Cabinet Secretary on policy issues, legal issues and general issues of concern to the people of Kenya.

The Cabinet Secretary submitted that the Cabinet granted policy approval to restructure and improve the aviation sector without deciding on any particular route and that all options were still open. He explained that what the Cabinet Memo was essentially asking was for the Ministry to go out of its way and get the KQ to become a financially prudent institution. He noted that Kenya Airways (KQ) was flying the Kenyan flag globally and therefore it cannot be looked at purely on commercial basis. He submitted that the aviation sector needed to be looked at very broadly; Ethiopian government being an example of why government involvement was vital in the aviation sector. Members however noted that as long as KQ remained a private entity, it would always be looked at commercially.

On expected job losses, the Cabinet Secretary asserted that there will be no job losses in case the restructuring of the aviation sector takes shape and that he had personally assured the KAA employees of the same. While emphasizing that the intention is to save the entire aviation sector, he noted that KQ was just but a single component in the entire aviation sector. He termed KQ as a quasi-government institution. He explained that in terms of shareholding we were moving towards making KQ a full public entity.

The CS noted that 70% of the business at JKIA was KQ and that it was important to consolidate the gains and manage them in a way that we got the best value. He insisted that the policy was to allow us to look into the best options on how to manage aviation assets and that all options were open. Responding to Members' questions, the Cabinet Secretary submitted that we could consider Nationalization of KQ as an option but termed it a piece-meal formula at the moment because we didn't know how the final lasting solution will be to the aviation sector.

On the assertion that KQ was still paying interest to the consortium of banks (KQ Lenders 2017), the CS explained that they wanted to convert the loans to equity but under the Banking Act banks cannot own shares in their companies, and this is why the KQ Lenders was created to hold some shares while some were left as a loan to be held by the KQ Lenders 2017 Ltd. The Committee was informed that the shares were time-bound with a period of ten years and that the KQ Lenders Ltd was the shareholder, not the banks. The Committee heard that the shares were to give KQ some breathing space and that the dividends were very minimal because KQ was hardly making profits.

The Cabinet Secretary explained that the government starts with a policy after which the corporates may come in before the feedback is taken back to the Cabinet. Policy shift in this case was therefore predicated by the challenges being faced in the aviation sector. He explained that the KQ proposal was taken to the PPP Unit in the National Treasury for consideration. He further explained that the currently proposed Privately Initiated Investment Proposal (PIIP) was framed in a way that the KQ and KAA will form a Special Purpose Vehicle (SPV) to manage the Jomo Kenyatta International Airport.

On the legality of PIIP, the Cabinet Secretary submitted that the Public Private Partnership Act was identified as suitable legal framework and added that the government was exploring other possible options.

Responding to Members' concern on how a loss-making entity like KQ can manage a profit-making entity like KAA, the Cabinet Secretary submitted that the aviation sector needs to be ~~looked at holistically. The CS further asserted that there cannot be differing opinion between the~~ Ministry and the KAA because KAA was a government agency and it therefore cannot be delinked from the government.

On the possible conflict of interest of the KAA Chairperson who is also the group Chairperson for CBA Bank, the Cabinet Secretary submitted that the position of the Chairman of KAA and that of the bank were totally unrelated to the events in the aviation sector. He explained that there was no linkage between the management of the banks and the management of Kenya Airports Authority.

The Cabinet Secretary further informed the Committee that an expressway from Jomo Kenyatta International Airport to Westlands was being planned as well as a commuter rail system from JKIA to town centre with assistance from the French government.

MIN No. TPWH 109/2019: ANY OTHER BUSINESS

1. Members were concerned about a suicide case by a KCAA employee. The Cabinet Secretary informed the Committee that the case was still under investigation by the relevant government agencies and that the Ministry was equally concerned and closely following on the matter.

2. The Committee Chairperson informed the Cabinet Secretary that the Committee may, in the course of the inquiry, need to engage the Cabinet Secretary on short notice and therefore

requested the Cabinet Secretary to be flexible in case his presence is required, albeit in a short notice, for any further clarifications.

MIN No. TPWH 110/2019: ADJOURNMENT

There being no other business, the sitting was adjourned at thirty eight minutes past noon. The next meeting to be held at 2pm, same day on 9th April 2019.

Signed..

(Chairperson)

Date.....23/5/19...

MINUTES OF THE TWENTY FOURTH (24^{TH}) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON TUESDAY, 9^{TH} APRIL 2019 AT 2.00 P.M. IN MINI CHAMBER, COUNTY HALL

MEMBERS PRESENT

1. Hon. David Pkosing, M.P. - Chairperson
2. Hon. Samuel Arama, M.P.
3. Hon. Savula Ayub Angatia, M.P.
4. Hon. Ahmed Abdisalan Ibrahim, M.P.
5. Hon. Dominic Kipkoech Koskei, M.P.
6. Hon. Johnson Manya Naicca, M.P.
7. Hon. Kulow Maalim Hassan, M.P.
8. Hon. Mugambi Murwithania Rindikiri, M.P.
9. Hon. Peris Pesi Tobiko, M.P.
10. Hon. Rigathi Gachagua, M.P.
11. Hon. Shadrack John Mose, M.P.
12. Hon. Tom Mboya Odege, M.P.

MEMBERS ABSENT WITH APOLOGY

1. Hon. Moses Kuria, M.P. - Vice Chairperson
2. Hon. David Njuguna Kiaraho, M.P.
3. Hon. Suleiman Dori Ramadhani, M.P.
4. Hon. Gideon Mutemi Mulyungi, M.P.
5. Hon. Ahmed Bashane Gaal, M.P.
6. Hon. Rehema Dida Jaldesa, M.P.
7. Hon. Vincent Kemosi Mogaka, M.P.

SECRETARIAT

1. Ms. Chelagat Aaron Tungo - Clerk Assistant I
2. Mr. Ahmed Salim - Clerk Assistant III
3. Mr. Ronald Walala - Legal Counsel I

4. Mr. Abdinasir Moge - Fiscal Analyst I
5. Mr. James Muguna - Research Officer III
6. Mr. Collins Mahambe - Audio Officer
7. Ms. Noelle Chelagat - Media Relations Officer

IN ATTENDANCE

1. Mr. Michael Joseph - Chairman, Kenya Airways (KQ)
2. Mr. Sebastian Mikosz - CEO, Kenya Airways (KQ)
3. Mr. Dennis Kashero - Head of Comm. & Public Affairs, KQ
4. ~~Mr. Emmanuel Mwaniki - Business Support Manager, KQ~~

MIN No. TPWH 111/2019: PRELIMINARIES

The meeting was called to order at twenty minutes past two o'clock, with a word of prayer from the chairperson. Members confirmed the agenda as meeting with the Chairperson and the Chief Executive Officer of Kenya Airways as the Committee proceeds with its inquiry into the aviation sector in Kenya.

MIN No. TPWH 112/2019: SUBMISIONS FROM THE CHAIRPERSON AND THE CEO, KENYA AIRWAYS

In his ıtation, the Kenya Airways (KQ) CEO submitted that comparative analysis of the aviatic :or globally shows that other succeeding airlines have full support of their goverr making them making an edge in the market. He admitted that competitiveness of KQ wa compared to other airlines. He submitted that Emirates, for instance, contributes 20% tc of the GDP of Dubai while KQ was only doing 3% in Kenya. He, for example, explain while Kenya Airways had a mandate of paying dividends, other airlines did not.

The KQ CEO submitted that through the KQ/KAA PIIP, KQ was simply proposing to align all the interests and to reduce costs. He gave an example of Rwanda which was copying Kenya in routes but it was offering cheaper rates because they had a different system of operation. On his part, the KQ Chairperson regretted that about nine years ago the Ethiopian Airline was half of KQ while it was now far much ahead. He noted that the advent of Middle Eastern airlines including Oman Air and even Ethiopian Airline brought stiff competition to KQ but KQ failed to act appropriately. While emphasizing the need to support Kenya Airways, the KQ Chairman submitted that there was need to consider the structure of costs and how the competition was and further noted that in real sense, 92% of KQ shareholders are Kenyan. The CEO, on his part, submitted that KQ's main focus was on creating more jobs, expanding connectivity and increasing contribution to the country's GDP.

On staff remuneration, the CEO reported that Kenya Airways had around 400 pilots, and that he would share with the Committee the salary structure for the CEO and the Directors by the morning of 10th April 2019.

The CEO explained that airline leasing was a better option and that it was the practice worldwide. He stated that there is normally flexibility on the length of leasing and it may take between 3 to 12 years before an operator requests for a new aircraft. He gave an example of Emirates which was leasing 62% of its aircraft. He explained that KQ had leased 20 of its fleet while 17 was on loan and 3 were fully owned by KQ. He explained that there was no formula for leasing from manufacturers as manufacturers only sell. He submitted that the mix of fleet of KQ was reasonable and that the fleet cost was currently at 11% even as they make attempts to lower the monthly costs. The CEO acknowledged that KQ might have previously done mistakes in its fleet acquisition program. He asserted that for KQ to fly more, then it needed to have more flexible routes.

The CEO submitted that he had reservations with Collective Bargaining Agreement with pilots and that is why he earlier refused to sign it around June 2017 as he was convinced that it highly favored pilots at the expense of KQ. He submitted that he ultimately had to sign the agreement because the go-slow by the pilots had devastating effects as flight were being cancelled within six hours of the pilots' go-slow.

The CEO submitted that the financial restructuring which was done two years ago was meant to lower the interest rates and the lease rates. Arising from the CEO presentation, Members wanted to know about the Tsavo Ltd Loan Structure and the Samburu Ltd Loan Structure. The CEO reported that the companies were not owned by Kenyans despite the Kenyan names and that they were created by the banks to syndicate their loans.

The CEO explained that they were looking forward to expanding employment, more airlines coming to Kenya by lowering charges, more connections, and expansion of JKIA to increase capacity from the current 11 million to 20 million passengers. He stated that the PIIP proposal was given to KAA and guided by PPP Act and that it was normal to address issues on KAA in the proposal as KAA was part of KQ challenges but was not a big problem.

MIN No. TPWH 113/2019: ANY OTHER BUSINESS

1. The Kenya Airways clarified that contrary to media reports, KQ direct flights to New York were still operating. He explained that frequencies were reduced to five during low season and that they will go up to daily flights in high season.

2. The Committee Chairperson informed the Kenya Airways' Chairperson and the Chief Executive Officer that the Committee may, in the course of the inquiry, need to engage them on short notice and therefore requested them to be flexible in case their presence was required for any further clarifications. The KQ Chairperson informed the Committee that whereas the CEO would be available any time as may be required by the Committee, the Chairperson would not be available for the next two weeks as he will be engaged in other preplanned activities.

MIN No. TPWH 114/2019: ADJOURNMENT

There being no other business, the sitting was adjourned at forty seven minutes past five o'clock. The next meeting to be held at 10 am, same Wednesday, 10th April 2019.

Signed..

(Chairperson)

Date......23/5/19..

MINUTES OF THE TWENTY FIFTH (25TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON WEDNESDAY, 10TH APRIL 2019 AT 10.00 A.M. IN MINI CHAMBER, COUNTY HALL

MEMBERS PRESENT

1. Hon. David Pkosing, M.P. - Chairperson
2. Hon. Samuel Arama, M.P.
3. Hon. David Njuguna Kiaraho, M.P.
4. Hon. Savula Ayub Angatia, M.P.
5. Hon. Ahmed Abdisalan Ibrahim, M.P.
6. Hon. Ahmed Bashane Gaal, M.P.
7. Hon. Dominic Kipkoech Koskei, M.P.
8. Hon. Johnson Manya Naicca, M.P.
9. Hon. Kulow Maalim Hassan, M.P.
10. Hon. Mugambi Murwithania Rindikiri, M.P.
11. Hon. Peris Pesi Tobiko, M.P.
12. Hon. Shadrack John Mose, M.P.
13. Hon. Tom Mboya Odege, M.P.
14. Hon. Vincent Kemosi Mogaka, M.P.

MEMBERS ABSENT WITH APOLOGY

1. Hon. Moses Kuria, M.P. - Vice Chairperson
2. Hon. Suleiman Dori Ramadhani, M.P.
3. Hon. Gideon Mutemi Mulyungi, M.P.
4. Hon. Rehema Dida Jaldesa, M.P.
5. Hon. Rigathi Gachagua, M.P.

SECRETARIAT

1. Ms. Chelagat Aaron Tungo - Clerk Assistant I
2. Mr. Ahmed Salim - Clerk Assistant III
3. Mr. Ronald Walala - Legal Counsel I

4. Mr. Abdinasir Moge - Fiscal Analyst I
5. Mr. James Muguna - Research Officer III
6. Mr. Collins Mahambe - Audio Officer
7. Ms. Noelle Chelagat - Media Relations Officer

IN ATTENDANCE

1. Mr. Jonny Andersen - Managing Director, Kenya Airports A.
2. Mr. Isaac Awuondo - Chairman, Kenya Airports Authority
3. Mr. Alex Gitari - G.M. Finance, Kenya Airports Authority
4. Mr. Fred Odawo - G.M. Projects and Eng. Services, KAA
5. Ms. Grace Odhaimbo - Communications Department, KAA

MIN No. TPWH 115/2019: PRELIMINARIES

The meeting was called to order at ten minutes past ten o'clock, with a word of prayer from the chairperson. Members confirmed the agenda as meeting with the Chairperson and the Chief Executive Officer of Kenya Airports Authority as the Committee conducts its inquiry into the aviation sector in Kenya.

MIN No. TPWH 116/2019: SUBMISIONS FROM THE CHAIRPERSON AND THE CEO, KENYA AIRPORTS AUTHORITY (KAA)

Members of the Committee sought clarification from the Managing Director on his denial of the knowledge on the proposal when he last appeared before the Hon. Members. He clarified that there was a misunderstanding and that he had actually not received the proposal by then. He further submitted that KAA has not responded to the KQ proposal on the PIIP as the process would be informed by the outcome of the due diligence and negotiation process in line with the law. He informed the Committee that KAA has not received any feedback from the PPP unit and therefore KAA has not responded to the KQ proposal. This, he explained, informed the KAA silence on the proposal.

The KAA MD informed the Committee that even as they await the feedback from the PPP unit, the KAA would itself seek answers to a number of questions. This includes the following:

a. KQ capacity in terms of its financial strength, technical capability to rn an airport and the legality of the KQ proposal in its entirety;
b. Whether the deal will be profitable to KAA as it may be to KQ;
c. Whether 1+1=3 in case KAA joins KQ;
d. Whether the proposal as it is was the best option to provide value for money;
e. Viability gap; in case JKIA is taken by KQ, what gap will remain for KAA; and
f. Considering that JKIA represents almost 80% of KAA revenues, how does KAA finance other airports?

The MD explained that KAA had identified those questions and other gaps so that KAA may sit with KQ to negotiate.

The Chairperson of the KAA was asked to clarify on conflict of interest, considering that he was also the Group Managing Director of CBA Bank; one of the banks that formed the KQ Lenders 2017 Ltd. He explained that whereas it would really appear that there was conflict of interest, in reality the CBA Bank in Kenya has its own CEO who was fully running the day to day responsibilities of the bank. He further explained that he had informed the KAA board of the perceived interest in board meetings and he was confident that he was not in actual sense conflicted considering the clear demarcation of roles for both institutions.

The Committee was further informed that the CBA Bank had converted its debt into equity and that CBA Bank had no direct shareholding in KQ. It was reiterated that the management of the day to day issues of the bank was left with CEO of the company and not the Chairperson.

KAA MD informed the Committee that the Authority, as part of its due diligence measures, competitively procured a transaction adviser to assist the KAA in analyzing the proposal and its implication even as they await the feedback from the PPP unit and before the transaction support phase, in case the proposal goes through.

The Committee was informed that the Kenya Airways owed the KAA slightly over five billion shillings, accumulated over time. KAA submitted that it had been very forceful in its recovery efforts and had KQ not been a national carrier, more stringent actions would have been taken against it including grounding it. KAA submitted that KQ represented 40% of KAA business. It was the KAA submission that irrespective of whether the proposed PIIP goes through or not, something must be done in one way or another to improve the aviation industry in Kenya.

KAA submitted that from a broader policy perspective, it was high time that something is done to increase our competitiveness as a country. KAA further argued that the Concession Order has not been looked at since 1996 and that KAA was, as a result, disadvantaged. They pleaded with the National Assembly, through the Committee, to look into the issue of the Concession Order,

---

The KAA submitted that they needed a month for the KAA to come with its own proposal as an alternative to the KQ proposal. The Committee resolved that, considering the urgency of time, it would be very important if KAA could submit their proposal to the Committee by 24th April 2019.

The Committee Chairperson further informed the KAA Chairperson and the Chief Executive Officer that the Committee may, in the course of the inquiry, need to engage them on short notice and therefore requested them to be flexible in case their presence was required for any further clarifications.

MIN No. TPWH 117/2019: **ADJOURNMENT**

There being no other business, the sitting was adjourned at twelve minutes past two o'clock. The next meeting to be held at 3.00 p.m., same day on Wednesday, 10th April 2019.

Signed..

(Chairperson)

Date..........23/5/17..

MINUTES OF THE TWENTY SIXTH (26^{TH}) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON WEDNESDAY, 10^{TH} APRIL 2019 AT 3.00 P.M. IN MINI CHAMBER, COUNTY HALL

MEMBERS PRESENT

1. Hon. David Pkosing, M.P. - Chairperson
2. Hon. Samuel Arama, M.P.
3. Hon. David Njuguna Kiaraho, M.P.
4. Hon. Savula Ayub Angatia, M.P.
5. Hon. Ahmed Abdisalan Ibrahim, M.P.
6. Hon. Dominic Kipkoech Koskei, M.P.
7. Hon. Johnson Manya Naicca, M.P.
8. Hon. Kulow Maalim Hassan, M.P.
9. Hon. Mugambi Murwithania Rindikiri, M.P.
10. Hon. Shadrack John Mose, M.P.
11. Hon. Tom Mboya Odege, M.P.
12. Hon. Vincent Kemosi Mogaka, M.P.

MEMBERS ABSENT WITH APOLOGY

1. Hon. Moses Kuria, M.P. - Vice Chairperson
2. Hon. Suleiman Dori Ramadhani, M.P.
3. Hon. Ahmed Bashane Gaal, M.P.
4. Hon. Gideon Mutemi Mulyungi, M.P.
5. Hon. Peris Pesi Tobiko, M.P.
6. Hon. Rehema Dida Jaldesa, M.P.
7. Hon. Rigathi Gachagua, M.P.

SECRETARIAT

1. Ms. Chelagat Aaron Tungo - Clerk Assistant I
2. Mr. Ahmed Salim - Clerk Assistant III
3. Mr. Ronald Walala - Legal Counsel I

4. Mr. Abdinasir Moge - Fiscal Analyst I
5. Mr. James Muguna - Research Officer III
6. Mr. Collins Mahambe - Audio Officer
7. Ms. Noelle Chelagat - Media Relations Officer

IN ATTENDANCE

1. Mr. Gilbert M. Kibe - Director General, KCAA
2. Mr. Joseph K. Chebungei - Director, Corporate Services, KCAA
3. Mr. Denis K. Kimani - Manager, Legal Services, KCAA

MIN No. TPWH 118/2019: PRELIMINARIES

The meeting was called to order at three o'clock, with a word of prayer from the chairperson. Members confirmed the agenda as meeting with the Director General of the Kenya Civil Aviation Authority (KCAA) as the Committee continues with its inquiry into the aviation sector in Kenya.

MIN No. TPWH 119/2019: SUBMISIONS FROM THE DIRECTOR GENERAL, KENYA CIVIL AVIATION AUTHORITY (KCAA)

The Director General of the Kenya Civil Aviation Authority (KCAA) submitted that the KCAA did not have any official position on the KQ/KAA PIIP the KCAA did not have the proposal for its information. The DG however stated that based on the small information in the public domain, it appeared that KQ was looking at the balance sheet of KAA and believed that they could expand their business. The KCAA DG informed the Committee that although KQ owed KCAA substantial amount in debt, the KQ had in the last year been making regular payments unlike before, a clear sign that there were some positive financial improvements with the KQ and therefore quite encouraging.

KCAA submitted that there were about 40 carriers that use JKIA and 25 cargo carriers and further noted that the Kenya Airways was the single most significant airline that contributed to air navigation services in Kenya. He informed the Committee that 80% of KCAA revenue came from the air navigation services and that air navigation service capabilities cannot be given to any airline.

The Committee was informed that a broad view of the aviation sector points to an encouraging growth even as more still needed to be done. The Committee resolved to give the KCAA Director General a copy of the KQ/KAA PIIP proposal for the KCAA consumption and information.

MIN No. TPWH 120/2019: ANY OTHER BUSINESS

1. Responding to Members' questions on slow pace of air accidents investigations, the KCAA Director General informed the Committee that investigators have been doing their work a lot of constraints and that KCAA was proposing that the unit be established as a totally independent organization with its own budget.

2. The Committee was informed by the Director General of KCAA that the Kenya Airline Workers Union was deregistered. The Committee resolved that it will first seek clarification from KAWU before it engages them on 11th April 2019, even as the Committee considers writing to the Registrar of Societies; a process that may take time before receiving feedback.

MIN No. TPWH 121/2019: ADJOURNMENT

There being no other business, the sitting was adjourned at thirty minutes past five o'clock. The next meeting to be held at 10 a.m. on Thursday, 11th April 2019.

Signed..

(Chairperson)

Date.........23/5/19...

MINUTES OF THE TWENTY SEVENTH (27TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON THURSDAY, 11TH APRIL 2019 AT 10.00 A.M. IN MINI CHAMBER, COUNTY HALL

MEMBERS PRESENT

1. Hon. David Pkosing, M.P. - Chairperson
2. Hon. David Njuguna Kiaraho, M.P.
3. Hon. Ahmed Abdisalan Ibrahim, M.P.
4. Hon. Ahmed Bashane Gaal, M.P.
5. Hon. Dominic Kipkoech Koskei, M.P.
6. Hon. Johnson Manya Naicca, M.P.
7. Hon. Kulow Maalim Hassan, M.P.
8. Hon. Mugambi Murwithania Rindikiri, M.P.
9. Hon. Peris Pesi Tobiko, M.P.
10. Hon. Rigathi Gachagua, M.P.
11. Hon. Shadrack John Mose, M.P.
12. Hon. Tom Mboya Odege, M.P.
13. Hon. Vincent Kemosi Mogaka, M.P.

MEMBERS ABSENT WITH APOLOGY

1. Hon. Moses Kuria, M.P. - Vice Chairperson
2. Hon. Samuel Arama, M.P.
3. Hon. Savula Ayub Angatia, M.P.
4. Hon. Suleiman Dori Ramadhani, M.P.
5. Hon. Gideon Mutemi Mulyungi, M.P.
6. Hon. Rehema Dida Jaldesa, M.P.

SECRETARIAT

1. Ms. Chelagat Aaron Tungo - Clerk Assistant I/Lead Clerk
2. Mr. Ahmed Salim - Clerk Assistant III
3. Mr. Ronald Walala - Legal Counsel

4. Mr. Abdinasir Moge - Fiscal Analyst
5. Mr. James Muguna - Research Officer
6. Mr. John Mungai - Audio Officer
7. Ms. Noelle Chelagat - Media Relations Officer

IN ATTENDANCE

1. Mr. Moss Ndiema - Secretary General, KAWU
2. Mr. Robert Lichoro - Union Official, KAWU
3. Mr. Daniel Yatich - Union Official, KAWU
4. Mr. Bonne NM Baraza - Union Official, KAWU
5. Mr. Walter Onguri - Union Official, KAWU
6. Mr. Danstone Muteshi - Union Official, KAWU
7. Mr. Bernard Owiti - Union Official, KAWU
8. Mr. Patrick Njuguna - Union Official, KAWU
9. Mr. Humphrey Mayebei - Union Official, KAWU
10. Mr. Robert Sifa - Union Official, KAWU
11. Mr. Abubakar Muhamed - Union Official, KAWU
12. Mr. John K. Waweru - Union Official, KAWU
13. Mr. Opicho Wakoli - Union Official, KAWU
14. Mr. Sylvester Otiato - Union Official, KAWU
15. Capt. Timothy Njoroge - Vice Chairman, KALPA
16. Capt. Muriithi Nyagah - General Secretary, KALPA
17. Capt. Dzochera Warrakah - Asst. General Sec., KALPA
18. Capt. Mathew Karimi - Asst. Treasurer, KALPA

MIN No. TPWH 122/2019: PRELIMINARIES

The meeting was called to order at ten o'clock, with a word of prayer from the chairperson. Members confirmed the agenda as meeting with the leadership of the Kenya Aviation Workers Union (KAWU) and the leadership of the Kenya Airline Pilots Association (KALPA) as the Committee continues with its inquiry into the aviation sector in Kenya.

MIN No. TPWH 123/2019: SUBMISIONS FROM THE KENYA AVIATION WORKERS UNION (KAWU)

The Committee asked the leadership of KAWU to first clarify on whether the organization was duly registered. KAWU explained that there was a pending matter in court and although the High Court had earlier revoked its registration, KAWU appealed and they got a stay pending appeal. KAWU therefore reverted back to its original status pending appeal, and therefore duly registered.

In their submission to the Committee, KAWU urged the National Assembly to reject the KQ/KAA proposal because they believed that it will cause redundancy. They explained that JKIA takeover will kill other facilities and affect Vision 2030. They acknowledged that Kenya Airways needed assistance but that the PIIP proposal was not the best option.

KAWU submitted that Kenya Airways enjoys exclusive use of Terminal 1A since its construction and that parking bays 13 to 23 were also under KQ and therefore wondered why the Kenya Airways couldn't perform despite all the benefits and preferences they currently enjoyed.

KAWU submitted that in order to save KQ, the government needed to buy all the shares, to nationalize KQ as t would be much easier for the government to control the aviation sector in totality. They argued that success of aviation sector depended on many other interconnected factors including the hospitality industry, connectivity in general among so many other issues which are normally under the government control.

The Committee wanted to know whether an assurance that no jobs would be lost will suffice. KAWU submitted that as much as nationalization would be an ideal option, it all depends on how the structuring will be done because the biggest problem at KQ was the management. They further submitted that selling some of the fleet that KQ has could give KQ up to fifty billion shillings.

The Committee thanked KAWU for their presentation and the supporting documents but asked them to submit a written and signed submission or memorandum to the Committee for Committee consideration, reference and record.

MIN No. TPWH 124/2019: SUBMISIONS FROM THE KENYA AIRLINE PILOTS ASSOCIATION (KALPA)

The Kenya Airline Pilots Association (KALPA) submitted that they were not opposed to the idea of JKIA takeover by Kenya Airways as long as the workers' jobs were protected. They further declared that as KALPA, they have not been given the copy of the proposal but that they will submit their memorandum on the same nonetheless (copy attached).

KALPA contested the salary rates of the KQ pilots as reported by the KQ CEO before the Committee on 9th April 2019. They submitted that KQ pilots were not the best paid in the continent as reported by the KQ CEO. They argued that in the last six years, Kenya Airways lost at least 130 pilots to other airlines and that this could not have happened if indeed the pilots were well paid. They further submitted that KQ was still operating long haul and ultra-long haul flights with only two pilots against the best global practice. They informed the Committee that KQ had a shortage of at least 200 pilots, an issue that has led to pilots missing their leave days to cover the shortage.

KALPA further submitted that the joint venture between the Kenya Airways and the KLM was not balanced as it favored KLM at the expense of KQ especially on routes and passenger allocation. They also reported that KQ was losing so much on the West African market simply because of bad marketing decisions.

KALPA regretted that KQ was using so much of resources in numerous litigation matters, especially those on matters employment. They identified consultancy issues as a problem, giving example of the McKenzie report which, in the opinion of KALPA, offered all the wrong solutions to the KQ at a heavy price in terms of fees and the overall health of KQ. KALPA also submitted that there were five Polish nationals who were consultants for KQ and who were not KQ employees.

KALPA informed the Committee that fifteen years ago Kenya Airways was highly profitable and that it even had a two billion shilling reserve with staff receiving annual bonuses. They submitted that details of the Deloitte Audit Report of 2016 on Kenya Airways needed to be revealed to the public so that Kenyans can know what was really ailing the Kenya Airways.

MIN No. TPWH 125/2019: ADJOURNMENT

There being no other business, the sitting was adjourned at fifty minutes past one o'clock. The next meeting to be held at 2.00 p.m. on Thursday, 11th April 2019.

Signed..

(Chairperson)

Date.........23/5/19..

MINUTES OF THE TWENTY EIGHTH (28TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON THURSDAY, 11TH APRIL 2019 AT 2.00 P.M. IN MINI CHAMBER, COUNTY HALL

MEMBERS PRESENT

1. Hon. David Pkosing, M.P. - Chairperson
2. Hon. David Njuguna Kiaraho, M.P.
3. Hon. Ahmed Abdisalan Ibrahim, M.P.
4. Hon. Ahmed Bashane Gaal, M.P.
5. Hon. Dominic Kipkoech Koskei, M.P.
6. Hon. Johnson Manya Naicca, M.P.
7. Hon. Mugambi Murwithania Rindikiri, M.P.
8. Hon. Rigathi Gachagua, M.P.
9. Hon. Tom Mboya Odege, M.P.

MEMBERS ABSENT WITH APOLOGY

1. Hon. Moses Kuria, M.P. - Vice Chairperson
2. Hon. Samuel Arama, M.P.
3. Hon. Savula Ayub Angatia, M.P.
4. Hon. Suleiman Dori Ramadhani, M.P.
5. Hon. Kulow Maalim Hassan, M.P.
6. Hon. Peris Pesi Tobiko, M.P.
7. Hon. Gideon Mutemi Mulyungi, M.P.
8. Hon. Rehema Dida Jaldesa, M.P.
9. Hon. Shadrack John Mose, M.P.
10. Hon. Vincent Kemosi Mogaka, M.P.

SECRETARIAT

1. Ms. Chelagat Aaron Tungo - Clerk Assistant I
2. Mr. Ahmed Salim - Clerk Assistant III
3. Mr. Ronald Walala - Legal Counsel I

4. Mr. Abdinasir Moge - Fiscal Analyst I
5. Mr. James Muguna - Research Officer III
6. Mr. Eugine Luteshi - Audio Officer
7. Ms. Noelle Chelagat - Media Relations Officer

IN ATTENDANCE

1. Col. Rtd. Eurychus Waithaka - Executive Officer, KAAO
2. Ms. Salome Kariuki - Administrative Officer, KAAO

MIN No. TPWH 126/2019: PRELIMINARIES

The meeting was called to order at two o'clock, with a word of prayer from the chairperson. Members confirmed the agenda as meeting with the leadership of the Kenya Association of Air Operators (KAAO) as the Committee continues with its inquiry into the aviation sector in Kenya.

MIN No. TPWH 127/2019: SUBMISIONS FROM THE KENYA ASSOCIATION OF AIR OPERATORS (KAAO)

KAAO submitted that the invitation to submit memoranda before the Committee presupposes access to critical information. They submitted that they were unable to submit a detailed memorandum discussing any aspect as proposed in the Privately Initiated Investment Proposal except for a few questions they chose to raise. From the information available to them in the public domain they believe that there was a desire to forge a joint venture partnership between Kenya Airways (KQ) and Kenya Airports Authority (KAA) to run the Jomo Kenyatta International Airport. KAAO explained that when KAA had previously called for a stakeholder public meeting, KAAO requested for the PIIP document but were not given. The planned meeting was later cancelled and as such, KAAO had inadequate factual information. All the same, KAAO declared that their members have a special interest in the matter.

The KAAO Executive Officer submitted that KAAO's interest was encompassed in their vision which is to create a safe, efficient, and economically viable National Civil Aviation Industry, through promotion and enhancement of safe and sustainable operations, and the provision of aviation services. He explained that the Kenya Air Operators Association was not fundamentally opposed to any reasonable strategic initiative that ensures the National Carrier (Kenya Airways) re-establishes itself as a leading carrier on the African continent but further added that KAAO believes this can only be achieved through the appropriate restructuring of KQ, both financially and operationally, using the best available resources both nationally and internationally.

KAAO further submitted that without detailed access and time to review the actual PIIP document, the Association was unable to comment on the importance or relevance of the Proposal, which they believed it needed to also address the legitimate concerns of the rest of the aviation industry.

The Executive Officer for KAAO further submitted that KAAO had perused the Progress Report on the Inquiry into the Proposed Takeover of Jomo Kenyatta International Airport by Kenya Airways by the Public Investments Committee dated 26th February 2019 and shares a number of the concerns and questions raised in that report as follows:

1. In this JV contemplated, what is the shareholding and structure, considering that KAA is a government institution?
2. How will other airports under KAA be managed – operationally and financially, considering that most of them do not have the traffic sufficient to fund their operations, while it is not a secret that hitherto they have been supported from the funds accruing from the JKIA?
3. What assurance do we have from KAA that these other airports, some being international, will retain the requisite standards as prescribed by ICAO without an additional cost to the already over-burdened operators?
4. What is the current revenue per airport for KAA and expenditure per airport? The Parliamentary Committee report indicates that there will be a net shortfall of approximately Kshs. 3.7 billion in KAA's operating budget post takeover. The Association is extremely concerned about the implications this has for the management, maintenance and development of the other national airports.
5. What areas does the JV envisage? Ground services, security, duty free shops, cargo, other concessions?

6. How would Capex plan and funding be approached during the duration of the JV? The PIIP needs to address the development /and/or redevelopment of JKIA if they want to successfully compete with the redeveloped Ethiopian (Bole International) and new Rwanda airports?
7. What will be the relationship between SPV and existing Kenyan operators at JKIA during the tenure of the JV?
8. How would this JV run in line with current Government policies governing aviation industry as well as the existing competition laws?
9. Have other options of reviving / strengthening KQ been considered, and how critical is this to KQ's business plan going forward?
10. Are there any examples of PIIPs in other jurisdictions and how successful have they been?
11. As we approach this effort to secure Kenya Airways against the emerging commercial competition, have we considered the regional/global competitive context in the light of the treaties that Kenya has signed in the past? We have in mind some within the African Union.
12. Kenya is a contracting State of the International Civil Aviation Organization [ICAO] which is a UN Agency. One of its principles is to encourage fair and healthy competition in international commercial Air Operations. Would running of JKIA by KQ which also runs International commercial flight operations, not pose a large measure of conflict of interest in provision of Airport services to its competitors in International flight operations?

In their closing remarks, KAAO submitted that as the umbrella body for Air Operators in Kenya, KAAO wished Kenya Airways all the best in their regional quest to re-establish its dominance, but added that this must be done without jeopardizing the rest of the industry that is vibrant and plays a pivotal role in tourism, cargo as well as international humanitarian aviation operations, and also employs many Kenyans.

The Committee Chairperson thanked the KAAO Executive Officer for a good presentation and informed him that the Committee will engage KAAO further when the need may in future arise.

MIN No. TPWH 128/2019: ADJOURNMENT

There being no other business, the sitting was adjourned at thirty minutes to four o'clock. The next meeting to be held on notice.

Signed..

(Chairperson)

Date.......23/5/19...

MINUTES OF THE THIRTY FIRST (31ST) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON FRIDAY, 3RD MAY 2019 AT 9.30 A.M. IN BARASA 1, WHITESANDS BEACH RESORT, MOMBASA

MEMBERS PRESENT

1. Hon. David Pkosing, M.P. - Chairperson
2. Hon. Moses Kuria, M.P. - Vice Chairperson
3. Hon. Samuel Arama, M.P.
4. Hon. Suleiman Dori Ramadhani, M.P.
5. Hon. Johnson Manya Naicca, M.P.
6. Hon. Peris Pesi Tobiko, M.P.
7. Hon. Ahmed Abdisalan Ibrahim, M.P.
8. Hon. Dominic Kipkoech Koskei, M.P.
9. Hon. Kulow Maalim Hassan, M.P.
10. Hon. Gideon Mutemi Mulyungi, M.P.
11. Hon. Shadrack John Mose, M.P.
12. Hon. Tom Mboya Odege, M.P.
13. Hon. Vincent Kemosi Mogaka, M.P.
14. Hon. David Njuguna Kiaraho, M.P.
15. Hon. Rigathi Gachagua, M.P.
16. Hon. Mugambi Murwithania Rindikiri, M.P.
17. Hon. Savula Ayub Angatia, M.P.

MEMBERS ABSENT WITH APOLOGY

1. Hon. Ahmed Bashane Gaal, M.P.
2. Hon. Rehema Dida Jaldesa, M.P.

SECRETARIAT

1. Ms. Chelagat Aaron Tungo - Clerk Assistant I/Lead Clerk
2. Mr. Ahmed Salim - Clerk Assistant III

3. Ms. Mercy Wanyonyi - Legal Counsel
4. Mr. Ronald Walala - Legal Counsel
5. Mr. Abdinasir Moge - Fiscal Analyst
6. Mr. James Muguna - Research Officer
7. Mr. Collins Mahambe - Audio Officer
8. Mr. Yeziel Jilo - Sergeant-at-arm

MIN No. TPWH 143/2019: PRELIMINARIES

The meeting was called to order at thirty minutes past nine o'clock, with a word of prayer from the Chairperson. Members confirmed the agenda as consideration of the zero draft report on the inquiry into the policy, human resource, legal compliance and issues of concern to the people as contemplated under Article 95 of the Constitution, in relation to the Kenya Airways Privately Initiated Investment Proposal to Kenya Airports Authority.

MIN No. TPWH 144/2019: CONSIDERATION OF THE ZERO DRAFT REPORT ON THE INQUIRY INTO THE POLICY, HUMAN RESOURCE, LEGAL COMPLIANCE AND ISSUES OF CONCERN TO THE PEOPLE AS CONTEMPLATED UNDER ARTICLE 95 OF THE CONSTITUTION, IN RELATION TO THE KENYA AIRWAYS PRIVATELY INITIATED INVESTMENT PROPOSAL TO KENYA AIRPORTS AUTHORITY

Members of the Committee considered the draft report as prepared by the secretariat. It was noted that the report structure and the content were satisfactory and that there was need to also look into the possible options for recommendations in the afternoon session.

MIN No. TPWH 145/2019: ADJOURNMENT

There being no other business, the sitting was adjourned at one o'clock. The next meeting to be held at 2:30pm, the same day on 3rd May 2019.

Signed..

(Chairperson)

Date...........................23/5/19...

MINUTES OF THE THIRTY SECOND (32ND) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON FRIDAY, 3RD MAY 2019 AT 2.30 P.M. IN BARASA 1, WHITESANDS BEACH RESORT, MOMBASA

MEMBERS PRESENT

1.	Hon. David Pkosing, M.P.	-	Chairperson
2.	Hon. Moses Kuria, M.P.	-	Vice Chairperson

3. Hon. Samuel Arama, M.P.
4. Hon. Suleiman Dori Ramadhani, M.P.
5. Hon. Johnson Manya Naicca, M.P.
6. Hon. Peris Pesi Tobiko, M.P.
7. Hon. Ahmed Abdisalan Ibrahim, M.P.
8. Hon. Dominic Kipkoech Koskei, M.P.
9. Hon. Kulow Maalim Hassan, M.P.
10. Hon. Gideon Mutemi Mulyungi, M.P.
11. Hon. Shadrack John Mose, M.P.
12. Hon. Tom Mboya Odege, M.P.
13. Hon. Vincent Kemosi Mogaka, M.P.
14. Hon. David Njuguna Kiaraho, M.P.
15. Hon. Rigathi Gachagua, M.P.
16. Hon. Mugambi Murwithania Rindikiri, M.P.
17. Hon. Savula Ayub Angatia, M.P.

MEMBERS ABSENT WITH APOLOGY

1. Hon. Ahmed Bashane Gaal, M.P.
2. Hon. Rehema Dida Jaldesa, M.P.

SECRETARIAT

1.	Ms. Chelagat Aaron Tungo	-	Clerk Assistant I/Lead Clerk
2.	Mr. Ahmed Salim	-	Clerk Assistant III

3. Ms. Mercy Wanyonyi - Legal Counsel
4. Mr. Ronald Walala - Legal Counsel
5. Mr. Abdinasir Moge - Fiscal Analyst
6. Mr. James Muguna - Research Officer
7. Mr. Collins Mahambe - Audio Officer
8. Mr. Yeziel Jilo - Sergeant-at-arm

MIN No. TPWH 146/2019: PRELIMINARIES

The meeting was called to order at thirty minutes past two o'clock, with a word of prayer from the Chairperson. Members confirmed the agenda as consideration of the zero draft report on the inquiry into the policy, human resource, legal compliance and issues of concern to the people as contemplated under Article 95 of the Constitution, in relation to the Kenya Airways Privately Initiated Investment Proposal to Kenya Airports Authority.

MIN No. TPWH 147/2019: CONSIDERATION OF THE ZERO DRAFT REPORT ON THE INQUIRY INTO THE POLICY, HUMAN RESOURCE, LEGAL COMPLIANCE AND ISSUES OF CONCERN TO THE PEOPLE AS CONTEMPLATED UNDER ARTICLE 95 OF THE CONSTITUTION, IN RELATION TO THE KENYA AIRWAYS PRIVATELY INITIATED INVESTMENT PROPOSAL TO KENYA AIRPORTS AUTHORITY

Members of the Committee noted that in the morning session, the Committee looked into the draft report and that it was important for the Committee to dedicate the afternoon session into consideration of the possible recommendations. The Committee analyzed, in comparison, the aviation industry models of other airlines. It was noted that that most of the successful airlines enjoyed strong support from their governments. The Committee tasked the secretariat with developing draft observations and recommendations for consideration during the next session.

MIN No. TPWH 148/2019: ADJOURNMENT

There being no other business, the sitting was adjourned at thirty minutes past nine o'clock in the evening. The next meeting to be held at 11:00am, on 4th May 2019.

Signed..

(Chairperson)

Date...23/5/19...

MINUTES OF THE THIRTY THIRD (33^{RD}) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON SATURDAY, 4^{TH} MAY 2019 AT 11.00 A.M. IN BARASA 1, WHITESANDS BEACH RESORT, MOMBASA

MEMBERS PRESENT

1. Hon. David Pkosing, M.P. - Chairperson
2. Hon. Moses Kuria, M.P. - Vice Chairperson
3. Hon. Samuel Arama, M.P.
4. Hon. David Njuguna Kiaraho, M.P.
5. Hon. Suleiman Dori Ramadhani, M.P.
6. Hon. Johnson Manya Naicca, M.P.
7. Hon. Peris Pesi Tobiko, M.P.
8. Hon. Ahmed Abdisalan Ibrahim, M.P.
9. Hon. Dominic Kipkoech Koskei, M.P.
10. Hon. Kulow Maalim Hassan, M.P.
11. Hon. Mugambi Murwithania Rindikiri, M.P.
12. Hon. Gideon Mutemi Mulyungi, M.P.
13. Hon. Rigathi Gachagua, M.P.
14. Hon. Shadrack John Mose, M.P.
15. Hon. Tom Mboya Odege, M.P.
16. Hon. Vincent Kemosi Mogaka, M.P.
17. Hon. Savula Ayub Angatia, M.P.

MEMBERS ABSENT WITH APOLOGY

1. Hon. Ahmed Bashane Gaal, M.P.
2. Hon. Rehema Dida Jaldesa, M.P.

SECRETARIAT

1. Ms. Chelagat Aaron Tungo - Clerk Assistant I/Lead Clerk
2. Mr. Ahmed Salim - Clerk Assistant III

3. Ms. Mercy Wanyonyi - Legal Counsel
4. Mr. Ronald Walala - Legal Counsel
5. Mr. Abdinasir Moge - Fiscal Analyst
6. Mr. James Muguna - Research Officer
7. Mr. Collins Mahambe - Audio Officer
8. Mr. Yeziel Jilo - Sergeant-at-arm

MIN No. TPWH 149/2019: PRELIMINARIES

The meeting was called to order at thirty minutes past two o'clock, with a word of prayer from the Chairperson. Members confirmed the agenda as consideration of the zero draft report on the inquiry into the policy, human resource, legal compliance and issues of concern to the people as contemplated under Article 95 of the Constitution, in relation to the Kenya Airways Privately Initiated Investment Proposal to Kenya Airports Authority.

MIN No. TPWH 150/2019: CONSIDERATION OF THE ZERO DRAFT REPORT ON THE INQUIRY INTO THE POLICY, HUMAN RESOURCE, LEGAL COMPLIANCE AND ISSUES OF CONCERN TO THE PEOPLE AS CONTEMPLATED UNDER ARTICLE 95 OF THE CONSTITUTION, IN RELATION TO THE KENYA AIRWAYS PRIVATELY INITIATED INVESTMENT PROPOSAL TO KENYA AIRPORTS AUTHORITY

The Committee came up with the observations and the recommendations to the Report. The Committee noted that there were six options as possible recommendations and it was resolved that the Committee Members think through all the options before deciding on one specific option for recommendation on which direction the aviation sector should take.

MIN No. TPWH 151/2019: ADJOURNMENT

There being no other business, the sitting was adjourned at five minutes to one o'clock. The next meeting to be held at 2:00pm, on 4th May 2019.

Signed..

(Chairperson)

Date........ 23/5/19 ....

MINUTES OF THE THIRTY FOURTH (34TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON SATURDAY, 4TH MAY 2019 AT 11.00 A.M. IN BARASA 1, WHITESANDS BEACH RESORT, MOMBASA

MEMBERS PRESENT

1. Hon. David Pkosing, M.P. - Chairperson
2. Hon. Moses Kuria, M.P. - Vice Chairperson
3. Hon. Samuel Arama, M.P.
4. Hon. David Njuguna Kiaraho, M.P.
5. Hon. Suleiman Dori Ramadhani, M.P.
6. Hon. Johnson Manya Naicca, M.P.
7. Hon. Peris Pesi Tobiko, M.P.
8. Hon. Ahmed Abdisalan Ibrahim, M.P.
9. Hon. Dominic Kipkoech Koskei, M.P.
10. Hon. Kulow Maalim Hassan, M.P.
11. Hon. Mugambi Murwithania Rindikiri, M.P.
12. Hon. Gideon Mutemi Mulyungi, M.P.
13. Hon. Savula Ayub Angatia, M.P.
14. Hon. Rigathi Gachagua, M.P.
15. Hon. Shadrack John Mose, M.P.
16. Hon. Tom Mboya Odege, M.P.
17. Hon. Vincent Kemosi Mogaka, M.P.

MEMBERS ABSENT WITH APOLOGY

1. Hon. Ahmed Bashane Gaal, M.P.
2. Hon. Rehema Dida Jaldesa, M.P.

SECRETARIAT

1. Ms. Chelagat Aaron Tungo - Clerk Assistant I/Lead Clerk
2. Mr. Ahmed Salim - Clerk Assistant III

3. Ms. Mercy Wanyonyi - Legal Counsel
4. Mr. Ronald Walala - Legal Counsel
5. Mr. Abdinasir Moge - Fiscal Analyst
6. Mr. James Muguna - Research Officer
7. Mr. Collins Mahambe - Audio Officer
8. Mr. Yeziel Jilo - Sergeant-at-arm

MIN No. TPWH 152/2019: PRELIMINARIES

The meeting was called to order at thirty minutes past two o'clock, with a word of prayer from the Chairperson. Members confirmed the agenda as consideration of the zero draft report on the inquiry into the policy, human resource, legal compliance and issues of concern to the people as contemplated under Article 95 of the Constitution, in relation to the Kenya Airways Privately Initiated Investment Proposal to Kenya Airports Authority.

MIN No. TPWH 153/2019: CONSIDERATION OF THE ZERO DRAFT REPORT ON THE INQUIRY INTO THE POLICY, HUMAN RESOURCE, LEGAL COMPLIANCE AND ISSUES OF CONCERN TO THE PEOPLE AS CONTEMPLATED UNDER ARTICLE 95 OF THE CONSTITUTION, IN RELATION TO THE KENYA AIRWAYS PRIVATELY INITIATED INVESTMENT PROPOSAL TO KENYA AIRPORTS AUTHORITY

The Committee considered the draft report in entirety and it was resolved that out of all the possible options before the Committee, the best route would be to nationalize the Kenya Airways and restructure the aviation sector along that route. This would also mean that the government of Kenya will be the sole shareholder in the new set up. The Committee considered the fact that the Jomo Kenyatta International Airport was a strategic national asset and therefore it ought to remain under the full government control. It was further noted that it was of extreme importance that the national carrier be under full government ownership in light of the fact that the success of the aviation sector highly depends on many intertwined factors, most of which are of strong public interest.

MIN No. TPWH 154/2019: **ADJOURNMENT**

There being no other business, the sitting was adjourned at five minutes to one o'clock in the evening. The next meeting to be held at 10:00am, on 7th May 2019.

Signed...

(Chairperson)

Date.......................23/5/19...

MINUTES OF THE THIRTY FIFTH (35TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON TUESDAY, 7TH MAY 2019 AT 10.00 A.M. IN 5TH FLOOR, CONTINENTAL HOUSE

MEMBERS PRESENT

1. Hon. David Pkosing, M.P. - Chairperson
2. Hon. Moses Kuria, M.P. - Vice Chairperson
3. Hon. Samuel Arama, M.P.
4. Hon. David Njuguna Kiaraho, M.P.
5. Hon. Savula Ayub Angatia, M.P.
6. Hon. Ahmed Abdisalan Ibrahim, M.P.
7. Hon. Dominic Kipkoech Koskei, M.P.
8. Hon. Gideon Mutemi Mulyungi, M.P.
9. Hon. Johnson Manya Naicca, M.P.
10. Hon. Rigathi Gachagua, M.P.
11. Hon. Kulow Maalim Hassan, M.P.
12. Hon. Mugambi Murwithania Rindikiri, M.P.
13. Hon. Peris Pesi Tobiko, M.P.
14. Hon. Shadrack John Mose, M.P.
15. Hon. Tom Mboya Odege, M.P.

MEMBERS ABSENT WITH APOLOGY

1. Hon. Suleiman Dori Ramadhani, M.P.
2. Hon. Ahmed Bashane Gaal, M.P.
3. Hon. Vincent Kemosi Mogaka, M.P.
4. Hon. Rehema Dida Jaldesa, M.P.

SECRETARIAT

1. Ms. Chelagat Aaron Tungo - Clerk Assistant I/Lead Clerk
2. Mr. Ahmed Salim - Clerk Assistant III
3. Ms. Mercy Wanyonyi - Legal Counsel

4. Mr. Collins Mahambe - Audio Officer
5. Ms. Zainab Wario - Sergeant-at-arm

IN ATTENDANCE

1. Mr. James Kamau, EGH - Cabinet Secretary, Transport
2. Mrs. Esther Koimett - Principal Secretary, Transport
3. Mr. Ken Ogeto - Solicitor General of Kenya
4. Mr. Nicholas Bodo - Ag. Director, Air Transport, MOTIHUDPW
5. Dr. Ronoh Tuimising - Legal Expert, PPP Unit, National Treasury
6. ~~Mr. Alex Mbuvi - Deputy Chief State Counsel, OAG&DOJ~~
7. Ms. Joan Chesoni - Senior State Counsel, OAG&DOJ

MIN No. TPWH 155/2019: PRELIMINARIES

The meeting was called to order at ten o'clock, with a word of prayer from the Chairperson. Members confirmed the agenda as consideration of the proposed amendment to the Merchant Shipping Act, No.4 of 2009 as contained in the Statute Law (Miscellaneous Amendments) Bill, 2019 and meeting with the Ministry of Transport, the National Treasury and the Solicitor General on Aviation Sector.

MIN No. TPWH 156/2019: CONFIRMATION OF MINUTES OF THE PREVIOUS

Confirmation of minutes of the previous sitting was deferred to the next sitting of the Committee.

MIN No. TPWH 157/2019: CONSIDERATION OF THE PROPOSED AMENDMENT TO THE MERCHANT SHIPPING ACT, NO.4 OF 2009 AS CONTAINED IN THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2019

The Committee was concerned that the Statute Law (Miscellaneous Amendments) Bill, 2019 was coming up for the second reading yet the Committee had not concluded its consideration of the Bill. The Committee noted that it had invited the Principal Secretary for Maritime and

Shipping Affairs on Thursday, 9th May 2019 to receive her views on the proposed amendment to the Merchant Shipping Act, No.4 of 2009 as contained in the Statute Law (Miscellaneous Amendments) Bill, 2019.

Members went through the amendment and noted that the amendment was substantive in nature and ought not to be brought through a Statute Law (Miscellaneous Amendments) Bill which is normally meant for minor amendments to statutes. The Committee further noted that the amendment, even if it were to be considered, ought to have been subjected to extensive public participation process; a process which the Committee could not satisfactorily undertake due to time constraints.

The Committee further noted that exempting an institution from the provisions of an entire Act was a major issue. It was the Committee's position that the proposed amendment, if allowed to pass, would give the Cabinet Secretary draconian powers.

MIN No. TPWH 158/2019: MEETING WITH THE MINISTRY OF TRANSPORT, THE NATIONAL TREASURY AND THE SOLICITOR GENERAL ON AVIATION SECTOR

The Cabinet Secretary for Transport and the Solicitor General were given a write-up of the possible recommendation of the Committee on the aviation sector, following a successful inquiry by the Committee into the sector. The Cabinet Secretary submitted that the Committee proposal was in line with the Cabinet position of consolidating the aviation assets to ensure that the end result was to make Nairobi an aviation hub. He was hopeful that consolidation of the sector will cause increased competitiveness. He noted that investors normally want to see convenience when connecting to places they invest while horticulture and agricultural businesses will also get a boost when the aviation sector is improved. Some of other benefits with a better aviation industry touched on employment in general, foreign policy, tourism among others. The Cabinet Secretary requested the Committee to give the Ministry two weeks to study the Committee recommendation before giving its opinion. He further requested a copy of the draft Committee report so that they can be more informed as they prepare their opinion.

The Solicitor General conveyed the apologies of the Attorney General and informed the Committee that the office of the Attorney General was in total concurrence that the Kenya Airways was an important asset to the country and that it needed urgent surgery. He assured the Committee of a close working relationship for the benefit of Kenya. He also requested time before the getting back to the Committee.

The National Treasury was represented by the Dr. Ronoh Tuimising who submitted that they have carefully listened to the Committee and he promised that the National Treasury would study the Committee recommendation and give their views in two weeks.

MIN No. TPWH 159/2019: ADJOURNMENT

There being no other business, the sitting was adjourned at twelve noon. The next meeting to be held at 10:00am, on 9th May 2019.

Signed..

(Chairperson)

Date....23/5/19..

MINUTES OF THE FOURTY FIFTH (45TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON THURSDAY, 23RD MAY 2019 AT 2.30 P.M. IN MEETING ROOM 2, HILTON GARDEN INN AIRPORT HOTEL, NAIROBI

MEMBERS PRESENT

1. Hon. David Pkosing, M.P. - Chairperson
2. Hon. Samuel Arama, M.P.
3. Hon. Ahmed Abdisalan Ibrahim, M.P.
4. Hon. Gideon Mutemi Mulyungi, M.P.
5. Hon. Johnson Manya Naicca, M.P.
6. Hon. Kulow Maalim Hassan, M.P.
7. Hon. Mugambi Murwithania Rindikiri, M.P.
8. Hon. Peris Pesi Tobiko, M.P.
9. Hon. Rehema Dida Jaldesa, M.P.
10. Hon. Shadrack John Mose, M.P.
11. Hon. Savula Ayub Angatia, M.P.
12. Hon. Rigathi Gachagua, M.P.
13. Hon. Dominic Kipkoech Koskei, M.P.
14. Hon. David Njuguna Kiaraho, M.P.
15. Hon. Vincent Kemosi Mogaka, M.P.

MEMBERS ABSENT WITH APOLOGY

1. Hon. Moses Kuria, M.P. - Vice Chairperson
2. Hon. Suleiman Dori Ramadhani, M.P.
3. Hon. Ahmed Bashane Gaal, M.P.
4. Hon. Tom Mboya Odege, M.P.

SECRETARIAT

1. Ms. Chelagat Aaron Tungo - Clerk Assistant I
2. Ms. Rose Wanjohi - Clerk Assistant I
3. Mr. Ahmed Salim - Clerk Assistant III

4. Mr. Abdinasir Moge - Fiscal Analyst
5. Ms. Christine Maeri - Audio Officer
6. Ms. Noelle Chelagat - Media Relations Officer
7. Mr. Yeziel Jilo - Sergeant-at-arm
8. Ms. Pauline Nyambura - Executive Assistant

MIN No. TPWH 201/2019: PRELIMINARIES

The meeting was called to order at thirty minutes past two o'clock, with a word of prayer from the Chairperson. Members confirmed the agenda as confirmation of the minutes of the previous sittings.

MIN No. TPWH 202/2019: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

1. The minutes of the 19th sitting held on 19th March 2019 were confirmed as true record of the proceedings having been proposed and seconded by Hon. Peris Tobiko and Hon. Johnson Naicca respectively.
2. The minutes of the 20th sitting held on 21st March 2019 were confirmed as true record of the proceedings having been proposed and seconded by Hon. Samuel Arama and Hon. Gideon Mulyungi respectively.
3. The minutes of the 21st sitting held on 26th March 2019 were confirmed as true record of the proceedings having been proposed and seconded by Hon. Rigathi Gachagua and Hon. Dominic Koskei respectively.
4. The minutes of the 22nd sitting held on 2nd April 2019 were confirmed as true record of the proceedings having been proposed and seconded by Hon. Johnson Naica and Hon. Samuel Arama respectively.
5. The minutes of the 23rd sitting held on 9th April 2019 were confirmed as true record of the proceedings having been proposed and seconded by Hon. Kullow Maalim and Hon. Shadrack Mose respectively.
6. The minutes of the 24th sitting held on 9th April 2019 were confirmed as true record of the proceedings having been proposed and seconded by Hon. Peris Tobiko and Hon. Johnsonn Naicca respectively.

7. The minutes of the 25th sitting held on 10th April 2019 were confirmed as true record of the proceedings having been proposed and seconded by Hon. Shadrack Mose and Hon. Dominic Koskei respectively.
8. The minutes of the 26th sitting held on 10th April 2019 were confirmed as true record of the proceedings having been proposed and seconded by Hon. Mugambi Rindikiri and Hon. Hassan Kullow respectively.
9. The minutes of the 27th sitting held on 11th April 2019 were confirmed as true record of the proceedings having been proposed and seconded by Hon. Vincent Kemosi and Hon. David Kiaraho respectively.
10. The minutes of the 28th sitting held on 11th April 2019 were confirmed as true record of the proceedings having been proposed and seconded by Hon. Rigathi Gachagua and Hon. Dominic Koskei respectively.
11. The minutes of the 29th sitting held on 23rd April 2019 were confirmed as true record of the proceedings having been proposed and seconded by Hon. Vincent Kemosi and Hon. Samuel Arama respectively.
12. The minutes of the 30th sitting held on 25th April 2019 were confirmed as true record of the proceedings having been proposed and seconded by Hon. Gideon Mutemi and Hon. Shadrack Mose respectively.
13. The minutes of the 31st sitting held on 3rd May 2019 were confirmed as true record of the proceedings having been proposed and seconded by Hon. David Kiaraho and Hon. Peris Tobiko respectively.
14. The minutes of the 32nd sitting held on 3rd May 2019 were confirmed as true record of the proceedings having been proposed and seconded by Hon. Johnson Naica and Hon. Hassan Kullow respectively.
15. The minutes of the 33rd sitting held on 4th May 2019 were confirmed as true record of the proceedings having been proposed and seconded by Hon. Dominic Koskei and Hon. Peris Tobiko respectively.
16. The minutes of the 34th sitting held on 4th May 2019 were confirmed as true record of the proceedings having been proposed and seconded by Hon. Gideon Mutemi and Hon. Ayub Savula respectively.

17. The minutes of the 35th sitting held on 7th May 2019 were confirmed as true record of the proceedings having been proposed and seconded by Hon. Mugambi Rindikiri and Hon. Samuel Arama respectively.
18. The minutes of the 36th sitting held on 9th May 2019 were confirmed as true record of the proceedings having been proposed and seconded by Hon. Johnson Naicca and Hon. Samuel Arama respectively.
19. The minutes of the 37th sitting held on 16th May 2019 were confirmed as true record of the proceedings having been proposed and seconded by Hon. Abdisalan Ahmed and Hon. Dominic Koskei respectively.
20. The minutes of the 38th sitting held on 20th May 2019 were confirmed as true record of the proceedings having been proposed and seconded by Hon. Rehema Jaldesa and Hon. Kulow Hassan respectively.
21. The minutes of the 39th sitting held on 20th May 2019 were confirmed as true record of the proceedings having been proposed and seconded by Hon. Shadrack Mose and Hon. Dominic Koskei respectively.
22. The minutes of the 40th sitting held on 21st May 2019 were confirmed as true record of the proceedings having been proposed and seconded by Hon. Rehema Jaldesa and Hon. Vincent Kemosi.
23. The minutes of the 41st sitting held on 21st May 2019 were confirmed as true record of the proceedings having been proposed and seconded by Hon. Gideon Mutemi and Hon. Peris Tobiko respectively.
24. The minutes of the 42nd sitting held on 22nd May 2019 were confirmed as true record of the proceedings having been proposed and seconded by Hon. Vincent Kemosi and Hon. Dominic Koskei.
25. The minutes of the 43rd sitting held on 22nd May 2019 were confirmed as true record of the proceedings having been proposed and seconded by Hon. Gideon Mutemi and Hon. Peris Tobiko respectively.
26. The minutes of the 44th sitting held on 23rd May 2019 were confirmed as true record of the proceedings having been proposed and seconded by Hon. Vincent Kemosi and Hon. Dominic Koskei.

MIN No. TPWH 203/2019: ADJOURNMENT

There being no other business, the sitting was adjourned at four o'clock. The next meeting to be held on Friday, 24th May 2019 at 9:30am.

Signed...

(Chairperson)

Date..24/5/2019.........

MINUTES OF THE FOURTY NINETH (49^{TH}) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON MONDAY, 10^{TH} JUNE 2019 AT 10.00 A.M. IN COMMITTEE ROOM 9, MAI N PARLIAMENT BUILDING

MEMBERS PRESENT

1. Hon. David Pkosing, M.P. - Chairperson
2. Hon. Kulow Maalim Hassan, M.P.
3. Hon. Ahmed Abdisalan Ibrahim, M.P.
4. Hon. Shadrack John Mose, M.P.
5. Hon. Tom Mboya Odege, M.P.
6. Hon. Rigathi Gachagua, M.P.
7. Hon. Ahmed Bashane Gaal, M.P.
8. Hon. Gideon Mutemi Mulyungi, M.P.
9. Hon. Mugambi Murwithania Rindikiri, M.P.
10. Hon. Suleiman Dori Ramadhani, M.P.
11. Hon. Vincent Kemosi Mogaka, M.P.
12. Hon. Rehema Dida Jaldesa, M.P.

MEMBERS ABSENT WITH APOLOGY

1. Hon. Moses Kuria, M.P. - Vice Chairperson
2. Hon. Johnson Manya Naicca, M.P.
3. Hon. Savula Ayub Angatia, M.P.
4. Hon. David Njuguna Kiaraho, M.P.
5. Hon. Peris Pesi Tobiko, M.P.
6. Hon. Samuel Arama, M.P.
7. Hon. Dominic Kipkoech Koskei, M.P.

SECRETARIAT

1. Ms. Chelagat Aaron Tungo - Clerk Assistant I
2. Ms. Rose Wanjohi - Clerk Assistant I
3. Ms. Mercy Wanyonyi - Legal Counsel I
4. Mr. Abdinasir Moge - Fiscal Analyst I
5. Mr. James Muguna - Research Officer III
6. Mr. Collins Mahamba - Audio Officer
7. Mr. Yeziel Jilo - Sergeant-at-arm

MIN No. TPWH 220/2019: PRELIMINARIES

The meeting was called to order at ten minutes to ten o'clock, with a word of prayer from the Hon. Ahmed Abdisalan, M.P. The agenda was confirmed as being confirmation of the minutes of the previous sittings and consideration of the Report on the Inquiry into the Aviation Industry in Kenya.

MIN No. TPWH 221/2019: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

Confirmation of minutes of the previous sitting was deferred to the next sitting of the Committee.

MIN No. TPWH 222/2019: CONSIDERATION OF THE REPORT ON THE INQUIRY IN RELATION TO KENYA AIRWAYS' PRIVATELY INITIATED INVESTMENT PROPOSAL TO KENYA AIRPORTS AUTHORITY SUBMITTED BY THE MINISTRY OF TRANSPORT AND INFRSTRUCTURE AND THE OFFICE OF THE ATTORNEY GENERAL.

The Legal officer took Members through the submissions made by the Ministry of Transport and Infrastructure together with the Office of the Attorney General and the National Treasury, pursuant to the directions of the Committee during the meeting held on 7 May 2019, which read as follows;

Background

For close to forty (40) years, Kenya enjoyed dominance in the aviation sector in East and Central Africa. Kenya is endowed with a strategic location in terms of connectivity to the rest of Africa, a highly skilled human resource complement trained in aviation matters, as well as relatively well-developed aviation infrastructure systems.

Regrettably, Kenya's aviation sector has been steadily declining in the past decade. This decline has been characterized by the turbulent performance of the National Carrier Kenya Airways Plc (KQ) and the loss of business by Jomo Kenyatta International Airport (JKIA) to other competing hubs globally. The decline is partly attributable to the existing policies impacting aviation in Kenya as well as a lack of agility and operational inefficiencies within the industry.

The Ministry of Transport is taking certain critical actions aimed at the stabilization and growth of the aviation industry. The National Treasury in conjunction with the Ministry of Transport conducted a financial restructuring of the national carrier in the year 2017. The next critical step is the restructuring of the aviation industry commencing with the consolidation of aviation assets.

The consolidation of the national aviation assets is aimed at restoring Nairobi as the civil aviation hub of choice in Africa, thereby contributing to Kenya's economic competitiveness, with aviation being a corridor for development and technology transfer. If Kenya is to achieve its objective of being an aviation hub in the region, it must begin to look at its aviation assets more strategically as key contributors to the GDP – and this starts with having a world class airline and world class airports, starting with JKIA as the main gateway to the country.

The main aim is to create operational synergies between Kenya's main hub and the National Carrier, thereby facilitating the airport and airline operations that are economic growth drivers. This model is similar to what is being utilized by Kenya's main competitors in the global aviation industry.

KQ operates internationally and needs to compete on commercially practical terms like any other private sector organization. There are various recommendations to ensure that the place of Nairobi as the civil aviation hub of choice in Africa is restored. Kenya Airways as the national carrier plays a strategic role in this. There is therefore need for KQ to adapt to the rapidly evolving global aviation landscape.

The current process should therefore be viewed from the lens of a restructuring of the entire aviation sector. The Ministry of Transport is currently embarking on a process of policy review and amendment. The new policy framework will inform the second phase of legislation required to develop the aviation sector post the current exercise.

Proposed Recommendations on the Restructuring of the Aviation Sector in Kenya
The recommendations are structured into two key sections:

A. Policy and legal considerations on the creation of an Aviation Holding Company; and
B. Short term measures required to sustain the operations of the National Carrier.

These recommendations are high level and will require additional time to concretize. A minimum period of three (3) months should be granted for the concretization phase.

A. **Policy and legal considerations on the creation of an Aviation Holding Company**

- **Policy Considerations**
  The DCTPWH has shared in its preliminary findings on the proposal for creation of a 100% Government of Kenya (GOK) Aviation Holding Company (AHC) that will consist of the following subsidiaries:
  a hived off JKIA, a residual KAA, a nationalized Kenya Airways Plc and an amalgamated Aviation Academy. The industry regulator KCAA maintains its independent position as governed by existing international and domestic legal and practice frameworks. The proposal of the Committee is a variant of the broad policy approved by Cabinet that supported the consolidation of the aviation assets in the manner proposed and is linked to the reorganization of an already existing sector. As stated previously in this document, the Ministry of Transport is currently undertaking a policy review process with the intended outcome being a standalone revised aviation policy and implementation plan.

- **Legal Considerations**
  The creation of the 100% GOK owned AHC and the consolidation of the aviation assets will require several changes in the law. These changes will centre on three main points: the establishment of the Aviation Holding Company, establishment of JKIA Corporation and the Nationalization of Kenya Airways Plc. It is important that the changes made, dovetail with the existing legal regime and be implementable.

- **Establishment of Aviation Holding Company**
  The creation of the AHC can be achieved by any of the following ways below:
    a. Establishment as a State Corporation as per Section 3 of the State Corporations Act;
    b. Enactment of a specific statute forming the AHC; and

c. Incorporation of the company under the Companies Act, 2015.

For greater flexibility and in order to create a sector specific legislation, option b is the most suitable. It is envisaged that the AHC will have the power to establish other companies in the pursuit of its objectives.

There are proposals to exempt the AHC from specific pieces of existing legislation, namely the State Corporations Act, the Public Finance Management Act 2012, the Public Procurement and Asset Disposal Act 2015 and the Public Service Commission Act. The justification proffered is that these exemptions are primarily for the benefit of KQ and will allow the airline to operate competitively on a global level without being fettered by the bureaucratic processes that are attendant to the afore stated statutes.

The justification given requires further canvassing as the said statutes were enacted to create systems of accountability and prudent use of public resources (both financial and human) in state corporations. Furthermore, the law as it exists does not contain provisions for the blanket exemptions sought, and other related statutes such as the Public Audit Act, 2015, may not afford sufficient safeguards.

The law as currently established, precludes public entities from exemptions from the above laws. The Office of the Attorney General has already pronounced itself on the matter where Kenya Reinsurance Corporation Limited sought to have its subsidiaries in West Africa and Zambia exempted from the Public Procurement and Asset Disposal Act, 2015 (PPADA, 2015).

The PPADA, 2015 defines a procuring entity as a public entity making a procurement or asset disposal. The Act under Section 2 (k) and (q) further provides that a public entity includes a company owned by a public entity or a body in which the national or county government has controlling interest. The AHC will be a public entity by the fact that the Government of Kenya will have a controlling interest in it.

The AHC will be a conduit, handler and controller of certain public funds. Public funds are defined in the Public Audit Act, No. 34 of 2015 as follows:

(a) *"All money that comes into possession of, or is distributed by, a State organ including the national or county governments and intergovernmental entities and money raised by a private body under statutory authority..."*

(a) *"...and any money that can generate liability for the government."*

Moreover, the Public Finance Management Act, 2012 defines public money as:

(a) *"All money that comes into possession of, or is distributed by, a national government entity and money raised by a private body where it is doing so under statutory authority; and*

(a) *Money held by national government entities in trust for third parties and any money that can generate liability for the Government."*

A wholly State-Owned Entity is a public asset held in trust for the People of Kenya and subject to the Constitution, the Public Finance Management Act, 2012, the Public Procurement and Asset Disposal Act, 2015 and other Kenyan laws and regulations.

From the foregoing, the AHC and its subsidiaries would be subject to the application of the Constitution, State Corporations Act, PFMA, PPADA, 2015 and the Public Audit Act. The recommendation to exempt the AHC once nationalized from any of the above laws requires statutory exemption expressly provided in an Act of Parliament, with the consequential amendments to relevant Acts.

Section 5A of the State Corporations act allows the President by notice in the Gazette, to exempt a state corporation from any of the provisions of the State Corporations Act.

In addition, Section 114 A of the PPADA, 2015 provides that a procuring entity may use a procurement procedure specially permitted by the National Treasury. The National Treasury may allow the use of specially permitted procedure where exceptional requirements make it impossible, impracticable or uneconomical to comply with the Act and the Regulations; where the market conditions or behaviour do not allow the effective application of the Act and Regulations made under the Act; for specialized or particular requirements which are regulated or governed by harmonized international standards or practices; where strategic partnership sourcing is applied; where credit financing procurement is applied; or in such other circumstances as may be prescribed. The Act also provides that the Cabinet Secretary may prescribe the procedure for carrying out specially permitted procurement under this section. To enable the operations of the AHC, Regulations for the application of Section 114 A should be enacted.
The statute establishing AHC and the JKIA subsidiary would also provide for the transfer of the relevant assets to JKIA Corporation. The vesting of assets would be preceded by a valuation and determination of Assets to be transferred.

To conclude, it is reiterated that should the legal framework be amended to accommodate the exemptions, alternative measures should be taken to ensure that the proposed AHC and its subsidiaries remain transparent and accountable (to various oversight organs such as the National Treasury, Public Investment Committee and the Auditor General) without excessive bureaucracy.

- **Establishment of Jomo Kenyatta International Airport (JKIA) Corporation**
  The modalities of establishing JKIA Corporation are similar to what has been stated above for the establishment of the AHC. The preferred solution is including the establishment of the corporation in the same statute that establishes the AHC. The treatment of exemptions for JKIA Corporation would be the same as what has been stated above for the AHC.

- **Nationalization of Kenya Airways Plc**
  The question of nationalization of KQ, is the culmination of a journey that brings the airline back to a similar legal structure that constituted it pre-privatization in 1992. GOK divested a significant portion of its shareholding in the airline to pave way for investment by the public and a strategic partner. Presently, the existing shareholding arrangements provide protection to the other shareholders, in the event of nationalization.

  The nationalization of the national carrier is a long-term solution and therefore acceptable. However, the process will require about 18 months due to cost implications and discussions that need to be undertaken with the Banks and private shareholders. There is also need for compliance with applicable laws and regulations such as the Companies' Act, Capital Markets Act, Competition Act, Capital Markets (Take-overs and Mergers) Regulations, 2002 (the "Takeover Regulations").

  As part of the nationalization, it has been proposed that a delisting process for KQ be carried out, which includes suspension of trading, negotiation and buyout of shareholders. The option of a long-term bond for KQ Lenders in order to exit them from the shareholding is a critical consideration. A valuation of shares will have to be done to determine the financial implications of this step.

Below is an outline of the required processes to achieve nationalization of the carrier. The points below are based on the assumption that KQ will be delisted:

i. In order to commence the nationalization process, GOK could make an offer to the other shareholders of KQ, with the objective of acquiring majority shareholding. The takeover of a public listed company is prescribed by the Takeover Regulations, with Capital Markets Authority, Competition Authority and the Securities Exchange approvals being some of the mandatory requirements;

ii. Once majority shareholding is obtained by GOK, GOK can then proceed to buy out minority shareholders in accordance with the provisions of the Companies Act 2015.

iii. With regard to the shareholding of KLM and any other foreign investor in KQ, and in addition to the existing KQ Shareholders Agreement, the Foreign Investments Protection Act as read with Article 75 (1) of the Constitution provides that no property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied:
   - the taking of possession or acquisition is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of any property in such manner as to promote the public benefit; and
   - provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation.

The following considerations are critical to the nationalization process:

(i) Negotiation of equipment leasing arrangements for KQ as the nationalization option is a trigger for change control provisions which are a trigger for default; and
(ii) Determination of the funding implication to GOK of implementing the proposed structures and provision of requisite budgetary allocations.

B. **Short term measures required to sustain the operations of the National Carrier**

Short term legislative and administrative actions include but are not limited to:

❖ **Tax Exemptions**

In line with recommendations of the Transport Committee it is proposed to specify the following tax exemptions benefiting the AHC and its subsidiaries for a specific period:

a) Amendment of the Miscellaneous Fees and Levies Act, 2016 to exempt the AHC from paying:
   - Railway Development Levy (RDL) on aircraft, aircraft parts, Jet A-1 fuel, utilities, commercial / on-board products and related goods and equipment; and
   - Import Declaration Fees (IDF) on aircraft parts, utilities, commercial / on-board products and related goods and equipment, Jet A-1 fuel imported by the suppliers and procured by AHC and its subsidiaries.

b) Amendment of the East African Community Customs Management Act (EACCMA) to exempt the AHC from paying Custom Duty on aircraft related parts and accessories not specifically exempted from tax under part B of the 5th Schedule to the act such as jet lubricants, grease, adhesives, aircraft specific detergents used for aircraft maintenance, aircraft seats and other related goods.

c) Amendment of the Excise Duty Act to provide for an exemption from Excise Duty for all excisable goods including excise on Jet A-1 fuel imported by the suppliers and procured by AHC and its subsidiaries.

d) Amendment of the Second Schedule to the Value Added Tax Act to zero-rate all supplies made or received by the AHC and its subsidiaries, including supplies of Jet A-1 fuel for both international and domestic flights.

The tax exemptions are supported. However, they may not be enough to sustain the airline and enable it to undertake the role of a strategic national asset, primarily to expand its route network and strengthen JKIA as a hub.

❖ **Collection of Charges in Aviation Sector**

- It is recommended that the Air Passenger Service Charge (APSC) be collected by the AHC and provided to the subsidiaries in line with an agreed sharing arrangement. However, the holding company should have some flexibility to consider the strategic plans of the subsidiaries and provide funding as necessary;

- The proposal to allow JKIA Company to collect landing charges, parking charges, en-route charges, aerodrome and approach charges though welcome may affect Kenya Civil Aviation Authority's ability to provide Air Navigation Services in the country. It is therefore proposed that the en-route charges, aerodrome and approach charges which are an integral part of the Air Navigation Service Charges should be collected by the Kenya Civil Aviation Authority;

- The proposal to increase the Air Passenger Service Charge currently being given to the Kenya Civil Aviation Authority (KCAA) from 6% to 20% is therefore not recommended. The Annual budgets of the subsidiaries should be agreed with the holding company and funded as necessary.

Conclusion

The above proposal has been designed in line with the proposed recommendations of the Transport Committee. In our view this proposal offers the structural and long-term reforms of the Kenyan aviation sector. It should be therefore treated as a comprehensive package of solutions (holding structure, tax exemptions, collection of charges scheme etc.) with each element significantly supporting the growth of the airline and airport business in the future. Implementation of this proposal shall ultimately lead to restoration of the national aviation's competitiveness and its market share in East Africa.

The proposal, however, require further deep-dive analyses to carefully study each aspect of the holding operations such as flow of funds between the mother company and subsidiaries, efficient management and governance structure as well as improvement initiatives (quick-wins) to generate benefits in short- and long-perspective. The responsibility to re-organize public assets is vested in the National Treasury. There is thus need for critical analysis of the financial implications of nationalization through the use of financial modelling and other tools.
The technical team considered the following measures:

A. Review of the efficiency drivers for the Airport Operator KAA and Industry Regulator KCAA and optimization of their functions;
B. Affirmative measures that will achieve coherence between aviation policy and broader GOK mainstream policy in a symbiotic manner.

GOK may consider formation of a dedicated team to develop long term measures to create a sustainable aviation policy and oversee its implementation.

MIN No. TPWH 223/2019: CONSIDERATION OF THE COMMITTEE'S

RECOMMENDATIONS ON THE INQUIRY

The Committee was in agreement with the recommendations of the report but thought it best to revise recommendation number seven which read, ''Upon nationalization of KQ, the Government undertake a staff rationalization programme with a view of harmonizing the terms of service and remuneration of staff under the Aviation Holding Company, including a review of the existing Collective Bargaining Agreements'', to read as follows; "Upon nationalization of KQ, the Government undertakes a staff rationalization programme with a view of retaining existing staff and harmonizing the terms of service and remuneration thereof under the Aviation Holding Company, including a review of the existing Collective Bargaining Agreements".

The secretariat was tasked to incorporate the changes in the report and submit to the committee for final consideration and adoption in the next meeting.

MIN No. TPWH 224/2019: ADJOURNMENT

There being no other business, the sitting was adjourned at half past three O'clock. The next meeting to be held on Tuesday 11th June, 2019

Signed..

(Chairperson)

Date...

MINUTES OF THE FIFTIETH (50TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON TUESDAY, 11TH JUNE 2019 AT 10.00 A.M. IN 8TH FLOOR UKULIMA SACCO BUILDING, PARLIAMENT.

MEMBERS PRESENT

1. Hon. David Pkosing, M.P. - Chairperson
2. Hon. Kulow Maalim Hassan, M.P.
3. Hon. Ahmed Abdisalan Ibrahim, M.P.
4. Hon. Shadrack John Mose, M.P.
5. Hon. Tom Mboya Odege, M.P.
6. Hon. Mugambi Murwithania Rindikiri, M.P.
7. Hon. Samuel Arama, M.P.
8. Hon. Ahmed Bashane Gaal, M.P.
9. Hon. Peris Pesi Tobiko, M.P.
10. Hon. Rigathi Gachagua, M.P.
11. Hon. Suleiman Dori Ramadhani, M.P.

MEMBERS ABSENT WITH APOLOGY

1. Hon. Moses Kuria, M.P. - Vice Chairperson
2. Hon. Johnson Manya Naicca, M.P.
3. Hon. Savula Ayub Angatia, M.P.
4. Hon. David Njuguna Kiaraho, M.P.
5. Hon. Gideon Mutemi Mulyungi, M.P.
6. Hon. Vincent Kemosi Mogaka, M.P.
7. Hon. Rehema Dida Jaldesa, M.P.
8. Hon. Dominic Kipkoech Koskei, M.P.

SECRETARIAT

1. Ms. Chelagat Aaron Tungo - Clerk Assistant I
2. Ms. Rose Wanjohi - Clerk Assistant I
3. Ms. Mercy Wanyonyi - Legal Counsel I
4. Mr. Abdinasir Moge - Fiscal Analyst I
5. Mr. James Muguna - Research Officer III
6. Mr. Collins Mahamba - Audio Officer
7. Mr. Yeziel Jilo - Sergeant-at-arm

MIN No. TPWH 225/2019: PRELIMINARIES

The meeting was called to order at fifteen minutes past ten o'clock, with a word of prayer from the Hon. Shadrack Mose, M.P. The agenda was confirmed as being confirmation of the minutes of the previous sittings and adoption of the Report on the Inquiry into the Aviation Industry in Kenya.

MIN No. TPWH 226/2019: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

Confirmation of minutes of the previous sitting was deferred to the next sitting of the Committee.

MIN No. TPWH 227/2019: ADOPTION OF THE REPORT ON THE INQUIRY INTO THE PROPOSED KENYA AIRWAYS' PRIVATELY INITIATED INVESTMENT PROPOSAL TO KENYA AIRPORTS AUTHORITY

The report on the inquiry into the proposed Kenya Airways' Privately Initiated Investment Proposal to Kenya Airports Authority was adopted, having been proposed and seconded by Hon. Samuel Arama M.P. and Hon. Tom Odege, M.P. respectively.

MIN No. TPWH 228/2019: ADJOURNMENT

There being no other business, the sitting was adjourned at half past eleven in the morning. The next meeting to be held on Tuesday 18th June, 2019

Signed...

(Chairperson)

Date...

ANNEX IV

VOLUME I

Correspondence by the Committee

REPUBLIC OF KENYA

Telegraphic Address
"Bunge", Nairobi
Telephone 2221291/2848000
Fax: 2243694
E-mail: clerk@parliament.go.ke
When replying please quote

NATIONAL ASSEMBLY

CLERK'S CHAMBERS
National Assembly
Parliament Buildings
P.O. Box 41842-00100
NAIROBI, Kenya

Ref.NA/DCS/TPWH/CORR/2019/034

8th April, 2019

Capt. Gilbert Kibe
Director General
Kenya Civil Aviation Authority
Jomo Kenyatta International Airport
NAIROBI

Mr. Eutychus Waithaka
Chief Executive Officer
Kenya Association of Air Operators
Jomo Kenyatta International Airport
NAIROBI

Capt. Murithi Nyagah
Secretary General
Kenya Airline Pilots Association
Jomo Kenyatta International Airport
NAIROBI

Mr. Moses Ndiema
Secretary General
Kenya Aviation Workers Union
Jomo Kenyatta International Airport
NAIROBI

Dear Mr. Ndiema

RE: INQUIRY INTO THE AVIATION INDUSTRY IN KENYA BY THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING

The Departmental Committee on Transport, Public Works and Housing is established pursuant to standing order 216 of the National Assembly and is mandated to, *inter alia*, "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".

The Committee intends to conduct an inquiry into the policy, human resource, legal compliance and issues of concern to the people as contemplated under Article 95 of the Constitution, and in relation to the Kenya Airways' Privately Initiated Investment Proposal (PIIP) to Kenya Airports Authority.

Following consultation between the Committee's Chairperson and Director General Kenya Civil Aviation Authority, Secretary General, Kenya Aviation Workers Union, Secretary General, Kenya Airline Pilots Association (KALPA) and Kenya Association of Air Operators (KAAO) on **Friday, 5th April, 2019** on the above subject matter, the

Committee invites you to appear before it to give your views on the Proposal as indicated in the schedule below.

VENUE: MINI-CHAMBER, FIRST FLOOR, COUNTY HALL, PARLIAMENT BUILDINGS			
	AGENCY/DEPARTMENT	**DATE & TIME**	**TIME**
1.	Director General, Kenya Civil Aviation Authority.	Wednesday, 10th April, 2019	2.00 pm
2.	Secretary, General, Kenya Aviation Workers Union	Thursday, 11th April, 2019	9.00 am
3.	Secretary, General, Kenya Airline Pilots Association	Thursday, 11th April, 2019	12.00 noon
4.	Chief Executive Officer, Kenya Association of Air Operators.	Thursday, 11th April, 2019	2.00 pm

You are requested to submit twenty five (25) copies of your written views on or before Wednesday, 11th April, 2019 on the above and any other additional information, which in your opinion the Committee may require in the course of its proceedings. You may send a soft copy of the submission to clerk@parliament.go.ke.

The Liaison officers for the meetings are **Ms. Chelagat Tungo Aaron, Committee Clerk,** who may be contacted on **Tel. No. 0720436528 or email addresses:** ctungo@parliament.go.ke/tungoaaron@gmail.com, and **Mr. Ahmed Salim Abdalla, Committee Clerk**, who may be contacted on Tel. no. 0710204056 **or email addresses:** damnan@parliament.go.ke/asadamnan@gmail.com.

Yours

JEREMIAH W. NDOMBI
For: CLERK OF THE NATIONAL ASSEMBLY

Copy to:- **Mrs. Esther Koimett, CBS**
Principal Secretary
State Department of Transport
Ministry of Transport, Infrastructure, Housing,
Urban Development & Public Works
Transcom House - Ngong Road
NAIROBI

Telegraphic Address
"Bunge", Nairobi
Telephone 2221291/2848000
Fax: 2243694
E-mail: clerk@parliament.go.ke
When replying please quote

REPUBLIC OF KENYA

NATIONAL ASSEMBLY

National Assembly
Clerk's Chambers
Parliament Buildings
P. O. Box 41842-00100
NAIROBI, Kenya

Ref.NA/DCS/TPWH/CORR/2019/029

1st April, 2019

Mrs. Esther Koimett, CBS
Principal Secretary
State Department of Transport
Ministry of Transport, Infrastructure
Housing, Urban Development & Public Works,
Transcom House - Ngong Road
NAIROBI

Mr. Sebastian Mikosz
Chief Executive Officer
Kenya Airways
KQ Head Office
Jomo Kenyatta International Airport
Airport North Road, Embakasi
NAIROBI

Mr. Jonny Andersen
Managing Director
Kenya Airports Authority
Head Office, Off Airport North Road
Jomo Kenyatta International Airport
NAIROBI

Dear Madam,

RE: INQUIRY INTO THE AVIATION INDUSTRY IN KENYA BY THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING

The Departmental Committee on Transport, Public Works and Housing intends to conduct an inquiry into the policy, human resource, legal compliance and issues of concern to the people as contemplated under Article 95 of the Constitution, and in relation to the Kenya Airways' Privately Initiated Investment Proposal (PIIP) to Kenya Airports Authority.

In accordance to with the Hon. Speaker's Communication on Thursday, 21st March, 2019 the Committee resolved during its sitting on Tuesday, 26th March, 2019 to invite stakeholders for a consultative meeting. The purpose of the meeting is to get views, proposals and any other information that may assist the Committee in finding a way forward to address policy gaps.

In this regard, the Committee invites the following to appear before it as per the Schedule below:- **Cabinet Secretary for Transport, Infrastructure, Housing, Urban**

Development & Public Works; Principal Secretary for State Department of Transport; Chairman and Managing Director of Kenya Airways; Chairman and Managing Director of Kenya Airports Authority.

VENUE – MINI CHAMBER, FIRST FLOOR, COUNTY HALL, PARLIAMENT BUILDINGS			
	AGENCY / DEPARTMENT	DATE	TIME
1.	Ministry of Transport, Infrastructure, Housing, Urban Development & Public Works	Tuesday, 9th April 2019	10.00 am
2.	Kenya Airways	Tuesday, 9th April 2019	2.30 am
3.	Kenya Airports Authority	Wednesday, 10th April 2019	10.00 am

The inquiry will cover, among others, issues and questions as enumerated in the attached list. You are further requested to prepare comprehensive report on the above and any other additional information, which in your opinion, the Committee may require in the course of its proceedings; and submit twenty five (25) copies of the reports on or before Monday, 8th April, 2019. You may send a soft copy of the submission to clerk@parliament.go.ke.

The Liaison officers for the meetings are **Ms. Chelagat Tungo Aaron, Committee Clerk**, who may be contacted on **Tel. No. 0720436528 or email addresses:** ctungo@parliament.go.ke / tungoaaron@gmail.com, and **Mr. Ahmed Salim Abdalla, Committee Clerk**, who may be contacted on Tel. no. 0710204056 **or email addresses:** damnan@parliament.go.ke / asadamnan@gmail.com.

Yours faithfully,

SERAH M.KIOKO
For: THE CLERK OF THE NATIONAL ASSEMBLY

Copy to:-

Mr. James Macharia, EGH
Cabinet Secretary
Ministry of Transport, Infrastructure,
Housing, Urban Development & Public Works
Transcom House - Ngong Road
NAIROBI

Mr. Michael Joseph
Chairman
Kenya Airways
KQ Head Office
Jomo Kenyatta International Airport
NAIROBI

Mr. Isaac Awuondo
Chairman
Kenya Airports Authority
Head Office, Off Airport North Road
Jomo Kenyatta International Airport
NAIROBI

REPUBLIC OF KENYA

②

Telegraphic Address:
"Bunge", Nairobi
Telephone: 254-020-2848000
Fax: 254-020-243694
E-mail: clerk@parliament.com

NATIONAL ASSEMBLY

Clerk's Chambers
National Assembly
Parliament Buildings
P O Box 41842-00100
NAIROBI, Kenya

When replying please quote
NA/DCS/TPWH/CORR/2019/011

21st February 2019

Mr. Jonny Andersen
Managing Director
Kenya Airports Authority
Head Office, Off Airport North Road
Jomo Kenyatta International Airport
NAIROBI

Mr. Sebastian Mikosz
Chief Executive Officer
Kenya Airways
KQ Head Office,
Jomo Kenyatta International Airport
Airport North Road, Embakasi
NAIROBI

Dear Mr Mikosz

RE: INVITATION TO A MEETING TO CONSIDER THE PROPOSED RESTRUCTURING PLAN BY THE KENYA AIRPORTS AUTHORITY AND THE KENYA AIRWAYS ON MANAGEMENT OF OPERATIONS AT KENYAN AIRPORTS

Reference is made to our letter Ref. NA/DCS/TPWH/CORR/2019/005 dated 12th February, 2019 and response letter from Kenya Airports Authority, Ref. KAA/MD/GC/VOL. 2(268) dated 14th February, 2019 on the above subject matter.

The Committee acceded to your request and resolved to reschedule the meeting to **Tuesday, 26th February, 2019** in **Committee Room, 5th Floor, Continental House, Parliament Buildings, at 10:00 a.m.**, to deliberate on the aforesaid agenda.

The Liaison officer for this meeting is Ms. Chelagat Tungo Aaron, Committee Clerk, who may be contacted on Tel. No. 0720436528 or email addresses: ctungo@parliament.go.ke / tungoaaron@gmail.com

Yours

JEREMIAH NDOMBI
FOR: THE CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA

Telegraphic Address
'Bunge', Nairobi
Tel. +254-020-221291
Fax: +254-020-243694
E-mail: clerk@parliament.go.ke
When replying please quote

NATIONAL ASSEMBLY

Clerk's Chambers
National Assembly
Parliament Buildings
P.O. Box 41842 –00100
NAIROBI, Kenya

Ref.NA/DCS/TPWH/CORR/2019/010

20th February, 2019

Mrs. Esther Koimett, CBS
Principal Secretary
State Department for Transport
Ministry of Transport, Infrastructure
Housing & Urban Development,
Transcom House - Ngong Road,
NAIROBI

Dear Mrs Koimett

RE: INVITATION TO A MEETING TO CONSIDER THE PROPOSED RESTRUCTURING PLAN BY THE KENYA AIRPORTS AUTHORITY AND THE KENYA AIRWAYS ON MANAGEMENT OF OPEATIONS AT KENYAN AIRPORTS

Reference is made to our letter **Ref.NA/DCS/TPWH/CORR/2019/001** dated **12th February, 2019** and **response** letter from Kenya Airports Authority, **Ref. KAA/MD/GC/VOL. 2(268)** dated **14th February, 2019** on the above subject matter.

The Managing Director for Kenya Airports Authority made a request to have the meeting postponed to a later date. The Committee acceded to the request and resolved to reschedule the meeting to **Tuesday, 26th February, 2019** in **Committee Room, 5th Floor, Continental House, Parliament Buildings**, at **10:00 a.m.**, to deliberate on the aforesaid agenda.

The Liaison officer for this meeting is **Ms. Chelagat Tungo Aaron, Committee Clerk**, who may be contacted on **Tel. No. 0720436528 or email addresses:** ctungo@parliament.go.ke/tungoaaron@gmail.com

Yours

JEREMIAH W. NDOMBI
For: THE CLERK OF THE NATIONAL ASSEMBLY

Copy to:-

Mr. James Macharia, EGH,
Cabinet Secretary
Ministry of Transport, Infrastructure
Housing & Urban Development
Transcom House - Ngong Road
<u>**NAIROBI**</u>

REPUBLIC OF KENYA

Telegraphic Address
"Bunge", Nairobi
Telephone 2221291/2848000
Fax: 2243694
E-mail: clerk@parliament.go.ke
When replying please quote

NATIONAL ASSEMBLY

CLERK'S CHAMBERS
National Assembly
Parliament Buildings
P. O. Box 41842-00100
NAIROBI

Ref.NA/DCS/TPWH/CORR/2019/005

13th February, 2019

Mr. Jonny Andersen
Managing Director
Kenya Airports Authority
Head Office, Off Airport North Road
Jomo Kenyatta International Airport
NAIROBI

Mr. Sebastian Mikosz
Chief Executive Officer
Kenya Airways
KQ Head Office
Jomo Kenyatta International Airport
Airport North Road, Embakasi
NAIROBI

Dear Mr Mikosz

RE: INVITATION TO A MEETING TO CONSIDER THE PROPOSED RESTRUCTURING PLAN BY KENYA AIRPORTS AUTHORITY AND KENYA AIRWAYS ON MANAGEMENT OF OPERATIONS AT KENYAN AIRPORTS – TUESDAY, 19TH FEBRUARY, 2019

The Departmental Committee on Transport, Public Works & Housing is constituted under Standing Order 216 and mandated to, inter-alia, *"investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and Departments as they may deem necessary, and as may be referred to them by the House"*.

During the Committee's sitting on 12th February 2019, members raised issues on the proposed restructuring plan by Kenya Airports Authority and Kenya Airways on management of operations at the Kenya airports, taking into account different media reporting on the matter. The Committee therefore resolved to invite the Managing Director, Kenya Airports Authority and Chief Executive Officer, Kenya Airways for a meeting to apprise the Committee on the proposal and the progress made.

This is therefore, to invite you to attend the said meeting on **Tuesday, 19th February, 2019** to deliberate on the aforesaid agenda. The meeting will be held in **Committee Room on 5th Floor, Continental House, Parliament Buildings** at **10.00 am.**

The Liaison officer for this meeting is **Ms. Chelagat Tungo Aaron, Committee Clerk**, who may be contacted on **Tel. No. 0720436528** or **email addresses:** ctungo@parliament.go.ke / tungoaaron@gmail.com

Yours

JEREMIAH W. NDOMBI
For: THE CLERK OF THE NATIONAL ASSEMBLY

Copy to:- **Mrs. Esther Koimett, CBS**
Principal Secretary
State Department for Transport
Ministry of Transport and Infrastructure Development
Transcom House - Ngong Road
NAIROBI

REPUBLIC OF KENYA

Telegraphic Address
"Bunge", Nairobi
Telephone 2221291/2848000
Fax: 2243694
E-mail: clerk@parliament.go.ke
When replying please quote

NATIONAL ASSEMBLY

CLERK'S CHAMBERS
National Assembly
Parliament Buildings
P. O. Box 41842-00100
NAIROBI

Ref.NA/DCS/TPWH/CORR/2019/005

13th February, 2019

Mr. Jonny Andersen
Managing Director
Kenya Airports Authority
Head Office, Off Airport North Road
Jomo Kenyatta International Airport
NAIROBI

Mr. Sebastian Mikosz
Chief Executive Officer
Kenya Airways
KQ Head Office
Jomo Kenyatta International Airport
Airport North Road, Embakasi
NAIROBI

Dear Mr Andersen

RE: INVITATION TO A MEETING TO CONSIDER THE PROPOSED RESTRUCTURING PLAN BY KENYA AIRPORTS AUTHORITY AND KENYA AIRWAYS ON MANAGEMENT OF OPERATIONS AT KENYAN AIRPORTS – TUESDAY, 19TH FEBRUARY, 2019

The Departmental Committee on Transport, Public Works & Housing is constituted under Standing Order 216 and mandated to, inter-alia, *"investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and Departments as they may deem necessary, and as may be referred to them by the House".*

During the Committee's sitting on 12th February 2019, members raised issues on the proposed restructuring plan by Kenya Airports Authority and Kenya Airways on management of operations at the Kenya airports, taking into account different media reporting on the matter. The Committee therefore resolved to invite the Managing Director, Kenya Airports Authority and Chief Executive Officer, Kenya Airways for a meeting to apprise the Committee on the proposal and the progress made.

This is therefore, to invite you to attend the said meeting on **Tuesday, 19th February, 2019** to deliberate on the aforesaid agenda. The meeting will be held in **Committee Room on 5th Floor, Continental House, Parliament Buildings** at **10.00 am.**

The Liaison officer for this meeting is **Ms. Chelagat Tungo Aaron, Committee Clerk**, who may be contacted on **Tel. No. 0720436528** or **email addresses:** ctungo@parliament.go.ke / tungoaaron@gmail.com

Yours

JEREMIAH W. NDOMBI
For: THE CLERK OF THE NATIONAL ASSEMBLY

Copy to:- **Mrs. Esther Koimett, CBS**
Principal Secretary
State Department for Transport
Ministry of Transport and Infrastructure Development
Transcom House - Ngong Road
NAIROBI

REPUBLIC OF KENYA

Telegraphic Address
"Bunge", Nairobi
Telephone 2221291/2848000
Fax: 2243694
E-mail: clerk@parliament.go.ke
When replying please quote

NATIONAL ASSEMBLY

CLERK'S CHAMBERS
National Assembly
Parliament Buildings
P. O. Box 41842-00100
NAIROBI

Ref.NA/DCS/TPWH/CORR/2019/001

13th February, 2019

Mrs. Esther Koimett, CBS
Principal Secretary
State Department for Transport
Ministry of Transport, Infrastructure
Housing & Urban Development
Transcom House-Ngong Road
NAIROBI

Dear Ms. Koimett

RE: INVITATION TO A MEETING TO CONSIDER THE PROPOSED RESTRUCTURING PLAN BY THE KENYA AIRPORTS AUTHORITY AND THE KENYA AIRWAYS ON MANAGEMENT OF OPERATIONS AT KENYAN AIRPORTS – 19TH FEBRUARY, 2019

The Departmental Committee on Transport, Public Works & Housing is constituted under Standing Order 216 and mandated to, inter-alia, *"investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and Departments as they may deem necessary, and as may be referred to them by the House"*.

During its sitting held on 12th February 2019, Members raised issues on the proposed restructuring plan by the Kenya Airports Authority and the Kenya Airways on management of operations at the Kenya airports, taking into account different media reporting on the matter. The Committee therefore resolved to invite the Cabinet Secretary, Ministry of Transport, Infrastructure, Housing & Urban Development; Managing Director, Kenya Airports Authority; and Chief Executive Officer, Kenya Airways for a meeting to apprise the Committee on the proposal and the progress made so far.

This is therefore, to invite the Cabinet Secretary, Transport, Infrastructure, Housing & Urban Development to attend the said meeting on **Tuesday, 19th February, 2019** to deliberate on the aforesaid agenda. The meeting will be held in **Committee Room on 5th Floor, Continental House, Parliament Buildings at 10.00 am.**

The Liaison officer for this meeting is **Ms. Chelagat Tungo Aaron, Committee Clerk**, who may be contacted on **Tel. No. 0720436528 or email addresses:** ctungo@parliament.go.ke / tungoaaron@gmail.com

Yours

JEREMIAH W. NDOMBI
For: THE CLERK OF THE NATIONAL ASSEMBLY

Copy to:- **Mr. James Macharia, EGH**
Cabinet Secretary
Ministry of Transport, Infrastructure
Housing & Urban Development
Transcom House - Ngong Road
NAIROBI

ANNEX V

VOLUME I

Advertisement inviting submission of Memoranda

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT - THIRD SESSION

In the Matter of the consideration by the National Assembly:-
The proposed Public Private Partnership (PPP) agreement between Kenya Airways and the Kenya Airports Authority

SUBMISSION OF MEMORANDA

Article 118 (1)(b) of the Constitution provides that, *"Parliament shall - facilitate public participation and involvement in the legislative and other business of Parliament and its Committees"* and Article 201 (a) of the Constitution provides that, *"there shall be openness and accountability, including public participation in financial matters"*.

The Departmental Committee on Transport, Public Works and Housing is established pursuant to Standing Order 216 of the National Assembly and is mandated to, *inter alia*, "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".

The Committee intends to conduct an inquiry into the issues of policy, human resource and legal compliance, as well as the general issues of concern to the public as contemplated under Article 95 of the Constitution, in relation to the Kenya Airways (KQ) Privately Initiated Investment Proposal (PIIP) to the Kenya Airports Authority (KAA). The Committee is in receipt of the Proposal from Kenya Airways PLC and the proposal seeks to introduce a Public Private Partnership for the operations, management and development of Jomo Kenyatta International Airport.

Pursuant to the provisions of the said articles of the Constitution, the Committee invites members of the public to submit any views they may have on the said proposal. The views, representations or written submissions may be forwarded to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi;** hand-delivered to the Office of the Clerk, **First Floor, Main Parliament Building, Nairobi;** or emailed to **clerk@parliament.go.ke;** to be received **on or before Thursday, 4th April, 2019 at 5:00 pm.**

MICHAEL R. SIALAI, EBS
CLERK OF THE NATIONAL ASSEMBLY

KENYA RURAL ROADS AUTHORITY

ROAD MAINTENANCE LEVY FUND (RMLF) ALLOCATION 2019/2020

County No.	County	S/No.	Constituency	22% All	10% All	Total All
1	Mombasa	1	Jomvu	21,500,000.00	9,600,000.00	31,100,000.00
		2	Changamwe	21,500,000.00	9,600,000.00	31,100,000.00
		3	Mvita	21,500,000.00	9,600,000.00	31,100,000.00
		4	Kisauni	21,500,000.00	9,600,000.00	31,100,000.00
		5	Likoni	21,500,000.00	9,600,000.00	31,100,000.00
		6	Nyali	21,500,000.00	9,600,000.00	31,100,000.00
2	Kwale	7	Msambweni	21,500,000.00	9,600,000.00	31,100,000.00
		8	Lunga Lunga	21,500,000.00	9,600,000.00	31,100,000.00
		9	Matuga	21,500,000.00	9,600,000.00	31,100,000.00
		10	Kinango	21,500,000.00	9,600,000.00	31,100,000.00
3	Kilifi	11	Kilifi North	21,500,000.00	9,600,000.00	31,100,000.00
		12	Kilifi South	21,500,000.00	9,600,000.00	31,100,000.00
		13	Kaloleni	21,500,000.00	9,600,000.00	31,100,000.00
		14	Rabai	21,500,000.00	9,600,000.00	31,100,000.00
		15	Ganze	21,500,000.00	9,600,000.00	31,100,000.00
		16	Malindi	21,500,000.00	9,600,000.00	31,100,000.00
		17	Magarini	21,500,000.00	9,600,000.00	31,100,000.00
4	Tana River	18	Galole	21,500,000.00	9,600,000.00	31,100,000.00
		19	Bura	21,500,000.00	9,600,000.00	31,100,000.00
		20	Garsen	21,500,000.00	9,600,000.00	31,100,000.00
5	Lamu	21	Lamu East	21,500,000.00	9,600,000.00	31,100,000.00
		22	Lamu West	21,500,000.00	9,600,000.00	31,100,000.00
6	Taita Taveta	23	Taveta	21,500,000.00	9,600,000.00	31,100,000.00
		24	Wundanyi	21,500,000.00	9,600,000.00	31,100,000.00
		25	Mwatate	21,500,000.00	9,600,000.00	31,100,000.00
		26	Voi	21,500,000.00	9,600,000.00	31,100,000.00
7	Garissa	27	Garissa Township	21,500,000.00	9,600,000.00	31,100,000.00
		28	Balambala	21,500,000.00	9,600,000.00	31,100,000.00
		29	Lagdera	21,500,000.00	9,600,000.00	31,100,000.00
		30	Dadaab	21,500,000.00	9,600,000.00	31,100,000.00
		31	Fafi	21,500,000.00	9,600,000.00	31,100,000.00
		32	Ijara	21,500,000.00	9,600,000.00	31,100,000.00
8	Wajir	33	Wajir North	21,500,000.00	9,600,000.00	31,100,000.00
		34	Wajir East	21,500,000.00	9,600,000.00	31,100,000.00
		35	Wajir West	21,500,000.00	9,600,000.00	31,100,000.00
		36	Wajir South	21,500,000.00	9,600,000.00	31,100,000.00
		37	Eldas	21,500,000.00	9,600,000.00	31,100,000.00
		38	Tarbaj	21,500,000.00	9,600,000.00	31,100,000.00
9	Mandera	39	Mandera East	21,500,000.00	9,600,000.00	31,100,000.00
		40	Mandera West	21,500,000.00	9,600,000.00	31,100,000.00
		41	Mandera North	21,500,000.00	9,600,000.00	31,100,000.00
		42	Mandera South	21,500,000.00	9,600,000.00	31,100,000.00
		43	Banissa	21,500,000.00	9,600,000.00	31,100,000.00
		44	Lafey	21,500,000.00	9,600,000.00	31,100,000.00
10	Marsabit	45	Moyale	21,500,000.00	9,600,000.00	31,100,000.00
		46	North Horr	21,500,000.00	9,600,000.00	31,100,000.00
		47	saku	21,500,000.00	9,600,000.00	31,100,000.00
		48	Laisamis	21,500,000.00	9,600,000.00	31,100,000.00
11	Isiolo	49	Isiolo North	21,500,000.00	9,600,000.00	31,100,000.00
		50	Isiolo South	21,500,000.00	9,600,000.00	31,100,000.00
12	Meru	51	Igembe Central	21,500,000.00	9,600,000.00	31,100,000.00
		52	Igembe South	21,500,000.00	9,600,000.00	31,100,000.00
		53	Igembe North	21,500,000.00	9,600,000.00	31,100,000.00
		54	Tigania West	21,500,000.00	9,600,000.00	31,100,000.00
		55	Tigania East	21,500,000.00	9,600,000.00	31,100,000.00
		56	North Imenti	21,500,000.00	9,600,000.00	31,100,000.00
		57	Buuri	21,500,000.00	9,600,000.00	31,100,000.00
		58	Central Imenti	21,500,000.00	9,600,000.00	31,100,000.00
		59	South Imenti	21,500,000.00	9,600,000.00	31,100,000.00
13	Tharak Nithi	60	Maara	21,500,000.00	9,600,000.00	31,100,000.00
		61	Chuka Igambang'ombe	21,500,000.00	9,600,000.00	31,100,000.00
		62	Tharaka	21,500,000.00	9,600,000.00	31,100,000.00
		63	Manyatta	21,500,000.00	9,600,000.00	31,100,000.00

ROAD MAINTENANCE LEVY FUND (RMLF) ALLOCATION 2019/2020

County No.	County	S/No.	Constituency	22% All	10% All	Total All
14	Embu	64	Runyenjes	21,500,000.00	9,600,000.00	31,100,000.00
		65	Mbeere South	21,500,000.00	9,600,000.00	31,100,000.00
		66	Mbeere North	21,500,000.00	9,600,000.00	31,100,000.00
15	Kitui	67	Mwingi North	21,500,000.00	9,600,000.00	31,100,000.00
		68	Mwingi West	21,500,000.00	9,600,000.00	31,100,000.00
		69	Mwingi Central	21,500,000.00	9,600,000.00	31,100,000.00
		70	Kitui West	21,500,000.00	9,600,000.00	31,100,000.00
		71	Kitui East	21,500,000.00	9,600,000.00	31,100,000.00
		72	Kitui Central	21,500,000.00	9,600,000.00	31,100,000.00
		73	Kitui South	21,500,000.00	9,600,000.00	31,100,000.00
		74	Kitui Rural	21,500,000.00	9,600,000.00	31,100,000.00
16	Machakos	75	Masinga	21,500,000.00	9,600,000.00	31,100,000.00
		76	Yatta	21,500,000.00	9,600,000.00	31,100,000.00
		77	Kangundo	21,500,000.00	9,600,000.00	31,100,000.00
		78	Matungulu	21,500,000.00	9,600,000.00	31,100,000.00
		79	Kathiani	21,500,000.00	9,600,000.00	31,100,000.00
		80	Mavoko	21,500,000.00	9,600,000.00	31,100,000.00
		81	Mwala	21,500,000.00	9,600,000.00	31,100,000.00
		82	Machakos Town	21,500,000.00	9,600,000.00	31,100,000.00
17	Makueni	83	Mbooni	21,500,000.00	9,600,000.00	31,100,000.00
		84	Kilome	21,500,000.00	9,600,000.00	31,100,000.00
		85	Kaiti	21,500,000.00	9,600,000.00	31,100,000.00
		86	Makueni	21,500,000.00	9,600,000.00	31,100,000.00
		87	Kibwezi East	21,500,000.00	9,600,000.00	31,100,000.00
		88	Kibwezi West	21,500,000.00	9,600,000.00	31,100,000.00
18	Nyandarua	89	Kinangop	21,500,000.00	9,600,000.00	31,100,000.00
		90	Kipipiri	21,500,000.00	9,600,000.00	31,100,000.00
		91	Ol Kalou	21,500,000.00	9,600,000.00	31,100,000.00
		92	Ol Jorok	21,500,000.00	9,600,000.00	31,100,000.00
		93	Ndaragwa	21,500,000.00	9,600,000.00	31,100,000.00
19	Nyeri	94	Tetu	21,500,000.00	9,600,000.00	31,100,000.00
		95	Kieni	21,500,000.00	9,600,000.00	31,100,000.00
		96	Mathira	21,500,000.00	9,600,000.00	31,100,000.00
		97	Othaya	21,500,000.00	9,600,000.00	31,100,000.00
		98	Nyeri Town	21,500,000.00	9,600,000.00	31,100,000.00
		99	Mukurweini	21,500,000.00	9,600,000.00	31,100,000.00
20	Kirinyaga	100	Mwea	21,500,000.00	9,600,000.00	31,100,000.00
		101	Gichugu	21,500,000.00	9,600,000.00	31,100,000.00
		102	Ndia	21,500,000.00	9,600,000.00	31,100,000.00
		103	Kirinyaga Central	21,500,000.00	9,600,000.00	31,100,000.00
21	Murang'a	104	Kangema	21,500,000.00	9,600,000.00	31,100,000.00
		105	Mathioya	21,500,000.00	9,600,000.00	31,100,000.00
		106	Gatanga	21,500,000.00	9,600,000.00	31,100,000.00
		107	Kandara	21,500,000.00	9,600,000.00	31,100,000.00
		108	Kigumo	21,500,000.00	9,600,000.00	31,100,000.00
		109	Kiharu	21,500,000.00	9,600,000.00	31,100,000.00
		110	Maragwa	21,500,000.00	9,600,000.00	31,100,000.00
22	Kiambu	111	Gatundu South	21,500,000.00	9,600,000.00	31,100,000.00
		112	Gatundu North	21,500,000.00	9,600,000.00	31,100,000.00
		113	Juja	21,500,000.00	9,600,000.00	31,100,000.00
		114	Kiambu	21,500,000.00	9,600,000.00	31,100,000.00
		115	Thika Town	21,500,000.00	9,600,000.00	31,100,000.00
		116	Lari	21,500,000.00	9,600,000.00	31,100,000.00
		117	Githunguri	21,500,000.00	9,600,000.00	31,100,000.00
		118	Kiambaa	21,500,000.00	9,600,000.00	31,100,000.00
		119	Kabete	21,500,000.00	9,600,000.00	31,100,000.00
		120	Kikuyu	21,500,000.00	9,600,000.00	31,100,000.00
		121	Ruiru	21,500,000.00	9,600,000.00	31,100,000.00
		122	Limuru	21,500,000.00	9,600,000.00	31,100,000.00
23	Turkana	123	Loima	21,500,000.00	9,600,000.00	31,100,000.00
		124	Turkana North	21,500,000.00	9,600,000.00	31,100,000.00
		125	Turkana West	21,500,000.00	9,600,000.00	31,100,000.00
		126	Turkana Central	21,500,000.00	9,600,000.00	31,100,000.00

ROAD MAINTENANCE LEVY FUND (RMLF) ALLOCATION 2019/2020

County No.	County	S/No.	Constituency	22% All	10% All	Total All
		127	Turkana East	21,500,000.00	9,600,000.00	31,100,000.00
		128	Turkana South	21,500,000.00	9,600,000.00	31,100,000.00
24	West Pokot	129	Kapenguria	21,500,000.00	9,600,000.00	31,100,000.00
		130	Kacheliba	21,500,000.00	9,600,000.00	31,100,000.00
		131	Pokot South	21,500,000.00	9,600,000.00	31,100,000.00
		132	Sigor	21,500,000.00	9,600,000.00	31,100,000.00
25	Samburu	133	Samburu North	21,500,000.00	9,600,000.00	31,100,000.00
		134	Samburu East	21,500,000.00	9,600,000.00	31,100,000.00
		135	Samburu West	21,500,000.00	9,600,000.00	31,100,000.00
26	Trans Nzoia	136	Cherangani	21,500,000.00	9,600,000.00	31,100,000.00
		137	Kwanza	21,500,000.00	9,600,000.00	31,100,000.00
		138	Endebess	21,500,000.00	9,600,000.00	31,100,000.00
		139	Saboti	21,500,000.00	9,600,000.00	31,100,000.00
		140	Kiminini	21,500,000.00	9,600,000.00	31,100,000.00
27	Uasin Gishu	141	Ainabkoi	21,500,000.00	9,600,000.00	31,100,000.00
		142	Turbo	21,500,000.00	9,600,000.00	31,100,000.00
		143	Kesses	21,500,000.00	9,600,000.00	31,100,000.00
		144	Moiben	21,500,000.00	9,600,000.00	31,100,000.00
		145	Kapseret	21,500,000.00	9,600,000.00	31,100,000.00
		146	Soy	21,500,000.00	9,600,000.00	31,100,000.00
28	Elgeyo Marakwet	147	Keiyo North	21,500,000.00	9,600,000.00	31,100,000.00
		148	Keiyo South	21,500,000.00	9,600,000.00	31,100,000.00
		149	Marakwet West	21,500,000.00	9,600,000.00	31,100,000.00
		150	Marakwet East	21,500,000.00	9,600,000.00	31,100,000.00
29	Nandi	151	Tinderet	21,500,000.00	9,600,000.00	31,100,000.00
		152	Mosop	21,500,000.00	9,600,000.00	31,100,000.00
		153	Chesumei	21,500,000.00	9,600,000.00	31,100,000.00
		154	Emgwen	21,500,000.00	9,600,000.00	31,100,000.00
		155	Nandi Hills	21,500,000.00	9,600,000.00	31,100,000.00
		156	Aldai	21,500,000.00	9,600,000.00	31,100,000.00
30	Baringo	157	Baringo North	21,500,000.00	9,600,000.00	31,100,000.00
		158	Baringo Central	21,500,000.00	9,600,000.00	31,100,000.00
		159	Baringo South	21,500,000.00	9,600,000.00	31,100,000.00
		160	Tiaty	21,500,000.00	9,600,000.00	31,100,000.00
		161	Eldamaravine	21,500,000.00	9,600,000.00	31,100,000.00
		162	Mogotio	21,500,000.00	9,600,000.00	31,100,000.00
31	Laikipia	163	Laikipia East	21,500,000.00	9,600,000.00	31,100,000.00
		164	Laikipia West	21,500,000.00	9,600,000.00	31,100,000.00
		165	Laikipia North	21,500,000.00	9,600,000.00	31,100,000.00
32	Nakuru	166	Kuresoi South	21,500,000.00	9,600,000.00	31,100,000.00
		167	Kuresoi North	21,500,000.00	9,600,000.00	31,100,000.00
		168	Molo	21,500,000.00	9,600,000.00	31,100,000.00
		169	Njoro	21,500,000.00	9,600,000.00	31,100,000.00
		170	Rongai	21,500,000.00	9,600,000.00	31,100,000.00
		171	Nakuru Town West	21,500,000.00	9,600,000.00	31,100,000.00
		172	Nakuru Town East	21,500,000.00	9,600,000.00	31,100,000.00
		173	Bahati	21,500,000.00	9,600,000.00	31,100,000.00
		174	Gilgil	21,500,000.00	9,600,000.00	31,100,000.00
		175	Naivasha	21,500,000.00	9,600,000.00	31,100,000.00
		176	Subukia	21,500,000.00	9,600,000.00	31,100,000.00
33	Narok	177	Narok North	21,500,000.00	9,600,000.00	31,100,000.00
		178	Narok East	21,500,000.00	9,600,000.00	31,100,000.00
		179	Narok South	21,500,000.00	9,600,000.00	31,100,000.00
		180	Narok West	21,500,000.00	9,600,000.00	31,100,000.00
		181	Kilgoris	21,500,000.00	9,600,000.00	31,100,000.00
		182	Emurua Dikirr	21,500,000.00	9,600,000.00	31,100,000.00
34	Kajiado	183	Kajiado East	21,500,000.00	9,600,000.00	31,100,000.00
		184	Kajiado Central	21,500,000.00	9,600,000.00	31,100,000.00
		185	Kajiado North	21,500,000.00	9,600,000.00	31,100,000.00
		186	Kajiado West	21,500,000.00	9,600,000.00	31,100,000.00
		187	Kajiado South	21,500,000.00	9,600,000.00	31,100,000.00
		188	Ainamoi	21,500,000.00	9,600,000.00	31,100,000.00
		189	Belgut	21,500,000.00	9,600,000.00	31,100,000.00

ROAD MAINTENANCE LEVY FUND (RMLF) ALLOCATION 2019/2020						
County No.	County	S/No.	Constituency	22% All	10% All	Total All
35	Kericho	190	Bureti	21,500,000.00	9,600,000.00	31,100,000.00
		191	Soin/Sigowett	21,500,000.00	9,600,000.00	31,100,000.00
		192	Kipkelion East	21,500,000.00	9,600,000.00	31,100,000.00
		193	Kipkelion West	21,500,000.00	9,600,000.00	31,100,000.00
36	Bomet	194	Bomet East	21,500,000.00	9,600,000.00	31,100,000.00
		195	Bomet Central	21,500,000.00	9,600,000.00	31,100,000.00
		196	Konoin	21,500,000.00	9,600,000.00	31,100,000.00
		197	Sotik	21,500,000.00	9,600,000.00	31,100,000.00
		198	Chepalungu	21,500,000.00	9,600,000.00	31,100,000.00
37	Kakamega	199	Lugari	21,500,000.00	9,600,000.00	31,100,000.00
		200	Likuyani	21,500,000.00	9,600,000.00	31,100,000.00
		201	Malava	21,500,000.00	9,600,000.00	31,100,000.00
		202	Ikolomani	21,500,000.00	9,600,000.00	31,100,000.00
		203	Butere	21,500,000.00	9,600,000.00	31,100,000.00
		204	Mumias West	21,500,000.00	9,600,000.00	31,100,000.00
		205	Mumias East	21,500,000.00	9,600,000.00	31,100,000.00
		206	Lurambi	21,500,000.00	9,600,000.00	31,100,000.00
		207	Navakholo	21,500,000.00	9,600,000.00	31,100,000.00
		208	Matungulu	21,500,000.00	9,600,000.00	31,100,000.00
		209	Shinyalu	21,500,000.00	9,600,000.00	31,100,000.00
		210	Khwisero	21,500,000.00	9,600,000.00	31,100,000.00
38	Vihiga	211	Hamisi	21,500,000.00	9,600,000.00	31,100,000.00
		212	Sabatia	21,500,000.00	9,600,000.00	31,100,000.00
		213	Vihiga	21,500,000.00	9,600,000.00	31,100,000.00
		214	Emuhaya	21,500,000.00	9,600,000.00	31,100,000.00
		215	Luanda	21,500,000.00	9,600,000.00	31,100,000.00
39	Bungoma	216	Mt Elgon	21,500,000.00	9,600,000.00	31,100,000.00
		217	Kimilili	21,500,000.00	9,600,000.00	31,100,000.00
		218	Webuye East	21,500,000.00	9,600,000.00	31,100,000.00
		219	Webuye West	21,500,000.00	9,600,000.00	31,100,000.00
		220	Tongaren	21,500,000.00	9,600,000.00	31,100,000.00
		221	Sirisia	21,500,000.00	9,600,000.00	31,100,000.00
		222	Kanduyi	21,500,000.00	9,600,000.00	31,100,000.00
		223	Kabuchai	21,500,000.00	9,600,000.00	31,100,000.00
		224	Bumula	21,500,000.00	9,600,000.00	31,100,000.00
40	Busia	225	Teso North	21,500,000.00	9,600,000.00	31,100,000.00
		226	Teso South	21,500,000.00	9,600,000.00	31,100,000.00
		227	Funyula	21,500,000.00	9,600,000.00	31,100,000.00
		228	Budalangi	21,500,000.00	9,600,000.00	31,100,000.00
		229	Nambale	21,500,000.00	9,600,000.00	31,100,000.00
		230	Matayos	21,500,000.00	9,600,000.00	31,100,000.00
		231	Butula	21,500,000.00	9,600,000.00	31,100,000.00
41	Siaya	232	Rarieda	21,500,000.00	9,600,000.00	31,100,000.00
		233	Ugenya	21,500,000.00	9,600,000.00	31,100,000.00
		234	Ugunja	21,500,000.00	9,600,000.00	31,100,000.00
		235	Alego Usonga	21,500,000.00	9,600,000.00	31,100,000.00
		236	Gem	21,500,000.00	9,600,000.00	31,100,000.00
		237	Bondo	21,500,000.00	9,600,000.00	31,100,000.00
42	Kisumu	238	Kisumu East	21,500,000.00	9,600,000.00	31,100,000.00
		239	Kisumu Central	21,500,000.00	9,600,000.00	31,100,000.00
		240	Kisumu West	21,500,000.00	9,600,000.00	31,100,000.00
		241	Seme	21,500,000.00	9,600,000.00	31,100,000.00
		242	Nyando	21,500,000.00	9,600,000.00	31,100,000.00
		243	Nyakach	21,500,000.00	9,600,000.00	31,100,000.00
		244	Muhoroni	21,500,000.00	9,600,000.00	31,100,000.00
43	Homa Bay	245	Kasipul	21,500,000.00	9,600,000.00	31,100,000.00
		246	Kabondo Kasipul	21,500,000.00	9,600,000.00	31,100,000.00
		247	Karachuonyo	21,500,000.00	9,600,000.00	31,100,000.00
		248	Rangwe	21,500,000.00	9,600,000.00	31,100,000.00
		249	Homa Bay Town	21,500,000.00	9,600,000.00	31,100,000.00
		250	Ndhiwa	21,500,000.00	9,600,000.00	31,100,000.00
		251	Mbita	21,500,000.00	9,600,000.00	31,100,000.00
		252	Suba	21,500,000.00	9,600,000.00	31,100,000.00

ounty No.	County	S/No.	Constituency	22% All	10% All	Total All
			KENYA RURAL ROADS AUTHORITY			
			ROAD MAINTENANCE LEVY FUND (RMLF) ALLOCATION 2019/2020			
44	Migori	253	Rongo	21,500,000.00	9,600,000.00	31,100,000.00
		254	Awendo	21,500,000.00	9,600,000.00	31,100,000.00
		255	Suna East	21,500,000.00	9,600,000.00	31,100,000.00
		256	Suna West	21,500,000.00	9,600,000.00	31,100,000.00
		257	Uriri	21,500,000.00	9,600,000.00	31,100,000.00
		258	Nyatike	21,500,000.00	9,600,000.00	31,100,000.00
		259	Kuria West	21,500,000.00	9,600,000.00	31,100,000.00
		260	Kuria East	21,500,000.00	9,600,000.00	31,100,000.00
45	Kisii	261	Bonchari	21,500,000.00	9,600,000.00	31,100,000.00
		262	South Mugirango	21,500,000.00	9,600,000.00	31,100,000.00
		263	Bomachoge Borabu	21,500,000.00	9,600,000.00	31,100,000.00
		264	Bomachoge Chache	21,500,000.00	9,600,000.00	31,100,000.00
		265	Bobasi	21,500,000.00	9,600,000.00	31,100,000.00
		266	Nyaribari Chache	21,500,000.00	9,600,000.00	31,100,000.00
		267	Nyaribari Masaba	21,500,000.00	9,600,000.00	31,100,000.00
		268	Kitutu Chache North	21,500,000.00	9,600,000.00	31,100,000.00
		269	Kitutu Chache South	21,500,000.00	9,600,000.00	31,100,000.00
46	Nyamira	270	Kitutu Masaba	21,500,000.00	9,600,000.00	31,100,000.00
		271	West Mugirango	21,500,000.00	9,600,000.00	31,100,000.00
		272	North Mugirango	21,500,000.00	9,600,000.00	31,100,000.00
		273	Borabu	21,500,000.00	9,600,000.00	31,100,000.00
47	Nairobi	274	Westlands	21,500,000.00	9,600,000.00	31,100,000.00
		275	Dagoretti South	21,500,000.00	9,600,000.00	31,100,000.00
		276	Dagoretti North	21,500,000.00	9,600,000.00	31,100,000.00
		277	Langata	21,500,000.00	9,600,000.00	31,100,000.00
		278	Kibra	21,500,000.00	9,600,000.00	31,100,000.00
		279	Roysambu	21,500,000.00	9,600,000.00	31,100,000.00
		280	Kasarani	21,500,000.00	9,600,000.00	31,100,000.00
		281	Ruaraka	21,500,000.00	9,600,000.00	31,100,000.00
		282	Embakasi North	21,500,000.00	9,600,000.00	31,100,000.00
		283	Embakasi South	21,500,000.00	9,600,000.00	31,100,000.00
		284	Embakasi Cetral	21,500,000.00	9,600,000.00	31,100,000.00
		285	Embakasi East	21,500,000.00	9,600,000.00	31,100,000.00
		286	Embakasi West	21,500,000.00	9,600,000.00	31,100,000.00
		287	Makadara	21,500,000.00	9,600,000.00	31,100,000.00
		288	Kamukunji	21,500,000.00	9,600,000.00	31,100,000.00
		289	Starehe	21,500,000.00	9,600,000.00	31,100,000.00
		290	Mathare	21,500,000.00	9,600,000.00	31,100,000.00
Total Allocation				6,235,000,000.00	2,784,000,000.00	9,019,000,000.00