



**ALG**  
Transport & Infrastructure



## **ADVISORY SERVICES FOR THE CONSTRUCTION OF A NEW PASSENGER TERMINAL BUILDING AT JOMO KENYATTA INTERNATIONAL AIRPORT**

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## Disclaimer

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## List of acronyms

Acronym	Meaning	Acronym	Meaning
ABJ	Abidjan Felix Houphouet Boigny Airport (Ivory Coast)	CASK	Cost per ASK
ACI	Airports Council International	CDG	Paris Charles de Gaulle Airport (France)
ADD	Addis Ababa Bole International Airport (Ethiopia)	CNS	Communication – Navigation - Surveillance
AF	Additional Financing	CPT	Cape Town International Airport (South Africa)
AIS	Aeronautical Information Service	CSX	Changsha Huanghua International Airport (China)
AMS	Amsterdam Schiphol Airport (Netherlands)	DAR	Dar-es-Salaam Julius Nyerere Airport (Tanzania)
ANA	Angama Mara Airport (Kenya)	DLA	Douala International Airport (Cameroon)
ANS	Air Navigation Service	DOH	Doha International Airport (Qatar)
APL	Nampula Airport (Mozambique)	DOM	Domestic
ASK	Available Seat - Kilometer	DRC	Democratic Republic of The Congo
ASM	Asmara International Airport (Eritrea)	DSS	Dakar Blaise Diagne International Airport (Senegal)
ASV	Amboseli Airport (Kenya)	DXB	Dubai International Airport (UAE)
ATC	Air Traffic Control	DZA	Dzaoudzi Pamandzi International Airport (Mayotte)
ATM	Air Traffic Movement	EBB	Entebbe International Airport (Uganda)
ATM	Air Traffic Management	EBITDA	Earnings Before Interest, Taxes, Depreciation, Amortization
AU	African Union	EDL	Eldoret airport (Kenya)
AUH	Abu Dhabi International Airport (UAE)	FBM	Lubumbashi International Airport (DRC)
BASA	Bilateral Air Service Agreement	FCO	Rome Leonardo da Vinci Fiumicino Airport (Italy)
HBE	Alexandria Borg El Arab Airport (Egypt)	FIH	Kinshasa N'Djili Airport (DRC)
HRE	Harare Robert Gabriel Mugabe Airport (Zimbabwe)	LCC	Low-Cost Carrier
IATA	International Air Transport Association	LHR	London Heathrow Airport (United Kingdom)
ICAO	International Civil Aviation Authority	LKG	Lokichogio Airport (Kenya)
IFPPP	Infrastructure Finance and Public Private Partnership	LLW	Lilongwe International Airport (Malawi)
IFR	Instrumental Flight Rules	LOK	Lodwar Airport (Kenya)
ILS	Instrumental Landing System	LOS	Lagos Murtala Mohammed Airport (Nigeria)
IMF	International Monetary Fund	LOY	Loyangalani (Kenya)
INT	International	LUN	Lusaka Kenneth Kaunda International Airport (Zambia)
IST	Istanbul Airport (Turkey)	LVI	Livingstone Harry Mwanga Nkumbula Airport (Zambia)

Acronym	Meaning	Acronym	Meaning
JED	Jeddah King Abdulaziz International Airport (Saudi Arabia)	LXR	Luxor International Airport (Egypt)
JIB	Djibouti Ambouli International Airport (Djibouti)	MBA	Moi International Airport (Kenya)
JJM	Meru Mulika Lodge Airport (Kenya)	MCT	Muscat International Airport (Oman)
JKIA	Jomo Kenyatta International Airport (Kenya)	MED	Medina Prince Mohammad bin Abdulaziz Airport (Saudi Arabia)
JNB	Johannesburg Tambo International Airport (South Africa)	MGQ	Mogadishu Aden Adde International Airport (Somalia)
JRO	Kilimanjaro International Airport (Tanzania)	Mol	Memorandum of Implementation
JUB	Juba Airport (South Sudan)	MoT	Ministry of Transport
CAA	Kenya Airports Authority	MQX	Mekele Alula Aba Nega Airport (Ethiopia)
KEU	Keekorok Airport (Kenya)	MRE	Mara Serena Airport (Kenya)
KEY	Kericho Airport (Kenya)	MRU	Port Louis Sir Seewoosagur Ramgoolam Airport (Mauritius)
KGL	Kigali Airport (Rwanda)	MTOW	Maximum Take Off Weight
KIS	Kisumu International Airport (Kenya)	MUZ	Musoma Airport (Tanzania)
KQ	Kenya Airways	MWZ	Mwanza Airport (Tanzania)
KSH	Kenyan Shilling	MLP	Milan Malpensa Airport (Italy)
KTJ	Kichwa Tembo Airport (Kenya)	MYD	Malindi Airport (Kenya)
CTL	Kitale Airport (Kenya)	NB	Narrow Body
LAPSSET	Lamu-Southern Sudan-Ethiopia Transport Corridor	JKIA	Jomo Kenyatta International Airport (Kenya)
LatAm	Latin America	NDE	Mandera (Kenya)
LAU	Lamu Manda Airport (Kenya)	NLA	Ndola International Airport (Zambia)
NorAm	North America	UAS	Samburu Buffalo Spring Airport (Kenya)
NOS	Nosy Be Fascene Airport (Madagascar)	UKA	Ukunda Airport (Kenya)
NUU	Nakuru (Kenya)	USD	US Dollar
NYE	Nyeri (Kenya)	VBS	Brescia Airport (Italia)
NYK	Nanyuki Airport (Kenya)	VFA	Victoria Falls Airport (Zimbabwe)
OLG	Olare Airport (Kenya)	VFR	Visiting Friends and Relatives
OLX	Olkiombo Airport (Kenya)	VPG	Vipingo Airport (Kenya)
OSJ	Ol Seki Airport (Kenya)	VRN	Verona Airport (Italy)
PAPI	Precision Approach Path Indicator	WB	Wide Body
PBB	Passenger Boarding Bridges	WIL	Wilson airport (Kenya)
PPP	Public Private Partnership	WJR	Wajir Airport (Kenya)
PPP	Purchase Power Parity	YD	Yamoussoukro Decision
RESA	Runway End Safety Area	ZNZ	Zanzibar Abeid Amani Karume Airport (Tanzania)

Acronym	Meaning	Acronym	Meaning
ROB	Monrovia Roberts International Airport (Liberia)	TAH	Trans-African Highway
RUN	Saint-Denis Roland Garros Airport (Reunion)	THR	Threshold
SAATM	Single African Air Traffic Market	RWY	Runway
SAR	Search and Rescue	TNR	Antananarivo Ivato International Airport (Madagascar)
SEZ	Special Economic Zones	ToR	Terms of Reference
SEZ	Victoria Seychelles International Airport (Seychelles)	TWR	Control Tower
SHJ	Sharjah International Airport	TWY	Taxiway
SKT	Sialkot International Airport (Pakistan)	UAE	United Arab Emirates
		ZRH	Zurich Airport (Switzerland)

**Table 1: List of acronyms**

## Executive summary

Kenya has established itself as one of the main African economies thanks to its diversified economic base, openness to investment and growing population, expected to reach +85M by 2050. As established by Kenya's strategic policies (e.g. Vision 2030) one of the country's main goals is to foster and consolidate economic and social growth by developing resilient infrastructure to improve tourism and connectivity. As a result, the Government of Kenya (GoK) is planning to implement a public-private partnership (PPP) for the expansion of Jomo Kenyatta International Airport (JKIA) to keep up with the growing needs of the airport and avoid its saturation.

Kenya Airports Authority (KAA) has engaged ALG to provide advisory services for the construction of a new passenger terminal building at JKIA. During the course of the project, ALG has performed the following tasks:

- Needs Analysis, to identify the relevant national and aviation policies and plans, and key stakeholders, of the project, among others;
- Technical Solution Option Analysis, to identify and propose a development plan for JKIA, determine its technical feasibility, and identify its costs;
- Project Due Diligence, to assess the main legal and environmental issues with regards to a future expansion at JKIA;
- Financial Analysis and Modelling, to assess the project's financial feasibility;
- Risk Assessment and Allocation Matrix, to identify the main project risks and propose an allocation matrix;
- Procurement Options, PPP Structure Analysis, and Recommendation of Preferred Option, to evaluate the potential procurement options (government procurement vs. PPP) and recommend one based on the value for money, fiscal impact, risk allocation, and manageability for KAA; among other factors

The present document is the final deliverable of the work plan.

It is important to note that the proposed development plan for JKIA, along with a number of assumptions employed during the assessment (such as, for example, the concession term, the economic regulation mechanism for aeronautical charges, the economic consideration for the Government, and the commercial revenue streams) are only used for the purpose of determining the feasibility of the project, and do not create any obligation for the Government. Shall the Government proceed with the implementation of a PPP, it will be required to define all these aspects during the tender documents preparation phase, according to its policies and goals.

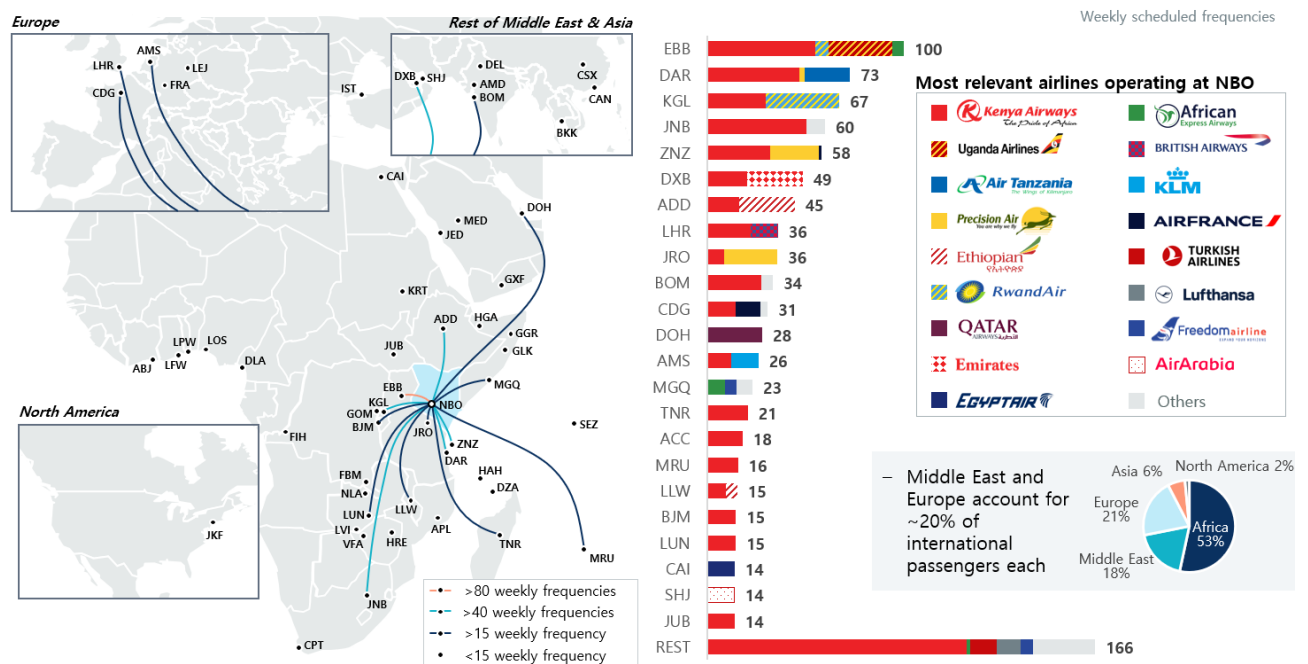
## Air Transport Market and Traffic Projections

JKIA is the country's main gateway, with over 6.5 million international passengers in 2019 (more than 90% of the country's international traffic), and over 1.7 million domestic passengers in the same year. It must be noted that Nairobi's airport system (JKIA and Wilson) accounts for practically all domestic flights in the country, through a network that radiates from the capital to other cities. This means that almost all domestic flights either depart from or arrive at Nairobi.



The international aviation market at JKIA is dominated by the national carrier, Kenya Airways, which accounts for more than half of international seats at the airport, portraying a large network of routes connecting JKIA with neighbouring African countries but also with main airports in Europe, the Middle East, Asia and North America (JFK). Thanks to this network, Kenya Airways has been able to develop a hub operation at JKIA, mainly focused on international-international connections, serving as a relevant hub for Eastern African connectivity.

Due to Kenya Airways' hub operation, supported by its subsidiary (Jambojet) and alliance and codeshare partners, more than 30% of JKIA traffic connects at the airport, and more than 80% (of connecting traffic) do so between international flights, indicating that JKIA has room to grow as Kenya's connecting gateway for domestic-international and domestic-domestic operations. Although the share of domestic connections at JKIA is relatively small, Kenya Airways and subsidiary Jambojet currently operate more than 97% of the scheduled domestic flights at JKIA.



**Figure 1: Main international routes to/from Jomo Kenyatta International Airport (2023)**  
(Source: OAG)

Looking ahead, Kenya's expected economic and demographic development, coupled with its positioning as a touristic and business destination, along with the expected liberalization of air travel, including the dropping of visa requirements for most visitors and the strengthening of Kenya Airways hub/gateway at JKIA, is projected to result in a 3.8x rise in traffic by 2055, at a 4.1% CAGR between 2025 and 2055.

Jomo Kenyatta International Airport	Share over segment		CAGR		
	2019	2055	'25-'40	'25-'55	'19-'55
DOM O/D	83%	65%	3.3%	2.8%	2.8%
DOM Connect.	17%	35%	7.3%	5.7%	5.5%
INT O/D	59%	50%	3.9%	3.7%	3.3%
INT Connect.	41%	50%	5.7%	4.8%	4.4%
<b>TOTAL</b>			<b>4.6%</b>	<b>4.1%</b>	<b>3.7%</b>

(million passengers)

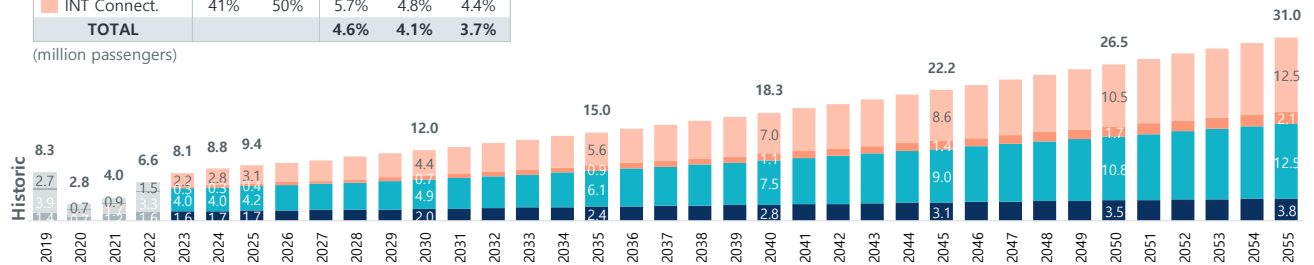


Figure 2: Forecasted number of annual passengers (O/D and connections) in JKIA during the period 2023-2055

Cargo also plays a significant role at JKIA with 358 kTn (kilotons) transported, making JKIA the largest sub-Saharan airport by cargo volume and second in Africa after Cairo (398 kTn). Cargo is expected to maintain a significant role in the development of the airport, and is forecasted to double by 2055, achieving more than 740 kTn.

## JKIA Proposed Development and Investment Plan

As a result of the forecasted passenger and cargo traffic, JKIA's current infrastructure will not be able to meet demand; some airport sub-systems are approaching saturation and will require significant expansion in the future.

Currently, the airport has a single runway and two main terminals, T1, divided in 5 subterminals (A, B, C, D and E) and T2. T1B and T1C have undergone enhancement works in 2022 while both T1E and T2 were built in 2015 as temporary infrastructures following the 2013 fire, with a planned 10-year lifespan.

The current terminal architecture presents some challenges to a seamless passenger journey, and there is a lack of interconnected baggage handling systems across diverse terminal buildings, critical for connecting passengers, leading to extended connecting times. In the most recent ASQ survey the "ease of making connections" received the lowest score among satisfaction measures. Besides the aforementioned functional challenges and the fact that T1E and T2 will need to be decommissioned at some point in the future, existing terminal capacity will be unable to meet projected near-term demand at adequate service levels, and will need to be expanded.

JKIA's single runway operates at a capacity of 30 air transport movements per hour (ATM/h) and is close to saturation. Runway capacity can be reasonably increased by 15% in the short to medium-term, but still, considering the traffic projections, the existing runway is projected to reach saturation in the next 10 to 15 years. As a result, JKIA will need a second runway around 2035, and it must be taken into account that building a new runway (from planning to commissioning) usually takes 8 to 10 years.

Considering the need for a second runway, and the long lead times before it is operational, ALG proposed during the kick-off and stakeholders consultation meetings that an airport PPP (rather than a terminals PPP) should be considered, with the private operator assuming responsibility for the development and operation of the terminals as well as the airfield (runways, taxiways, aprons, etc.). There are several benefits to opting for an Airport PPP as opposed to a terminals PPP, notably, that it provides a longer-term, more

coherent, and lower-risk development path for JKIA. The GoK was receptive to the proposal but requested the financial assessment of both scenarios (terminals PPP vs. airport PPP) to make a final decision.

ALG has designed a comprehensive development and action plan that provides a solution for the capacity bottlenecks identified. This plan has been elaborated with a holistic perspective, which integrates all main airport subsystems, providing them with enough capacity to operate as Kenya’s gateway while modernising the infrastructure, bringing a sense of place to visitors and nationals alike.

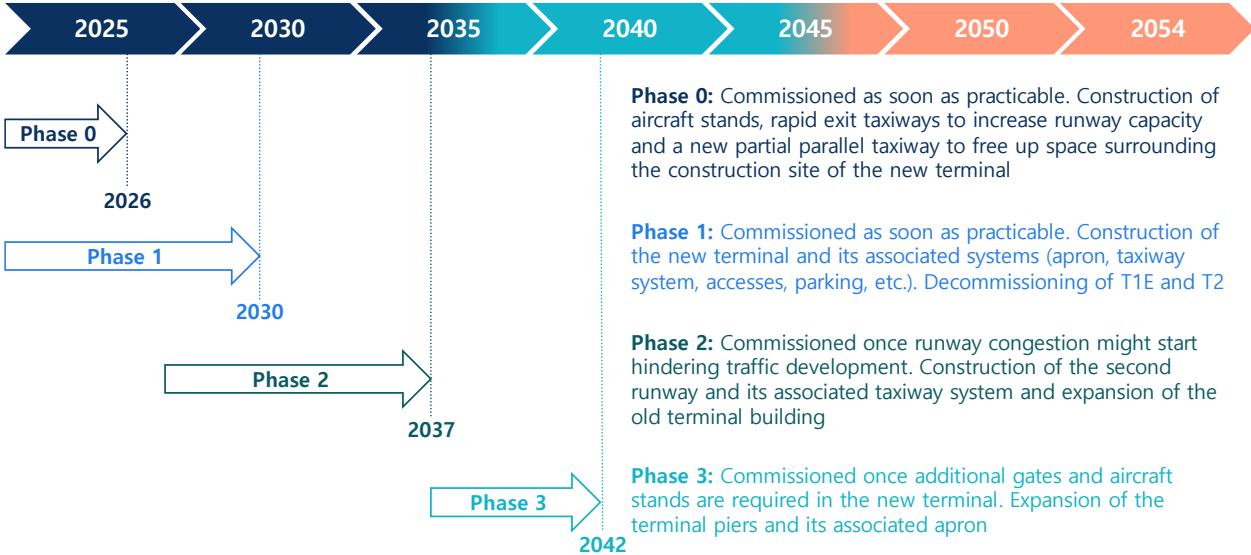


Figure 3: JKIA Development Plan overview

The proposed development is divided in 4 phases. Phase 0, carried out during the project’s first years and expected to be commissioned by the end of 2026, encompasses the addition of rapid exit taxiways to the existing runway to reduce runway occupancy times and improve runway throughput. At the same time, this phase includes the construction of new aircraft stands (passenger and cargo) to alleviate apron congestion and a new partial parallel taxiway to allow for the closure of sections of the existing taxiway, which will be required for the construction of the new terminal. In addition, Phase 0 assumes refurbishments to T1E and T2, to extend their service life until the new terminal becomes operational.



Figure 4: Phase 0 (RETs, parallel taxiway, cargo and passenger stands)

Phase I comprises the construction of the new terminal building, all its associated subsystems (parking, accesses, apron) as well as the network of taxiways connecting the new terminal and the existing runway, to be commissioned by 2030. A new multi-level passenger terminal building with a central processing area and two piers is projected. One pier would be exclusively designated for departing international passenger flows, with a mezzanine level for arriving international passengers and transfers, while the other pier would host international departures on the upper level, domestic departures on the lower level, and a mezzanine level for arriving international passengers and transfers. It is envisioned that Kenya Airways, Jambojet and its alliance and codeshare partners would operate from this new terminal, while the remaining airlines at JKIA would continue their operations in the existing terminal complex. This aims to enhance the ease of making connections at the airport and position Kenya Airways within a new and contemporary terminal, which enables future expansion. Phase I also contemplates the decommissioning of T1E and T2.

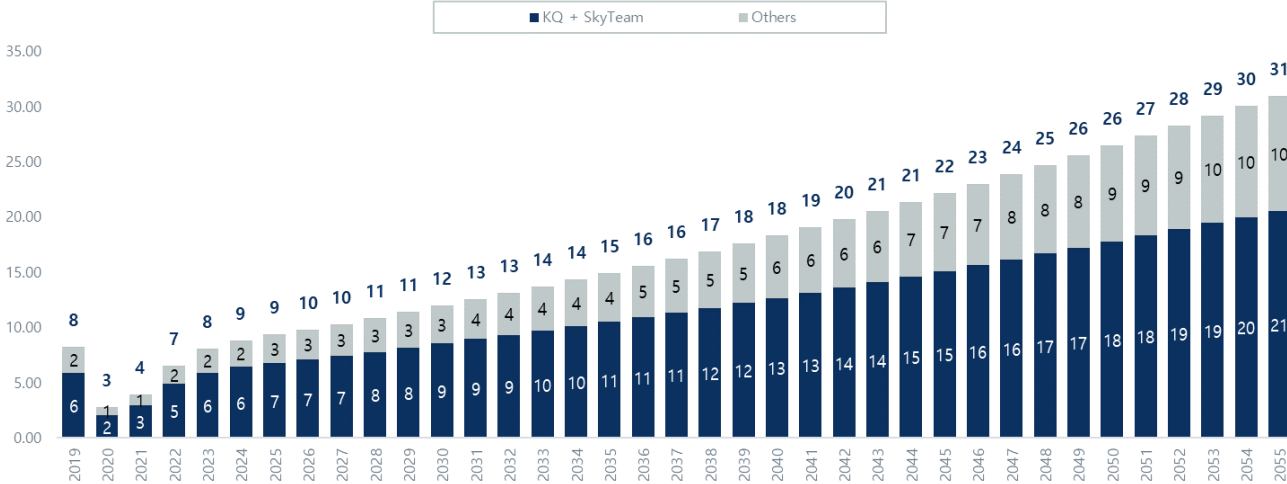


Figure 5: Traffic split by Kenya Airways and its codeshare partners and others



Figure 6: Phase I (proposed terminal and its associated subsystems)

Phase II encompasses the expansion of the existing terminal to make up for the lost arrivals capacity that will result from the decommissioning Terminal T1E and T2 (in Phase I), and the construction of a second runway and its associated taxiways by 2037. The new runway is expected to be of the same length and spaced 1,580 meters from the existing one to allow for independent operations with less onerous requirements than if the runways were more closely spaced. Furthermore, the location of the new runway would allow for the construction of a third parallel runway in the distant future (not anticipated in the studied period) within non-urbanised terrain, spaced 1,035m from the new second runway that would



allow for independent operations between all runways, laying the groundwork for a long-term airfield development plan at JKIA.



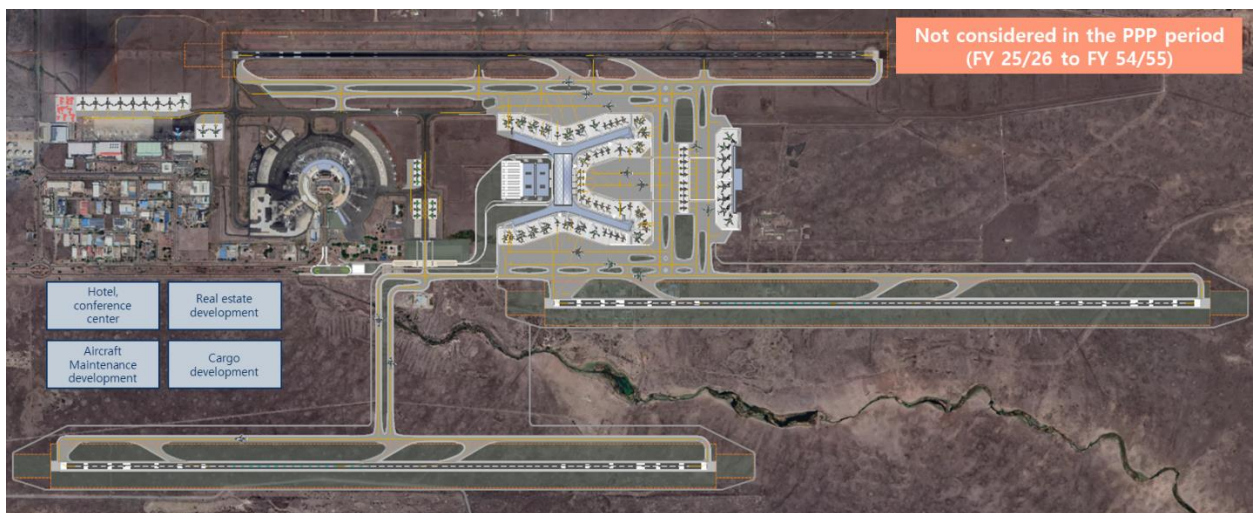
**Figure 7: Phase II (second runway and expansion of the existing terminal)**

Phase III comprises the expansion of the new terminal piers and its associated apron by 2042.



**Figure 8: Phase III (expansion of the new terminal)**

The proposed development plan is scalable well-beyond 2055, enabling the addition of satellite piers to expand terminal capacity, as well as a third parallel independent runway, and with room to spare for the development of ancillary businesses within the airport premises.



**Figure 9: JKIA development potential beyond 2055**

The capital investment plan has been estimated at 1,631 MUSD for the airfield, terminals, and accesses, and includes investments to expand capacity (i.e. new runway) as well as to replace capacity (i.e. maintenance on existing runway).

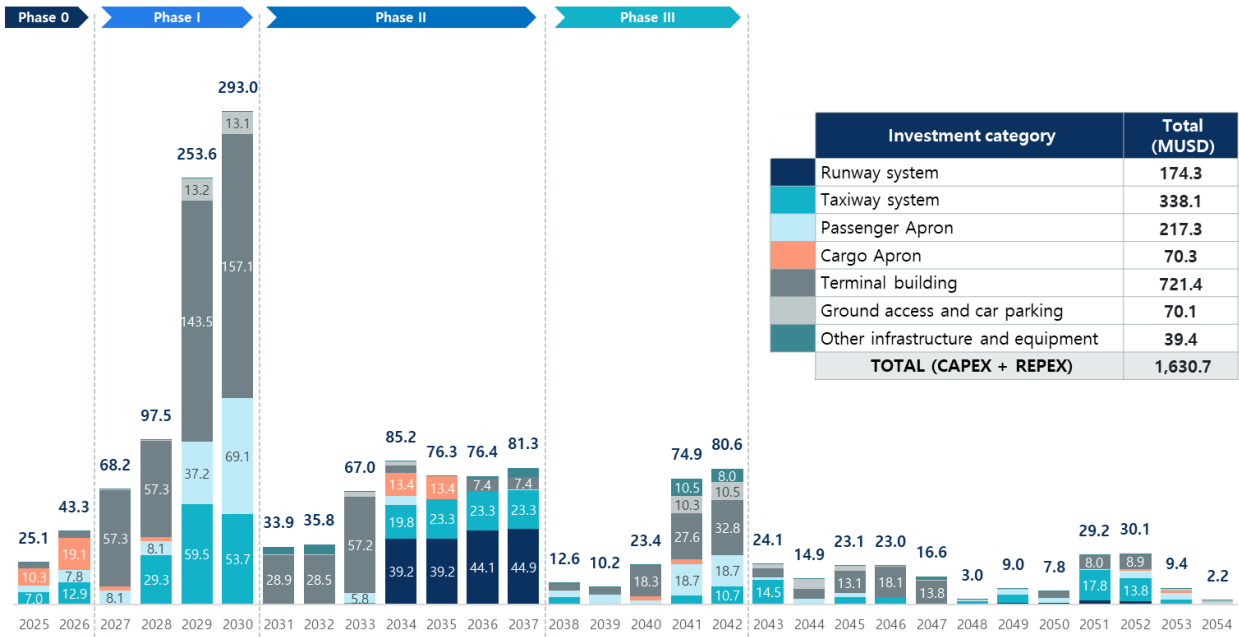


Figure 10: Total investment program by category (2025-2054)

### Procurement options (PPP vs traditional)

There are different approaches that the Government could pursue to implement the development plan.

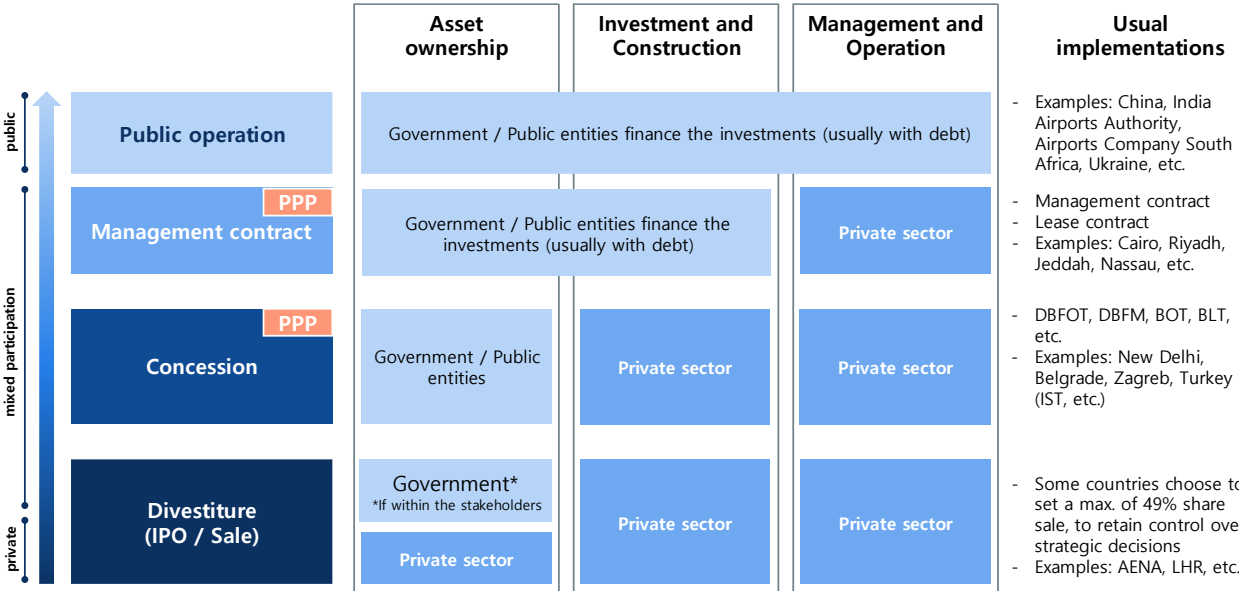


Figure 11: Alternative airport procurement approaches

As shown above, there are 4 main approaches to private sector participation in airport development, with varying degrees of involvement in asset ownership, investment/construction, and management and operation. The approaches go from a fully public operation and ownership (current model at JKIA) in which



the public sector operates the airport and maintains full control of it while financing its investments and retaining all potential risks, to a divestiture or sale in which the public sector ends up ceding total or partial ownership of the asset.

In between the fully public and fully private options there are a number of Public Private Partnership (PPP) models that have mixed public and private participation:

- Management contracts: the public entity retains asset ownership and is also responsible for investment and construction, while the private sector manages and operates the airport.
- Concession: in which the public sector retains ownership of the asset and oversight of the contract, and the private sector assumes responsibility for investment, construction and management/operation.

In the case of JKIA, a significant investment is required and the Government is open to private participation. A DBFOT concession (design, build, finance, operate and transfer) strikes a sensible balance between the obligations and risks that are transferred to the private sector and the ownership and strategic control retained by the Government. Under such model, the private sector would be responsible for the financing and execution of the development plan, and would bear a significant share of the project risks, such as design, construction, demand, and commercial, to name a few.

## Financial assessment

While there is a unique development plan for JKIA, two scenarios were evaluated as per the Government request: **1. Airport PPP** and **2. Terminals PPP**.

In the Airport PPP scenario, the development of the entire airport's infrastructure by a private investor under a 30-year PPP is considered (maximum allowed by the PPP law) including the construction and commissioning of a second runway. The Terminals PPP scenario assumes that the private investor would only operate and build the terminals (new and old) as well as the apron and landside infrastructure such as parking and accesses, etc., with KAA retaining responsibility for the airfield (existing and new runways and taxiways). Terminals PPP assumes a 15 years contract term, as private investors are only likely to commit to an investment for a 10 to 15 year period, at which point the airport will need the second runway and investors would have no guarantee that the runway would be built.

### Airport PPP

Based on forecasted traffic, maintaining regulated fees and charges constant in real terms (updated for inflation), and considering the efficiencies that a private investor could bring to the airport operation, the project would generate in average 64% EBITDA margin. When considering the ~1,630 MUSD investment required the project would offer an attractive return to the private investor with a ~300 NPV (WACC: 10.87%) over the 30-year period.

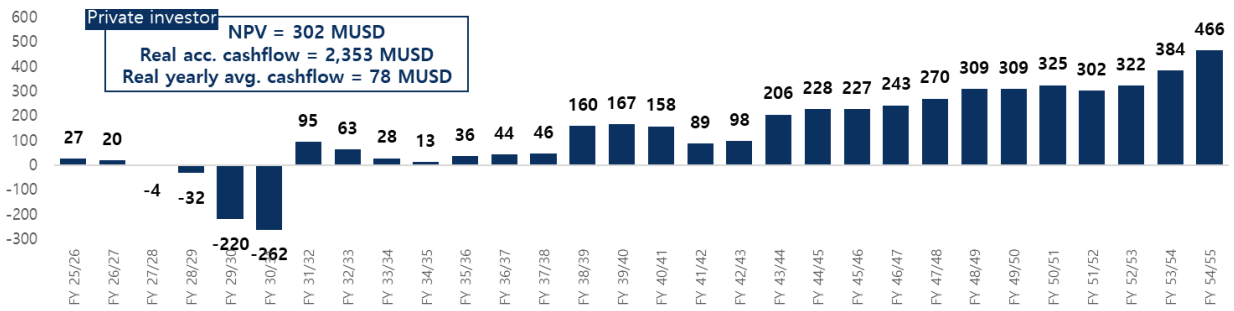


Figure 12: Cashflow projection and valuation analysis Airport PPP scenario (MUSD)

Therefore, despite applying conservative inputs, the project would be feasible and bankable. In the base case, the private investor could offer an ~8% concession fee over gross revenues and still obtain an attractive return (15% IRR). Furthermore, the sensitivity analysis shows that the concession fee could be significantly higher under more favourable traffic or revenue scenarios.

### Terminals PPP

Terminals PPP scenario assumes the same hypothesis for the revenues and costs projections but considers a different concession perimeter, only including the passenger terminals and associated businesses (APSC, duty free, commercial retail, car park, etc.), as shown in the figure below.

	Private Investor	KAA
APSC revenue		
Aircraft parking, boarding bridge		
Landing revenue		
Fuel, land and building rentals		
Terminal commercial revenue		
Terminal investment, maintenance		
Apron investment, maintenance		
Runways and taxiways investment, maintenance		

Figure 13: Revenue and costs streams included in Terminals PPP

The Terminals PPP scenario generates an average 55% EBITDA margin over total revenues but fails to achieve attractive returns for the private investor when considering the financing of the ~755 MUSD investment, resulting in a negative net present value of -40 MUSD. Additionally, in the 15-year period the public sector/KAA would face a total investment of ~505 MUSD, mainly to build the second runway and associated taxiways.

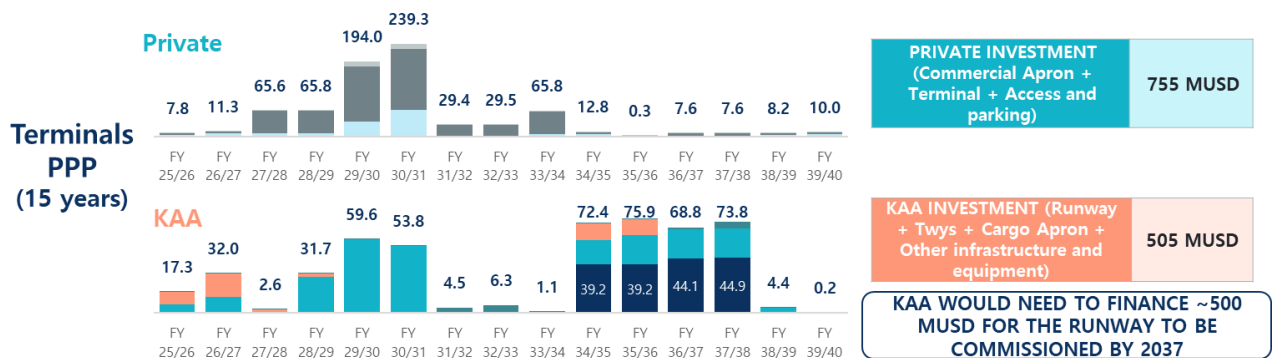
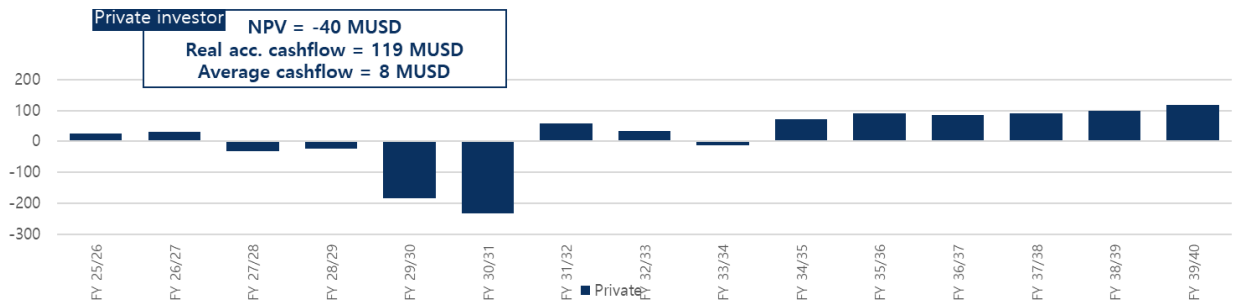


Figure 14: CapEx projection in Terminals PPP (MUSD)



Source: ALG analysis

**Figure 15: Cashflow projection and valuation analysis Terminals PPP scenario (MUSD)**

Despite failing to offer an attractive return to the private investor, there are several levers that would make the project financially feasible such as reducing CapEx (downsizing the new terminal) or changing the APSC allocation structure (assigning the airport operator 35 USD/dep.pax reducing the Tourism Promotion Fund allocation).

## Preferred option and conclusions feasibility

Based on the analysis of the procurement options and the financial assessment the conclusion is that an **Airport PPP model** (whole airport DBFOT concession) **is the preferred option**. The Airport PPP is feasible and bankable, an important benefit for the Government is that the Airport PPP option ensures that the second runway would be built when needed. In the case of a Terminals PPP runway construction delays would be a risk retained by the public sector. In preliminary discussions with potential investors, Airport PPP emerges as the preferred choice for most private investors.

Overall, developing the project is beneficial for the country, as developing the airport offers a social net present value of 241 MUSD over the 30-year period, with a benefit/cost ratio (B/C) of ~3.5. Both the qualitative and quantitative value for money assessment (Value for money P50 = 1.7 bn USD) conclude that carrying out the project under a PPP/concession adds the most value to the public sector thanks to the onboarding of efficiencies and the transfer of the majority of the potential project risks.

Shall the Government decide to move forward with the project, the next phases will involve the structuring and implementation of the transaction, which will need to be designed according to the objectives and goals set by the Government for those next steps.

## Legal, Regulatory and Contractual due diligence

### Key Regulatory Issues

1. **Procurement:** the regulatory framework applicable to PPPs in Kenya is generally clear and provides for sufficient flexibility in order to organize an open tender process compliant with best international practices (which is the procurement method by default under the PPP regulations, and is our recommended approach). The preferred tender process is to be confirmed with KAA and the Government.
2. **Economic regulation of the PPP Contract:** The Private Partner under the PPP Contract will be entitled to levy charges from users for the services it provides, by virtue of the delegation of KAA's

functions under the KAA Act. The PPP Contract may set forth the maximum charges which the Private Partner will be entitled to collect, as well as the methodology for adjusting such maximum charges periodically to account for inflation.

However under the KAA Act, charges levied by KAA must be approved by the CS; similarly and by virtue of the delegation of KAA's duties, the charges levied by the Private Partner (and any revision thereof) will need to be approved by the CS. The KAA Act could be amended to remove the requirement of the CS's approval, so that the charges are exclusively regulated by contract ; however this will require an Act of Parliament. If the KAA Act is not amended and the CS approval remains required on charges levied by the Private Partner, the PPP Contract will provide for a compensation to the Private Partner for additional costs / loss of revenues if the charges which have been set and revised in accordance with the terms of the PPP Contract are not subsequently approved by the CS.

Also, pursuant to the Civil Aviation (Aerodrome Certification, Licensing and Registration) Regulations, KCAA is entitled to prescribe the maximum charges the holder of an aerodrome certificate may levy for the use of the aerodrome or the performance of services at the aerodrome. These Regulations could be amended to remove such prerogative on the part of KCAA where the charges are regulated by contract (as it would be the case under the PPP Contract). If the Regulations are not amended, if KCAA elects to prescribe maximum charges in contradiction with the maximum charges set forth in the PPP Contract, this would need to be treated in the PPP Contract as relief event entitling the Private Partner to compensation for extra costs/loss of revenues.

3. **Changes to the APSC:** the Air Passenger Service Charge (APSC) payable for international passengers under the APSC Act is currently set at USD 50 / pax and allocated as follows : USD 30 for KAA, USD 10 for KCAA and USD 10 for the Tourism Promotion Fund (TPF). We understand that the APSC is paid by the airlines through IATA and collected by KRA which then redistributes the APSC to KAA, KCAA and TPF as per the allocation above. However once the PPP Contract starts, it is the Private Partner which should benefit from the USD 30 portion currently distributed to KAA in relation to JKIA (given it will be taking over KAA's duties).

Designating the Private Partner as the recipient of KAA's portion of the PASC will require legislative amendment to the APSC Act and is therefore not the preferred legal option ; also, from a bankability perspective, the Private Partner will require to collect directly the PASC from airlines (and not depend on KRA to collect and remit the portion owed to the Private Partner).

However under the APSC Act, the CS is empowered to change by notice the amount and apportionment of the APSC. The CS could therefore reduce the PASC from USD 50 to USD 30 / pax and subsequently amend the allocation of this new PASC as follows: USD 10 for KCAA, USD 10 for TPF and 0 for KAA. Correlatively, the Private Partner is entitled to prescribe charges for its services by virtue of its delegation of duties under the KAA Act as well as pursuant to the Civil Aviation (Aerodrome Certification, Licensing and Registration) Regulations. The Private could therefore levy a new charge in an amount equivalent to the USD 30 portion of the APSC previously allocated to KAA (provided that such charge is not referred to as APSC and provided also that such charge and any revision thereof will be subject to the CS approval as per section 2 above).

## **Key Contractual Issues**

1. **Ownership of the Land:** Under the PPP Contract, the Private Partner may be given a contractual license to use JKIA for the purpose of the Project. However, typically concession contracts do not confer

real property title or leasehold interest. However such title maybe required in order for the existing leases, which are registered on the Title Deed of JKIA granted to KAA, to be transferred to the Private Partner for the Private Partner to manage and receive rent revenues (as lessor to those leases). Also Lenders are likely to request to take security over the land and real assets, which requires the Private Partner to benefit from title or leasehold interest (rather than a mere contractual permission to use which does not create rights *in rem* susceptible of real security interests). Therefore, potential additional registrable statutory instruments may be necessary, such as a lease between KAA and the Private Partner in respect of JKIA perimeter. Such lease which would be subject to the approval of the National Land Commission.

2. **Loan Agreements:** Under the two credit facility agreements between KAA and Agence Française de Développement (AFD), KAA is obligated to deposit receivables from the charge collected for the account of KAA under the Air Passenger Service Charge Act as well as all landing fees and parking fees in Receivables Accounts. The moneys standing to the credit of the Receivable Account are in each case subject to a fixed charge under a first-ranking debenture in favour of AFD.

However the Project contemplates a substantial reduction in the share of the APSC allocated to KAA, as well as a redirection of landing and parking fees to the future Private Partner, which could lead to a breach of KAA's obligations under the loan agreements, potentially triggering default events under the loan documents. Amendments and waivers from AFD may be required, likely involving collateral over other receivables (e.g. the concession fee which KAA will receive under the PPP Contract with the Private Partner). We understand the loans are still under repayment; as we have not been provided by the current repayment plans, we recommend that KAA confirms the final repayment date in order to confirm for how long such security over KAA's receivables will subsist.

# 1 Introduction

Motivated by an aspiration for a more competitive economy and higher quality of life for its citizens, the Government of Kenya (GoK) has outlined medium to long-term objectives for the development of the country. These goals encompass several economic, social, and political dimensions of the country, and are detailed in key publications such as the Kenya Vision 2030, the Integrated Transport Policy, the Civil Aviation Authorities Strategic Plans or the Kenya Kwanza Manifesto.

According to the Africa Infrastructure Country Diagnostic (AICD) report, Kenya needs to spend approximately \$4 billion per decade (20% of GDP) to address its infrastructure deficit. To achieve this objective, the GoK is exploring alternatives to secure additional financing, adopting lower-cost technologies, and prioritizing infrastructure investments. In this context, the GoK has made infrastructure development through Public Private Partnerships (PPPs) a priority as a mechanism to address the major infrastructure gaps in the country. In this context, the GoK is exploring a PPP for the construction and concession of a new terminal and potential airfield expansion in Nairobi's Jomo Kenyatta International Airport (JKIA). The goal of this initiative is to enhance the existing infrastructure at JKIA and increase the airport's capacity to keep up with the growing needs of the country.

The aviation sector in Kenya contributes US\$1.5bn to the GDP through direct and indirect contributions. US\$740m comes from aviation itself, US\$515m through indirect activities down the supply chain and US\$294m from employees' and stakeholders spending. It generates 26,000 jobs directly, a further 104,000 indirectly and 59,000 more induced. The aviation impact on Kenya's tourism industry accounts for an extra US\$1.6bn contribution to GDP and 336,000 jobs.

The Government has acknowledged the aviation sector's importance for the country's social and economic development and has pledged its commitment to modernizing the sector for the benefit of Kenya.

Nairobi airport is the country's largest airport and one of the most important international hubs in East Africa for people and cargo. Current projections show that the airport is set on a trajectory for expansion. However, existing infrastructure at Jomo Kenyatta International Airport is approaching saturation, with forecasts indicating that it will reach maximum capacity in the near future.

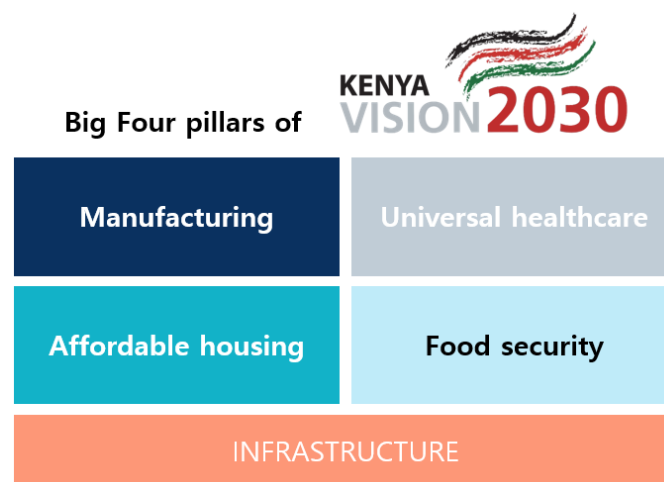
To address this, infrastructure expansion of the facilities at the Airport are not only recommended but deemed necessary to align with the country's development goals and is also consistent with efforts of neighboring countries in enhancing their aviation infrastructure.

The proposed PPP partnership involves the construction of a new passenger building terminal at JKIA, the rehabilitation of the existing terminal and potentially the construction of a second runway and several other airfield improvements.

All proposals for the development of the airfield and passenger terminal have been carried out in accordance with international standards, specifically following the International Civil Aviation Organization (ICAO) Annex 14 for Aerodrome Design and Operations and the Airport Development Reference Manual (ADRM) by the International Air Transport Association (IATA), among others.

The expansion of Jomo Kenyatta International Airport (JKIA) aligns with various key objectives and strategic plans:

- **Population Redistribution and Hub Development:** The expansion will help with population redistribution outlined in the **Kwanza Manifesto** by creating a more developed hub that would improve interconnectivity among regions through international-domestic connectivity and domestic-domestic connectivity, creating a more robust and efficient transport system for Kenyans.
- **Promotion of Tourism:** Modernized facilities will allow for the projected increase of passengers and will lead to new types of tourism in Nairobi. A greater demographic of tourists can ultimately cater tourism categories unexplored in the country, potentially benefiting new sectors.
- **Local Employment Creation:** The expansion initiative is expected to generate local jobs through the construction projects directly and indirectly through the increase of the tourism and transport sector, bolstering the local economy in line with **Kenya Vision 2030**.
- **Resilient Infrastructure and Sustainable Industrialization:** The development aligns with the goals of the **Kenya Civil Aviation Authority (KCAA) Strategic Plan** by building resilient infrastructure. The aim is to enhance capacity, facilitating the expeditious and safe movement of aircraft in Kenya's airspace.
- **Air Transport growth:** The new terminal will promote air transport growth and give citizens higher access to affordable and efficient transport options, establishing Kenya's regional competitiveness, aligned with the **East African Community Vision 2050**.



**Figure 16: Infrastructure underpins the successful implementation of the Big Four pillars**

ALG has been engaged to provide consulting services for the "Provision of transaction advisory services for the construction of a new passenger terminal building at Jomo Kenyatta International airport – JKIA". Despite the initial scope of the project, as discussed with KAA (awarding entity), the State Department of Transport and several other stakeholders, ALG will also analyze a potential PPP that encompasses JKIA airside, including the development of a new runway.

This document is the final report to be delivered as per contract stipulations. The document has been divided into the following chapters based on the respective objectives at this phase of the project:

1. **Introduction:** project background, objectives, and report structure.
2. **Air Transport Market Analysis:** In-depth evaluation of the historical evolution of the air transport market in Kenya. The analysis encompasses the identification of routes, passengers, hubs, and



main airlines in both domestic and international markets. It also provides historical context of the aviation sector in Kenya identifying key factors and transformative moments in the sector, as well as the main drivers underpinning the future development of the sector.

3. **Traffic Forecast:** The chapter provides detailed projections on passengers, aircraft movements and cargo which will be used in the capacity analysis, offering essential design parameters necessary for the design and planning of JKIA's infrastructure.
4. **Infrastructure Development Proposal:** Comprehensive review of the condition of airport facilities, an analysis of compliance with both ICAO (International Civil Aviation Organization) and local regulations, and a capacity analysis which will set the needs for the infrastructure development during the concession period. This analysis will result in the development and investment expansion plan.
5. **Financial and Economic Analysis Reports:** Evaluation of the best procurement option and assess the project's financial feasibility and bankability under such procurement option.
6. **Cost-benefit analysis:** Assessment on whether the project adds social value, that is, carrying out the project adds more social benefits than social costs.
7. **Risk assessment:** identification of the main project risks and the proposed allocation matrix
8. **Value for Money (VfM):** Evaluation on whether the project adds value by being carried out under a PPP, adding net economic impact.
9. **Legal and Regulatory Due Diligence:** Analysis of the overall body of laws, regulations, and institutional arrangements relevant to the project, and identification of red flags related to a potential PPP process.
10. **Contractual due diligence:** Analysis to identify and draw the attention to key points and issues which have emerged from the legal due diligence review on contracts and documents, identifying transferability of the contracts, outstanding liabilities, termination, and outstanding litigation.
11. **Annex I: Fees and Charges Benchmarking**
12. **Annex II: Stakeholders Consultation Report**
13. **Annex III: Rapid-exit taxiways (RETs) construction in single-airports.**
14. **Annex IV: Market Sounding**

**Strategic Environmental Assessment Report:** Analysis of environmental issues related to the project (separate document)



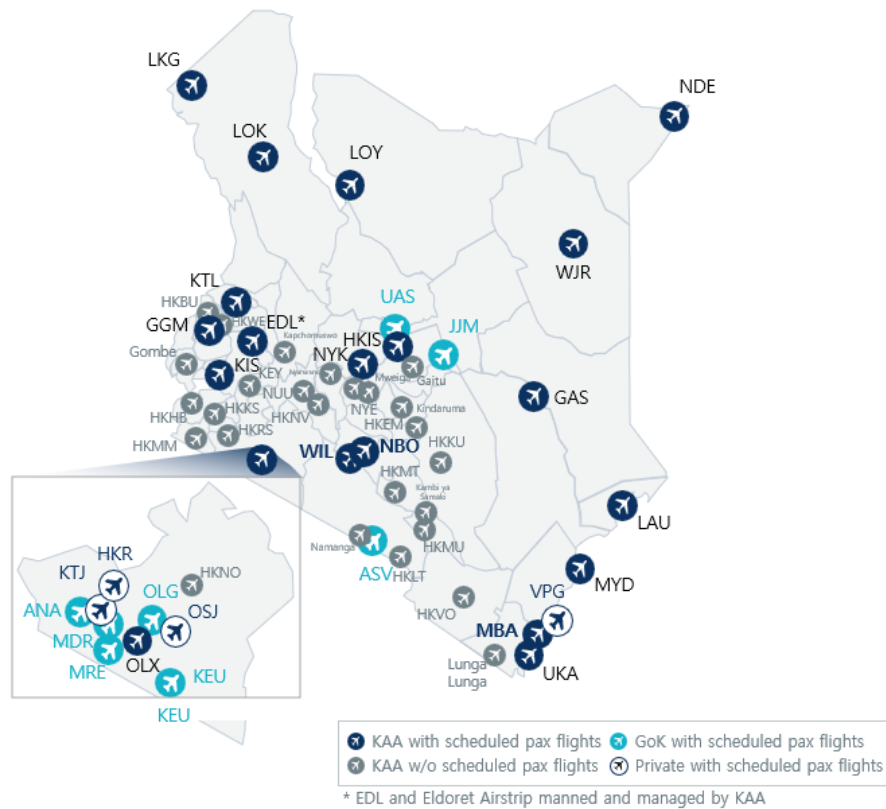
## 2 Air Transport Market Analysis

This chapter presents an analysis of Nairobi’s air transport market and provides an overview of the evolution and current state of the market through historical supply and demand traffic statistics, as well as an analysis of the main factors that will drive its short-term and long-term development. Through this assessment, the chapter lays the foundation for the ensuing traffic forecast.

### 2.1 Market Overview

#### 2.1.1 Kenyan Air Transport Market

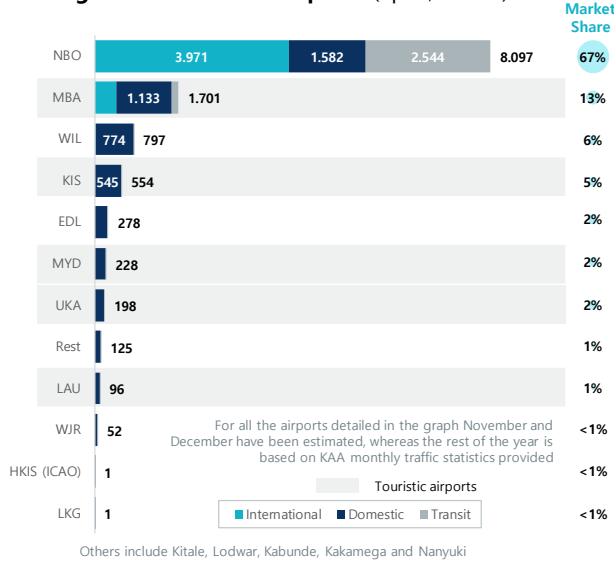
Kenya’s airport network is comprised of 446 aerodromes, of which 230 are classified as public facilities. Among the public airports, 45 are under the management of the Kenya Airports Authority (KAA) – 18 with scheduled pax flights and 26 w/o scheduled pax flights-, 53 are overseen by the Kenya Wildlife Services, 9 are under military jurisdiction, and the remainder fall under the State Department of Interior.



**Figure 17: Kenyan aerodrome network**  
(Source: AIP, KAA, ALG Analysis)

Nairobi International Airport and Mombasa Airport serve as the primary gateways into the country, operating more than 99% of the international market. Wilson Airport (WIL) and Kisumu (KIS) serve as other focal airports for the domestic market. All four are under the control of KAA. Midsized airports such as Eldoret (EDL), Malindi (MYD), Diani (UKA), and Manda (LAU) serve as main destinations for domestic passengers and cargo, strategically linking various regions across the country. The remaining aerodromes are small airfields with infrequent flights except for those in the Mara, not operated by KAA but serving an important number of flights.

### Passenger traffic in KAA airports (kpax, 2023E)



### Cargo throughput in KAA airports (ktonnes, 2023E)



Figure 18: Passenger and cargo traffic in major KAA airports

(Source: KAA, AIP)

#### 2.1.1.1 Passenger Market

In 2019, Kenya's air transport market reached a peak of 12 million international, domestic, and transit<sup>1</sup> passengers in KAA's airports, before crashing down to 4.5 million in 2020 as a result of the COVID pandemic.

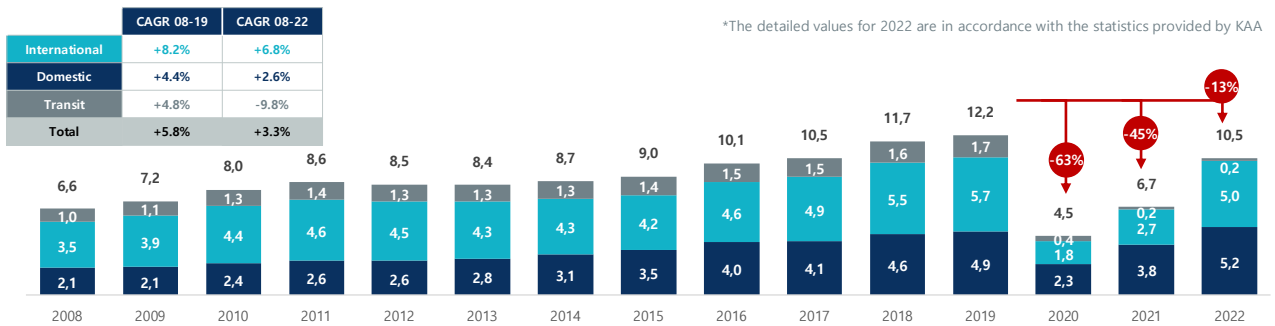


Figure 19: Kenya air traffic evolution (Mpax 2008-2023) (Source: KAA, ALG)

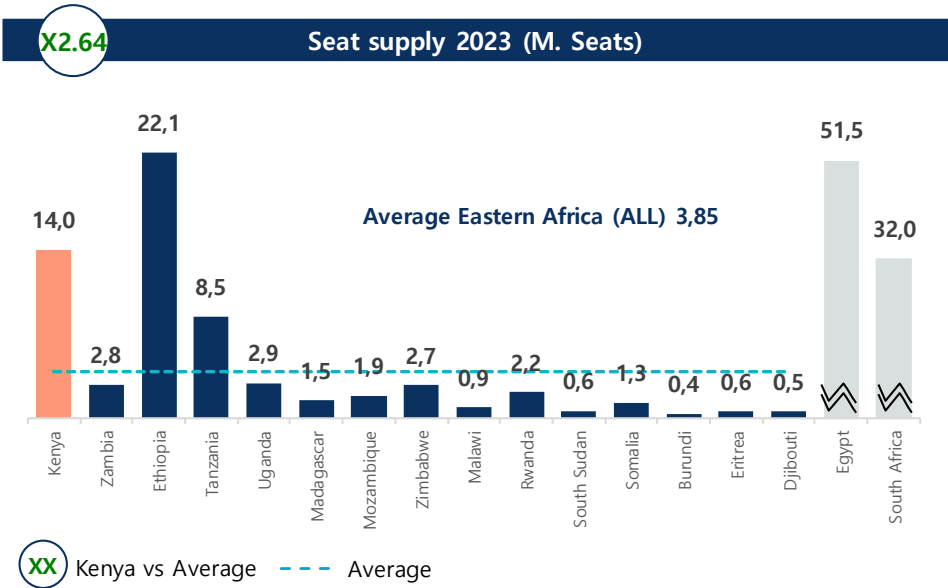
Between 2008 and 2014, Kenya's air traffic experienced a modest growth compared to pre-pandemic volumes (CAGR 2008-2014: +3.9%). This was influenced by the global repercussions of the 2008 economic crisis and subsequent recovery. Despite a drop in international traffic figures and stable connections, the increase in domestic passengers (CAGR 2008-2014: +7.5%) played a key role, increasing from 2.6 million passengers in 2011 to 3.1 million passengers in 2014 (+16%), resulting in an overall growth to 8.7 million passengers (+32% vs 2008).

<sup>1</sup> The term "transit" in KAA's traffic figures refers to connecting passengers who disembark from one aircraft, utilize the terminal facilities, and then board a different aircraft. For clarity, these individuals, referred to as "transit passengers" in KAA's data, will be subsequently referred to as "connecting passengers" or simply "connections."

Regarding the years prior to the pandemic, specifically from 2014 to 2019, air traffic in Kenya experienced a notable growth rate of +7.1%. This growth was mainly fueled by an upsurge in domestic traffic, but also significant growth in the international and transit segments. Similarly, in the period from 2008 to 2014, domestic traffic grew the most, reaching a combined traffic growth of 6.7% CAGR.

The country's strong economy, coupled with strategic efforts to promote air traffic growth, have propelled it to become the second-largest air transport market in Eastern Africa, with only Ethiopia having a larger air market by passenger figures.

Despite the recent decrease in total seat capacity due to the impact of the COVID-19 pandemic, Kenya still maintains 2.64x the Eastern African average seat capacity. Currently, seat supply and passenger numbers are gradually recovering.



**Figure 20: Kenyan seat supply 2023**  
(Source: OAG)

Kenya holds a significant position in the African air traffic market with a seat capacity of 14 million, making it a top-2 region within East-Africa. Kenya ranks just below Ethiopia, which dominates the region in terms of air traffic volume and market share thanks to Ethiopian Airlines and its hub operation at Addis Ababa (ADD) airport.

While Kenya does not reach the scale of Egypt or South Africa in terms of GDP/capita or population, its role in the East African air traffic landscape is noteworthy; Kenya plays an important role within the Africa's air traffic market.

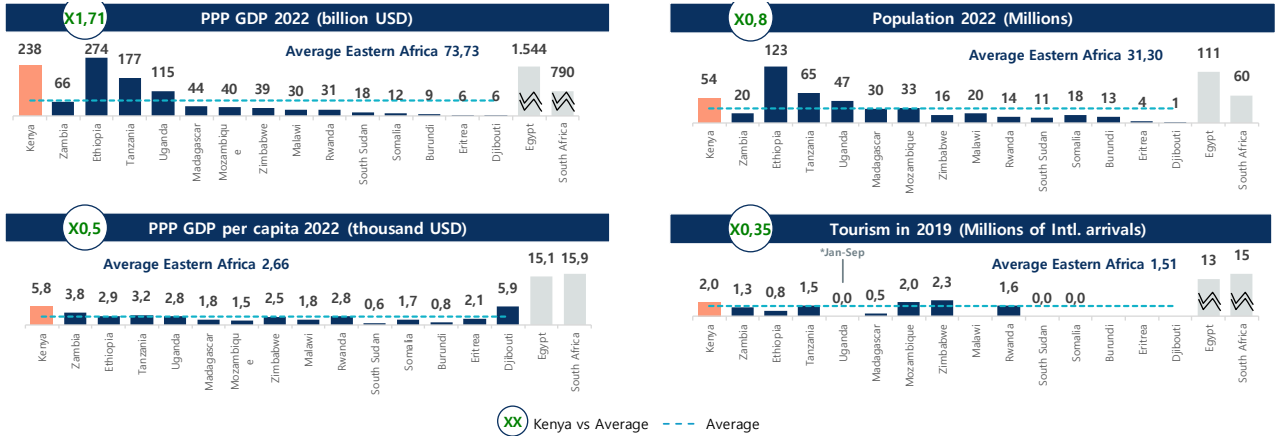
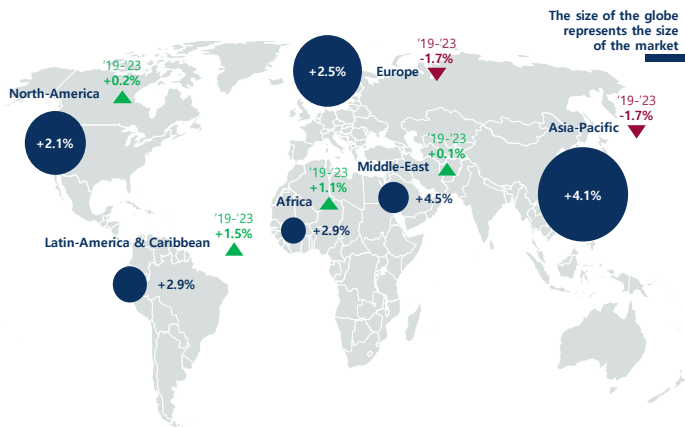


Figure 21: Comparison of macroeconomic variables in Kenya (Source: Oxford Economics, UNWTO, WB)

In 2023, 2019 figures were surpassed by +2.9%, reaching 124,5 million departing seats. Egypt, Morocco, and South Africa observed the largest supply shares in Africa. Focusing on Kenya, it holds the 7th position among all African countries, with a market share of 5%.

Historic CAGR of seat supply by region (2012-2023)



African air market share (2023, Mseats)

Country	Mseats	Market share (%)
Egypt	51	18,07%
Morocco	32	11,29%
South Africa	32	11,28%
Ethiopia	22	7,77%
Nigeria	16	5,73%
Algeria	15	5,36%
#7 Kenya	14	4,99%
Tunisia	13	4,62%
Tanzania	8	2,99%
Ghana	5	1,74%
Mauritius	5	1,69%
Senegal	4	1,48%
Cote D'Ivoire	4	1,28%
Reunion	3	1,23%
Congo Democratic	3	1,19%
Libya	3	1,17%
Angola	3	1,10%
Uganda	3	1,03%
Zambia	3	0,98%
Sudan	3	0,98%

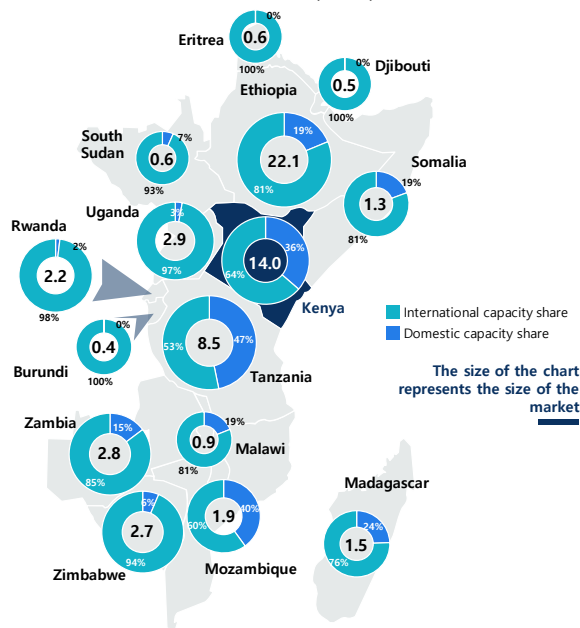
\*Top-20 countries detailed above

Figure 22: Historic CAGR of seat supply by region (2012-2023) and African air market share (2023, Mseats) (Source: OAG)

Three of Kenya's airports are within the top 20 airports in the East Africa region (Jomo Kenyatta and Wilson in Nairobi, and Mombasa), contributing to the country's share of around one-fifth of the region's total seat supply. Jomo Kenyatta is the second largest airport by seat capacity in Eastern Africa and is only surpassed by its northern neighbour Addis Ababa in Ethiopia.

A noteworthy aspect lies in the size of Kenya's domestic market. Kenya stands out with a large proportion of domestic passengers in comparison to neighbouring countries in the region. Only Tanzania and Mozambique have higher proportional levels of domestic travellers but lower total air passenger traffic numbers (including international passengers). This is a reflection of Kenya country size, as well as its economic and tourism development and a larger domestic propensity to travel.

### Seat offer in Eastern Africa (2023)



### Top-20 airports in the region (Mseats, scheduled, 2023)

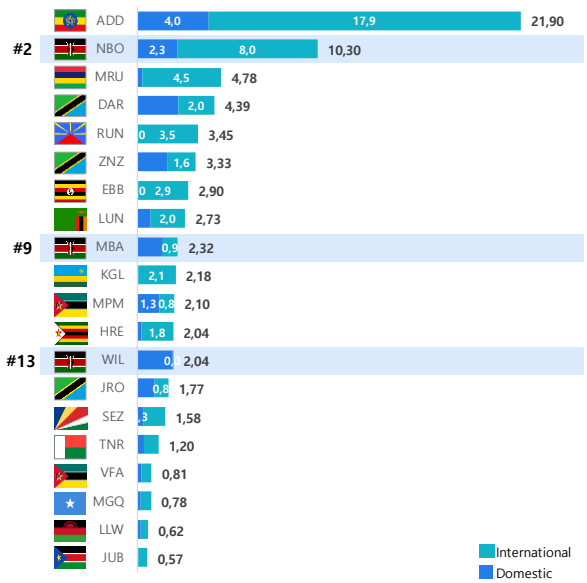


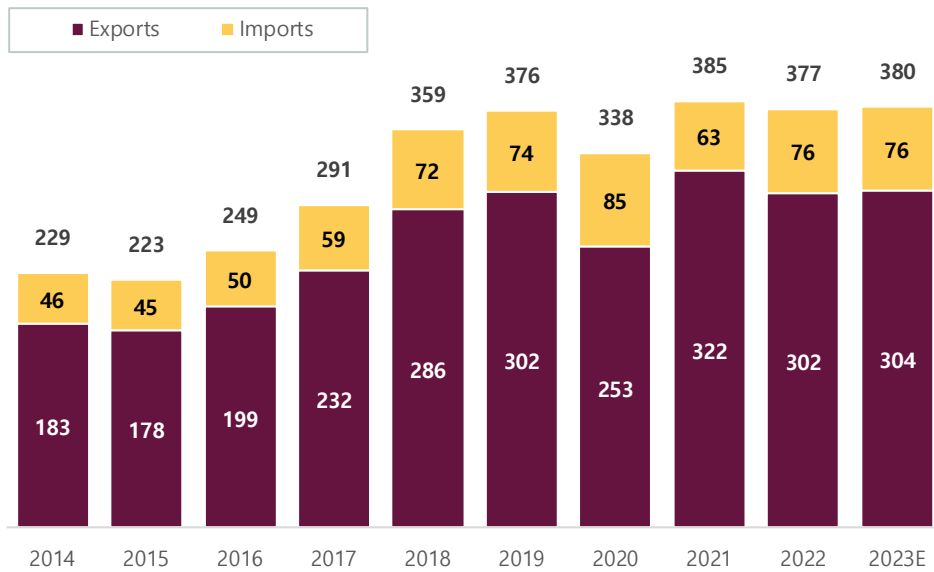
Figure 23: Overview of East African air transport market

(Source: OAG)

Cargo plays a significant role not only in Kenya’s aviation industry, but across Africa. In 2019, Cairo was the only international African airport which surpassed Nairobi’s cargo volume. JKIA serves as the largest cargo hub in the country, reaching 358 kTn in 2019 (~95% of the total cargo volume in the country), the largest sub-Saharan airport by cargo volume, and second in Africa after Cairo. This accomplishment, solidifies JKIA as top performers in the air cargo market.

The cargo volume accommodated by the rest of the network is considerably less compared to JKIA, reaching just 12 Ktn and representing the remaining country market share.

\*2023 Estimated



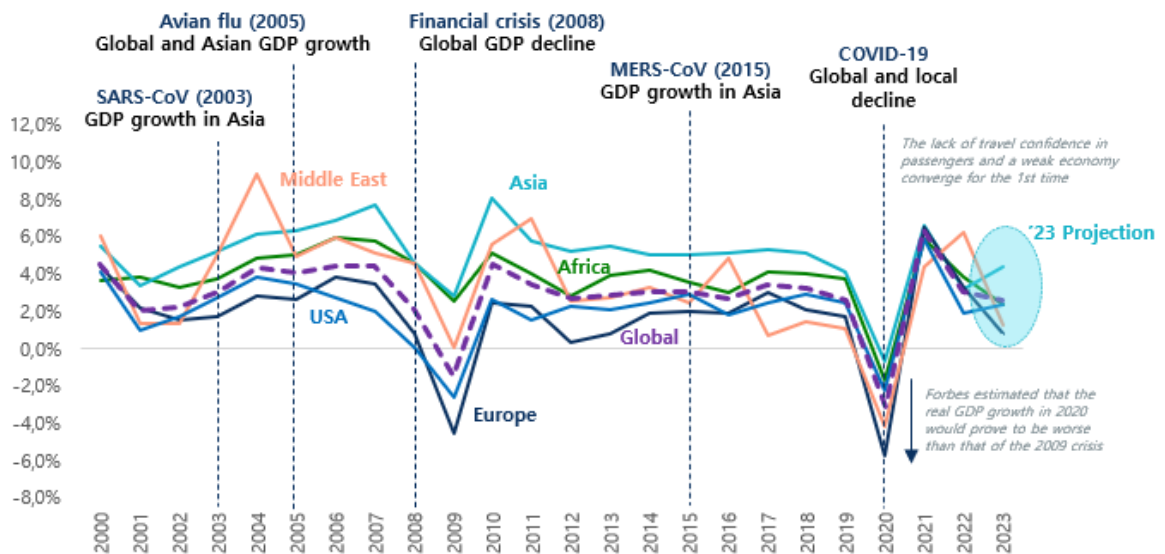
Historical exports/imports split has been estimated based on last KAA statistics provided

**Figure 24: Kenya total exports/imports evolution ('000 Tn, 2014-2023)**  
(Source: KAA, KCAA, ALG Analysis)

### 2.1.2 COVID-19 Impact

Undoubtedly, the COVID-19 pandemic has exerted both short-term and long-term effects, not only on the Kenyan passenger traffic market but on the global economy at large.

For the first time since 2008, the global economy saw a sharp contraction resulting in negative GDP growth worldwide in 2020. The impact was widespread, though Europe and Latin America were hit hardest. Kenya, too, witnessed a substantial shift, going from a GDP growth of 5.1% in 2019 to a contraction of 0.3% in 2020.

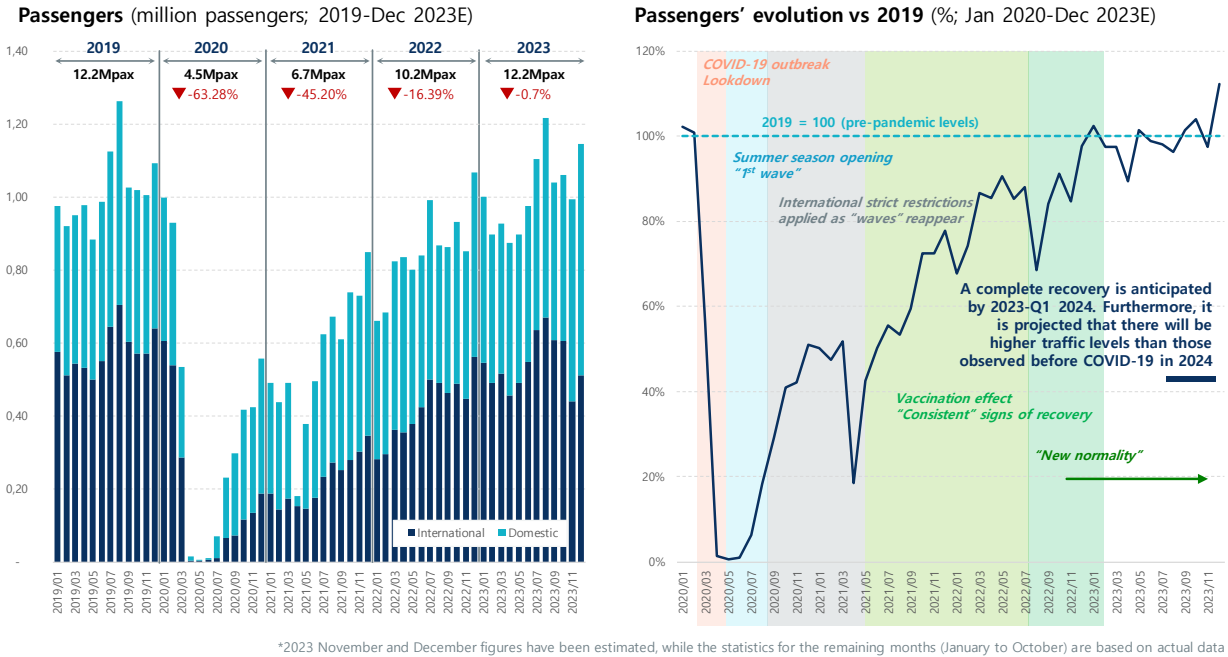


**Figure 25: GDP growth by world region (% , 2000-2023)**  
(Source: Oxford Economics, World Bank, IMF)

The sharp rebound that was witnessed in 2021 can be attributed to the severe recession of 2020 and the easing of measures at both international and national levels regarding the pandemic. This rebound represents a "kick-back" effect following the drastic economic shift in the preceding year.

As a result, in Kenya the pandemic led to a notable change in GDP, resulting in a decline of about -5.3% in 2020. This quickly saw a correction back to 2019 levels in 2021 and 2022 where the GDP experienced growth of around 5.6% and 4.7%, respectively.

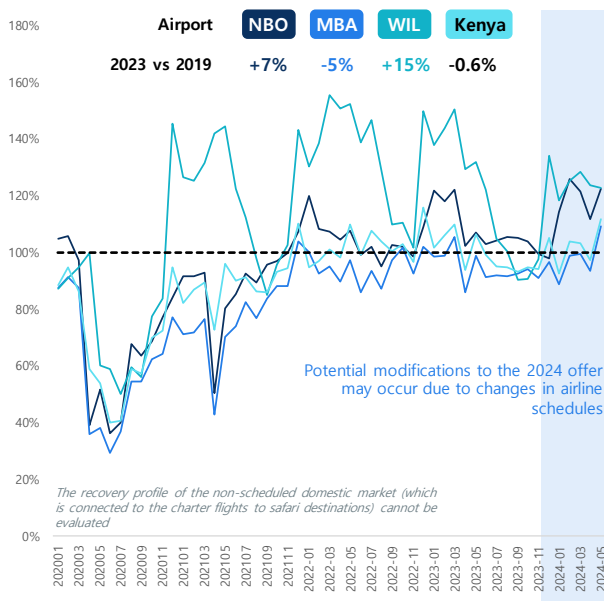
Since 2020 there has been a gradual uptake in traffic numbers. As of 2023, passenger levels are nearly the same as in 2019. It is anticipated that a complete recovery of passengers will be reached between the end of 2023 and Q1 of 2024.



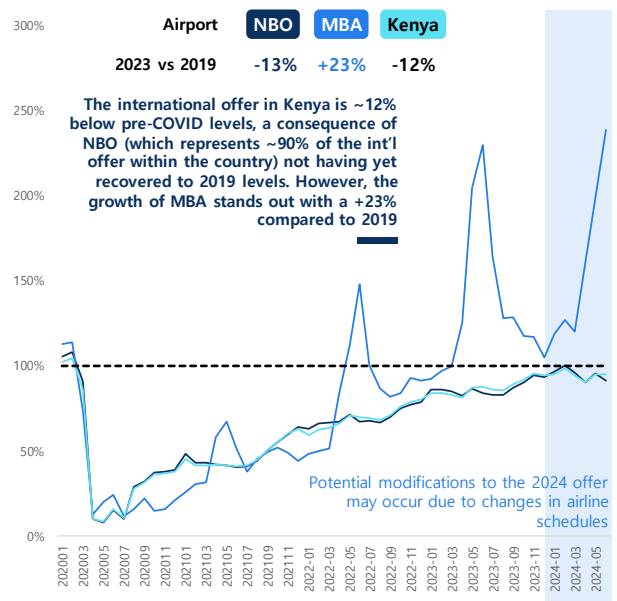
**Figure 26: Kenya COVID-19 impact and recovery (2019-2023 Expected)**  
(Source: KAA)

As shown in Figure 26, recovery has been different between the domestic and international markets, as well as across different airports. The domestic market recovered relatively fast, whereas the international market is only now reaching comparable levels to 2019. Wilson airport was the first airport to achieve and even exceed its baseline levels, outpacing JKIA, which experienced a more gradual recovery. Projections for 2024 show that both domestic and international travel are expected to exceed pre-covid levels.

**Scheduled domestic market (vs same month of 2019)**



**Scheduled international market (vs same month of 2019)**



**Figure 27: Evolution of seat offer in Kenya (2020 – May 2024)**

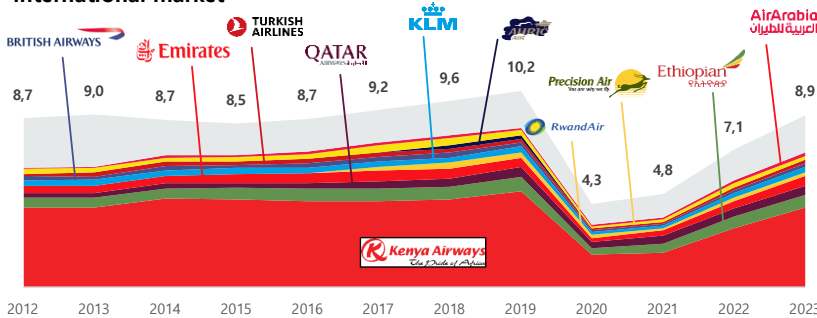
(Source: OAG)

**2.1.3 Kenya’s aviation market**

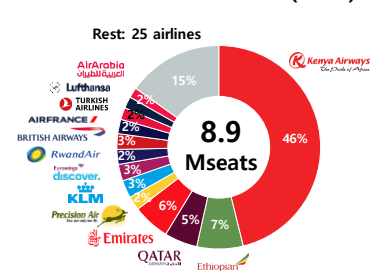
The **international aviation market** in Kenya is dominated by the national carrier, Kenya Airways, which operates approximately half of the total seats to and from Kenya. The rest of the market is made up of mainly African, Middle Eastern and European airlines, such as Emirates, Ethiopian or Qatar airlines each owning a 5-7% share of the market. The remaining airlines (KLM, Eurowings, British Airways, etc.) each hold around 3% of the market share or less.

The busiest airports in terms of international traffic are JKIA with 92% of total international passengers in 2019, and to a lesser extent, Moi International Airport (MBA) in Mombasa with around 6% of total international passengers – the remaining 2% is distributed among few airports in the network.

**International market**



**International Seats (2023)**

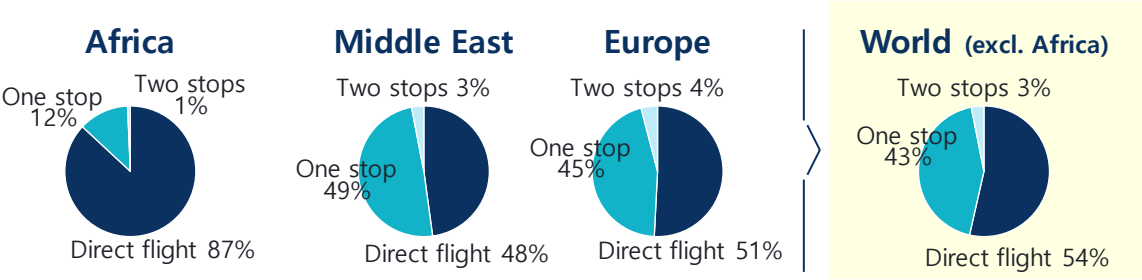


**Figure 28: Historic seat evolution in scheduled international flights**

(Source: OAG)

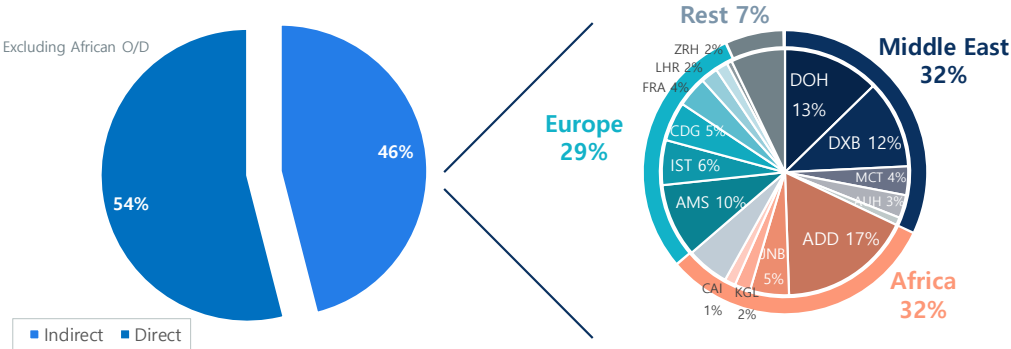


A considerable number of international passengers bound for Kenya opt to connect through Middle Eastern, African, or European hubs. This trend mainly arises due to the lack of direct routes to Kenya from their respective countries of origin.



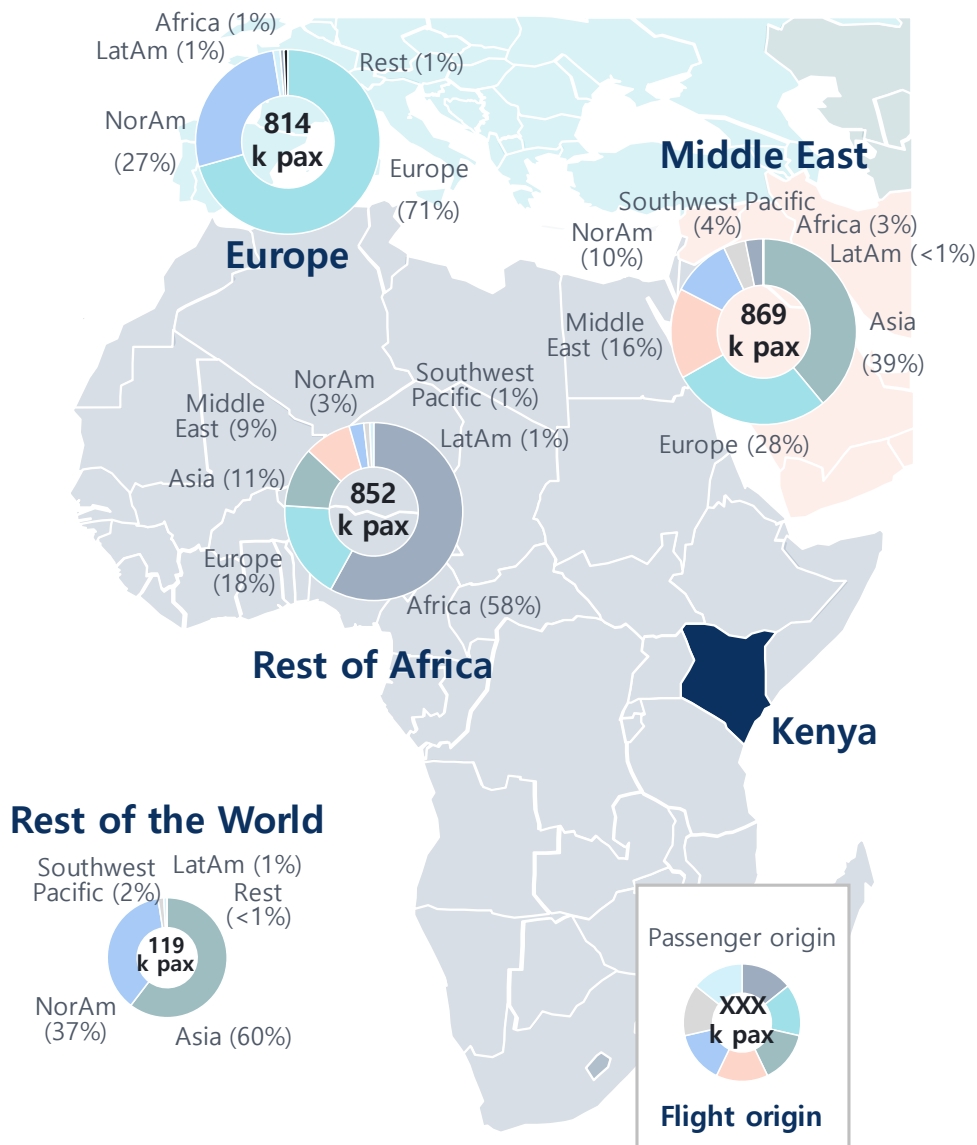
**Figure 29: Number of stops for international passengers to/from Kenya (2019)**  
(Source: OAG)

Excluding Africa, where the relatively short distances often make direct flights more feasible, almost half of the total traffic requires connecting through other airports before arriving in or departing from Kenya. These intermediate airports are roughly divided between the Middle East, Africa, and Europe, with each region contributing to roughly one-third of the indirect traffic arriving at or departing from Kenya.



**Figure 30: Main connecting airports for indirect passengers to/from Kenya (2019)**  
(Source: OAG)

These airports, such as Doha Airport for Qatar Airways or Addis Ababa for Ethiopian Airlines, serve as major hubs for connecting flights. However, there is a substantial difference in the region of origin of passengers when analyzing these intermediate airports.



**Figure 31: International hubs connecting passengers to/from Kenya (thousand pax, 2019)**  
 (Source: OAG)

The main region of origin for passengers making an intermediate stop in Europe is Europe itself. In this case, North American passengers also connect at airports in this region.

In the Middle East, the region of origin includes not only the Middle East and Asia but also many passengers from Europe and North America. It is worth noting that these last two types of passengers could ideally connect in European airports for a shorter and more efficient flight to Kenya but prefer to do so connecting through middle eastern carrier hubs such as Emirates, Qatar Airways or Turkish Airlines.

This suggests that there could be a market opportunity for the development of new direct routes between Kenya and destinations currently connected only via intermediate stops in foreign airports. Providing direct flights to these regions could potentially capture a significant portion of the market and offer passengers a more convenient and efficient travel option.

	Airport	Direct	Indirect	Connecting Hub								Potential to remove stops?	
				ADD	DXB	DOH	KGL	AMS	MCT	FRA	JNB		Rest
WB	1 London Heathrow	149,077	57,241	8,633	10,228	8,604		10,096	598	4,014	74	14,994	
NB	2 Mumbai	45,863	37,697	28,671	4,102	182	448		2,153	2		2,139	
WB	3 Delhi		29,367	8,570	7,506	1,802		3	1,671			9,815	?
WB	4 Washington		26,577	3,558	6,041	3,041		3,085		3,824	14	7,014	?
WB	5 Beijing		26,481	2,048	9,963	4,098		18		65	4	10,285	?
WB	6 Stockholm		24,858	3,297	1,903	9,030		4,454		1,810		4,364	⊗
WB	7 Madrid		22,683	4,469	4,543	3,351		1,624		282		8,414	⊗
NB	8 Johannesburg	153,684	20,524	4,966	76		8,466			2		7,014	
WB	9 Toronto		20,120	4,131	1,531			2,815		4,053		7,590	⊗
NB	10 Cape Town	38,838	16,364	1,541	106		532				14,183	2	
WB	11 Guangzhou	27,630	16,073	2,375	3,345	4,346	160		5,391			456	
WB	12 New York	38,178	15,782	222	3,874	2,740		1,680		552	383	6,331	
WB	13 Geneva	8,306	15,446	1,146	1,347	650		3,196		1,402		7,705	
NB	14 Lagos	33,910	14,780	6,449	162	54	7,642			16	320	137	
WB	15 Frankfurt	12,157	13,547	2,479	1,680	705		2,266	36		13	6,368	
WB	16 Paris	18,836	11,905	1,594	1,282	1,409		1,613	52	1,284	10	4,661	
NB	17 Doha	50,039	11,119	4,264					6,800			55	
NB	18 Dubai	170,574	11,047	4,477			2,547	4	2,849	10	3	1,157	
NB	19 Cairo	21,213	10,708	4,654	1,164		4		360	4		4,522	
NB	20 Khartoum	12,694	10,345	9,700	25							620	

Figure 32: Top 20 origins & destinations in JKIA with the most indirect passenger flights in 2019

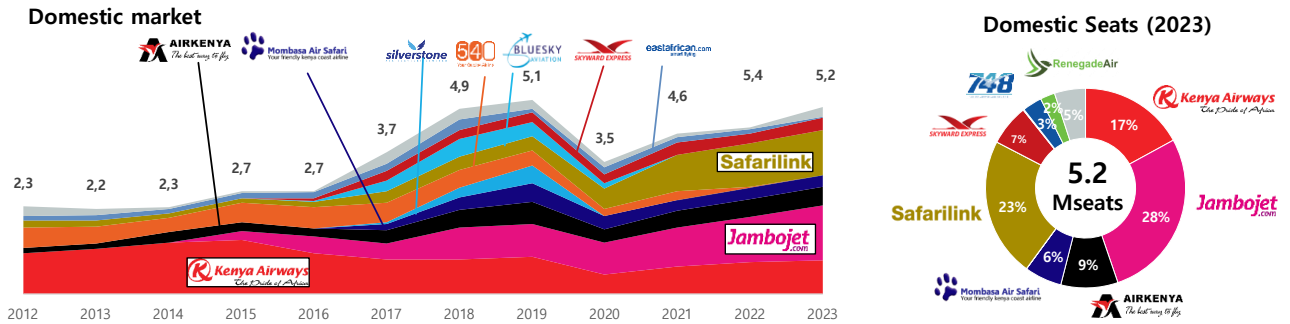
(Source: OAG)

Opening a new route requires an indirect demand of over 25 thousand passengers in the case of a narrow-body (NB) aircraft and approximately 40 thousand passengers in the case of a wide-body (WB), therefore, the potential to open a new route might be assessed considering the existence of an alternative direct route and the number of indirect (unserved) passengers.

There are six potential destinations with sufficient demand to consider establishing direct routes with narrow-body aircraft. However, due to distance considerations and aircraft range limitations, wide-body aircraft would be required. Nevertheless, the upcoming development of new-generation long-range narrow-body aircraft, such as the A321neo (especially A321neoLR and XLR), is expected to revolutionize route planning.

Upon widespread availability of these aircraft, narrow-body aircraft will be capable of operating long-haul routes, significantly impacting infrastructure operational requirements, route networks, and fleet planning dynamics.

On the other hand, the domestic market in Kenya is characterized by multiple local airlines. Kenya Airways and its low-cost subsidiary, Jambojet, together account for almost half of the seats offered in 2023, Safarilink, accounts for almost one forth. The subsequent three carriers individually account for 6-9% of the market share, and the remaining hold 3% or less. The domestic market in Kenya witnessed a more moderate decline compared to the international market. Notably, airlines like Safarilink and Skyward Express seized the challenges presented by the COVID-19 pandemic as opportunities to enhance and expand their scheduled operations. In contrast, Fly 540 has ceased its operations



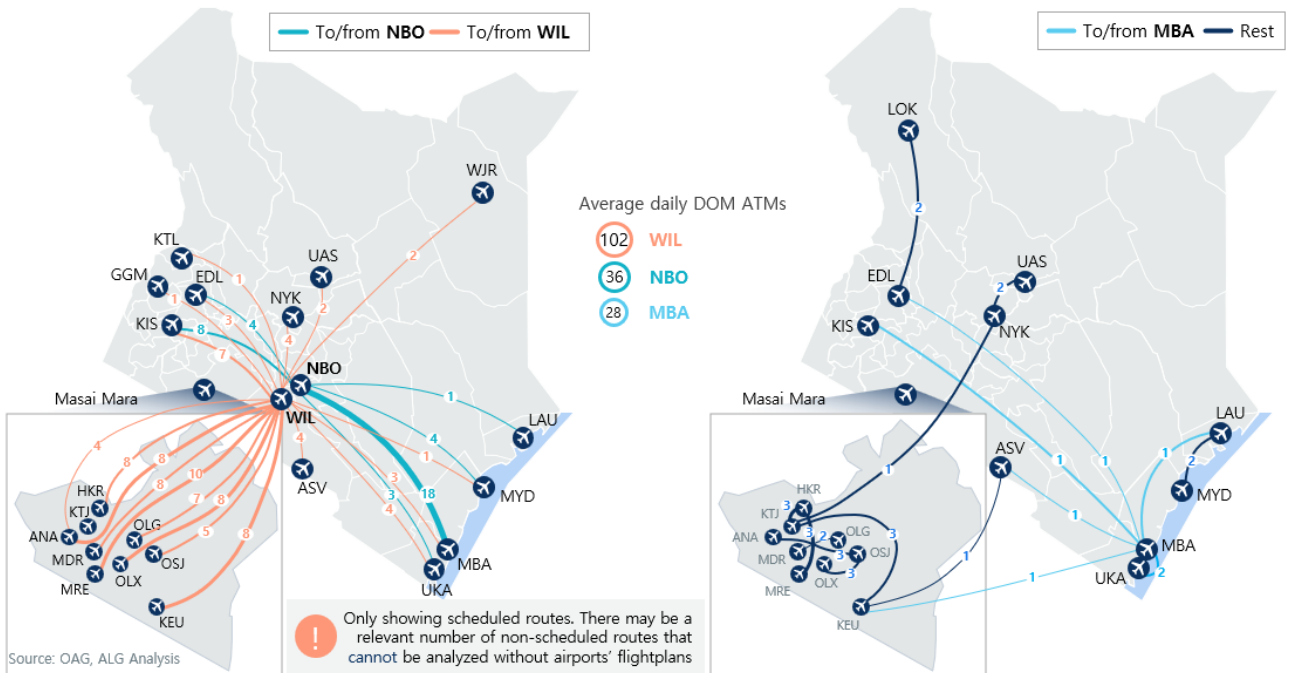
**Figure 33: Historic evolution of Kenyan seat offer in scheduled domestic flights**  
(Source: OAG)

The domestic network in Kenya is primarily centered around Nairobi airports, connecting various destinations, including tourist hotspots, major cities, and, to a lesser extent, smaller towns that cater to essential travel needs. Additionally, there are limited transversal routes connecting different airports within the country.

This network structure aligns with the country's economic and tourism dynamics, with Nairobi serving as a central hub for domestic air travel.

**Domestic routes to/from Nairobi City (daily ATMs, 2023)**

**Transversal domestic routes (daily ATMs, 2023)**



**Figure 34: Domestic routes to/from Nairobi city and transversal routes – only scheduled ops.**  
(Source: OAG)

**2.1.4 Kenya's main airports**

**Jomo Kenyatta International Airport**

Jomo Kenyatta International Airport (JKIA, IATA Code: JKIA) is Kenya's main airport, serving as the main point of entry to the country and as an international hub with connections to various destinations worldwide. Additionally, Jomo Kenyatta plays a significant role in connecting domestic flights to smaller airports across the country.

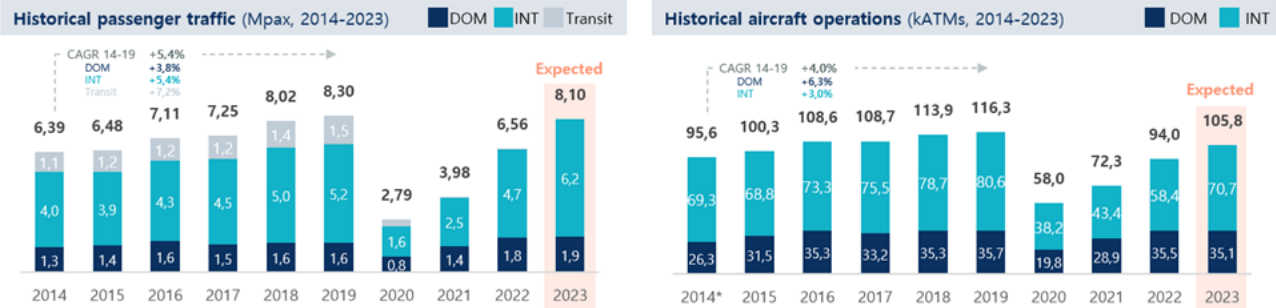


Figure 35: Historical passengers and air traffic operations (2014-2023) in JKIA (Source: KAA)

As of October 2023, Jomo Kenyatta International Airport (JKIA) recorded approximately 6.72 million passengers, already surpassing the figures from the previous year. Most of this traffic was international, with 5.1 passengers arriving from or departing to international destinations. JKIA has historically served as a hub for transit passengers, with up to 36% of its traffic being connecting passengers in 2019.

JKIA served a total of 55 non-stop services in 2023, including 36 destinations within Africa region, 6 to Middle East, 6 to Western Europe, 6 to Asia and one unique destination to USA. The highest average weekly frequency being to Entebbe International Airport (EBB) in Uganda. Other frequently serviced destinations were Dar es-Salam in Tanzania, Kigali in Rwanda, Johannesburg in South Africa, and Zanzibar in Tanzania. The Middle East and Europe accounted for about 20% of passengers each while African destinations made up the bulk of international travel, accounting for almost 60% of all international passengers.

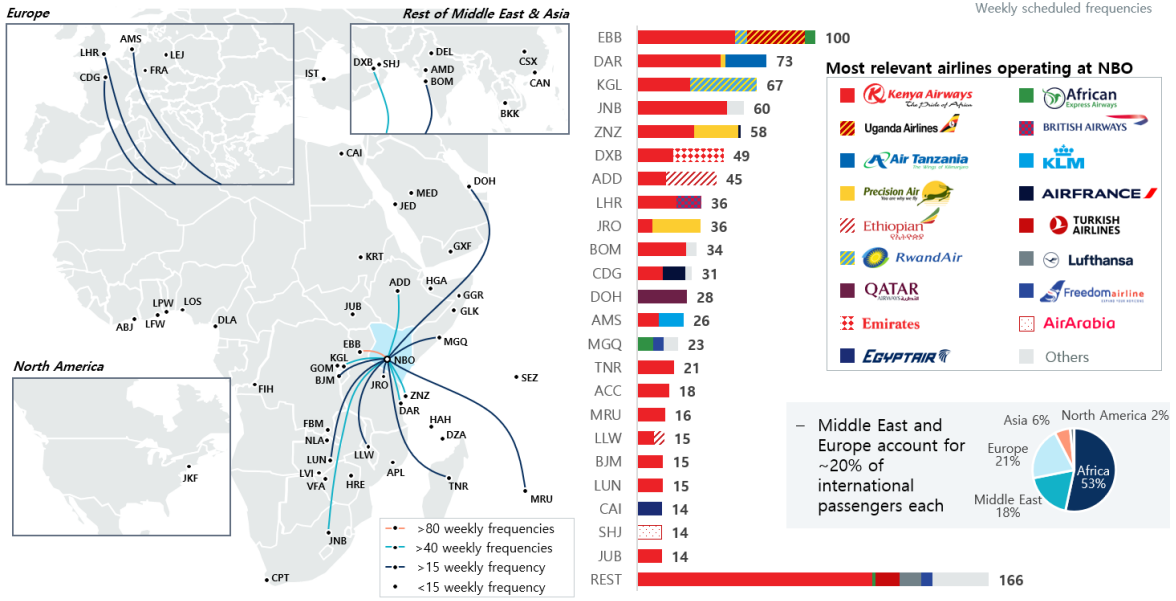
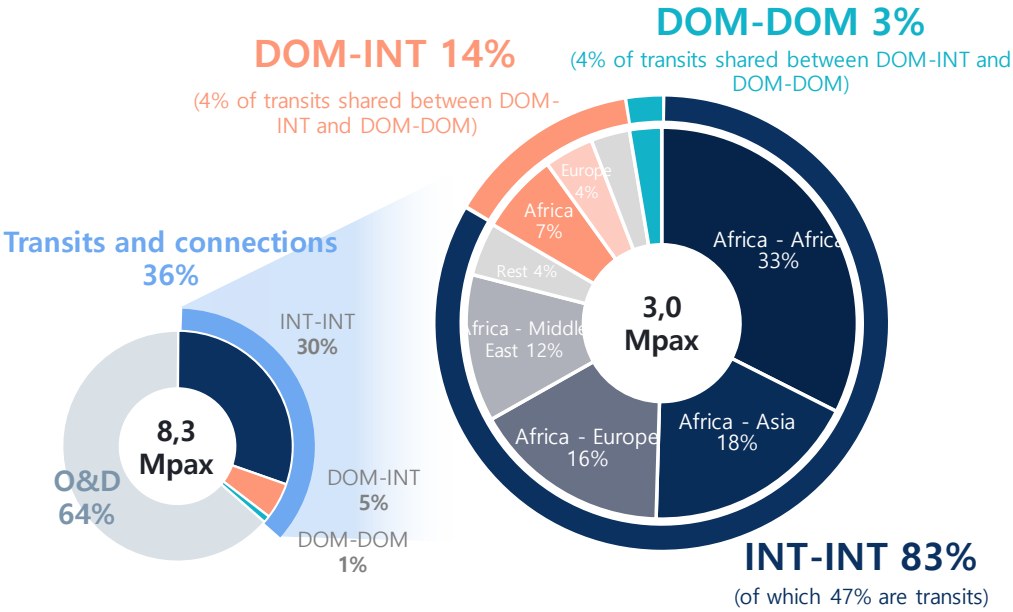


Figure 36: Main routes to/from Jomo Kenyatta International Airport (2023) (Source: OAG)

At Jomo Kenyatta International Airport (JKIA), 64% of passengers are categorized as O&D (Origin and Destination) passengers, indicating that they either start or end their journey at JKIA. The remaining 36% of passengers are transit or connection passengers. Within transit and connecting routes, passengers are further categorized into INT-INT, DOM-INT and DOM-DOM depending on the locations of their origin and destination.



**Figure 37: Passenger split in JKIA (% of passengers, 2019)**  
(Source: KAA, OAG)

In the international-international (INT-INT) segment at Jomo Kenyatta International Airport (JKIA), a significant number of passengers use the airport as a regional hub, connecting to other African countries from other African countries, Europe or Asia and Middle East.

The majority of domestic-international (DOM-INT) connections – including also INT-DOM connections – have MBA as their origin or destination, comprising more than 80% of passengers in this segment.

There are few connections between Kenyan airports through JKIA (domestic-domestic segment) as those are mainly carried out at WIL airport. However, half of the passengers travelling in this segment in JKIA fly between EDL and MBA.

The airline landscape at Jomo Kenyatta International Airport (JKIA) is characterized by Kenya Airways' dominant presence. Kenya Airways has strategically organized its operations at JKIA, creating a hub-and-spoke network that emphasizes INT-INT connections.

Kenya Airways plays a pivotal role as a gateway for international passengers entering Kenya, facilitating their subsequent connections to various destinations within the country. In terms of seat offerings, Kenya Airways stands out as a major player in both the domestic and international markets:



Figure 38: Scheduled operating airlines in JKIA (seat offering % in 2023)  
(Source: OAG)

Kenya Airways contributes to over half of the seat capacity in the international segment. While Kenya Airways holds a significant share, other carriers from the Middle East, such as Emirates and Qatar, and Eastern Africa, including Ethiopian and Rwandair, also have a presence in this segment.

### Moi International Airport

Mombasa International Airport (MBA) acts as the country’s second-largest international gateway.

In 2023, Mombasa’s domestic network revolved mainly around routes connecting with Nairobi (JKIA), constituting more than 80% of its domestic market.

Though the total number of destinations is limited compared to JKIA, MBA has established its own international network with key hubs in Europe, and limited connections in Asia and the Middle East.

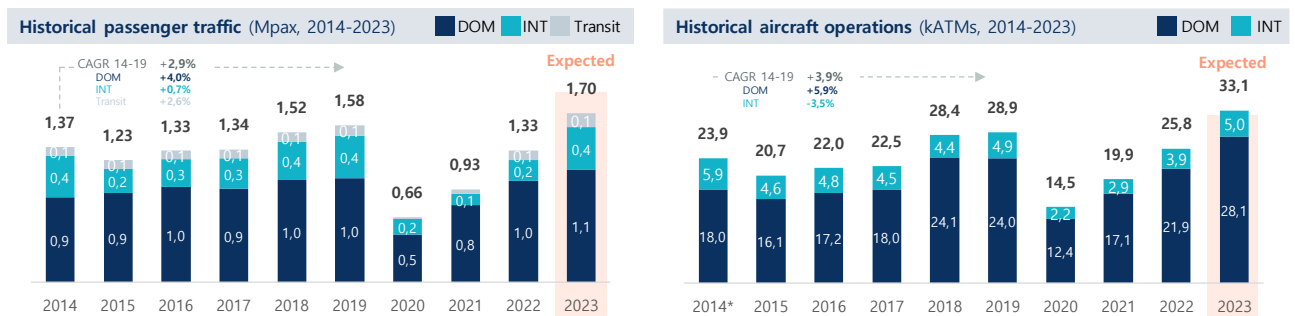


Figure 39: Historic passenger traffic and aircraft operations at MBA  
(Source: KAA)



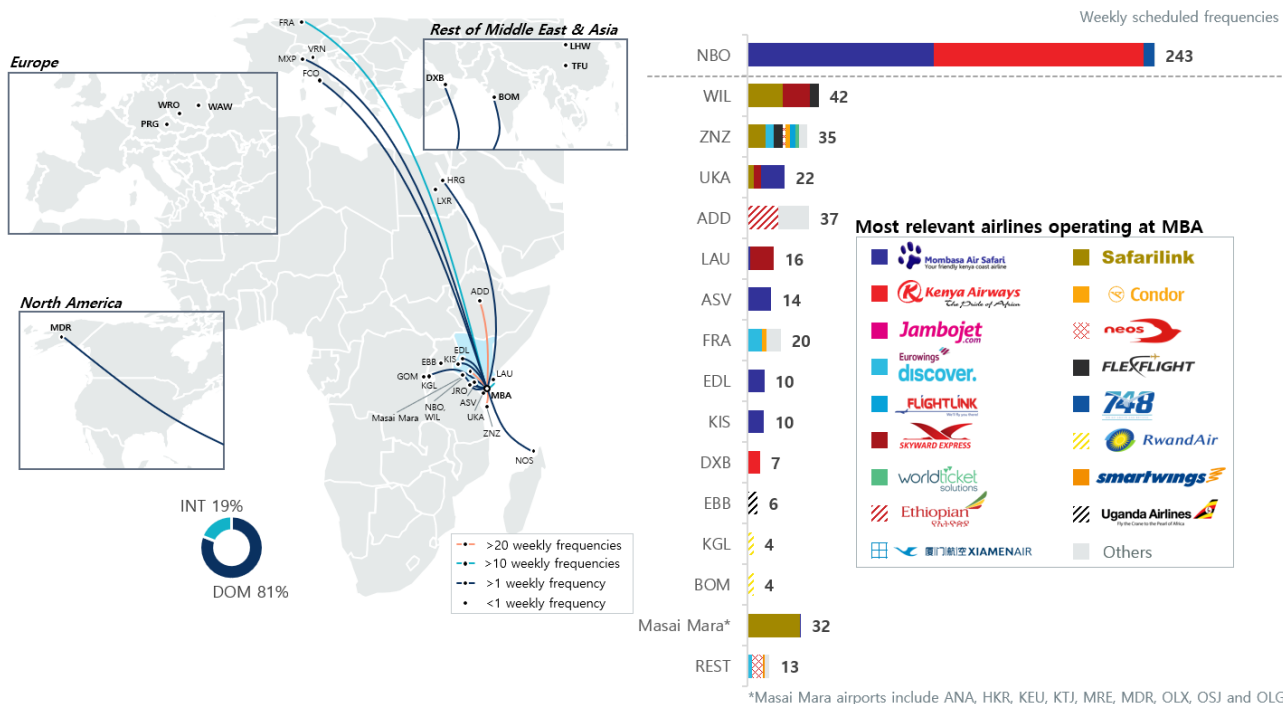


Figure 40: Main routes to/from MBA

(Source: OAG)

Almost all airlines operating the international segment at MBA are not Kenyan but legacy carriers with hub operations, using MBA as a feeder (Ethiopian airlines, Uganda Airlines, etc.) or leisure/vacation airlines flying point-to-point to MBA due to its touristic nature (Eurowings, Condor, Neos, etc.).

**International market MBA**

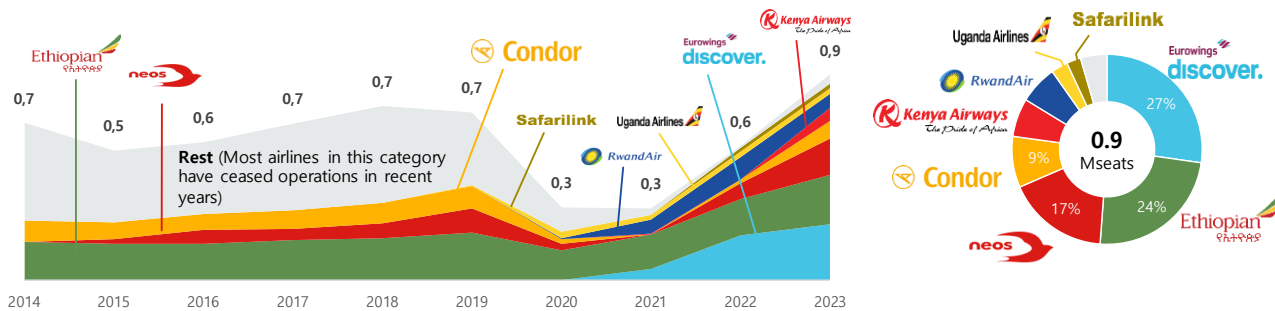


Figure 41: Historic evolution of international scheduled seat offer to/from NBO (2023)

(Source: OAG)

**Wilson Airport**

Wilson Airport plays a crucial role in complementing Jomo Kenyatta’s (JKIA) domestic services by serving destinations that may be unsuitable for larger aircraft, particularly those associated with safari locations. This is achieved using smaller aircraft and increased flight frequencies, catering to the specific needs of these routes. In 2022, Wilson Airport served 0.8 million passengers.



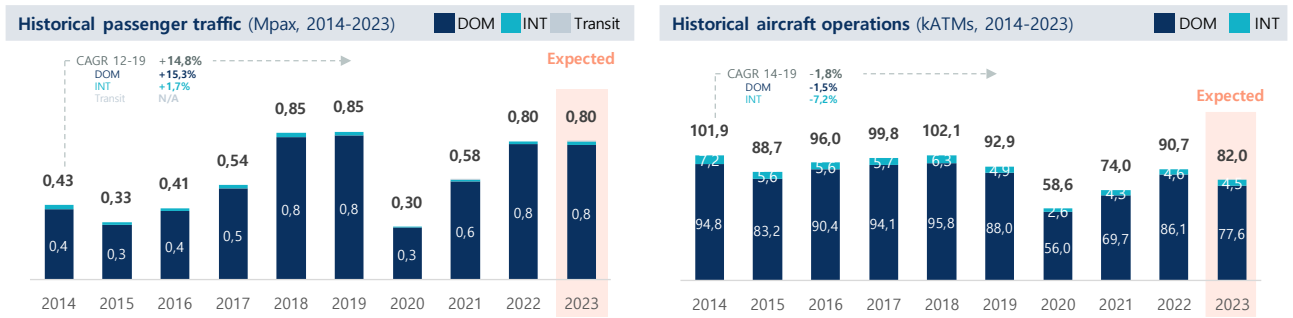


Figure 42: Historic passenger traffic and aircraft operations at WIL  
(Source: OAG)

Wilson Airport includes numerous aviation schools, Fixed-Base Operators (FBOs), and general aviation flights. Additionally, it acts as the home to the Aero Club of East Africa, further contributing to its role as a hub for aviation activities.

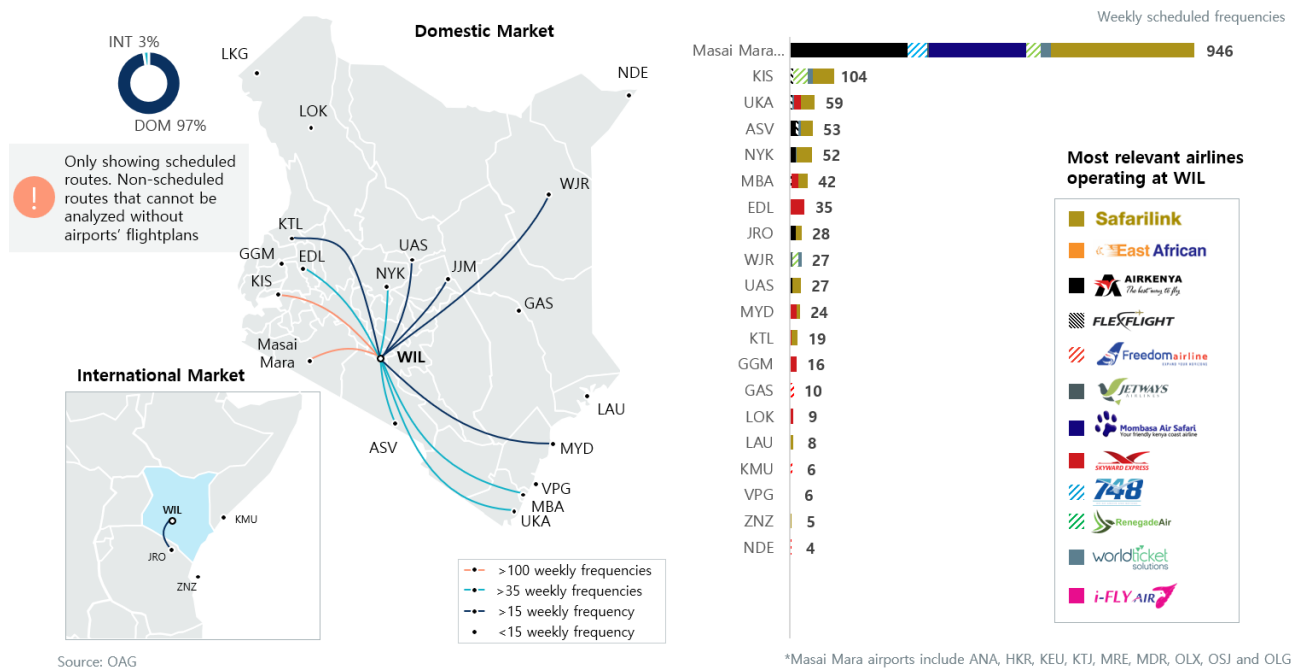
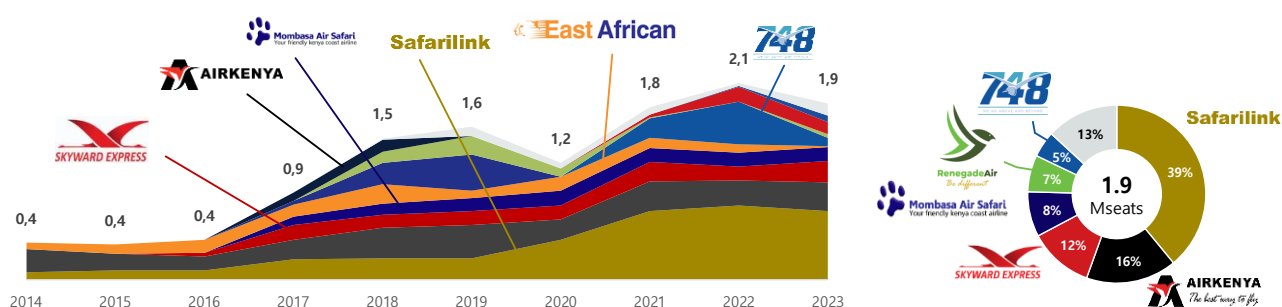


Figure 43: Main destinations from Wilson Airport 2023  
(Source: OAG)

The airlines at Wilson Airport include several small domestic carriers which operate both scheduled and chartered flights, mainly to touristic destinations such as the Mara region. These routes are mainly flown on small aircraft, mainly turboprops (Dash 8, Cessna family, Fokker) and some jets (CRJ200), as larger aircraft are unsuitable for the available infrastructure at the Mara.

## Domestic market WIL



**Figure 44: Historic evolution of domestic scheduled seat offer to/from WIL (2023)**  
(Source: OAG)

## The role of JKIA and WIL in domestic connectivity

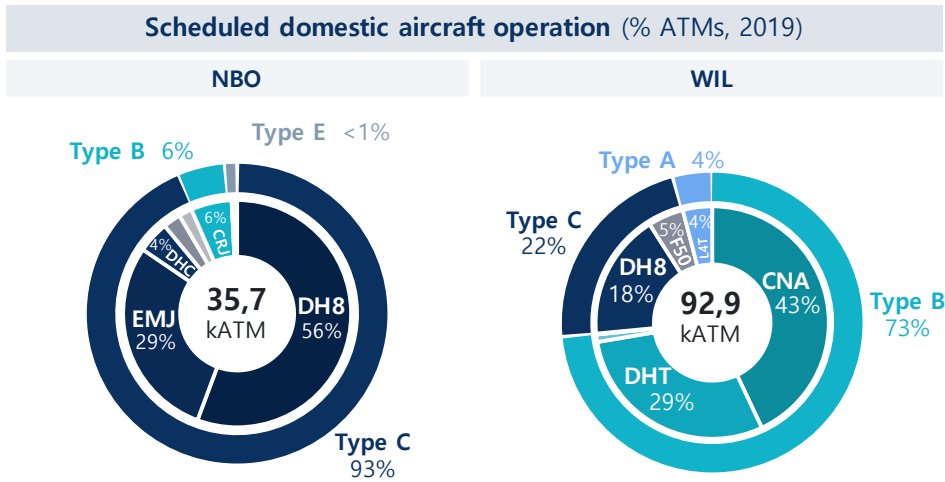
It's important to consider that a significant portion of the traffic on domestic flights comprises international passengers traveling to Kenya's popular tourist attractions, including beach resorts in Diani Beach, national parks, and other tourist destinations.

Consequently, the market strategies of Jomo Kenyatta International Airport and Wilson Airport should align to cater to arriving and departing international passengers whose ultimate destination is outside Nairobi city.

In this context, Wilson Airport and Jomo Kenyatta International Airport cater to distinct markets, each characterized by different operational features. Wilson Airport emphasizes domestic connectivity, smaller airlines with a tourism focus, and the use of light aircraft (e.g., Cessna). In contrast, Jomo Kenyatta International Airport functions as an international hub and the country's gateway, serving larger airlines (such as the flag carrier, KQ) and accommodating larger aircraft (e.g., Dash 8).

	WIL	NBO
<b>Core Market</b>	Domestic connectivity	Int'l hub & gateway
<b>Operations</b>	Charter and general aviation	Scheduled
<b>Airlines</b>	Small and scattered	Dominant flag carrier (KQ)
<b>Average scheduled aircraft size</b>	21 seats/ATM (2019)	74 seats/ATM (2019)

**Figure 45: Main differences between WIL and JKIA (2019)**  
(Source: OAG)

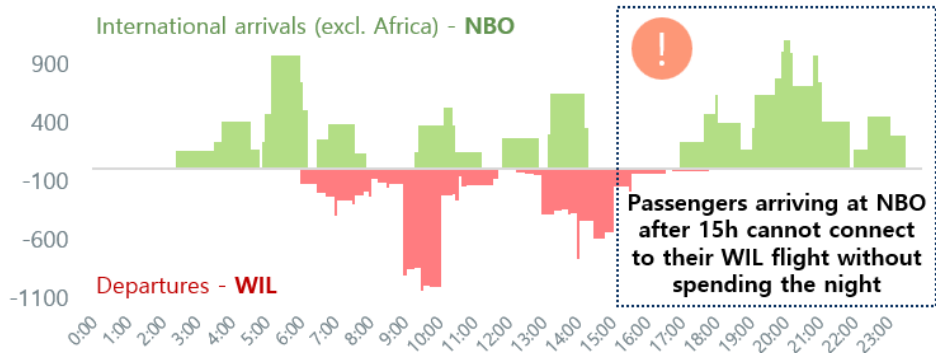


**Figure 46: Scheduled domestic aircraft fleet (% ATMs, 2019)**  
(Source: OAG)

Given that several popular tourist destinations can only be reached from Wilson Airport, where smaller aircraft are stationed, and considering Jomo Kenyatta International Airport's role as the international gateway, passengers are required to transfer between the two airports.



**Figure 47: Distance between JKIA and WIL**  
(Source: Google Maps)



**Figure 48: Example of schedule mismatches between JKIA and WIL (2019)**  
(Source: OAG)

Due to extended transfer times between airports caused by traffic congestion and mismatched flight schedules (Wilson Airport closes at the time most international flights arrive), passengers are compelled to spend at least one day (or two, depending on the return flight) in Nairobi.

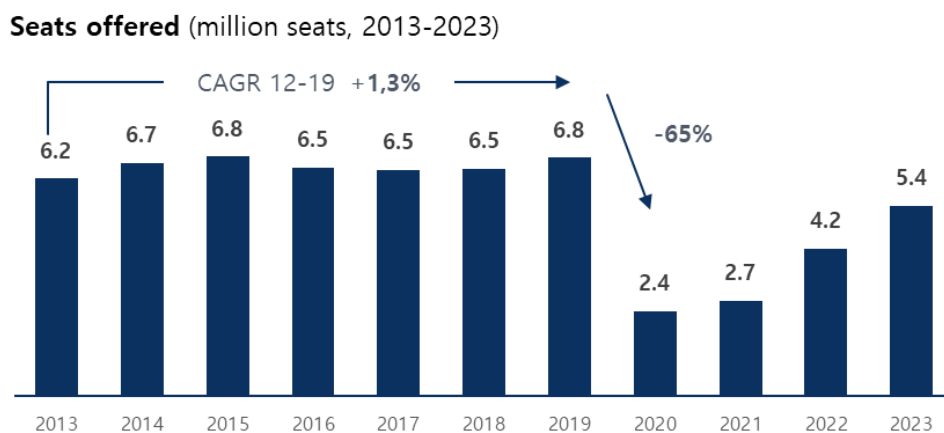
This scheduling misalignment significantly impacts the feasibility of domestic to international connections, contributing to the airport's low numbers of connecting passengers between domestic and international flights.

## 2.1.5 Main Kenyan Airlines

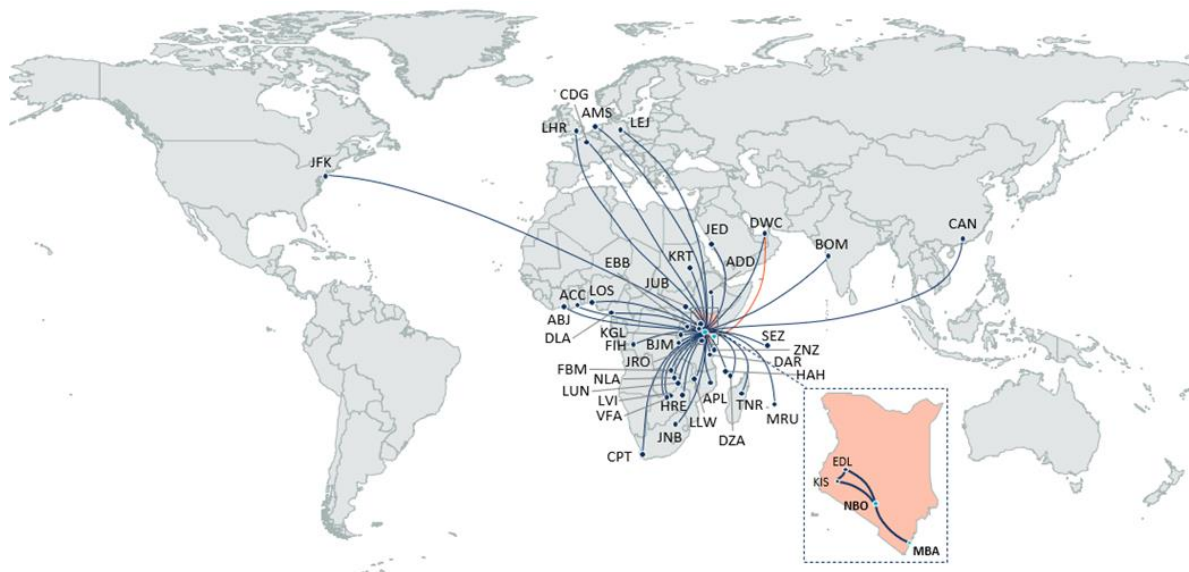
### 2.1.5.1 Kenya Airways

Based at Jomo Kenyatta Airport, Kenya Airways serves as the full-service carrier for Kenya. Established in 1972, it was initially government-owned until its privatization in 1996, making it the first African flag carrier to undergo such transition. Kenya Airways has been a member of the African Airlines Association since 1977 and joined the SkyTeam alliance in 2007. The primary focus of Kenya Airways is to establish connections between Kenya and different African nations, along with destinations in Europe, the Middle East, and North-America. Jomo Kenyatta Airport (JKIA) serves as a hub for Kenya, facilitating INT-INT connections for passengers.

In 2003, Kenya Airways acquired a 49% stake in Precision Air, and it currently holds a 41% share in the company.

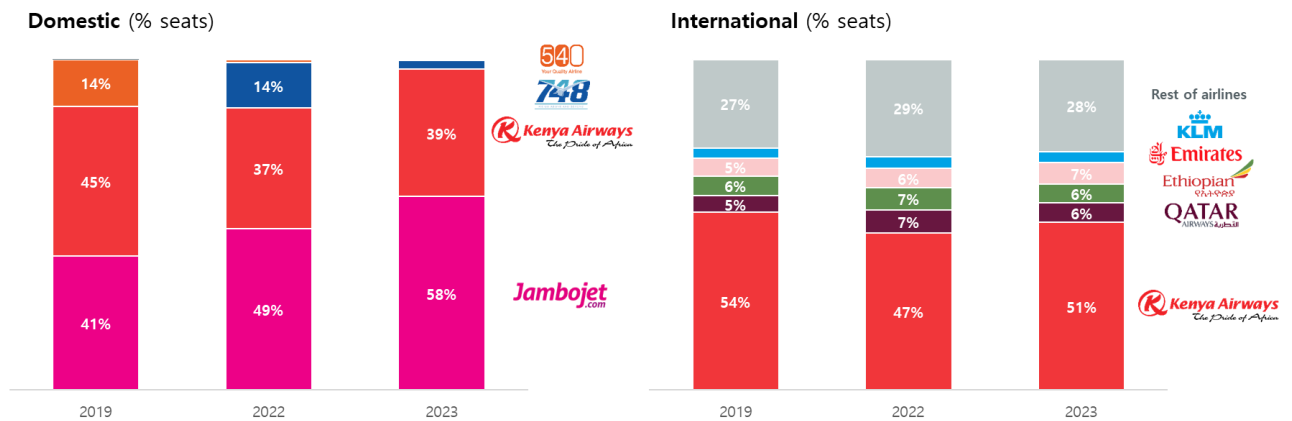


**Figure 49: Kenya Airways historical offering to/from Kenya**  
(Source: OAG, CAPA)



**Figure 50: Destinations of Kenya Airways (2023)**  
(Source: OAG, CAPA)

Despite Kenya Airways dominating the market at JKIA, the airline has not regained the market share it had before the COVID-19 pandemic. In the case of the domestic market, Kenya Airways held a dominant position before the pandemic, but currently, Jambojet has emerged as the primary airline after absorbing the share of Five Forty Aviation and a portion of Kenya Airways' share. Regarding international traffic, market shares have remained relatively constant after the traffic recovery, although Kenya Airways is still recovering its previous market share.



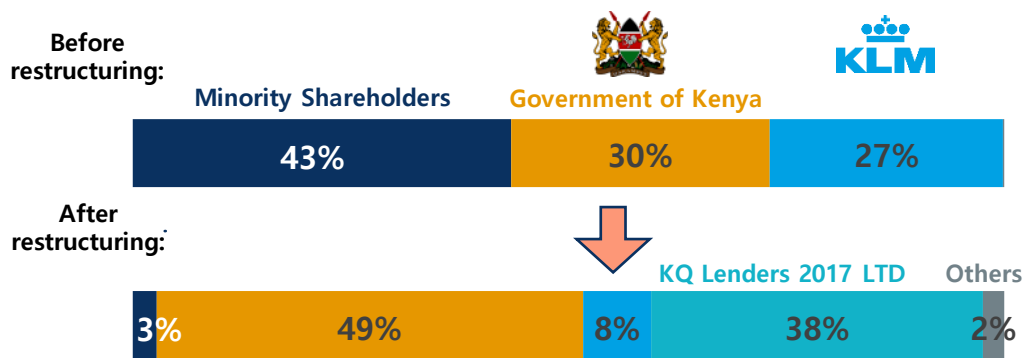
**Figure 51: Evolution of market shares at JKIA**  
(Source: OAG)

The airline's in-service fleet encompasses 2 Boeing B737-300(F), 8 Boeing 737-800 (capacity 145 seats), 9 Boeing 787-8 (capacity: 234 seats) and 13 Embraer ERJ190 (capacity: 96 seats), covering the regional and international market.

Between 2014 and 2017, Kenya Airways incurred in debt exceeding USD 2 billion due to the unsuccessful Mawingu Plan, which aimed to expand the airline's network (including operations in North and South America and Australia) and increase the fleet to 119 aircraft.

In 2017, the company underwent a financial restructuring, with the Government of Kenya assuming the largest risk by issuing a USD 750 million guarantee. A syndicate of Kenya banks also became part of the shareholding structure.

KLM, a longstanding partner of Kenya Airways, had its stake in the company significantly reduced, as it did not participate in the restructuring. KLM originally took a stake in Kenya Airways during its privatization in the late 1990s and formed a strategic alliance with the carrier. Today, its ownership has fallen below 8%.



**Figure 52: Shareholder structure modification in 2017**

(Source: Kenya Airways)

Even though the financial restructuring was necessary, it has not achieved long-term stability. The main challenges that remain are:

- Strong competition from government-protected airlines, particularly Ethiopian, to which Kenyan Airlines is losing market share.
- Following the unsuccessful nationalization and merger plan with Kenya Airports Authority, the airline must now strive for self-sustainability.
- The airline's liquidity position has been worsened by the impact of COVID-19, posing a risk of triggering the sovereign guarantee.

Notably, in January 2022, the government retracted the bill intended for the nationalization of the airline, which aimed to establish a holding company incorporating the public airport operator (KAA). Moreover, the government revealed in February 2022 its plan to infuse over USD 230 million into the airline after operating in the red for several years, expediting their reform efforts and bolstering cash flow.

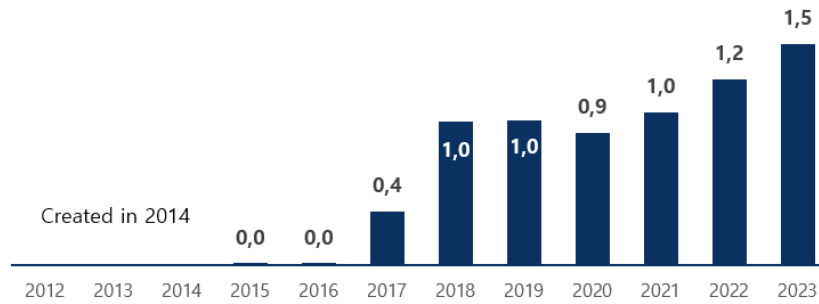
Regarding the potential merger with South African Airways (SAA), in November 2021, the partnership to create a Pan African Airline Group by 2023 was signed, however, the establishment of the potential new group has been delayed at least until 2024. Among other factors, there is uncertainty regarding SAA's financial health as back in 2019 the company filed for bankruptcy and ceased operations after years of continuous financial losses. The South African government tried to resuscitate the airline in 2021 by offering a 51% stake to external investors that proved successful with the airline restarting operations in late 2021. Despite that, investors remain doubtful about the airline's current status and future which might limit the chances of a successful partnership with Kenya Airways.

#### 2.1.5.2 Jambojet

Jambojet is the first low-cost carrier in Kenya and is a wholly owned subsidiary of Kenya Airways. The carrier was established to help meet rising competition in Kenya Airways' core markets from new independent LCCs.

Compared to its parent company, it is focused on the domestic market although it also operates some international flights to neighboring countries

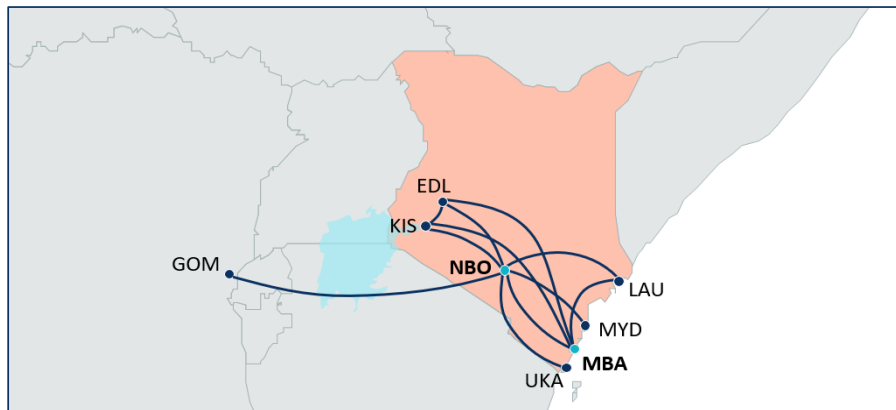
**Seats offered** (million seats, 2012-2024)



**Figure 53: Jambojet historical offering to/from Kenya**

(Source: OAG, CAPA)

**Destinations (2023)**



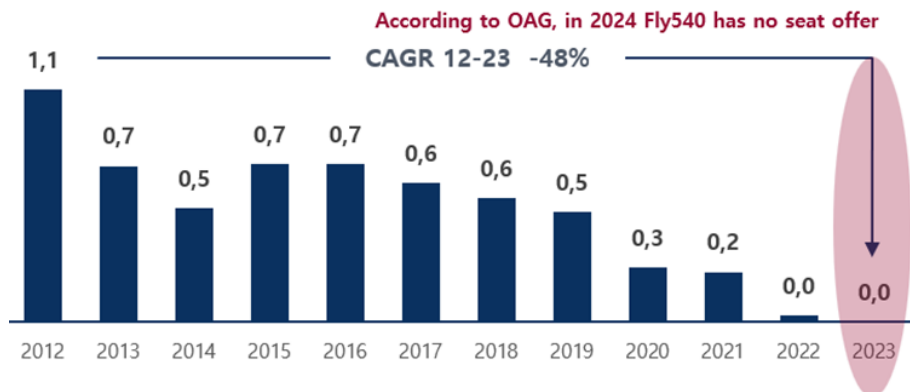
**Figure 54: Jambojet destinations (2023)**

(Source: OAG, CAPA)

### 2.1.5.3 Fly540

Based in a point-to-point (P2P) network, Fly540 was a low-cost airline owned entirely by Lonrho Africa Holding Ltd, an investment holding company and Don Smith, its CEO. The airline ceased operations in September 2022.

**Seats offered** (million seats, 2012-2023)



**Figure 55: Fly540 historical offering to/from Kenya**

(Source: OAG, CAPA)



### 2.1.5.4 Other domestic airlines

In Kenya, there are over 11 small domestic airlines operating a combined fleet of more than 115 aircraft. Primarily composed of turboprops like the De Havilland Canada Dash 8, Cessna, or Fokker families, these airlines also include some small jets such as the Bombardier CRJ Series







In general, all domestic airlines are based in Wilson (WIL) airport with the objective of connecting safari destinations and coastal areas with the capital. This network is served with aircraft operating charter services, or in a hop-on-hop-off schedule.







**Figure 56: Fleet used by domestic airlines**

(Source: airlines website, ©Markus Jenke, ©Glenn Azzopardi, ©HansAir, ©Hugh M, Freedom Airline)

The principal airlines among these groups are:

Domestic Airlines	Fleet	Description
	8 Cessna Caravan 1 DeHarvilland Dash 8 – 100 1 DeHarvilland Dash 8 – 200 1 DeHarvilland Dash 8 – 300	11 Operates <b>scheduled</b> services to <b>safari destinations</b> in Kenya and the border with Tanzania. It can also provide private <b>charter</b> services upon request.
	4 Fokker 50 1 Fokker 70 1 Fokker 28 2 DeHarvilland Dash 8 - 300	8 Formerly known as Skyward International aviation, it operated both <b>scheduled</b> and <b>charter</b> services ( <b>passengers</b> and <b>cargo</b> ) to domestic destinations
	3 Fokker 50 4 Cessna Caravan 2 DeHarvilland Dash 8 – 100	9 The main segment of this airline is <b>ACMI leasing</b> although it recently launched three scheduled services (twice-daily connection to Kisumu, Wajir and Masai Mara).
	1 Bombardier CRJ200 2 McDonnell Douglas DC-9 1 Fokker 28 1 Beechcraft 1900 2 Cessna Caravan	7 Operates <b>scheduled</b> services to the most touristic destinations in Kenya (including flights to safaris and the eastern coast). It can also provide private <b>charter</b> services upon request. Formerly known as Fly-SAX, it was <b>acquired by Fly540</b> in 2010 and rebranded as easafrican.com in 2012.
	1 Bombardier CRJ200 1 Embraer 120 ER 2 Fokker 50 1 Airbus A320	5 Even though it operates many <b>scheduled</b> flights (to both domestic and some international destinations), part of their strategy also includes <b>charter</b> , <b>executive</b> and <b>cargo</b> flights. Freedom airlines has been certified to provide <b>aircraft maintenance</b> to other airlines (on top of to their own fleet)
	1 Fokker 50	1 Operates <b>scheduled</b> flights mainly to Wajir and Masai Mara. Apart from that, offers <b>evacuation flights</b> and <b>relief services</b> , <b>ACMI leasing</b> , <b>private charters</b> and <b>cargo</b> delivery too.

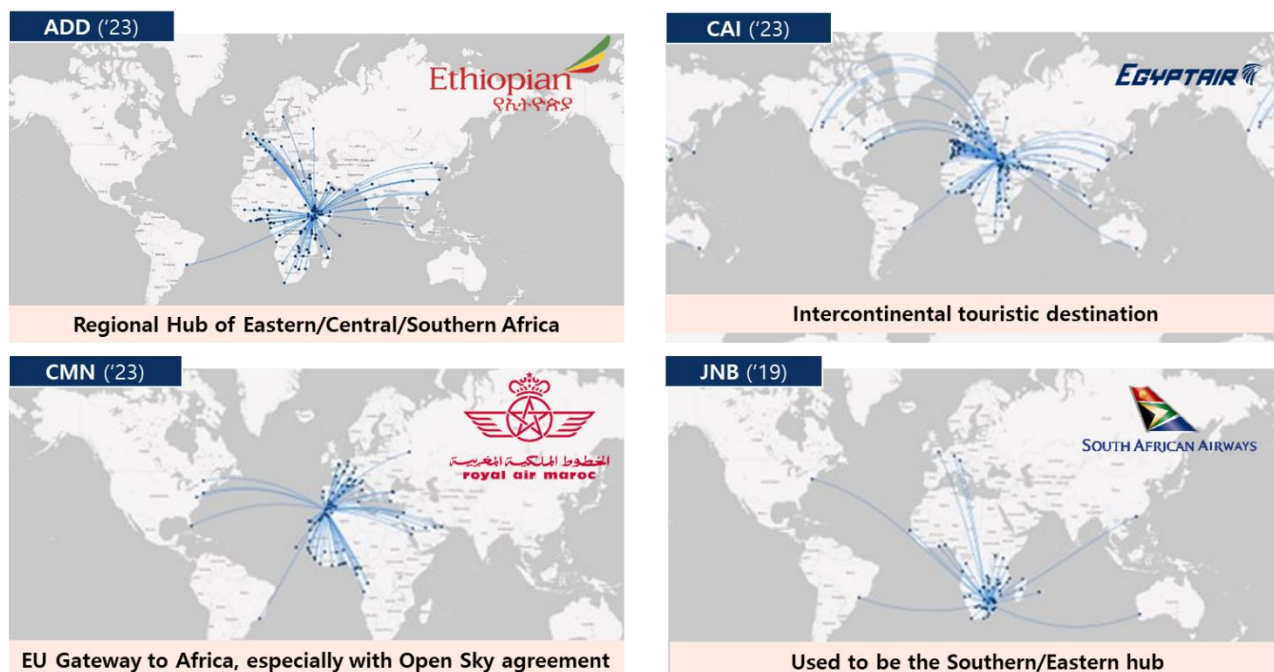
Domestic Airlines	Fleet		
	3 DeHavilland DHC-6 2 DeHavilland DHC-7 1 DeHavilland Dash 8 3 Cessna Caravan	9	Operates <b>scheduled</b> and <b>charter</b> services to the most visited <b>safari reserves</b> in Kenya (and typically does not serve the touristic market of the eastern coast). It has two wholly owned <b>subsidiaries: Regional Air Services</b> in Tanzania and <b>Aerolink</b> in Uganda which follow the same market strategy as Air Kenya
	8 DeHarvilland Dash 8-400 2 Fokker F27 1 Beechcraft 1900	11	Operates <b>cargo charter</b> flights and <b>passenger charter</b> flights (both private or in groups). Compared to the other charter airlines in Kenya, the core market of Bluebird Aviation is <b>not operating between touristic destinations</b> . It also offers border or pipelines security surveillance, luxury transportation or air ambulance services.
	7 DeHarvilland Dash 8-400 2 DeHarvilland Dash 8-100 3 Cessna Grand Caravan	12	Founded originally to provide service to the humanitarian sector, it also serves as a <b>charter</b> for the natural resource sector and government institutions. It also operates as an <b>international cargo airline</b> with destinations in Uganda, South Sudan, Ethiopia, Somalia and Tanzania. It has been certified as an <b>Aircraft Maintenance Organization</b> by the KCAA.
	1 Beechcraft Super Kingair 5 Cessna Grand Caravan EX 9 Cessna Grand Caravan 2 Cessna 310 2 Cessna 206	19	Operates <b>passenger scheduled</b> flights to the most visited touristic domestic destinations. <b>Charter</b> and <b>cargo</b> aviation services can also be provided.

**Figure 57: List of domestic airlines**  
(Source: CAPA, airlines' official website)

### 2.1.6 Competitive landscape

Kenya is the third fastest growing country in Eastern Africa in terms of seat capacity recording a CAGR of 6.5% between 2012 and 2019. This growth positioned Kenya as the second largest country offering 14.9 million seats in 2019, only surpassed by Ethiopia (22.1 million seats that same year).

At the same time, JKIA and Kenya Airways compete with other airlines that operate under a hub&spoke strategy in Africa such as Ethiopian from Addis Ababa, EgyptAir from Cairo, Royal Air Maroc from Casablanca or South African Airways from Johannesburg. Additionally many Middle Eastern carriers offer ample connectivity to/from eastern and southern Africa, effectively competing with JKIA catchment area.



**Figure 58: Main airlines with a hub&spoke strategy in Africa**  
(Source: CAPA, airlines' official website)

Despite being one of the largest aviation markets in Africa, Kenya has not yet recovered 2019 capacity levels unlike other competing countries such as Ethiopia, Tanzania or Uganda that fully recovered and even exceed 2019 capacity levels.

It is worth noting the growth of Ethiopia, which has already surpassed 2019 traffic levels in 2023 and has exhibited an annual average growth of 12.5% between 2012 and 2019. This increase in airport traffic is directly linked to the growth of its main airline, Ethiopian Airlines. A dedicated section will delve into the characteristics of the airline, its hub in Addis Ababa, fleet and its potential strategies.

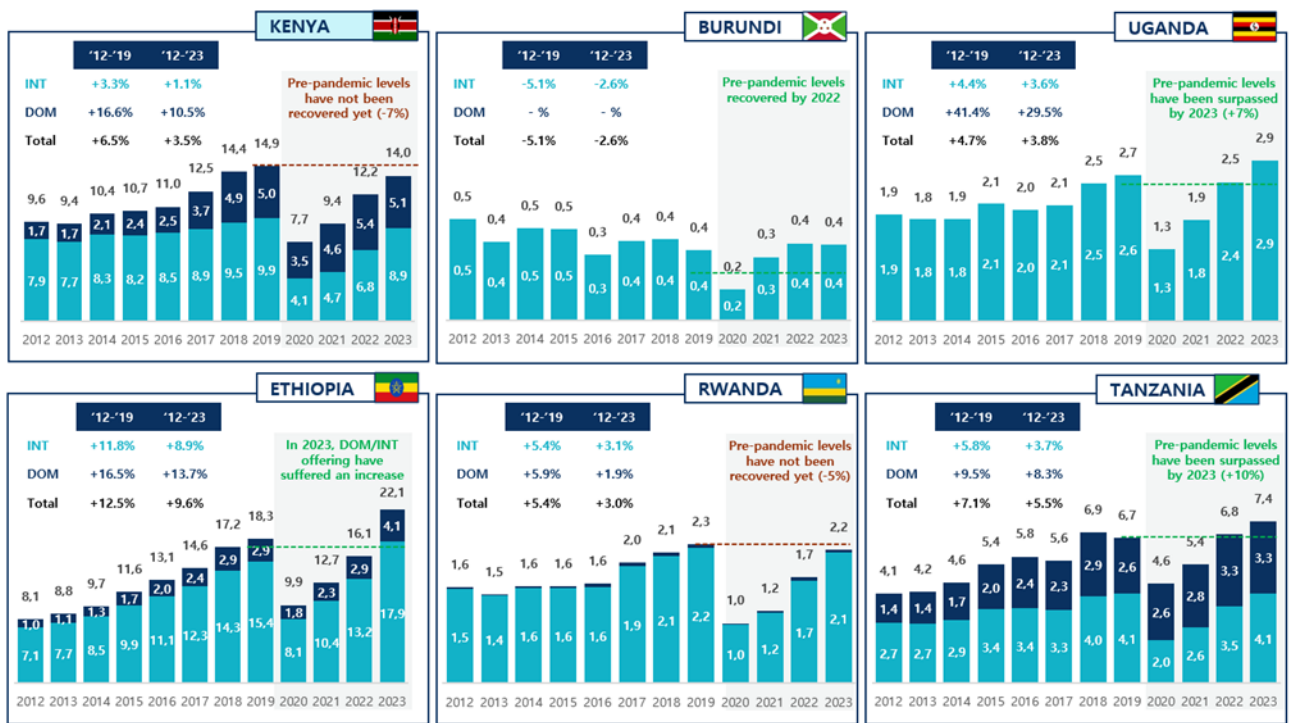


Figure 59: Capacity comparison between Kenya and adjacent countries (MSeats, 2012-2023) (Source: OAG)

As an incentive to recover the international traffic and attract visitors, Kenya plans to eliminate visa requirements for foreign visitors, regardless of their nationality and origin. This initiative aims to stimulate international tourism, leading to increased demand at Kenyan airports and fostering economic growth in the region.

However, the KCAA recently announced a postponement of the implementation of visa-free entries for the global community. Instead, a new electronic travel authorization register like the Electronic Travel Authorization (ETA) systems used by the US, UK, or Canada, is currently under development. Consequently, travelers from visa-requiring countries are required to continue applying for travel authorizations through the standard application process.

Currently, passport holders in Kenya are classified into 3 categories, and the visa/travel authorization processing is expedited accordingly:

Category 1: Nationals and citizens from countries in which visas are not required to enter Kenya.

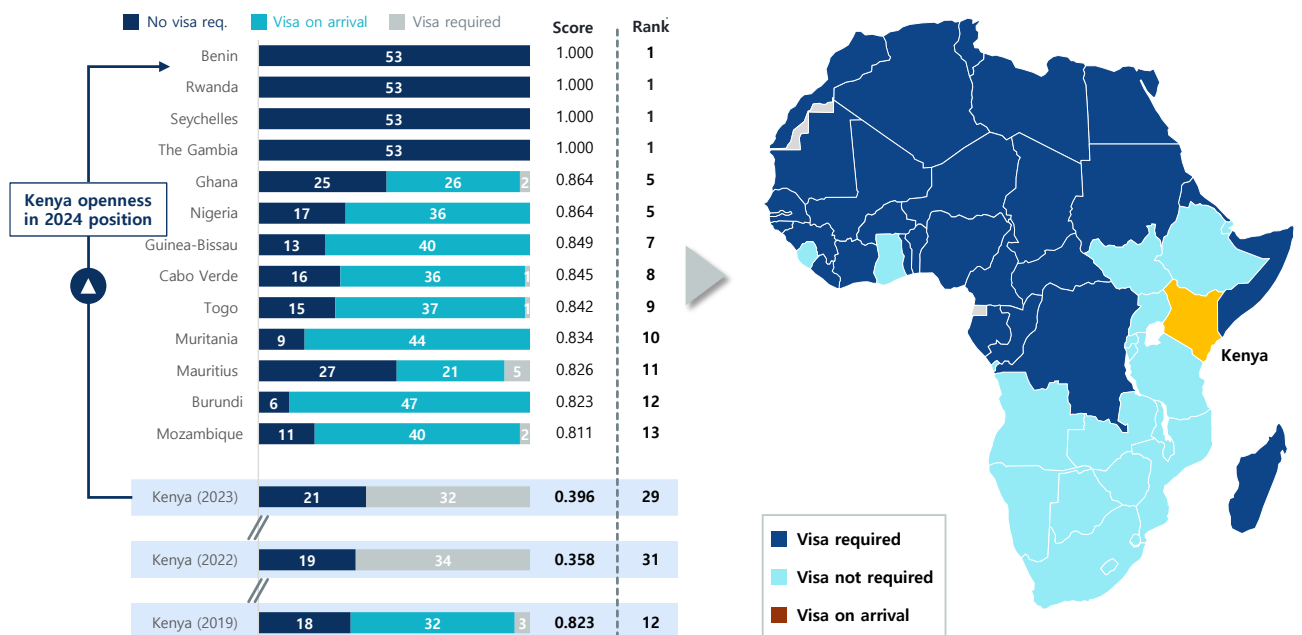
Category 2: Citizens from countries who require a standard visa to enter Kenya.

Category 3: Citizens from countries who require a referred visa to enter Kenya.



**Figure 60: Kenya visa requirements**  
(Source: eVisa)

Currently, according to the Visa Oppennes index, which assesses the ease with which visitors are authorized to enter their country of destination between African countries, Kenya holds the 29<sup>th</sup> position on the continent based on its existing visa requirements. Specifically, there are 21 countries for which no visa is required to enter Kenya, while 32 countries necessitate a visa for entry. If the initiative to eliminate visa requirements is implemented, Kenya would ascend to be among the top six countries (joining Benin, Rwanda, Seychelles, and Gambia). This change is expected to enhance tourism to Kenya.

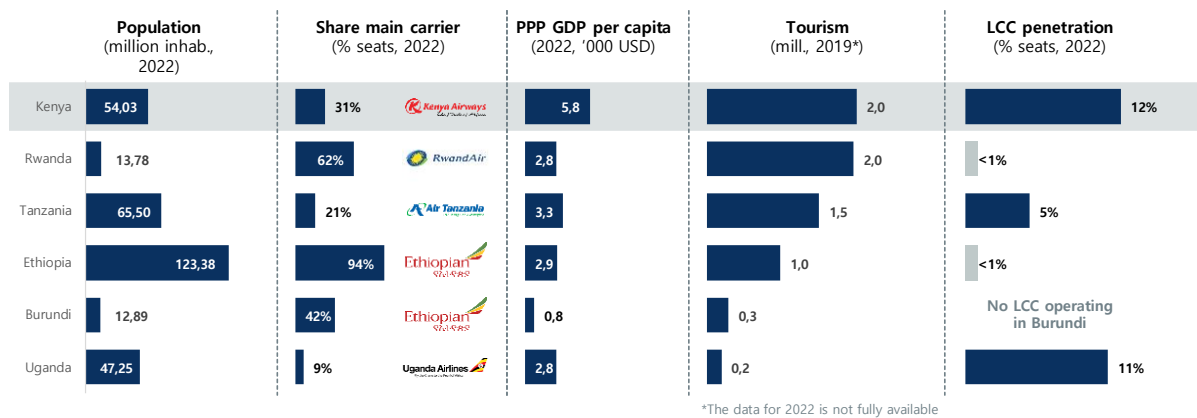


**Figure 61: Intra-Africa Visa requirements per country to Kenya (2023)**

(Source: Openness Visa, ALG Analysis)

In Kenya’s traffic recovery, special attention should be given to overseas international tourism. The recovery of this traffic has played a pivotal role in the recovery of pre-pandemic traffic levels and is foreseen to fuel future air traffic growth. Kenya is positioned as the preferred Eastern African destination for international tourism, with Europe and Middle East the main origin regions, attracted by its natural attractions.

In the domestic market, there is also a moderate opportunity to grow local demand. Kenya presents a significant population density and records one of the largest GDP per capita among the analyzed countries. Together with future penetration of low-cost carriers in the county, there’s potential for further development of the domestic traffic.



**Figure 62: Characterization of Eastern-African countries (2022)**  
(Source: Oxford Economics, UNWTO, Government statistics, OAG)

### 2.1.6.1 Consolidation in the African Aviation Market

One of the industry trends seen in the African aviation market is the consolidation of larger groups of airlines. To strengthen their presence in the region, some airlines acquired and created new subsidiaries in different African countries. An example of this process is ASKY Airlines founded by Ethiopian Airlines back in 2008.

With the sanitary and economic crisis caused by COVID-19, this consolidation process has accelerated as many smaller players as possible and new entrants have been unable to withstand Covid-19 effects. The challenges of airlines in the African market have been accentuated by the sanitary crisis for a struggling, low-profitability market which eventually led to the disappearance of many airlines.

As part of the consolidating process carried out by the larger airlines, both, African and Middle East carriers have started participating in smaller airlines through different schemes. These schemes are diverse and include capital contributions (in cash or equipment), share swaps, and other schemes based on technical support or management contracts in which no equity participation is involved. Through these variety of participations, airlines such as Ethiopian Airlines, Egyptair, Kenya Airways, Qatar and Emirates position themselves in different geographies expanding their operations.





**Figure 63: Airlines with present or past participation in African airlines**

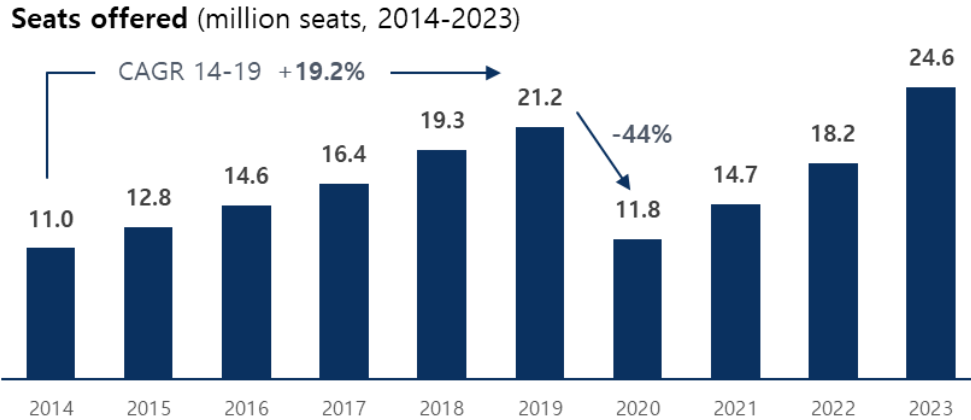
(Source: OAG, CAPA, ALG Analysis)

### 2.1.6.2 Ethiopian Airlines

As one of the leading airlines on the African continent, and the national airline of Ethiopia, Ethiopian Airlines serves more than 60 international destinations across Africa, Europe, the Middle East, and North America. The carrier is based in Addis Ababa Bole International airport where it also serves an extensive international and domestic cargo network.

Its fleet consists of 128 active aircraft with 24 on order. The fleet is mainly made up of Airbus A350-900s, Boeing 787-8s, variants of the Boeing 737 and 777, a few regional Boeing 767-300 regional jets, as well as several De Havilland Canada Dash 8s.

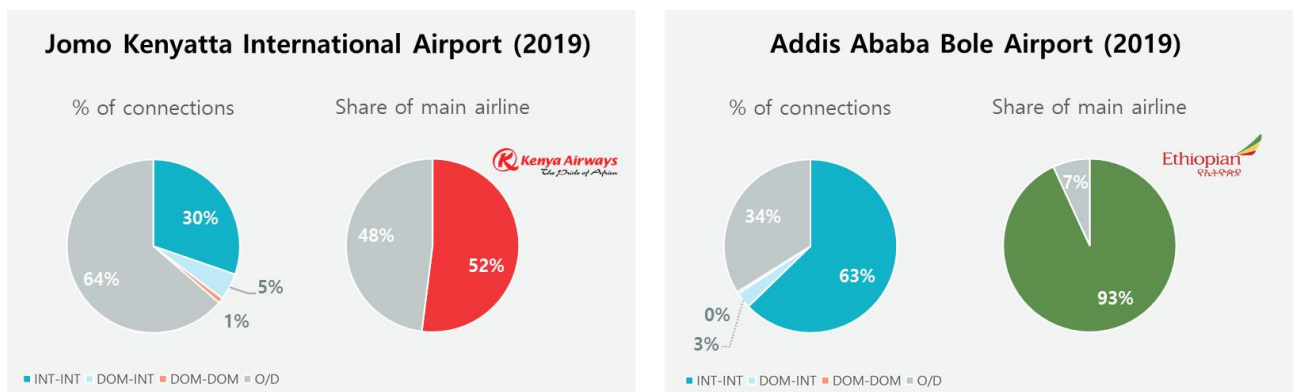
Ethiopian maintains its hub of operations in Addis Ababa and has built a global network. At the same time, Addis Ababa international airport, Bole, has had capacity constraints and urban encroachment since before 2014, when a proposal for a new airport was first suggested. However, plans have not materialised and construction works for the new airport, which was initially intended to be commissioned by 2025, have not started yet which could derive in congestion issues in the coming years.



**Figure 64: Ethiopian Airlines historical seat offering**  
(Source: OAG)

Despite potential future congestion issues, Ethiopian is one of the main competitors to Kenya Airways regional hub operation. However, in recent years, Ethiopian has claimed a dominant position in enhancing connectivity in the East African region.

As mentioned earlier, Ethiopian Airlines has established itself as the primary airline at Addis Ababa Bole Airport, holding a 93% market share in 2019, virtually indicating that there are no other airlines willing to operate at ADD at the expense of competing with Ethiopian Airlines. This data suggests how powerful the Ethiopian airline has grown to become through the successful development of its consolidated hub but also hints to a lack of interest to fly origin/destination to the country as the majority of airport traffic (66%) connects at it. In fact, 76% of international passengers connect to other international or domestic flights through Addis Ababa. In the case of Jomo Kenyatta, 43% of these international passengers are connecting passengers.



**Figure 65: JKIA-ADD airport comparison**  
(Source: OAG, ALG analysis)

The rise of Ethiopian in Africa started in 2005. At the time, the airline found itself trailing behind South African Airways, EgyptAir and Kenya Airways in terms of passenger numbers. That year, the airline set the target of tripling its passenger volume by 2010. By 2010, it had exceeded its target and was named the most profitable airline in Africa for that year. Consequently, it launched a new growth plan called "2025 Vision".

Through this plan, Ethiopian expanded its connectivity elsewhere in the region. Faced with political and financial barriers, the airline opted to invest in other airlines. In 2013 it acquired a 49% stake in Malawi



Airlines and in 2018, a 45% stake in Zambia Airways. It has also taken stakes in ASKY Airlines and Ethiopian Mozambique Airlines.

African airlines have been severely damaged since Covid, with many being grounded for the period Mar- to Sep- 2020. With no aid, it has been difficult for many to overcome the debts incurred in this period and the drop in passenger demand in the subsequent years. However, Ethiopian saw an opportunity in cargo demand, and made the decision to build up capacity during this period. This decision proved to be beneficial, as the company maintained its cashflow without incurring debts or any bailouts. A year after the pandemic (2021) the airline was operating an average of 50 widebody flights per week to China plus operations to and via Europe with PPE and medical supplies.

Essentially, Ethiopian Airlines’ strategy for overcoming the pandemic was to redirect focus towards cargo, going as far as repurposing passenger aircraft for cargo use, and opening business lines with Asia, particularly China.

Ethiopian is currently expanding its fleet and adding several new destinations to its network of operation, both for passenger and freight services. With aims of becoming a key player in global air transport, its CEO announced in 2023 that the carrier has “fully recovered from the impacts of COVID”.

In 2023, the Kenyan government granted Ethiopian more flights into Mombasa through its open skies policy. KQ has opposed the motion arguing that Kenya risks entering a one-sided deal as there is no guarantee of reciprocity with Ethiopia. On one hand, this could hurt KQ by increasing their domestic competition, but on the other, it could help boost tourism numbers and positively contribute to Kenyan economy and aviation market.

2.1.6.3 Qatar Airways and RwandAir partnership

RwandaAir is the flag carrier at Rwanda which emerged as a dynamic and rapidly growing airline (17% CAGR between 2014 and 2019). With a fleet of 14 aircraft ranging from wide-body A330 to narrow-bodies B737 and smaller regional aircraft (CRJ and DHC8), the airline is based at Kigali airport and plays a key role in Rwanda’s connectivity with routes to various international destinations including London, Paris and destinations in the Middle East.

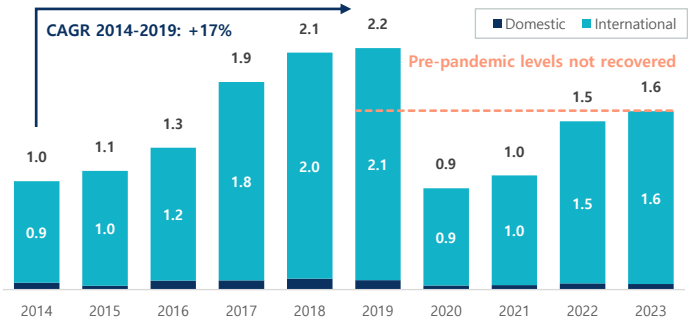


Figure 66; RwandAir Seat Evolution (2014-2023)  
(Source: CAPA)

Although the airline has yet to fully recover its pre-pandemic offer (1.6 million seats in 2023 in contrast with 2.2 million seats in 2019), its historic growth and the acquisition of a 49% stake in the company by Qatar Airways, presents an optimistic outlook for the airline. This acquisition, together with the other

acquisition of 60% stake of the new Rwanda international airport, also reflects the commitment of Qatar Airways to develop Rwandan airline and the new airport.

This new airport located about 40 kilometers south of Kigali is expected to be completed by late 2026, at an estimated cost of 2 billion USD. Once completed, the new airport will boast a 130,000 sqm main terminal building capable of initially accommodating 8 million passengers annually, but is expected to rise to more than 14 million passengers in the long-term.

Furthermore, adjacent to the passenger terminal building, there will be a cargo terminal capable of accommodating more than 150,000 cargo tones annually (expected).

This new development is a significant upgrade on the existing Kigali International Airport, which is set to remain operational for special arrivals, some chartered flights, and a pilot training school.



**Figure 67: New international airport in Rwanda**  
(Source: Google Earth)

RwandAir operates services to over 25 destinations across Africa, Europe, the Middle East and Asia. A deep-dive into RwandaAir’s capacity to/from Africa shows the network changes of the carrier during and after the pandemic caused by COVID-19 with a total exit of some markets such as the Rwanda-Congo route, and in favor of additional capacity over 2019 levels in other routes to Ghana, Gabon and Kenya. The shift of capacity to these routes are yet to compensate for the drop derived from the COVID-19 outbreak.

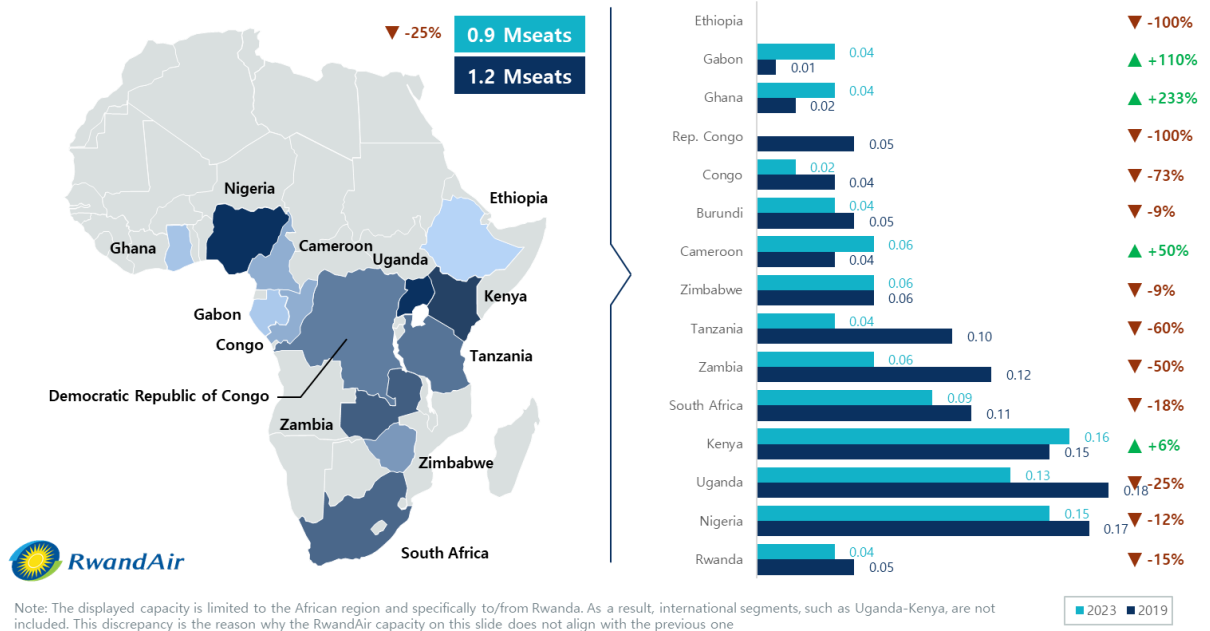


Figure 68: RwandAir capacity to/from Rwanda in Africa (Mseats; 2019 & 2023)

(Source: OAG)

In contrast, Qatar shows a fully recovered network in Africa (+49% of 2019 seats offered). The carrier's network extends to northern and eastern African countries with RwandAir's network in Central Africa showing potential to complement Qatar's network in the region. Qatar's capacity increase to/from Africa together with its recent purchases underscores the commitment of the carrier with the African market.

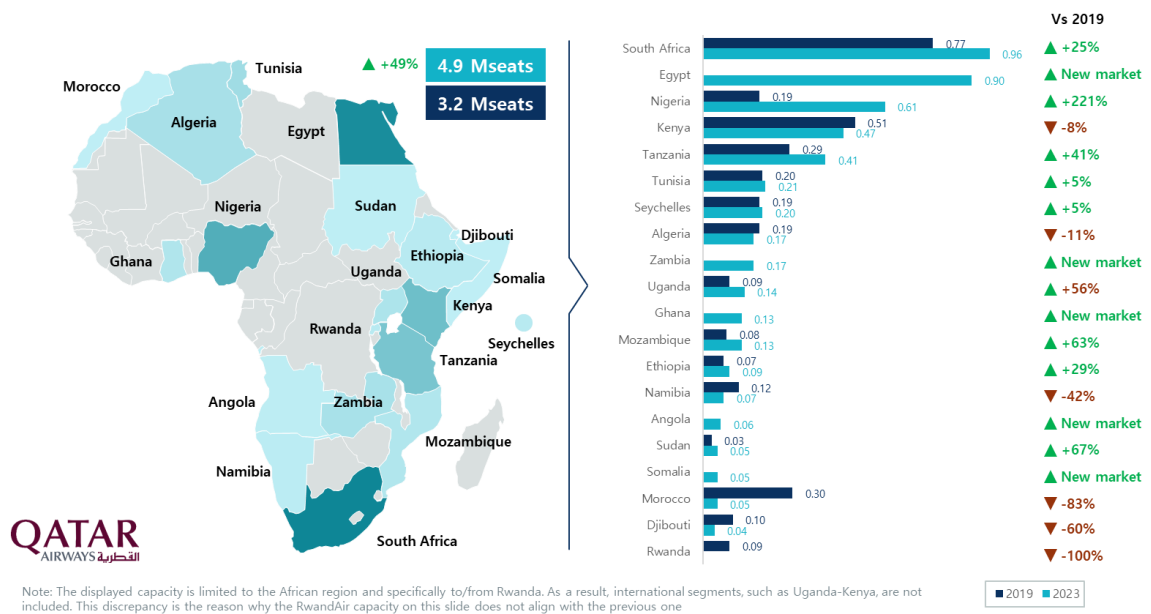
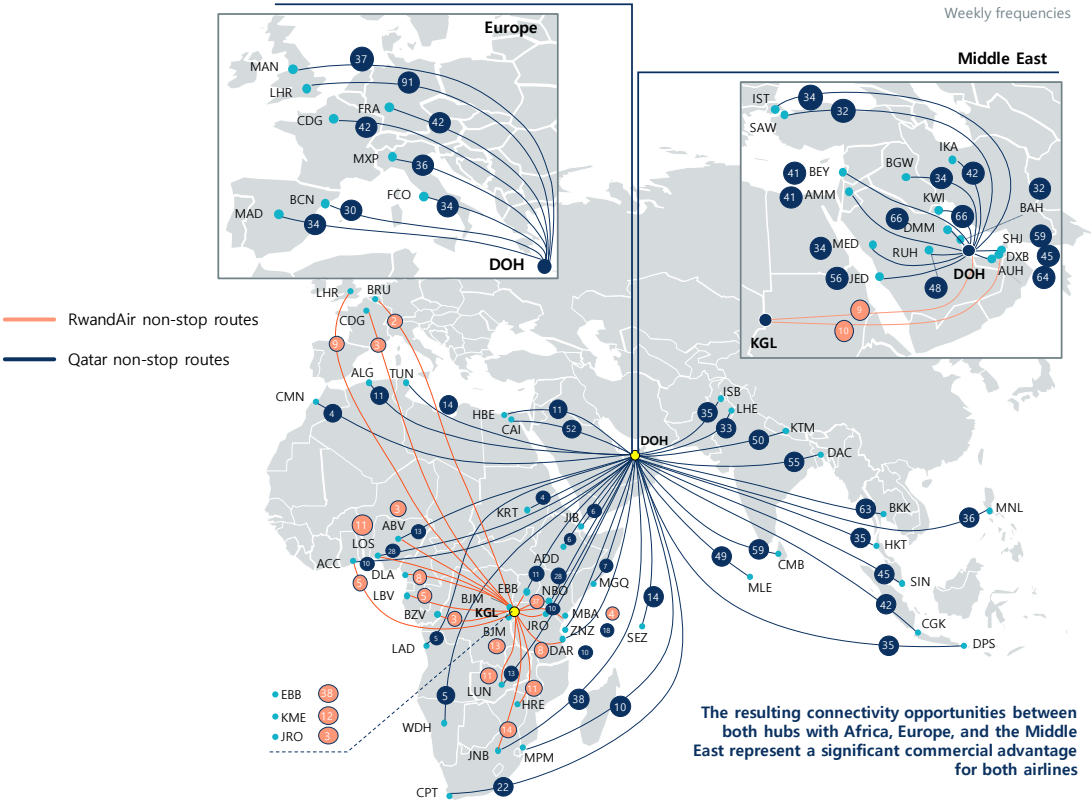


Figure 69: Qatar Airways capacity to/from Africa (Mseats 2019 & 2023)

(Source: OAG)

The participation of Qatar in the Rwanda's market has associated benefits in terms of passenger connectivity. With the start of non-stop flights between Doha and Rwanda by RwandAir in 2022, customers of both airlines have access to over 65 destinations.



Note: (1) The route map detailed above only includes non-stop routes from both KGL and DOH hubs; (2) the numbers indicated refer to weekly frequencies, specifically considering only those greater than 30 for Europe, North America, etc., in the case of Qatar Airways (Africa is all included)

**Figure 70: RwandAir and Qatar Airways non-stop routes from both airlines' hubs (KGL and DOH)**  
(Source: OAG)

The move of Qatar Airways boosts the carrier's connectivity in Africa strengthening its position in both the passenger and cargo markets against other carriers.

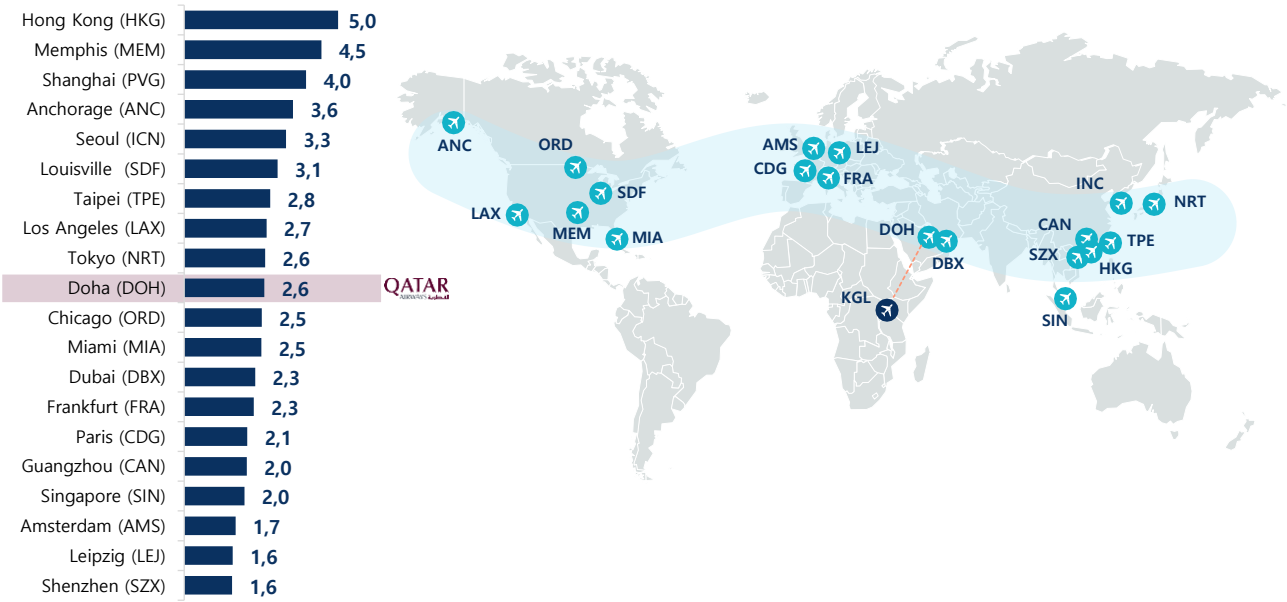
As mentioned earlier, Africa is one of the top-growing cargo regions with an average growth of 7.5% between 2014 and 2019, currently representing a 2% of the global air cargo market.

Additionally, the growth in Africa's air transport is closely linked to economic developments driven by the implementation of regulatory frameworks, increased investment flows and reduced operational costs. On this note, several boosters of cargo demand in the region have historically included:

1. Substantial flow of goods and investment from China and the Middle East.
2. The region's remarkable and rapid economic growth driven by the abundance of resources.
3. The potential for diversification within different cargo markets in the region.

The favorable prospects for these drivers factor in the outlook for the African air cargo market showing again substantial projections and expecting a yearly growth of over 5% over the next decade. These projections are reinforced by the establishment of Qatar in the African market and its partnerships in the market to establish a new cargo hub.

Doha, Qatar’s headquarters ranged among the top 10 cargo airports with 2.6 million tons of cargo transported through the airport. The further move of this carrier into the African cargo market supposes a significant development for the region and might potentially position Kigali as Eastern Africa prospective new key location within the global air-cargo flows in the long-term.



**Figure 71: Air cargo market overview (Million tons; 2021)**  
 (Source: Boeing, Airbus, ALG Analysis)

At present, Qatar Airways Cargo operates in 28 African cities, employing a combination of freighter and belly-hold services. The strategic move of Qatar into Rwanda’s new international airport, besides consolidating the airline in the African market, is potentially aimed at developing a new cargo network. As part of this partnership and starting in 2023, KGL is serving as partnership hub for Qatar Airways Cargo. This includes additional cargo weekly frequencies from its hub:

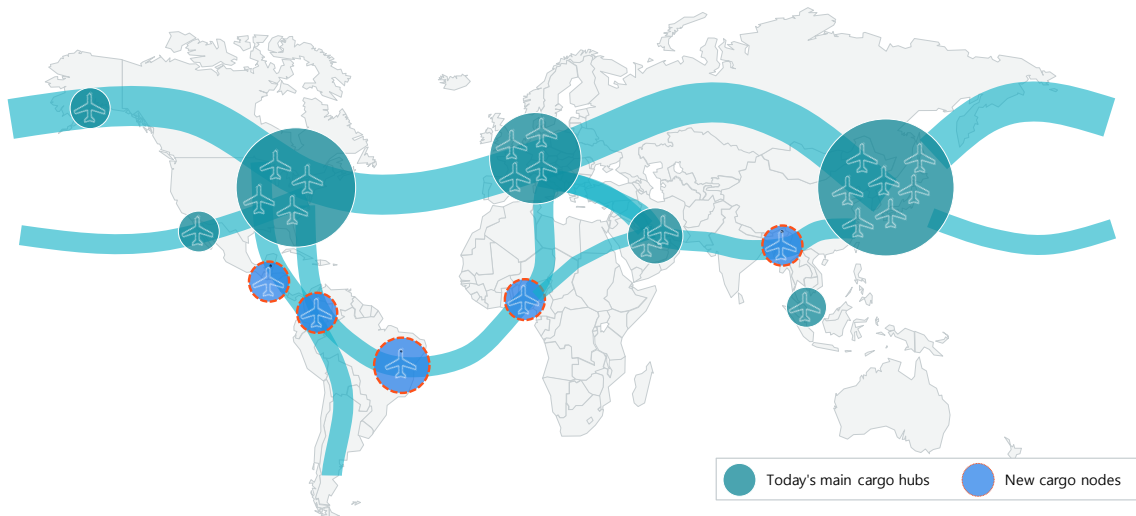
- 3 weekly frequencies connecting Lagos.
- 2 weekly frequencies connecting Doha operated with a B777.
- 1 weekly frequency connecting Doha operated with a A310.

## 2.1.7 Cargo

### 2.1.7.1 Global cargo traffic outlook

Six of the top-20 largest cargo airports are located in the United States, with the domestic market playing an essential role in the development of those airports. East Asia is the prevalent hub for international cargo, accommodating eight of the world's largest cargo airports, including Hong Kong, the largest airport in terms of cargo traffic.

Europe's primary cargo hubs are strategically located in Frankfurt (FRA), Paris (CDG), London (LHR), and Amsterdam (AMS). Conversely, the Middle East concentrates most of its cargo operations at its principal passenger hubs in the region, such as Dubai (DXB), Doha (DOH), Istanbul (IST), and Abu Dhabi (AUH).



**Figure 72: Major global air cargo market flows**

(Source: Airbus, Boeing, ALG Analysis)

Africa only accounts for approximately 2% of the global air cargo market, mainly connecting the continent with Europe, East Asia and Middle Eastern hubs.

As of today, no African airport ranks among the 40 busiest cargo airports globally. However, significant developments are currently underway, with Qatar Airways acquiring 49% of RwandAir and 60% of the new Rwanda international airport or with JKIA hosting more than 358 kTn in 2019, 2<sup>nd</sup> largest cargo airport in the continent.

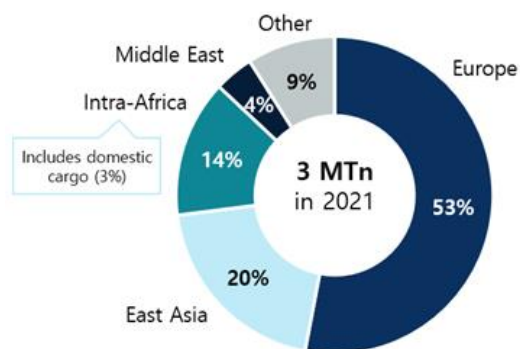
Air cargo focuses on high-value time-sensitive products that justify higher transportation costs. These include perishable goods, machinery and electrical equipment, electronics, small packages and documents, chemicals, textiles, metals, or transportation equipment.

For this reason, it represents ~35% of the global foreign trade by value but only ~0.5% by weight.

### 2.1.7.2 African cargo traffic outlook

During the last decade, air cargo traffic in Africa has increased at a slightly slower rate than global figures (World freight ton per kilometer (FTK) elasticity to GDP is 1.5, as opposed to 1.3 in Africa).





**Figure 73: African air cargo trade partners 2021**

(Source: Boeing, Airbus, AFRAA, IMF)

Europe dominates Africa's international air trade, holding a significant 47% share of the continent's cargo market. This dominance is primarily attributed to Europe's geographical proximity to Africa and longstanding historical and investment connections.

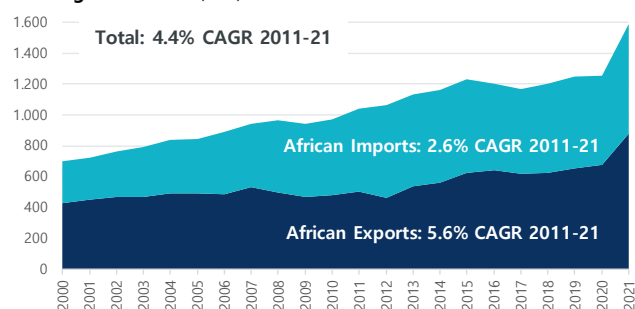
Asia's share of Africa's international air trade experienced a slight setback during the pandemic but maintained its position as the second-largest, accounting for 20% of air cargo traffic in 2021. The primary drivers of growth in this market persist in the form of increasing Chinese investment.

In 2021, air cargo between African nations reached an estimated 326,000 tonnes, representing 11% of the total Africa cargo market.

Despite pandemic setbacks, initiatives like the African Continental Free Trade Area and Single African Air Transport Market drive the development of intra-Africa air cargo routes. Ground infrastructure limitations create a specific need for air cargo in Africa.

#### Africa-Europe cargo market

Air cargo evolution (kTn)



#### Africa-East Asia cargo market

Air cargo evolution (kTn)



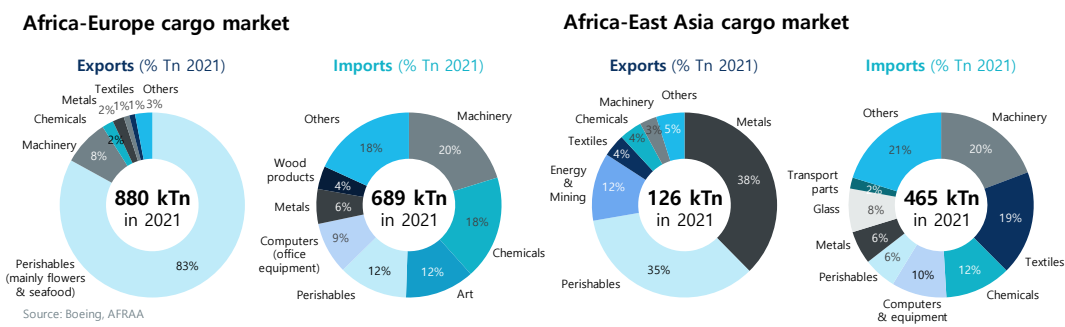
**Figure 74: Air cargo flows between Africa-Europe and Africa-East Asia**

(Source: Boeing, Airbus, AFRAA, IMF)

When splitting imports and exports according to the type of product transported, perishables are, by far, the most exported product by air.

However, in the case of imports, each market supplies African countries with a vast array of products.



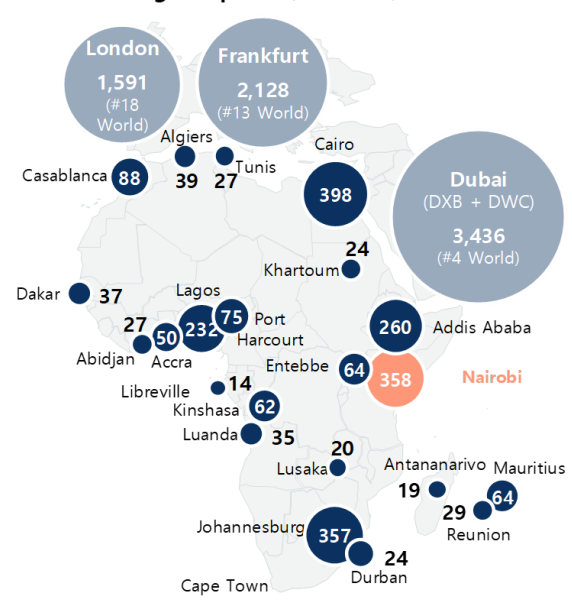


**Figure 75: Air cargo flows between Africa-Europe and Africa-East Asia by exports/imports and type of product**  
(Source: Boeing, Airbus, AFRAA, IMF)

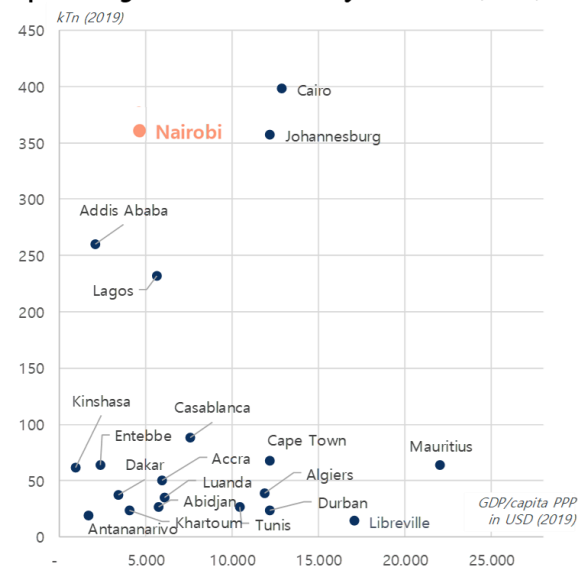
On the other hand, domestic air cargo in Africa is projected to reach a total of 161,000 tons, with a significant concentration in South Africa and the Democratic Republic of the Congo. Together, these two countries contributed to more than 83% of the total domestic air cargo traffic in Africa in 2019.

In Africa, only 5 airports surpassed the 200,000 tones milestone, including Jomo Kenyatta airport (JKIA). Nairobi's airport stands out as a leading cargo airport within the Eastern Africa region, handling over 358,000 tons in 2019, positioning JKIA as the 2<sup>nd</sup> largest cargo airport in Africa (2019), behind Cairo.

**Main African cargo airports (kTn 2019)**



**Airport cargo traffic vs Country GDP PPP (2019)**



**Figure 76: Most relevant cargo airports in Africa**

(Source: CAPA, AFRAA, Local airport websites, ICAO, Oxford Economics, ALG Analysis)

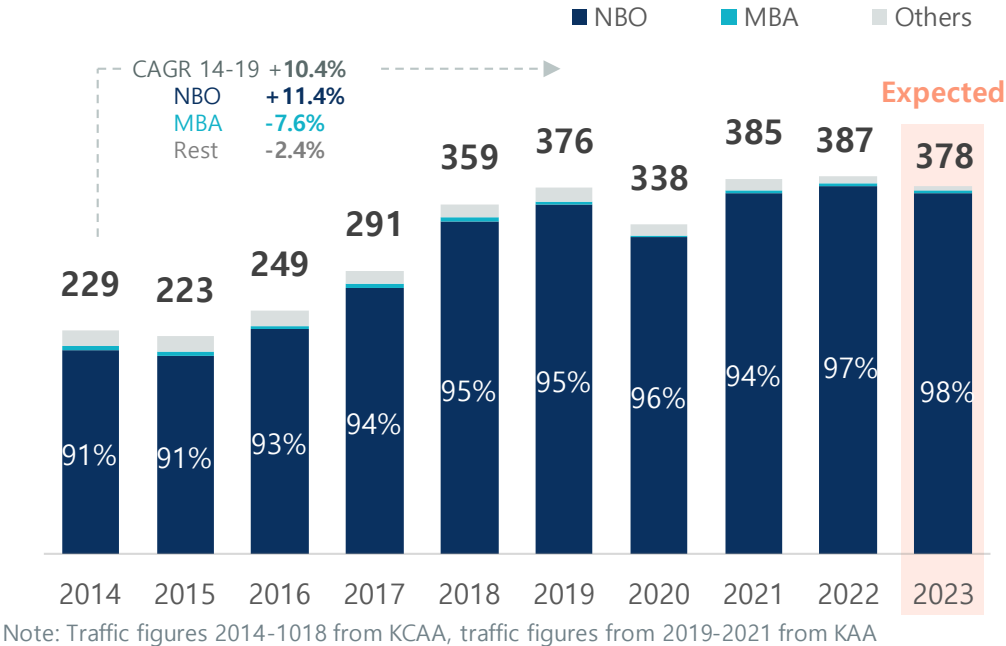
In order to boost intra-African trade, member countries of the African Union promoted the establishment of the African Continental Free Trade Area (AfCFTA). This agreement took effect in 2019, and its implementation commenced in 2021.

If successful, the AfCFTA agreement aims to create a unified African market comprising over 1.2 billion consumers, with a total GDP surpassing \$2.5 trillion by 2030. A study carried out by the United Nations Economic Commission for Africa (ECA) indicates that the AfCFTA would generate a general increase in

demand for intra-African freight of approximately 28%. Although the share for air transport (0.9% in 2019) is expected to remain almost unchanged compared to road and rail transport, the implementation of AfCFTA is projected to double airfreight from 2.3 to 4.5 million tonnes. As a result of these projections, different African countries have invested in logistics and industrial parks to serve as key logistics hubs.

2.1.7.3 Kenya cargo traffic outlook

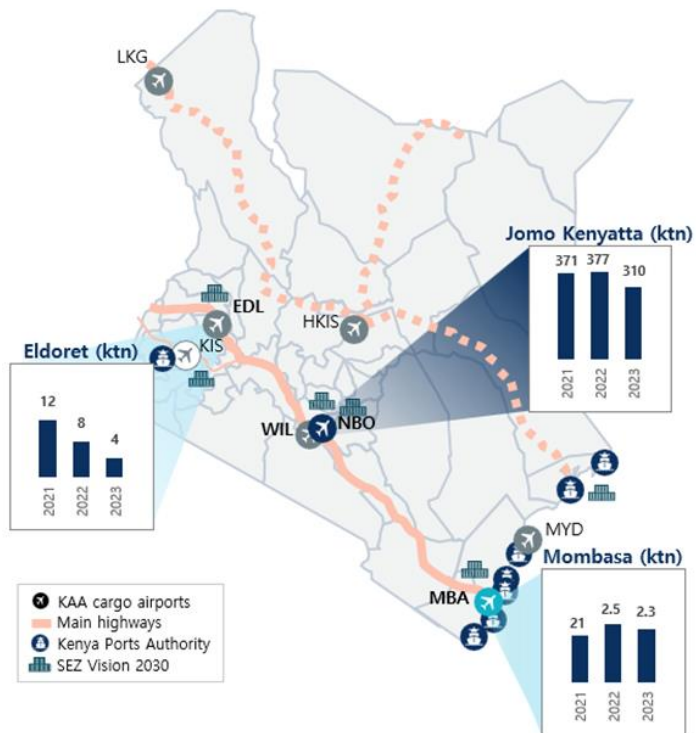
In the past decade, Kenya has experienced stable growth on air cargo traffic reaching 376 thousand tons in 2019 (CAGR 2014-2019: 10.4%). By 2022, pre-pandemic levels have been surpassed by +2.9%, but expectations for 2023 are to reach similar levels than in 2019.



**Figure 77 Kenya air cargo evolution (kTn, 2014-2023)**  
(Source: KCAA, KAA)

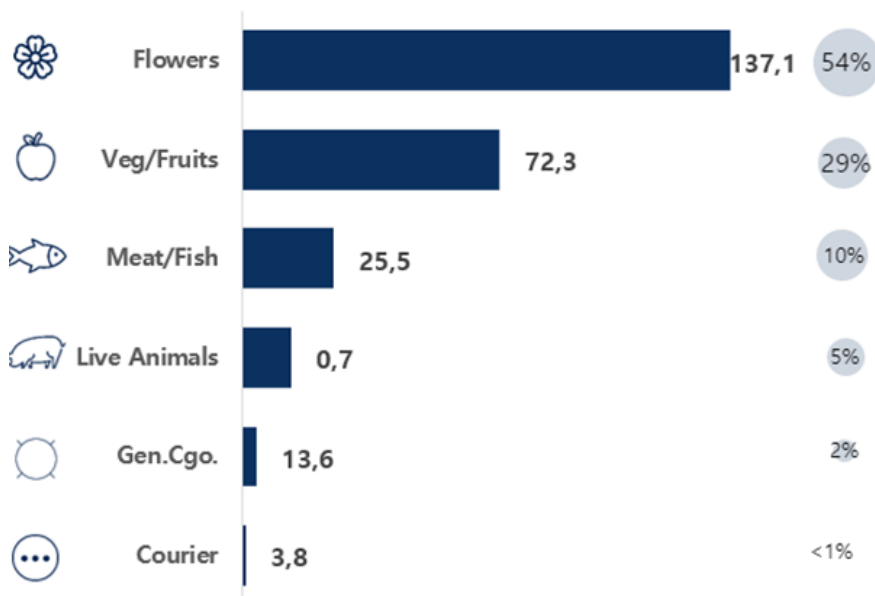
Nevertheless, the Kenyan air cargo market exhibited resilience despite the negative effects of the COVID-19 pandemic. In 2020, compared to 2019, the cargo volume experienced a moderate 10% decrease, which is a less substantial reduction when compared to other cargo airports. Furthermore, the air cargo volumes have been fully recovered by 2021/2022, unlike other regions.

Jomo Kenyatta International Airport (JKIA) has a significant role in handling most of the air cargo in Kenya, representing approximately 95% of its market share. Furthermore, the sustained growth rate of the airport has been the primary contributor to the country's cargo development, especially as the cargo handled in other airports (such as Moi International Airport, Eldoret Airport, etc.) has been steadily declining.



**Figure 78: Kenya cargo airports network (2021-2023E)**  
 (Source: KCAA, KAA, ALG Analysis)

Jomo Kenyatta International Airport primarily exports perishable goods, including flowers, fruits, and vegetables. This category constitutes over 83% of the cargo volume in terms of weight. Kenya in general and Jomo Kenyatta International Airport in particular, have great potential to continue growing and positioning themselves among the world’s top cut flowers exporters.



**Figure 79: JKIA airport exports by product (FY 22/23)**  
 (Source: KAA, ALG Analysis)

The main cargo operators in Jomo Kenyatta International Airport include Kenya Airways Cargo, Astral Aviation, Air France/KLM, Lufthansa Cargo or Emirate Sky cargo among many others. Operators are distributed in different cargo terminals. AFS, Kenya Airways and Signor's alone manage more than 70% of the total air cargo.

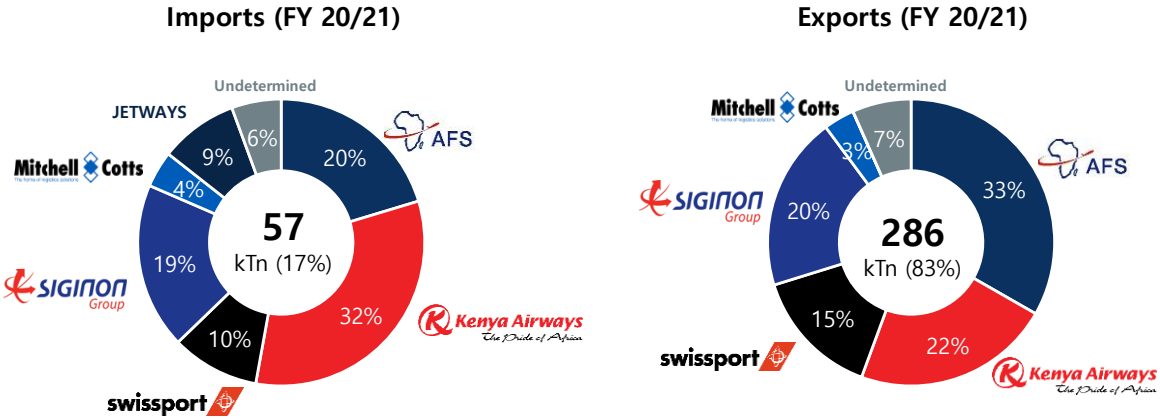


Figure 80: Imports and exports by cargo shed (FY 20/21)  
(Source: KAA)

### 2.2 Air Traffic Development Drivers

The future growth of the air traffic market depends on several key parameters that, when considered collectively, will shape its development. In the case of Kenya, five main drivers have been identified. These drivers will serve as the supporting pillars for the traffic forecast detailed in the following chapter.

Macroeconomics and demography	Transport infrastructure	Tourism	Bilateral agreements & liberalization	Airline Competition & New Routes
<ul style="list-style-type: none"> <li>Air transport demand is dependent on both <b>population and economic development</b></li> <li>The <b>higher the economic development, the higher the air traffic demand</b> is due to higher propensity to fly among <b>local population and business travellers</b> (both local and international)</li> <li>Population growth and distribution translates into <b>more potential passengers and demand distribution</b> among the domestic airports</li> </ul>	<ul style="list-style-type: none"> <li>When land or seas connectivity presents challenges, <b>demand for air travel usually increases</b>, especially in domestic travel</li> <li>Effects of a subpar land or sea connectivity favour <b>demand to multiple closeby airports and airstrips</b> as travellers look to fly as close as possible to their final destination</li> <li>Conversely, <b>improvements in land or sea connectivity</b> compete with air travel and <b>reduce its demand</b> (e.g. high speed trains, road bridges)</li> </ul>	<ul style="list-style-type: none"> <li>Tourism drives air travel demand as the <b>majority of tourists</b>, especially those coming from faraway regions or with short stays, enter and leave the country through air travel</li> <li>In many countries, <b>leisure and VFR travellers are less sensitive to ticket prices</b> than locals and thus are able to stimulate air travel demand even in countries in which <b>high fares or the economic environment do not allow for strong organic air traffic growth</b></li> </ul>	<ul style="list-style-type: none"> <li><b>Air liberalization increases demand for air travel as fares tend to decrease</b> and travel becomes more accessible</li> <li><b>Many african countries are signers of the SAATM, aimed at implementing the Yamossoukro Decision (YD) on African skies</b> liberalization</li> <li><b>Only 10 countries have implemented all proposed concrete measures</b> to comply with the YD</li> <li>The easing or <b>dropping of Visa requirements</b> usually results in an <b>increase of international air travel</b></li> </ul>	<ul style="list-style-type: none"> <li>Historically, air transport <b>liberalization has led to airline competition, reduction of yields</b> (ticket price in USD/km) and development of LCCs</li> <li>Allowing the creation or establishment of more efficient airlines into the country, including LLCs, regardless of nationality, <b>stimulate air travel demand by making travel more accessible especially to middle-class citizens as fares decrease</b></li> </ul>
<b>Vision 2030</b>				
<p><b>Air traffic and transport infrastructure are key to the realization of Kenya's Vision 2030, which aims to transform the country into a newly industrializing, middle-income country providing a high quality of life to all its citizens by 2030 in a clean and secure environment</b></p>				

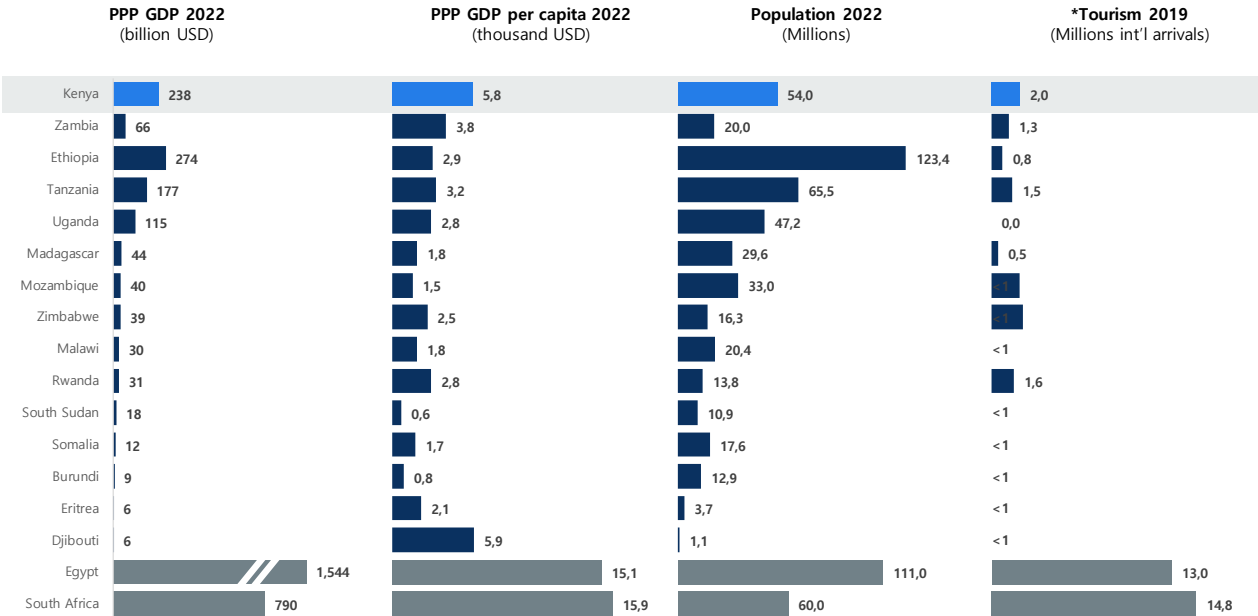
Figure 81: Main air transport drivers

### 2.2.1 Macroeconomics and demography

Air transport demand is highly linked to both population and economic development. Higher levels of economic development lead to increased air traffic demand among the local population and business travellers (both local and international).

Population growth and distribution play a crucial role in determining the potential number of passengers and the distribution of demand across various regions of the country. This, in turn, not only presents opportunities for the construction of new airports or the enhancement of existing ones, more importantly, contributes to increases in air travel.

Kenya is one of the most prosperous countries in Eastern Africa, excelling in those indicators that have a direct impact on air traffic development. As shown in the figure below, Kenya is above the regional average in terms of GDP and GDP per capita, population and number of international tourists.

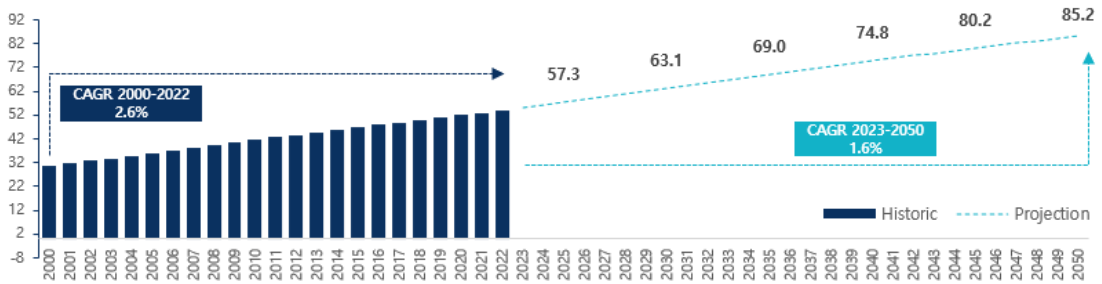


**Figure 82: Benchmarking of macroeconomic indicators of countries in East Africa**

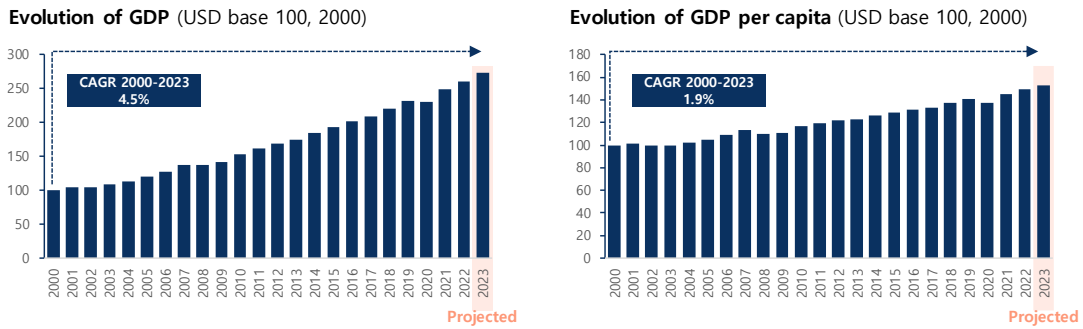
(Source: World Bank, Oxford Economics, UNWTO, Country government tourism statistics, ALG Analysis)

The improvements in social and political stability, notably since 2010, have had a favourable impact on Kenya's economic recovery, attracting private sector investments. This favourable trend along with population growth and economic development have propelled Kenya's advance and improved living conditions. Consequently, the Kenyan economy has steadily grown over the last few decades achieving a 4,5% CAGR GDP growth from 2000 to 2023.

As one of the most robust sub-Saharan economies, both population and GDP in Kenya have experienced steady growth in the last decades.

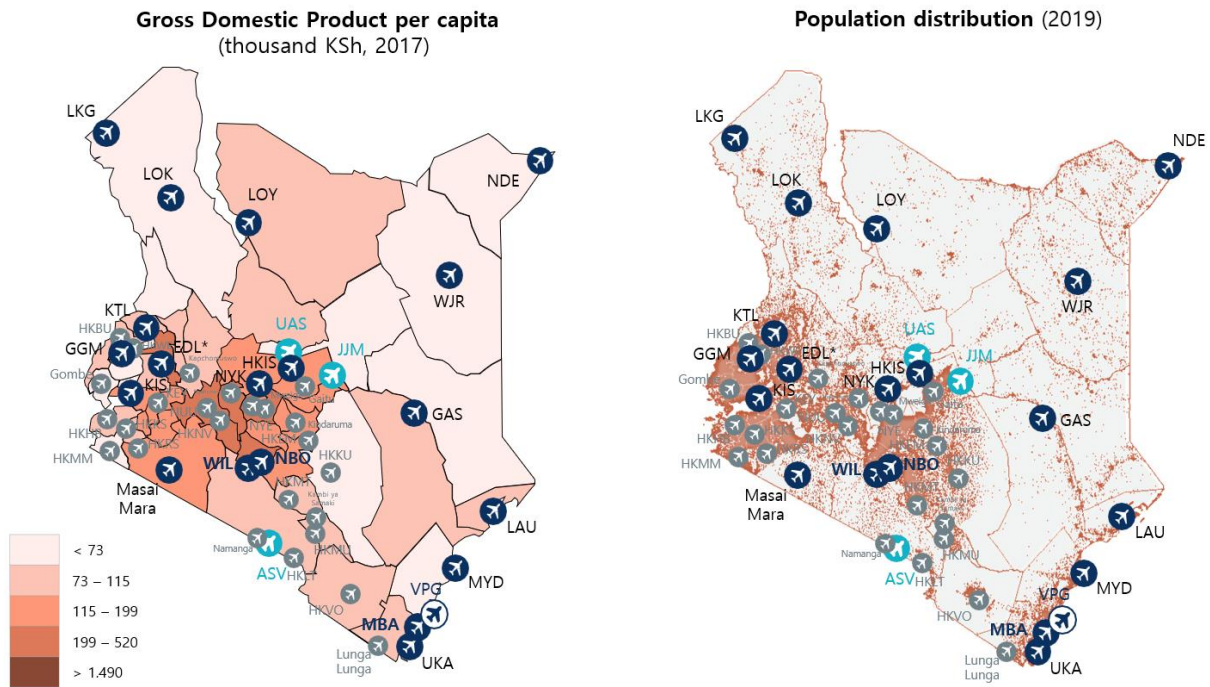


**Figure 83: Kenya population evolution (million inhabitants)**  
(Source: Oxford Economics, UN)



**Figure 84: Kenyan economy evolution**  
(Source: Oxford Economics)

Kenya's population stands at 54 million (2022 figures), the majority of which is concentrated in five of the 47 counties. The largest population is centered around Nairobi, the coast and the bay of Lake Victoria.

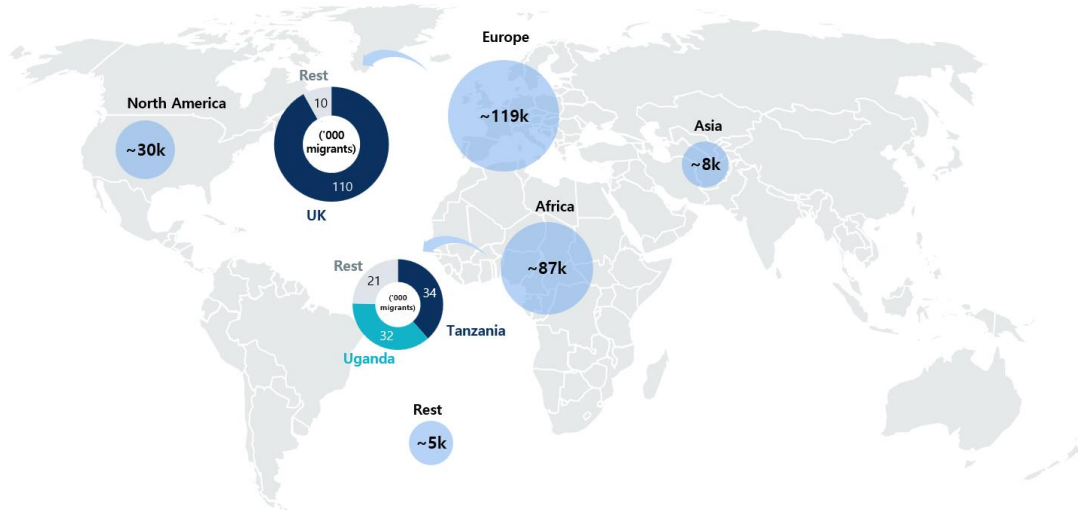


**Figure 85: Relationship between macroeconomic indicators and airport locations**  
(Source: KNBS)



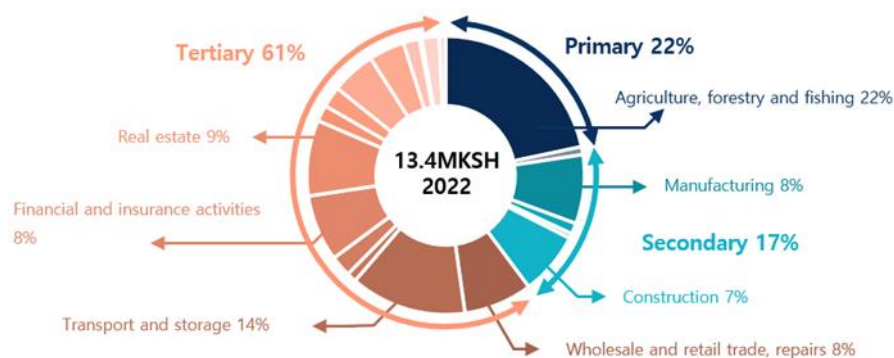
Most airports are located within these densely populated counties, that are also the most economically developed zones, and where most air traffic is concentrated. On the other hand, airports situated in counties with a low population density contribute to the country’s internal connectivity.

Kenya’s diaspora is estimated by the United Nations to consist of 250,000 people, equivalent to 0.5% of the country’s population. Kenyans living abroad mainly do so in highly developed economies such as the UK, representing 44% of all Kenyans living abroad, or USA and Canada (6% each). Neighboring countries such as Tanzania and Uganda each host around 13% of Kenyan emigrants.



**Figure 86: Emigration destinations from Kenya (2019)**  
(Source: United Nations)

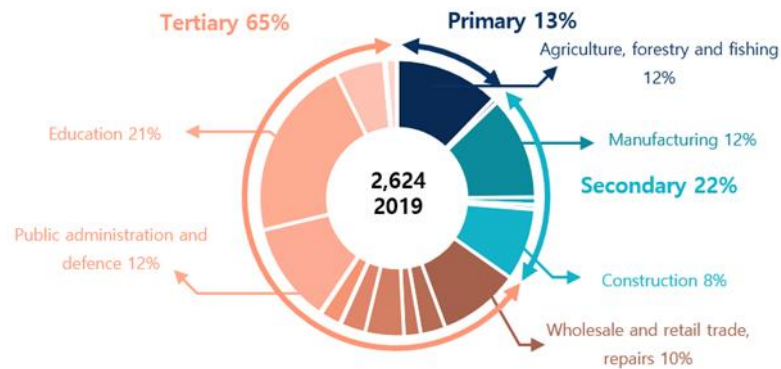
Kenya’s economy is primarily driven by the tertiary (service) sector which accounted for nearly two thirds of the economy in 2022. This sector encompasses transport/storage services, finance and insurance, retail, real estate, tourism, and other services. This sector is also where most of the population is employed with 65% of the workforce contributing to the tertiary sector in 2019.



**Figure 87: Kenyan GDP composition**  
(Source: Kenya National Bureau of Statistics)

The secondary sector makes up 17% of the economy and 22% of the formal workforce. The industries in this sector are largely based on the processing of imported goods and local crops. The government’s support for export-oriented industries have positioned the country as one of the most industrially developed in Africa.



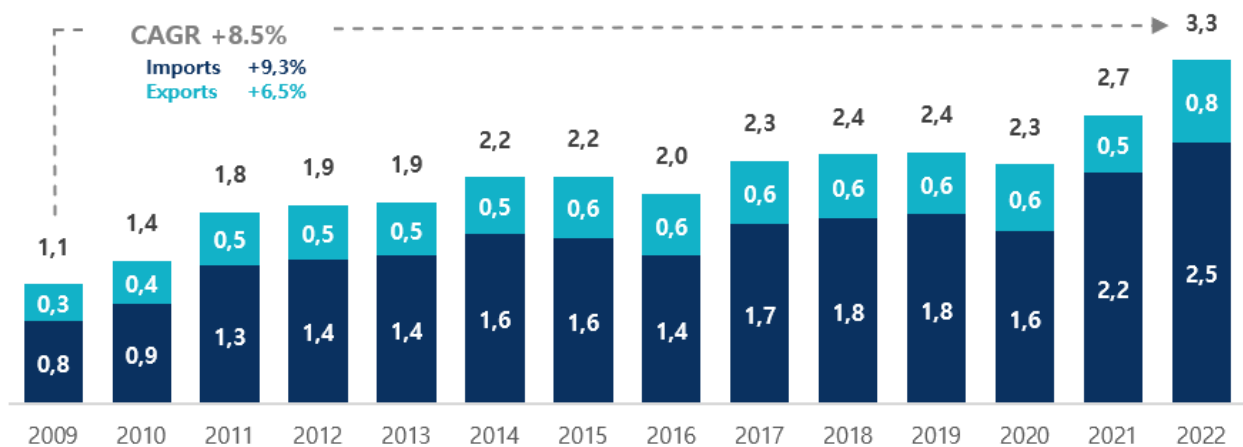


**Figure 88: Formal workforce distribution in Kenya**

(Source: Kenya National Bureau of Statistics)

Lastly, the primary sector accounts for 22% of GDP and employs 13% of the formal workforce. Kenya relies on important natural resources such as tea and flowers to export internationally. Though agriculture makes up the bulk of the primary sector, fishing and animal production hold a smaller portion (3% and 16%, respectively) of the primary sector.

Kenya's biggest trade partners are located in Asia, though a substantial amount of trade is done with Europe and Africa, and to a lesser extent, the Americas. Trade has steadily increased in the last decade with an average CAGR of 8.5% from 2009-2022. However, Kenya operates at a trade deficit, as is common for many sub-Saharan countries.



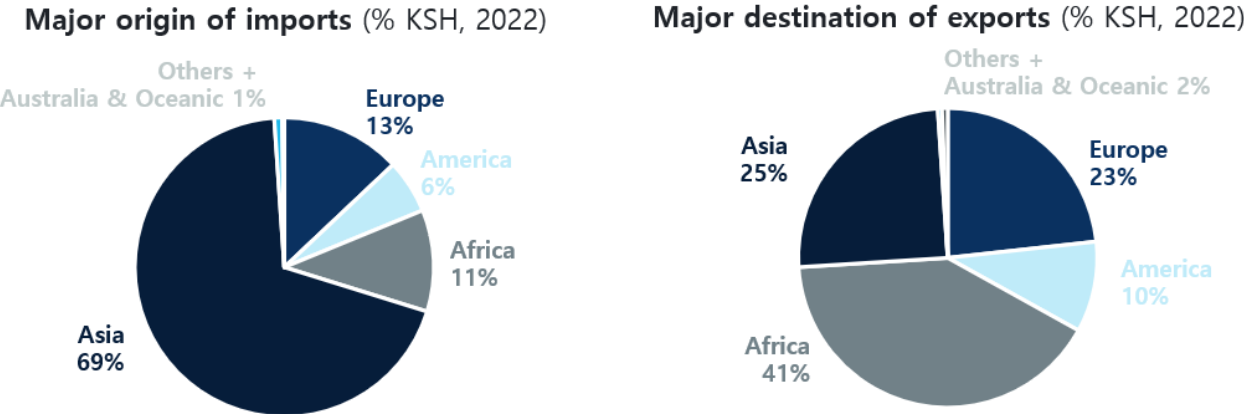
**Figure 89: Historical trade value (bKSH)**

(Source: Kenyan Bureau of Statistics)

While trade has sustained continuous growth over the last years, even in spite of COVID, the proportion of imports to exports has remained relatively unchanged. Exports have historically fluctuated between 20-30% of total trade value.

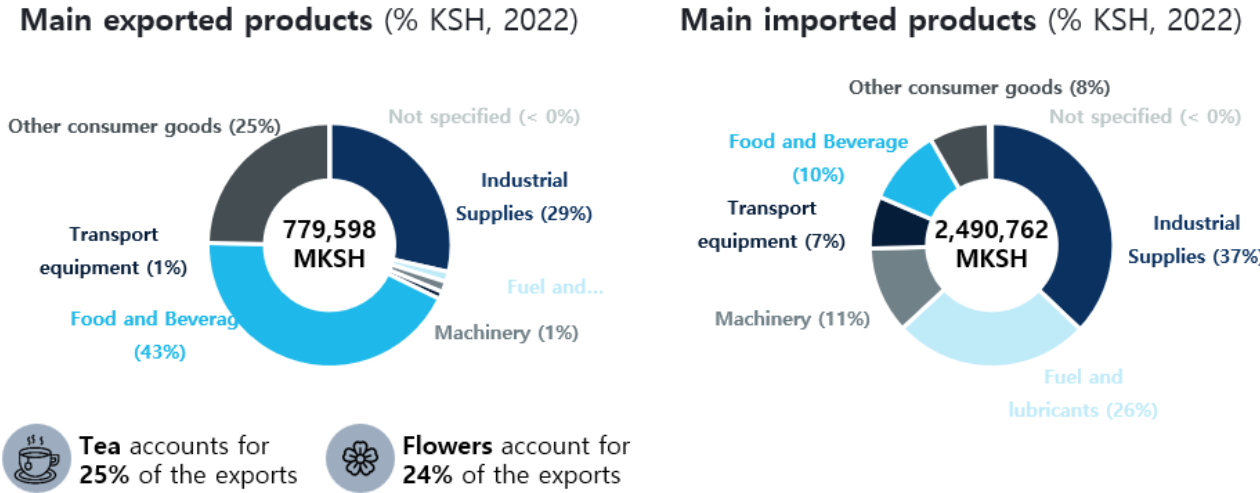
The trade deficit is primarily attributed to a heavy reliance on Asian imports, which account for 70% of the total imports. These imports from Asia predominantly consist of industrial supplies, fuel and lubricants, with China being the main supplier.

Exports, on the other hand, are primarily directed to other African nations, constituting 41% of total exports. Europe and Asia also play significant roles as export destinations, each accounting for about a quarter of the total export value.



**Figure 90: Main origins and destinations of imported and exported goods**  
(Source: Kenya Bureau of Statistics)

In alignment with the GDP composition, Kenya's exports comprise food and beverage, industrial supplies, and other consumer goods. Notably, tea and flowers account for 25% and 24% of the exports, and these products are usually transported via air.



**Figure 91: Main imported and exported products**  
(Source: Kenya National Bureau of Statistics)

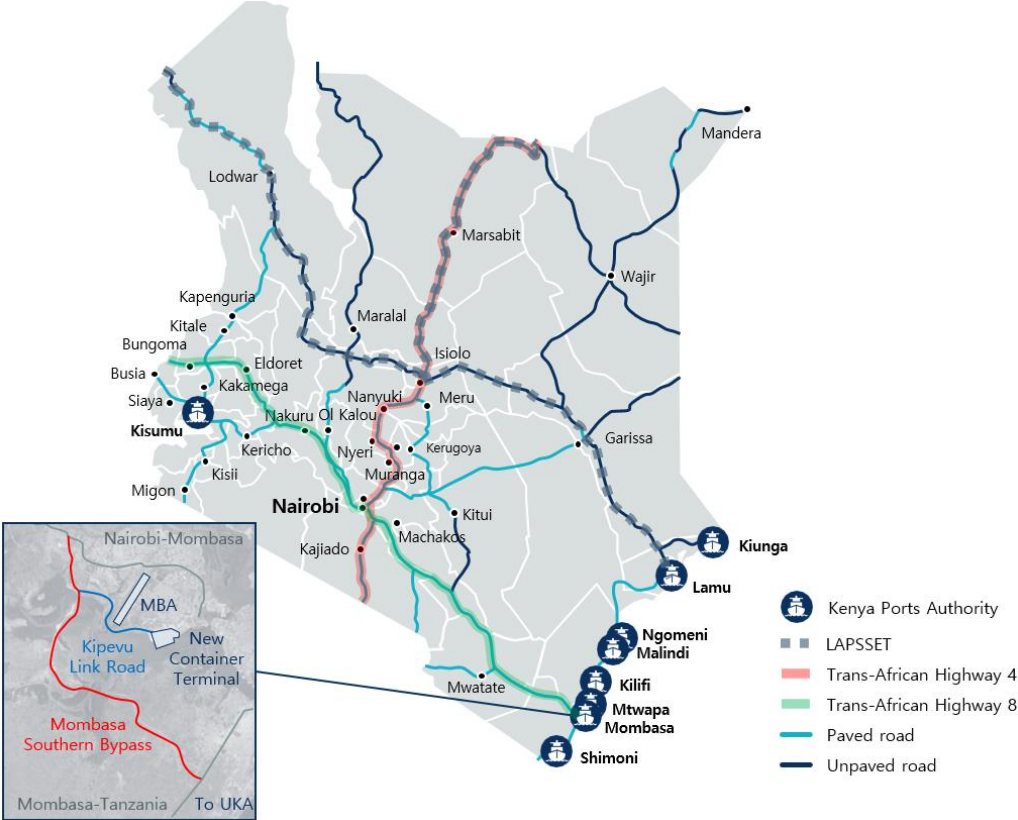
**2.2.2 Transport Infrastructure**

Transport infrastructure plays a pivotal role in shaping the demand for air travel. The condition of both land and sea connectivity is tied to the demand for other means of transport. When land or sea connectivity faces challenges, this is usually reflected in an increase in air transport demand, particularly in domestic routes, where air travel becomes essential to meet the demand of individuals without access to other

options. Conversely, improvements in land or sea connectivity such as the introduction of high-speed trains or road bridges, may reduce the demand for air transport.

In the case of Kenya, road infrastructure is partially underdeveloped and mostly concentrated in the southern part of the country. A significant portion of the roads are unpaved (88%), and only 36% of all roads are in good condition. 43% of the roads are in fair condition and the remaining 21% are in poor condition. As a result, air travel is of the essence to connect populated and remote areas.

Two of the most relevant routes in the continent go through Kenya: Trans African Highways 4 and 8 (Cairo to Cape Town and Lagos – Mombasa, respectively).



**Figure 92: Class A road network and most important ports in Kenya**  
 (Source Kenya Roads Board, Construction Kenya, Google Maps)

New road developments, such as the Mombasa Southern Bypass and LAPSET (Lamu Port-South Sudan-Ethiopia Transport), are expected to impact air transport in various ways. The Mombasa Southern Bypass aims to address bottlenecks at the Likoni ferry and reduce driving time from Ukunda to Mombasa. On the other hand, the LAPSET corridor is set to connect Lamu Port to South Sudan and Ethiopia, potentially fostering the development of new industries and increasing the demand for air cargo transportation.

**2.2.3 Tourism**

Tourism is an important driver for air travel as most tourists, especially those coming from farther regions, enter and exit the country by air. In many cases, leisure and VFR (visiting friends and relatives) travelers are less sensitive to ticket prices compared to local travelers. These types of tourists can stimulate air travel

demand even in countries where high fares or economic conditions might otherwise hinder organic air traffic growth.

International tourism is volatile and susceptible to economic and political instability. Tourists may consider alternative destinations that are cheaper or perceived as safer during times of instability. Over the past two decades, internal disputes and terrorist attacks in Kenya have led to periodic declines in total tourist numbers, with recovery taking up to five years each time. These events have made it a struggle for Kenya to break the 2 million annual visitors mark.

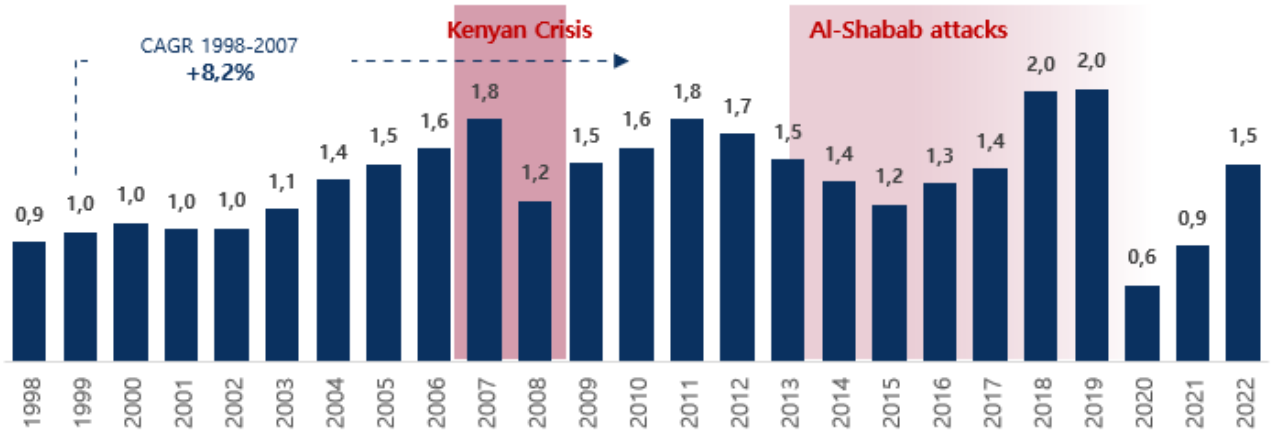


Figure 93: Evolution of tourists in Kenya (Million visitors)

(Source: World Bank)

The short-term effects of Covid on tourism in Kenya were pronounced, as levels dropped by almost 75% in 2019. Data for 2021 and 2022 indicates that levels are recovering, with latest figures showing 1,5 million visitors in 2022.

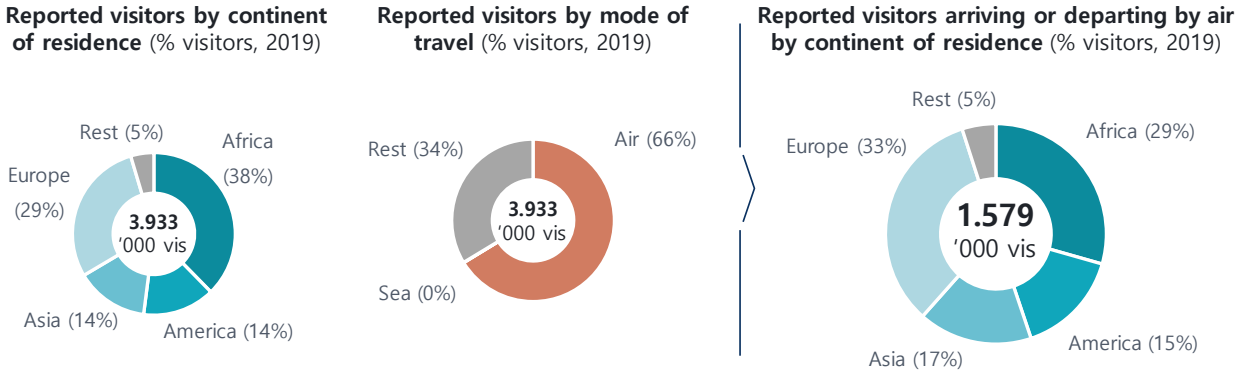


Figure 94: Tourism key figures

(Source: Kenyan National Bureau of Statistics)

As illustrated in the figure above, in 2019 most visitors arrived by air (66%), with Africa (38%), followed by Europe (29%) as the main source of visitors.

Kenya is the third most visited country in East Africa, surpassed only by Mozambique and Zimbabwe. The appeal of its sunny coasts and stunning beaches attracts tourists in the southeast region, while the extensive national parks and safaris attract tourists to the central and southwest areas. This diversity in attractions is one of the main advantages Kenya holds over neighbouring countries, which may not be able to offer both safari experiences and beach resorts.

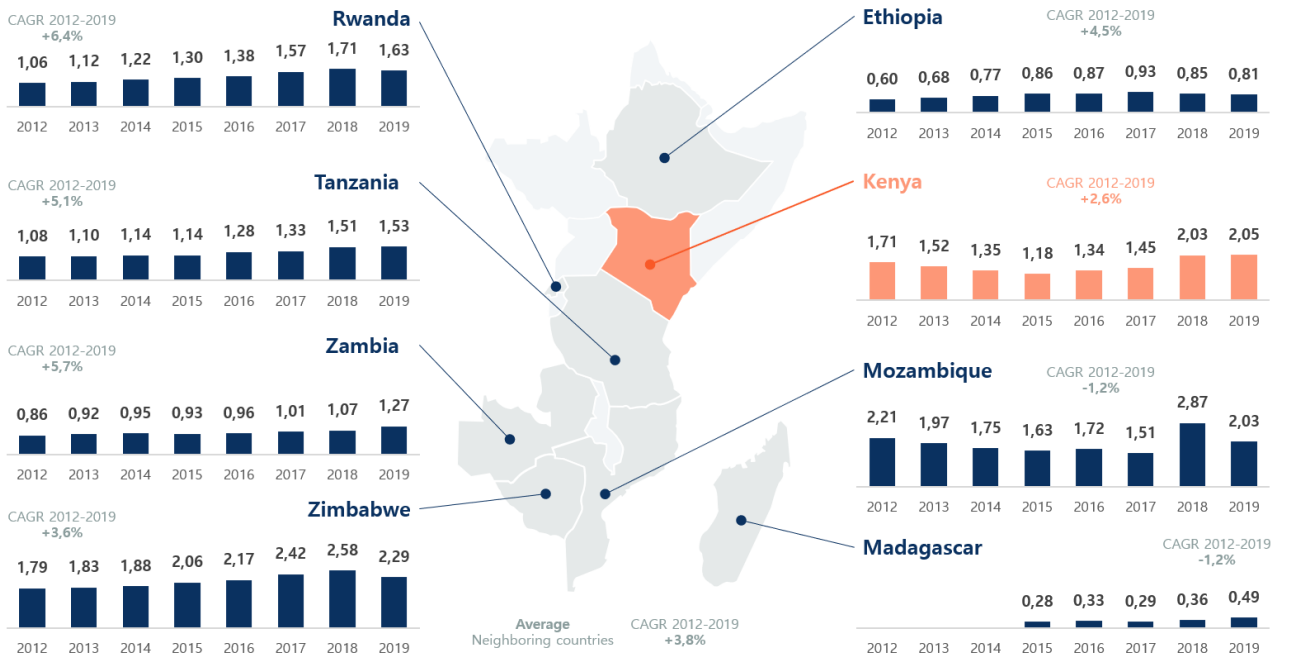


Figure 95: Historic evolution of tourists in Eastern Africa

(Source: World Bank)

Nairobi and Masailand are the two main visited regions, accounting each for 24% of tourists. Both regions offer natural reserves and safari experiences. The central part of the country attracts 21% of visitors and features renowned natural attractions such as Mt. Longonot, Hell’s Gate Park and Lake Bogoria. The coastal region accounts for 18% of tourism and encompasses a blend of beach resorts, famous landmarks, and natural reserves.

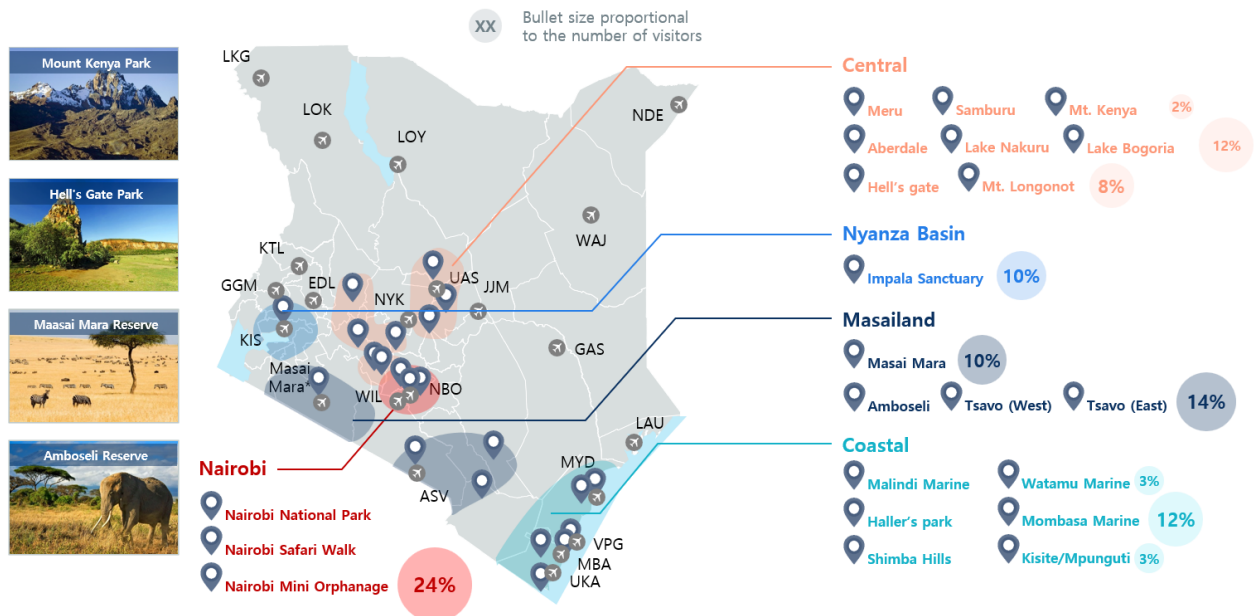


Figure 96: Main tourist attractions in Kenya

(Source: KNBS)

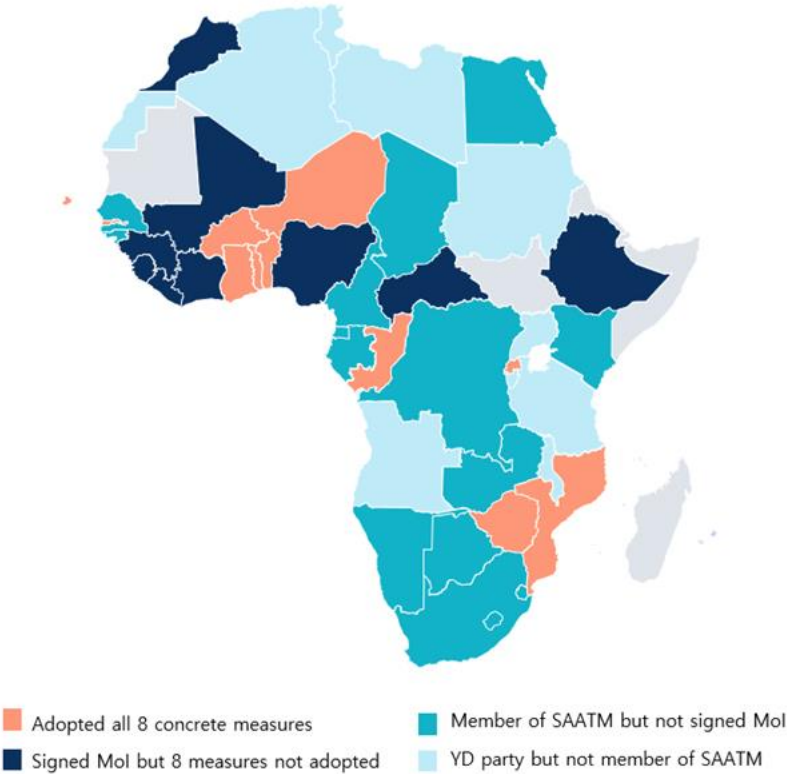
**2.2.4 Bilateral Agreements and Liberalization**

Air liberalization is a critical factor in driving the supply for air travel, making it more accessible and affordable. Essentially, it creates the freedom for airlines to operate on a fully commercial basis. Across Africa, the implementation of the Yamoussoukro Decision (YD) and the Single African Air Transport Market (SAATM) aim to liberalize African skies, fostering fair competition, safety, and security in the aviation sector.

The Yamoussoukro Decision, seeks to liberalize the internal African aviation market by removing restrictions on ownership, granting up to 5<sup>th</sup> freedom traffic rights, and fully liberalizing frequencies, fares, and capacity. It also introduces safety and security standards, eligibility criteria for African community carriers, and mechanisms for fair competition and customer protection.

SAATM, launched in 2018, serves as the implementation vehicle for the Yamoussoukro Decision, creating a unified air transport market in Africa. As of April 2023, 35 countries have signed SAATM, representing over 61% of African Union member states, 70% of the African population, and more than 80% of Africa's aggregate GDP.

However, the implementation of these measures faces challenges. Only ten countries, including Benin, Burkina Faso, Cape Verde, Ghana, Mozambique, Niger, Congo, Rwanda, Gambia, and Togo, have fully implemented the eight concrete measures outlined in the YD. These 8 concrete measures include:



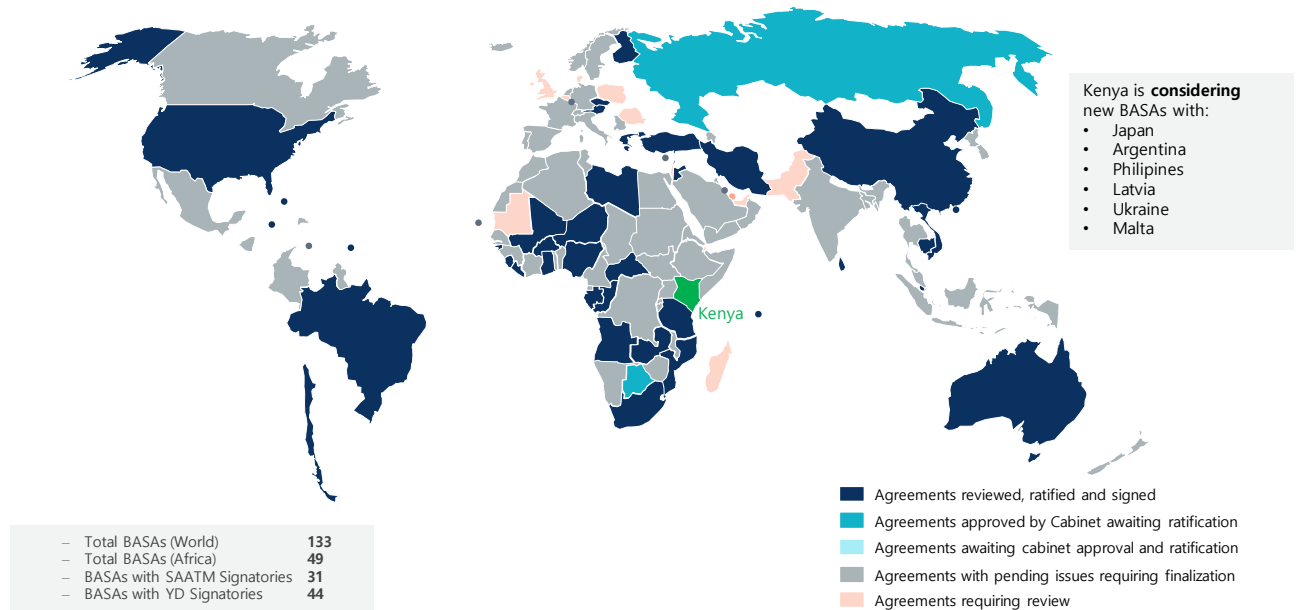
**Figure 97: SAATM adoption**  
 (Source: African Union, AFRAA, IATA) AFCAC)



1. **Publish** the country's commitment to the YD.
2. **Notify** other states about their liberalization.
3. **Ensure conformity** with the YD.
4. **Propose** a national/multi-national airline to the AFCAC.
5. **Constitute** a YD implementation committee.
6. **Organize** public awareness activities.
7. **Celebrate** the YD anniversary.
8. **Sign** the Memorandum of Implementation (MoI)

Even though Kenya has not yet committed to the implementation of YD, the country has signed or is working towards signing bilateral agreements with a significant number of countries globally, totaling 133. This extensive network of bilateral agreements positions Kenya favorably in international air travel.

According to a Continental Study on the Benefits of the SAATM conducted by IATA and the African Union Commission (AUC), the potential benefits for Kenya include 110M USD in fare savings, a 180M USD consumer surplus, and an increase in air traffic demand by approximately one million passengers, leading to a substantial rise in employment and a positive impact on GDP, estimated to be more than 0.20%.



**Figure 98: Bilateral Air Service Agreements (BASA) between Kenya and other countries**  
(Source: Ministry of Transport of Kenya)

### 2.2.5 Airline competition and new routes

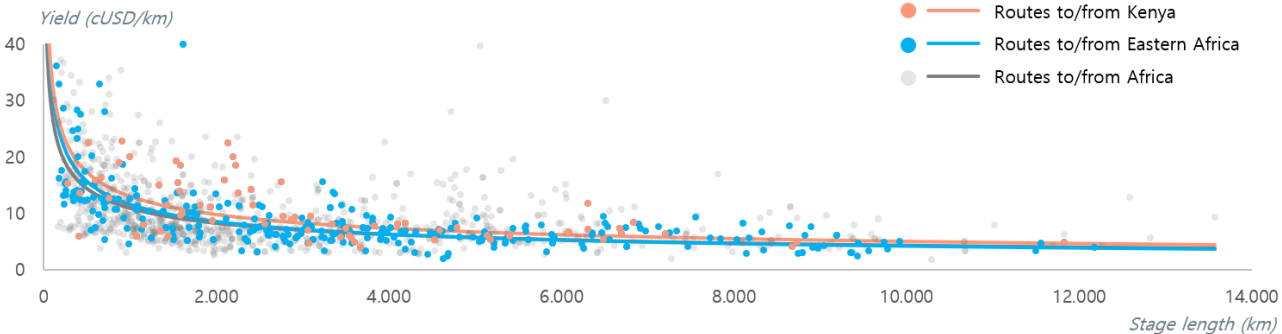
Air transport liberalization has historically led to increased airline competition, resulting in several effects on the air travel market.



Aggressive competition among airlines typically results in a decline in the average ticket price. Intense competition and "price wars" contribute to making air travel more affordable for a broader segment of the population, thereby boosting overall demand in the air transport market.

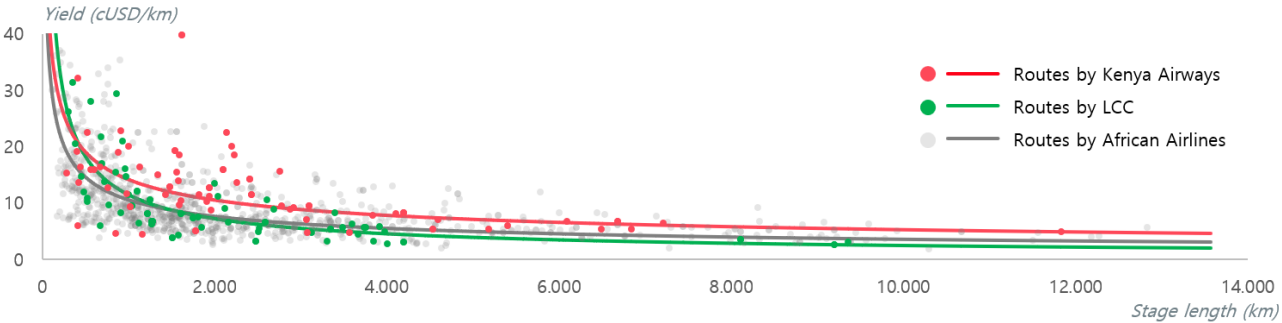
The introduction and establishment of more efficient airlines, including Low-Cost Carriers, regardless of their nationality, can stimulate air travel demand. This is particularly true for the middle-class demographic, as lower fares make air travel more accessible to a larger population.

In the context of Kenya, the yields are relatively higher compared to regional and continental averages. Kenya's yields are approximately 17% higher than the regional and continental average. The figure below illustrates this trend, showing that in both short-haul and long-haul flights, Kenya's yields are higher compared to Eastern Africa and Africa as a whole.



**Figure 99: Average yield in routes to/from Kenya, Eastern Africa, and Africa**  
(Source: OAG)

When distinguishing by airlines, in the routes operated by Kenya Airways the yield consistently stands much higher than the average for African airlines (+41%) and Low-Cost Carriers (LCCs) (+73%).

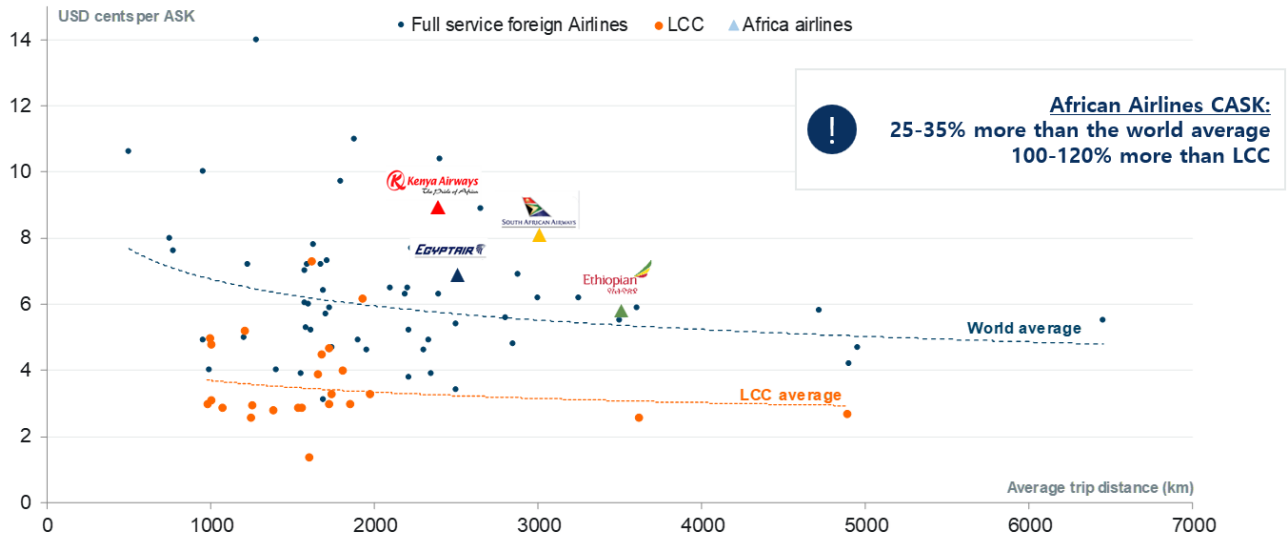


**Figure 100: Average yield in routes operated by Kenya Airways LCC and African airlines**  
(Source: OAG)

However, Kenya Airways narrows the difference in yield with other airlines, particularly in the short-haul segment, especially for routes of less than 500 kilometers long. This suggests that Kenya Airways may adjust its pricing strategy or face different competitive dynamics in shorter-distance flights.

In terms of cost per Available Seat Kilometer (CASK), Kenya Airways stands out with the highest CASK among the African airlines considered, though most African airlines are above the world average. This higher cost can be attributed to various factors, including endogenous challenges like an aging fleet, leasing deals and a lack of a clear strategy. Exogenous factors such as government taxes, and the elevated

cost of non-liberalized airport services (e.g., handling, fuel, etc.) also contribute to the airline's higher CASK in Africa.



**Figure 101: Cost Available Seat Kilometer (CASK) vs. Average trip distance per seat**  
 (Source: CAPA, OAG, Flight Global)

African airlines, on average, face CASK values that are 25% to 35% higher than the world average and more than double the values of Low-Cost Carriers (LCCs). This highlights the challenges and cost disparities that these carriers contend with in the global aviation landscape.

Future outlook for airlines in Africa, influenced by the COVID-19 crisis, revolves around three main points:

**Consolidation of Large Groups:** To strengthen their presence in the region, some airlines have pursued consolidation by acquiring or creating subsidiaries in different African countries. Examples include Kenya Airways with Jambojet, Precision Air, and Ethiopian Airlines with entities like Malawian, Zambia Airways, and ASKY.

**Emergence of New Players:** New-generation airlines adopting low-cost principles have emerged, primarily focusing on the domestic and regional market. Examples include FastJet in Mozambique or FlySafair in South Africa, showcasing a trend toward low-cost operations.

**Disappearance of Less Competitive Airlines:** Airlines facing challenges in competitiveness and profitability have exited the market. A recent example is South African Airways, which entered in business rescue proceedings in 2019 and ceased operations by 2020 due to the pandemic impact and the several problems carried along over the years despite resuming operations a year later (loss of domestic market share resulting from government deregulation in 1991, issues of corruption, emergence of competitors such as Comair or FlySafair, non-profitable international routes, etc). There are other examples, such as Air Guinee or Air Ivoire, which have completely disappeared due to an inability to survive the competitive landscape.

Major African and Middle Eastern airlines, including Kenya Airways, are actively participating in smaller airlines through various schemes. This strategy can involve both cash or in-kind contributions such as

capital or equipment in exchange for equity stakes, and different agreements or contracts, fostering collaborations and expansions.



**Figure 102: Examples of consolidations of African airlines into larger groups**

Despite the presence of airlines such as Fastjet or FlySafair in the low-cost carrier (LCC) sector, LCCs are underrepresented in Africa. High operational costs, low traffic, low liberalization and the dominance of state-owned airlines present obstacles to the growth of LCCs. However, as operational costs decrease, and the population gains better access to air transport through economic development, the potential for low-cost airlines to operate in more countries may increase, as has happened in South Africa and Egypt.

**2.2.6 Vision 2030**

The macroeconomic indicators in Kenya have shown growth over the last two decades, particularly after the implementation of the Medium-Term Plan initiated in 2008. This plan aims to accelerate the transformation of Kenya, making it globally competitive and prosperous with a high quality of life. A crucial component of this vision is Vision 2030, a 5-year Medium Term Plan that serves as a guiding strategy for the country's development.

Vision 2030 outlines a strategy for Kenya to become globally competitive and prosperous by 2030, and it plays a significant role in shaping the demand for transport infrastructure and services. Factors such as economic policies, population growth, urbanization, increased trade volume, and productivity both within Kenya and its neighboring countries are expected to influence the demand for transportation infrastructure.

The vision emphasizes a well-connected country with an extensive network of roads, railways, ports, airports, water and sanitation facilities, and telecommunications. The goal is to eliminate the concept of any region being considered remote by 2030. Priority is given to infrastructure investment to support the implementation of the Big Four pillars, which include manufacturing, universal healthcare, affordable housing, and food security.

Under Vision 2030, several Special Economic Zones (SEZs) are planned for development, including:

1. **Greater Mombasa SEZ** (Master Plan Finalized and Detail Design ongoing, Resettlement Action Plan Done)
2. **Lamu SEZ** (Licensing ongoing)
3. **Kisumu SEZ**
4. **AEZ SEZ** (Private, Licensed)
5. **Tatu City SEZ** (Private, Licensed)
6. **Konza SEZ** (Licensing ongoing)

Special Economic Zones can encompass various types, including free trade zones, industrial parks, free ports, information and communication technology parks, science and technology parks, agricultural zones, tourist and recreational zones, business service parks, or livestock zones. While SEZs often rely heavily on road and maritime transport, airports may directly and indirectly benefit from the activities developed in these zones.



**Figure 103: Road, port, and airport network outlined in SEZ**  
 (Source: Kenya Roads Board, KAA Vision 2030)

### 3 Traffic Forecast

#### 3.1.1 Introduction to forecasting methodology

The passenger traffic projection for Jomo Kenyatta International Airport is based on a methodology that consists of two approaches:

- The **Top-Down** approach establishes long-term growth trend and employs econometric or statistical modelling methodologies.
- The **Bottom-Up** methodology results in a detailed short-term forecast for the first 3-5 years, taking into account factors that impact short-term traffic, as well as the latest information on airline routes and strategies. The analysis includes the impact of COVID-19 and the recovery path followed and foreseen. Likewise, the seat supply published by airlines in GDS systems for the upcoming months is also considered.

In addition to passenger traffic, forecasts are also conducted for air traffic movements and cargo traffic. The air traffic movements forecast relies on forecasts of average aircraft size and load factors. The cargo traffic forecast adopts a combined top-down and bottom-up methodology, mirroring the approach used for passenger traffic projections.

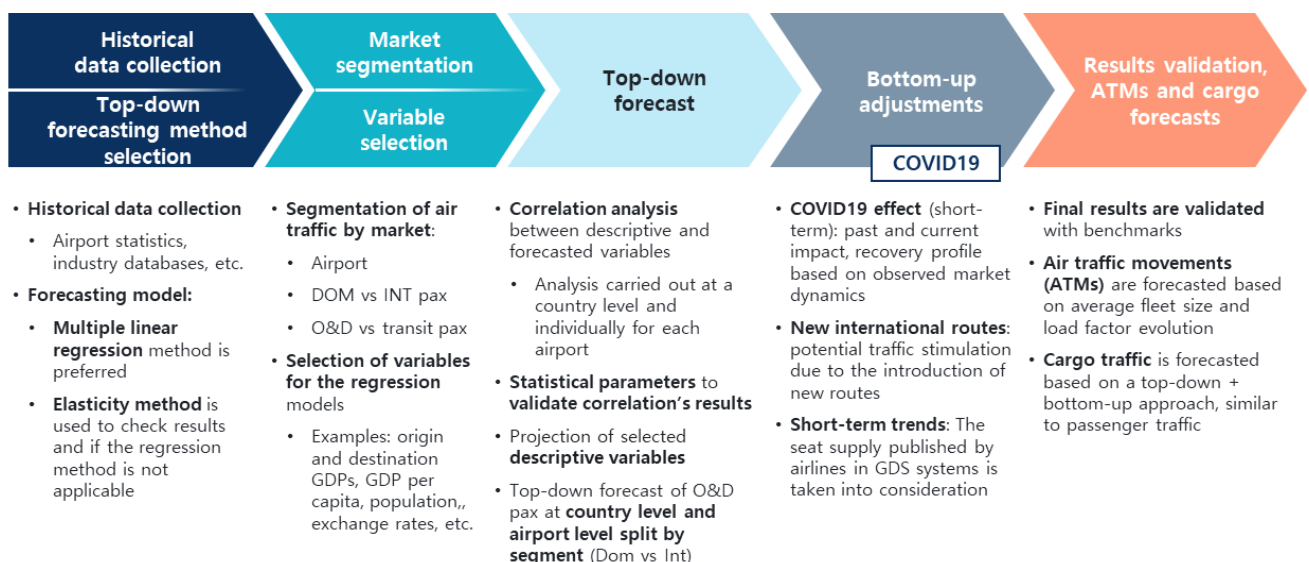


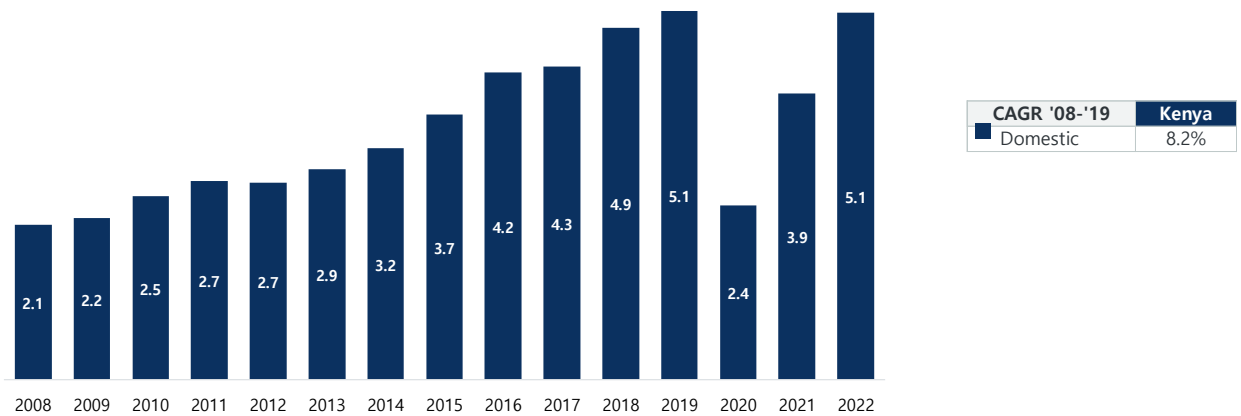
Figure 104: Traffic forecasting methodology

#### 3.1.2 Top-down/econometric model

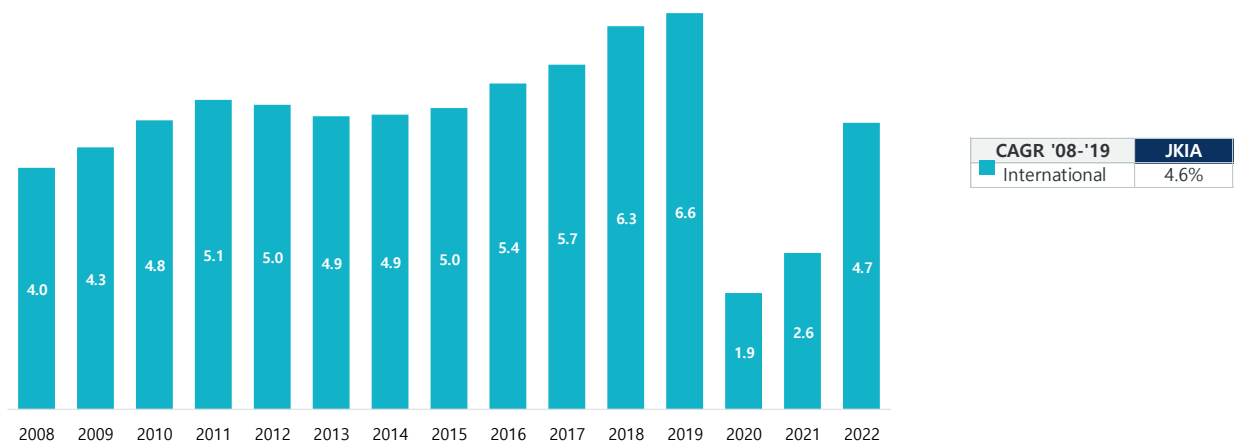
The initial phase of the methodology involves projecting the long-term traffic pattern using a top-down econometrical model.

This model is implemented firstly for the domestic traffic of Kenya at country level (to ensure better correlation), and then for the international segment of Jomo Kenyatta International Airport.

The figures below illustrate the historical traffics, on which regressions are applied.



**Figure 105: Historic domestic passenger traffic in Kenya (Mpax)**  
(Source: KAA)



**Figure 106: Historic international passenger traffic in JKIA (MPax)**  
(Source: KAA)

The multivariable regression model guarantees that the connections between historical traffic and the chosen descriptive variables are statistically significant, forming a reliable basis for the traffic forecast.

In the process of selecting descriptive variables, various regressions have been tested using variables typically correlated with historical air traffic, such as GDP, GDP per capita, population, etc. Notably, the most favorable outcomes have been obtained when incorporating the GDP of Kenya and the GDP of the regions and countries of origin for passengers flying to Jomo Kenyatta International Airport.

	Economy-related					Industry-related	
	GDP (local and regional)	GDP per capita (local and regional)	Population (local and regional)	Foreign Exchange	Oil price	Yields	Tourism
<b>Relation with air traffic</b>	GDP evolution reflects the economic development of the country or region	GDP per capita represents the wealth level of its citizens and their access to air transport	Population evolution represents growth in the potential size of the market with access to air transport	As local currency devaluates, foreign currencies become stronger and inbound traffic is stimulated because travel becomes cheaper	Fuel usually represents the largest OpEx for airlines. Air fares are directly correlated with Brent price (lower yields, higher traffic)	The offer of airlines affects yields and stimulates short-term demand. Yields represent the accessibility to air transport	Tourism is one of the main sources of air traffic, and therefore airport traffic is directly correlated
<b>Pros &amp; Cons for air traffic forecast</b>	<b>Pros</b> <ul style="list-style-type: none"> <li>Robust projections are available</li> <li>Normally correlates extremely well</li> </ul> <b>Cons</b> <ul style="list-style-type: none"> <li>May have limitations for small markets</li> </ul>	<b>Pros</b> <ul style="list-style-type: none"> <li>Robust projections are available</li> <li>Normally correlates well</li> </ul> <b>Cons</b> <ul style="list-style-type: none"> <li>Does not take into account the size of the market (population)</li> </ul>	<b>Pros</b> <ul style="list-style-type: none"> <li>Projections available</li> </ul> <b>Cons</b> <ul style="list-style-type: none"> <li>May be correlated with GDP and therefore is better used in combination with GDP per capita</li> </ul>	<b>Pros</b> <ul style="list-style-type: none"> <li>Projections available</li> <li>Tends to correlate well with int'l traffic</li> </ul> <b>Cons</b> <ul style="list-style-type: none"> <li>Volatile projections</li> <li>Different impact for outbound and inbound</li> </ul>	<b>Pros</b> <ul style="list-style-type: none"> <li>Projections available</li> <li>Tends to correlate well with traffic</li> </ul> <b>Cons</b> <ul style="list-style-type: none"> <li>Volatile projections</li> <li>Difficult to find a good correlation</li> </ul>	<b>Pros</b> <ul style="list-style-type: none"> <li>Good correlation with short-haul and long-haul markets</li> </ul> <b>Cons</b> <ul style="list-style-type: none"> <li>No robust projections available</li> </ul>	<b>Pros</b> <ul style="list-style-type: none"> <li>Exceptional correlation factors with traffic</li> </ul> <b>Cons</b> <ul style="list-style-type: none"> <li>No robust projections available; usually projections are too optimistic (targets)</li> <li>May inter-correlate with GDPs</li> </ul>
<b>Elasticity</b>	+	+	+	+	-	-	+

Figure 107: Descriptive variables selection for Kenya's air traffic forecast

As mentioned before, the model is applied separately to domestic traffic at country level and international traffic at airport level for Jomo Kenyatta International Airport.

In all the segments analyzed, historical air traffic demonstrates the strongest correlation with a two or three-variable linear regression model in which the independent variables are the GDP of Kenya and of the regions where most traffic originates.

Specifically, domestic traffic within Kenya exhibits correlation with both the national GDP and the GDP of OECD countries. This is represented by the dual dimension of the domestic market which, in one hand, is extensively depicted by Kenyans and on the other, by international passengers arriving through Jomo Kenyatta International Airport and later flying to their final destination or travelling around Kenya's most visited touristic areas.

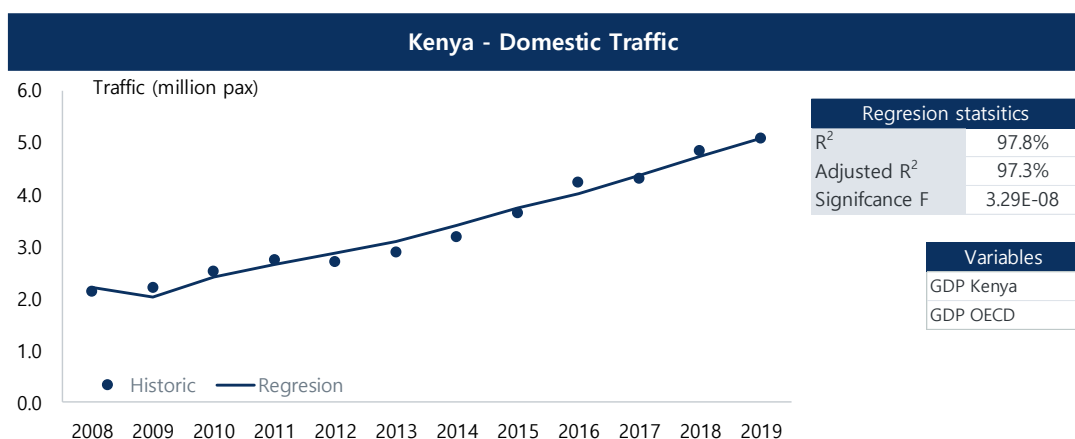


Figure 108: Domestic traffic at country level multivariable lineal regression results



Similarly, the international traffic in Jomo Kenyatta International Airport correlates well with the national GDP. The other two GDPs considered are representative of the passenger profile at the airport; OECD as the origin of O&D traffic (and to a lesser extent, some connecting international traffic) and Sub-Saharan Africa as the origin or destination of connecting traffic (as a regional connection hub in Eastern Africa).

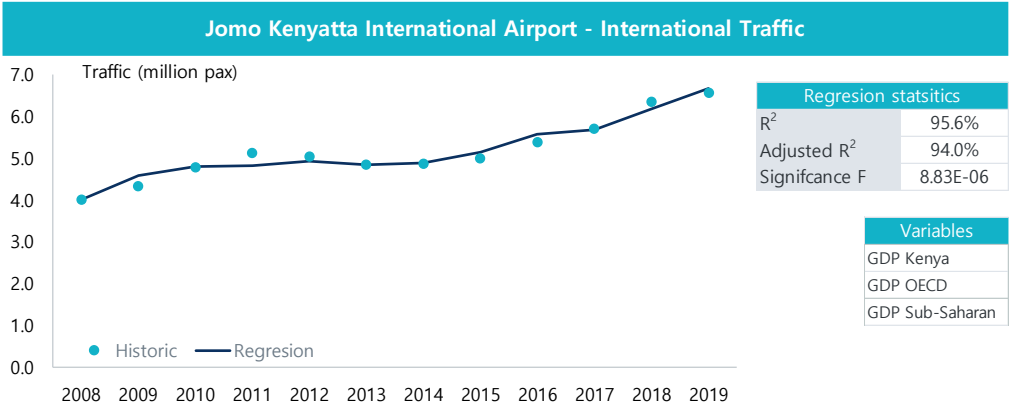


Figure 109: International traffic at JKIA multivariable lineal regression results

This regression offers a high level of correlation as the value of R<sup>2</sup> is 95.6% (and 94.0% in the case of adjusted R<sup>2</sup>). On the other hand, the statistical significance of the model is 8.83E-06 which ensures that the chosen variables are the ones driving the international traffic in the airport.

After validating the statistical models, forecasts for the descriptive variables are acquired from trustworthy sources. In this instance, predictions are sourced from the international economic forecasting firm Oxford Economics.

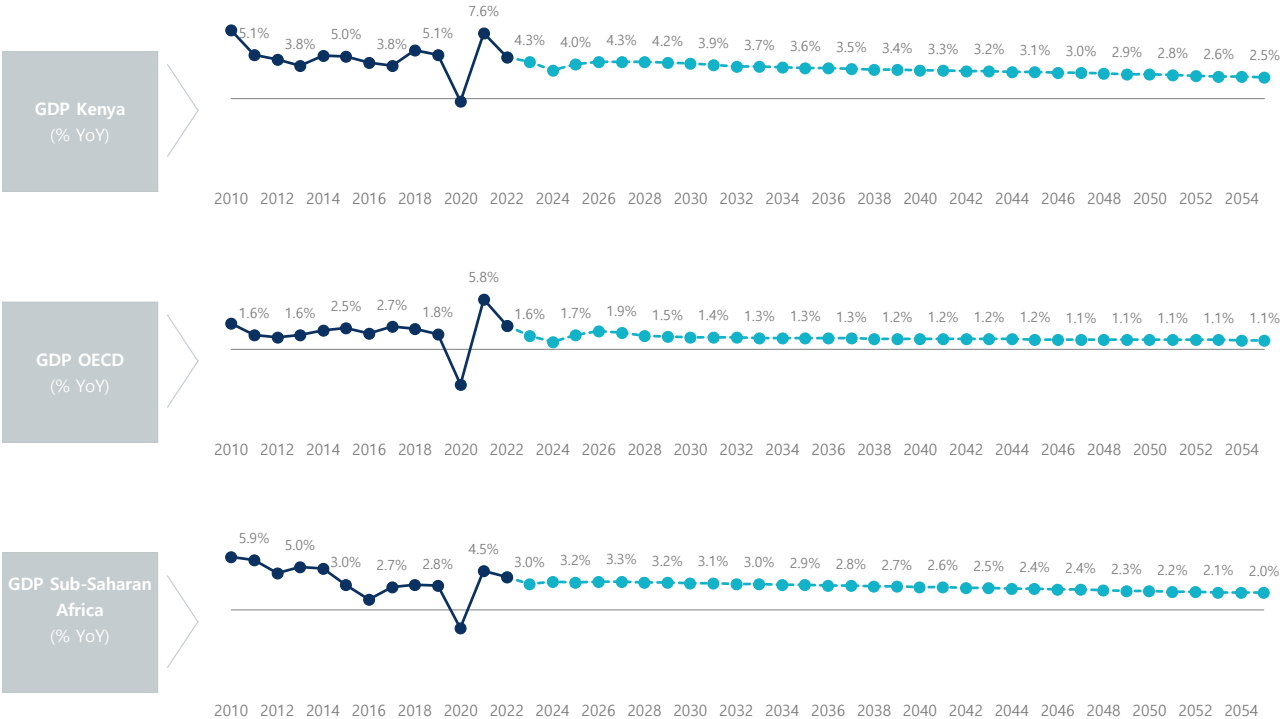


Figure 110: Forecast of descriptive variables (Source: Oxford Economics)

Utilizing the multivariable linear regression model and predictions of descriptive variables, long-term top-down traffic forecasts are applied for each segment.

### 3.1.3 Bottom-up forecast

The bottom-up forecast is employed to refine the short-term adjustments in the econometric top-down model. In this context, the primary adjustment factor takes into consideration the impact of the COVID-19 pandemic, as well as the subsequent recovery of traffic and traffic expectations until 2025.

This analysis involves incorporating the potential recovery profile through a comprehensive analysis of market dynamics at JKIA. The crisis caused by the COVID-19 pandemic signifies a shift in the trend of air transport, blending an erosion of passenger trust with an economic downturn that diminishes their purchasing power.

Given this scenario, it becomes crucial to examine in detail the impact of the pandemic crisis on the global aviation industry, specifically in Africa and the aviation sector in Kenya and Nairobi. Consequently, each of the numerous factors influencing traffic recovery post-crisis have been identified, including regulatory directives for flight resumption, airline responses, health-protection measures, and passenger trust. Furthermore, domestic and international traffic trends at JKIA have been analyzed, segmented by routes and markets, with the aim of applying growth profiles that best align with each segment to forecast traffic until 2025. As specified later, actual seat supply data published by airlines in GDS systems for the upcoming months of 2024 has been considered, ensuring the forecast adheres to airlines' expectations.

Regarding COVID-19 recovery, ALG has developed an ad-hoc methodology with the aim of capturing in the short-term forecast, the macroeconomic and flight propensity effects. This methodology is based on the definition of four key parameters that include all the factors previously mentioned and helps define recovery per segment.

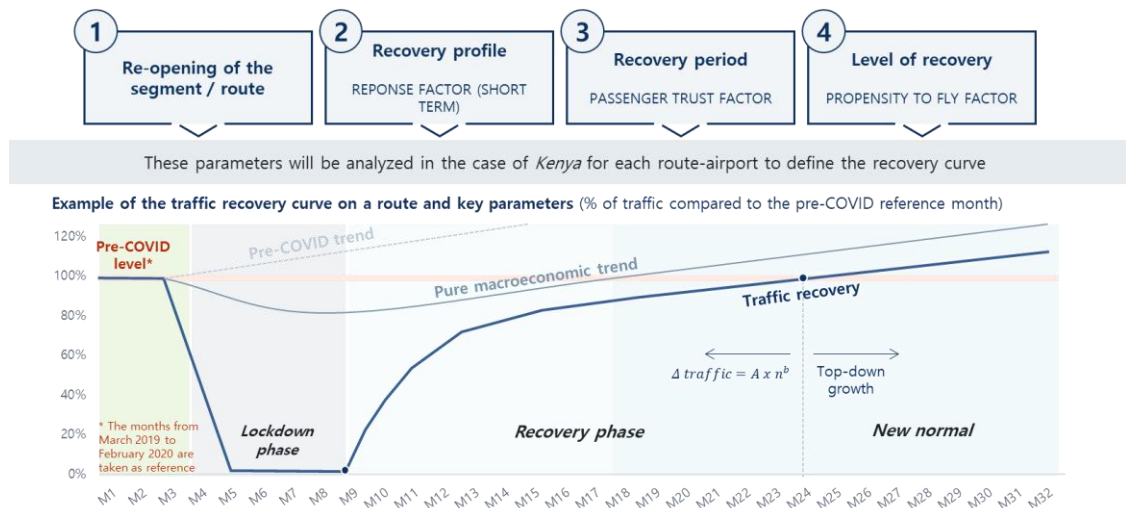


Figure 111: Bottom-Up COVID-19 effect methodology

The parameters and the scope that are analyzed in each one is described below:

1. **Reopening of the segment/route:** Month in which each airline reopened the market segment or route. The re-opening of routes, which depended on both the re-opening of borders and on airline decisions, establishes the beginning of the recovery curve.

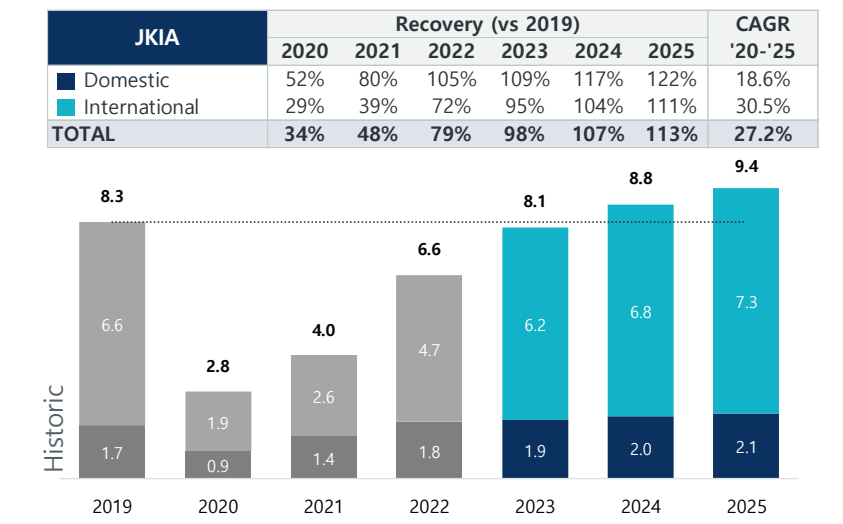
2. **Recovery profile:** Speed of recovery between the reopening and the moment when the macroeconomic factor recovers. The recovery profile depended on the response of the airlines in the short term (prioritization of routes from their base, etc.).
3. **Recovery period:** Time (number of months) it takes to regain confidence to fly and travel.
4. **Level of recovery:** Percentage of traffic compared to the pre-crisis level that will be reached once the confidence factor is recovered.

For international traffic, these adjustments have been applied homogeneously based on regions (i.e., if no singularity was identified, all routes to/from the same region are assumed to recover at the same rate). In the case of domestic traffic, it has been analyzed at an airport pair level.

Furthermore, the seat capacity published by the airlines in the OAG database has been taken into account (up to June 2024 for domestic traffic and up to September 2024 for international one). A load factor based on historical data according to the region or airport pair has been applied to these seats to estimate the volume of passengers at JKIA in the following months.

In this manner, the following short-term forecast for domestic and international traffic at JKIA has been obtained. As illustrated in the figure below, domestic traffic has shown a faster recovery than the international segment, as in 2023, the domestic market has surpassed 2019 values.

International traffic is projected to experience a slower growth, reaching 2019 levels by 2024. This slower pace is attributed to a combination of travel restrictions in countries of origin and the apprehension of international passengers to embark on long-haul journeys, particularly when closer alternatives are available near their home countries. The overall traffic volume is envisaged to surpass 2019 levels in 2024, as depicted in the figure below.



**Figure 112: Short-term forecast results (MPax; base scenario)**

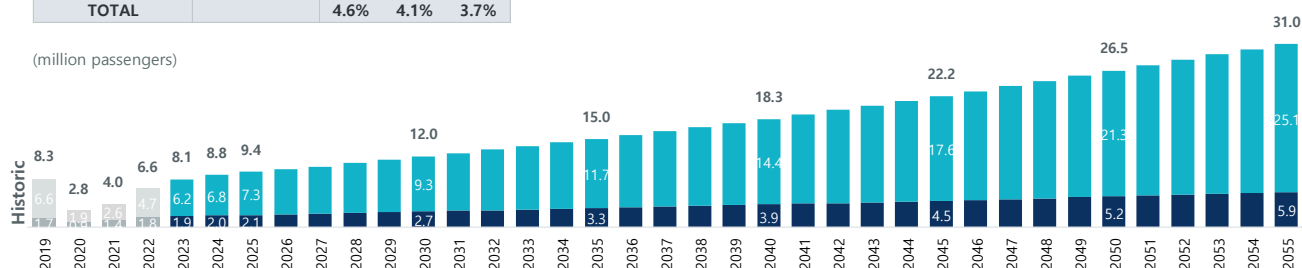
Once the recovery period has been set, elasticities between the levels of recovery are applied, depending on how well the route is performing. After the traffic has recovered in one route, its growth rate is expected to reduce.

### 3.1.4 Results and checks

**Jomo Kenyatta International Airport** currently serves as the primary gateway for the country and is expected to further solidify its status as a regional international hub. Additionally, the traffic growth at JKIA is expected to be boosted by the strengthening of the Kenya Airways INT-INT hub and the development of a DOM-INT country gateway.

Domestic traffic at JKIA is forecasted to grow at a 3.5% CAGR '25-'55, reaching 5.9 million passengers in 2055. In the international segment, the airport is expected to reach 25.1 million passengers in 2055, growing at a 4.2% CAGR '25-'55 (post COVID-19 pandemic).

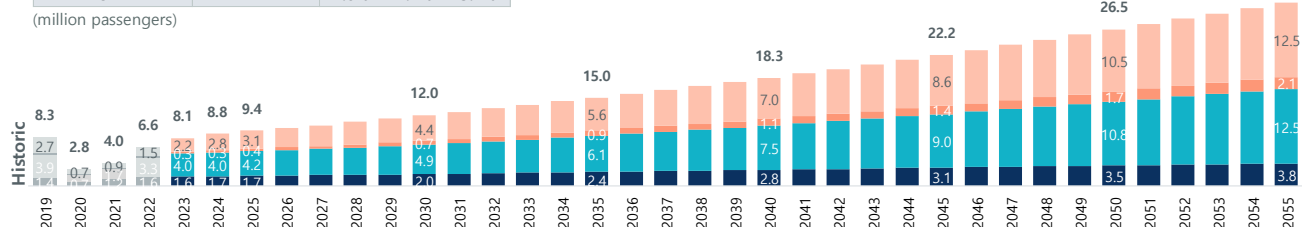
Jomo Kenyatta International	Share		CAGR		
	2019	2055	'25-'40	'25-'55	'19-'55
Domestic	21%	19%	4.2%	3.5%	3.5%
International	79%	81%	4.7%	4.2%	3.8%
<b>TOTAL</b>			<b>4.6%</b>	<b>4.1%</b>	<b>3.7%</b>



**Figure 113: Forecasted number of domestic and international passengers in JKIA (incl. connections)**

The significance of connecting passengers in Kenya, especially at JKIA, should be highlighted. The strengthening of JKIA's position as a regional hub in Eastern Africa, driven by Kenya Airways' enhanced presence in both INT-INT and DOM-INT connection markets, is anticipated to elevate the share of connecting passengers at the airport. It is therefore assumed that the existing domestic connections share of 17% vs total DOM traffic will increase to approximately 35%, and the international connections segment will grow from 41% to 50% vs total INT traffic.

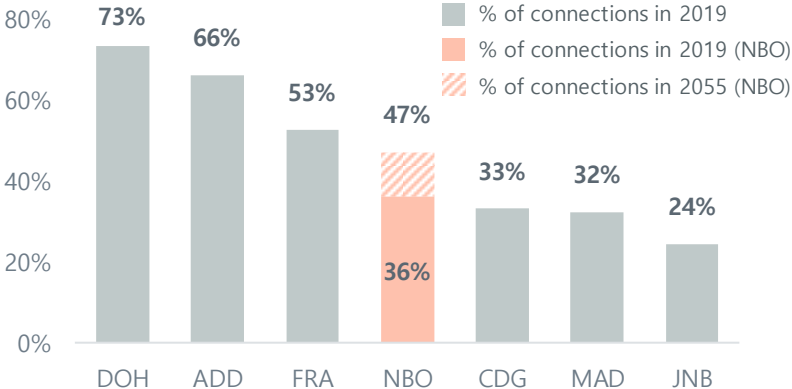
Jomo Kenyatta International Airport	Share over segment		CAGR		
	2019	2055	'25-'40	'25-'55	'19-'55
DOM O/D	83%	65%	3.3%	2.8%	2.8%
DOM Connect.	17%	35%	7.3%	5.7%	5.5%
INT O/D	59%	50%	3.9%	3.7%	3.3%
INT Connect.	41%	50%	5.7%	4.8%	4.4%
<b>TOTAL</b>			<b>4.6%</b>	<b>4.1%</b>	<b>3.7%</b>



**Figure 114: Forecasted number of annual passengers (O/D and connections) in JKIA during the period 2023-2055**

The assumption mentioned earlier builds on the successful financial restructuring of Kenya Airways and an enhanced market strategy aimed at being highly attractive and competitive at a regional level.

As a result of aligned strategies between JKIA and Kenya Airways, Jomo Kenyatta International Airport is expected to become a relevant hub for connections in Eastern Africa, increasing its connections from 36% in 2019 to 47% over the total traffic in 2055, and directly competing with other regional hubs.



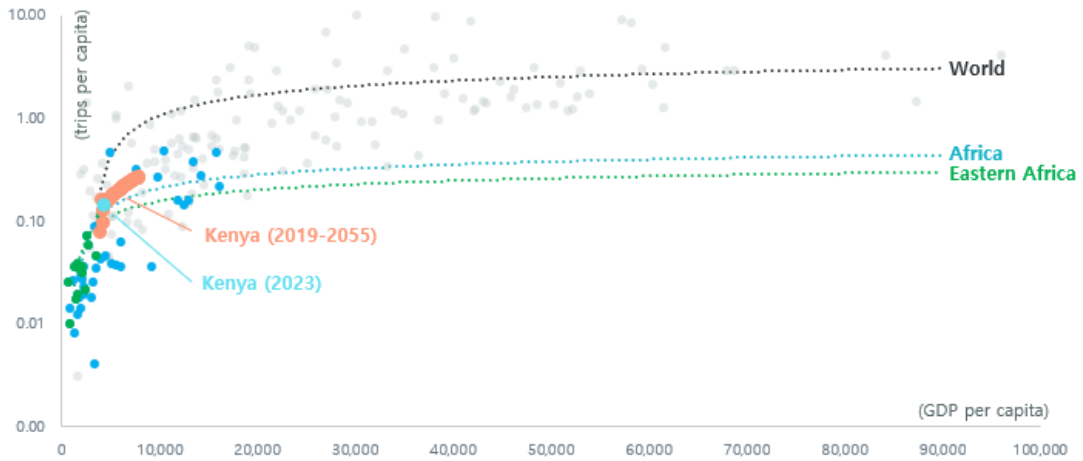
**Figure 115: Percentage of connecting passengers over total passengers in selected hubs (2019)**  
(Source: OAG)

3.1.4.1 Check with macroeconomic indicators

In order to validate the traffic forecast's final outcomes, it is useful to check that the progression of the propensity to fly (trips per capita related to the GDP per capita of the country), is aligned with the prevailing market trends in comparable nations.

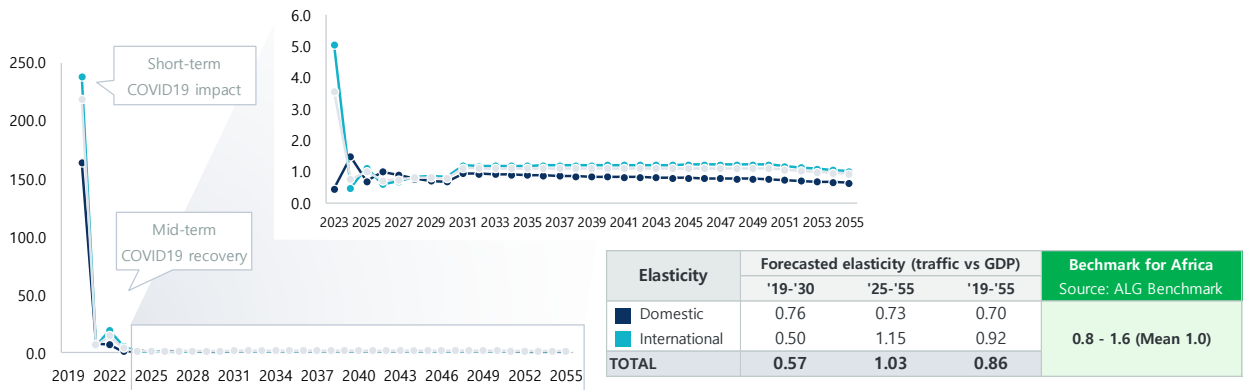
In this context, the estimation of Kenya's trips per capita at the country level has been derived from JKIA's traffic forecast, resulting in 0.26 trips per capita by 2055. During the period spanning from 2023 to 2055, the GDP per capita of Kenya is expected to increase by 78%, while the trips per capita is foreseen to increase by another 94%, reflecting an elasticity of approximately 1.1.

Consequently, in the next years Kenya traffic is expected to slightly surpass current Africa's average, converging toward the prevailing air transport benchmarks observed in more developed air transport markets.



**Figure 116: Propensity to fly (2019)**  
 (Source: Airbus, Oxford Economics)

In terms of elasticity, despite the initial peak, caused by constrained traffic due to the restrictions imposed by the COVID19 pandemic and later recovery, the elasticity is stabilized around values close to 1. It should also be noted that the high rate of economic growth estimated by Oxford Economics for Kenya diminishes the elasticity value.



**Figure 117: O&D traffic - Kenyan GDP elasticity**  
 (Source: Oxford Economics)

### 3.1.5 Air traffic movements forecast

The forecast for air traffic movements is derived from the passenger traffic projections, considering the expected fleet development (fleet size/composition evolution) resulting in an increase of seats per ATM multiplied by the average load factor. The calculation is performed separately for domestic and international traffic.

In this regard, the ratio of seats per ATM at JKIA has been assumed to change throughout the period analyzed. Specifically, the percentage of larger aircraft with code letter C2 (A320 and B737 families) will increase to the detriment of smaller aircraft with code letters C1 (ATR, CRJ900) and with code letter B.

On the other hand, load factors are expected to grow by 0.4% to 0.6% year on year, depending on the traffic segment (international and domestic, respectively). Airlines continually aim for increased load factors to achieve profitability as the market matures and consolidates.

As a result, the number of annual domestic and international ATMs is estimated accordingly.

On average, the total ATMs are projected to reach 287,000 in 2055, growing at a CAGR of 2.5% from 2019 to 2055. This growth rate is slightly lower than the growth of total passenger traffic (3.7% CAGR), aligning with the anticipated rise in average fleet size and load factors.

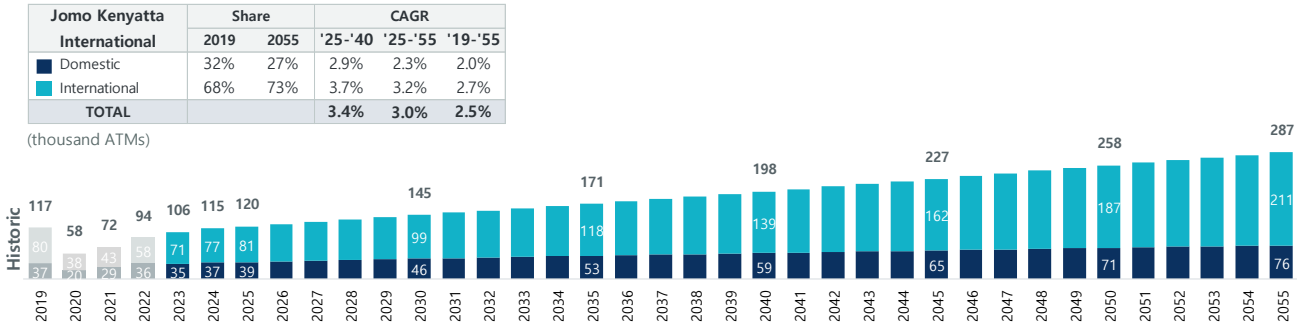


Figure 118: Forecasted number of annual ATMs in JKIA during the period 2023-2055

**3.1.6 Cargo forecast**

The forecast for cargo traffic is based on a top-down regression model to predict both the long-term trend and the short-term recovery from the COVID-19 impact. This approach is chosen due to the comparatively minimal impact of the COVID-19 pandemic on cargo traffic, which already recovered pre-pandemic levels in 2021. The model is applied at a country level and redistribute it among Kenyan airports based on historical and expected cargo shares.

Similar to passenger forecasts, the regression model needs to be applied to each market segment, which includes domestic cargo, exports (international outbound cargo), and imports (international inbound cargo). However, given the relatively low volume of cargo in the domestic segment, projections for this segment have been made applying the CAGR of comparable air cargo markets.

Regarding imports, the main variable taken into account is the GDP of Kenya. The Kenyan demand serves as the primary determinant for imported products.

On the other hand, exports are driven by the demand of foreign nations from Kenyan products, including items like tea, coffee, or flowers. The potential consumers of exported goods (via air) encompass United States, European countries, and Sub-Saharan African countries. Consequently, the GDP of OECD region and Sub-Saharan region has been considered into the multivariable linear regression.



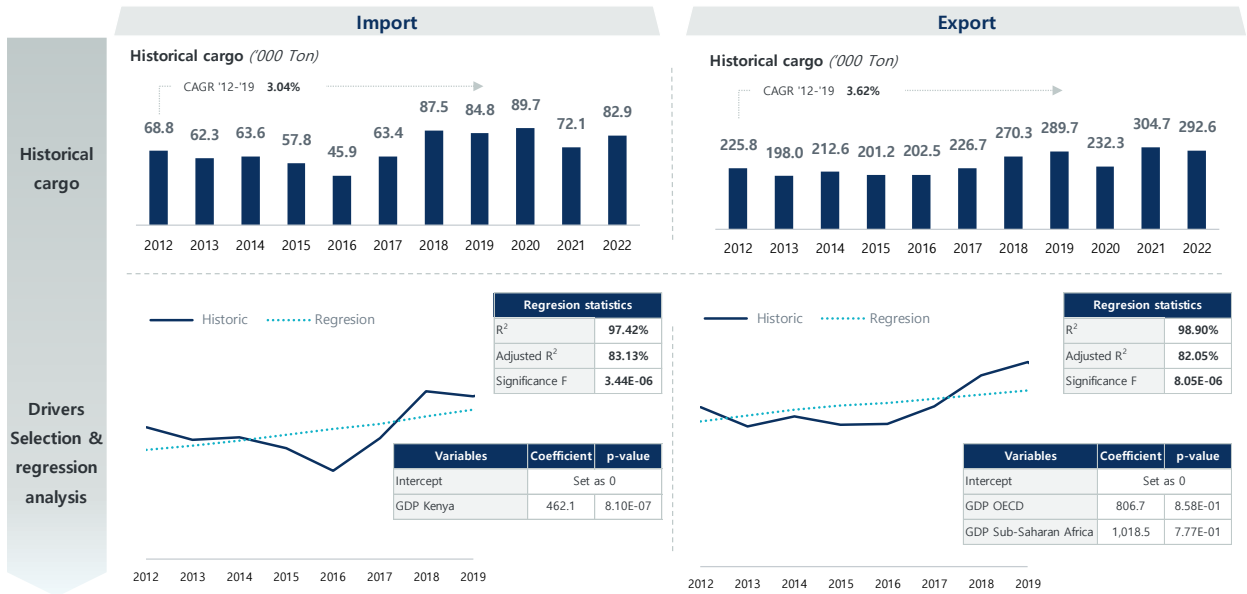


Figure 119: Cargo traffic forecast methodology and assumptions

As a result, it is foreseen that total cargo traffic grows at a CAGR of 2.0% during the period 2019-2055 reaching a total of 744 thousand tons by 2055.

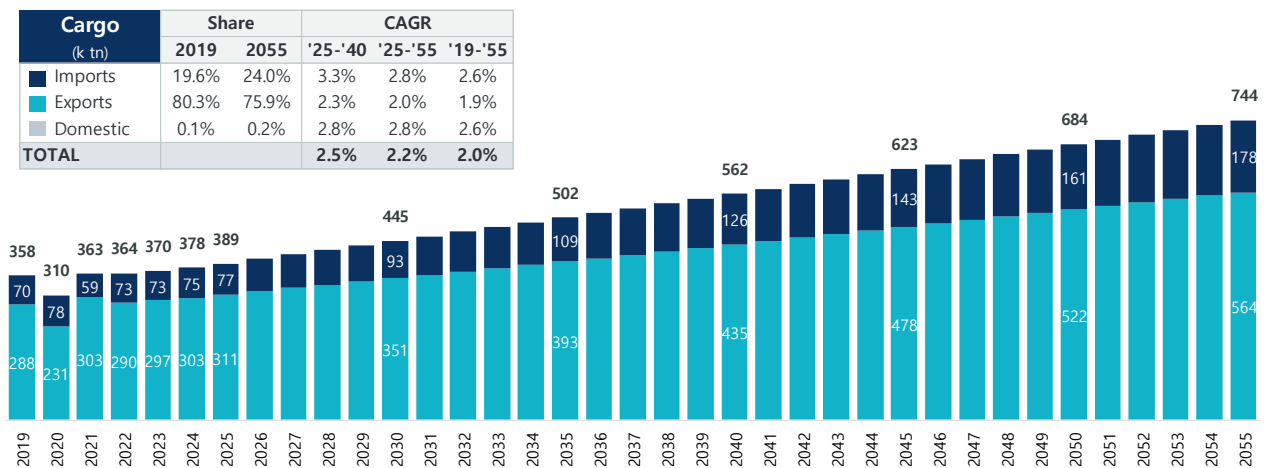


Figure 120: Cargo traffic forecast (split by segment)

### 3.2 Design parameters projection

Annual traffic as well as passenger and ATM peak hour are the key parameters to design airport infrastructure. Accurate Design or Busy Hour Rate (BHR) demand forecasting is essential for optimal infrastructure planning, encompassing both airfield and landside capacity requirements.

The concept of Design or Busy Hour Rate is grounded in the idea that infrastructure design should not be solely anchored in the absolute peak demand flow, an occurrence anticipated to happen only once a year. Instead, busy hour demand operates on the premise of establishing a design level beyond which it is acknowledged that service standards may decline for a small fraction of the demand.

Each design parameter and their forecasting methodology are explained in the figure below.

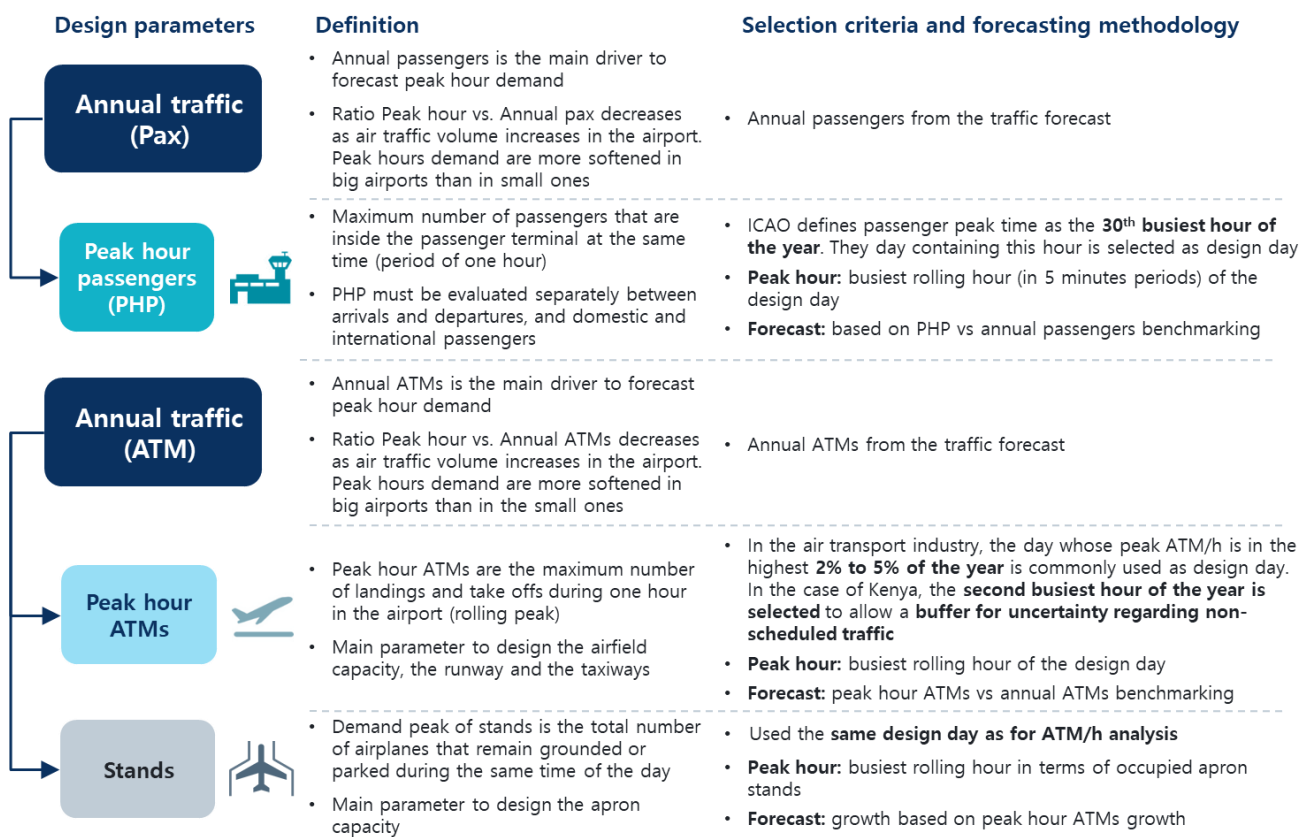


Figure 121: Design parameters: definition, selection criteria and forecasting methodology

Projections for PHPs and stands have been estimated by distinguishing between two different airline groups to assess the most tailored development options for the airport in terms of terminal allocation:

- **Kenya Airways group + alliance and codeshare partners:** encompassing Jambojet, Precision Air, KLM, British Airways, Air France, Egyptair, Oman Air, Saudi Arabian Airlines, and Air Austral
- **Others:** encompassing the remaining airlines operating at JKIA

Design parameters (PHPs, ATMs/h and stands) are forecasted using international benchmarks that establish a correlation between annual figures (Mpax and ATMs) and peak parameters. In this process, initial points are estimated from the design day (initial PHPs, ATMs/h and stands). The design day profile for PHPs and

ATMs/h is subsequently projected by applying annual growth rates to off-peak passengers and operations, while maintaining previously forecasted parameters for peak hours.

The initial point is compared with the benchmark trend to determine whether the values are in line or exhibit a deviation (offset). In this case, the initial points for JKIA are mostly aligned with the benchmark reference values. This alignment is a consequence of a mature market featuring multiple segments (such as serving as Kenya’s primary gateway and as an Eastern African regional hub). This market maturity enables one segment to compensate for demand fluctuations in the other, resulting in a more aligned initial position.

Regarding the offsets, it has been assumed they are progressively reduced (but not completely eliminated) so that JKIA’s design parameters are slightly more aligned with the benchmark at the end of the studied period.

It’s worth noting that the forecast also distinguishes between O&D PHPs (Origin & Destination, without connections) and total PHPs (O&D and connections). This distinction is important because connecting passengers do not use all passenger processing facilities, such as entrance security or check-in counters. This differentiation helps minimize the risk of overdesigning infrastructure, thereby reducing investment requirements.

Resulting design parameters for JKIA are shown in the figure below.



Figure 122: Design parameters for JKIA

When examining the results, it is observed that the totals do not align with the sum of Domestic and International in Peak Hour Passengers, Peak Hour ATMs, or Stands. This difference arises because the table shows independent peaks that do not occur simultaneously. For example, the maximum number of Domestic stands, the maximum number of International stands, and the maximum number of total stands (without distinguishing between domestic or international) occur at different times of the day, and these individual peaks are illustrated in Figure 122.

## 4 Infrastructure Development Proposal

The present chapter presents the results of the analysis of the existing assets condition review, the ICAO compliance assessment, the capacity-demand assessment, the proposed development plan, and the resulting investment plan for Jomo Kenyatta International Airport (JKIA) for the period 2025-2054.

The infrastructure assessment and thus the results of the other analyses are based on the information gathered during the site visit (which took place during the second week of December 2023 – week of the 11<sup>th</sup>) as well as the data provided by KAA and the project stakeholders during the period between the start of the project and the delivery date. Other data has been obtained from other publicly available sources or otherwise estimated.

### 4.1 Infrastructure assessment methodology

The investment plan has been defined under three categories of investment: compliance or regulatory investment, expansion (CapEx), and maintenance (RepEx) investment. These investments are based on the results of the following analyses:

- **Compliance assessment:** the compliance of the existing infrastructure, specifically on the airside, were analysed against the Standard and Recommended Practices (SARPs) of ICAO, which revolve around the safety and security of airport operations. If any non-compliances are identified, the output of this analysis defines and incorporates them into the **compliance or regulatory investments**, to be prioritised to ensure safety and security of operations. Since JKIA is a certified aerodrome, it is not expected that such works would represent a significant portion of the total investment amount.
- **Capacity-demand analysis:** evaluation of the adequacy of the capacity of the current primary facilities (including runway and taxiway system, aprons, terminal buildings, access points, and parking areas) in comparison to demand, aiming to identify any deficiencies in capacity and ascertain necessary expansions that serve as catalysts for capital investments. **The results of this assessment guide the expansion investments essential for the development of JKIA's infrastructure**, guaranteeing the ability to accommodate the anticipated future demand.
- **Condition analysis of existing facilities:** involves the cataloguing of all facilities such as runways, taxiways, terminal buildings, and all other support infrastructure, outlining the lifespan of such assets in order to estimate when maintenance/replacement works are due. **The findings from this analysis guide the major maintenance and replacement investments** necessary to uphold the operational integrity and sound condition of the existing facilities.

Based on the information above, any new infrastructural development at the airport is guided by the compliance assessment and the capacity-demand analysis. Simultaneously, the analysis of the condition of existing facilities informs the necessity for significant maintenance investments. These analyses are crucial for formulating the development strategy and crafting the investment plan that accompanies it.

#### 4.1.1 Existing facilities and condition analysis

The assessment of current facilities and their condition relies on information acquired during site visits, as well as data supplied by KAA. Additional data has been sourced from various publicly available sources or otherwise estimated. For instance, if details about the year in which maintenance was last conducted on a

particular piece of infrastructure are available, they are utilised to project the timeframe for the next maintenance cycle. In cases where such information is unavailable, estimates are derived from satellite imagery spanning multiple years.

#### 4.1.2 Compliance assessment

The infrastructure of JKIA has been evaluated in terms of adherence to the Standards and Recommended Practices (SARPs) outlined in ICAO Annex 14 and any complementary documents. This assessment is based on the most recent version of ICAO Annex 14, 9<sup>th</sup> Edition from July 2022.

The evaluation of the physical attributes of the current airfield has been formulated based on two criteria: the aerodrome code and the approach type; these being **4E and CAT I**, respectively.

#### 4.1.3 Capacity-demand assessment

The airport's capacity is established by evaluating the capacities of its main subsystems, which include the runway and taxiways system, the apron, the terminal building, and the landside access and car parking. Each of these subsystems must offer sufficient capacity to meet the anticipated demand, even though some may be more critical or less flexible than others.

For instance, when runway capacity reaches saturation, aircraft may encounter delays during peak hours and be required to wait at the gate or engage in holding patterns while in the air. Likewise, passengers might experience a diminished level of service within the terminal if it becomes saturated, but they will still be processed through the system. However, if there is a lack of available aircraft parking spaces in the apron, it constitutes a bottleneck that cannot be resolved without additional capacity at the expense of delays. While landside accesses and car parking are important, they are generally regarded as less critical compared to the previously mentioned facilities.

The capacity-demand analysis involves assessing the declared or the estimated capacity of the current infrastructure against the anticipated future demand based on 30-year traffic forecasts (2025-2054). This examination identifies capacity shortfalls for the different subsystems and forms the foundation for creating the development and capital investment plans.

It is important to highlight that the capacity-demand analysis typically relies on real flight plan data and the current airport capacity to guarantee precision and reduce the risks of over- or under-design, which could affect the investment plan and financial feasibility of the project. However, in this case, the capacity-demand analysis has been conducted using the information received and available data, such as historic annual traffic and the OAG database. Consequently, the findings of this assessment may undergo changes if additional information becomes available.

The capacity-demand analysis for JKIA, which encompasses the runway and taxiways, the apron, the terminal building, and landside facilities, follows the methodology outlined below:

**Runway and taxiways:** KAA provided the currently declared runway capacity, but ALG computed it independently using a proprietary tool. This tool is designed to simulate the interactions among various aircraft types within a specified fleet mix together with inputs on minimum spacing and air traffic regulations. The analysis takes into account airfield conditions and fleet mix characteristics. Furthermore, the assessment of the runway length at JKIA considers aircraft fleet performance requirements and airport conditions, including the existing length, airport elevation, and airport reference temperature.

*Inputs: Air Traffic Movements per hour (ATMs/h) demand as per developed traffic forecast. Aircraft Characteristics for Airport Planning (ACAP), and AIP information.*

**Apron:** The assessment of apron capacity is grounded in a stand occupation analysis. Two distinct peaks are assessed: static stand demand (for long-term or overnight stand usage) and dynamic stand demand (during an active aircraft turnaround). This analysis enables the determination of capacity requirements for operational dynamic stands, which can be serviced by contact stands or non-contact stands. Non-operational static stands can be allocated to remote aprons, which may also offer potential cost-effectiveness.

Additionally, two other peaks have been considered: the concurrent peak (indicating the maximum number of stands occupied at the same hour by different aircraft codes) and the independent peak (representing the maximum number of stands of a specific aircraft code occupied simultaneously).

*Input: stands demand as per developed traffic forecast.*





**Terminal:** The evaluation of terminal capacity requirements for JKIA relies on the IATA Airport Development Reference Manual (ADRM) methodology, assuming an Optimum Level of Service. This assessment has been based on the 12<sup>th</sup> edition of this document from June 2022.

*Input: Peak Hour Passengers (PHP) demand as per developed traffic forecast.*

**Landside system:** The analysis of both road accesses, including curbside operations, and car parking capacity at JKIA is conducted using the Transportation Research Board (TRB) manuals. The operational procedures considered for these complementary analyses are grounded in industry trends.

*Input: Peak Hour Passengers (PHP) demand as per developed traffic forecast.*

The graph below summarises the methodologies that are employed for the capacity-demand analysis of each subsystem.

	Methodology	Infrastructure system	Design parameter
 <p><b>Airfield</b></p>	<ul style="list-style-type: none"> <li>Methodology applied based on simulations developed by ALG, FAA AC 150/5060-5, ACRP Report 79, and the runway capacity analysis tool developed by ALG</li> <li>Current airport procedures have been taken into account in the analysis</li> </ul>	<ul style="list-style-type: none"> <li>Runways</li> <li>Taxiways system</li> </ul>	ATMs/h
 <p><b>Apron</b></p>	<ul style="list-style-type: none"> <li>The apron capacity-demand analysis is based on the peak demand for stands, i.e., the total number of aircraft parked or remaining on the ground at the airport at any given time</li> </ul>	<ul style="list-style-type: none"> <li>Stands</li> </ul>	Stands
 <p><b>Passenger Terminal</b></p>	<ul style="list-style-type: none"> <li>Methodology based on IATA Airport Development Reference Manual (ADRM), Edition 12<sup>th</sup> calculation criteria assuming an Optimum Level of Service</li> <li>The analysis is adapted to forecasted design parameters, airport particularities, national regulations and industry standard processing times as well as typical values for the airport under study</li> </ul>	<ul style="list-style-type: none"> <li>Terminal building passenger processing systems (check-in, security, immigration, boarding areas, baggage claim, customs, departure hall, arrivals hall)</li> </ul>	PHPs <sup>(*)</sup>
 <p><b>Surface access</b></p>	<ul style="list-style-type: none"> <li>Methodology based on Transportation Research Board (TRB) manuals and ALG analysis</li> <li>All the different operational procedures considered for the complementary analyses are based on industry trends</li> </ul>	<ul style="list-style-type: none"> <li>Airport Access System</li> <li>Car park</li> <li>Curbside</li> </ul>	PHPs <sup>(*)</sup>

Source: ALG analysis

**Figure 123: Design guidelines for each sub-system analysed**

(\*) Note: Peak Hour Passengers



## 4.2 Infrastructure assessment

The results from this section serve as the foundation for the investment plan, which, as previously outlined, consists of compliance or regulatory investments, maintenance or replacement investments, and capital investments derived from the development plan.

Jomo Kenyatta International Airport stands as Kenya's largest airport and gateway, catering to its capital city, Nairobi. The airport has the capacity to accommodate aircraft up to code E.



**Figure 124: Overview of Jomo Kenyatta International Airport**  
(Source: Google Earth, AIP, KAA, CAPA)

### 4.2.1 Existing facilities and condition analysis

The analysis involves the examination of essential existing facilities and equipment, representing a significant portion of the overall infrastructure value. These insights play a crucial role in the definition of the future maintenance investment needs.

The current condition of JKIA's infrastructure has been assessed by integrating technical information from KAA and first-hand data collected by the consultant team during a site visit to the airport. This visit, facilitated by KAA personnel, thoroughly covered both airside and landside facilities.

The image below showcases the primary airside and landside facilities at the airport, forming the foundation of the maintenance plan as they encompass a significant portion of the asset value. Nevertheless, the replacement/maintenance estimations also include additional equipment such as vehicles, fire-fighting trucks, generators, and more.



Figure 125: JKIA main airfield infrastructure, buildings, and other assets

#### 4.2.1.1 Airfield

The primary component of the airfield is runway 06-24, measuring 4,117 x 45 meters (60 m with shoulders), with the capability to accommodate Code E aircraft. The associated taxiway system comprises five taxiways south of the runway, including one parallel taxiway and four 90-degree taxiways connecting it to the terminals and commercial aprons and further taxiways north of the runway connecting it to the general aviation and MRO areas.

It is noteworthy that the parallel taxiway does not connect with the runway end 24, resulting in potential increased runway occupancy times and a subsequent reduction in the overall runway capacity. To address this, a turning pad has been positioned at THR24 to facilitate operations from that direction. Conversely, one of the taxiways directly links the parallel taxiway to the runway end 06 (the preferred runway direction), aiming to optimise overall runway capacity. Nevertheless, most take-offs and landings occur on runway 06; based on 2023 data, runway 24 was used for take-offs for less than 50 hours throughout the entire year, with ADS-B data indicating that less than 0.7% of annual movements operated at runway 24 (winds are mostly favourable to the operation on runway 06) with an additional 0.25% of annual operations landing on runway 06 but overshooting TWY L and having to use the turn pad at the end of the runway and backtrack it. Therefore, the non-inclusion of a taxiway connecting to the end of runway 24 is not expected to have a significant impact on the system's capacity.

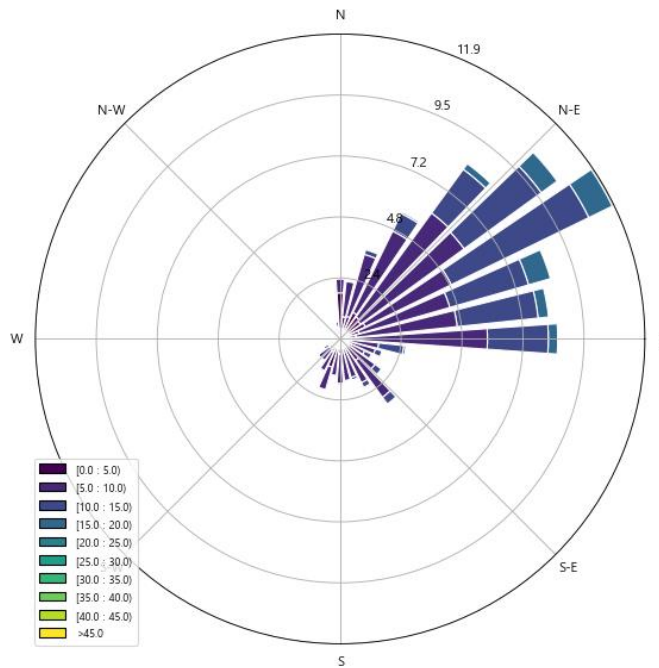


Figure 126: 2019 wind frequency and intensity while in operation



Figure 127: Airfield snapshots from the site visit at JKIA

The airport features four aprons, including two commercial aprons with contact and remote stands south of the runway, one cargo apron, and one long-term and general aviation apron situated on the northern side of the runway. Additionally, there are smaller aprons adjacent to hangars scattered across the airfield.

As per the information received during the site visit, both the commercial apron and the cargo apron currently experience congestion.





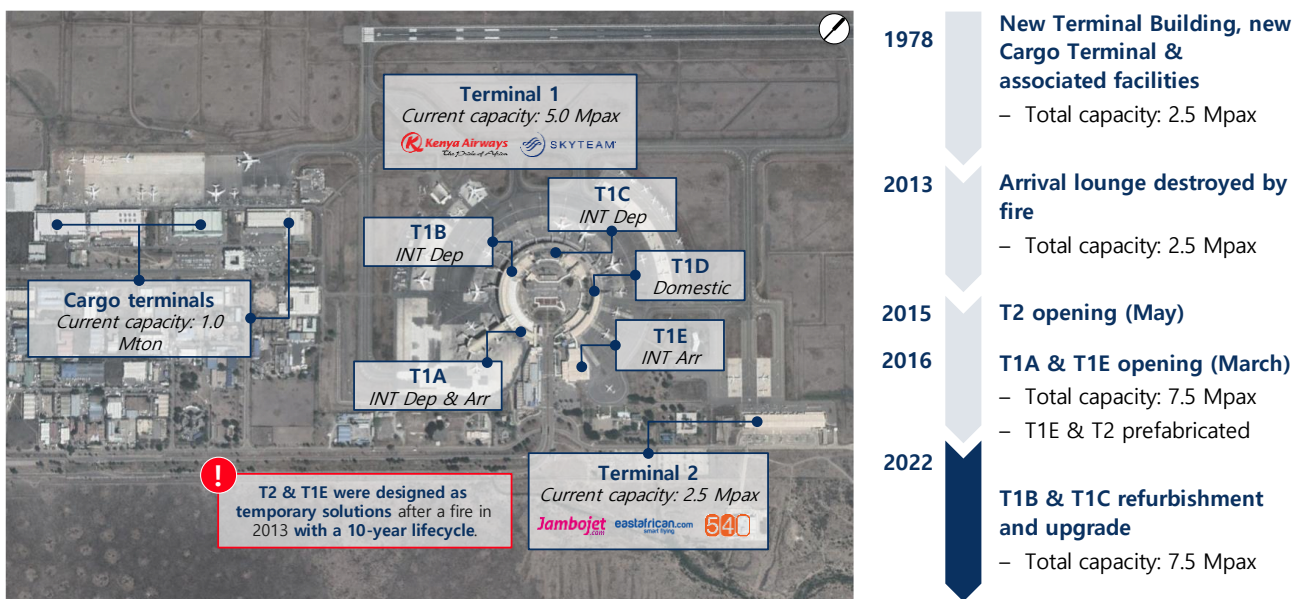
**Figure 128: Apron snapshots from the site visit at JKIA**

The airfield pavement is primarily flexible, except for the commercial aprons that feature rigid sections (made of concrete) designated for aircraft parking, and threshold 24, which is also constructed with concrete. The overall condition of the runway pavement is good, having undergone resurfacing in 2015. However, there are minor rubber deposits in the landing zones of RWY 06 and the airport staff has informed the Consultant that longitudinal cracks are beginning to emerge on the runway surface. Furthermore, the runway strip does not smoothly abut with the end of the shoulder’s pavement. The pavements of the aprons and taxiways are also generally in good condition. Notably, the flexible pavement of the T1A taxilane was replaced with rigid pavement in 2021.

#### 4.2.1.2 Passenger Terminal Building

**JKIA has two terminals, T1 and T2, with a total capacity of 7.5 million annual passengers** (based on information provided by KAA for *Project Infill*, which aims to improve the level of service at the terminal and overall passenger satisfaction):

- **Terminal 1 (~70,000 m<sup>2</sup>, capacity of 5.0 Mpax)**, is predominantly used by Kenya Airways and its codeshare partners. The terminal comprises five sections: T1A (international arrivals and departures), T1B and T1C (international departures), T1D (arrivals and departures), and T1E (international arrivals).
- **Terminal 2 (10,000 m<sup>2</sup>, capacity of 2.5 Mpax)**, which is operated by low-cost carriers (LCCs) and handles both international and domestic flights.



**Figure 129: Passenger terminal distribution at JKIA**

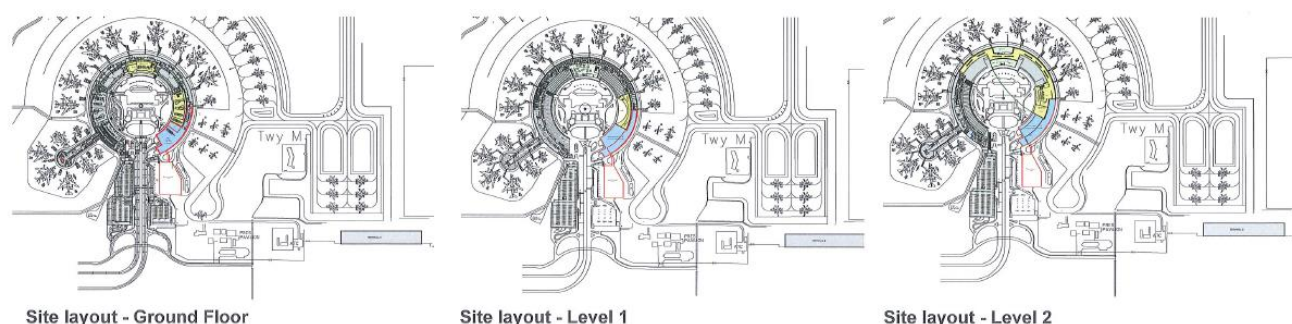
(Source: Google Earth, KAA)

It should be highlighted that both Terminal 1E & Terminal 2 were conceived as temporary infrastructures following the 2013 fire, with a planned 10-year lifespan. Commencing operations in 2015, the terminals are now approaching the conclusion of its lifecycle, anticipated around 2025. In fact, a project codenamed *Project Infill* was proposed to be carried out in the near future (2024-2025) in order to “complete the ring” by building within the empty spaces between T1B and T1C and T1C and T1D, leading to the decommissioning of both Terminal T1E and Terminal 2. It is understood that the Project is stopped now to consider what proposals third parties put forward for the development of the terminals at JKIA.

Before the onset of the COVID-19 pandemic, the airport did surpass its terminals maximum capacity, as evidenced by the 2019 traffic surpassing 8 million passengers, including connecting passengers. Consequently, certain terminal processing facilities were already experiencing congestion issues. In response to this, Terminals 1B and 1C had enhancement works in 2022, which included the refurbishment of departure halls, check-in areas, introduction of centralised security screening, implementation of open plan gates and re-organisation of duty-free retail, which were aimed at easing passenger flows rather than to increase capacity. The upgrade works were also seeking to enhance the passenger experience by aligning the level of service with that provided in T1A, the newest terminal area, across the remaining terminals. The redesign initiative was completed in October 2022.

In this line, **Project Infill aims to complete the JKIA ring of terminal buildings by providing an internal connection from T1A to T1D**. More specifically, the project aims to:

- Provide a permanent arrivals hall for processing international passengers, replacing the temporary terminal 1E. This is proposed to be located between Terminal 1C and 1D;
- Provide an arrivals walkway above the ring building that connects to the new arrivals hall;
- Provide new passenger boarding bridges (PBBs) in the ring building in a phased approach that serves both arriving and departing passengers;
- Construction of a permanent facility between Terminal 1B and 1C that improves the processing of passengers by centralising and increasing the area for the immigration and security screening area, provide additional retail space and provide a first-class lounge; and
- Remodel Terminal 1D (domestic terminal). This involves the demolition of the single storey building and the temporary 1D above it and the construction of a new facility within the same footprint.



**Figure 130: Proposed plan for Project Infill**

(Source: KAA).

For the purpose of this document, it is assumed that *Project Infill* or any variation thereof is going to fall within the Concessionaire’s obligations.



With or without said expansion project, which is intended to improve overall service levels rather than increase capacity, the airport is likely to require substantial short-term expansion to accommodate a return and surpassing of pre-COVID levels.

In general, the maintenance condition of both terminal buildings is deemed fair, although certain operational issues have been identified. Specifically, **the current terminal architecture poses challenges to a seamless passenger journey, leading to extended connecting times and impeding the realisation of JKIA's full potential as a hub.** Indeed, in the most recent ASQ survey conducted in Q4 FY 22/23, the "ease of making connections" received the lowest score among various satisfaction measures. Furthermore, the ring-shaped design of T1 acts as a constraint on potential expansion, prompting consideration for a new terminal. The exploration of development options is elaborated upon in the subsequent subsections.

**Another operational challenge at JKIA arises from the lack of interconnected baggage handling systems across its diverse terminal buildings.** This poses a considerable issue, particularly when managing the transfer of passengers between terminals. As passengers move between flights that involve different terminals, the independent BHS systems lead to inefficiencies, delays, and potential disruptions in the transfer process. Having a unified baggage handling system is crucial for streamlining operations, enhancing efficiency, and ensuring a smoother experience for passengers navigating through various terminals. **Addressing this issue becomes pivotal in optimising the overall functionality of the airport and improving the quality of service provided.**

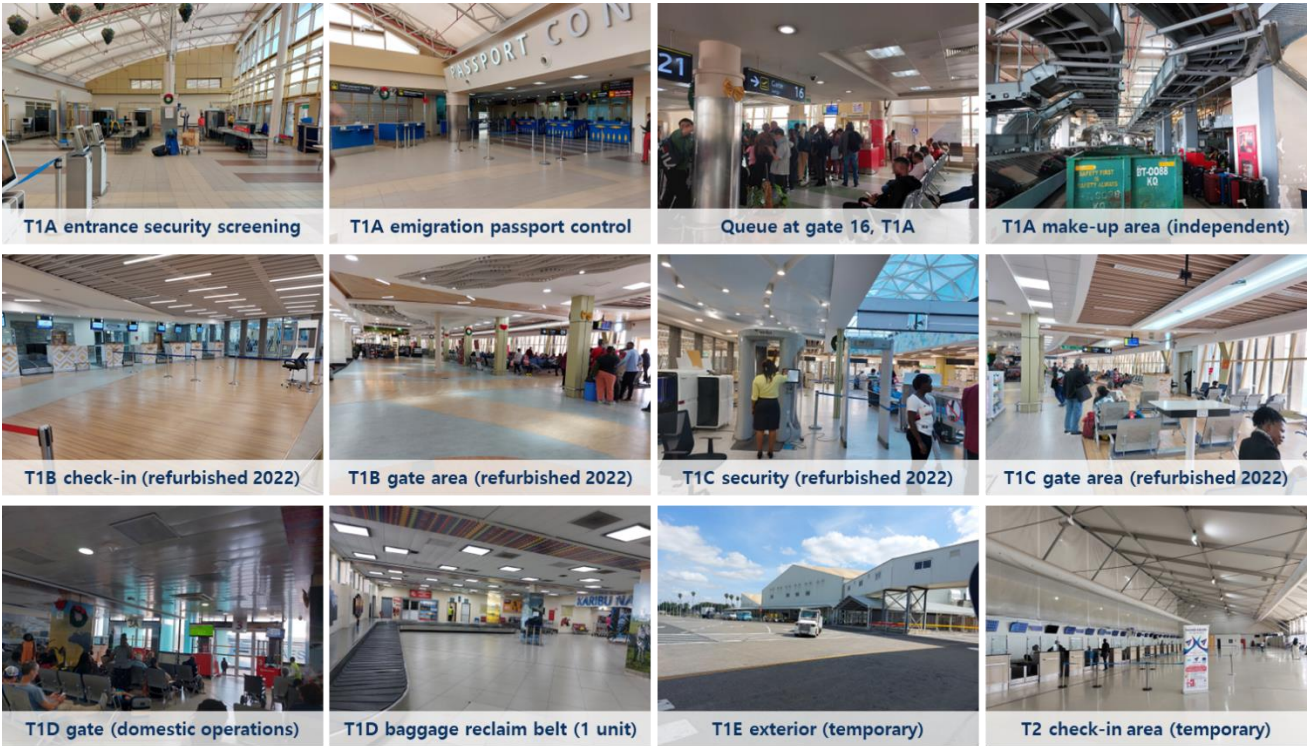


Figure 131: Snapshots of Terminal 1 and Terminal 2 at JKIA

Besides the issues regarding passenger flows, the lack of interconnection of the baggage handling system and the difficulty for expansion of the ring terminal, **the existing Terminal 1E and Terminal 2, initially constructed as temporary solutions, fall short in embodying the aesthetic standards expected of a gateway airport.** Their temporary nature is reflected in their design and materials, which lacks the visual appeal and permanence associated with a key transportation hub. To elevate the airport's image and provide a more welcoming and impressive entry point, **it is advisable to consider their demolition in the**

near to medium term. By doing so, there is an opportunity to replace it with a new, architecturally pleasing and modern terminal building that aligns with the airport’s status as a prominent gateway and brings a sense of place to visitors. This strategic decision not only enhances the overall appearance of the facility but also contributes to a positive and lasting first impression for travellers.

*Project Infill* highlights that Level 1 of Terminal 1D (which is used for international passengers connecting from T1E to T1C, T1B and T1A) was also constructed as a temporary solution and both the single-level original building and the temporary construction above it should be demolished as well to be replaced by a new building.

4.2.1.3 Other facilities

Additional facilities available at the airport include the cargo apron and associated cargo terminals/buildings, road accesses to both Terminal 1 and Terminal 2 and the fire-fighting stations located across the airfield, of which there are two (2) in total, enhancing the overall safety and emergency response capabilities at JKIA.

The cargo terminal buildings are well-maintained and anticipated to possess ample capacity (1,000 kTn) to meet the current demand. However, the cargo apron did already show congestion in the past, based on information provided to the Consultants by the airport personnel.

The airport's parking facilities boast a total capacity of 2,299 parking spaces, incorporating both surface parking and a multi-storey car park. The multi-storey car park alone is designed to accommodate approximately 1,500 vehicles. However, the current availability is limited to 1,100 spaces as the top floor was repurposed for office space.



Figure 132: Existing other facilities at JKIA

In summary, the overall condition of the airport is generally satisfactory. No substantial investments are anticipated in the short term for the airfield pavements, as they are mostly in good condition. However, there might be a need for minor works on the runway surface in the near to medium term if superficial cracks develop further.

Similarly, the terminal building's condition is generally good, with T1A renovation dating from 2015 and T1B and T1C recently undergoing refurbishment in late 2022. However, as previously mentioned, the primary challenges lie with buildings T1E and T2, displaying their temporary nature and lacking the aesthetically pleasing appearance expected of a gateway airport. This is especially notable in the case of



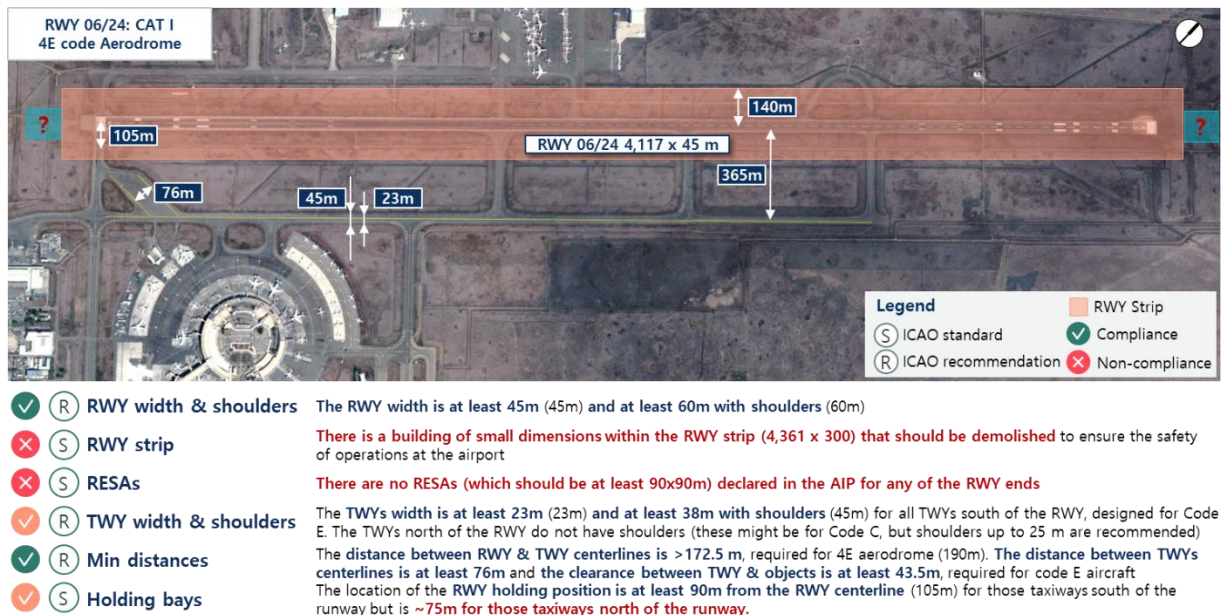
T1E, designated for arrivals, creating a first impression for arriving travellers that may not meet the desired standards. Additional concerns stem from the absence of a unified baggage handling system and the multi-terminal setup, which complicates connections for transferring passengers.

## 4.2.2 Compliance assessment

JKIA must adhere to international standards and best practices as a certified airport. This primarily involves compliance with the Standards and Recommended Practices (SARPs) outlined in ICAO's Annex 14. Any significant non-compliance issues, particularly those related to standards, must be addressed, and any associated costs should be incorporated into the capital investment plan.

**JKIA is a certified aerodrome but, based on a preliminary analysis, it appears to incur in some minor non-compliances** based on the requirements compiled in ICAO Annex 14 for a CAT I, code 4E aerodrome, namely:

- **RWY 06/24 does not have its RESAs** (Runway End Safety Areas) **declared**. These should have a minimum size of 90 x 90 m and a recommended size of 240 x 90 m and even though it was mentioned during the site visit that RESAs are implemented at both runway ends; these and their exact dimensions should be declared in the AIP.
- **The taxiways north of the runway, which connect to the general aviation and MRO facilities, do not have shoulders as recommended by ICAO SARPs.** Taxiways south of the runway, which are intended to serve Code E aircraft, have shoulders that extend beyond the 38 m recommended by ICAO; however, those north of the runway (which might be only for Code C aircraft), should have shoulders to provide a taxiway and shoulder width of 25 m if they are intended for Code C and 38 m if they are intended for Code E.
- **The runway-holding positions north of the runway are at a distance of 75m from the runway centre line, when this should be at least 90 m.** The separation between runway-holding positions and the runway centre line are dictated by the type of runway; this being a Precision approach category I runway, this distance should be of at least 90 m.
- **There is a building of small dimensions within the runway strip that should be removed** to ensure the safety of the operations at JKIA.



**Figure 133: Preliminary compliance assessment of JKIA**

(Source: Google Earth, ICAO Annex 14)

The identified non-compliances are not perceived as immediate threats to airport operations. Nevertheless, attention should be given to addressing these issues, particularly the presence of a building within the runway strip. Although it is understood that RESAs may exist without formal declaration, these should be declared. Other non-compliances appear to be either easily rectifiable or are presented as recommendations.

It is strongly recommended that the airport operator takes proactive measures to rectify all the mentioned non-compliances to ensure full compliance with safety standards and regulations.

For a more comprehensive evaluation of compliance regarding the runway, taxiway system, and aprons, detailed assessments are provided in the following tables.

ICAO Reference	Description	Criteria	Compliance	Observations / Mitigations
Actual length of runways (Annex 14: 3.1.7)	The actual runway length to be provided for a primary runway should be adequate to meet the operational requirements of the airplanes for which the runway is intended.	Recommendation	✓	The current length of the RWY (=4,117 m) is sufficient to reach all current destinations and potentially develop long-distance routes without major MTOW restrictions
Width of runways (Annex 14: 3.1.10)	The width of a runway intended for a code E aircraft must not be less than 45 m.	Recommendation	✓	The length of RWY 06/24 (code E, 45 m) is sufficient for code E aircraft.
Longitudinal slopes (Annex 14: 3.1.13)	The longitudinal slope of the RWY along the runway centerline must not exceed 1.0% (Code 4).	Recommendation	✓	The graph in section "HKK AD 2.12 Runway physical characteristics" titled "Slopes longitudinal profiles of Runways, Stop ways and clearways" shows a maximum longitudinal slope of 0.5365%.
Strength of runways (Annex 14: 3.1.21)	A runway should be capable of withstanding the traffic of airplanes the runway is intended to serve.	Recommendation	✓	Even though there are no reports indicating that the PCN of the runway (65/F/A/W/T), if insufficient for the safe operation of aircrafts at NBO, a value of 65 is slightly below the typical ACN ranges for Code E aircraft, which range from 70-90 in asphalt and 50-60 in concrete
Surface of runways (Annex 14: 3.1.22)	The surface of a runway shall be constructed without irregularities that would impair the runway surface friction characteristics or otherwise adversely affect the take-off or landing of an airplane.	Requirement	✓	Inspections carried out during the visit showed that the runway surface is in good condition, despite some minor imperfections as shown previously in snapshots and the presence of rubber deposits, especially near THR 06.
Width of runway shoulders (Annex 14: 3.2.2)	For airplanes with OMGS from 9 m up to but not including 15 m, the runway shoulders should extend symmetrically on each side of the runway so that the overall width of the runway and its shoulders is not less than 60 m where the code letter is D or E.	Recommendation	✓	RWY 06/24 (=45 m) plus the shoulders (=7.5 m on each side) have a total width of 60 m.
Surface of runway shoulders (Annex 14: 3.2.5)	A runway shoulder should be prepared or constructed so as to resist erosion and the ingestion of the surface material by airplane engines.	Recommendation	✓	The shoulders of RWY 06/24 are paved with a width of 60 m.
Length of runway strips (Annex 14: 3.4.2)	A strip shall extend before the threshold and beyond the end of the runway or stopway for a distance of at least 60 m where the code number is 4.	Requirement	✓	The dimensions of the runway strip are as follows, according to the AIP: 4,361 x 300m.
Width of runway strips (Annex 14: 3.4.3)	A strip including a precision approach runway shall, wherever practicable, extend laterally to a distance of at least 140 m where the code number is 4.	Requirement	✓	The runway strip is therefore compliant with ICAO Annex 14.
Width of runway strips (Annex 14: 3.4.6)	An object situated on a runway strip which may endanger aeroplanes should be regarded as an obstacle and should, as far as practicable, be removed.	Recommendation	✗	There is a small building near THR 06 which is situated at a distance of approximately 110 meters from the runway center line. This object should, if possible, be removed.
Width of runway strips (Annex 14: 3.4.8)	That portion of a strip of an instrument runway where the code number is 4 within a distance of at least 75 m from the center line of the runway and its extended center line should provide a graded area for airplanes which the runway is intended to serve in the event of an airplane running off the runway.	Recommendation	✓	Inspections carried out during the visit showed that the portion of the strip within 75 m from the runway center line is graded.
Runway end safety areas (Annex 14: 3.5.1)	A runway end safety area shall be provided at each end of a runway strip where the code number is 4.	Requirement	✗	There are no Runway End Safety Areas declared in the AIP for either of the runway 06/24 ends. However, personnel from the airport have mentioned that indeed RESAs of 90 x 90 m are built at either end. RESAs of 90 x 90 m would be compliant with ICAO requirements, but their length would be below the 240 m recommended
Dimensions of runway end safety areas (Annex 14: 3.5.3)	A runway end safety area shall extend from the end of a runway strip to a distance of at least 90 m where the code number is 4.	Requirement	✗	
Dimensions of runway end safety areas (Annex 14: 3.5.4)	A runway end safety area should, as far as practicable, extend from the end of a runway strip to a distance of at least 240 m where the code number is 4.	Recommendation	✗	
Dimensions of runway end safety areas (Annex 14: 3.5.5)	The width of a runway end safety area shall be at least twice that of the associated runway.	Requirement	✗	
Distance between RWY and TWY (Annex 14: Table 3-1)	Distances between the TWY centerline and the RWY centerline for code 4E shall not be less than 172.5 m.	Recommendation	✓	The distance between runway 06-24 and its parallel taxiway to the North (TWY A) is ~200 m, while the distance between runway 06-24 and its parallel taxiway to the South (TWY G) is ~365 m.
Runway-holding positions (Annex 14: 3.12.2)	A runway holding position (or positions) must be provided at the intersection of a runway and a runway.	Requirement	✓	Runway-holding positions are provided at each intersection between the runway and a taxiway.
Runway-holding positions (Annex 14: 3.12.6)	The distance between a runway holding position established at a runway/ taxiway intersection or a road holding position and the center line of a runway shall be 90 m for Code 4 runways with a Precision approach category I.	Requirement	✗	The distance between runway-holding positions and the runway is >90 m (~107.5 m) for those taxiways south of the runway (TWY K, TWY F, TWY E & TWY L), but is less than that (~75 m) for those north of it (TWY A, TWY B & TWY C).

**Figure 134: Compliance assessment of the runway at JKIA**

(Source: Google Earth, ICAO Annex 14)

ICAO Reference	Description	Criteria	Compliance	Observations / Mitigations
Width of taxiways (Annex 14: 3.9.4)	A straight portion of a taxiway must be no less than 23 m wide for aircraft that the airport is intended to serve (aircrafts with OMGWS between 9-15 m).	Recommendation	✓	All taxiways at Jomo Kenyatta International Airport have a width equal to 23 m.
TWY minimum separation distances (Annex 14: 3.9.7)	The distance between the taxiway center line and another taxiway center line must not be less than 76 m for code E taxiways and 91 m for code F taxiways.	Recommendation	✓	All taxiways at Jomo Kenyatta International Airport are separated from each other by a distance of at least 76 m.
Taxiway minimum separation distances (Annex 14: 3.9.7)	The separation between taxiways and objects must not be less than 43.5 m for code E.	Recommendation	✓	No instances have been found where the separation between taxiways and objects is less than the 43.5 m specified for Code E aircraft.
Taxiway shoulders (Annex 14: 3.10.1)	Straight portions of a taxiway where the code letter is C, D, E or F should be provided with shoulders which extend symmetrically on each side of the taxiway so that the overall width of the taxiway and its shoulders on straight portions is not less than 38m where the code letter is E and 25 m where the code letter is C.	Recommendation	⚠	The TWYs width is at least 38m with shoulders (~45 m) for all TWYs south of the RWY, designed for Code E aircraft. The TWYs north of the RWY do not have shoulders (these might be taxiways designated for Code C aircraft only, but shoulders extending up to 25 m are still recommended).
Taxiway strips (Annex 14: 3.11.1)	A taxiway, other than an aircraft stand taxilane, shall be included in a strip.	Recommendation	?	There is no information available about taxiway strips.
Width of taxiway strips (Annex 14: 3.11.2)	A taxiway strip should extend symmetrically on each side of the center line of the taxiway throughout the length of the taxiway to at least 43.5 from the center line.	Recommendation	?	However, there is sufficient space on both sides of the taxiways as to incorporate strips.
Objects on taxiway strips (Annex 14: 3.11.3)	The taxiway strip should provide an area clear of objects which may endanger taxiing airplanes.	Recommendation	?	No fixed objects were found in the taxiway strips (Google Earth).

**Figure 135: Compliance assessment of the taxiway system at JKIA**

(Source: Google Earth, ICAO Annex 14)

ICAO Reference	Description	Criteria	Compliance	Observations / Mitigations
Minimum distances (Annex 14: 3.9.7)	The separation distance between the centerline of the taxilanes and an object must not be less than 22.5 m for Code C, 33.5 m for Code D and 40 m for Code E.	Recommendation	✓	Measurements based on satellite imagery (Google Earth) show that these distances are respected in all aircraft parking positions.
Strength of aprons (Annex 14: 3.13.3)	Each part of an apron should be capable of withstanding the traffic of the aircraft it is intended to serve, due consideration being given to the fact that some portions of the apron will be subjected to a higher density of traffic and, as a result of slow moving or stationary aircraft, to higher stresses than a runway.	Recommendation	✓	Even though there are no reports indicating that the PCN of the aprons (65/F/A/W/T), is insufficient for the safe operation of aircraft at NBO, a value of 65 is slightly below the typical ACN ranges for Code E aircraft, which range from 70-90 in asphalt and 50-60 in concrete. Nonetheless, it must be noted that the portions of apron pavement where the aircraft are to be parked are constructed in concrete rather than in asphalt.
Clearance distances on aircraft stands (Annex 14: 3.13.6)	In an aircraft parking position, there must be the minimum clearance distance between an aircraft parked in the position and any adjacent building or other aircraft using a neighboring position or any other fixed object <ul style="list-style-type: none"> <li>• 4.5 m for Code C;</li> <li>• 7.5 m for Codes D and E.</li> </ul>	Recommendation	✓	Measurements based on satellite imagery (Google Earth) show that these distances are respected in all aircraft parking positions.
Isolated aircraft parking position (Annex 14: 3.14.1)	An isolated aircraft parking position shall be designated, or the aerodrome control tower shall be advised of an area or areas suitable for the parking of an aircraft which is known or believed to be the subject of unlawful interference, or which for other reasons needs isolation from normal aerodrome activities.	Requirement	✓	The AIP does not show any specific spot for an isolated aircraft parking position. However, during the site visit, airport personnel explained that TWY D is the isolated aircraft parking position at JKIA.

**Figure 136: Compliance assessment of the apron at JKIA**

(Source: Google Earth, ICAO Annex 14)

Furthermore, the KCAA did provide a list of pending findings in January 2022. Those findings which relate to non-compliances in the airfield infrastructure are listed below:

- ILS critical area marking is not established (*minimum impact*);
- Non-implementation of the measurement of runway friction (*difficulty to monitor of the runway surface characteristics and its adequacy for the traffic that it is expected to serve*);

- Inability to implement the maintenance actions to ensure that friction characteristics do not fall below the prescribed minima (*impact as per previous point*);
- Apron controller has no visual contact with apron 2 and part of apron 1;
- Maintenance of taxiways A, B, C and D;
- Unserviceable and dim lights on TWY E, F, G, H and M;
- Runway edge lights are located at 7.5 m against a requirement of not more than 3 m from the runway edge; and
- Depressions on the left-hand side of taxiway E centreline after exit from the runway;

It is unclear at this stage if the above-mentioned issues have been resolved by now.

Considering the information provided, significant capital investments related to compliance or regulatory actions are not anticipated. With the assumption that RESAs are implemented, the primary actions would involve constructing taxiway shoulders on the taxiways north of the runway. These shoulders should measure only 2 m if intended for Code C aircraft or 15 m if designated for Code E. Additionally, the demolition of the building within the runway strip is recommended.

### 4.2.3 Capacity-demand assessment

In this section, the analysis involves assessing the current capacity at JKIA's primary facilities, i.e., the runway, apron, terminal buildings and road accesses and car parking, and identifying triggers for expansion. The goal is to establish a baseline scenario that facilitates the estimation of necessary infrastructure and facility expansions. This aligns with achieving an Optimum Level of Service (LoS) as per the guidelines outlined in IATA's Airport Development Reference Manual (ADRM) 12<sup>th</sup> edition.

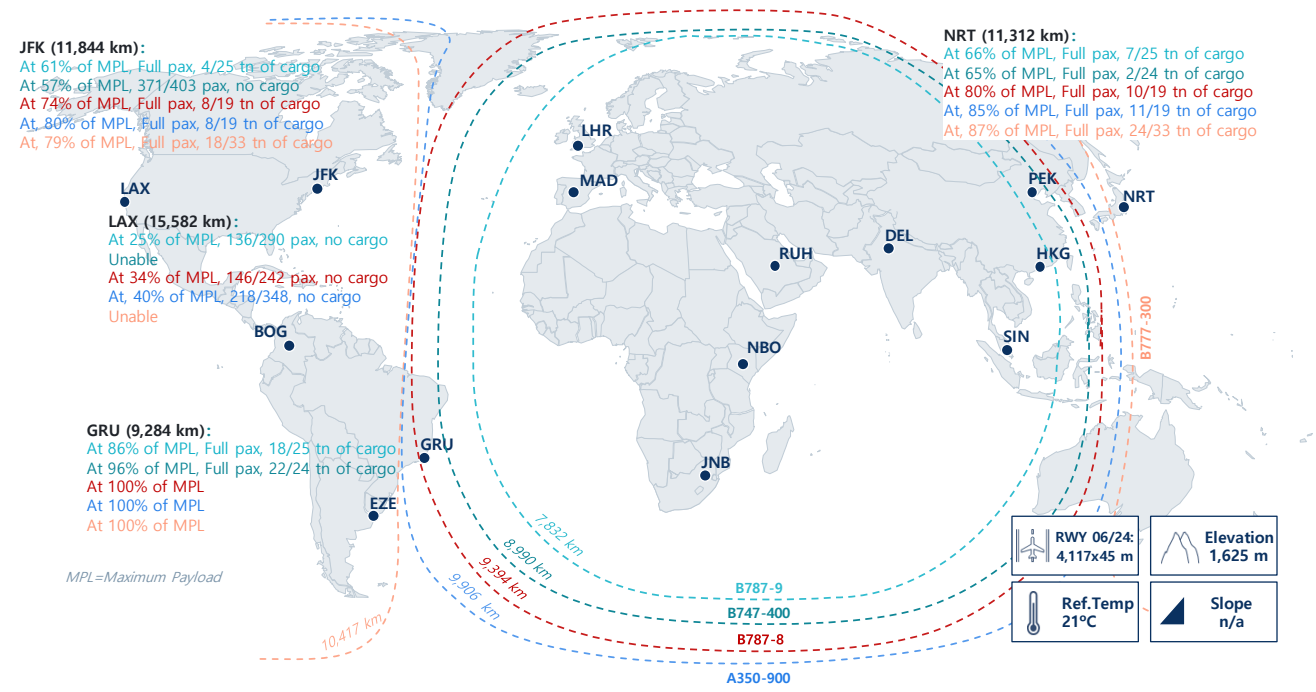
To achieve this objective, a thorough examination has been conducted to understand the available capacity and the future anticipated demand across all the different airport systems and subsystems. A summary of the methodology has been depicted previously in Figure 123.

Considering the expected necessity for significant expansion across the airport's main facilities, the development plan and its associated capital investments currently serve as the major contributors to the overall investment plan.

#### 4.2.3.1 Runway

Situated at an elevation of 1,625 meters above mean sea level, the airport has a paved runway designated as 06/24, measuring 4,117 meters in length and 45 meters in width, 60 m when including shoulders.

The diagram below illustrates the range of different aircraft taking off from JKIA, taking into account runway characteristics, elevation, and the airport reference temperature, along with the top 20 origin/destination routes involving the highest number of indirect passengers to and from the airport. With the current runway, a wide array of destinations comprising the whole of Africa, Europe and the majority of Asia are easily attainable by long-haul aircraft without penalisation in passenger payload. Serving America's west coast is more challenging as the large distance makes it economically unfeasible for the large majority of long-haul aircraft. A runway extension would improve payload-range calculations, but such improvements wouldn't be meaningful, still forcing airlines to suffer large payload penalisations to serve the region.



### Figure 137: Preliminary runway length analysis of Jomo Kenyatta International Airport

(Source: AIP, ACAP)

Regarding the runway's capacity, 30 ATM/h are declared in the documentation received from the KAA. Such documents state the total annual capacity as 157,680 operations based on the 30 ATM/h, an eighteen-hour (18h) daily cap and a utilisation of 80%.

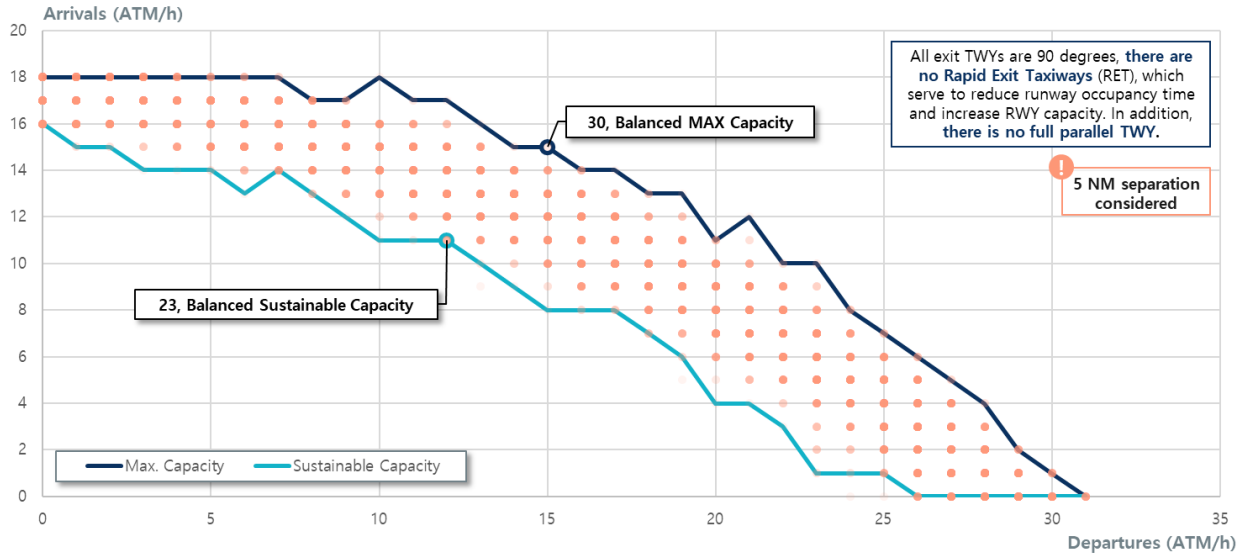
ALG has conducted a further in-depth examination of the potential runway capacity utilising a proprietary tool. This tool models the interactions among various aircraft types within a designated fleet mix, incorporating inputs related to minimum spacing and air traffic regulations. The analysis takes into account the following criteria:

- **Airfield conditions:** current preferred RWY06, no full parallel taxiway at THR 24, and all exit taxiways are 90 degrees (there are no Rapid Exit Taxiways).
- **Fleet mix characteristics:** 8.7% of code B, 78% code C, 0.3% code D, and 13% code E operations (based on OAG schedules for 2019) and most restricting times between arrivals and departures procedures.
- **Separation Rules & Operational Buffers:** average separation between consecutive arrivals, consecutive departures and between arrivals and departures. Current assumption of 5 NM between arrivals according to information contained within JKIA's AIP. Wilson proximity plays a relevant role in assessing the runway capacity, currently Wilson operates many VFR departures that later on change into IFR flights (Z flight plan), but IFR departures and arrivals are very infrequent, if an aircraft requests departing as an IFR flight it must accept potential delays until the arrival sequence at JKIA allows for such departure. Therefore, it is paramount that the current operation at WIL is maintained, not interfering with JKIA by mostly operating VFR flights, giving preference to JKIA operation in case an aircraft requests to depart under IFR rules.

According to the analysis, the **runway has an estimated maximum capacity of 30 ATMs/h** (consistent with KAAs data), whereas 2019 demand is estimated at 27 ATM/h. Thus, expansions are envisaged in the short- and medium-term to increase the runway's capacity.

- WIL has many VFR departures that later on turn into IFR flights (Z flight plan); if an aircraft requests departing from WIL as an IFR it must accept potential delays.

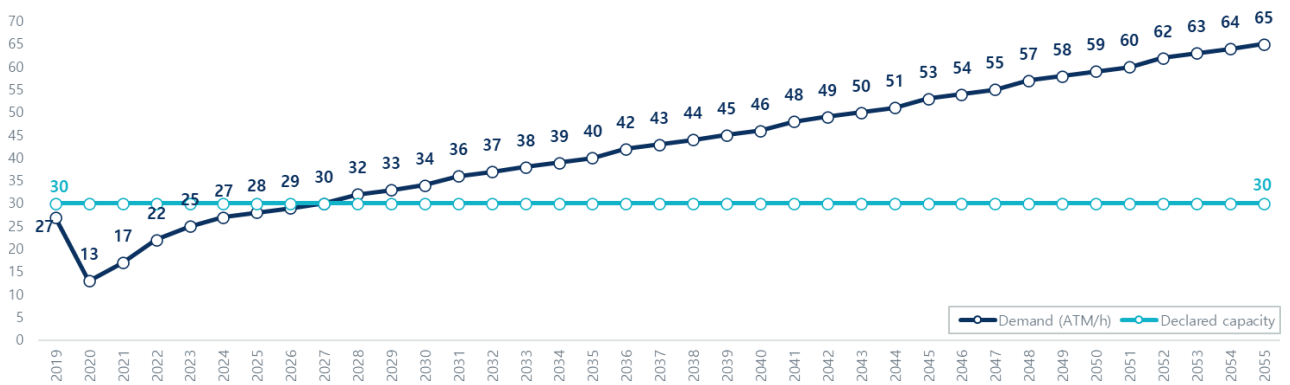




**Figure 138: Runway hourly capacity analysis of JKIA**  
(Source: OAG, ICAO Doc 4444)

According to KAA's specifications, with a current capacity of 30 ATM/h, **it is anticipated that demand will exceed this capacity by 2028, reaching a peak of 65 ATM/h by 2055.** Consequently, there is a need to increase the existing capacity in the near future to accommodate the projected demand.

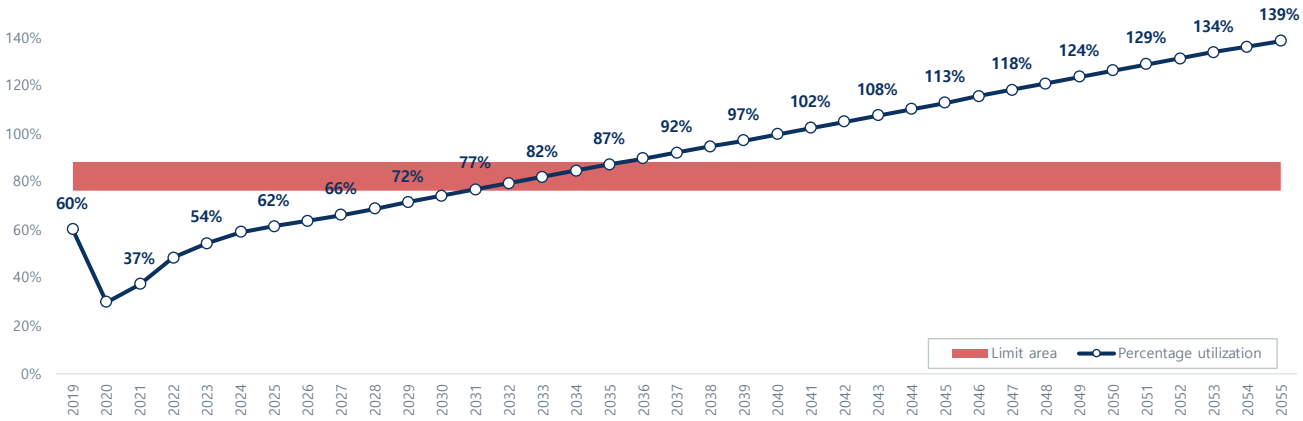
However, the aforementioned analysis is overly simplistic as it solely focuses on the annual peak hour instead of considering runway usage throughout the entire day. While demand may exceed the declared hourly runway capacity during the peak hour (within a whole year), this affects only a very small percentage of the operating hours. Dealing with this issue could be accomplished by making slight adjustments to schedules or implementing holding patterns for aircraft during the busiest peaks, as potential solutions. In any case, planning new infrastructure right when the peak hourly capacity is exceeded might misguide infrastructure planners to carry out capital investments before they are needed.



**Figure 139: Runway hourly capacity-demand analysis at Jomo Kenyatta International Airport**

To address this, an additional analysis has been conducted by examining the "percentage of utilisation" of runway 06-24. This analysis looks at the peak day within a year, determining the percentage of runway use compared to its total capacity. We assume a rate of 30 operations per hour within the operational window from 05:00 am to 00:00 am, as daily operations follow a consistent pattern.

Currently, JKIA's operational capacity between 5:00 am and 12:00 am is calculated at 570 operations (30 operations per hour for 19 hours). The anticipated peak-day operations are then projected based on traffic forecasts. Recognising potential congestion concerns, development options should be considered when the utilisation percentage exceeds 75-80%. By adopting this approach, it would be possible to defer the consideration of development options by 4 to 5 years, moving from 2028 to 2032-2033, rather than relying solely on the peak rate of operations per hour.



**Figure 140: Runway percentage utilisation at Jomo Kenyatta International Airport**

The analysis above clearly indicates the need for improvements in runway capacity in the near term. With the anticipated increase in operations at JKIA, the construction of a second runway is also anticipated to become necessary in 10-15 years. Further details on this are provided in section 4.2.4.

#### 4.2.3.2 Apron

JKIA features three aprons dedicated to commercial, cargo, and general aviation/long-term stay, with a total of 68 stands designed to accommodate aircraft up to Code E. The estimated capacity is allocated as follows (*the split per code has not been confirmed by KAA, but any deviations from the numbers presented below are expected to be minimal*):

- 49 commercial stands (16 code E, 4 code D, and 29 code C);
- 9 cargo stands (7 code E and 2 code D); and
- 10 stands for General Aviation and long-stay aircraft in the north apron, able to accommodate code C aircraft. These stands are presently utilised as an aircraft graveyard. Due to the uncertainty surrounding their future usage plans and their considerable distance from the terminals, **they are not taken into account for the capacity-demand analysis.**

In addition, the airport is equipped with 16 passenger boarding bridges (PBBs) to facilitate the boarding and disembarkation of passengers. Positions with PBBs are designated as "contact stands," those adjacent to the terminal building without a PBB are termed as "false contact stands," and those situated farther from the terminals are classified as "remote stands."



Figure 141: Existing apron capacity at Jomo Kenyatta International Airport

(Source: AIP, satellite imagery)

As previously explained, different peaks are examined to evaluate the projected demand in comparison to the existing capacity. Initially, the analysis focuses on concurrent and independent peaks.

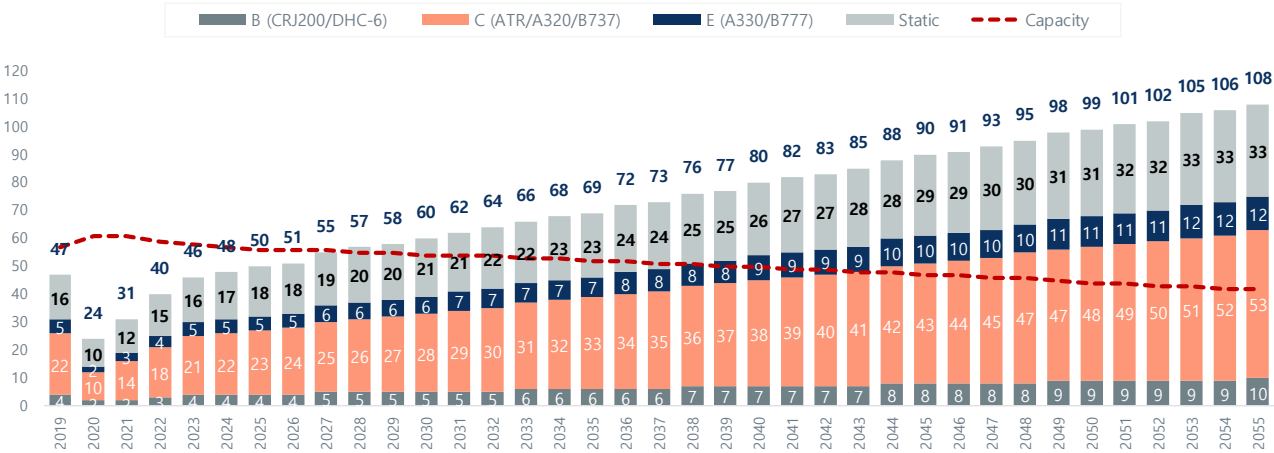
#### Concurrent peak

Anticipated growth in stand demand suggests a total requirement of 108 stands by the year 2055, categorised as follows: 10 stands for type B, 53 for type C, 12 for type E, and 33 static stands primarily accommodating smaller and overnight aircraft (8 for type B, 23 for type C, and 2 for type E).

JKIA, when excluding the 10 code C stands in the GA/long-stay apron has a total capacity of 49 aircraft. **The commercial apron is projected to sufficiently cater to total demand up to 2027, after which an**

**expansion becomes necessary to accommodate static demand** (Note: the capacity decreases as more code E parking positions are needed, since these could accommodate two code C aircraft).

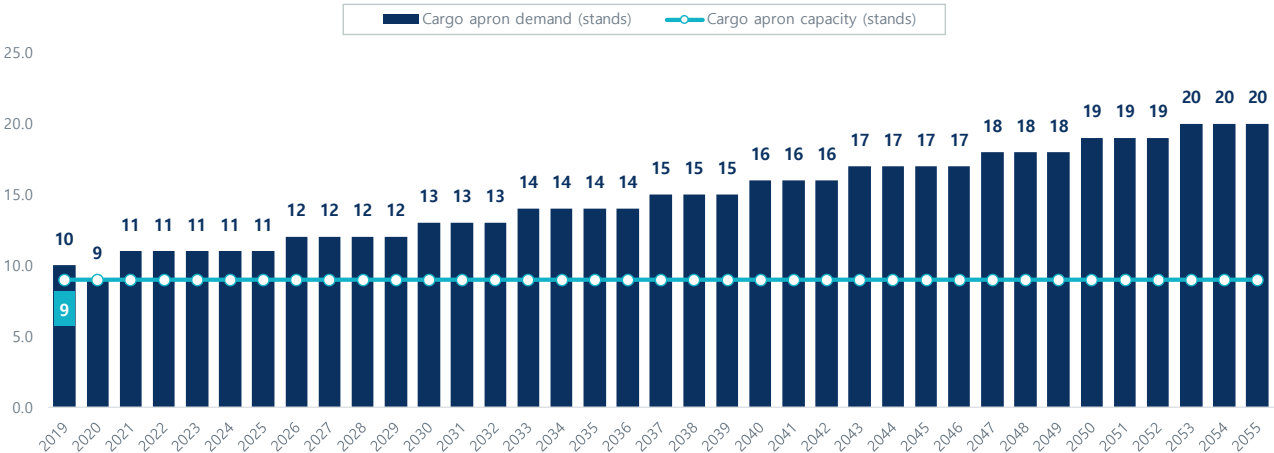
The findings of this analysis align with the information gathered during the site visit. Airport personnel indicated that, in the near future, apron expansion is necessary due to existing congestion.



**Figure 142: JKIA apron capacity-demand analysis by aircraft code (concurrent peak)**

It should be noted that the previous apron capacity-demand analysis does not include non-scheduled operations or cargo operations due to the unavailability of information, i.e., a real flight plan. However, capacity constraints in the cargo apron were transmitted to the team during the site visit. Thus, a high-level capacity-demand analysis has been conducted assuming a ratio of 36,000 Tn/stand, which is based on the cargo levels in 2019, year in which the apron experienced congestion.

The analysis shows **the need of providing 11 additional aircraft stands to accommodate the demand of 2055. The apron needs thus to be expanded.** The apron development options are assessed in subsection 4.2.4.



**Figure 143: JKIA high-level cargo apron capacity-demand analysis**

**Independent peak**

To further develop the capacity-demand analysis, an evaluation has been conducted to determine the needs for each independent peak per aircraft code. The assessment highlights a capacity deficiency in all

the types of stands (codes B, even though these are less restrictive given their small size, C & E), leading to the occupation of wide body stands by smaller aircraft and subsequently causing a shortage of code E stands.

- **Code B stands.** While there are no stands specifically designated for code B aircraft, they can be accommodated in larger stands. The projection indicates that the demand for code B is expected to reach 7 dynamic stands and 14 static stands by the year 2055;
- **Code C stands.** The commercial apron can currently accommodate up to 29 code C stands (without considering the 10 aircraft that could be accommodated in the GA/long-stay apron). However, the projected demand of code C aircraft is expected to surpass 29 code C stands by 2031, indicating the necessity for apron expansion. However, considering the availability of code E stands, a few more parking positions could be made available to code C aircraft when not all code E positions are occupied; and
- **Code E stands.** The anticipated dynamic demand for code E is projected to reach 20 stands by 2055, exceeding the current capacity of 16 code E stands by 2048.

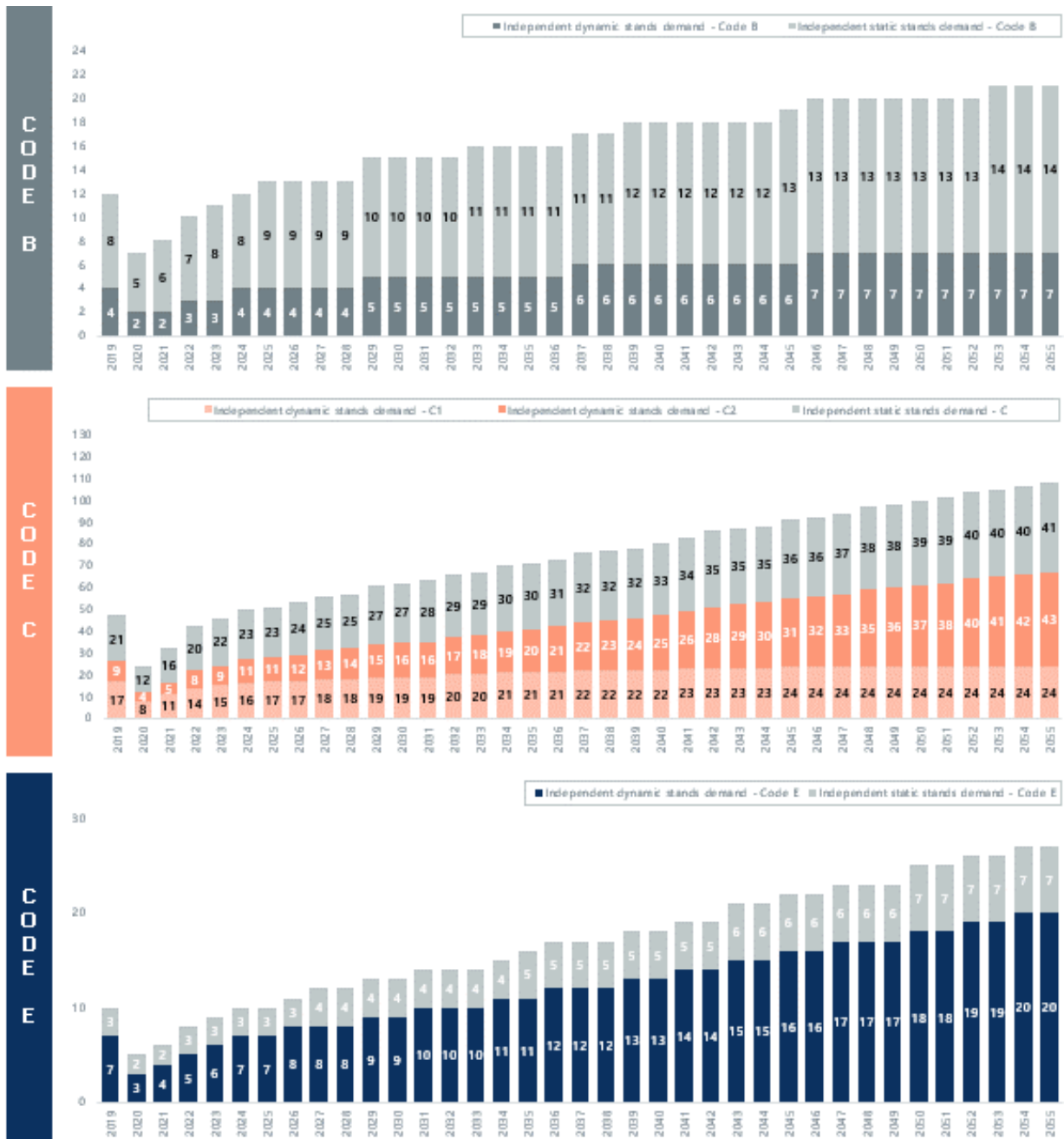


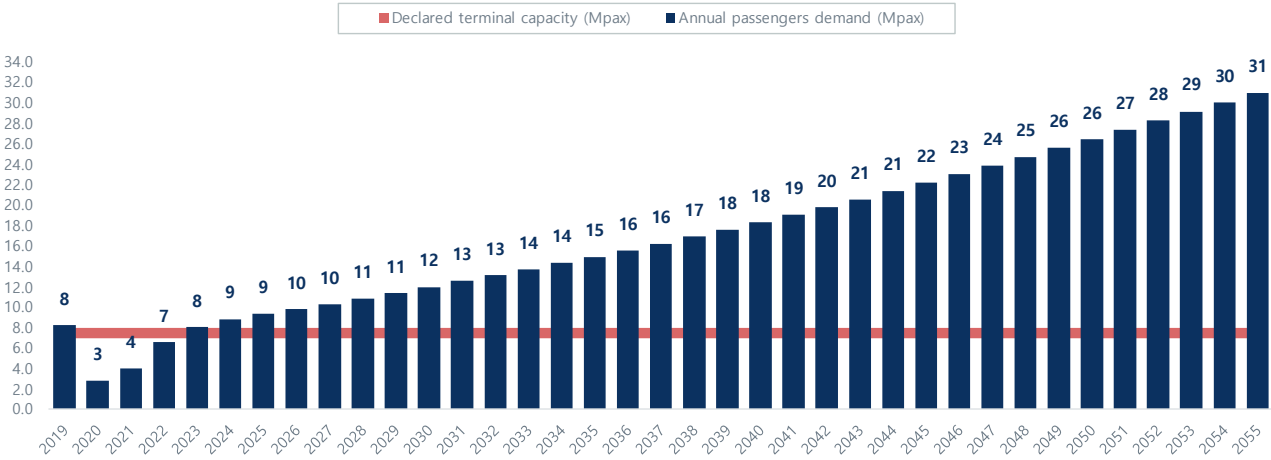
Figure 144: JKIA apron capacity-demand analysis by aircraft code (independent peak)

In light of this analysis, it is clear that **apron expansions should be envisaged in the short and medium term**. This is deemed necessary to accommodate both static and dynamic demand, particularly in light of the projection that **capacity will be exceeded by 2027 based on the concurrent peak**.

#### 4.2.3.3 Passenger Terminal

With the airport's declared capacity of 7.5 million passengers, it is anticipated that terminal capacity will already be exceeded in 2023 upon the recovery of pre-Covid traffic levels, based purely on this high-level capacity assessment. However, a more comprehensive capacity-demand analysis has been developed, adhering to the guidelines set by IATA. This detailed assessment which analyses each terminal subsystem provides a more accurate determination of when expansions are required in different areas. Regardless of

the methodology employed, expansions of the terminal are necessary in the short and medium term to accommodate the expected demand while ensuring an optimum Level of Service (as defined in IATA's ADRM 12<sup>th</sup> edition).

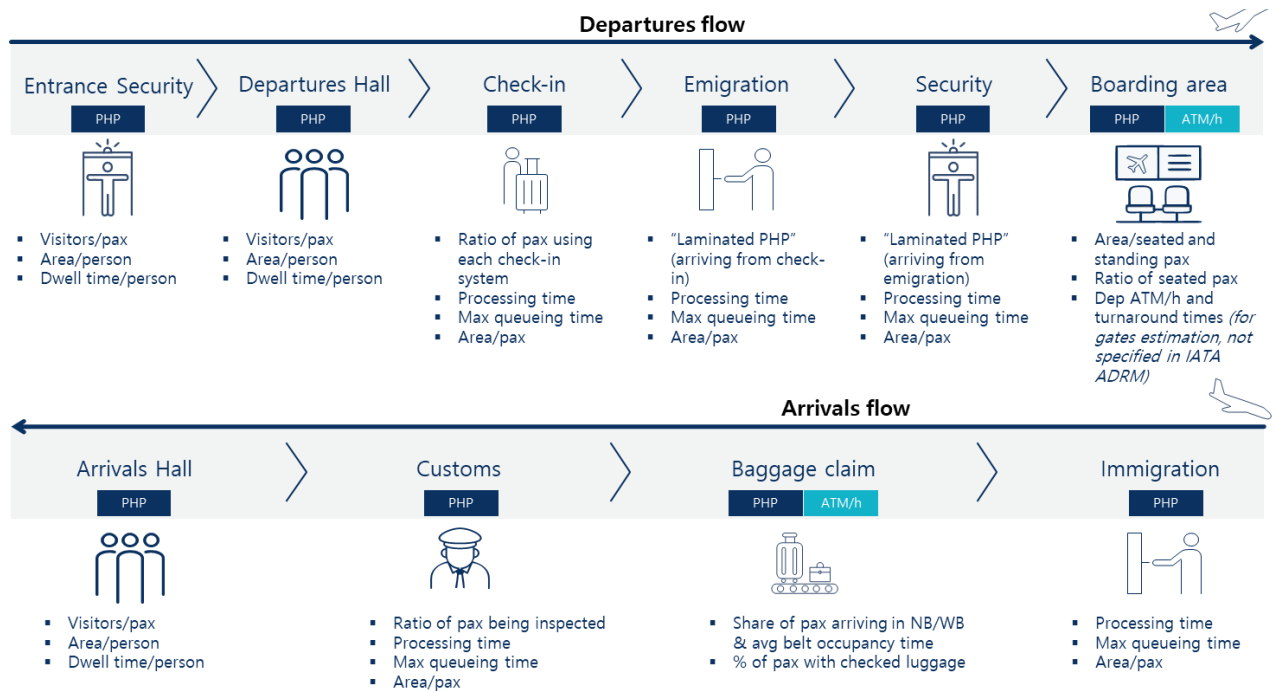


**Figure 145: Terminal building capacity-demand analysis (Mpx)**

In accordance with the methodology developed by IATA in its Airport Development Reference Manual (ADRM), the assessment of terminal capacity incorporates current and projected passenger flows during peak hours (PHP), with the required Level of Service (LoS) as a constant parameter. This approach facilitates the estimation of terminal dimensions, considering both surface area (m<sup>2</sup>) and required equipment (e.g., check-in counters, baggage claim units, etc.). By comparing these requirements with the existing surface and equipment, the assessment provides insights into the congestion levels within various terminal building systems and components.

The figure below illustrates both arrivals and departures passenger flows, which are shown together with the parameters to determine the equipment and area needs for each of the different processes.





**Figure 146: Passenger processing facilities analysed in the PTB capacity assessment**

For the implementation of this approach, we relied on a set of assumptions derived from the data supplied by KAA, observations documented during the site visit, and relevant recommendations from IATA, where applicable, including:

- Peak factors have been considered for analysing all passenger processing facilities requirements, i.e., departing/arriving Peak Hour Passengers and/or ATMs;
- Peak Hour Passengers including O&D and connecting passengers are considered for the sizing of immigration, emigration, customs, and boarding gate lounges; while the other subprocesses are analysed for O&D passengers only;
- Maximum queuing times (MQT) and minimum area per passenger ratios are based on the Optimum Level of Service based on IATA ADRM's guidelines; and
- Emigration, immigration, and customs processes are only applicable to international passengers.

The following tables summarise these assumptions and input data.








Departures		Unit	Value
<b>Entrance security</b>			
	Peak 30-minute Factor	% of PHP	60%
	Process Time per Passenger	sec	20.00
	Maximum Queuing Time	min	10.00
	Depth of One X-ray Lane	m	4.00
	Width of One X-ray Lane	m	3.00
	Space per Person	m <sup>2</sup>	1.00
	Corridor Width	m	5.00
<b>Departures and Arrivals Hall</b>			
	Space per person	m <sup>2</sup>	2.00
	People accompanying the passenger	person	1.50
	Dwell time visitors	minutes	20.00
	Dwell time passengers	minutes	10.00
<b>Traditional Check-in</b>			
	Depth of the Check-in Process Area	m	5.00
	Width of the One Service Desk	m	2.50
	Corridor Width	m	4.00
	Peak 30-minute Factor	% of PHP	70%
	Proportion of Business Passengers	% of PHP	10%
	Proportion of First Class Passengers	% of PHP	0%
	Ratio of Passengers using Traditional Check-in Facilities	% of PHP	60%
	Process Time per Economy Passengers	sec	210.00
	Process Time per Business Passengers	sec	210.00
	Process Time per First Class Passengers	sec	210.00
	Maximum Queuing time for Economy passengers	min	20.00
	Maximum Queuing time for Business passengers	min	5.00
	Maximum Queuing time for First Class passengers	min	3.00
	Space per Person	m <sup>2</sup>	1.30
<b>Security Check</b>			
	Depth of One Security Lane	m	15.00
	Width of the One Security Lane	m	7.50
	Space per Person	m <sup>2</sup>	1.00
	Corridor Width	m	10.00
	Process Time per Passenger - INT	sec	30.00
	Maximum Queuing Time	min	10.00
	Process Time per Passenger - DOM	sec	20.00
<b>Emigration</b>			
	Process Time per Passenger	sec	60.00
	Maximum Queuing Time	min	10.00
	Depth of One Departure Control Desk	m	3.00
	Width of the One Departure Control Desk	m	2.50
	Space per Person	m <sup>2</sup>	1.00
	Corridor Width	m	5.00
<b>Boarding Lounges</b>			
	Additional Gate Buffer	%	15%
	Adjustment Factor to Seat Ratio	%	15%
	Open Gate Lounge Factor	%	90%
	Space per Seated Person	m <sup>2</sup>	1.80
	Space per Standing Person	m <sup>2</sup>	1.20
	Additional Space Ratio to account for boarding operation (in % of global gate area)	%	15%
	Additional Circulation Area (in % of global gate area)	%	15%
	Avg. Turnaround time	hours	1.50
	Seat Ratio ( 50% - 70%)	%	70%
	# of pax in the design aircraft - INT	pax per ACFT	83 - 114
	# of pax in the design aircraft - DOM	pax per ACFT	47 - 74

Figure 147: Inputs to the terminal building capacity assessment – Departures flow

Arrivals		Unit	Value
<b>Immigration</b>			
	Peak 30-minute Factor	% of PHP	70%
	Process Time per Passenger	sec	80.00
	Maximum Queuing Time	min	10.00
	Corridor Width	m	5.00
<b>Baggage claim</b>			
	Claim frontage per passenger	m	85%
	Area per passenger	m <sup>2</sup>	1.50
	# of passengers in the design aircraft NB - INT	Pax per aircraft	95
	# of passengers in the design aircraft WB - INT	Pax per aircraft	249
	Avg. NB Load Factor - INT	%	100%
	Avg. WB Load Factor - INT	%	100%
	Average claim device occupancy time per NB	min	20.00
	Average claim device occupancy time per WB	min	45.00
	Proportion of passengers arriving by NB (Design Day) - INT	%	81%
	Peak Proportion of passengers collecting bag simultaneously (same flight)	%	49%
	Ratio of Passengers collecting bags	%	100%
	# of passengers in the design aircraft NB - DOM	Pax per aircraft	88
	# of passengers in the design aircraft WB - DOM	Pax per aircraft	234
	Avg. NB Load Factor - DOM	%	100%
	Avg. WB Load Factor - DOM	%	100%
	Proportion of passengers arriving by NB (Design Day) - DOM	%	100%
Peak Proportion of passengers collecting bag simultaneously (same flight) - DOM	%	49%	
<b>Customs</b>			
	Process Time per passenger at Primary Inspection Booth Facility (if existing)	min	10.00
	Process Time per passenger at X-ray Facility	min	5.00
	Ratio of Passengers to be Inspected	%	100%
	Maximum Queuing Time at Primary Inspection Booth	min	5.00
	Maximum Queuing Time at X-ray Facility	min	5.00
	Depth of One Primary Inspection Booth Lane	m	3.00
	Width of One Primary Inspection Booth Lane	m	2.20
	Depth of One X-ray Lane	m	4.00
	Width of One X-ray Lane	m	3.00
	Corridor Width	m	3.00
	Space per Person	m <sup>2</sup>	1.30

**Figure 148: Inputs to the terminal building capacity assessment – Arrivals flow**

Estimates for the current equipment were obtained through the site visit and information provided by stakeholders, including the existing asset list and airport plans. Queuing areas were measured using PDF plans from KAA, although it's acknowledged that these plans might not be the latest version and may not accurately represent the current state of the terminal. This is particularly true for Terminals 1B and 1C, which underwent refurbishment in late 2022.

#### Passenger processing facilities – Equipment

The results of the capacity-demand analysis are illustrated in Figure 149 below. This analysis involves a comparison between the equipment required to meet the forecasted traffic demand based on an Optimum Level of Service (LoS) and the existing equipment available in both terminals. It is important to highlight that the depicted equipment in the below figure represents the combined available equipment for all terminals and has been approximated through site visits and discussions with stakeholders.

	Current Equipment	2019	2025	2030	2035	2040	2045	2050	2055
<b>Traffic Parameters (All traffic)</b>									
Total traffic (Mpax)		8.3	9.4	12.0	15.0	18.3	22.2	26.5	31.0
INT'L traffic (Mpax)		1.7	2.1	2.7	3.3	3.9	4.5	5.2	5.9
DOM traffic (Mpax)		6.6	7.3	9.3	11.7	14.4	17.6	21.3	25.1
DOM ARR PHPs (O&D)		289	353	422	500	576	651	724	793
DOM DEP PHPs (O&D)		352	419	490	571	649	725	798	868
INT'L ARR PHPs (O&D)		1,018	1,066	1,177	1,364	1,571	1,799	2,048	2,291
INT'L DEP PHPs (O&D)		1,079	1,127	1,239	1,424	1,626	1,846	2,083	2,313
<b>Departing Passengers Flow (International &amp; Domestic)</b>									
<b>Entrance security – INT'L</b>	9	67%	67%	78%	89%	100%	111%	133%	144%
Required lanes		6	6	7	8	9	10	12	13
<b>Entrance security – DOM</b>	3	67%	100%	100%	133%	133%	133%	167%	167%
Required lanes		2	3	3	4	4	4	5	5
<b>Check-in counters – INT'L</b>	90	39%	40%	43%	50%	58%	64%	74%	82%
Required counters		35	36	39	45	52	58	67	74
<b>Check-in counters – DOM</b>	24	50%	63%	67%	79%	92%	100%	108%	117%
Required counters		12	15	16	19	22	24	26	28
<b>Security screening – INT'L</b>	21	43%	48%	48%	57%	62%	71%	81%	86%
Required lanes		9	10	10	12	13	15	17	18
<b>Security screening – DOM</b>	4	50%	75%	75%	75%	100%	100%	125%	125%
Required lanes		2	3	3	3	4	4	5	5
<b>Emigration desks</b>	41	54%	56%	59%	68%	78%	88%	100%	110%
Required counters		22	23	24	28	32	36	41	45
<b>Boarding gates – INT'L</b>	25	150%	142%	154%	169%	181%	196%	212%	227%
Required gates		39	37	40	44	47	51	55	59
<b>Boarding gates – DOM</b>	6	183%	183%	217%	233%	250%	267%	283%	300%
Required gates		11	11	13	14	15	16	17	18
<b>Arriving Passengers Flow (International &amp; Domestic)</b>									
<b>Immigration desks</b>	44	59%	61%	68%	77%	89%	102%	116%	130%
Required counters		26	27	30	34	39	45	51	57
<b>Baggage Reclaim – INT'L</b>	10	60%	60%	60%	70%	80%	90%	90%	110%
Required belts		6	6	6	7	8	9	9	11
<b>Baggage Reclaim – DOM</b>	2	150%	150%	150%	150%	150%	150%	200%	200%
Required belts		3	3	3	3	3	3	4	4
<b>Customs</b>	3	67%	100%	100%	100%	133%	133%	133%	167%
Required lanes		2	3	3	3	4	4	4	5

**Figure 149: Terminal equipment capacity-demand analysis**

(Does not consider the decommissioning of T1E and T2)

The assumptions consider the potential extension of the life cycle of Terminals 1E and Terminal 2 beyond the year 2025, extending their continued operation for the foreseeable future. Consequently, the computation of existing equipment and queuing areas does not factor in *Project Infill*.

The presented results indicate that certain terminal subsystems are anticipated to face significant congestion in the near and medium term. However, it is important to note that there may be some caveats associated with these findings:

- **Entrance security lanes:** Considering the lanes currently installed, congestion is foreseen in international screening by 2040 and in domestic screening by 2025. Nevertheless, in both scenarios, the installation of additional screening lanes in terminals T1B, T1C, and T1D could readily accommodate the projected demand, given the seemingly available space within their footprints.
- **Check-in counters:** There is no expected congestion at the check-in desks for international flights throughout the forecasted period. Additionally, congestion at domestic check-in counters is not anticipated until 2045. This suggests that the current terminal has ample capacity to meet the projected demand.
- **Security screening lanes:** Likewise, congestion is expected solely at the security screening lanes for domestic traffic in Terminal 1D by 2040, with international lanes deemed adequate for the anticipated demand. Nonetheless, the current terminal layout, which has the 2 existing security lanes in a narrow corridor, poses challenges in integrating the necessary additional 2 lanes to meet the forecasted PHPs. A redesigned T1D could nonetheless be able to accommodate all 4 lanes.
- **Emigration desks:** No congestion is anticipated until 2050. Additionally, this is not deemed a critical issue, considering the available space in both T1A and the current T1B & T1C buildings. A reconfiguration to meet the expected demand should be feasible.

- **Boarding gates:** These are the critical factor to render the current terminal insufficient for current and future traffic; this was confirmed during the site visit conducted by the Consulting team, which experienced congestion in the gate areas. However, it is important to note the following considerations in the calculations presented above.

The IATA ADRM methodology lacks a dedicated approach for calculating the requirement for boarding gates. The employed methodology determines gate needs by considering the total departing PHPs, average aircraft size, average load factor, and an average turnaround time. The turnaround times considered are 1.5 hours for international flights and 1 hour for domestic flights. Any change in these assumptions proportionally affects the number of gates needed; however, the average values utilised are considered reasonable.

Regardless, considering the input values and the observed congestion during the site visit, **it is asserted that gates constitute the primary capacity constraint at JKIA**. Severe congestion is projected to be occurring already at international gates, and as per the outlined methodology, domestic gates are also facing severe congestion, expected to only exacerbate in the future. However, it was observed during site visits that the domestic gates in Terminal 2 are not currently utilised to their full capacity, as most flights are being boarded via Terminal 1D.

Nevertheless, it's important to acknowledge that the analysis is conducted based on projected peak-hour passenger figures, which do not reflect the majority of operating hours and therefore, the airport should not be expected to experience such congestion levels throughout most of the day.

- **Immigration desks:** Congestion is anticipated by 2045. Similarly, to emigration counters, this is not deemed a critical issue, considering the available space within the existing terminals which could be reconfigured to install additional passport control positions.
- **Baggage reclaim belts:** Congestion is projected in the international baggage reclaim only by the end of the 30-year period. According to the calculations, congestion in the domestic reclaim is expected already and is likely to intensify further once T2 is demolished.
- **Customs (X-ray lanes):** These are considered not to be a concern. If additional customs controls are needed, there is ample space available to install one or even more if necessary.

Considering the findings above, **the current shortage of both domestic and international gates emerges as a crucial issue requiring a solution**. Given the difficulty to expand the current terminal to provide more gates, the optimal solution involves the construction of a new terminal building and minor expansions in the current building to meet the anticipated demand. Section 4.2.4, which describes the proposed development plan for JKIA, provides a detailed assessment of the Terminal development plans.

#### **Passenger processing facilities – Queueing areas**

As previously stated, queueing areas have been assessed using PDF plans provided by KAA. It's recognised, however, that these plans might not be the most recent version and may not precisely depict the current distribution of the terminal, especially for T1B and T1C.

	Current Areas	2019	2025	2030	2035	2040	2045	2050	2055
<b>Traffic Parameters (All traffic)</b>									
Total traffic (Mpax)		8.3	9.4	12.0	15.0	18.3	22.2	26.5	31.0
INT'L traffic (Mpax)		1.7	2.1	2.7	3.3	3.9	4.5	5.2	5.9
DOM traffic (Mpax)		6.6	7.3	9.3	11.7	14.4	17.6	21.3	25.1
DOM ARR PHPs (O&D)		289	353	422	500	576	651	724	793
DOM DEP PHPs (O&D)		352	419	490	571	649	725	798	868
INT'L ARR PHPs (O&D)		1,018	1,066	1,177	1,364	1,571	1,799	2,048	2,291
INT'L DEP PHPs (O&D)		1,079	1,127	1,239	1,424	1,626	1,846	2,083	2,313
<b>Departing Passengers Flow (International &amp; Domestic)</b>									
<b>Entrance security – INT'L</b>	245 m <sup>2</sup>	73%	73%	86%	98%	110%	122%	147%	159%
Required area		180	180	210	240	270	300	360	390
<b>Entrance security – DOM</b>	195 m <sup>2</sup>	31%	46%	46%	62%	62%	62%	77%	77%
Required area		60	90	90	120	120	120	150	150
<b>Check-in counters – INT'L</b>	900 m <sup>2</sup>	25%	26%	29%	33%	38%	42%	49%	54%
Required area		228	236	258	297	344	381	437	485
<b>Check-in counters – DOM</b>	425 m <sup>2</sup>	19%	23%	24%	30%	33%	37%	40%	43%
Required area		80	97	104	127	142	158	172	182
<b>Security screening – INT'L</b>	385 m <sup>2</sup>	47%	52%	52%	62%	68%	78%	88%	94%
Required area		180	200	200	240	260	300	340	360
<b>Security screening – DOM</b>	60 m <sup>2</sup>	100%	150%	150%	150%	200%	200%	250%	250%
Required area		60	90	90	90	120	120	150	150
<b>Emigration desks</b>	270 m <sup>2</sup>	81%	85%	89%	104%	119%	133%	152%	167%
Required area		220	230	240	280	320	360	410	450
<b>Boarding gates – INT'L</b>	5,275 m <sup>2</sup>	131%	135%	154%	178%	199%	226%	255%	287%
Required area		6,904	7,139	8,116	9,375	10,504	11,941	13,477	15,114
<b>Boarding gates – DOM</b>	1,060 m <sup>2</sup>	67%	81%	100%	118%	137%	155%	174%	194%
Required area		714	855	1,061	1,254	1,449	1,648	1,849	2,052
<b>Arriving Passengers Flow (International &amp; Domestic)</b>									
<b>Immigration desks</b>	1,085 m <sup>2</sup>	18%	19%	21%	24%	27%	31%	35%	39%
Required area		195	203	225	255	293	338	383	428
<b>Baggage Reclaim – INT'L</b>	4,500 m <sup>2</sup>	63%	67%	72%	89%	102%	121%	129%	158%
Required area		2,844	3,015	3,262	4,005	4,592	5,466	5,818	7,092
<b>Baggage Reclaim – DOM</b>	655 m <sup>2</sup>	165%	187%	206%	220%	235%	252%	312%	332%
Required area		1,084	1,223	1,349	1,442	1,543	1,649	2,042	2,173
<b>Customs</b>	175 m <sup>2</sup>	89%	134%	134%	134%	178%	178%	178%	223%
Required area		156	234	234	234	312	312	312	390

Figure 150: Terminal capacity-demand areas demand analysis

This analysis aligns with the conclusions drawn from the examination of terminal equipment, indicating the likelihood of congestion in some of the processing areas in the near and medium term. As already discussed in the previous analysis, certain areas are more critical than others, with particular emphasis needed on boarding gate areas and baggage reclaim halls. These processing areas, requiring larger spaces to accommodate future demand, are also the most constrained within the existing footprint.

#### Total Terminal area check – Equipment space + Queuing space + Additional areas

A final assessment has been conducted, comparing the overall area of the current terminal with an estimated value representing the total area required to adequately accommodate the expected traffic demand. This estimation is derived from the spaces needed for queuing, the installation of necessary equipment, and additional non-functional areas essential for computing the total gross area of the terminal. Non-functional areas denote spaces allocated for ancillary purposes within the terminal. These areas are categorised and evaluated as follows:

- **Commercial areas:** include both public and private spaces designated for retail, food and beverage, ancillary, and commercial support services (like kitchens and storage). The overall demand for commercial areas has been computed using a ratio of 500 m<sup>2</sup>/Mpax for the domestic zone and 1,000 m<sup>2</sup>/Mpax for the international zone, drawing on benchmarks from other international airports.
- **Baggage Handling Systems (make up areas):** preliminary estimations for total footprint area were derived using the methodology recommended by the Transportation Research Board (TRB) from the United States. The TRB proposes distinct methodologies for departures and arrivals makeup areas.
- **Offices** catering to various purposes: operator administration offices, airline operational offices, passenger service offices, etc. IATA does not address the sizing of these offices in its ADRM 12<sup>th</sup> edition manual; however, they are essential for the proper functioning of the airport. The

computation considers ratios of 350 m<sup>2</sup>/Mpax for airline offices and 250 m<sup>2</sup>/Mpax for airport offices.

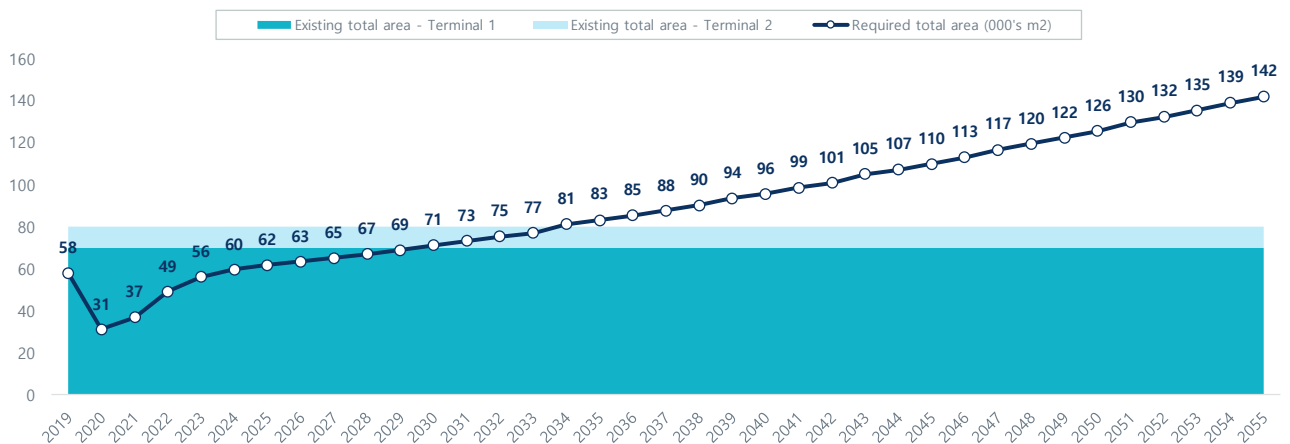
- **Circulation areas** to facilitate the horizontal and vertical movement of passengers, staff, and baggage, and to include restrooms as well as other restricted and service areas of the airport (system control, maintenance, security, restricted corridors, etc.). Based on projects in similar airports, an additional 35% of the calculated areas for the other purposes is estimated to be sufficient to ensure these services and circulation areas.

The total passenger processing areas and non-functional spaces determine the gross area needed for the passenger terminal building. The resulting area for the terminal building includes an additional 5%, accounting for spaces necessary for the building structure, construction requirements, walls, and any other construction inefficiencies.

For comparison with existing and projected areas for the terminal building(s), these have been estimated using the following approach:

- Total area for Terminal 1 estimated at 70,000 m<sup>2</sup>;
- Total area for Terminal 2 is 10,000 m<sup>2</sup> as per Project Infill data;

This approach paints a more optimistic scenario for the existing Terminal, suggesting it might have sufficient area to accommodate the anticipated traffic further than expected (until 2030-2035). **Nevertheless, the constraints identified in prior analyses, especially regarding boarding gates and baggage reclaim belts emphasize the need for a new Terminal in the short to medium term.**

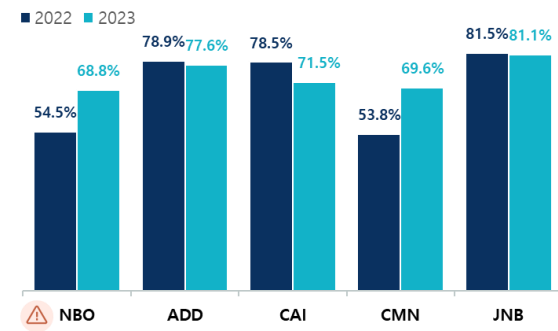


**Figure 151: Resulting terminal areas capacity-demand analysis**

Apart from the analyses conducted above, there are many issues in the operation of the current terminal regarding passenger flows and lack of interconnection of the baggage handling system, contributing on lagging JKIA/KQ on-time performance compared to the main hubs in the region.



Annual punctuality (OTP 15 min)



Monthly punctuality (OTP 15 min)

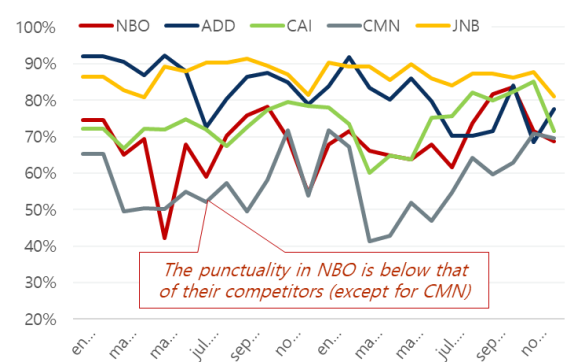


Figure 152: On time performance in main African hubs

In the Consultant's perspective, the above analysis underscores the necessity for the construction of a new terminal building. This recommendation is not solely aimed at improving capacity in critical systems like boarding gates and baggage reclaim but also addresses broader concerns. Apart from issues related to passenger flows, the lack of interconnection of the baggage handling system, and the challenges for expanding the ring terminal, the Consultant highlights that the existing system falls short in meeting the aesthetic standards expected of a gateway airport which also serves the country's flag carrier.

It must be emphasised that the previous analysis views T1 as a singular structure, but this perspective is not whole. Airlines are assigned to a specific subterminal, consequently, if the operator aims to sustain Kenya Airways and SkyTeam's operations in T1A, significant congestion would already be anticipated in the very short term in various processes such as emigration, immigration, and international boarding gates (only those gates at T1A have access to arrivals at the subterminal). The result of this analysis is shown below in Figure 153. This congestion aligns with observations made during the site visit. This is another reason why the construction of a new terminal is proposed, to provide Kenya Airways and its codeshare partners with the space they require as soon as practicable and avoid further congestion in T1A.

	Current Equipment	2019	2025	2030	2031	2032	2033	2034	2035
<b>Traffic Parameters (KQ + Codeshares int'l traffic)</b>									
INT'L traffic (Mpx)		4.4	4.8	6.1	6.5	6.8	7.1	7.4	7.7
INT'L ARR PHPs (O&D)		1,018	976	975	988	1,001	1,014	1,028	1,042
INT'L DEP PHPs (O&D)		997	960	967	982	996	1,011	1,027	1,043
<b>Departing Passengers Flow (International)</b>									
Entrance security	4	150%	150%	150%	150%	150%	150%	150%	150%
Required lanes		6	6	6	6	6	6	6	6
Check-in counters	30	107%	103%	103%	103%	107%	107%	110%	113%
Required counters		32	31	31	31	32	32	33	34
Self-service kiosks	10	40%	40%	40%	40%	40%	40%	40%	40%
Required kiosks		4	4	4	4	4	4	4	4
Security screening	10	80%	80%	80%	80%	80%	80%	90%	90%
Required lanes		8	8	8	8	8	8	9	9
Emigration desks	16	125%	125%	125%	125%	125%	125%	131%	131%
Required counters		20	20	20	20	20	20	21	21
Boarding gates	13	292%	269%	277%	285%	285%	285%	292%	292%
Required gates		38	35	36	37	37	37	38	38
<b>Arriving Passengers Flow (International)</b>									
Immigration desks	16	163%	156%	156%	156%	156%	163%	163%	163%
Required counters		26	25	25	25	25	26	26	26
Baggage Reclaim	3	300%	267%	300%	300%	300%	300%	300%	300%
Required belts (NB)		9	8	9	9	9	9	9	9
Customs	1	200%	200%	200%	200%	200%	200%	200%	200%
Required lanes		2	2	2	2	2	2	2	2

Figure 153: Terminal 1A capacity-demand equipment demand analysis

(With traffic of Kenya Airways and its codeshare partners)

According to the Consultant's recommendation, Kenya Airways, along with its alliance and codeshare partners, should be relocated to a new terminal building, while other carriers at the airport could continue operations from Terminal 1. This strategic move aims to enhance the airport's overall image,

establishing a more inviting entry point, and strategically positioning Kenya Airways within a new, and contemporary terminal, which enables future expansion. **The proposal aligns with the airport's role as Kenya's gateway, providing a distinct sense of place for visitors, ultimately contributing to an improved aesthetic, and creating an enduring first impression for visitors to the country.**

4.2.3.4 Landside facilities

The landside capacity assessment focuses on analysing three primary components: road access, curbside, and car parking facilities. The anticipated demand for the access road system has been estimated for both departure and arrival flows, based on the following assumptions:

- Passenger traffic flow is determined by O&D peak hour passenger (PHP) estimations, factoring in an average of 2 visitors per passenger;
- Modal split is derived from satisfaction surveys provided by KAA for Q4 FY22-23;
- The total number of airport employees per shift assumes 234 employees per Mpax (O&D), maintaining a constant level throughout the studied period;
- For employees using private vehicles, three entries for shifts are assumed, resulting in only 40% of employees coinciding with passenger peaks; and
- An additional 2.5% airport traffic (based on the overall traffic peak) is considered beyond peak vehicle demand, accounting for visitors, maintenance, entrance of goods, and service providers, among others.

The assumptions for the capacity-demand analysis of the landside system are summarised below:

	Modal split	Pax per vehicle	Curbside use	DEP curbside Dwell time (min)	ARR curbside Dwell time (min)	Curbside length (m)	Daily distribution with respect to full year (car parking)	Daily rotation	Space/bay (m <sup>2</sup> )
<b>Passengers</b>									
Public parking & rent-a-car	76%	2.00	47%	3	3	7	0.4%	6	18
Taxi/App	18%	2.00	100%	2	3	7	0.4%	20	18
Buses	6%	25.00	100%	5	5	15	0.4%	2	40
<b>Employees</b>									
Private vehicle	10%	1.50	0%	2	2	7	50.0%	2	18
Bus	90%	25.00	100%	5	5	15	n/a	n/a	n/a

**Figure 154: Landside system assumptions**

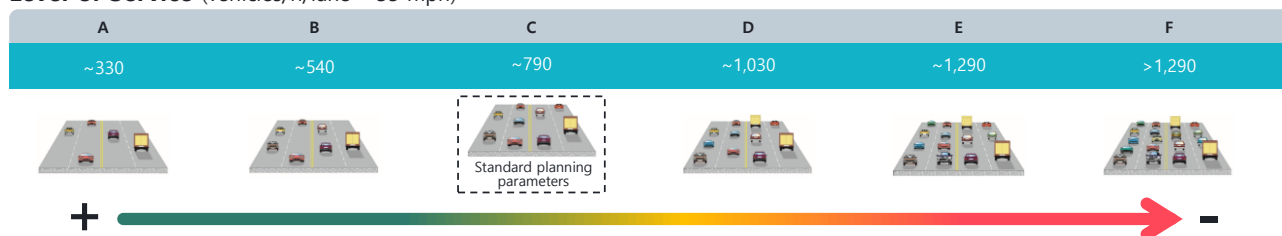
The table below illustrates the progression of road traffic demand with the expected growth of airport traffic:

Forecast	2019	2025	2030	2035	2040	2045	2050	2055
<b>MPax Total (O/D)</b>	<b>5.3</b>	<b>5.9</b>	<b>6.9</b>	<b>8.5</b>	<b>10.2</b>	<b>12.2</b>	<b>14.3</b>	<b>16.4</b>
<b>PHP &amp; Visitors Total</b>	<b>1,642</b>	<b>1,812</b>	<b>2,084</b>	<b>2,479</b>	<b>2,902</b>	<b>3,356</b>	<b>3,838</b>	<b>4,311</b>
PHP & Visitors Departures	3,654	3,945	4,425	5,124	5,865	6,657	7,488	8,295
PHP & Visitors Arrivals	3,456	3,753	4,239	4,965	5,739	6,576	7,461	8,331
Employees / shift peak	494	553	649	795	957	1,136	1,333	1,531
<b>One-direction vehicles traffic - Departures</b>	<b>1,570</b>	<b>1,696</b>	<b>1,905</b>	<b>2,209</b>	<b>2,530</b>	<b>2,877</b>	<b>3,239</b>	<b>3,594</b>
Private vehicle - Passengers and visitors	1,380	1,490	1,672	1,936	2,215	2,515	2,828	3,133
Taxi/APP - Passengers	111	119	134	155	177	201	226	251
Private vehicle - Employees	33	37	44	53	64	76	89	103
Bus - Employees	4	5	5	6	8	9	10	12
Buses - Passengers	4	4	4	5	5	6	7	8
Additional off-airport traffic (vehicles)	38	41	46	54	61	70	79	87
<b>One-direction vehicles traffic - Arrivals</b>	<b>1,487</b>	<b>1,617</b>	<b>1,826</b>	<b>2,142</b>	<b>2,478</b>	<b>2,843</b>	<b>3,227</b>	<b>3,610</b>
Private vehicle - Passengers and visitors	1,306	1,418	1,601	1,876	2,168	2,484	2,818	3,147
Taxi/APP - Passengers	105	114	128	150	173	199	225	252
Private vehicle - Employees	33	37	44	53	64	76	89	103
Bus - Employees	4	5	5	6	8	9	10	12
Buses - Passengers	3	4	4	5	5	6	7	8
Additional off-airport traffic (vehicles)	36	39	44	52	60	69	78	88

**Figure 155: Main road access traffic volume estimation**

Taking into account the industry's service standard levels, the present capacity of JKIA's road access system, and assuming an average speed of approximately 60 km/h (35 mph), the evaluation indicates that there is currently no congestion in the system during peak hours. The existing capacity, however, is anticipated to be insufficient to maintain an adequate Level of Service (LoS C) beyond 2040.

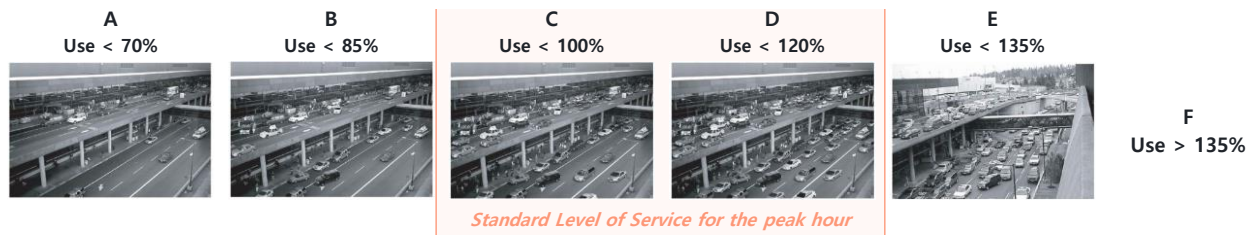
**Level of Service** (vehicles/h/lane – 35 mph)



Forecast	2019	2025	2030	2035	2040	2045	2050	2055
<b>MPax Total (O/D)</b>	<b>5.3</b>	<b>5.9</b>	<b>6.9</b>	<b>8.5</b>	<b>10.2</b>	<b>12.2</b>	<b>14.3</b>	<b>16.4</b>
PHP & Visitors Departures	3,654	3,945	4,425	5,124	5,865	6,657	7,488	8,295
PHP & Visitors Arrivals	3,456	3,753	4,239	4,965	5,739	6,576	7,461	8,331
<b>One-direction vehicles traffic - Departures</b>	<b>1,570</b>	<b>1,696</b>	<b>1,905</b>	<b>2,209</b>	<b>2,530</b>	<b>2,877</b>	<b>3,239</b>	<b>3,594</b>
Required lanes - LoS C	3	3	3	4	4	5	6	6
LoS provided based on existing lanes	<b>B</b>	<b>B</b>	<b>C</b>	<b>C</b>	<b>C</b>	<b>D</b>	<b>D</b>	<b>E</b>
<b>One-direction vehicles traffic - Arrivals</b>	<b>1,487</b>	<b>1,617</b>	<b>1,826</b>	<b>2,142</b>	<b>2,478</b>	<b>2,843</b>	<b>3,227</b>	<b>3,610</b>
Required lanes - LoS C	3	3	3	4	4	5	6	6
LoS provided based on existing lanes	<b>B</b>	<b>B</b>	<b>C</b>	<b>C</b>	<b>C</b>	<b>D</b>	<b>D</b>	<b>E</b>

**Figure 156: JKIA main road access capacity-demand analysis**

The curbside situation at the airport is anticipated to remain favourable, with an expected adequate Level of Service (LoS) or above until 2055.



Forecast	2019	2025	2030	2035	2040	2045	2050	2055
<b>MPax Total (O/D)</b>	5.3	5.9	6.9	8.5	10.2	12.2	14.3	16.4
Vehicles in Departures curbside	772	833	934	1,082	1,238	1,406	1,582	1,754
Vehicles in Arrivals curbside	730	794	895	1,049	1,212	1,390	1,576	1,762
<b>Departures curbside (required length)</b>	265	286	320	371	425	482	542	603
Curbside use	39%	42%	46%	54%	62%	70%	79%	87%
LoS provided based on existing length	<b>A</b>	<b>A</b>	<b>A</b>	<b>A</b>	<b>A</b>	<b>A</b>	<b>B</b>	<b>C</b>
<b>Arrivals curbside (required length)</b>	262	286	321	377	436	500	567	635
Curbside use	51%	56%	46%	54%	62%	71%	81%	91%
LoS provided based on existing length	<b>A</b>	<b>A</b>	<b>A</b>	<b>A</b>	<b>A</b>	<b>B</b>	<b>B</b>	<b>C</b>

**Figure 157: JKIA curbside capacity-demand analysis**

Concerning car parking facilities, the current capacity is deemed sufficient to meet the existing demand until 2034. However, congestion levels for taxi and bus parking bays could not be assessed due to limited information, which only mentions the availability of 2,299 car parking spaces for both the public and staff.

The daily utilisation of each car parking facility has been calculated based on the ratio of passengers per vehicle and a daily rotation parameter. Results of this assessment are shown below:

	2019	2025	2030	2035	2040	2045	2050	2055
<b>Existing capacity</b>								
Public parking & staff	2,299	2,299	2,299	2,299	2,299	2,299	2,299	2,299
Taxi/App	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Bus	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
<b>Total</b>								
Required public parking & rent-a-car spaces	1,532	1,713	2,011	2,463	2,964	3,521	4,130	4,743
Required staff car parking spaces	22	25	29	35	43	51	59	68
<b>Total parking &amp; staff spaces</b>	<b>1,554</b>	<b>1,738</b>	<b>2,040</b>	<b>2,498</b>	<b>3,007</b>	<b>3,572</b>	<b>4,189</b>	<b>4,811</b>
Use based on existing spaces/bays	67%	75%	87%	107%	129%	153%	180%	206%
<b>Taxi/App</b>								
Required car parking spaces/bays	96	107	126	154	185	220	258	296
<b>Bus</b>								
Required car parking spaces/bays	27	30	35	43	52	62	73	84

**Figure 158: JKIA car parking capacity-demand analysis**

Considering all the information provided, it is evident that the airport is approaching capacity in all its primary systems, except for landside access and car parking, which are not anticipated to reach saturation in the short term. Regarding runway capacity, various approaches to the capacity-demand analysis yield different results. However, even with the least restrictive approach, expansions become necessary to prevent delays during peak hours. The following section outlines a phased approach to increase capacity on the existing runway, followed by an assessment of the construction of a second runway at JKIA.

Expansion of the passenger aprons at JKIA is anticipated in the short term. By the end of the thirty-year period, the airport's capacity needs to more than double based on the developed traffic forecasts. Like the approach for the runway and taxiway system, the expansion of passenger apron capacity is implemented in phases, coinciding with the construction of a new terminal building. Considering the substantial number of stands in the new terminal building, the size of its apron plays a pivotal role in determining the overall terminal footprint.

To provide sufficient terminal capacity, the construction of a new terminal building is anticipated in the near future, with further expansions planned for the longer term and potential developments in the existing Terminal 1. Alongside the apron, these terminal developments represent the most significant components of the capital investment plan. The subsequent section delves into the proposal for terminal capacity expansion, focusing on the construction of a new terminal building and options to improve the overall level of service in the existing terminal and their associated timelines.

Long-term congestion is also anticipated for accesses and car parking, but the construction of a new terminal building, along with its associated accesses, curbside areas, and car parking developments, is expected to inherently alleviate congestion.

#### 4.2.4 Development and action plan

This section presents a development plan that provides a solution for resolving the capacity bottlenecks identified in the preceding subsection.

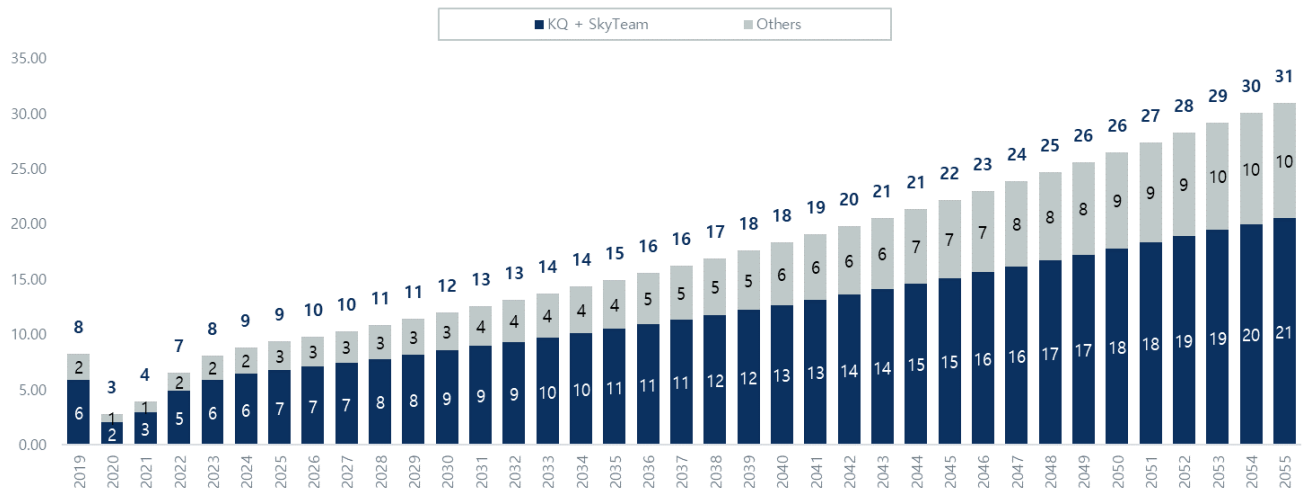
It is important to note that the proposed development plan is a reference design intended to validate the technical viability and financial feasibility of the project. In other words, it allows the consultant to confirm that there exists at least one technical solution that will be able to accommodate JKIA's future growth, and to have an estimated investment plan that is later used in the financial feasibility assessment.

Shall the Government decide to implement a PPP it will define (during the implementation phase) which elements and timelines of the development plan are going to be mandatory works for the concessionaire, which elements are going to be triggered works (triggered by traffic and/or service levels), which features are going to be prescribed in the concession agreement (for example, the location of the second runway could be defined as to ensure that it is not built over the river), and which ones are going to be left for the concessionaire to propose.

Jomo Kenyatta International Airport is in need of significant development to meet the growing demands of commercial air traffic. A comprehensive development plan is essential, encompassing the expansion of the terminal, commercial apron, and the construction of a second runway. This holistic approach is crucial for operational efficiency and reliability, addressing congestion, and accommodating the increasing demand for air travel. Moreover, the airport's role as Kenya's gateway necessitates upgrades not only to meet projected demand but also to create a positive first impression for visitors exploring the country's diverse attractions.

From the Consultant's point of view, and as is discussed in the subsequent pages, the optimal operational solution entails constructing a new multi-level passenger terminal building with a central processing area and two piers. One pier would be exclusively designated for international passenger flows, and a mezzanine level for arriving international passengers and transfers, while the other pier would have international departures on the upper level, domestic departures on the lower level, and a mezzanine level for arriving international passengers and transfers. **This alternative suggests fully segregating the operations of Kenya Airways and its codesharing airlines. They would be transferred to this new terminal and its associated apron, while the remaining airlines at JKIA would continue their operations in the current terminal.** Figure 159 represents the traffic split for Kenya Airways and its codeshare partners, which would be transferred to the new terminal building, and other airlines, which are proposed to remain within the existing terminal.





**Figure 159: Traffic split by Kenya Airways and its codeshare partners and others**

The development plan includes proposals for the following airport infrastructure:

- Runway and taxiways system;
- Commercial and cargo aprons;
- Passenger terminal buildings; and
- Landside system (access, curbside and car parking).

The development plan, and consequently the capital investment plan, outlines various expansion phases for each of the mentioned facilities. These phases are initiated in response to anticipated traffic demand requirements, serving as triggers to facilitate the ongoing growth of the airport.

This section presents the proposal put forward by the Consultant team, offering one of several possible alternatives to solve the airport’s capacity shortfall. It is acknowledged that different potential third parties interested in operating the airport might provide different proposals. Given this very fact, some of the proposed infrastructural developments at JKIA, such as the construction of a new runway and taxiway system, and the introduction of a new terminal, among others, may be contractually obligated, while other initiatives may be collaboratively determined between the Concessionaire and the Government, taking into consideration the best interests of both parties.

## Runway and taxiways

Ensuring that the runway and taxiways system has sufficient capacity is crucial for the efficient and safe operation of an airport. An appropriately designed and well-maintained taxiway system is essential for the seamless movement of aircraft on the ground, facilitating efficient traffic flow between runways, terminals, and other airport facilities.

Insufficient capacity in these systems inevitably leads to congestion, delays, and increased operational challenges. These issues not only impact airline schedules and passenger experiences but also have broader implications for the overall efficiency and economic viability of the airport. Adequate capacity ensures that aircraft can depart and arrive on schedule, minimising turnaround times and optimising the use of valuable airport resources.

Therefore, a well-planned runway and taxiway system is critical for accommodating future growth in air traffic. As airports expand and experience increased demand, the infrastructure must be scalable to handle a higher number of aircraft movements without compromising safety or operational efficiency.

Considering the capacity-demand analysis, the current runway can accommodate the expected peak hourly demand until 2027 (30 ATMs/h), and the total daily demand is projected to remain below 80% of the current capacity until 2032. Consequently, improvements to the taxiway system serving the existing runway 06/24 are required by 2032 at the latest to enhance capacity. Enhancements to the existing runway, such as the construction of Rapid Exit Taxiways would be adequate to meet the anticipated demand but would only serve for a limited period of time after which, the construction of a second runway parallel to the existing one will be required.

Considering the plans for inclusion of a new terminal between the parallel runways (details to follow in this section) and its corresponding apron in the comprehensive development plan, it is essential to enhance the taxiway system.

The suggested developments are scheduled to be divided into two distinct phases, the first closely followed by the second, as outlined below:

**Phase 0** includes the construction of two additional Rapid Exit Taxiways (RETs) for RWY 06 and a partial parallel taxiway positioned 172.5 meters from the runway centerline. The proposed development for this Phase I is presented below in Figure 160.

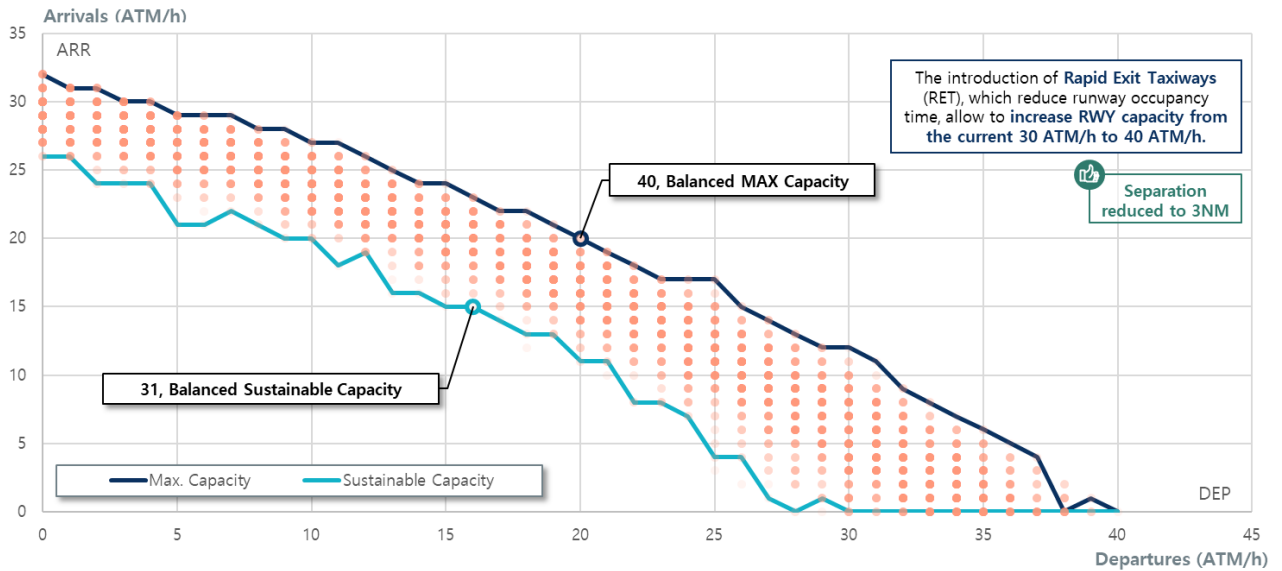


**Figure 160: Phase 0 of the proposed runway and taxiway system expansion (RETs and parallel taxiway, 2026)**

These works as well as operational improvements to reduce minimum separation distances between arriving aircraft are intended to reduce runway occupancy time and thus increase overall runway capacity to, potentially, up to ~40 ATM/h. Phase I construction works are planned to be operational by the end of 2026. Constructing the two RETs by 2026, even though the capacity-demand analysis projects their need by 2032, is a strategic decision that accounts for a phased approach to capacity increases, adaptability to unforeseen changes in traffic growth and an enhanced operational flexibility, given that additional taxiways

provide more options for aircraft movement, allowing for a reduction of delays during peak periods. This proactive measure ensures the airport is well-prepared to accommodate future growth while maintaining an optimal operational performance.

The runway capacity of the enhanced system has been calculated based on ALG’s proprietary model.



**Figure 161: Runway hourly capacity analysis of JKIA with RETs and parallel TWY**

(Source: OAG, ICAO Doc 4444)

**Phase I** includes the construction of all taxiways associated with the apron for the New Terminal building and the completion of the partial parallel taxiway initially constructed in Phase 0, which is to be extended to full length, tying to both runway ends.

The New Terminal, which is discussed later, is expected to commence operations in 2030, this being assumed as the earliest that such works can be completed. Alongside it, a second partial parallel taxiway to RWY 06/24 is to be constructed to mitigate bottlenecks, and the extension of TWY G is planned to connect with the taxilane designated for the northern pier of the Terminal's apron.

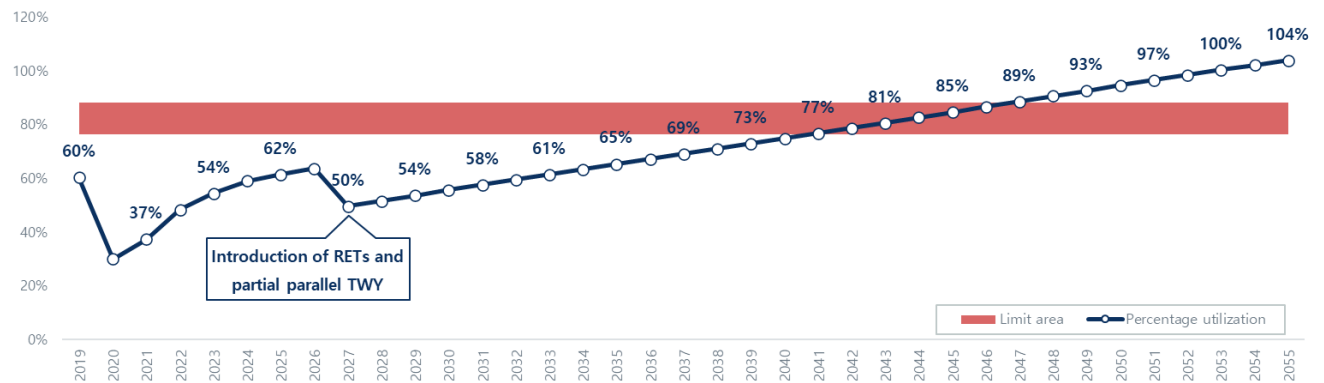


**Figure 162: Phase I of the proposed runway and taxiway system (2030)**

**Phase II** entails the construction of the second runway, its corresponding taxiway system, and all taxiways and taxilanes linked to the initial stage of the New Terminal.

Moreover, the introduction of a new taxiway connecting both runways alongside the remote apron area is necessary to facilitate access to remote aircraft parking positions.

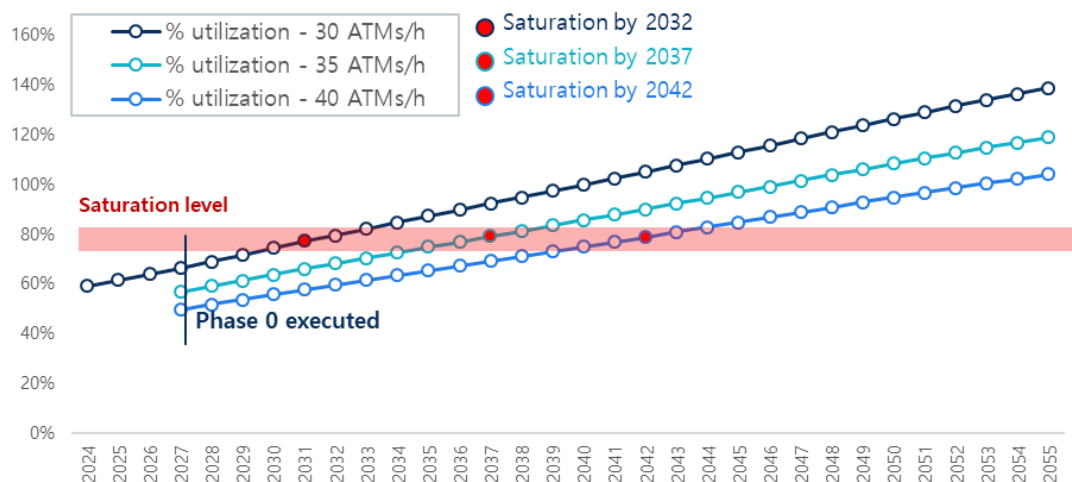
Concerning the second runway, the capacity-demand analysis suggests that expansion may not be required until 2035 if the peak ATM per hour rate is used as the trigger (see Figure 139), or even later, around 2040-2042, if the daily percentage utilisation is considered as the triggering factor (see figure below), both considering that the existing runway is capable of handling 40 ATM/h. However, the Consultant recommends advancing the construction of the second runway considering that it will not be able to achieve more than 35 ATMs/h to improve overall airport operations.



**Figure 163: Runway percentage utilisation at JKIA after the introduction of RETs (40 ATM/h after 2026)**

Advancing the construction of the second runway is also a proactive measure to ready the airport for a worst-case scenario, in which increasing capacity to 40 ATM/h becomes challenging. It also avoids causing disruptions and runway closures for minor issues such as rubber removal works or wheel punctures, which could potentially shut down the airport for extended periods. Additionally, this approach mitigates risks and enhances the overall attractiveness of the project for a potential third party interested in entering into a PPP agreement.

Employing a more conservative estimate of 35 ATM/h as the maximum achievable capacity after implementing RETs and a parallel taxiway system to the existing RWY 06/24, rather than the initial assumption of 40 ATM/h, to account for the uncertainty related to achieving such capacity, the construction of the second runway would be needed by 2037.



**Figure 164: Scenarios on runway saturation depending on capacity (ATMs/h) reached after phase 0**

In conclusion, while the capacity-demand analysis indicates that expansion could potentially be deferred until 2042 in a best-case scenario, the Consultant recommends the proactive advancement of the second runway construction to 2037, motivated by a prudent approach to address worst-case scenarios, where reaching the desired capacity of 40 ATM/h could pose challenges. Moreover, it aims to prevent prolonged disruptions and runway closures resulting from routine maintenance tasks such as rubber removal or wheel punctures, which could otherwise significantly impact airport operations.

The second runway is expected to have the same dimensions that the existing runway, i.e., 4,117 x 45 meters, but with shoulders extending to 75 meters to accommodate Code F aircraft and have an ILS CAT II/III system installed. The proposal for a CAT II/III system aims to address concerns and requests from KCAA, with the goal of minimising disruptions caused by visibility issues. However, it's worth noting that such disruptions were minor in 2023, as mentioned earlier. The implementation of a CAT II/III runway entails enhancing TWY lighting in both new and existing taxiways, incorporating centre line lights.

Furthermore, the second runway is planned to feature a full parallel taxiway. The investment plan also includes the construction of a code E taxiway to connect both runways and link them with the remote apron for the New Terminal. Additionally, integration of the parallel taxiway with the new commercial apron is included in the development proposal.



**Figure 165: Phase II of the proposed runway and taxiway system (New runway, 2037)**

The introduction of a second runway is expected to easily increase capacity to a range of 70-75 ATM/h. Consequently, it is foreseen that no further development is necessary within the next 30 years, given that capacity is projected to be at 65 ATM/h by 2055.

### **Runway location and operating principle of the dual-runway system**

The positioning of the second runway has been optimised to adhere to the following principles:

- It should be situated at a distance from the existing runway 06 which ensures their ability to operate independently from each other;
- It should maintain a considerable distance to the existing runway 06 to accommodate the terminal development, its apron, and all the new proposed taxiway and taxilane system, ensuring robustness to prevent bottlenecks;
- It should provide sufficient space to incorporate a potential third runway south of the new one;



- It should avoid construction above or in close proximity to the river south of the current terminal.

The proposal suggests designating the existing runway as the preferred runway for departures, with the new proposed runway reserved for arrivals (segregated mode, as it is easier to implement and offers similar runway throughput). This arrangement offers the advantage of reducing noise levels for nearby residents. Currently, the existing RWY end 24 (which would become 24R in the future dual-runway system) is approximately 3km from the nearest populated areas. However, the proposed RWY 24L end would be approximately 2.5km from the closest population, potentially causing more significant noise disturbances for a group of inhabitants who are currently unaffected by noise pollution.

ICAO Annex 14 recommends that, where parallel instrument runways (as these are intended to be) are intended for simultaneous use, the minimum distance between their centre lines should be 1,035 m for independent parallel approaches. Further, in this case a spacing of 1,580 m between runways is proposed as such spacing offers several advantages.

First, for runways spaced 1,525 meters or more there is no necessity for any specialised control or navigation aid facility, apart from ensuring satisfactory two-way radio communications, when conducting independent instrument departures. This holds true if a course divergence of 45 degrees or more can be achieved after take-off.

Additionally, the criteria for the ATS surveillance system are reduced when the separation between the two runway center lines is 1,525 meters or more.

ICAO Document 9643 designates parallel runways spaced by less than 1,525 meters as "closely spaced runways." Conducting independent operations on such runways demands an elevated focus on safety considerations. Before any implementation, thorough attention must be dedicated to addressing safety-related issues, including weather limitations, wake turbulence, adherence to approved instrument approaches, track keeping on visual approaches, communications, obstacle evaluation, and pilot training, among others.

Based on the above, the proposed location is situated approximately 1,580 meters from the current RWY 06 centerline. This distance is sufficient for facilitating a dual parallel taxiway system for each runway, along with a taxilane providing access to the outer sides of both pier north and pier south.

Finally, the suggested site provides 1,035 meters buffer southwards, allowing for the potential construction of a third runway in the future. While such an expansion is not anticipated in the studied period, this additional runway could operate independently from the existing ones. The location for this 3<sup>rd</sup> runway would minimally encroach upon the current airport perimeter without impacting any populated areas. Hence, it is believed that the present proposal lays the groundwork for a long-term airfield development plan at JKIA.

### **Commercial apron**

Similar to the runway and taxiway system, an appropriately sized and well-organised apron facilitates the smooth flow of aircraft movements, allowing for timely departures and arrivals. Insufficient capacity in the commercial aprons can lead to congestion, delays in aircraft movements, and severe disruptions to airport operations. Adequate apron capacity is particularly critical for hub airports like JKIA, where the efficient utilisation of apron space is essential for the seamless connection of various air services.



Moreover, as air travel demand continues to grow, ensuring the scalability of commercial aprons becomes imperative. An airport's ability to handle increased aircraft movements and larger aircraft types, depends on the flexibility and adaptability of its apron infrastructure. Therefore, strategic planning and timely expansion or development initiatives are essential to accommodate present and future demands on the commercial apron areas.

In terms of apron design, as a first principle, the airport must provide sufficient capacity across all its commercial aprons to accommodate the anticipated total demand, encompassing both dynamic and static stands.

- **Dynamic Stands:** Used for the boarding and disembarking of passengers by aircraft with a reduced turnaround time (typically less than three hours); and
- **Static Stands:** Used by aircraft for overnight stays, maintenance, or turnaround times exceeding three hours.

The commencement of operations for the new Terminal building and its corresponding commercial apron is not anticipated before 2030; this is based on the minimum time estimated for their design, construction, and commissioning. Consequently, there is a need to ensure sufficient capacity in the existing commercial aprons to accommodate the projected demand by then. As indicated in Figure 167, there is an expected shortfall of 6 stands by 2030. However, following discussions with Kenya Airways, it has been revealed that they aspire to introduce Code E aircraft to the airport in the near future. Consequently, additional capacity is being implemented at this stage to account for the potential utilisation of MARS stands designated for Code E. Hence, the proposed development plan suggests constructing 10 new remote stands for Code C aircraft situated in the proximity of the current apron close to Terminal 2, with the aim of completing their construction by 2027 (alongside Phase 0 of the airfield development).

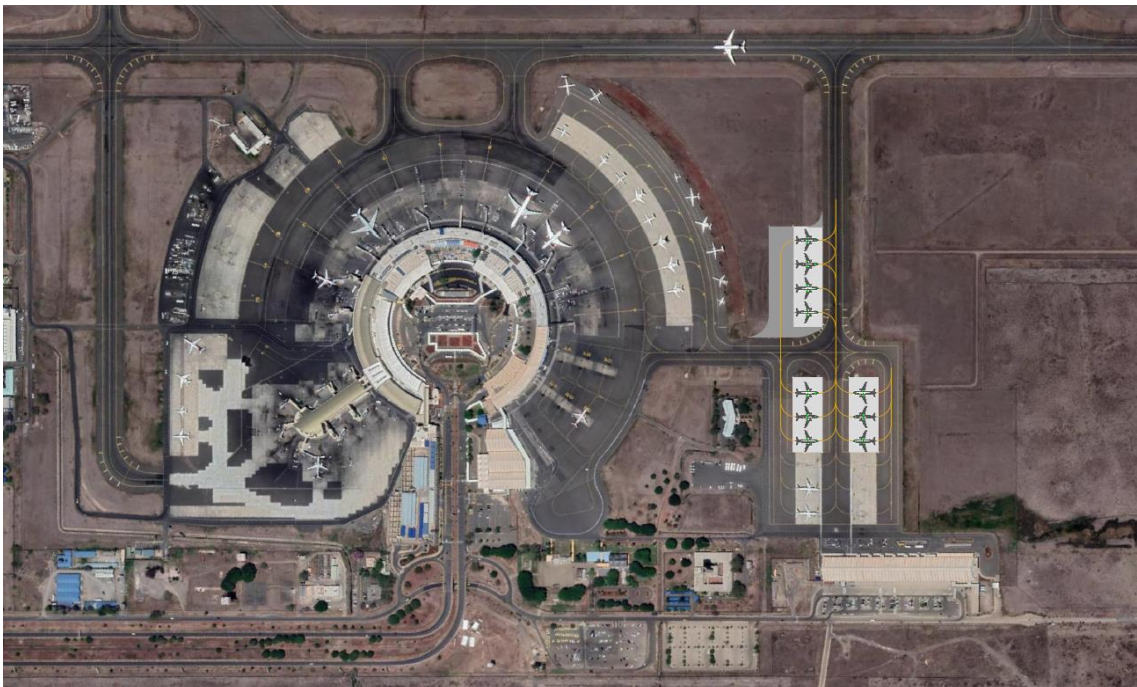
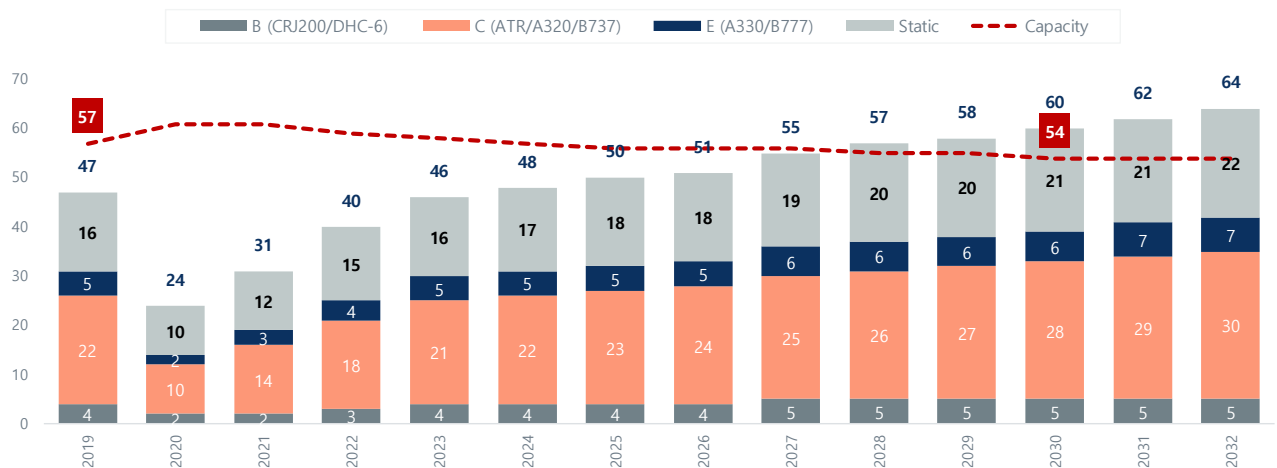


Figure 166: Proposed stands (10x Code C) in proximity to existing commercial apron in T2 (2027)



**Figure 167: Capacity-demand for commercial stands at JKIA (2019-2032)**

Note: Capacity is higher than the existing 49 stands because it is considered that 1 Code E stand could be occupied by 2 Code C's. Total capacity therefore decreases as the demand for Code E stands increases.

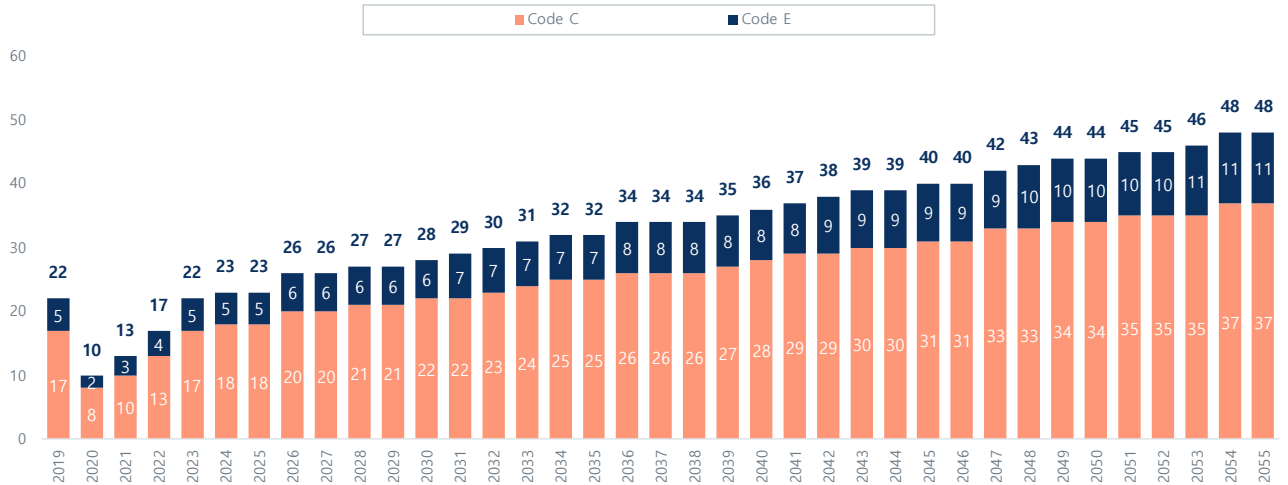
### *Sizing of the New Terminal's commercial apron*

The development of the new passenger apron is closely tied to and heavily influences the development of the passenger terminal building. This link between the two is essential because allocating aircraft parking positions near the terminal building is crucial for optimising turnaround times, enhancing overall airport capacity, and improving the overall passenger experience.

The new terminal area at JKIA is projected to feature a dedicated apron for Kenya Airways' commercial aircraft and their codeshare partners. To determine its appropriate size, it is key to further develop the design parameters forecasts to account only for the operations of these airlines.

To dimension the New Terminal passenger apron, dynamic stand demand is considered, as static stands can be situated farther from the Terminal, even within the existing passenger apron area. Consequently, the overall stand demand, encompassing both dynamic and static stands for the entire airport (across both terminals), is only used as a final check to guarantee that sufficient capacity is provided for the airport.

The graph below shows the projection of the demand of dynamic stands (37 for code C aircraft and 11 for Code E by 2055) for both international and domestic stands for the concurrent peak.



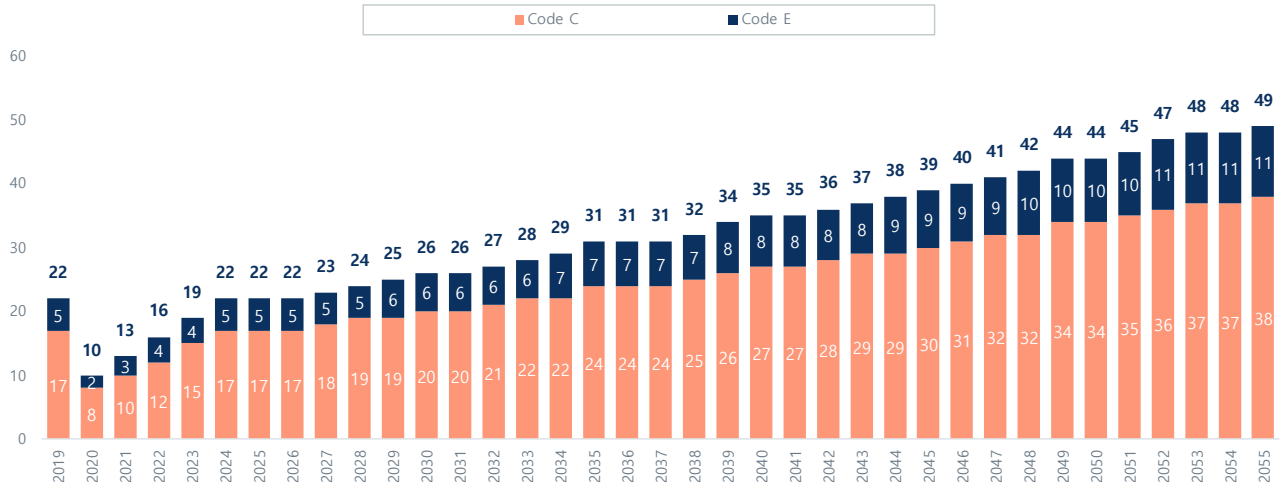
**Figure 168: Peak-Hour demand projection for dynamic stands (concurrent peak)**

According to the origin/destination of flights, the new apron needs to provide sufficient capacity to serve two types of stands:

- **Domestic Stands:** Stands whose boarding gates are designated for passenger traffic destined for other airports within Kenya; and
- **International Stands:** Stands whose boarding gates have the necessary immigration controls to facilitate the flow of international passenger traffic.

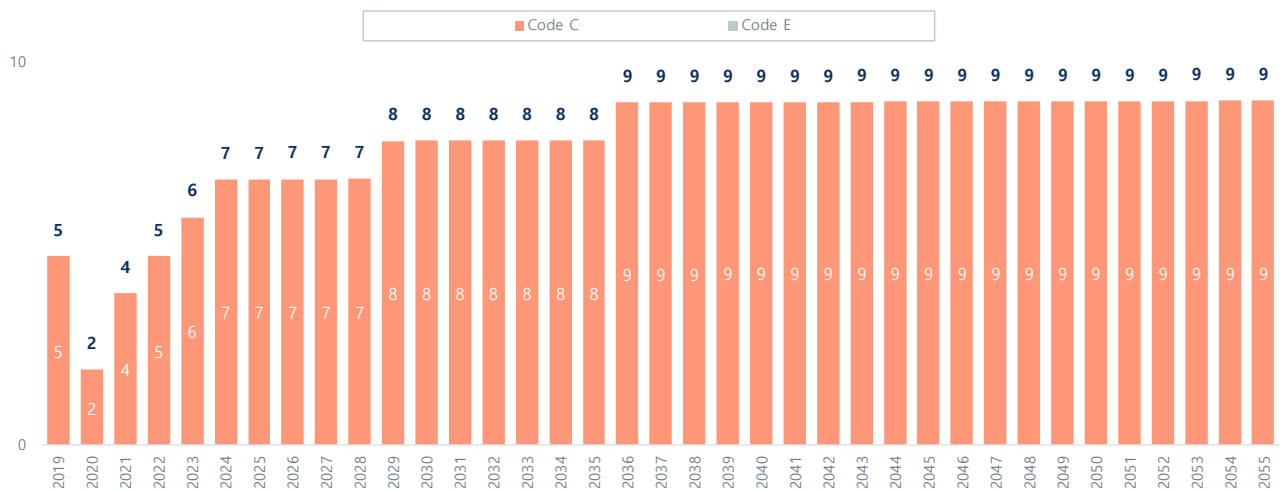
The classification of domestic and international stands is linked with the provision of contact and remote positions, which are discussed later. In the context of the apron and terminal development, a priority has been placed on international stands being contact stands, while domestic stands can be either boarding from the lower level of the terminal and access the aircraft by bus or foot. Remote stands have the flexibility to accommodate both domestic and international flights, while contact stands must be explicitly designated for either domestic or international flights, depending on the type of gate they serve.

According to the traffic forecast and the developed design parameters, the peak hours for domestic and international stand demand do not overlap. Consequently, the demand during the overall peak hours is lower than the sum of the domestic peak hours and international peak hours. The total demand for dynamic stands during peak hours is illustrated in the preceding figure, while the peak demand for international stands and the peak demand for domestic stands are shown in the two figures below.



**Figure 169: Peak-Hour demand projection for dynamic international stands (concurrent peak)**

Considering that the peak for international stand demand (Figure 169) surpasses the total stand demand (including international and domestic, Figure 170), the apron associated to the New Terminal must have the capacity to accommodate the anticipated demand of 49 aircraft.



**Figure 170: Peak-Hour demand projection for dynamic domestic stands (concurrent peak)**

Additionally, the apron must be capable of handling the anticipated peak demand for each aircraft code separately. In other words, there is a need to provide adequate parking positions for the independent peak of each aircraft code. The following figures illustrate the anticipated independent peaks for each aircraft type, distinguishing between domestic and international parking positions.

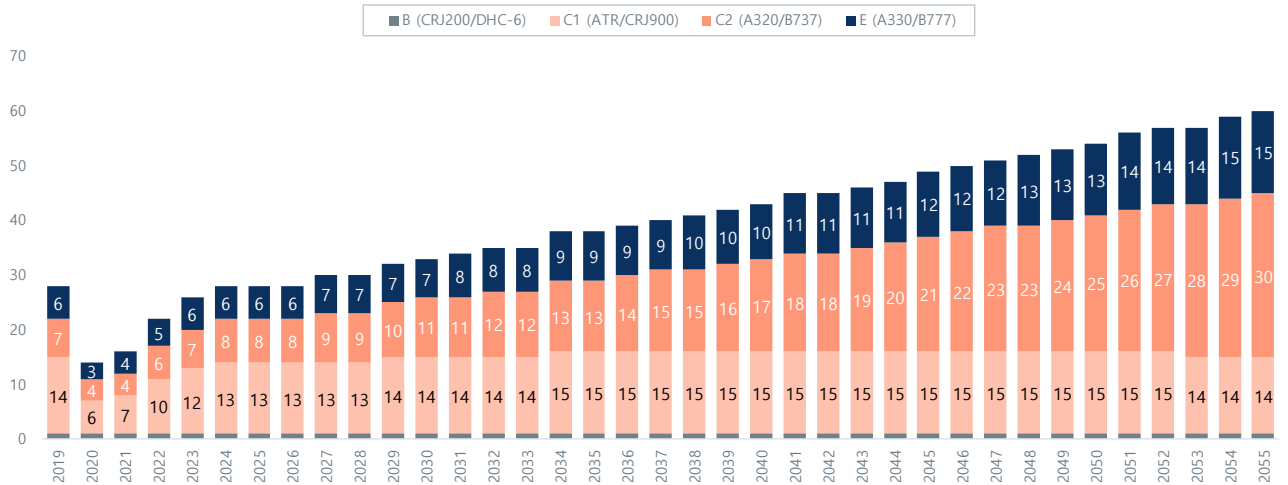


Figure 171: Peak-Hour demand projection for dynamic international stands (independent peak)

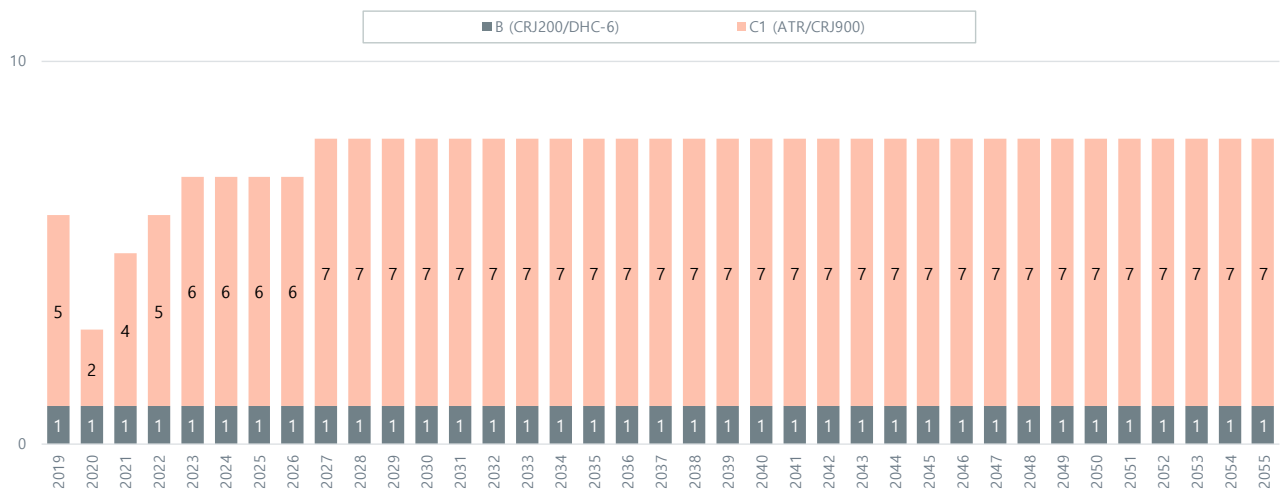


Figure 172: Peak-Hour demand projection for dynamic domestic stands (independent peak)

The last segregation to be made is regarding the allocation between contact and remote stands, each defined as follows:

- **Contact stands:** Passenger boarding and disembarkation take place directly from the terminal using boarding bridges. Another approach involves passengers descending to the lower level through stairs or directly via the boarding bridge and walking to the aircraft, which is parked nearby but not connected via a Passenger Boarding Bridge (PBB). These positions are commonly referred to as "false contact" stands.
- **Remote stands:** Passenger boarding and disembarkation are facilitated through buses that transport passengers from the terminal to the aircraft without access to a boarding bridge.

The demand for contact stands is determined under the assumption that they should accommodate a minimum of 75% of international flights during peak hours. This percentage significantly increases when evaluated in terms of annual operations. Stands dedicated to C1 aircraft are already classified as remote due to their smaller size and inability for most of such aircraft to connect to boarding bridges. All Code E aircraft are connected via boarding bridges.

Additionally, to create an additional capacity buffer, the independent peak demand for Code E has been considered as part of the concurrent peak. As a result, for instance, 15 stands are provided instead of the 11 required during the concurrent peak for 2055, resulting in a total capacity slightly higher than the minimum necessary based on the aforementioned assumptions since they can be used as MARS stands capable of accommodating two Code C aircraft each.

Regarding domestic stands, as their peak does not coincide with the international peak, these can be accommodated within the capacity designated for international aircraft. In 2055, the total apron demand is 49 positions as shown in Figure 169, rather than the sum of these 49 plus the 9 positions designated for domestic aircraft in Figure 170. Consequently, domestic aircraft will be parked in contact or remote positions based on availability. In either case, boarding for domestic flights will occur either walking or via bus, as domestic gates will be situated on the Level 0 of the terminal building.

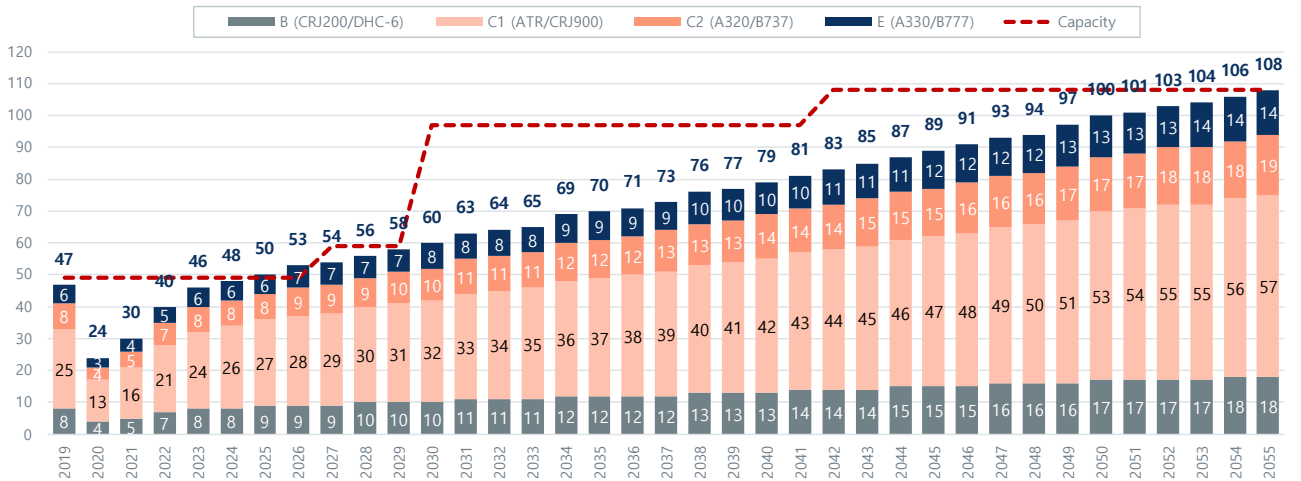
In line with the suggested airfield development action plan, expansions of the commercial apron and the terminal are phased to contribute to a project that is economically and financially viable from a Public-Private Partnership (PPP) perspective. The development and capital investment plans are therefore structured according to the following phases, which are designated following the phasing of the airfield development phases:

- **Phase I:** To be finished by 2030 and ensure ample capacity to accommodate demand up to 2042, a total of 38 aircraft parking positions are required based on the concurrent peak for both international and domestic stands. Among these, 11 Code E stands are designated as contact stands, 16 Code C stands are also contact stands, and 11 stands are suggested as remote stands. Out of these, 9 are situated in a remote apron east of the New Terminal, and 2 are planned to be constructed as "false contact".
- **Phase III:** This involves the construction of a new set of stands to achieve the ultimate capacity of 49 aircraft parking positions, as detailed earlier. The plan includes the introduction of 4 new Code E and 6 Code C contact stands, along with the projection of a new remote parking position to be built in the remote apron area.

The substantial contrast in scale between Phase I and Phase III is evident. Phase I, intricately tied to the New Terminal construction and the relocation of Kenya Airways and its partners to the new apron, is considerably more extensive. In contrast, Phase III predominantly centres on the expansion of stands and parking positions, contributing to a comparatively smaller scale.

Figure 173 below illustrates the outcomes of the capacity-demand analysis based on the concurrent peak for the entire airport. The proposed development plan guarantees the provision of adequate capacity throughout the studied period, thereby preventing shortages in aircraft parking positions.

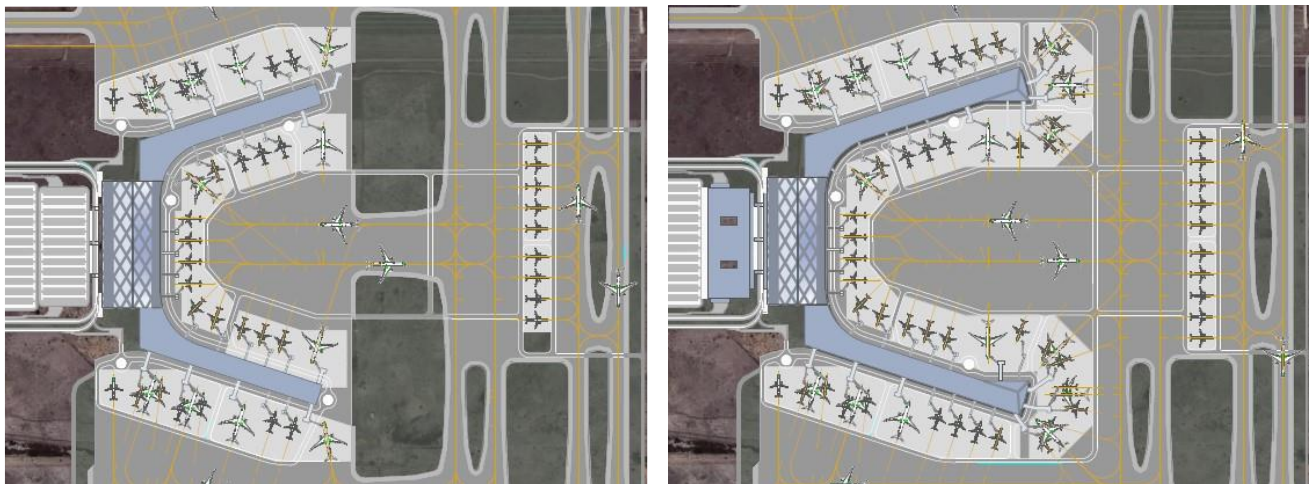




**Figure 173: Commercial apron demand vs proposed capacity of JKIA**

Note: The graph below does not take the MARS factor into account, meaning that all Code E stands are occupied by a single aircraft. This implies that the capacity includes an additional buffer.

As already mentioned, the arrangement of the apron, particularly the quantity and dimensions of its contact stands, significantly influences the layout and dimensions of the passenger terminal building, as aircraft need to be positioned adjacent to it. The demand for aircraft parking positions in the New Terminal is substantial, considering the relatively modest size of the aircraft expected to utilise it. Although these aircraft are projected to increase in size over the next thirty years, they are anticipated to primarily fall under Code C. Hence, as depicted in Figure 174 below, the proposed terminal design features a centralised processing area and two piers to accommodate all contact stands. As it happens with the apron phasing, Phase I of the terminal is significantly more extensive than Phase III. Further details on the design of the New Terminal are provided in the subsequent subsection.



**Figure 174: Phase I (left) & Phase III (right) for the apron and Terminal development plans JKIA**

### Cargo apron

The capacity-demand analysis, which is based on a high-level analysis anchored in a cargo tonnage of 36 kTon per stand, reveals an inadequacy of the existing 9 stands to meet the anticipated demand for the next thirty years, underscoring the necessity for 11 additional aircraft stands.

The expansion of the cargo apron is structured in phases, as follows:

- In Phase 0, six (6) new Code E stands will be constructed to meet anticipated demand until 2035 (totaling 15 stands). To address current cargo apron congestion, Phase I is scheduled for commissioning in 2026.
- In Phase II, the apron will expand with five (5) additional Code E stands to cater to forecasted traffic until 2055 (reaching a total of 20 stands).

Figure 175 below shows the results of the capacity-demand analysis based on the proposed development plan for the cargo apron.

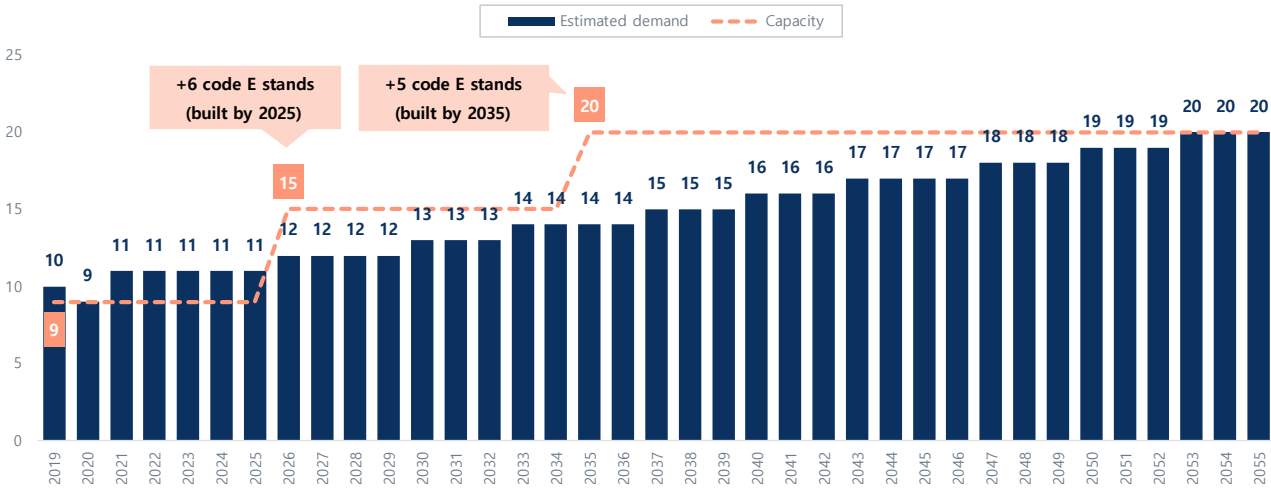


Figure 175: Capacity-demand analysis for cargo stands

**Passenger terminal building**

Passenger terminal buildings play a crucial role in ensuring the efficient flow of travellers through an airport. Ensuring that a terminal building provides sufficient capacity to handle the expected passenger flows is essential for several reasons.

Firstly, it directly impacts the overall passenger experience. A well-designed and adequately sized terminal helps to avoid congestion, long queues, and delays in various stages of travel, such as check-in, emigration/immigration, security screening, and boarding. This contributes to a smoother and more pleasant passenger journey, improving their satisfaction levels and reflecting positively on the airport's reputation.

Secondly, the provision of sufficient terminal capacity is crucial for maintaining operational efficiency. Inadequate capacity can lead to bottlenecks, causing delays in flight schedules and disruptions to airport operations, just like in the case of insufficient capacity in the runway and taxiway system or the aprons.

Thirdly, for hub airports, like JKIA, the efficient operation of the passenger terminal is vital for connecting various flights and managing the transfer of passengers between different services. If the terminal lacks the capacity to handle connecting passengers, it can hinder the airport's ability to serve as an effective hub.

The ability to handle increased passenger volumes, larger aircraft, and changing travel patterns requires foresight in terminal design and a commitment to continuous improvement. Strategic planning, regular monitoring of passenger flows and satisfaction levels, and timely expansion or development initiatives are essential to accommodate present and future demands on passenger terminal buildings, contributing to the overall efficiency and competitiveness of the airport.

The design criteria for the New Terminal incorporates the requirements derived from the capacity-demand analysis, utilising the methodology outlined in the 12<sup>th</sup> Edition of IATA's ADRM, based on the traffic forecasted for Kenya Airlines' and its partners. This analysis considers peak hour passengers and peak hour aircraft movements for the terminal dimensioning. Furthermore, the proposed new passenger terminal building is guided by additional principles primarily focused on enhancing passenger comfort and optimising building functionality.

- **Simple and functional design** to facilitate passenger flow and circulation: efficient and logical passenger flows to minimise congestion, adequate space for check-in, security screening, emigration, immigration, boarding and baggage reclaim processes and well-designed and thought through circulation channels and wayfinding principles to guide passengers seamlessly through the terminal.
- **Tailored:** the objective of the proposed solution is to improve the overall passenger experience, with a particular emphasis on enhancing the journey for connecting passengers, considering the significance of this segment for Kenya Airways operations and the shortfalls that the existing terminal provides for this traffic segment. Facilitating a seamless connection within the airport facilities plays a pivotal role in establishing JKIA as a prominent hub in Africa.
- **Flexibility and scalability:** the design should be flexible to accommodate changes in passenger number and in its operational needs. Furthermore, it should include consideration for future expansion to handle increased capacity.
- **Accessibility:** the passenger terminal building should comply with regulations and guidelines related to accessibility for all passenger and include design elements that ensure accessibility for passengers with reduced mobility.
- **Integrated Baggage Handling System:** it is proposed to introduce a centralised baggage handling system which addresses the shortcomings of the current system. An efficient and secure BHS should be installed which minimises delays and errors and integrates advanced technology for baggage screening, sortation, and tracking.
- **Sustainability and environmental considerations:** the design of the passenger terminal should integrate sustainable design principles, best environmental practices, and energy efficiency.
- **Collaboration with stakeholders:** in further design stages, consideration needs to be given to the needs and preferences of airlines, ground handlers and other stakeholders within the airport network. Collaboration with various entities to create a seamless and well-coordinated airport operation is essential.
- **Optimisation:** The layout of the terminal building has been strategically planned to maximise efficiency in both construction and maintenance investments.

In addition to providing an in-depth description and justification of the proposed concept and layout for the New Terminal, this section also addresses the role of the existing terminal. It examines options and timelines for its development, based on a capacity-demand analysis tailored to both the intended traffic the existing terminal is meant to accommodate (airlines other than Kenya Airlines' and its partners) and

the overall airport capacity to handle all expected traffic (including all airlines and both terminal buildings). The analysis includes considerations for Project Infill or potential derivatives thereof.

### *New Terminal*

As previously noted, the overall configuration and design of the passenger terminal building are heavily influenced by the apron, with a particular focus on the quantity and dimensions of contact stands. Based on this, the suggested terminal layout comprises a central processing zone and two piers, designated as Pier North and Pier South. The dimensions of the central processing area are determined by the equipment and queueing areas, following the methodology outlined in the 12<sup>th</sup> edition of the IATA Airport Development Reference Manual (ADRM). Meanwhile, the sizing of the piers is influenced by the required aircraft parking positions and gate area to be provided.

As previously noted in the apron development section, in Phase I, the New Terminal building will exhibit a significantly larger footprint compared to Phase III, attributed to the relatively modest increase in contact stands planned for the latter phase.

The proposed New Terminal is envisioned to encompass two main levels, along with an additional mezzanine level. Broadly speaking, the design envisions passenger flows in the following manner:

- **Upper level:** In the central processing area, this level accommodates the departures processing areas and equipment, encompassing check-in, emigration, and security procedures. Conversely, the upper level on both piers is intended to house the gate boarding areas specifically designated for international flights. A design featuring dual gates is suggested for passenger boarding bridges (PBBs). Specifically, some PBBs will incorporate two gate areas, providing the flexibility to either board aircraft through the PBB or descend to the apron level using stairs installed within the PBB. This arrangement eliminates the need for constructing a lower level dedicated to gates for remote or false contact aircraft parking positions. This proposal is viable due to the ample space on the upper level of the piers, which can easily accommodate gate lounge areas for international flights, commercial space, and circulation areas.
- **Lower level:** The lower level of the central processing area is designated to facilitate arriving processes, including immigration, baggage reclaim area, and customs. Regarding the pier layout, Pier North is designated to house domestic gate lounges on its lower level. These are intended for passengers waiting to board domestic aircraft at remote or false contact stands. The lower level of Pier North is planned to be half the width of the upper level, providing sufficient space for gate lounges equipped with seating, circulation areas, and commercial spaces. Considering the ample space available for gate lounges on the upper level of the piers, it is recommended that the lower level of Pier South remain empty, with the upper level being supported by pylons.
- **Mezzanine level:** The mezzanine level is designed to cater to international arriving flows, directing them towards the central processing area. Within this area, these passengers can make use of the facilities designated for connecting flights or descend to the lower level at the central processor, where arrival processing facilities are available.

Similar to the approach taken in the apron design and going alongside it, the construction of the terminal is proposed to be executed in phases to ensure sufficient capacity without unnecessarily over-sizing the terminal for extended periods. This phased strategy aims to optimise the investment profile of the project. Consequently, it is suggested that the terminal be divided into two distinct phases, the first one to start operations by 2030, which is believed to be the earliest date in which the Terminal could be finalised, coinciding with Phase I of the overall development plan and the second one to be concluded by 2042,

Phase III of the overall development plan. The figure below outlines the specified number of equipment and queuing areas allocated for each phase based on IATA's ADRM methodology.

Processing area	After Phase I			After Phase III		
	# of equipment	Queueing areas (m <sup>2</sup> )	Total areas (m <sup>2</sup> )	# of equipment	Queueing areas (m <sup>2</sup> )	Total areas (m <sup>2</sup> )
Entrance security (INT'L + DOM)	10	300	570	11	330	630
Departures Hall	-	-	2,000	-	-	2,300
Arrivals Hall	-	-	2,000	-	-	2,300
Traditional Check-in (INT'L + DOM)	54	360	1,600	63	420	1,850
Self-service Check-in (INT'L + DOM)	7	Minor	Minor	8	Minor	Minor
Bag drop (INT'L + DOM)	8	Minor	Minor	11	Minor	Minor
Emigration	23	230	690	28	280	840
Security (INT'L)	10	200	2,100	12	240	2,500
Security (DOM)	3	90	650	3	90	650
Boarding lounges (INT'L)	41	-	9,000	47	-	11,500
Boarding lounges (DOM)	9	-	1,850	9	-	2,250
Immigration	29	220	800	35	270	970
Baggage reclaim (INT'L)	3 NB + 4 WB	-	4,200	4 NB + 5 WB	-	5,800
Baggage reclaim (DOM)	2 NB	-	1,250	2 NB	-	1,350
Customs	3	250	325	3	250	325

Figure 176: Equipment and areas needed for Phases I & III of the New Terminal at JKIA

The processes and areas detailed above do not include processing facilities for connecting passengers. Given that JKIA serves as both Kenya's primary gateway airport and a connecting hub, it is imperative to ensure an adequate provision of facilities for connecting passengers. Like the table above, the necessary equipment and areas for these facilities are outlined below.

Processing area	After Phase I			After Phase III		
	# of equipment	Queueing areas (m <sup>2</sup> )	Total areas (m <sup>2</sup> )	# of equipment	Queueing areas (m <sup>2</sup> )	Total areas (m <sup>2</sup> )
INT-INT Security Check	11	220	2,300	16	320	3,320
INT-DOM Immigration	4	30	110	6	45	165
INT-DOM Customs	1	60	160	1	60	160
INT-DOM Security Check	1	20	210	2	40	420
DOM-INT Emigration	3	30	90	4	40	120
DOM-INT Security Check	2	40	420	2	40	420

Figure 177: Equipment and areas needed for connections in Phases I & III of the New Terminal at JKIA

In addition to the functional areas mentioned earlier, there are other essential areas to be considered for determining the complete size of the terminal building. The methodology for these has been briefly

outlined in section 4.2.3.3, and a summary of the areas incorporated in the terminal design is provided below.

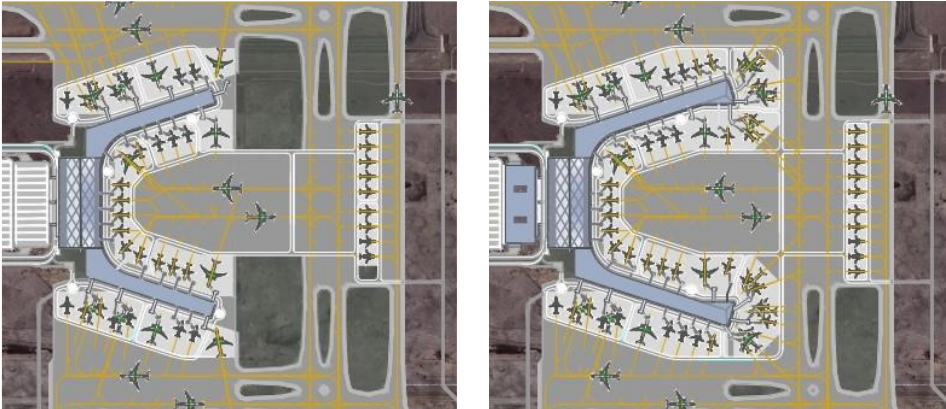
Processing area	After Phase I	After Phase III
	Total areas (m <sup>2</sup> )	Total areas (m <sup>2</sup> )
Commercial Domestic	900	1,000
Commercial International	6,300	8,300
BHS outbound	8,700	9,000
BHS Inbound	1,500	1,800
Airline offices	5,700	7,200
Airport offices	4,000	5,100
VIP areas	1,800	1,900
Circulation areas	21,500	25,000

**Figure 178: Auxiliary areas in Phases I & III of the New Terminal at JKIA**

In accordance with the information detailed above, the proposed development of the New Terminal is divided into two phases which run on the same timeline as the apron development:

- Phase I:** The development involves constructing a two-level terminal with an estimated area of 105,000 m<sup>2</sup>, to be completed by 2030. The overall capacity of this facility is estimated at ~14 million passengers per annum (Mpax), which suffices to meet the airport's needs until the year 2042. At this point, the traffic demand from Kenya Airways and its codeshare partner airlines is anticipated to achieve up to ~13.5 Mpax. Consequently, a new terminal expansion becomes necessary post-2042 to accommodate the demand until the conclusion of the thirty-year period. The construction works are expected to last four (4) years.
- Phase III:** The terminal expansion involves adding approximately 15,000 m<sup>2</sup> to the initially proposed new terminal, resulting in a total area of 120,000 m<sup>2</sup>. The estimated capacity of this expanded facility is around ~21 million passengers per annum. This increased capacity is anticipated to effectively accommodate the projected demand throughout the rest of the studied period. The expansion works are expected to last three (3) years.

The illustration below depicts the proposed development for the two phases of the new terminal construction.



**Figure 179: Phase I (left) & Phase III (right) for the Terminal development plans at JKIA**



The proposed phasing avoids oversaturation of the Terminal throughout the study period. Nevertheless, the Terminal design ensures available space within its footprint to accommodate additional equipment if traffic exceeds projected levels. Figure 180 below illustrates the outcomes of the capacity-demand analysis.

	Equipment Phase I	Equipment Phase III	2030	2035	2040	2042	2045	2050	2055
<b>Traffic Parameters (KQ + codeshares traffic, O&amp;D + connections)</b>									
Total traffic (Mpax)			8.6	10.5	12.7	13.6	15.1	17.8	20.5
INT'L traffic (Mpax)			2.4	2.8	3.1	3.2	3.4	3.7	3.8
DOM traffic (Mpax)			6.1	7.7	9.6	10.4	11.7	14.2	16.7
DOM ARR PHPs (O&D)			350	395	429	440	454	467	469
DOM DEP PHPs (O&D)			409	455	491	503	517	530	531
INT'L ARR PHPs (O&D)			975	1,042	1,118	1,152	1,206	1,304	1,393
INT'L DEP PHPs (O&D)			967	1,043	1,128	1,164	1,223	1,326	1,421
<b>Departing Passengers Flow (International &amp; Domestic)</b>									
<b>Entrance security – INT'L</b>			86%	86%	86%	88%	88%	100%	100%
Required lanes	7	8	6	6	6	7	7	8	8
<b>Entrance security – DOM</b>			100%	100%	100%	100%	100%	100%	100%
Required lanes	3	3	3	3	3	3	3	3	3
<b>Check-in counters – INT'L</b>			84%	92%	97%	82%	87%	96%	100%
Required counters	37	45	31	34	36	37	39	43	45
<b>Check-in counters – DOM</b>			76%	94%	94%	94%	94%	100%	100%
Required counters	17	18	13	16	16	17	17	18	18
<b>Self-service kiosks – INT'L</b>			100%	100%	100%	80%	80%	100%	100%
Required kiosks	4	5	4	4	4	4	4	5	5
<b>Self-service kiosks – DOM</b>			67%	100%	100%	100%	100%	100%	100%
Required kiosks	3	3	2	3	3	3	3	3	3
<b>Security screening – INT'L</b>			80%	90%	100%	83%	83%	92%	100%
Required lanes	10	12	8	9	10	10	10	11	12
<b>Security screening – DOM</b>			100%	100%	100%	100%	100%	100%	100%
Required lanes	3	3	3	3	3	3	3	3	3
<b>Emigration desks</b>			87%	91%	100%	82%	86%	96%	100%
Required counters	23	28	20	21	23	23	24	27	28
<b>Boarding gates – INT'L</b>			88%	93%	98%	87%	89%	96%	100%
Required gates	41	47	36	38	40	41	42	45	47
<b>Boarding gates – DOM</b>			89%	89%	100%	100%	100%	100%	100%
Required gates	9	9	8	8	9	9	9	9	9
<b>Arriving Passengers Flow (International &amp; Domestic)</b>									
<b>Immigration desks</b>			86%	90%	97%	83%	86%	94%	100%
Required counters	29	35	25	26	28	29	30	33	35
<b>Baggage Reclaim – INT'L</b>			86%	86%	100%	78%	78%	100%	100%
Required belts (NB)	7	9	6	6	7	7	7	9	9
<b>Baggage Reclaim – DOM</b>			100%	100%	100%	100%	100%	100%	100%
Required belts (NB)	4	4	4	4	4	4	4	4	4
<b>Customs</b>			67%	67%	100%	100%	100%	100%	100%
Required lanes	3	3	2	2	3	3	3	3	3

Figure 180: Capacity-demand analysis of the New Terminal

Plans for Phase III of the New Terminal, which highlight operational areas, non-operational areas and the conceptual passenger flows are presented next.

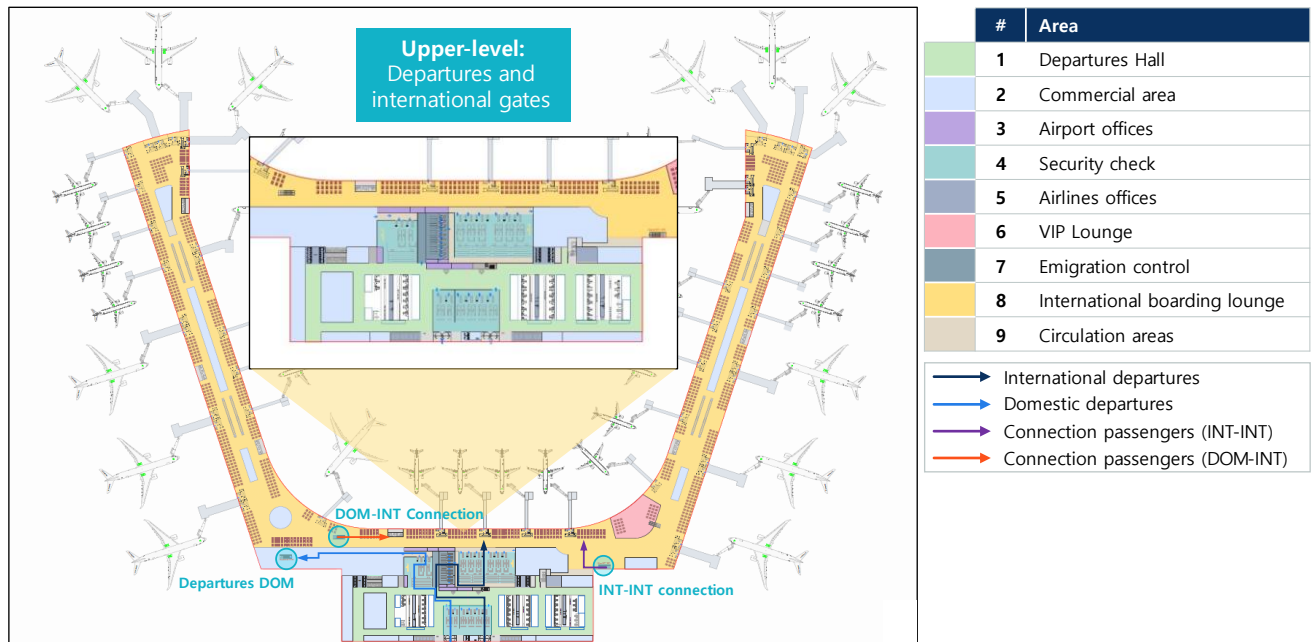
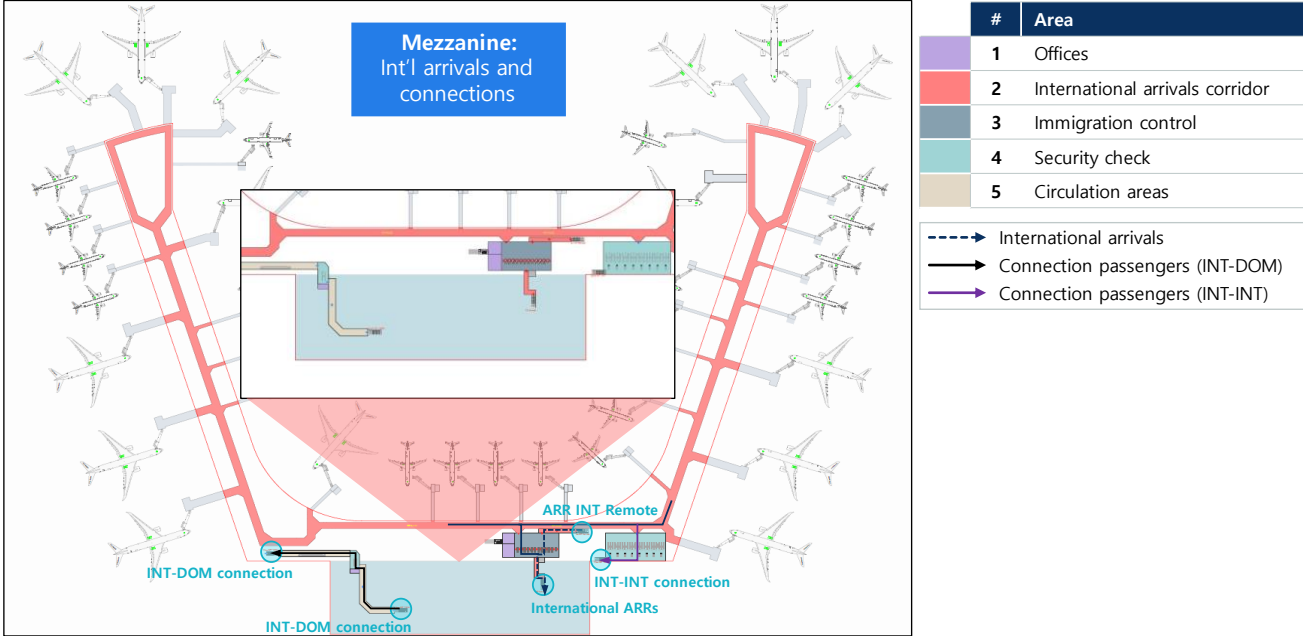


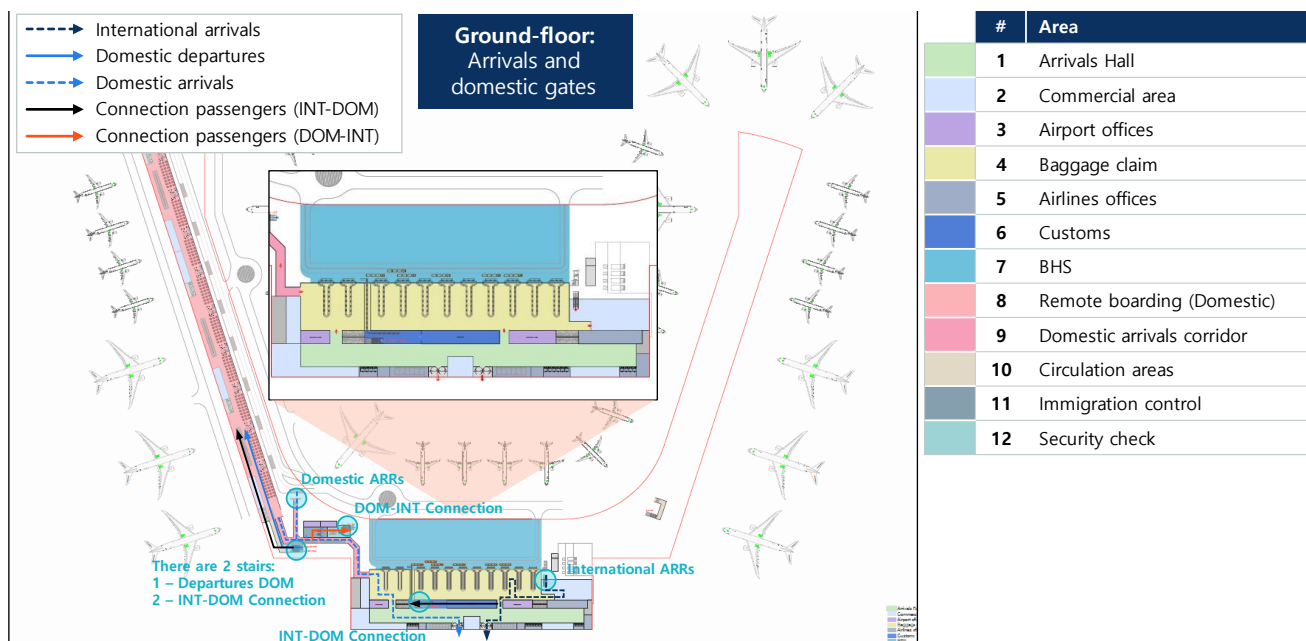
Figure 181: New Terminal Plans (Phase III, 2042-2055) – Upper level

The upper level serves as the departures area. Within the central processing area, travellers undergo check-in, security screening, and emigration (only international passengers). International travellers board their flights on this level, either directly through Passenger Boarding Bridges (PBBs) or by descending to the lower level. If the aircraft is not directly connected to the terminal via a PBB (false contact), passengers either board via air stairs or are shuttled by buses from the lower level to their aircraft if this is parked in a remote apron. Domestic passengers descend to the lower level of the North pier where the domestic gate lounges are located.



**Figure 182: New Terminal Plans (Phase III, 2042-2055) – Mezzanine level**

The mezzanine level is specifically designated for arriving international passengers and serves as the primary area for various connecting flows. Within this area, security screening is conducted for INT-INT connections, following which passengers proceed back upstairs to access the international gate lounges. Additionally, INT-DOM connections also undergo screening on this floor, after going through baggage pick-up and customs on the lower level; after screening they go downstairs on the North pier to the domestic gates area. Finally, immigration services are located here, after which arriving international passengers proceed to the baggage reclaim hall located on the lower level afterward.



**Figure 183: New Terminal Plans (Phase III, 2042-2055) – Lower level**

The lower level is primarily dedicated to handling arrival procedures. After completing immigration procedures on the mezzanine level, international arriving passengers descend here and proceed to the baggage reclaim hall before exiting the airport through the arrivals hall. Domestic passengers, on the other hand, access the lower level of the pier to reach the domestic baggage reclaim hall. For domestic passengers intending to make a DOM-INT connection, emigration and security procedures are conducted on this level. Subsequently, they proceed directly to the international gates situated on the upper level.

Along with the construction of the New Terminal, the proposal recommends decommissioning Terminals 1E and 2 a year after the commencement of operations at the new terminal, by 2031. While the proposal aims for a complete segregation of passengers of Kenya Airways and its codeshare partner airlines from other passenger flows, it acknowledges that some other airlines may operate from the New Terminal during periods where surplus capacity is available, given the reduction in capacity in the existing terminal after the decommissioning of terminals T1E and 2. This assumption is feasible because, apart from Qatar Airways (18%), Ethiopian Airways (18%), and Emirates (20%), the market shares of most other airlines operating at JKIA fall within the 3-6% range, meaning the airport operator could host some minor airlines operating at the New Terminal without compromising capacity or level of service.

Nevertheless, the suggestion is to enhance the current infrastructure in Terminal 1 to manage all airline operations other than those of Kenya Airways and its codeshare partners. To confirm this is feasible, a dual approach is employed. Firstly, it is necessary to identify specific areas within the existing terminal that require expansion in order to meet the expected demand from airlines other than Kenya Airways and its partners beyond 2031, after the decommissioning of T1E and T2. Moreover, it is crucial to confirm that the integrated system of Terminal 1 and the New Terminal possesses the capacity to accommodate the expected demand for the next thirty years.

Following the Consultant's proposal, it is recommended to ensure that enough capacity is made available at the current Terminal 1 to accommodate the traffic of airlines other than Kenya Airways and their partners. In line with this, Figure 184 is intended to illustrate the capacity-demand analysis for Terminal 1 during the period 2031-2055. Drawing from the analysis results, the key findings indicate that the most

critical deficiencies pertain to the shortage of domestic boarding gates, immigration desks, and baggage belts, affecting both international and domestic passengers.

	Equipment from 2031	2031	2035	2040	2045	2050	2055
<b>Traffic Parameters (Others traffic, O&amp;D + connections)</b>							
Total traffic (Mpax)		3.6	4.4	5.6	7.1	8.7	10.4
INT'L traffic (Mpax)		0.3	0.5	0.8	1.1	1.6	2.1
DOM traffic (Mpax)		3.3	4.0	4.9	5.9	7.1	8.4
DOM ARR PHPs (O&D)		106	147	205	271	345	426
DOM DEP PHPs (O&D)		137	184	250	323	403	488
INT'L ARR PHPs (O&D)		636	736	872	1,021	1,184	1,345
INT'L DEP PHPs (O&D)		556	667	816	978	1,150	1,322
<b>Departing Passengers Flow (International &amp; Domestic)</b>							
<b>Entrance security – INT'L</b>		38%	50%	63%	75%	88%	100%
Required lanes	8	3	4	5	6	7	8
<b>Entrance security – DOM</b>		50%	50%	100%	100%	150%	150%
Required lanes	2	1	1	2	2	3	3
<b>Check-in counters – INT'L</b>		23%	28%	33%	40%	47%	54%
Required counters	78	18	22	26	31	37	42
<b>Check-in counters – DOM</b>		42%	50%	75%	92%	108%	133%
Required counters	12	5	6	9	11	13	16
<b>Self-service kiosks – INT'L</b>		7%	7%	7%	9%	9%	11%
Required kiosks	46	3	3	3	4	4	5
<b>Self-service kiosks – DOM</b>		25%	25%	25%	25%	25%	38%
Required kiosks	8	2	2	2	2	2	3
<b>Security screening – INT'L</b>		28%	33%	39%	44%	56%	61%
Required lanes	18	5	6	7	8	10	11
<b>Security screening – DOM</b>		50%	100%	100%	100%	150%	150%
Required lanes	2	1	2	2	2	3	3
<b>Emigration desks</b>		33%	39%	47%	56%	64%	72%
Required counters	36	12	14	17	20	23	26
<b>Boarding gates – INT'L</b>		59%	68%	77%	86%	95%	100%
Required gates	22	13	15	17	19	21	22
<b>Boarding gates – DOM</b>		100%	125%	150%	175%	225%	250%
Required gates	4	4	5	6	7	9	10
<b>Arriving Passengers Flow (International &amp; Domestic)</b>							
<b>Immigration desks</b>		100%	119%	138%	163%	188%	213%
Required counters	16	16	19	22	26	30	34
<b>Baggage Reclaim – INT'L</b>		167%	200%	200%	200%	267%	267%
Required belts (NB)	3	5	6	6	6	8	8
<b>Baggage Reclaim – DOM</b>		100%	200%	200%	200%	300%	300%
Required belts (NB)	1	1	2	2	2	3	3
<b>Customs</b>		200%	200%	200%	200%	300%	300%
Required lanes	1	2	2	2	2	3	3

Figure 184: Capacity-demand analysis of Terminal 1 after decommissioning T1E & T2

To address the capacity shortfall, the proposal contemplates developing the existing terminal once the New Terminal commences operations. This approach allows the New Terminal to absorb traffic, if needed, mitigating disturbances caused by ongoing construction work. The plan involves expanding the terminal through two distinct workstreams, both to be executed concurrently between 2031 and 2033.

- **Construction of an arrivals area between T1B and T1C** that incorporates an additional eighteen (18) immigration desks and five (5) international baggage reclaim belts to cater to the anticipated demand throughout the entire 30-year period. Two (2) X-ray screening lanes for customs processing must also be installed.
- **Building a new pier in the T1E area** to introduce six (6) additional domestic boarding gates and two (2) baggage reclaim belts for domestic arrivals. This is proposed to be constructed in two separate levels.

The first task, involving the construction of an arrivals area between T1B and T1C, shares similarities with one of the phases of Project Infill. This phase aimed to establish an arrivals corridor, immigration area, and baggage reclaim belts within the available space between Terminals 1C and 1D. In the proposal, this concept would be implemented between Terminals 1B and 1C, involving the creation of an arrivals corridor above the existing departures level in a ring-shaped configuration. Additionally, the space between both terminals would be "filled", housing baggage reclaim belts on the ground floor. Like the Project Infill plan, a portion of the first level in the filled area could be designated for office space.





Figure 185: High-level view of the proposal to expand Terminal 1 (2033)

Figure 186 presents the outcomes of the second part of the analysis, which assesses the demand for terminal equipment in comparison to the equipment available in Terminal 1 (excluding T1E and T2 and including the aforementioned developments), Phase I (2030-2042), and Phase III of the New Terminal (2042-2055). According to the findings, it is anticipated that the integrated system of the two terminals could effectively accommodate the demand well beyond 2033, when both the New Terminal and the enhancements to the existing one are completed, and up until the end of the 30-year period of study.

	2031	2035	2040	2042	2045	2050	2055
<b>Passenger processing equipment</b>							
<b>Entrance security lanes - Int</b>	50%	57%	64%	67%	67%	80%	87%
	7	8	9	10	10	12	13
<b>Entrance security lanes - Dom</b>	60%	80%	80%	80%	80%	100%	100%
	3	4	4	4	4	5	5
<b>Check-in counters - Int</b>	37%	41%	47%	48%	50%	58%	64%
	41	45	52	55	58	67	74
<b>Check-in counters - Dom</b>	63%	70%	81%	76%	83%	90%	97%
	17	19	22	22	24	26	28
<b>Self-service kiosks - Int</b>	10%	10%	10%	12%	12%	14%	14%
	5	5	5	6	6	7	7
<b>Self-service kiosks - Dom</b>	27%	27%	27%	27%	27%	27%	36%
	3	3	3	3	3	3	4
<b>Baggage Drop counters - Int</b>	56%	46%	54%	54%	54%	62%	69%
	5	6	7	7	7	8	9
<b>Baggage Drop counters - Dom</b>	60%	43%	57%	57%	57%	57%	57%
	3	3	4	4	4	4	4
<b>Security lanes - Int</b>	42%	46%	50%	50%	54%	61%	64%
	11	12	13	14	15	17	18
<b>Security lanes - Dom</b>	60%	60%	80%	80%	80%	100%	100%
	3	3	4	4	4	5	5
<b>Emigration desks</b>	46%	50%	57%	58%	61%	69%	76%
	26	28	32	34	36	41	45
<b>Boarding gates - Int</b>	57%	61%	65%	65%	69%	73%	79%
	26	28	30	31	33	35	38
<b>Boarding gates - Dom</b>	62%	52%	56%	54%	57%	61%	64%
	13	14	15	15	16	17	18
<b>Immigration desks</b>	76%	58%	66%	67%	71%	81%	90%
	31	34	39	42	45	51	57
<b>Baggage belts - Int</b>	50%	41%	47%	42%	47%	47%	58%
	6	7	8	8	9	9	11
<b>Baggage belts - Dom</b>	60%	38%	38%	38%	38%	50%	50%
	3	3	3	3	3	4	4
<b>Customs - X-ray</b>	100%	75%	100%	80%	80%	80%	100%
	3	3	4	4	4	4	5

Figure 186: Capacity-demand analysis of the integrated system of Terminal 1 + New Terminal vs total traffic

In conclusion, the comprehensive development plan for the new passenger terminal at JKIA reflects a thorough consideration of various factors to ensure efficient, scalable, and sustainable terminal operations. The phased approach, coupled with a focus on flexibility and collaboration with stakeholders, is expected to contribute to the long-term success and competitiveness of the airport.

**Landside system**

The development strategy for the landside system guarantees that sufficient capacity for accessing the new terminal building and accommodating car parking spaces is provided at JKIA.

Airport parking facilities typically take up valuable and crucial real estate within the airport premises. As a result, it is essential to ensure that parking spaces are conveniently located near the terminal, in proximity to workplaces, or close to public transport stops.

As described, the proposal outlines the construction of a New Passenger Terminal Building to accommodate the operations of Kenya Airways and its partners. Consequently, there is a need to build additional parking spaces near the new terminal. The current car parking facilities in the existing terminal area are insufficient to meet the forecasted demand, given the higher relative number of O&D passengers in the group of airlines excluding Kenya Airways and its partners.

In alignment with the phased approach to the Terminal building, the development of car parking is suggested to be executed in the following stages:

- **Phase I:** A surface car parking is planned to be developed in front of the New Terminal, providing around 1,700 parking spaces. The construction of this parking facility is anticipated to be completed by 2030.
- **Phase III:** By the conclusion of the analysed period, a total of 2,300 car parking spaces are deemed necessary. To address this requirement, it is suggested that during Phase II of the New Terminal development, a multi-story car park be constructed in front of the terminal. This facility is anticipated to provide approximately 1,500 car parking spaces, with the remaining 800 spaces allocated to surface car parks.



**Figure 187: Phase I (left) & Phase III (right) for car parking development at JKIA**

Considering the results of the capacity-demand analysis for car parking within the current terminal building, designed to accommodate airlines other than Kenya Airways and its partners, a deficit in parking spaces is projected by 2050 (see Figure 189). To address this, it is recommended to construct an additional 300 car parking bays to accommodate the forecasted demand at the end of the thirty-year period unless KAA offices on the top floor of the existing multi-story parking are dismantled.

Moreover, the investment plan encompasses the rerouting of the existing access road to facilitate entry to the new Passenger Terminal Building. In addition to this, there is a provision for the construction of the

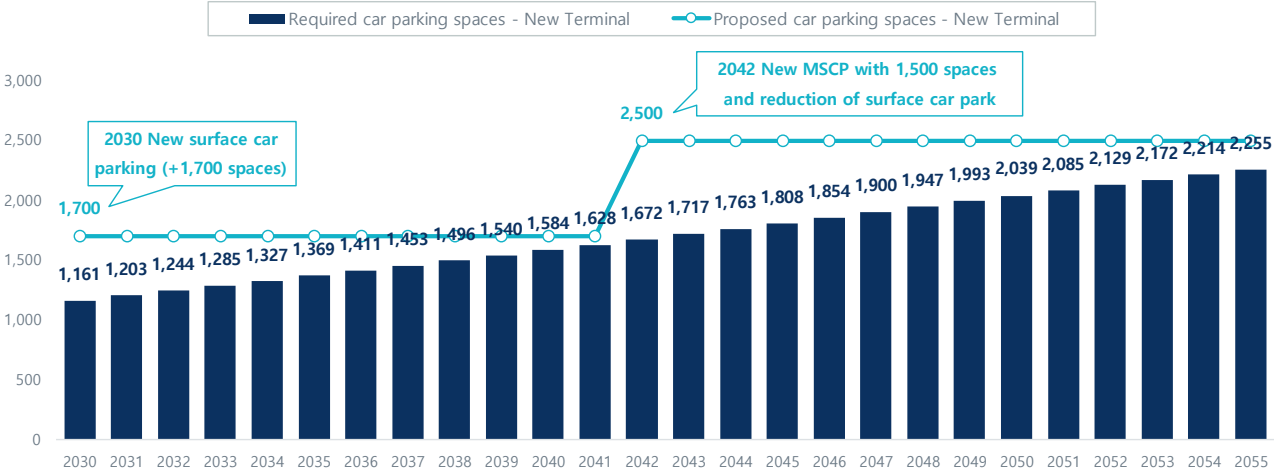


curbside. These infrastructural enhancements aim to streamline access and enhance the overall functionality of the airport, ensuring a well-coordinated and efficient flow of traffic and passenger services.



**Figure 188: Rerouting of existing roads to access the new Terminal and associated parking and curbside**

The illustration in Figure 189 below depicts how the planned car parking development adequately meets the anticipated demand for parking at both Terminals.



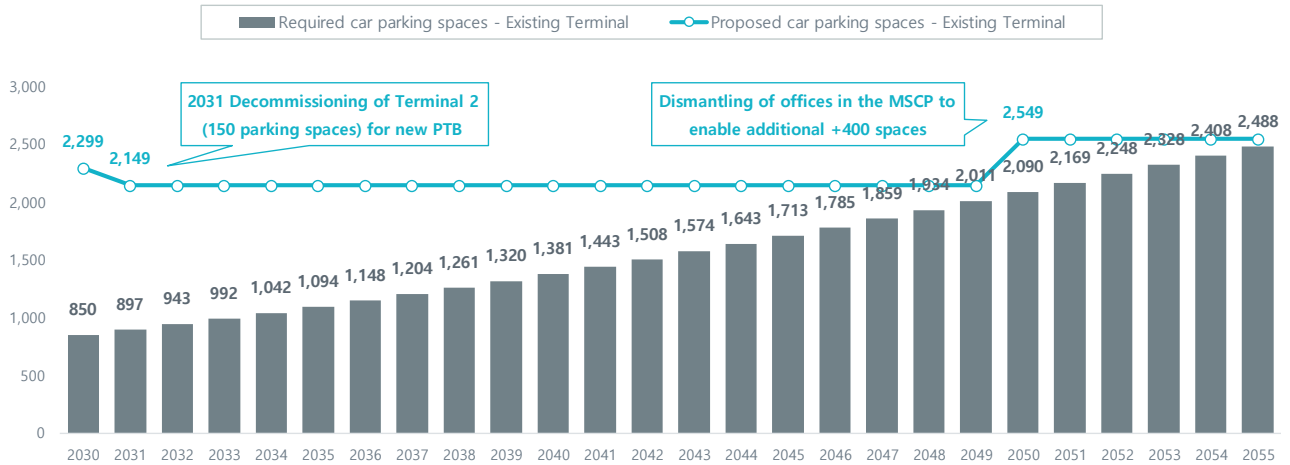


Figure 189: Capacity-demand analysis of car parking spaces at JKIA (Terminal 1 and New Terminal)

### Development Plan summary and Phasing

Next, a concise summary of the development plan is presented, outlining the expansion plans for each subsystem discussed in detail in the preceding subsections. The following phasing is proposed:

- Phase 0** involves building two RETs for Runway 06/24 and a partial parallel taxiway. The aim is to enhance the runway's capacity and improve operational efficiency and reliability. The plan also includes the construction of 10 aircraft parking positions for Code C commercial aircraft on the current terminal commercial apron. Additionally, stands for accommodating 6 Code E aircraft on the cargo apron are envisioned to address congestion concerns in that area. Works in this phase are proposed for completion by the end of 2026/beginning of 2027.



Figure 190: Phase 0 (2025-2027)

- Phase I** focuses on the initial construction phase of the terminal building and its corresponding commercial apron. This apron includes both a contact apron and a remote apron situated in front of the terminal. Concurrently, the taxiway system undergoes significant expansion to introduce a double parallel taxiway for the existing runway and taxiway connections to the apron areas. Additionally, there is a diversion of the main road to facilitate access to the terminal building, and plans include the establishment of a surface car parking to accommodate approximately 1,700 cars. This phase is expected to be completed by 2030.



**Figure 191: Phase I (2030)**

- Phase II** is centred on the development of a new runway and its associated taxiway system, comprising of a complete parallel taxiway and an inner parallel taxiway. Additionally, a new taxiway connecting both runways is included. The proposed dimensions for the new runway mirror those of the existing one, measuring 4,117 x 45 meters but designed to meet CAT II/III specifications and be able to accommodate Code F aircraft (shoulders to extend to 75m). Notably, there is a distance of 1,580 meters between the two runways, leaving sufficient space to accommodate a potential third runway, positioned 1,035 meters to the south, capable of carrying out independent operations from both the existing and the second runway. Furthermore, the plan includes the construction of five (5) code E cargo stands to meet the projected demand up to 2055. Regarding the current terminal building, in this phase an expansion is planned in order to meet the anticipated demand from other airlines other than Kenya Airways and its codeshares partners by the end of the studied period. This expansion involves adding a third level above T1B and T1C to process arriving passengers. Additionally, international baggage reclaim belts are proposed on the ground floor. Finally, a pier extension next to T1D is planned to facilitate up to 6 domestic boarding gates.



**Figure 192: Phase II (2037)**

- Phase III:** represents the conclusive stage of development, encompassing a minor expansion in the commercial apron of the new terminal and the extension of the terminal building's piers to accommodate supplementary contact stands.



Figure 193: Phase III (2042)

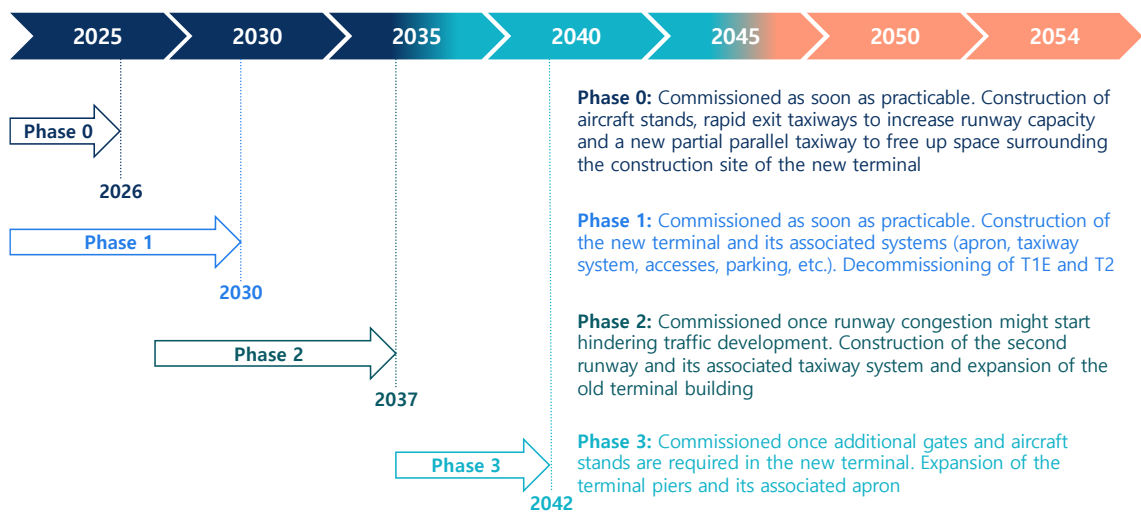


Figure 194: JKIA Development Plan overview



### 4.3 Investment plan

The investment plan has been formulated based on the outcomes of the three preceding infrastructure assessments: evaluating the current state of existing infrastructure, ensuring compliance with ICAO standards, and conducting a comprehensive capacity-demand analysis. These assessments cover the period from 2025 to 2054. The conclusions of these assessments inform a robust investment strategy that addresses immediate needs while also aligning with future traffic demands and reinvestment requirements.

- **Regulation compliance investment or remedial investment:** these include actions needed to bring the airport's infrastructure in line with the Standard and Recommended Practices (SARPs) outlined by the International Civil Aviation Organization (ICAO), particularly focusing on operational safety and security. This is referred to as "CapEx – Compliance".

*Input: Compliance assessment*

- **Expansion investment:** Also known as "CapEx – Development," these investment actions are necessary to enhance an airport's infrastructure and processing capacity. In essence, this involves the addition of new infrastructure, equipment, or systems that did not previously exist, contributing to the overall development of the airport.

*Input: Capacity-demand analysis*

- **Major Maintenance and Replacement investment:** Includes any investment needed to sustain the optimal operational condition of existing infrastructure, systems, and equipment and entails actions typically involving the replacement of an entire component or a significant part of it. Major maintenance efforts may also be necessary to guarantee compliance with regulations, such as the substantial rehabilitation of runway, taxiway, or apron pavements to ensure the safe operation of aircraft. Such investments are referred to as "RepEx".

*Input: Existing facilities and condition analysis and capacity-demand analysis*

Ultimately, the primary objective of the investment plan is to maintain a streamlined investment profile while also ensuring an adequate condition, capacity, and compliance of the airport's facilities. Thus, the investment plan has been optimised to ensure that:

- The infrastructure **complies with ICAO regulations;**
- The infrastructure has **enough capacity to cope with the forecasted demand;**
- The infrastructure maintains a **good operation condition** during the studied period; and
- The **investment profile** is technically sound as well as **economically and financially viable** from a potential PPP project perspective.

Concerning pricing and life cycle definition, the investment amounts primarily rely on unit costs obtained from region-specific benchmarking and/or general construction categories. In instances where specific costs were unavailable, certain assumptions were made due to the difficulty in conducting region-specific benchmarking of airport infrastructure unit prices, primarily stemming from a lack of publicly updated information.

Broadly, life cycles have been defined following the industry's standard methodology for estimating significant maintenance and replacement investments. The determination of the quantity to be replaced or maintained for a particular item or facility, along with its associated unit cost, adheres to industry-standard approaches.

A concise overview of the methodology used to quantify Regulatory and Expansion Capital Expenditure (CapEx) as well as Major Maintenance CapEx is provided in Figure 195 below.

Regulatory and Expansion CapEx	Operational requirements	Operational year	<ul style="list-style-type: none"> <li>Expansion from the main infrastructure (RWY, TWY, apron, PTB &amp; car parking) is triggered according to demand levels (traffic triggers the expansion year), and costs are allocated in the previous years before this operational 'deadline'</li> <li>Secondary infrastructure is phased based on the development of the main infrastructure</li> </ul>
		Surface or amount	<ul style="list-style-type: none"> <li>Each project requirements are expressed through their appropriate units (either m<sup>2</sup> or units), as per the estimated expansion requirements</li> <li>Surface or number of units required multiplied by the unit cost will result in the estimated expansion cost</li> </ul>
	Unitary costs	Reference	<ul style="list-style-type: none"> <li>A unit price (USD/m<sup>2</sup> or USD/unit) is defined for each project/work based either on the available information and other ALG project references from other regional industry references</li> </ul>

Major Maintenance CapEx		RWYs & TWYs	Apron	PBBs	Terminal	Vehicles	Buildings	Access	Car Park	Utilities
	Life cycle (number of years that the asset is expected to operate without major maintenance)	15-20 for asphalt surfaces 15 for lighting	25 for concrete 20 for asphalt 15 for lighting	25	10 – 25 (depending on asset)	5 – 15 (depending on the vehicle)	10	1*-10	1*-10	15-30 (depending on asset)
	% of the replacement cost (when 100% is used) or % of the original construction cost considered for major maint.	100% for asphalt surfaces 50% RWY lighting 50% TWY lighting	50%-100% depending on apron material 50% for lighting	100%	~70% depending on areas	100%	10%	20%	20%	80-100% (depending on asset)
% of areas / units to be replaced / reconstructed	56% for RWY 100% for TWY 100% RWY lighting 100% TWY lighting	70% for concrete 100% for asphalt 100% for lighting	100%	~40%	100%	100%	10%*-100%	10%*-100%	100%	

Reinvestment is spread across the years before the end of the life cycle(1 – 5 years)

Figure 195: Main assumptions for the investment plan forecast

While a single and unified airport development plan has been presented to align with anticipated infrastructure needs and forecasted demand, the analysis must encompass two scenarios: one including the entire airport PPP and another which only includes the terminals PPP, as requested by the Government of Kenya (GoK).

Considering the need for a second runway, and the long lead times to have it operational, ALG proposed during the kick-off and stakeholders' consultation meetings that a airport PPP should be considered, with the private operator having responsibility for the development and operation of the terminals as well as the airfield (runways, taxiways, aprons, etc.). There are a number of benefits to a airport PPP (instead of a terminals PPP), the main one being that it provides a longer-term, more coherent, lower-risk development alternative for JKIA. The GoK was receptive to the proposal but requested an assessment of both scenarios (terminals PPP vs. airport PPP) to make a final decision.

In Scenario 1, the comprehensive development of the entire airport's infrastructure is entrusted to a private Concessionaire through a 30-year Public-Private Partnership (PPP), which includes the construction and commissioning of a second runway. On the other hand, in Scenario 2, the private investor is tasked solely with operating and building the terminals (new and existing), as well as the passenger apron and landside infrastructure such as parking areas and accesses. In this scenario, the Kenya Airports Authority (KAA) would be in charge of the development of the second runway and the taxiway system, among other infrastructure.

Scenario 1 is based on a 30-year contract term, the maximum allowable under PPP law. Meanwhile, Scenario 2 assumes a 15-year contract term, as private investors are not inclined to commit to investments for a longer duration without assurance that a second runway would be commissioned. After this period, the airport's need for the second runway becomes crucial.



In Scenario 2, the private investor would provide financing amounting to ~755 million USD for the entire 15-year PPP contract, whereas the Kenya Airports Authority (KAA) or the public sector would bear the rest of the investment plan totaling ~505 million USD.

### 4.3.1 Investment Plan for Scenario 1 (Airport PPP)

As previously explained, this scenario encompasses the entirety of airport infrastructure, including runways, taxiways, terminal buildings, accesses, and other relevant facilities. The investment outlined in this subsection already incorporates contingencies and preliminaries, encompassing potential costs such as design expenses, permit acquisition, and environmental mitigation measures.

**The comprehensive capital investment plan for JKIA airport, aimed at ensuring the optimal condition, capacity, and compliance of all airport facilities, is projected to amount to USD ~1,630 million over the studied period spanning from 2025 to 2054.**

The contemplated investment actions at JKIA airport are driven by several factors, including (1) addressing present challenges associated with congestion and saturation across various airport facilities, encompassing constraints on the runway, the terminal and both commercial and cargo aprons; (2) fulfilling the requirements for future infrastructure to align with projected demand; and (3) striving to uphold an optimal level of service and condition for both existing and future facilities.

Figure 196 below shows the distribution of investments, distributed by Regulatory and Expansion CapEx and Maintenance CapEx (RepEx).



**Figure 196: Regulatory, expansion and maintenance Capex estimation at JKIA airport (2025-2054)**

Expansion CapEx amounts to ~1,277 million USD, constituting approximately 78% of the overall proposed investment program. This primarily stems from the construction of the new terminal building and its associated apron, expected to be completed by 2030 and fully developed by 2042. Additionally, investment expenses include the construction of the new parallel runway, along with its associated taxiway system, to be completed by 2037.

Figure 197 below shows the yearly Expansion CapEx investment anticipated by category for the period between 2025 and 2054.

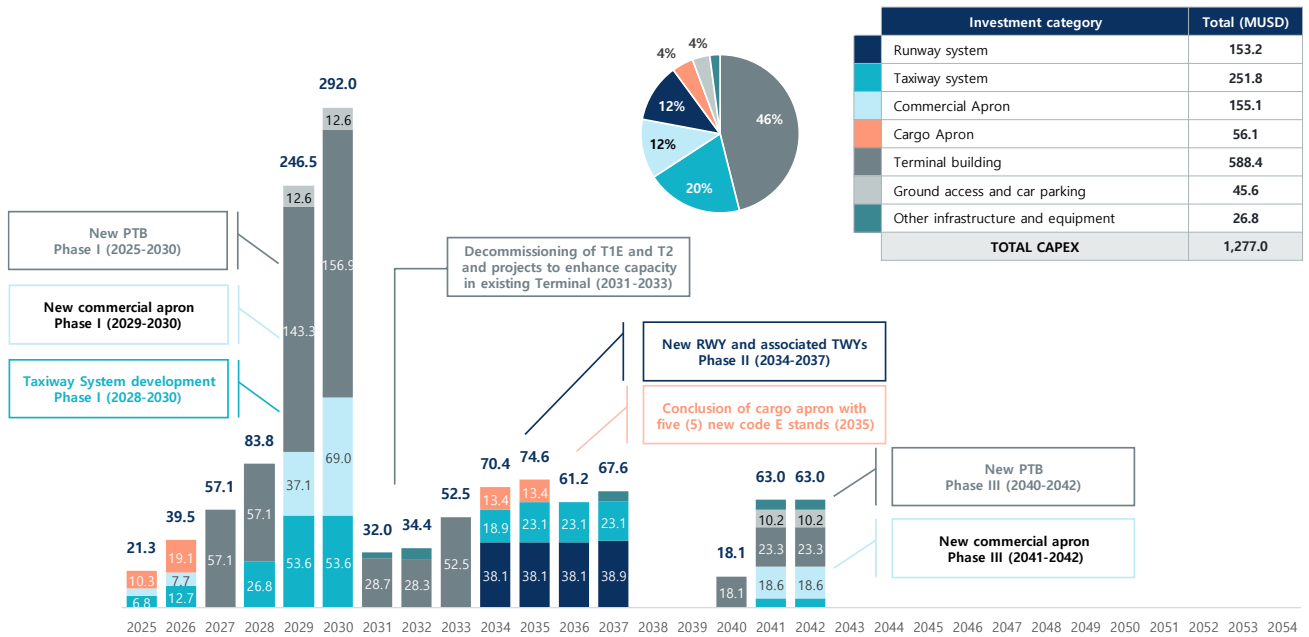


Figure 197: Expansion Capex investment program cost by category (2025-2054)

Furthermore, a sum of ~350 million USD is anticipated for Maintenance Capital Expenditure (RepEx). This allocation is intended to uphold the existing and newly built facilities in a well-functioning state, ensuring an optimal level of service.

The most substantial maintenance investments occur toward the latter phases of the forecasted period, driven mainly by reinvestments to be made in the Terminals (especially the existing one) and the taxiway system built during Phase I. The terminal receives the most RepEx at ~133 million USD, followed by the TWY system at ~86 million USD, and the apron at ~62 million USD.

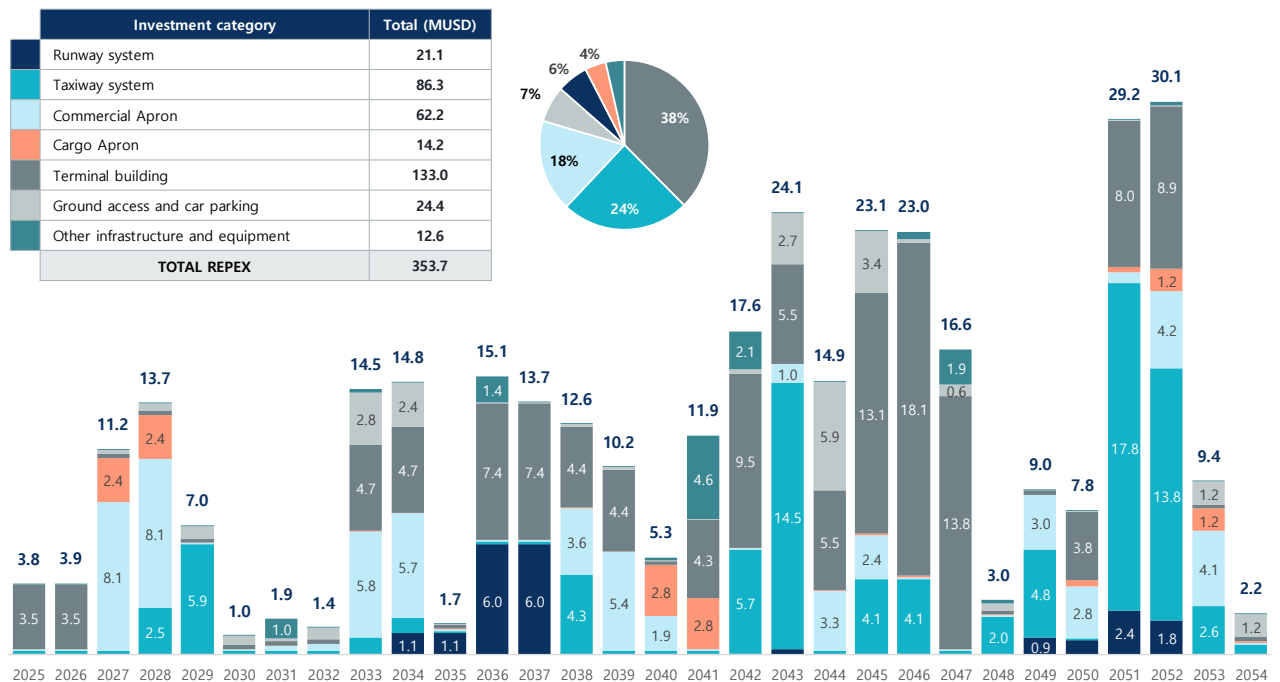


Figure 198: Maintenance Capex investment program cost by category (2025-2054)

Taking into account both CapEx and RepEx, the categorisation is as follows:

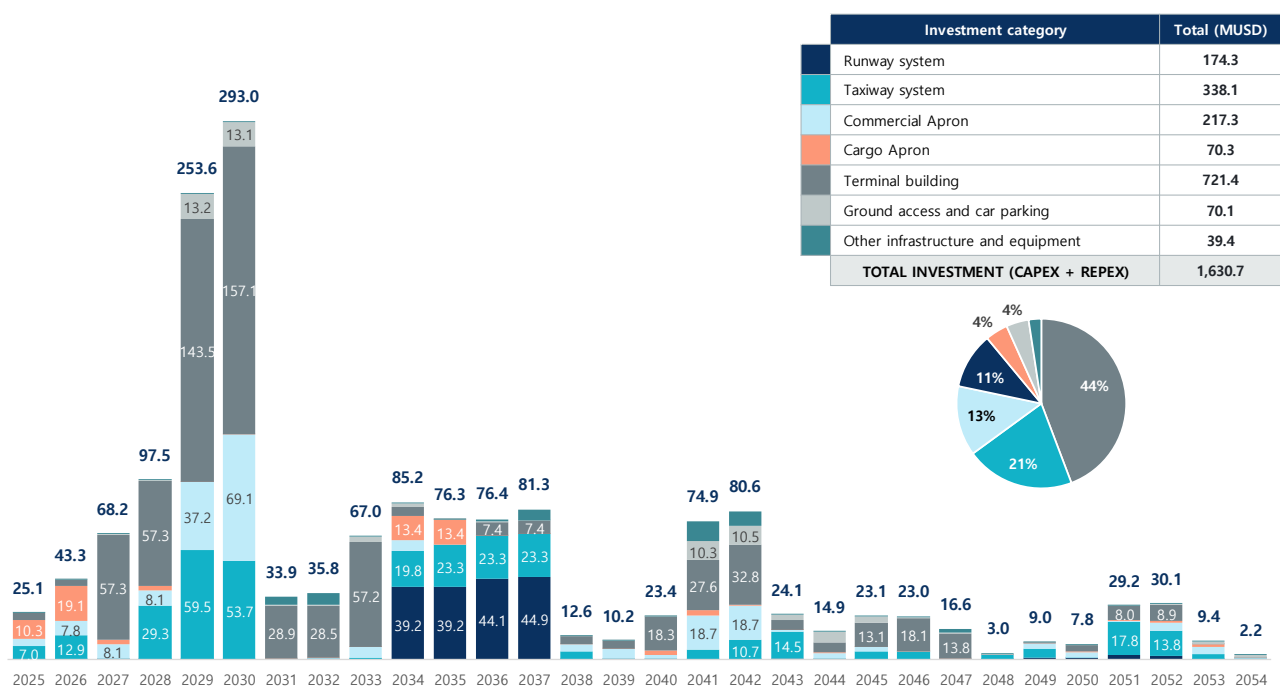


Figure 199: Total investment program by category (2025-2054)

### 4.3.2 Investment Plan for Scenario 2 (Terminals PPP)

As described, in Scenario 2, the private investor is exclusively responsible for managing and constructing the terminals (both new and existing), along with the passenger apron, parking areas, and landside accesses. The Kenya Airports Authority (KAA) would be responsible of developing and maintaining all other infrastructure, including the second runway, the taxiway system and the cargo aprons.

This scenario unfolds within a 15-year contract term, between 2025 and 2039. In this second scenario, the development plan mirrors that of the first scenario up to Phase II. However, in this scenario, the private investor is solely responsible for developing the initial phase of the New Terminal and its associated commercial apron, along with its accesses, car parking, and improvements on the existing Terminal 1.

The figures below illustrate the investment program spanning from 2025 to 2039, categorised by those commitments that should be made by the private investor (Figure 200) and those by the KAA (Figure 201). As per the analysis findings, the total estimated investment, inclusive of CapEx and RepEx, amounts to ~1,260 million USD. Within this, ~40%, equivalent to ~505 million USD, would need to be financed by KAA, the rest, approximately ~755 million USD would be funded by a potential concessionaire.

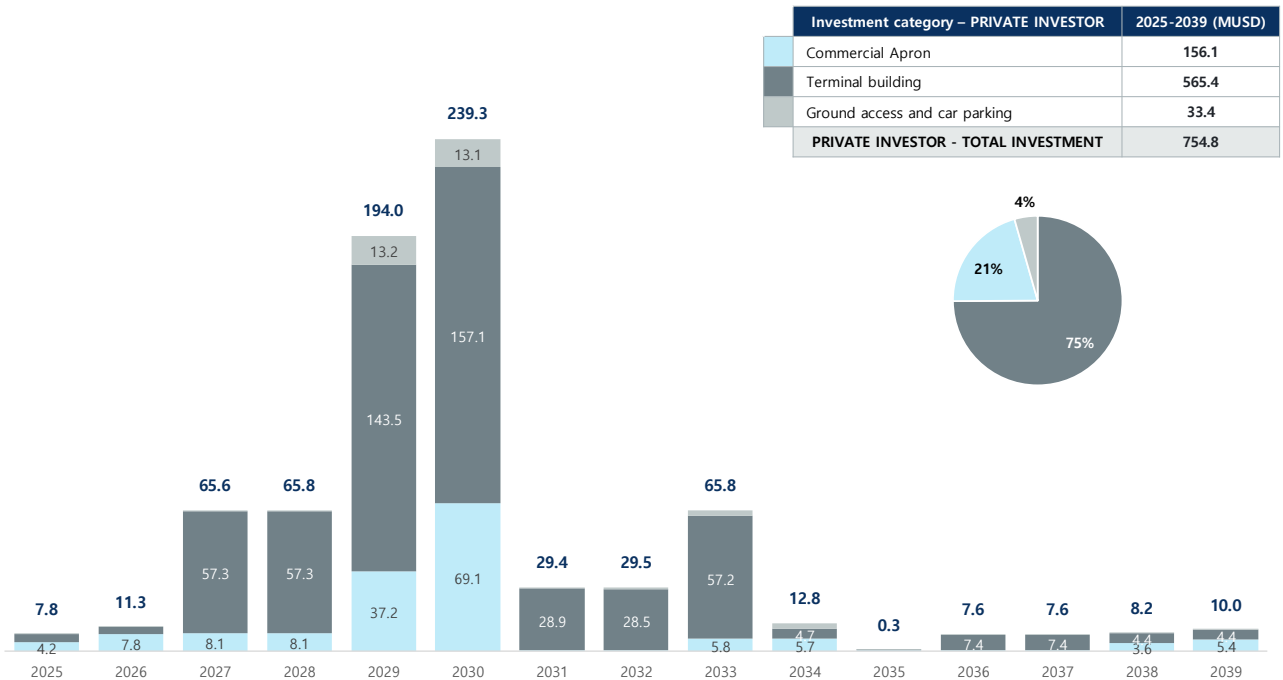


Figure 200: Total investment program by category (2025-2039) – To be financed by the private investor

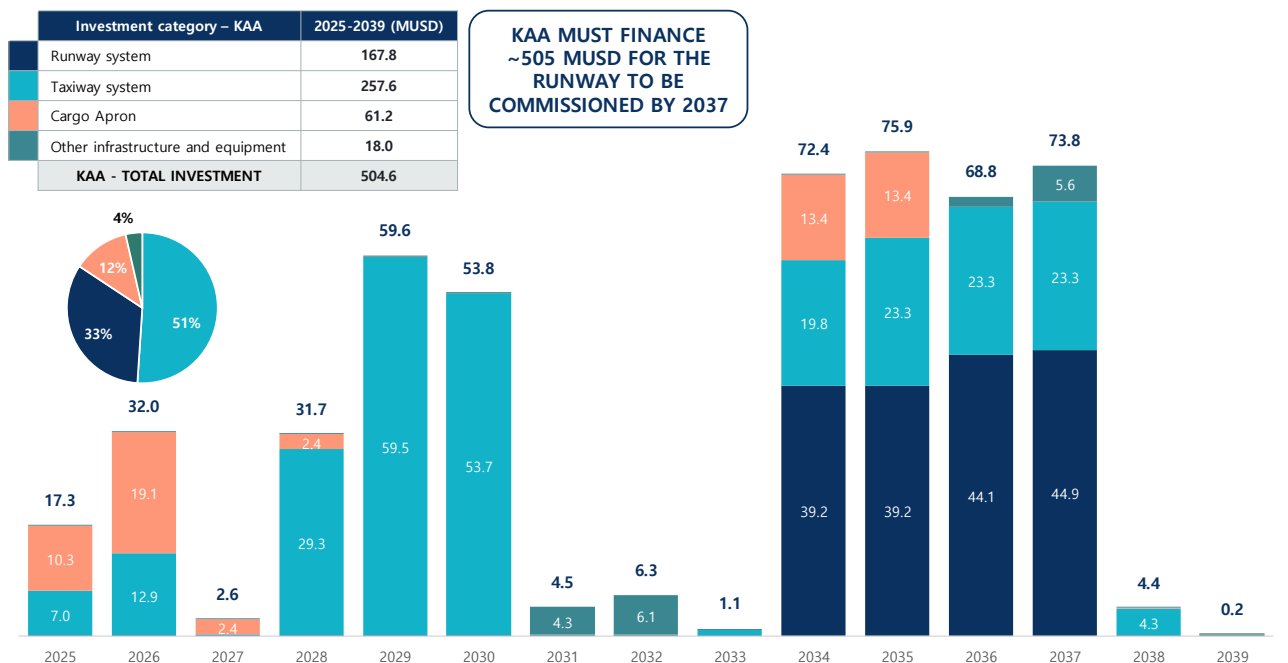


Figure 201: Total investment program by category (2025-2039) – To be financed by KAA

Finally, the proposed development plan has been conceived with the objective of establishing the infrastructure needs to meet future traffic growth, and consequently determine the attractiveness of a PPP for potential investors. As such, the development plan focuses on the main infrastructure elements that will be needed at JKIA in the short, medium, and long terms. It must be noted that while the development plan has a detailed analysis of the construction, maintenance, and operational costs that enable the assessment of the project's financial feasibility, it shouldn't be considered a detailed or finalised airport

design, but rather a work-in-progress that shall be fine-tuned to the needs and future plans of the main stakeholders and users of the airport.



# 5 Financial and Economic Analysis Reports

## 5.1 Procurement Options

There are different approaches for private sector participation in airport infrastructure, with varying degrees of private sector involvement in the ownership, investment/construction, and management and operation responsibilities of the asset.

These procurement options provide the Government flexible models to leverage private sector expertise and resources while achieving developmental goals efficiently. By understanding the implications of each approach, stakeholders can tailor PPP arrangements to suit specific project requirements, optimize resource allocation, and maximize the long-term value of infrastructure investments.

The alternative approaches to private participation in public infrastructure development are the following:

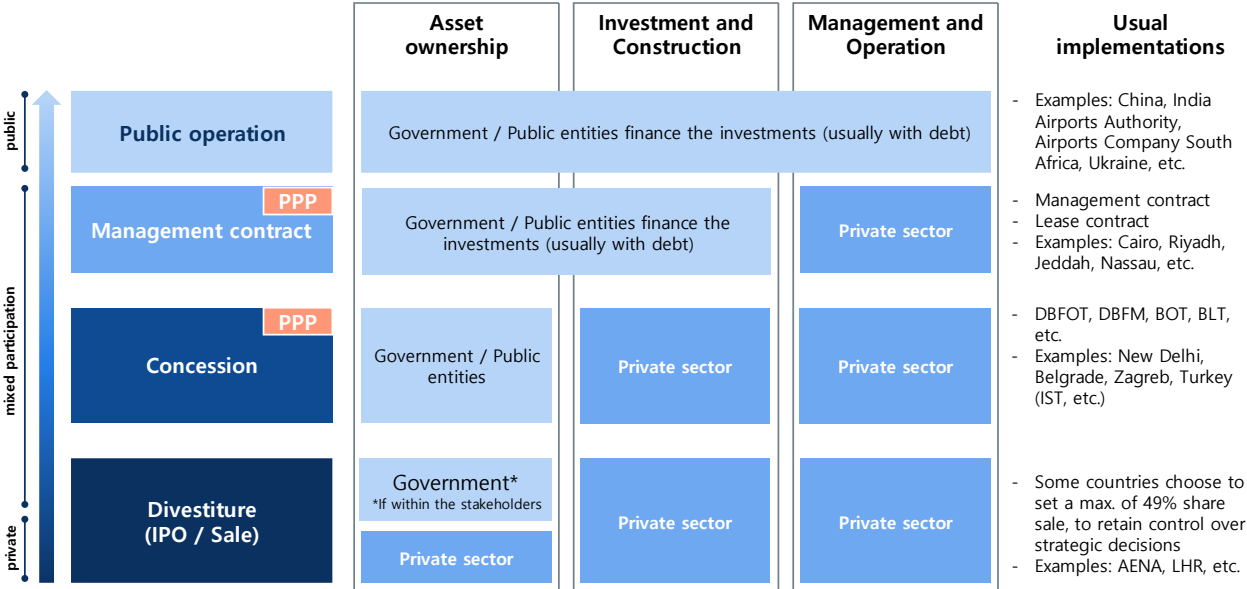


Figure 202: Alternative approaches to private participation in public infrastructure development

### 5.1.1 Public operation

The current model at JKIA, public operation involves the ownership, development and management of the airport by a Government entity (KAA in this case).

The Government is responsible for the funding and financing for construction, expansion, and maintenance of the airport through public funds, grants, bonds, or other mechanisms, which means that Government would need to arrange for the financing of the development plan, including the new terminal building and second runway construction.

This model offers certain advantages such as the complete control over the airport management and development process, however, it requires the Government to either self-finance or arrange the financing required for the investment plan. In addition, the model may also present other challenges, such as rigid bureaucratic processes, or limited flexibility in decision-making and procurement, which can impact the airport's ability to adapt to changing market conditions and realize all the commercial and operational

efficiencies that can be achieved by a private-sector operator. Furthermore, all the risks (construction, operation, design, etc.) are retained by the Government.

### **5.1.2 Management contract**

A management contract involves the public sector enlisting a private operator or contractor to oversee either specific services or the entirety of an asset, such as the management of an airport, encompassing aspects like, commercial, operations, and maintenance.

In a management contract, the Government retains responsibility for all investment efforts in the airport, with capital and investment risks falling under its purview. In the typical management contract, the private party manages and operates the airport while the Public assumes a supervising role. Although a management contract often leads to increased operational expenses and requires the public sector to undertake the required investments it enables the public sector to benefit from the private sector experience and operational efficiency.

The public sector financial commitment or effort required for a management contract is generally higher than that of a concession. Unlike a concession, a management contract does not shift the demand risk to the private operator, leaving the Government exposed to potential fluctuations in airport cash flows.

### **5.1.3 Concession**

A concession involves an arrangement between a granting Public entity and an operator, investor or consortium – the Concessionaire –, in which the Public entity retains the ownership of the asset, but transfers the development/investment and management and operation responsibilities to the private sector. The private operator typically retains all the cashflows related to the airport during the concession period, and assumes obligations with regards to investments, maintenance of service levels, and payments to the government, among others.

Concessions are a particularly attractive way of carrying out big infrastructure projects when the Government requires mobilizing capital and know-how to supplement scarce public resources. In the case of JKIA, the significant investments, and the need to carry out several short-term works to address short-term capacity constraints, fit well with the rationale of a concession.

The Concessionaire will be assuming the financing burden for the required developments and will also be responsible for their construction.

In airports facing challenges becoming self-sustainable or failing to attract private investor interest, exploring the possibility of partial Government financing for the investment plan is a common approach. However, in airport projects, the use of blended funding is rarely preferred due to its propensity to add complexity in concessions, resulting in escalated conflicts and risks arising from the intricate coordination between private operators and the public sector.

#### **5.1.3.1 Concession scope: landside and airside**

One important aspect in a concession is the scope of the services to be transferred, i.e., the scope of the contract and the assets to be included.

As shown in the figure below, there are several ways to implement a concession depending on the defined scope:

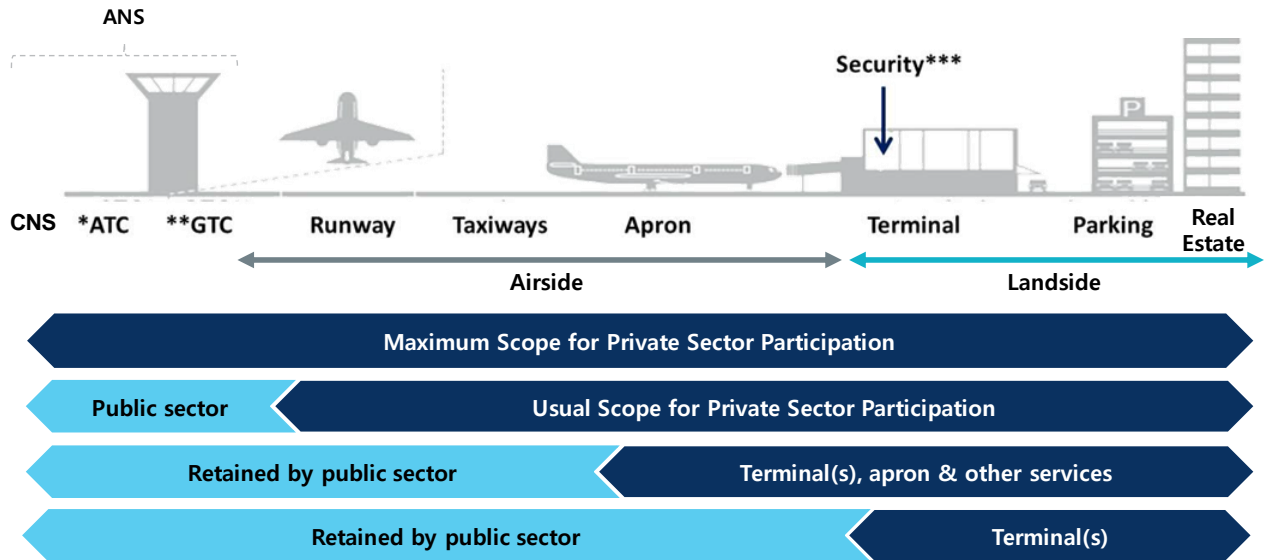


Figure 203: Airport concession alternatives according to contract scope

(Source: ALG analysis)

- Integral, including air traffic control – Maximum Scope for Private Sector Participation

In this Concession framework, all airport services, including air navigation services, are concessioned. This model confers complete control of the airport to private parties, with compliance limited to regulations set by the regulator. It is important to mention that the ANSP concessionaire may be different from the airports one, meaning the air navigation service provider and the airport operator might be different private investors.

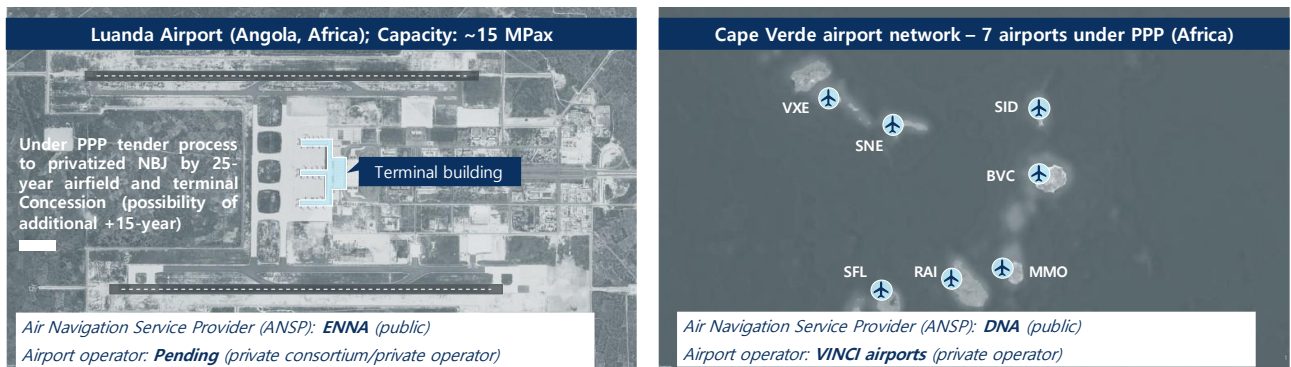


Figure 204: Examples of airports with maximum scope for private sector participation (ANSP & Airport operator: private entities)

(Source: CAPA, ALG Analysis)

- Terminal and Airfield (incl. movement and manoeuvring areas) – Usual Scope for Private Sector Participation

This PPP model, common in most concessions, assigns the entire airport infrastructure while excluding air navigation services to the Concessionaire. Thus, in this model, the private operator develops, manages, and operates the airfield (runway, taxiway, and apron) and the passenger or cargo terminals, and may or may not include other ancillary services such as parking or airport-owned real estate developments such as hotels.

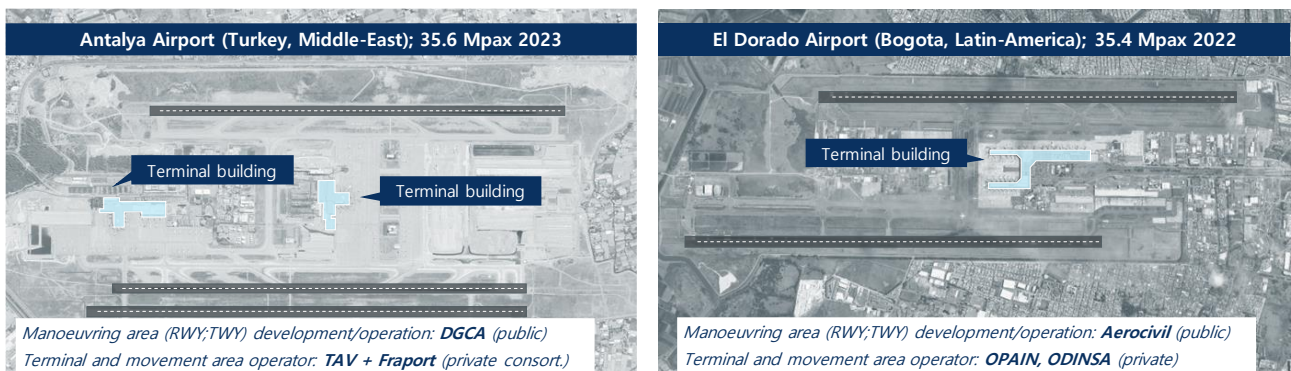


**Figure 205: Usual scope for private sector participation (Standard PPP) African airport examples**

(Source: CAPA, ALG Analysis)

- Terminal(s), Apron and Other Services

This PPP formulation is less common, and it grants the private investor control over the terminals, apron, and additional services like car parking or real estate, while the responsibility for the airfield remains with the State. This formulation introduces a significant challenge associated with the intricate coordination between the Concessionaire and Public within the same airport.

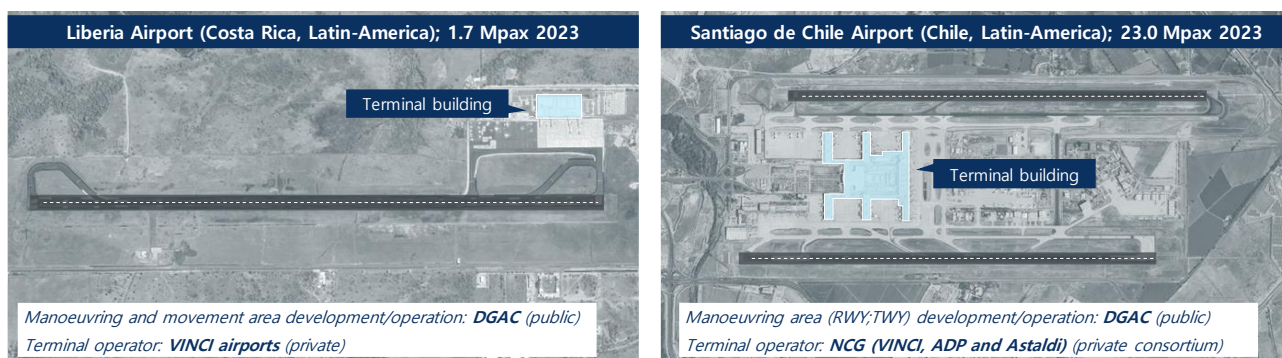


**Figure 206: Examples of airports with terminal(s), apron & other services PPPs**

(Source: CAPA, ALG Analysis)

- Terminal(s):

The primary distinction in this model lies in the complete exclusion of the manoeuvring and movement area, that is, runways, taxiways (manoeuvring area) and the apron (movement area) leaving the private investor to operate the terminal(s) and associated landside businesses (duty free, car parking, etc.). Usually, excluding the airside and the apron reduces CapEx as these subsystems generally require substantial investment, while the revenues generated are comparatively modest, usually limited to landing fees and parking charges. Despite that, as previously mentioned, the exclusion of the manoeuvring and movement area presents significant challenges, such as the division of responsibilities leading to coordination issues and duplicated efforts, or even the lack of public financing for airfield development or maintenance, which could jeopardize operations and hinder the progress of the PPP.



**Figure 207: Airport terminal(s)-only PPPs examples**

(Source: CAPA, World Bank, ALG Analysis)

#### 5.1.4 Divestiture (IPO/Sale)

The divestiture can involve the sale or IPO of certain assets or divisions related to the airport. The options mentioned involve the following actions:

- IPO (Initial Public Offering): The airport authority may decide to conduct an IPO to partially privatize the airport by offering shares to the public. This would involve selling a portion of the ownership in the airport to investors through the stock market. The funds raised from the IPO could be used to finance expansion projects, upgrade infrastructure, or reduce debt.
- Sale: Alternatively, the airport authority could decide to sell certain assets or divisions of the airport to another entity. For example, they might sell off a terminal building, parking facilities, or other non-core assets to a private investor or another airport operator. The proceeds from the sale could be used for similar purposes as in an IPO, such as financing capital projects or reducing debt.

In both IPO and sale scenarios, the government loses (partially or fully) airport ownership and its assets. This potential outcome could impact the decision-making autonomy that other business options provide. Conversely, the financing requirements driven by investments and the execution of works to avoid constraints would be transferred directly to the private sector.

#### 5.1.5 Preferred option

The development plan at Jomo Kenyatta (JKIA) airport includes a new terminal building and a second runway to meet increasing traffic demands and enhance airport capacity. Currently, the Government shoulders the responsibility for financing and executing these works, posing challenges due to significant initial investments and short-term capacity improvement requirements.

The management contract model does not solve the financing challenges generated by the development plan, and in addition results in limited risk transfer to the private sector. As a result, it does not adjust well to the needs of the Government with regards to JKIA.

A divestiture (selling ownership) of the airport can indeed provide solutions to financing challenges and expedite necessary works. However, it also means that the Government loses direct control over the airport and its assets and decision-making processes. This loss of control could potentially lead to decisions being made based on the interests of private stakeholders rather than solely on what is in the best interest of the country. Because of the aforementioned points, this option is not recommended.



**The preferred option for project development is the DFBOT (design, finance, build, operate and transfer) Concession model.** Under this modality the Concessionaire assumes full responsibility for the financing and execution of the development plan. In addition, a significant portion of the project risks, including construction, operation, and market risks are transferred to the private sector. This risk transfer incentivizes the Concessionaire to efficiently manage the project and implement strategies to mitigate risks, thereby reducing the burden on the Government.

Although the proposed development plan is unique and agnostic to the scope of the concession defined by the Government, two scenarios are considered: **1. Airport PPP** and **2. Terminals PPP**.

Under an Airport PPP, the development of the entire airport's infrastructure by a private investor under a 30-year PPP is considered (maximum allowed by the PPP law) and comprises the development of the terminal complex and the entire airfield. In the terminals PPP scenario, the private investor would only operate and build the terminals (new and old) as well as the apron and landside infrastructure such as parking areas, accesses, etc., with KAA developing the second runway and taxiway system. Terminals PPP assumes a 15-year contract term, as private investors are only likely to commit to an investment for a 10-to-15-year period, at which point the airport will need the second runway and investors would have no guarantee that the runway would be built.

The following chapter presents the financial/feasibility assessment of both scenarios.



## 5.2 Financial assessment

To analyse the feasibility of establishing a PPP scheme at Jomo Kenyatta, a financial assessment must be conducted. Two different concession scope/perimeter may be applicable at JKIA and are financially analysed:

### 1. Option 1: Airport PPP

In this option, the scope of the PPP includes the entire airport, both airside and landside, which entails the development of the new runway and the new passenger terminal building during a 30-year concession. Subject to the PPP law permitting it, the agreement could even include a provision for an extension of the term of the concession, which would be negotiated between the Government and the concessionaire.

### 2. Option 2: Terminals PPP

In this option, the 15-year concession includes the existing and the new passenger terminal, landside, and commercial apron, excluding the new runway, taxiways, and cargo apron from the project scope.

To analyse which option is the best for JKIA, the following methodology will be carried out:

- **Revenues and operating expenses projections:** This includes the projection of revenues, OpEx, and EBITDA during the whole period.
- **Investment needs, financial structuring, income tax, Depreciation and Amortization:** This includes financial calculations such as the investment needs, financial structure, potential concession fee, income tax, and depreciation plan.
- **Financial results:** it includes the calculations of the Cashflows of the Project and Shareholders and financial ratios.

Next figure shows the general scheme/layout of the financial assessment:

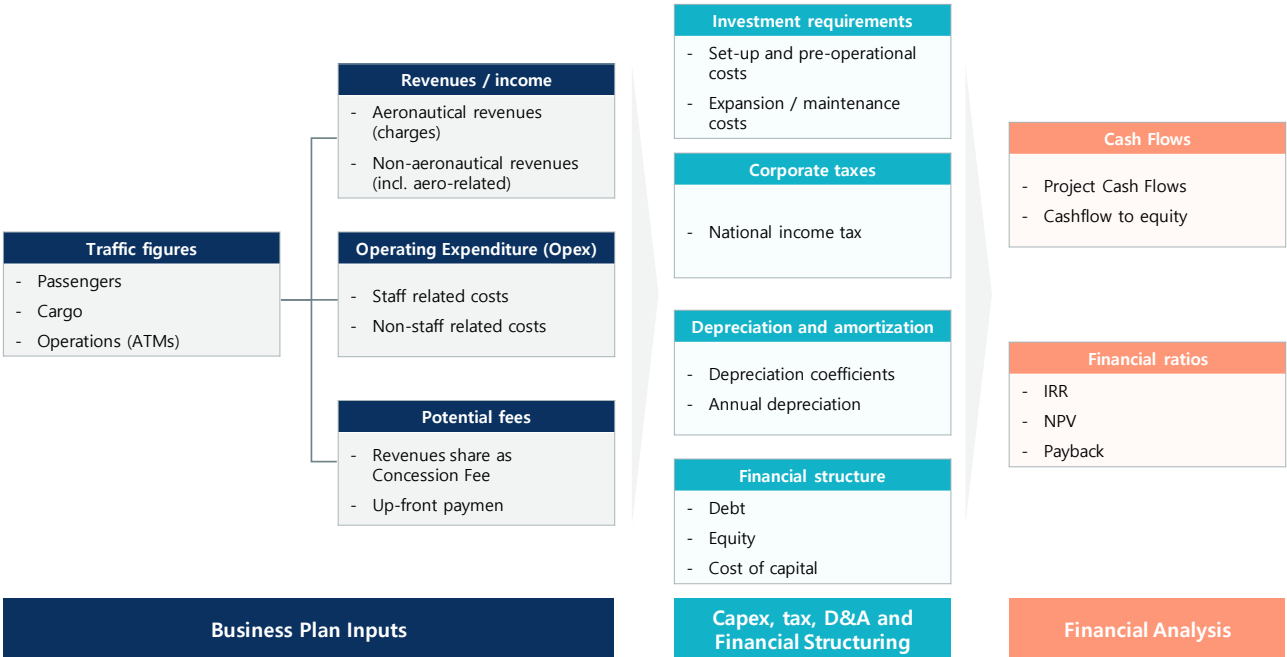
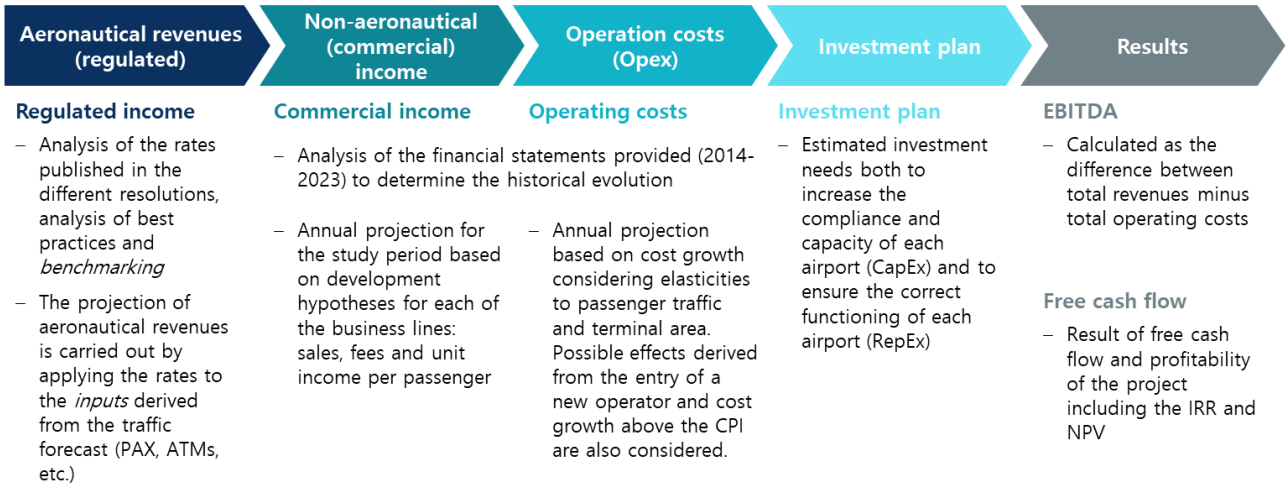


Figure 208: Financial model general scheme/layout

**5.2.1 Methodology**

The financial and economic assessment determines the feasibility of the project, analysing the project's viability and bankability. Throughout this section, the following elements, which are independent of the type of PPP chosen for the concession of JKIA, will be analysed:

- Aeronautical revenues
- Non-aeronautical revenues
- Operating costs
- Investment plan
- EBITDA

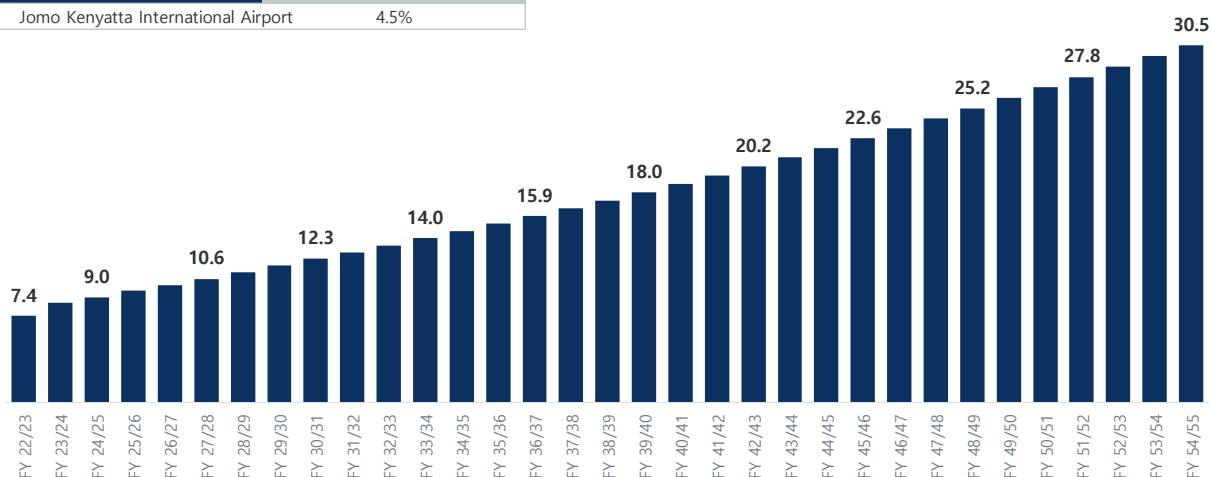


**Figure 209: Methodology for the financial assessment**

Air traffic projections from previous tasks will be utilized to assess the financial feasibility of a potential concession. To achieve this, the calendar year traffic projections have been converted into fiscal year projections to formulate the business plan. Considering that fiscal years span from July to June, the results of the bottom-up analysis have been utilized from 2019 to 2025 to capture the traffic comprising the periods from July to June of the next year. From 2026 onwards the simple average of consecutive calendar year traffic has been used.

The figure presented below depict the traffic forecast up to FY 54/55, derived from the hypotheses and assumptions outlined in section 3 of the document. FY 54/55 is specifically regarded as the targeted final year for the potential PPP.

Traffic (Mpax)	CAGR FY 22/23 - 54/55
Jomo Kenyatta International Airport	4.5%



**Figure 210: Traffic forecast – Jomo Kenyatta International Airport**

(Source: ALG analysis)

## 5.2.2 Airport PPP

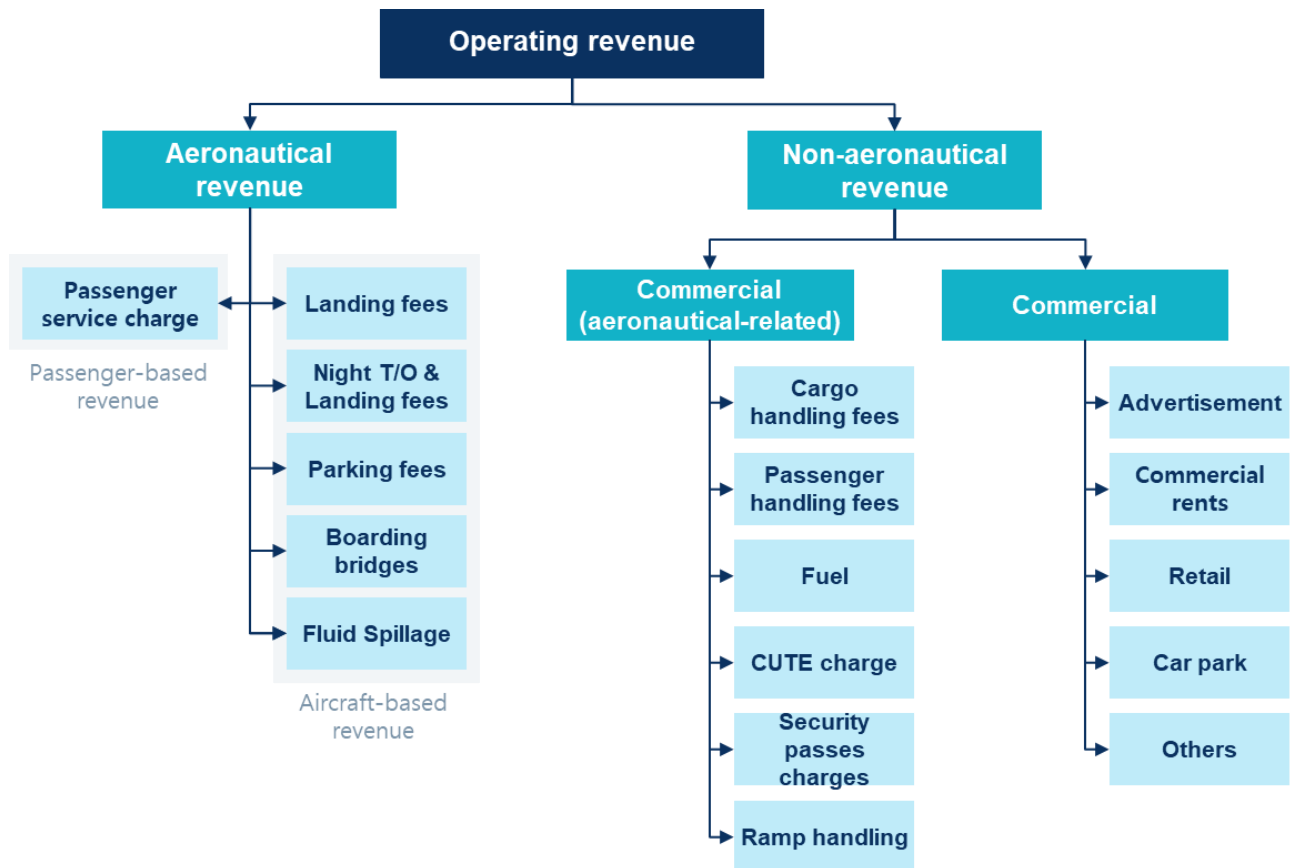
### 5.2.2.1 Revenues from operating activities

Total revenues generated from airport-related activities can be categorized into aeronautical and non-aeronautical revenue, depending on the nature of the activity generating the revenue.

Aeronautical revenue can be further subcategorized into passenger-based revenue (such as passenger service charges) and aircraft-based revenue (covering landing, parking, airbridge fees, etc.). Non-aeronautical revenue is divided into various streams, including commercial-aeronautical related, such as handling charges, fuel, CUTE and security passes, and purely commercial revenues, including advertising, commercial rents, retail and car parking as the most common streams.

In both cases, revenue streams representing a minor percentage of aeronautical and non-aeronautical revenue are grouped under the collective category "others." This encompasses fees such as, for example, animal holding, revenue from film shooting, income from penalties and fines, and other similar sources.

The resulting scheme is shown in the figure below:



**Figure 211: Structure of aeronautical and non-aeronautical revenue streams**

(Source: ALG analysis)

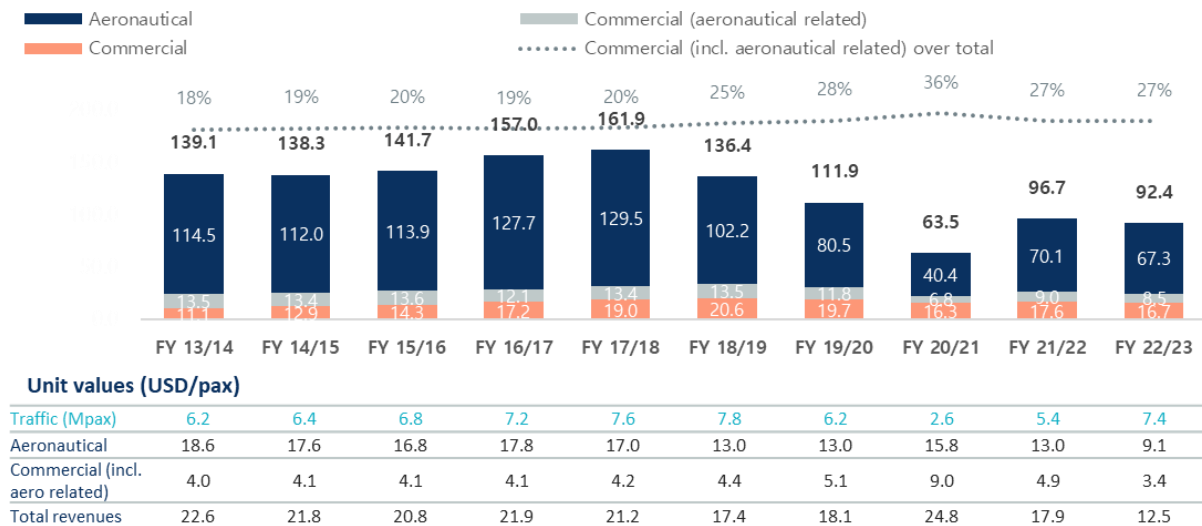
### Historical revenues

Based on historical revenues since FY 13/14, collected from information provided by KAA, it is observed that most revenues are aeronautical, with commercial revenues (including aeronautical related) accounting for 27% of total revenues since FY 21/22.

Historical revenues peaked in FY 17/18 at USD 161.9 million, and sharply declined due to the COVID-19 crisis. These revenue levels have not yet recovered in FY 22/23.

In terms of unit values, aeronautical revenue per passenger remained stable at approximately 17 USD/pax; however, a change in these values has been observed since FY 18/19, with aeronautical revenues at 9 USD/pax in FY 22/23. This is explained as the APSC was updated in FY 18/19, going from 40 USD/departing passenger received by KAA to 30 USD/departing passenger. Additionally, some discrepancies have been identified between the APSC numbers provided in KAA's financial statements and those calculated from the provided traffic and charges that would need to be reconciled in the structuring phase.

As for commercial unit revenues, these remain constant at around 4 USD/pax.



**Figure 212: Historical aeronautical revenue (real MUSD 2023)**

(Source: ALG analysis)

### 5.2.2.1.1 Aeronautical revenue

#### Aeronautical revenue methodology

Aeronautical revenue is forecasted based on the following assumptions:

- Aeronautical revenues are forecasted based on the current structure of regulated charges of KAA and the forecasted number of passengers and movements (together with fleet distribution to calculate those charges which are dependent on MTOW).
- All fees and charges values are maintained as currently published by KAA.
- Passenger-based revenues are considered to grow in line with the increase in passenger traffic. On the other hand, aircraft-based revenues grow based on the increase in ATMs at the airport. The projection also takes into account the evolution of the fleet at the airport since aircraft-based revenues depend on the MTOW of the operating aircraft.
- Streams of revenue that cannot be directly linked to unit values (per passenger, MTOW, or ATM) have been projected assuming elasticities (to passenger or ATM) obtained from the analysis of historical data. These include fluid spillage.
- It is assumed that all aeronautical revenue values are annually updated with US inflation, meaning they remain constant in real terms (2023 base)

It must be noted that the use of the current aeronautical fees and charges (adjusted by inflation) as price caps for the projection of aeronautical revenues is an assumption for the purpose of validating the financial feasibility of the project. This does not prevent the Government from deciding on a different economic regulation mechanism for the eventual concession.

A summary of all aeronautical charges and their detailed forecasting assumptions is presented in the figure below.

Charge	Driver	A/C category	DOM	INT	Key facts	Forecasting assumptions
<b>Air Passenger Service Charge</b>	Departing passengers (excl. con)	-	<b>300*</b> Kshs/pax	<b>30</b> USD/pax	<ul style="list-style-type: none"> <li>It is assumed that all the passengers pay these charges</li> </ul>	<ul style="list-style-type: none"> <li><b>INT Air Passenger Service Charges (APSC) constant</b> in real USD terms. <b>DOM APSC</b> are projected in local currency and converted to USD Real.</li> <li>The <b>percentage</b> received by KAA of this charge remains constant throughout the period</li> </ul>
<b>Landing fees</b>	Air traffic movements, MTOW and time of landing	Group 1	<b>10.00</b> USD/landing		<ul style="list-style-type: none"> <li>Charges are dependent on MTOW and airport class, but they are equal for domestic and international flights</li> <li>The fee increases progressively as the MTOW of the aircraft increases according to 11 groups aircraft with different MTOW</li> </ul>	<ul style="list-style-type: none"> <li><b>Landing fees constant</b> in real USD terms</li> <li>Air traffic movements are separated into five segments according to their reference code (A,B,C,D or E)</li> <li>For each of the segments, average MTOW is forecasted based on the expected evolution of airlines' fleets</li> <li>Night operations have been considered in accordance with the distribution of scheduled flights</li> </ul>
		Group 2	<b>20.00</b> USD/landing			
		Group 3	<b>25.00</b> USD/landing			
		Group 4	<b>40.00</b> USD/landing			
		Group 5	<b>65.00</b> USD/landing			
		Group 6	<b>102.00</b> USD/landing			
		Group 7	<b>223.00</b> USD/landing			
		Group 8	<b>585.00</b> USD/landing			
		Group 9	<b>820.00</b> USD/landing			
		Group 10	<b>1,345.00</b> USD/landing			
		Group 11	<b>1,750.00</b> USD/landing			
<b>Parking charges</b>	Air traffic movements, MTOW and length of stay	Group 1	<b>6.00</b> USD/landing		<ul style="list-style-type: none"> <li>Parking fees depend on the size of the aircraft (MTOW) and are equal to all airports</li> <li>The charge is applicable if an aircraft is parked for more than 6 hours continuously</li> </ul>	<ul style="list-style-type: none"> <li><b>Parking charges constant</b> in real USD terms</li> <li>Segments and average MTOW for each segment are equal to those used landing fees</li> </ul>
		Group 2	<b>6.00</b> USD/landing			
		Group 3	<b>6.00</b> USD/landing			
		Group 4	<b>6.00</b> USD/landing			
		Group 5	<b>10.00</b> USD/landing			
		Group 6	<b>10.00</b> USD/landing			
		Group 7	<b>15.00</b> USD/landing			
		Group 8	<b>25.00</b> USD/landing			
		Group 9	<b>40.00</b> USD/landing			
		Group 10	<b>50.00</b> USD/landing			
		Group 11	<b>130.00</b> USD/landing			
<b>Airbridge charges</b>	Air traffic movements, MTOW and length of stay	Group 1	-		<ul style="list-style-type: none"> <li>Airbridge charges depend on the size of the aircraft (MTOW) and are equal for all airports</li> <li>The charge is applicable for those flights that request the service</li> </ul>	<ul style="list-style-type: none"> <li><b>Airbridge charges constant</b> in real USD terms</li> <li>Segments and average MTOW for each segment are equal to those used for landing fees</li> <li>International flights are the primary users of this service compared to domestic flights</li> </ul>
		Group 2	-			
		Group 3	<b>75.00</b> USD/landing			
		Group 4	<b>75.00</b> USD/landing			
		Group 5	<b>75.00</b> USD/landing			
		Group 6	<b>75.00</b> USD/landing			
		Group 7	<b>75.00</b> USD/landing			
		Group 8	<b>75.00</b> USD/landing			
		Group 9	<b>75.00</b> USD/landing			
		Group 10	<b>100.00</b> USD/landing			
		Group 11	<b>100.00</b> USD/landing			

\* Equivalent to 2.4 USD/pax (Source: Oxford Economics)

**Figure 213: Operating aeronautical revenue drivers and main assumptions**

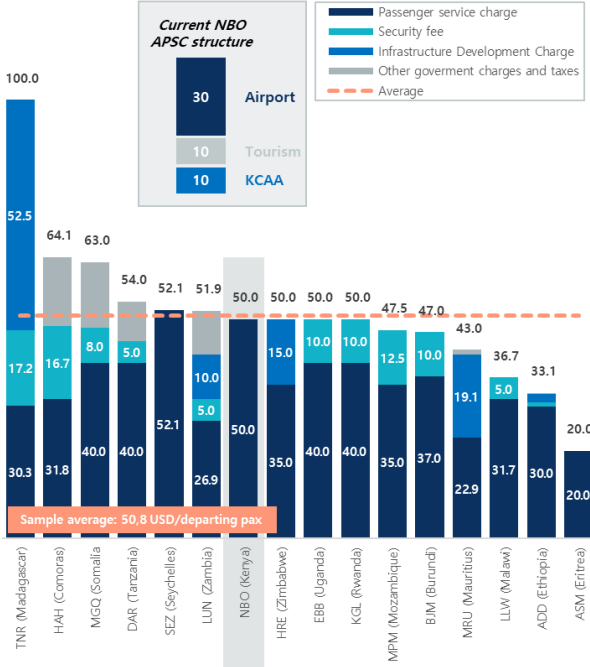
(Source: KAA, ALG analysis)

The main contributor to aeronautical revenue is the Air Passenger Service Charge. When comparing it with other international airports of the region, Kenya's passenger charge of USD 50.0, is aligned with the average value of the East Africa region (USD 50.8) as well as at similar values when compared with other relevant countries such as Zimbabwe, Uganda or Rwanda but higher than those in Addis Ababa (ADD)

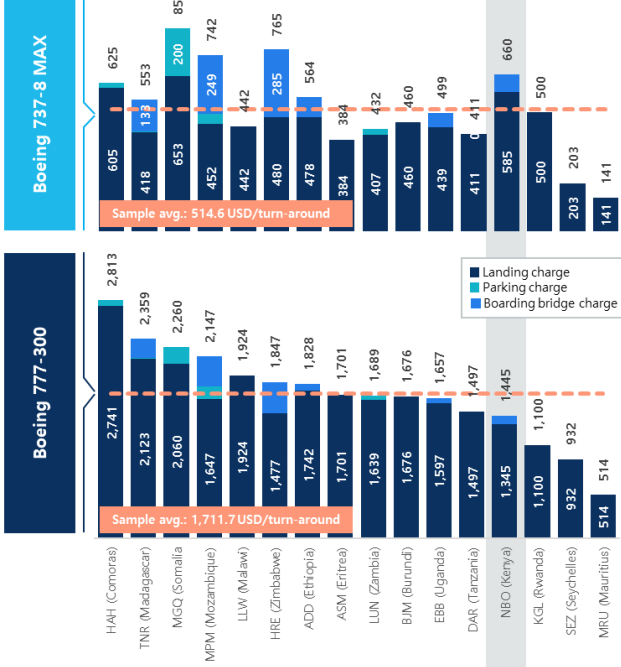


airport (33.1 USD/dep.pax). It is necessary to clarify that out of these 50 USD/departing passenger, 60% is received by KAA (30 USD/departing passenger), 20% is directed to KCAA (10 USD/departing passenger), and another 20% goes to the Tourism Promotion Fund (10 USD/departing passenger).

**INT passenger charges (USD/departing passenger)**



**INT aircraft charges (USD/2h turn-around)**



**Figure 214: International benchmarking of passenger and aircraft charges**  
(Source: KAA)

Aeronautical revenue forecast

Total aeronautical revenue is forecasted to reach USD 256.2 m by FY 54/55 after growing at a 3.8% CAGR between FY 25/26 and FY 54/55. The share between passenger-based and aircraft-based revenue remains approximately constant accounting for 70% and 30% of total revenue respectively throughout the forecasted period.

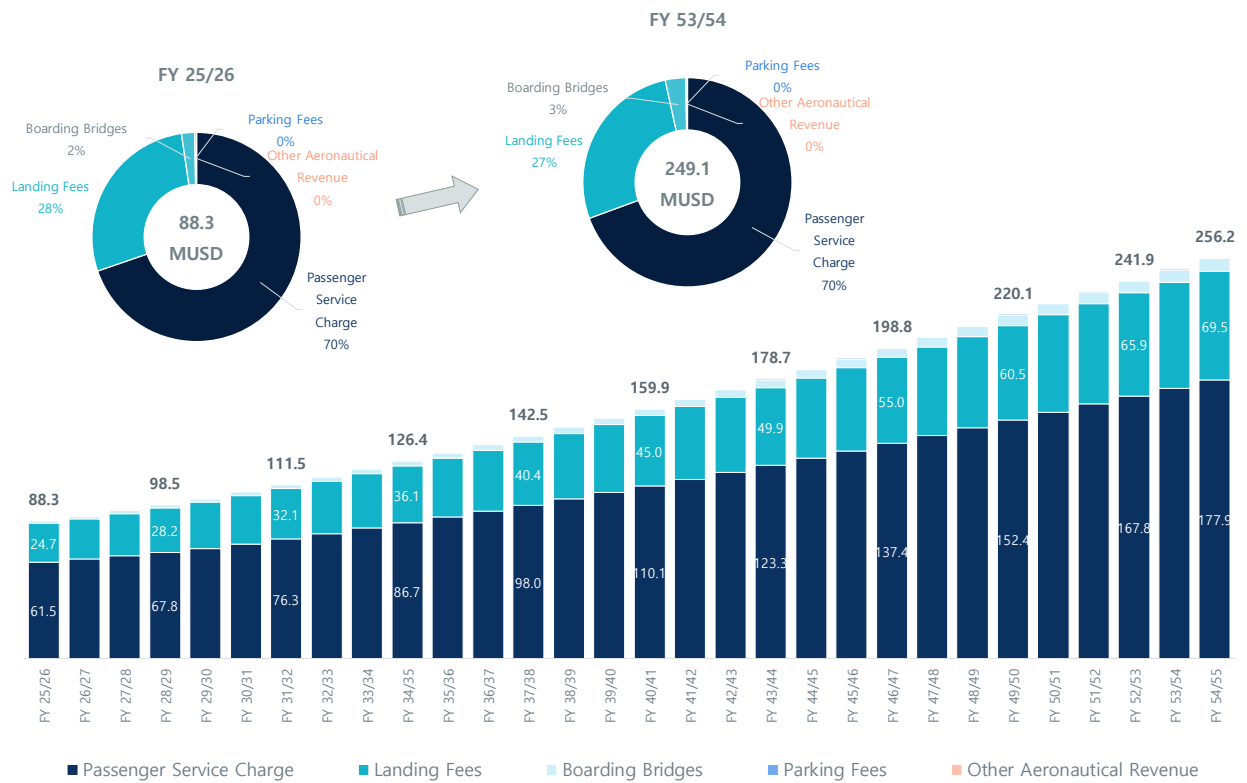


Figure 215: Aeronautical revenue forecast (real MUSD 2023) – JKIA

(Source: ALG analysis)

The result can be validated by comparing the resulting unit values (per passenger or ATM) to reference unit values of the industry.

Aeronautical yield will slightly decrease -0.3% CAGR from 9.2 USD/pax in FY 25/26 to 8.4 USD/pax in FY 54/55, because of the progressive increase in fleet size and load factors as aircraft-based charges are diluted among a larger number of passengers.

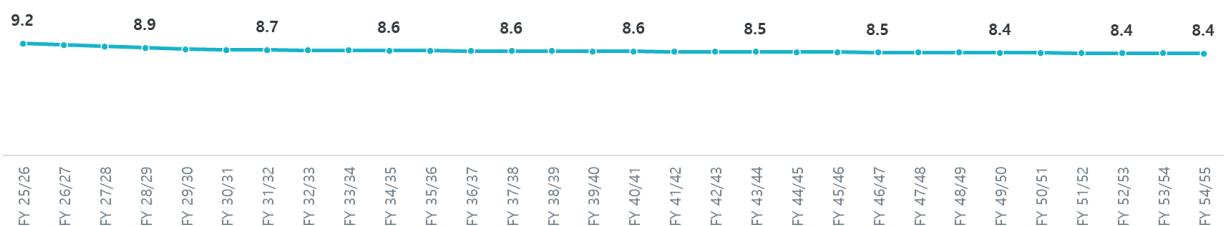


Figure 216: Aeronautical revenue yield forecast (USD/pax)

(Source: ALG analysis)

A comparison of the resulting growth rates of passenger traffic, aeronautical revenue, and aeronautical yield is shown in the figure below.

	Value		CAGR
	FY 25/26	FY 54/55	FY 25/26-FY 54/55
Traffic (million passengers)	9.58	30.54	4.08%
Aeronautical revenue (USD m)	88.27	256.22	3.74%
Aeronautical revenue yield (USD / pax)	9.21	8.39	(0.32%)

**Figure 217: Comparison of passenger traffic, aeronautical revenue, and aeronautical yield forecasts**

(Source: ALG analysis)

### 5.2.2.1.2 Non-aeronautical revenue

#### Non-aeronautical revenue methodology

Non-aeronautical revenue is forecasted based on the following assumptions:

- For each of the non-aeronautical revenue streams, the historical value of FY 22/23 is taken as the reference point which is projected considering an elasticity to both the forecasted traffic demand and the proposed area of the terminal building. In this sense, there are revenues that depend purely on the growth of traffic (handling, fuelling, CUTE, security passes...) and other purely commercial revenues depend on the growth of traffic and the evolution of available space in the passenger terminal, such as advertising, retail, car parking.
- Some streams in the historic P&L statements have been combined including the income of the Duty Free and other stores under the category of retail and the rent of buildings, land, and cargo hangars, which have been categorized as commercial rents.
- Non-aeronautical revenue comprises two streams: commercial (aero-related revenues), which includes handling charges, fuel, and CUTE; and commercial revenues, which encompass advertising, commercial rents, retail, car parking, etc.
- Besides the current commercial revenue streams that exist today, and assuming that the concession agreement allows it, the concessionaire could develop a number of businesses such as additional hotels, business and convention centres, commercial real estate, etc. Revenue streams from these business (if there are none today) are not considered in the projections, in the interest of being conservative.

It is assumed that commercial revenues would not be under any regulatory mechanism, and that the concessionaire would be able to operate those services with full commercial freedom.

A summary of all non-aeronautical revenue streams and their detailed forecasting assumptions is presented in the figure below.

Charge	Driver	Projection methodology	Base values (FY 22/23)	Comments
<b>Cargo handling</b>	Air cargo	Elasticity	3.09 MUSD	<ul style="list-style-type: none"> <li>Value obtained from the historic P&amp;L accounts as the <b>difference</b> between cargo revenue and the proposed cargo charges</li> <li>Projection is based on assuming an <b>elasticity</b> between cargo handling revenue and <b>air cargo</b></li> </ul>
<b>Passenger handling</b>	Total passengers	Elasticity	3.18 MUSD	<ul style="list-style-type: none"> <li>Value obtained from the <b>historic P&amp;L accounts</b></li> <li>Projection is based on assuming an <b>elasticity</b> between the <b>number of passengers</b></li> </ul>
<b>Fueling</b>	Total passengers	Elasticity	1.13 MUSD	<ul style="list-style-type: none"> <li>Value obtained from the <b>historic P&amp;L accounts</b></li> <li>Projection is based on assuming an <b>elasticity</b> between the <b>number of passengers</b> and the required fuel to fly the route</li> </ul>
<b>CUTE</b>	Total passengers	Elasticity	0.93 MUSD	<ul style="list-style-type: none"> <li>Value obtained from the <b>historic P&amp;L accounts</b></li> <li>Projection is based on assuming an <b>elasticity</b> between the <b>number of passengers</b></li> </ul>
<b>Security passes</b>	Total passengers	Elasticity	0.13 MUSD	<ul style="list-style-type: none"> <li>Value obtained from the <b>historic P&amp;L accounts</b></li> <li>Projection is based on assuming an <b>elasticity</b> between the <b>number of passengers</b></li> </ul>

**Figure 218: Commercial revenue (aeronautical-related) drivers and main assumptions**

(Source: KAA, ALG analysis)

Category	Driver	Projection methodology	Base values (FY 22/23)	Comments
<b>Advertising</b>	Passenger Traffic and Terminal Area	Elasticity	0.67 MUSD	<ul style="list-style-type: none"> <li>Advertising revenue is driven by <b>passenger activity and available space</b></li> <li>Forecast is based on a ratio per departing passenger due to lack of more detailed information</li> </ul>
<b>Commercial rents</b>	Passenger Traffic and Terminal Area	Elasticity	6.82 MUSD	<ul style="list-style-type: none"> <li>Elasticity to passenger traffic is used as a proxy for the progressive <b>opening of new areas</b> and/or <b>renegotiation of existing leasing contracts</b></li> <li>This includes not only the rental of <b>building and lands</b> but also <b>hangars</b> for general aviation</li> </ul>
<b>Retail</b>	Passenger Traffic and Terminal Area	Elasticity	6.74 MUSD	<ul style="list-style-type: none"> <li>Retail revenue is driven by <b>passenger traffic and available space</b></li> <li>The resulting ratio of revenue per passenger has been used to validate the result which has been benchmarked against other airports</li> <li>This includes both <b>Food &amp; Beverage, Kiosks</b> and the <b>Duty Free</b> (if it exists)</li> </ul>
<b>Car parking</b>	Passenger Traffic	Elasticity	2.26 MUSD	<ul style="list-style-type: none"> <li>Car parking revenue is driven by <b>passenger traffic and available space</b></li> <li>The resulting ratio of revenue per passenger has been used to validate the result which has been benchmarked against other airports</li> </ul>
<b>Other commercial revenue</b>	Passenger Traffic and Terminal Area	Elasticity	0.23 MUSD	<ul style="list-style-type: none"> <li>Other commercial revenue is driven by <b>passenger traffic and available space</b></li> <li>This category includes all those revenue streams whose <b>volume is not sufficient</b> to be considered in a separate category and projected by itself. For example, animal holding fees or security passes, among others are included in this concept.</li> </ul>

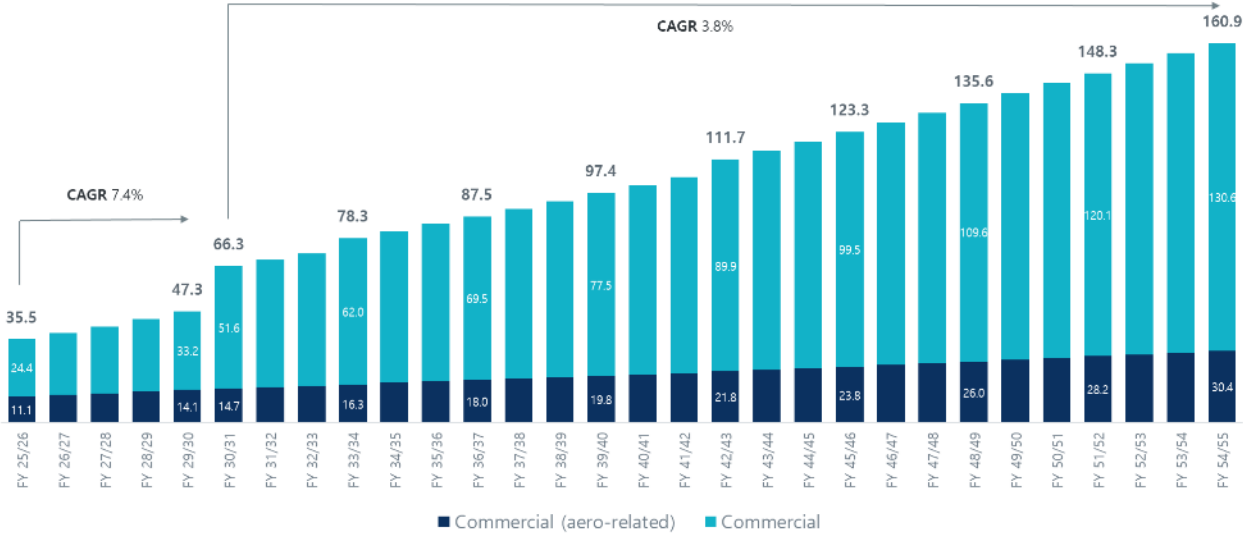
**Figure 219: Commercial revenue drivers and main assumptions**

(Source: ALG analysis)

### Non-aeronautical revenue forecast

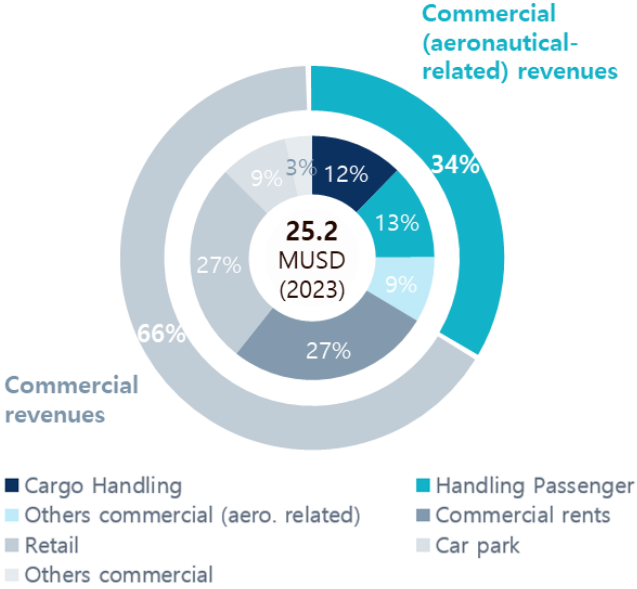
Total non-aeronautical revenue at JKIA is forecasted to grow at a 7.4% CAGR between FY 25/26 and FY 29/30. After that, there is a significant increase in the number of aeronautical revenues in FY 30/31 due to the construction of the new terminal building. As a result of these works, the new available space for stores and other business allows the revenue from non-aeronautical activities to grow from 47.3 MUSD in

FY 29/30 to 66.3 MUSD in FY 30/31. In the long term, revenues will grow with a 3.8% CAGR from FY 30/31 until the end of the concession.



**Figure 220: Non-aeronautical revenue forecast (real MUSD 2023)**  
(Source: ALG analysis)

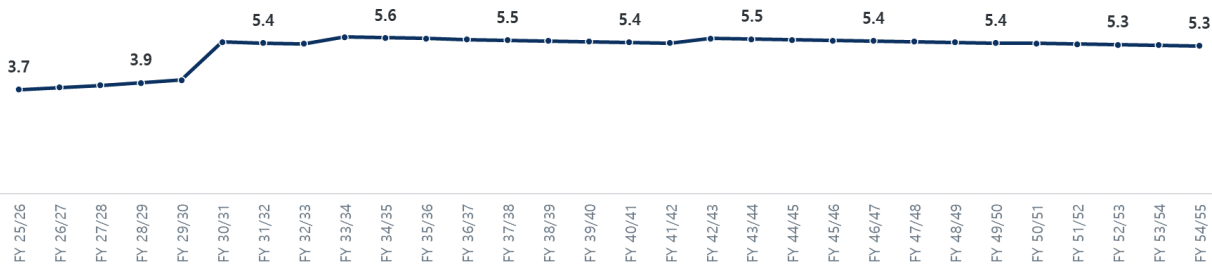
Commercial rents and retail are the primary source of revenues at JKIA, each one accounting for approximately one third of the total non-aeronautical revenues, as shown in the following figure:



**Figure 221: Non-aeronautical revenue split (2023)**  
(Source: KAA, ALG analysis)

Non-aeronautical yield is expected to increase at a 1.2% CAGR from 3.7 USD/pax in FY 25/26 to 5.3 USD/pax in FY 54/55. The increase in revenue will primarily result from the expansion of new terminals, featuring an improved commercial offering. This expansion is expected to elevate commercial revenues by

providing a broader and more tailored array of services, products, and solutions to targeted clients. Additionally, it involves optimizing currently underused commercial areas.



**Figure 222: Non-aeronautical revenue yield forecast (USD/pax)**

(Source: ALG analysis)

The following figure presents a comparison of the resulting growth rates of passenger traffic, non-aeronautical revenue, and non-aeronautical yield:

	Value		CAGR
	FY 25/26	FY 54/55	FY 25/26-FY 54/55
Traffic (million passengers)	9.58	30.54	4.08%
Non-Aeronautical revenue (USD m)	35.48	160.92	5.35%
Non-Aeronautical yield (USD / pax)	3.70	5.27	1.22%

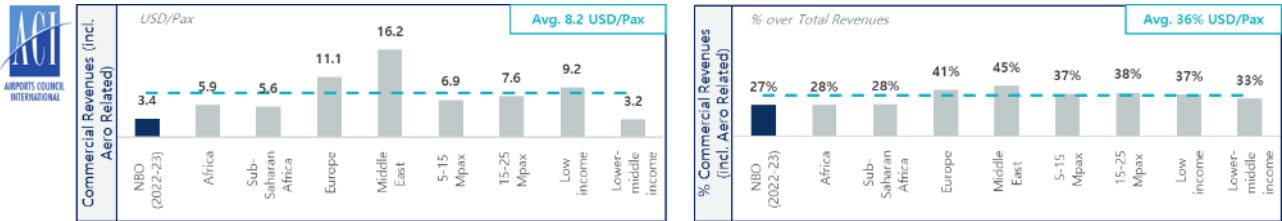
**Figure 223: Comparison of passenger traffic, non-aeronautical revenue, and non-aeronautical yield forecasts**

(Source: ALG analysis)

Benchmarking of non-aeronautical revenue

In comparison to the African average and other regions and categories, it is noted that the commercial unit revenue of 3.4 USD/pax in 2023 is below benchmarked average.

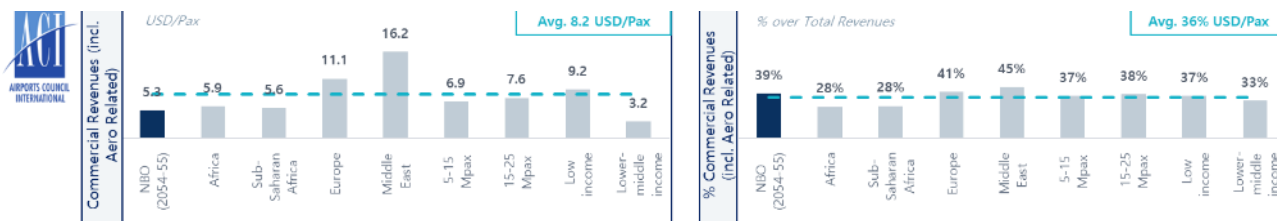
The projected commercial unit revenue for 2055 is expected to be better aligned with the benchmark, particularly with Africa and the Sub-Saharan region. This improvement is anticipated as JKIA is expected to enhance its commercial performance throughout the concession period, while non-aeronautical revenues would account for 39% of the total revenues in FY 54/55.



**Figure 224: International benchmark of non-aeronautical operating revenue per passenger – FY 22/23 (USD/pax)**

(Source: ACI, ALG analysis)



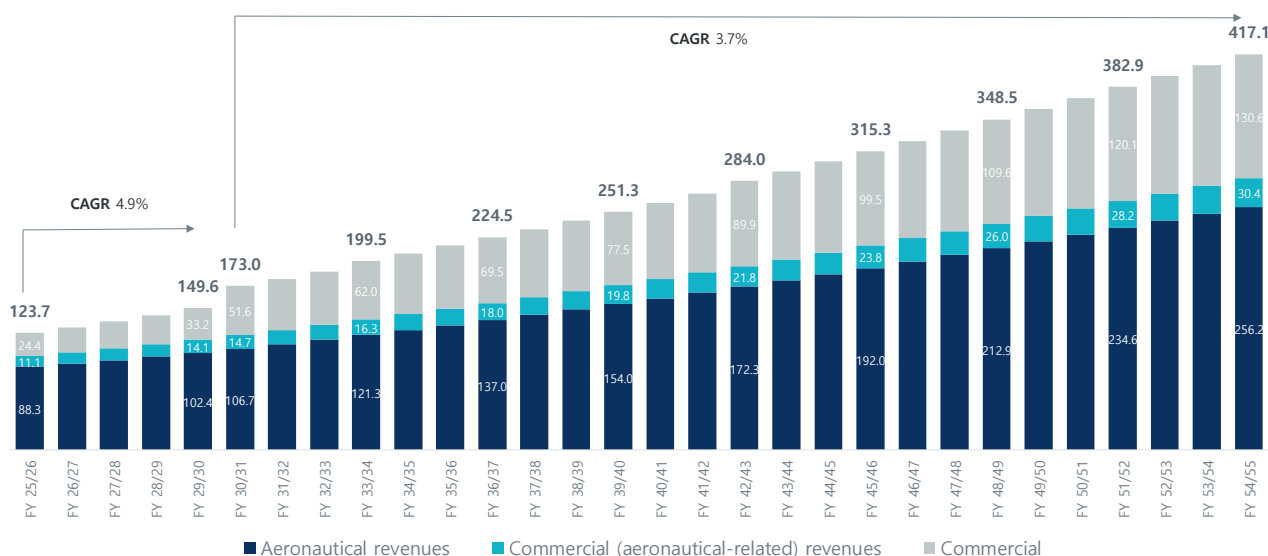


**Figure 225: International benchmark of non-aeronautical operating revenue per passenger – FY 54/55 (USD/pax)**

(Source: ACI, ALG analysis)

### 5.2.2.1.3 Total revenues forecast

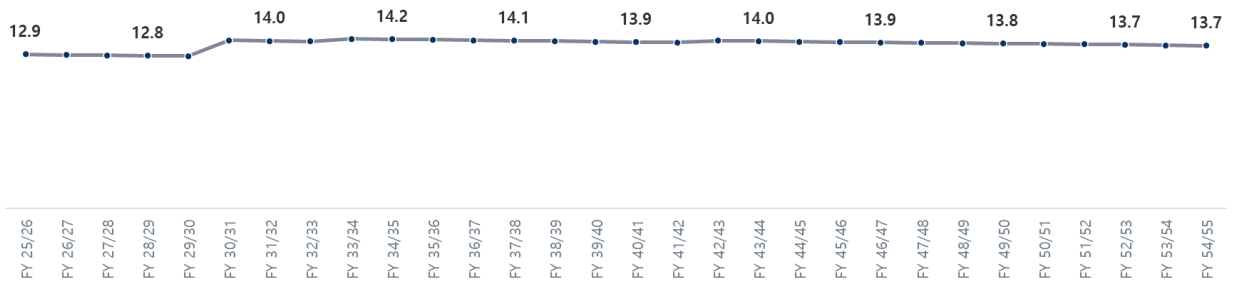
Total revenues are forecasted to grow at a 4.9% CAGR between FY 25/26 and FY 29/30, and at a 3.7% CAGR between FY 30/31 and FY 54/55, above forecasted traffic growth, thanks to commercial yield improvement, reaching USD 417.1m by the end of the concession. The average compound annual growth rate throughout the concession period would be 4.3%.



**Figure 226: Total revenues forecast (real MUSD 2023) – JKIA**

(Source: ALG analysis)

Regarding unit costs, it is expected that they remain practically constant throughout the period, around 13 USD/pax, growing only at a 0.2% CAGR between FY 25/26 and FY 54/55.

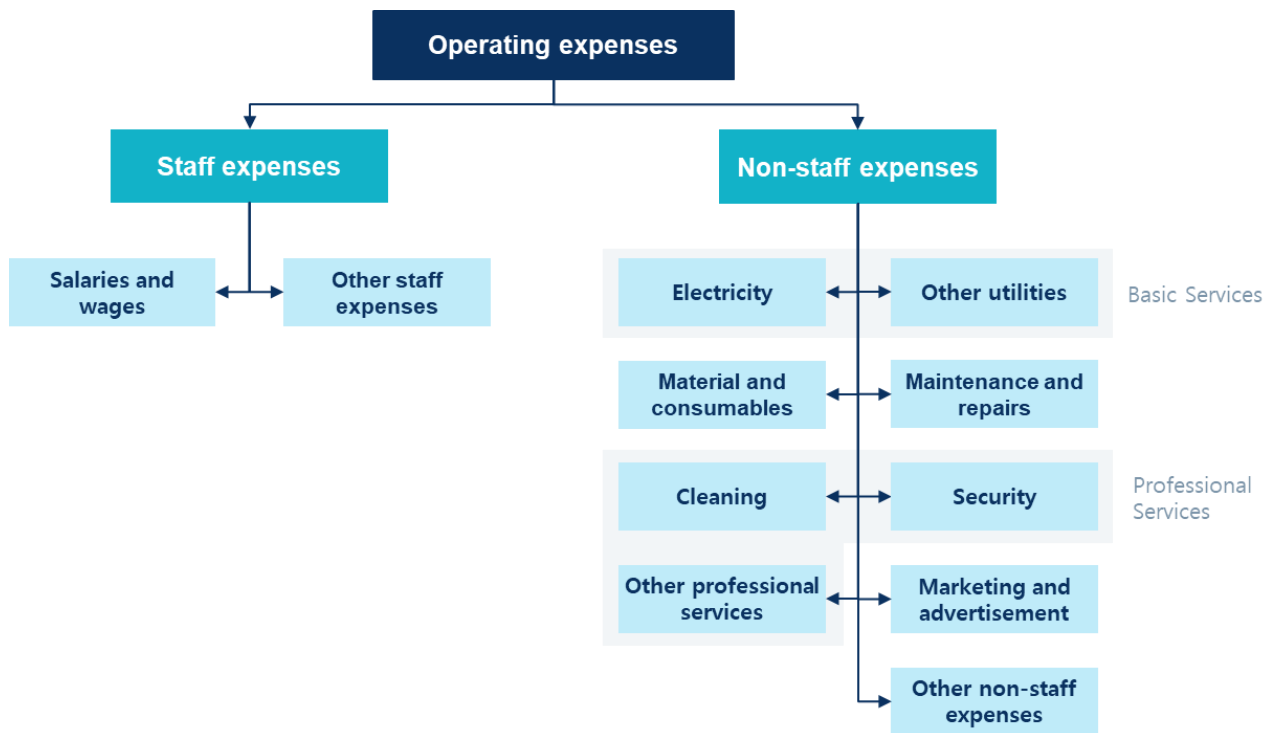


**Figure 227: Total revenues yield forecast (USD/pax)**

(Source: ALG analysis)

### 5.2.2.2 Operating Expenses

Operating expenses are commonly categorized into two main categories: staff costs and non-staff costs. Staff costs encompass salaries, wages, and additional benefits like pension contributions, medical expenses, allowances, uniforms, etc. Non-staff costs encompass all other operating expenses, with major components typically including maintenance, security, cleaning, utilities, and materials.



**Figure 228: Structure of aeronautical and non-aeronautical revenue streams**

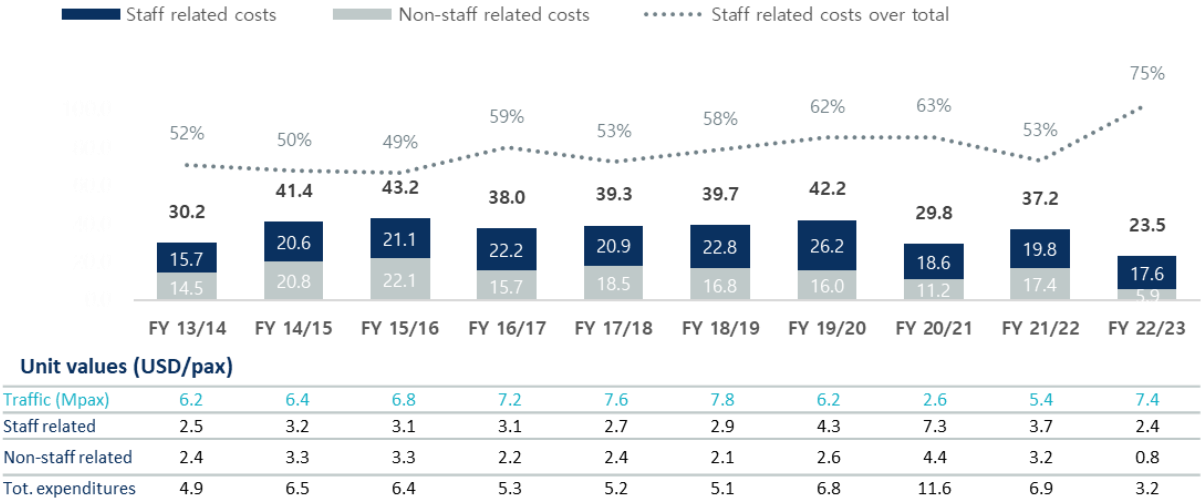
(Source: ALG analysis)

#### Historical operating expenses

Regarding historical operating expenses, it is observed that they have fluctuated throughout the analyzed historical period around USD 40m, reaching a minimum in recent years in FY 22/23 at USD 23.5m.

The proportion of staff-related costs over total expenses has ranged between 50-60% since FY 13/14 but reached 75% in FY 22/23.

Looking at unit values, it is perceived that total costs per passenger are low, hovering around 5 USD/pax during the period, indicating that operations at JKIA are efficient.



**Figure 229: Historical operating expenses (real MUSD 2023)**

(Source: ALG analysis)

**5.2.2.2.1 Staff costs**

The quantity of employees, as well as the related staff costs and benefits (such as pensions, medical expenses, allowances, etc.), evolve based on the evolution of the infrastructure, as well as on the growth of passenger volume. In essence, larger airports generally require a larger staff complement to manage the increased workload and serve a larger number of passengers.

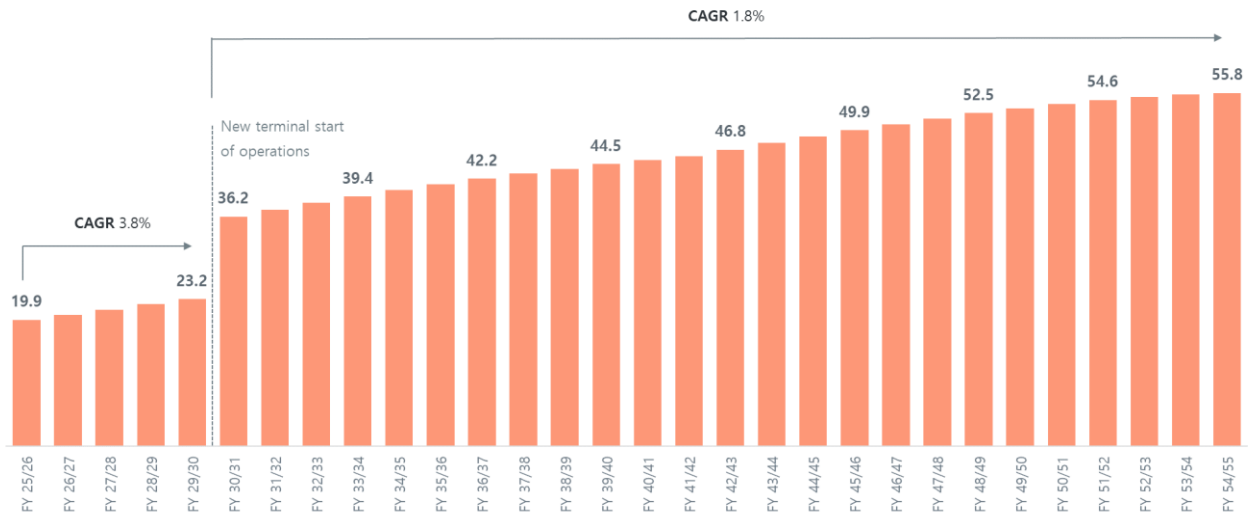
Staff costs assumptions

Staff costs have been forecasted based on the following assumptions:

- The projected number of employees considers a historical reference point and an elasticity factor related to the expected annual passengers, acknowledging that a higher number of passengers results in a lower employees/Mpax ratio.
- All values of staff expenses are adjusted for the inflation rate of the Kenyan shilling and forecasted to increase 1% above such rate.

Staff costs forecast

Staff costs are projected to increase at a 3.8% CAGR from FY 25/26 to FY 29/30. From FY 30/31, a significant rise in staff needs is anticipated due to the entry into service of the new terminal building, leading to an increase of the number of employees at JKIA and consequently in staff costs. Subsequently, costs are expected to grow at a 1.8% CAGR between FY 30/31 and FY 54/55, reaching USD 56 million in FY 54/55. The average annual compound growth rate throughout the concession period would be 3.6%.



**Figure 230: Staff expenses forecast (real MUSD 2023) – JKIA**

(Source: ALG analysis)

#### 5.2.2.2.2 Non-staff costs

##### Non-staff costs assumptions

Non-staff costs are forecasted based on the following main assumptions:

- The categories of electricity, materials and consumables, maintenance and repair, cleaning, marketing and advertisement, have been projected independently. However, categories related to phone & internet connection, water expenses, etc., have been grouped under the category "other utilities" as they are not significant in terms of volume and no significant change in projection drivers is anticipated. Security expenses have also been grouped with the remaining professional services under the category of "other professional services". The category "others non-staff" includes expenses for insurance, conferences and seminars, KRA commissions, and others.

A summary of all the non-staff costs and their detailed forecasting assumptions is presented in the figure below.

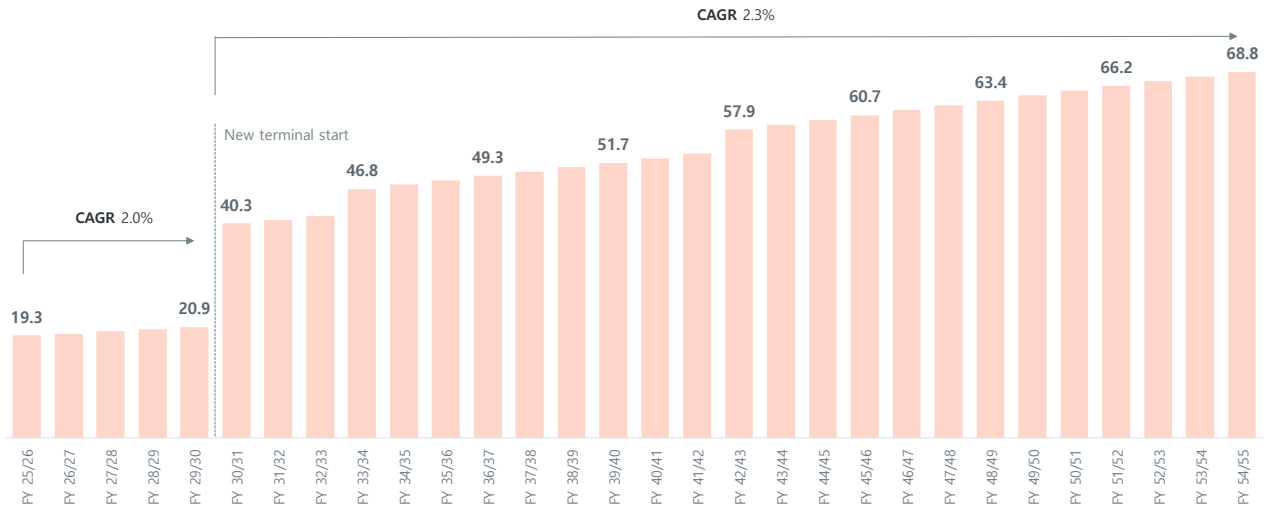
Category	Driver	Projection methodology	Comments
<b>Electricity</b>	Total passengers and Terminal Area	<b>Elasticity</b>	<ul style="list-style-type: none"> <li>Value obtained from the <b>historic P&amp;L accounts</b></li> <li>Projection is based on assuming an <b>elasticity</b> between the <b>number of passengers and the terminal area</b></li> </ul>
<b>Other utilities</b>	Total passengers and Terminal Area	<b>Elasticity</b>	<ul style="list-style-type: none"> <li>Value obtained from the <b>historic P&amp;L accounts</b></li> <li>The category includes <b>water and corporate costs</b></li> <li>Projection is based on assuming an <b>elasticity</b> between the <b>number of passengers and the terminal area</b></li> </ul>
<b>Materials and consumables</b>	Total passengers and Terminal Area	<b>Elasticity</b>	<ul style="list-style-type: none"> <li>Value obtained from the <b>historic P&amp;L accounts</b></li> <li>Projection is based on assuming an <b>elasticity</b> between the <b>number of passengers and the terminal area</b></li> </ul>
<b>Maintenance and repairs</b>	Total passengers and Terminal Area	<b>Elasticity</b>	<ul style="list-style-type: none"> <li>Value obtained from the <b>historic P&amp;L accounts</b></li> <li>Projection is based on assuming an <b>elasticity</b> between the <b>number of passengers and the terminal area</b></li> </ul>
<b>Cleaning</b>	Total passengers and Terminal Area	<b>Elasticity</b>	<ul style="list-style-type: none"> <li>Value obtained from the <b>historic P&amp;L accounts</b></li> <li>Projection is based on assuming an <b>elasticity</b> between the <b>number of passengers and the terminal area</b></li> </ul>
<b>Other professional services</b>	Total passengers and Terminal Area	<b>Elasticity</b>	<ul style="list-style-type: none"> <li>Value obtained from the <b>historic P&amp;L accounts</b></li> <li>The category includes <b>security and other professional costs</b></li> <li>Projection is based on assuming an <b>elasticity</b> between the <b>number of passengers and the terminal area</b></li> </ul>
<b>Marketing and advertisement</b>	Total passengers and Terminal Area	<b>Elasticity</b>	<ul style="list-style-type: none"> <li>Value obtained from the <b>historic P&amp;L accounts</b></li> <li>Projection is based on assuming an <b>elasticity</b> between the <b>number of passengers and the terminal area</b></li> </ul>
<b>Others non-staff expenses</b>	Total passengers and Terminal Area	<b>Elasticity</b>	<ul style="list-style-type: none"> <li>Value obtained from the <b>historic P&amp;L accounts</b></li> <li>The category includes <b>KRA commissions and other non-staff costs</b></li> <li>Projection is based on assuming an <b>elasticity</b> between the <b>number of passengers and the terminal area</b></li> </ul>

**Figure 231: Operating non-staff expenses drivers and main assumptions**

(Source: ALG analysis)

#### Non-staff costs forecast

Non-staff costs are forecasted to reach USD 69m by FY 54/55 after growing at a 2.0% CAGR between FY 25/26 and FY 29/30 and at a 2.3% CAGR between FY 30/31 and FY 54/55, after the beginning of operations of the new passenger terminal building.

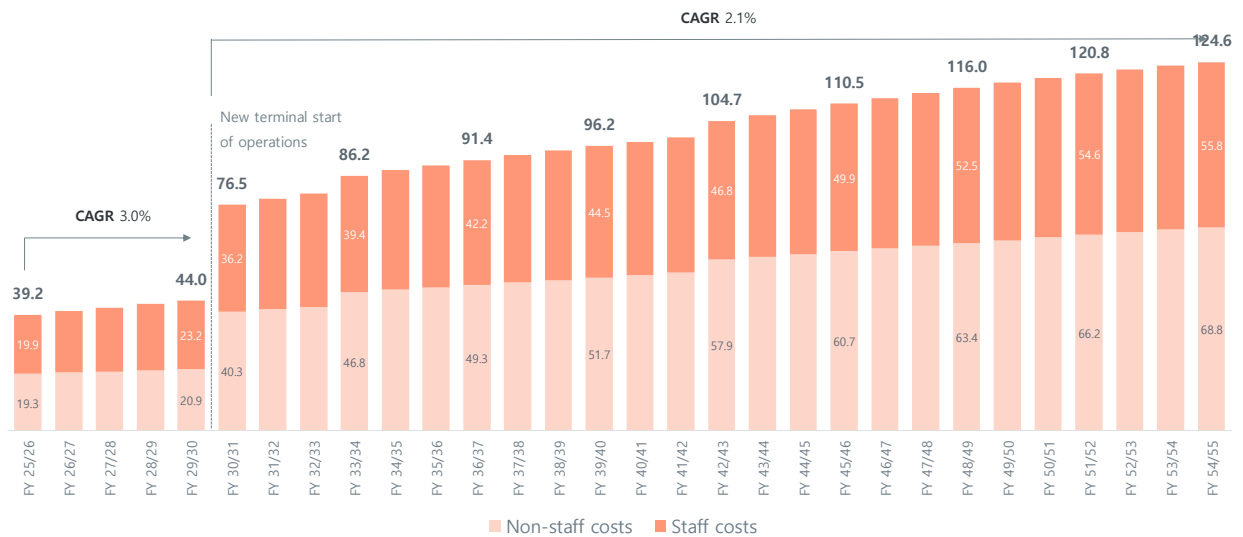


**Figure 232: Non-staff expenses forecast (real MUSD 2023) – JKIA**

(Source: ALG analysis)

### 5.2.2.2.3 Operating expenses forecast

Total operating expenses are forecasted to grow at a 3.0% CAGR between FY 25/26 and FY 29/30, and at a 2.1% CAGR between FY 30/31 and FY 54/55, reaching USD 125m by the end of the concession. The average compound annual growth rate throughout the concession period would be 4.1%.



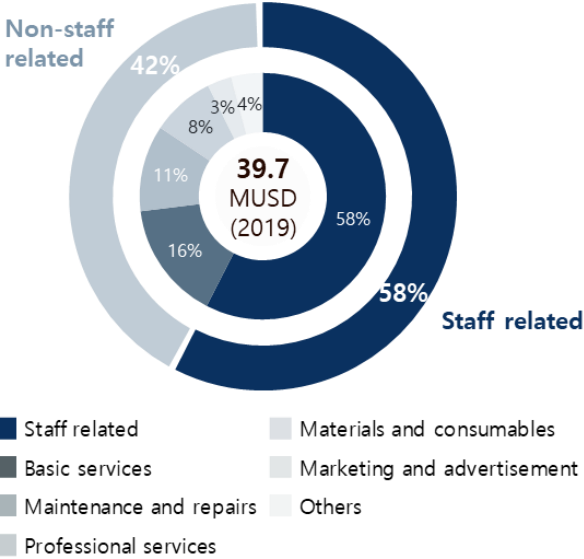
**Figure 233: Operating expenses forecast (real MUSD 2023) – JKIA**

(Source: ALG analysis)

Regarding the distribution of staff and non-staff operating costs, historic figures show that staff costs represent approximately 60% of total expenses. As seen in the results, non-staff costs are expected to grow faster than staff costs. This is because with the entry of the private investor, there will likely be more outsourced services and potential efficiencies in staff allocation. Additionally, many non-staff costs are



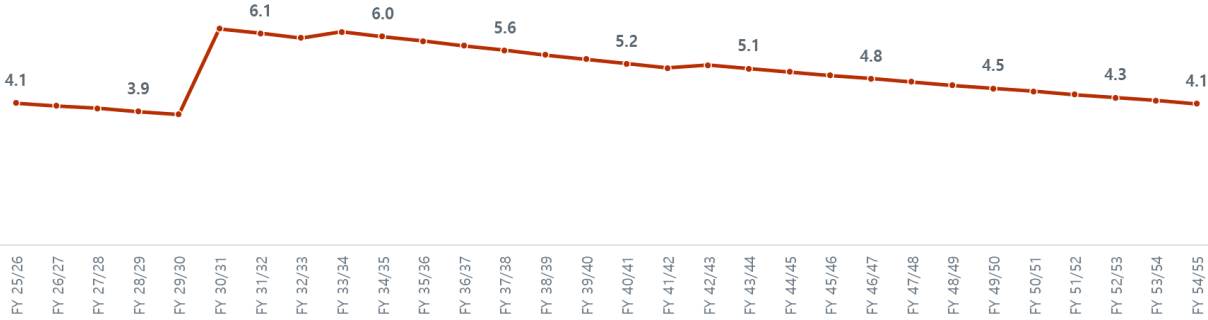
relatively inelastic to traffic growth but are linked to terminal surface that is expected to be substantially expanded.



**Figure 234: Operating costs split (2019)**

(Source: KAA, ALG analysis)

Total unit costs are forecasted to increase after the entry into operation of the new terminal, but then they will be reduced at a -1.8% CAGR between FY 30/31 to 4.1 USD/pax in FY 54/55. This reduction is attributed to economies of scale gradually lowering the unit cost over the analysis period, despite increases in operating costs following terminal expansions.



**Figure 235: Operating expenses yield forecast (USD/pax)**

(Source: ALG analysis)

Differences in growth rates of passenger traffic, operating expenses and operating expenses unit costs are shown in the next figure:

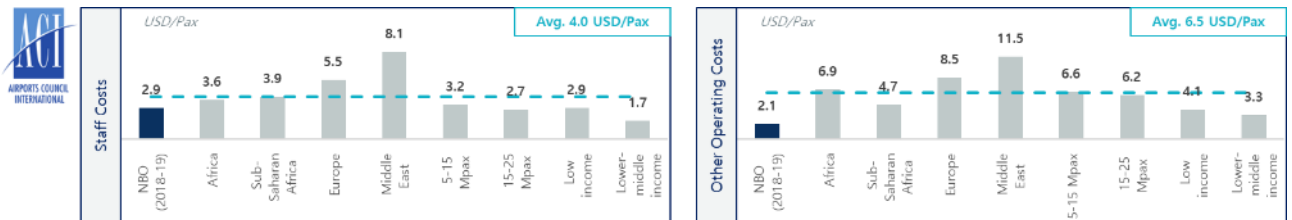
	Value		CAGR
	FY 25/26	FY 54/55	FY 25/26-FY 54/55
Traffic (million passengers)	9.58	30.54	4.08%
Operating Expenses (USD m)	39.19	124.56	4.07%
Operating expenses yield (USD / pax)	4.09	4.08	(0.01%)

**Figure 236: Comparison of passenger traffic, operating expenses, and operating expenses yield forecasts**

(Source: ALG analysis)

### Benchmarking of operating expenses

Unit operating expenses at JKIA are among the lowest when compared with Sub-Saharan and African airports, and with other regions and categories. This means that the operation at JKIA is currently efficient, and although future hikes are expected due to terminal expansions, a considerable increase in the unit values of operating expenses per passenger is not anticipated.



**Figure 237: International benchmark of operating expenses per passenger – FY 18/19 (USD/pax)**

(Source: ACI, ALG analysis)



**Figure 238: International benchmark of operating expenses per passenger – FY 54/55 (USD/pax)**

(Source: ACI, ALG analysis)

### 5.2.2.3 EBITDA

Total EBITDA of JKIA is expected to reach USD 293m in FY 54/55, growing at a 4.4% CAGR from USD 85m in FY 25/26. EBITDA margin in FY 25/26 was 68%, and this value is expected to be maintained between 60%-70% during the whole concession period.

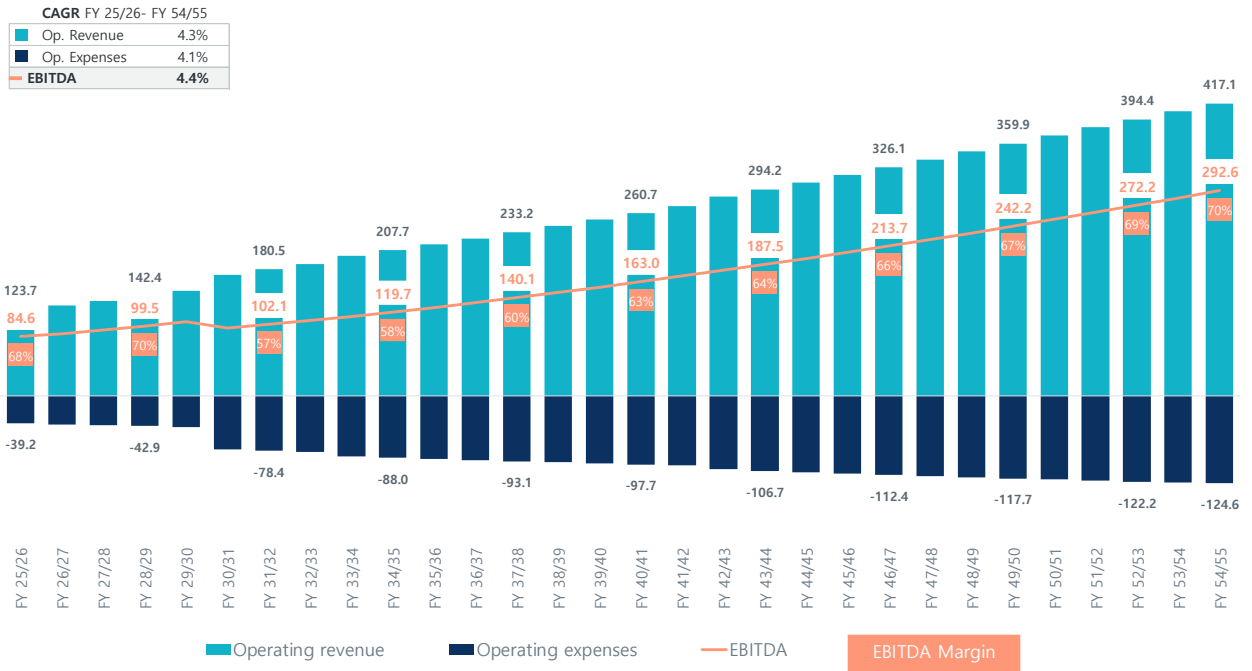


Figure 239: Operating revenues and expenses, EBITDA and EBITDA margin forecast (real MUSD 2023, % USD) - JKIA

(Source: ALG analysis)

## 5.2.2.4 Evaluation inputs

### Calendar

The calendar of the project considers that the PPP contract starts on July 1<sup>st</sup> 2025 (start of FY 25/26) with a duration of 30 years. The ending date of the Contract is June 30<sup>th</sup> 2055 (end of FY 54/55).

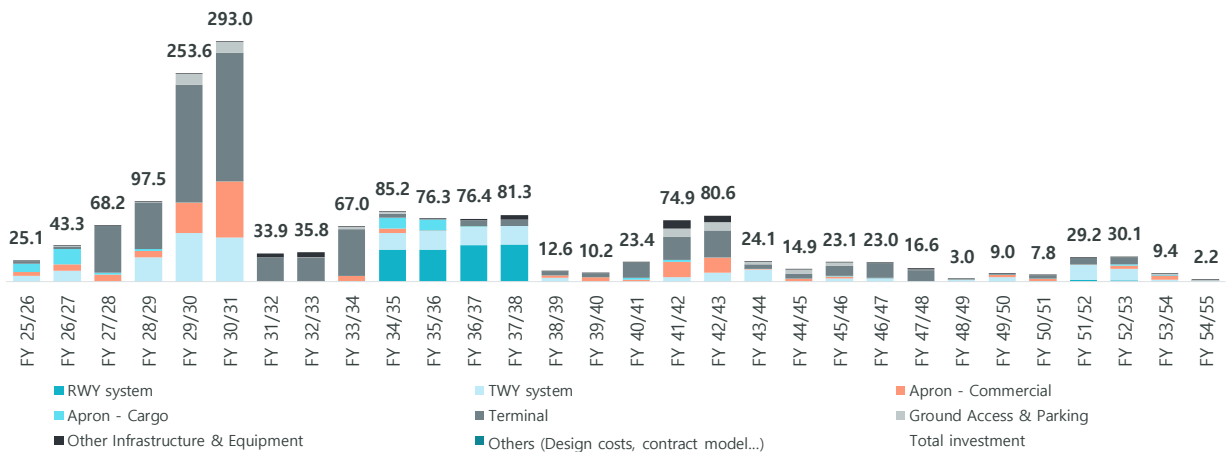
Calendar	Unit	Value
Start Date of Contract Period	Date	01/07/2025
Contract Period	Years	30
End Date of Contract Period	Date	30/06/2055

**Figure 240: Calendar of the Project**

(Source: ALG analysis)

### Investment

Investments are detailed in section 4.3 and start in FY 2025/2026 aligned with the Financial Model. The investment plan is shown in the following figure:



**Figure 241: Investment plan (MUSD) – Jomo Kenyatta International Airport**

(Source: ALG analysis)

### Currency and inflation rate

The currency of the financial model is USD, because charges, investments, and fund sources are denominated in USD.

The average inflation rate in US Dollars (USD) is 2.02% for the whole contract period while the average inflation rate estimated in Kenyan shillings (Kshs) is 5.54%. In the Financial Model the values are calculated in nominal USD prices (instead of real prices, used in the Business Plan) and apply USD inflation rate.

Inflation Rates	Unit	Value
CPI Rate USD USA	%	2.02%

CPI Rate Kenya	%	5.54%
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**Figure 242: Average inflation rates**

(Source: ALG analysis)

### Financial structure

This type of projects is typically financed with approximately 30% Equity and 70% Debt, therefore, in this project, this financial structure will be assumed and consequently the WACC will be calculated.

Financial Structure	Unit	Value
Debt	%	70.00%
Equity	%	30.00%

**Figure 243: Financial structure**

(Source: ALG analysis)

### Taxes

Kenya determines corporation tax as a method of collecting income tax that companies are bound to pay. The income tax rate of companies incorporated in Kenya is 30%. The application of tax credit when taxable income is negative has been established.

Taxes	Unit	Value
Corporate Tax Rate	%	30.00%

**Figure 244: Taxes**

(Source: Kenya Revenue Authority)

### Discount rates

Discount rates are expressed in US Dollars (USD). In this section, the WACC used to discount the Project's cashflow will be calculated.

- The cost of equity is calculated using the CAPM, which equates rates of return to volatility (risk vs reward). The cost of equity is an implied cost or an opportunity cost of capital. It is the rate of return that shareholders require to compensate them for the risk of investing in the project. The formula for the cost of equity is shown below:

$$K_e = r_f + \beta \cdot (R_m - r_f) + C_r$$

- **Ke:** Cost of equity
- **rf:** Risk-free rate is the return that can be earned by investing in a risk-free security, 30-year U.S. T-Bond
- **β:** The Beta is a measure of a stock's volatility of returns relative to the overall market. Levered beta takes into account the capital structure of the company.
- **Rm:** Equity Risk Premium (ERP) is defined as the extra yield that can be earned over the risk-free rate by investing in the stock market.

- **Cr:** Country risk premium (Cr) is the additional return or premium demanded by investors to compensate them for the higher risk associated with investing in a given foreign country, compared with investing in the domestic market.
- A firm's **Weighted Average Cost of Capital (WACC)** represents its blended cost of capital across all sources, including common shares and debt. The cost of each type of capital is weighted by its percentage of total capital and they are added together. The WACC after taxes formula is:

$$\text{WACC} = K_e \cdot E/(E+D) + K_d \cdot D/(E+D) \cdot (1-t)$$

- **Cost of equity (Ke)** is the rate on return required by investors.
- **Cost of debt (Kd)** is the interest rate required by lenders.
- **D and E** are the values of **Debt and Equity**.
- **The corporate tax rate (t)** is used to calculate the Tax Shield of interests. The tax shield is an allowable deduction from taxable income that results in a reduction of taxes owed.

The value of Cost of Equity (Ke) is used to discount the Cash Flows to Equity (NPV equity Cash Flows), whereas the WACC is used to discount the Project Cash Flows (NPV project cash flows).

Next table shows the values of the discount rates for the Financial Model:

Discount Rates	Unit	Value	Source
Interest Rate after taxes - Kd	%	6.36%	Calculation
<b>Cost of Equity - Ke</b>	%	<b>21.38%</b>	<b>Calculation</b>
<b>WACC after taxes</b>	%	<b>10.87%</b>	<b>Calculation</b>
<b>Inputs Discount Rates</b>			
Risk Free Rate- rf	%	4.36%	US T-Bonds 30yr 24 January 2024. CNBC
Market Risk Premium (Rm-rf)	%	6.17%	Damodaran: Risk Premium arithmetic average last 30yr ('94-'23)
Beta unlevered - $\beta_u$	x	0.65	Damodaran: Unlevered Beta. Air Transport & Engineering/Construction Emerging countries. 05 January 2024
Corporate Tax Rate - t	%	30%	Kenya
D/E Ratio	x	233%	
Beta levered - $\beta_L$	x	1.71	Beta formula
Country Risk Premium - Cr	%	6.46%	Damodaran. Kenya Risk Premium 1 Jan 2024
Interest Rate - Kd	%	9.09%	5.31% (SOFR rate 24/01/2024) + 3.78% spread (KAA AFD loan)

**Figure 245: Discount rates**

(Source: ALG analysis)

### Concession Fee

The Concession Fee included in the Financial Model is a total revenue share (percentage of total revenues generated by the private operator/concessionaire). For the purpose of the feasibility analysis, the concession fee is assumed to be a fixed percentage over gross revenues during the life of the concession. During the project implementation phase the Government could define a different economic consideration model (escalating concession fee, upfront payment, or other alternative).

### Depreciation Plan



The depreciation method of the financial model uses the asset life depending on the type of asset.

Asset category	Asset Life (years)	Depreciation coefficient (%)
Perimeter road, Car parkings	10	10.0%
IT, security & other systems (current terminal)	12	8.3%
RWY & TWY lighting, Terminal: electrical equipment, Minor retrofit/furniture/finishes, Access roads, ARFF station, AGL system, PAPI	15	6.7%
RWY, TWYs, current T1, Cargo, HVAC, FDAS & other mechanical equipment, Service roads, Perimeter fence, ARFF vehicles	20	5.0%
Apron (flexible), PBBs, BHS, new ARFF building, floodlighting, utilities (terminal), ILS	25	4.0%
Apron (rigid), Elevators/escalators, Waste Water Treatment Facility	30	3.3%
Dedicated buildings (Police, Private Warehouses, VVIP...)	100	1%

**Figure 246: Depreciation Plan**

(Source: ALG analysis)

It is important to note that it is assumed that the concessionaire does not receive any compensation from the grantor for the portion of investments that has not been fully amortized at the end of the concession.

**Key financial metrics**

From the point of view of the **Private Operator**, the cashflow metric must be analyzed:

- **IRR Project Cashflow (after taxes)**, which must be higher than WACC.

For KAA, there must be analyzed:

- **KAA’s cashflows** considering the **concession fee**

5.2.2.5 Results

The project, which includes the airport PPP investment (USD ~1,630m) with a 30-year concession would generate a return of USD 302m for the private investor, considering that neither an up-front fee nor a concession fee is accounted for.

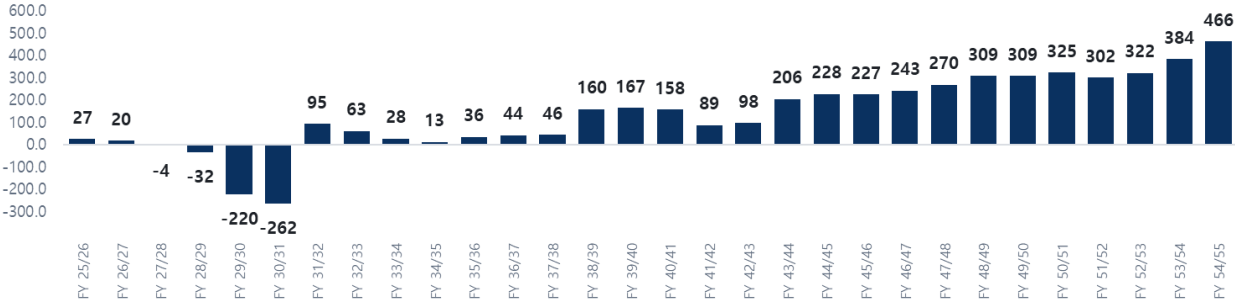
Private investor	IRR	NPV	Discount Rate
Project cash flow	19.0%	USD 302m	WACC: 10.9%

**Figure 247: Key Financial Metrics (nominal MUSD)**

(Source: ALG analysis)

In this scenario, the **project cashflow** IRR is higher than WACC resulting in a positive net present value.

Regarding project cashflow, the investor would have an accumulated real cashflow of USD 2,353m, translating to an average annual cash flow of USD 78m.



**Figure 248: Cashflow (private investor) – No up-front, nor concession fee (MUSD)**  
(Source: ALG analysis)

5.2.2.6 Sensitivity analysis and government payments

After conducting a sensitivity analysis with various scenarios, it is observed that the project's return largely depends on the regular updating of fees and charges.

In the previous results, it has been considered that there are neither up-front fees nor concession fees. However, in this section, the intention is to analyze how the concession fee that KAA could receive would vary given a change in the variables. In the base case, that is, considering the results presented in the previous subchapter, the private investor could offer KAA 8% of total revenues as concession fee and still obtain an attractive return (project cashflow IRR=15%).

The sensitivity analysis will be conducted by varying the variables of traffic, airport APSC, CapEx, and PPP duration to observe their impact on the concession fee, project NPV, and KAA avg. cashflow. The concession fee, project NPV, and KAA average cash flow for each of the studied scenarios are detailed below. For this analysis, a project cashflow IRR of 15% is assumed as an attractive return for the private investor.

**Sensitivity to traffic**

If the passenger traffic were different than expected and the rest of the project variables remained constant (fees and charges, CapEx, and PPP duration), the following results would be obtained:

	Traffic				
	-20%	-10%	Base case	+10%	+20%
Concession fee	-	3%	8%	11%	15%
Project NPV	146 MUSD	176 MUSD	174 MUSD	173 MUSD	171 MUSD
KAA avg. cashflow	-	5 MUSD	14 MUSD	22 MUSD	31 MUSD

\*KAA avg. cashflow is real USD after-tax (30%)

**Figure 249: Sensitivity to traffic (IRR=15%)**

(Source: ALG analysis)

### Sensitivity to airport APSC

If APSC (USD Real 2023) were updated and the rest of the project variables remained constant (traffic, CapEx, and PPP duration), the following results would be obtained:

Airport APSC					
	20 USD/pax	25 USD/pax	30 USD/pax	35 USD/pax	40 USD/pax
Concession fee	-	1%	8%	14%	19%
Project NPV	62 MUSD	175 MUSD	174 MUSD	175 MUSD	173 MUSD
KAA avg. cashflow	-	1 MUSD	14 MUSD	27 MUSD	40 MUSD

**Figure 250: Sensitivity to airport APSC (IRR=15%)**

(Source: ALG analysis)

### Sensitivity to CapEx

If the amount of the investment varied compared to the estimates and the rest of the project variables remained constant (traffic, airport APSC, and PPP duration), the following results would be obtained:

CapEx					
	+20% (1,960 MUSD)	+10% (1,790 MUSD)	1,630 MUSD	-10% (1,470 MUSD)	-20% (1,300 MUSD)
Concession fee	-	1%	8%	14%	20%
Project NPV	121 MUSD	190 MUSD	174 MUSD	158 MUSD	140 MUSD
KAA avg. cashflow	-	2 MUSD	14 MUSD	25 MUSD	37 MUSD

**Figure 251: Sensitivity to CapEx (IRR=15%)**

(Source: ALG analysis)

### Sensitivity to PPP duration

If the duration of the PPP were to be shorter than the planned 30-year concession period and the rest of the project variables remained constant (traffic, airport APSC, and CapEx), the following results would be obtained:

**PPP duration**

	20 years	25 years	30 years
Concession fee	-	5%	8%
Project NPV	70 MUSD	132 MUSD	174 MUSD
KAA avg. cashflow	-	7 MUSD	14 MUSD

**Figure 252: Sensitivity to PPP duration (IRR=15%)**

(Source: ALG analysis)

### 5.2.3 Terminals PPP

#### 5.2.3.1 Assumptions and inputs

##### Calendar

The calendar of the project considers that the PPP contract starts on July 1<sup>st</sup> 2025 (start of FY 25/26) with a duration of 15 years, given that, as specified previously, the scope of this project does not include the construction of a new runway and therefore the duration is shorter. The ending date of the Contract is June 30<sup>th</sup> 2040 (end of FY 39/40).


Calendar	Unit	Value
Start Date of Contract Period	Date	01/07/2025
Contract Period	Years	15
End Date of Contract Period	Date	30/06/2040

**Figure 253: Calendar of the Project**

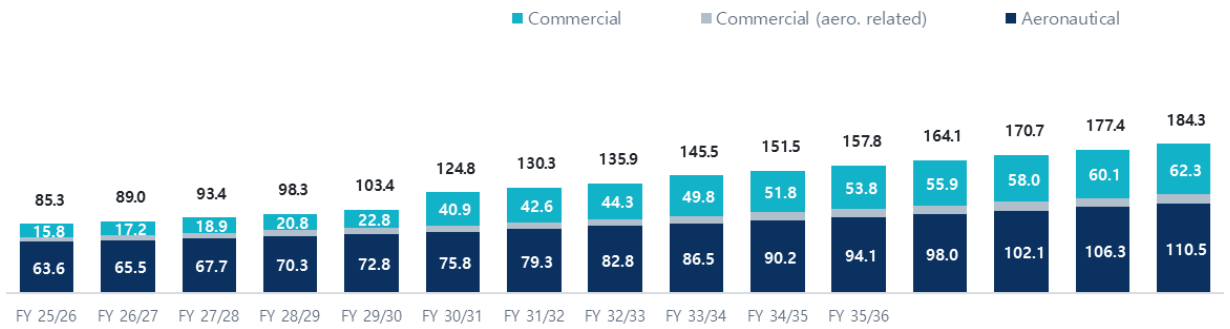
(Source: ALG analysis)

##### Traffic, Charges, Revenues, Operating Expenses and Investment

- Traffic: Values of traffic are those previously estimated.
- Charges: Values of charges are those previously estimated in the Airport PPP Business Plan.
- Revenues: In this scenario, the private investor would receive only aeronautical revenues from APSC, parking, and boarding bridges. On the other hand, for commercial revenues (aeronautical-related), the private entity would receive revenues from passenger handling, CUTE, security passes, and ramp handling. Regarding commercial revenues, the private investor would receive revenues from advertisements, retail, car parking and other commercials.

	Private Investor	KAA 
APSC revenue		
Aircraft parking, boarding bridge		
Landing revenue		
Fuel, land and building rentals		
Terminal commercial revenue		
Terminal investment, maintenance		
Apron investment, maintenance		
Runways and taxiways investment, maintenance		

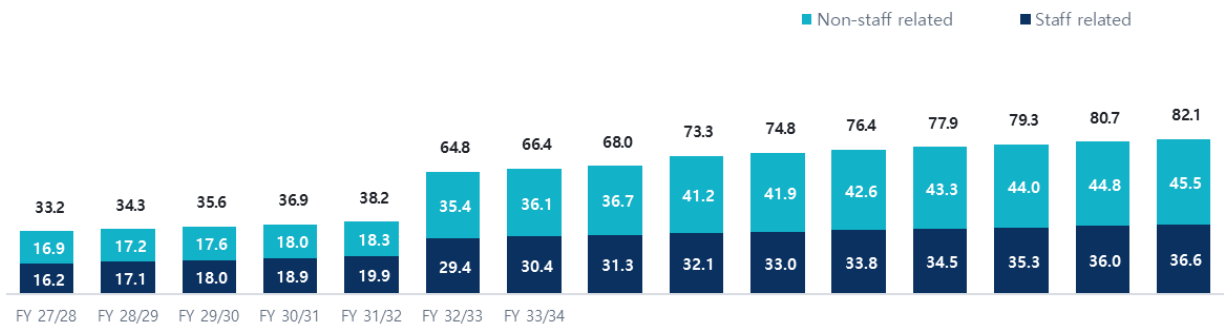
**Figure 254: Revenue and costs streams included in Terminals PPP**



**Figure 255: Revenues projection in Terminals PPP (MUSD)**

(Source: ALG analysis)

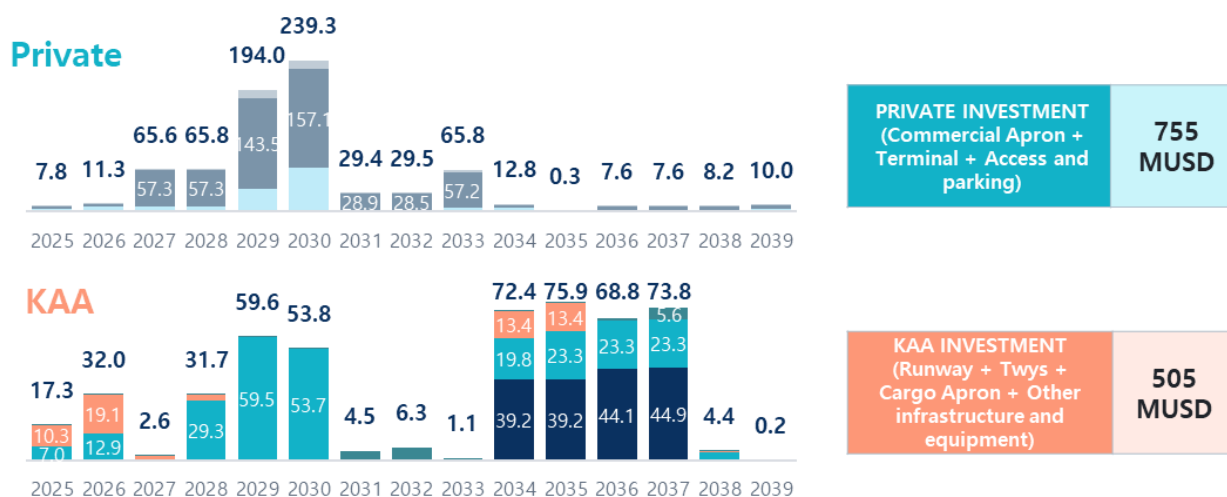
- Operating costs: In this option, costs related to the airside are not included and consequently staff-related costs are reduced. As for non-staff costs, the same categories of costs are included, but solely in relation to the terminal, accesses, and apron. Consequently, these costs are lower than in the Airport PPP.



**Figure 256: Operating expenses projection in Terminals PPP (MUSD)**

(Source: ALG analysis)

- Investment: The private investor will need to invest in the construction and maintenance of terminals, accesses, aprons, to the tune of of ~755 MUSD. By retaining responsibility for the airfield, KAA will have to invest in the maintenance and construction of the second runway and taxiways, totaling ~500 MUSD.



**Figure 257: CapEx projection in Terminals PPP (MUSD)**

(Source: ALG analysis)

### Currency and inflation rate

The currency of the financial model is nominal USD, because charges, investments, and fund sources are denominated in USD.

The average inflation rate in US Dollars (USD) is 2.03% for the whole contract period while the average inflation rate estimated in Kenyan shillings (Kshs) is 5.61%. In the Financial Model the values are calculated in nominal USD prices (instead of real prices, used in the Business Plan) and apply USD inflation rate.

Inflation Rates	Unit	Value
CPI Rate USD USA	%	2.03%
CPI Rate Kenya	%	5.61%

**Figure 258: Average inflation rates**

(Source: ALG analysis)

### Financial structure

The financial structure is assumed the same as in Aiports PPP, section 5.2.2.4.

### Taxes

The taxes inputs are remained the same as in Aiports PPP, section 5.2.2.4.

### Discount rates

Discount rates are assumed the same as in Airports PPP, section 5.2.2.4.

### Concession Fee

The Concession Fee included in the Financial Model is a revenue share (percentage of regulated revenues generated by the private operator/concessionaire).



**Depreciation Plan**

The depreciation method is the specified in Airports PPP, section 5.2.2.4.

**Key financial metrics**

From the point of view of the **Private Operator**, there are two key metrics to be applied in this prefeasibility evaluation:

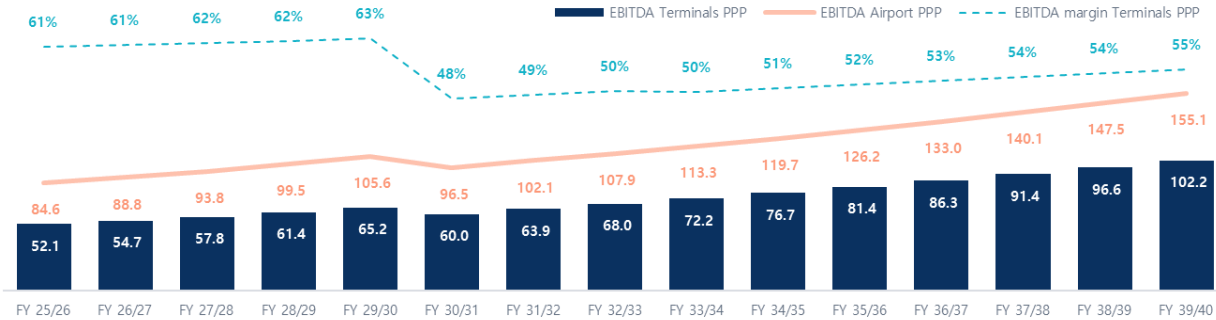
- **IRR Project Cashflow (after taxes)**, which must be higher than WACC.

For KAA, the following key metrics will be considered:

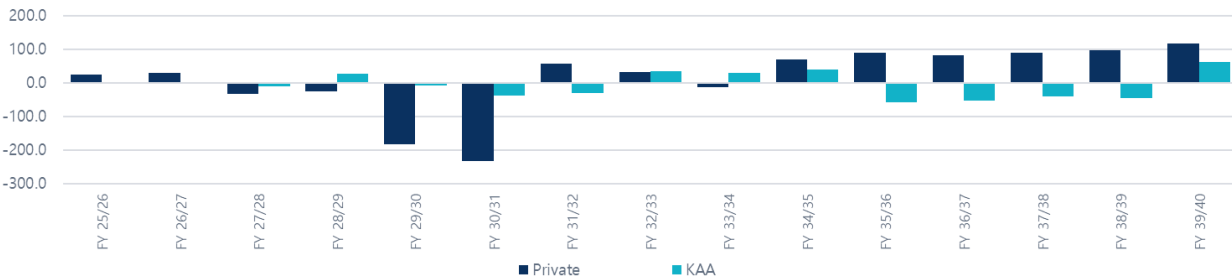
- **KAA's cashflow** considering, in addition to the concession fee, the investments carried out by KAA, revenues and OpEx from the airfield operation.

5.2.3.2 Results

In this scenario, the project, which consists of a 15-year concession solely encompassing the terminals and commercial apron (~ USD 750 million), would yield an EBITDA margin of 55% in the final year of the concession, which is below the EBITDA margin of 70% resulted in the Airport PPP for the same year.



**Figure 259: EBITDA Terminals PPP, EBITDA Airport PPP and EBITDA margin forecast (MUSD, % USD) - JKIA**  
(Source: ALG analysis)



**Figure 260: Cashflow (private investor and KAA) – No up-front, nor concession fee (MUSD)**  
(Source: ALG analysis)

With no up-front and no concession fee considered, the project would offer the following results for the private investor and KAA:

Private investor	
NPV	-40 MUSD
Real accumulated cashflow	119 MUSD
Real average cashflow	8 MUSD

**Figure 261: Results for the private investor (nominal MUSD)**

(Source: ALG analysis)

KAA	
NPV	-15 MUSD
Real accumulated cashflow	-14 MUSD
Real average cashflow	-1 MUSD

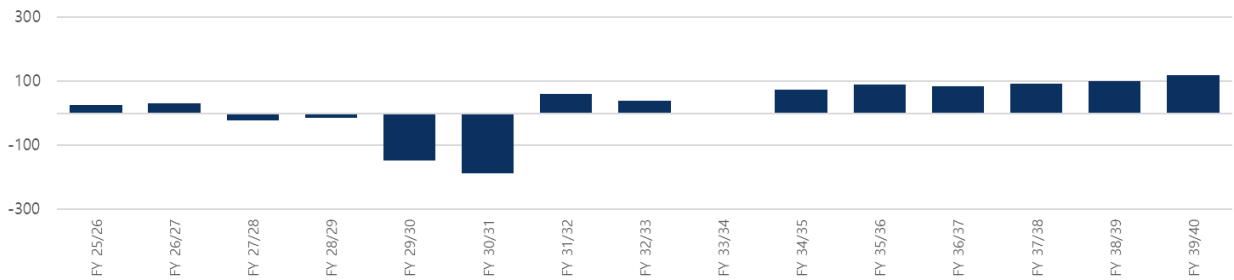
**Figure 262: Results for KAA (nominal MUSD)**

(Source: ALG analysis)

In conclusion, under the assumptions used, the results suggest that the project Terminals PPP, would not be attractive to a private investor as it offers a negative present value. Therefore, if the option of implementing the Terminals PPP were chosen, other levers would need to be applied to make the project feasible. They are detailed as follows:

### **Investment reduction**

If the investment costs were reduced by 15% (from USD 755m to USD 640m resulting in a smaller terminal building), and assuming there is no up-front fee or concession fee, the following results would be obtained for the private investor:



**Figure 263: Cashflow (private investor) – New terminal downsizing (MUSD)**

(Source: ALG analysis)

Private investor	
NPV	40 MUSD
ROI	16%
Real accumulated cashflow	233 MUSD
Real average cashflow	16 MUSD

**Figure 264: Results for the private investor – New terminal downsizing (nominal MUSD)**

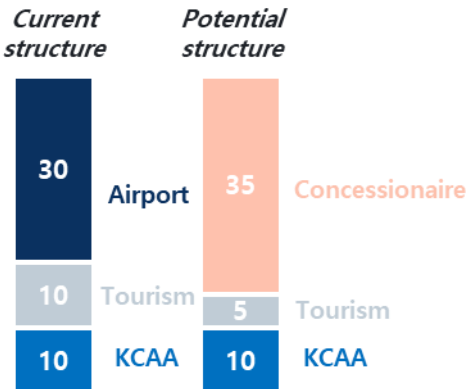
(Source: ALG analysis)

### **Change of allocation structure of the international passenger charge**

Currently, according to Air Passengers Service Charge Act (Kenyan Law Cap. 475), the allocation of the international Air Passenger Service Charge (APSC) in Kenya is as follows:

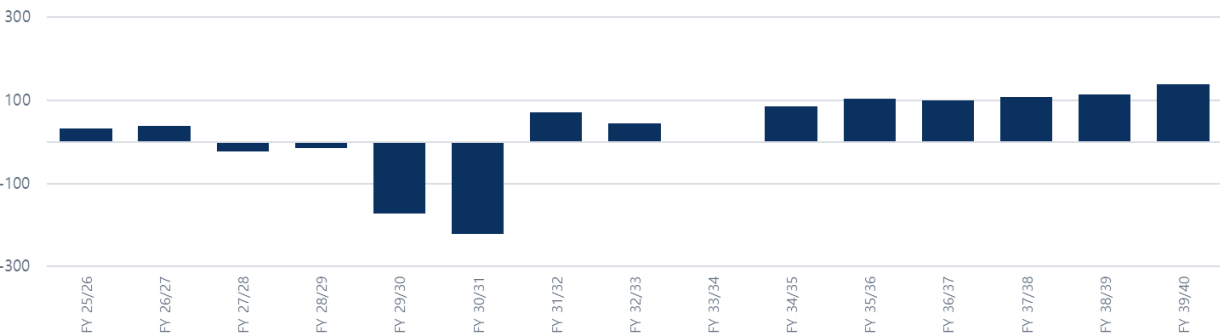
- 30 USD/departing passenger (60%) to the Kenyan Airports Authority (KAA) for the development and enhancement of the infrastructure and services of the different airports in Kenya.
- 10 USD/departing passenger (20%) to the Kenyan Civil Aviation Authority (KCAA), ensuring the continuity of the regulatory oversight in guaranteeing safety and compliance.
- 10 USD/departing passenger (20%) to the Tourism Promotion Fund to boost Kenya’s tourism attractiveness.

If the allocation of the APSC were modified so that the amount received by the Tourism Promotion Fund decreased by 5 USD/dep.pax, and allocated to the private investor (totaling 35 USD per departing passenger), the project would be attractive to private investors.



**Figure 265: Potential structure of the APSC**  
(Source: ALG analysis)

With this new distribution of the international APSC, the private investor would obtain the following cashflows:



**Figure 266: Cashflow (private investor) – APSC potential structure (MUSD)**  
(Source: ALG analysis)

Private investor	
NPV	45 MUSD
Real accumulated cashflow	267 MUSD
Real average cashflow	18 MUSD

**Figure 267: Results for the private investor – New terminal downsizing (nominal MUSD)**

(Source: ALG analysis)

### 5.3 Conclusions of the financial and economic analysis

Considering the development and investment plan for JKIA for the next 30 years, an airport concession (terminals + airfield) results in a financially feasible project for private investors.

A concession of the whole airport eliminates the runway construction risk as the construction of the second runway would be defined as "mandatory works" for the concessionaire. This will provide the Government of Kenya a clear, low-risk roadmap with regards to the development of JKIA and ensure that the second runway will be operational when needed.

In addition, as the most usual scope for airport concessions include the terminals and the airfield, the Airport PPP model is better known and understood by stakeholders (investors, lenders, etc.) and could potentially lead to a faster implementation.

The terminals PPP concession, as assessed, has a negative project value as a result of the significant investment required during the initial years. The modification of some assumptions however (eg. lower investment, or higher APSC) could result in a positive project value and a bankable project.

A terminals PPP concession would result in the transfer to the private sector of risks related to the terminal, but the Government would retain all airfield related risks. The most significant risk retained by the Government is related to the construction of the second runway, which KAA would need to start planning for in the short term. If, for any reason, the construction for the second runway is delayed -or does not start-, JKIA's development would be constrained and with it, the development of Kenyan aviation.

	Airport PPP	Terminals PPP
<b>Financials</b>	<p><b>300 MUSD NPV</b> on base case; investor returns + <b>concession fee</b></p>	<p><b>Negative</b> project <b>value</b> for investor and KAA current development plan</p> <p>To be bankable it requires lower investment, higher fees/charges, external funding, or other options</p>
<b>Risks</b>	<p>Significant <b>risks</b> transferred to the <b>private sector</b>. Ensures <b>all</b> pieces of <b>infrastructure</b> puzzle will be <b>in place</b>, in time</p>	<p><b>Risks</b> transferred to private sector <b>BUT also retained by KAA</b> (airfield): second runway project delays could limit JKIA growth, with cascading effects on tourism, etc.</p>
<b>Market attractiveness</b>	<p><b>Most common model</b>, known by operators, investors, lenders; likely faster time to market</p>	<p>Most interested parties have <b>less</b> or no <b>experience</b> operating with this model</p>

**Figure 268: Airport PPP vs. Terminals PPP comparison**

(Source: ALG analysis)

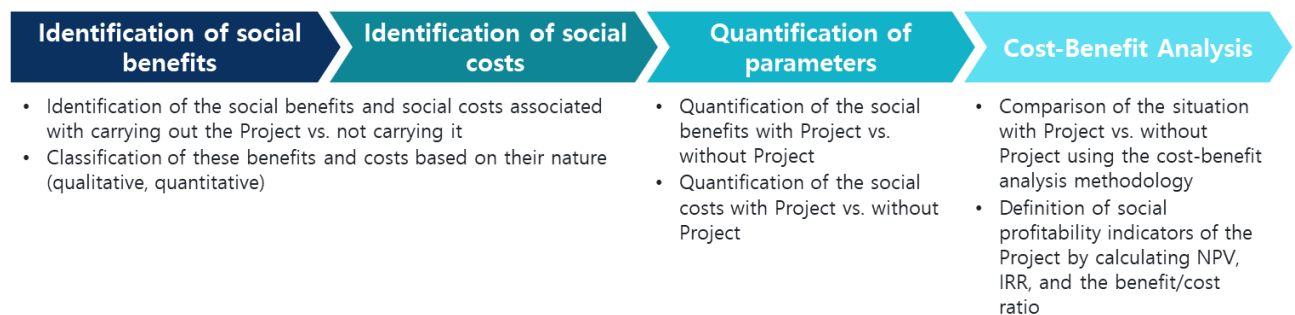
## 6 Cost-Benefit Analysis

### 6.1 Introduction

Cost-Benefit Analysis (CBA) enables the identification of both social benefits and social costs by evaluating the socio-economic benefit derived from implementing the expansion project at Jomo Kenyatta International Airport.

The methodology employed for the analysis is the calculation of the Social Net Present Value (SNPV), which results from the difference between the social economic benefits and costs generated by an investment project over time.

To do this, social benefits and costs related to carrying out the project versus not carrying it out are identified using the following methodology. These benefits and costs are categorized as qualitative and quantitative based on their nature, to subsequently quantify them.



**Figure 269: Methodology of the Cost-Benefit Analysis**

The no-Project case is built on the premise that investments to increase the capacity of JKIA are not undertaken. Consequently, traffic demand growth would be constrained by the available capacity, with investments limited to regulatory compliance and major maintenance to ensure airport operability, but without including expansion-related investments. In this scenario, lower capital expenses, operational expenses and aeronautical and commercial revenues would be obtained due to the reduced traffic volume and commercial space.

### 6.2 Qualitative social impacts

Qualitative benefits are linked to the improvement of the quality of life of the Kenyan population, as well as to fostering a positive and inclusive perception of the aviation industry.

#### 6.2.1 Enhancement of Kenya's international image as a safe and attractive tourist destination

The expansion of JKIA is expected to significantly enhance Kenya's international image as an attractive tourist destination. This enhancement stems from the improved infrastructure and operational capabilities that the expansion project will bring. With modernized facilities, Jomo Kenyatta International airport will project an image of safety and reliability to international travellers. A positive international image is crucial for attracting more tourists, stimulating economic growth through increased tourism and business revenue, and creating job opportunities in the hospitality and tourism sectors. Moreover, by positioning Kenya as

a more reachable destination, the expansion of Nairobi airport can contribute to the country's overall economic development and global standing.

### **6.2.2 Improvement of operational safety at the airport**

The expansion would also enhance operational safety, as it includes upgrades to critical infrastructure, such as runways or taxiways, enhancing the implementation of advanced navigation systems, as ILS CATII/III, contributing to reduce the risk of accidents and incidents. Additionally, investments in advanced security systems and enhanced emergency response capabilities will further bolster operational safety. By improving operational safety, the expansion would enhance the airport's readiness as a regional hub.

### **6.2.3 Increase in the quality level of services for passengers**

The upgrades to terminal facilities will decrease delays and crowding at the airport, improving the level of service for passengers. In addition, the expansion of retail and dining options, enhancements to passenger amenities, and improvements in overall customer service standards will also improve the passengers' experience. By offering a seamless and enjoyable travel experience, JKIA will position itself as a leading aviation hub in the region.

### **6.2.4 Environmental impact**

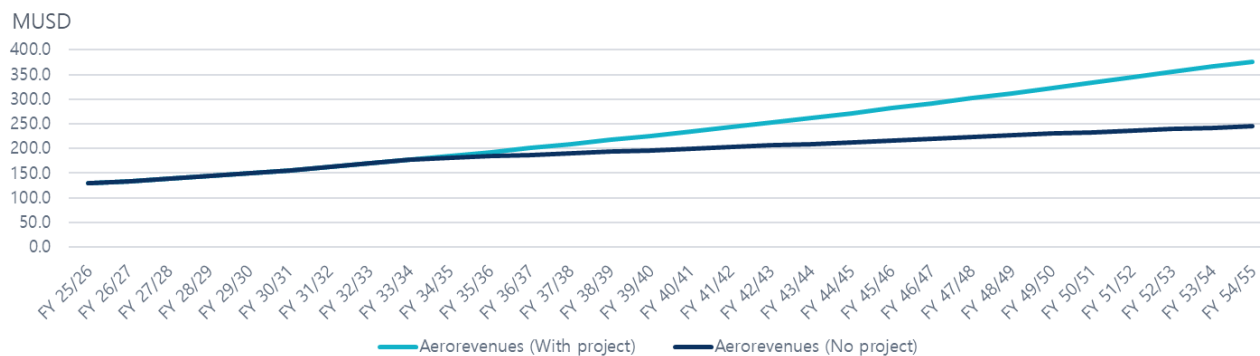
The development of the airport, with a new terminal and an additional runway, will allow traffic to grow without limitations associated with the infrastructure. However, this will entail a considerable increase in the number of aircraft movements, leading to higher emissions and noise in the airport vicinity. On the other hand, having two runways will help decongest traffic at the airport, resulting in fewer delays and overflights, thus contributing to reducing the impact of noise and emissions.

## **6.3 Quantitative social benefits**

### **6.3.1 Increase in passenger demand**

Kenya is continuously growing as a tourist destination. To enable the airport to cement its position as a hub, it is absolutely necessary to develop its infrastructure. In the event that the project is not carried out, the growth of passenger traffic would be limited, as airport facilities would become saturated to the point of not being able to accommodate the expected demand even if accepting massive delays.

On the other hand, if the project is carried out, the increase in passenger traffic would result in higher revenues for both the airport and the country. This would not only stem from tourism-related expenses but also, in this case, from the increased income generated by passenger charges (APSC) and charges related to aircraft.



**Figure 270: Aeronautical revenues with and without project (MUSD)**

### 6.3.2 Income generated from the impact in tourism volume

The arrival of tourists to Kenya represents a net income for the region because of the spending they make on different activities during their stay, such as accommodation, cultural visits, gastronomy, leisure, shopping, etc. Therefore, the proposed enhancements at Jomo Kenyatta International airport, the main international gateway to the region, in order to accommodate the increase in air traffic volume expected for the following years, will enable an increase in the number of visitors arriving to Kenya.

For the calculation of the net income increase due to higher arriving visitors to the region, the following assumptions have been made:

- **Passenger demand:** The demand projections for JKIA airport have been considered for both project and without the project scenarios, as outlined and detailed in this document.
- **Distribution of foreign and national visitors:** Estimated in the O/D passenger traffic demand projection and its distribution according to national and international split, developed in the demand analysis. For the year 2022, according to the statistics provided by the KAA, it is estimated as 60% foreigners and 40% nationals.

According to the Annual Tourism Sector Performance Report of 2022 published by the Ministry of Tourism and Wildlife of Kenya, a total of 1,483,752 foreign visitors arrived in the region in 2022, of whom 1,062,762 arrived through Jomo Kenyatta International airport (71.6%). Historically, the percentage of foreign visitors arriving through JKIA compared to the total number of foreign visitors arriving in the country has been around 70%.

At JKIA in 2022, the total international passengers numbered 2,259,930. This, in relation to the 1,062,762 foreign visitors arriving through the airport, results in a share of 47% (proportion of foreign visitors compared to total O/D passengers).

	2019	2020	2021	2022
Arriving foreign visitors through JKIA	1.423.971	392.318	644.194	1.062.762
Share vs O/D International passengers (%)	29,2%	13,0%	67,2%	47,0%

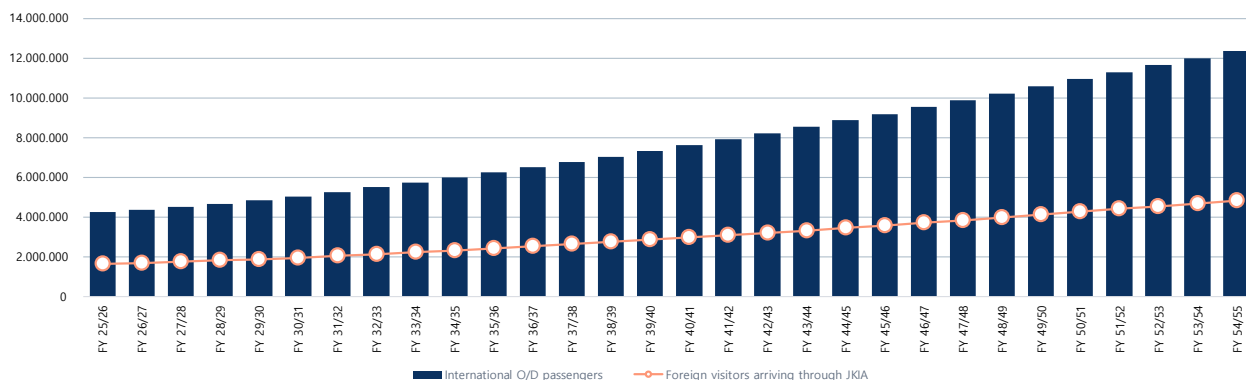
**Table 2: Arriving foreign visitors through Jomo Kenyatta (JKIA) International airport**

(Source: Kenyan Ministry of Tourism and Wildlife)



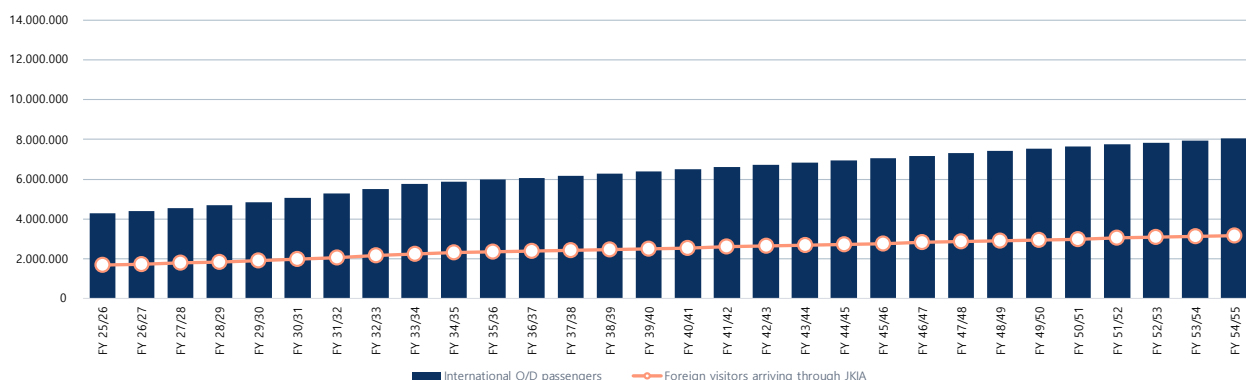
The average share of historical years available has been considered as the starting point for the projection of foreign visitors (~39%).

For the projection, this share will increase according to the growth in international O/D passenger demand at JKIA and implementation of tourism promotion plans driven by the project implementation or lack thereof within the region (Project: CAGR 2023-2055: +4.1%; no project implementation: CAGR 2023-2055: +2.7%).



**Figure 271: International O/D passengers and foreign visitors with project implementation**

(Source: ALG Analysis, Oxford Economics, Kenyan Ministry of Tourism and Wildlife)



**Figure 272: International O/D passengers and foreign visitors without project implementation**

(Source: ALG Analysis, Oxford Economics, Kenyan Ministry of Tourism and Wildlife)

- **Final year of operation for both scenarios, with and without project implementation:** The last year of operation is FY 2054/2055. In the scenario with project implementation, the anticipated O/D demand is 16.1 million passengers, including 4.8 million international visitors arriving through JKIA. In the scenario without project implementation, the expected O/D demand is 11.5 million passengers, including 3.1 million international visitors arriving through JKIA.
- **Tourist attractions within Kenya:** Kenya is a country with numerous tourist attractions, with notable natural reserves such as Maasai Mara National Reserve, Amboseli National Park, Tsavo National Park, Mount Kenya National Park, and Lamu Island. These destinations showcase a variety of indigenous flora and fauna. The tourism promotion initiatives within the region have been factored into the estimation of foreign visitors, contributing to an increase alongside the demand-driven growth.

- **Average spending of foreign tourists:** The average spending has been estimated according to the earnings detailed in the Annual Tourism Sector Performance Report of 2022 and the total number of foreign visitors collected in the same document: From 2023 onwards, the report outlines the projections made by the Kenyan Ministry regarding earnings from foreign visitors and the number of foreign visitors expected. These figures have been considered.

USD (nominal terms)										
	2019	2020	2021	2022	Projection					2027
Average spending of foreign tourists	1,290	1,130	1,352	1,564	1,999	1,774	1,847	1,862	1,878	1,878

**Figure 273: Average spending of foreign tourists**

(Source: Annual Tourism Sector Performance Report 2022 – Kenyan Ministry of Tourism and Wildlife of Kenya)

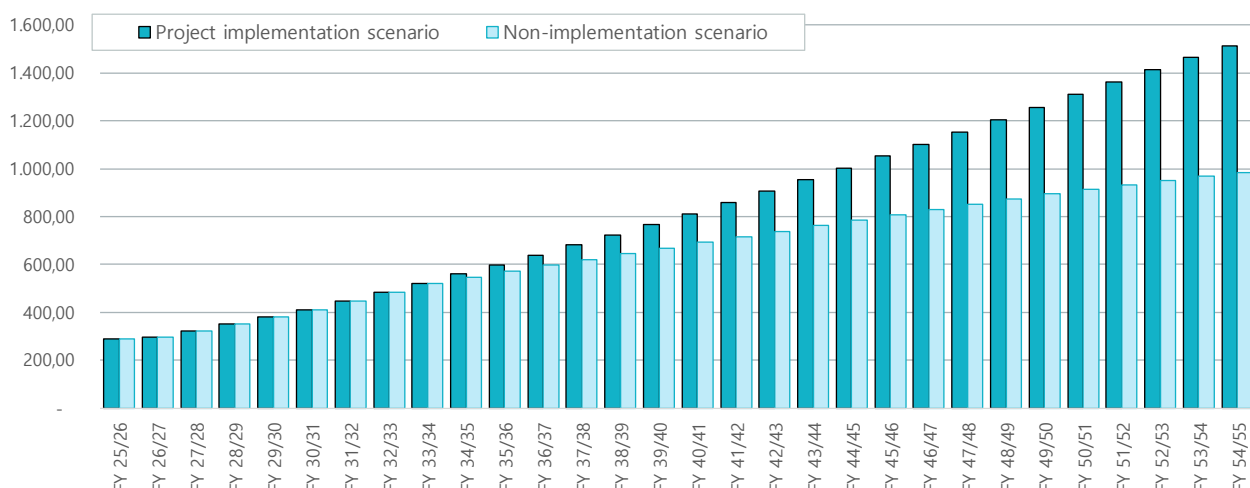
For the starting point, the average spending of 2027, (1,878 USD per visitor), has been considered in order to be consistent in the calculations with the expectations of the Kenyan Ministry of Tourism, and it has been increased according to the CAGR 2027-2050 (~4.2%) of the nominal GDP per capita growth projection in Kenya published by Oxford Economics until 2050, reaching an average spending per visitor of 6,094 USD.

- **Net profit:** The data used reflect the income per visitor, but not the benefits that Kenya obtains from each one, as the expenses involved in providing tourism services are not included. Therefore, it is estimated that 90% is allocated to costs, and 10% to net generation for the country. This distribution is conservative, but it is aligned with globally trends in the tourism industry, as well as the statistics available. As an example, according to South African tourism accommodation report of 2018, the profit margin of hotels, motels, and inns (11.3%), guesthouses and guest-farms (3.0%) and other accommodation (10%) are on an overall percentage of 10.7%.

After conducting the analysis, it is estimated that the benefit generated for Kenya stems from the increase in passengers caused by the project implementation and the natural increase in visitor spending resulting from the economy.

The results are presented in real terms with 2023 as the base year (2023 = 100), adjusting to US CPI and based on the assumption that the earnings figures included in the report are in nominal terms:

Therefore, the difference between project implementation and non-implementation is **approximately 4,976 million USD** accumulated.



**Figure 274: Project implementation vs non-implementation of the project results**

(Source: ALG Analysis, Oxford Economics, Kenyan Ministry of Tourism and Wildlife)

### 6.3.3 Income generated from job creation in construction

The infrastructure works required for the execution of the investment for the project's development demand a workforce to materialize them. For this purpose, the indicator of job creation is used, which is the relationship between investment per job, estimated at one direct job for every US \$50,000 of investment based on projects with similar characteristics.

Simultaneously, it is assumed that each new job created earns on average 2 minimum wages (minimum wage in 2023 = 15,120 kshs/month, two minimum wages as these jobs are considered specialized in airport construction), in order to quantify the value of the social benefit of labor generation. Wages are adjusted for the inflation rate of the Kenyan shilling and forecasted to increase 1% above such rate.

These values are calculated for the years in which the investment plan and works are executed. The following table and graph present the calculation results:

Year	Direct jobs (#)	Total wages (USD)
2026	502	1,288,681
2027	867	2,308,640
2028	1,365	3,769,974
2029	1,951	5,591,889
2030	5,071	15,056,320
2031	5,860	17,684,644
2032	678	2,069,264
2033	717	2,210,279
2034	1,339	4,174,275
2035	1,704	5,366,835
2036	1,525	4,852,340
2037	1,528	4,908,059
2038	1,627	5,277,228

2039	251	823,582
2040	204	675,426
2041	468	1,561,144
2042	1,499	5,047,908
2043	1,613	5,481,230
2044	481	1,649,961
2045	298	1,031,107
2046	462	1,614,380
2047	460	1,620,904
2048	332	1,180,420
2049	59	211,495
2050	180	649,284
2051	157	572,046
2052	583	2,144,424
2053	602	2,233,019
2054	189	705,593
2055	44	166,780
<b>Total</b>	<b>32,615</b>	<b>101,927,130</b>

**Table 3: Income generated from job creation in construction**

### 6.3.4 Overall economic and labor impact

In addition to impacting passenger growth, the execution of the project would entail an economic impact with the following types of effects:

- **Direct impact:** This includes the airport's contribution to the economy through direct wages and the surplus generated in its operation, which affects commercial revenues. This impact considers a ratio of direct job creation of 850 FTE/Mpax.
- **Indirect impact:** This involves activities aimed at supplying airport and air transport activities with products and services, as well as the economic activity generated by the employees of the companies related to the airport system. It considers a ratio of indirect job creation of 1,050 FTE/Mpax. Additionally, a revenue multiplier of 1.4 is used with respect to the projected revenues of the direct impact.
- **Induced impact:** These are effects attributable to the presence of the airport in the territory, such as those derived from the economic activity generated by visitors entering through the airport. It considers a ratio of induced job creation of 1,100 FTE/Mpax, and a multiplier of 1.5 with respect to the revenues from the direct + indirect impact.
- **Commercial revenues:** With the rise in traffic demand, more passengers will spend time at the airport, resulting in higher commercial revenues due to the project's development.

The following table summarizes the results of these effects:

	Jobs created (#) with project	Jobs created (#) without project	Impact (MUSD) with project	Impact (MUSD) without project
<b>Direct impact</b>	18,696	9,642	61	30
<b>Indirect impact</b>	23,095	11,911	86	42
<b>Induced impact</b>	24,194	12,478	221	107

<b>Commercial revenues</b>	-	-	2,997	1,425
<b>Total</b>	<b>65,985</b>	<b>34,031</b>	<b>3,366</b>	<b>1,604</b>

**Table 4: Direct, indirect and induced impact**

## 6.4 Social costs

### 6.4.1 Operating costs

Despite the fact that the entry of a private investor tends to increase operational cost efficiency through the application of best practices in the business, it is necessary to consider that apart from larger passenger numbers, having a new terminal building greatly increases operating costs.

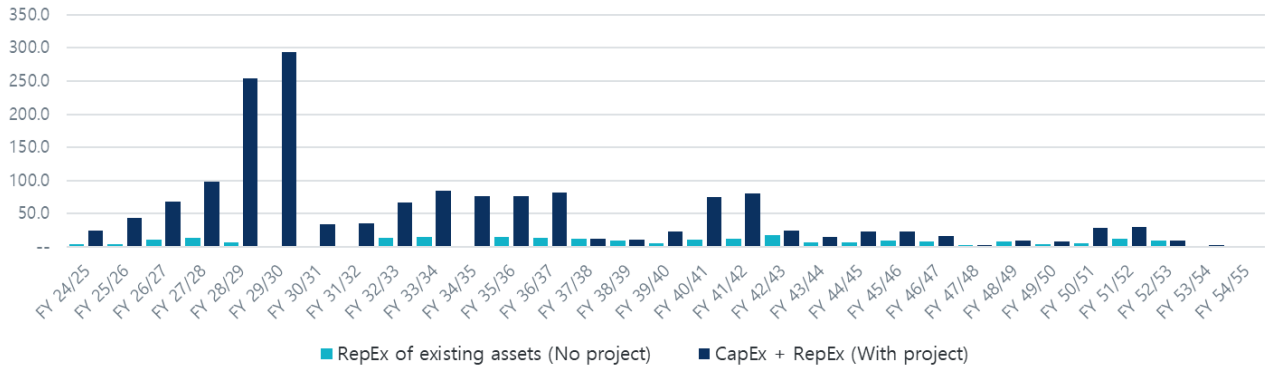
In this case, the accumulated operational costs throughout the period FY 25/26 to FY 54/55 if the project were carried out would be 50% higher than in the case of not carrying out the project.



**Figure 275: Operating costs with and without project (MUSD)**

### 6.4.2 Capital expenses

If the project were to be carried out, the investments would amount to USD 1,631 million, as detailed throughout the document, encompassing the complete project, which includes investments for the new runway, new terminal building, and maintenance investments for the existing and new assets. If the project were not to be implemented, there would be no capital investment costs for new infrastructure incurred; only the maintenance costs of existing assets would be accounted for, resulting in a total cost of USD 237 million for the entire period.

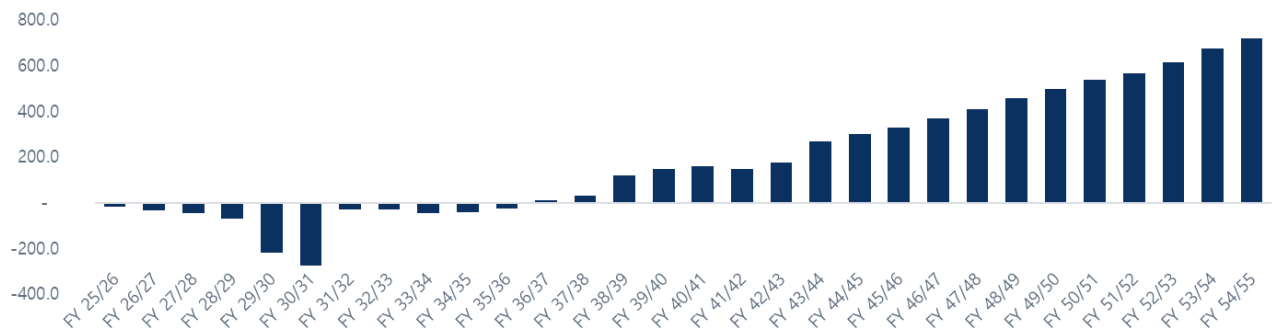


**Figure 276: Investment with and without project (MUSD)**

## 6.5 Social profitability indicators

The total socio-economic benefit of the Project is calculated as the sum of all identified and quantified benefits mentioned earlier, subtracting the social costs. Both for the benefits and costs, the cashflow accounts for the difference between the project being realized or not.

The following graph illustrates the evolution of the social cashflow over the 30-year concession period:



**Figure 277: Social cashflow of the project (real MUSD 2023)**

From the social cashflow, it can be observed that while the net benefit is negative in the first 11 years due to the value of investments, during the rest of the period, there is a positive trend in this indicator. At a discount rate of 10%, the net present value (NPV) of the project's benefits is positive, reaching USD 241m, indicating that the project is highly beneficial to society.

# 7 Risk Assessment

## 7.1 Risk analysis

The deviations both in terms of costs and revenue that projects suffer through their life cycle are due to the presence of **risks factors**, which have some chance of occurring and which, if they occur, will have an impact in the project outcome.

The methodology followed to identify risk factors is based on benchmarking and the experience of the Consultant, in structuring PPP projects at similar airports worldwide.

The risk analysis is structured in three main steps that conclude with the definition of the risk matrix. The first step involves identifying and defining the potential risks that may affect the project at each of its phases. The second step focuses on quantifying the identified risks based on their probability of occurrence and the impact they would entail. Finally, the third step involves defining mitigating measures.

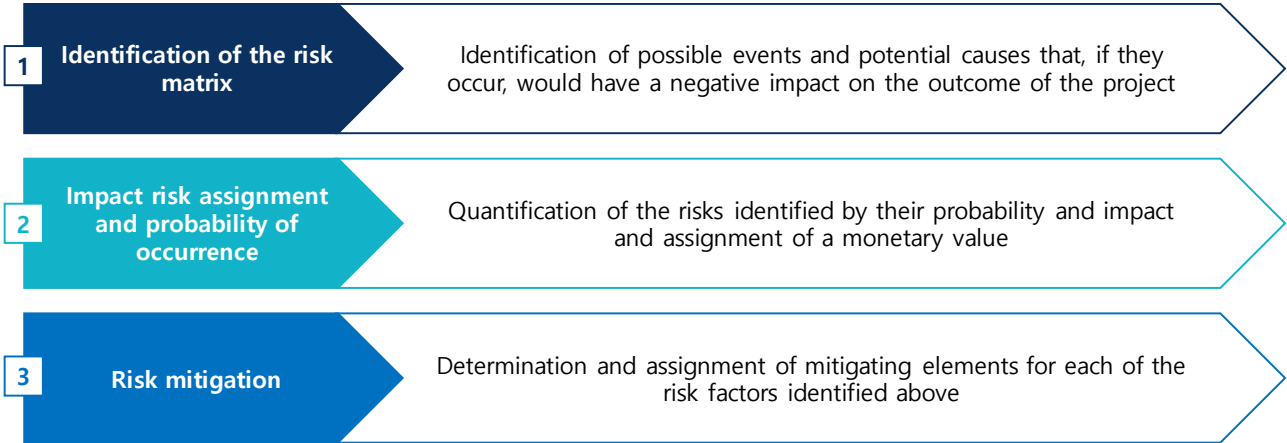


Figure 278: Risk analysis methodology

The information obtained from the different stages is transposed into a general matrix format which incorporates the categorization of the different risk factors and their causes, their probability of occurrence and potential impact, classification (retained, transferred or shared).








This matrix constitutes one of the reference elements for the calculation of the Value for Money (VfM) through the Public Sector Comparator.



**7.1.1 Identification of the risk matrix**

The first step of the analysis consists of identifying and defining the possible risks that may affect the project in each of its phases.

The main risks identified are categorized according to the phase of the project in which they may appear and their potential consequences. Nine main categories have been established that encompass over 80 identified risks.

<b>1 Design</b> 	1.1. Design defects	<b>5 Commercial and income</b> 	5.1. Insufficient charges long-term	
	1.2. Delay in design		5.2. Changes in the offer and/or in the quality of service	
	1.3. Increase in design costs		5.3. Counterpart	
<b>2 Construction</b> 	2.1. Increase in construction costs		5.4. Exchange	
	2.2. Construction delays		<b>6 Financials</b> 	6.1. Lack of financing
	2.3. Non-compliance with the technical specifications agreed			6.2. Debt: Deterioration in the financial conditions (terms and rates) between the signing of the contract and the financial closing
2.4. Risk of non-compliance with the works				
<b>3 Demand</b>	2.5. Equipment availability		<b>7 Force Majeure</b>	7.1. Force majeure events
3.1. Unexpected demand changes	<b>8 Environmental and social</b> 			8.1. Environmental impact studies
<b>4 Operation &amp; maintenance</b> 		4.1. Increase in operational costs	8.2. Environmental incidents	
		4.2. Increase in maintenance costs	8.3. Environmental-social incidents	
		4.3. Risk of non-compliance with the minimum LoS agreed	8.4. Environmental costs	
		4.4. Risk associated with the condition of the asset	8.5. Regulatory framework	
		4.5. Associated risk to Civil Liability	<b>9 Contract</b> 	9.1. Early termination by the Grantor
4.6. Potential airport constrains	9.2. Early termination by the Concessionaire			

**Figure 279: Risk identification and allocation for JKIA airport PPP**

**7.1.2 Impact risk assignment and probability of occurrence**

Once the main risks have been identified in the previous step, the objective is to quantify the selected risks through their impact risk and probability of occurrence.

The definition of the risk matrix, as well as the quantitative evaluation of the impact risk and the probability of occurrence is based on the evaluation and criteria of the consultant and the legal team. Before incorporating it into the draft concession agreement, the matrix will need to be reviewed and adjusted based on Government feedback.

To quantify the impact of identified risks, each risk is assigned a value from 1 to 5, with a value of 1 representing a critical category impact, meaning that any risk classified as such could lead to the cancellation of the project. Thus, a value of 5 represents a negligible impact, signifying that the event would have an insignificant effect on the project's lifecycle.

The criteria used for assigning impacts is shown below.

Impact risk	Impact	Criteria	Assessment	Impact
<b>Critical (C)</b>	Greater or equal to 20%	Any impact that could lead to the <b>cancellation of the project</b>	1	30%
<b>Severe (S)</b>	Less than 20%	Any impact that <b>jeopardizes the objective</b> of the project or that may lead to a <b>significant impact in the long-term</b>	2	15%
<b>Moderate (Mo)</b>	Less than 10%	Any impact that would case a significant <b>change in the planning</b> or could lead to a <b>noticeable and unwelcome effect on the project</b>	3	7.5%
<b>Minimum (Mi)</b>	Less than 5%	Any impact that could be dealt <b>within the project team</b> and would <b>not have any long-term effect</b>	4	5%
<b>Negligible (D)</b>	Less than 1%	Any impact that <b>insignificantly</b> affects or <b>does not produce a significant adverse effect on the life cycle of the project</b>	5	1%

**Figure 280: Impact risk assignment**

Regarding the assigned probability of occurrence for a risk, a scale of values from 1 to 5 is also used. In this case, a value of 1 represents a high probability of occurrence, meaning that it is very likely that the risk will occur during the project's lifecycle. On the contrary, a value of 5 represents a very low probability of occurrence or that it is unlikely for the risk to occur during the project's lifecycle. The criteria used for assigning probability of occurrence are included in the table below.

Probability of occurrence	Probability	Description	Assesment	Probability
<b>Very high</b>	100% - 91%	The risk is <b>very likely to occur</b> during the project life cycle	1	95%
<b>High</b>	90% - 61%	The risk is <b>likely to occur</b> during the project life cycle	2	75%
<b>Moderate</b>	60% - 41%	The risk <b>may or may not occur</b> during the project life cycle	3	50%
<b>Low</b>	40% - 11%	The risk is <b>unlikely to occur</b> during the project life cycle	4	25%
<b>Very low</b>	10% - 0%	The risk is <b>very unlikely to occur</b> during the project life cycle	5	5%

**Figure 281: Probability of occurrence assignment**

The assessment on each of the risks is based on the information available for the current stage of the project and is based on the reference values obtained in previous experiences with similar PPP projects globally.

The combination of both parameters (impact risk and probability of occurrence) in table format, allows visualizing what type of risks can be classified globally as **High (H), Medium (M), and Low (L)**.

Probability of occurrence		Impact risk				
		Critical (C)	Severe (S)	Moderate (Mo)	Minimum (Mi)	Negligible (D)
		≥ 20%	20% - 10%	10% - 5%	5% - 1%	< 1%
<b>Very high</b>	<b>100% - 91%</b>	H	H	H	H	M
<b>High</b>	<b>90% - 61%</b>	H	H	M	M	M
<b>Moderate</b>	<b>60% - 41%</b>	H	M	M	M	L
<b>Low</b>	<b>40% - 11%</b>	H	M	M	L	L
<b>Very low</b>	<b>10% - 0%</b>	M	M	L	L	L

**Figure 282: Risks classification table** (impact risk combined with probability of occurrence)

### 7.1.3 Risk Matrix

For the final construction of the Matrix, each risk is assigned a percentage that represents who assumes it, depending on whether it is a 100% State risk (retained risk), 100% private entity risk (transferred risk) or is shared 50% between the State and the private operator (shared risk).

The **risk intensity** (its quantification over the reference value) is obtained by multiplying the impact by the probability of occurrence.

The final Risk Matrix is as follows.

RISK MATRIX OF CONTRACTS IN THE FRAMEWORK OF PRIVATE INITIATIVE PROMOTION PROCESSES										
Risk category	What is the risk?	How does the risk arise?	Risk allocation (responsibility)			Impact risk (1-5)	Prob. of occurrence (1-5)	Impact	Prob. of occurrence	Intensity expected loss
			State	Private	N/A					
1. Design	1.1. Design defects	1.1.1. Flaws in the technical specifications required by the Government (KAA)	50%	50%	-	4	5	5.0%	5%	0.25%
		1.1.2. Flaws in the design proposed by the private	-	100%	-	3	5	7.5%	5%	0.38%
		1.1.3. Wrong supervision and Project Control	50%	50%	-	4	4	5.0%	25%	1.25%
	1.2. Delay in the completion of the design	1.2.1. Modifications to the approved Project	50%	50%	-	3	4	7.5%	25%	1.88%
		1.2.2. Variations in the security specifications	100%	-	-	4	4	5.0%	25%	1.25%
		1.2.3. Delay in the approval of the project	100%	-	-	5	3	1.0%	50%	0.50%
1.3. Increase in the design costs	1.3.1. Increase in the costs of elaboration of Project	-	100%	-	5	3	1.0%	50%	0.50%	
2. Construction	2.1. Increase in the construction costs	2.1.1. Variation in the investment costs due to greater n° of works not foreseen by the Private	-	100%	-	4	4	5.0%	25%	1.25%
		2.1.2. Increase in the investment costs due to higher prices of supplies and equipment	-	100%	-	3	3	7.50%	50%	3.75%
		2.1.3. Changes in the Legal Framework that affect the construction process	100%	-	-	4	4	5.0%	25%	1.25%

**RISK MATRIX OF CONTRACTS IN THE FRAMEWORK OF PRIVATE INITIATIVE PROMOTION PROCESSES**

Risk category	What is the risk?	How does the risk arise?	Risk allocation (responsibility)			Impact risk (1-5)	Prob. of occurrence (1-5)	Impact	Prob. of occurrence	Intensity expected loss
			State	Private	N/A					
		2.1.4. Specific Government action affecting the Concession (unilateral)	100%	-	-	3	5	7.5%	5%	<b>0.38%</b>
		2.1.5. Geological conditions	-	100%	-	2	5	15.0%	5%	<b>0.75%</b>
		2.1.6. Errors and defects in the construction	-	100%	-	3	4	7.5%	25%	<b>1.88%</b>
		2.1.7. Hidden defects that are generated before delivery	50%	50%	-	3	4	7.5%	25%	<b>1.88%</b>
		2.1.8. Damages	-	100%	-	3	5	7.5%	5%	<b>0.38%</b>
		2.1.9. Adverse changes in the exchange rate (unless caused by Government action)	-	100%	-	3	3	7.5%	50%	<b>3.75%</b>
	2.2. Delays in the construction	2.2.1. Lack of licenses, permits and authorizations that delay the start of the work	50%	50%	-	4	3	5.0%	50%	<b>2.50%</b>
		2.2.2. Archaeological remains / unexploded ordnance / pre-existing pollution	100%	-	-	3	5	7.5%	5%	<b>0.38%</b>
		2.2.3. Construction takes longer than anticipated by the Private	-	100%	-	3	4	7.5%	25%	<b>1.88%</b>
		2.2.4. Deficiency in the supply of materials and equipment	-	100%	-	5	4	1.0%	25%	<b>0.25%</b>
		2.2.5. Work accidents	-	100%	-	4	4	5.0%	25%	<b>1.25%</b>
		2.2.6. Delay in the approval of the works	50%	50%	-	5	2	1.0%	75%	<b>0.75%</b>
		2.2.7. Delay in the constitution of Obstacle Limitation Surfaces	100%	-	-	2	4	15.0%	25%	<b>3.75%</b>
		2.3. Non-compliance with the technical	2.3.1. Errors in the supervision and the control of the works agreed	100%	-	-	4	4	5.0%	25%

**RISK MATRIX OF CONTRACTS IN THE FRAMEWORK OF PRIVATE INITIATIVE PROMOTION PROCESSES**

Risk category	What is the risk?	How does the risk arise?	Risk allocation (responsibility)			Impact risk (1-5)	Prob. of occurrence (1-5)	Impact	Prob. of occurrence	Intensity expected loss
			State	Private	N/A					
	specifications agreed	2.3.2. Defects in the execution of the works	-	100%	-	4	4	5.0%	25%	<b>1.25%</b>
		2.3.3. Modifications in the design requested by the Private	-	100%	-	5	5	1.0%	5%	<b>0.05%</b>
		2.3.4. Modifications in the design requested by the Government	100%	-	-	3	3	7.5%	50%	<b>3.75%</b>
		2.3.5. Request for additional works by the Government	100%	-	-	3	3	7.5%	50%	<b>3.75%</b>
		2.3.6. Request for additional works by the Private	-	100%	-	3	5	7.5%	5%	<b>0.38%</b>
	2.4. Risk of non-compliance with the works	2.4.1. The Concessionaire abandons the Project	-	100%	-	1	5	30.0%	5%	<b>1.50%</b>
		2.4.2. Private falls into insolvency	-	100%	-	1	5	30.0%	5%	<b>1.50%</b>
		2.4.3. Infrastructure does not meet the requirements to start the operation	-	100%	-	2	5	15.0%	5%	<b>0.75%</b>
	3. Market risk	3.1. Demand lower than anticipate	3.1.1. Modifications in the market trends resulting in lower traffic growth	-	100%	-	2	4	15.0%	25%
3.1.2. Increase competition with similar destinations			-	100%	-	2	4	15.0%	25%	<b>3.75%</b>
3.1.3. Airlines bankruptcy and/or inclusion of new players (different model, etc.)			-	100%	-	3	3	7.5%	50%	<b>3.75%</b>
3.1.4. Demand reduction due to a new international airport in JKIA catchment area			100%	-	-	2	5	15.0%	5%	<b>0.75%</b>
4. Operation and maintenance	4.1. Increase in operating costs	4.1.1. Changes caused by initiative of the Private	-	100%	-	4	4	5.0%	25%	<b>1.25%</b>
		4.1.2. Inefficiencies in operation caused by design	-	100%	-	4	4	5.0%	25%	<b>1.25%</b>
		4.1.3. Increase in the prices of supplies and equipment	-	100%	-	4	3	5.0%	50%	<b>2.50%</b>

**RISK MATRIX OF CONTRACTS IN THE FRAMEWORK OF PRIVATE INITIATIVE PROMOTION PROCESSES**

Risk category	What is the risk?	How does the risk arise?	Risk allocation (responsibility)			Impact risk (1-5)	Prob. of occurrence (1-5)	Impact	Prob. of occurrence	Intensity expected loss	
			State	Private	N/A						
		4.1.4. Premium insurance	-	100%	-	4	3	5.0%	50%	<b>2.50%</b>	
		4.1.5. An insurance risks becomes uninsurable	50%	50%		3	4	7.5%	25%	<b>1.88%</b>	
		4.1.6. Increased costs due to operational issues	-	100%	-	3	3	7.5%	50%	<b>3.75%</b>	
		4.1.7. Cost rises due to changes in applicable laws	50%	50%	-	3	4	7.5%	25%	<b>1.88%</b>	
	4.2. Increase in maintenance costs	4.2.1. Maintenance over the life of the asset costs more than budgeted	-	100%	-	4	3	5.0%	50%	<b>2.50%</b>	
	4.3. Risk of non-compliance with service level	4.3.1. Failures in the availability of public service attributable to the Concessionaire	-	100%	-	4	5	5.0%	5%	<b>0.25%</b>	
		4.3.2. Failures in the availability of public service attributable to the Grantor	100%	-	-	4	5	5.0%	5%	<b>0.25%</b>	
		4.3.4. Grantor changes in service level requirements	100%	-	-	3	4	7.5%	25%	<b>1.88%</b>	
	4.4. Risk associated to the condition of the asset	4.4.1. Asset status	-	100%	-	5	3	1.0%	50%	<b>0.50%</b>	
	4.5. Risks associated with Civil Liability	4.5.1. Direct, indirect, and other economic damages	-	100%	-	4	4	5.0%	25%	<b>1.25%</b>	
	5. Comm. and income	5.1. Insufficient charges in the long-term	5.1.1. Non-aeronautical revenues	-	100%	-	3	4	7.5%	25%	<b>1.88%</b>
			5.1.2. Aeronautical revenues	-	100%	-	2	4	15.0%	25%	<b>3.75%</b>
5.1.3. Collection risk: payment evasion by Kenya Airways*			100%	-	-	2	3	15.0%	50%	<b>7.50%</b>	
5.1.4. Refusal to collect charges			-	100%	-	3	4	7.5%	25%	<b>1.88%</b>	
5.2.1. Breach of service levels by the Private		-	100%	-	4	3	5.0%	50%	<b>2.50%</b>		

**RISK MATRIX OF CONTRACTS IN THE FRAMEWORK OF PRIVATE INITIATIVE PROMOTION PROCESSES**

Risk category	What is the risk?	How does the risk arise?	Risk allocation (responsibility)			Impact risk (1-5)	Prob. of occurrence (1-5)	Impact	Prob. of occurrence	Intensity expected loss
			State	Private	N/A					
	5.2. Changes in the offer and/or in the quality of service	5.2.2. Reduction in interested concessionaires	-	100%	-	3	4	7.5%	25%	<b>1.88%</b>
		5.2.3. Outdated or poor technology	-	100%	-	3	4	7.5%	25%	<b>1.88%</b>
		5.3.2. New government representative tries to annul contract	100%	-	-	2	5	15.0%	5%	<b>0.75%</b>
		5.3.3. Concessionaire is found guilty of corrupt practices	-	100%	-	2	5	15.0%	5%	<b>0.75%</b>
		5.3.4. Impairment of shareholder credit exposure	-	100%	-	4	3	5.0%	50%	<b>2.50%</b>
	5.4. Exchange	5.4.1. Currency fluctuations	-	100%	-	3	3	7.5%	50%	<b>3.75%</b>
		5.4.2. Currency devaluation	-	100%	-	5	3	1.0%	50%	<b>0.50%</b>
		5.4.3. Restrictions on convertibility or transfer or sought currency devaluation	100%	-	-	2	4	15.0%	25%	<b>3.75%</b>
	6. Financials	6.1. Lack of financing	6.1.1. Difficulty of the Private to meet the requirements requested by the financier	-	100%	-	2	4	15.0%	25%
6.2. Debt: Deterioration in the financial conditions (terms and rates) between the signing of the contract and the financial closing		6.2.2. Financial closure is delayed due to delays by the contracting authority	100%	-	-	3	3	7.5%	50%	<b>3.75%</b>
		6.2.3. Exchange rate variation	-	100%	-	3	4	7.5%	25%	<b>1.88%</b>
7. Force Majeure	7.1. Force Majeure	7.1.1. Natural: earthquake, floods, frosts, etc.	50%	50%	-	2	5	15.0%	5%	<b>0.75%</b>
		7.1.2. project-specific labour disputes, strikes, unions, etc.	-	100%	-	3	4	7.5%	25%	<b>1.88%</b>
		7.1.3. "political" force majeure e.g., war, civil unrest, embargo, widespread strikes	100%	-	-	2	4	15.0%	25%	<b>3.75%</b>



RISK MATRIX OF CONTRACTS IN THE FRAMEWORK OF PRIVATE INITIATIVE PROMOTION PROCESSES										
Risk category	What is the risk?	How does the risk arise?	Risk allocation (responsibility)			Impact risk (1-5)	Prob. of occurrence (1-5)	Impact	Prob. of occurrence	Intensity expected loss
			State	Private	N/A					
8. Social and Environmental	8.1. Environmental impact studies	8.1.1. Failure to deliver technical studies	-	100%	-	4	5	5.0%	5%	0.25%
		8.1.2. Deficiency in the content of technical studies	-	100%	-	4	5	5.0%	5%	0.25%
		8.1.3. Budget increase for mitigation activities	-	100%	-	4	4	5.0%	25%	1.25%
	8.2. Environmental incidents	8.2.1. Pre-existing environmental liability	100%	-	-	3	5	7.5%	5%	0.38%
		8.2.2. Operation failure	-	100%	-	4	4	5.0%	25%	1.25%
		8.2.3. Find unforeseen archaeological remains	100%	-	-	3	5	7.5%	5%	0.38%
	8.4. Environmental costs related	8.4.1. Major mitigation activities	-	100%	-	3	4	7.5%	25%	1.88%
	8.5. Environmental regulatory framework	8.5.1. Non-compliance with the environmental standards and the provisions of EIA	-	100%	-	3	4	7.5%	25%	1.88%
9. Early termination of the contract or unilateral modification	9.1. By the Grantor	9.1.1. The Grantor terminates the contract early	100%	-	-	1	5	30.0%	5%	1.50%
	9.2. By the Concessionaire	9.1.2. The Concessionaire terminates the contract early	-	100%	-	1	5	30.0%	5%	1.50%

**Table 5: Risk Matrix**













			%					
<b>1 Design</b>		1.1. Design defects	2.6	<b>5 Commercial and income</b>		5.1. Insufficient charges long-term	15.0	
		1.2. Delay in design	8.8			5.2. Changes in the offer and/or in the quality of service	6.9	
		1.3. Increase in design costs	2.5			5.3. Counterpart	11.5	
<b>2 Construction</b>		2.1. Increase in construction costs	22.8			5.4. Exchange	6.3	
		2.2. Construction delays	15.6	<b>6 Financials</b>		6.1. Lack of financing	3.8	
		2.3. Non-compliance with the technical specifications agreed	12.5			6.2. Debt: Deterioration in the financial conditions (terms and rates) between the signing of the contract and the financial closing	9.4	
<b>3 Demand</b>		3.1. Unexpected demand changes	8.1	<b>7 Force Majeure</b>		7.1. Force majeure events	5.0	
		<b>4 Operation &amp; maintenance</b>		4.1. Increase in operational costs	16.3	<b>8 Environmental and social</b>		8.1. Environmental impact studies
4.2. Increase in maintenance costs	1.9			8.2. Environmental incidents	2.8			
4.3. Risk of non-compliance with the minimum LoS agreed	3.8			8.3. Environmental-social incidents	-			
4.4. Risk associated with the condition of the asset	1.3			8.4. Environmental costs	1.9			
4.5. Associated risk to Civil Liability	1.3			8.5. Regulatory framework	1.9			
				<b>9 Contract</b>			9.1. Early termination by the Grantor	1.5
							9.2. Early termination by the Concessionaire	1.5

Figure 283: Risk intensity / expected loss for JKIA airport PPP

In summary, the following table details the different risks falling within the responsibility of the Public, namely, retained risks or risks with shared responsibility.

	Shared responsibility		Public responsibility
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Type of risk	Risk assigned to the State		Assignment		
	<b>1. Design</b>	Design defects	Flaws in the technical specifications required by the Government (KAA)		
		Wrong supervision and Project Control			
	Delay in the completion of the design	Modifications to the approved Project			
		Delay in the approval of the project			
	Increase in the construction costs	Changes in the Legal Framework that affect the construction process			
		Specific Government action affecting the Concession (unilateral)			
		Hidden defects that are generated before delivery			
	Delays in the construction	Lack of licenses, permits and authorizations that delay the start of the work			
		Archaeological remains / unexploded ordnance / pre-existing pollution			
		Delay in the approval of the works			
		Delay in the constitution of Obstacle Limitation Surfaces			

Type of risk		Risk assigned to the State		Assignment	
		Non-compliance with the technical specifications agreed	Errors in the supervision and the control of the works agreed		
			Modifications in the design requested by the Government		
			Request for additional works by the Government		
		Risk of non-compliance with the works	Infrastructure does not meet the requirements to start the operation		
	<b>4. Operation &amp; maintenance</b>	Risk of non-compliance with service levels	Failures in the availability of public service attributable to the Grantor		
			Grantor changes in service level requirements		
	<b>5. Comm. and income</b>	Insufficient charges in the long-term	Collection risk: payment evasion by Kenya Airways		
		Counterpart	New government representative tries to annul contract		
		Exchange	Restrictions on convertibility or transfer		
	<b>7. Force Majeure</b>	Force Majeure	Natural: earthquake, floods, frosts, etc.		
			"Political" force majeure e.g., war, civil unrest, embargo, widespread strikes		
	<b>8. Social and Environmental</b>	Environmental incidents	Pre-existing environmental liability		
			Find unforeseen archaeological remains		
	<b>9. Early termination of the contract and/or unilateral modification</b>	Early termination of the contract and/or unilateral modification by the Grantor	The Grantor terminates the contract early		

**Table 6: Public entity (State) and shared responsibility identified risks**

The risk analysis will allow the economic assessment of each identified risk and will serve as the basis for calculating the Value for Money (VfM).

#### 7.1.4 Preliminary Mitigation measures

In this section, a range of potential mitigating measures aimed at addressing the identified risks within the PPP framework have been explored. These measures are designed to minimize the impact of risks on project outcomes, enhance resilience, and optimize the allocation of resources. By implementing these mitigation strategies, stakeholders can safeguard against potential disruptions and promote the long-term viability of the partnership.

The mitigating actions proposed are the following:

1. Establishment of a technical supervisory committee by the Government for the design and construction phase. This committee will also ensure that the new developments comply with technical specifications outlined in Kenyan and international (ICAO) standards.

2. Formation of a Government-Private coordination committee to address potential issues arising during the progression of the PPP and define the way forward to solve those problems.
3. Definition of realistic planning and scheduling in the Contract to mitigate potential misalignment with Government expectations and construction timelines detailed by the Private.
4. Implementation of promotion plans and negotiations with airlines to increase traffic at JKIA and mitigate potential demand risks.
5. Adoption of long-term coverage and policies, including natural risk insurance, price adjustment clauses, insurance programs, construction risk policies, material damage risk policies, etc.
6. Development of labor relations and communication plans to ensure transparency throughout the PPP process between Public and Private parties.
7. Establishment of Force Majeure monitoring plans, such as archeological monitoring plans and contingency plans for medical emergencies.
8. Application of penalties policies to the Private in the event of non-compliance with the terms and conditions agreed upon in the PPP Contract.
9. Implementation of an environmental mitigation plan, including the mandatory works included upon the PPP contract and initiatives aligned with international standards.
10. Inclusion of guarantees within the PPP Contract regarding currency convertibility or currency repatriation.
11. Submission of financing applications in US dollars and provisions for exchange rate coverage must be included within the Contract.

## 8 Value for Money (VfM)

### 8.1 Value for Money (VfM) qualitative analysis

The qualitative Value for Money (VfM) assessment of the project involves evaluating different aspects from an analytical perspective, which allows for identifying if the project is feasible through a PPP mechanism. Below are summarized the criteria to be evaluated with their respective weighting:

Criteria	Weigthing
Public financing capacity to execute the project as a public work	25%
Efficient cost management and planning	15%
Budget allocation to ensure the Operation and Maintenance of Public Works projects	10%
Project implementation and monitoring capacity	10%
Project bankability	10%
Competition and investor interest	15%
Risk transfer level	15%

**Figure 284: Weighting of criteria for the qualitative analysis of VfM.**

Within these categories, there are scores from one (1) to five (5) that allow for grading each component. The qualitative criteria rating scale is detailed below::

Assessment	Score
The Project does not generate VfM	1
The Project generates a low VfM	2
The Project generates a moderate VfM	3
The Project generates a high VfM	4
The Project generates a very high VfM	5

**Figure 285: Score of categories for the qualitative analysis of VfM**

Over of a maximum score of 100 points, the project is considered to generate value for money and, therefore advisable to be implemented under the PPP scheme the closer the overall score of the qualitative analysis is to the maximum score.

Each of the categories described above has been evaluated to determine the qualitative weighting of the VfM analysis.

#### 8.1.1 Public Financing capacity to execute the project under a Public Work scheme

Projects carried out under the PPP modality generally have a lower impact on the budgets of the Government compared to the traditional Public Work modality. In the case of the present project, being

a self-financed project in which all investment and costs are borne by the Concessionaire, the Government does not need a budget disbursement to execute the investment.

Given the project investment requirements, it is assumed that the Government would face challenges in getting the financing required to develop the project under the traditional Public Work modality, especially in the first development phases.

However, considering the economic and financial attractiveness of the development project, financing through the Traditional Work model could potentially materialize, with the Government securing other sources of financing besides the private sector, although this would mean retaining all project risks, unlike in the PPP scenario, where a significant part of the risks are transferred to the PPP Contractor.

Public financing capacity to execute the project as a public work	Score
The government has the fiscal space and/or public financing to comfortably finance the project	1
The Government has sufficient fiscal space and/or public financing to finance the project	2
The Government has sufficient fiscal space and/or public financing to finance the project fairly, but this has a significant impact on the budget	3
The Government does not have sufficient fiscal space and/or public financing to finance the project, but could opt for alternative financing sources	4
The Government does not have sufficient fiscal space and/or public financing to comfortably finance the project and cannot opt for alternative financing sources	5

**Figure 286: Public financing capacity to execute the project as public works score.**

**8.1.2 Efficient Cost management and Planning**

Efficient cost and deadlines management enable a project to be implemented correctly and in accordance with the timeline agreed, maximizing its benefits. When comparing management between the traditional Public Work and PPP modalities, it is generally observed that the private sector has the capacity to carry out more efficient management than the public entity for the entire project, as the Government – in this case – is subject to public procurement regulations when negotiating with subcontractors and suppliers, which can result in (1) higher costs and/or (2) decreased efficiency.

Considering the particularities of the project, which requires a significant initial investment for the development of the required infrastructure for JKIA to accommodate the project demand, rapid execution of the works is key to ensuring the maximization of project benefits. In this regard, it is expected that a Concessionaire will have greater flexibility to achieve cost savings and reduced deadlines compared to the Government.

Efficient cost management and planning	Score
It is not likely that the structure of the project under the PPP modality will have sufficient flexibility and/or incentives to generate cost savings and reduce deadlines derived from greater efficiency of the PPP Contractor.	1
It is likely that the structure of the project under the PPP modality has sufficient flexibility and/or incentives to generate cost savings and reduce deadlines derived from greater efficiency of the PPP Contractor	2
It is likely that the structure of the project under the PPP modality has sufficient flexibility and/or incentives to generate moderate cost savings and reduce deadlines derived from greater efficiency of the PPP Contractor	3
It is likely that the structure of the project under the PPP modality has sufficient flexibility and/or incentives to generate high-cost savings and reduce deadlines derived from greater efficiency of the PPP Contractor	4
It is likely that the structure of the project under the PPP modality has sufficient flexibility and/or incentives to generate very high-cost savings and reduce deadlines derived from greater efficiency of the PPP Contractor	5

**Figure 287: Efficiency cost management and planning score**

### 8.1.3 Budget Allocation for Operation and Maintenance Assurance of Public Work projects

When determining to what extent a PPP Contractor may be more efficient than the Public entity in maintaining infrastructure, it should be considered, firstly, whether there is an existing issue in the budget allocation for maintenance and rehabilitation in this type of projects when carried out through traditional Public Work scheme, as well as considering whether the PPP Contract covers the entire lifecycle of the infrastructure or if some tasks remain the responsibility of the Public entity.

Regarding the first point, it has been observed that historically, budget allocation to ensure the operation and maintenance of projects carried out under traditional Public Work modality is limited, as resources are not always immediately available. Although necessary activities have been carried out to ensure the proper functioning of the infrastructure thus far, in some cases, it is not easy to allocate budget resources right when they are needed. In this sense, a PPP Contractor would have greater flexibility to finance for day-to-day operation and maintenance at the airport.

From the perspective of the PPP contract, the Project includes all activities related to construction as well as operation and maintenance, ensuring continuity of investment activities and infrastructure performance and development throughout the duration of the contract.

At JKIA, KAA has had no issues with operating and maintaining Kenyan airports. Additionally, KAA has been covering the operation and maintenance costs of the assets.



Budget allocation to ensure the operation and maintenance of public works projects	Score
The PPP contract does not cover the entire life cycle of the project (some tasks are the responsibility of the Government). Historically, the Government has not had problems related to fulfilling the operation and maintenance tasks of similar projects and has a budget allocation that allows it to comfortably cover the operation and maintenance of the infrastructure	1
The PPP contract covers the entire life cycle of the project. Historically, the Government has not had problems related to fulfilling the operation and maintenance tasks of similar projects and has a budget allocation that allows it to comfortably cover the operation and maintenance of the infrastructure	2
The PPP contract covers the entire life cycle of the project. Historically, the Government has not had problems related to fulfilling the operation and maintenance tasks of similar projects, but it does not have a budget allocation that allows it to adequately cover the operation and maintenance of the infrastructure	3
The PPP contract does not cover the entire life cycle of the project (some tasks are the responsibility of the Government). Historically, the Government has had problems related to fulfilling the operation and maintenance tasks of similar projects and does not have a budget allocation that allows it to adequately cover the operation and maintenance of the infrastructure	4
The PPP contract covers the entire life cycle of the project. Historically, the Government has had problems related to fulfilling the operation and maintenance tasks of similar projects and does not have a budget allocation that allows it to adequately cover the operation and maintenance of the infrastructure	5

**Figure 288: Budget allocation to ensure the operation and maintenance of public works projects score.**

#### **8.1.4 Implementation and Monitoring Capacity of the Public entity**

When a project is developed under a PPP scenario, the implementation and monitoring of the PPP contract is usually an area where the Public requires a higher level of effort. Therefore, it is important to analyse whether the Public has the experience and tools required to implement and monitor the Project.

The PPP unit is the entity responsible for monitoring the development of the PPP, as it not only possesses experience in managing contracts with private entities, both as service providers and for the execution of works, but also has oversight capacity. The functions of the PPP unit in this process will be carried out by KAA.

Public implementation and monitoring capacity	Score
The Public does not have a dedicated team specialized in the implementation and monitoring of PPP projects, nor does it have experience in the development of PPP projects, nor does it have an expert structuring advisor	1
The Public does not have a dedicated team specialized in the implementation and monitoring of PPP projects, nor does it have an expert structuring advisor, but it does have experience in the development of PPP projects	2
The Public does not have a dedicated team specialized in the implementation and monitoring of PPP projects, but it does have an expert structuring advisor with experience in the development of PPP projects	3
The Public has a dedicated team specialized in the implementation and monitoring of PPP projects, with experience in the development of PPP projects, but does not have the support of an expert structuring advisor	4
The Public has a dedicated team specialized in the implementation and monitoring of PPP projects, with experience in the development of PPP projects, and with the support of an expert structuring advisor	5

**Figure 289: Implementation and monitoring capacity of the public entity score**

### 8.1.5 Project bankability

In order for a PPP project to be successful, it must be structured in a way that ensures its bankability while minimizing budget contributions and contingent commitments from the Public entity. In this regard, it is important to ensure that the contractual structure and business model are appealing to financial entities and that they consider the project to be feasible and bankable.

According to the socio-economic and financial studies carried out, the project's profitability is balanced for a private investor, who may achieve a target rate of return and even have the capacity to pay an annual fee to the Government. Additionally, the risks during the initial construction phase could be transferred to the PPP Contractor, as they have the capacity to absorb the additional costs resulting from higher work volume, price fluctuations of the consumables and the procurement of required resources for project progression.

Therefore, it is expected that the proposed scheme will generate interest in the international lenders' market and ensure the project's bankability. Although a market survey with financial entities and/or investment funds has not been conducted due to the current stage of the Project, initial conversations with potential investors indicate that there would be interest in the project, and investors would evaluate the opportunity.

Project bankability	Score
The financial entities have not shown interest in financing the project under the PPP modality and/or require guarantees and/or significant budget contributions	1
The financial entities have shown limited interest in financing the project under the PPP modality and/or require guarantees and/or significant budget contributions	2
The financial entities have shown moderate interest in financing the project under the PPP modality and/or require guarantees and/or significant budget contributions	3
The financial entities have shown high interest in financing the project under the PPP modality and/or require guarantees and/or significant budget contributions	4
The financial entities have shown very high interest in financing the project under the PPP modality and/or require guarantees and/or significant budget contributions	5

**Figure 290: Project bankability score**

### 8.1.6 Competition and Investor Interest

It is important to assess whether the project under the PPP modality is attractive to private investors. Structuring the project properly allows for greater interest from the private sector, which will attract more participants and enable greater competition, ultimately leading to a better outcome for the public entity.

Given the nature of the project and an understanding of the dynamics of airport infrastructure structuring processes, there is anticipated to be high interest from the private sector in the project. Private operators have already shown interest as JKIA potential PPP, offering the opportunity to operate in a country appealing to foreign investment, particularly at a time when there are other PPP processes for airport infrastructure in Africa.

Additionally, the PPP Contract is expected to be structured in accordance with best international practices, encouraging the participation of the most relevant international airport operators.

Competition and investor interest	Score
There is unlikely to be sufficient interest in the private sector to create a competitive environment for developing the project as a PPP contract	1
There is low interest on the part of the private sector, which creates a climate of limited competition to develop the project as a PPP contract	2
There is moderate interest on the part of the private sector that allows for creating a climate of competition sufficient to develop the project as a PPP contract	3
There is high interest on the part of the private sector that allows for creating an adequate climate of competition to develop the project as a PPP contract	4
There is very high interest on the part of the private sector that allows for creating an optimal climate of competition to develop the project as a PPP contract	5

**Figure 291: Competition and investor interest score**

**8.1.7 Volume of risks transferred.**

Finally, an important requirement for evaluating the Value for Money (VfM) of a project when considering development under a PPP scheme is the proper allocation of risks among the involved parties, namely, the Public entity and the PPP Contractor.

In this regard, as detailed in the risk assessment, risk allocation transfers to the private investor those risks the private can mitigate better and bear the costs with the Public only retaining some risks which are under its control.

Risk transfer level	Score
There is no ability to transfer risk from the Public to the PPP Contractor, and the Public is likely to face high contingent commitments	1
There is a low capacity to transfer risk from the Public to the PPP Contractor, and the Public is likely to face medium contingent commitments	2
There is a moderate capacity to transfer risk from the Public to the PPP Contractor, and the Public is likely to face low or no contingent commitments	3
There is a high capacity to transfer risk from the Public to the PPP Contractor, and it is likely that the Public will face low or no contingent commitments	4
There is a very high capacity to transfer risk from the Public to the PPP Contractor, and the Public is likely to face low or no contingent commitments	5

**Figure 292: Risk transfer level score**

**8.1.8 Conclusions and results**

Once it has been evaluated that the execution of the Project is feasible and bankable and it generates a social benefit through a Cost-Benefit Analysis (CBA), this chapter has conducted a qualitative analysis of the VfM (Value for Money) of the Project to confirm that the structuring of the Project under the PPP modality presents a favourable outcome.

After analysing each of the criteria established for the qualitative Value-for-Money (VfM) analysis and defining the appropriate score for each of them, the qualitative assessment of the VfM of the project is summarized below:

$$Normalized\ score = \sum_{t=0}^t \frac{100 * Weighting}{5} * Score$$

Criteria (t)	Weighting	Score	Normalized score
1) Public financing capacity to execute the project as a public work	25%	4	20
2) Efficient cost management and planning	15%	4	12
3) Budget allocation to ensure the Operation and Maintenance of Public Works projects	10%	2	4
4) Public implementation and monitoring capacity	10%	5	10
5) Bankability of the project	10%	3	6
6) Competition and investor interest	15%	5	15
7) Risk transfer level	15%	4	12
<b>Total VpD – Qualitative analysis</b>	<b>100%</b>		<b>79</b>

**Figure 293: Value for Money (VfM) qualitative analysis results**

As observed, the qualitative VfM score of the project based on the weighting and scoring criteria established is 79. Therefore, carrying the project under a PPP is substantially more favourable than going for a traditional public works modality.

## 8.2 Value for Money (VfM) quantitative analysis

The Public-Private Comparator (PPC) allows for evaluating the convenience of carrying out the project under the PPP (Public-Private Partnership) modality compared to Traditional Public Works (TPO), and consequently, calculating the Value for Money (VfM), which is obtained from the net result of executing the project as a PPP compared to a TPO.

### 8.2.1 Methodology for Value for Money (VfM) calculation

The PSC is made up of nine (9) elements: four (4) related to the cost of the Public Reference Project (PRP) and five (5) related to the PPP Project.

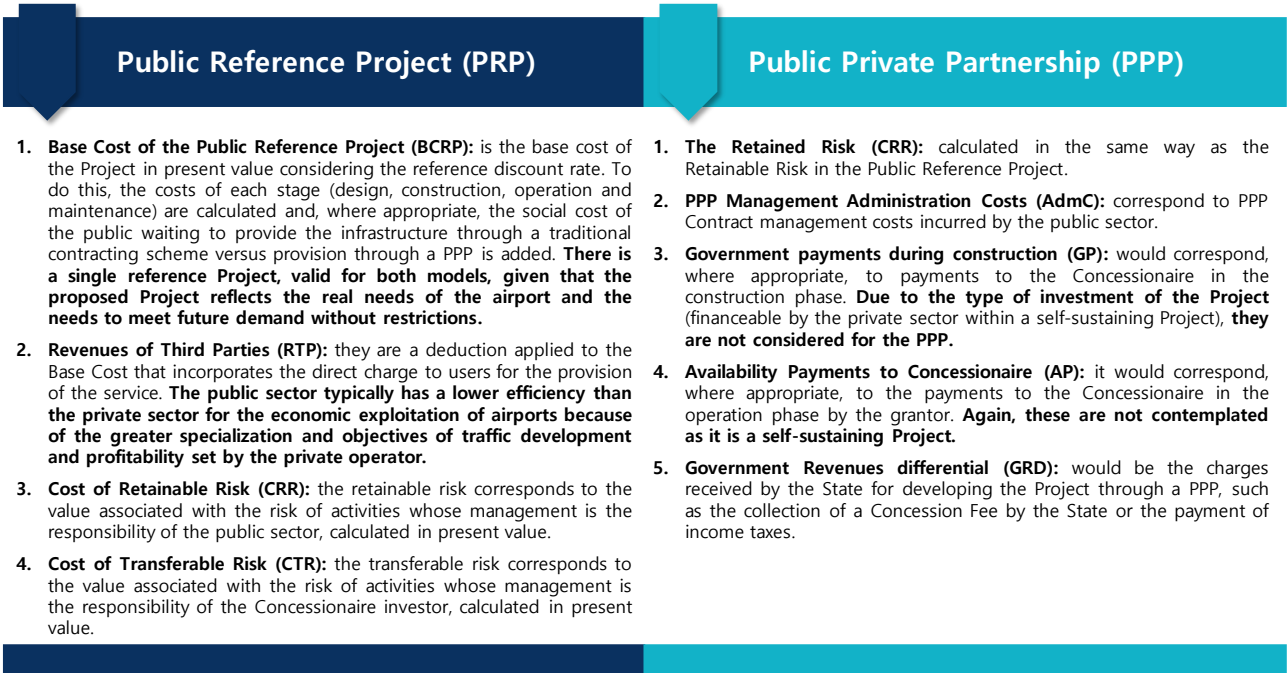
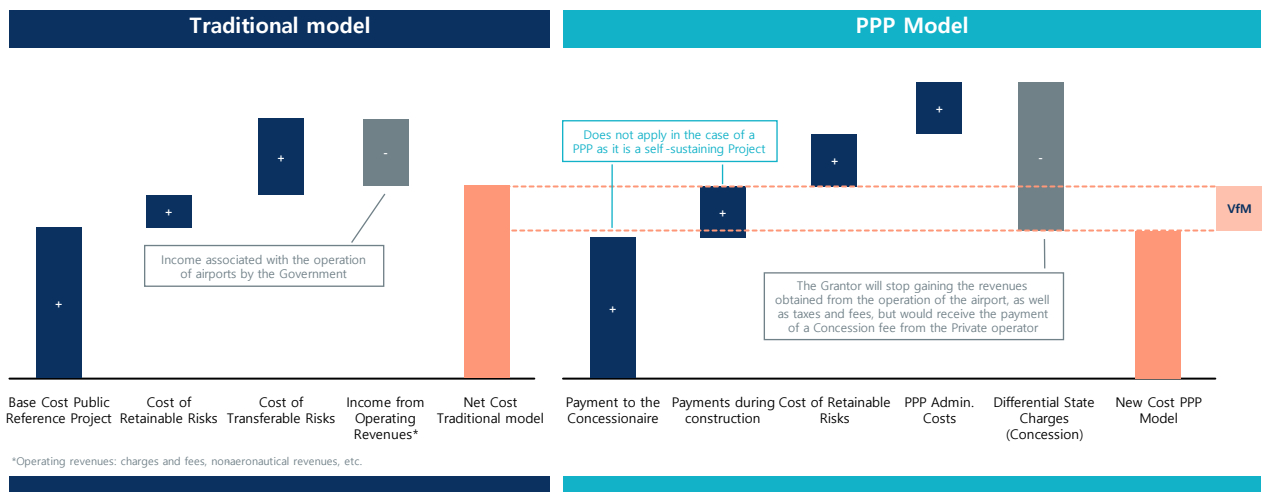


Figure 294: Public Sector Comparator (PSC)

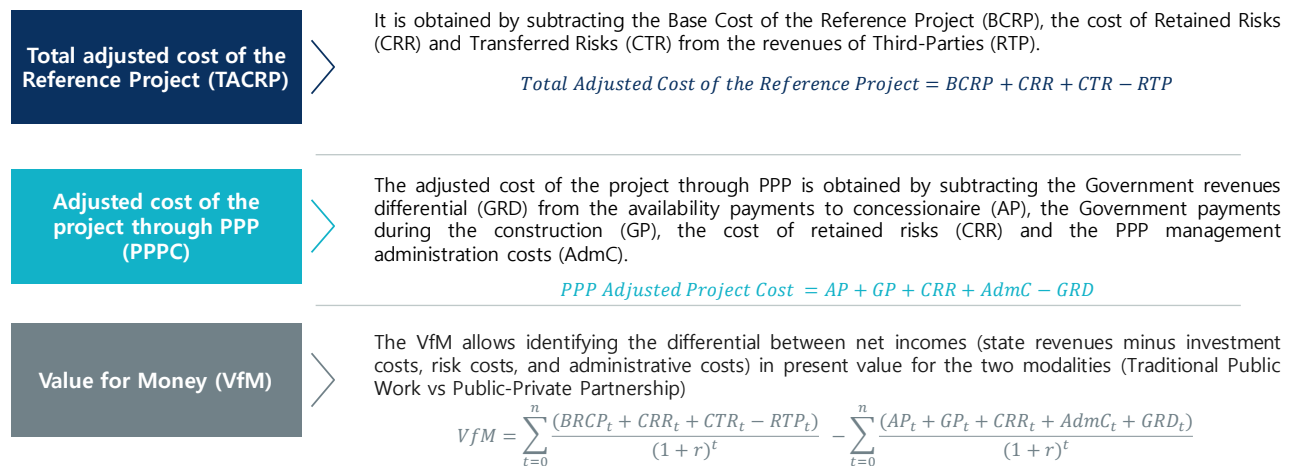
The Value for Money (VfM) is computed as the net economic impact resulting from carrying out the project as a PPP versus a traditional public works project.

The Value for Money will be positive when the present value of the expected cost for the Government carrying out the project as PPP is lower than the cost resulting from executing the project through traditional public work. Such economic impact can be positive because of the efficiencies brought by the private investor or by the project risks assumed by the concessionaire.



**Figure 295: Methodology Value for Money (VfM)**

The calculation of the Value for Money is based on the premise of budget availability for project execution by the Public. This premise is conservative, as it assumes a budget capacity from the Public that may not be there.



**Figure 296: Analytical calculation of Value for Money (VfM)**

There are some considerations for estimating the Value for Money:

- It is based on a premise of budget availability for the execution of the project by the Government when calculating the traditional model. The lack of resources on the part of the grantor or the budgetary capacity of the State to undertake the investments required to guarantee operational safety and meet future demand are one of the reasons that merit the implementation of the project through PPPs.
- For the calculation, the parameters (revenues, operating expenditures, PPP Fee, etc.) have been utilized in constant prices.
- In this case, the calculation of the present value of each one of the components have been carried out using as discount rate of KAA cost of debt of 9.09%



### 8.2.1.1 Assessment of Retainable Risk (CCR) and Transferable Risk (CTR)

Based on the Risk Matrix detailed earlier and the allocation of risks (retained, transferred, or shared), the quantification and monetary valuation of said risks is carried out.

For this monetary valuation, the following is required:

1. **Obtaining the values of the P5/P50/P95 percentiles for each of the risks** using statistical inference techniques (application of the Chi-square probability function), where P5 represents an "ideal" scenario for project execution, P50 represents the "natural" state of execution of the project and P95 a worst-case scenario with a high probability of occurrence.
2. **Obtaining the reference economic magnitudes of the project** on which the impacts of each of the risks will be applied according to where their impact occurs. The present value or NPV of the reference magnitudes of the project have been obtained using the discount rate of 9.09% (KAA cost of debt). These magnitudes are the following:

Economic Magnitudes of the Project	Definition	Base value (USD)
The total cost of the initial investment (Capex)	It is used to assess the impact on construction cost overruns.	869.063.818
The total income of the Project (Revenues)	It is considered to assess several risks such as (i.e.) the risk of demand or the lack of availability of airports.	2.995.855.993
The total expenses of the Project (Opex)	It is considered to assess several risks such as (i.e.) the risk of demand or the lack of availability of airports.	1.089.151.544
The total financial expenses of the Project	Serves to assess the risk of an increase in interest rates or the financial costs of the Project.	305.257.856
The gross margin of the Project	Serves to assess different risks such as (i.e.) the early expiration of the concession contract.	1.906.704.449
Cashflow of the project in the middle of the concession	It is considered to assess risks such as (i.e.) "political" force majeure events which could terminate the concession contract	953.352.225

**Figure 297: Economic Magnitudes of the Project considered for the cost quantification of the different risks**

3. **Assignment of the appropriate magnitude of reference** to each risk and calculation of the impact for each of the parties (retainable risk vs transferable risk).

Once these steps have been carried out, it is possible to obtain the application magnitudes that will feed the analytical formulation previously exposed and thus obtain the result of the project's Value for Money.

$$\text{Risk value by percentile} = RA \times PVRC \times IR \times PO$$

Where:

- **RA**: Risk allocation weighting percentage (retained vs transferred)
- **PVRC**: Present value of the reference cost applied to each risk
- **IR**: Percentage of impact risk according to percentile
- **PO**: Probability of occurrence according to percentile

**Figure 298: Risk cost by percentile calculation**

The results for the P5/P50/P95 percentiles of both transferable (CTR) and retainable (CRR) are:

Risk Assessment	P5 (USD)	P50 (USD)	P95 (USD)
Cost of Transferable Risks (CTR)	272.930.956	1.218.755.532	4.105.346.835
Cost of Retainable Risks (CRR)	148.384.080	525.707.783	1.570.478.661

Figure 299: Transferable (CTR) and Retainable (CRR) risks values for P5/P50/P95

#### 8.2.1.2 Calculation of the base cost of the reference project (BCRP)

The base cost of the reference project (BCRP) represents the net present value of the expected costs for the public sector articulated in the PRP, during the life cycle of the project.

The base cost of the project represents an estimate of the business plan calculations outlined earlier if KAA operates JKIA airport. The forecasted traffic demand and the expectations for aeronautical revenues will remain consistent regardless of the operator. However, the optimization of commercial revenues, cost efficiencies and enhancements in the investments – such as improved contracts – that typically accompany operation by a private investor would not be realized at the airport.

In addition to the base cost of the project, the cost of public financing must be considered. The cost have been estimated based on the following assumption:

- **Public financing:** it has been considered that the public sector would have budget restrictions that would not allow it to face the payment of all the works at the time of their execution, for which it would need to borrow funds.

PPP Base Cost (USD)	Initial investment	Replacement investments	Opex	Public Financing	BCRP Total
Nominal prices	1.774.504.575	547.790.920	5.585.379.456	568.506.006	8.476.180.958
<b>Present value</b>	<b>952.814.414</b>	<b>136.740.970</b>	<b>1.317.998.514</b>	<b>305.257.856</b>	<b>2.712.811.755</b>

Figure 300: Calculation of the base cost of the reference project (BCRP)

#### 8.2.1.3 Income from third parties (RTP)

The income from third parties (RTP) corresponds to the existing or potential revenues that the Government is collecting or could collect if it executed the project directly.

In this case, it would correspond to the **aeronautical and commercial revenues (incl. aero related revenues) of the airport.**

Typically, the public operator (State/Government) is less efficient than the private operator in generating commercial income, as mentioned before. Commercial incomes have been estimated for both cases, and the results indicate that the efficiency of public operator would be ~90% that of a private operator.

The present value of the income from third parties for the Government is 2.674.538.771 USD

8.2.1.4 Calculation of the total adjusted cost of the reference project (TACRP)

The total adjusted cost the reference project (TACRP) is obtained by subtracting the revenue of third parties (RTP) from the sum of the base cost reference project (BCRP), the cost of transferable risks (CTR) and the cost of retained risks (CRR)

	Percentile 5	Percentile 50	Percentile 95
<b>Base cost of the reference Project (BCRP)</b>	2.712.811.755		
<b>Cost of transferable risks (CTR)</b>	272.930.956	1.218.755.532	4.105.346.835
<b>Cost of retainable risks (CRR)</b>	148.384.080	525.707.783	1.570.478.661
<b>Revenues from third parties (RTP)</b>	2.674.538.771		
<b>Total adjusted cost of the reference Project</b>	459.588.020	1.782.736.299	5.714.098.480

Figure 301: Total Adjusted Cost of the Reference Project (TACRP) result

The project would have an estimated net cost of 1.8bn USD for the government if normal state of risks materialized (P50) while costing the government 460 MUSD in an ideal scenario (P5) and 5,7 bn USD in a worst-case scenario.

8.2.1.5 Calculation of the PPP adjusted project cost (PPPC)

The adjusted cost of the project through PPP is obtained by subtracting the Government revenues differential (GRD) from the sum of the availability payments to concessionaire (AP), the Government payments during the construction (GP), the cost of retained risks (CRR) and the PPP management administration costs (AdmC).

- 1. Payments for availability to the concessionaire (AP):** It refers to the periodic financing that the PPP contractor, in this case the concessionaire, may receive from the public entity, in this case the government, during the execution of the project. As the project is self-financed it will not require public contributions.
- 2. Public sector payments in the construction stage (GP):** The concept applies the same premises as those mentioned earlier in the case of the AP, with the exception that the payments by the

public (government) are executed during the construction stage, as the project is self-financed it does not require public contributions or payments.

3. **Cost of retainable risks (CRR):** Calculated in the same way as the retainable risks in the PRP.
4. **Transaction and/or administration costs of the PPP (AdmC):** These costs refer to those incurred by the public entity to structure, tender, and monitor and follow up on the PPP contract. The structuring cost is pending calculation and inclusion in the transaction and administrative costs, but its potential impact is minimal and would not alter the results of the VfM calculation.
5. **Government revenues differential (GRD):** Refers to the difference in government revenues resulting from the implementation of the project via PPP scheme compared to a baseline scenario where the project is financed by the public sector.

	Percentile 5	Percentile 50	Percentile 95	Definitions of results
Payments for availability to the concessionaire (AP)	0			In the Project there are no payments to the Concessionaire in the operation phase
Public sector payments in the construction stage (GP)	0			In the Project there are no payments to the Concessionaire in the construction phase
Cost of retainable risks (CRR)	148.384.080	525.707.783	1.570.478.661	Calculated in the same way as the retainable risk in the PRP
Transaction and/or administration cost of the PPP (AdmC)	3.901.437			Management cost of the PPP contract consider both structuring and supervision payments. The structuring cost is <i>Directional</i>
Government revenues differential (GRD)	428.196.636			Charges received by the State for developing the Project through a PPP (PPP Fee + Taxes differential + [Revenues – (Capex + Opex)] <sub>Public</sub> )
<b>PPP Adjusted Project Cost (PPPC)</b>	<b>- 275.911.119</b>	<b>101.412.585</b>	<b>1.146.183.462</b>	<b>Negative value of PPPC means that payments received by the Public from the Private are higher than cost of the risks retained by Public</b> <b>Positive value of PPPC means that payments received by the Public from the Private are lower than cost of the risks retained by Public</b>

Figure 302: Calculation of the PPP adjusted project cost (PPPC)

### 8.2.2 Determination of Value for Money (VfM)

The value for money corresponds to the difference in total adjusted costs between the public provision (TACRP) and the private provision of the infrastructure (PPPC).

By obtaining a positive result, carrying out the project through a PPP generates more value for the Government than carrying it through a public Traditional Work model in any of the potential risk materialization.




	Percentile 5	Percentile 50	Percentile 95
Total adjusted costs of the reference Project	459.588.020	1.782.736.299	5.714.098.480
PPP Adjusted Project cost	- 275.911.119	101.412.585	1.146.183.462
Value for money (VfM)	735.499.139 	1.681.323.714 	4.567.915.018 

Figure 303: Determination of value for money (VfM)

## 9 Legal and Regulatory Due Diligence

### 9.1 Introduction

- ALG has been selected to assist the Kenyan Airports Authority (the "KAA" or the "Client") in relation to the feasibility assessment, transaction structuring and market sounding in relation to a potential public-private partnership ("PPP") to be competitively procured and awarded by KAA to a private partner for the modernisation of the Jomo Kenyatta International Airport (the "Project").
- Gide Loyrette Nouel A.A.R.P.I ("Gide"), in association with Kaplan & Stratton Advocates ("Kaplan & Stratton" or the "Local Counsel", together with Gide, the "Legal Consultant"), is acting as subcontractor to ALG Global ("ALG") to provide advisory services in relation to the legal aspects of the Project.
- The present revised legal due diligence report (the " Report") consists of the analysis of the legal and regulatory framework applicable to the Project. The due diligence of the contractual documents made available by KAA in relation to the existing operation of JKIA will be the subject of a separate report. The Report follows and updates the draft report dated 11 January 2024.
- The purpose of this Report is to identify and draw to the attention of the Client the key points and issues which have emerged from our legal due diligence investigation to date rather than to provide a detailed summary of all of the documents and regulations we have reviewed in the course of that investigation. Accordingly, an index of the documents reviewed for purposes of this Report is attached to this Report as Schedule 1 (the "Reviewed Documentation").

### 9.2 Reliance – Confidentiality

- This Report is strictly confidential and subject to legal professional privilege. It has been prepared for the exclusive use of the Client in connection with the Project and for no other purpose and is not to be relied upon by, nor is any responsibility to, any other person.
- This Report may not be copied to, distributed to, or relied upon for any purposes by, any person other than the Client without the prior written consent of Gide.

### 9.3 Limitations, assumptions and reservations

This Report is subject to the limitations, assumptions and reservations stated in Schedule 2.

### 9.4 Legal definitions

Defined terms in this Report and its Schedules have the meanings set out below.

All other capitalized terms used in this Report and not defined below or elsewhere in the Report shall have the meaning ascribed to them in the relevant Reviewed Documentation.

<b>Act of Parliament</b>	means a law made by the Parliament of Kenya.
<b>Aerodrome Certificate</b>	has the meaning given to this term in Section 9.7.2.4.1 of this Report.
<b>Aircraft Handling Charge</b>	has the meaning given to this term in Section 9.7.2.5.1 of this Report.
<b>Air Navigation Charge</b>	has the meaning given to this term in Section 9.7.2.5.1 of this Report.
<b>Air Quality Regulations</b>	has the meaning given to this term in Section 9.10.1 of this Report.
<b>Airworthiness Regulations</b>	has the meaning given to this term in Section 9.10.1 of this Report.
<b>ALG</b>	means ALG Global.
<b>Arbitration Act</b>	has the meaning given to this term in Section 9.14 of this Report.
<b>Arbitration Rules</b>	has the meaning given to this term in Section 9.14 of this Report.
<b>Attorney-General</b>	means the head of the Law State Office of Kenya.
<b>BIT</b>	has the meaning given to this term in Section 9.13.2 of this Report.
<b>Boarding Bridge Charge</b>	has the meaning given to this term in Section 9.7.2.5.1 of this Report.
<b>Cabinet Secretary</b>	has the meaning given to this term in Section 9.6.2.1 of this Report.
<b>CBK Act</b>	has the meaning given to this term in Section 9.13 of this Report.
<b>Chicago Convention</b>	has the meaning given to this term in Section 9.7.1.1 of this Report.
<b>Committee</b>	has the meaning given to this term in Section 9.6.2.1 of this Report.
<b>Companies Act</b>	has the meaning given to this term in Section 9.13 of this Report.
<b>Competition Act</b>	has the meaning given to this term in Section 9.11.1 of this Report.
<b>Contracting Authority</b>	has the meaning given to this term in Section 9.6.2.1 of this Report.
<b>Data Room</b>	has the meaning given to this term in Section ▪ of this Report.
<b>Directorate</b>	has the meaning given to this term in Section 9.6.2.2 of this Report.
<b>Report</b>	has the meaning given to this term in Section ▪ of this Report.



<b>EIA Regulations</b>	has the meaning given to this term in Section 9.10.1 of this Report.
<b>ELRC Act</b>	has the meaning given to this term in Section 9.11.1 of this Report.
<b>Employment Act</b>	has the meaning given to this term in Section 9.11.1 of this Report.
<b>En-route Charge</b>	has the meaning given to this term in Section 9.7.2.5.1 of this Report.
<b>Environment Authority</b>	has the meaning given to this term in Section 9.10.2 of this Report.
<b>Environmental Management and Co-ordination Act</b>	has the meaning given to this term in Section 9.10.1 of this Report.
<b>Final Report</b>	has the meaning given to this term in section 1.2 of Schedule 2 of this Report.
<b>Finance Act</b>	has the meaning given to this term in Section 9.13 of this Report.
<b>Foreign Investment Act</b>	has the meaning given to this term in Section 9.13 of this Report.
<b>Fuel Charge</b>	has the meaning given to this term in Section 9.7.2.5.1 of this Report.
<b>Gazette</b>	means the official journal of the government of the Republic of Kenya.
<b>Gide</b>	means Gide Loyrette Nouel A.A.R.P.I.
<b>Government</b>	means the government of the Republic of Kenya.
<b>Investment Promotion Act</b>	has the meaning given to this term in Section 9.13 of this Report.
<b>IT Act</b>	has the meaning given to this term in Section 9.13.5 of this Report.
<b>KAA or Client</b>	means the Kenyan Airports Authority.
<b>KAA Act</b>	has the meaning given to this term in Section 9.7.2.1 of this Report.
<b>KAA (Vesting) Order, 1994</b>	has the meaning given to this term in Section 9.9.1 of this Report.
<b>KCAA</b>	means the Kenya Civil Aviation Authority.
<b>Kenya</b>	means the Republic of Kenya.
<b>Labour Institutions Act</b>	has the meaning given to this term in Section 9.11.1 of this Report.
<b>Labour Relations Act</b>	has the meaning given to this term in Section 9.11.1 of this Report.

<b>Land Act, 2012</b>	has the meaning given to this term in Section 9.9.1 of this Report.
<b>Landing Fee</b>	has the meaning given to this term in Section 9.7.2.5.1 of this Report.
<b>Land Registration Act, 2012</b>	has the meaning given to this term in Section 9.9.1 of this Report.
<b>Legal Consultant</b>	has the meaning given to this term in Section 9.9.1 of this Report.
<b>Local Counsel or Kaplan &amp; Stratton</b>	means Kaplan & Stratton Advocates Law Firm.
<b>Minister of Roads and Transports</b>	means the minister in charge of roads and transports in Kenya.
<b>Nairobi City County Trade Licensing Act, 2019</b>	has the meaning given to this term in Section 9.9.1 of this Report.
<b>National Construction Authority Act, 2011</b>	has the meaning given to this term in Section 9.9.1 of this Report.
<b>National Employment Authority Act</b>	has the meaning given to this term in Section 9.11.1 of this Report.
<b>Noise Pollution Regulations</b>	has the meaning given to this term in Section 9.10.1 of this Report.
<b>Parking Fee</b>	has the meaning given to this term in Section 9.7.2.5.1 of this Report.
<b>Passenger Service Charge</b>	has the meaning given to this term in Section 9.7.2.5.1 of this Report.
<b>Petition Committee</b>	has the meaning given to this term in Section 9.6.2.11 of this Report.
<b>Physical and Land Use Planning Act, 2019</b>	has the meaning given to this term in Section 9.9.1 of this Report.
<b>PPP</b>	means Public-Private-Partnership.
<b>PPP Act</b>	has the meaning given to this term in Section 9.6.1 of this Report.
<b>PPP Contract</b>	means the contract organising the PPP.

<b>PPP Regulations, 2014</b>	has the meaning given to this term in Section 9.6.1 of this Report.
<b>Pre-qualification Committee</b>	Has the meaning given to this term in Section 1.1.1.1(a) of this Report.
<b>Private Partner</b>	has the meaning given to this term in Section 9.6.2.1 of this Report.
<b>Project</b>	has the meaning given to this term in this Report.
<b>Proposal Evaluation Team</b>	has the meaning given to this term in Section 9.6.2.9 of this Report.
<b>Proposed PPP Regulations, 2022</b>	has the meaning given to this term in Section 9.6.1 of this Report.
<b>Public Procurement Act</b>	has the meaning given to this term in Section 9.6.1 of this Report.
<b>Public Service Commission Regulations</b>	has the meaning given to this term in Section 9.11.1 of this Report.
<b>Regulations of Wage Order</b>	has the meaning given to this term in Section 9.11.1 of this Report.
<b>Reviewed Documentation</b>	has the meaning given to this term in this Report.
<b>State Corporation</b>	means a corporate body established by an Act of Parliament.
<b>State Corporations Act</b>	has the meaning given to this term in Section 9.6.1 of this Report.
<b>Waste Regulations</b>	has the meaning given to this term in Section 9.10.1 of this Report.

## 9.5 Legal summary

### 9.5.1 Institutional framework

#### 9.5.1.1 Institutional framework applicable to PPP

The key institutions involved in the development of PPPs are the following:

- a) The Cabinet Secretary responsible for matters relating to finance, which is responsible for, inter alia, drafting regulations under the PPP Act;

- b) The Committee which is in charge of, inter alia, approving feasibility studies, and negotiating contracts terms;
- c) The Directorate which is in charge of providing support to assist the Contracting Authority in the preparation, conclusion and execution of PPP Contracts.

Please refer to Section 9.6 for more information on the institutional framework applicable to the development of the Project as a PPP.

#### 9.5.1.2 Institutional framework applicable to Airports and Civil Aviation

The following institutions will play a key role in relation to the regulation and the exercise of airport activities within the framework of the Project:

- a) Ministry of Roads and Transports, which is, inter alia, responsible for determining civil aviation policies and making regulations. It can give directions of general nature to KCAA and KAA regarding their operations and approve any individual capital work for the purposes of KAA which the estimated cost exceeds ten million shillings. As such, the Project will be subject to the prior approval of the Minister of Roads and Transports. The CS is also competent to approve charges levied by KAA or upon commencement of the PPP Contract, the charges levied by the Private Partner.
- b) Kenya Civil Aviation Authority (KCAA), which is the public body in charge of the development and the management of civil aviation and the regulation and operation of a safe civil aviation system (including airports) in Kenya; and
- c) Kenya Airports Authority (KAA), which is the public body instituted by the KAA Act in charge of administering, controlling and managing aerodromes. KAA is competent to, inter alia, construct, operate and maintain aerodromes and other related facilities (including JKIA). KAA may lawfully enter into a PPP Contract with the Private Partner.

Please refer to Section 9.7.2.2 for more information on the airports and civil aviation institutional framework.

#### 9.5.1.3 Institutional Framework applicable to Property, Land, Planning and Construction

The following institutions have a significant role under the framework applicable to Property, Land, Planning and Construction :

- a) The National Land Commission which is responsible, inter alia, for monitoring and overseeing land use planning throughout the country;
- b) The Cabinet Secretary for the time being responsible for matters related to physical and land use planning which is responsible for, inter alia, formulating a national policy on physical and land use planning and approval and oversighting over the preparation of national physical land use development plans; and

- c) The National Construction Authority established under the Construction Act, which is responsible for overseeing the construction industry and coordinating its development. Please refer to Section 9.9 for more information on the institutional framework applicable to Property, Land, Planning and Construction.

#### 9.5.1.4 Environmental Aspects

The National Environment Management Authority is in charge of the general supervision and co-ordination over all matters relating to the environment and is the main public authority with respect to the implementation of all policies relating to the environment. It will be competent to deal with the environmental aspects of the Project.

#### 9.5.1.5 Institutional Framework applicable to investments

The Kenya Investment Authority established under the Investment Promotion Centre Act (Cap. 485) is responsible for promoting and facilitating investment in Kenya, and is in particular in charge of issuing investment certificates and assisting the investors in obtaining any licences and permits.

For more information on the role of the Kenya Investment Authority and the institutional framework applicable to the investments in Kenya please refer to Section 9.13.

### 9.5.2 Legal framework

#### 9.5.2.1 Procurement

##### A. Generalities

Preliminary note: the assessments and recommendations made under this Report are based solely on the regulations currently in force i.e. the PPP Regulations, 2014. We advise to follow up closely the drafting and adoption of the Proposed PPP Regulations, 2022 (currently under consideration for adoption) as this may have an impact on the procurement process of the Project (depending on when the Proposed PPP Regulations 2022 will actually be adopted and will enter into force). Please refer to Section 9.6.2.1 for more information.

Based on the applicable regulations and according to our understanding of the nature and characteristics of the Project:

- the Project would qualify as a PPP under the PPP Act;
- KAA is a State Corporation and therefore would qualify as a Contracting Authority operating at the national government level under the PPP Act, and thus be entitled to enter into a PPP Contract; and
- the Private Partner shall take the form of a project company incorporated in Kenya for the purpose of the performance of the PPP Contract.

##### B. Procurement of the PPP Contract

- a) Pre-procurement procedure: before launching a tender process in relation to a PPP project, the following steps shall be completed:
1. Kenya Vision 2030 provides for the rehabilitation and maintenance of airstrips and airport expansion and modernization. As such, the Project falls within the national development agenda. However the Project is not yet included in the approved PPP priority project list (which is a condition to initiate the subsequent phase of development of the Project). In order for the Directorate to include the Project into the approved PPP priority project list, KAA, as the Contracting Authority, should submit the project to the Directorate for approval, together with concept notes and the main elements of the Project;
  2. a feasibility report demonstrating the "*legal, regulatory, social, economic and commercial viability*" of the project shall be carried out by the Contracting Authority; we understand that guidelines from the Directorate should be implemented under the PPP Act in order to clarify the required elements of such feasibility report; in any case, the content of this feasibility report will be substantially addressed by the content of the studies currently carried out under the consultants' assignment;
  3. the Directorate shall submit an evaluation report together with its recommendations to the Committee; and
  4. the prior approval of the Committee shall be obtained.

The four aforementioned points will have to be taken into account in the transaction timetable of the Project. Please refer to Section 9.6.2.2 for further details.

b) Procurement procedure

In accordance with international best practice, we recommend to use the competitive bidding procedure which, through open competition, is the most likely to maximise the value-for-money for the Contracting Authority. The open tender is the procurement method by default under the applicable regulations. The other procurement methods are restricted bidding, direct procurement and privately-initiated proposals; however certain conditions and procedural requirements must be met in order for a contracting authority to procure a contract through any of these methods. Generally we do not advise to use such methods, as they deprive the Contracting Authority from fully benefiting from the competitive pressure and/or can exclude bidders which have not been preselected by the Contracting Authority but would have met the qualification criteria to participate to an open bidding process).

We recommend that the competitive bidding be structured in two phases, as is permissible under the PPP regulations: (i) a prequalification phase (preceded by a public, open call for prequalification applications) in order to shortlist candidates based on technical, financial and legal criteria and (ii) a tender phase where prequalified bidders will submit their technical and financial bids.

c) Advertisement of the procurement

Although this is not provided for in the PPP Act, the Contracting Authority should expand its advertising for competitive bidding under the PPP Act beyond national publications, using international journals and online platforms.

d) Prequalification and pre-selection

- The request for qualifications should detail the various legal, technical and financial criteria that each applicant needs to meet. The PPP Act does not provide specific provision on the possibility for any applicant to request clarification on the request for qualification. This can however be provided for under the tender documentation. Please refer to Section 9.6.2.5 for more information.
- Preselection: the tender rules applicable to the procedure will essentially be set out in the tendering documents. However, the Contracting Authority will have to ensure compliance with specific restrictions provided under the PPP Act, regarding (i) the cancellation of the tender process which can occur only in specific circumstances, (ii) the rules applicable to the consortiums, and (iii) the discussions with the prequalified bidders during the competitive dialogue.

e) Evaluation and selection of the bids

- f) The evaluation system provides to evaluate (i) first the technical bids according to a pass/fail approach or scoring system, then (ii) to decide between the financial offers of bidders whose technical bids have passed the pass/fail test. The evaluation and award criteria are not specifically addressed in the PPP Act or PPP Regulations; they will need to be addressed in the tender documentation.

g) Content of PPP contract

Other than the minimum contractual provisions required under the PPP Act as set out in Section 9.6.3 (such as a maximum duration of 30 years), the Contracting Authority is free to determine the contents of the contractual provisions of the PPP agreement.

#### 9.5.2.2 Airports and Civil Aviation

- A. International Framework: Kenya is a party to the major international conventions regulating civil aviation worldwide and has signed air services agreements with most of the countries.
- B. Aerodrome certification: the existing airport certificate may not be transferred to the Private Partner. The Private Partner will therefore have to apply for a new aerodrome certificate. The timing for the issuance of the aerodrome certificate by KCAA will have to be taken into account as the Private Partner cannot operate the airport without an aerodrome certificate. The Private Partner's obligation to obtain, maintain, renew and comply with the airport certificate will have to be provided for in the PPP Contract.. Please refer to Section 9.7.2.4 for further details on the airport certification process.
- C. Economic Regulation of Airports:
- Prerogatives of the CS and KCAA in respect of charges: We understand from the Civil Aviation Act, the KAA Act and the applicable Regulations that (i) KAA has power to collect landing and parking fees, airport use fees, passenger service charges and other airport services-related fees and (ii) KCAA has power to collect air navigation charges, en-routes charges and other civil aviation-related charges. The charges are further identified in Section 9.7.2.5.



Under the KAA Act, charges levied by KAA must be approved by the CS. By virtue of the delegation of KAA's duties, the charges levied by the Private Partner (and any revision thereof) will need to be approved by the CS. The KAA Act could be amended to remove the requirement of the CS's approval, so that the charges are exclusively regulated by the PPP Contract ; however this will require an Act of Parliament, which may take time to obtain and the outcome is not entirely under the Government's control.

If the KAA Act is not amended as per above, this can be mitigated through the PPP Contract: under the PPP Contract, if the CS does not approve charges and revisions thereof which are set accordance with the terms of the PPP Contract, this would qualify as a change in law or material adverse government action and give rise to pecuniary relief for the Private Partner for loss of revenues / additional costs incurred as a result.

Also, KCAA is empowered pursuant to the Civil Aviation (Aerodrome Certification, Licensing and Registration) Regulations to review airport charges and prescribe maximum limits. Such Regulations could be amended through new regulations by the CS in order to remove such prerogative on the part of KCAA where the charges are separately regulated by contract with the competent authority (i.e. the PPP Contract with KAA in the present case). If the Regulations are not amended, this can also be mitigated through the PPP Contract: if KCAA elects to prescribe maximum charges in contradiction with the maximum charges set forth in the PPP Contract, this would need to be treated in the PPP Contract as relief event entitling the Private Partner to compensation for extra costs/loss of revenues.

- APSC: the Air Passenger Service Charge (APSC) payable for international passengers under the APSC Act is currently set at USD 50 / pax and allocated as follows : USD 30 for KAA, USD 10 for KCAA and USD 10 for the Tourism Promotion Fund (TPF). We understand that the APSC is paid by the airlines through IATA and collected by KRA which then redistributes the APSC to KAA, KCAA and TPF as per the allocation above. However once the PPP Contract starts, it is the Private Partner which should benefit from the USD 30 portion currently distributed to KAA in relation to JKIA (given it will be taking over KAA's duties).

Designating the Private Partner as the recipient of KAA's portion of the PASC will require legislative amendment to the APSC Act and is therefore not the preferred legal option ; also, from a bankability perspective, the Private Partner will require to collect directly the PASC from airlines (and not depend on KRA to collect and remit the portion owed to the Private Partner).

However under the APSC Act, the CS is empowered to change by notice the amount and apportionment of the APSC. The CS could therefore reduce the PASC from USD 50 to USD 30 / pax and subsequently amend the allocation of this new PASC as follows: USD 10 for

KCAA, USD 10 for TPF and 0 for KAA. Correlatively, the Private Partner is entitled to prescribe charges for its services by virtue of its delegation of duties under the KAA Act as well as pursuant to the Civil Aviation (Aerodrome Certification, Licensing and Registration) Regulations. The Private could therefore levy a new charge in an amount equivalent to the USD 30 portion of the APSC previously allocated to KAA (provided that such charge is not referred to as APSC and provided also that such charge and any revision thereof will be subject to the CS approval as per above).

Please refer to Section 9.7.2.5.2 for further details.

### 9.5.2.3 Government Guarantee

The Private Partner and its lenders are likely to require from a bankability perspective a Sovereign guarantee to backstop KAA's payment obligations as Contracting Authority under the PPP Contract (in particular the termination payments). This requirement will depend on the assessment by the private partner and its lenders of the creditworthiness of KAA and the magnitude of the payment obligations of KAA under the PPP Contract.

In addition to securing payment obligations of KAA, the Private Partner and its Lenders may also require certain specific undertakings and/or guarantees by the Government in support of the implementation of the Project, for example in respect of Kenya Airways which is wholly-owned by the Government and is an anchor client of JKIA.

The issuance of a Government guarantee shall in principle be approved by Parliament. However we understand from the Local Counsel that considering recent engagements with government authorities, the Government of Kenya may be reluctant to issue any sovereign guarantees in the next 3 to 5 years. We understand however that the Government has issued Letters of Support for past projects, which provided for the payment by the Government of a transfer indemnity in the event that political events caused the contracting public agencies to breach their payment obligations. In any event, the extent of the Government support to cover for risks borne by the Government as well as the binding nature of such letter would need to be discussed and confirmed on a case-by-case basis.

Should the issuance of a Government guarantee or letter of support be rejected by the Government despite being required for the bankability of the Project, the Local Counsel has advised that the Government could co-sign the PPP Contract (alongside with KAA) in order to be jointly liable with KAA for KAA's payment obligations under the PPP Contract. Such joint liability embedded in the PPP Contract would not be construed as a specific Government "guarantee" within the meaning of the Public Finance Management Act. However the Local Counsel is not aware of any past project where this approach has

been implemented. As a Government guarantee is likely to be required by investors and lenders as a pre-condition to their engagement in the Project, we would recommend discussing with the Government what form of support it is willing to provide.

Please refer to Section 9.8 for further details on government guarantee.

#### 9.5.2.4 Property, Land, Planning and Construction

##### A. Overview of land ownership by KAA:

- KAA's title over the airport site and assets: under the KAA Act and the KAA (Vesting) Order, KAA has title to the lands and property that are necessary or useful for KAA to carry out its functions. KAA should therefore in principle have necessary title over (i) JKIA, and (ii) subject to Government's prior approval, other land or asset necessary for the Project.
- Transfer of the Site and Assets to the Private Partner: The right to occupy the lands and assets necessary for the Project may be granted under the PPP Contract. It is therefore not mandatory for KAA and the Private Partner to enter into a lease agreement, separate from the PPP Contract (which could lead to registrations fees).

However, entering into a separate lease may be necessary to convey certain interests in relation to the site that may be required by the Private Partner over the land, as concession contracts typically do not convey title in real property but are simply a contractual permission to use the land. Also it is expected that most if not all leases currently entered between KAA and other parties (commercial entities and public administrations such as KCAA) in respect of the occupation and use of JKIA space will need to be transferred from KAA to the Private Partner; therefore this would require the Private Partner to obtain the same land title as KAA benefits from and therefore may require KAA and the Private Partner to enter into a separate lease which shall then be registered with the Land Registry (and existing lessees would become sub-lessees with the Private Partner as their lessor). The specific approach, whether through lease or direct concession, can be further refined depending on the requirements of the Private Partner and its lenders. Please refer to Section 8.2.2 and the separate contractual due diligence report for more information.

- B. Permitting requirements: The Project will be subject to (i) development permission in accordance with the relevant plans and legislations from the Cabinet Secretary responsible for matters related to physical and land use planning, (ii) registration with the National Construction Authority of the construction works, which should be awarded to a registered contractor. Please refer to Section 9.3 for more information.
- C. Land acquisition (if applicable): If the project requires land acquisition, KAA would have the right to engage in agreements with other parties to access the land. KAA could also seek authorization for compulsory acquisition of the land. The process and costs relating to land acquisition (as well

as the compliance thereof with international E&S standards) would have to be anticipated in the structuring of the transaction.

#### 9.5.2.5 Environmental Aspects

##### (A) Environmental impact assessment

- Preparation of project report: the Private Partner will have to prepare a project report of the likely environmental effect of the Project and submit it to the Environment Authority, which shall either (i) decide whether a comprehensive project report shall be prepared and/or an environmental impact assessment study report shall be conducted or (ii) issue the proponent with an approval to proceed with the Project and issue the required licence.
- Environmental impact assessment study: should the Environment Authority decide so after completion of the project report and/or the comprehensive project report, the Private Partner may be subject to conducting an EIA and submitting it to the Environment Authority so as to be granted the environmental impact licence.
- Transfer of any potential existing EIA license: at this stage, we have not been provided with any information in relation to any existing environmental impact assessment licence. Confirmation should be sought with KAA in this regard. As the case maybe, and without prejudice to the obtaining of any new environmental impact assessment licence for the Project, transfer of such potential existing environmental impact assessment licence should be made to the Private Partner so as to ensure that the Private Partner complies with it.
- Annual environmental audit reports: after submitting the EIA, the proponent will have to prepare an environmental audit report and submit it to the Environment Authority annually and carry out self-auditing study on a regular basis. Such environmental audit report's obligations will be provided for in the PPP Contract and carried out by the Private Partner.

Please refer to Section 9.10.3.1 for further details on the environmental impact assessment process.

##### (B) Environmental quality standards

In addition to any international environmental standards which may apply to the Project, as referred to in the E&S report, the PPP Contract will have to provide for the compliance with the relevant environmental quality obligations under Kenyan law. Please refer to Section 9.10.4 for further details on such environmental quality standards.

#### 9.5.2.6 Tax

The Private Partner is likely to have tax obligations and/or requirements arising from the following taxes:

- Income tax: the Private Partner, as a Kenya incorporated company, will be taxable on income accrued or derived within or outside Kenya at (presently) 30% of its gains or profits. It will also be subject to withholding taxes on the revenues paid to non-resident companies, as listed in Section 9.12.1 below. Should the Project's capital investment is at least 10 billion shillings, the conclusion of a special operating framework arrangement with the Government of Kenya may be considered.
- Stamp duty: while implementing the Project, the Private Partner will be subject to the payment of the relevant stamp duty for any Project documents relating to property in Kenya. Please refer to Section 9.12.2 for further details.
- Value added tax: the applicable texts are clear about the application of VAT on domestic air navigation services. However, regarding international air navigation services, it should be clarified whether VAT applies on fees and charges paid for services provided in relation to international flights. Should no Kenyan laws would give sufficient comfort on that aspect, a VAT exemption or zero rated could be provided for in the special operating framework arrangement to be entered into with the Government of Kenya. Please refer to Section 9.12.3 for further details.
- Customs and excise tax: while implementing the Project, the Private Partner will have to comply with the relevant import duties. Please refer to Section 9.12.4 for further details.

#### 9.5.2.7 Labour aspects

##### (C) Generalities

- Employees as Public Sector Workers: KAA staff are considered public sector employees. The provisions of the Employment Act apply to such public sector employees (instead of regulations governing employment of civil servants).
- KAA's hiring power: KAA has the authority to hire employees necessary for its efficient functioning. These employees are hired under contracts of service, which are recognized within the scope of the Employment Act.
- Lack of special arrangements or collective agreements: KAA's employees are not covered by any special arrangements, collective agreements (as there is no such agreement registered with the Employment and Labour Relations Court), or specific terms and conditions unique to them, thus the terms and conditions of service for KAA's staff are to be interpreted in accordance with the Employment Act and their respective contracts of service. This will be in any case further reviewed as part of the separate contractual due diligence.
- Please refer to Section 11.2 for more information.

##### (D) Secondment of KAA employees

Under the PPP Act, the KAA may second employees to the Private Partner for the purpose of the Project. The Employment Act 2007 will continue to apply to the seconded employee during the secondment period. The employee so seconded shall be employed on the same or improved terms of service during the secondment period.

(E) Termination of Employment Contracts

If it were to be required, in order to legally terminate contract of service of the KAA's employees on ground of redundancy, KAA would have to comply with the different process specified in the Employment Act e.g. the notice period and the minimum declared redundant severance pay. Please refer to Section 11.5 for more information.

9.5.2.8 Investment

(F) Generalities / application for an investment certificate

Under the applicable regulations, the stakeholders shall be entitled to apply for an investment certificate, that may benefit the Private Partner and the stakeholders by facilitating the granting of licences required for the Project (as the environmental impact licence or the licence to discharge effluent), and protect the investment of the stakeholders. Please refer to Section 9.13 for more information.

(G) Foreign exchange regulations

- Transactions in Foreign Currencies: under the Central Bank of Kenya (CBK) Act, there are no restrictions on Kenyan-incorporated companies engaging in buying, selling, borrowing, lending, or settling payments in foreign currencies. These transactions must be conducted through an authorized dealer, which can include banks, bureaus, mortgage finance companies, money remittance providers, or microfinance banks licensed by the Central Bank of Kenya.
- Foreign-Controlled Companies Operating Foreign Currency Accounts: there are no specific legal provisions that restrict foreign-controlled companies incorporated in Kenya from opening and operating foreign currency accounts.
- Repatriation of Dividends or Profits: the Foreign Investment Act does not impose restrictions on repatriating dividends or profits in an authorized currency (as specified under the investment certificate), provided however that distributions to foreign shareholders of the Private Partner will be subject to a 15% withholding tax. Please refer to Section 9.13.5 for more information.

(H) Business structure

No shareholding restrictions were identified. Please refer to Section 9.13.6.1 for more information.

#### 9.5.2.9 Arbitration

Arbitration is allowed under the PPP Act and is not subject to any specific limitation. The referral of disputes to international arbitration (with a seat outside Kenya) should be provided for in the PPP contract. We would recommend the use of generally accepted rules of arbitration (e.g. the ICC arbitration rules) used in project finance transactions involving international sponsors and lenders (who will require international arbitration as part of their bankability requirements).



## 9.6 Procurement

### 9.6.1 Overview of the Kenya PPP Legal Framework

- Public Private Partnerships Act, 2021 (the "PPP Act")
- Proposed Public Private Partnerships Regulations, 2022 (the "Proposed PPP Regulations, 2022")
- Public Private Partnership Regulations, 2014 (the "PPP Regulations, 2014")
- Public Procurement and Asset Disposal Act, 2015 (the "Public Procurement Act")
- State Corporations Act CAP 446 (the "State Corporations Act")

### 9.6.2 Procurement process

#### 9.6.2.1 General principles

PPPs in Kenya are governed by the Public Private Partnerships Act, 2021 dated 9th December 2021. This Act shall apply to every PPP Contract for the financing, design, construction, rehabilitation, operation, equipping or maintenance of a project or provision of a public service undertaken as a PPP<sup>2</sup>.

The Cabinet Secretary responsible for matters relating to finance may draft regulations under the PPP Act as provided under section 89.

The PPP Act establish a Public Private Partnership Committee (the "Committee") which shall consist of (a) the Principal Secretary in the State department responsible for matters relating to finance, who shall be the chairperson; (b) the Principal Secretary in the State department responsible for matters relating to planning; (c) the Principal Secretary in the State Department responsible for matters relating to infrastructure; (d) the Solicitor-General; (e) two persons nominated by the Council of County Governors; (f) three persons, not being public officers, appointed by notice in the Gazette by the Cabinet Secretary; and (g) the Director-General, who shall be the secretary. The Committee may formulate policies on public private partnerships, and is in charge of overseeing the implementation of public private partnerships contracts<sup>3</sup>.

We note that there are proposed Public Private Partnerships Regulations, 2022 that have however not yet come into force (hereinafter referred to as "Proposed PPP Regulations, 2022"). We understand from enquiries made by Local Counsel that the timing for such update is uncertain. However, pursuant to the Part "Savings and Traditional Provisions" of the PPP Act, any PPP Regulations, standards, guidelines, procedures or approvals made or issued by the former Committee or former Directorate under the Public Private Partnerships Act, 2013 (repealed) shall

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<sup>2</sup> Section 4 of the PPP Act

<sup>3</sup> Section 6 of the PPP Act

be deemed to have been made or issued under the PPP Act insofar as they are not inconsistent with the new Act<sup>4</sup>. As a result, the Report also refers to the Public Private Partnership Regulations, 2014 ("PPP Regulations, 2014").

The assessments and recommendations made under this Report are made on the date identified above. While we have pointed out in the Report certain similarities differences between the PPP Regulations, 2014 and the Proposed PPP Regulations, 2022, we have based our analysis and our recommendations solely on the regulations in force at the date of the Report, i.e. the PPP Regulations, 2014.

We advise to follow up closely on the drafting and adoption of the Proposed PPP Regulations, 2022 (currently under consideration for adoption) as this may have an impact on the procurement process of the Project (depending on when the Proposed PPP Regulations 2022 will be adopted and will enter into force).

The PPP Act specifies that the provisions of the Public Procurement and Asset Disposal Act, 2015 (the "Public Procurement Act") shall not apply to a PPP project. This is confirmed in the Public Procurement Act which provides that: "For avoidance of doubt, the following are not procurements or asset disposals with respect to which this Act applies: [...] (e) procurement and disposal of assets under Public Private Partnership Act, 2013<sup>5</sup>;"

However, the PPP Act specifies that "Without prejudice to the generality of subsection (2), the provisions of the Public Procurement and Assets Disposal Act, 2015 (No. 33 of 2015) shall (b) apply if there is counterpart funding that is, including public funds, for the public private partnership project."<sup>6</sup>.

In our understanding, the Public Procurement Act shall only apply if public funds are made available for the PPP project<sup>7</sup>.

Both the PPP Act and the Public Procurement Act provides they shall prevail over any other legislation in case of inconsistency<sup>8</sup>. However, the Public Procurement Act provides that: "this Act shall prevail in case of any inconsistency between this Act and any other legislation or government notices or circulars, in matters relating to procurement and asset disposal except in cases where procurement of professional services is governed by an Act of Parliament applicable for such services." Thus, we deduce that, if there is any inconsistency between the PPP Act and the Public Procurement Act, the PPP Act shall prevail.

Based on the information we received, we understand that the financing of the Project will not include public funds. Therefore, the Public Procurement Act should not apply.

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<sup>4</sup> Section 92 of the PPP Act

<sup>5</sup> Section 4(2)(e) of the Public Procurement Act

<sup>6</sup> Section 4(3) of the PPP Act

<sup>7</sup> Section 4 of the PPP Act

<sup>8</sup> Sections 5 of the PPP Act and of the Public Procurement Act

In the event the provisions of the PPP Act are in contradiction with the Public Procurement Act or any other written law, the provisions of the PPP Act shall prevail<sup>9</sup>.

The PPP Act defines PPPs as follows: "a contractual arrangement between a contracting authority and a private party under which a private party—

- a) undertakes to perform a public function or provide a service on behalf of the contracting authority;
- b) receives a benefit for performing a public function by way of—
  - i. compensation from a public fund;
  - ii. charges or fees collected by the private party from users or consumers of a service provided to them; or
  - iii. a combination of such compensation and such charges or fees;
- c) is generally liable for risks arising from the performance of the function in accordance with the terms of the project agreement; and
- d) transfers the facility to the contracting authority"<sup>10</sup>.

The situations in which a Contracting Authority (as defined hereunder) may enter into a project agreement under a PPP are specified under Section 20(1) of the PPP Act and cover: "A contracting authority intending to finance, operate, equip or maintain an infrastructure facility or provide a public service may enter into a project agreement with a qualified private party for the financing, construction, operation, equipping or maintenance of the infrastructure facility or provision of the public service in accordance with the provisions of this Act"<sup>11</sup>.

Pursuant to the PPP Act, the Contracting Authority may enter into a PPP arrangement with a private partner in accordance with the forms set out in Second Schedule<sup>12</sup>.

We understand the Project would involve appointing a private party to finance and carry out the modernisation of JKIA under a concession scheme. As such the project would imply (i) the management of public assets and the provision of service by the private party on behalf of KAA in accordance with Section 9.7.2.2.3 hereunder, (ii) a transfer of risk for such activities from KAA to the private party, (iii) the remuneration of the private party for performing such activities which would consist of the charges and fees collected by the private party from users of JKIA and (iv) the transfer of the facility back to KAA upon the expiry or termination of the PPP agreement.  
Hence, we conclude that the Project would qualify as a PPP under the PPP Act.

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<sup>9</sup> Section 5 of the PPP Act

<sup>10</sup> Section 2 of the PPP Act

<sup>11</sup> Section 20(1) of the PPP Act

<sup>12</sup> Section 21 of the PPP Act

The PPP Act defines the contracting authority at the national level as "a state department, agency or state corporation which intends to have its functions undertaken by a private party<sup>13</sup>" (the "Contracting Authority").

The State Corporations Act provides that a state corporation is a corporate body established by an Act of Parliament (the "State Corporation")<sup>14</sup>. Section 3(2) of the KAA Act, which is an Act of Parliament, states that KAA is a corporate body<sup>15</sup>.

Having regard to the State Corporation Act and the Kenya Airport Authority Act, KAA is a State Corporation which could therefore be qualified as a Contracting Authority operating at the national government level under the PPP Act, and be entitled to enter into a PPP.

Private party is defined as "a party that enters into a project agreement with a contracting authority and is responsible for undertaking a project on behalf of the contracting authority<sup>16</sup>".

Upon the execution of the PPP Contract, a special purpose vehicle company shall be incorporated by the successful bidder (the "Private Partner") in Kenya in accordance with the Companies Act, 2015 and the PPP Contract shall be entered into the Private Partner and the Contracting Authority. The limitations applicable to the shareholding of the Private Partner are developed hereunder in section 14.5.1. The Private Partner may include a public entity as a minority shareholder and shall provide a performance security<sup>17</sup>.

The Private Partner shall comply with a set of obligations, in particular relating to winding up the company, change in its legal structure, restructuring its shareholding or transferring shares<sup>18</sup>:

- The directors of a project company shall not wind up the company, alter the legal structure or reduce the share capital of the company without the written approval of the contracting authority, which approval shall not be unreasonably withheld;
- A majority shareholder of a project company shall not transfer any shares held in the project company or permit the dilution of its majority stake in the project company to a point where the shareholder loses such majority standing before the issuance by the contracting authority of a certificate confirming the contracting authority's acceptance of the quality of the project undertaken in accordance with the project agreement;
- Notwithstanding the provisions of the previous paragraph, any party to a project agreement may, with the approval of the Cabinet Secretary, restructure the project company's

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<sup>13</sup> Section 2 of the PPP Act

<sup>14</sup> Section 2 of the State Corporations Act

<sup>15</sup> Section 3(2) of the Kenya Airport Authority Act

<sup>16</sup> Section 2 of the PPP Act

<sup>17</sup> Section 68 of the PPP Act and Section 49 of the PPP Regulations, 2014

<sup>18</sup> Section 68 of the PPP Act

shareholding as may be necessary to secure the equity component of a transaction: (a) alter the overall split between debt and equity approved under the project agreement; and (b) dilute the majority position of the lead member of a consortium within the shareholding structures of the project company.

The Private Partner shall incorporate a project company in Kenya on the execution of the PPP Contract. The above-mentioned limitations on the change in the Private Partner's shareholding will have to be taken into account and reflected in the PPP Contract.

#### 9.6.2.2 Pre-Procurement Procedure

Pursuant to the PPP Act, the Contracting Authority has the duty (a) to identify, screen and prioritize projects based on guidance issued by the Directorate of Public Private Partnerships (the "Directorate") which is the lead institution in the implementation of a PPP project<sup>19</sup> and (b) to prepare and appraise each project to ensure its legal, regulatory, social, economic and commercial viability<sup>20</sup>.

##### (a) **Project identification / Validation as part of official PPP project list**

The Contracting Authority intending to implement a project through a PPP is responsible for identifying and conceptualizing potential projects, in consultation with the Directorate<sup>21</sup>.

The Contracting Authority shall prepare a list of projects that it intends to undertake on a priority basis, provided that those projects shall be part of the national development agenda.

The list is submitted to the Directorate for approval, accompanied by appropriate project concept notes, and the main elements of the project such as estimated costs, operational and strategic benefits of the projects<sup>22</sup>.

The Directorate notifies the Committee, the Cabinet Secretary responsible for matters relating to finance and Cabinet, bi-annually, on all projects it approves under the priority list for implementation under the PPP Act<sup>23</sup>.

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<sup>19</sup> Sections 15 and 19 of the PPP Act

<sup>20</sup> Section 22 of the PPP Act

<sup>21</sup> Section 30 of the PPP Act

<sup>22</sup> Section 25 of the PPP Act and Section 12 of the PPP Regulations, 2014. To note, the list of elements to be incorporated in this description differs between the PPP Regulations, 2014 and the Proposed PPP Regulations, 2022 (the latter being more detailed - see Section 10 of the Proposed PPP Regulations, 2022).

<sup>23</sup> Section 25 of the PPP Act

Under the direction of the Directorate, the Contracting Authority constitutes a project implementation team composed with a member of the Directorate and different expert for overseeing the structuring and implementation phases of the project once the Directorate validates a project under the project list submitted<sup>24</sup>.

The Directorate establishes, maintains and publishes the up-to-date national list of projects that have been approved on its website and on the Contracting Authority's website<sup>25</sup>.

"Kenya Vision 2030" provides for "the rehabilitation and maintenance of airstrips and airport expansion and modernisation: This will involve rehabilitation and expansion of airstrips and airports serving tourist and commercial sites in the country". The Project seems to be part of the national development agenda, but does not appear in the approved PPP priority project list.

As such, KAA, as the Contracting Authority, should submit the project to the Directorate for approval, together with concept notes and the main elements of the project, in order for the Directorate to include the Project into the approved PPP priority project list.

(b) **Project appraisal - Business Case**

Pursuant to the PPP Act, the Contracting Authority shall, under the direction of the Directorate, undertake a feasibility study of the project in order to determine its viability. The feasibility study requires "to explore the technical, financial, legal, social and environmental feasibility of undertaking an infrastructure or development facility as a public private partnership"<sup>26</sup>. However, the PPP Act do not specify explicit criteria like budget sustainability for determining feasibility. Instead, the feasibility of a project is assessed based on guidelines which should be published by the Committee, and projects shall be approved based on the Committee's discretion after considering various factors related to the project's feasibility. Where the Directorate determines that the Contracting Authority does not have the technical expertise to procure the project, the Contracting Authority is required to appoint a transaction advisor to assist it in the different phases of the project<sup>27</sup>.

The feasibility report is submitted to the Directorate for evaluation. The Directorate then drafts an evaluation report and submits it, together with its recommendations, to the Committee which shall within twenty-one (21) days of receipt of the documents determine whether or not the Contracting Authority may tender for the proposed project as a PPP project<sup>28</sup>.

Before launching a tender process in relation to a PPP project, the following steps shall be completed:

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<sup>24</sup> Section 31 of the PPP Act

<sup>25</sup> Section 26 of the PPP Act

<sup>26</sup> Sections 2 and 32 of the PPP Act

<sup>27</sup> Section 34 of the PPP Act

<sup>28</sup> Section 33 of the PPP Act

Kenya Vision 2030 provides for the rehabilitation and maintenance of airstrips and airport expansion and modernization. As such, the Project falls within the national development agenda. However the Project is not yet included in the approved PPP priority project list (which is a condition to initiate the subsequent phase of development of the Project). In order for the Directorate to include the Project into the approved PPP priority project list, KAA, as the Contracting Authority, should submit the project to the Directorate for approval, together with concept notes and the main elements of the Project; a feasibility report demonstrating the "legal, regulatory, social, economic and commercial viability" of the project shall be carried out by the Contracting Authority; we understand that guidelines from the Directorate should be implemented under the PPP Act in order to clarify the required elements of such feasibility report; in any case, the content of this feasibility report will be substantially addressed by the content of the studies currently carried out under the consultants' assignment;

Before launching a tender process in relation to a PPP project:

- (a) the -Directorate shall submit an evaluation report together with its recommendations to the Committee;
- (b) the prior approval of the Committee shall be obtained

The recommendations and approvals from the Directorate and the Committee shall be done in regard to the guidelines published by the Committee and in conformity with the standardised forms for the submission of feasibility study reports to be published by the Directorate .

The four aforementioned points will have to be taken into account in the transaction timetable of the Project.

### 9.6.2.3 Procurement procedures

Under the PPP Act, there are four (4) methods of procurement<sup>29</sup>:

- by direct procurement;
- by privately-initiated proposals;
- by restricted bidding; and
- by competitive bidding;

provided that each method is subject to specific conditions being met, except for the competitive bidding, meaning that competitive bidding is the method of procurement by default.

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<sup>29</sup> Section 37 of the PPP Act



(I) Direct procurement

The direct procurement may be used, in consultation with the Directorate, if any of the following conditions are satisfied: (a) a private party possesses the intellectual property rights to the key approaches or technologies required or, (b) has exclusive rights and no reasonable alternative or substitute is available, (c) the services are only available from a limited number of private parties, (d) there are operational and strategic advantages, (e) the direct engagement shall significantly lower the cost of delivering the works or services, (f) there is an urgent need and other procurement methods are impractical, (g) the Contracting Authority, having procured goods, equipment, technology or services from a private party, determines that additional supplies shall be procured from that private party for reasons of standardization or because of the need for compatibility with existing goods, equipment, technology or services, (h) the works or services are procured from a public entity, or (i) any other reason that may be prescribed by the Cabinet Secretary responsible for matters relating to finance<sup>30</sup>.

(J) Privately-initiated proposal

The Contracting Authority may consider a privately-initiated proposal if the project (a) is aligned with national infrastructure priorities and meets a societal need, (b) provides value for money, (c) provides sufficient information for fiscal affordability assessment and potential contingent liability implications, (d) can be delivered at a fair market price, (e) is supported by transparent and accountable documentation precisely listed (including a justification why the project is not suitable for open competitive procurement and very specific information regarding the project such as reference design, sketches and alignment map), and (f) supports the efficient transfer of risk from the public sector<sup>31</sup>.

The Contracting Authority shall submit the privately-initiated proposal to the Directorate for assessment and approval. The Directorate assesses privately-initiated proposals, establishes evaluation criteria in consultation with the Contracting Authority, evaluates proposals with relevant departments, prepares a detailed assessment report, and makes recommendations to the Committee<sup>32</sup>.

There is no general obligation for the Contracting Authority to put the privately-initiated proposal received out to tender. However, at the development phase, where the Contracting Authority receives more than one privately-initiated proposal with respect to the same matter and all proposals proceed to the project development stage, the Contracting Authority may utilize a restricted tendering procedure that limits

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<sup>30</sup> Section 38 of the PPP Act

<sup>31</sup> Section 40 of the PPP Act

<sup>32</sup> Section 42 of the PPP Act

competitive bidding to the private parties that submitted proposals<sup>33</sup>; and the Contracting Authority may also elect to subject the project to open competitive tendering process, when it is in public interest<sup>34</sup>.

(K) Restricted bidding procedure

The restricted bidding shall not be used except where (a) competition for contract is restricted to prequalified tenderers, because of the complex or specialized nature of the works and services, (b) the time and cost required to examine and evaluate a large number of tenders would be disproportionate to the value of the works or services to be procured, (c) there are only a few known suppliers of the whole market of the works or services, or (d) an advertisement is placed on the procuring entity website regarding the intention to procure through limited tender.

No specific provisions regarding the restricted bidding procedure are provided for in the PPP Act<sup>35</sup>.

In accordance with international best practice, we recommend using the competitive bidding procedure which, through open competition, is the most likely to maximise the value-for-money for the Contracting Authority. We are not aware of circumstances which could allow KAA to procure the Project through restricted bidding or direct procurement; likewise we are not aware of any privately-initiated proposal for the Project (and generally we do not advise to use such methods as they deprive the Contracting Authority from fully benefiting from the competitive pressure and/or can exclude bidders which have not been preselected by the Contracting Authority but would have met the qualification criteria to participate to an open bidding process).

The competitive bidding should be structured in two phases; (i) a prequalification phase (preceded by a public, open call for prequalification applications) in order to shortlist candidates based on technical, financial and legal criteria; and (ii) a tender phase where prequalified bidders will submit their financial and technical bid (see below).

The PPP Regulations, 2014 only develop the procedure of "solicited proposals" which was the main procurement procedure under the repealed PPP Act, 2013. To note, there is no major modifications between the process of the "solicited proposal" and the "competitive binding" under the Proposed Regulations, 2022.

According to Section 9.7.2.1 and the "Savings and Transitional Provisions" of the PPP Act, the rules for solicited proposals outlined in the PPP Regulations, 2014, are applicable to competitive bidding processes,

<sup>33</sup> Section 44(4) of the PPP Act

<sup>34</sup> Section 44 of the PPP Act

<sup>35</sup> Section 45 of the PPP Act, no details are provided in the PPP Act regarding the restrictive bidding procedure neither in the PPP Regulations, 2014. However, we understand from the Proposed PPP Regulations 2022 that the tendering process (excluding the pre-qualification phase) would be similar to the competitive bidding.

except in cases where these regulations conflict with the provisions of the PPP Act. In such instances, the PPP Act's provisions prevail.

9.6.2.4 Advertisement of the procurement

When opting for a competitive bidding, the Contracting Authority shall invite persons to apply for qualification to develop and implement a PPP project by notice in the Gazette and in at least two (2) newspapers of national circulation as provided for by the PPP Regulations, 2014<sup>36</sup>.

To note, the Proposed PPP Regulations, 2022 specifies that the Contracting Authority is invited to inform the persons by notice in at least one newspaper of national circulation and other wide-reaching media<sup>37</sup>.

The Contracting Authority should expand its advertising for competitive bidding under the PPP Act beyond national publications, using international journals and online platforms.

Also, a pre-tender market sounding is advised to align preselection criteria with market realities and interests.

9.6.2.5 Pre-qualification and pre-selection

(a) **Pre-qualification**

On approval of the feasibility report, the Contracting Authority invites requests for qualifications from bidders with respect to the proposed project, and specifies the eligibility criteria for shortlisting bidders<sup>38</sup>. A private party or a consortium is eligible to respond to a request for qualification if it<sup>39</sup>:

- (a) satisfies the criteria specified in the request for qualification issued by the contracting authority; [The PPP Regulations, 2014 specify broad criteria including (a) technical qualifications; (b) financial requirements; (c) relevant experience; (d) compliance with health and safety regulations; and (e) compliance with environment regulations<sup>40</sup>]<sup>41</sup>
- (b) has the technical and financial capacity to undertake the proposed project;
- (c) has the legal capacity to enter into a project agreement with the contracting authority;
- (d) is not insolvent, in receivership, bankrupt or in the process of being wound up; and
- (e) is not for any reason precluded by the contracting authority from entering into a project agreement with the contracting authority".

<sup>36</sup> Section 21(2) of the PPP Regulations, 2014

<sup>37</sup> Section 30(1) of the Proposed PPP Regulations, 2022

<sup>38</sup> Section 46(1) and (3) of the PPP Act

<sup>39</sup> Section 47 of the PPP Act

Section 29(2) of the PPP Regulations, 2014

<sup>41</sup> To note, the Proposed PPP Regulations 2022 include similar criteria (see Section 30(2) of the Proposed PPP Regulations, 2022).

The PPP Act specifies that a consortium is authorized to submit a bid through its lead member, accompanied by a notarized binding agreement executed by the consortium's members<sup>42</sup>. Members cannot submit separate bids directly or indirectly, either individually or through other entities<sup>43</sup>. Violation of these rules results in disqualification by the Contracting Authority<sup>44</sup>. If a consortium member withdraws, the authority may disqualify the consortium or review the PPP Contract terms<sup>45</sup>. Disqualification occurs if the lead member is dismissed or withdraws unless promptly replaced to maintain eligibility<sup>46</sup>. All consortium members are jointly and severally bound by the PPP Contract terms and share responsibility for fulfilling obligations<sup>47</sup>.

However, the PPP Act does not provide specific provision on the possibility for any applicant to request clarification on the request for qualification. The request for qualifications will detail the various legal, technical and financial criteria that each applicant needs to meet, in accordance with the above provisions.

The bidders may be required to provide any statements or documents deemed relevant by the Contracting Authority in order to prove their eligibility<sup>48</sup>. The Directorate shall prescribe the standards and specify the practice notes on procurement and tender administration regarding the requests for qualification<sup>49</sup>. The Directorate has the right to determine that the prequalification phase should not apply to a PPP project, the project may then proceed to the bidding stage<sup>50</sup>, however, the PPP Act and the PPP Regulations do not specify until when nor on what grounds the Directorate may make this decision.

We would however not recommend skipping the prequalification stage and proceeding directly to the bidding stage, as prequalification allows to filter out applicants lacking the requisite financial and technical capacity and thus helps the Contracting Authority mitigate the costs and time required to complete the procurement process (by avoiding spending time and resource dealing with unqualified bidders and reviewing their bids).

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<sup>42</sup> Section 53(1), (2) and (3) of the PPP Act

<sup>43</sup> Section 53(4) of the PPP Act

<sup>44</sup> Section 53(5) of the PPP Act

<sup>45</sup> Section 53(6) of the PPP Act

<sup>46</sup> Section 53(7) and (8) of the PPP Act

<sup>47</sup> Section 53(10) of the PPP Act

<sup>48</sup> Section 46(3) of the PPP Act

<sup>49</sup> Section 46(2) of the PPP Act

<sup>50</sup> Section 46(6) of the PPP Act

The Contracting Authority shall constitute a pre-qualification committee for purpose of prequalifying bidders ("Pre-qualification Committee")<sup>51</sup>. The Pre-qualification Committee may ask the applicants for complementary documents or for clarifications regarding their application<sup>52</sup>.

(b) **Pre-selection**

The Pre-qualification Committee is in charge of reviewing the requests for qualification submitted to the Contracting Authority and apply the disqualification criteria which include false information, collusion, failure to meet criteria, and violation of laws<sup>53</sup>.

The Pre-qualification Committee is in charge to establish a short list of pre-qualified bidders.

The PPP Act does not provide any specific provisions on (i) the right for the Pre-qualification Committee to waive certain non-material non-conformity in prequalification applications, (ii) the maximum number of pre-qualified bidders, (iii) the possibility to continue with the bidding process where all bidders except one have been rejected or (iv) the delays related to the submission or the evaluation of the prequalification applications.

However, we understand that the decision to waive certain non-materiality and/or non-conformity in pre-qualification applications may be construed as preferential treatment of certain bidders. Thus, a disqualified bidder could object its disqualification by lodging a petition in accordance with the procedure described in Section 9.6.2.11 below. We advise the Pre-qualification Committee not to waive any condition during the pre-qualification phase, or more generally during the tendering process.

A disqualified bidder may object to its disqualification by lodging a petition before the Petition Committee (as defined below in section 9.6.2.11). The petition shall be made within fourteen (14) days of being notified of the disqualification. The Petition Committee hears and determines the objection within twenty-eight (28) days of the petition being lodged<sup>54</sup>.

An aggrieved bidder may also apply for a review of the administrative decision to a court or a tribunal "without unreasonable delay" (please see section 9.6.2.11)<sup>55</sup>.

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<sup>51</sup> Section 48 of the PPP Act

<sup>52</sup> Sections 30 to 32 of the PPP Regulations, 2014. To note, the Proposed PPP Regulations, 2022 include similar provisions (see Sections 31 to 33 of the Proposed PPP Regulations, 2022).

<sup>53</sup> Section 49 (2) of the PPP Act

<sup>54</sup> Section 49 of the PPP Act

<sup>55</sup> Section 47 of the Constitution of Kenya, and Fair Administrative Action Act, 2015.

#### 9.6.2.6 Invitation to tender and bidding documents

After the preparation of the shortlist of prequalified bidders, a Contracting Authority shall in consultation with the Directorate prepare tender documents in relation to the project for the purpose of inviting bids from eligible bidders<sup>56</sup>. The tender documents include the following information<sup>57</sup>:

- a) general information related to the project necessary for the preparation and submission of bids;*
- b) specifications of the project including the technical and financial conditions that should be met by bidders;*
- c) specifications of the final product, level of services, performance indicators and such other requirements as may be necessary including the safety, security and environment preservation requirements to be met by bidders;*
- d) basic terms of the project agreement including non-negotiable conditions;*
- e) the criteria and method to be used in evaluating bids;*
- f) forms and documents that are required to be filled and submitted by bidders;*
- g) the value of the bid security required to be submitted by bidders;*
- h) the conditions, procedures and administration of bid clarifications;*
- i) the date, time and place for the submission of tender documents by bidder;*
- j) instructions regarding pre-bid conferences, where necessary;*
- k) the conditions to be met by any consortiums permissible changes to a consortium arrangement;*
- l) the procedure to be followed in a competitive dialogue process; and*
- m) any other matter that may be necessary for the proper conduct of the tender stage of the project;*
- n) the methodology to be used during the technical or financial evaluation of bids;*
- o) the validity period of the bids;*
- p) the value of bid security;*
- q) the method of calculating a performance bond;*
- r) the validity period of a performance bond;*
- s) whether the competitive dialogue procedure will be used;*
- t) the deadline for receiving bids;*
- u) where the tender documents may be collected from;*
- v) the price of tender documents;*
- w) the scoring system to be applied in the evaluation of bids, where applicable;*
- x) the criteria for assessing technical bids and the threshold each technical bid should meet;*

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<sup>56</sup> Section 50 (1) of the PPP Act

<sup>57</sup> Section 50 (2) of the PPP Act, Section 35(3) to the PPP Regulations, 2014 and Section 37(3) of the Proposed PPP Regulations, 2022

- y) *the criteria for ranking the successfully evaluated bids;*
- z) *the criteria for evaluating and comparing financial bids; and*
- aa) *the circumstances under which a bid may be rejected.*

A pre-bid conference may be organized (if specified in the tender process) between the Contracting Authority and the prequalified bidder, and may result to an alteration of the tender documents<sup>58</sup>. We understand that it is possible for the prequalified bidder to obtain clarification and modification of the tender at this stage.

The tender documentation may provide for a competitive dialogue and the procedure to be followed<sup>59</sup>. In this regard, the Contracting Authority may solicit clarification requests from bidders and/or require each bidder to submit a non-binding proposal.

The discussions held during a competitive dialogue shall not be disclosed to any person by any party to the discussions<sup>60</sup>. At the end of this procedure, the Contracting Authority may:

- alter the project specifications, risk matrix or structure<sup>61</sup>; and
- invite each bidder that participated in the competitive dialogue to submit a best and final offer which shall form the basis for the evaluation of the bids and award of the tender<sup>62</sup>.

- In line with best practice, we generally recommend that the request for proposals include the draft PPP agreement (and not only the basic terms thereof) and allows for two (or three) rounds of “competitive dialogue”, where the bidders are allowed to raise clarification requests on the request for proposals and the draft PPP agreement appended thereto, including suggestions to amend the draft PPP Contract.
- For the sake of transparency, we typically advise that all communications with bidders be in written form only, and that all questions from bidders and answers from the Contracting Authority are shared with all bidders (for each question with the name of the bidder having raised the question anonymised). Following each round of competitive dialogue, the Contracting Authority would then issue an updated request for proposals, including revised draft PPP agreement incorporating the amendments that the Contracting Authority has accepted to consider.
- Once all rounds of dialogue have been held, we typically recommend that the RFP provides that (i) bidders, when submitting their bid, will agree to be bound by the terms of the final version of the project PPP agreement contained in the tender package, subject only to the finalisation of limited and

<sup>58</sup> Section 38 of the PPP Regulations, 2014 and Sections 39 and 40 of the Proposed PPP Regulations, 2022

<sup>59</sup> Section 52 of the PPP Act, Section 35(3)(f) of the PPP Regulations, 2014 and Section 27(1)(l) of the Proposed PPP Regulations, 2022

<sup>60</sup> Section 52(4) of the PPP Act

<sup>61</sup> Section 52(5) of the PPP Act

<sup>62</sup> Section 52(5) and (6) of the PPP Act



minor provisions of the project PPP agreement, and that (ii) if following award, the preferred bidder tries to reopen discussions on substantive points and refuses to sign the final version of the project PPP agreement (as per the final version of the RFP), its designation as preferred bidder will be withdrawn and its bid bond may be fully encashed.

- This aims to limit to the further extent possible the negotiation of the terms of the PPP agreement after award and to prevent the preferred bidder from negotiating substantive points once the competitive pressure is no longer there, which can result in significant delays and even jeopardize the completion of the procurement process.

The Contracting Authority may cancel a tender process at any time before the execution of the PPP Contract,

(i) after prior approval of the Committee and Attorney-General, and

(ii) if the public interest is impaired when the following circumstances exist:

- *" (a) the project has been overtaken by operation of law or rendered obsolete as a consequence of substantial technological change or by reason of a force majeure event;*
- *(b) there is evidence that the bids are significantly above market prices;*
- *(c) material governance issues have been demonstrably detected;*
- *(d) all evaluated tenders are non-responsive;*
- *(e) civil commotion, hostilities or armed conflict has arisen that renders the implementation of the project impractical; or*
- *(f) evidence of commission of an offence under the Anti-Corruption and Economic Crimes Act, 2003 (No. 3 of 2003) or the Proceeds of Crime and Anti-Money Laundering Act, 2009 (No. 9 of 2009) <sup>63</sup>.*

The Contracting Authority shall notify the bidders and specify the reasons for the cancellation<sup>64</sup>.

The Contracting Authority will have to ensure compliance with specific restrictions provided under the PPP Act, regarding (i) the cancellation of the tender process which can occur only in specific circumstances, (ii) the rules applicable to the consortiums, and (iii) the discussions with the prequalified bidders during the competitive dialogue.

#### 9.6.2.7 Bid security

A bid security is required in the form of an irrevocable bank guarantee from a bank licensed to operate in Kenya which shall undertake to pay the Contracting Authority on the first formal claim to pay, in writing,

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<sup>63</sup> Section 62 of the PPP Act

<sup>64</sup> Section 62 of the PPP Act

regardless of any objection by the bidder<sup>65</sup>. We note that the PPP legal framework does not specify a minimum or maximum amount of the security bid which should thus be determined in the tender documentation.

Regarding the validity of the bid security, the applicable PPP Regulations, 2014 provide that the bid security shall be valid at least sixty (60) days from the date the bid validity period ends<sup>66</sup>.

If the rejection of the bid is based on the evaluation of both the technical and financial offers, the Proposal Evaluation Team (as defined in Section 7.2.9) shall promptly return the bid security to the person whose bid has been rejected<sup>67</sup>.

#### 9.6.2.8 Electronic submissions

The PPP Act does not include any provision regarding the electronic bid submission.

- In the context of international tenders, we generally recommend electronic submissions which has proven to be more efficient than physical submissions for both bidders and procuring entities. We would suggest allowing electronic submissions through a dedicated platform (e.g. on the KAA's online portal: [SAP NetWeaver Portal \(kaa.go.ke\)](http://SAP NetWeaver Portal (kaa.go.ke))). However, such electronic submission should only be used if a robust platform for bid submissions and qualified human resources to manage it are available to the procuring entity.

#### 9.6.2.9 Evaluation and award of contract

The Contracting Authority shall, in consultation with the Directorate, constitute a proposal evaluation team in charge of opening and evaluating bids submitted by the bidders ("Proposal Evaluation Team")<sup>68</sup>.

In the event that a bidder fails to meet the conditions specified in the tender documents or PPP Regulations, the Proposal Evaluation Team is required to reject the submission. If all bids are rejected due to non-compliance, the tender process is considered terminated. The Contracting Authority, in coordination with the Directorate, then decides whether to initiate the tender process anew<sup>69</sup>. Thus, the PPP Act seems to prevent the possibility from waiving any condition during the tendering process.

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<sup>65</sup> Section 50 of the PPP Act, Section 41 of the PPP Regulations, 2014 and Section 43 of the Proposed PPP Regulations, 2022

<sup>66</sup> Section 41 of the PPP Regulations, 2014. To note that Section 43 of the Proposed Regulations, 2022 state that the bid security shall remain valid and enforceable until the issuance of a performance security by the Private Partner

<sup>67</sup> Section 44 of the PPP Regulations, 2014, and Section 46 of the Proposed Regulations, 2022

<sup>68</sup> Section 54 of the PPP Act

<sup>69</sup> Section 56 of the PPP Act

The Proposal Evaluation Team, within twenty-eight (28) days, assesses both technical and financial bids and produces a report with criteria, comparisons, and recommendations, then submitted to the accounting officer<sup>70</sup>, which may return the documents for review<sup>71</sup>.

The assessment of the financial bid will only take place if the bidder's technical proposal has surpassed the specified scoring threshold outlined in the tender documents<sup>72</sup>.

Where the Proposal Evaluation Team applies a scoring system in accordance with the evaluation system provided in the tender documentation, it shall rank each offer in accordance with the scores each offer has attained after the evaluation<sup>73</sup>.

The evaluation system provides to evaluate (i) first the technical bids according to a pass/fail approach or scoring system, then (ii) to decide between the financial offers of bidders whose technical bids have passed the pass/fail test. However, the evaluation and award criteria are not specifically addressed in the PPP Act or PPP Regulations, they will need to be addressed in the tender documentation.

We generally recommend the request for proposals to provide:

- (i) for each technical criteria: a pass/fail evaluation (rather than a score X out of Y); and
- (ii) for the financial criteria: the financial bids (for bids having successfully passed the technical evaluation as per above) could be ranked according to the amount of concession fee that the bidder proposes to pay to KAA. Other financial criteria could be considered (in addition to or alternatively to the concession amount). A weighing factor between the technical proposal score and the financial proposal score could be applied if deemed relevant (noting well that the technical proposal must pass a certain score for the financial proposal to be evaluated, and that the financial proposal will only be opened if the technical proposal has passed the minimum score).

#### 9.6.2.10 Negotiation and Signing of PPP contract

A negotiating committee, formed by the Contracting Authority in consultation with the Directorate, engages in negotiations with the first-ranked bidder, seeking an extension of the validity of its bids from the second-ranked bidder (or any number of bidder as the tender document may have indicated) pending the completion of negotiations with the first-ranked bidder<sup>74</sup>.

The negotiations cover various project aspects but are restricted from; (a) alter the criteria on which tender was awarded; (b) affect the non-negotiable terms and conditions specified in the invitation to tender; (c) alter the financial structure of the project; (d) affect the conditions applying to a privately-initiated proposal;

<sup>70</sup> Section 55(1) of the PPP Act

<sup>71</sup> Section 55(2) and (3) of the PPP Act

<sup>72</sup> Section 39 of the PPP Regulations, 2014, and Section 41 of the Proposed Regulations, 2022

<sup>73</sup> Section 47 of the PPP Regulations, 2014 and Section 49 of the Proposed Regulations, 2022

<sup>74</sup> Section 57 of the PPP Act

and (e) affect the conditions in respect of which there were no reservations raised by the bidder in the bid or proposal<sup>75</sup>. Adjustments for exchange rates or inflation are allowed if explicitly stated in the tender documents, if specified in the tender documents<sup>76</sup>. If negotiations with the first-ranked bidder fail, a similar process is followed with the second-ranked bidder<sup>77</sup>.

Post-tender negotiations lead to the drafting of a project and financial risk assessment report by the negotiating committee. This report details the negotiated terms, contingent liabilities, and includes recommendations. If the Contracting Authority is satisfied, the report is forwarded to the Directorate for approval. If the Directorate rejects it, the authority refers the report back to the negotiating committee for review<sup>78</sup>.

Once the report is approved by the Directorate, the Directorate submit it to the Committee for approval, which has twenty-eight (28) days to endorse the PPP Contract. The Committee notifies the Contracting Authority in writing within thirty (30) days of approval. Upon notification, the Contracting Authority finalizes the PPP Contract, clears it with the Attorney-General, and presents it to the successful bidder for execution<sup>79</sup>.

On the Committee's approval, the Contracting Authority executes the PPP Contract with the successful bidder<sup>80</sup> and publishes in at least two (2) newspapers of national circulation and electronic media the results of the tender and the main elements of the PPP, including but not limited to the successful bidder, the project tariff, the duration of the project, or the social and economic benefits of the project<sup>81</sup>.

If the private party fails to commence the project within twelve (12) months from the date of execution of the contract, the contract shall be terminated without liability for the Contracting **Authority or the government**<sup>82</sup>. Commencement shall be construed as the performance of any obligation under the PPP Contract (not specifically as the commencement date of the works).

The Contracting Authority notifies in writing (i) all the bidders who participated in the tender process of the decision of the Committee and (ii) the Cabinet of the Committee's approval to enter into a PPP Contract with the successful bidder<sup>83</sup>.

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<sup>75</sup> Section 57(3) of the PPP Act

<sup>76</sup> Section 57(4) of the PPP Act

<sup>77</sup> Section 57(6) and (7) of the PPP Act

<sup>78</sup> Section 58 of the PPP Act

<sup>79</sup> Sections 59 and 60 of the PPP Act

<sup>80</sup> Section 61 of the PPP Act

<sup>81</sup> Section 69 of the PPP Act

<sup>82</sup> Section 61 of the PPP Act

<sup>83</sup> Section 60 of the PPP Act

#### 9.6.2.11 Challenge of procurement proceedings

The PPP Act establishes a petition committee to address grievances related to decision made by the Committee, Directorate or a Contracting Authority (the "Petition Committee")<sup>84</sup>.

A person aggrieved by a decision regarding the tender process or the PPP Contract may lodge a petition to the Petition Committee within seven (7) days from the date of the decision<sup>85</sup>.

The Petition Committee shall hear and determine the petition within twenty-eight (28) days from the date the petition was lodged. The person aggrieved by the Petition Committee's decision may, within seven (7) days of the decision, make an application for review to the Committee and, if the decision is maintained, appeal to the High Court within fourteen (14) days from the date of the decision<sup>86</sup>.

Moreover, pursuant to Section 47 of the Constitution of Kenya on the principle of fair administrative action, a person aggrieved by any administrative action or decision may, without unreasonable delay, apply for judicial review to the High Court (or a subordinate Court), provided that the internal mechanisms for appeal or review and all remedies available under any written law have been exhausted<sup>87</sup>. The application shall be determined within ninety (90) days of filing the application<sup>88</sup>.

### 9.6.3 PPP Contract

#### 9.6.3.1 General

The PPP Act provides a list of the minimum contractual obligations required to be specified in the PPP Contract<sup>89</sup>:

- 1. The nature and scope of works and services that the parties shall carry out and the conditions for their implementation.*
- 2. The rights of a contracting authority, the project company and where applicable, the lender, in relation to the project including step in rights of lenders.*
- 3. A description of any property to be contributed by a party to the project agreement.*
- 4. A description of any utilities to be provided in relation to the project and the responsibility thereof.*

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<sup>84</sup> Section 75(1) of the PPP Act

<sup>85</sup> Section 75(4) and (5) of the PPP Act

<sup>86</sup> Section 75(6), (7) and (8) of the PPP Act

<sup>87</sup> Section 9 of the Fair Administrative Action Act, 2015

<sup>88</sup> Section 8 of the Fair Administrative Action Act, 2015

<sup>89</sup> Section 69 and Third Schedule of the PPP Act

5. *The ownership of the project assets, the obligations of parties related to the handover and receipt of the project site.*
6. *The responsibility for obtaining authorizations, permits, and approvals.*
7. *A description of any sharing of revenue between the contracting authority and the private party.*
8. *Mutual financial obligations and their relation to the funding mechanism including the requirements relating to performance bonds and guarantees.*
9. *The preparation and submission of financial and other reports and the carrying out of financial audits in relation to the project.*
10. *The product sale price or the service availability payment on which the project is based and the rules for its determination and amendment, either by an increase or decrease, as well as the indexation mechanisms to reflect inflation or changes in the interest rate, if required.*
11. *The means of quality assurance and quality control, and supervision as well as administrative, financial and technical monitoring of the project operation, utilization and maintenance.*
12. *The extent of the right of the contracting authority to vary the conditions of the project and other obligations imposed on private party, and the basis and mechanisms of compensation for any loss resulting from such variation order.*
13. *The types of insurance to be taken out on the project, and the risks of its operation or utilization, executive warranties issued in favour of the contracting authority, and provisions and procedures for their release.*
14. *The basis of risk allocation in respect of a change in the law, unforeseeable accidents, force majeure, or discovery of antiquities, as the case may be, and the resultant compensation.*
15. *The duration of the contract.*
16. *Early termination events under which a party may terminate the contract prior to the expiry of the project agreement and the rights of the parties in relation to the termination.*
17. *The process of handing over the project on expiry or on termination of the project agreement by a party to the agreement.*
18. *Mechanism for dispute resolution including resolution of disputes by way of arbitration or any other amicable dispute resolution mechanism.*
19. *The events giving rise to compensation and the mechanisms for payment of such compensation or penalties.*
20. *Performance securities required when undertaking a project, the value and renewal mechanisms.*

- 21. Appointment of independent experts.*
- 22. Local content requirements.*
- 23. Direct agreements and lenders rights where applicable.*
- 24. Termination and expiry of the project agreement.*
- 25. Obligations of, undertakings and warranties by contracting parties.*
- 26. Cases of emergency step in by either contracting authority or lenders in case of private party default.*

9.6.3.2 Specific provisions:

#### **9.6.3.2.1 Property**

A Contracting Authority can grant the right to occupy the lands and assets necessary for the Project under the PPP Contract <sup>90</sup>.

The Contracting Authority has the duty to ensure consistent transfer of assets at the expiry or early termination with the provisions of the PPP Contract<sup>91</sup>.

#### **9.6.3.2.2 Local content**

Parties must prioritize local services and supplies, promote technology transfer, optimize trade concessions for Kenyan goods, and comply with local content requirements<sup>92</sup>. However, we understand from enquiries made by Local Counsel that no minimum requirement has been issued, nor any bonus system/scheme, under the PPP legal framework.

The Committee, on the advice of the Directorate, shall issue such guidelines, standards and practice notes on local content as shall be deemed necessary based on the priority requirements of the Kenyan economy.

#### **9.6.3.2.3 Duration**

The PPP Act provides that a PPP arrangement may not be concluded for a period exceeding thirty (30) years<sup>93</sup>, with specific types of arrangements having shorter durations (e.g. management contract and output performance-based concluded up to ten (10) years, and build transfer concluded for a period of time not exceeding twenty (20) years<sup>94</sup>).

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<sup>90</sup> Section 20 of the PPP Act

<sup>91</sup> Section 22 of the PPP Act

<sup>92</sup> Section 83(1) of the PPP Act

<sup>93</sup> Section 21 of the PPP Act

<sup>94</sup> Second Schedule of the PPP Act



Factors in determining duration include legal provisions, technology lifespan, investment standards, economic viability, asset depreciation, and recoupment period<sup>95</sup>.

The Directorate may issue guidelines for determining duration and extend PPP Contract tenure with approval from the Committee and Attorney-General, without imposing additional burdens (fiscal or statutory)<sup>96</sup>.

**9.6.3.2.4 Amendment, variation or waiver**

If the parties intend to make any amendment, variation to the agreement, the outputs of the project or any waivers specified in the agreement, they may enter into negotiations and shall submit it to the Committee and Attorney-General for approval<sup>97</sup>. They shall ensure various elements, as value for money affordability, risk transfer, efficiency and effectiveness of public services, and environmental protection<sup>98</sup>.

**9.6.3.2.5 Applicable law and dispute resolution**

Pursuant to the PPP Act, the law applicable to the PPP Contract shall be the laws of Kenya, any provision to the contrary being void<sup>99</sup>.

The parties may agree to resolve any disputes arising under the PPP Contract through arbitration or any other non-judicial means of dispute resolution<sup>100</sup>.

**9.6.3.2.6 Remuneration**

Every PPP Contract, shall make provision for the revenue sharing mechanisms and thresholds between a private party and the Government, where a project’s revenue performance meets and exceeds the target return on investment negotiated under a PPP Contract<sup>101</sup>.

Other than the minimum contractual provisions required under the PPP Act as set out above, the Contracting Authority is free to determine the contents of the contractual provisions of the PPP agreement.

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<sup>95</sup> Section 23 of the PPP Act

<sup>96</sup> Section 23 of the PPP Act

<sup>97</sup> Section 72 of the PPP Act

<sup>98</sup> Section 72 of the PPP Act

<sup>99</sup> Section 71 of the PPP Act

<sup>100</sup> Section 71 of the PPP Act

<sup>101</sup> Section 70 of the PPP Act

## 9.7 Airports and Civil Aviation - Legislation Framework

### 9.7.1 International Framework

#### 9.7.1.1 International Conventions

Kenya has ratified the following conventions relative to air transport:

- the Chicago Convention, signed in Chicago on 7 December 1944, including the International Air Services Transit Agreement and the International Air Transport Agreement. The date of accession for Kenya was 1 May 1964 (the "**Chicago Convention**");
- the Convention On The International Recognition Of Rights In Aircraft signed in Geneva on 17 September 1953;
- the Convention for the Suppression of Unlawful Seizure of Aircraft, dated 16 December 1970 (the Hague Hijacking Convention);
- the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on 23 September 1971 and its supplementary Protocol For The Suppression Of Unlawful Acts Of Violence At Airport Serving International Civil Aviation signed at Montreal on 2 February 1988;
- the Convention for The Unification Of Certain Rules For International Carriage By Air signed at Montreal on 28 May 1999;
- Additional Protocol No.1 to amend the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on 12 October 1929 - extended on 25 September 1975;
- Additional Protocol No.2 to amend 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 Protocol done at the Hague on 28 September 1955 - extended on 25 September 1975;
- Additional Protocol No.3 to amend 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 Protocol done at the Hague on 28 September 1955 and at Guatemala City on 8 March 1971 - extended on 25 September 1975;
- Montreal Protocol No.4 to amend 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 Protocol done at the Hague on 28 September 1955 - extended on 25 September 1975;
- the Convention on the Marking of Plastic Explosives for the Purpose of Detection signed at Montreal on March 1, 1991;
- the African Civil Aviation Commission Constitution signed in Addis Ababa on 17 January 1969, (ratified on 12 May 1969) and the Constitution of the African Civil Aviation Commission signed in Dakar on 16 December 2009.

Kenya became a party to the open sky agreement named "Yamoussoukro Decision" adopted on 14 November 1999 when it ratified the Abuja Treaty.

In the context of the Yamoussoukro Decision, Kenya has signed the Solemn Commitment for the establishment of the Single African Air Transport Market (SAATM) of 2 June 2021 between the Democratic Republic of Congo, Egypt, Ethiopia, Kenya, Rwanda, Eswatini, Zambia and Zimbabwe. The purpose of the SAATM is to create a single unified air transport market in Africa to advance the liberalization of civil aviation in Africa and act as an impetus to the continent's economic integration agenda.

Kenya is a party to the major international conventions regulating civil aviation worldwide and has signed air services agreements with most of the countries.

#### 9.7.1.2 Bilateral Air Services Agreement

Kenya has signed bilateral air services agreements with the following countries: Liberia, Somalia, Czech Republic, Cyprus, Chile, Belize, Suriname, Tanzania, Austria, Barbados, Sri Lanka, South Africa, the United States of America, Singapore, Cambodia, Jamaica, Turkey, Seychelles, Greece, Finland, Burkina Faso, Sweden, Australia, etc.

## 9.7.2 Civil Aviation Regulation

### 9.7.2.1 Main applicable texts

- Kenya Airports Authority Act of 23 May 1992 (revised in 2019) (the "KAA Act");
- Civil Aviation Act No. 21 of 2013, dated 14 January 2013 (revised in 2014 and 2016);
- The Civil Aviation (Aerodromes) Regulations of 2013;
- The Civil Aviation (Aerodromes Certification, Licensing and Registration) Regulations of 2018;
- Civil Aviation (Regulatory Fees and Charges for Air Navigation Services) Regulations, 2012, Gazetted on 5th October 2012 under Legal Notice No.110;
- Civil Aviation (Regulatory Fees and Unmanned Aircraft Systems) Regulations, 2020, Gazetted on 22nd January 2021 under Legal Notice No.4;
- Air Navigation (Fees For Certificates And Services) Regulations 2022;
- Circular AIC 08/23 (White 266) on Charges for Air Navigation Services and Regulatory Fees dated 30 May 2023;
- Air Passenger Service Charge Act, 1970 (Cap. 475) (revised in 2018)
- Air Passenger Service Charge Act (Apportionment) Order, 2018
- Kenya Airports Authority Concession Order, 1996.

### 9.7.2.2 Institutional Framework

#### 9.7.2.2.1 Ministry of Roads and Transports

Under the Civil Aviation Act of 2013, the Cabinet Secretary for the Ministry of Roads and Transport is responsible for determining civil aviation policies<sup>102</sup>. In addition, it makes regulations related to air navigation, air transport, air accident investigation<sup>103</sup> and conducts audits of KCAA activity<sup>104</sup>.

The Ministry can give directions of a general nature to KCAA and KAA regarding their operations, approve alterations in the tariffs, rates and charges made for the services and facilities provided by KCAA and KAA, and, for KAA only, approve alteration in salaries, wages or other terms and conditions of service of employees, give directions of a general nature regarding a matter involving an agreement with or the interest of any other country or territory, approve any individual capital work for the purposes of KAA which the estimated cost exceeds ten million shillings<sup>105</sup>.

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<sup>102</sup> Section 51 of the Civil Aviation Act

<sup>103</sup> Section 82 of the Civil Aviation Act

<sup>104</sup> Section 55 of the Civil Aviation Act

<sup>105</sup> Section 11 of the KAA Act and Section 51 of the Civil Aviation Act

The Project shall be subject to the prior approval of the Minister of Roads and Transports. Close coordination with the Ministry of Roads and Transports at all steps of the Project will be mandatory for the success of the Project.

#### 9.7.2.2.2 Kenya Civil Aviation Authority (KCAA)

The Kenya Civil Aviation Authority (KCAA) is the public body in charge of the development and the management of civil aviation and the regulation and operation of a safe civil aviation system in Kenya<sup>106</sup>.

KCAA is mainly responsible for<sup>107</sup>:

- the licensing of air services;
- the provision of air navigation services, which consist in (i) communication services, whether ground to air or ground to ground, provided for the safety of the aircraft; (ii) navigational services (radio, radar and visual aids to navigation), (iii) air traffic services provided for the safety of the aircraft, and (iv) aeronautical information services<sup>108</sup>;
- advising the Government of Kenya on matters concerning civil aviation;
- the safety, security, economic and technical regulation of civil aviation;
- the certification of aircraft operators;
- the licensing and monitoring of aeronautical personnel;
- the establishment, co-ordination and maintenance of state aviation safety and security programmes;
- licensing and certification of aerodromes, regulated agents and air navigation service providers;
- giving effect to the Chicago Convention and other international agreements relating to civil aviation to which Kenya is party to.

In this respect, KCAA has power to<sup>109</sup>:

- determine, set out and levy rates, charges, dues or fees for any services performed by KCAA, or for use by any person of the facilities provided by KCAA or for the grant, renewal or validation of a licence, permit or certificate, subject to the approval of the Cabinet Secretary;
- enter into contracts, arrangements, agency, associations or partnerships with any person, Government agency or authority, whether, within or outside Kenya, subject to any limitations that may be set out by the Cabinet Secretary;
- acquire, hire, hold, lease out, or dispose of all types of assets or property including land.

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<sup>106</sup> Section 6 of the Civil Aviation Act

<sup>107</sup> Section 7 of the Civil Aviation Act

<sup>108</sup> Section 2 of the Civil Aviation Act, definition of "air navigation services"

<sup>109</sup> Section 8 of the Civil Aviation Act

### 9.7.2.2.3 Kenya Airports Authority (KAA)

The Kenya Airports Authority (the "KAA") is the public body instituted by the KAA Act in charge of administering, controlling and managing aerodromes<sup>110</sup>. KAA is competent to, inter alia, construct, operate and maintain aerodromes and other related facilities<sup>111</sup>.

In order to carry out its functions, KAA may<sup>112</sup>:

- carry on any business that may be necessary or desirable for its purposes;
- determine, impose and levy rates, charges, dues or fees for any services it performs, or for use by any person of the facilities it provides, or for the grant to any person of a licence, permit or certificate, subject to the approval of the Minister of Roads and Transports;
- prohibit, control or regulate the use by any person of the services performed or the facilities provided by KAA and the presence of any person, aircraft or goods on the premises controlled or occupied by KAA;
- enter into agreements with any person, agency or Ministry for:
  - the supply, maintenance or repair of any property necessary or desirable for the purposes of KAA;
  - the performance or provision by that person, agency or Ministry of any of the services or facilities which may be performed or provided by KAA; or
  - the payment, collection or apportionment of any rates, charges or other receipts arising out of the performance or the provision by that person, agency or Ministry of such services or facilities.

Based on KAA's general contracting power under the KAA Act<sup>113</sup>, we understand that KAA may lawfully enter into a PPP Contract with the Private Partner without the PPP Contract being considered a delegation of powers not permitted under the KAA Act.

### 9.7.2.3 Aerodromes management

KAA is the authority in charge of managing aerodromes<sup>114</sup>.

#### 9.7.2.3.1 Airport Operators Duties

Airport operators shall comply with the various rules set out in the Civil Aviation (Aerodromes) Regulations 2013.

In particular, an airport operator shall:

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<sup>110</sup> Section 3 of the KAA Act.

<sup>111</sup> Section 12 of the KAA Act

<sup>112</sup> Section 12 of the KAA Act

<sup>113</sup> Section 2(a) of the PPP Act, definition of "public private partnership"

<sup>114</sup> Section 8(1)(b) of the KAA Act

- comply with the conditions endorsed on the Aerodrome Certificate<sup>115</sup>
- ensure that there is an adequate number of qualified and skilled personnel (including certified personnel if KAA requests it) to perform aerodrome operation and maintenance activities<sup>116</sup>;
- maintain the aerodrome in accordance with the procedures set out in the aerodrome manual as they might be altered by a written directive of KAA<sup>117</sup>;
- conduct proper and efficient maintenance of the aerodrome facilities<sup>118</sup>, and, more generally, maintain the aerodrome in a serviceable condition<sup>119</sup>;
- co-ordinates with the air traffic services to ensure the safety of aircraft operating in the airspace, associated with the aerodrome<sup>120</sup>;
- implement a safety management system that complies with the requirements of the Manual of Aerodrome Standards<sup>121</sup>;
- submit to KAA reports on the condition of the aerodrome<sup>122</sup>;
- conduct inspections of the aerodrome<sup>123</sup>.

Private Partner's compliance with such obligations will have to be provided for in the PPP Contract.

#### 9.7.2.4 Aerodrome Certification

##### 9.7.2.4.1 Overview

A person who wishes to apply to operate an aerodrome for use by both international and domestic air traffic must apply to KCAA for an aerodrome certificate (the "Aerodrome Certificate")<sup>124</sup>. An aerodrome manual must accompany any application for an Aerodrome Certificate<sup>125</sup>.

KCAA must maintain a register of all Aerodrome Certificates issued<sup>126</sup>. The certification status of an Aerodrome is to be promulgated in the Aeronautical Information Publication issued by KCAA<sup>127</sup>.

We note that the Civil Aviation (Aerodromes) Regulations of 2013 provides for the collection of a fee for any request for certification<sup>128</sup>. The Civil Aviation (Aerodrome Certification, Licensing and Registration)

<sup>115</sup> Regulation 39 of the Civil Aviation (Aerodromes) Regulations

<sup>116</sup> Regulation 40 of the Civil Aviation (Aerodromes) Regulations

<sup>117</sup> Regulation 41 of the Civil Aviation (Aerodromes) Regulations

<sup>118</sup> Regulation 41 of the Civil Aviation (Aerodromes) Regulations

<sup>119</sup> Regulation 52 of the Civil Aviation (Aerodromes) Regulations

<sup>120</sup> Regulation 41(4) of the Civil Aviation (Aerodromes) Regulations

<sup>121</sup> Regulation 42 of the Civil Aviation (Aerodromes) Regulations

<sup>122</sup> Regulation 52 of the Civil Aviation (Aerodromes) Regulations

<sup>123</sup> Regulation 56 of the Civil Aviation (Aerodromes) Regulations

<sup>124</sup> Regulations 5(2), 6 and 11 of the Civil Aviation (Aerodrome Certification, Licensing and Registration) Regulations

<sup>125</sup> Regulation 7 of the Civil Aviation (Aerodrome Certification, Licensing and Registration) Regulations

<sup>126</sup> Regulation 19 of the Civil Aviation (Aerodrome Certification, Licensing and Registration) Regulations

<sup>127</sup> Regulation 20(3) of the Civil Aviation (Aerodrome Certification, Licensing and Registration) Regulations

<sup>128</sup> Regulation 131 (1) (a) of the Civil Aviation (Aerodromes) Regulations of 2013



Regulations of 2018 revised the certification process, but did not abrogate the certification fee, and created a new fee for the exemption requests.

#### **9.7.2.4.2 Conditions for the issuance of an Aerodrome Certificate**

KCAA determines the conditions for the issuance of an Aerodrome Certificate<sup>129</sup>.

KCAA issues an Aerodrome Certificate where it is satisfied that<sup>130</sup>:

- the applicant and the personnel of the applicant are adequate in number and have the necessary competency and experience to operate and maintain an aerodrome;
- the aerodrome manual prepared for the aerodrome and submitted with the application contains all the relevant information;
- the aerodrome facilities, services and equipment are established in accordance with approved standards;
- the aerodrome operating procedures make satisfactory provision for the safety of aircraft;
- an approved safety management system is in place;
- the applicant has an approved aviation security program in accordance with the applicable security Regulations.
- The issuance of an Aerodrome Certificate is subject to compliance with any other condition as may be specified or notified by KCAA<sup>131</sup>.

Upon decision to refuse to grant an Aerodrome Certificate, KCAA must notify to the applicant the reasons for the refusal no later than 14 days after the decision has been made<sup>132</sup>.

KCAA endorses on the Aerodrome Certificate the conditions for use of the aerodrome and any other details as may be necessary<sup>133</sup>.

The Aerodrome Certificate shall be valid for a period of 2 years or for such less duration as may be prescribed<sup>134</sup>. An application for the renewal of the Aerodrome Certificate shall be submitted to KCAA 90 days before the expiry of the certificate, in the prescribed form and accompanied by the appropriate charges<sup>135</sup>.

The Aerodrome Certificate may also be amended by application to KCAA which shall be made in the prescribed form and accompanied by the appropriate charges<sup>136</sup>.

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<sup>129</sup> Regulation 8(1) of the Civil Aviation (Aerodrome Certification, Licensing and Registration) Regulations

<sup>130</sup> Regulation 12(1) of the Civil Aviation (Aerodrome Certification, Licensing and Registration) Regulations

<sup>131</sup> Regulation 12(2) of the Civil Aviation (Aerodrome Certification, Licensing and Registration) Regulations

<sup>132</sup> Regulation 12(3) of the Civil Aviation (Aerodrome Certification, Licensing and Registration) Regulations

<sup>133</sup> Regulation 8(2) of the Civil Aviation (Aerodrome Certification, Licensing and Registration) Regulations

<sup>134</sup> Regulation 13 of the Civil Aviation (Aerodrome Certification, Licensing and Registration) Regulations

<sup>135</sup> Regulation 14 of the Civil Aviation (Aerodrome Certification, Licensing and Registration) Regulations

<sup>136</sup> Regulation 15 of the Civil Aviation (Aerodrome Certification, Licensing and Registration) Regulations

#### 9.7.2.4.3 Continuing satisfaction

Following the issuance of the Aerodrome Certificate, KCAA shall carry out surveillance and inspections to ensure continuing validity of the certificate and continuing capacity of the aerodrome operator to maintain safe and regular operation of the aerodrome and associated facilities and services<sup>137</sup>.

The breach of any condition subject to which an Aerodrome Certificate has been issued including any approval, permission or exemption renders the Aerodrome Certificate invalid<sup>138</sup>.

#### 9.7.2.4.4 Specifications of the Aerodrome Certificate

The Aerodrome Certificate specifies<sup>139</sup>:

- the category of the aerodrome, aerodrome reference code and aerodrome category (Category A concerning aerodromes for both international and domestic use);
- the restrictions, if any, relating to non-compliance with or deviations from the appropriate aerodrome design, operation or equipment standards;
- the period of validity of the Aerodrome Certificate (in any case no longer than 2 years).

#### 9.7.2.4.5 Non-Transferability of the Aerodrome Operator Certificate

An Aerodrome Certificate is not transferable<sup>140</sup>.

#### 9.7.2.4.6 Exemption

An aerodrome operator can apply for an exemption from the obligation to obtain an Aerodrome Certificate in order to operate an aerodrome for international and domestic use<sup>141</sup>. The applicant for an exemption must justify the reasons for the exemption, state its duration and the operations to be conducted under the proposed exemption and pay the fee prescribed by KCAA<sup>142</sup>.

9.7.2.4.7 The existing airport certificate may not be transferred to the Private Partner. The Private Partner will therefore have to apply for a new aerodrome certificate. The timing for the issuance of the aerodrome certificate by KCAA will have to be taken into account as the Private Partner cannot operate the airport without aerodrome certificate. The Private Partner's obligation to obtain, maintain, renew and comply with the airport certificate will have to be provided for in the PPP Contract. Fees for the Certification of Aerodromes

According to the Circular AIC 08/23 (White 266) on Charges for Air Navigation Services and Regulatory Fees, when an application is made for the grant or renewal of the Aerodrome Certificate, the applicant shall pay the investigation fees required by KAA as follows:

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<sup>137</sup> Regulation 12(4) of the Civil Aviation (Aerodrome Certification, Licensing and Registration) Regulations

<sup>138</sup> Regulation 9(1) of the Civil Aviation (Aerodrome Certification, Licensing and Registration) Regulations

<sup>139</sup> Regulation 10 of the Civil Aviation (Aerodrome Certification, Licensing and Registration) Regulations

<sup>140</sup> Regulations 10(2) and 12(5) of the Civil Aviation (Aerodrome Certification, Licensing and Registration) Regulations

<sup>141</sup> Regulation 51 of the Civil Aviation (Aerodrome Certification, Licensing and Registration) Regulations

<sup>142</sup> Regulation 52(2) and (6) of the Civil Aviation (Aerodrome Certification, Licensing and Registration) Regulations

- Primary International Airports (i.e. aerodromes for both international and domestic use): 1,000,000 shillings (Ksh) for issuance of certificate and 1,000,000 shillings (Ksh) for renewal of certificate<sup>143</sup>;
- for variation of the Aerodrome Certification: 250,000 Ksh<sup>144</sup>.

Moreover, the Circular AIC 08/23 (White 266) on Charges for Air Navigation Services and Regulatory Fees provides for the collection of a fee regarding the continuous inspection by KCAA of the aerodrome equal to 2,5% of the Annual Landing Fees<sup>145</sup>.

Finally, a fee is collected concerning the approval of the aerodrome manual. This fee is of 10,000 shillings (Ksh) for the initial approval and 100 shillings per amended page<sup>146</sup>.

#### 9.7.2.5 Economic Regulation of Airports under the Civil Aviation Act and the KAA Act

##### 9.7.2.5.1 General overview of the existing applicable fees and charges

The KAA Act empowers KAA to determine, impose and levy rates, charges, dues or fees for any services performed by KAA, or for use by any person of the facilities provided by KAA, or for the grant to any person of a licence, permit or certificate, subject to the approval of the Minister of Roads and Transports<sup>147</sup>. The Civil Aviation Act provides for KCAA to determine, set out and levy the charges for any of the services it provides, for use of any of its facilities and for the grant of a license, permit or certificate<sup>148</sup>. In particular, KCAA is entitled to levy fees in relation to the areas governed by the following regulations: the Civil Aviation (Licensing of Air Services) Regulations, the Civil Aviation (Air Traffic Services) Regulations, the Civil Aviation (Certification, Licensing and Registration of Aerodromes) Regulations, the Civil Aviation (Personnel Licensing) Regulations and the Civil Aviation (Airworthiness) Regulations.

We understand from the KAA Act, the Civil Aviation Act and the applicable Regulations that (i) KAA has power to collect landing and parking fees, airport use fees, passenger service charges and other airport services-related fees and (ii) KCAA has power to collect air navigation charges, en-routes charges and other civil aviation-related charges. The charges are further identified in sections (A) to (C) below.

#### (A) Charges levied by KAA

<sup>143</sup> Section 10 (A)(a)(b) of the Circular AIC 08/23 (White 266) on Charges for Air Navigation Services and Regulatory Fees

<sup>144</sup> Section 10 (A)(c) of the Circular AIC 08/23 (White 266) on Charges for Air Navigation Services and Regulatory Fees

<sup>145</sup> Section 10 (B.) of the Circular AIC 08/23 (White 266) on Charges for Air Navigation Services and Regulatory Fees

<sup>146</sup> Section 10 (C.) of the Circular AIC 08/23 (White 266) on Charges for Air Navigation Services and Regulatory Fees

<sup>147</sup> Section 12(3)(e) of the KAA Act

<sup>148</sup> Section 35 of the Civil Aviation Act

We understand that the charges collected by KAA are currently as follows:

(i) a fee is due in respect of each landing of the aircraft at JKIA (the "**Landing Fee**").

Charges are calculated on the maximum permissible take-off weight in the certificate of airworthiness, as follows

Weight of aircraft (in Kgs)	Amount or rate of fee (USD)
Less than 1,500	10
Between 1,501 and 2,500	20
Between 2,501 and 5,000	25
Between 5,001 and 10,000	40
Between 10,001 and 20,000	65
Between 20,001 and 40,000	102
Between 40,001 and 80,000	223
Between 80,001 and 120,000	585
Between 120,001 and 180,000	820
Between 180,001 and 300,000	1,345
Aircraft exceeding 300,000 Kgs in weight	1,750

(ii) a fee shall be payable by the parking user (i.e. the airline) to KAA in respect of any of his aircraft parked or left standing in the airport (the "**Parking Fee**").

The first six (6) hours of parking are free. However, if the six (6) hours of parking are exceeded, the following charges apply:

Weight of aircraft (in Kgs)	Amount or rate of fee (USD)
Less than 10,000	6
Between 10,001 and 40,000	10

Between 40,001 and 80,000	15
Between 80,001 and 120,000	25
Between 120,001 and 180,000	40
Between 180,001 and 300,000	50
Aircraft exceeding 300,000 Kgs in weight	130

- (iii) A fuel charge of USD 0.35 per liter ("**Fuel Charge**")<sup>149</sup>
- (iv) A boarding bridge charge of USD 75 per 3 hours for aircrafts whose weight is comprised between 2,000 and 180,000 Kgs and of USD 100 for aircrafts weighting more than 180,000 Kgs ("**Boarding Bridge Charge**")
- (v) A fee shall be payable in respect of every vehicle operated for the provision of the ground handling services (the "Aircraft Handling Charge"):

Aircraft type	Amount or rate of fee (USD)
Cessna	Contract: 200 Ad-hoc: 300
ATR42/F27/F50	Contract: 550 Ad-hoc: 650
B737/B727/BAE146	Contract: 200 Ad-hoc: 300
B747	Contract: 200 Ad-hoc: 300

(B) Charges levied by KCAA

Please note that the following charges are exclusive of VAT. In accordance with the VAT Act, 2013<sup>150</sup>, KCAA charges VAT on domestic air navigation services with effect from 1st July 2023. The applicable rate shall be 16%<sup>151</sup>.

<sup>149</sup> Section 2 of the Kenya Airports Authority Concession Order, 1996

<sup>150</sup> Section 5(2)(b) of the VAT Act, 2013

<sup>151</sup> Section 8.0 of Schedule B of Circular AIC 08/23 (White 266) on Charges for Air Navigation Services and Regulatory Fees

(vi) A fee shall be payable by the operator of an aircraft in respect of each landing of the aircraft at an airport (the "Air Navigation Charge")<sup>152</sup>.

Weight of aircraft (in Kgs)	Amount or rate of fee (USD)
Less than 1,500	3
Between 1,501 and 2,500	6
Between 2,501 and 5,000	8
Between 5,001 and 10,000	10
Between 10,001 and 20,000	20
Between 20,001 and 40,000	30
Between 40,001 and 80,000	50
Between 80,001 and 120,000	80
Between 120,001 and 180,000	100
Between 180,001 and 300,000	150
Aircraft exceeding 300,000 Kgs in weight	180

(vii) An en-route charge shall be paid by the owner of an aircraft making a flight in Kenya based on the following parameters (the "En-route Charge")<sup>153</sup>:

- Distance Flown;
- the Maximum Take-Off Mass;
- the unit rate.

The formula to be applied is as follows:  $C = P \times D \times \sqrt{MTOM/50}$

Where:

- C = the charge to be paid by the owner
- P = unit rate D = distance flown

<sup>152</sup> Section 1.0 of Schedule B of Circular AIC 08/23 (White 266) on Charges for Air Navigation Services and Regulatory Fees

<sup>153</sup> Sections 1.2 and 1.3 of Schedule B of Circular AIC 08/23 (White 266) on Charges for Air Navigation Services and Regulatory Fees

- MTOM = maximum take-off mass
- Average Mass Factor (AMF) =  $\sqrt{\text{MTOM}/50}$
- Traffic units = AMF x D

The proposed en-route charges are as follows<sup>154</sup>:

Domestic Traffic			International Traffic		
Mass in Kgs	AMF	C/Km (in USD)	Mass in Kgs	AMF	C/Km (in USD)
Less than 2,500	0.158	0.041	Less than 2,500	0.158	0.076
Between 2,501 and 5,000	0.274	0.071	Between 2,501 and 10,000	0.354	0.171
Between 5,001 and 10,000	0.387	0.101	Between 10,001 and 20,000	0.548	0.265
Between 10,001 and 25,000	0.537	0.140	Between 20,001 and 50,000	0.837	0.404
Between 25,001 and 60,000	0.921	0.239	Between 50,001 and 80,000	1.140	0.550
Between 60,001 and 100,000	1.264	0.328	Between 80,001 and 150,000	1.516	0.733
Between 100,001 and 150,000	1.581	0.411	Between 150,001 and 200,000	1.871	0.904
Over 150,000	1.871	0.486	Over 200,000	2.439	1.178

- (C) Please note that the charges levied by KCAA are mentioned for information purposes only as no change in those charges is contemplated under the Project.
- (D) Charges levied by KAA and KCAA

Every airline (whether aircraft owner, operator or manager) shall pay an air passenger service charge of USD 50 per international departing passenger and KSH 600 per domestic departing passenger (the "**Passenger Service Charge**"), except for children under the age of two (2) years and for any passenger embarking at an airport at which he is in transit<sup>155</sup>.

The Passenger Services Charge must be collected by the airline (through a collection agent) from every passenger who purchases a ticket for an international or domestic flight which charge shall be apportioned between KAA, KCAA and the Tourism Promotion Fund as follows:

<sup>154</sup> Sections 1.7 of Schedule B of Circular AIC 08/23 (White 266) on Charges for Air Navigation Services and Regulatory Fees

<sup>155</sup> Sections 3 and 4 of the Air Passenger Service Charge Act



- in the case of international flight: 60% to KAA, 20% to KCAA and 20% to the Tourism Promotion Fund, and
- in the case of a domestic flight: 50% to KAA, 30% to KCAA and 20% to the Tourism Promotion Fund<sup>156</sup>.
- The Minister of Roads and Transports may however, by notice in the Gazette, vary or amend this charge.<sup>157</sup> We understand this allows the CS to amend the amount of the charge as well as the apportionment of the charge between the recipients designated in the Air Passenger Service Charge Act.

#### **9.7.2.5.2 Fees and charges to be set for the Project**

##### **(A) Setting of new fees and charged to be levied by the Private Partner**

As said above, under the KAA Act, KAA is entitled to determine, impose and levy rates, charges, dues or fees for any services performed by KAA, or for use by any person of the facilities provided by KAA, or for the grant to any person of a license, permit or certificate, subject to the approval of the Minister of Roads and Transports.

As indicated in Section 9.7.2.2.3 of the Report, KAA is authorised to delegate its functions to the Private Partner through the PPP Contract. This delegation will include the right to levy and collect rates, charges, dues and fees for the services performed or use of the facilities at JKIA.

Also, the holder of an Aerodrome Certificate shall prescribe charges for the use of the aerodrome or any facilities provided at the aerodrome for the safety, security, efficiency or regulatory of air navigation<sup>158</sup>.

Therefore, under the PPP Contract, the Private Partner will be entitled to levy charges from users for the services it provides, by virtue of the delegation of KAA's functions under the KAA Act as well as pursuant to the Civil Aviation (Aerodrome Certification, Licensing and Registration) Regulations.

It is our recommendation that the PPP Contract regulates the maximum charges which the Private Partner will be able to levy, as well as the modalities pursuant to which these maximum charges will be adjusted periodically to reflect inflation.

##### **(B) Prerogatives of KCAA in relation to aerodrome charges**

<sup>156</sup> Section 2 of the Air Passenger Service Charge Act (Apportionment) Order

<sup>157</sup> Section 3(2) of the Air Passenger Service Charge Act

<sup>158</sup> Regulation 18(1) of the Civil Aviation (Aerodrome Certification, Licensing and Registration) Regulations

KCAA may require the holder of the Aerodrome Certificate to furnish particulars of the charges the holder levies for the use of an aerodrome or the performance of services at the aerodrome<sup>159</sup>. KCAA may also prescribe the maximum charges the holder may levy for the use of the aerodrome or the performance of services at the aerodrome for a specified period<sup>160</sup>.

KCAA is empowered pursuant to the Civil Aviation (Aerodrome Certification, Licensing and Registration) Regulations to review airport charges and prescribe maximum limits. Such Regulations could be amended through new regulations by the CS in order to remove such prerogative on the part of KCAA where the charges are separately regulated by contract with the competent authority (i.e. the PPP Contract with KAA in the present case). If the Regulations are not amended, this can also be mitigated through the PPP Contract: if KCAA elects to prescribe maximum charges in contradiction with the maximum charges set forth in the PPP Contract, this would need to be treated in the PPP Contract as relief event entitling the Private Partner to compensation for extra costs/loss of revenues.

(C) Prerogatives of the CS in relation to airport charges

Under the KAA Act, charges levied by KAA must be approved by the Minister of Roads and Transports<sup>161</sup>.

By virtue of the delegation of KAA's duties, the charges levied by the Private Partner (and any revision thereof) will need therefore to be approved by the CS. The KAA Act could be amended to remove the requirement of the CS's approval, so that the charges are exclusively regulated by the PPP Contract; however this will require an Act of Parliament, which may take time to obtain and the outcome is not entirely under the Government's control.

If the KAA Act is not amended as per above, this can be mitigated through the PPP Contract: under the PPP Contract, if the CS does not approve charges and revisions thereof which are set accordance with the terms of the PPP Contract, this would qualify as a change in law or material adverse government action and give rise to pecuniary relief for the Private Partner for loss of revenues / additional costs incurred as a result.

(D) Repeal or amendment of airport charges formerly levied by KAA or collected on the account of KAA

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<sup>159</sup> Regulation 18(2) of the Civil Aviation (Aerodrome Certification, Licensing and Registration) Regulations

<sup>160</sup> Regulation 18(3) of the Civil Aviation (Aerodrome Certification, Licensing and Registration) Regulations

<sup>161</sup> section 12(3)(e) of the KAA Act.

In accordance with the KAA Act, the Minister of Roads and Transports may approve any alterations in the tariffs, rates and other charges made for the services provided by KAA . Such airport charges may therefore be repealed by KAA with the Minister of Roads and Transports' prior approval.

In relation to the the Air Passenger Service Charge, as indicated above the APSC payable for international passengers under the APSC Act is currently set at USD 50 / pax and is allocated as follows : USD 30 for KAA, USD 10 for KCAA and USD 10 for the Tourism Promotion Fund (TPF).

We understand that the APSC is paid by the airlines through IATA and collected by KRA which then redistributes the APSC to KAA, KCAA and TPF as per the allocation above.

However once the PPP Contract starts, the Private Partner will be providing the services in respect of such passengers, in lieu of KAA. The Private Partner should therefore benefit from the USD 30 portion currently distributed to KAA in relation to JKIA (given it will be taking over KAA's duties).

Designating the Private Partner as the recipient of KAA's portion of the PASC will require legislative amendment to the APSC Act. As such it is not the preferred legal option given this may take some time and the outcome is not entirely predictable. Also, from a bankability perspective, the Private Partner will require to collect directly the PASC from airlines (and not depend on KRA to collect and remit the portion owed to the Private Partner).

However under the APSC Act, the CS is empowered to change by notice the amount and apportionment of the APSC. The CS could therefore reduce the PASC from USD 50 to USD 30 / pax and subsequently amend the allocation of this new PASC as follows: USD 10 for KCAA, USD 10 for TPF and 0 for KAA. Correlatively, the Private Partner is entitled to prescribe charges for its services by virtue of its delegation of duties under the KAA Act as well as pursuant to the Civil Aviation (Aerodrome Certification, Licensing and Registration) Regulations. The Private could therefore levy a new charge in an amount equivalent to the USD 30 portion of the APSC previously allocated to KAA (provided that such charge is not referred to as APSC and provided also that such charge and any revision thereof will be subject to the CS approval as per above).

### 9.8 Government Guarantee

Under the PPP Act, the Cabinet Secretary for the Ministry of National Treasury and Economic Planning may issue Government support measures for a PPP including a bidding undertaking, a letter of support, a letter of credit, a credit guarantee, whether partial or full, approval for issuance of partial risks guarantees and political risk insurance or any other instrument that the Cabinet Secretary may, on the advice of the PPP Committee, determine. These Government support measures may be issued where it is necessary to support a project to lower premiums factored for the profiling of political risks or to underwrite approved

commercial risks under a negotiated project agreement and provided that the instrument shall comply with the provisions of the Public Finance Management Act<sup>162</sup>.

Under the Public Finance Management Act, the guarantee of debt by the Government of Kenya shall be done in terms of criteria agreed with the Intergovernmental Budget and Economic Council and prescribed in regulations approved by Parliament<sup>163</sup>. Furthermore, any national or external government securities issued by the Cabinet Secretary shall be within the borrowing limits set out by the Parliament<sup>164</sup>.

The issuance of a Government guarantee shall in principle be approved by Parliament.

The issuance of a Government guarantee shall in principle be approved by Parliament. However we understand from the Local Counsel that considering recent engagements with government authorities, the Government of Kenya may be reluctant to issue any sovereign guarantees in the next 3 to 5 years. We understand however that the Government has issued Letters of Support for past projects, which provided for the payment by the Government of a transfer indemnity in the event that political events caused the contracting public agencies to breach their payment obligations. In any event, the extent of the Government support to cover for risks borne by the Government as well as the binding nature of such letter would need to be discussed and confirmed on a case-by-case basis.

Should the issuance of a Government guarantee or letter of support be rejected by the Government despite being required for the bankability of the Project, the Local Counsel has advised that the Government could co-sign the PPP Contract (alongside with KAA) in order to be jointly liable with KAA for KAA's payment obligations under the PPP Contract. Such joint liability embedded in the PPP Contract would not in order to avoid the issuance of be construed as a specific Government "guarantee" within the meaning of that would be subject to the Parliament's approval in accordance with the Public Finance Management Act. However the Local Counsel is not aware of any past project where this approach has been implemented. Should it be considered by the Government, this option shall be further discussed with KAA and the relevant Government authorities as well as further analysed under Kenyan law, especially to confirm that the PPP Contract would not be construed as a guarantee as defined in the Constitution of Kenya and as applied to Public Finance Management Act to the extent that it comprises of direct payment obligations by the Government of Kenya.

<sup>162</sup> Section 28 of the PPP Act

<sup>163</sup> Section 50(4) of the Public Finance Management Act

<sup>164</sup> Sections 53 and 53A of the Public Finance Management Act

It should be noted in any case that any liabilities of the State must be approved upfront through the budget or immediately thereafter (in the case of emergencies) through a supplementary budget, as prescribed under the provisions of the Public Finance Management Act. Pursuant to the Asset & Liability Policy, Accounting Officers are only required to ensure that all contingent liabilities relating to their respective entities are identified, quantified and disclosed in the entity's financial statements. Under section 67 of the Public Finance Management Act, an Accounting Officer in relation to the national government is such person as a law or the CS may designate. Before a decision is made to enter into a PPP Contract, the Asset & Liability Policy places an obligation on the Contracting Authority (i.e. KAA in this case) to consult with the National Treasury for technical guidance and financial implications, especially with respect to potential contingent liabilities.

## 9.9 Property, Land, Planning and Construction

### 9.9.1 Overview of applicable regulations

- Act of Parliament to establish the Kenya Airports Authority, to provide for the powers and functions of the Authority and for connected purposes, Kenya Airports Authority Act, CAP 395 ("**KAA Act**");
- Subsidiary to the KAA Act - KAA (Vesting) Order, 1994 [L.N. 201/1994.] ("**KAA (Vesting) Order, 1994**");
- Act of Parliament to provide for the participation of the private sector in the financing, construction, development, operation or maintenance of infrastructure or development projects through public private partnerships; to streamline the regulatory framework for public private partnerships; to repeal the Public Private Partnerships Act, 2013; and for connected purposes, the Public Private Partnership Act, 2021 ("**PPP Act**");
- Act of Parliament to revise, consolidate and rationalize the registration of titles to land, to give effect to the principles and objects of devolved government in land registration, and for connected purposes Act No. 3 of 2012 as last revised by Act No. 1 of 2020 ("**Land Registration Act, 2012**");
- Act of Parliament to give effect to Article 68 of the Constitution, to revise, consolidate and rationalize land laws; to provide for the sustainable administration and management of land and land based resources, and for connected purposes Act No. 6 as last revised by Act No. 15 of 2019 ("**Land Act, 2012**");
- Act of Parliament to make provision for the planning, use, regulation and development of land and for connected purposes ("**Physical and Land Use Planning Act, 2019**");

- The Physical and Land Use Planning (Classification of Strategic National or Inter-Country Projects) regulations, 2019;
- The Physical and Land Use Planning (Development Control Enforcement) Regulations, 2021;
- The Physical and Land Use Planning (General Development Permission and Control) Regulations, 2021;
- Act of the Nairobi City County Assembly to provide for grant of trade licenses within Nairobi City County and for connected purposes ("**Nairobi City County Trade Licensing Act, 2019**");
- Act of Parliament to provide for the establishment, powers and functions of the National Construction Authority and for connected purposes ("**National Construction Authority Act, 2011**");
- National Construction Authority Regulations, 2014.

## 9.9.2 Overview of land ownership by KAA

### 9.9.2.1 Identification of KAA's title over the airport site and assets

Under the KAA Act, "the Minister may, by order published in the Gazette, transfer to the Authority any property belonging to the Government which appears to him to be necessary or useful to the Authority for the performance of its functions under this Act, which property shall vest in the Authority by virtue of the order without further assurance<sup>165</sup>".

In application of the KAA Act, the KAA (Vesting) Order of 1994 provides that "all Government property previously administered by the now Erstwhile Department of Aerodromes, Office of the President<sup>166</sup>, is transferred to the Kenya Airports Authority<sup>167</sup>". The details of the properties administered by this Government Department were not specified in the KAA (Vesting) Order of 1994.

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<sup>165</sup> Section 4 of the KAA Act

<sup>166</sup> the Government Department responsible for planning, design, maintenance and operation of aerodromes in Kenya existing immediately prior to the coming into operation of the KAA Act

<sup>167</sup> KAA (Vesting) Order, 1994

Under the KAA Act and the KAA (Vesting) Order, KAA has title to the lands and property that are necessary or useful for KAA to carry out its functions. KAA should therefore in principle have necessary title over (i) JKIA, and (ii) subject to Government's prior approval, other land or asset necessary for the Project.

#### **9.9.2.1.1 Capacity to transfer the Site and Assets to the Private Partner**

The KAA Act does not contain specific regulations explicitly permitting KAA to engage in leasing arrangements or, more generally, to grant the right to any third party to use or otherwise occupy its property<sup>168</sup>.

However, some general provisions of the Kenyan Airport Authority Act refer to KAA's broad authority for the performance of its functions and within the purpose of the Act, in particular, "the capacity in its name to acquire, hold, and dispose of movable and immovable property for the purposes of the Kenya Airport Authority Act<sup>169</sup>".

#### **9.9.2.1.2 Form of the agreement to transfer the Site and Assets to the Private Partner**

The PPP Act allows a Contracting Authority (as defined in sub-section 9.6.3.2.1) to designate its property for use by a private party during a project, based on appropriateness. The terms and conditions of this arrangement are determined by the contracting authority as deemed suitable for the project's duration<sup>170</sup>.

However, under Land Act, 2012 it may be necessary to enter into a lease agreement to effect the PPP e.g. where KAA may require to lease any land to the Private Partner. In such cases, according to the Land Registration Act, 2012, interests in land being conveyed to the Private Partner through leases, sales or charges may require separate additional statutory instruments to be approved and registered with the Lands Registrar.

The right to occupy the lands and assets necessary for the Project may be granted under the PPP Contract. It is therefore not mandatory for KAA and the Private Partner to enter into a lease agreement, separate from the PPP Contract, which could give rise to registrations fees.

However, entering into a separate lease may be necessary to convey certain interests in relation to the site that may be required by the Concessionaire over the land as concession contracts typically do not convey title in real property (susceptible of security interests *in rem* – which may be a requirement for the Lenders) but are simply a contractual permission to use the land.

<sup>168</sup> Section 12.3 (g) of the KAA Act

<sup>169</sup> Section 3.2 of the KAA Act

<sup>170</sup> Section 20(1) of the PPP Act



Also it is expected that most if not all leases currently entered between KAA and other parties (commercial entities and public administrations such as KCAA) in respect of the occupation and use of JKIA space will need to be transferred from KAA to the Private Partner; therefore this would require the Private Partner to obtain the same land title as KAA benefits from and therefore may require KAA and the Private Partner to enter into a separate lease which shall then be registered with the Land Registry (and existing lessees would become sub-lessees with the Private Partner as their lessor).

The specific approach, whether through lease or direct concession, can be further refined depending on the requirements of the Private Partner and its lenders.

### 9.9.3 Permitting requirement

Under the Physical and Land Use Planning Regulations, 2019<sup>171</sup>, development permission is required for any development (defined as "the carrying out of any works on land or making any material change in the use of any structures on the land").

A development application must be submitted including a planning brief, a cadastral plan, architectural designs, civil drawings, structural drawings, Environmental Impact Assessment, Environmental and Social Impact Assessment and Strategic Environmental Assessment reports and any other relevant documents<sup>172</sup>, which is then transmitted to the relevant authority<sup>173</sup>:

- the director-general of the National Physical and Land Use Development Plan would have to review and comment development permission in accordance with the national laws (environment, land survey...) and for publication<sup>174</sup>;
- the Cabinet Secretary for the time being responsible for matters related to physical and land use planning may consider and approve development permission for any development to be carried out within the prescribed projects of strategic national importance<sup>175</sup>;
- the permit shall be issued by the county director of physical and land use planning<sup>176</sup>.

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<sup>171</sup> Section 5 of the Physical and Land Use Planning Regulations, 2019

<sup>172</sup> Schedule 1 of the Physical and Land Use Planning (General Development Permission and Control) Regulations (FORM PLUPA/DC/1F (r. 3(1)))

<sup>173</sup> Regulations 58 and 59 of the Physical and Land Use Planning Act, and Section 20(1) and (3) of the Physical and Land Use Planning (General Development Permission and Control) Regulations

<sup>174</sup> Regulation 20(3) of the Physical and Land Use Planning (General Development Permission and Control) Regulations

<sup>175</sup> Section 69 of the Physical and Land Use Planning Act, 2019; and Regulation 21(1) of the Physical and Land Use Planning (General Development Permission and Control) Regulations and Schedule 1 of the Physical and Land Use Planning (General Development Permission and Control) Regulations (FORM PLUPA/DC/1F (r. 3(1)))

<sup>176</sup> Sections 56 to 61 of the Physical and Land Use Planning Act, 2019

In our understanding, for a national strategic project an application for a development permission in the form PLUPA/DC/1F would be necessary.

Moreover, under the National Construction Authority Act, 2011, any construction work (including "the construction, extension, installation, repair, maintenance, renewal, removal, renovation, alteration, dismantling, or demolition of (b) any road, harbour works, railway, cableway, canal or aerodrome"<sup>177</sup>) shall be carried out by a registered contractor<sup>178</sup>. According to Regulation 17 of the National Construction Authority Regulations, each owner must submit an application to register a project with the National Construction Authority<sup>179</sup> in writing within thirty days from the date on which a tender for construction works, contracts or projects in the public or private sector is awarded to a registered contractor.

The National Construction Authority Act, 2011 provides that a contractor to be registered is a person or firm that, for a reward or other valuable consideration, undertakes the construction, installation, or erection for any other person, of any structure situated below, on or above the ground, or other work connected therewith, or the execution, for any other person, of any alteration or otherwise to any structure or other work connected therewith, and undertakes to supply (a) the materials necessary for the work, or is authorized to exercise control over the type, quality or use of the materials supplied by any other person; (b) the labour necessary for the work, or is authorized on behalf of the person for whom the work is undertaken or any other person, to employ or select workmen for employment for the purposes of the execution of the work, whether under a contract of service or otherwise<sup>180</sup>. The Act outlines specific exclusions where a person is not required to be a registered contractor. These exclusions apply: "when the work undertaken (i) does not incur a cost exceeding such sum or sums as the Board may from time to time determine; or (ii) consists of a residential house for private use, not requiring a structural design<sup>181</sup>". However, these exclusions should not apply to the Private Partner's contractor, and the person in charge of the construction work of the Project should be a registered contractor, or apply for registration under the National Construction Act.

Where construction is to take place on a plot of land that is not vested in KAA, such construction or execution of works shall be carried out only with the consent of the owner of the land<sup>182</sup>.

The Project will be subject to (i) development permission in accordance with the relevant plans and legislations from the Cabinet Secretary responsible for matters related to physical and land use planning,

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<sup>177</sup> Section 2 of the National Construction Authority Act, 2011

<sup>178</sup> Regulation 17 (5) of the National Construction Authority Regulations, 2014

<sup>179</sup> Authority established under the National Construction Authority Act, 2011

<sup>180</sup> Section 16 of the National Construction Authority Act, 2011

<sup>181</sup> Section 16 of the National Construction Authority Act, 2011

<sup>182</sup> Section 12 (4) of the KAA Act

(ii) registration with the National Construction Authority of the construction work, which should be awarded to a registered contractor.

#### **9.9.4 Land acquisition (if applicable)**

KAA is entitled to secure the necessary land for its purposes, utilizing either negotiation processes or obtaining authorization to compulsory acquire the land through the ministry responsible for land affairs<sup>183</sup> which act on behalf of the National Land Commission (as defined in Article 67 of the Constitution)<sup>184</sup>.

The development of JKIA would enter into the classification of "Strategic national or Inter-county project" as JKIA is an international airport<sup>185</sup>, and would also be considered as "Land Use programme" regarding the possible need of land acquisition and purchases, and land reservation<sup>186</sup>. A specific procedure applies to these categories of projects<sup>187</sup>. If the project requires land acquisition, KAA would have the right to engage in agreements with other parties to access the land. KAA could also seek authorization for compulsory acquisition of the land. The process and costs relating to land acquisition (as well as the compliance thereof with international E&S standards) would have to be anticipated in the structuring of the transaction.

### **9.10 Environmental Aspects**

#### **9.10.1 Overview of applicable regulation**

- Environmental Management and Co-ordination Act, No. 8 of 1999 (the "Environmental Management and Co-ordination Act");
- Environmental (Impact Assessment and Audit) Regulations, 2003 (the "EIA Regulations");
- Environmental Management and Co-ordination (Water Quality) Regulations, 2006 (the "Water Regulations");
- Environmental Management and Co-ordination (Waste Management Regulations), 2006 (the "Waste Regulations");

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<sup>183</sup> Section 13 of the KAA Act

<sup>184</sup> Section 107 of the Land Act, 2012

<sup>185</sup> Regulation 3 of the Physical and Land Use Planning (Classification of Strategic National or Inter-Country Projects) Regulations

<sup>186</sup> Regulation 13 of the Physical and Land Use Planning (Classification of Strategic National or Inter-Country Projects) Regulations, 2019

<sup>187</sup> Regulation 20(1) and (3) of the Physical and Land Use Planning (General Development Permission and Control) Regulations

- Environmental Management and Coordination (Noise and Excessive Vibration Pollution) (Control) Regulations, 2009 (the "Noise Pollution Regulations");
- Civil Aviation (Airworthiness) Regulations, 2018 (the "Airworthiness Regulations");
- Environmental Management and Co-ordination (Air Quality) Regulations, 2014 (the "Air Quality Regulations").

### 9.10.2 National Environment Management Authority

The National Environment Management Authority (the "Environment Authority") was established by the Environmental Management and Co-ordination Act. The Environment Authority is in charge of the general supervision and co-ordination over all matters relating to the environment and is the main public authority with respect to the implementation of all policies relating to the environment<sup>188</sup>.

The National Environment Management Authority will be competent to deal with the environmental aspects of the Project.

### 9.10.3 Environmental Impact Assessment

#### 9.10.3.1 Application for an Environmental Impact Assessment Licence

##### (A) Preparation of a project report

Any person, being a proponent of any airports and airfields projects (including rehabilitation works of airports and airstrips), shall submit to the Environment Authority a summary project report of the likely environmental effect of the project<sup>189</sup>.

Under the Environmental Management and Co-ordination Act, the term "proponent" means any person proposing or executing a project, program or an undertaking specified in the Second Schedule.

The Project will be subject to the submission of a summary project report. The obligation to submit this report should be borne by the Private Partner under the PPP Contract.

The project report shall specify:

- (b) the nature of the project;
- (c) the location of the project including:

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<sup>188</sup> Section 7 and 9 (1) of the Environmental Management and Co-ordination Act

<sup>189</sup> Regulation 7(1) of the EIA Regulations

- (i) proof of land ownership, where applicable;
  - (ii) any environmentally sensitive area to be affected;
  - (iii) availability of supportive environmental management infrastructure; and
  - (iv) conformity to land use plan or zonation plan; and
- (d) potential environmental impacts of the project and the mitigation measures to be taken during and after implementation of the project<sup>190</sup>.

Upon receipt of the project report, the Environment Authority shall, within five days, undertake screening and assessment thereof for completeness and:

- (e) where the Environment Authority considers that the proposed project may have a significant adverse environmental impact, it shall recommend that the proponent should prepare and submit a comprehensive project report; or
- (f) where the Environment Authority considers that the proposed project is not likely to have any significant adverse environmental impact, it shall exempt the proponent from submitting a comprehensive project report and issue the proponent with an approval to proceed with the project.

A proponent shall submit at least two copies of the project report to the Environment Authority or the Environment Authority's appointed agent in the prescribed form accompanied by the prescribed fees<sup>191</sup>.

The project report is then commented by the relevant lead agencies (any Government ministry, department, parastatal, state corporation or local authority, in which any law vests functions of control or management or any element of the environment or natural resources) and the relevant District Environment Committee, which comment shall be submitted to the Environment Authority within 21 days from the date of receipt of the project report from the Environment Authority<sup>192</sup>.

The decision of the Environment Authority shall be communicated within 45 days of the submission of the project report. Where the Environment Authority is satisfied that the project will have no significant impact

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<sup>190</sup> Regulation 7(2) of the EIA Regulations

<sup>191</sup> Regulation 8 of the EIA Regulations

<sup>192</sup> Regulation 9 of the EIA Regulations

on the environment, or that the project report discloses sufficient mitigation measures, the Environment Authority may issue the Environmental Impact Assessment Licence in form 3 set out in the first schedule to the EIA Regulations. If the Environment Authority finds that the project will have a significant impact on the environment, and the project report discloses no sufficient mitigation measures, the Environment Authority shall require that the proponent undertake an environmental impact assessment study in accordance with the EIA Regulations<sup>193</sup>.

The Private Partner will have to prepare a project report of the likely environmental effect of the Project and submit it to the Environment Authority, which shall either (i) decide whether a comprehensive project report shall be prepared and/or an environmental impact assessment study report shall be conducted (see section (B) below) or (ii) issue the proponent with an approval to proceed with the Project and issue the required license.

(B) Environmental impact assessment study

- Application for an environmental impact assessment licence

A full environmental impact assessment study report (an "EIA") shall be conducted in accordance with terms of reference developed during the scoping exercise by the proponent and approved by the Environment Authority and in accordance with the general environmental impact assessment guidelines and sector environmental impact assessment guidelines set out in the third schedule to the EIA Regulations<sup>194</sup>.

An application for an environmental impact assessment licence shall be in the form of a project report in form 1 set out in the first schedule to the EIA Regulations, and the applicant shall submit the application together with the prescribed fee (as set out in the fifth schedule of the EIA Regulations) to the Environment Authority or the Environment Authority's appointed agent in the district where the Project is to be undertaken<sup>195</sup>.

The EIA studies and reports shall be conducted or prepared respectively by individual experts or a firm of experts authorised in that behalf by the Environment Authority, as listed in a register maintained by the Environment Authority. The register is a public document and may be inspected at reasonable hours by any person on the payment of a prescribed fee (as set out in the fifth schedule of the EIA Regulations)<sup>196</sup>.

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<sup>193</sup> Section 10 of the EIA Regulations

<sup>194</sup> Section 12 of the EIA Regulations

<sup>195</sup> Section 58(3) of the Environmental Management and Co-ordination Act and section 6 of the EIA Regulations

<sup>196</sup> Section 58(5) of the Environmental Management and Co-ordination Act

The detailed content of the EIA is provided for in section 18 of the EIA Regulations.

- Publication of the EIA

Upon receipt of the EIA, the Environment Authority shall cause to be published in the Gazette, in at least two newspapers circulating in the area or proposed area of the project and over the radio a notice which shall state:

- (a) a summary description of the project;
- (b) the place where the project is to be carried out;
- (c) the place where the EIA may be inspected; and
- (d) a time limit of not exceeding sixty days for the submission of oral or written comments on the EIA.

The Environment Authority may set up a technical advisory committee to advise it on the EIA and may require to carry out further evaluation or environmental impact assessment study, review or submit additional information<sup>197</sup>.

- Environmental Impact Licence

The Environment Authority may, after being satisfied as to the adequacy of the EIA issue an environmental impact assessment licence on such terms and conditions as may be appropriate and necessary to facilitate sustainable development and sound environmental management<sup>198</sup>. The Environment Authority shall give its decision on the EIA within 3 months of receiving the EIA<sup>199</sup>.

Should the Environment Authority decide so after completion of the project report and/or the comprehensive project report, the Private Partner) may be subject to conducting an EIA and submitting it to the Environment Authority so as to be granted the environmental impact licence.

- (E) Transfer of any potential existing EIA Licence
- (F) An environmental impact assessment licence may be transferred by the holder to another person only in respect of the project in relation to which such licence was issued<sup>200</sup>. The person to whom

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<sup>197</sup> Sections 61 and 62 of the Environmental Management and Co-ordination Act

<sup>198</sup> Section 63 of the Environmental Management and Co-ordination Act

<sup>199</sup> Section 23 of the EIA Regulations

<sup>200</sup> Section 65(1) of the Environmental Management and Co-ordination Act



it is transferred and the person transferring it shall jointly notify the Director-General of the Environment Authority in writing of the transfer, not later than thirty (30) days after the transfer<sup>201</sup>.

(G) At this stage, we have not been provided with any information in relation to any existing environmental impact assessment licence. Confirmation should be sought with KAA in this regard. As the case maybe, and without prejudice to the obtaining of any new environmental impact assessment licence for the Project, transfer of such potential existing environmental impact assessment licence should be made to the Private Partner so as to ensure that the Private Partner complies with it.

(H) Annual environmental audit reports

The owner of the premises or the operator of a project for which an environmental impact assessment study report has been made shall (i) keep accurate records and make annual reports to the Environment Authority describing how far the project conforms in operation with the statements made in the environmental impact assessment study report submitted and (ii) shall take all reasonable measures to mitigate any undesirable effects not contemplated in the EIA submitted to the Environment Authority and shall prepare and submit an environmental audit report on those measures to the Environment Authority annually or as the Environment Authority may, in writing, require<sup>202</sup>.

The environmental audit shall, unless it is a self-auditing study as specified below, be conducted by a qualified and authorized environmental auditor or environmental inspector who shall be an expert or a firm of experts registered by the Environment Authority<sup>203</sup>. The environmental audit shall be conducted within a period of 12 months of the commencement of the operations, and no more than 24 months after the completion of the Project, whichever is earlier<sup>204</sup>.

Furthermore, after the EIA has been approved by the Environment Authority, the proponent shall take all practical measures to ensure the implementation of the environmental management plan by carrying out a self-auditing study on a regular basis<sup>205</sup>.

The details regarding the content and standards of the environmental audit are provided for in sections 35 and 36 of the EIA Regulations.

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<sup>201</sup> Section 65(2) of the Environmental Management and Co-ordination Act

<sup>202</sup> Section 68 of the Environmental Management and Co-ordination Act

<sup>203</sup> Regulation 31 of the EIA Regulations

<sup>204</sup> Regulation 31 of the EIA Regulations

<sup>205</sup> Regulation 34 of the EIA Regulations

After submitting the EIA, the proponent will have to prepare an environmental audit report and submit it to the Environment Authority annually and carry out self-auditing study on a regular basis. Such environmental audit report's obligations will be provided for in the PPP Contract and carried out by the Private Partner.

#### 9.10.4 Environmental quality standards

Kenyan environmental acts and regulations provide for various environmental quality standards and obligations in terms of water quality, waste management, noise and air quality which will have to be taken into account by KAA while implementing the Project.

Such environmental quality standards are contained in the Water Regulations, the Waste Regulations, the Noise pollution Regulations, the Airworthiness Regulations and the Air Quality Regulations, as those regulations are defined in Section 9.10.1 above.

In addition to any international environmental standards which may apply to the Project, as referred to in the E&S report, the PPP Contract will have to provide for the compliance with the relevant environmental quality obligations under Kenyan law, including so as to ensure that the Private Partner (i) obtains the relevant license to discharge effluents from the Environment Authority, (ii) minimizes the waste generated by the Project and mitigate pollution, (iii) obtains an Environmental Impact Licence (iv) complies with the relevant strategic noise or vibration maps and action plans made by KAA and applicable to the Project, (v) ensures that the aircrafts landing or taking off in the Jomo Kenyatta International Airport apply or have applied to the noise certificate issued by KCAA and (vi) complies with the relevant emission limits of air pollutants.

## 9.11 Labour Aspects

### 9.11.1 Overview of applicable regulation

In Kenya, employment relationships are principally governed by the following texts:

- The Employment Act, No 11 of 2007 (the "**Employment Act**") together with the Employment (General) Rules, 2014, which define the fundamental rights of employees and the basic conditions of employment in Kenya. They provide for the minimum terms of an employment relationship and termination on account of redundancy;
- The Labour Relations Act, No 14 of 2007 (the "**Labour Relations Act**"), which provides for, inter alia, the regulation of trade unions and employers organisations/federations, including the rules concerning collective bargaining agreements;

- The Labour Institutions Act, No 12 of 2007 (the "**Labour Institutions Act**"), which provides for the establishment and functions, powers and duties of the following institutions: the National Labour Board (advise the Cabinet Secretary for Labour and Social Protection ("Minister") on concerning employment and labour matters), Committee of Inquiry (to inquire into any matter connected with any trade dispute of any type or class), Labour Administration And Inspection, Wages Councils (investigate and make recommendations to the Minister on minimum wage remuneration and conditions of employment), Employment Agencies etc. It also provides for the rules concerning collective bargaining agreements;
- The National Employment Authority Act, No 3 of 2016 (the "**National Employment Authority Act**"), which establishes the National Employment Authority which provides for a comprehensive institutional framework for employment management by advising on formulation of, implementing, develops key survey metrics and monitors implementation of employment policies and strategies on the national and county government levels;
- The Employment and Labour Relations Court Act No. 20 of 2011 (the "**ELRC Act**") that provides for the creation of the Employment and Labour Relations Court;
- The Public Service Commission Act, No 10 of 2017, together with the Public Service Commission Regulations, 2020 (the "**Public Service Commission Regulations**") determining the rules to be applied to employees of the public sector;
- The Regulation of Wages (General) Order of 1 August 1982, as amended in 2022 (the "**Regulation of Wages Order**");
- Act of Parliament to promote and safeguard competition in the national economy; to protect consumers from unfair and misleading market conduct; to provide for the establishment, powers and functions of the Competition Authority and the Competition Tribunal, and for connected purposes (the "**Competition Act**").

The Ministry of Labour and Social Protection is the ministry responsible for administering labour and employment affairs in Kenya.

### 9.11.2 Overview

The Employment Act applies to all employees (i.e., a person employed for wages or a salary<sup>206</sup>), employed by any employer (which can be any person, public body, including the Government of Kenya<sup>207</sup>, firm, corporation or company<sup>208</sup>) under a contract of service<sup>209</sup> (i.e., an agreement, whether oral or in writing,

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<sup>206</sup> Section 2 of the Employment Act, definition of "employee"

<sup>207</sup> Section 3(4) of the Employment Act

<sup>208</sup> Section 2 of the Employment Act, definition of "employer"

<sup>209</sup> Section 3(1) of the Employment Act

and whether expressed or implied, to employ or to serve as an employee for a period of time, including contracts of apprenticeship and indentured learnership, but excluding foreign contracts of service<sup>210</sup>). The Employment Act provides for some limitative exclusions, which do not apply to KAA<sup>211</sup>.

Under the KAA Act, KAA has power to appoint on such terms and conditions of service as it may determine employees as may be necessary for its efficient working. KAA exercises disciplinary control over such employees<sup>212</sup>.

As a State Corporation (please refer to Section 9.6.2.1 in this respect) KAA should be considered operating in the public sector, as it must obey the rules and principles of the public service<sup>213</sup>.

However, we understand that KAA's staff may not be considered public officers, as they are neither State Officers (as they do not hold a State office in the sense of Article 260 of the Constitution of Kenya (mainly, office in the KAA is not considered a State Office<sup>214</sup>)), nor persons, other than State officers, holding a public office<sup>215</sup> (i.e., an office in the national government, a county government or the public service<sup>216</sup>)).

In our understanding, the staff of the KAA are to be considered employees of the public sector, and the provisions of the Employment Act should apply.

The terms and conditions of employment set out in the Employment Act constitute a minimum that no employee nor agreement may relinquish, vary or amend in such manner that the employee is less protected<sup>217</sup>. Under the Employment Act, specific agreements/orders may be adopted and applied in addition or in derogation to the terms and conditions of the contract of service:

- special arrangements: the Cabinet Secretary of the Ministry of Labour and Social Protection may, after consultation with the National Labour Board, exclude by way of order categories of employed persons whose terms and conditions of employment are governed by special arrangements from the application of the Employment Act, as long as the special

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<sup>210</sup> Section 2 of the Employment Act, definition of "contract of service"

<sup>211</sup> Section 3(2) of the Employment Act

<sup>212</sup> Section 29 of the KAA Act

<sup>213</sup> Article 232 of the Constitution of Kenya

<sup>214</sup> Article 260 of the Constitution, definition of "State office"

<sup>215</sup> Article 260 of the Constitution, definition of "public officer"

<sup>216</sup> Article 260 of the Constitution, definition of "public office"

A "public service" is the collectivity of all individuals, other than State officers performing a function within a State organ. A "State organ" is a commission, office, agency or other body established under the Constitution of Kenya. As the KAA has not been established under the Constitution of Kenya, its staff may not be considered public officers.

<sup>217</sup> Section 3(6) of the Employment Act

arrangements afford protection that is equivalent to or better than the protection the Employment Act provides for<sup>218</sup>;

- Collective agreements: agreements concluded between a recognised trade union and an employer<sup>219</sup> may set out terms and conditions of contracts of service<sup>220</sup>. If a collective agreement sets out terms and conditions of contracts of service, said terms shall be incorporated into the contract of employment of every employee covered by the collective agreement<sup>221</sup>. However, for the terms of a collective agreement to be enforceable, they must be more favourable than the terms and conditions provided for in the Employment Act<sup>222</sup>; and
- specific terms and conditions in the public sector: where no collective bargaining agreement has been signed in the public sector, the Minister of Labour and Social Protection, after Consultations with the National Labour Board, may make regulations establishing machinery for determining terms and conditions of employment for any category of employees in the public sector. These terms and conditions have the same effect as a collective agreement registered in accordance with the Labour Relations Act, and should be enforced as such<sup>223</sup>.

KAA has power to appoint on such terms and conditions of service it determines such employees as may be necessary for the efficient working of the authority<sup>224</sup>, under contracts of service (being specified that within the meaning of the Employment Act, contracts of service include any contract to employ or serve as an employee for a period of time).

We understand that KAA's employees are not subject to any (i) special arrangement, (ii) collective agreement (as there is no collective agreement registered with the Employment and Labour Relations Court (as required by section 60 of the Labour Relations Act, 2007)) nor (iii) specific terms and conditions. In absence of a derogative arrangement, the terms and conditions of service of KAA's staff should be interpreted in regard to the Employment Act and to the different contracts of services applicable.

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<sup>218</sup> Section 3(5) of the Employment Act

<sup>219</sup> Section 57 of the Labour Relations Act

<sup>220</sup> Section 2 of the Employment Act, definition of "collective agreement"

<sup>221</sup> Section 59(3) of the Labour Relations Act

<sup>222</sup> Section 26 of the Employment Act

<sup>223</sup> Section 61 of the Labour Relations Act

<sup>224</sup> Section 29 of the KAA Act

Pursuant to the Employment Act, contracts of service can take different forms (contract for an indefinite period<sup>225</sup>, contract for a specified period of time<sup>226</sup>, contract for a specific task<sup>227</sup>, contract for casual employment (i.e., does not last longer than 24 hours at a time)<sup>228</sup>, or contract for a probationary period of not more than twelve (12) months<sup>229</sup>) with specific provisions applying for each.

A contract of service can be an oral agreement, except when a written agreement is mandatory<sup>230</sup> (when the services expected exceed a cumulative duration of three months). Particulars of employment must be inserted in a written agreement<sup>231</sup> (such as working hours or wages as they might be detailed in specific orders or acts<sup>232</sup>).

### 9.11.3 Secondment of KAA employees

Pursuant to the PPP Act, the KAA, acting as a contracting authority, may, on the request of the project company, second to the company such number of employees as may be necessary for the purposes of the undertaking of the PPP Project<sup>233</sup>; such employee shall, during the period of secondment, be deemed to be an employee of the project company and shall be subject only to the direction and control of the company.

The conditions of employment for a KAA employee seconded to the project company are expected to either be maintained at their current level or enhanced during the secondment period<sup>234</sup>. We understand therefore that where the terms and conditions of employment of the project company are less protective than those set out by the KAA, the latter shall apply. It will need to be further clarified under which circumstances the project company may terminate the secondment of a seconded employee (and whether the employee remains employed by KAA in this event).

The Public Service Commission Regulations provide for the secondment of public officers from one public organization to another<sup>235</sup>. However in the instance of a PPP project, such secondment would not be from

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<sup>225</sup> Sections 10(3) and 18(2) of the Employment Act

<sup>226</sup> Section 10(3) of the Employment Act

<sup>227</sup> Sections 2, definition of "piece work", and 18 of the Employment Act

<sup>228</sup> Section 2 of the Employment Act, definition of "casual employee"

<sup>229</sup> Section 2 of the Employment Act, definition of "probationary contract"

<sup>230</sup> Section 8 of the Employment Act

<sup>231</sup> Section 10 of the Employment Act

<sup>232</sup> Regulation of Wages Order

<sup>233</sup> Section 74 of the PPP Act

<sup>234</sup> Section 74 of the PPP Act

<sup>235</sup> Regulation 37 of the Public Service Commission Regulations

one public organization to another but from a public one to a private one, therefore the Public Service Commission Regulations would not apply in this respect.

It should be noted that the provisions of the Employment Act 2007 will still be applicable during the secondment period.

It remains to be confirmed whether the PPP Contract can set out in full the conditions for the secondment of KAA employees to the Private Partner, or whether a separate secondment agreement would be required.

#### **9.11.4 Disposal of business**

Section 46 of the Competition Act provides that the Competition Authority<sup>236</sup> must consider the potential impact on employment before approving a merger.

A merger is defined as "an acquisition of shares, business or other assets, whether inside or outside Kenya, resulting in the change of control of a business, part of a business or an asset of a business in Kenya in any manner and includes a takeover<sup>237</sup>". Section 41 of the Competition Act provides that a merger occurs when one or more undertakings directly or indirectly acquire or establish direct or indirect control over the whole or part of the business of another undertaking (undertaking being defined as "any business intended to be carried on, or carried on for gain or reward by a person, a partnership or a trust in the production, supply or distribution of goods or provision of any service, and includes a trade association<sup>238</sup>") and that may be achieved by any manner including:

- a) the purchase or lease of shares, acquisition of an interest, or purchase of assets of the other undertaking in question;*
- b) the acquisition of a controlling interest in a section of the business of an undertaking capable of itself being operated independently whether or not the business in question is carried on by a company;*
- c) the acquisition of an undertaking under receivership by another undertaking either situated inside or outside Kenya;*
- d) acquiring by whatever means the controlling interest in a foreign undertaking that has got a controlling interest in a subsidiary in Kenya;*
- e) in the case of a conglomerate undertaking, acquiring the controlling interest of another undertaking or a section of the undertaking being acquired capable of being operated independently;*

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<sup>236</sup> Authority established under the Competition Act

<sup>237</sup> Section 2 of the Competition Act

<sup>238</sup> Section 2 of the Competition Act



- f) vertical integration;*
- g) exchange of shares between or among undertakings which result in substantial change in ownership structure through whatever strategy or means adopted by the concerned undertakings; or*
- h) amalgamation, takeover or any other combination with the other undertaking.*

However, under the PPP Act, a public private partnership is defined as "a contractual arrangement between a contracting authority and a private party under which a private party (a) undertakes to perform a public function or provide a service on behalf of the contracting authority; (b) receives a benefit for performing a public function by way of (i) compensation from a public fund; (ii) charges or fees collected by the private party from users or consumers of a service provided to them; or (iii) a combination of such compensation and such charges or fees". Therefore, the Private Partner performing a public function or acting on behalf of the Contracting Authority shall not be considered to have 'acquired' the undertakings or interests of KAA, and the PPP Contract should not be considered as constituting a merger over JKIA.

We have not identified any specific provision applicable to the Project imposing the transfer of all employees.

### 9.11.5 Termination of Employment Contracts

#### 9.11.5.1 Overview

A contract without reference to limit of time may be terminated by either party<sup>239</sup>, subject to the provisions of the Employment Act concerning unfair termination and notice of termination<sup>240</sup> as every employee shall have the right not to be unfairly terminated by his employer<sup>241</sup>. To be considered fair, the employer must show the Labour Tribunal that the termination is for any of the following reasons<sup>242</sup>:

- the employee's conduct, capacity or compatibility;
- operational requirements of the employer; or
- redundancy.

Only employees employed by their employer for a period not less than thirteen months immediately before the date of termination shall have the right to complain to the Employment and Labour Relations Court that he has been unfairly terminated<sup>243</sup>.

Collective agreements may provide for additional rights an employee may enjoy regarding complaint of summary dismissal and unfair termination<sup>244</sup>.

We understand that only employees employed continuously for more than thirteen months are effectively protected against unfair termination as other employees may not complain to the Employment and Labour Relations Court about said unfair termination, but only make a complaint to a labour officer<sup>245</sup>, except where a collective agreement provides otherwise<sup>246</sup>.

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<sup>239</sup> Section 35(1) of the Employment Act

<sup>240</sup> Sections 35 and 44 of the Employment Act

<sup>241</sup> Section 45(2) of the Employment Act

<sup>242</sup> Sections 40 and 45(2)(b) of the Employment Act

<sup>243</sup> Section 45(3) of the Employment Act

<sup>244</sup> Section 47(4) of the Employment Act

<sup>245</sup> Section 47(1) of the Employment Act

<sup>246</sup> Section 47(3) of the Employment Act

#### 9.11.5.2 Termination on the ground of redundancy

The Employment Act allows termination on the ground of redundancy (i.e., involuntary job loss due to the employer's initiative when an employee's services become superfluous<sup>247</sup>) if the employer complies with the conditions of the Employment Act<sup>248</sup>.

(l) Specific conditions to be applied by the employer

In particular, the employer shall<sup>249</sup>:

- (e) *where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy;*
- (f) *where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer;*
- (g) *the employer has, in the selection of employees to be declared redundant had due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;*
- (h) *where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;*
- (i) *the employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;*
- (j) *the employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and*

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<sup>247</sup> Section 2 of the Employment Act, definition of "redundancy"

<sup>248</sup> Section 40 of the Employment Act

<sup>249</sup> Section 40(1) of the Employment Act

(k) *the employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days pay for each completed year of service.*

(J) Notice period

An employee is entitled to the following notice periods<sup>250</sup>, except where the contract is to pay wages daily<sup>251</sup> (i.e., where the employee is a casual employee<sup>252</sup>) or in case of a fundamental breach of the contract of service or serious misconduct<sup>253</sup>:

- where the contract is to pay wages daily, a contract terminable by either party at the close of any day without notice<sup>254</sup>;
- where the contract is to pay wages periodically at intervals of less than one month, a contract terminable by either party at the end of the period next following the giving of notice in writing<sup>255</sup>; or
- where the contract is to pay wages or salary periodically at intervals of or exceeding one month, a contract terminable by either party at the end of the period of twenty-eight days next following the giving of notice in writing<sup>256</sup>; in this case such contract may be terminated by either party without notice upon payment to the other party of the remuneration which would have been earned by that other party, or paid by him as the case may be in respect of the period of notice required to be given<sup>257</sup>; or
- any longer period set out by the terms of the terminated contract of service<sup>258</sup>.

The provisions of the Employment Act regarding the termination notice does not apply where an employee is (i) a member a registered pension or provision fund scheme under the Retirement Benefits Act; (ii) a gratuity or service pay scheme established under a collective agreement; (iii) any other scheme established

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<sup>250</sup> Section 35(1) of the Employment Act

<sup>251</sup> Section 35(1)(a) of the Employment Act

<sup>252</sup> Section 18(2) of the Employment Act

<sup>253</sup> Section 44(3) and (4) of the Employment Act

<sup>254</sup> Section 35(1) of the Employment Act

<sup>255</sup> Section 35(1) of the Employment Act

<sup>256</sup> Section 35(1) of the Employment Act

<sup>257</sup> Section 36 of the Employment Act

<sup>258</sup> Section 35(2) of the Employment Act

and operated by an employer whose terms are more favourable than those to the service pay scheme established by the Employment Act: (iv) the National Security Fund<sup>259</sup>. We have found no information to suggest that an exclusion should apply to KAA.

(K) Declared redundant severance pay

Specific provisions apply for an employee whose contract of service provides for payment of wages periodically at intervals of or exceeding one month. If its contract is terminated on ground of redundancy, the employee shall be entitled to service pay for every year worked<sup>260</sup>.

(L) In any case, the employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days' pay for each completed year of service<sup>261</sup>.

(M) It is our understanding that the service pay due to the employee shall be at minimum fifteen days pay for each completed year of service.

We understand that there is no collective agreement in force concerning the KAA, or at least that the collective bargaining agreement for the 2016-2019 period has not received any effect yet. In order to legally terminate contract of service of the KAA's employees, it would have to respect the different process specified in the Employment Act e.g. the notice period and the minimum declared redundant severance pay.

## 9.12 Tax

The Private Partner must comply with the tax obligations as follows:

### 9.12.1 Income Tax

Kenya uses a source-based system of taxation such that unless specifically exempted, all income of a person (resident or non-resident) which is accrued in or derived from Kenya is taxable in Kenya pursuant to the IT Act and the Regulations thereunder<sup>262</sup>.

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<sup>259</sup> Section 35(6) of the Employment Act

<sup>260</sup> Section 35(5) of the Employment Act

<sup>261</sup> Section 40(1) of the Employment Act

<sup>262</sup> Section 3(1) of the IT Act

Under the IT Act, Kenyan resident companies are taxable on income accrued or derived within or outside Kenya at the applicable rates (presently 30% of the company's gains or profits<sup>263</sup>).

In respect of withholding taxes applicable to non-resident companies, the relevant revenues and applicable rates are listed in the table below.

Revenues	Withholding taxes on non-resident corporation
<b>Dividends</b>	Dividends paid to nonresident corporations are subject to withholding tax at a rate of 15 percent, unless an applicable tax treaty provides otherwise. Dividends on listed shares for citizens of the East African Community are subject to withholding tax at the rate of 5 percent .
<b>Interest</b>	Interest paid to nonresidents is subject to the following withholding tax on the gross amount payable <sup>264</sup> : <ul style="list-style-type: none"> <li>• in respect of interest and deemed interest arising from a government bearer bond of at least two years duration and interest, discount or original issue discount and interest from other sources — 15 percent;</li> <li>• in respect of interest, arising from bearer instrument other than a government bearer bond of at least two years duration — 25 percent;</li> </ul>
<b>Royalties</b>	Payments of royalty or natural resource income to nonresidents are subject to withholding tax at a rate of 20 percent of the gross amount payable.  However, for payments made by a Special Economic Zone Enterprise, Developer or Operator to a nonresident person, a concessionary rate of 5 percent applies instead.
<b>Services</b>	<u>Management Fees, Professional Fees, Training Fees and Other Similar Fees</u>  Management fees, professional fees, training fees, consultancy fees, agency fees or contractual fees paid to nonresidents are subject to withholding tax at a rate of 20 percent of the gross amount payable <sup>265</sup> .

This table is subject to Kenya's tax treaties<sup>266</sup> and the Finance Act, 2024.

The investment allowance in the second schedule to the IT Act is a tax incentive that may apply to the Project.

<sup>263</sup> Third Schedule, Head B, 2.(a) of the IT Act

<sup>264</sup> Income Tax Act 1973, §34(2)(e), Third Schedule, Head B, para. 3(e).

<sup>265</sup> Income Tax Act 1973, §34(2)(a), Third Schedule, Head B, para. 3(a)

<sup>266</sup>Kenya has entered into tax treaties with the following countries: Algeria – Belgium – Botswana – Cameroon – Canada – China – Denmark – Democratic Republic of Congo – East African Community – Egypt – Ethiopia – France – Germany – Ghana – India – Iran – Ireland - Italy – Ivory Coast – Japan.

A company whose capital investment is at least ten billion shillings may also conclude a special operating framework arrangement with the Government and shall be subject to the rate of tax specified therein<sup>267</sup>.

The Private Partner, as a Kenya incorporated company, will be taxable on income accrued or derived within or outside Kenya at (presently) 30% of its gains or profits. It will also be subject to withholding taxes on the revenues paid to non-resident companies, as listed above. Please note that should the Project's capital investment is at least 10 billion shillings, the conclusion of a special operating framework arrangement with the Government of Kenya may be considered.

### 9.12.2 Stamp Duty

Unless specifically exempted, any Project documents which relate to property in Kenya require to be stamped with duty pursuant to the provisions of the Stamp Duty Act (chapter 480 of the Laws of Kenya) and the Regulations thereunder unless any specific exemptions apply<sup>268</sup>. Counterpart duplicates of the project documents which relate to property in Kenya will require to be stamped with fixed stamp duty of KES 20 each<sup>269</sup>.

Stamping must take place within thirty (30) days of execution or of receipt in Kenya where the documents are wholly executed outside of Kenya<sup>270</sup>. Stamping is required in order to allow the documents to be adducible as evidence in court<sup>271</sup>.

The Private Partner will be subject to the payment of the relevant stamp duty for any Project documents relating to property in Kenya.

### 9.12.3 Value Added Tax ("VAT")

The Value Added Tax Act, 2013 and the Regulations thereunder impose VAT on taxable supplies at the standard rate of sixteen per cent (16%) unless specific exemptions apply<sup>272</sup>. The Private Partner would have to remit VAT on the supply of taxable goods and services with a value of KES 5 million or more in a year<sup>273</sup>.

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<sup>267</sup> Section 28A of the IT Act

<sup>268</sup> Section 5 of the Stamp Duty Act

<sup>269</sup> Schedule of the Stamp Duty Act (point 19.)

<sup>270</sup> Section 6(1) of the Stamp Duty Act

<sup>271</sup> Section 19 of the Stamp Duty Act

<sup>272</sup> Section 5(2)(b) of the VAT Act, 2013

<sup>273</sup> Section 34 of the VAT Act, 2013



In accordance with the VAT Act, 2013<sup>274</sup>, KCAA charges VAT on domestic air navigation services with effect from 1st July 2023. The applicable rate shall be 16%<sup>275</sup>.

Please note that the following supplies are zero rated<sup>276</sup>:

- (a) *ship stores supplied to international sea or air carriers on international voyage or flight;*
- (b) *transportation of passengers by air carriers on international flight;*
- (c) *the supply of taxable services to international sea or air carriers on international voyage or flight;*
- (d) *goods purchased from duty free shops by passengers departing to places outside Kenya.*

The applicable texts are clear about the application of VAT on domestic air navigation services. However, regarding international air navigation services, it should be clarified whether VAT applies on fees and charges paid for services provided in relation to international flights. Should no Kenyan laws would give sufficient comfort on that aspect, a VAT exemption or zero rated could be provided for in the special operating framework arrangement to be entered into with the Government of Kenya.

#### **9.12.4 Customs and Excise Tax**

Pursuant to the Customs and Excise Act (Chapter 472 of the Laws of Kenya) and the Regulations thereunder imported goods are generally subject to import duty at varied rates<sup>277</sup>.

While implementing the Project, the Private Partner will have to comply with the relevant import duties.

## **9.13 Investments / Foreign Exchange Regulation**

### **9.13.1 Overview of applicable regulations**

- Investment Promotion Act, 2004 (the "Investment Promotion Act");
- The Companies Act, 2015 (the "Companies Act");
- The Finance Act, 2023 (the "Finance Act");
- Income Tax Act (the "IT Act");

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<sup>274</sup> Section 5(2)(b) of the VAT Act, 2013

<sup>275</sup> Section 8.0 of Schedule B of Circular AIC 08/23 (White 266) on Charges for Air Navigation Services and Regulatory Fees

<sup>276</sup> Second Schedule, Part A of the VAT Act, 2013.

<sup>277</sup> Seventh Schedule, Part I. of the Customs and Excise Act

- Central Bank of Kenya Act (the "CBK Act");
- An Act of Parliament to give protection to certain approved foreign investments and for matters incidental thereto (the "Foreign Investments Protection Act").

### 9.13.2 Investment treaties

Kenya has signed bilateral investment treaties ("BIT") with the following countries: Mauritius, Singapore, Japan, United Arab Emirates, Korea, Qatar, Turkey, Kuwait, Slovakia, Burundi, Iran, Finland, France, Libya, Switzerland, China, United Kingdom, Italy, Germany and Netherlands. However, please note that some of those treaties may (i) not be in force, e.g. the BIT concluded with Mauritius, Qatar, Turkey, Slovakia, Iran, Libya and China, or (ii) terminated, e.g. the BIT concluded with Italy.

These treaties generally provide that a party will not expropriate or nationalise investments made by nationals of or companies incorporated in the other party other than for a public purpose, on a non-discriminatory basis, and for prompt and adequate compensation.

Moreover, we note that Kenya has signed several treaties with investment provisions and ratified the Convention on the Settlement of Investment Disputes between States and Nationals of other States.

### 9.13.3 Foreign investments protection

The Foreign Investments Protection Act provides that "no approved enterprise or any property belonging thereto shall be compulsorily taken possession of, and no interest in or right over such enterprise or property shall be compulsorily acquired, except in accordance with the provisions concerning compulsory taking of possession and acquisition and the payment of full and prompt payment of compensation contained in Article 75 of the Constitution and reproduced in the Schedule to this Act".

### 9.13.4 Investment incentives

Pursuant to the Investment Promotion Act and the Foreign Investments Protection Act, any person who intends to invest in Kenya may apply to the Kenya Investment Authority for an investment certificate<sup>278</sup>. The Foreign Investments Protection Act provides for specific provisions applying to foreign investors who are defined under the Investment Promotion Act as "(a) a natural person who is not a citizen of Kenya; (b) a partnership in which the controlling interest is owned by a person or persons who are not citizens of Kenya; or (c) a company or other body corporate incorporated under the laws of a country other than Kenya"<sup>279</sup>.

If the investment certificate for a foreign investor is issued, it shall state (a) the name of the holder; (b) the name and a description of the enterprise; (c) the amount of the foreign assets invested or to be invested by the holder of the certificate in the enterprise divided as between - (i) capital, being deemed

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<sup>278</sup> Section 3 of the Investment Promotion Act and Section 3 of the Foreign Investments Protection Act

<sup>279</sup> Section 2 of the Investment Promotion Act

to be a fixed amount representing the equity of the holder in the enterprise for the purposes of this Act and which shall be expressed in the certificate in, and shall for the purposes of this Act be in, either Kenya currency or the relevant foreign currency; and (ii) any loan, which may be expressed in, and may for the purposes of this Act be in, either Kenya currency or the relevant foreign currency; (d) the foreign currency invested or to be invested; (e) deleted by Act No. 7 of 1988, s. 3; (f) such other matters as may be necessary or desirable for the purposes of this Act<sup>280</sup>.

This investment certificate entitles its holders to several benefits related to:

- licensing: the holder of an investment certificate (which shall set out the licences that are necessary to the proposed investment<sup>281</sup>) is entitled to have those licences issued upon application within twelve (12) months, and the licences will be deemed to have been issued within twelve (12) months after the issuance of the investment certificate<sup>282</sup>;
- entry permits for expatriates<sup>283</sup>;
- be protected against compulsory acquisition<sup>284</sup>; or
- invest foreign assets in a company<sup>285</sup>, which is broadly defined as "*includes foreign currency, credits, rights, benefits or property, any currency, credits, rights, benefits or property obtained by the expenditure of foreign currency, the provision of foreign credit, or the use or exploitation of foreign rights, benefits or property, and any profits from an investment in an approved enterprise by the holder of a certificate issued under section 3 in relation to that enterprise.*"

An applicant shall be entitled to an investment certificate:

- if the amount to be invested is at least:
  - one hundred thousand (100.000) USD or the equivalent in any currency for a foreign investor (a foreign investor includes among others "*a company or other body corporate incorporated under the laws of a country other than Kenya*"<sup>286</sup>); or

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<sup>280</sup> Section 3(4) of the Foreign Investments Protection Act

<sup>281</sup> Section 12(1) and Second Schedule of the Investment Promotion Act

<sup>282</sup> Section 12(2) of the Investment Promotion Act

<sup>283</sup> Section 13 of the Investment Promotion Act

<sup>284</sup> Section 8 of the Foreign Investments Protection Act

<sup>285</sup> Section 5 of the Foreign Investments Protection Act

<sup>286</sup> Section 4(1)(b) of the Investment Promotion Act

- one million (1.000.000) shillings or the equivalent in another currency for a local investor (a local investor is defined as *"a company incorporated under the laws of Kenya, in which the majority of shares are held by a person who is a citizen of Kenya"*<sup>287</sup>); and
- provided that the activity related to the investment is lawful and beneficial to Kenya<sup>288</sup>.

An investment is considered beneficial to Kenya where it enables (a) creation of employment for Kenyans, (b) an acquisition of new skills or technology for Kenyans, (c) a contribution to tax revenues or other Government revenues, (d) a transfer of technology to Kenya, (e) an increase in foreign exchange, either through exports or import substitution, (f) an utilization of domestic raw materials, supplies and services, (g) an adoption of value addition in the processing of local, natural and agricultural resources, (h) an utilization, promotion, development and implementation of information and communication technology, or (i) any other factors that the Kenya Investment Authority considers beneficial to Kenya<sup>289</sup>.

We understand that even though the Private Partner will be incorporated under the laws of Kenya, the majority of its assets will be provided (i) by institutions or companies which are not citizen of Kenya and/ or (ii) in foreign currency.

Therefore, the Private Partner may not be considered as a local investor under the Investment Promotion Act and each of the stakeholder may have to submit an application for an investment certificate itself.

The Project, involving the modernisation of the JKIA, should (i) reach the minimum amount to be invested in Kenya mentioned above and (ii) be considered lawful and beneficial to Kenya.

The applicants shall therefore be entitled to an investment certificate, that may benefit the Private Partner and the stakeholders by facilitating the granting of licences required for the Project (as the environmental impact licence or the licence to discharge effluent), and protect the investment of the stakeholders. However, it remains unclear whether this certificate is mandatory for any person intending to invest in Kenya or is solely recommended.

### 9.13.5 Foreign exchange regulation

According to the Central Bank of Kenya Act (the "CBK Act"), all monetary obligations or transactions entered into or made in Kenya shall be deemed to be expressed and recorded, and shall be settled, in Kenya currency unless otherwise provided for by law or agreed upon between the parties<sup>290</sup>.

<sup>287</sup> Section 4(1)(b) of the Investment Promotion Act

<sup>288</sup> Section 4(1) of the Investment Promotion Act

<sup>289</sup> Section 4(2) of the Investment Promotion Act

<sup>290</sup> Section 21 of the CBK Act

In our understanding, there is no restriction under the CBK Act preventing a company incorporated in Kenya of buying, selling, borrowing or lending in foreign currencies, or settling payments to non-residents, on condition that these transactions are made through an authorized dealer<sup>291</sup> (which includes any authorized bank, bureau, mortgaged finance company, money remittance provider or microfinance bank licensed by the Central Bank of Kenya<sup>292</sup>). Similarly, there appears to be no provision under Kenyan laws that restricts the possibility for a foreign-controlled company incorporated in Kenya to open and operate foreign currency accounts.

In addition, we understand that the repatriation of dividends by a resident company is not prohibited or restricted under Kenyan laws. In our understanding, there is no restriction under the Foreign Investments Protection Act from repatriate dividends or profits in an authorized currency (i.e. authorized under the investment certificate), provided however that distributions to foreign shareholders of the Private Partner will be subject to a 15% withholding tax.

According to the definition given by the IT Act, the Project Company, incorporated in Kenya, should not be identified as a permanent establishment. Thus the Private Partner shall only be subject to the 30% taxation on company's gains or profits (see section 9.12), but not to the 15% applicable for the Permanent establishment on the repatriated income.

### 9.13.6 Business structure

#### 9.13.6.1 Shareholding restrictions

The Companies Act, 2015 (the "Companies Act") contains specific provisions applicable to foreign companies<sup>293</sup>, in particular section 979 which requires foreign companies to appoint at least one local representative in order to be registered in the Foreign Companies Register.

However, a foreign company is defined as "a company incorporated outside Kenya"<sup>294</sup>. We understand that the project company should not be considered a foreign company under the Companies Act and should therefore not appoint a local representative or more generally be subject to any of the specific provisions regarding foreign companies.

Although there is no general legislation that imposes any restriction to Kenyan companies in which the majority interest is owned by foreigners, some sectors provide specific limitations. In particular, the Civil Aviation (Licensing of Air Services) Regulations, 2018 provide that a body corporate applicant for an internal or international air services licence must ensure that at least fifty-one per cent (51%) of its voting rights are ultimately held by the State, a citizen of Kenya or both. KCAA may exempt any person from the requirements of this provision having regard to the special nature of the air service.

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<sup>291</sup> Section 33A of the CBK Act

<sup>292</sup> Section 2 of the CBK Act

<sup>293</sup> Sections 973 and seq. of the Companies Act

<sup>294</sup> Section 3 of the Companies Act

The first and third schedules of the Civil Aviation (Licensing of Air Services) Regulations, 2018 list the activities identified as air services (defined as any service performed by means of an aircraft for hire or reward) and aircrafts. However, in our understanding, the activities which will be carried out by the project company do not fall under these categories. The project company may not be required to the aforementioned restriction regarding its shareholding.

Thus, we underline the fact that legal framework applicable to certain sensitive sectors (as the air services, the insurance or the information and communications technologies, for example) regulates foreign control over Kenyan companies. Nevertheless, it seems that no such restriction may apply to the business structure of the project company, as its activities will consist in operating the airport.

Please note that, pursuant to the Companies Act, every company shall keep a register of its members, including information relating to its beneficial owners<sup>295</sup> (i.e. the natural person who ultimately owns or controls a legal person or arrangements or the natural person on whose behalf a transaction is conducted, and includes those persons who exercise ultimate effective control over a legal person or arrangement<sup>296</sup>).

#### 9.13.6.2 Licencing requirements

Any person intending to operate a business or trade (defined as any commercial activity conducted for the purpose of facilitating such buying and selling of goods and services with a clear definition of operating times or trade and includes exempted businesses<sup>297</sup>) within Nairobi City County, including businesses within the perimeter of JKIA, is required to obtain a trade license<sup>298</sup>. The application for a trade license shall be submitted to the directorate of trade licensing, and may be made in electronic format<sup>299</sup>.

The activities to be carried out by the Private Partner may therefore be subject to the grant of a business licence as provided by the Nairobi City County Trade Licensing Act, 2019.

We note that, although the Second Schedule of the Investment Promotion Act relating to "Licences to which the holder of an investment certificate may be entitled" does not expressly mention the Nairobi City County Trade Licensing Act, 2019, it refers to the repealed Trade Licensing Act. It remains unclear whether or not the licensing incentives (specified in section 9.12.1 above) could be applicable to the aforementioned business licence.

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<sup>295</sup> Sections 93 and 93A of the Companies Act

<sup>296</sup> Section 3 of the Companies Act

<sup>297</sup> Section 2 of the Nairobi City County Trade Licensing Act, 2019

<sup>298</sup> Section 8 of the Nairobi City County Trade Licensing Act, 2019

<sup>299</sup> Section 9 of the Nairobi City County Trade Licensing Act, 2019

## 9.14 Availability of international arbitration

The PPP Act provides that

- 1) *"(1) Project agreements under this Act shall be subject to the provisions of the Laws of Kenya and any provision in a project agreement to the contrary shall be void.*
- 2) *(2) The parties to a project agreement may agree to resolve any disputes arising under the project agreement through arbitration or any other non-judicial means of dispute resolution as may be provided for in the project agreement in accordance with paragraph 18 of the Third Schedule<sup>300</sup>".*

Schedule 3 of the PPP Act provides for the minimum contractual obligations required to be specified in a project agreement and in particular in paragraph 18: "Mechanism for dispute resolution including resolution of disputes by way of arbitration or any other amicable dispute resolution mechanism".

Pursuant to the Arbitration Act, "the parties are free to agree on the judicial seat of arbitration and the location of any hearing or meeting"<sup>301</sup>. Additionally, foreign arbitral awards originating from a state party to the New York Convention<sup>302</sup> are recognized as binding in Kenya. The High Court of Kenya is responsible for enforcing such awards in accordance with the provisions of the convention, with Kenya having acceded to it on February 10, 1989, albeit with a reciprocity reservation<sup>303</sup>.

Grounds for the High Court's refusal to recognize or enforce an award are outlined in section 37 of the Arbitration Act. These include instances where the court determines that the "subject matter of the dispute is not capable of settlement by arbitration under the law Kenyan" or that "the recognition or enforcement of the arbitral award would be contrary to the public policy of Kenya"<sup>304</sup>. However, in our understanding these grounds would not apply to the project, given that the PPP Act permits arbitration without restrictions on international arbitration.

Arbitration is allowed under the PPP Act and is not subject to specific limitations. The referral of disputes to international arbitration (with a seat outside Kenya) should be provided for in the PPP contract. We would recommend the use of generally accepted rules of arbitration (e.g. the ICC arbitration rules) used in project finance transactions involving international sponsors and lenders (who will require international arbitration as part of their bankability requirements).

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<sup>300</sup> Section 71 of the PPP Act

<sup>301</sup> Section 21 of the Arbitration Act

<sup>302</sup> The Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations General Assembly in New York on the 10th June, 1958

<sup>303</sup> Section 36 of the Arbitration Act

<sup>304</sup> Section 37 of the Arbitration Act





## **SCHEDULE 1. INDEX OF THE REVIEWED DOCUMENTATION**

### **1. PROCUREMENT**

- Public Private Partnerships Act, 2021 (the "PPP Act");
- Proposed Public Private Partnerships Regulations, 2022 (the "Proposed PPP Regulations, 2022");
- Public Private Partnership Regulations, 2014 (the "PPP Regulations, 2014");
- Public Procurement and Asset Disposal Act, 2015 (the "Public Procurement Act");
- State Corporations Act CAP 446 (the "State Corporations Act").

### **2. AIRPORTS AND CIVIL AVIATION**

- Kenya Airports Authority Act of 23 May 1992 (revised in 2019);
- Civil Aviation Act No. 21 of 2013, dated 14 January 2013 (revised in 2014 and 2016);
- The Civil Aviation (Aerodromes) Regulations of 2013;
- The Civil Aviation (Aerodromes Certification, Licensing and Registration) Regulations of 2018;
- Civil Aviation (Regulatory Fees and Charges for Air Navigation Services) Regulations, 2012, Gazetted on 5th October 2012 under Legal Notice No.110;
- Civil Aviation (Regulatory Fees and Unmanned Aircraft Systems) Regulations, 2020, Gazetted on 22nd January 2021 under Legal Notice No.4;
- Air Navigation (Fees For Certificates And Services) Regulations 2022;
- Circular AIC 08/23 (White 266) on Charges for Air Navigation Services and Regulatory Fees dated 30 May 2023;
- Air Passenger Service Charge Act, 1970 (Cap. 475) (revised in 2018);
- Air Passenger Service Charge Act (Apportionment) Order, 2018;
- Kenya Airports Authority Concession Order, 1996;
- Value Added Tax Act, 2013.

### **3. GOVERNMENT GUARANTEE**

- Public Finance Management Act, 2012.

### **4. PROPERTY, LAND, PLANNING AND CONSTRUCTION**

- Kenya Airports Authority Act, CAP 395 ("KAA Act");

- Subsidiary to the KAA Act - KAA (Vesting) Order, 1994 [L.N. 201/1994.] ("KAA (Vesting) Order, 1994");
- Public Private Partnerships Act, 2013; and for connected purposes, the Public Private Partnership Act, 2021 ("PPP Act");
- Act of Parliament to revise, consolidate and rationalize the registration of titles to land, to give effect to the principles and objects of devolved government in land registration, and for connected purposes Act No. 3 of 2012 as last revised by Act No. 1 of 2020 ("Land Registration Act, 2012");
- Act of Parliament to give effect to Article 68 of the Constitution, to revise, consolidate and rationalize land laws; to provide for the sustainable administration and management of land and land-based resources, and for connected purposes Act No. 6 as last revised by Act No. 15 of 2019 ("Land Act, 2012");
- Act of Parliament to make provision for the planning, use, regulation and development of land and for connected purposes ("Physical and Land Use Planning Act, 2019");
- The Physical and Land Use Planning (Classification of Strategic National or Inter-Country Projects) regulations, 2019;
- The Physical and Land Use Planning (Development Control Enforcement) Regulations, 2021;
- The Physical and Land Use Planning (General Development Permission and Control) Regulations, 2021;
- Act of the Nairobi City County Assembly to provide for grant of trade licenses within Nairobi City County and for connected purposes ("Nairobi City County Trade Licensing Act, 2019");
- Act of Parliament to provide for the establishment, powers and functions of the National Construction Authority and for connected purposes ("National Construction Authority Act, 2011");
- National Construction Authority Regulations, 2014.

## 5. ENVIRONMENTAL ASPECTS

- Environmental Management and Co-ordination Act, No. 8 of 1999;
- Environmental (Impact Assessment and Audit) Regulations, 2003;
- Environmental Management and Co-ordination (Water Quality) Regulations, 2006;
- Environmental Management and Co-ordination (Waste Management Regulations), 2006;
- Environmental Management and Coordination (Noise and Excessive Vibration Pollution) (Control) Regulations, 2009;
- Civil Aviation (Airworthiness) Regulations, 2018;
- Environmental Management and Co-ordination (Air Quality) Regulations, 2014.

## **6. LABOUR ASPECTS**

- The Employment Act, (the "Employment Act");
- The Labour Relations Act, (the "Labour Relations Act");
- The Labour Institutions Act, No 12 of 2007 (the "Labour Institutions Act");
- The National Employment Authority Act, 2016 (the "National Employment Authority Act");
- The Employment and Labour Relations Court Act, 2011 (the "ELRC Act");
- The Public Service Commission Act, 2017, together with the Public Service Commission Regulations, 2020 (the "Public Service Commission Regulations") determining the rules to be applied to employees of the public sector;
- The Regulation of Wages (General) Order of 1 August 1982, as amended in 2022 (the "Regulation of Wages Order");
- Act of Parliament to promote and safeguard competition in the national economy; to protect consumers from unfair and misleading market conduct; to provide for the establishment, powers and functions of the Competition Authority and the Competition Tribunal, and for connected purposes (the "Competition Act").

## **7. TAX**

- Income Tax Act, Chapter 470 of the Laws of Kenya (IT Act);
- Customs and Excise Act (Chapter 472 of the Laws of Kenya)
- Finance Act 2023;
- Stamp Duty Act, Chapter 480 of the Laws of Kenya;
- Value Added Tax Act, 2013.

## **8. INVESTMENTS / FOREIGN EXCHANGE REGULATION**

- Investment Promotion Act, 2004 (the "Investment Promotion Act");
- The Companies Act, 2015 (the "Companies Act");
- The Finance Act, 2023 (the "Finance Act");
- Income Tax Act (the "IT Act");
- Central Bank of Kenya Act (the "CBK Act");
- An Act of Parliament to give protection to certain approved foreign investments and for matters incidental thereto (the "Foreign Investments Protection Act").

## 9. AVAILABILITY OF INTERNATIONAL ARBITRATION

- Public Private Partnerships Act, 2021 (the "PPP Act");
- An Act of Parliament to repeal and re-enact with amendments the Arbitration Act and to provide for connected purposes (the " Arbitration Act");
- Its subsidiary legislation the Arbitration Rules, 1997 (the "Arbitrations Rules, 1997").

## SCHEDULE 2. LIMITATIONS, ASSUMPTIONS AND RESERVATIONS

### 1. LIMITATIONS

- 1.1. Our Draft Report will not and should not be deemed to constitute a detailed description of Reviewed Documentation, or an exhaustive analysis of all legal and regulatory aspects which may be relevant to the Project.
- 1.2. This Draft Report will be subject to revision and alteration. Informal oral comments made in discussions with the Client will not have any greater significance than explanations or other material contained in the Draft Report and reliance should only be placed on information and comments set out in the final report (the "**Final Report**").
- 1.3. Our Draft Report will not and should not be deemed to include a review and analysis of international best practices.
- 1.4. Our Draft Report should not be taken to supplant the additional enquiries and procedures that should be undertaken in consideration of the Project. In particular we draw attention to the fact that if we were to perform additional procedures, other matters might come to our attention which might be relevant to the assessment of the proposed Project.
- 1.5. We will update our Draft Report for (or otherwise keep you informed of) events or transactions occurring or disclosed subsequent to the date of issuing the Draft Report. We will have no obligations however to update our Final Report, including for the avoidance of doubt any subsequent events (any events, circumstances or inaccuracies which may occur or come to light following the issuance of our Final Report) which may occur prior to completion of the proposed Project.
- 1.6. The Draft Report does not purport to review or opine on whether the development, management and operation of JKIA or the Project or generally the activities of KAA in relation thereto have been conducted in accordance with the applicable laws and regulations, and no opinion shall be deemed to have been made in relation thereto. .

- 1.7. The liability of the Legal Consultant to any person regarding the information provided in all reports provided in relation to the Project shall not exceed the amount stated in letter of engagement between the Legal Consultant and ALG.

## **2. ASSUMPTIONS**

- 2.1. We have assumed:

- that all Reviewed Documentation or explanations provided to us are true, complete and factually accurate and not misleading and are in full force in accordance with their provisions, and that all copy documents submitted to us are true and complete copies of the originals of such documents;
- that all information available in public databases and governmental websites consulted by us is true, complete and factually accurate and not misleading; and
- that no information which is material in the context of the Project has been withheld from us.

## **2.2. Reservations**

The Report is strictly limited to the matters stated in it and does not extend and is not to be read as extending by implication to any other matter. Without prejudice to the generality of this statement:

- this Report does not substitute to a general presentation of the Project;
- this Report does not include any comment on the value of the Project and on the financial risks to be incurred by any participant in the Project; however, it should be noted that the information and conclusions contained therein may have financial consequences;
- this Report does not outline or opine on political risks associated with changes in political control and the possible impacts on governmental policy;



- this Report does not include any comment on the accounts or other financial statements or any assessment of the current financial condition of KAA;
- this Report is by nature a factual and legal review of the current legislation applicable in Kenya in relation to the Project, it should not be regarded as a comprehensive legal opinion and must not be regarded as a substitute for specific legal advice on the matters covered in the Report;
- Our regulatory due diligence set out in this Report is based solely on the laws of Kenya and consequently we cannot be considered to have given any opinion on the basis of any other law;
- the information in the Draft Report may be superseded by subsequent information which is available, in which case the subsequent information should be considered rather than that in the Draft Report;
- although business matters are not the subject of this Draft Report, this Draft Report inevitably contains commercial information and addresses commercial issues; however, we assume no liability for the completeness and accuracy of the information and conclusions concerning commercial matters contained in this Draft Report.

## 10 Contractual Due Diligence

### 10.1 Introduction

ALG has been selected to assist the Kenyan Airports Authority (the "**KAA**" or the "**Client**") in relation to the feasibility assessment, transaction structuring and market sounding in relation to a potential public-private partnership ("**PPP**"), to be tendered and awarded by KAA to a private partner for the modernisation of the Jomo Kenyatta International Airport (the "**Project**").

Gide Loyrette Nouel A.A.R.P.I ("**Gide**"), in association with Kaplan & Stratton Advocates ("**Kaplan & Stratton**" or the "**Local Counsel**"), together with Gide, the "**Legal Consultant**", is acting as subcontractor to ALG Global ("**ALG**") to provide advisory services in relation to the legal aspects of the Project.

The present draft legal due diligence report (the "**Draft Report**") consists of the due diligence of certain contractual documents and related information, made available by KAA through a data room as well as following requests from Gide, in relation to the existing operation of the Jomo Kenyatta International Airport ("**JKIA**"). In accordance with our terms of engagement and considering the large volume of documents provided in the data room (some of which could not be easily identified based on the document name), we have applied materiality thresholds where appropriate to select the relevant documents in the data room for the purpose of our review. An index of the contracts and documents reviewed for the purposes of this Report is attached to this Report as Schedule 1 (the "**Reviewed Documentation**").

The Reviewed Documents on the basis of which this Report has been prepared only consist of documents and information which have been made available by the Client and provided to us on or before 13 February 2024 and, accordingly, our Report speaks solely as at such date.

The purpose of this Draft Report is to identify and draw to the attention of the Client the key points and issues which have emerged from our legal due diligence review of the Reviewed Documents in the context of the Project and in particular issues relating to transferability of the contracts, outstanding liabilities, termination and outstanding litigation.

A due diligence report provided separately contain the findings of our analysis of the legal and regulatory framework applicable

### 10.2 Limitations, assumptions and reservations

This Draft Report is subject to the limitations, assumptions and reservations stated in Schedule 2

### 10.3 Reliance - Confidentiality

This Draft Report is strictly confidential and subject to legal professional privilege. It has been prepared for the exclusive use of the Client in connection with the Project and for no other purpose and is not to be relied upon by, nor is any responsibility to, any other person.

This Draft Report may not be copied to, distributed to, or relied upon for any purposes by, any person other than the Client without the prior written consent of Gide.

## 10.4 Executive Summary

Further information on Reviewed Documentation is provided in Sections 10.5 to 10.13 through a summary table for each reviewed documents (each one a “**Reviewed Document**” and together the “**Reviewed Documents**”) This executive summary gathers the main aspects of the Reviewed Documentation, focusing on concession, land, lease, licence and loan agreements.

### 10.4.1 Concession agreements

- We understand that the Concession Contracts reviewed in Sections 10.7.1 to 10.7.6 are still in force but that the Concession Contracts reviewed under Section 10.7.7 have expired.
- The concession agreements do not contain express provisions regulating their transfer or assignment by KAA. The Local Counsel has advised that under Kenyan law, there are no explicit legal provisions that prohibit the transfer of contracts in general. However, it has been well established that the transfer of rights and obligations under a contract will require the express consent from the transferee. Consequently, in the absence of contractual clauses explicitly preventing or authorizing the transfer of contractual rights or obligations, the transfer of the concession agreements to the future Private Partner of JKIA will require a novation agreement to be entered between KAA, the Private Partner and the concessionaire. Note that the same principle applies to any type of contract (e.g. lease) subject to Kenyan law.
- We note that the provisions on termination vary in each concession contract. While termination for convenience is explicitly mentioned for a few contracts, others do not provide for provisions in relation to their termination by KAA. Therefore, in the event that a concession is not transferred to the Private Partner, depending on the provisions of the contract KAA will (i) be able to terminate the contract for convenience (and as the case may be indemnify the concessionaire) or (ii) need to negotiate with the concessionaire the early termination of the contract.

### 10.4.2 Ownership of the land

- KAA obtained title over JKIA by virtue of the KAA (Vesting) Order, 1994 adopted pursuant to the Kenya Airports Authority Act, and reflected in the Title Deed dated 1st August 1996. The examination of the Title Deed has revealed that several leases have been registered in relation to the JKIA perimeter (see below).
- In accordance with the Kenya Airports Authority Act and the Public Private Partnership Act, 2021, the PPP Contract between the Private Partner and KAA would, in itself, be sufficient to designate JKIA land for use by the Private Partner. This contract acts as a contractual licence for the Private Partner to operate, maintain, rehabilitate, or upgrade an infrastructure facility. However, concessions typically do not confer title in real property. Therefore, the Local Counsel does not anticipate that either legal title or leasehold interest in the land would be conferred on the concessionaire through this permission to use by virtue of the PPP Contract.

- In order to grant title or leasehold interest over JKIA land to the Private Partner (which may be susceptible of security interest in rem and therefore may be required by the Lenders of the Private Partner) and considering also the existing leases with third parties (commercial entities, public authorities) registered on the Title Deed, which may need to be transferred to the Private Partner in connection with the Project (so that the Private Partner acts as lessor in respect of such leases and therefore may receive rent and manage the leases and the buildings), additional registrable statutory instruments may be required. The Private Partner may therefore acquire legal title or leasehold interest in any property presently owned by KAA over JKIA (for example, through a lease), subject to the prior approval of the National Land Commission. The existing leases would then be transferred to the Private Partner.

#### **10.4.3 Lease agreements**

- Despite our request, we have not received from KAA the list of the 10 most material leases for us to review. Consequently, we have selected at random a sample of leases amongst the 500 or so documents in the data room; the selected leases may not represent the most material leases entered by KAA.
- The lease agreements reviewed do not contain provisions in relation to their transfer by KAA, or assignment by KAA. As indicated above, if the leases are to be transferred to the Private Partner a novation agreement will need to be entered between KAA, the Private Partner and the concessionaire in respect of such lease.
- The lease agreements selected do not provide for termination for convenience. We also note that the provisions on renewal of the lease and rehabilitation of the premises vary in each lease agreement, as further detailed below.

#### **10.4.4 Licences with airlines**

- We have reviewed licences for the following airlines: Aerospace Consortium International Limited; Air France; Astral Aviation Limited; Chesaka International Company Limited; Corporate Aviation Limited; KLM Royal Dutch Airlines; Saudi Arabian Airlines Corporation; Precision Air Services; Seven Four Eight Air Services; Kenya Airways PLC. According to the information in our possession, these licences are still in force, except the Licence with Seven Four Eight Air Services, which is deemed to have expired in August 2023.
- The reviewed licenses do not provide for provisions in relation to their transfer by KAA. As indicated above, if the leases are to be transferred to the Private Partner a novation agreement will need to be entered between KAA, the Private Partner and the concessionaire in respect of such lease.
- KAA may terminate these licence contracts by convenience by written notice sent to the licensees, with the notice specifying that upon termination in whole part of the license KAA may pro-rate and refund such paid license fees to the extent that they have not been utilized. This provision may therefore be triggered if the licence is not transferred to the Private Partner.
- The term of the reviewed licenses still in force is between April 1, 2025 and July 1, 2027, and only the licences with Chesaka International Company Limited and with Aerospace Consortium International include a renewal clause. As such, the Private Partner may have to enter into new licences shortly after being selected (or depending on the time required to award the PPP Contract, KAA may have to

manage the renewal of the licences during the tender process for the Project, with a view to transferring such licences to the Private Partner once the PPP Contract is awarded).

#### 10.4.5 Loan agreements

- We have been provided with and have reviewed the following loan agreements: an advance agreement for preparation of proposed Kenya aviation modernization project preparation No. V0440 from the International Development Association dated 7<sup>th</sup> November 2016; a subsidiary loan agreement from the Government dated 22<sup>nd</sup> August 2011 (on-lending to KAA an equivalent loan made available by IDA to the Government) to *inter alia* finance the upgrade of the Mombasa International Airport and the supply and installation of a new baggage handling system and constructing a water supply line for JKIA; a subsidiary loan agreement from the Government dated 24<sup>th</sup> August 2004 (on-lending to KAA an equivalent loan made available by IDA to the Government) for the implementation of the Northern Corridor Transport Improvement Project.
- We have also been provided with and have reviewed two credit facility agreements entered between KAA and the Agence Française de Développement: (i) the credit facility agreement N°CKE 1029.01 K dated 29 June 2010 in relation to the JKIA expansion project ; and (ii) the credit facility agreement no. CKE 1078.01 P dated 5 November 2014 in relation to the rehabilitation of Mombasa Airport's airside pavements. However :
  - Under each agreement, KAA is required to deposit in a Receivables Account, opened in the name of KAA to the benefit of AFD with an escrow bank, receivables from the charge collected for the account of KAA under the Air Passenger Service Charge Act as well as all landing fees and parking fees, in an amount at least equal to (i) USD 16 million per year under the JKIA AFD loan and (ii) 150% of KAA's yearly debt service under the MBA AFD Loan. The moneys standing to the credit of the Receivable Account are in each case subject to a fixed charge under a first-ranking debenture in favour of AFD.
  - However it is contemplated in the context of the Project to significantly reduce the share of the APSC allocated to KAA (which would now be levied and retained by the future Private Partner in respect of JKIA APSC). Also KAA will no longer be receiving landing fees and parking fees in respect of JKIA (which would be paid to and retained by the future Private Partner).
  - Therefore the receivables, which are escrowed are secured by way of fixed charge to the benefit of AFD pursuant to the loan agreements, will be reduced, and KAA may not be able to maintain the required minimum amounts referred to above in the Receivables Accounts. If so this will trigger a breach of KAA's undertakings under the loan documents. Such breach may in turn qualify as a KAA event of default under the loan documents and entitle AFD to accelerate the loans.
  - Thus, and to the extent the loan repayment periods overlap with the concession period of the future Concession Contract, the implementation of the changes to the APSC and the transfer of the landing and parking fee to the Private Partner in the context of the Project would require obtaining amendments and waivers from AFD under the loan documents. AFD is likely to require KAA to offer as collateral other receivables in lieu of the receivables from the APSC and parking and landing fees it will no longer receive. The concession fee which KAA will receive under the PPP Contract with the Private Partner could be offered as new collateral.
  - We understand both loans are under repayment. We have not been provided with the repayment plans for those loans; we recommend KAA to confirm when the final repayment date

will occur under both loans, in order to confirm when the security will no longer be effective and hence how material is this issue.

## 10.5 Concession agreement between KAA and the GOK

There is no concession agreement in place for the operation of JKIA by KAA. KAA manages and operates the Airport by virtue of the KAA Act.

## 10.6 Collective bargaining agreement and employment contracts

### 10.6.1 Collective bargaining agreement between KAA and Kenya Aviation Workers Union (KAWU)

KAA confirmed that only one Collective bargaining agreement was in force.

<b>Title</b>	Collective Bargaining Agreement between Kenya Airports Authority and Kenya Aviation Workers Union ( <b>KAWU</b> )
<b>Parties</b>	Kenya Airports Authority as the <b>Authority</b> and KAWU as the <b>Union</b> .
<b>Purpose</b>	Terms and conditions of service which will apply to employees of the Authority from as may be negotiated and agreed by both parties from time to time <sup>305</sup> .
<b>Duration of the Agreement</b>	1 <sup>st</sup> January 2014 to 31 <sup>st</sup> December 2015.
<b>Scope</b>	The agreement refers to " <i>Every employee</i> " <sup>306</sup> and is therefore likely to apply to employees located at JKIA.
<b>Temporary contract:</b>	The collective agreement allows employment on temporary or casual terms for up to a month, and beyond that a written employment contract of service shall be provided <sup>307</sup> .
<b>Hours of work</b>	<p><u>Hours of work:</u></p> <ul style="list-style-type: none"> <li>▪ office workers: 40 hours per week;</li> <li>▪ shift workers: 48 hours per week<sup>308</sup>.</li> </ul> <p><u>Overtime:</u></p> <p>The employee shall be paid for extra hours, if he/she achieved the minimum hours of 192 hours, at the following rates:</p> <ul style="list-style-type: none"> <li>▪ overtime worked from Monday to Saturday: one and half hours times hourly rate;</li> </ul>

<sup>305</sup> Preamble of the Collective bargaining agreement.

<sup>306</sup> Article 2 of the Collective bargaining agreement.

<sup>307</sup> Article 5 of the Collective bargaining agreement.

<sup>308</sup> Article 14 of the Collective bargaining agreement.

	<ul style="list-style-type: none"> <li>overtime worked Sundays and public holidays: two hours times the hourly rate<sup>309</sup>.</li> </ul>
<b>Secondment</b>	While the PPP Act provides for the possibility for a contracting authority to second its employees <sup>310</sup> , it is not considered by the Collective Bargaining Agreement.
<b>Termination</b>	<p><u>Entitlement on termination:</u></p> <p>It shall be referred to the Employment Act regarding fair termination since the collective bargaining agreement only refers to the possibility for KAA to dismiss an employee after his/her trial period with one month's notice.<sup>311</sup></p> <p>Methods and criteria of redundancy/retrenchment are to be discussed and agreed with the Union<sup>312</sup>.</p>
	<p><u>Contesting termination:</u></p> <p>The collective bargaining agreement provides a right to all employees who have been dismissed <b>to appeal to the Management within three months</b><sup>313</sup>.</p>
	<p><u>Notice period:</u></p> <p><u>Notice period for termination for redundancy:</u></p> <p>The collective agreement provides for three months <b>written notice</b> or three months' salary in lieu of notice.<sup>314</sup></p> <p><u>Notice period for termination (not for redundancy):</u></p> <p>The collective agreement provides for a <b>one-month notice</b> or salary in lieu of notice.<sup>315</sup></p>
	<p><u>Notification of the termination for redundancy to the Union:</u></p> <p>The Union shall be notified through writing the reasons for and the extent of the intended redundancy/retrenchment <b>three months before the redundancy is done</b><sup>316</sup> while the Employment Act only provides for one month.</p>

<sup>309</sup> Article 26 of the Collective bargaining agreement.  
<sup>310</sup> Section 11.3 of the Regulatory due diligence report.  
<sup>311</sup> Article 47 of the Collective bargaining agreement.  
<sup>312</sup> Article 53.3 of the Collective bargaining agreement.  
<sup>313</sup> Article 43 of the Collective bargaining agreement.  
<sup>314</sup> Article 53.3 of the Collective bargaining agreement.  
<sup>315</sup> Article 47 of the Collective bargaining agreement.  
<sup>316</sup> Article 53.2 of the Collective bargaining agreement.



	<u>Declared redundant severance pay:</u>	The collective agreement provides that an employee declared redundant/retrrenched shall be entitled to a severance pay at the rate of <b>three months' salary</b> plus house allowance for each completed year of service <sup>317</sup> and the following: <ul style="list-style-type: none"> <li>▪ monthly pay up to the effective date of redundancy/retrrenchment;</li> <li>▪ accrued leave days up to the effective date of the redundancy/retrrenchment;</li> <li>▪ refund of pension as per Staff Superannuation Scheme rules and regulations.<sup>318</sup></li> </ul>
	<u>Severance pay (non-redundancy termination) :</u>	The collective bargaining agreement offers several rights to dismissed employees: <ul style="list-style-type: none"> <li>▪ Salary and appropriate allowances up to the last day worked;</li> <li>▪ Pro-rated leave days up to the date of termination;</li> <li>▪ Refund as per Staff Superannuation Scheme rules;</li> </ul> <p>If in Authority's accommodation, he will be permitted one-month extra period of occupation.<sup>319</sup></p>
<b>Comments</b>	<p>The Collective bargaining agreement with KAWU was concluded for a period of effect from January 1, 2014 to December 31, 2015, while providing that it should remain in force until a new agreement is reached.</p> <p>KAA confirmed us that (i) no collective agreement has since been reached between Kenya Airports Authority and KAWU and (ii) that this collective bargaining agreement was still in force; moreover, nothing in the the Labour Relations Act, No 14 of 2007 and the Labour Institutions Act, No 12 of 2007 - Subsidiary Legislation provide for a maximum duration of collective agreements or obligations to re-register the agreement.</p> <p>The agreement would therefore remain in force.</p>	

### 10.6.2 Employment Contracts

We have only been provided with the following templates:

- appointment letter and offer letter on Job Grade S7 at KAA (manager position);
- appointment letter on Job Grade S9 at KAA;

<sup>317</sup> Article 53.6 of the Collective bargaining agreement.

<sup>318</sup> Article 53.8 of the Collective bargaining agreement.

<sup>319</sup> Article 48 of the Collective bargaining agreement.

- offer letter for a non-manager position at JKIA.

#### 10.6.2.1 Appointment letter and offer letter on Job Grade S7 at KAA

<b>Title</b>	Appointment letter and offer letter on Job Grade S7 at KAA
<b>Parties</b>	Kenya Airports Authority as <b>the Employer.</b>
<b>Purpose</b>	Employment contract.
<b>Duration of the Agreement</b>	N/A
<b>Scope</b>	Job Grade S7
<b>Temporary contract:</b>	N/A
<b>Hours of work</b>	<p><u>Hours of work:</u></p> <ul style="list-style-type: none"> <li>Monday to Friday, from 8:00 am to 5:00 pm with a lunch break between 1:00 pm to 2:00 pm</li> </ul> <p><u>Overtime:</u></p> <ul style="list-style-type: none"> <li>As Manager there is no qualification for overtime payment or time off for extra hours worked including public holidays.</li> </ul>
<b>Secondment</b>	N/A
<b>Termination</b>	The contract may be terminated by either Party giving one (1) month prior notice or on payment of an equivalent of one(1) month basic salary in lieu of such notice.
<b>Comments</b>	The Appointment Letters contain the minimum employment terms required to be included in an employment contract and the Local Counsel have not identified any potentially onerous provisions.

#### 10.6.2.2 Appointment letter letter on Job Grade S9 at KAA

<b>Title</b>	Appointment letter on Job Grade S9 at KAA
<b>Parties</b>	Kenya Airports Authority as <b>the Employer</b>
<b>Purpose</b>	<b>Employment contract</b>
<b>Duration of the Agreement</b>	N/A

<b>Scope</b>	General Manager. Details of the duties and responsibilities are as prescribed in the Job Description, which forms part of the terms of employment (we have not been provided with).
<b>Temporary contract:</b>	The contract is for a period of three (3) years. The contract is renewable on expiry subject to satisfactory performance.
<b>Hours of work</b>	<p><u>Hours of work:</u></p> <ul style="list-style-type: none"> <li>▪ Monday to Friday, from 8:00 am to 5:00 pm with a lunch break between 1:00 pm to 2:00 pm</li> </ul> <p><u>Overtime:</u></p> <ul style="list-style-type: none"> <li>▪ As General Manager there is no qualification for overtime payment or time off for extra hours worked including public holidays.</li> </ul>
<b>Secondment</b>	N/A
<b>Termination</b>	The contract may be terminated by either Party giving one (1) month prior notice or on payment of an equivalent of one(1) month basic salary in lieu of such notice.
<b>Comments</b>	The Appointment Letters contain the minimum employment terms required to be included in an employment contract and the Local Counsel have not identified any potentially onerous provisions.

### 10.6.3 Conclusions on the labor agreements

While both the Collective Bargaining Agreement (CBA) and the sample appointment letters allow termination with one month's notice or salary in lieu of notice, it's essential to highlight that employers in Kenya cannot terminate employees at will, particularly those employed for more than thirteen months.

Termination must be based on the expiry of a fixed employment term, a valid fair reason, and adherence to fair procedure, or redundancy in line with the Employment Act, 2007. Notably, the terms outlined in the CBA are significantly more favourable for employees than the minimum requirements set by the Employment Act, 2007.

Clause 53 of the CBA is applicable to employees not retained by the Private Partner, and KAA cannot redeploy them. The responsibility for addressing this matter lies with KAA. In cases where the intention is to transfer some of KAA's existing employees to the Private Partner, it is imperative that the terms of the new contract are either substantially similar or superior to the current terms enjoyed by KAA employees.

It should be noted that the Private Partner is not obliged to recognize the CBA, unless they take on at least 51% of the unionizable employees. In such instances, recognition of the CBA becomes mandatory.

The Offer Letters are very similar to standard templates and no legal issues arise. However, it is crucial to reiterate that when considering the transfer of KAA's existing employees to the Private Partner, the terms of the new contract must meet or exceed the current terms provided by KAA.

The Appointment Letters contain the minimum employment terms required for an employment contract, with no identified onerous provisions except for the comment below.

## 10.7 Concession agreements

We have been provided with various concession agreements that we examined:

- Concession Agreement for in-flight catering kitchen with LSG Sky Chefs Kenya Limited dated 8th May 2014 (the "**Concession Agreement for in-flight catering kitchen**");
- Concession Agreement between KAA and Eurocraft Agencies Limited for the provision of ground handling services dated 3rd November 2021, (the "**Concession Agreement between KAA and Eurocraft Agencies Limited for the provision of ground handling services**");
- Renewal of Swissport Kenya Ltd's licence to provide ground handling service dated 1st July 2021 (the "**Renewal of Swissport Kenya Ltd's licence to provide ground handling service**");
- Concession Agreement for the provision of third-party transport services with Hala Nairobi Airport Services Limited dated 17th October 2022 (the "**Concession Agreement for the provision of third-party transport services**");
- Concession Agreement for the development and management of duty-free shops at Terminal 1B, B4 & Terminal 1C, C8 with M/S Safari Duty Free Limited JV Flemingo International Limited, and its Deed of Assignment to Simba Duty Free Limited in respect of the Concession and Licence Agreements dated 24th May 2022 (the "**Concession Agreement for the development and management of duty-free shops at Terminal 1B, B4 & Terminal 1C, C8**");
- Concession Agreement for the development and management of duty-free shops at Terminal 1A with Dufry International AG dated 2nd January 2015 and its Deed of Assignment to Dufry Kenya Limited in respect of the Concession and Licence Agreements dated 22nd January 2016 (the "**Concession Agreement for the development and management of duty-free shops at Terminal 1A**");
- Concession Agreement for cargo handling services between KAA and Mitchell Cotts Freight Kenya Limited dated 19th November 2012 (the "**Concession Agreement for cargo handling services**");
- Supplemental Concession Agreement for cargo handling services between KAA and Transglobal Cargo Centre Ltd dated 17th July 2015 (the "**Supplemental Concession Agreement for cargo handling services**");
- Concession for space to Nation Media Group publication stand at Terminal 1D with Nation Media Group Plc dated 13th May 2020 (the "**Concession for space to Nation Media Group publication stand at Terminal 1D**");
- Submission of Accepted Notification of Award for relocation of space to Nation Media Group, dated 29th September 2021 (the "**Submission of Accepted Notification of Award for relocation of space**");
- Rental Schedule Adjustment for Space concluded with Nation Media Group, dated 18th September 2023 (the "**Rental Schedule Adjustment for Space**");
- Concession Agreement between KAA and Kenya Airways for the provision of ground handling services dated 1st October 1996 (the "**Concession Agreement between KAA and Kenya Airways for the provision of ground handling services**");

- Concession Agreement for the provision of ground handling services between KAA and Airside Limited dated 28th April 2008 (the "**Concession Agreement for the provision of ground handling services between KAA and Airside Limited**");
- 2006 Eurocraft Concession Agreement for the provision of ground handling services dated 15th December 2006 (the "**2006 Eurocraft Concession Agreement for the provision of ground handling services**");
- Concession Agreement for the development and management of advertising media with Scanad Kenya Limited dated 23<sup>rd</sup> September 2015 (the "**Concession Agreement for the development and management of advertising media**").

### 10.7.1 Concession Agreement for in-flight catering kitchen

<b>Title</b>	Concession Agreement for in-flight catering kitchen
<b>Parties</b>	<b>Kenya Airports Authority</b> as the Authority and <b>LSG Sky Chefs Kenya Limited</b> as the Concessionaire.
<b>Purpose</b>	Grant of a concession to operate an in-flight catering kitchen at JKI Airport.
<b>Date</b>	Signature Date: 8 <sup>th</sup> May 2014. Effective Date: under <i>Article 1.1</i> , the date on which all the CPs defined in the same Article are fulfilled.
<b>Term</b>	20 year-period commencing on the Full Commercial Operation Date <sup>320</sup> , which is not defined.
<b>Concession fee</b>	Minimum Annual Guarantee Fee of USD 250,000.00 <sup>321</sup> . The Concessionaire also has to pay a concession fee based on the percentage of gross turnover generated by the concessionaire and which may represent from 5 to 7% of that gross turnover <sup>322</sup> .
<b>Exclusivity / restriction of competition</b>	No exclusivity granted. KAA has undertaken, <i>inter alia</i> , not to grant any lease to a competitor of the Concessionaire on more favourable terms than those set out under the lease concluded with the Concessionaire, not to make the provision of any services by a competitor subject to lesser standards than those imposed on the Concessionaire under the Concession, not to grant any competitor a longer term than that granted to the Concessionaire, and to ensure that no competitor will be given any preference or advantage when compared to the rights and obligations granted to the

<sup>320</sup> Article 1 of the Concession Agreement for in-flight catering kitchen.

<sup>321</sup> Article II.2) of the Concession Agreement for in-flight catering kitchen.

<sup>322</sup> Article II.2) of the Concession Agreement for in-flight catering kitchen.

	Concessionaire under the Agreement and the related contracts <sup>323</sup> . The Private Partner will have to comply with these restrictions of competition.
<b>Transfer</b>	No contractual restriction on transfer by KAA.
<b>Termination for convenience</b>	No termination for convenience. The Concession only provides for termination for a party's default or for a lasting force majeure event. No further details as to the consequences of termination.
<b>Comments</b>	The Minimum Annual Guarantee Fee may have changed, pursuant to Article II.2) of the Concession which provides for a revision of this fee after the fifth anniversary of the Full Commercial Operation Date. According to KAA, the fee has not changed. To be confirmed with KAA: if the Full Commercial Operation Date occurred.

## 10.7.2 Concession Agreement for ground handling services

### 10.7.2.1 Concession Agreement between KAA and Eurocraft Agencies Limited for the provision of ground handling services

<b>Title</b>	Concession Agreement between KAA and Eurocraft Agencies Limited for the provision of ground handling services
<b>Parties</b>	<b>Kenya Airports Authority</b> as the Authority and <b>Eurocraft Agencies Limited</b> as the Concessionaire.
<b>Purpose</b>	Grant of a concession to carry out ground handling services at JKI Airport.
<b>Date</b>	Signature Date: 3rd November 2021 Effective Date: 1 <sup>st</sup> July 2021.
<b>Term</b>	Concluded for 5 years and 3 months (until 1 <sup>st</sup> October 2026) <sup>324</sup> .
<b>Concession fee</b>	<ul style="list-style-type: none"> <li>▪ Concession fee at the rate of 9% of annual gross turnover, with a guaranteed minimum of Kshs 4,000,000.00 (approximately USD 24,540.00)<sup>325</sup>; and</li> <li>▪ Apron bussing concession of USD 70 per bus per day<sup>326</sup>.</li> </ul>

<sup>323</sup> Article V.4) of the Concession Agreement for in-flight catering kitchen.

<sup>324</sup> Article 3 of 2021 Concession Agreement between KAA and Eurocraft Agencies Limited for the provision of ground handling services.

<sup>325</sup> Article 4.1 of the 2021 Concession Agreement between KAA and Eurocraft Agencies Limited for the provision of ground handling services.

<sup>326</sup> Schedule of the 2021 Concession Agreement between KAA and Eurocraft Agencies Limited for the provision of ground handling services.

<b>Exclusivity / restriction of competition</b>	The licence is granted on a non-exclusive basis <sup>327</sup> .
<b>Transfer</b>	No contractual restriction on transfer by KAA.
<b>Termination for convenience</b>	The Authority may terminate the Concession at any time, upon service of a written notice. The Authority may have to pro-rate and refund the fees paid to the extent that they have not been utilized <sup>328</sup> .
<b>Comments</b>	The Concession Order of 1996 shall apply. This Concession Agreement is the product of a contractual renewal dated 5 <sup>th</sup> August 2021, with retroactive effect from 1 <sup>st</sup> July 2021 <sup>329</sup> . Possible renewal of the Concession upon service of a written notice by the Concessionaire six months before the expiry of the term. Yet, the Authority is not obligated to grant such renewal.

#### 10.7.2.2 Renewal of Swissport Kenya Ltd's licence to provide ground handling services

<b>Title</b>	Renewal of Swissport Kenya Ltd's licence to provide ground handling services
<b>Parties</b>	<b>Kenya Airports Authority</b> as the Authority and <b>Swissport Kenya Ltd</b> as the Concessionaire.
<b>Purpose</b>	Grant of a concession to carry out ground handling services at JKI Airport.
<b>Date</b>	Effective date: 1 <sup>st</sup> July 2021.
<b>Term</b>	Granted for 5 years and 3 months (until 1 <sup>st</sup> October 2026) <sup>330</sup> .
<b>Concession fee</b>	<ul style="list-style-type: none"> <li>Concession fee at the rate of 9% of annual gross turnover, with a guaranteed minimum of Kshs 4,000,000.00 (approximately USD 24,540.00); and</li> </ul>

<sup>327</sup> Paragraph (B) of the Preamble of the 2021 Concession Agreement between KAA and Eurocraft Agencies Limited for the provision of ground handling services.

<sup>328</sup> Article 8.3 of the 2021 Concession Agreement between KAA and Eurocraft Agencies Limited for the provision of ground handling services.

<sup>329</sup> Renewal of Concession Agreement to provide ground handling services at JKIA.

<sup>330</sup> Paragraph (i) of the Renewal of Swissport Kenya Ltd's licence to provide ground handling services.



	<ul style="list-style-type: none"> <li>▪ Apron bussing concession of USD 70 per bus per day<sup>331</sup>.</li> </ul>
<b>Exclusivity / restriction of competition</b>	No provision on exclusivity.
<b>Transfer</b>	No contractual restriction on transfer by KAA.
<b>Termination for convenience</b>	No provision on termination.
<b>Comments</b>	<p>It should be noted that we have not been provided with the entire agreement, merely with the notification of award. Thus, certain provisions are missing.</p> <p>Another agreement relating to the provision of ground handling services at JKIA by Swissport was signed in 2008 but expired on 30<sup>th</sup> June 2012. There is no certainty that the agreements are linked and that one may rely on the provisions of the 2008-Agreement to construe the 2021-Concession.</p>

### 10.7.3 Concession Agreement for the provisions on third-party transport services

<b>Title</b>	Concession Agreement for the provision of third-party transport services
<b>Parties</b>	<b>Kenya Airports Authority</b> as the Authority and <b>Hala Nairobi Airport Services Limited</b> as the Concessionaire.
<b>Purpose</b>	Grant of a concession for the provision of third-party transport services at JKI Airport.
<b>Date</b>	Signature Date: 17 <sup>th</sup> October 2022. Effective Date: 1 <sup>st</sup> June 2021
<b>Term</b>	5 years and 3 months from the Effective Date (1 <sup>st</sup> September 2026) <sup>332</sup> .

<sup>331</sup> Paragraph (ii) of the Renewal of Swissport Kenya Ltd's licence to provide ground handling services.

<sup>332</sup> Article 3 of the Concession Agreement for the provision of third-party transport services.

<b>Concession fee</b>	Annual fees amounting to Kshs 300,000.00 plus VAT and mandatory statutory charges (around USD 1,858.70) <sup>333</sup> .
<b>Exclusivity / restriction of competition</b>	The Concession specifies that the concession has been granted to the Concessionaire on a non-exclusive basis <sup>334</sup> .
<b>Transfer</b>	No contractual restriction on transfer by KAA.
<b>Termination for convenience</b>	The Authority may terminate the Agreement for its convenience by written notice of 90 days. If any termination for convenience, the Authority may pro-rate and refund paid license fees to the extent that they have not been utilized <sup>335</sup> .
<b>Comments</b>	The Concession Order 1996 shall apply.

#### 10.7.4 Concession Agreement for the development and management of duty-free shops

##### 10.7.4.1 Concession Agreement for the development and management of duty-free shops at Terminal 1B, B4 & Terminal 1C, C8

<b>Title</b>	Concession Agreement for the development and management of duty-free shops at Terminal 1B, B4 & Terminal 1C, C8
<b>Parties</b>	<b>Kenya Airports Authority</b> as the Authority and M/S Safari Duty Free Limited JV Flemingo International Limited as the Concessionaire.  On 23 <sup>rd</sup> November 2022, the concession was assigned by M/S Safari Duty Free Limited JV Flemingo International Limited to <b>Simba Duty Free Limited</b> . Consequently, Simba Duty Free Limited has been acting as the Concessionaire since then <sup>336</sup> .
<b>Purpose</b>	Grant of a concession for the development and management of duty-free shops offering liquor, tobacco, perfumes, confectionary and/or cosmetics in Terminal 1B, B4, 1C and C8 at JKI Airport.
<b>Date</b>	Signature Date: 24 <sup>th</sup> May 2022.

<sup>333</sup> Article 4.1 of the Concession Agreement for the provision of third-party transport services.

<sup>334</sup> Paragraph (B) of the Preamble of the Concession Agreement for the provision of third-party transport services.

<sup>335</sup> Article 8.3 of the Concession Agreement for the provision of third-party transport services.

<sup>336</sup> Deed of Assignment in respect of the Concession and Licence Agreements.

<b>Term</b>	10-year period starting on the Commencement of Services (defined as the date on commission of Terminal 1B and 1C), with a midterm review of the concession terms and conditions <sup>337</sup> . We have not been provided with the date on which the Commencement of Services occurred.
<b>Concession fee</b>	<i>Minimum annual fee of USD 3,500,000.00 plus VAT, plus a concession fee for the term representing 37,8% of gross sales plus VAT, subject to the operation of a reconciliation mechanism whereby the concessionaire shall pay the difference between the concession fee and the minimum annual fee at the end of each year<sup>338</sup>.</i>
<b>Exclusivity / restriction of competition</b>	During the term of the Concession, the Authority undertakes not to enter into any contract relating to the development and management of duty-free shops at terminals 1B and 1C selling the exclusive products (namely liquor, tobacco, perfumes, confectionary and/or cosmetics). The private partner will have to comply with these exclusivity provisions <sup>339</sup> .
<b>Transfer</b>	No contractual restriction on transfer by KAA.
<b>Termination for convenience</b>	The Authority may terminate the Agreement for its convenience by written notice of 90 days. In case of termination for convenience, the Authority may pro-rate and refund paid fees to the extent that they have not been utilized <sup>340</sup> .
<b>Comments</b>	<p>The Agreement grants power to the Authority to relocate the operations of the Concessionaire or even to suspend the latter for renovation or redevelopment purposes<sup>341</sup>.</p> <p>Assignment: the Concessionaire's rights and obligations have been validly assigned to <b>Simba Duty Free Limited</b> on 23<sup>rd</sup> November 2022 Deed of Assignment in respect of the Concession and Licence Agreements dated 24<sup>th</sup> May 2022, in which KAA gave its written consent).</p>

<sup>337</sup> Article II.3) of the Concession Agreement for the development and management of duty-free shops at Terminal 1B, B4 & Terminal 1C, C8.

<sup>338</sup> Article II.4) of the Concession Agreement for the development and management of duty-free shops at Terminal 1B, B4 & Terminal 1C, C8.

<sup>339</sup> Article V.3) (a) of the Concession Agreement for the development and management of duty-free shops at Terminal 1B, B4 & Terminal 1C, C8.

<sup>340</sup> Article VII. 2) of the Concession Agreement for the development and management of duty-free shops at Terminal 1B, B4 & Terminal 1C, C8.

<sup>341</sup> Article II.2) (c) of the Concession Agreement for the development and management of duty-free shops at Terminal 1B, B4 & Terminal 1C, C8.

#### 10.7.4.2 Concession Agreement for the development and management of duty-free shops at Terminal 1A

<b>Title</b>	Concession Agreement for the development and management of duty-free shops at Terminal 1A
<b>Parties</b>	<b>Kenya Airports Authority</b> as the Authority and <b>Dufry International AG</b> as the Concessionaire. On 22 <sup>nd</sup> January 2016, the concession was assigned and novated by Dufry International AG to <b>Dufry Kenya Limited</b> . Consequently, Dufry Kenya Limited has been acting as the Concessionaire since then.
<b>Purpose</b>	Grant of a concession for the development and management of duty-free shops in Terminal 1A, at JKIA Airport.
<b>Date</b>	22 <sup>nd</sup> January 2015.
<b>Term</b>	10-year period from the date of commencement of services (defined as the last day of a 4-month period starting from the date on which the Authority granted all the necessary approvals) and possible extension for another term of 5 years upon written request of the Concessionaire <sup>342</sup> .
<b>Concession fee</b>	The Concession fees are divided into several sub-fees: <ul style="list-style-type: none"> <li>▪ Ksh 2,000 per square foot of actual space utilized. As the space provided is approximately 730 Square meters, i.e., 7 965 square feet, the rent shall be approximately Ksh 15,930,000.00 (approximately USD 97,989.00) per quarter;</li> <li>▪ Guaranteed minimum fee of USD 3,500,000 per annum; and</li> <li>▪ A concession fee calculated at 20% of gross receipts and payable quarterly, subject to a reconciliation mechanism whereby the concessionaire shall pay the difference between the concession fee and the guaranteed minimum fee at the end of each year<sup>343</sup>.</li> </ul>

<sup>342</sup> Article II.3) of the Concession Agreement for the development and management of duty-free shops at Terminal 1A.

<sup>343</sup> Article II.4) of the Concession Agreement for the development and management of duty-free shops at Terminal 1A.

<b>Exclusivity / restriction of competition</b>	Pursuant to the Agreement, the Concessionaire shall be the sole licensee for the development and management of duty-free retail services in Terminal 1A <sup>344</sup> .
<b>Transfer</b>	No contractual restriction on transfer by KAA.
<b>Termination for convenience</b>	No provision on termination for convenience. No further details as to the consequences of termination.
<b>Comments</b>	<u>Renewal</u> : possible extension of the term of the concession, provided that the Concessionaire has observed all its obligations. Yet, it may be argued that the Authority is not bound to grant such extension, even if the Concessionaire has been compliant with its obligations, since the clause indicates that "the Authority may (...) grant to the Concessionaire an extension of the Term", as opposed to "shall grant" <sup>345</sup> . <u>Assignment</u> : all of the rights and obligations held by Dufry International AG under the Agreement have been validly assigned to Dufry Kenya Ltd on 22nd January 2016 (Deed of assignment and novation in respect of Concession agreement for the development and management of duty-free retails services under a single master license at JKIA dated 22nd January 2015 for which KAA gave its written consent).

## 10.7.5 Concession agreement for cargo handling services

### 10.7.5.1 Concession Agreement for cargo handling services between KAA and Mitchell Cotts Freight Kenya Limited

<b>Title</b>	Concession Agreement for cargo handling services between KAA and Mitchell Cotts Freight Kenya Limited
<b>Parties</b>	<b>Kenya Airports Authority</b> as the Authority and <b>Mitchell Cotts Freight Kenya Limited</b> as the Concessionaire.
<b>Purpose</b>	Grant of a concession to build and operate cargo storage and handling facility at JKI Airport.
<b>Date</b>	Signature Date: 19 <sup>th</sup> November 2012. Effective Date: date on which the Conditions Precedent have been fulfilled. We have not been provided with the exact Effective Date.

<sup>344</sup> Article II.4) (b) of the Concession Agreement for the development and management of duty-free shops at Terminal 1A.

<sup>345</sup> Article II.3) of the Concession Agreement for the development and management of duty-free shops at Terminal 1A.

<b>Term</b>	20-year period commencing on the full commercial operation date defined as the 90 <sup>th</sup> day from the date on which a certificate of occupation is issued by the City Council of Nairobi <sup>346</sup> .
<b>Concession fee</b>	No clause on concession fee appears in the pages provided but mention of "the Concession paying the concession fee agreed herein before". The relevant pages seem to be missing.
<b>Exclusivity / restriction of competition</b>	No exclusivity granted. KAA has undertaken not to grant any lease to a competitor of the Concessionaire on more favourable terms than those set out under the lease concluded with the Concessionaire, not to make the provision of any services by a competitor subject to lesser standards than those imposed on the Concessionaire under the Concession, not to grant any competitor a longer term than that granted to the Concessionaire, and to ensure that no competitor will be given any preference or advantage when compared to the rights and obligations granted to the Concessionaire under the Agreement and the related contracts. The private partner will have to comply with these restrictions of competition <sup>347</sup> .
<b>Transfer</b>	No contractual restriction on transfer in the provided pages.
<b>Termination for convenience</b>	No provision on termination for convenience in the provided pages. No further details as to the consequences of termination.
<b>Comments</b>	Certain pages of the Agreement appear to be missing (references to Article VII in some of the definitions, e.g. "Concessionaire Default" and "Default" ; impression accentuated by the succession of certain page numbers and articles).

#### 10.7.5.2 Supplemental Concession Agreement for cargo handling services between KAA and Transglobal Cargo Centre Limited

<b>Title</b>	Supplemental Concession Agreement for cargo handling services between KAA and Transglobal Cargo Centre Limited
<b>Parties</b>	<b>Kenya Airports Authority</b> as the Authority and <b>Transglobal Cargo Centre Limited</b> as the Concessionaire.

<sup>346</sup> Article 1.50) of the Concession Agreement for cargo handling services between KAA and Mitchell Cotts Freight Kenya Limited.

<sup>347</sup> Article 4 of the Concession Agreement for cargo handling services between KAA and Mitchell Cotts Freight Kenya Limited.

<b>Purpose</b>	Supplement the principal concession agreement made between the Authority and the Concessionaire on 30 <sup>th</sup> January 2009 which granted the Concessionaire the right to provide cargo handling services at JKI Airport.
<b>Date</b>	Signature Date: 17 <sup>th</sup> July 2015.
<b>Term</b>	20-year period from the date it is executed by both parties and automatically extendable for a further period of 5 years <sup>348</sup> .
<b>Concession fee</b>	Concession fee at the rate of 8% of Annual Gross Receipts (inclusive of VAT) which means all sums actually received or receivable by the Concessionaire directly from the provision of the Services at the Airport, subject to an annual minimum guaranteed fee of Kshs 4,000,000.00 (around USD 24,615.38) <sup>349</sup> .
<b>Exclusivity / restriction of competition</b>	No provision on exclusivity.
<b>Transfer</b>	No contractual restriction on transfer by KAA.
<b>Termination for convenience</b>	No provision on termination for convenience. No further details as to the consequences of termination.
<b>Comments</b>	The Agreement is still in force. We have not been provided with the principal concession agreement. Despite its undertaking towards Mitchell Cotts Freight Kenya Ltd in another concession relating to cargo handling services, it seems that KAA has granted a longer term to Transglobal Cargo Centre Ltd (20 + 5 years) than to Mitchell Cotts (20 years).

#### 10.7.6 Concession for space to Nation Media Group publication stand at Terminal 1D

<b>Title</b>	Concession for space to Nation Media Group publication stand at Terminal 1D
<b>Parties</b>	<b>Kenya Airports Authority</b> as the Authority and <b>Nation Media Group Plc</b> as the Concessionaire.
<b>Purpose</b>	Grant of a concession for the sale of newspapers at Terminal 1D of JKI Airport.
<b>Date</b>	Signature Date: 13 <sup>th</sup> May 2020.

<sup>348</sup> Article II (2) of the Supplemental Concession Agreement for cargo handling services between KAA and Transglobal Cargo Centre Limited.

<sup>349</sup> Article II (3) of the Supplemental Concession Agreement for cargo handling services between KAA and Transglobal Cargo Centre Limited.



	Effective Date: 1 <sup>st</sup> January 2020.
<b>Term</b>	Agreement was supposed to expire on 1 <sup>st</sup> January 2023, in the absence of any suspension. Yet, based on additional documents, it is our understanding that the Concession shall now expire on 1 <sup>st</sup> July 2026 <sup>350</sup> .
<b>Concession fee</b>	Kshs 60,000.00 (approximately USD 369.20) <sup>351</sup> .
<b>Exclusivity / restriction of competition</b>	No provision on exclusivity.
<b>Transfer</b>	No contractual restriction on transfer by KAA.
<b>Termination for convenience</b>	No provision on termination for convenience.
<b>Comments</b>	It appears from other documents provided (Submission of Accepted Notification of Award for relocation of space and Rental Schedule Adjustment for Space) that the concession was first relocated to Terminal 2, before being moved back to Terminal 1D.

### 10.7.7 Expired Concession Agreements

#### 10.7.7.1 Concession Agreement between KAA and Kenya Airways for the provision of ground handling services

<b>Title</b>	Concession Agreement between KAA and Kenya Airways for the provision of ground handling services
<b>Parties</b>	<b>Kenya Airports Authority</b> as the Authority and <b>Kenya Airways</b> as the Concessionaire.
<b>Purpose</b>	Grant of a concession to carry out ground handling services at JKI Airport.
<b>Date</b>	Effective date: 1 <sup>st</sup> October 1996
<b>Term</b>	Granted for 5 years with a further period of five (5) years only on a mutually agreed Concession <sup>352</sup> .

<sup>350</sup> Paragraph (i) of the Submission of Accepted Notification of Award for relocation of space.

<sup>351</sup> Article 4.1 of the Concession for space to Nation Media Group publication stand at Terminal 1D.

<sup>352</sup> Preamble of the Concession Agreement between KAA and Kenya Airways for the provision of ground handling services

<b>Concession fee</b>	<ul style="list-style-type: none"> <li>▪ Concession fee at the rate of 7,7% of annual gross turnover from Ground Handling Services<sup>353</sup>.</li> <li>▪ Payable quarterly in arrears.</li> </ul>
<b>Exclusivity / restriction of competition</b>	No provision on exclusivity.
<b>Transfer</b>	No contractual restriction on transfer by KAA.
<b>Termination for convenience</b>	No provision on termination for convenience.
<b>Comments</b>	The contract has expired and it does not appear that there was any clause providing for its automatic renewal or extension.

#### 10.7.7.2 Concession Agreement for the provision of ground handling services between KAA and Airside Limited

<b>Title</b>	Concession agreement for the provision of ground handling services between KAA and Airside Limited
<b>Parties</b>	<b>Kenya Airports Authority</b> as the Authority and <b>Airside Limited</b> (trading as <b>Swissport Kenya</b> ) as the Concessionaire.
<b>Purpose</b>	Grant of a concession for the provision of ground handling services at JKI Airport.
<b>Date</b>	28 <sup>th</sup> April 2008.
<b>Term</b>	Agreement expired on 30 <sup>th</sup> June 2012.
<b>Concession fee</b>	No provision on concession fee, only provisions relating to indemnities.
<b>Exclusivity / restriction of competition</b>	No provision on exclusivity.
<b>Transfer</b>	The contract provides that only the concessionaire may assign its rights to a permitted assignee or to another assignee but with the written consent of the Authority, which shall not be unreasonably withheld. No contractual restriction on transfer by KAA.
<b>Termination for convenience</b>	No provision on termination for convenience.

<sup>353</sup> Preamble of the Concession Agreement between KAA and Kenya Airways for the provision of ground handling services

<b>Comments</b>	The contract has expired and it does not appear that there was any clause providing for its automatic renewal or extension.
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#### 10.7.7.3 2006 Eurocraft Concession Agreement for the provision of ground handling services

<b>Title</b>	2006 Eurocraft Concession Agreement for the provision of ground handling services
<b>Parties</b>	<b>Kenya Airports Authority</b> as the Authority and <b>Eurocraft Agencies Limited</b> as the Concessionaire.
<b>Purpose</b>	Grant of a concession for the provision of ground handling services at JKI Airport.
<b>Date</b>	15 <sup>th</sup> December 2006.
<b>Term</b>	Agreement expired on 31 <sup>st</sup> May 2012.
<b>Concession fee</b>	Concession fee of 8% of annual gross turnover subject to an annual minimum guarantee of Kshs 4,000,000.00 (approximately USD 24,377.00) <sup>354</sup>
<b>Exclusivity / restriction of competition</b>	No provision on exclusivity.
<b>Transfer</b>	No contractual restriction on transfer by KAA.
<b>Termination for convenience</b>	No provision on termination for convenience.
<b>Comments</b>	The contract has expired and it does not appear that there was any clause providing for its automatic renewal or extension.

#### 10.7.7.4

<sup>354</sup> Article II (2) of the 2006 Eurocraft Concession Agreement for the provision of ground handling services.

### 10.7.7.5 Concession Agreement for the development and management of advertising media

<b>Title</b>	Concession Agreement for the development and management of advertising media
<b>Parties</b>	<b>Kenya Airports Authority</b> as the Authority and <b>Scanad Kenya Limited</b> as the Concessionaire.
<b>Purpose</b>	Grant of a concession to carry out advertising media activities at JKA Airport.
<b>Date</b>	23 <sup>rd</sup> September 2015.
<b>Term</b>	Agreement has expired on 1 <sup>st</sup> December 2021.
<b>Concession fee</b>	Annual Guarantee fee of Kshs 30,000,000.00 for the first year of the Agreement, and for Kshs 68,000,000.00 for years 2 to 4 <sup>355</sup> . Agreement is truncated afterwards.
<b>Exclusivity / restriction of competition</b>	No provision on exclusivity.
<b>Transfer</b>	No provision on transfer in the available pages but the general conditions of contract provided in the call for tenders stipulate that the contractor may not assign its obligations under the contract except with KAA's prior written consent. No contractual restriction on transfer by KAA.
<b>Termination for convenience</b>	The Authority may terminate the Agreement for its convenience at any time, by written notice <sup>356</sup> . No further details as to the consequences of termination.
<b>Comments</b>	The Agreement has expired but, according to KAA, some outstanding amounts are still due to KAA by the Concessionaire.

## 10.8 Ownership of the land

The property of the airport site and assets is vested in KAA under the KAA Act. KAA confirmed us that no other land were acquire by or vested into KAA further this Deed.

We have been provided with a title act granting right over the plot of land L.R 21919 to KAA, effective from the 1st August 1996. We understand from our oral conversations with KAA that the plot of land L.R 21919 encompasses the entire perimeter of JKIA (the "Title Deed over JKIA"). The copy of the Title Deed over JKIA we have been provided with, seems to be itself dated 12th August 1996, and we have not been provided with a more recent copy.

<sup>355</sup> Article II (3) of the Concession Agreement for the development and management of advertising media.

<sup>356</sup> Article V (c) of the Concession Agreement for the development and management of advertising media.

<b>Title</b>	Title Deed over JKIA
<b>Reference</b>	Grant number: 70118
<b>Parcel of Land</b>	L.R. No. 21919 with dimensions and boundaries delimited in Annex (which we have not been provided with) and more particularly on Land Survey Plan Number 205580 deposited in the Survey Records Office at Nairobi.
<b>Term</b>	99 years (from 1 <sup>st</sup> August 1996)
<b>Rent</b>	A peppercorn per year (if demanded), which might have been revised as provided in Article 16 of the Special Conditions of the Title Deed.
<b>Destination of the land</b>	The land and buildings shall only be used for Offices Airport facilities and ancillary services.
<b>Transfer</b>	Article 9 of the Special Conditions of the Title Deed provides that the Grantee (KAA) shall not transfer, sublet, charge, or part with the possession of the land (or any part) or any building except with the prior consent in writing of the Commissioner of Lands (the National Land Commission).
<b>Termination for convenience</b>	No provision on termination for convenience. No further details as to the consequences of termination.
<b>Others</b>	In addition of the Special Conditions annexed to the Title Deed, the Act is subject to the Government Land Act CAP 280 (now Land Act, 2012 as defined in the Regulatory Due Diligence Report <sup>357</sup> ).

## 10.9 Leases on the airport site

Despite our request, we have not received from KAA the list of the 10 most material leases for us to review. Consequently, we have selected at random a sample of leases amongst the 500 or so documents in the data room; the selected leases may not represent the most material leases entered by KAA:

- Lease Agreement between KAA and African Cargo Handling LTD dated 1<sup>st</sup> October 1997 (the "**Lease Agreement between KAA and African Cargo Handling LTD**");
- Lease Agreement between KAA and Transglobal Cargo Centre Limited dated 1<sup>st</sup> October 2008 (the "**Lease Agreement between KAA and Transglobal Cargo Centre Limited**");
- Lease Agreement with KCAA over LR No. 21919 (I.R 70118/1) dated 1<sup>st</sup> February 2020 (the "**Lease Agreement with KCAA over LR No. 21919 (I.R 70118/1)**");

<sup>357</sup> Which provides that : « Unless the contrary is specifically provided in this Act, any right, interest, title, power, or obligation acquired, accrued, established, coming into force or exercisable before the commencement of this Act shall continue to be governed by the law applicable to it immediately prior to the commencement of this Act »

- Lease Agreement with KCAA over a portion (approximately 2.5 ha) on land reference number 21919 dated 15<sup>th</sup> February 2016 (the “**Lease Agreement with KCAA over a portion (approximately 2.5 ha) on land reference number 21919**”); and
- Lease Agreement with Kenya National Highways Authority dated 1<sup>st</sup> April 2014 (the “**Lease Agreement with Kenya National Highways Authority**”)

### 10.9.1 Lease Agreement between KAA and African Cargo Handling LTD

<b>Title</b>	Lease Agreement between KAA and African Cargo Handling LTD
<b>Parties</b>	<b>Kenya Airports Authority</b> as the Lessor and <b>African Cargo Handling Limited (subsidiary of Kenya Airways Group)</b> as the Lessee.
<b>Purpose</b>	The Rent of a parcel for the purpose of constructing, operating and maintaining thereon a Freight terminal Facility, which is defined as a building with improvements and surrounding rump designed for the storage and processing of inbound and out-bound air cargo.
<b>Date</b>	Signature date: 24 <sup>th</sup> September 1997 Effective date: 1 <sup>st</sup> October 1997
<b>Term</b>	Concluded for 45 years (until 1 <sup>st</sup> October 2042) <sup>358</sup> .
<b>Rent</b>	First five years of the term: Annual rent of Kshs.15,500,500 (USD 95,387.00) – payable clear of all deduction by advance quarterly instalments of Kshs.3,875,125 each on the First day of each quarter. Next five years of the term: Annual rent of Kshs. – payable 17,050,550 (USD 104,926.00) clear of all deduction by advance quarterly instalments of Kshs.4,262,637.50 each on the First day of each quarter. Next ten years: Annual rent of Kshs.20,460,600 (USD 125,911.00) – payable clear of all deduction by advance quarterly instalments of Kshs.5,115,150 each on the First day of each quarter. For the remainder of the term: Annual rent of Kshs.28,747,227 (USD 176,906.00) – payable clear of all deduction by advance quarterly instalments of Kshs.7,186,807 each on the First day of each quarter <sup>359</sup> .
<b>Exclusivity / restriction of competition</b>	No provision on exclusivity and/or restriction of competition.

<sup>358</sup> Preamble of the Lease Agreement between KAA and African Cargo Handling LTD.

<sup>359</sup> Preamble of the Lease Agreement between KAA and African Cargo Handling LTD.

<b>Transfer</b>	<p>The lessee shall not at any time transfer or assign this lease in whole or in part or assign any of its rights or obligations hereunder without the prior written consent of the Lessor which consent shall not be unreasonably withheld <sup>360</sup>.</p> <p>The contract defines assignment as any transfer of lease by merger, consolidation, operation of law.</p> <p>No contractual restriction on transfer by KAA.</p>
<b>Termination for convenience</b>	<p>No provision on termination for convenience.</p> <p>No further details as to the consequences of termination.</p>
<b>Others</b>	<p>The Lessor has the right to modify or improve the Airport and its associated facilities as needed, ensuring the Lessee still has reasonable access to their leased area. The Lessor won't be held liable for any business losses or damages the Lessee might incur due to these changes. Additionally, the Lessor can set fees for using the Airport, excluding extra charges for the leased premises<sup>361</sup>.</p> <p>The Lessee shall construct, maintain, and operate the Freight Terminal in an efficient and competent manner and to the highest international standards prevailing in the industry.</p> <p>At the expiration of the Lease, the ownership of the facilities and developments or improvements shall vest in the Lessor at no cost or price to the Lessor.</p>

### 10.9.2 Lease Agreement between KAA and Transglobal Cargo Centre Limited

<b>Title</b>	Lease Agreement between KAA and Transglobal Cargo Centre Limited
<b>Parties</b>	<b>Kenya Airports Authority</b> as the Landlord and <b>Transglobal Cargo Centre Limited</b> as the Tenant.
<b>Purpose</b>	Lease of a parcel of land containing by measurement 182,986 square feet, being a portion of a parcel of land situate in the JKIA, City of Nairobi.
<b>Date</b>	Effective Date: 1 <sup>st</sup> October, 2008.
<b>Term</b>	30 <sup>th</sup> September 2028 <sup>362</sup> , with an automatic extension of term expiring on 30 <sup>th</sup> September 2048 without need for the parties to enter a new Lease of the premises.
<b>Rent</b>	<p>Annual rent payable as follows:</p> <p>For the first five years of the Term: <b>Kshs. 2,744,790</b> (USD 16,891.00).</p>

<sup>360</sup> Article (r) of the Lease Agreement between KAA and African Cargo Handling LTD.

<sup>361</sup> Article (g) of the Lease Agreement between KAA and African Cargo Handling LTD.

<sup>362</sup> Article 1.8 of the Lease Agreement between KAA and Transglobal Cargo Centre Limited.

	At every interval of five years thereafter the rent shall be adjusted upwards to such market rent as shall then be prevailing for the premises <sup>363</sup> .
<b>Exclusivity / restriction of competition</b>	No provision on exclusivity and/or restriction of competition.
<b>Transfer</b>	The Tenant must not assign or charge the whole or any part of the Premises and must not sublet the whole or any part of the Premises without the consent of the Landlord first had and obtained which consent shall not be unreasonably withheld or delayed <sup>364</sup> . No contractual restriction on transfer by KAA.
<b>Termination for convenience</b>	No provision on termination for convenience. No further details as to the consequences of termination.
<b>Other</b>	The tenant had to pay KAA a deposit of Kshs. 686,197.50 to be retained by KAA through the initial term (until 2028) as a security for the due performance by the tenant of its obligations under the lease. The deposit has to be paid back to the tenant at the expiry of the initial term after the payment by the tenant of all sums due. Another deposit have to be made at the commencement of the extended term. The lease also provides for Work – construction of a Freight Terminal Building by the Tenant. We have not been provided with more information related to this Work.

### 10.9.3 Lease Agreement between KCAA over LR No. 21919 (I.R 70118/1)

<b>Title</b>	Lease Agreement with KCAA over LR No. 21919 (I.R 70118/1)
<b>Parties</b>	<b>Kenya Airports Authority</b> as the Lessor and <b>Kenya Civil Aviation Authority</b> as the Lessee.
<b>Purpose</b>	Leasing of parcel of land situated in the city of Nairobi, Kenya, enabling the development and management of a Regional Aviation Centre for medicine.
<b>Date</b>	1 <sup>st</sup> February 2020 <sup>365</sup> .
<b>Term</b>	1 <sup>st</sup> February 2045 <sup>366</sup> .
<b>Contract Price / Rent</b>	A peppercorn per year <sup>367</sup> .

<sup>363</sup> Articles 1.29.1 and 1.29.2 of the Lease Agreement between KAA and Transglobal Cargo Centre Limited.

<sup>364</sup> Article 3.9.2 of the Lease Agreement between KAA and Transglobal Cargo Centre Limited.

<sup>365</sup> According to the notification of Award.

<sup>366</sup> Article 2.13 of the Lease Agreement with KCAA over LR No. 21919 (I.R 70118/1).

<sup>367</sup> Article 2.28 of the Lease Agreement with KCAA over LR No. 21919 (I.R 70118/1).



<b>Transfer</b>	Lessee may assign its interests in the whole or any part of the premises with the prior written consent of the lessor, which shall not be unreasonably withheld. No contractual restriction on transfer by KAA.
<b>Termination for convenience</b>	No provision on termination for convenience. No further details as to the consequences of termination.
<b>Comments</b>	The notification of Award provides for a Lease Agreement, a Building Agreement and a Concession Agreement. We only have been provided with the lease agreement.

10.9.3.1 Lease Agreement with KCAA over a portion (approximately 2.5 ha) of land reference number 21919, Nairobi

<b>Title</b>	Lease Agreement with KCAA over a portion (approximately 2.5 ha) on land reference number 21919
<b>Parties</b>	<b>Kenya Airports Authority</b> as the Lessor and <b>Kenya Civil Aviation Authority</b> as the Lessee.
<b>Purpose</b>	Leasing of parcel of land situated in the city of Nairobi, Kenya, enabling the development and occupation of the Kenya Civil Aviation Authority Headquarters Office Block.
<b>Date</b>	15 <sup>th</sup> February 2016.
<b>Term</b>	Concluded for thirty-five (35) years from 3 <sup>rd</sup> March 2014 (until 3 <sup>rd</sup> March 2049) <sup>368</sup> .
<b>Contract Price / Rent</b>	Kshs 1 (if demanded) <sup>369</sup>
<b>Transfer</b>	Lessee may not sublease the premises or any part thereof without the prior written consent of the Lessor. No contractual restriction on transfer by KAA.
<b>Termination for convenience</b>	No provision on termination for convenience. No further details as to the consequences of termination.
<b>Comments</b>	The Lease is renewable for an additional term to be agreed by the parties upon service of written notice by the Lessee to the Lessor on or before 60 days from expiry of the Lease <sup>370</sup> .

<sup>368</sup> Preamble of the Lease Agreement with KCAA over a portion (approximately 2.5 ha) of land reference number 21919.

<sup>369</sup> Article 1(a) of the Lease Agreement with KCAA over a portion (approximately 2.5 ha) of land reference number 21919.

<sup>370</sup> Article 7 of the Lease Agreement with KCAA over a portion (approximately 2.5 ha) of land reference number 21919.

### 10.9.3.2 Lease Agreement with Kenya National Highways Authority

<b>Title</b>	Lease Agreement with Kenya National Highways Authority
<b>Parties</b>	<b>Kenya Airports Authority</b> as the Lessor and <b>Kenya National Highways Authority</b> as the Lessee.
<b>Purpose</b>	Leasing of premises situated on a portion of LR. 21919 in the city of Nairobi, Kenya, enabling the development of a transport sector support project office complex.
<b>Date</b>	Effective Date: 1 <sup>st</sup> April 2014.
<b>Term</b>	1 <sup>st</sup> April 2049 <sup>371</sup> .
<b>Contract Price / Rent</b>	Kshs 1 (if demanded) per annum <sup>372</sup> .
<b>Transfer</b>	No contractual restriction on transfer by KAA.
<b>Termination for convenience</b>	No provision on termination for convenience. No further details as to the consequences of termination.
<b>Comments</b>	N/A

## 10.10 Licences

### 10.10.1 Licence Agreement with the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland

<b>Title</b>	Licence Agreement with the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland
<b>Parties</b>	<b>Kenya Airports Authority</b> as the Licensor and <b>the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland</b> as the Licensee.
<b>Purpose</b>	Grant of a licence for office space enabling the licensee to carry out airline operation and management services at JKI Airport in support of air movements by the UK Government or Ministry of Defence at the Airport.
<b>Date</b>	Signature Date: 1 <sup>st</sup> July 2021 Effective Date: 1 <sup>st</sup> July 2020
<b>Term</b>	The agreement came into force on the effective date (1 <sup>st</sup> July 2020) and shall remain in force for a period of five (5) years and three (3) months (until 1 <sup>st</sup> October 2025)

<sup>371</sup> Article 1.6 of the Lease Agreement with Kenya National Highways Authority.

<sup>372</sup> Article 1.8 of the Lease Agreement with Kenya National Highways Authority.

	unless the Services are suspended or the agreement is terminated in accordance with the following termination's section <sup>373</sup> .
<b>Contract Price / Rent</b>	Annual fee of Kshs 1,476,270.00 (around USD 9,255.70) excluded VAT <sup>374</sup> .
<b>Transfer</b>	No contractual restriction on transfer by KAA.
<b>Termination for convenience</b>	Possible termination for convenience upon service of written notice. In case of early termination, the Licensor may pro-rate and refund the paid license fees to the extent that they have not been utilized <sup>375</sup> . In the event of a wrongful termination, the remedy is the same as that provided for in situations of termination for convenience <sup>376</sup> .
<b>Comments</b>	N/A

### 10.10.2 Licence Agreement between KAA and Simba Duty Free Limited

<b>Title</b>	Licence Agreement between KAA and Simba Duty Free Limited.
<b>Parties</b>	<b>Kenya Airports Authority</b> as the Licensor and M/S Safari Duty Free Limited JV Flemingo International Limited as the Licensee. On 23 <sup>rd</sup> November 2022, the licence was assigned by M/S Safari Duty Free Limited JV Flemingo International Limited to <b>Simba Duty Free Limited</b> . Consequently, Simba Duty Free Limited has been acting as the Licensee since then <sup>377</sup> .
<b>Purpose</b>	Grant of a licence over a portion of land of six hundred and twenty (620) square meters to enable the Licensee to perform the services set out under the Concession Agreement for the development and management of duty-free shops at Terminal 1B, B4 & Terminal 1C, C8.
<b>Date</b>	Signature Date: 24th May 2022.
<b>Term</b>	10-year period starting on the Commencement Date (defined as the date of site handover) <sup>378</sup> .

<sup>373</sup> Article 3 of the Licence Agreement with the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland.

<sup>374</sup> Article 4.1 of the Licence Agreement with the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland.

<sup>375</sup> Article 8.3 of the Licence Agreement with the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland.

<sup>376</sup> Article 8.5 of the Licence Agreement with the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland.

<sup>377</sup> Deed of Assignment in respect of the Concession and Licence Agreements.

<sup>378</sup> Article 1 of the Licence Agreement between KAA and Simba Duty Free Limited.

<b>Contract Price / Rent</b>	Annual rent of USD 345 per square meter plus VAT of actual space utilized by the Licensee. As the available space is 620 square meters, if all this space is used, the rent will be USD 213,900.00 per annum, subject to adjustment reflecting yearly inflationary rates. In addition, payment of a Service Charge plus VAT for costs incurred by the Licensor to run and manage common areas, representing 20% of the Initial Rent (approximately USD 42,780.00 per annum) <sup>379</sup> .
<b>Transfer</b>	No contractual restriction on transfer by KAA.
<b>Termination for convenience</b>	The Authority may terminate the Agreement for its convenience by written notice of 90 days. In case of termination for convenience, the Authority may pro-rate and refund paid fees to the extent that they have not been utilized <sup>380</sup> .
<b>Comments</b>	This Licence Agreement relates to the Concession Agreement for the development and management of duty-free shops at Terminal 1A between the same parties.

## 10.11 Agreements with airlines

We have reviewed licences for the following airlines: Aerospace Consortium International Limited; Air France; Astral Aviation Limited; Chesaka International Company Limited; Corporate Aviation Limited; KLM Royal Dutch Airlines; Saudi Arabian Airlines Corporation; Precision Air Services; Seven Four Eight Air Services; Kenya Airways PLC.

### 10.11.1 Licence with Aerospace Consortium International Limited

<b>Title</b>	AGREEMENT NO. KAA/JKIA/REN/11/02/199 (LICENCE AGREEMENT)
<b>Parties</b>	<b>Kenya Airports Authority</b> as the Licensor and <b>Aerospace Consortium International Limited</b> as the Licensee.
<b>Purpose</b>	Granting to the Licensee on a non-exclusive basis a Licence for space for provision of Airline Services at Freight Terminal – KAHL Building at Jomo Kenyatta International Airport.
<b>Date</b>	Signature Date: 27 <sup>th</sup> July 2021 Effective Date: 1 <sup>st</sup> January 2021
<b>Term</b>	The agreement came into force on the effective date (1st January 2021) and shall remain in force for a period of five (5) years, three (3) months (until 1 <sup>st</sup> April 2026)

<sup>379</sup> Articles 1 and 3.1, and Schedule 1 of the Licence Agreement between KAA and Simba Duty Free Limited.

<sup>380</sup> Article 6.1 of the Licence Agreement between KAA and Simba Duty Free Limited.

	unless the Services are suspended or the agreement is terminated in accordance with the following termination's section.
<b>Consideration / Fees / Rents payable</b>	The Licensee covenants to pay to the Licensor the annual licence fees of Kenya Shillings one million two hundred and twenty-four thousand five hundred and forty (Kshs 1,224,540.00, around USD 7,512.64) <sup>381</sup> .
<b>Exclusivity / restriction of competition</b>	The Licence granted by the Licensor is on a non-exclusive basis a Licence for space for provision of Airline Services. The Licence granted by the Licensor to the Licensee is not intended to grant the Licensee any exclusive possession of any part of the Airport or create any tenancy relationship whatsoever between the parties <sup>382</sup> .
<b>Transfer (assignment and successors and assigns)</b>	No contractual restriction on transfer by KAA, the only restriction on the transfer lies with the licensee.
<b>Termination</b>	In the context of the Project, the following causes for termination <sup>383</sup> can be identified: <ul style="list-style-type: none"> <li>▪ <b>termination by the Licensor:</b> <ul style="list-style-type: none"> <li>- in case of a listed default from the Licensee;</li> <li>- <u>decision or act performed by a public authority</u>: the Kenya Government or any government agency or authority or any Kenyan court should take any decision or perform any act which suspends and/or revokes the Licensee's License or makes Licensee's unable to perform the Licensee's obligations or commitments under the Licence Agreement;</li> <li>- <u>termination for convenience</u>: the Licensor by written notice sent to the Licensee may terminate the Agreement, at any time for its convenience, with the notice specifying that upon termination in whole part of the license the Authority may pro-rate and refund such paid license fees to the extent that they have not been utilized.</li> </ul> </li> <li>▪ <b>Termination by either Parties:</b> each party shall be entitled to terminate this Agreement by giving Sixty (60) days written notice to the other Party such termination immediately effective upon the giving of such notice of termination: <ul style="list-style-type: none"> <li>- if one Party ceases or threatens to cease to carry its business;</li> </ul> </li> </ul>

<sup>381</sup>Article 4 (*Licence Fee*) of the Aerospace Consortium International Limited Licence Agreement.

<sup>382</sup>Recitals of the Aerospace Consortium International Limited Licence Agreement.

<sup>383</sup>Article 8 (*Licence Termination*) of the Aerospace Consortium International Limited Licence Agreement.

	<ul style="list-style-type: none"> <li>- if a receiver, administrator, or similar officer is appointed over all or any part of the assets or undertaking of the other Party.</li> </ul> <p>The termination of this Licence agreement shall not discharge the liabilities of the defaulting party<sup>384</sup>.</p>
<b>Comments</b>	<p><u>Renewal</u>: the Licensee may give notice in writing to the Licensor not less than six (6) months before the expiry of the Term. The renewal is not automatic, and the Licensor is not obligated to grant such renewal<sup>385</sup>.</p>

### 10.11.2 Licence with Air France

<b>Title</b>	AGREEMENT NO. KAA/JKIA/NOT/11/02 (81)
<b>Parties</b>	<b>Kenya Airports Authority</b> as the Licensor and <b>Air France</b> as the Licensee.
<b>Purpose</b>	Granting to the Licensee on a non-exclusive basis a Licence for space for provision of Airline Operation and Management Services at Terminal 1C Airside and at Terminal 1C Airside Equipment Yard at Jomo Kenyatta International Airport.
<b>Date</b>	Signature Date: 23rd March 2021. Effective Date: 1st July 2020
<b>Term</b>	The agreement came into force on the effective date (1st July 2020) and shall remain in force for a period of five (5) years, three (3) months (until 1 <sup>st</sup> October 2025) unless the Services are suspended or the agreement is terminated in accordance with the following termination's section.
<b>Consideration / Fees / Rents payable</b>	The Licensee covenants to pay to the Licensor the annual licence fees of Kenya Shillings two million three hundred and ninety-one thousand three hundred (Kshs, 2,391,300.00, around USD 14,670.65) per annum plus Value Added Tax (VAT) <sup>386</sup> .
<b>Exclusivity / restriction of competition</b>	The Licence granted by the Licensor is on a non-exclusive basis a Licence for space for provision of Airline Operation and Management Services. The Licence granted by the Licensor to the Licensee is not intended to grant the Licensee any exclusive possession of any part of the Airport or create any tenancy relationship whatsoever between the parties <sup>387</sup> .
<b>Transfer (assignment)</b>	No contractual restriction on transfer by KAA, the only restriction on the transfer lies with the licensee.

<sup>384</sup> Article 8.7 of the Aerospace Consortium Limited Licence Agreement.

<sup>385</sup> Article 13.4 (*Renewal*) of the Aerospace Consortium International Limited Licence Agreement.

<sup>386</sup>Article 4 (*Licence Fee*) of the Air France Licence Agreement.

<sup>387</sup> Recitals of the Air France Licence Agreement.

and successors and assigns)	
Termination	<p>In the context of the Project, the following causes for termination<sup>388</sup> can be identified:</p> <ul style="list-style-type: none"> <li>▪ <b>termination by the Licensor:</b> <ul style="list-style-type: none"> <li>- in case of a listed default from the Licensee;</li> <li>- <u>decision or act performed by a public authority</u>: the Kenya Government or any government agency or authority or any Kenyan court should take any decision or perform any act which suspends and/or revokes the Licensee's License or makes Licensee's unable to perform the Licensee's obligations or commitments under the Licence Agreement;</li> <li>- <u>termination for convenience</u>: the Licensor by written notice sent to the Licensee may terminate the Agreement, at any time for its convenience, with the notice specifying that upon termination in whole part of the license the Authority may pro-rate and refund such paid license fees to the extent that they have not been utilized.</li> </ul> </li> <li>▪ <b>termination by either Parties:</b> each party shall be entitled to terminate this Agreement by giving Sixty (60) days written notice to the other Party such termination immediately effective upon the giving of such notice of termination: <ul style="list-style-type: none"> <li>- if one Party ceases or threatens to cease to carry its business;</li> <li>- if a receiver, administrator, or similar officer is appointed over all or any part of the assets or undertaking of the other Party.</li> </ul> </li> </ul> <p>The termination of this Licence agreement shall not discharge the liabilities of the defaulting party<sup>389</sup>.</p>
Comments	N/A.

### 10.11.3 Licence with Astral Aviation Limited

Title	AGREEMENT NO. KAA/JKIA/NOT/11/02 (84)
Parties	<b>Kenya Airports Authority</b> as the Licensor and <b>Astral Aviation Limited</b> as the Licensee.
Purpose	Granting to the Licensee on a non-exclusive basis a Licence for space for provision of Airline Operation and Management Services at Terminal 1B Airside at Jomo Kenyatta International Airport.

<sup>388</sup>Article 8 (*Licence Termination*) of the Air France Licence Agreement.

<sup>389</sup>Article 8.7 of the Air France Licence Agreement.

<b>Date</b>	Signature Date: 19 <sup>th</sup> February 2021 Effective Date: 1 <sup>st</sup> July 2020
<b>Term</b>	The agreement came into force on the effective date (1 <sup>st</sup> July 2020) and shall remain in force for a period of five (5) years, three (3) months (until 1 <sup>st</sup> October 2025) unless the Services are suspended or the agreement is terminated in accordance with the following termination's section.
<b>Consideration / Fees / Rents payable</b>	The Licensee covenants to pay to the Licensor the annual licence fees of Kenya Shillings three hundred and eighty thousand, two hundred and fifty (Kshs 380,250.00, around USD 2,332.80) per annum plus Value Added Tax (VAT) <sup>390</sup> .
<b>Exclusivity / restriction of competition</b>	The Licence granted by the Licensor is on a non-exclusive basis a Licence for space for provision of Airline Operation and Management Services. The Licence granted by the Licensor to the Licensee is not intended to grant the Licensee any exclusive possession of any part of the Airport or create any tenancy relationship whatsoever between the parties <sup>391</sup> .
<b>Transfer (assignment and successors and assigns)</b>	No contractual restriction on transfer by KAA, the only restriction on the transfer lies with the licensee.
<b>Termination</b>	In the context of the Project, the following causes for termination <sup>392</sup> can be identified: <ul style="list-style-type: none"> <li>▪ <b>termination by the Licensor:</b> <ul style="list-style-type: none"> <li>- in case of a listed default from the Licensee;</li> <li>- <u>decision or act performed by a public authority</u>: the Kenya Government or any government agency or authority or any Kenyan court should take any decision or perform any act which suspends and/or revokes the Licensee's License or makes Licensee's unable to perform the Licensee's obligations or commitments under the Licence Agreement;</li> <li>- <u>termination for convenience</u>: the Licensor by written notice sent to the Licensee may terminate the Agreement, at any time for its convenience, with the notice specifying that upon termination in whole part of the license the Authority may pro-rate and refund such paid license fees to the extent that they have not been utilized.</li> </ul> </li> </ul>

<sup>390</sup>Article 4 (*License Fee*) of the Astral Aviation Limited Licence Agreement.

<sup>391</sup> Recitals of the Astral Aviation Limited Licence Agreement.

<sup>392</sup>Article 8 (*License Termination*) of the Astral Aviation Limited Licence Agreement.



	<ul style="list-style-type: none"> <li>▪ <b>termination by either Parties:</b> each party shall be entitled to terminate this Agreement by giving Sixty (60) days written notice to the other Party such termination immediately effective upon the giving of such notice of termination: <ul style="list-style-type: none"> <li>- if one Party ceases or threatens to cease to carry its business;</li> <li>- if a receiver, administrator, or similar officer is appointed over all or any part of the assets or undertaking of the other Party.</li> </ul> </li> </ul> <p>The termination of this Licence agreement shall not discharge the liabilities of the defaulting party<sup>393</sup>.</p>
<b>Comments</b>	N/A.

#### 10.11.4 Licence with Chesaka International Company Limited

<b>Title</b>	AGREEMENT NO. KAA/JKIA/REN/11/02/198
<b>Parties</b>	<b>Kenya Airports Authority</b> as the Licensor and <b>Chesaka International Company Limited</b> as the Licensee.
<b>Purpose</b>	Granting to the Licensee on a non-exclusive basis a Licence for space for provision of Clearing and Forwarding Services at the Freight Terminal - KAHL Building at Jomo Kenyatta International Airport.
<b>Date</b>	Signature Date: 12 <sup>th</sup> July 2021 Effective Date: 1 <sup>st</sup> January 2021
<b>Term</b>	The agreement came into force on the effective date (1 <sup>st</sup> January 2021) and shall remain in force for a period of five (5) years, three (3) months (until 1 <sup>st</sup> April 2026) unless the Services are suspended or the agreement is terminated in accordance with the following termination's section.
<b>Consideration / Fees / Rents payable</b>	The Licensee covenants to pay to the Licensor the annual licence fees of Kenya Shillings five hundred and thirty two thousand eight hundred (Kshs 532,800.00, (around USD 3,268.83) per annum plus Value Added Tax (VAT) <sup>394</sup> .
<b>Exclusivity / restriction of competition</b>	The Licence granted by the Licensor is on a non-exclusive basis a Licence for space for provision of Clearing and Forwarding Services. The Licence granted by the Licensor to the Licensee is not intended to grant the Licensee any exclusive possession of any part of the Airport or create any tenancy relationship whatsoever between the parties <sup>395</sup> .

<sup>393</sup>Article 8.7 of the Astral Aviation Limited Licence Agreement.

<sup>394</sup>Article 4 (*Licence Fee*) of the Chesaka International Company Limited Licence Agreement.

<sup>395</sup> Recitals of the Chesaka International Company Limited Licence Agreement.

<b>Transfer (assignment and successors and assigns)</b>	<p>No contractual restriction on transfer by KAA, the only restriction on the transfer lies with the licensee.</p>
<b>Termination</b>	<p>In the context of the Project, the following causes for termination<sup>396</sup> can be identified:</p> <ul style="list-style-type: none"> <li>▪ <b>termination by the Licensor:</b> <ul style="list-style-type: none"> <li>- in case of a listed default from the Licensee;</li> <li>- <u>decision or act performed by a public authority</u>: the Kenya Government or any government agency or authority or any Kenyan court should take any decision or perform any act which suspends and/or revokes the Licensee's License or makes Licensee's unable to perform the Licensee's obligations or commitments under the Licence Agreement.</li> <li>- <u>termination for convenience</u>: the Licensor by written notice sent to the Licensee may terminate the Agreement, at any time for its convenience, with the notice specifying that upon termination in whole part of the license the Authority may pro-rate and refund such paid license fees to the extent that they have not been utilized.</li> </ul> </li> <li>▪ <b>termination by either Parties:</b> each party shall be entitled to terminate this Agreement by giving Sixty (60) days written notice to the other Party such termination immediately effective upon the giving of such notice of termination including but not limited to: <ul style="list-style-type: none"> <li>- if one Party ceases or threatens to cease to carry its business;</li> <li>- if a receiver, administrator, or similar officer is appointed over all or any part of the assets or undertaking of the other Party.</li> </ul> </li> </ul> <p>The termination of this licence agreement shall not discharge the liabilities of the defaulting party<sup>397</sup>.</p>
<b>Comments</b>	<p>Renewal: the Licensee may give notice in writing to the Licensor not less than six (6) months before the expiry of the Term. The renewal is not automatic, and the Licensor is not obligated to grant such renewal<sup>398</sup>.</p>

### 10.11.5 Licence with Corporate Aviation Limited

<sup>396</sup> Article 8 (*Licence Termination*) of the Chesaka International Company Limited Licence Agreement.

<sup>397</sup>Article 8.7 of the Chesaka International Company Limited Licence Agreement.

<sup>398</sup> Article 13.4 (*Renewal*) of the Chesaka International Company Limited Licence Agreement.

<b>Title</b>	AGREEMENT NO. KAA/JKIA/REN/11/02/204
<b>Parties</b>	<b>Kenya Airports Authority</b> as the Licensor and <b>Corporate Aviation Limited</b> as the Licensee.
<b>Purpose</b>	Granting to the Licensee on a non-exclusive basis a Licence for space for provision Clearing and Forwarding Services at the Freight Terminal at Jomo Kenyatta International Airport.
<b>Date</b>	Signature Date: 23 <sup>rd</sup> December 2021 Effective Date: 1 <sup>st</sup> January 2021
<b>Term</b>	The agreement came into force on the effective date (1st January 2021) and shall remain in force for a period of five (5) years, three (3) months (until 1 <sup>st</sup> April 2026) unless the Services are suspended or the agreement is terminated in accordance with the following termination's section.
<b>Consideration / Fees / Rents payable</b>	The Licensee covenants to pay to the Licensor the annual licence fees of Kenya Shillings three hundred and thirty four thousand four hundred and forty (Kshs 334,440.00, around USD 2,051.89) per annum plus Value Added Tax (VAT) <sup>399</sup> .
<b>Exclusivity / restriction of competition</b>	The Licence granted by the Licensor is on a non-exclusive basis a Licence for space for provision of Clearing and Forwarding Services. The Licence granted by the Licensor to the Licensee is not intended to grant the Licensee any exclusive possession of any part of the Airport or create any tenancy relationship whatsoever between the parties <sup>400</sup> .
<b>Transfer (assignment and successors and assigns)</b>	No contractual restriction on transfer by KAA, the only restriction on the transfer lies with the licensee.
<b>Termination</b>	In the context of the Project, the following causes for termination <sup>401</sup> can be identified: <ul style="list-style-type: none"> <li>▪ <b>termination by the Licensor:</b> <ul style="list-style-type: none"> <li>- in case of a listed default from the Licensee;</li> <li>- <u>decision or act performed by a public authority</u>: the Kenya Government or any government agency or authority or any Kenyan court should take any decision or perform any act which suspends and/or revokes the Licensee's License or makes Licensee's unable to perform the Licensee's obligations or commitments under the Licence Agreement;</li> </ul> </li> </ul>

<sup>399</sup> Article 4 (*Licence Fee*) of the Corporate Aviation Limited Licence Agreement.

<sup>400</sup> Recitals of the Corporate Aviation Limited Licence Agreement.

<sup>401</sup>Article 8 (*Licence Termination*) of the Corporate Aviation Limited Licence Agreement.

	<ul style="list-style-type: none"> <li>- <u>termination for convenience</u>: the Licensor by written notice sent to the Licensee may terminate the Agreement, at any time for its convenience, with the notice specifying that upon termination in whole part of the license the Authority may pro-rate and refund such paid license fees to the extent that they have not been utilized.</li> <li>▪ <b>termination by either Parties</b>: each party shall be entitled to terminate this Agreement by giving Sixty (60) days written notice to the other Party such termination immediately effective upon the giving of such notice of termination including but not limited to: <ul style="list-style-type: none"> <li>- if one Party ceases or threatens to cease to carry its business;</li> <li>- if a receiver, administrator, or similar officer is appointed over all or any part of the assets or undertaking of the other Party.</li> </ul> </li> </ul> <p>The termination of this Licence agreement shall not discharge the liabilities of the defaulting party<sup>402</sup>.</p>
<b>Comments</b>	N/A.

#### 10.11.6 Licence with KLM Royal Dutch Airlines

<b>Title</b>	AGREEMENT NO. KAA/JKIA/NOT/11/02 (102)
<b>Parties</b>	<b>Kenya Airports Authority</b> as the Licensor and <b>KLM Royal Dutch Airlines</b> as the Licensee.
<b>Purpose</b>	Granting to the Licensee on a non-exclusive basis a Licence for space for provision of Airline Operation and Management Services at Terminal A1 Landside, Terminal 1B Airside Engineering Office and at Terminal 1B Airside Equipment Yard at Jomo Kenyatta International Airport.
<b>Signing Date</b>	Signature Date: 2 <sup>nd</sup> March 2021 Effective Date: 1 <sup>st</sup> July 2020
<b>Term</b>	The agreement came into force on the effective date (1 <sup>st</sup> July 2020) and shall remain in force for a period of five (5) years, three (3) months (until 1 <sup>st</sup> October 2025) unless the Services are suspended or the agreement is terminated in accordance with the following termination's section.

<sup>402</sup> Article 8.7 of the Corporate Aviation Limited Licence Agreement.

<b>Consideration / Fees / Rents payable</b>	The Licensee covenants to pay to the Licensor the annual licence fees of Kenya Shillings four million twenty two thousand nine hundred and fifty five (Kshs 4,022,955.00, around USD 24,681.20) per annum plus Value Added Tax (VAT) <sup>403</sup> .
<b>Exclusivity / restriction of competition</b>	The Licence granted by the Licensor is on a non-exclusive basis a Licence for space for provision of Airline Operation and Management Services. The Licence granted by the Licensor to the Licensee is not intended to grant the Licensee any exclusive possession of any part of the Airport or create any tenancy relationship whatsoever between the parties <sup>404</sup> .
<b>Transfer (assignment and successors and assigns)</b>	No contractual restriction on transfer by KAA, the only restriction on the transfer lies with the licensee.
<b>Termination</b>	<p>In the context of the Project, the following causes for termination<sup>405</sup> can be identified:</p> <ul style="list-style-type: none"> <li>▪ <b>termination by the Licensor:</b> <ul style="list-style-type: none"> <li>- in case of a listed default from the Licensee;</li> <li>- <u>decision or act performed by a public authority</u>: the Kenya Government or any government agency or authority or any Kenyan court should take any decision or perform any act which suspends and/or revokes the Licensee's License or makes Licensee's unable to perform the Licensee's obligations or commitments under the Licence Agreement;</li> <li>- <u>termination for convenience</u>: the Licensor by written notice sent to the Licensee may terminate the Agreement, at any time for its convenience, with the notice specifying that upon termination in whole part of the license the Authority may pro-rate and refund such paid license fees to the extent that they have not been utilized.</li> </ul> </li> <li>▪ <b>termination by either Parties:</b> each party shall be entitled to terminate this Agreement by giving Sixty (60) days written notice to the other Party such termination immediately effective upon the giving of such notice of termination including but not limited to: <ul style="list-style-type: none"> <li>- if one Party ceases or threatens to cease to carry its business;</li> <li>- if a receiver, administrator, or similar officer is appointed over all or any part of the assets or undertaking of the other Party.</li> </ul> </li> </ul>

<sup>403</sup>Article 4 (*Licence Fee*) of the KLM Royal Dutch Airlines Licence Agreement.

<sup>404</sup> Recitals of the KLM Royal Dutch Airlines Licence Agreement.

<sup>405</sup> Article 8 (*Licence Termination*) of the KLM Royal Dutch Airlines Licence Agreement.

	The termination of this Licence agreement shall not discharge the liabilities of the defaulting party <sup>406</sup> .
<b>Comments</b>	N/A.

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<sup>406</sup>Article 8.7 of the KLM Royal Dutch Airlines Licence Agreement.

### 10.11.7 Licence with Saudi Arabian Airlines

<b>Title</b>	AGREEMENT NO. KAA/JKIA/NOT/11/02 (99)
<b>Parties</b>	<b>Kenya Airports Authority</b> as the Licensor and <b>Saudi Arabian Airlines Corporation</b> as the Licensee.
<b>Purpose</b>	Granting to the Licensee on a non-exclusive basis a Licence for space for provision of Airline Operation and Management Services at Terminal 1A Landside at Jomo Kenyatta International Airport.
<b>Date</b>	Signature Date: 27 <sup>th</sup> August 2021 Effective Date: 1 <sup>st</sup> May 2020
<b>Term</b>	The agreement came into force on the effective date (1 <sup>st</sup> May 2020) and shall remain in force for a period of five (5) years, three (3) months (until 1 <sup>st</sup> August 2025) unless the Services are suspended or the agreement is terminated in accordance with the following termination's section.
<b>Consideration / Fees / Rents payable</b>	The Licensee covenants to pay to the Licensor the annual licence fees of Kenya Shillings one million two hundred and ninety six thousand nine hundred (Kshs 1,296,900.00, around USD 7,963.90) per annum plus Value Added Tax (VAT) <sup>407</sup> .
<b>Exclusivity / restriction of competition</b>	The Licence granted by the licensor is on a non-exclusive basis a Licence for space for provision of Airline Operation and Management Services. The Licence granted by the Licensor to the Licensee is not intended to grant the Licensee any exclusive possession of any part of the Airport or create any tenancy relationship whatsoever between the parties <sup>408</sup> .
<b>Transfer (assignment and successors and assigns)</b>	No contractual restriction on transfer by KAA, the only restriction on the transfer lies with the licensee.
<b>Termination</b>	In the context of the Project, the following causes for termination <sup>409</sup> can be identified: <ul style="list-style-type: none"> <li>▪ <b>termination by the Licensor:</b> <ul style="list-style-type: none"> <li>- in case of a listed default from the Licensee;</li> <li>- <u>decision or act performed by a public authority</u>: the Kenya Government or any government agency or authority or any Kenyan court should take any decision or perform any act which suspends and/or revokes the Licensee's</li> </ul> </li> </ul>

<sup>407</sup> Article 4 (*Licence Fee*) of the Saudi Arabian Airlines Corporation Licence Agreement.

<sup>408</sup> Recitals of the Saudi Arabian Airlines Corporation Licence Agreement.

<sup>409</sup>Article 8 (*Licence Termination*) of the Saudi Arabian Airlines Corporation Licence Agreement.

	<p>License or makes Licensee's unable to perform the Licensee's obligations or commitments under the Licence Agreement;</p> <ul style="list-style-type: none"> <li>- <u>termination for convenience</u>: the Licensor by written notice of ninety (90) days sent to the Licensee may terminate the Agreement, at any time for its convenience, with the notice specifying that upon termination in whole part of the license the Authority may pro-rate and refund such paid license fees to the extent that they have not been utilized.</li> </ul> <ul style="list-style-type: none"> <li>▪ <b>termination by either Parties</b>: each party shall be entitled to terminate this Agreement by giving ninety (90) days written notice to the other Party such termination immediately effective upon the giving of such notice of termination including but not limited to: <ul style="list-style-type: none"> <li>- if one Party ceases or threatens to cease to carry its business;</li> <li>- if a receiver, administrator, or similar officer is appointed over all or any part of the assets or undertaking of the other Party;</li> </ul> </li> </ul> <p>The termination of this Licence agreement shall not discharge the liabilities of the defaulting party<sup>410</sup>.</p>
<b>Comments</b>	N/A.

#### 10.11.8 Licence with Precision Air Services

<b>Title</b>	AGREEMENT NO/ KAA/JKIA/NOT/11/02/95
<b>Parties</b>	<b>Kenya Airports Authority</b> as the Licensor and <b>Precision Air Services</b> as the Licensee.
<b>Purpose</b>	Granting to the Licensee on a non-exclusive basis a Licence for space for provision of airline operation and management services at Terminal 1A Landside at Jomo Kenyatta International Airport.
<b>Date</b>	Signature Date: 4 <sup>th</sup> July 2022 Effective Date: 1 <sup>st</sup> July 2020
<b>Term</b>	The agreement came into force on the effective date (1st July 2020) and shall remain in force for a period of five (5) years, three (3) (until 1 <sup>st</sup> September 2025) months unless the Services are suspended or the agreement is terminated in accordance with the following termination's section.
<b>Consideration / Fees / Rents payable</b>	The Licensee covenants to pay to the Licensor the annual licence fees of Kenya Shillings one million sixty three thousand nine hundred and twenty (Kshs 1,063,920.00, around USD 6,529.09) per annum plus a service charge of Kenya

<sup>410</sup> Article 8.7 of the Saudi Arabian Airlines Licence Agreement.



	Shillings two hundred and sixty-five thousand nine hundred and eighty (Kshs 265,980.00, around USD 1,632.07) plus Value Added Tax (VAT) <sup>411</sup> .
<b>Exclusivity / restriction of competition</b>	<p>The Licence granted by the licensor is on a non-exclusive basis a Licence for space for provision of airline operation and management services.</p> <p>The Licence granted by the Licensor to the Licensee is not intended to grant the Licensee any exclusive possession of any part of the Airport or create any tenancy relationship whatsoever between the parties<sup>412</sup>.</p>
<b>Transfer (assignment and successors and assigns)</b>	No contractual restriction on transfer by KAA, the only restriction on the transfer lies with the licensee.
<b>Termination</b>	<p>In the context of the Project, the following causes for termination<sup>413</sup> can be identified:</p> <ul style="list-style-type: none"> <li>▪ <b>termination by the Licensor:</b> <ul style="list-style-type: none"> <li>- in case of a listed default from the Licensee;</li> <li>- <u>decision or act performed by a public authority</u>: the Kenya Government or any government agency or authority or any Kenyan court should take any decision or perform any act which suspends and/or revokes the Licensee's License or makes Licensee's unable to perform the Licensee's obligations or commitments under the Licence Agreement;</li> <li>- <u>termination for convenience</u>: the Licensor by written notice sent to the Licensee may terminate the Agreement, at any time for its convenience, with the notice specifying that upon termination in whole part of the license the Authority may pro-rate and refund such paid license fees to the extent that they have not been utilized.</li> </ul> </li> <li>▪ <b>Termination by either Parties:</b> each party shall be entitled to terminate this Agreement by giving Sixty (60) days written notice to the other Party such termination immediately effective upon the giving of such notice of termination including but not limited to: <ul style="list-style-type: none"> <li>- if one Party ceases or threatens to cease to carry its business;</li> <li>- if a receiver, administrator, or similar officer is appointed over all or any part of the assets or undertaking of the other Party.</li> </ul> </li> </ul>

<sup>411</sup>Article 4 (*Licence Fee*) of the Precision Air Services Licence Agreement.

<sup>412</sup> Recitals of the Precision Air Services Licence Agreement.

<sup>413</sup>Article 8 (*Licence Termination*) of the Precision Air Services Licence Agreement.

	The termination of this Licence agreement shall not discharge the liabilities of the defaulting party <sup>414</sup> .
<b>Comments</b>	N/A.

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<sup>414</sup>Article 8.7 of the Precision Air Services Limited Licence Agreement.

### 10.11.9 Licence with Seven Four Eight Air Services

<b>Title</b>	AGREEMENT NO. KAA/JKIA/NOT/11/02 (105)
<b>Parties</b>	<b>Kenya Airports Authority</b> as the Licensor and <b>Seven Four Eight Air Services</b> as the Licensee.
<b>Purpose</b>	Granting to the Licensee on a non-exclusive basis a Licence for space for provision of airline operation and management services at Terminal 2 at Jomo Kenyatta International Airport.
<b>Date</b>	Signature Date: 2 <sup>nd</sup> March 2021 Effective Date: 1 <sup>st</sup> August 2020
<b>Term</b>	The agreement came into force on the effective date (1 <sup>st</sup> August 2020) and shall remain in force for a period of five (3) years (until 1 <sup>st</sup> August 2023) unless the Services are suspended or the agreement is terminated in accordance with the following termination's section.
<b>Consideration / Fees / Rents payable</b>	The Licensee covenants to pay to the Licensor the annual licence fees of Kenya Shillings one hundred and twenty thousand (Kshs 120,000.00, around USD 736.27) per annum Value Added Tax (VAT) <sup>415</sup> .
<b>Exclusivity / restriction of competition</b>	The Licence granted by the licensor is on a non-exclusive basis a Licence for space for provision of airline operation and management services. The Licence granted by the Licensor to the Licensee is not intended to grant the Licensee any exclusive possession of any part of the Airport or create any tenancy relationship whatsoever between the parties <sup>416</sup> .
<b>Transfer (assignment and successors and assigns)</b>	No contractual restriction on transfer by KAA, the only restriction on the transfer lies with the licensee.
<b>Termination</b>	In the context of the Project, the following causes for termination <sup>417</sup> can be identified: <ul style="list-style-type: none"> <li>▪ <b>termination by the Licensor:</b> <ul style="list-style-type: none"> <li>- in case of a listed default from the Licensee;</li> <li>- <u>decision or act performed by a public authority</u>: the Kenya Government or any government agency or authority or any Kenyan court should take any decision or perform any act which suspends and/or revokes the Licensee's</li> </ul> </li> </ul>

<sup>415</sup> Article 4 (*Licence Fee*) of the Seven Four Eight Air Services Licence Agreement.

<sup>416</sup>Recitals of the Seven Four Eight Air Services Licence Agreement.

<sup>417</sup>Article 8 (*Licence Termination*) of the Seven Four Eight Air Services Licence Agreement.

	<p>License or makes Licensee's unable to perform the Licensee's obligations or commitments under the Licence Agreement;</p> <ul style="list-style-type: none"> <li>- <u>termination for convenience</u>: the Licensor by written notice sent to the Licensee may terminate the Agreement, at any time for its convenience, with the notice specifying that upon termination in whole part of the license the Authority may pro-rate and refund such paid license fees to the extent that they have not been utilized.</li> </ul> <ul style="list-style-type: none"> <li>▪ <b>termination by either Parties</b>: each party shall be entitled to terminate this Agreement by giving Sixty (60) days written notice to the other Party such termination immediately effective upon the giving of such notice of termination, including but not limited to: <ul style="list-style-type: none"> <li>- if one Party ceases or threatens to cease to carry its business;</li> <li>- if a receiver, administrator, or similar officer is appointed over all or any part of the assets or undertaking of the other Party.</li> </ul> </li> </ul> <p>The termination of this Licence agreement shall not discharge the liabilities of the defaulting party<sup>418</sup>.</p>
<b>Comments</b>	Subject to KAA's confirmation his agreement seems to have expired.

#### 10.11.10 Licence with Kenya Airways PLC

<b>Title</b>	LICENCE FOR SPACE FOR AIRLINE OPERATIONS AND MANAGEMENT SERVICES AT JOMO KENYATTA INTERNATIONAL AIRPORT (JKIA) - AGREEMENT NO. KAA/JKIA/11/02/100 VOL. 4
<b>Parties</b>	<b>Kenya Airports Authority</b> as the Licensor and <b>Kenya Airways PLC</b> as the Licensee.
<b>Purpose</b>	Granting to the Licensee on a non-exclusive basis a Licence for space for provision of airline operation and management services at various locations located within the Parking Garage, Freight Terminal, Terminal 1A, Terminal 1C, Terminal 1D and Equipment Yards at Jomo Kenyatta International Airport.
<b>Date</b>	Signature Date: 3 <sup>rd</sup> April 2023 Effective Date: 1 <sup>st</sup> July 2017
<b>Term</b>	The agreement came into force on the effective date (1 <sup>st</sup> July 2017) and shall remain in force for a period of ten (10) years (until 1 <sup>st</sup> July 2027) unless the Services are suspended or the agreement is terminated in accordance with the following termination's section.

<sup>418</sup>Article 8.7 of the Seven Four Eight Air Services Licence Agreement.

<b>Consideration / Fees / Rents payable</b>	<p>The Licensee covenants to pay to the Licensor the annual licence fees of Kenya Shillings seventy four million five hundred and ninety three thousand and fifty and eighty cents (Kshs 74,593,050.80, around USD 457,641.48) per annum plus a service charge of Kenya Shillings eight million one hundred twenty-four thousand six hundred eighty dollars and twenty-nine cents (Kshs 8,124,680.29, around USD 49,847.08) plus Value Added Tax (VAT)<sup>419</sup>.</p>
<b>Exclusivity / restriction of competition</b>	<p>The Licence granted by the licensor is on a non-exclusive basis a Licence for space for provision of airline operation and management services.</p> <p>The Licence granted by the Licensor to the Licensee is not intended to grant the Licensee any exclusive possession of any part of the Airport or create any tenancy relationship whatsoever between the parties<sup>420</sup>.</p>
<b>Transfer (assignment and successors and assigns)</b>	<p>No contractual restriction on transfer by KAA, the only restriction on the transfer lies with the licensee.</p>
<b>Termination</b>	<p>In the context of the Project, the following causes for termination<sup>421</sup> can be identified:</p> <ul style="list-style-type: none"> <li>▪ <b>termination by the Licensor:</b> <ul style="list-style-type: none"> <li>- in case of a listed default from the Licensee;</li> <li>- <u>decision or act performed by a public authority</u>: the Kenya Government or any government agency or authority or any Kenyan court should take any decision or perform any act which suspends and/or revokes the Licensee's License or makes Licensee's unable to perform the Licensee's obligations or commitments under the Licence Agreement.</li> <li>- <u>termination for convenience</u>: the Licensor by written notice sent to the Licensee may terminate the Agreement, at any time for its convenience, with the notice specifying that upon termination in whole part of the license the Authority may pro-rate and refund such paid license fees to the extent that they have not been utilized.</li> </ul> </li> <li>▪ <b>termination by either Parties:</b> each party shall be entitled to terminate this Agreement by giving Sixty (60) days written notice to the other Party such termination immediately effective upon the giving of such notice of termination, including but not limited to: <ul style="list-style-type: none"> <li>- if one Party ceases or threatens to cease to carry its business;</li> </ul> </li> </ul>

<sup>419</sup>Article 4 (*Licence Fee*) of the Kenya Airways PLC Licence Agreement.

<sup>420</sup>Recitals of the Kenya Airways PLC Licence Agreement.

<sup>421</sup>Article 8 (*Licence Termination*) of the Kenya Airways PLC Licence Agreement.

	<ul style="list-style-type: none"> <li>- if a receiver, administrator, or similar officer is appointed over all or any part of the assets or undertaking of the other Party.</li> </ul> <p>The termination of this Licence agreement shall not discharge the liabilities of the defaulting party<sup>422</sup>.</p>
<b>Comments</b>	N/A.

## 10.12 Loan Agreements

We have been provided, and reviewed the following loan agreements:

- Advance agreement for preparation of proposed Kenya aviation modernization project preparation advance No. V0440 from the International Development Association dated 7th November 2016 (the "Agreement KAMP");
- Subsidiary Loan Agreement from the Government of the Republic of Kenya dated 22nd August 2011 (the "Agreement KTSSP");
- Subsidiary Loan Agreement from the Government of the Republic of Kenya dated 24th August 2004 (the "Agreement NCTIP"); and
- Credit Facility Agreement N°CKE 1029.01 K from the Agence Française de Développement dated 29th June 2010 (the "JKIA Loan Agreement").

### 10.12.1 Agreement KAMP

<b>Title</b>	"Agreement KAMP" – Advance agreement for preparation of proposed Kenya aviation modernization project preparation advance No. V0440
<b>Parties</b>	<b>International Development Association</b> (World Bank) and <b>Republic of Kenya</b> as the Recipient.
<b>Purpose</b>	To extend to the Republic of Kenya an advance out of the World Bank's Project Preparation Facility in an amount not to exceed five million dollars to assist in financing the improvement of security, safety, and service provision at JKIA. The Activities to be performed by the Recipient include and for which the Advance is provided consist in (i) the preparation of detailed design for remodelling of selected terminals at JKIA, (ii) the preparation of bidding and safeguard documents for the Project, (iii) the provision of technical assistance and advisory services to the SdoT and (iv) the provision of training related to the preparation of the Project <sup>423</sup> .

<sup>422</sup>Article 8.7 of the Kenya Airways PLC Licence Agreement.

<sup>423</sup> Article 2.01 of the Agreement KAMP.

<b>Date</b>	7 <sup>th</sup> November 2016 (date of the countersign by the Recipient)
<b>Term</b>	After fulfilment of the activities described by the Advance Agreement.
<b>Commitment</b>	Amount of the Advance Allocated: up to USD 5,000,000 <sup>424</sup> .
<b>Payment schedule</b>	<p>The payment schedule depends on the existence of a refinancing agreement concluded before 30<sup>th</sup> September 2017 ("Refinancing Date").</p> <p><u>Existence of a refinancing agreement:</u></p> <p>The total amount of the advance withdrawn is reimbursed to the World Bank as soon as the refinancing agreement takes effect<sup>425</sup>.</p> <p><u>Absence of refinancing agreement:</u></p> <p>The repayment terms depend on the amount of the advance withdrawn:</p> <ul style="list-style-type: none"> <li>▪ if less than USD 50,000: Reimbursed on the date that the World Bank will indicate by notice to the beneficiary. Including service fees accumulated on the balance of the advance withdrawn until the repayment date<sup>426</sup>;</li> <li>▪ if greater than USD 50,000: Reimbursement in ten approximately equal semi-annual instalments, in the amounts and on the dates ("payment dates") which the world bank shall specify in a notice to the recipient, and the Recipient shall pay a service charge on the aggregate balance at the rate of three-fourths of one percent per annum, payable in arrears on each payment date<sup>427</sup>.</li> </ul>
<b>Potential Event of default</b>	<i>No provisions that would be relevant to the project.</i>
<b>Security</b>	No provision on security.
<b>Comments</b>	<p>KAA confirmed that :</p> <ul style="list-style-type: none"> <li>▪ the entire loan has been disbursed and the designs completed; and a payment schedule is still in progress but we have not been able to obtain it.</li> </ul>

### 10.12.2 Agreement KTSSP

<b>Title</b>	"Agreement KTSSP" - Subsidiary Loan Agreement
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It is our understanding from the Project Information Document provided by The World Bank website that the Project mentioned by the present Agreement consisted of four components: Component A: Improve the Passenger Terminal Capacity at JKIA and Institutional Strengthening, Component B: Enhance Security at major Airports under KAA, Component C: Strengthen the Aviation Oversight capacity and Component D: Institutional Strengthening of Oversight function of the State Department of Transport.

<sup>424</sup> Article 3.01 of the Agreement KAMP.

<sup>425</sup> Article 4.02, (a) of the Agreement KAMP.

<sup>426</sup> Article 4.02, (b), (i) of the Agreement KAMP.

<sup>427</sup> Article 4.02, (b), (ii) of the Agreement KAMP.

<b>Parties</b>	<b>The Government of the Republic of Kenya</b> as the "Government" and <b>Kenya Airports Authority</b> as the "Authority".
<b>Purpose</b>	In relation to a financing agreement made in May 2011 between the government of the Republic of Kenya and the International Development Association, the government of the Republic of Kenya has loaned the Authority the proceeds of the funding allocated for the implementation of Part C of the Kenya Transport sector support project <sup>428</sup> . <b>Regarding JKIA:</b> supplying and installing a new baggage handling system and constructing a water supply line for the Airport <sup>429</sup> .
<b>Date</b>	22 <sup>nd</sup> August 2011.
<b>Term</b>	As the same date as the financing agreement <sup>430</sup> .
<b>Commitment</b>	SDR 9,550,550, being equivalent to USD 15,040,000 <sup>431</sup> (with 5% interests/annum in KES <sup>432</sup> ).
<b>Payment schedule</b>	The loan shall be repaid within a period of 23 years from the date of disbursement under this agreement with a grace period of eight years. The instalments shall be semi-annual payable to the permanent Secretary Ministry of Finance on each 15 <sup>th</sup> February and 15 <sup>th</sup> August commencing on 15 <sup>th</sup> August 2019 and ending 15 <sup>th</sup> February 2034 <sup>433</sup> .
<b>Potential Event of default</b>	KAA has many obligations under the agreement, there is no specific provisions related to defaults, however, KAA shall promptly inform the Government with any conditions which interfere or threaten to interfere with the progress of the project or the performance of the government's obligations <sup>434</sup> .
<b>Security</b>	No provision on security.
<b>Comments</b>	<i>KAA shall open and maintain a dedicated project account until the completion of the project in a commercial bank<sup>435</sup>.</i> <i>KAA confirmed that this loan has been partially disbursed and the remaining allocation redirected to the road agencies.</i> <i>However, the amount disbursed and the amount remaining are still unknown.</i>

<sup>428</sup> Article 2.01 of the Agreement KTSSP.

<sup>429</sup> Schedule 1, Part C of the Agreement KTSSP.

<sup>430</sup> Article 14.02 of the Agreement KTSSP.

<sup>431</sup> Article 2.01 of the Agreement KTSSP.

<sup>432</sup> Article 4.01 of the Agreement KTSSP.

<sup>433</sup> Article 3.01 of the Agreement KTSSP.

<sup>434</sup> Article 5.02, (i) of the Agreement KTSSP.

<sup>435</sup> Article 6.01, (b) of the Agreement KTSSP.



### 10.12.3 Agreement NCTIP

<b>Title</b>	"Agreement NCTIP" - Subsidiary loan agreement
<b>Parties</b>	<b>The Government of the Republic of Kenya and the Kenya Airports Authority.</b>
<b>Purpose</b>	In relation to a Credit Agreement made in June 2004 between the government of the Republic of Kenya and the International Development Association, and a project agreement between IDA and KAA, the Government of the Republic of Kenya loans to KAA a portion of the proceeds of the Credit amounting to USD 34,820,000 for the purposes of the Northern Corridor Transport Improvement Project <sup>436</sup> .
<b>Date</b>	24 <sup>th</sup> August 2004.
<b>Term</b>	As the same date as the Credit Agreement <sup>437</sup> .
<b>Commitment</b>	USD 34,820,000 <sup>438</sup> .
<b>Payment schedule</b>	KAA shall pay an interest rate of 7% per annum to the GOK on the on-lent amount and outstanding in semi-annual instalments payable on each April 15 and October 15 <sup>439</sup> . KAA shall repay the principal amount of the Credit to the GOK in 23 years including a grace period of 8 years in semi-annual instalments payable on each 15 <sup>th</sup> April and 15 <sup>th</sup> October commencing 15 <sup>th</sup> October 2012 and ending 15 <sup>th</sup> April 2027 <sup>440</sup> .
<b>Potential Event of default</b>	the Government may suspend the disbursement for the loan to KAA if: <ul style="list-style-type: none"> <li>▪ KAA conducts its affairs in relation to the project contrary to the provisions of the loan and other related legal instruments;</li> <li>▪ KAA applies the loan to activities not directly connected with the project.</li> </ul> KAA shall not take or concur in any action which would have the effect of amending, abrogating, assigning, or waiving the Agreement or any of its provisions <sup>441</sup> . Conditions which interfere or threaten to interfere with the progress of the project or the performance of KAA obligations <sup>442</sup> .
<b>Safety</b>	No security provisions, however, they might be part of the project agreement.

<sup>436</sup> We understand from the World Bank [website](#) that the elements of the project concerning JKIA and to be implemented by KAA consist of: (i) Rehabilitation and reconfiguration of old Embakasi Airport terminal and the main terminal at Jomo Kenyatta International Airport and construction of the road linking the two terminals; (ii) Installation of fencing, lighting, and surveillance systems at Jomo Kenyatta International Airport; (iii) Enhancing aviation security and safety, flight information system, search and rescue capacity, communications, and emergency operations centers at Jomo Kenyatta International Airport.

<sup>437</sup>Article 6.02 of the Agreement NCTIP.

<sup>438</sup>Article 2.02 of the Agreement NCTIP.

<sup>439</sup> Article 2.03 of the Agreement NCTIP.

<sup>440</sup>Article 2.04 of the Agreement NCTIP.

<sup>441</sup>Article 3.04, (a) of the Agreement NCTIP.

<sup>442</sup>Article 3.05, (b) of the Agreement NCTIP.

<b>Comments</b>	<p><i>We understand that KAA shall contribute USD 6.720.000 to the project by transferring this amount to the project account in order to apply the proceeds of the loan amount and own contribution to the expenditures approved and contained in schedule 1 of the Credit Agreement<sup>443</sup>.</i></p> <p><i>However, we were unable to confirm that this equity contribution has been paid into the dedicated account and that no obligation remains in this respect.</i></p>
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#### 10.12.4 JKIA Loan Agreement

<b>Title</b>	"JKIA Loan Agreement" - Credit Facility Agreement N°CKE 1029.01 K
<b>Parties</b>	<b>Kenya Airports Authority</b> as the Borrower and <b>Agence Française de Développement</b> as the Lender.
<b>Purpose</b>	Credit Facility for the purpose of financing the JKIA expansion project <sup>444</sup> which, according to KAA consisted of the expansion of (i) JKIA Terminal 1 A and (ii) the parking garage.
<b>Date</b>	29 <sup>th</sup> June 2010.
<b>Term</b>	After fulfilment of the obligations provided by the present Credit Facility Agreement.
<b>Commitment</b>	<p>Maximum aggregate principal amount of USD 93,000,000<sup>445</sup>.</p> <p>The interests to be paid are not expressly specified in the Credit Facility Agreement. They shall be determined at each drawdown, either as a fixed interest rate or a floating interest rate.</p> <p>Commitment fee: from the signing date, the Borrower shall pay to the lender a commitment fee of zero point fifty percent(0,50%) per annum.</p>
<b>Payment schedule</b>	<p>From the end of the Grace Period, the borrower shall repay to the Lender the principal amount of the credit facility in thirty equal half-yearly instalments, due and payable on each Payment Date<sup>446</sup>.</p> <p>Grace Period refers to the period from the Signing Date and expiring sixty months thereafter during which no repayment of the principal of the Credit facility is due. Payment Date refers to the 31<sup>st</sup> of January and the 31<sup>st</sup> of July of each year.<sup>447</sup>.</p>

<sup>443</sup> Article 2.02 of the Agreement NCTIP.

<sup>444</sup> Schedule 2 of JKIA Loan Agreement.

<sup>445</sup> Article 2.1 of the JKIA Loan Agreement.

<sup>446</sup> Article 7 of the JKIA Loan Agreement.

<sup>447</sup> Schedule 1-A of the JKIA Loan Agreement.

<b>Potential Event of default</b>	The Borrower shall not contract or keep any indebtedness other than the Authorized Indebtedness <sup>448</sup> . Change of control is an Event of default <sup>449</sup> .
<b>Security</b>	The Secured Obligations shall be secured by a charge upon all the property (excluding the Borrowers' immovable property), undertaking and revenue of the Borrower by operation of Section 19(3) of the Kenya Airports Authority Act, Cap. 395 of the Laws of Kenya <sup>450</sup> . The Borrower agrees that any other Security that it provides to the Lender shall be in addition to (and not in substitution for) and without prejudice to the charge over all the property (excluding the Borrower's immovable property), undertaking and revenue of the Borrower to secure the Secured Obligations created by the operation of Section 19 (3) of the Kenya Airports Authority Act, Cap.395 of the Laws of Kenya <sup>451</sup> .
<b>Assignment</b>	The Borrower may not assign or transfer, in any manner whatsoever, all or part of its rights and/or obligations under the Agreement without the prior written consent of the Lender <sup>452</sup>
<b>Comments</b>	We understand that the expansion project of the JKIA Terminal 1A and the parking garage are now complete. The loan has been drawn down to \$90 million out of a total of \$93 million, with a payment schedule that remains unknown. *** Please note also that we have been provided with and have reviewed a copy of the credit facility agreement no. CKE 1078.01 P dated 5 November 2014 in relation to the rehabilitation of Mombasa Airport's airside pavements. The key issues in relation to such credit facility agreement are addressed in section 10.4.5 together with the JKIA Loan Agreement (as the issues are linked between both credit agreements).

### 10.13 Other material contracts

We have identified two mains contracts exceeding USD 1m in value and that may still be in force at concession contract signing date (especially any ongoing material construction contract):

<sup>448</sup> Articles 12.6 and 14.1, (b) of the JKIA Loan Agreement.

<sup>449</sup> Article 14.1 (i) of the JKIA Loan Agreement.

<sup>450</sup> Article 10.1 of the JKIA Loan Agreement.

<sup>451</sup> Article 10.2 of the JKIA Loan Agreement.

<sup>452</sup> Article 16.5 of the JKIA Loan Agreement.

- contract for construction of T1A Concrete Apron between KAA and M/s Northern Construction Limited dated 6th September 2019 (the "Contract for construction of T1A Concrete Apron"); and
- contract for construction of additional entry and exit lane with Icarus Construction Ltd dated 11th July 2019 (the "**Contract for construction of T1A Concrete Apron**").

We have been provided with a list of infrastructure project contracts for JKIA with amounts exceeding USD 1m, but of all five contracts listed, we were only able to find the following in the data room provided:

- contract for the proposed waterproofing and HVAC at Terminal 1B and C at JKIA with M/S China Jiangxi International Economic and Technical Cooperation Company Limited, dated 27th January 2022 (the "Proposed waterproofing and HVAC at Terminal 1B and 1C at JKIA contract"); and
- contract for the direct procurement for supply, installation, testing and commissioning of electrical works for terminal 1B and C at JKIA with M/S China Jiangxi International Economic and Technical Cooperation Company Limited (the "Proposed supply installation and commissioning of electrical works for Terminal 1B and 1C at JKIA").

### 10.13.1 Material Construction Contracts

#### 10.13.1.1 Contract for construction of T1A Concrete Apron

<b>Title</b>	Contract for construction of T1A Concrete Apron <sup>453</sup>
<b>Parties</b>	<b>Kenya Airports Authority</b> as the Authority and <b>M/s Northern Construction Limited</b> as the Contractor.
<b>Purpose</b>	Contract for the removal of existing asphalt pavement and the construction of concrete pavement with dowels.
<b>Date</b>	6 <sup>th</sup> September 2019.
<b>Term</b>	12-month contract duration from commencement date corresponding to the date of receipt of the letter of notice to commence <sup>454</sup> .
<b>Contract Price</b>	Kshs 265,950,358.00 including all taxes (around USD 1,657,407.00) <sup>455</sup> .
<b>Payment schedule</b>	Pursuant to special conditions of contract <sup>456</sup> : <ul style="list-style-type: none"> <li>▪ no advance payment shall be paid;</li> <li>▪ an interim payment shall be made each month based on a certificate provided by the Engineer and establishing the value of the work completed and the value of the materials brought to the Site; and</li> </ul>

<sup>453</sup> We have been provided with the Special Conditions but not with the General Conditions.

<sup>454</sup> Article 6 of the Contract for construction of T1A Concrete Apron.

<sup>455</sup> Article 4 of the Contract for construction of T1A Concrete Apron.

<sup>456</sup> Articles 60.1 to 60.10 of the Conditions of Particular Application of the Contract for construction of T1A Concrete.

	<ul style="list-style-type: none"> <li>a final payment shall be made within 30-days after final payment certificate has been issued (following issue of the taking-over certificate), corresponding to the difference between the total value of the work done in accordance with the contract, and all the amounts already paid to the Contractor, plus, or minus, the sums owed from one party to the other.</li> </ul>
<b>Defect liability period</b>	12-month defect liability period starting from the date of completion of the work, as certified by the Engineer in the Taking-Over Certificate <sup>457</sup> .
<b>Transfer</b>	No contractual restriction on transfer by KAA.
<b>Comments</b>	<p>Contract includes a clause providing for a possible termination for convenience upon service of written notice by the Authority.</p> <p>According to KAA, the Contract was terminated for non-performance of the Contractor and a new contractor is to be appointed to finish the works by 2025.</p>

#### 10.13.1.2 Contract for construction of additional entry and exit lane

<b>Title</b>	Contract for construction of additional entry and exit lane
<b>Parties</b>	<b>Kenya Airports Authority</b> as the Authority and <b>Icarus Construction Ltd</b> as the Contractor.
<b>Purpose</b>	Contract for the construction of additional entry and exit lane at JKA Airport.
<b>Date</b>	11 <sup>th</sup> July 2019.
<b>Term</b>	8-month contract duration from commencement date (defined as the 28 <sup>th</sup> day from receipt of the notice to proceed) <sup>458</sup> .
<b>Contract Price</b>	Kshs 31,900,423.40 <sup>459</sup> (around USD 196,310.3).

<sup>457</sup> Article 41 of the General Conditions of the T1A Concrete Apron at JKIA Contract (FIDIC).

<sup>458</sup> Article 5 of the Contract for construction of additional entry and exit lane.

<sup>459</sup> Article 4 of the Contract for construction of additional entry and exit lane.

<b>Payment schedule</b>	<p>Pursuant to special conditions of contract<sup>460</sup>:</p> <ul style="list-style-type: none"> <li>▪ no advance payment shall be paid;</li> <li>▪ an interim payment shall be made each month based on a certificate provided by the Engineer and establishing the value of the work completed and the value of the materials brought to the Site; and</li> <li>▪ a final payment shall be made within 30-days after final payment certificate has been issued (following issue of the taking-over certificate), corresponding to the difference between the total value of the work done in accordance with the contract, and all the amounts already paid to the Contractor, plus, or minus, the sums owed from one party to the other.</li> </ul>
<b>Defect liability period</b>	<p>12-month defect liability period starting from the date of completion of the work, as certified by the Engineer in the Taking-Over-Certificate<sup>461</sup>.</p> <p>The deliverance of a Defects Liability Certificate, ends the period of validity of the Performance Security which should be return to the Contractor within 14 days.</p>
<b>Transfer</b>	No contractual restriction on transfer by KAA.
<b>Comments</b>	<p>Contract includes a clause providing for a possible termination for convenience upon service of written notice by the Authority.</p> <p>According to KAA, construction works are completed, and the lane is now in use, however, we have not been provided with the Taking-Over Certificate.</p>

### 10.13.2 Proposed waterproofing and HVAC at Terminal 1B and 1C at JKIA contract

<b>Title</b>	Contract for the proposed waterproofing and HVAC at Terminal 1B and C at JKIA
<b>Parties</b>	<b>Kenya Airports Authority</b> as the Authority and <b>M/S China Jiangxi International Economic and Technical Cooperation Company Limited</b> as the Contractor.
<b>Purpose</b>	Contract for the proposed waterproofing and HVAC at Terminal 1B and C at JKIA.
<b>Date</b>	Signature Date: 12 <sup>th</sup> January 2022. Effective Date: commencement date <sup>462</sup> which is not indicated.
<b>Term</b>	The works shall be undertaken within a period of four (4) months from the indicated commencement date <sup>463</sup> .
<b>Contract Price</b>	Kshs 175,366,273.70 <sup>464</sup> (around USD 1,127,757.38).

<sup>460</sup> Articles 60.1 to 60.10 of the Conditions of Particular Application of the construction of additional entry and exit lane at Jomo Kenyatta International Airport Contract.

<sup>461</sup> Article 41 of the General Conditions of the T1A Concrete Apron at JKIA Contract (FIDIC).

<sup>462</sup> Article 5 of the Proposed waterproofing and HVAC at Terminal 1B and 1C at JKIA contract.

<sup>463</sup> Article 5 of the Proposed waterproofing and HVAC at Terminal 1B and 1C at JKIA contract.

<sup>464</sup> Article 4 of the Proposed waterproofing and HVAC at Terminal 1B and 1C at JKIA contract.

<b>Payment schedule</b>	Pursuant to special conditions of contract <sup>465</sup> : <ul style="list-style-type: none"> <li>▪ no advance payment shall be paid; and</li> <li>▪ the payment to the Contractor should be made within 30 days of the date of issue of each certificate certifying that works have been completed to the satisfaction of KAA.</li> </ul>
<b>Defect liability period</b>	6-month defect liability period starting from the date of the whole completion of the works <sup>466</sup> .
<b>Transfer</b>	No contractual restriction on transfer by KAA.
<b>Comments</b>	Contract includes a clause providing for a possible termination for convenience upon service of thirty (30) days written notice by KAA <sup>467</sup> . Based on the information provided to us, we were unable to determine whether the contract is still in force.

### 10.13.3 Proposed supply installation and commissioning of electrical works for Terminal 1B and 1C at JKIA

<b>Title</b>	<b>Proposed supply installation and commissioning of electrical works for Terminal 1B and 1C at JKIA</b>
<b>Parties</b>	<b>Kenya Airports Authority</b> as the Authority and <b>M/S China Jiangxi International Economic and Technical Cooperation Company Limited</b> as the Contractor.
<b>Purpose</b>	Contract to procure the supply, installation, testing and commissioning of electrical works for Terminal 1B and C.
<b>Date</b>	Signature Date: 20 <sup>th</sup> June 2022
<b>Term</b>	Not provided.
<b>Contract Price</b>	Kshs 269,374,014.48 <sup>468</sup> (around USD 1,758 305,21)
<b>Payment schedule</b>	Pursuant to special conditions of contract <sup>469</sup> : <ul style="list-style-type: none"> <li>▪ no advance payment shall be paid;</li> <li>▪ the payment to the Contractor should be made within 30 days of the date of issue of each certificate certifying that works have been completed to the satisfaction of KAA.</li> </ul>

<sup>465</sup> Article 6 of the Proposed waterproofing and HVAC at Terminal 1B and 1C at JKIA contract.

<sup>466</sup> Article 13 of the Proposed waterproofing and HVAC at Terminal 1B and 1C at JKIA contract.

<sup>467</sup> Article 20 of the Proposed waterproofing and HVAC at Terminal 1B and 1C at JKIA contract.

<sup>468</sup> Article 3 of the Proposed supply installation and commissioning of electrical works for Terminal 1B and 1C at JKIA.

<sup>469</sup> Article 6 of the Proposed supply installation and commissioning of electrical works for Terminal 1B and 1C at JKIA.

<b>Defect liability period</b>	2-years defect liability period starting from the date of the whole completion of the works <sup>470</sup> .
<b>Transfer</b>	No contractual restriction on transfer by KAA.
<b>Comments</b>	Contract includes a clause providing for a possible termination for convenience upon service of thirty (30) days written notice by KAA <sup>471</sup> .  Based on the information provided to us, we were unable to determine whether the contract is still in force.

#### 10.13.4 Conclusion on the material contracts

Both Contract for construction of T1A Concrete Apron and Contract for construction of additional entry and exit lane are terminated. The T1A Concrete Apron Contract has been terminated by KAA due to a Contractor default, and a new one should be concluded with another contractor. According to KAA, the works provided for in the additional entry and exit lane Contract are completed, and the lane is now in use, however, we have not been provided with the Taking-Over Certificate, and are thus, unable to specify if the Defect Liability Period started. We have not been provided with information as regards the other contracts.

Based on the information provided to us, we were unable to determine whether the Proposed supply installation and commissioning of electrical works for Terminal 1B and 1C at JKIA and the Contract for the proposed waterproofing and HVAC at Terminal 1B and C at JKIA are still in force.

Both contracts do not provide for restriction on transfer on KAA. The Local Counsel has advised that under Kenyan law, there are no explicit legal provisions that prohibit the transfer of contracts in general.

However, while the benefits of a contract (excluding the obligations) may be assigned without the counterparty's consent, a formal novation - transferring both rights and obligations - can only occur with the consent of both the contractor and the third party. This process would involve entering into a tripartite novation agreement between the concessionaire, KAA and the Private Partner.

Both contracts provide for a possibility for KAA to terminate the contract for convenience

#### 10.14 Litigation and arbitration register

The table below is based on our review of the litigation and arbitration register provided to us. We have identified what we reasonably assumed are material claims based on the information provided in the register. Kindly note that we were not provided with the underlying claim documents.

<sup>470</sup> Article 13 of the Proposed supply installation and commissioning of electrical works for Terminal 1B and 1C at JKIA.

<sup>471</sup> Article 20 of the Proposed supply installation and commissioning of electrical works for Terminal 1B and 1C at JKIA.



We have been able to identify a few disputes that are outstanding and which relate to claims related to land within the JKIA perimeter (see land section below). It would be useful to track the status and settlement of those claims as the Project progresses towards implementation.

For some disputes, the information provided to us did not allow us to precisely determine whether the dispute pertains to JKIA or to another KAA property (as specified in the table below). This could be further confirmed with KAA in the course of the preparation of the tender.

Ref. (litigation and arbitration register)	Parties	Comments	Status	Financial exposure (+/-) (sums potentially owed by KAA, unless otherwise indicated)
Contract				
25.	Claimant: Weld- Con Ltd. Respondents: Catic & KAA.	Dispute related to civil and electrical works. It is not clear whether this dispute relates specifically to JKIA.	Pending.	USD 847,300.00 (joint and severally between respondents) Another document (Contingent liabilities) refers to a sum of approx. USD 5,497,582.
60.	Claimant: Giant Holdings. Respondent: KAA	The claimant alleges that the termination of a concession agreement was unlawful and claims damages. Claim before an arbitral tribunal. It is not clear whether this dispute relates specifically to JKIA.	Pending - the Arbitrator is yet to issue a date for preliminary meeting.	Unknown
66.	Claimant: WeR GmbH (ex-Roder HTS Hocker GmbH). Respondent: KAA.	Claim for payment of alleged works done and completed. It is not clear whether this dispute relates specifically to JKIA.	Pending.	USD 1,572,000.00 (we understand that approx. USD 78,000.00 of that sum have already been paid).
73.	Claimant: Anhui Construction Engineering Group Co. LTD.	CONTRACT NO: KAA/ES/JKIA/658/DB Contract for Design/Build Tender for Construction of	Final settlement agreement executed by the	USD 3,793,088.76 (to be paid by KAA)

Ref. (litigation and arbitration register)	Parties	Comments	Status	Financial exposure (+/-) (sums potentially owed by KAA, unless otherwise indicated)
	Respondent: KAA.	the Greenfield Passenger Terminal Complex and Associated Works at Jomo Kenyatta International Airport Alleged unilateral termination by KAA of a construction contract. Payment process underway.	parties on 26 May 2023.	
78.	Claimant: Kyevaluki Services Ltd. Respondent: Land National Commission, Chief Land Registrar and the Attorney General.	Petition seeking declaration over a suit property. It is not clear on which grounds is KAA involved in this matter. It is not clear whether this dispute relates specifically to JKIA.	Pending.	0
85.	Claimant: KIU Construction LTD. Respondent: KAA.	Arbitration between KIU Construction LTD and KAA. No further details as to the subject matter of the dispute. It is not clear whether this dispute relates specifically to JKIA.	Pending.	USD 3,349,875.33
NA	Claimant: Relief & Mission Logistics. Respondent: KAA.	Claim for compensation for termination of concession agreement for passenger transfer services at JKIA.	Pending.	USD 950,000.00
NA	Claimant: Sinohydro Corporation Ltd. Respondent: KAA.	Claim from the contractor for outstanding payments, duties & taxes, suspension of works related to rehabilitation of aircraft pavement at JKIA.	Pending	USD 8,034,466.00

Ref. (litigation and arbitration register)	Parties	Comments	Status	Financial exposure (+/-) (sums potentially owed by KAA, unless otherwise indicated)
Land				
1.	Claimant: Kyangombe Self Help Group. Respondent: KAA.	Claim over a parcel of land illegally acquired by the claimants which falls within the parcel of Land LRn° 21919 (JKIA parcel)	Decision delivered on 9 <sup>th</sup> June 2023.	In favor of KAA.
65.	Claimant: KAA Respondent: Edison Kiplangat Bundotich, Sally Chepkemoi, Simon Ondiek, Commissioner of Lands, Registrar of Titles & Director of Surveys	It is not clear whether this relates specifically to the JKIA property.	The matter was concluded in favor of KAA (no more precisions)	Monetary claim not specified
4.	Claimant: AIC Kenya Registered Trustees. Respondents: KAA & Others.	Claim over a parcel of land. It is not clear whether this dispute relates specifically to JKIA.	Pending.	0
6.	Claimants: Arthur Omollo & Others. Respondents: AG & Others.	Claim over a parcel of land. Authority has been enjoined as an interested party, without any adverse averments made against it so far. It is not clear whether this dispute relates specifically to JKIA.	Pending.	USD 8,380.00 (it is our understanding that this sum would not be owed by KAA)
10.	Claimant: Mitu-Bell Welfare Society. Respondent: KAA.	Claim over a parcel of land and the demolition of the claimant's building, which were erected within the flight path. (identified by	Pending.	0

Ref. (litigation and arbitration register)	Parties	Comments	Status	Financial exposure (+/-) (sums potentially owed by KAA, unless otherwise indicated)
		the Local Counsel as a land part of JKIA)		
14.	Claimant: Wanandegge housing Cooperative Limited. Respondent: KAA.	Claim over a parcel of land It is not clear whether this dispute relates specifically to JKIA.	Decision issued in favor of KAA.	0
19.	Claimant: Jimben Investments Ltd. Respondents: KAA & Others.	Claim over a parcel of land; 1. That L.R. 22590 situate at JKIA belongs to them.	The matter is scheduled for hearing on 13th March 2024.	0
28	Claimant: KAA Respondent : Peter Muinde & Another	Claim over illegal encroachment on its land by the Defendants (identified by the Local Counsel as a land part of JKIA).	The matter was concluded in favor of KAA in order to restrain the defendant on trespassing upon all that parcel of land 21919 or any part of it.	USD 6,389.78
38.	Claimant: Steelstone Kenya. Respondents: KAA and Attorney General.	Claim over a parcel of land. It is not clear whether this dispute relates specifically to JKIA.	Pending.	0
39.	Claimant: Ram Singh & Grandsons Limited. Respondents: KAA and Attorney General.	Claim over a parcel of land. It is not clear whether this dispute relates specifically to JKIA.	Pending.	0
40.	Claimant: Isaac Ondieki Lumumba.	Claim over a parcel of land It is not clear whether this dispute relates specifically to JKIA.	Pending.	0

Ref. (litigation and arbitration register)	Parties	Comments	Status	Financial exposure (+/-) (sums potentially owed by KAA, unless otherwise indicated)
	Respondents: KAA and Attorney General.			
41.	Claimant: Kandia Fresh Produce Suppliers Ltd Respondents: KAA and Attorney General.	Claim over a parcel of land. It is not clear whether this dispute relates specifically to JKIA.	Pending.	0
56.	Claimant: Axel Engineering. Respondents: KAA & Others.	The claimant seeks an injunction to prevent interference of occupation of a property which forms part of the authority's JKIA title.	Pending.	0
64.	Claimant: Push Enterprises Ltd. Respondent: KAA.	Claim over a parcel of land. It is not clear whether this dispute relates specifically to JKIA.	The judgment was scheduled to be delivered on 25th January 2024.	0
68.	Claimant: Christine Nyambura Gathii. Respondents: KAA & Others.	Claim over a parcel of land and general damages arising from breach of the fundamental right to property. It is not clear whether this dispute relates specifically to JKIA.	Judgment delivered on 12 <sup>th</sup> September 2022 against KAA. A notice of appeal has been filed.	USD 61,743.64
76.	Claimant: Supplies and Services Ltd. Respondents: KAA & Others.	Claim over a parcel of land. It is not clear whether this dispute relates specifically to JKIA.	Pending.	0
82.	Claimants: Dickson Kaingu Mangi & Others. Respondents: KAA & Others.	Claim over a parcel of land. It is not clear whether this dispute relates specifically to JKIA.	Judgment delivered on 15 <sup>th</sup> June, 2023, in favor of KAA.	0

Ref. (litigation and arbitratio n register)	Parties	Comments	Status	Financial exposure (+/-) (sums potentially owed by KAA, unless otherwise indicated)
Tax				
NA	Claimant: KRA. Respondent: KAA.	Submission of a tax assessment claim for the collection of the Air Passenger Service Charge. It is not clear whether this dispute relates specifically to JKIA.	Pending.	USD 26,397,764.00

## **SCHEDULE 1. INDEX OF THE REVIEWED DOCUMENTATION**

### **1. MATERIAL CONSTRUCTION CONTRACTS**

Contract for construction of T1A Concrete Apron;

Contract for construction of additional entry and exit lane;

Proposed waterproofing and HVAC at Terminal 1B and 1C at JKIA contract; and

Proposed supply installation and commissioning of electrical works for Terminal 1B and 1C at JKIA.

### **2. COLLECTIVE BARGAINING AGREEMENT AND EMPLOYMENT AGREEMENT**

Collective Bargaining Agreement between Kenya Airports Authority and Kenya Aviation Workers Union (KAWU).

### **3. OWNERSHIP OF THE LAND**

Title Deed over JKIA

### **4. LEASE AGREEMENTS**

Lease Agreement between KAA and African Cargo Handling LTD;

Lease Agreement between KAA and Transglobal Cargo Centre Limited;

Lease Agreement with KCAA over LR No. 21919 (I.R 70118/1);

Lease Agreement with KCAA over a portion (approximately 2.5 ha) of land reference number 21919;

Lease Agreement with Kenya National Highways Authority.

### **5. CONCESSION AGREEMENTS**

Concession Agreement for in-flight catering kitchen;

2021 Concession Agreement between KAA and Eurocraft Agencies Limited for the provision of ground handling services;

Renewal of Swissport Kenya Ltd's licence to provide ground handling service;

Concession Agreement for the provision of third-party transport services;

Concession Agreement for the development and management of duty-free shops at Terminal 1B, B4 & Terminal 1C, C8;

Deed of Assignment in respect of the Concession and Licence Agreements;

Concession Agreement for the development and management of duty-free shops at Terminal 1A;

Concession Agreement for cargo handling services between KAA and Mitchell Cotts Freight Kenya Limited;

Supplemental Concession Agreement for cargo handling services between KAA and Transglobal Cargo Centre Ltd;

Concession for space to Nation Media Group publication stand at Terminal 1D;

Submission of Accepted Notification of Award for relocation of space to Nation Media Group, dated 29<sup>th</sup> September 2021 (the "Submission of Accepted Notification of Award for relocation of space");

Rental Schedule Adjustment for Space concluded with Nation Media Group, dated 18<sup>th</sup> September 2023 (the "Rental Schedule Adjustment for Space");

Concession Agreement for the provision of ground handling services between KAA and Airside Limited;

2006 Eurocraft Concession Agreement for the provision of ground handling services;

Renewal of Concession Agreement to provide ground handling services at JKIA;

Concession Agreement for the development and management of advertising media.



## **6. LICENCES**

Licence Agreement with the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland.

## **7. AGREEMENTS WITH AIRLINES**

Licence with Aerospace Consortium International Limited;

Licence with Air France;

Licence with Astral Aviation Limited;

Licence with Chesaka International Company Limited;

Licence with Corporate Aviation Limited;

Licence with KLM Royal Dutch Airlines;

Licence with Saudi Arabian Airlines;

Licence with Precision Air Services;

Licence with Seven Four Eight Air Services;

Licence with Kenya Airways PLC.

## **8. FINANCING AGREEMENTS**

Agreement KAMP;

Agreement KTSSP;

Agreement NCTIP;

JKIA Loan Agreement.

## **9. LITIGATION AND ARBITRATION REGISTER**

Kenya Airports Authority - Litigation and arbitration register (January 2024).

## SCHEDULE 2. LIMITATIONS, ASSUMPTIONS AND RESERVATIONS

### 1. LIMITATIONS

- Our Draft Report will not and should not be deemed to constitute a detailed description of Reviewed Documentation.
- This Draft Report will be subject to revision and alteration. Informal oral comments made in discussions with the Client will not have any greater significance than explanations or other material contained in the Draft Report and reliance should only be placed on information and comments set out in the final report (the "**Final Report**").
- Our Draft Report will not and should not be deemed to include a review and analysis of international best practices.
- We have relied for the preparation of the Draft Report exclusively on the Reviewed Documentation. We have not conducted any independent searches or investigations to check the exhaustiveness of the documentation provided to us except as otherwise expressly indicated. We have not inspected any register or conducted interviews with the management to verify the information received. Please note that there may be matters and documents of a legal nature that have not been disclosed to us, and which therefore have not been referred to in our Draft Report, about which we have no knowledge or information, but which may nevertheless be relevant to the subject matter of the Draft Report. No guarantee is given by the Legal Consultant that all matters of significance to you will be disclosed by the Draft Report.
- Our Draft Report should not be taken to supplant the additional enquiries and procedures that should be undertaken in consideration of the Project. In particular we draw attention to the fact that if we were to perform additional procedures, other matters might come to our attention which might be relevant to the assessment of the proposed Project.
- We will update our Draft Report for (or otherwise keep you informed of) events or transactions occurring or disclosed subsequent to the date of issuing the Draft Report. We will have no obligations however to update our Final Report, including for the avoidance of doubt any

subsequent events (any events, circumstances or inaccuracies which may occur or come to light following the issuance of our Final Report) which may occur prior to completion of the proposed Project.

- The Draft Report does not purport to review or opine on whether the development, management and operation of JKIA or the Project or generally the activities of KAA in relation thereto have been conducted in accordance with the documents reviewed by us, nor are we able to comment on the commercial implications of such documents.
- The legal consultant's liability to any person in respect of information provided in reports relating to the project shall not exceed the amount stated in the letter of engagement between the legal consultant and the ALG.

## **2. ASSUMPTIONS**

### 2.1. We have assumed:

- that all Reviewed Documentation or explanations provided to us are true, complete and factually accurate and not misleading and are in full force in accordance with their provisions, and that all copy documents submitted to us are true and complete copies of the originals of such documents;
- that all information available in public databases and governmental websites consulted by us is true, complete and factually accurate and not misleading;
- that all signatures, stamps, seals, and dates, if any, on all Reviewed Documentation provided to us as originals or as copies of originals are genuine and made by persons legally authorized to represent the respective entity;
- that, where only extracts of documents have been supplied to us, the extracts do not give a misleading view of the document as a whole;
- that all agreements and documents entered into, executed and/or issued by or on behalf of the Client and reviewed by us were duly authorized and were validly executed and that all necessary

corporate actions to authorize their delivery and performance were taken and that save as otherwise expressly indicated, all documents are valid and binding on all parties thereto;

- that such agreements and documents still exist and continue un-amended and are in full force and effect and have not been varied, cancelled, or superseded by some other document or agreement of which we are unaware;
- that no information which is material in the context of the Project has been withheld from us; and
- the accuracy of all reports, certificates, letters, and opinions issued by external advisers.

### **3. RESERVATIONS**

- Reviewed Documentation may, in fact, not have been performed in accordance with their terms or at all.
- Any term of any agreement comprised in the Reviewed Documentation may have been amended already by the parties either orally or by conduct or by a course of dealings without our being aware of such amendment. In addition, there may be agreements which are wholly oral of which we are unaware.
- There may be breaches of the obligations of any of the parties to the documents we have examined which have not been disclosed.
- The Draft Report is strictly limited to the matters stated in it and does not extend and is not to be read as extending by implication to any other matter. Without prejudice to the generality of this statement:
  - this Draft Report does not substitute for a general presentation of the Project;
  - this Draft Report does not include any comment on the value of the Project and on the financial risks to be incurred by any participant in the Project; however, it should be noted that the information and conclusions contained therein may have financial consequences;

- this Draft Report does not outline or opine on political risks associated with changes in political control and the possible impacts on governmental policy;
- this Draft Report does not include any comment on the accounts or other financial statements or any assessment of the current financial condition of KAA;
- this Draft Report is by nature a factual and legal review of the Reviewed Documentation, it should not be regarded as a comprehensive legal opinion and must not be regarded as a substitute for specific legal advice on the matters covered in the Draft Report;
- save as otherwise expressly indicated, this Draft Report does not advise on the commercial nature or effect of the transactions contemplated by or associated with the agreements and documentation referred to herein;
- we have only considered the Reviewed Documentation and the information provided to us in the light of the laws of Kenya and consequently cannot be considered to have reviewed them in the light or on the basis of any other law;
- we have not attempted to describe or comment on the business, commercial, financial, technical, or accounting issues or implications of the Reviewed Documentation and no view or opinion is expressed on provisions in the Reviewed Documentation relating to such matters;
- the information in the Draft Report may be superseded by subsequent information which is available, in which case the subsequent information should be considered rather than that in the Draft Report;
- although business matters are not the subject of this Draft Report, this Draft Report inevitably contains business information and addresses business issues; however, we assume no liability for the completeness and accuracy of the information and conclusions concerning business matters contained in this Draft Report; and

- where documents of the Reviewed Documentation contain confidentiality undertakings; we do not know whether any of the Reviewed Documentation has been made available to us in breach of these confidentiality undertakings.

## Annex I: Fees and Charges Benchmarking

### Methodology

The main objectives of the fees and charges benchmarking is to understand how JKIA's fees and charges compare vs. other airports, identify any feature in the structure of fees and charges that requires attention, and determine whether there is room for potential increases, if needed.

The following table depicts aeronautical charges at JKIA:

Nairobi Jomo Kenyatta (NBO) airport – Fees and charges breakdown						
Aircraft based charges						
MTOW (Kg)		Day landing (USD)	Night landing (USD)	Night take-off (USD)	Parking (USD) First 6h free	Airbridge (USD/3h)
From	To					
0	1,500	10.00	12.00	2.00	6.00	75.00
1,501	2,500	20.00	24.00	4.00	6.00	75.00
2,501	5,000	25.00	30.00	5.00	6.00	75.00
5,001	10,000	40.00	48.00	8.00	6.00	75.00
10,001	20,000	65.00	78.00	13.00	10.00	75.00
20,001	40,000	102.00	122.40	20.40	10.00	75.00
40,001	80,000	223.00	267.60	44.60	15.00	75.00
80,001	120,000	585.00	702.00	117.00	25.00	75.00
120,001	180,000	820.00	984.00	164.00	40.00	75.00
180,001	300,000	1,345.00	1,614.00	269.00	50.00	100.00
> 300,000		1,750.00	2,100.00	350.00	130.00	100.00
Passenger-based charges						
International passenger service charge: 50 USD/departing passenger				Domestic passenger service charge: 600 Kshs/departing passenger (equivalent to ~3.7 USD/departing passenger)		

<sup>1</sup>The night landing charges are a 20% higher than the normal day landing charge

<sup>1</sup>Night landing considered from 15:31h to 02:59h GMT

<sup>2</sup>The exchange rate of Kshs to USD applied is 0.0062 (Monday, 8th January 2024).

Note: ANS charges are payable to KCAA directly. They have not been included because they are out of the scope of this analysis

Note: Landing and take-off charges are the same for international and domestic

**Figure 304: Current charges for JKIA**

(Source: KAA Schedule of charges 2013, ICAO 7100 2016 edition, ALG Analysis)

Most of the airports in the sample apply a fee per ton for landing based on the MTOW of the aircraft. In the case of JKIA, a fixed charge is applied through a weight band with 11 groups. On some instances, that results in steep increases for different aircraft that have very similar MTOWs but fall on different sides of a given weight band limit. For example, an aircraft like the B737-800, with an MTOW close to 79,000 kg, pays a total of 223 USD for a day landing while a B737-8MAX, whose MTOW is 82,190 kg - +~1,300 kg compared to its predecessor - pays 162% more, or 585 USD.

The methodology applied for the execution of the benchmark is based on the following three steps:



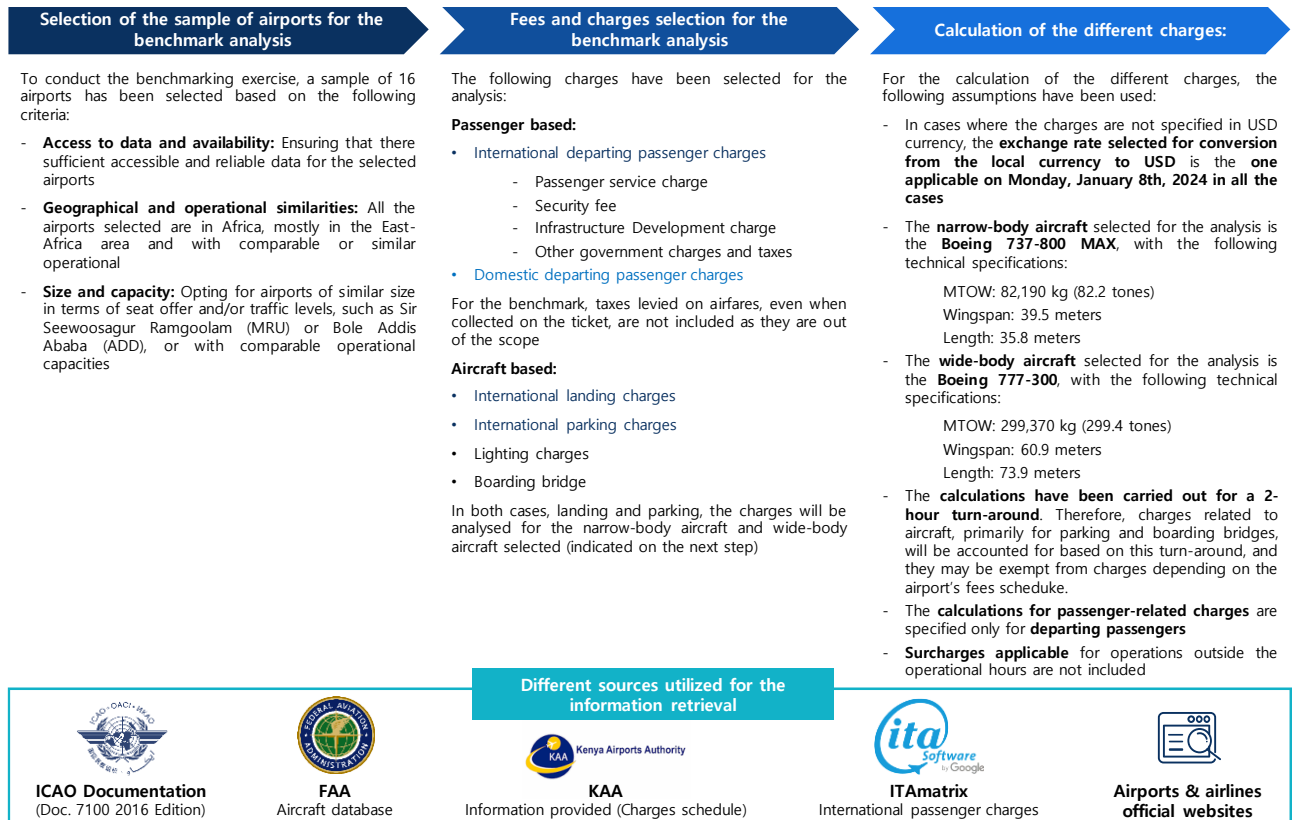


Figure 305: Benchmarking methodology

The sample of airports selected includes the following airports:

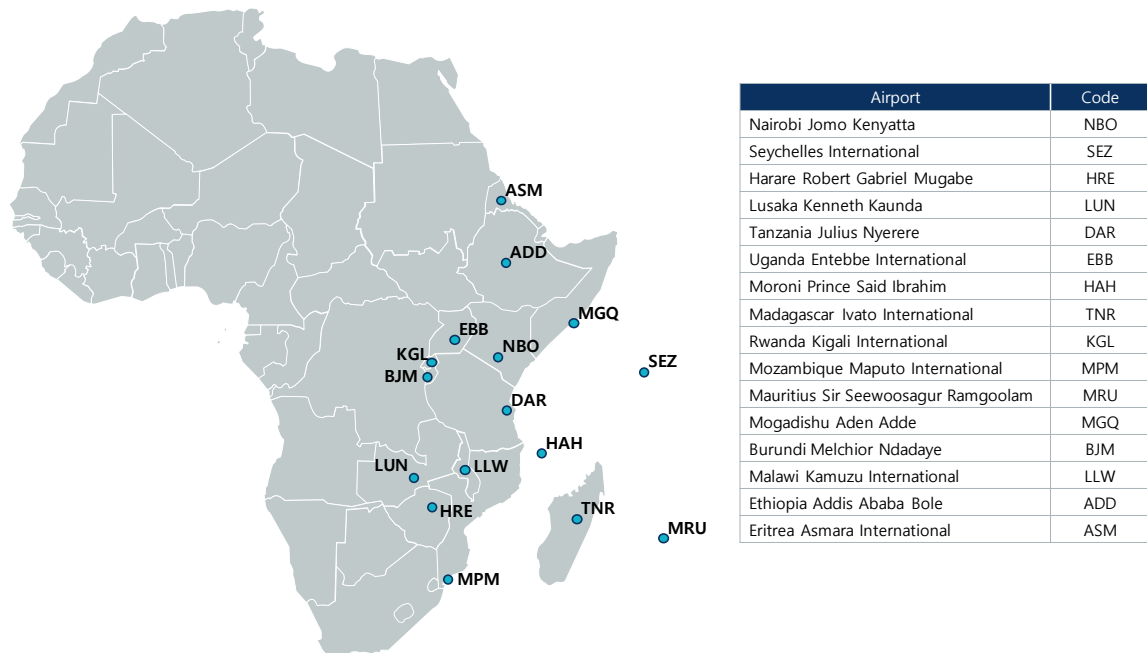


Figure 306: Airport sample considered for the benchmarking analysis

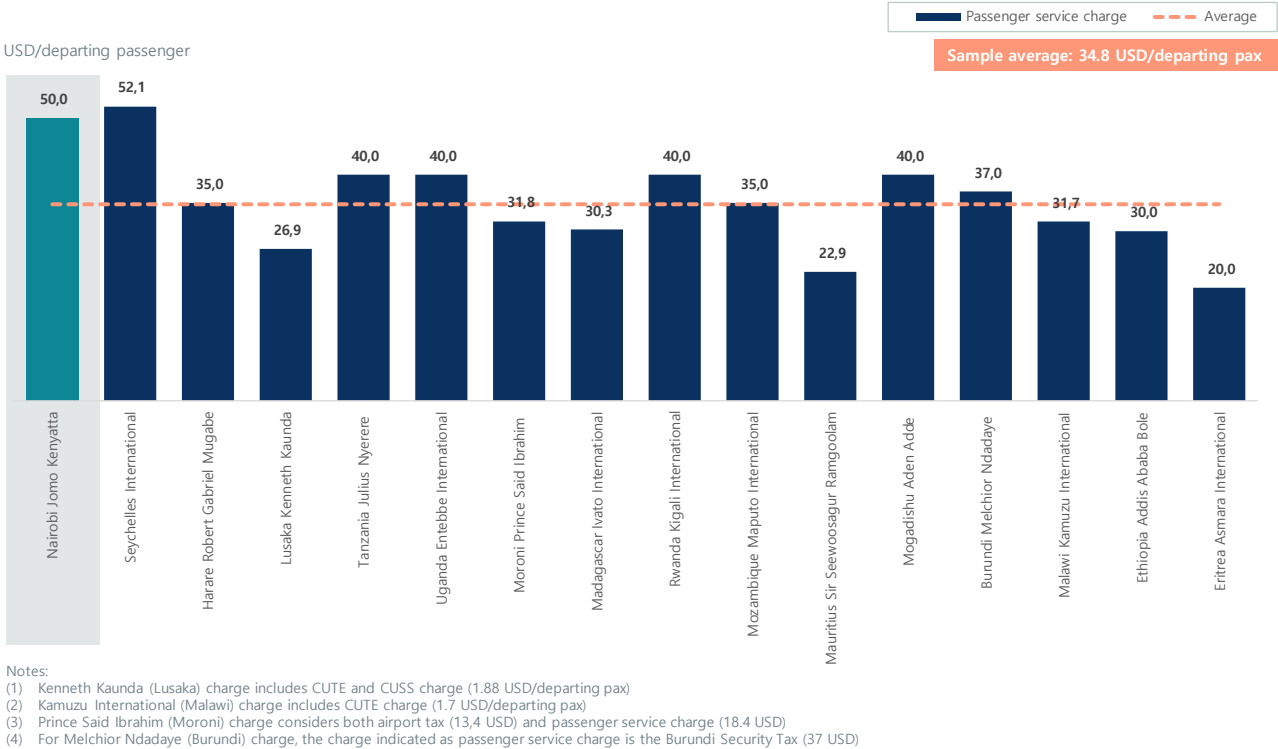
## Passenger-based charges

The passenger charges applicable for the airports in the sample are the following:

- Passenger service charge
- Security fee
- Infrastructure development charge
- Other government charges and taxes

To facilitate comparisons, each charge is analyzed independently, and the final section within this chapter (1.2.4 Total fees and charges per international departing passenger) shows the total charges per passenger in order to provide the total cost faced by the passengers on top of the airfare.

### Passenger service charge



**Figure 307: Passenger service charges for international departing passenger**

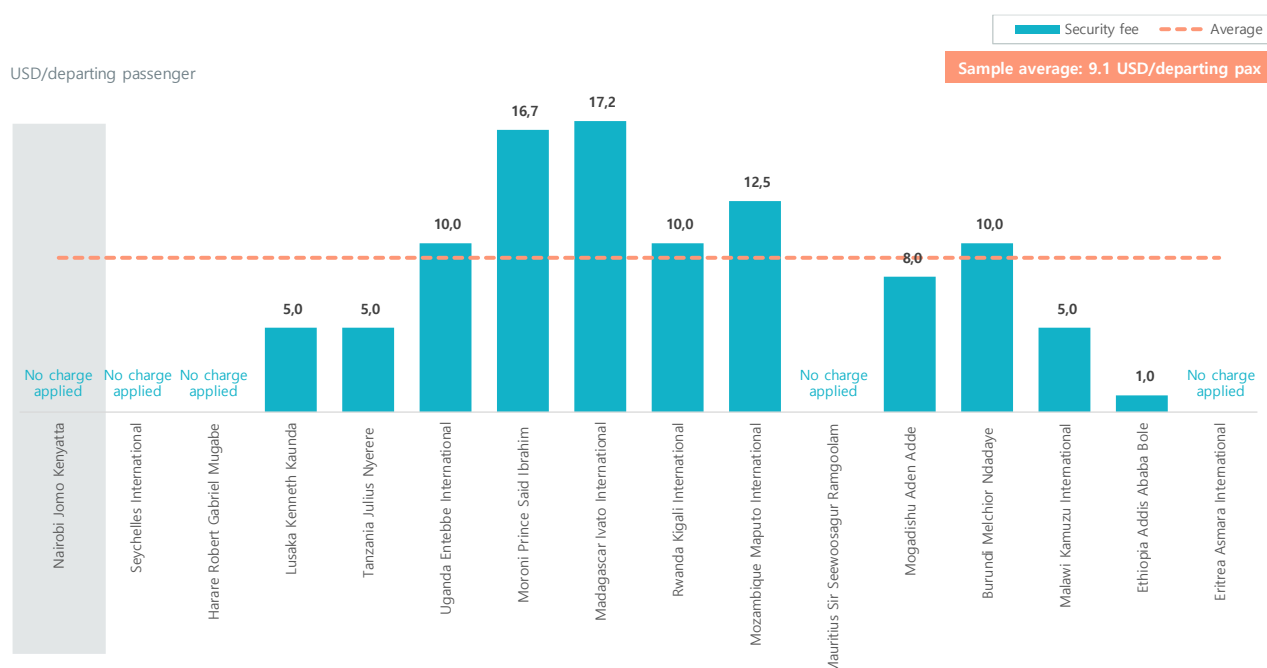
(Source: KAA, ITAmatrix, Kenya Airways official website, Ethiopian Airlines official website, AIP, Local airport websites, ICAO 7100 2016 Edition, ALG Analysis)

At JKIA, the passenger service charge (50 USD) is 43% above the sample average of 34.8 USD per departing passenger.

According to Air Passengers Service Charge Act (Kenyan Law Cap. 475), the allocation of the international Air Passenger Service Charge in Kenya is as follows:

1. 30 USD/departing passenger (60%) to the Kenyan Airports Authority (KAA) for the development and enhancement of the infrastructure and services of the different airports in Kenya.
2. 10 USD/departing passenger (10%) to the Kenyan Civil Aviation Authority (KCAA), ensuring the continuity of the regulatory oversight in guaranteeing safety and compliance.
3. 10 USD/departing passenger (10%) to the Tourism Promotion Fund to boost Kenya's tourism attractiveness.

## Security fee

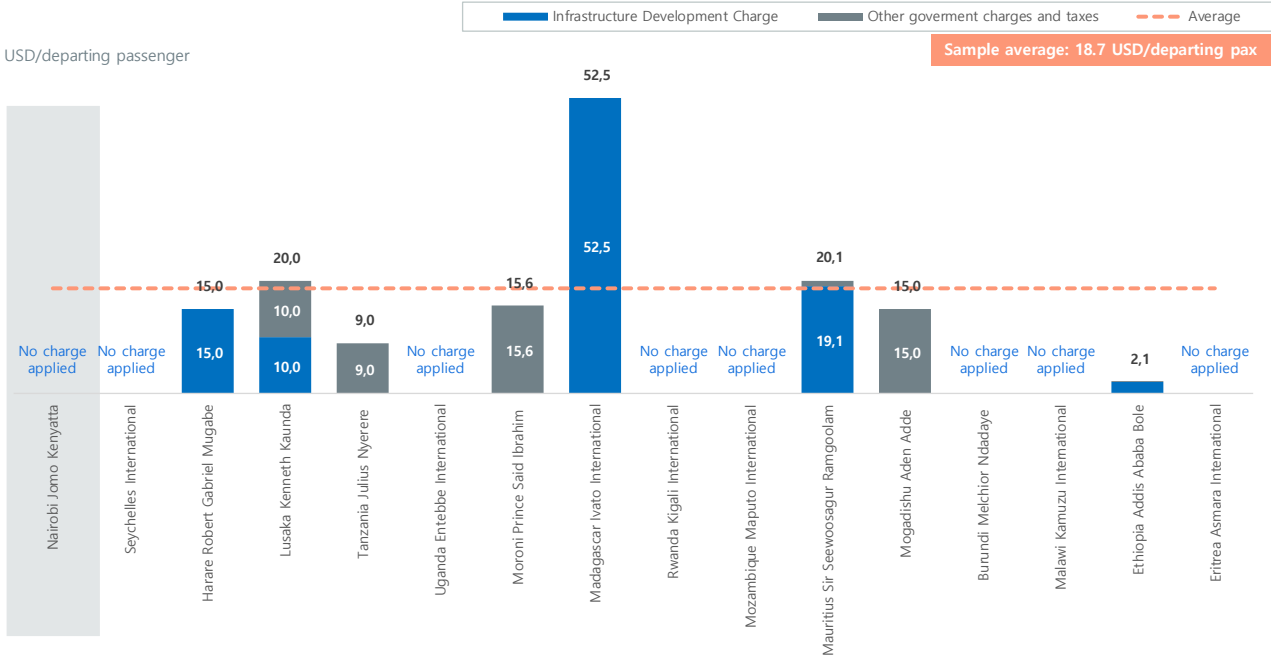


**Figure 308: Security fee charges for international departing passenger**

(Source: KAA, ITAmatrix, Kenya Airways official website, Ethiopian Airlines official website, AIP, Local airport websites, ICAO 7100 2016 Edition, ALG Analysis)

There is no security fee at JKIA. For the sample of airports compared, the average is 9.1 USD per departing passenger. The maximum charge currently applied is 17.2 USD at Ivato International (Madagascar), whereas the minimum charge applied is 1.0 USD at Bole Addis Ababa airport (Ethiopia).

# Infrastructure development charge and other government charges and taxes



Notes:  
 (1) Ivato International (Madagascar, Antananarivo) infrastructure development charge considers the Madagascar Airport Infrastructure Development charge (45.5 USD) plus Madagascar Secondary Airport Infrastructure charge (6.96 USD)  
 (2) Bole Addis Ababa (Ethiopia) total charge considers as other government charges and taxes the Stamp Duty in Ethiopia (0.1 USD)  
 (3) The sample average (18.7 USD/departing passenger) detailed in the graph corresponds to the total (infrastructure development + other government charges and taxes) average

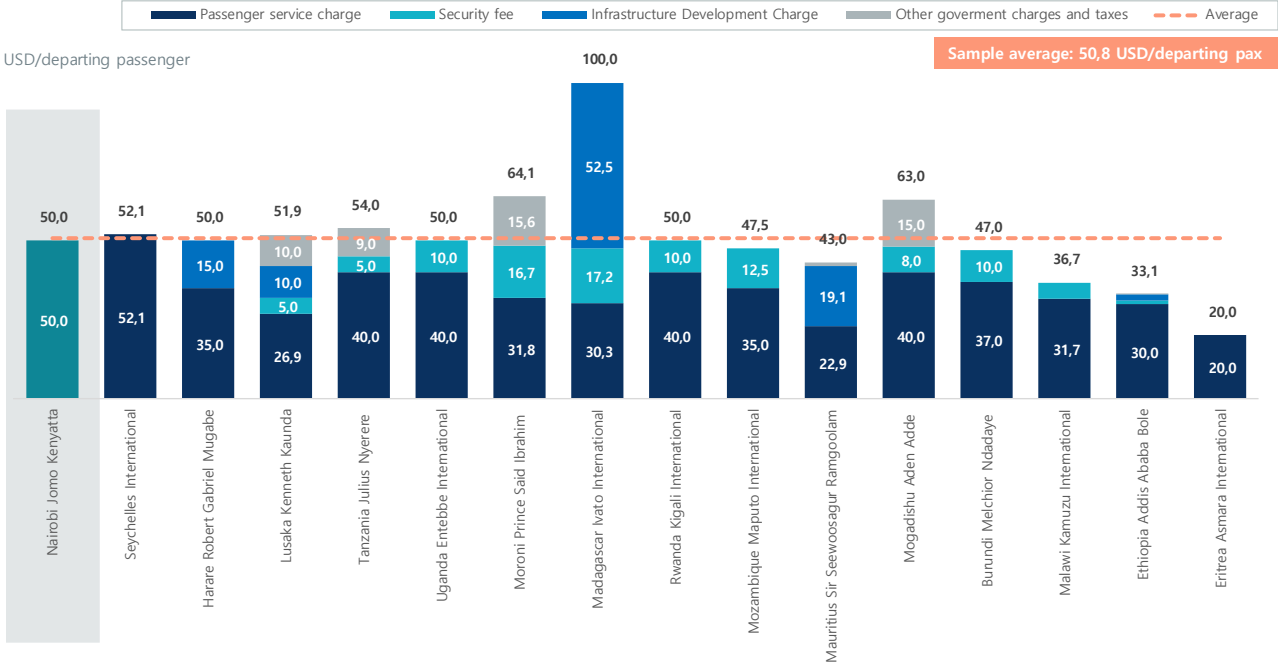
**Figure 309: Infrastructure development charge and other government charges and taxes for international departing passenger**

(Source: KAA, ITAmatrix, Kenya Airways official website, Ethiopian Airlines official website, AIP, Local airport websites, ICAO 7100 2016 Edition, ALG Analysis)

Infrastructure development charges are typically levied by governments to fund current or future aviation infrastructure projects, whereas other government taxes and charges can include items such as civil aviation charges, tourism incentive taxes, environmental taxes, and others. In general, none of these items constitute a revenue for the airport operators, although they do have an effect on the total ticket costs.

The sample average for infrastructure development and other government charges and taxes is 18.7 USD per passenger, although it must be noted that there is a significant variation among airports, with charges ranging from 2.1 USD to 52.5 USD per departing passenger.

### Total fees and charges per departing international passenger



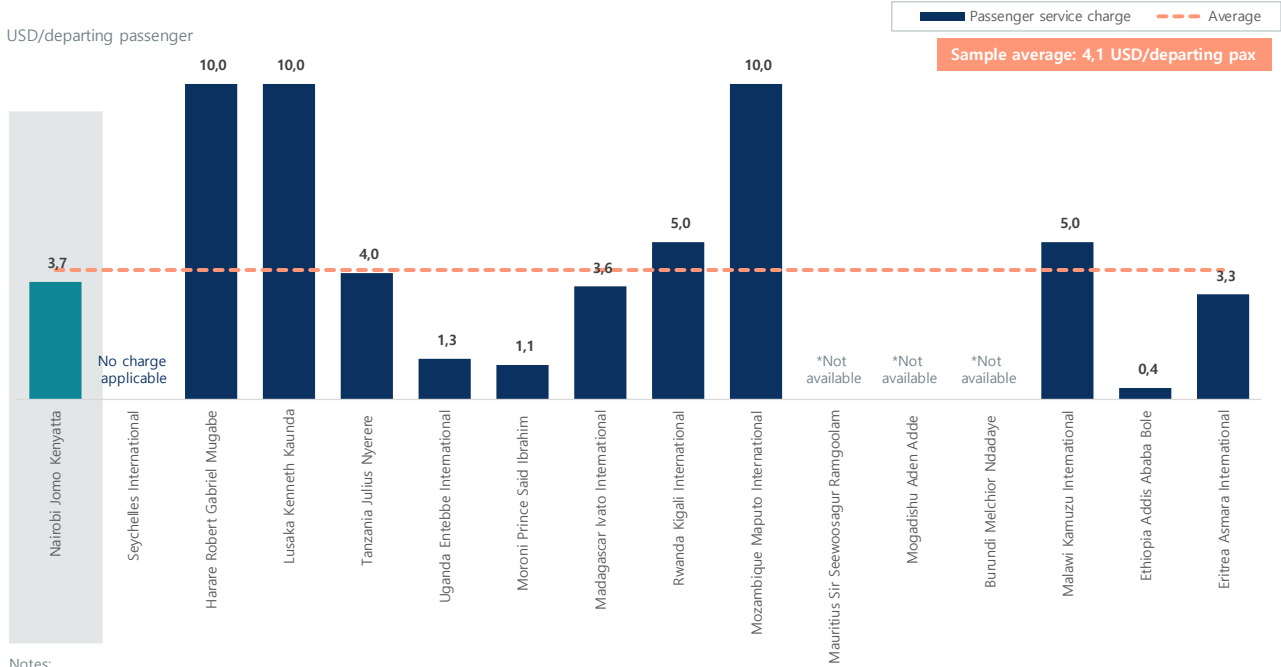
**Figure 310: International departing passenger charges**

(Source: KAA, ITAmatrix, Kenya Airways official website, Ethiopian Airlines official website, AIP, Local airport websites, ICAO 7100 2016 Edition, ALG Analysis)

JKIA's total charges for international departing passengers (50 USD) aligns closely with the sample average (50.8 USD), and charges at most airports in the sample are within 10% of the average. The most notable exception is Addis Ababa's Bole with total charges of 33.1 USD per departing passenger.

Among the airports with higher international charges, Ivato International stands out with a charge of 100 USD due to its infrastructure development charge of 52.5 USD, making it an outlier in the sample.

### Total fees and charges per departing domestic passenger



Notes:

- (1) \*Not available: No clear information indicating the existence or non-existence of charges has been found
- (2) Entebbe International (Uganda) considers 3,000 UGShs (0.78 USD) of passenger service charge plus 2,000 UGShs (0.52 USD) of security charge
- (3) Ivato International (Madagascar) considers 4,916.60 MGA (1.1 USD) of passenger service charge plus 2.5USD of security charge

**Figure 311: Domestic departing passenger charges**

(Source: KAA, ITAmatrix, Kenya Airways official website, Ethiopian Airlines official website, AIP, Local airport websites, ICAO 7100 2016 Edition, ALG Analysis)

In the case of JKIA, the applicable domestic passenger charge is 600 KSHs (3.7 USD) per departing passenger, and there are no security fees.

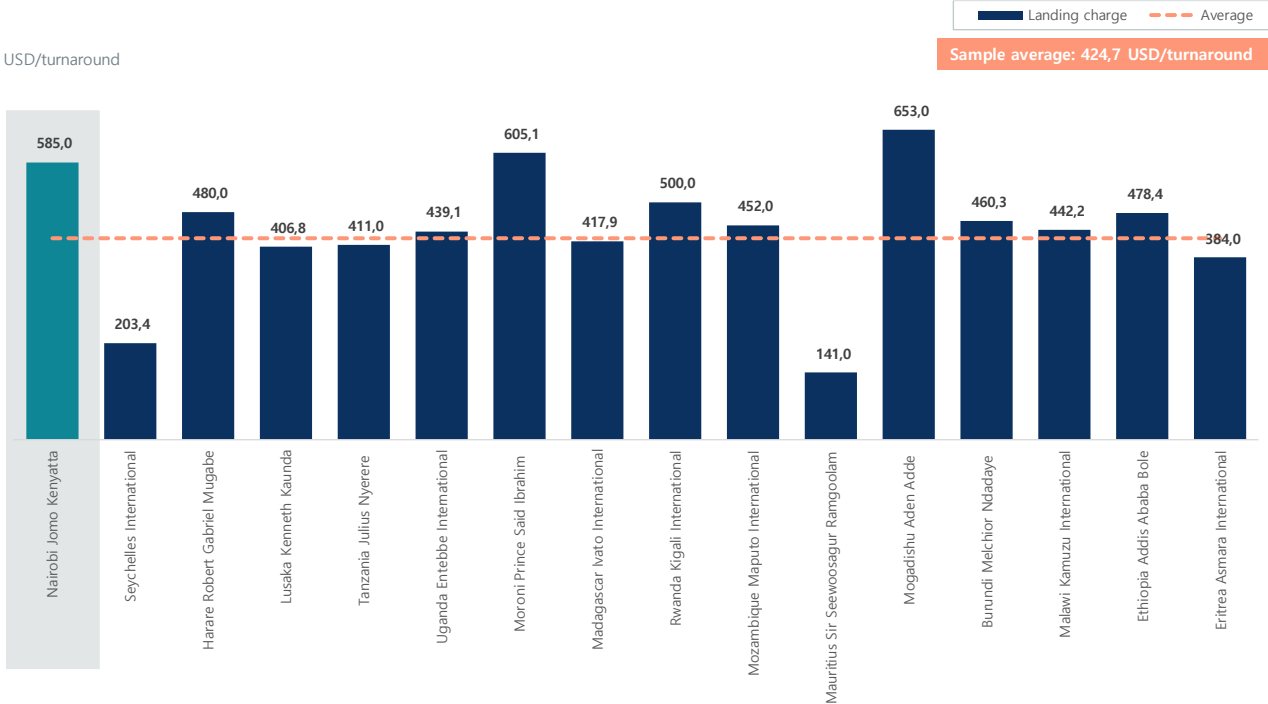
Overall, domestic passenger charges are lower than international, with three distinct groups of airports that charge around 1 USD, 5 USD, or 10 USD per departing domestic passenger.

# Aircraft-based charges

## Landing fees

The landing charges for all the airports gathered in the sample are determined based on the aircraft MTOW.

### Boeing 737-8 MAX (international flight)

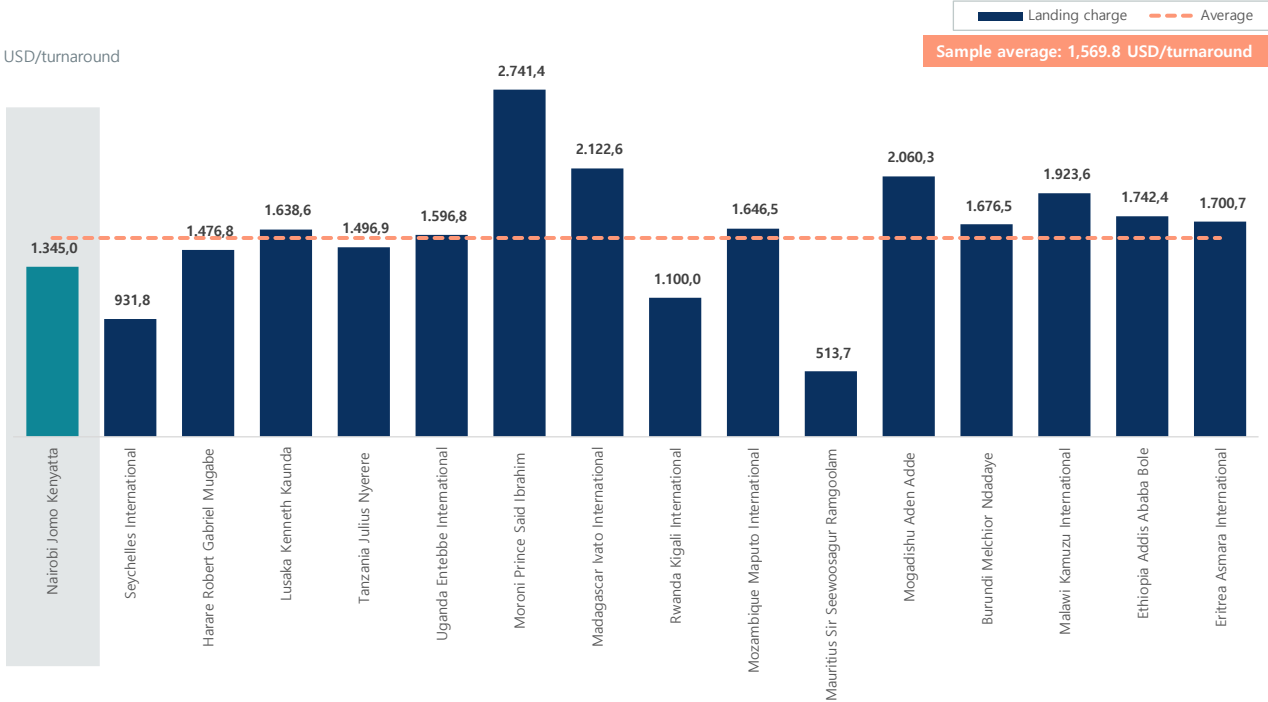


**Figure 312: Landing fees for a B737-8MAX on an international flight**

(Source: KAA, FAA, Local airports websites, Civil Aviation Authority of Mauritius, ICAO 7100 2016 Edition; ALG Analysis)

Landing fees for a Boeing 737-8MAX on an international flight are 585 USD, almost 38% above the sample average of 424.7 USD. Charges at most airports in the sample are in the 400 USD range.

### Boeing 777-300



**Figure 313: Landing fees for a B777-300 on an international flight**

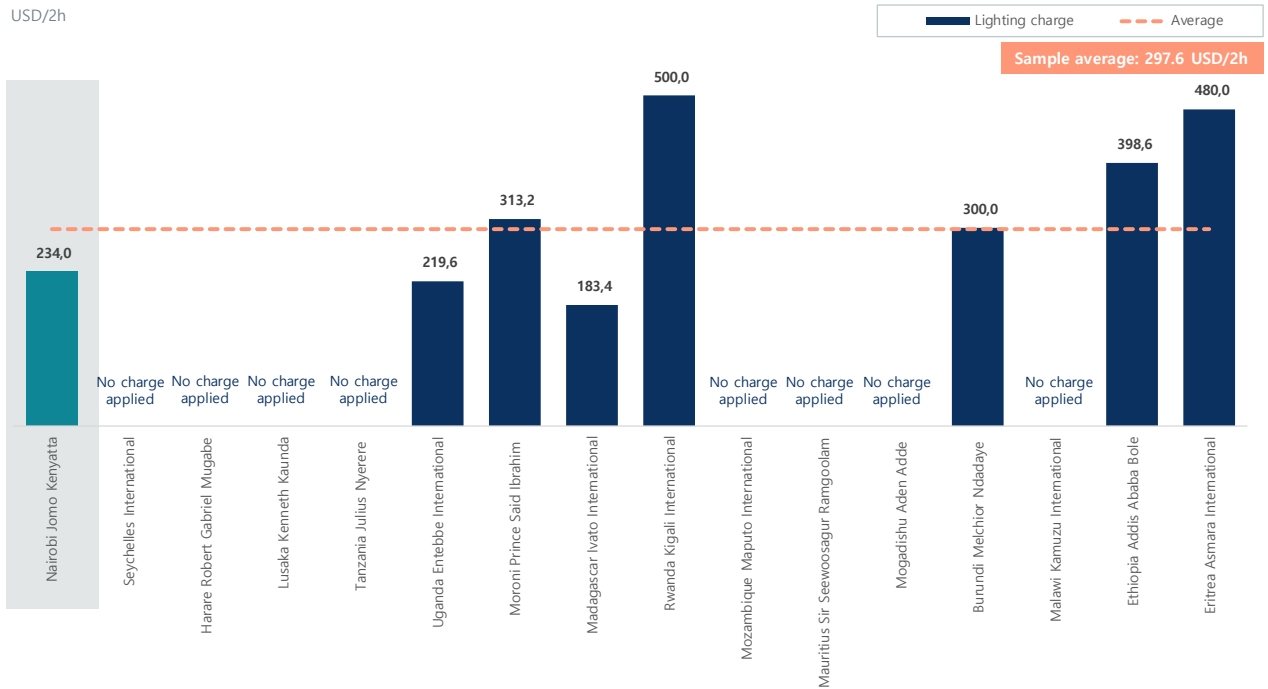
(Source: KAA, FAA, Local airports websites, Civil Aviation Authority of Mauritius, ICAO 7100 2016 Edition; ALG Analysis)

Landing fees for a B777-300 on an international flight at JKIA are 1,345 USD, about 15% below the sample average.



## Lighting charges

### Boeing B737-8 MAX



Notes:

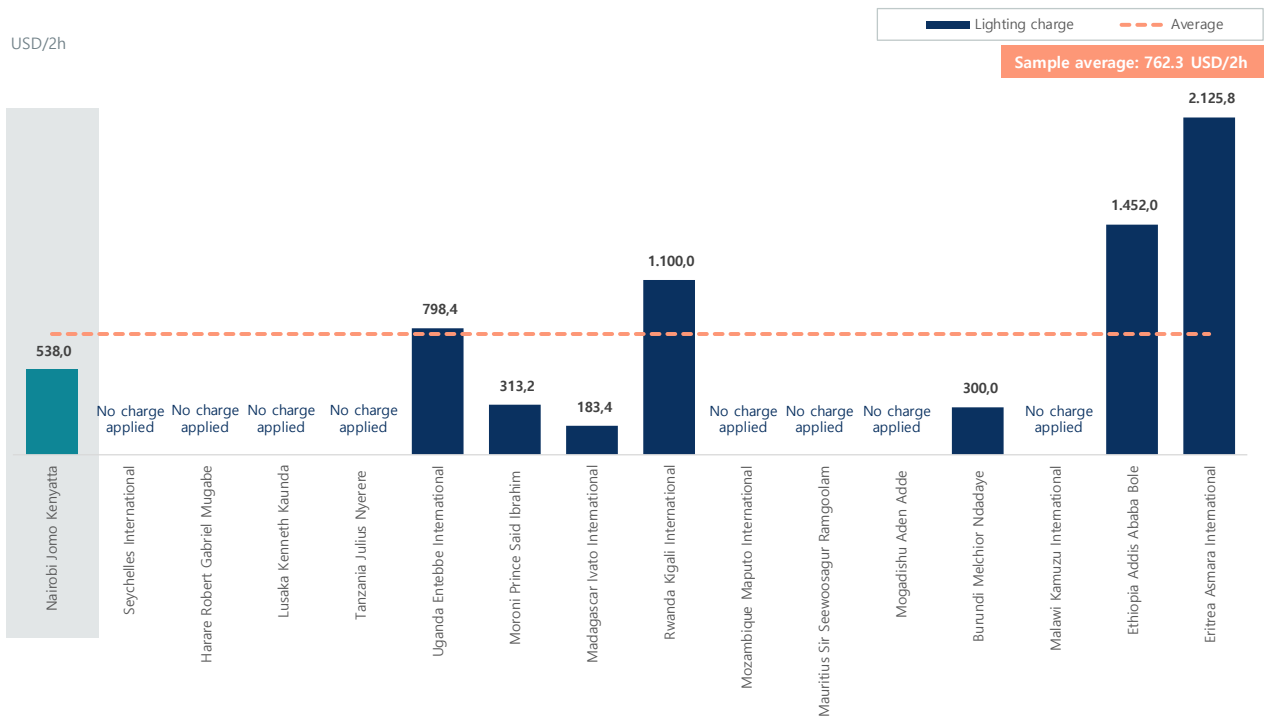
- (1) Nairobi Jomo Kenyatta (Kenya) – Levied at aircraft landing at a controlled aerodrome outside normal hours one-fifth (1/5) of the single day landing charge and 117 USD for night take-off for aircraft between 80 – 120 tons
- (2) Entebbe International (Uganda) – 50% of the single landing charge
- (3) Prince Said Ibrahim (Moroni) – The lighting charge breakdown is as follows: 79,559 KMF (175.02 USD) for RWY, 31,406 KMF (69.09 USD) as flat fee and 31,406 KMF/2h (69.09 USD) for apron
- (4) Ivato International (Madagascar) – For aircraft above 75 tons, 416,890 MGA (91.7 USD/landing or take-off)
- (5) Kigali International (Rwanda) – 50% of the standard landing charge for each landing or take-off. No information regarding take-off charges has been found, so it is assumed that is equivalent to landing charge applicable
- (6) Melchor Ndadaye (Burundi) – Fixed fee of 300 USD / flight
- (7) Addis Ababa (Ethiopia) – The charge applicable for aircraft above 40 tons of MTOW is 2.2 USD/1,000 lbs (453.6 kg)
- (8) Asmara International (Eritrea) – 125% of the landing charge for more than half an hour

**Figure 314: Lighting charges for Boeing 737-8 MAX**

(Source: KAA, FAA, Local airports websites, Civil Aviation Authority of Mauritius, ICAO 7100 2016 Edition; ALG Analysis)

Lighting charges for a Boeing 737-8 MAX at JKIA are below the sample average (234 USD vs 297.6 USD). It must be noted that only half of the airports in the sample apply this charge.

## Boeing 777-300



### Notes:

- (1) Nairobi Jomo Kenyatta (Kenya) – Levied at aircraft landing at a controlled aerodrome outside normal hours one-fifth (1/5) of the single day landing charge and 269 USD for night take-off for aircraft between 180 – 300 tons
- (2) Entebbe International (Uganda) – 50% of the single landing charge
- (3) Prince Said Ibrahim (Moroni) – The lighting charge breakdown is as follows: 79,559 KMF (175.02 USD) for RWY, 31,406 KMF (69.09 USD) as flat fee and 31,406 KMF/2h (69.09 USD) for apron
- (4) Ivato International (Madagascar) – For aircraft above 75 tons, 416,890 MGA (91.7 USD/landing or take-off)
- (5) Kigali International (Rwanda) – 50% of the standard landing charge for each landing or take-off. No information regarding take-off charges has been found, so it is assumed that is equivalent to landing charge applicable
- (6) Melchor Ndadaye (Burundi) – Fixed fee of 300 USD / flight
- (7) Addis Ababa (Ethiopia) – The charge applicable for aircraft above 40 tons of MTOW is 2.2 USD/1,000 lbs (453.6 kg)
- (8) Asmara International (Eritrea) – 125% of the landing charge for more than half an hour

**Figure 315: Lighting charges for Boeing 777-300**

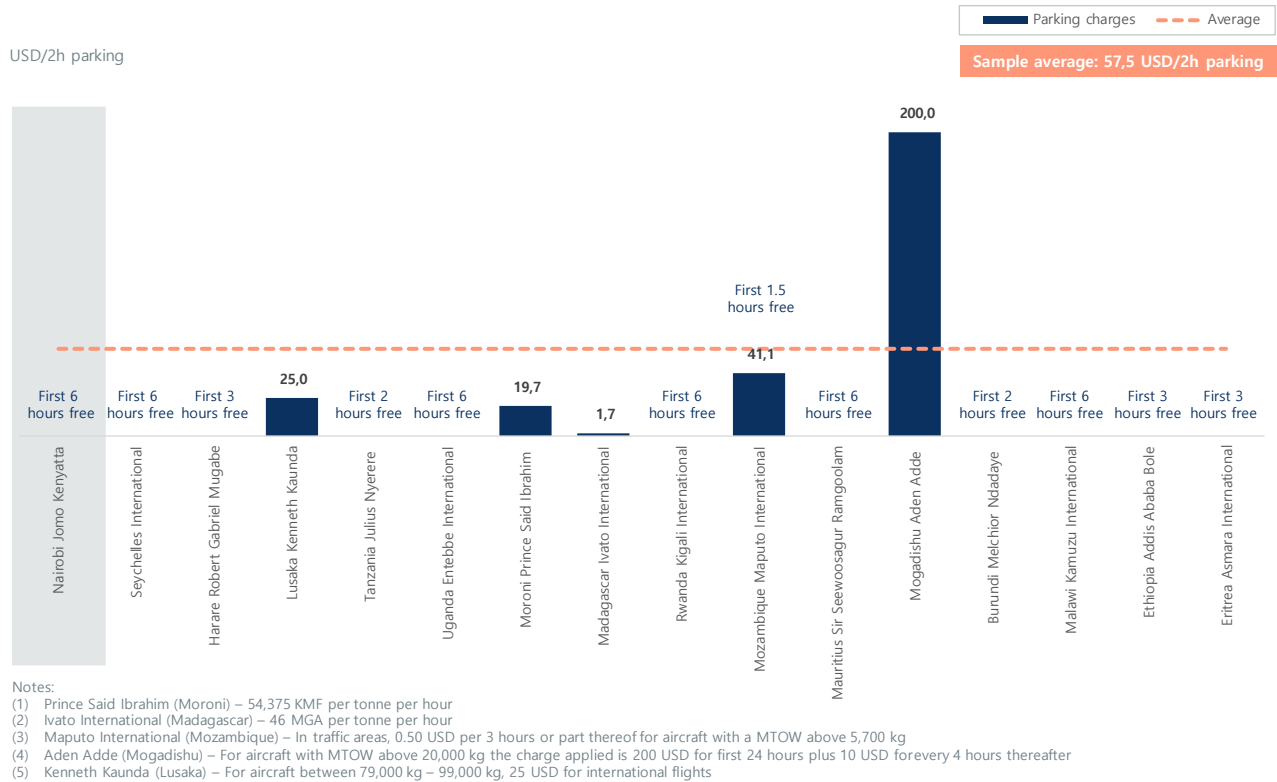
(Source: KAA, FAA, Local airports websites, Civil Aviation Authority of Mauritius, ICAO 7100 2016 Edition; ALG Analysis)

In the case of a Boeing 777-300, lighting charges at JKIA total 538 USD, almost 30% below the sample average. It must be noted that the average has is a significance variance in the sample, with charges ranging.

## Parking fees

Parking charges are generally determined based on the aircraft's square footage (width x length) or MTOW, and the amount of time that the aircraft occupies the aircraft stand.

### Boeing 737-8 MAX

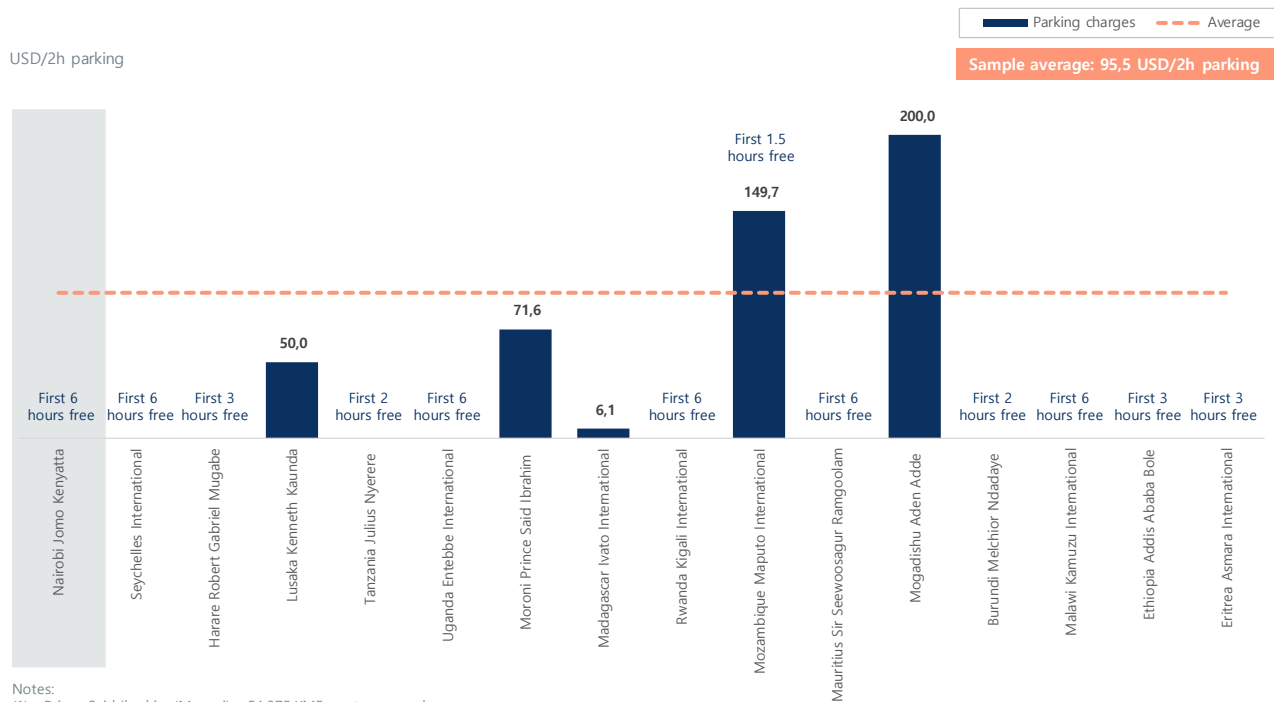


**Figure 316: Parking fees for B737-8MAX on an international flight**

(Source: KAA, FAA, Local airports websites, Civil Aviation Authority of Mauritius, ICAO 7100 2016 Edition; ALG Analysis)

For JKIA, the initial 6 hours of parking are free of charges. The current daily parking fee at JKIA for the B737-8MAX is 25 USD. The provision of free parking hours is a widespread practice among the airports in the sample (10). The parking charges for airports without free parking hours range from 2 USD to 200 USD.

## Boeing 777-300



Notes:

- (1) Prince Said Ibrahim (Moroni) – 54,375 KMF per tonne per hour
- (2) Ivato International (Madagascar) – 46 MGA per tonne per hour
- (3) Maputo International (Mozambique) – In traffic areas, 0,50 USD per 3 hours or part thereof for aircraft with a MTOW above 5,700 kg
- (4) Aden Adde (Mogadishu) – For aircraft with MTOW above 20,000 kg the charge applied is 200 USD for first 24 hours plus 10 USD for every 4 hours thereafter
- (5) Kenneth Kaunda (Lusaka) – For aircraft between 299,000 kg – 349,000 kg, 50 USD for international flights

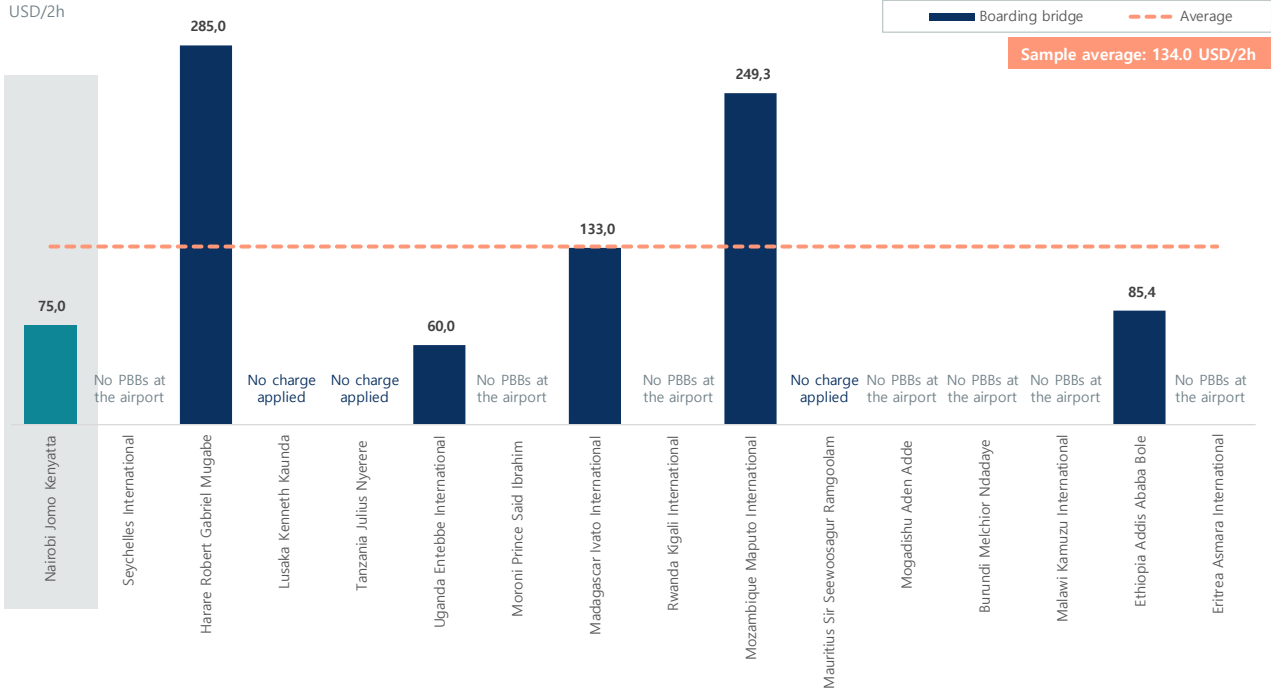
**Figure 317: Parking fees for a B777-300 on an international flight**

(Source: KAA, FAA, Local airports websites, Civil Aviation Authority of Mauritius, ICAO 7100 2016 Edition; ALG Analysis)

For larger aircraft, such as the Boeing 777-300, parking fees range from 6.1 USD to 200 USD.

### Boarding bridge charges

#### Boeing 737-8 MAX



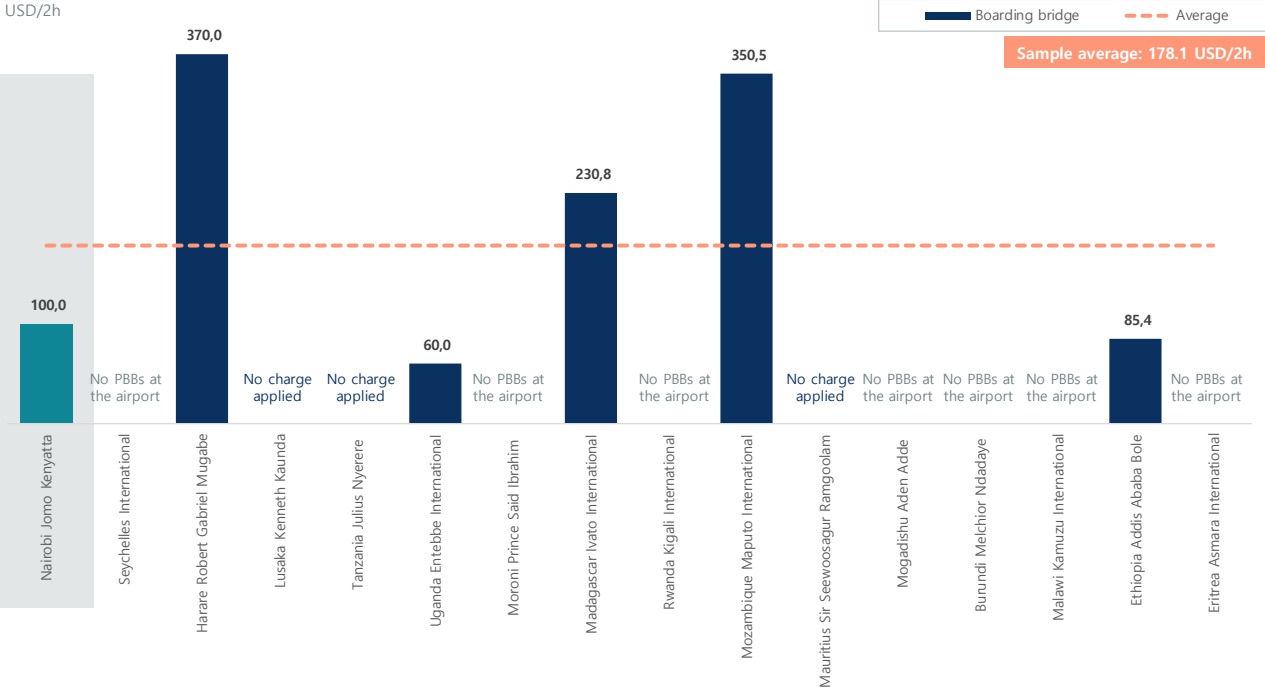
- Notes:
- (1) Nairobi Jomo Kenyatta (Kenya) – For aircraft up to 180 tons, 75 USD for 3 hours thereof. As there are no specifications, the charge of 75 USD is applied for 2 hours
  - (2) Robert Gabriel Mugabe (Harare) – For aircraft with MTOW between 75-100 tons, 105 USD fixed charge for the first 90 minutes and 30 USD per 15 minutes or part thereof after the first 90 minutes. Despite of boarding bridge ground power service charges are detailed; they have not been considered
  - (3) Entebbe International (Uganda) – 60 USD for the first 3 hours.
  - (4) Ivato International (Madagascar) – For aircraft up to 150 tons, 66.52 USD/h
  - (5) Maputo International (Mozambique) – For aircraft between 40 – 100 tons, 89.25 USD fixed charge for the first hour, and additional 40 USD per 30 minutes
  - (6) Addis Ababa (Ethiopia) – 85.37 USD for int'l flights for one use of terminal facilities including the boarding bridge (one use = period not exceeding 2 hours)
  - (7) "No charge applied" means that these are airports that have PBBs, but in the available public charge schedule, no fee for boarding bridge use is indicated

**Figure 318: Boarding bridge charges for B737-8 MAX**

(Source: KAA, FAA, Local airports websites, Civil Aviation Authority of Mauritius, ICAO 7100 2016 Edition; Logistic Capacity Assessment (LCA), ALG Analysis)

JKIA is one of six airports in the sample that charge for the use of boarding bridges. Boarding bridge charges at JKIA for a Boeing 737-8 MAX are 75 USD, notably lower than the sample average of 134 USD, but very close to the cost of Addis Ababa Bole (85.4 USD).

# Boeing 777-300



Notes:

- (1) Nairobi Jomo Kenyatta (Kenya) – For aircraft above 180 tons, 100 USD for 3 hours thereof. As there are no specifications, the charge of 75 USD is applied for 2 hours
- (2) Robert Gabriel Mugabe (Harare) – For aircraft with MTOW between 200-300 tons, 130 USD fixed charge for the first 90 minutes and 40 USD per 15 minutes or part thereof after the first 90 minutes. Despite of boarding bridge ground power service charges are detailed; they have not been considered
- (3) Entebbe International (Uganda) – 60 USD for the first 3 hours.
- (4) Ivato International (Madagascar) – For aircraft above 150 tons, 115.41 USD/h
- (5) Maputo International (Mozambique) – For aircraft between above 190 tons, 110.5 USD fixed charge for the first hour, and additional 60 USD per 30 minutes
- (6) Addis Ababa (Ethiopia) – 85.37 USD for int'l flights for one use of terminal facilities including the boarding bridge (one use = period not exceeding 2 hours)
- (7) "No charge applied" means that these are airports that have PBBs, but in the available public charge schedule, no fee for boarding bridge use is indicated

**Figure 319: Boarding bridge charges for Boeing 773-300**

(Source: KAA, FAA, Local airports websites, Civil Aviation Authority of Mauritius, ICAO 7100 2016 Edition; Logistic Capacity Assessment (LCA), ALG Analysis)

At 100 USD, the boarding bridge charge for a Boeing 777-300 at JKIA is still significantly lower compared to the sample average of 178.1 USD.

### Total turn-around charges (international, daylight operation)

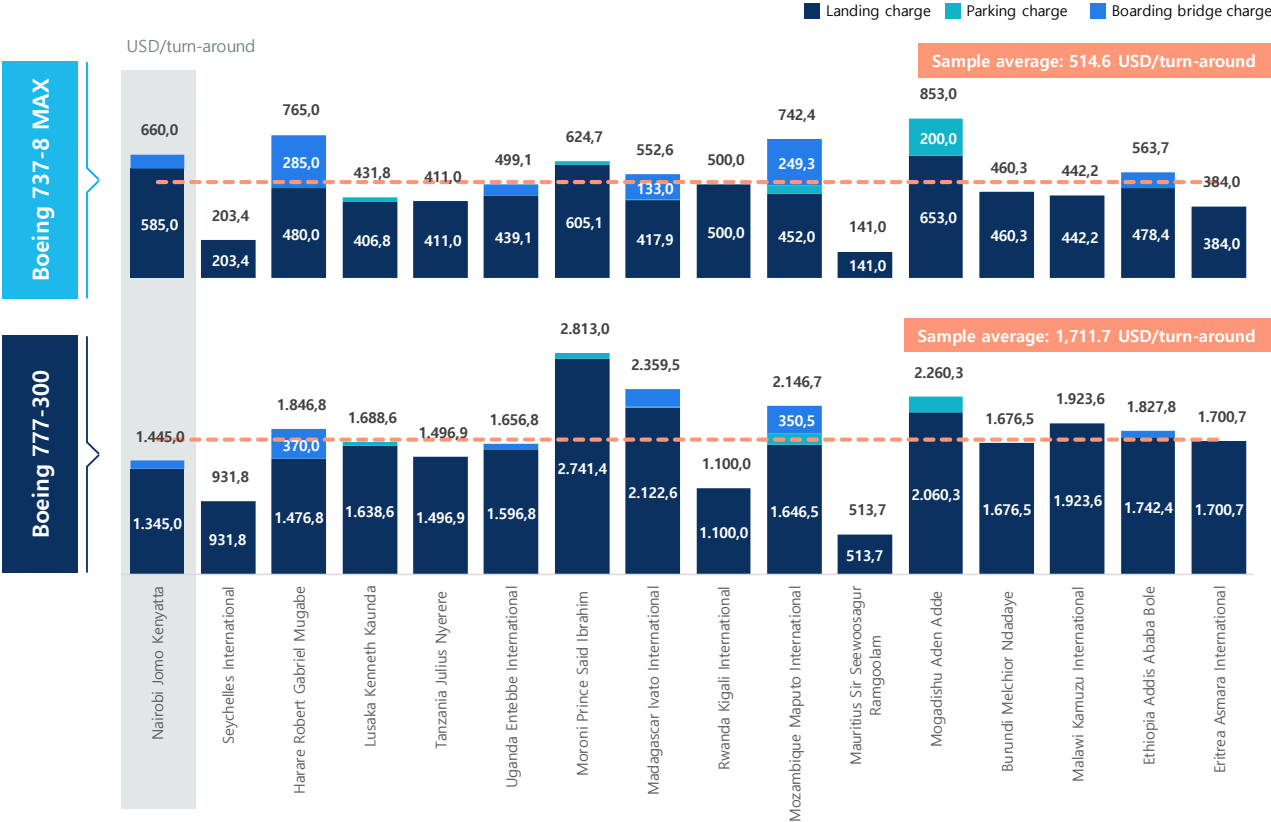


Figure 320: International turn-around total charges per aircraft

(Source: KAA, FAA, Local airports websites, Civil Aviation Authority of Mauritius, ICAO 7100 2016 Edition; Logistic Capacity Assesment (LCA), AIP, ALG Analysis)

As a conclusion from the chart above, the total charge for a typical international turn-around of 2 hours at Nairobi Jomo Kenyatta (JKIA) is slightly above the sample average for the Boeing B737-8MAX aircraft (660 USD vs. 514.6 USD), while for the B777-300, it is slightly below compared to the sample average (1,445 USD vs. 1,712 USD).

### Benchmarking conclusion

Regarding the PPP as a whole, the proposed development plan will have to be financed through aeronautical and non-aeronautical (commercial) revenues. At this regard, mechanisms should be implemented for aeronautical revenues to be collected directly by the potential private investor and regularly updated. Current fees and charges collected at JKIA are in line with comparable airports in the region, both in passenger charges and aircraft charges, therefore, if further revenue streams were required for JKIA PPP to be bankable, an assessment on the international Air Passengers Service Charge allocation might be required, analyzing whether a larger share should be allocated to the airport operator.

## Annex II: Stakeholders Consultation Report

During the week of December 11, 2024, an ALG team visited Kenya with two main objectives:

- Perform a **site-visit** of JKIA to have a better understanding of its terminals, airfield (runway, taxiways, apron), accesses, support buildings and equipment, and the general state of the infrastructure
- Engage with Kenya Airports Authority (KAA) and other stakeholders in the project in a series of kick-off meetings, present ALG's understanding and views of the project, and gather input and comments from all the stakeholders

In the course of the visit, the following meetings took place:

- December 13
  - KAA
  - JKIA Stakeholders (airlines and other stakeholders)
- December 14
  - Kenya Civil Aviation Authority (KCAA)
  - PPP Unit (Public Private Partnerships Directorate – National Treasury)
  - Ministry of Transport

In addition to these meetings, a virtual meeting with the Kenya Airways management team was held on January 11 2024.

ALG presented the following slides during the meetings, with its understanding of the project, its high-level view for the development of JKIA, and initial thoughts with regards to the best way to structure a PPP considering the future investment needs.





**ALG Introduction**  
ALG is a boutique strategy & business consulting firm, with global presence, specialized in infrastructure, transportation and logistics

**150**  
Employees

**7**  
Offices in 6 countries

**30+**  
Years of experience

Recurrent advisor of **Tier-1 organizations** in the transportation sector

**15+**  
Nationalities

**28 M€**  
Annual sales (2022)

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**Introducing ALG**  
Aviation at the core, with a vast experience in PPP process structuring

**Aviation – 80%**

- Air transport
- Airport
- Air navigation
- Civil aviation

**Maritime**

- Maritime transport
- Port infrastructure
- Port and maritime business
- Hinterland & foreland development

**Land transportation**

- Railway transport
- Road transport
- Urban transport & mobility
- Digital transformation

**Real Estate**

- Logistics zones & ILPs
- Services areas
- Business clusters
- Support facilities
- Commercial developments

Strategy, business planning and implementation support

Market assessment and demand forecast

PPP process structuring and implementation

Infrastructure development and investment planning

ALG

**ALG Introduction**  
ALG has extensive experience in developing PPP projects around the world

**22 Airport PPP structuring projects (Government side) during the last 5 years**

America	Europe	Middle East and Africa	Asia
<ul style="list-style-type: none"> <li>– Brasília (Brazil)</li> <li>– Rio Janeiro (Brazil)</li> <li>– Sao Paulo-GRU (Brazil)</li> <li>– Belo Horizonte (Brazil)</li> <li>– Natal (Brazil)</li> <li>– Fortaleza (Brazil)</li> <li>– Salvador (Brazil)</li> <li>– Florianopolis (Brazil)</li> <li>– Porto Alegre (Brazil)</li> <li>– Cartagena (Colombia)</li> <li>– Barranquilla (Colombia)</li> <li>– Pereira (Colombia)</li> <li>– Belize (Belize)</li> <li>– Cusco (Peru)</li> <li>– Arequipa (Peru)</li> <li>– Recife (Brazil)</li> <li>– Santiago Chile (Chile)</li> <li>– Balmaceda (Chile)</li> <li>– Florianopolis (Brazil)</li> <li>– Buenos Aires (Argentina)</li> <li>– Quito (Ecuador)</li> <li>– Bogota (Colombia)</li> <li>– Montevideo (Uruguay)</li> <li>– Santa Cruz (Bolivia)</li> <li>– Municipal Aéreo (Belize)</li> <li>– Punta Arenas (Chile)</li> <li>– Calama (Chile)</li> <li>– OMA Airports (Mexico)</li> <li>– Bahamas airports</li> </ul>	<ul style="list-style-type: none"> <li>– Atlanta (USA)</li> <li>– Orlando (USA)</li> <li>– Saint Louis (USA)</li> <li>– Cargo Center Mexico DF (Mexico)</li> <li>– Varadero (Cuba)</li> <li>– Santa Clara (Cuba)</li> <li>– David (Panama)</li> <li>– Rio Hato (Panama)</li> <li>– Panama-Tocumen (Panama)</li> <li>– North Eleuthera (Bahamas)</li> <li>– Markig (Bahamas)</li> <li>– Shureh (Bahamas)</li> <li>– Kingston (Jamaica)</li> <li>– Roatan (Honduras)</li> <li>– San Domingo (Dominican Rep)</li> <li>– Palmarola (Honduras)</li> <li>– San Pedro de Sula (Honduras)</li> <li>– San José (Costa Rica)</li> <li>– Liberty (Costa Rica)</li> <li>– Grantley Adams (Barbados)</li> <li>– Quaverato (Mexico)</li> <li>– São Francisco do Sul (Brazil)</li> <li>– Manaus (Brazil)</li> <li>– Curitiba (Brazil)</li> <li>– Foz do Iguaçu (Brazil)</li> <li>– Belo Horizonte-Pampulha (Brazil)</li> <li>– Monte Bay (Jamaica)</li> <li>– Prévostville (Turks &amp; Caicos)</li> </ul>	<ul style="list-style-type: none"> <li>– London City (UK)</li> <li>– Skavasta (Sweden)</li> <li>– Belfast International (UK)</li> <li>– Sarajevo (Bosnia)</li> <li>– Nantes (France)</li> <li>– Roma (Italy)</li> <li>– Barcelona (Spain)</li> <li>– Toulouse (France)</li> <li>– Lyon (France)</li> <li>– Belgrade (Serbia)</li> <li>– Nice (France)</li> <li>– Istanbul-Gökcen (Turkey)</li> <li>– Murcia-Colera (Spain)</li> <li>– Vilnius (Lithuania)</li> <li>– Kaunas (Lithuania)</li> <li>– Lisbon (Portugal)</li> <li>– Oporto (Portugal)</li> <li>– Podgorica (Montenegro)</li> <li>– Tivat (Montenegro)</li> <li>– Bucharest (Romania)</li> <li>– Athens (Greece)</li> <li>– Düsseldorf (Germany)</li> <li>– Sofia (Bulgaria)</li> <li>– Lviv (Ukraine)</li> <li>– Dalaman Airport (Turkey)</li> <li>– Sarajevo Airport (Bosnia)</li> </ul>	<ul style="list-style-type: none"> <li>– Ajlaja (Jordanian)</li> <li>– Merka (Jordanian)</li> <li>– Shureh (Jordanian)</li> <li>– Bagdad (Iraq)</li> <li>– Casablanca (Morocco)</li> <li>– Hower Kutiko (Namibia)</li> <li>– Kigali (Rwanda)</li> <li>– DMC (Dubai)</li> <li>– Madinah (Saudi Arabia)</li> <li>– Dammam (Saudi Arabia)</li> <li>– Riyadh (Saudi Arabia)</li> <li>– Libreville (Gabon)</li> <li>– Lusaka (Zambia)</li> <li>– Livingstone (Zambia)</li> <li>– Conakry (Guinea)</li> <li>– Harare (Zimbabwe)</li> <li>– Vitoria Falls (Zimbabwe)</li> <li>– Antananarivo (Madagascar)</li> <li>– Noy Be (Madagascar)</li> <li>– Brussels (Belgium)</li> <li>– Liège (Belgium)</li> <li>– Al Ula (Saudi Arabia)</li> <li>– Taif (Saudi Arabia)</li> <li>– Abha (Saudi Arabia)</li> <li>– Luanda (Angola)</li> <li>– Utaqap-Bangkok (Thailand)</li> <li>– Medan (Indonesia)</li> <li>– Batam (Indonesia)</li> <li>– Lombok (Indonesia)</li> <li>– Malaysia airports (Malaysia)</li> <li>– Boracay (Philippines)</li> <li>– Tagbaitan (Philippines)</li> <li>– Manila-Clark (Philippines)</li> <li>– Cebu-Mactan (Philippines)</li> <li>– Davao (Philippines)</li> <li>– Iloilo (Philippines)</li> <li>– Cagayan (Philippines)</li> <li>– Osaka (Japan)</li> <li>– Sydney (Australia)</li> <li>– Mianm (Kirgistan)</li> <li>– Islamabad (Pakistan)</li> </ul>

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**ALG Introduction**  
ALG has proven and extensive experience as a leading transport and logistics consulting firm in Africa

**ALG Experience in Africa from 2010 to 2023**  
Transport & Infrastructure

**70** Projects

**> 25** mEUR

**40** Clients

**> 35** African countries

**2022-23: Development of the Kenya Aviation Policy, including the investment requirements for the KAA airport network and PPP options**

ALG

**What were we engaged for?**  
Project objectives as per RFP

ALG

**Project objectives**  
"TRANSACTION ADVISORY SERVICES FOR THE CONSTRUCTION OF A NEW PASSENGER TERMINAL BUILDING AT JKIA"

The initial aim of the project:

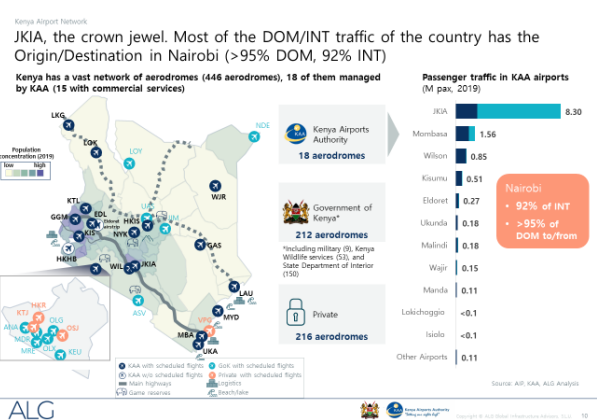
- **Feasibility assessment** for the expansion of the Passenger Terminal facilities at JKIA by **constructing a new passenger terminal**
  - Development options based on demand expectations
- **Analyze financing options:**
  - **DO Nothing?**
    - Self-financing (public funding)
  - **PPP Approach?**
    - BOT
    - Joint Venture JKIA

**JKIA Terminal 1**

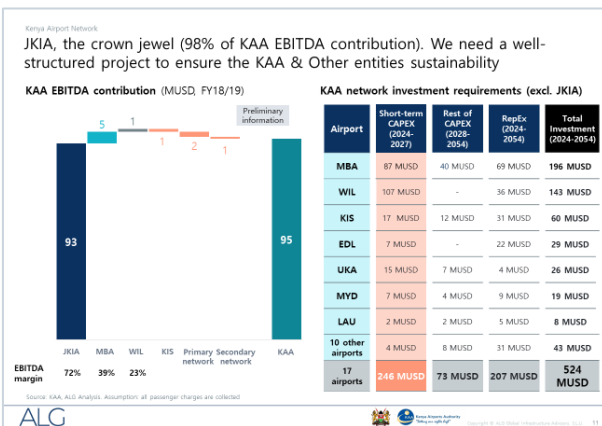
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# Our initial thoughts

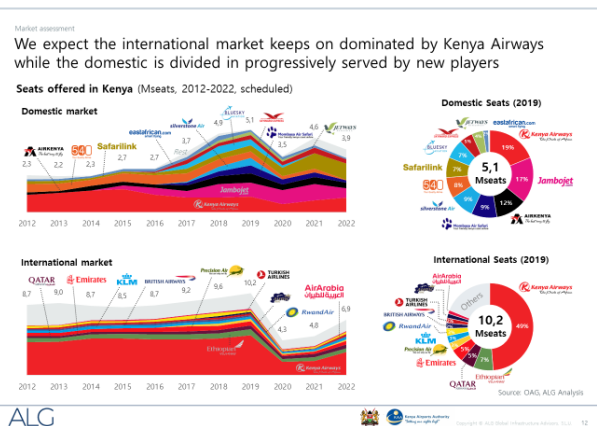
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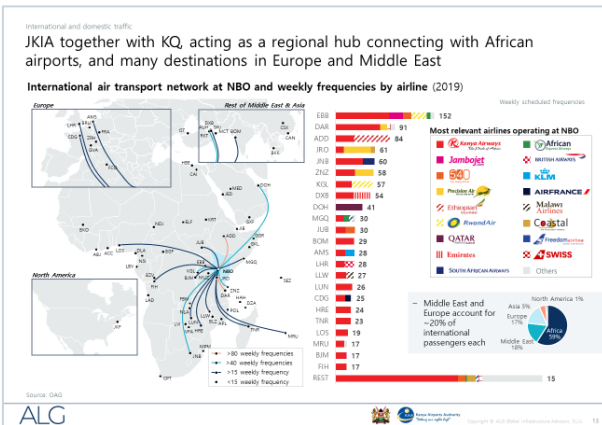
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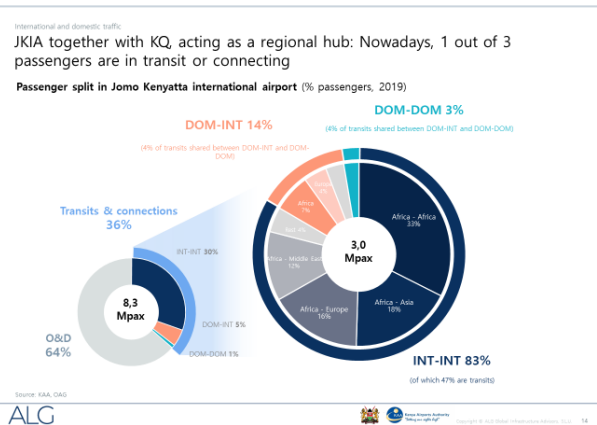
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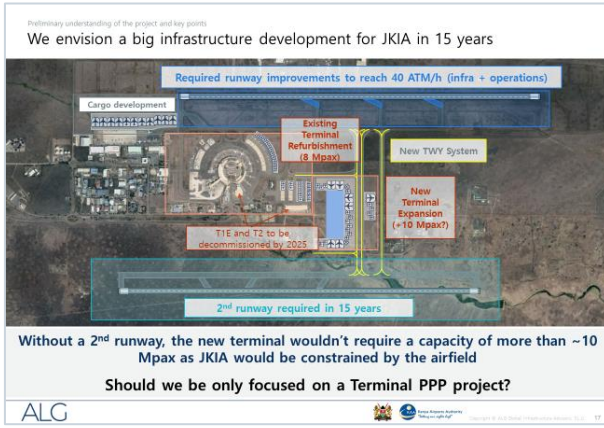
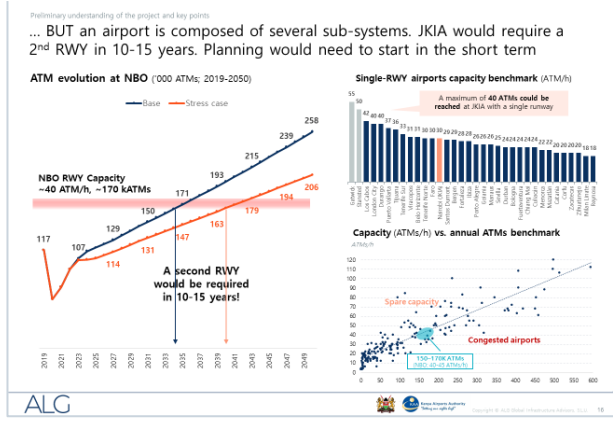
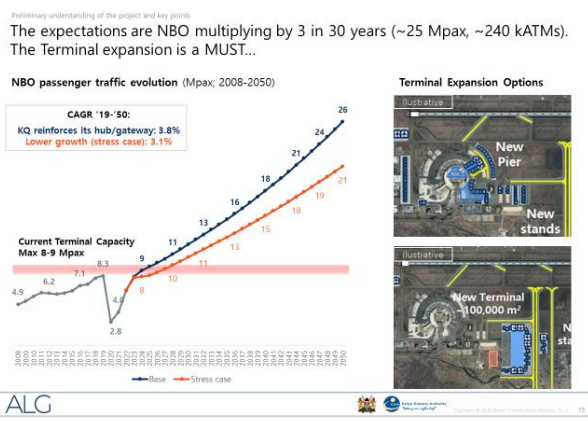
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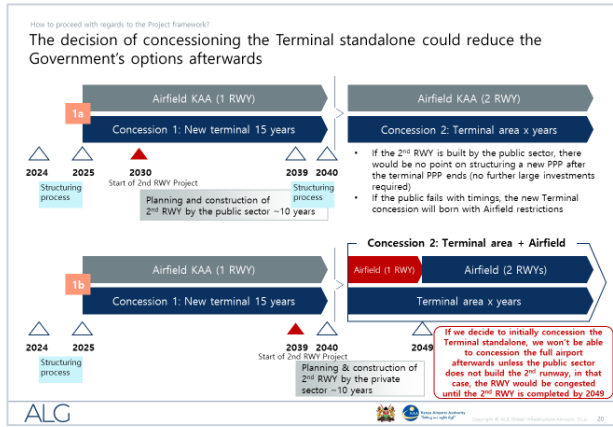
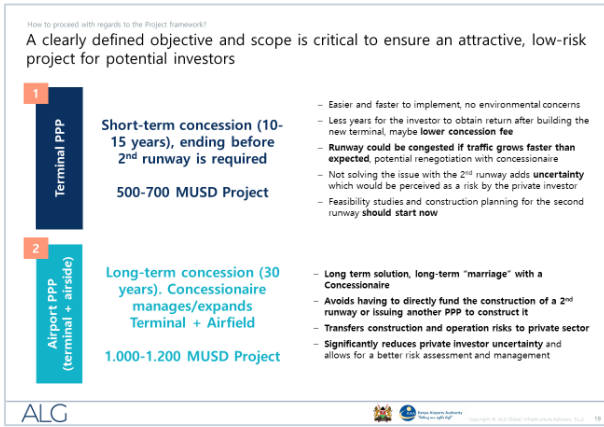


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## How to proceed with regards to the Project framework?

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**Figure 321: ALG's presentation in the kick-off meetings**

ALG's messages to the different stakeholders are summarized as follows:

- According to the Terms of Reference, the engagement calls for a feasibility assessment of the expansion of terminal capacity at JKIA, and an examination of alternative financing option (public financing, PPP, etc.)
- JKIA is the most important airport in Nairobi, accounting for over 90% of international traffic in Kenya, and along with Wilson, almost half of domestic traffic in the country (meaning that almost all domestic flights originate or terminate in Nairobi)
- As a result, JKIA generates over 95% of KAA's EBITDA, so it is important that a potential PPP is structured in a way that considers KAA's financial sustainability
- Kenya Airways is projected to play a significant role in the international market, whereas in the domestic market more competition is expected in the future
- Connecting passengers account for over one third of JKIA's traffic, and that figure will slightly rise in the future
- Based on the traffic projections, increased terminal capacity will be needed in the near future
- Depending on future traffic growth rates, and the ability of the airport operator and air service provider to increase runway capacity, JKIA will also need a second runway in the next 10 to 15 years. Considering

the time needed to build a new runway (from project planning to commissioning), which can easily take 7 to 10 years, plans for it need to start taking place in the very short term.

- Potential investors will assess JKIA's traffic and capacity and are extremely likely to reach the same conclusion (that the airport will need a new runway in 10-15 years). As a result, the term for a terminals-only PPP at JKIA would be limited to that period (10 to 15 years), as investors are unlikely to commit to a longer-term investment considering that a critical piece of infrastructure required for long-term growth is out of their control.
- Moreover, in a terminals-only PPP scenario, considering the time to get a runway planned, designed, built and commissioned, KAA would need to start working on the second runway project in the very short term (and also figure out the financing)
- Alternatively, an Airport PPP could be considered, with the private operator responsible for the development, management, and maintenance of the terminals and the airfield (runways, taxiways, apron, etc.). This would allow the possibility of a longer-term PPP (as the private operator will control the entire infrastructure), ensure that the second runway gets built, reduce overall project risks for the private sector, and reduce the need for KAA to finance the second runway.
- ALG proposed an Airport PPP as a development alternative that would yield better long-term results, as it ensures that JKIA will have the required infrastructure to meet future traffic, better aligns the interests of the grantor and the operator and reduces overall risks both for KAA and other stakeholders in the airport, as well as for the private operator.

## **KAA meeting**

KAA attendees: Caleb Kositany, Henry Ogoye, Serah Kimani, Eng. Walter Ogola, Ettah Muango, Mohamud Gedi, Matias Adasa, Ahmed Issaak, Samuel Mochache, Vincent Korir, George Ngugil, Iltasayon Neepe

ALG attendees: Hernan Sznycer, Jose Luis Rodriguez, Pere Mas

Main feedback received:

- KAA agrees with the rationale of ALG's proposal for an Airport PPP
- Kenya Airways has a significant outstanding debt with KAA for airport charges.
- KAA is concerned about the operational disruption that improvement works to the existing runway (RETs, centerline lighting for ILS) could cause.
- Because it is structured as a tax, the Air Passenger Service Charge is collected by Kenya Revenue Authority, and distributed between the three agencies that are entitled to its revenues (KAA being one of those)

## **Stakeholders meeting**

Stakeholders / KAA attendees. Selina Gor. (Airport Manager JKIA), Duke Mayaica, David Anamanda (Tradewinds/Airlines Operators Committee -AOC-), Angella Kagota (Tradewinds/AOC), John Nahianya (Kenya Airways/AOC), Kuria J.C. (Indigo Airlines), Amos Kipkalis (Kenya Aerotech LTD), Isaac Mwangi (Kenya Airways), Jabes Okeyo (Menzies Aviation), Daniel Manderu (Swissport), Frederik Otieno (Airport Manager



British Airways), Yvonne Mwamjeni (AOC), Koech Lenus (KAA), Tauhida Fakil (KAA), Rose Novos (KAA), Matilda Jepkosgei (KAA), Stephen Mandukw (KAA), Eric Nzioka (Collins Aerospace), Manjeru Maina (Collins Aerospace)

ALG attendees: Hernan Sznycer, Jose Luis Rodriguez

Main feedback received:

- The group is willing to cooperate and participate in the process, and requests that stakeholders' messages are considered.
- There was an airport greenfield (completely new) project in the past, which was not deemed feasible as long as the current one has potential to expand.
- There is a need for additional aircraft stands, both in the main and cargo aprons
- The cargo business merits a deep down and an analysis on how to perform and operate better and be more profitable for all parties, but all stakeholders would see with good eyes that the cargo business be outside of the perimeter of a potential concession.
- As of today, none of the airlines operating in Wilson airport are planning to operate at JKIA.
- There's a need to harmonize charges and fees across the eastern African region.
- It is important to avoid letting the private operator increase aeronautical charges at will. ALG indicated that aeronautical charges (and charges for certain monopolistic services) should be regulated.
- Operators should still be heard in charges and fees stakeholders' consultations.
- Amenities for the staff in airside should be improved.

## **KCAA meeting**

KCAA / KAA attendees: Joseph Chebungei (Director of Corporate Services), Beatrice Muthiaga, David Ondieki (Manager Aerodromes, ANS and Meteorological Regulation), Seline Ng'eno (CATCO), Michelle Kowero (KAA), Beth Bmwakio (SATO), James Kimiuyu (MCP), Andrew Njiru (SAI-CETOPS), Dadayo Kefa (FOI)

ALG attendees: Hernan Sznycer, Jose Luis Rodriguez

KCAA provided the following feedback during the meeting:

- The new runway is long overdue.
- With the current infrastructure it is not possible to reach 40 ATMs/h, as the existing runway does not have a full parallel taxiway nor Rapid Exit Taxiways (RET)
- Some aircraft overshoot taxiway L (the last one) and must use the turn-pad. It is only a few instances during the year, but when it happens it results in go-arounds.
- Weather-related disruptions regarding low visibility or low cloud base are relevant (note: ALG requested more information on the subject)
- A private investor could be certified to operate / have responsibility for airport security.

- WIL has many VFR departures that later on turn into IFR flights (Z flight plan); if an aircraft request departing from WIL as an IFR it must accept potential delays.

Besides the valuable feedback during the in-person meeting, KCAA submitted through KAA a document with more feedback with regards to JKIA's development project, and information that was requested during the meeting. The items below were submitted by KCAA for consideration during the feasibility study:

- *Consideration should be made to incorporate the construction of a 2nd parallel runway, preferably ILS CAT II/III, that should cater for the already constricted capacity of the existing runway.*
- *The existing runway be reconstructed and upgraded to a higher precision category to increase efficiency, minimize disruptions due to bad weather and improve safety as the accuracy of operations within the runway are improved (ILS CAT II/III)*
- *The capacity of the existing runway be improved by the introduction of rapid exit taxiways to reduce the runway occupancy times for aircraft.*
- *That the infrastructure within the airport be redesigned to link the existing runway, taxiways, aprons and parking bays to the new terminal and the 2nd parallel runway through an efficient network of taxiways with minimum delays.*
- *With the increased traffic projections, a new parking area, docking bays and required linkages for aircraft be constructed to reduce the congestion currently being experienced within the airport.*
- *Based on the projections for increased air traffic growth, the design should take cognizance of the need for future expansion of the terminal, business continuity and maintenance requirements*
- *That the project should incorporate specific needs for customs, immigration, security agencies, port health, KEPHIS, restaurants, police units, restrooms, concessionaires, rescue and firefighting including fire prevention, baggage and cargo handling, persons with special needs equipment among others.*
- *That a new vehicle parking area be constructed for the travelling public with proper guidance to parking bays to ensure a reasonable service time for its users*
- *Incorporate the construction and equip a rescue and firefighting substation with access roads to the terminal and 2nd runway enabling an emergency response time of not more than 3 minutes from initiation or notification of an emergency.*
- *Proper bird and wildlife hazard management be put in place while considering waste disposal, land use in the vicinity of the airport, drainages and bird nesting areas within terminal buildings.*

With regards to disruptions, use of runway 24 for take-offs, and use of runway 24's turn pad, KCAA provided the following statistics:

- There were 25 diversions and 22 go arounds in 2023 (and 5 and 10 respectively in 2022) due to weather.
- There were 15 days in 2023 where Weather Standby was Initiated, most of which lasted for about one hour. Seven of the 15 Weather Standby instances were due to strong crosswinds (a CAT II/III ILS system wouldn't have prevented that)
- There were 16 delays due to weather in 2023.

- With regards to runway 24, it was used for takeoffs during a total of 44 hours in the course of 14 days during 2023, and the turn pad was 9 times by aircraft that didn't manage to turn on taxiway L after landing.

## **PPP Unit meeting**

PPP Unit / KAA attendees: Christine Nganga (PPP Unit), Matias Adasa (KAA), Michelle Kowero (KAA)

ALG attendees: Hernan Sznycer, Pere Mas, Jose Luis Rodriguez, Ruth Kirunga (Kaplan&Stratton), Ken Kamaitha (Kaplan&Stratton)

## **Ministry of Transport meeting**

Ministry of Transport attendees: Mohamed Daghar (Principal Secretary), Angela Rugut SDOT (State Department for Transport), Grace Mwangi (SDOT), Rashid Shikely (SDOT), Samuel Mochache (KAA), Ettah Muango (KAA), Matias Adasa (KAA), Samson Karau (KAA), Henry Ogoye (KAA), Jason Kapkirwok (SDOT)

ALG attendees: Hernan Sznycer, Pere Mas, Jose Luis Rodriguez, Ruth Kirunga (Kaplan&Stratton), Ken Kamaitha (Kaplan&Stratton)

Main feedback received: the Principal Secretary requested a short document explaining why having different parties (eg. KAA and a private operator) operate different terminals would not be recommended, and the main arguments for an Airport PPP.

The document was submitted to the Principal Secretary the day after the meeting.

## **Kenya Airways**

Kenya Airways attendees: Allan Kilavuka (Group Managing Director & Chief Executive Officer), Gerold Tumulka (Chief Strategy & Innovation Officer), Tom Shivo (Chief People Officer), Isaac Mwangi (Head of ICT), John Nalianya (Head of Operations Control Center), Ngugi Mwaniki (Business Support Manager), George Kamal, Joan Otero, Beryl.

ALG attendees: Hernan Sznycer, Jose Luis Rodriguez, Adria Pon Elvira

Kenia Airways provided the following feedback during the meeting:

- As a key user of JKIA, Kenya Airways indicated a willingness to have more involvement in the airport's development process.
- Data from 2019 is outdated and has changed significantly. The presentation of more recent and relevant data for 2022/2023 and its usage to make accurate projections is essential.
- The combined share of KQ and Jambojet at JKIA currently ranges between 60-70% of the total. This is different than the picture painted by 2019 data.
- There is a concern with regards to the lack of an upside traffic scenario. Inquiries have been made into whether ALG has taken into account any specific events or measures outlined in the Aviation



Policy that might contribute to an increase in traffic to higher levels. Growth has exceeded 5% in the past, suggesting the need to explore a scenario with even higher growth.

- Kenya Airways mentioned that looking only at the terminal is a very narrow point of view and that the airport should be looked at holistically, including other facilities such as the airfield and the cargo areas. Apart from that, the project must factor Kenya Aviation Policy and an analysis on what the competition is doing would be required.
- Significant importance has been placed on the urgency of constructing a second runway within the next 10-15 years. Even a 10-year window is too long in their view. KQ emphasizes the need to examine the morning and evening peak periods at the airport, taking into account the airport's fleet mix, and conducting a benchmarking analysis against comparable African airports. An analysis of the runway shouldn't be done without knowledge of KQ's 5-year expansion plan.
- A key bottleneck for Kenya Airways revolves around the current insufficient number of boarding gates and aircraft parking spaces. Additionally, KQ has short-term growth aspirations (within 5 years) that involve a 50% expansion of their fleet and the replacement of smaller aircraft in the long run. Their strategic plans include doubling the count of wide-body aircraft in their fleet within the next 5 years, with the smallest aircraft being a B737. Furthermore, KQ wants to add an additional seven (7) code E aircraft at the airport but are unable given the lack of apron capacity.
- Kenya Airways expressed an interest in managing their dedicated terminal building. It is also paramount to consider transit/connections at the airport, as they constitute over 50% of the airline's current traffic.
- The significance of the current terminal building, the cargo apron, and other relevant infrastructure cannot be understated. Kenya Airways' insights should be integrated into planning for all other facilities. With regards to the current terminal, heavy consideration should be put into improving its electrical and water supply systems.
- The identification of quick wins which can help alleviate capacity constraints at the airport in the next five (5) years is encouraged.
- KQ focal points should be Isaac Mwangi and Gerold Tumulka

### Annex III: Rapid-exit taxiways (RET) construction in single-airports

One of the key enhancements considered under the development plan within the Phase 0 (2026) detailed in the document is the construction of two (2) additional rapid-exit taxiways (RETs) to reduce runway occupancy times and enhance runway throughput and the construction of a new partial parallel taxiway to allow for the closure of sections of the existing taxiway, which will be required for the construction of new terminal within the current RWY and TWY system at Jomo Kenyatta International airport.

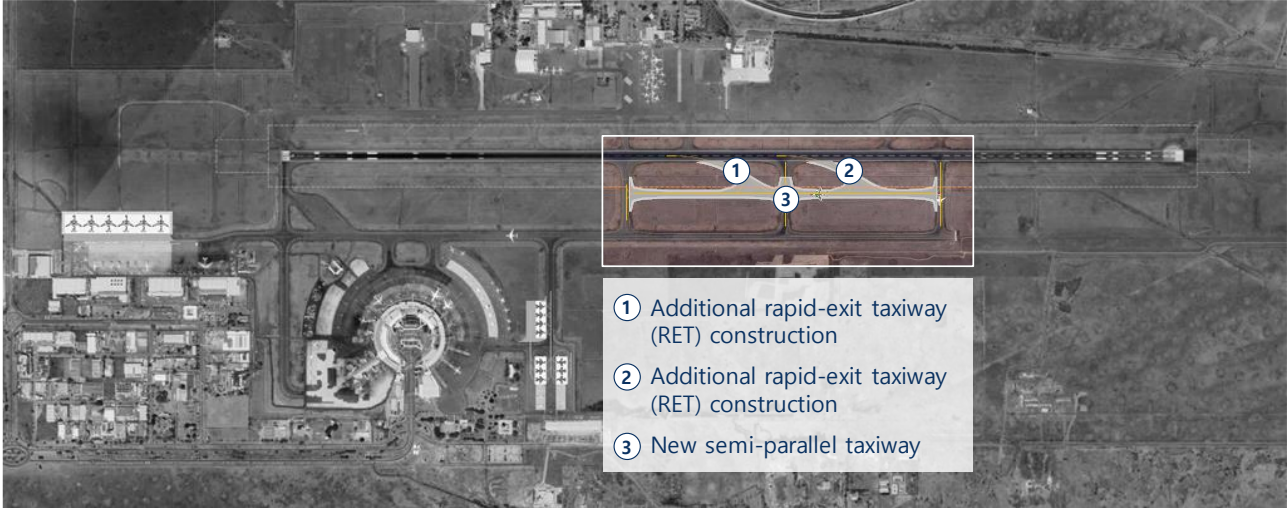


Figure 322: New RETs and semi-parallel TWY construction (Phase 0, 2026)

The experience shows that runway construction works in single-runway airports can be planned to manage operational disruptions and minimize the impact to users and with proper planning, management, and advance notice to users (NOTAM, AIP supplement, etc.), RETs and semi-parallel TWY construction in JKIA should have no effect on traffic development.



Figure 323: RET construction in single-runway airports examples (1/2)

(Source: Google Earth, Xiamen Gaoqi airport AIP, Prishtina airport AIP supplement, ALG Analysis)





\*XMN airport 2022 traffic statistics (24.1 MPax): Additional enhancements have been carried out during the last decade to accommodate those traffic figures. The 2014 figures are not available

**Figure 324: RET construction in single-runway airports examples (2/2)**

(Source: Google Earth, ALG Analysis)

In addition, there are airports such as (i.e.) Malaga (AGP) airport in Spain where the construction of two (2) rapid-exit taxiways was executed during 2006-2007 simultaneously, finishing the construction in ~8 months. Furthermore, the airport increased its demand by +3.8% (2006: 13.0 million passengers vs 2007: 13.5 million passengers). Therefore, the construction of the new two additional RETs can be planned to be executed simultaneously, reducing the operational impact that a phased approach would entail.



**Figure 325: Simultaneous construction of two (2) additional rapid-exit taxiways (RETs) in Malaga (AGP) airport (example)**

(Source: Google Earth, AENA, ALG Analysis)

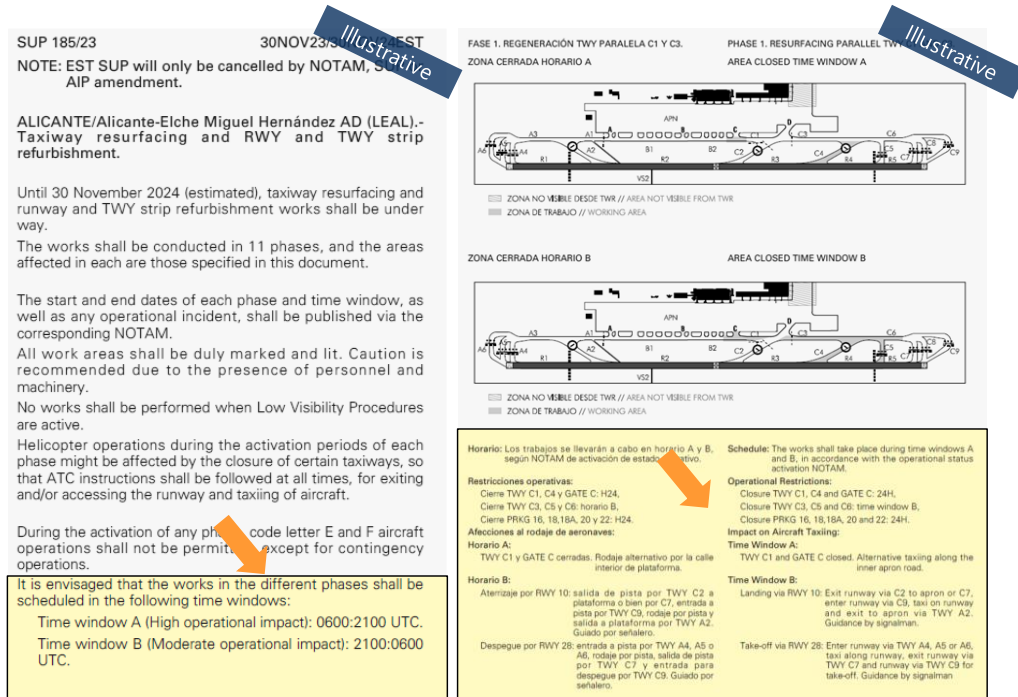
The operational disruptions caused by the RET construction within the airports sample have shown that such constructions do not hinder traffic demand growth, and in fact, traffic figures increased during the construction year.

It is important to highlight that without the construction of rapid-exit taxiways in these airports, the runway capacity would be further constrained, potentially leading to a reduction in the demand captured by the airport. This capacity limitation could have been much more noticeable in top-performing airports in terms of traffic volume, such as Juanda (Surabaya) in 2013/2014 or Xiamen Gaoqi.

In the case of Jomo Kenyatta International Airport, the operation is H24, with flights operating throughout the day. Therefore, it is expected that the temporary closure of the runway will be necessary during some days to execute the construction works, causing minor operational disruptions.

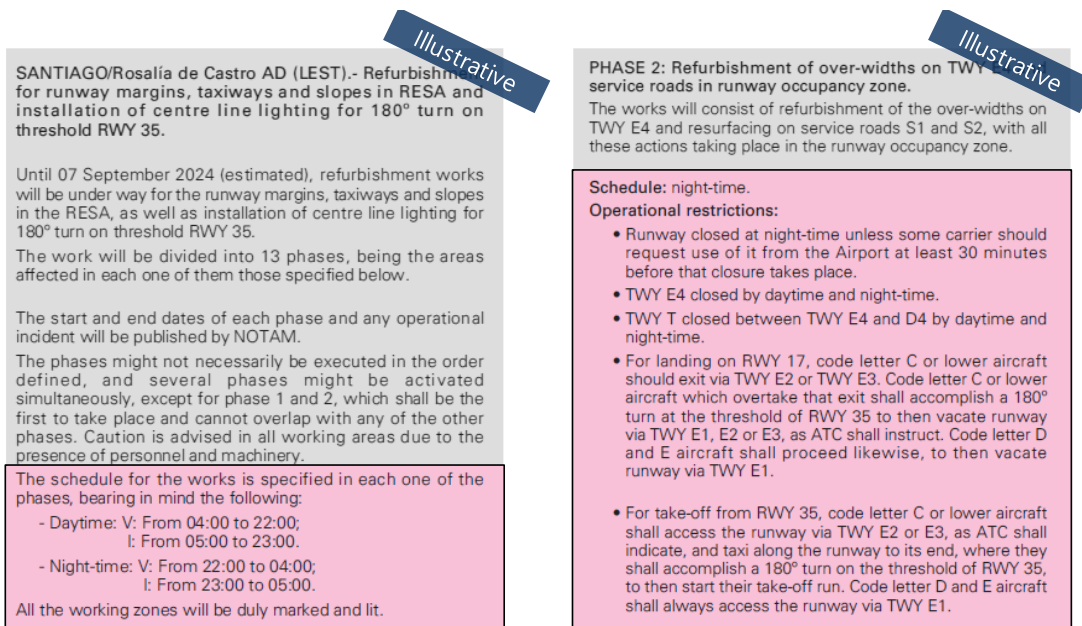
However, as shown in the previous examples, operational disruptions do not necessarily imply a reduction in traffic and operations at the airport, as long as proper planning, phasing and management of the time-windows selected for executing the works are carried out. In JKIA, the construction should take place during lower traffic and off-peak hours, while maintaining current demand peaks.

These time-windows are classified based on the operational impact and the volume of traffic affected by the execution of the works. Furthermore, depending on the impact, operational restrictions may vary and the aircraft's taxiing circuit for landing and take-off could be modified.



**Figure 326: Alicante (ALC) airport – RWY & TWY refurbishment / Planning – Construction phasing in “time windows” (example)**

(Source: ALC AIP supplement 185/23; ALG Analysis)



**Figure 327: Rosalía de Castro (SCQ) airport – RWY, TWY and RESA works / Planning – Construction phasing in “time windows”**

(Source: SCQ AIP supplement; ALG Analysis)

A preliminary analysis for Jomo Kenyatta International airport has been conducted to estimate the possible time-windows for the RETs construction based on the ATMs/h profile during the 2022 design day (23<sup>rd</sup> August) according to the schedule operations obtained from OAG database.

The operational limit to estimate the impact and the selection of the time-windows has been established in 13 ATMs/h. Taking this into account, the following time-windows have been identified:

- **Time-window A (low operational impact):** 00:00 - 05:15 (5.25h). The operational limit of 13 ATMs/h is not surpassed during this timeframe.
- **Time-window B (high operational impact):** 05:26 – 22:24 (17h). The operational impact is severe due to (1) the operational limit is surpassed and (2) the most volume of operations and, consequently, the higher traffic volume, occurs during this timeframe.
- **Time-window C (moderate operational impact):** 22:25 – 23:59 (~1.75h). The operations during this timeframe are slightly below of the operational limit established.

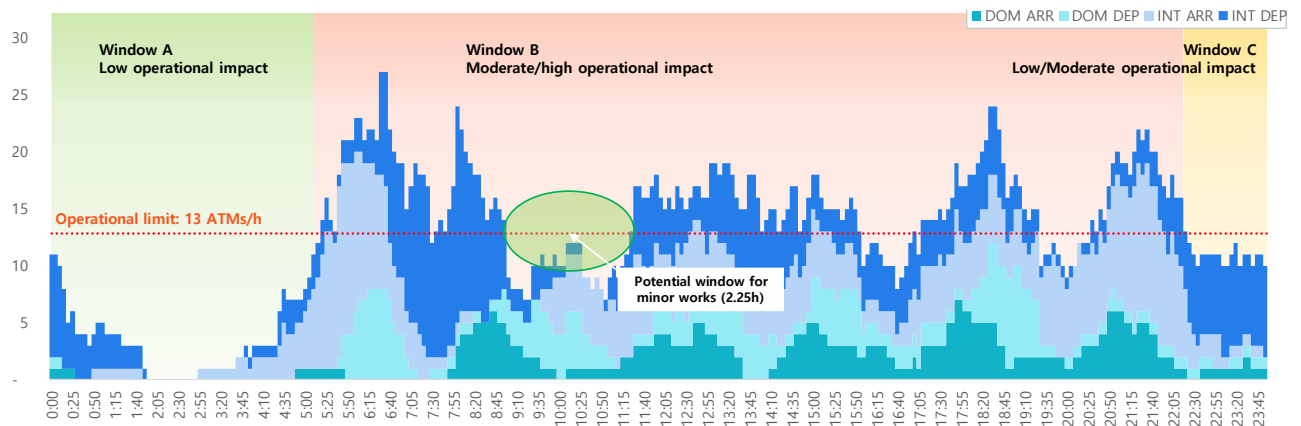


Figure 328: 2022 Design day (23<sup>rd</sup> August) ATMs/h profile

(Source: OAG, ALG Analysis)

Once the time-windows have been identified and the potential impact determined, the construction planning can be conducted according to the operational requirements of the airport. The following table details the preliminary construction planning carried out:

Project	Construction of 2 new rapid-exit TWYs (RETs) in RWY 06/24 and new semi parallel TWY (connection between TWY F-E)			
Phase	Normal (existing)	Phase I: Construction of RETs and TWY connection	Phase II: Signalling	Phase III: Lighting
Scope of work	N/A	(1) Grading and earthmoving (2) Drainage system (3) Paving of projected surfaces	(1) Horizontal signage (2) Vertical signage	(1) Lighting (2) Electrical channelling and associated civil works
Effects of construction operations	N/A	(1) <b>Area 1 (high criticality):</b> New RET(s) – Runway 06/24 overlap construction. Complete cease of operations (RWY closure) is required (1) <b>Area 2 (moderate criticality):</b> Construction of the RET & TWY connection requires a comprehensive safety study to assess the potential reconfiguration of ARRs pathway for construction and/or the complete closure of the runway		
Construction phase	N/A	Phase I (anticipated): 6-9 months	Phase II (anticipated): ~1 month	Phase III (anticipated): ~1 month
Construction time	N/A	Window A: 00:00-05:15 (5.25h) Window C: 22:25-23:59 (~1.75h)	Window A: 00:00-05:15 (5.25h) Window B: 05:26-22:24 (17h) Window C: 22:25-23:59 (~1.75h)	Window A: 00:00-05:15 (5.25h) Window B: 05:26-22:24 (17h) Window C: 22:25-23:59 (~1.75h)
RWY avg. operations	~3.5 kATMs/day	~3.1 kATMs (~400 ATMs)/day	Window A+C: ~3.1 kATMs (~400 ATMs)/day Window A+B+C: ~1.2 kATMs (~2,500 ATMs)/day (This is a preliminary estimation; a comprehensive study must be conducted, considering both the future flight plan and safety considerations, to assess the potential impact on operations)	
RWY approach visibility minimums	Proper coordination with Flight Procedures is required to ensure normal operations during construction and to advise pilots to consult the latest NOTAMs			

Figure 329: Preliminary construction planning

(Source: ALG Analysis)

It is important to mention that the phased approach and detailed construction planning outlined above should be taken as an illustrative concept but serve as an example that RET works can be planned to have minimal disruption to operations. For the proper execution of the works, a thorough technical engineering study is required to determine the airport's operational possibilities during the execution of the works and potential operational restrictions. Additionally, safety studies are required to comply with the aerodrome regulations established by the regulators, in this case, ICAO, and the current regulations in Kenya, and other complementary analysis such as (i.e.) topographic surveys, etc



## Annex IV: Market sounding

During the feasibility study, the consultant reached out to several airport operators and investors that could potentially be interested to participate in a PPP at JKIA, to assess their level of interest in the region, the country, and the airport, and understand what considerations they would have in assessing the opportunity.

The following operators/investors were contacted:

- **Grupo Aeroportuario del Pacifico**, operator 12 airports in Mexico, and with AENA -Spain's major airport operator- among its shareholders
- **Vinci Airports**, member of Vinci Group, operator of over 70 airports in 13 countries
- **Avialliance**, operator and investor of airports in Athens, Budapest, Düsseldorf, Hamburg and San Juan (Puerto Rico)
- **TAV Airports**, member of Groupe ADP Groupe, has interests in 15 airports and terminals concessions in 8 countries, and also provides a wide array of airport services
- **Groupe ADP (Aéroport de Paris)**, operator and investor of Paris' airports and other 20+ airports directly or via TAV Airports and GMR Airports.
- **Ferrovial**, investor and operator of 5 airports in Europe and USA (recently sold its stake in London Heathrow)
- MAHA Capital, strategic investor with interests in the transportation sector

Few information was shared with potential investors, mostly that there could be an opportunity for a PPP a JKIA, and that the airport would need a new passenger terminal building and new runway in the future. Hence, it is important to consider that the feedback received is very preliminary, and based on the little information that was made available to investors.

First, all seven parties that were contacted indicated that the traffic volumes of JKIA are certainly interesting and attractive. Some parties indicated that would be in principle interested in the opportunity, and others indicated that while their current focus is currently not on Africa, that they would still evaluate the opportunity considering the traffic volumes and standing of Nairobi, provided the transaction structure is attractive.

With regards to the things that investors would look at when evaluating the opportunity, they indicated the following:

- Investors indicated that they value a transaction process with clarity and clear governance, as it allows them to organize internally and mobilize the resources needed to evaluate the opportunity and prepare a bid.

- Investors also indicated that having clear prequalification criteria would be a plus, and it would allow them to invest more resources in the bid preparation process, knowing that they are competing against a pool of prequalified bidders.
- The experience of the team that will be advising and assisting the Government during the transaction implementation was also mentioned as an important factor that investors would look at when assessing the opportunity, as a proxy of the overall organization of the process.
- Shall the government require participation via consortium, investors expressed their preference for having the least prescriptions possible with regards of the internal organization of the consortium.
- In terms of the operation of the concession, investors indicated a preference for the Government to dictate the expected outcome (e.g., service levels at the airport) and let the investor manage how to achieve that outcome during the concession. The investor could reach the expected outcome in different ways (e.g., different terminal designs, different commercial strategies, etc.), and prefers freedom to determine how to get there.
- The importance of having a defined framework for regulated aeronautical charges during the concession was also mentioned, as it reduces uncertainty and risk.





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