

REPUBLIC OF KENYA



THE NATIONAL TREASURY AND ECONOMIC PLANNING

**REPORT ON GUARANTEED DEBT BY THE NATIONAL GOVERNMENT
FOR THE FINANCIAL YEAR 2022/2023**

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EXECUTIVE SUMMARY

The National Treasury's one of the key responsibilities is to manage the level and composition of national public debt, national guarantees and other financial obligations of national government as outlined in the Public Finance Management Act, 2012, Section 12 (1) (b).

As part of efforts to strengthen debt management and enhance debt transparency, the National Treasury has committed to continue expanding the scope of reporting on public debt to include national government guarantees. The Report outlines the legal framework for management of guaranteed debt. Article 260 of the Constitution of Kenya, 2010 defines a Guarantee and the PFM Act, 2012 provides the operational framework for the management of guaranteed debt.

As at June 2023, the Government Guaranteed debt stood at Ksh. 170,228.9 million comprised of Ksh. 88,223.9 million (51.8 per cent) for Kenya Airways PLC (KQ), Ksh. 50,960.9 million (29.9 percent) for Kenya Port Authority (KPA) and Ksh 31,044.2 million (18.2 per cent) for Kenya Electricity Generating Company PLC (KENGEN)

The report provides details of the parties, amount, currency, purpose and terms and conditions to the loans. It also provides information on various affirmations by the National Government in the guarantee agreement on each loan. The loans relate to; three (3) loans contracted by KPA to finance Mombasa Port Development, seven (7) loans contracted by KenGen to finance Geothermal and hydropower plants and one (1) contacted by Kenya Airways to finance the six (6) Boeing Model 787-8 Aircraft, one (1) Boeing Model 777-300ER Aircraft and One (1) General Electric Model GENx-1/B70/75 Spare Engine.

Section 51 of the PFM Act, 2012 gives the national government entities powers to borrow in accordance with the Act or any other Act of Parliament. Section 51 (4) of PFM Act,2012 states that ***‘the national government is not liable to contribute towards payment of any debt or liability of a national government entity, unless the national government has guaranteed the debt or liability’***. During the fiscal year 2022-2023, the National Government serviced guaranteed debt on behalf of Kenya Airways (KQ) amounting to Ksh 12,326.9 million. This comprises principal repayment of Ksh 10,643.4 million and interest payment of Ksh. 1,683.5 million. Cumulatively, the amount of loan that the government has paid on behalf of KQ is Ksh 15,043.3 million, comprising a principal repayment of Ksh 13,008.6 million and interest payment of Ksh 2,043.8 million.

1. INTRODUCTION

1. Article 260 of the *Constitution of Kenya, 2010* defines a Guarantee as any absolute or conditional promise, commitment or undertaking by the National Government to partially or completely re-pay any loan to a County Government or any person. Section 12 (1) (b) of the *Public Finance Management (PFM) Act, 2012* grants the National Treasury the mandate to manage the level and composition of public debt, Government Guarantees and other financial obligations of Government within the framework of the Act and develop a framework for sustainable debt control.

The Public Debt Management Office (PDMO) in the National Treasury and Economic Planning is responsible for the management of Government Guaranteed debt. Disbursed Guaranteed loans or Guaranteed debt is part of the overall public debt and is subject to public debt limits set under the PFM Act, 2012. The performance of Guaranteed debt must be closely monitored and publicly disclosed as part of the fiscal risk management and debt transparency.

2. LEGAL FRAMEWORK FOR GUARANTEED DEBT

2. Article 213 of the Constitution of Kenya provides that (1) an Act of Parliament shall prescribe terms and conditions under which the National Government may guarantee loans and (2) within two months after the end of each financial year, the National Government shall publish a report on the guarantees that it gave during that year. Guaranteed debts form part of the total public debt of the Government as defined in Article 214 (2) of the Constitution of Kenya which defines public debt as “*all financial obligations attendant to loans raised or guaranteed and securities issued or guaranteed by the national government*”. The PFM Act, 2012 was enacted by Parliament to give effect to Article 214 (2) of the Constitution of Kenya.
3. Section 58 of the PFM Act, 2012 grants the Cabinet Secretary responsible for matters relating to finance the power to guarantee loans of a County Government or any other borrower on behalf of the National Government and that guarantee shall be approved by Parliament.

The National Government guarantees a loan for the public entity or County Government on the following basis;

- i. if it's financing a capital project;
- ii. the entity is capable of repaying the loan and
- iii. its financial position satisfactory over the medium-term.

The terms of the guarantee must comply with the fiscal responsibility principles and financial objectives of the National Government and recommendation of the Intergovernmental Budget and Economic Council (IBEC) in respect of any guarantee to a County Government. The guaranteed amount must be within the debt limits as approved by Parliament.

4. In the event of default on guaranteed debt, section 60 (1) Subject to subsection (2) of the PFM Act, 2012, provides for the National Government to charge on, and pay out of the Consolidated Fund without further appropriation but with the Controller of Budget's authority. Any amount paid by the Cabinet Secretary on a guarantee is a debt due to the National Government from the borrower and is recoverable. Section 61(1) empowers the Cabinet Secretary to recover either through proceedings brought in a court of competent jurisdiction; withholding a transfer of money in line with Article 225 of the Constitution, if the borrower receives appropriations or/and enter into an agreement to pay the debt over a period at such intervals, and subject to such terms and conditions, as specified and agreed.
5. The *Public Finance Management (National Government) Regulations, 2015* provides the operational framework under which the guarantees are issued by the Cabinet Secretary/National Treasury and Economic Planning. Regulation 203 of the same regulations provides the process and eligibility criteria the National Government entities must fulfil before an application for Government guarantee is considered and approved by Parliament.
6. The preparation of this *Guarantee Debt Report* is guided by Section 32 (1) and (2) PFM Act, 2012, which specifies the reporting format and timelines of preparation and submission to Parliament. The Cabinet Secretary is required to submit to Parliament, a record of all guarantees issued by the National Government, not later than seven days after receiving a request to do so from either House of Parliament. The Cabinet Secretary shall, with respect to every such Guarantee, specify the following information in the record— (a) names of the parties to the loan that is guaranteed; (b) principal amount of that loan; (c)

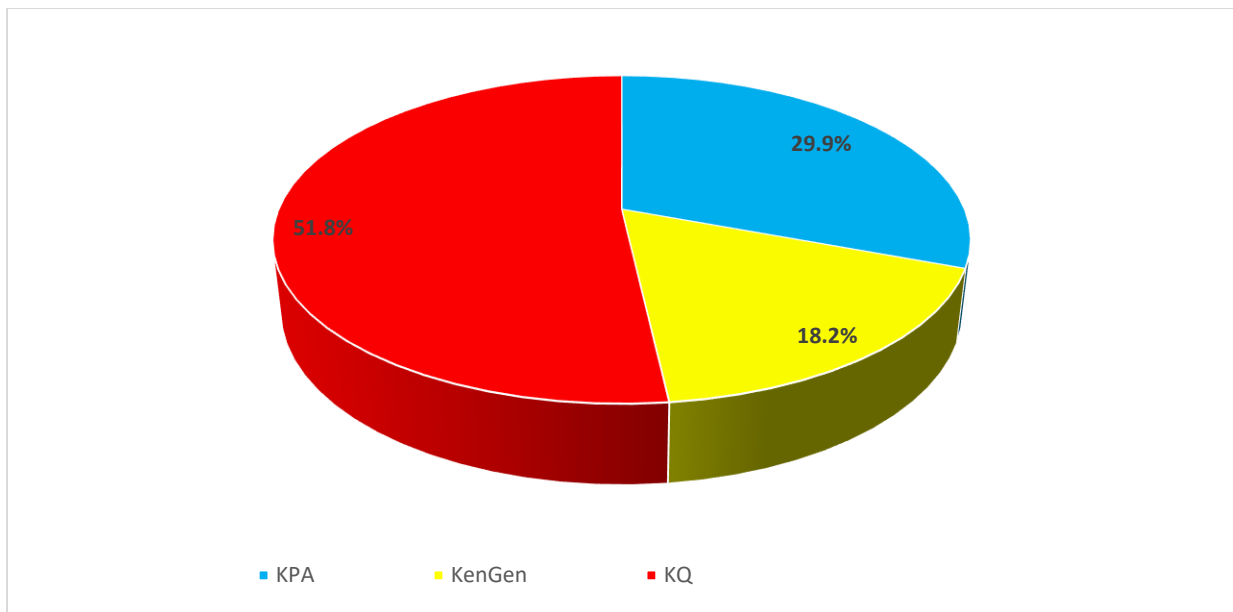
terms and conditions applicable to that loan, including— (i) interest and other charges that are payable in respect of that loan; and (ii) terms of its repayment and (3) not later than two months after the end of each financial year, the Cabinet Secretary shall publish and publicize a report giving details of the guarantees given by the National Government during that year.

As part of continuing efforts and commitment to enhance debt transparency, the National Treasury will publish annually the Guarantees Debt Report on its website.

3. STATUS GUARANTEED DEBT AS AT END JUNE 2023

7. Loan Guarantee instruments (agreements) signed by the National Treasury/Ministry of Finance acting for and on behalf of the Government of the Republic of Kenya (Guarantor) and the State-Owned Entities (borrowers) indicates that, the National Government guaranteed 100 percent of the due principal, interest and any other charges on the relevant loans. Where the principal loan is increased by the borrower, the Guarantor is exempt from the liabilities to the extent of such increase. Thus, the total exposure to the National Government on all the loan guarantees issued will be represented by the total amount of guaranteed debt outstanding at any given time.
8. As at June 2023, the Government Guaranteed debt stood at Ksh. 170,228.9 million as follows;
 - a. Kenya Electricity Generating Company PLC (Kengen) of Ksh. 31,044.2 million (18.2 percent);
 - b. Kenya Port Authority (KPA) of Ksh. 50,960.9 million (29.9 percent) and
 - c. Kenya Airways PLC (KQ) of Ksh. 88,223.9 million which accounts for 51.8 per cent of the total as shown in the figure 1 below.

Figure 1: Composition of outstanding guaranteed debt stock as at June, 2023



Source: National Treasury

KPA and KenGen service all their Guaranteed debts on a timely basis as per the terms and conditions outlined in the loan agreements. On the other hand, KQ guaranteed is non-performing, was called-up and the National Government stepped in to service the loan on behalf of KQ.

4. SPECIFIC DETAILS OF EACH LOAN GUARANTEED

9. The following are the details of loans contracted by various State-Owned Entities and guaranteed by the National Government. The section provides details of the parties, amount, currency, purpose and terms and conditions to the loans. It also provides information on various affirmations by the National Government in the guarantee agreement on each loan. The loans relate to; three (3) loans contracted by KPA to finance Mombasa Port Development, seven (7) loans contracted by KenGen to finance Geothermal and hydropower plants and one (1) contacted by Kenya Airways to finance the six (6) Boeing Model 787-8 Aircraft, one (1) Boeing Model 777-300ER Aircraft and One (1) General Electric Model GENx-1/B70/75 Spare Engine.

i. Mombasa Diesel Generating Power Plant, Kipevu Project

a) The names of parties to the loan

The Government of Japan through the Overseas Economic Corporation Fund, Japan as the lender and Kenya Power Company Limited as a borrower. The loan was contracted on 21st March, 1995 and matures on 20th September, 2025.

b) The amount of the loan contracted and currency of repayment

The amount of the loan is in Japanese Yen 10,716,000,000 and will be repaid in Japanese Yen.

c) The terms and conditions of the loan, including interest and other charges payable and the terms of repayment

The loan had a tenor of 30 years with a grace period of 10 years and a repayment period of 20 years of 40 equal semi-annual repayments each of Japanese Yen 10,716,000,000 starting 20th March,2005 through to 20th September 2025. The loan attracts a service charge to the Fund in Japanese Yen of an amount equal to one-tenth percent (0.1%) of the amount of the disbursement.

d) The purpose for which the loan was utilized

The objective of the Project to construct approximately 75MW Diesel Power Plant in order to cope with the increase of electricity demand and also to assure stable electricity supply in Kenya.

e) Terms of the Guarantee by the National Government

The Government of the Republic through the Ministry of Finance as a Guarantor to the Loan agreed in the Guarantee Agreement dated 7th November, 1995 affirmed to the Overseas Economic Corporation Fund, Japan;

1. That the Guarantor has accepted all the provisions of the Loan Agreement and agrees to guarantee jointly and severally with the Borrower any and all liabilities arising from or in connection with the obligations of the Borrower under the Loan Agreement.
2. That the Guarantor, furthermore, agrees that: -
 - a. The Guarantor guarantees the due and punctual payment of the principal of and the interest and any other charges on the Loan as provided for in the Loan Agreement;

- b. The Guarantor shall not be exempted from any of its liabilities under this Guarantee by reason of any extension of maturity, forbearance or concession given to the Borrower, any exercise of right or remedy against the Borrower, any exercise of right or amplification of the provisions of the Loan Agreement (provided that if the principal of the loan is thereby increased, the Guarantor shall be exempted from its liabilities to the extent of such increase);
3. So long as any part of the Loan under the Loan Agreement shall be outstanding and unpaid, the Guarantor shall:
 - a. Not take any action which would prevent or interfere with the performance by the Borrower or any other beneficiaries of the Loan, if any, of obligations under the Loan Agreement, and
 - b. Not, without prior consent of JICA in writing, take any action for the dissolution or disestablishment of the Borrower or any other beneficiaries of the Loan, if any, or for the suspension of their activities;
4. The Guarantor waives notice of acceptance of this Guarantee, notice of any liability to which it may apply, notice concerning principal, interest and any other charges, and notice of dishonour or non-payment of any such liabilities.

ii. Sondu Miriu Hydropower Project power plant

a) The names of parties to the loan

The Government of Japan through the Overseas Economic Cooperation Fund in Japan as the lender and Kenya Power Company Limited as a borrower. The loan was contracted on 3rd March, 1997 and matures on 20th March, 2027.

b) The amount of the loan contracted and currency of repayment

The amount of the loan is Japanese Yen 6,933,000,000 and will be repaid in Japanese Yen.

c) The terms and conditions of the loan, including interest and other charges payable and the terms of repayment

The loan had a tenor of 30 years with a grace period of 10 years and a repayment period of 20 years of 40 equal semi-annual repayments each of Japanese Yen 6,933,000,000 starting 20th

March 2007 through to 20th March 2027. The Borrower shall pay interest to the Fund semi - annually at the rate of two and three- tenths percent (2.3%) per annum on the principal disbursed on 20th March and September, of each year.

d) The purpose for which the loan was utilized

The objective of the Project is to construct hydroelectric power plant to meet growing power demand in Western Kenya.

e) Terms of the Guarantee by the National Government

The Government of the Republic through the Ministry of Finance as a Guarantor to the Loan agreed in the Guarantee Agreement dated 23rd June,1997 affirmed to the Overseas Economic Corporation Fund, Japan;

1. That the Guarantor has accepted all the provisions of the Loan Agreement and agrees to guarantee jointly and severally with the borrower any and all liabilities arising from or in connection with the obligations of the Borrower under the Loan Agreement.
2. That the Guarantor, furthermore, agrees that: -
 - a. The Guarantor guarantees the due and punctual payment of the principal of and the interest and any other charges on the Loan as provided for in the Loan Agreement;
 - b. The Guarantor shall not be exempted from any of its liabilities under this Guarantee by reason of any extension of maturity, forbearance or concession given to the borrower, any exercise of right or remedy against the borrower, any exercise of right or amplification of the provisions of the Loan Agreement (provided that if the principal of the loan is thereby increased, the Guarantor shall be exempted from its liabilities to the extent of such increase);
3. So long as any part of the Loan under the Loan Agreement shall be outstanding and unpaid, the Guarantor shall:
 - a. Not take any action which would prevent or interfere with the performance by the Borrower or any other beneficiaries of the Loan, if any, of obligations under the Loan Agreement, and

- b. Not, without prior consent of JICA in writing, take any action for the dissolution or disestablishment of the borrower or any other beneficiaries of the Loan, if any, or for the suspension of their activities;
- 4. The Guarantor waives notice of acceptance of this Guarantee, notice of any liability to which it may apply, notice concerning principal, interest and any other charges, and notice of dishonour or non-payment of any such liabilities.

iii. Sondu Miriu Hydropower Project power plant Phase II

a) The names of parties to the loan

The Government of Japan through the Japan Bank for International Cooperation (JICA), as the lender and the Kenya Power Company Limited but later transferred to Kenya Electricity Generating Company Limited as a borrower. The loan was contracted on 20th February, 2004 and matures on 20th February, 2044.

b) The amount of the loan contracted and currency of repayment

The amount of the loan is Japanese Yen 10,554,000,000 and will be repaid in Japanese Yen.

c) The terms and conditions of the loan, including interest and other charges payable and the terms of repayment

The loan had a tenor of 40 years with a grace period of 10 years and a repayment period of 30 years of 60 equal semi-annual repayments each of Japanese Yen 10,554,000,000 starting 20th February 2014 through to 20th February 2044. The Borrower shall pay interest to the Bank semi-annually at the rate of three-fourths of one percent (3/4 of 1%) per annum on the principal disbursed and outstanding on 20th February and August, of each year.

d) The purpose for which the loan was utilized

To construct hydroelectric power plant to meet growing power demand in Western Kenya.

e) Terms of the Guarantee by the National Government

The Government of the Republic through the Ministry of Finance as a Guarantor to the Loan agreed in the Guarantee Agreement dated 7th June, 2004 affirmed to the Japan Bank for International Cooperation,

1. That the Guarantor has accepted all the provisions of the Loan Agreement and agrees to guarantee jointly and severally with the Borrower any and all liabilities arising from or in connection with the obligations of the Borrower under the Loan Agreement.
2. That the Guarantor, furthermore, agrees that: -
 - a. The Guarantor guarantees the due and punctual payment of the principal of and the interest and any other charges on the Loan as provided for in the Loan Agreement;
 - b. The Guarantor shall not be exempted from any of its liabilities under this Guarantee by reason of any extension of maturity, forbearance or concession given to the Borrower, any exercise of right or remedy against the Borrower, any exercise of right or amplification of the provisions of the Loan Agreement (provided that if the principal of the loan is thereby increased, the Guarantor shall be exempted from its liabilities to the extent of such increase);
3. So long as any part of the Loan under the Loan Agreement shall be outstanding and unpaid, the Guarantor shall:
 - a. Not take any action which would prevent or interfere with the performance by the Borrower or any other beneficiaries of the Loan, if any, of obligations under the Loan Agreement, and
 - b. Not, without prior consent of JICA in writing, take any action for the dissolution or disestablishment of the Borrower or any other beneficiaries of the Loan, if any, or for the suspension of their activities;
4. The Guarantor waives notice of acceptance of this Guarantee, notice of any liability to which it may apply, notice concerning principal, interest and any other charges, and notice of dishonour or non-payment of any such liabilities.

iv. Sondu Miriu Hydropower Project Sang`oro power plant

a) The names of parties to the loan

The Government of Japan through Japan International Cooperation Agency (JICA) as the lender and Kenya Electricity Generating Company Limited as a borrower. The loan was contracted on 23rd January, 2007 and matures on 20th January, 2047.

b) The amount of the loan contracted and currency of repayment

The amount of the loan is Japanese Yen 5,620,000 and will be repaid in Japanese Yen.

c) The terms and conditions of the loan, including interest and other charges payable and the terms of repayment

The loan had a tenor of 40 years with a grace period of 10 years and a repayment period of 30 years of 60 equal semi-annual repayments each of Japanese Yen 5,620,000 starting 20th January 2017 through to 20th January 2047. The interest rate of the loan is at the rate of three-fourths of one percent (0.75%) per annum on the principal disbursed and outstanding amount.

d) The purpose for which the loan was utilized

The objective of the Project is to construct hydroelectric power plant to meet growing power demand in Kenya in order to contribute to economic growth and improvement of living standards.

e) Terms of the Guarantee by the National Government

The Government of the Republic through the Ministry of Finance as a Guarantor to the Loan agreed in the Guarantee Agreement dated 31st July, 2007 affirmed the Japan Bank for International Cooperation,

1. That the Guarantor has accepted all the provisions of the Loan Agreement and agrees to guarantee jointly and severally with the Borrower any and all liabilities arising from or in connection with the obligations of the Borrower under the Loan Agreement.
2. That the Guarantor, furthermore, agrees that: -

- a. The Guarantor guarantees the due and punctual payment of the principal of and the interest and any other charges on the Loan as provided for in the Loan Agreement;
 - b. The Guarantor shall not be exempted from any of its liabilities under this Guarantee by reason of any extension of maturity, forbearance or concession given to the Borrower, any exercise of right or remedy against the Borrower, any exercise of right or amplification of the provisions of the Loan Agreement (provided that if the principal of the loan is thereby increased, the Guarantor shall be exempted from its liabilities to the extent of such increase);
3. So long as any part of the Loan under the Loan Agreement shall be outstanding and unpaid, the Guarantor shall:
 - a. Not take any action which would prevent or interfere with the performance by the Borrower or any other beneficiaries of the Loan, if any, of obligations under the Loan Agreement, and
 - b. Not, without prior consent of JICA in writing, take any action for the dissolution or disestablishment of the Borrower or any other beneficiaries of the Loan, if any, or for the suspension of their activities;
4. The Guarantor waives notice of acceptance of this Guarantee, notice of any liability to which it may apply, notice concerning principal, interest and any other charges, and notice of dishonour or non-payment of any such liabilities.

v. Mombasa Port Development Programme

a) The names of parties to the loan

The Government of Japan through Japan International Cooperation Agency (JICA) as the lender and Kenya Ports Authority as a borrower. The loan was contracted on 20th November, 2007 and matures on 20th November 2047.

b) The amount of the loan contracted and currency of repayment

The amount of the loan is Japanese Yen 26,711,000,000 and will be repaid in Japanese Yen. The principal amount is categorized into two i.e Principal I of JPY 22,877,000,000 and Principal II of JPY 3,834,000,000.

c) The terms and conditions of the loan, including interest and other charges payable and the terms of repayment

The loan had a tenor of 40 years with a grace period of 10 years and a repayment period of 30 years of 60 equal semi-annual repayments each of Japanese Yen 26,711,000,000 starting 20th March, 2025 through to 20th March ,2055. The borrower is paying an interest amount to JICA semiannually at rate of two-tenths per cent (0.2%) per annum on the principal I and at rate of one-hundredth per cent (0.01%) per annum on the principal II disbursed and outstanding amount on 20th May and November each year.

The Loan attracted a commitment charge to JICA by the borrower upon effectiveness of the Loan Agreement but not less than 120 days from the date of signature of the Loan Agreement at rate of one-tenths per cent (0.1%) of the undisbursed loan amount until completion date.

d) The purpose for which the loan was utilized

The objective of the Project was to meet the meet the increasing demand for container handling capacity by constructing a new container terminal and providing new handling facilities at the Mombasa Port with a larger goal of facilitating social and economic development in Kenya and neighboring countries in East Africa.

f) Terms of the Guarantee by the National Government

The Government of the Republic through the Ministry of Finance as a Guarantor to the Loan agreed in the Guarantee Agreement dated 24th September, 2008 affirmed Japan Bank for International Cooperation,

1. That the Guarantor has accepted all the provisions of the Loan Agreement and agrees to guarantee jointly and severally with the Borrower any and all liabilities arising from or in connection with the obligations of the Borrower under the Loan Agreement.
2. That the Guarantor, furthermore, agrees that: -

- a. The Guarantor guarantees the due and punctual payment of the principal of and the interest and any other charges on the Loan as provided for in the Loan Agreement;
 - b. The Guarantor shall not be exempted from any of its liabilities under this Guarantee by reason of any extension of maturity, forbearance or concession given to the Borrower, any exercise of right or remedy against the Borrower, any exercise of right or amplification of the provisions of the Loan Agreement (provided that if the principal of the loan is thereby increased, the Guarantor shall be exempted from its liabilities to the extent of such increase);
3. So long as any part of the Loan under the Loan Agreement shall be outstanding and unpaid, the Guarantor shall:
- a. Not take any action which would prevent or interfere with the performance by the Borrower or any other beneficiaries of the Loan, if any, of obligations under the Loan Agreement, and
 - b. Not, without prior consent of JICA in writing, take any action for the dissolution or disestablishment of the Borrower or any other beneficiaries of the Loan, if any, or for the suspension of their activities;
4. The Guarantor waives notice of acceptance of this Guarantee, notice of any liability to which it may apply, notice concerning principal, interest and any other charges, and notice of dishonour or non-payment of any such liabilities.

vi. Olkaria I Unit 4 and 5 Geothermal Power Project

a) The names of parties to the loan

The Government of Japan through Japan International Cooperation Agency (JICA) as the lender and Kenya Electricity Generating Company Limited as a borrower. The loan was contracted on 31st March, 2010 and matures on 20th March 2040.

b) The amount of the loan contracted and currency of repayment

The amount of the loan is Japanese Yen 29,516,000,000 and will be repaid in Japanese Yen.

c) The terms and conditions of the loan, including interest and other charges payable and the terms of repayment

The loan had a tenor of 30 years with a grace period of 10 years and a repayment period of 20 years of 40 equal semi-annual repayments each of Japanese Yen 29,516,000,000 starting 20th March, 2020 through to 20th March, 2040. The Borrower shall pay interest to JICA semi-annually at the rate of two-tenth percent (0.20%) per annum on the principal disbursed and outstanding on 20th March and September each year. The loan attracted a commitment charge to JICA by the borrower semi-annually at the rate of one-tenth percent (0.1 %) per annum on the total unused balance from one hundred twenty (120) days after the date of signature of the Loan Agreement to the completion date.

d) The purpose for which the loan was utilized

The objective of the Project is to enhance security of electric power supply in Kenya by adding an extra 140MW of geothermal power into the national grid, thereby creating a conducive investment climate and enabling economic growth in Kenya. Being a renewable and a clean energy project, it shall contribute to minimization of the negative impact on the global environment.

f) Terms of the Guarantee by the National Government

The Government of the Republic through the Ministry of Finance as a Guarantor to the Loan agreed in the Guarantee Agreement dated 29th November, 2011 affirmed Japan Bank for International Cooperation,

1. That the Guarantor has accepted all the provisions of the Loan Agreement and agrees to guarantee jointly and severally with the Borrower any and all liabilities arising from or in connection with the obligations of the Borrower under the Loan Agreement.
2. That the Guarantor, furthermore, agrees that: -
 - a. The Guarantor guarantees the due and punctual payment of the principal of and the interest and any other charges on the Loan as provided for in the Loan Agreement;
 - b. The Guarantor shall not be exempted from any of its liabilities under this Guarantee by reason of any extension of maturity, forbearance or

concession given to the Borrower, any exercise of right or remedy against the Borrower, any exercise of right or amplification of the provisions of the Loan Agreement (provided that if the principal of the loan is thereby increased, the Guarantor shall be exempted from its liabilities to the extent of such increase);

3. So long as any part of the Loan under the Loan Agreement shall be outstanding and unpaid, the Guarantor shall:
 - a. Not take any action which would prevent or interfere with the performance by the Borrower or any other beneficiaries of the Loan, if any, of obligations under the Loan Agreement, and
 - b. Not, without prior consent of JICA in writing, take any action for the dissolution or disestablishment of the Borrower or any other beneficiaries of the Loan, if any, or for the suspension of their activities;
4. The Guarantor waives notice of acceptance of this Guarantee, notice of any liability to which it may apply, notice concerning principal, interest and any other charges, and notice of dishonour or non-payment of any such liabilities.

vii. Rehabilitation and Upgrade of Hydropower plant Kindaruma

a) The names of parties to the loan

The Government of the Federal Republic of Germany (KFW) as the lender and Kenya Electricity Generation Company Ltd as a borrower. The loan was contracted on 16th November, 2010 and mature in 30th June, 2024.

b) The amount of the loan contracted and currency of repayment

The amount of the loan is EUR 39,100,000 and will be repaid in Japanese Yen. The principal amount is categorized into two i.e. Principal I of EUR 30,000,000 and Principal II of EUR 9,100,000.

c) The terms and conditions of the loan, including interest and other charges payable and the terms of repayment

The loan had a tenor of 13 years and the borrower shall repay Portion I and Portion II of the Loan Euro 39,100,000 on a pari passu and pro rata basis in 20 equal consecutive half-yearly instalments, the first of which will fall due six months after the average weighted delivery date but not later than three years after the effectiveness of this Loan Agreement. The borrower is paying an interest amount to KfW semiannually at rate of 2.5% per annum on Principal Portion I and interest on Portion II will be notified by KfW to the Borrower within two Banking Days after this Loan Agreement has entered into force and effect. The interest payment is charged on disbursed and outstanding amounts and is payable semiannually each year.

The borrower was to pay a commitment fee of 0.25 percent on undisbursed loan amounts until the loan full disbursed and a one-off Management fee of 0.75 percent of the principal amount of the loan upon elapse of 3-months period after the loan agreement becomes effective.

d) The purpose for which the loan was utilized

The objective of the Project was to enhance container handling capacity and increase efficiency of port management by constructing new container terminal and providing new handling facilities at the Mombasa Port, thereby contributing to a larger goal of facilitating trade and economic development in Kenya and neighboring countries in East Africa.

e) Terms of the Guarantee by the National Government

The Government of the Republic through the Ministry of Finance as a Guarantor to the Loan agreed in the Guarantee Agreement dated 29th November, 2011 affirmed Government of Germany through KfW:

1. That the Guarantor has approved all the provisions of the Loan Agreement;
2. That the Guarantor, irrevocably and unconditionally guarantees the due and punctual payment of the principal of and the interest and any other payment obligations of the borrower as provided for in the Loan Agreement;
3. Upon KfW's first written demand stating that the Borrower has not performed its payment obligations as and when due, the Guarantor shall remit promptly the requested amounts

without any set off, reservations, deduction, counterclaim or other objections or defence exclusively in Euro to KfW`s account;

4. The payment obligations of the Guarantor shall be independent of the validity of the loan Agreement of any prior advice or request for payment from KfW to the borrower, of any legal proceedings or other action instituted by KfW against the borrower or of any evidence of the borrower`s default to be furnished by KfW. The Guarantor shall not be exempted from any of its liabilities under this guarantee by reason of and the consent of the guarantor shall not be required for any extension of maturity, forbearance or concession given to the borrower, any exercise of right or remedy against the borrower, or any modification or amplification of the provisions, of the loan Agreement(provided that if the principal of the loan is thereby increased , the Guarantor shall be exempt from its liabilities to the extent of such increase);
5. So long as any part of the Loan under the Loan Agreement shall be outstanding and unpaid, the Guarantor shall:
 - a. Not take any action which would prevent or interfere with the performance by the Borrower or any other beneficiaries of the Loan, if any, of obligations under the Loan Agreement,
 - b. By taking all necessary or appropriate measures, within its competence and in conformity with sound engineering and financial practices, assist the borrower in the implementation and operation of the project and in the performance of the borrower`s obligations under the Loan Agreement;
 - c. Not, without prior consent of JICA in writing, take any action for the dissolution or disestablishment of the Borrower or any other beneficiaries of the Loan, if any, or for the suspension of their activities;
6. The Guarantor waives notice of acceptance of this Guarantee, notice of any liability to which it may apply, notice concerning principal, interest and any other charges, and notice of dishonour or non-payment of any such liabilities;
7. So long as the Guarantor is under any actual or contingent liability hereunder, it shall not have any right of subrogation in respect of any amount paid by it hereunder;
8. That, KfW is exempt from all taxes, fees, charges and similar costs in Kenya on all payments to be made by the Guarantor under this guarantee. If required by law, the

Guarantor shall or otherwise to make any deduction or withholding from any sum payable to KfW, then the Guarantor shall pay such additional amounts as to ensure that KfW receives a net sum equal to the sum it would have received had such deduction or withholding been made;

9. The Guarantor shall notify KfW with undue delay of any events which may impede or endanger the due implementation of the Loan Agreement or the Guarantee;
10. All claims of KfW under the Guarantee Agreement expire after five years from end of the year in which any such claim has accrued and in which KfW has become aware of the circumstances constituting such claim or could have become aware of them without gross negligence;

viii. Rehabilitation and Upgrade of Geothermal Power Olkaria I and IV

(a) Names of the parties to the loan

The Government of Germany through Frankfurt am Main (KfW) as the lender and Kenya Electricity Generating Company Limited as a borrower. The loan was contracted on 3rd May, 2011 and matures on 30th June, 2026.

(b) The amount of the loan contracted and currency of repayment

The amount of the loan is EUR 60,000,000 and will be repaid in Japanese Yen.

(c) The terms and conditions of the loan, including interest and other charges payable and the terms of repayment

The loan had a tenor of 14 years with a grace period of 3 years and a repayment period of 11.5 years of 23 equal semi-annual repayments each of EUR 60,000,000, starting 30th June 2015 through to 30th June, 2026. The interest rate of the loan is at the rate of 3 percent per annum on the principal disbursed and outstanding amount.

The loan attracts a commitment charge payable semi-annually to KfW at a rate of 0.25% per annum on the total undisbursed balance of the loan from 90 days or elapse of three-month period following the enter into force of the loan agreement to Completion date of disbursement. The borrower was

to pay KfW a non-refundable one-time lump sum management fee of 0.75% of the principal amount of the loan.

(d) The purpose for which the loan was utilized

The objective of the project was to expand the electricity generation capacity of Olkaria Geothermal steam field by extending Olkaria I geothermal power plant and constructing Olkaria IV geothermal power plant as planned by the borrower.

(e) Terms of the Guarantee by the National Government

The Government of the Republic through the Ministry of Finance as a Guarantor to the Loan agreed in the Guarantee Agreement dated 29th November, 2011 affirmed Government of Germany through KfW,

1. That the Guarantor has approved all the provisions of the Loan Agreement;
 - a) That the Guarantor, irrevocably and unconditionally guarantees the due and punctual payment of the principal of and the interest and any other payment obligations of the borrower as provided for in the Loan Agreement;
 - b) Upon KfW's first written demand stating that the Borrower has not performed its payment obligations as and when due, the Guarantor shall remit promptly the requested amounts without any set off, reservations, deduction, counterclaim or other objections or defence exclusively in Euro to KfW's account;
 - c) The payment obligations of the Guarantor shall be independent of the validity of the loan Agreement of any prior advice or request for payment from KfW to the borrower, of any legal proceedings or other action instituted by KfW against the borrower or of any evidence of the borrower's default to be furnished by KfW. The Guarantor shall not be exempted from any of its liabilities under this guarantee by reason of and the consent of the guarantor shall not be required for any extension of maturity, forbearance or concession given to the borrower, any exercise of right or remedy against the borrower, or any modification or amplification of the provisions, of the loan Agreement (provided that if the

principal of the loan is thereby increased, the Guarantor shall be exempt from its liabilities to the extent of such increase);

2. So long as any part of the Loan under the Loan Agreement shall be outstanding and unpaid, the Guarantor shall:
 - a) Not take any action which would prevent or interfere with the performance by the Borrower or any other beneficiaries of the Loan, if any, of obligations under the Loan Agreement,
 - b) By taking all necessary or appropriate measures, within its competence and in conformity with sound engineering and financial practices, assist the borrower in the implementation and operation of the project and in the performance of the borrower`s obligations under the Loan Agreement;
 - c) Not, without prior consent of JICA in writing, take any action for the dissolution or disestablishment of the Borrower or any other beneficiaries of the Loan, if any, or for the suspension of their activities;
3. The Guarantor waives notice of acceptance of this Guarantee, notice of any liability to which it may apply, notice concerning principal, interest and any other charges, and notice of dishonour or non-payment of any such liabilities;
4. So long as the Guarantor is under any actual or contingent liability hereunder, it shall not have any right of subrogation in respect of any amount paid by it hereunder;
5. KfW is exempt from all taxes, fees, charges and similar costs in Kenya on all payments to be made by the Guarantor under this guarantee. If required by law, the Guarantor shall or otherwise to make any deduction or withholding from any sum payable to KfW, then the Guarantor shall pay such additional amounts as to ensure that KfW receives a net sum equal to the sum it would have received had such deduction or withholding been made;
6. The Guarantor shall notify KfW with undue delay of any events which may impede or endanger the due implementation of the Loan Agreement or the Guarantee;
7. All claims of KfW under the Guarantee Agreement expire after five years from end of the year in which any such claim has accrued and in which KfW has become aware of the circumstances constituting such claim or could have become aware of them without gross negligence;

ix. Mombasa Port Development Project Phase 2

a) The names of parties to the loan

The Government of Japan through Japan International Cooperation Agency (JICA) as the lender and Kenya Ports Authority as a borrower. The loan was contracted on 9th March, 2015 and matures on 20th April, 2055.

b) The amount of the loan contracted and currency of repayment

The amount of the loan is Japanese Yen 32,116,000,000 and will be repaid in Japanese Yen. The principal amount is categorized into two i.e. Principal I of JPY 26,212,000,000 and Principal II of JPY 5,904,000,000.

c) The terms and conditions of the loan, including interest and other charges payable and the terms of repayment

The loan had a tenor of 40 years with a grace period of 10 years and a repayment period of 30 years of 60 equal semi-annual repayments each of Japanese Yen 32,116,000,000 starting 20th March, 2025 through to 20th March ,2055. The borrower is paying an interest amount to JICA semiannually at rate of one-tenths per cent (0.1%) per annum on the principal I and at rate of one-hundredth per cent (0.01%) per annum on the principal II disbursed and outstanding amount on 20th March and September each year.

The Loan attracted a one-off Front-End-Fee to JICA by the borrower upon effectiveness of the Loan Agreement but not less than 60 days at rate of one-tenths per cent (0.1%) of the amount of the loan.

d) The purpose for which the loan was utilized

The objective of the Project was to enhance container handling capacity and increase efficiency of port management by constructing new container terminal and providing new handling facilities at the Mombasa Port, thereby contributing to a larger goal of facilitating trade and economic development in Kenya and neighboring countries in East Africa.

The loans under KPA management are highly concessional terms with an average maturity of 40 years and interest rate of 0.01 to 0.1 percent per annum.

e) Terms of the Guarantee by the National Government

The Government of the Republic through the National Treasury, as a Guarantor to the Loan agreed in the Guarantee Agreement dated 8th August, 2016 affirmed Japan Bank for International Cooperation,

1. That the Guarantor has accepted all the provisions of the Loan Agreement and agrees to guarantee jointly and severally with the Borrower any and all liabilities arising from or in connection with the obligations of the Borrower under the Loan Agreement.
2. That the Guarantor, furthermore, agrees that: -
 - i. The Guarantor guarantees the due and punctual payment of the principal of and the interest and any other charges on the Loan as provided for in the Loan Agreement;
 - ii. The Guarantor shall not be exempted from any of its liabilities under this Guarantee by reason of any extension of maturity, forbearance or concession given to the Borrower, any exercise of right or remedy against the Borrower, any exercise of right or amplification of the provisions of the Loan Agreement (provided that if the principal of the loan is thereby increased, the Guarantor shall be exempted from its liabilities to the extent of such increase);
3. So long as any part of the Loan under the Loan Agreement shall be outstanding and unpaid, the Guarantor shall:
 - a. Not take any action which would prevent or interfere with the performance by the Borrower or any other beneficiaries of the Loan, if any, of obligations under the Loan Agreement, and

- b. Not, without prior consent of JICA in writing, take any action for the dissolution or disestablishment of the Borrower or any other beneficiaries of the Loan, if any, or for the suspension of their activities;
- 4. The Guarantor waives notice of acceptance of this Guarantee, notice of any liability to which it may apply, notice concerning principal, interest and any other charges, and notice of dishonour or non-payment of any such liabilities.

x. Six (6) Boeing Model 787-8 Aircraft, one (1) Boeing Model 777-300ER Aircraft and one (1) General Electric Model GEnx-1/B70/75 Spare Engine

a) The names of parties to the loan

Kenya Airways PLC as a borrower contracted two loans from Export-Import Bank of the United States (Exim Bank, US) and MTC Trust & Corporate Service Limited and the Consenting Creditors as lenders. The loans were contracted on 14th November 2017 and will mature on 1st September, 2027.

b) The amount of the loan contracted and currency of repayment

The amount of the loan was USD 750.0 million and repayable in US Dollar. The principal amount has two portions i.e. Principal I of USD 525.0 million and Principal II of USD 225.0 million comprised of, Holdco Loans of USD 50.0 million and New Finance Facilities of USD 175.0 million (comprising of letters of credit facility of USD 75.0 million and multipurpose facility of USD 100.0 million).

c) The terms and conditions of the loan, including interest and other charges payable and the terms of repayment

The loan has a tenor of 10 years payable Monthly with an interest of Libor plus a margin of 0.67 percent per annum payable within 21 days of the date of a demand from Exim Bank to the borrower and without any set-off, deduction or counterclaim by the guarantor for any reason whatsoever starting 30th November, 2017 through to 30th September, 2027.

d) The purpose for which the loan was utilized

The purpose of the loans was to finance the six (6) Boeing Model 787-8 Aircraft, one (1) Boeing Model 777-300ER Aircraft and One (1) General Electric Model GEnx-1/B70/75 Spare Engine by Kenya Airways.

e) Terms of the Guarantee by the National Government

Acting through its Cabinet Secretary to the Treasury as a Guarantor to the Loan, agreed in the Guarantee Agreement;

1. That the Guarantor has accepted all the provisions of the Loan Agreement and agrees to guarantee jointly and severally with the borrower any and all liabilities arising from or in connection with the obligations of the borrower under the Loan Agreement;
2. The Guarantor agrees to make all payments free and clear of, and without deduction for, any present or future tax, levy, deduction, charge or withholding imposed by any jurisdiction from or through which payment is made, or any liability;
3. The Guarantor shall pay or reimburse Ex-Im Bank promptly upon demand of payment for all of the costs and expenses incurred by Ex-Im Bank in connections with the registration, amendment, or enforcement of the Guarantee Agreement or the protection or preservation of any right or claim of Ex-Im Bank arising out of the Guarantee Agreement.
4. The Guarantor shall pay in full when due, and shall fully indemnify Ex-Im Bank against,
 - a. Any and all existing and future withholding, value added or taxes, fees or charges that may be imposed by the Government of the Republic of Kenya in respect of any Aircraft and/ or the spare Engine or in connection with any of the payments made under any of the operative documents;
 - b. Any and all custom duties, value added tax, special duties or other taxes that may be imposed by any Government of the Republic of Kenya on the import, lease, use or re-export of the Aircraft, the spare Engine or any portion thereof;
 - c. Any stamp or similar tax that may be imposed in connection with the execution, registration, recordation or enforcement of the Guarantee Agreement or any of the operative document; and

5. The Guarantor waives notice of acceptance of this Guarantee, notice of any liability to which it may apply, notice concerning principal, interest and any other charges, and notice of dishonour or non-payment of any such liabilities.

5. CALLED-UP GUARANTEED DEBT

10. Section 51 of the PFM Act, 2012 gives the national government entities powers to borrow in accordance with the Act or any other Act of Parliament. However, Section 51 (4) states that *‘the national government is not liable to contribute towards payment of any debt or liability of a national government entity, unless the national government has guaranteed the debt or liability’*.
11. During the fiscal year 2022-2023, the National Government serviced guaranteed debt on behalf of Kenya Airways (KQ) amounting to Ksh 12,326.9 million. This comprises principal repayment of Ksh 10,643.4 million and interest payment of Ksh. 1,683.5 million. Cumulatively, the amount of loan that the government has paid on behalf of KQ is Ksh 15,043.3 million, comprising a principal repayment of Ksh 13,008.6 million and interest payment of Ksh 2,043.8 million.

ANNEX 1: NATIONAL GOVERNMENT GUARANTEED DEBT AS AT END JUNE 2023

Borrower	Creditor	Purpose	Date Contracted	Principal Amount (Original Currency)	Loan Currency	Maturity Date	Terms and Conditions of the loan					
							Tenor (yrs)	Interest Rate	Commitment fees	Other Charges (Management/ Front end fees)	Outstanding Amount (Original Currency)	Outstanding Amount (Ksh)
KPA	Japan	Kenya Port Development	9-Mar-15	26,212,000,000	JPY	20-Apr-55	40	0.10%			31,735,316	27,048,395,160
				5,904,000,000	JPY		40	0.01%				2,991,846,985
KPA	Japan	Mombasa Port Modernization Project	20-Nov-07	22,877,000,000	JPY	20-Nov-47	40	0.20%	0.10%		22,107,817	19,236,258,975
				3,834,000,000	JPY		40	0.01%				1,684,409,187
Sub-Total												50,960,910,307
KENGEN	Japan	Mombasa Diesel Generating Power Plant, Kipevu Project	21-Mar-95	10,716,000,000	JPY	20-Sep-25	30	2.60%		0.10%	850,632	825,196,404
KENGEN	Japan	Sondu Miriu Hydropower Project power plant	3-Mar-97	6,933,000,000	JPY	20-Mar-27	30	2.30%			1,183,679	1,148,284,631
KENGEN	Japan	Sondu Miriu Hydropower Project power plant Phase II	20-Feb-04	10,554,000,000	JPY	20-Feb-44	40	0.75%			7,266,630	7,049,343,225
KENGEN	Japan	Sondu Miriu Hydropower Project Sang'oro power plant	23-Jan-07	5,620,000	JPY	20-Jan-47	40	0.75%			3,397,728	4,568,333,937
KENGEN	Japan	Olkaria I Unit 4 and 5 Geothermal Power Project	31-Mar-10	29,516,000,000	JPY	20-Mar-40	30	0.20%	0.10%		15,398,905	14,938,446,921
KENGEN	Germany	Rehabilitation and Upgrade of Hydropower plant Kindaruma	16-Nov-10	30,000,000	EUR	30-Jun-24	13	2.50%	0.25%	0.75%	3,000,000	458,944,500
				9,100,000	EUR		13	To be notified			910,000	139,213,165
KENGEN	Germany	Rehabilitation and Upgrade of Geothermal Power Olkaria Land	3-May-11	60,000,000	EUR	30-Jun-26	14	3.00%	0.25%	0.75%	12,527,113	1,916,416,563
Sub-Total												31,044,179,346
KQ	Exim Bank USA	Six (6) Boeing Model 787-8 Aircraft, one (1) Boeing Model 777-300ER Aircraft and one (1) General Electric Model GENx-1/B70/75 Spare Engine	14-Nov-17	525,000,000	USD	31-Oct-27	10	3 Months Libor + Fixed Margin of 0.67%			402,840,000	56,606,080,303
	Local Banks			225,000,000	USD		10				225,000,000	31,617,787,500
Sub-Total												88,223,867,803
Total												170,228,957,456