GENERAL INFORMATION

Capital: Nairobi
Population: 46,050,302
GDB: USD 63,398 Million

LEGAL AND INSTITUTIONAL FRAMEWORK

PPP Law and other applicable texts
- Public Private Partnership Act, 2014 (No. 15 of 2013)
- Public Private Partnership Regulations, 2014
To remove duplication and overlap, the PPP Act, 2013 amended
- Policy Statement on Public Private Partnerships, 2011
- The Privatization Act, 2005
- The Public Roads Toll Act Cap.407, and
  - The Public Procurement and Disposal Act, 2005

Other Applicable Sectoral Law
- Water Act, 2002
- Energy Act, 2006
  - The Privatization Act, 2005

PPP Unit
- Public Private Partnerships Committee (PPPC) in charge of PPP policy guidelines formulation, project approvals, monitoring and evaluation oversight
- Public Private Partnerships Unit (PPPU), a Special Purpose Unit established within the National Treasury of the Government, acting as the secretariat and technical arm of the PPPC
- Project Facilitation Fund, a public entity that prepares the projects for tender

www.aflsf.org / pppirc.worldbank.org
Definition
(Art. 2 and Schedule 2 of PPP Act)

“Public private partnership” means an 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 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; and
(c) is generally liable for risks arising from the performance of the function in accordance with the terms of the project agreement.

“Concession” means a contractual license formalized by a project agreement, which may be linked to a separate interest or right over real property, entitling a person who is granted the license to make use of the specified infrastructure or undertake a project and to charge user fees, receive availability payments or both such fees and payments during the term of the concession.

PPP Arrangements listed in Schedule 2 of the PPP Act

General Principles
(Art. 29 and Art. 2.3 of PPP Act)

In procuring and awarding a contract to a private party under this Act, a contracting authority shall be guided by the principles of transparency, free and fair competition and equal opportunity in accordance with the guidelines made under this Act.

Principles listed under art. 2.3 (Statements of Principles of PPPs – Policy Statement on PPP, 2011)

Tendering and contracting procedures / Choice of the private partnership
(Art. 29 to 53 of PPP Act and PPP Regulations)

- Competitive bidding process (art. 29 (1))
- Competitive Dialogue Procedure (art. 45) used in certain and exceptional circumstances listed under the aforesaid provision
- Privately initiated investment proposals (art. 61) with prior approval of the PPP Unit and PPPC
- Preliminary Bidders Meeting (art. 41), an optional procurement with prior approval of the PPP Unit

The process for solicited proposals (art. 28-50) and privately initiated investment proposals (art. 51-53) is more detailed in the PPP Regulations

Project Evaluation
(Art. 12 to 33 of PPP Act and PPP Regulations)
- Sector diagnostic study and assessment prior to entering into PPP arrangement (art. 20)
- Feasibility study (art. 14 and art. 33)
- Value assessment report (art. 15)

Project preparation and appraisal (PPP Regulations, art. 12-16)

Negotiation and Signature of PPP Contracts
(Art. 52 of PPP Act)
Negotiations are restricted to the extent that they cannot result in an increase in pricing and shall not affect the non-negotiable terms and conditions specified as non-negotiable conditions in the invitation to tender, the financial structure, or the conditions in respect of which there were no reservations raised by the bidder in the bid (art. 52).

Rights and Obligations of the public partner
(Schedule 3 of PPP Act)
- Obligations related to the selection of the private party (art. 29-37, art. 39-41, art. 43, art 48-50, art 52(5) and (6))

Minimum contractual obligations required to be specified in a project agreement (PPP Act, Schedule 3)

Rights and Obligations of the private partner
(Schedule 3 of PPP Act)
- Obligations related to the bidding process (art. 44, 46, 52(5))
- Obligations related to the Project company: establishment (art. 59 (1), wind up or alteration (art 59 (3)); transfer of shares (art. 59(4); pledge (art. 59 (6))
- Financial obligations (art. 69)

Minimum contractual obligations required to be specified in a project agreement (PPP Act, Schedule 3)

Obligations of both public and private partners
(Schedule 3 of PPP Act)
Minimum contractual obligations required to be specified in a project agreement are listed (Schedule 3 of the PPP Act)
**Applicable Law**
- Laws of Kenya (art. 63 (1))

**Dispute resolution (Art. 63 of PPP Act)**
- Arbitration, or any other non-judicial means of dispute resolution, upon approval of Committee (art. 63(2))

### EXAMPLES OF PROJECTS STRUCTURED AS PPP

#### Energy
- Thermal Power Generation (80MG) (Gulf Power)
- Ngong Wind Farm (26 MW)
- Thika Power Plant (88 MW)
- Lake Turkana Wind Power (300 MW)

#### Urban Transports
- Kenya-Uganda Railway Line

#### Roads
- Nairobi-Thika Road
- 2nd Nyali Bridge in Msa

#### Ports
- 2nd Container Terminal Mombasa
- Kisumu Lake Port