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PROJECT APPRAISAL DOCUMENT

ON A

PROPOSED CREDIT

IN THE AMOUNT OF SDR 26.4 MILLION
(US$40 MILLION EQUIVALENT)

TO THE

REPUBLIC OF KENYA

FOR AN

INFRASTRUCTURE FINANCE AND PUBLIC-PRIVATE PARTNERSHIPS (IFPPP) PROJECT
ADAPTABLE PROGRAM LENDING PHASE I

October 2, 2012

Financial and Private Sector Development
Country Department AFCE2
Africa Region

CURRENCY EQUIVALENTS

(Exchange Rate Effective June 30, 2012)

Currency Unit	=	Kenya Shillings
KES 83.95	=	US$1
US$1.51	=	SDR1

FISCAL YEAR

July 1 – June 30

ABBREVIATIONS AND ACRONYMS

AFTFP/W/E	Africa Financial and Private Sector Development Department/ West Africa/ East Africa
AICD	Africa Infrastructure Country Diagnostic
APL	Adaptable Program Loan/Lending
BOO	Build-Own-Operate
BOOT	Build-Own-Operate-Transfer
BOT	Build-Operate-Transfer
CMA	Capital Markets Authority
CMU	Country Management Unit
CPS	Country Partnership Strategy
CSO	Civil Society Organization
DFID	Department for International Development (UKAid)
DMD	Debt Management Department
EA	Environmental Assessment
EAC	East African Community
EFO	Externally-Funded Output
EOI	Expression of Interest
ESIA	Environmental and Social Impact Assessment
ESMF	Environmental and Social Management Framework
ESMID	Efficient Securities Markets Institutional Development
ESMP	Environmental and Social Management Plan
ESW	Economic and Sector Work
FA	Financing Agreement
FBS	Fixed Budget Selection
FCCL	Fiscal Commitment and Contingent Liability
FCMNB	Non-bank Financial Intermediaries Group
FCMSM	Securities Markets Group
FEUFS	Financial Solutions Unit
FLSTAP	Financial and Legal Technical Assistance Program
FM	Financial Management
FSAP	Financial Sector Assessment Program
GDC	Geothermal Development Company
GDP	Gross Domestic Product
GEMLOC	Global Emerging Markets Local Currency Bond Program
GETPPP	Global Expert Team on Public-Private Partnerships
GoK	Government of Kenya
GSM	Global System for Mobile Communications
HDN	Human Development Network

IBRD	International Bank for Reconstruction and Development
ICA	Investment Climate Assessment
ICR	Implementation Completion and Results Report
ICT	Information and Communications Technology
IDA	International Development Association
IFC	International Finance Corporation
IIFCL	India Infrastructure Finance Company Ltd.
IIFF	Indonesia Infrastructure Finance Facility
IFMIS	Integrated Financial Management Information System
IFPPP	Infrastructure Finance and Public-Private Partnerships
IFR	Interim Financial Reports
IMF	International Monetary Fund
IPP	Independent Power Producer
IRR	Internal Rate of Return
KAA	Kenya Airport Authority
KCAA	Kenya Civil Aviation Authority
KeNHA	Kenya National Highways Authority
KeRRA	Kenya Rural Roads Authority
KENAO	Kenya National Audit Office
KPA	Kenya Ports Authority
KPI	Key Performance Indicators
KPAA	Kenya Ports Authority Act
KPLC	Kenya Power and Lighting Company
KURA	Kenya Urban Roads Authority
KWS	Kenya Wildlife Services
LCS	Least Cost Selection
LEGPS	Private Sector Development, Finance Legal Unit
M&E	Monitoring and Evaluation
MIC	Middle Income Country
MIGA	Multilateral Investment Guarantee Agency
MoF	Ministry of Finance
MTEF	Medium-Term Expenditure Framework
MTR	Mid-Term Review
NGO	Non-Governmental Organization
NUTRIP	National Urban Transport Improvement Project
OP	Operational Policy
ORAF	Operational Risk Assessment Framework
PAP	Project-Affected Person
PCN	Project Concept Note
PDMS	Public Debt Management Strategy
PDO	Project Development Objective
PER	Public Expenditure Review
PFI	Participating Financial Institutions
PFS	PPP Feasibility Study
PIM	Project Implementation Manual
PIU	Project Implementation Unit
PPA	Power Purchase Agreement
PPIAF	Public-Private Infrastructure Advisory Facility
PPOA	Public Procurement Oversight Authority
PPP	Public-Private Partnership
PPPSC	PPP Steering Committee
PPPS	PPP Secretariat

PREM	Poverty Reduction and Economic Management Network
PRG	Partial Risk Guarantee
PROCYS	Procurement Cycle Tracking System
PS	Permanent Secretary
PSC	Project Steering Committee
QBS	Quality-Based Selection
QCBS	Quality- and Cost-Based Selection
RAP	Resettlement Action Plan
RFP	Request for Proposal
ROC	Regional Operations Committee
RPF	Resettlement Policy Framework
RVR	Rift Valley Railways
SDN	Sustainable Development Network
SEA	Strategic Environmental Assessment
SIL	Specific Investment Loan
SSA	Sub-Saharan Africa
SSS	Single Source Selection
TA	Technical Assistance
TMEA	TradeMark East Africa
V2030	Vision 2030
VfM	Value for Money
VGF	Viability Gap Fund
WB	World Bank
WBG	World Bank Group
WBI	World Bank Institute
WHO	World Health Organization
WSP	Water and Sanitation Program

Regional Vice President:	Makhtar Diop
Country Director:	Johannes Zutt
Sector Director:	Gaiv Tata
Sector Manager:	Irina Astrakhan
Task Team Leader:	Yira Mascaró/Peter Mousley

REPUBLIC OF KENYA

Infrastructure Finance and Public-Private Partnerships (IFPPP) Project
Adaptable Program Lending Phase I

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Republic of Kenya

Infrastructure Finance and Public-Private Partnerships (IFPPP) Project
Adaptable Lending Program Phase I

PROJECT APPRAISAL DOCUMENT

AFRICA

AFTFE

Basic Information

Date:	October 2, 2012	Sectors:	Finance (30%); Private Sector Development (35 %); Public administration- Finance (35%),
Country Director:	Johannes Zutt	Themes:	Infrastructure services for private sector development (50%), Public expenditure, financial management and procurement (50%)
Sector Director	Gaiv Tata		
Sector Manager	Irina Astrakhan		
Project ID:	P121019	EA Category:	A - Full Assessment
Lending Instrument:	Adaptable Program Loan		
Team Leader(s):	Yira Mascaró/Peter Mousley		

Does the project include any CDD component? No

Joint IFC: No

Borrower: Republic of Kenya

Responsible Agency: Public-Private Participation Unit, Ministry of Finance

Contact:	Eng. Stanley Kamau	Title:	Director
Telephone No.:	254-20-225-2299	Email:	skkamau@treasury.go.ke

Project Implementation Period:	Start Date:	October 31, 2012	End Date:	June 30, 2016

Expected Effectiveness Date:	January 31, 2013
Expected Closing Date:	December 31, 2016

Project Financing Data(US$M)

[ ] Loan	[ ] Grant	Term: The credit has a final maturity of 40 years including a grace period of 10 years	
[X] Credit	[ ] Guarantee		

For Loans/Credits/Others

Total Project Cost (US$M):	40.00
Total Bank Financing (US$M):	40.00

Financing Source	Amount(US$M)
BORROWER/RECIPIENT	0.00
International Development Association (IDA)	40.00
Total	40.00

Expected Disbursements (in USD Million)

Fiscal Year	2013	2014	2015	2016	2017				
Annual	1.00	9.00	12.00	10.00	8.00				
Cumulative	1.00	10.00	22.00	32.00	40.00				

Project Development Objective(s)

The overall objective of this two-phase Adaptable Lending Program (APL) Program is to increase private investment in the Kenya infrastructure market across sectors and to sustain this participation over an extended period of time. This involves three key areas of development: (i) enabling environment; (ii) pipeline of potential projects; (iii) financing.

The specific objective of the APL 1 project is to improve the enabling environment to generate a pipeline of bankable Public-Private Partnership (PPP) projects.

Components

Component Name	Cost (USD Millions)
Institutional Support and Regulatory Reform	11.5
PPP Pipeline Preparation	20
Improvements to Fiscal Commitment and Contingent Liability Risk Management Framework	5
Project Management	3.5

Compliance

Policy

Does the project depart from the CAS in content or in other significant respects?	Yes [ ]	No [X]
Does the project require any exceptions from Bank policies?	Yes [ ]	No [X]
Have these been approved by Bank management?	Yes [ ]	No [ ]

Is approval for any policy exception sought from the Board?	Yes [ ] No [X]
Does the project meet the Regional criteria for readiness for implementation?	Yes [X] No [ ]

Safeguard Policies Triggered by the Project	Yes	No
Environmental Assessment OP/BP 4.01	X	
Natural Habitats OP/BP 4.04		X
Forests OP/BP 4.36		X
Pest Management OP 4.09		X
Physical Cultural Resources OP/BP 4.11		X
Indigenous Peoples OP/BP 4.10		X
Involuntary Resettlement OP/BP 4.12	X	
Safety of Dams OP/BP 4.37		X
Projects on International Waterways OP/BP 7.50		X
Projects in Disputed Areas OP/BP 7.60		X

Legal Covenants/Effectiveness Conditions

Name	Recurrent	Due Date	Frequency
Effectiveness Condition - Project Implementation Manual (PIM)		**Effective Date**	

Description

The Republic of Kenya has prepared and adopted a Project Implementation Manual (PIM) in form and substance satisfactory to the Association.

Name	Recurrent	Due Date	Frequency
Legal Covenants		**January 15, 2013**	

Description

Engage not later than January 15, 2013, or such other date as may be agreed by the Association, and thereafter at all times assign to the Project Implementation Unit (PIU), a procurement specialist, a monitoring and evaluation specialist, environmental and social specialist, and a PPP specialist, and such other staff as may be agreed with the Association; all said staff with qualifications, experience, and terms of reference satisfactory to the Association.

Name	Recurrent	Due Date	Frequency
Additional Events of Suspension			

Description

At any time before the Closing Date, the Recipient has, in the opinion of the Association, failed to apply sound environmental and social standards or measures in its management of PPP infrastructure projects in its jurisdiction that have commenced or been materially restructures subsequent to the date of this Agreement.

Team Composition

Bank Staff

Name	**Title**	**Specialization**	**Unit**
Yira Mascaró	Lead Financial Sector Specialist	Task Team Leader	AFTFE
Peter Mousley	Lead Private Sector Development Specialist	Co-Task Team Leader	AFTFW
Jade Ndiaye	Extended Term Consultant	PAD drafting	AFTFE
Victoria Delmon	Senior Counsel	PPP Legal aspects	LEGPS
Stephen Mukaindo	Counsel	Project Lawyer	LEGAF
Catiana Garcia-Kilroy	Sr. Security Market Specialist	Capital Markets	FCMSM
Jeffrey John Delmon	Sr. Infrastructure Specialist	Transactions and Financing	FEUFS
Gisela Durand	Consultant	Operational Adviser	AFTFE
Rania Zayed	Consultant	PPP Advisor	AFTFE
Serah Njoroge	Program Officer	Transactions	PPIAF
Gibwa Kajubi	Sr. Social Development Specialist	Social Development	AFTCS
Svetlana Khvostova	Operations Analyst	Environmental Specialist	AFTEN
Lucy Musira	Program Assistant	Admin/ Operations	AFCE2
Yeshareg Dagne	Program Assistant	Admin/ Operations	AFTFE
Irene Chacon	Operations Analyst	Operations	AFTFW
Dahir Warsame	Sr. Procurement Specialist	Procurement	AFTPC
Joel Munyori	Procurement Specialist	Procurement	AFTPC
Josephine Ngigi	Financial Management	Financial Management	AFTFM
Wolfgang Chadab	Sr. Finance Officer	Finance	CTRFC
Nevena Ilieva	Sr. Operations Officer	ORAF	AFTOS
Jutte Kern	Sr. Monitoring and Evaluation Specialist	Performance Framework	AFTDE
Josphat Sasia	Lead Transport Specialist	Transport	AFTTR
Kyran O'Sullivan	Senior Energy Specialist	Energy	AFTG1
Mitsunori Motohashi	Energy Specialist	Energy	AFTG1
Gokhan Akinci	Lead Investment Policy Officer	Special Economic Zones	CICIN
Isabel Neto	Senior ICT Policy Specialist	ICT	TWICT

REPUBLIC OF KENYA

INFRASTRUCTURE FINANCE AND PUBLIC-PRIVATE PARTNERSHIPS (IFPPP) PROJECT
ADAPTABLE PROGRAM LENDING PHASE I

PROJECT APPRAISAL DOCUMENT

I. STRATEGIC CONTEXT

A. Country Context

1. **The Republic of Kenya (Kenya) is facing economic challenges which may dampen growth in 2012, but it remains above its long-term average growth performance.** The combination of high food and fuel prices, the drought in the Horn of Africa in 2011, and the Euro crisis have weakened Kenya's external position. For 2012, the World Bank projects Gross Domestic Product (GDP) growth to recover slightly and reach 5.0 percent**.** This is lower than in 2010 but much higher than during the recent 2008/2009 crisis and above the 3.7 percent long-term average growth performance. If the positive trends continue, Kenya could return to the high growth momentum it experienced between 2004 and 2007, which will be necessary to achieve the goals outlined in *"Vision 2030"* (V2030) and the *Vision 2030: First Medium Term Plan (2008-2012).*

2. **Expected events in 2012/13 will be a defining moment in Kenya's history, while the world is coping with the continued effects of the global economic crisis.** The combination of national elections, the establishment of a new system of devolved government and the global economic crisis will make the next 12 months extremely challenging. At the same time, if Kenya weathers these challenges well, 2012/13 will be remembered as the period in which Kenya began to deliver on the promise of the new constitution.

3. **Political Issues. The August 4, 2010 passage of the new constitution for Kenya was a watershed moment.** The new constitution will bring about a number of changes to the political system in the short and medium terms, including in the structure of government and in the legal and judicial systems. The campaign for the next general election has informally begun, with several high-level figures said to be interested in running for president.

4. **The overall poverty rate in Kenya based on the national poverty line is 46.6 percent, and the extreme poverty rate is 20 percent (as noted in the *Poverty and Inequality Assessment, 2009*).** These figures are based on the most recent (2005-06) household consumption survey and will be updated using a new survey planned for 2011-12. Poverty is higher in rural areas (50 percent) compared to urban areas (34 percent) and far higher among female-headed households. Overall, income inequality is high in Kenya: the Gini coefficient of 45.2 is similar to that of Rwanda and Uganda and above those of two of its other neighbors, Tanzania and Ethiopia (34.6 and 30 respectively).

5. **Poverty in Kenya is closely associated with poor infrastructure, low income diversification, lack of access to credit and inequality in access to land.** The most important drivers for households falling into poverty are various forms of shocks, among them, food price inflation, droughts and floods, illness and death in the family, and death of

livestock. Key factors for breaking the cycle of poverty *are access to key infrastructure* such as roads, *household income diversification*, and *access to financial services* (*Poverty and Inequality Assessment, 2009*).

B. Sectoral and Institutional Context

6. **Infrastructure has been consistently identified as a top constraint to growth and to doing business in Kenya.** Recent estimates[1] indicate that annual per capita growth could potentially increase by three percentage points if the country's infrastructure endowment could be brought to a middle-income country (MIC) average. Having made significant progress in infrastructure through the mid-2000s, Kenya boasts infrastructure indicators that are higher than those of most low-income countries in Africa, but well below those of Africa's MICs. The Africa Infrastructure Country Diagnostic (AICD) report concludes that Kenya faces a large infrastructure deficit, which requires sustained expenditure of almost US$4 billion per year over the next decade (about 20 percent of GDP).[2]

7. **Kenyan businesses are particularly affected by the lack of infrastructure, identified as a top constraint for doing business (see Investment Climate Assessments (ICAs) 2007).** Transport is the main infrastructure bottleneck affecting Kenyan firms, including the Mombasa Port, with issues related to terminal capacity and the need to enhance road and rail interfaces to improve efficiency. Electricity is another major constraint affecting Kenyan firms and the power sector needs to double its current capacity over the next decade.[3] The last ICA reports indicate that more than half of the manufacturing firms surveyed reported transportation as a major problem (direct and indirect costs) as of 2007, increasing from 37 percent and 48 percent in 2003, respectively. In contrast, the Information and Communication Technologies (ICT) sector has been substantially modernized, generating most of the infrastructure-related economic growth in the 2000s. Major institutional reforms in ICT have allowed a revolution in the sector and as a result, Kenya has achieved one of the highest Global System for Mobile (GSM) communications coverage rates in Africa (over 90 percent of Kenya's population lives within range of a GSM signal).

8. **Government strategies and plans recognize and seek to solve Kenya's lack of sufficient infrastructure.** *V2030*, Kenya's long-term development strategy, seeks to transform Kenya into a MIC by the year 2030.[4] The strategy sees infrastructure as a key pillar to obtain this goal and has identified around US$23 billion in investment required through FY2013 to address the infrastructure deficit, about 80 percent of which was expected to come from PPPs according to the Government's ambitious plan. While this target is extremely aggressive, and has not been achieved anywhere in the world, it evidences the importance of PPPs for the Government and the critical nature of the proposed IDA operation. Kenya's First Medium Term Plan (2008-2012) for the implementation of *V2030*focuses on concrete activities, programs, and projects to improve and modernize the

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[1] See recent Africa Infrastructure Diagnostic Report, "Kenya's Infrastructure: A Continental Perspective" (World Bank, March 2010)

[2] For instance, meeting the growing demand for power and improving the reliability of the power supply would require an estimated US$1 billion per year and meeting the Millennium Development Goals on water and sanitation would require investments of almost US$2 billion a year.

[3] About 85 percent of firms surveyed experience losses due to power interruptions (higher than at comparator countries) and 2 out of 3 firms have generators, which are costly to obtain and operate. As of 2007, power disruptions cost Kenyan firms about 7 percent of sales (indirect costs) while spoilage during transportation generate losses of 2.6 percent of sales (double those observed in South Africa, India and China).

[4] The strategy covers the period 2008-2030 and was developed through a participatory and inclusive process.

country's infrastructure, which is conceived as a key "foundation for national transformation." The plan includes: increased infrastructure investment (in the road network, water and sanitation, rail, sea and air transport and energy supply services); the legal framework to support PPPs; and institutional reforms in transport. It also includes actions and policies in capital markets to create the enabling environment for long-term finance by developing a more liquid long-term Government debt market, market architecture reforms and regulations that support long-term instruments such as infrastructure bonds and asset backed securities. Reforms in the pension and insurance sectors designed to foster further growth in both sectors as well as a stronger involvement in long-term finance are also under consideration.

9. **Kenya already spends a sizable amount (US$1.6 billion per year) to meet its infrastructure needs, but financing the deficit will be a challenge.**[5] The private sector accounts for about half of infrastructure investment (90 percent of which is in ICT), followed by the public sector and development aid (each cover a quarter). Kenya's AICD report estimates that Kenya's infrastructure funding gap is about $2.1 billion per year (approximately 11 percent of GDP). The options for addressing the funding gap include raising additional resources, adopting lower-cost technologies, or adopting less ambitious targets for infrastructure development, while continuing to prioritize infrastructure investments.

10. **The FY2012 budget reaffirmed infrastructure as a priority and the Government has restated that PPPs would be a key financing option to be deployed more systematically.** Aside from a series of Independent Power Producers (IPPs) in the energy sector, dating back several years, and the recently restructured Rift Valley Railway (RVR) concession,[6] most segments of the Government of Kenya (GoK) have little experience with PPPs. Moreover, financial support to PPPs from the sovereign government (e.g., revenue guarantees) has been ad hoc, raising the need for systematic contingent liability management, while some progress is ongoing with 4-6 IPPs. While PPPs provide private financing in traditionally publicly-financed infrastructure investments, PPPs are also a service solution, enabling governments to bring the benefits of private management to public services, typically leading to significant improvements in service quality and coverage.

11. **Kenya's capital markets rank third in size in SSA (after South Africa and Nigeria) and have promising prospects, but require structural changes to provide sustainable long-term funding.** The main challenges are: i) the development of a liquid government long-term yield curve that could serve as a reference to non-government fixed income securities; ii) addressing regulatory constraints to issue efficiently and at lower costs corporate and asset backed securities to institutional investors; iii) supporting growth in the pension and insurance sector, as well as accommodating their investment policies to planned institutional offering regimes; and iv) making available local currency funding products at suitable tenures to finance local currency generating pipeline. The share of domestic government debt over total debt shifted from 30 percent in 2000 to 54 percent as of end-2010 and has extended maximum tenors from 6 years in 2002 to 30 years in 2011, including a

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[5] According to AICDs 2010 report about 65 percent of the total is allocated to capital expenditure and 35 percent to operating expenditures. Operating expenditure is entirely covered from budgetary resources and payments by infrastructure users. This analysis is based on 2006 data.

[6] Improvements in the rail sector were expected to emerge with the concession of the Kenya Railway in 2006 under the joint Kenya-Uganda Rail Concession, but it faced problems. Notably, this was successfully restructured in 2010. See Section D, Lessons Learned for Case Study.

series of the so-called "infrastructure bonds."[7] However, secondary markets are shallow, preventing the consolidation of a reliable medium and a long-term government yield curve. Corporate bond markets, though revamped extensively since 2007, represent only 2.8 percent of GDP as of end-2011. The banking sector dominates the investor base holding 50 percent of Government debt and 25 percent of corporate debt, yet more diversified than most African countries. Nevertheless, there is a relatively large and growing institutional investor base (mutual funds, pension funds, and insurance companies) with assets under management at 25 percent of GDP as of end-2011. Pension fund and insurance companies are already oriented towards non-government long-term funding with holdings of 68 percent of outstanding corporate bonds in 2011.

12. **The GoK is seeking to create the appropriate system in the local capital market enabling it to become a sustainable source of long-term financing for infrastructure projects.** This strategy is consistent with V2030 objectives to boost savings, support private contractual savings arrangements (pensions and insurance) and enhance the role of capital markets to finance growth. Also, more developed debt markets support financial stability, even in times of stress, as experienced by emerging market economies with relatively efficient debt markets during the 2008 crisis. A more consolidated long-term market would support Kenya in both financing development and helping manage events of financial stress. Additionally, the strategy draws lessons from ongoing developments in both advanced and emerging market economies to leverage capital markets as a major source of financing for infrastructure and other PPP projects, including pension funds as main investors. Recent interest in Kenya's PPP sector by foreign investors would also provide an opportunity for knowledge and skills transfer. Kenya would be required to adapt lessons learned with different structures and instruments used in other regions (e.g. infrastructure funds, private equity funds, infrastructure bonds, and Sharia-compliant instruments) to the specific funding needs of projects and the profile of investors.

13. **The GoK is aware of the need to implement reforms to promote the development of a robust market for PPP financing to affect substantively broader-based growth in infrastructure and social investment across sectors in a manner that augments Value for Money (VfM) and enhances governance.** The GoK's first steps to strengthen the legal and institutional enabling environment involved adoption of the Public Procurement and Disposal (Public-Private Partnerships) Regulations in 2009 (PPP Regulations) issued under the Public Procurement and Disposal Act of 2005. The GoK has since published a National PPP Policy, in effect since April 2012. This policy seeks to further strengthen the legal, institutional and operational framework to achieve broad PPP market development objectives. The GoK intends to give legislative effect to this framework through a PPP Bill that was submitted to Parliament on May 4, 2012. It entails the following key Governance and VfM reforms and initiatives:

- **Institutional Governance:** The PPP regulations established a new PPP Steering Committee (PPPSC) and a PPP Secretariat (PPPS). These entities are tasked with driving a technical, rigorous project development process and providing high-level oversight of the Policy's implementation, respectively. The PPPSC is a Permanent Secretary-level body chaired by the Permanent Secretary (PS) of the Ministry of Finance (MoF) and responsible for policy implementation and oversight of pipeline approval. The PPPS is

[7] "Infrastructure Bonds" are Government bonds expected to fund a list of infrastructure projects provided in the prospectus, but not formally attached to them.

considered to be the technical body of the PPPSC, headed by a PPP Director who reports to the PS of Finance as chair of the PPPSC. The PPPS will be responsible for coordinating with line ministries, from the identification and development stage of PPP projects until financial close. The PPPSC and PPPS will be the main partners and implementing agencies for the proposed IFPPP project.

- **Fiduciary Governance:** The GoK will, as part of the PPP Policy, implement significant reforms to the management of fiscal commitments and contingent liabilities associated with PPPs as well as develop new fiscal instruments - such as the planned Viability Gap Fund (VGF) for transparent financing and reporting on Government funding of PPPs.

- **VfM:** The PPP Policy places great importance on fostering PPP procurement through competitive processes, based on a high level of technical due diligence. It seeks to improve the ability of all governmental agencies to prepare, procure and implement quality PPPs more efficiently and consistently. This entails the development and training of specialized units (referred to as "Nodes" in the Policy) within line ministries to undertake this responsibility.

14. **The effectiveness of these key institutional and technical innovations, which are to be supported under the IFPPP, will be further strengthened by the project's contribution to enhanced capital markets for infrastructure financing.** These changes will – over the longer run – support the creation of new sources of domestic finance for infrastructure development and PPPs in other sectors through the lengthening of yield curves, the growth of corporate bond markets, and the "crowding in" of pensions and insurance funds to infrastructure and other investments, while preserving prudential considerations of these institutional investors.

15. **In addition, the World Bank Group (WBG) has been providing technical and logistical support to improve the investment climate and the financing framework (including PPPs) for infrastructure and other sectors in Kenya over several years.** The proposed project will build on ongoing technical assistance being delivered by a range of Bank teams and external partners.[8] Recent work includes: (i) a 2009 policy note based on an earlier comprehensive study funded by the Public-Private Infrastructure Advisory Facility (PPIAF) and other analytical work on PPP options in various infrastructure and social sectors; (ii) guidance on preliminary screening of PPP proposals and input on a potential pipeline of PPP projects (in close collaboration with sector colleagues); (iii) ad-hoc advice on PPP regulatory framework early on, a legal review in 2010, and comments on drafts of the PPP bill and policy; (iv) analysis of public expenditures review (PER); (v) PPIAF funded semi-resident advisor to support the PPPS in place; (vi) technical assistance via the Financial and Legal Technical Assistance Program (FLSTAP) and analytical underpinnings via the FSAP update on capital markets, insurance and pensions together with the Capital Markets

[8] These include: the Africa Finance and Private Sector Development (AFTFP) Unit in collaboration with Global Expert Team on PPPs (GETPPP); the Private Sector Development, Finance and Infrastructure Unit (LEGPS), Financial Solutions Unit (FEUFS); Social Development Network (SDN) including the Public-Private Infrastructure Advisory Facility (PPIAF); Efficient Securities Markets Institutional Development (ESMID); Global Emerging Markets Local Currency (GEMLOC); International Finance Corporation (IFC); Banking and Debt Management , Securities Markets Group (FCMSM); Non-bank Financial Intermediaries Group (FCMSM); Poverty Reduction and Economic Management (PREM); and the Water and Sanitation Program (WSP). Among external partners, TradeMark provided an externally-funded output (EFO) to speed up the preparation of this project and discussions are at an advanced stage for DFID to support IFPPP preparation and implementation.

Practice of the Finance and Private Sector Development Department[9]; and (vii) technical assistance via FLSTAP together with WB Treasury, on debt management to the Debt Management Department (DMD) located in the MoF and WBG guidance to the DMD on analysis of loan guarantees.

16. **One of the most crucial elements contributing to successful PPPs is the early identification of a strong pipeline of PPP projects.** To help in this effort, the FLSTAP supported a consultancy for a firm to undertake a PPP pipeline analysis. As reported in the "Pipeline Analysis of Public-Private Partnership Projects in Kenya: Project Screening and Prioritization Report", a methodology was developed together with the GoK with four steps: identification, screening, scoring, and ranking.

- **Identification:** The identification step is based on questionnaires sent to 125 ministries, agencies and units, following the PPP Screening Guidance Note prepared by the PPPS covering six categories of questions: Policy & Planning, Public Sector Involvement, Project Specifics, Precedence, Risks, PPP candidate. The consultants held a stakeholders workshop in mid-February 2012 based on responses received.[10]
- **Screening:** Out of these projects, the PPPS together with the IFPPP team undertook a screening exercise and agreed on a subset of about 14 projects to be the long list of possible PPPs that could be supported by the IFPPP (see Annex 9). Key input and criteria used for this screening included: (i) further detailed information provided by the Ministries; (ii) the suitability of projects for IDA support (e.g. excluding prisons housing PPPs); (iii) considerations of potential issues arising from implementation of the Constitution (e.g. on water sector projects that may be affected by this process); (iv) ongoing WBG support including "soon-to-start" or ongoing feasibility studies of prospective projects (e.g. two projects being structured by IFC and NUTRIP); and (v) sectoral relevance for the IDA portfolio;
- **Scoring**: this step used a multi-criteria evaluation framework based on critical success factors for PPPs. Also, weights of indicators were developed for each of the criteria leading to projects that would be considered acceptable for PPP implementation and expected to provide VfM.
- **Ranking**: this step ranked 140 potential PPP projects based on the overall weighted score**.**

17. **Based on the above, the GoK then selected six possible "first mover" projects taking into account time considerations as well as potential readiness, which were**

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[9] This includes support to create the enabling environment for long-term finance through capital markets. Recent work has included a detailed action plan and implementation support (ongoing) to lengthen the Government yield curve; legal and regulatory assistance to reduce issuance costs of private fixed income securities; the design of a model for issuance and regulation of asset backed securities (ABS); and the design and implementation (ongoing) of an over-the-counter secondary market trading architecture for fixed income securities.

[10] The *identification* step covered all projects from questionnaire received (close to 200), followed by meetings with key parties, consideration of V2030 flagship projects, and consultation with other stakeholders (including private sector entities). The *Screening* step assessed eligibility for PPP implementation with criteria for it to be non-eligible clearly defined ex-ante, but not including lack of information, as this could be driven by lack of sufficient understanding of PPP concepts or misinterpretation of the respective questions. Out of the resulting 171 projects, about 40% were clear-cut PPP candidates, while 43% had information insufficiently detailed. The *Scoring* step 8 criteria (status, scope, political will, cost recovery, risk profile, marketability, replicability, and size) and a set of indicators to support the scoring under each criterion were clearly identified in the consultant's report to maximize transparency and objectivity. The *Ranking* step involved ranking close to 140 potential PPP projects based on the overall weighted score.

submitted to the World Bank to be developed with funding from the IFPPP project. The six potential transactions are listed below (further details are provided in Annex 2), with one change that resulted from further assessment of readiness undertaken during appraisal for the ICT project listed. The letter also includes two other transactions that are currently receiving IFC support (at early stages). It is also noted that all 14 long-listed projects are expected to receive some support (See Annex 9, which includes 16 projects, adding the two being supported by IFC).

18. The second phase of the consultancy will entail further analysis of the "first movers" to help move the preparation process forward (ongoing) and, to the extent possible, prioritize transactions. It is also expected that in the course of APL 1 these "first movers" may change, based on the outcome of feasibility studies, private sector demand, and/or political considerations.

Table 1: PPP "First-mover" Projects

Project Name	Contracting Authority	Estimated Cost (US $ Million)	PPP Type	Project Description
Nyali Bridge	KeNHA	TBC	Concession	Construction of a bridge linking Mombasa island & Northern Coast.
Dualling of Mombasa-Nairobi-Malaba Road	KeNHA	TBC	concession, public investment	Upgrading & development of the Northern Corridor (or portions of it). 150 KM of International trunk road linking Mombasa-Uganda. Three potential segments include: Mombasa-Mariakani (60KM), Naivasha-Nakuru (45KM), and Nakuru-Mau Summit (45KM).
Jomo Kenyatta Airport (Ancillary Services)	KAA	500	concession, public investment	Government decision on new terminal pending; PPP expected to operate and provide additional facilities (parking, hotel, conference center).
Geo-Thermal IPP – Menengai	KPLC/GDC	1600	BOO	The steam produced by GDC will be sold to investors who will finance, construct and operate the power plants.1st phase will be 400 MW (in close coordination with team preparing IDA energy project).
Government Shared Service center/ National Land Information System	Min ICT	360	BOOT	Establishment of a web portal to provide services to citizens countrywide. Design implementation framework developed.
Special Economic Zone (SEZ), Dongo-Kundu-Mombasa	KPA/Min Trade	TBC	Not yet determined	Development of SEZ on a 2000km^2 land parcel, based on Singapore development model, including PPP aspects.

19. **While this represents the "First Mover" list of the GoK highest priority projects for IFPPP support, it is recognized that this list may change over time** for technical, commercial reasons, etc., or because other priority projects are identified. The IFPPP will also be providing ongoing support for upstream screening of potential projects under

consideration to be included in the Government's PPP project pipeline. This pipeline development will be done in close collaboration with the GoK and build on prior rounds of consultation with key line ministries. Among ongoing WBG investments, partial risk guarantees (PRGs), and advisory services, the following efforts are expected to be key for the development of the pipeline particularly for possible project financing to be provided under the APL 2: (i) further IPP initiatives; (ii) the recently approved National Urban Transport Improvement Project (NUTRIP); (iii) IFC advisory for PPPs, including on Kenyatta University hostels (approved for advisory transaction in December 2011) and the Mombasa Convention Centre (preparations for advisory transaction ongoing); and (iv) initial discussions on options for the Jomo Kenyatta International Airport (to MoF) coordinating with technical advice from the project team to KAA.

C. Higher Level Objectives to which the Project Contributes

20. **The 2011 Africa Regional Strategy *"Africa's Future and the World Bank's Support to it"* is based on two pillars: (i) Competitiveness and Employment; (ii) Vulnerability and Resilience.** Under the first pillar the World Bank aims to improve the enabling environment to strengthen competitiveness and to deploy innovative financing instruments to crowd in private sector investment and expertise. These are also the higher level IFPPP goals.

21. **At the country level, the Kenya Country Partnership Strategy for 2010-2013 supports the Government of Kenya *V2030* through a three-pronged program** focusing on: (i) unleashing Kenya's growth potential; (ii) reducing inequality and social exclusion, and; (iii) managing resource constraints and environmental challenges. The first growth pillar highlights the need to improve core infrastructure and the mobilization of private investment in support of this outcome. The April 2012 CPS Progress Report reinforces the Bank's commitment to develop more PPPs to meet infrastructure and other sector service gaps and the need for more private investment in the core infrastructure and other sectors. The Progress Report emphasizes the importance of using Bank instruments to specifically to leverage additional private sector finance, working in collaboration with IFC, MIGA, the WBI as well as other international bilateral and multilateral donor partners.

22. **The recently approved WBG *"Transformation through Infrastructure"* Strategy Update for 2012-2015 identifies PPPs as an important source of financing and expertise for infrastructure development**. The strategy includes Kenya as one of the "Tier 1" countries to be supported through joint World Bank-IFC support for PPP scale-up in the country. The IFPPP project is a key aspect of the WBG support to this scale-up effort.

23. **The IFPPP project contributes to these regional, country-level and sector strategic World Bank priorities** through its support to a central agency-led, multi-sectoral policy initiative designed to expand and support the PPP market in the country. The project, which is referenced in the Updated CPS Results Framework in the Progress Report, will also provide a vehicle through which the different agencies of the WBG and other donor partners can deepen their collaboration in support of the Government's PPP objectives.

II. PROJECT DEVELOPMENT OBJECTIVES (PDO)

24. **The overall objective of this two-phase APL Program is to increase private investment in the Kenya infrastructure market across sectors and to sustain this participation over an extended period of time.** This involves three key areas of

development: (i) enabling environment; (ii) pipeline; and (iii) financing. These three areas are inter-related. Pipeline development is dependent on the enabling environment and financing of the pipeline, but the momentum to achieve these changes is itself a function of success in taking some early projects to market. This is key to policy credibility, i.e., that well-developed deals with substantial public benefit can be done through transparent and cost-effective processes, as set out in the GoK's PPP Policy.

25. **The APL Program is proposed in view of the inter-relatedness of these three key policy elements and the sequencing challenges that they pose.** This will enable the World Bank to best support the Government to build on initial enabling environment reforms and a targeted approach to pipeline development and then draw on additional project financing under APL 2.

26. **The Key Performance Indicators (KPIs) for the overall APL program will consist of**: (i) the number of PPP projects taken to financial close; and (ii) increased levels of private sector investment mobilized for infrastructure development. The specific targets for these KPIs will be developed under APL 1 and reflected in the PAD of APL 2.

Project Development Objective

27. **The objective of APL 1 is to improve the enabling environment to generate a pipeline of bankable PPP projects.** On the basis of progress made during APL 1 and fulfillment of triggers as stated in paragraph 49 below, APL 2, tailored to the specific project financing needs of the pipeline, will be initiated.

PDO Level Results Indicators

28. **As reported in Annex 1, the APL 1 project will result in**: (a) a pipeline of well-designed and bankable projects including three targeted "first mover" projects ready for market; (b) PPP regulations agreed with MoF, further to the passage of the PPP Bill currently before Parliament; (c) a regime for management of PPP fiscal commitments and risks being established and made operational; and (d) regular issuance of longer-term benchmark government notes that will in turn lengthen the yield curve against which longer-term maturity debt can be provided for infrastructure financing.

Project Beneficiaries and Stakeholders

29. **PPPs involve a range of stakeholders from public and private sectors, as well as the wider citizenry. More specifically**:

- The public sector, covering central agencies, line ministries and at agencies at the sub-national level. The public sector will have contractual and fiduciary obligations to fulfill under concession agreements that can extend to an excess of 20 years;
- The private sector, covering both concessionaires and their sub-contracted companies and financial partners;
- Citizens in five roles: (i) as end-users of PPP service provides; (ii) as taxpayers contributing through the government budget to the financing of the projects; (iii) as providers of labor and other services to the project; (iv) as investors channeling long-term savings such as pension funds to the financing of the projects; and (v) as members of communities for whom safeguards issues may arise in regard to specific PPP projects;

- Civil Society Organizations (CSOs) with different social, community, safeguards and other specific interests related to project development and implementation, which have an oversight function in the form of their "third party" role in monitoring and evaluating specific transactions.

30. **The ultimate beneficiaries of the technical assistance component of the IFPPP will be the users (enterprises and the population in general) of the new/improved infrastructure services provided under an enhanced governance framework.** One main output of the proposed project is an improved PPP framework which, once set up, will be used to identify, prioritize and implement necessary infrastructure projects to enhance the competitiveness and growth potential of firms and improve the well-being of Kenyans, as the Government is better able to provide public services and works leveraging private sector resources (including financial and managerial).

31. Further details on PDO and intermediate results indicators are provided in Annex 1.

III. PROJECT DESCRIPTION

32. **This IFPPP project is proposed as a US$40 million first phase of a two-phase APL project. The estimated budget for APL 2 is an additional US$90 million.** The program will assist the GoK to increase the levels of service and quality for targeted infrastructure and other social services by mobilizing private sector participation through a PPP model. Leveraging greater volumes of private sector investment in infrastructure provision is a critical end-objective for the overall program.

33. **The value added of this project derives from the governance, VfM and pipeline growth impacts that it is designed to bring about**, as detailed in paragraph 13, as well as improvements in the financial sector, including the development of the environment to regularly raise funds in local currency through local capital markets. APL 1 is designed to increase GoK's capacity to facilitate private sector participation through legal, regulatory and institutional reforms and through financing project preparation, transaction advisory services, and evaluation of projects to foster market-readiness of prospective projects. Subject to the fulfillment of triggers indicating the establishment of key elements of an enabling environment and the development of a soundly-appraised pipeline of robust projects for PPP financing, APL 2 can commence. In addition to any ongoing technical assistance required, APL 2 would provide catalytic financing through one or a combination of financial intermediary lending, a Viability Gap Fund (VGF) and/or parallel guarantee mechanisms or other financing mechanisms (to be identified) to assist in bringing bankable transactions with high public priority to financial close. Ongoing analytical work complementing APL 1 will further assess the VGF and other possible financial instruments, in light of capital markets development objectives but also in terms of the type of financing needed to bring targeted PPPs to financial close.

34. **By helping to strengthen the PPP enabling environment framework, the IFPPP APL 1 will assist the GoK to develop a solid foundation to systematically prepare PPPs and realize the benefits of PPPs more effectively.** This would foster increased private investments in infrastructure, increased employment opportunities, improved service delivery to enterprises and the population in general, improved fiscal impact on government from better project preparation, more balanced risk allocation, increased transparency, wider quality control, greater efficiency, and enhanced financial sector support. This framework

will enable an increase in the availability and quality of infrastructure in different sectors to boost enterprise growth and productivity and improve the well-being of Kenyans.

35. **The APL instrument is particularly well-suited to support the development of the Kenyan PPP market as it allows for support to upstream advisory and technical assistance, while avoiding the costs and commitment exposure risks that would be associated with the approval of specific project financing**. APL 2 financing only comes on stream when the enabling environment is strengthened through passage of the PPP law and regulations, establishment of institutional arrangements for the different financing instruments under consideration, and the preparation of PPP Feasibility Studies (PFSs) for market-ready transactions. This two-phase approach provides an incentive for the public sector to develop "National Policy-compliant" projects that would potentially be eligible for IDA financing under APL 2. It also signals to private sector the World Bank commitment to provide financing for future PPP projects.

36. **This approach takes into account lessons learned from recently-approved PPP operations in Africa (Nigeria and Ghana) and recent IBRD infrastructure financing projects in India and Indonesia.** The project will build on ongoing technical assistance to the infrastructure and PPP framework in Kenya, as described above. Project preparation has been carried out in close cooperation with IFC, MIGA and PPIAF and external partners (including TradeMark and DFID) in order to maximize synergies and leverage expertise.

37. **The overall IFPPP APL project (comprising APL 1 and APL 2) is expected to be a US$130 million program, structured around TA and 2-3 investment instruments**, comprising this US$40 million IFPPP APL 1 (Components 1, 2, 3, and 4) and a subsequent US$90 million IFPPP APL 2 for investment support to individual PPP projects. Subject to successful progress on APL 1 and compliance with the triggers, APL 2 may provide infrastructure financing to the public and private sides of a PPP project through a set of instruments to be assessed during APL 1 and based on the specific pipeline of projects. Instruments could include: (i) a Viability Gap Fund to provide public capital to fill funding gaps required to facilitate infrastructure PPPs and (ii) an additional financial instrument to be identified by the World Bank and GoK in APL 1 (instruments under consideration include potential financial intermediary lending that will provide long-term debt financing for eligible financial intermediaries, guarantees, or other capital market- related instruments). The goals and objectives of APL 2 will be developed during APL 1.

A. Project Components

38. **Component 1: Institutional Support and Regulatory Reform.** The budget is US$11.5 million. This allocation was established based on an assessment of needs and lessons learned from prior technical assistance projects in Kenya, particularly the FLSTAP. Parallel/coordinated support from other donors is likely (e.g., the U.S. Treasury and PPIAF are currently also providing advisory support to the PPP Secretariat, TradeMark with preparation support, and DFID with possible preparation support and subsequent investment funds for the Viability Gap Fund).

39. *Sub-Component 1A: Support to PPP Institutions.* This sub-component will provide comprehensive support for the establishment and sustainable functioning of the PPPSC, the PPPS and other entities mandated by the GoK to implement its PPP program (e.g., PPP Nodes in line ministries and the funds discussed in Component 3). Support will focus on

coordination of project selection, development and implementation among these different entities to help improve the institutional framework. This support will include:

- Technical assistance for activities in the PPPS and Nodes such as policy work, sector analyses, embedded consultancy services (including resident advisory services), investment planning, financing and analysis (both public and PPP) work, and other PPP-related advisory support;
- PPP-specific training for key GoK stakeholders on both broad and sector-specific topics. This includes resources for in-house training, workshops, study tours, and courses for both Central Agencies and PPP Nodes in the line ministries;
- Public awareness campaigns and investment conferences to manage the launch of the PPP program, including press releases, media coverage, workshops for stakeholders, coordination of PPP conferences with major conference organizers, a website for the unit, and an investment workshop for private sector partners who have expressed interest to prequalify or bid for PPP projects; and
- Equipment and operating costs of the PPPS, including international communication, work supplies and overhead.

40. *Sub-Component 1B: Legal and Regulatory Reform.* This sub-component will support further policy dialogue and design on the legal and regulatory framework for PPPs, including the implementation of the PPP Policy, the PPP Law and regulations, and other laws and regulations that have an impact on and/or create constraints on the success and sustainability of PPP projects, including the constitution, environmental laws, labor and safety laws and sectoral laws, as needed. This would build upon ongoing work delivered by the Bank and others.

41. *Sub-Component 1C: Institutional Development for Financial Products and Approaches to PPP.* This sub-component will support the Government as it assesses and develops the different institutional arrangements necessary for the management of the prospective financing instruments to be supported under the APL 2. The sub-component will include: assessment of feasibility and, if confirmed, operating requirements for the prospective VGF; guarantee instruments; infrastructure funds; and financial intermediary lending facilities/instruments under consideration. It will also include technical assistance to create the environment for the use of local capital markets to channel long-term savings (e.g. pension fund and insurance) into bankable infrastructure projects. These assessments would be undertaken in close coordination with the development of targeted "lead transactions" to ensure that the IDA financing addresses the key financing gaps needed to leverage private investment for specific investments.

42. **Specific capital markets work will include:** i) further support to ongoing efforts, also supported by the specialized Global Emerging Markets Local Currency (GEMLOC) and Efficient Securities Markets Institutional Development (ESMID) World Bank programs as well as the FLSTAP project to lengthen the Government yield curve and develop more liquid government bond markets; ii) approval by Cabinet for submission to Parliament of the Capital Markets Authority Bill 2011 and Securities and Investment Bill 2011; iii) regulatory reforms enabling the development of securitization instruments, instruments for investors, and investment rules enabling broader participation by pension funds and insurance companies in infrastructure projects and/or funds; iv) institutional capacity building for infrastructure financing by institutional investors and intermediaries; v) the development of a policy framework for potential new infrastructure funding vehicles (e.g. infrastructure fund

and sharia-compliant capital markets instruments). These issues would all be systematically addressed in the financial intermediary operational work that would need to be undertaken as an input to the preparation of APL 2.

43. **The project will also finance a number of activities to assist the Government in its efforts to develop an issuance strategy aligned with the existing debt management strategy and the goal of extending the yield curve.** These include:

In the Primary Market:

- Liability management program for benchmark building (switches and buy backs of outstanding issues);
- Enhanced auction process (transparency, enhanced efficiency, and revised rules to focus on wholesale participants); and
- Primary Dealer program to support benchmarks across yield curve.

In the Secondary Market:

- Implementation of an over-the-counter market (outside the Exchange); and
- Upgrades on clearing and settlement to support secondary market liquidity.

44. **Component 2: PPP Pipeline Preparation.** This component for US$20 million will assist the GoK (particularly procuring ministries and the Nodes that are to be established as centers of PPP expertise within the procuring ministries) in ensuring that the first projects to come before the PPPSC and PPPS are well-prepared, "bankable," and take into account lessons learned from previous PPP projects, the privatization program in Kenya, and regional and international experience. Funds will be available to engage feasibility consultants, transaction advisors, lawyers and other consultants as necessary to properly prepare projects for tender as PPPs. This would include the financing of safeguard assessments. Initial demand for funds under this component has been gauged by the PPP pipeline consultancy being supported under the FLSTAP, consultations by the team with various Government counterparts and, most importantly, coordination within the WBG including IFC and MIGA.

45. **Component 3: Improvements to Fiscal Commitment and Contingent Liability (FCCL) Risk Management Framework.** The capacity of GoK for the assessment, monitoring and management of fiscal commitments and risks associated with PPPs is limited. This component for US$5 million will provide support and guidance to the MoF and other relevant agencies on the fiscal commitment and risk framework associated with infrastructure, with an emphasis on contingent liabilities from PPPs. Such support includes: (i) development of operational framework and guidelines and implementation support (including resident advisors) for the assessment, monitoring, managing, reporting and disclosure of fiscal risks associated with PPPs; (ii) specific technical and advisory support (including resident advisors) for fiscal risk assessment work on projects; (iii) training and capacity building and related advisory work on identification, valuation and assessment, reporting, and management of fiscal risks; (iv) equipment and other software for Fiscal Commitment and Contingent Risk Information Management Functions. This component would collaborate closely with the ongoing GoK Government Integrated Financial Management Information System (IFMIS) reform.

46. **Component 4: Support for Program Management.** A Project Implementation Unit (PIU) is established within the MoF that will provide the fiduciary, safeguards and Monitoring and Evaluation (M&E) expertise required for the implementation of the IFPPP

project in accordance with Bank policies and requirements. This component for US$3.5 million may include equipment, operating costs, organizational and systems development, training, capacity building and technical assistance.

B. Project Financing

47. **The proposed operation will use the APL instrument and may also incorporate potential viability gap financing, financial intermediary lending and/or parallel guarantee instruments in APL 2**. An APL is best suited to respond the Government's ongoing efforts to expand its ability to develop and manage PPPs while providing funding at a later stage when projects are ready for concessioning. It also demonstrates clear World Bank Group commitment to support the Government's PPP agenda over the long term where good progress is evidenced and Government commitment is maintained. This will be an important signal to potential investors in Kenyan PPPs. The total estimated size of the program is US$130 million, with the four-year APL 1 amounting to US$40 million.

Table 2: Project Cost and Financing

Project Components	Project cost	IDA Financing	% Financing
(1) Technical Support to PPP Institutions for PPP Legal, Regulatory and PPP Financing Environment.	$11,500,000	$11,500,000	100%
(2) Support for Preparation of Individual PPPs.	$20,000,000	$20,000,000	100%
(3) Improvements to Fiscal Risk Management Framework.	$5,000,000	$5,000,000	100%
(4)Support for Program Management.	$3,500,000	$3,500,000	100%
Total Project Costs	$40,000,000	$40,000,000	100%

C. Program Objective and Phases

48. **As previously noted, the program is a two-phase APL initiative** designed to assist the GoK to increase targeted infrastructure and other social service levels and quality by mobilizing private sector participation through a PPP model.

49. **There are triggers that will need to be met prior to the activation of APL 2.** APL 1 will be supporting upstream institutional and pipeline development activities and the intermediate outcome objectives necessary to facilitate the realization of these triggers, detailed below:

a) PPP Law enacted and acceptable to IDA (the Association);
b) Submission of at least five PFSs by contracting authorities to the respective sector Minister, acceptable to the Association;
c) FCCL Management Framework approved by the PPPSC, acceptable to the Association.

D. Lessons Learned and Reflected in the Project Design

50. **This operation has also been designed with due consideration of other PPP market developments and the experience of other World Bank-funded projects in support of PPP transactions,** notably recent operations approved for India, Indonesia, Nigeria, Ghana

and Bangladesh. Each of these projects provides key insights that have informed the design of the Kenya project.

51. **In the case of India where the Bank provided a line of credit to a specialized Infrastructure Financing Facility (the India Infrastructure Finance Company Ltd – IIFCL),** challenges have arisen identifying suitable projects eligible for IBRD funding. One key constraint in this case has been the fact that the IIFCL does not originate projects and, as a result, projects under consideration for financing do not always meet Bank Group guidelines for procurement and safeguards. By comparison, whereas the Indonesia Infrastructure Finance Facility (IIFF) is mandated to follow Bank Group policies, there is currently an absence of a viable pipeline to which the line of credit provided to the IIFF can deploy.

52. **The development of a bankable pipeline requires political champions**. A range of institutional and other stakeholder interests need to be considered to get a project to market. Experience highlights the importance of putting in place a sufficiently robust institutional authorizing environment. There are two aspects to this. The first concerns the location of the PPP units within the government structure and the political support extended to these entities. These entities need to have sustained political and institutional support in order to carry out their mandates and manage the different stakeholder dynamics that prevail around PPPs. The early lesson being learned from the Nigeria project is that, while a specialized institution reporting to the Presidency can provide a very powerful authorizing environment, it may lack the long-term institutional support that linkage to an established agency or ministry might provide. A closer alignment with the Ministry of Finance (MoF) which – inter alia – has (i) a formal government-wide investment "prioritizing" role through its responsibility for the public budget and (ii) more institutional experience dealing with key line ministries may be a more robust approach. Egypt has a PPP unit housed in its Treasury, following their typical role in handling long-term financial commitments, rebalancing of investments, budget planning and economic appraisal of projects, as well as procurement policy, all of which are central to the PPP agenda. As a result, both the Ghana and the Kenya PPP programs have decided to formally establish PPP units within Ministries of Finance.

53. **The second aspect of the institutional environment is the effectiveness of inter-ministerial cooperation and leadership around the selection and development of specific transactions.** In the case of Ghana and Kenya – drawing on lessons learned from India, Indonesia and Nigeria – the Government identified a limited list of transactions that would provide PPP Policy with "first movers." This "official" list is a statement of political commitment. However, while a central agency/institution can drive a PPP Policy, the actual deals selected for PPP financing involve national assets for which there can be a 20-30 year agreement with the private sector. For these agreements/contracts to be successfully prepared and implemented, committed and effective line ministries that are responsible for these assets are critical. This is evidenced by the lessons learned to date with the Kenya program of Independent Power Producers (IPPs) where the capacity and track record of the Kenya Power and Light Company (KPLC) is a key factor in the success of a program of PPP investments (see Box 1). In response to these types of challenges, the Kenya IFPPP project would provide a significant portion of funding for capacity building in the different line ministries and would support the development of PPP Nodes to ensure that agencies understand the range of PPP options available and the potential complexity of these projects. The IFPPP project would also help to ensure that agencies develop the core expertise and have the resources to hire (and manage) capable transaction advisors.

Box 1: Case Study: IPPs in Kenya – Case Study of Strong Line Agency Leadership

1. Following the shift in the 1990s from concessionary funding for power projects toward private sector participation in infrastructure and a wave of sector reforms, IPPs began to be introduced in Kenya in 1996 to meet Kenya's energy demands. An effective means to help address shortfalls in public funds for investment and increase financing options for electricity generation (it is estimated that Kenya needs over US$5 billion of new investments by 2015 for electricity generation alone), IPPs have helped bridge Kenya's energy needs by attracting an estimated 347 MW of power capacity through six Power Purchase Agreements (PPAs) over the past 12 years. IPPs have also enabled the Kenyan government to redirect donor financing to higher-priority needs and diversify Kenya's energy mix.

2. Kenya currently has active PPAs with IPPs including: Iberafrica I/II, Orpower/Olkaria III, Tsavo/Kipevu 2, Mumias and Rabai (Westmout closed in 2004) with the Kenya Power and Lighting Company as the off-taker (table provided below). Although the structure and framework of the agreements vary to some extent (earlier PPAs were developed to plug power shortages while subsequent PPAs have varied in their intent and mix of funding arrangements to include donor financing), IPPs have been largely successful in Kenya due to the KPLCs reliability as an off-taker with a good payment record. In addition, a number of new IPPs supported by the Bank Partial Risk Guarantee product are anticipated to reach financial close in the next six months. These operations are detailed in Tables A and B below (Source: World Bank, Report No. 663-KE, 2012).

Table A: Current IPPs Operating in Kenya

Company	Capacity (MW)	Type	Years	Commissioned
Westmount	46	Gas Turbine	7	1997
Iberafrica I/II	108	Medium Speed Diesel	7 renewed for 15 / 20	1997/2009
Orpower/Olkaria III	48	Geothermal	20	2000/2008
Tsavo/Kipevu 2	75	MSD using HFO	20	2000
Mumias	26	Bagasse cogeneration	12	2009
Rabai	90	MSD using HFO	20	2009
Orpower	84	BOO	20	2000

Table B: Kenya's Proposed Future IPP Pipeline and Imports from Ethiopia[11] (2014-2017)

IPP Name	Type	Proposed Capacity	Indicative Full Commissioning
Thika	MSD using HFO	87 MW	2013
Triumph	MSD using HFO	82 MW	2013
Gulf	MSD using HFO	80.3 MW	2013
Lake Turkana	Wind	300 MW	2014-2015
Aeolus–Kinangop	Wind	60 MW	2015-2016
AGIL-Longonot	Geothermal	140 MW	2015-2016
Menengai	Geothermal	4 X 100 MW	2015-2017
Imports from Ethiopia[12]	Hydro (regional)	400 MW	2018

3. A number of other factors have contributed to the success of IPPs in Kenya, most notably the manner in which planning, procurement and contracting are coherently linked, the role of development finance institutions along with the development origins of firms and credit enhancements[13]. These successes have not been overshadowed by early difficulties with IPPs in the mid/late 90s due to a difficult investment climate, low foreign investment and initially very expensive PPAs with low return for investors. The lessons learned for Kenya are summarized below:

- **Planning, procurement and contracting:** The first two plants in Kenya (Westmount and Iberafrica) were widely scrutinized for non-transparent bidding practices and high charges, however, subsequent IPPs

[11] Additional generation capacity is anticipated, in particular from KenGen.

[12] In a significant milestone, Kenya recently agreed on terms for a PPA with Ethiopia, which will open up the regional trading market.

[*] By supporting the proposed project, the Bank does not intend to prejudice the final determination of the parties' claims on the disputed areas

in Kenya have conformed to international competitive over selective bidding practices (OrPower4 and Tsavo for example). Also, KPLC has been assigned responsibility for managing the procurement and contracting, with the capability to manage this process internally. This has resulted in standardized bid documentation and a clearer understanding from project sponsors of how the procurement process works.

- **Role of Regulator and Development Finance Institutions:** The Energy Regulatory Commission (ERC) maintains a crucial role in reducing capacity charges and setting tariffs, which has reduced PPA charges from the initial set of PPAs negotiated in Kenya. Additionally, the Energy Regulatory Commission chairs a planning committee which develops least-cost plans (assisted by the KPLC and World Bank). The IFC involvement in more recent IPPs as an investor for Tsavo has helped lend more credibility to IPP projects.
- **Risk Mitigation:** In recent years, given political uncertainty and risk perceptions of international investors connected to the December 2007 election, the Kenyan government has explored risk mitigation options to address the financing of PPPs. These include PRGs and MIGA guarantees to proceed with private sector participation.

54. **Political commitment as expressed in official Government statements of project lists and inter-ministerial coordination are necessary but not sufficient requirements.** Incentives are also needed. This can include the establishment of PPP units within participating line ministries (referred to as Nodes under the Kenya PPP Policy) to "hardwire" institutional ownership. Capacity building to assist line ministry staff to develop the expertise to move from public project procurement and delivery to PPP project development, contract management and regulation is also required. In contrast to the India and the Indonesia projects, the IFPPP project provides significant capacity building to both central and line ministries and institutional arrangements to foster a sustainable approach to pipeline development and commercial and financial closure of the resultant deal flow. What merits emphasis is that the following three institutional requirements need to be met: (i) careful attention to ensure optimal location of the PPP unit for a given country, as this can vary given different institutional and authorizing environment settings; (ii) establishing a clear political commitment; and (iii) putting in place the incentives to identify and follow through on a prospective project pipeline.

55. **The Kenya project is designed as an APL, under APL 1, in order to consolidate the institutional framework** for the effective implementation of Kenya's National PPP Policy through support to legislative action and institutional strengthening and to provide technical and financial resources to develop a technically sound project preparation process and transparent selection mechanism. The importance of this upstream project development work is evidenced by the frequency with which PPP contracts can all too quickly require complex re-negotiations as a result of poor prior preparation or other pre-requisites that simply do not take place. The experience with Rift Valley Railways, as summarized in Box 2, is an example where closer investigation of the winning concessionaire's rail operational capacity and financial proposals could have highlighted upstream key weaknesses in the proposal and helped to avoid the difficult re-negotiation that ensued.

Box 2: Rift Valley (RVR) Railways – A Case Study of Contract Re-Negotiation

I. Background:

1. This project involves nearly 2,350 km of meter-gauge railway line connecting port of Mombasa to major cities such as Nairobi, Kisumu, and Kampala and on to the oil fields at Lake Albert on the border with the Democratic Republic of Congo. It was originally built in 1896-1905 during colonial times and became part of the East African Railways and Harbors which broke up into three separate companies in Kenya, Uganda and Tanzania in 1977

2. The route is a lifeline for Kenya, Uganda, Rwanda, Burundi, East DRC, and South Sudan. A 25 year unitary concessions was awarded in 2006 to two separate concession companies under one holding company linked by an interface agreement. Key terms of the concession included:

- Passenger services for at least 5 years, optional thereafter, including open access
- Lead shareholder concept used with Sheltham as the Lead Investor (35%). Others included Transcentury (20%), Primefuels (15%), Centum (10%), Mirambo (10%), Babock and Brown (10%)
- Concession fee: Upfront fee of $3.0M (Kenya) and $2.0M (Uganda); 11.1% of gross revenue/annum; plus $1.0M per annum for passenger services
- Conceded Assets Account: Investments and current assets registered, and net mount to be repaid after depreciation at end of concession period or at termination (good for establishing residual condition and value, not easy to administer)
- Obligations: reach at least 5 million tons per annum by 2011; make investments to upgrade infrastructure and improve operations to international standards including safety aspects
- Financing Plan: equity $24M; debt $64M; internal cash flow $23M;
- A Joint Railway Commission (an advisory body) was also set up to resolve cross-border issues in relation to the concession.

3. Development Partners to the concession included: IFC $32M; KfW $32M; World Bank (IDA) comprising $88.5 million (for retrenchment and settlement purposes), plus Partial Risk Guarantees in the amount of $45m for Kenya and $15m for Uganda.

II. Concession Re-Negotiation:

4. The concession experienced the negative impact of a weak management and governance structure, insufficient technical oversight and a lack of adequate funds for capital injection from the Lead Investor and service disruptions resulting from post-election problems in 2008 A number of key performance measures were missed: (i) freight volumes 7-10% below target; (ii) investments only $1.2M against target of $7m ($2M in Uganda, $5m in Kenya); (iii) passenger services 32% below commitment; (iv) infrastructure and rolling stock grossly under-maintained; (v) safety standards not fully conformed to; and (vi) fees owed to both governments ($1.0M to Uganda and $5.0M to Kenya). As a result a “Notice of Termination” was issued and in January 2009 IFC and KfW were signaled to commence cure period (major lender steps in).

5. With the help of IFC and a protracted re-negotiation effort, agreement was reached on a new structure and financing plan endorsed by all parties:
- Citadel Group of Egypt has 51%, Transcentury 34% and Ugandan Investor (Bomi Holdings Ltd.) 15%;
- Lead Investor now Kenya-Uganda Railway Holdings (KURH) into which shareholders contribute equity;
- Renewed interest by lenders to advance credit facilities up to $164m, importantly, now including a local bank. The lenders are AfDB, Equity Bank, FMO/BIO in addition to IFC and KfW; technical management agreement with América Latina Logística (ALL) - a Brazilian logistics company;
- All debt with Kenya and Uganda governments cleared by Citadel; Debt funds (IFC, AfDB, KfW) start to flow; and
- The renegotiated concession contract involves an investment of $311 versus the $111 million of the original contract.

III. Current Status

6. All loan and equity participation agreements are finalized and IDA Partial Risk Guarantee (PRG) is agreed upon.

7. The operator with necessary know-how is in place as are the performance monitoring systems and training activities. The Rehabilitation of rolling stock, as well as the improvement of 70 km of line and drainage structures is underway. The rolling stock is being over-hauled and new stock being acquired. The retrenchment exercise is completed and resettlement is ongoing. Environmental impact studies have been completed and a revised business plan is under implementation.

IV. Looking Back

On hindsight, it may be noted that the actual investment requirements (US$311 M) turned out to be far greater than originally estimated (US$ 111 M) which has implications for the required financial and managerial capability of potential investors at the time of pre-qualification. Secondly, the concept of the Lead Investor being fully in charge with no room for dilution of shares made the task of restructuring financially and legally difficult. This points to the need for much more extensive due diligence on the scope of works, investment estimates, required technical and management skills in structuring deals, and alternatives for the overall organizational framework for management of concessions.

56. **The GoK is seeking to build on the successes in IPPs and the lessons learned through the legal and institutional framework being established for PPPs,** by ensuring that there is a systematic and consistent mechanism for identifying, selecting and procuring PPPs and determining what form of government support should be available. The IFPPP project will support GoK in this effort by supporting development of detailed regulations and guidelines to complement and build on the legal framework, providing capacity to the line ministries, the MoF and other relevant agencies, and providing funding and support for project preparation and government support instruments, together with other products offered by the WBG.

57. **Another benefit of this APL 1 upstream support to the enabling environment,** including the development of a robust project pipeline, is that it will serve to increase eligibility of the PPP projects for Bank financing under the more streamlined 3.14(a) procurement guideline which allows winning concessionaires – conforming to a competitive process consistent with Bank guidelines - to deploy Bank funding to procure goods, works and services using their own commercially-viable procedures. It will also reduce dependence on unsolicited and negotiated bids which, while remaining an option for the Government, tend to have a higher likelihood of being technically and competitively deficient. An additional area of support under the IFPPP will help the Government to develop more robust procedures to deal with unsolicited bids and to be able to more effectively negotiate deals through access to improved technical expertise.

58. **The other key advantage of the two-phase APL design, based on the aforementioned lessons learned from India and Indonesia, is that it avoids creating a large IDA commitment exposure risk until triggers for APL 2 are met that address enabling environment and pipeline readiness requirements.** Drawing on the additional lessons learned from the experience of the Bangladesh project, IDA support will not focus on developing or supporting a single infrastructure financing intermediary, but would look to place funds – in a wholesale manner – through apex entities via instruments such as VGFs, financial intermediary lending or guarantees. Moreover, decisions about the suitability of these different instruments will not be made until the pipeline is sufficiently confirmed for the financing instruments to be developed to meet the unmet financing needs of these "first mover" projects, including alternative market solutions.

IV. IMPLEMENTATION

A. Institutional and Implementation Arrangements

59. **The MoF PPPS under the authority of a Director will act as overall Implementing Agency for the IFPPP project.** The project will be implemented with the support of a PIU reporting to the Director, PPPS. The PIU will be composed of: (1) Project Coordinator. (2) Financial Management Specialist; (3) Procurement Specialist; (4) Assistant Project Accountant; (5) M&E Specialist; (6) Safeguards Specialist (with specific World Bank expertise); and (7) PPP Specialist. The PPPS bears overall responsibility according to the PPP Policy for coordinating Government implementation, including advisory and oversight functions under the overall governance of the PPPSC.

60. **A Project Steering Committee (PSC) will be set up and this function will be developed in terms of roles and responsibilities in the Project Implementation Manual**

(PIM). It will, *inter alia*, require Semi-Annual Project Progress Reviews, based on reporting to be prepared by the PIU under the supervision of the PPPS Director. The PSC will be chaired by the PS Treasury and will include the Attorney General and the PS of the Ministry of Planning. The PPPS will serve as the secretariat and technical arm of the PSC.

61. **The MoF has made arrangements to use an existing PIU under the MoF, which is currently supporting the implementation of the FLSTAP, to undertake the day-to-day implementation of the project.** The MoF PIU will be broadened to handle the IFPPP project with support from additional staffing as required. The GoK will benefit from the experience already acquired by the PIU team. The procedures are established and the PIM will incorporate system-related aspects (use of client connection, PROCYS), and will standardize communications among the implementing agencies, the PIU, the PPPS and MoF in order to expedite processing of requests. The PIU will only deal of operational aspects of the IFPPP project (procurement of activities supported under the project, disbursements, financial management), with the exception of the Safeguards PPP technical specialists. The PIU will report to the Director PPPS.

62. **Specific PPP technical expertise to be financed by the project will be in accordance with the PPPS organigram and roles and responsibilities.** This technical and advisory cadre will be recruited into the PPPS and report directly to the PPPS Director according to terms of contract and the PPPS Business Plan.

B. Results Monitoring and Evaluation

63. **The PIU M&E Function:** Specialists in the PIU will coordinate with the Ministries and Agencies Nodes to ensure that coherent and standard M&E data gathering and reporting systems are in line with the PDO and intermediate results indicators established for the project, as further explained in the Project Performance Framework in Annex 1. The scope of work of the PIU will cover APL 1 and APL 2. The function also includes coordination with participating line ministries and agencies and ensuring adequate reporting to the National Development Planning Commission.

64. **It is anticipated that an impact evaluation will be undertaken on the overall APL program (APL 1 and APL 2).** In view of this, the World Bank will work closely with the GoK to develop the baseline data requirements and methodology to effectively conduct impact evaluation at a suitable time after the results of the overall APL program are known. A detailed evaluation plan will be expanded to include, *inter alia*, the development of a relevant baseline to lay the foundations for the successful implementation of project impact evaluation. This will be done in coordination with the other PPP APL projects being undertaken in the Africa region. Management anticipates building a methodology around specific PPP projects where beneficiaries could be more effectively identified and tracked for impact analysis, but the details will be defined after APL 2 has started.

65. **Reviews during implementation, supervision missions by IDA will include formal annual and semi-annual work program consultations at which time annual procurement and capacity building plans will be subjected to detailed review and approval actions by the PPPS and the World Bank**. The PPP PIU will be required to prepare information necessary to inform these implementation review exercises and to ensure that all indicators in the results framework of Annex 1 are reported on with recent progress data.

66. **A Mid-Term Review (MTR) will take place 24 months after effectiveness of the APL 1 Credit** in accordance with the terms of reference agreed upon by Government/PPPS, the PIU, IDA and other donors involved in the Government's PPP program. The MTR will include an assessment of the triggers identified and clarify whether conditions to progress to APL 2 have been fulfilled. The PIU will prepare the mid-term report detailing implementation progress under all program components and identifying implementation issues. This report will be submitted to the PPPS, IDA and other donors involved in the project not later than two months prior to the mid-term review. During the MTR, implementation progress and solutions to identified implementation issues will be discussed and agreed on and, if required, project redesign will be undertaken. An Implementation Completion Report (ICR) will also be prepared by IDA following the preparation of a Project Completion Report by the PIU and PPPS and within six months after the closing date of APL 1 and APL 2.

67. **M&E Framework Systems and Reporting**: The M&E framework, systems, and operations of the PPP PIU will be established in accordance with the Project's objectives and strategy. Relevant tasks will include: (a) preparing quarterly, half yearly and annual project monitoring reports, containing summary data on overall performance against targets; (b) coordinating the organization of annual and semi-annual M&E reviews and lessons learned workshops to ensure the M&E function enhances the ability to increase project outcomes; and (c) development of the Impact Evaluation Design and Implementation Plan and compilation of baseline data requirements as determined in the design framework.

68. **M&E Participatory Mechanisms:** The project arrangements will ensure that an effective and participatory M&E system and methodology are established consistent with a robust M&E function. This includes: (a) the establishment of "third party" demand-based feedback arrangements (at policy, program and project levels) with civil society and other community interests in line with commitments made during the March/April 2012 Project Stakeholder Meetings for the disclosure of the ESMF and RPF; (b) feedback from wider private sector with a stake in development of the PPP market; and (c) ensuring that diversity in participation is respected by allowing space for women, the poorest, and marginalized social/ethnic groups to participate.

69. **Staff and Consultant Management:** Depending on workload and resource requirements as approved under the M&E Annual Plan, staff with additional specialized M&E skills will be identified and recruited when needed.

C. Sustainability

70. **Key strategic goals for this project are not just to finance specific PPP transactions but also to help establish a robust and sustainable PPP market. It is anticipated that this will entail:** (a) ongoing financial sector reforms coupled with the technical assistance and capacity building supported by this program to foster the deepening of the capital and particularly the bond market; (b) enhancement of the Government's project development capacity; (c) momentum to push forward ongoing legal, regulatory and fiduciary reforms at the sector level; (d) creation of vibrant support markets for transactions and related services over time; and (e) the establishment of a track record and reputation for well-developed and implemented PPP transactions. Furthermore, the GoK has shown strong commitment and ownership of the PPP Program as represented by the recent passage of the National Policy on

PPP and the establishment of the PPPS. Notwithstanding this strong commitment, certain risks exist. The critical factors associated with this project and how they are addressed, are detailed in the following section.

V. KEY RISKS AND MITIGATION MEASURES

A. Risk Ratings

Table 3: Risk Ratings Summary table

Risk	Rating
Stakeholder Risk	Moderate
Implementing Agency Risks	
Capacity	High
Governance	Substantial
Project Risks	
Design	Low
Social and Environmental	High
Program and Donor	Low
Delivery Monitoring and Sustainability	Low
Approval Process for each PPP Project	High
Consumers and Public	High
OVERALL RISK	**Substantial**

71. **Outline of Key Risks** (More details provided in the ORAF in Annex 4):

i. *Institutional Capacity* – The MoF has limited experience with PPP operations and the PPPS and PPPSC are new entities with a lack of PPP experience. This may delay the implementation of the project. Beyond the MoF, capacity in the various participating sectoral agencies varies and experience in implementing properly-developed PPP transactions is limited. Moreover, gaps exist in institutional policies and arrangements. To mitigate these risks, the IFPPP project is designed to build capacity of all relevant GoK agencies through training and other preparatory activities.

ii. *Cabinet approval for PPP each project* – Currently, Cabinet approval is required for all PPPs. However, under the pending PPP Bill the Cabinet would be able to delegate approval authority to the PPPSC, at least for smaller projects. Moreover, parliamentary approval is currently required for road concessions in accordance with current sector legislation or when credit guarantees are to be provided for a PPP. The PPP Law, once adopted, will amend the requirement for road concessions to be approved by Parliament, standardizing the process for PPPs in all sectors.

iii. *Public opinion of private sector involvement* – Infrastructure is considered a public good and public opinion - including the opinion of organized labor - may not be supportive of private sector involvement(already evident in efforts related to increased private participation in the Mombasa Port, which lacks a sufficient outreach strategy). The project will support mechanisms to reinforce the socio-economic benefits of the PPP approach and will provide continued support and assistance to improve government outreach and measures to be put in place to ensure public consultation on projects.

iv. *Governance of PPP operations* – There are three key sets of functions required for the implementation of a PPP program: (i) "advisory" or project development; (ii) review and approval or "gate-keeping" processes; and (iii) contract supervision and evaluation. There is a risk that the advisory and gate-keeping functions may be conflated into a single entity or across units with insufficient separation/autonomy. This can undermine the accountability and transparency of the PPP development and approval process. The GoK Policy involves clear separation of functions across the PPPS, PPPSC and the line ministry PPP Nodes. In addition there are specific gate-keeping roles assigned to the DMD (fiscal commitment and contingent liability) and the Budget (government support) and Accountant General's Office. This represents a strong set of institutional checks and balances that will serve to mitigate key areas where potential conflicts of interest can arise. Moreover, these entities will, through the project, be provided with upstream capacity building. More generally, the MoF and other agencies are to be trained in identification and management of potential conflicts of interest. The proposed operation will support technical assistance aimed at heightening awareness and reducing - to the greatest extent possible - potential institutional conflicts of interest via an institutional deepening of policy implementation arrangements and technical professionalization of roles and responsibilities across targeted staff in the key units.

v. *Social and environmental* – There is a risk that line ministries fail to comply with Bank safeguards requirements as spelt out in ESMF and RPFs. Capacity building and technical assistance will be provided to the GoK to ensure compliance.

B. Overall Risk Rating Explanation

72. Based on the risks outlined above, and in consideration of the larger APL program that the APL 1 project supports, the overall level of risk during project implementation is considered Substantial.

VI. APPRAISAL SUMMARY

A. Economic and Financial Analyses

73. **The economic and financial analysis for this APL Program comprises two phases. For APL 1, which is a capacity building and technical assistance set of activities, the appraisal is based on institutional and qualitative analysis.** APL 2 will be based on detailed economic and financial analysis drawn from the PFS work which will provide the basis for one of the key APL 2 triggers described above.

74. **APL 1:** Given the capacity building and technical assistance character of activities to be supported under Component 1, a quantitative economic and financial analysis would not be the appropriate tool to assess significance. However, the areas emphasized by the component, such as improved inter-ministerial coordination, strengthened institutional capacities within key ministries, an improved local capital markets ecosystem for long-term financing and relevant agencies, and an augmented PPP legal and regulatory environment, are essential for long- term sustainable development of a PPP market. Similarly, the preparation and transactions advisory work financed under Component 2 is not conducive to quantitative analysis. However, it provides a solid platform for economic, financial and safeguards assessment and would generate the quantitative analysis that will be essential in order to proceed with APL 2. Also, in the context of M&E work, consideration will be given to analysis required to effectively assess efficiency at the end of the project.

75. **APL 2:** The economic and financial appraisal for APL 2 will be based on the PFS work to be undertaken on the potential PPPs under consideration for support through the project. This analysis will focus on the following project appraisal factors: (a) technical cost estimation (capital, maintenance, operating); (b) social and environmental impact costs and benefits; and (c) demand and revenue projections. Financial appraisal will be carried out to determine which projects can support the introduction of a tariff and which cannot, as well as the potential to be fully or partially financed through local capital market instruments. The methodology will differentiate fully self-supporting tariff projects from those likely to require some degree of subsidy (capital grant and/or availability of payment/revenue guarantees) and those likely to be wholly publicly-financed. The financial model will evaluate full project life costs, affordability limits, risks and their costs and optimal value-for-money methods of delivery, and will include, at minimum, the following inputs: (i) cost of annual expenditure; (ii) construction costs; (iii) annual routine maintenance (where relevant); (iv) periodic major maintenance by annual drawdown amount; (v) toll station operating costs (where relevant); (vi) security and safety; (vii) other ancillary operating costs; (viii) tariff revenue income based on proposed tariff structure (or tariff structure options); (ix) other sources of funds such as VGS, debt financing, and concessionaire equity; and (x) affordability, meaning an assessment of fiscal commitments required from the project. Based on this analysis, the overall pipeline of potential PPP projects will be aggregated to produce overall sector internal rate of return (IRR) estimates.

B. Technical

76. **The technical design of the project has benefited from a series of technical assessments covering:** institutional arrangements**;** legal and regulatory issues; capital market and financing; pipeline, fiscal commitment and contingent liability management; design requirements for the VGF based on the anticipated "first mover" projects; safeguard assessments at the framework level and initial safeguards work at the project level. These work streams have been supported by PPIAF and additional funds provided by donor partners, notably TradeMark East Africa (TMEA).

77. **Further technical work will be undertaken over the coming months including further due diligence on the prospective pipeline and an assessment of the different PPP financial instruments to be deployed.** This next phase of technical work will be undertaken in close cooperation with IFC and MIGA.

C. Financial Management

78. **A description of the project's overall financial management (FM) arrangements in Annex 3 indicates that they satisfy the Bank's minimum requirements under OP/BP 10.02.** The assessment of financial management arrangements at the MoF concludes that the financial management residual risk rating for the MoF PIU is Moderate. The format and content of the Interim Financial Report (IFR) for the project has been submitted and cleared, to be included as part of the PIM. The only pending action is:

	Action	Date due by	Responsible
1	Develop a corruption prevention mechanism to be included as part of the PIM	By effectiveness	PIU

79. **Based on the risk rating of the project and the current FM arrangements, it is expected that the project will have on-site supervision at least once a year.** The financial

management action plan outlines the mitigating measures which, if implemented, would strengthen the FM arrangements.

D. Procurement

80. **The PIU of the MoF will be responsible for all procurement activities under the Project in coordination with the PPPS.** Procurement will be carried out in accordance with the World Bank's "Guidelines: Procurement of Goods, Works and Non-Consulting Services under IBRD Loans and IDA Credits & Grants by World Bank Borrowers" dated January 2011; (ii) "Guidelines: Selection and Employment of Consultants under IBRD Loans and IDA Credits & Grants by World Bank Borrowers" dated January 2011 and the provisions stipulated in the Legal Agreement; and (iii) "Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants", dated October 15, 2006, as revised in January 2011 and the provisions stipulated in the Legal Agreement. The procurement under project components is expected to comprise: (i) the selection of consultants (transaction advisory services, sector specialists, etc); (ii) feasibility and pre-feasibility studies and other preparatory work; (iii) safeguards due diligence work; (iv) training; and (v) the acquisition of ICT-related goods and other goods and equipment that will help Ministries and Agencies manage and track PPP projects and perform PPP-related activities.

81. **There is existing procurement capacity within the MoF/PIU that can be quickly deployed to meet the requirements of the IFPPP project**. A full-time procurement specialist experienced in both IDA/World Bank and consultant procurement processes will be hired for the PIU. To enhance project implementation, the PPPS will also organize regular training for PIU staff in contract monitoring and administration. Preliminary detailed procurement arrangements are given in Annex 3.

E. Social (including Safeguards)

82. **The project will have positive social impacts and benefit the Kenyan people through improvement of infrastructure and service delivery in relevant areas through support to PPP transactions in core infrastructure sectors.** However, the project might also entail social risks and adverse social impacts on different social groups. Some potential examples of negative social impacts are: land acquisition might be needed for construction and rehabilitation of infrastructure and some people might be displaced; and the construction phase of large-scale infrastructure projects requires a relatively large number of construction workers and with the influx of migrant laborers, conflict might arise between construction camps and local communities. Other social problems such as crime, prostitution, and erosion of traditional authority are well-known risks associated with an influx of migrant laborers, as are health risks from increased communicable and non-communicable diseases and HIV/AIDS. Additionally, improved service may result in tariff increases that poor people find unaffordable. The Resettlement Policy Framework (RPF) contains details of the principles and objectives governing the preparation and implementation of Resettlement Action Plans (RAPs), including review, approval and disclosure of RAPs, screening for involuntary resettlement, establishment of baseline and socioeconomic data, and the likely categories of project-affected persons. Compensation arrangements for those being involuntarily resettled, including possibilities for land exchange, are outlined in the RPF. The RPF also contains a mechanism for resolving disputes that may arise.

83. **All environmental and social impacts and risks are associated with infrastructure development in support of PPP transactions that are to be implemented in APL 2.**

84. **The grievance redress procedure will ensure that any grievance and/or complaints of Project Affected Persons (PAPs) on any aspects of land acquisition, compensation and livelihood rehabilitation are dealt with in a timely, adequate and transparent manner**. To ensure that PAPs as well as CSOs are aware of the procedures of grievance redress, these procedures will be disseminated through a public information campaign.

85. **Other social impacts and risks besides resettlement will be addressed through the ESMF.** It establishes a process of environmental and social screening which will permit the institutions in charge of the implementation of the project to identify, assess and mitigate the environmental and social impacts of the proposed intervention. According to the ESMF, Environmental and Social Impact Assessments (ESIAs) and Environment and Social Management Plans (ESMPs) will also be prepared and implemented during project implementation. In addition, the ESMF determines the institutional measures to be taken during program implementation, including those related to capacity building.

86. **The PPPS and PIU together will have three safeguards staff:** (1) an environmental specialist; (2) a social specialist to be part of the PPPS with specific responsibilities to oversee all safeguards work to be undertaken through the project in support of PPP transactions; and (3) a safeguards specialist to be based in the PIU. GoK is committed to ensuring that each PPP project has a positive impact upon the public interest. The following principles shall be addressed in PPP transactions: (i) safeguards to users, particularly vulnerable groups; and (ii) setting affordable user charges and tariff structures.

87. **Stakeholder Engagement:** In tandem with World Bank safeguards policy 4.01 governing EA Category A projects, the PIU recognizes that stakeholder involvement is an important element of the PPP Program and the EA process and that stakeholder identification and analysis at an early stage is critical in the assessment of interests, concerns, relationships, assumptions, their level of influence and the ways in which they affect project risks. To this end, the preparation of the ESMF and RPF drew from input providing during stakeholder consultations that were organized in Nairobi and other areas of potential PPP projects (e.g. Kisumu, Mombasa). The main issues raised by stakeholders, including representatives from the GOK, private sector, media groups and universities, were procedural in nature (i.e., resettlement compensation, timelines for disclosure and payment, PPP project selection). Specific (non-exhaustive) areas of environmental/social concern included conservation of water catchment areas for dams and land ownership, which were appropriately discussed and addressed as summarized in the ESMF. These consultations will continue during project implementation.

F. Environmental (including Safeguards)

88. **The project has been categorized as Category A (Full Assessment) for safeguards because, although many of the transactions in the overall program are likely to have moderate environmental and social impacts**, some of the candidate projects in the future may have significant adverse environmental impacts that are sensitive, diverse, cumulative, irreversible or unprecedented. In the overall context of the proposed PPP activities, potential negative environmental and social impacts due to project activities are likely to include loss of vegetation, soil erosion, soil and groundwater pollution, air pollution, public health impacts such as traffic hazards, noise, and dust, and loss of livelihoods. These impacts must

be fully identified and the appropriate mitigating measures clearly defined and accounted to be incorporated into the project's overall budget.

89. **The project includes support for the preparation of PPP transactions, some of which may be co-financed or financed by the Bank as part of APL 2.** The project ESMF and RPF will guide the preparation of ESIAs and ESMPs, Resettlement Action Plans (RAPs), and/or other safeguards instruments that will be prepared for these PPP transactions, some of which will be financed by the Bank under APL 2. The current project will limit its support to the financing of relevant safeguards studies required by the World Bank guidelines for the anticipated "first mover" PPP transactions that are scheduled to receive IDA funding under APL 2. For those transactions financed by the Bank, the environmental and social safeguards specialists within the PPP Secretariat will submit a report on the screening exercise with its recommendations for clearance to the World Bank to proceed with the detailed ESMP and ESIA, RAP and any other safeguards instruments. Some specific considerations for Bank-financed transactions are as follows:

- *Environmental and Social Management Plans:* Based on the ESIAs, the Program and all sub-projects will include the preparation of ESMPs to address health, safety, and environmental regulatory compliance objectives, institutional responsibilities (e.g. those related to the World Bank project), and other related commitments. During the proposal stage, each potential concessionaire will as part of its proposal submit an overview of how project environmental issues will be addressed on an ongoing basis. The plans will also specify standards proposed to ensure environmental sustainability of sub-projects. Standards and plans proposed to address social issues - including labor relations - will be particularly important. This could include, *inter alia,* structures to handle retrenchment, special packages for workers that have attained retirement age, and retraining of staff to acquire needed skills.

- *Capacity building and training requirements:* The capacity of the Borrower to carry out its design, planning, approval, permitting, monitoring and implementation roles will, to a large extent, determine the success and sustainability of the PPP program in addressing environmental and social issues. The first step in pursuing capacity building will be to identify the capacity building needs of various stakeholders. Given the nature of the environmental and social management requirements and provisions outlined in the ESMF, competencies and capacity building will be required for personnel across several identified institutions in the following areas: (i) stakeholder engagement, consultation and partnerships; (ii) EIA law and relevant environmental policies; (iii) development of mitigation measures and Environmental Management Plans; (iv) thorough review of Country EIA procedures, Environmental Management policies & guidelines; and (v) WB safeguards as well as their implementation and enforcement. The group will also be trained on the use and application of ESMF tools (screening checklists, EA), their review, implementation and enforcement, and environmental reporting, monitoring and follow-up of ESMF. Significant emphasis will be placed on understanding EIA procedures, environmental, management policies & guidelines, WB safeguards, implementation and enforcement, reporting, monitoring and follow-up of ESMF.

- *ESIAs:* The PPP Program is financing Environmental and Social Impact Assessments (ESIAs) for all prospective PPP projects that is anticipated might be financed by the Bank.

Table 4 identifies the different safeguard policies that are triggered by APL 1:

Table 4: Safeguard Policies Triggered by APL 1

Safeguard Policies Triggered by the Project	Yes	No
Environmental Assessment (OP/BP 4.01)	[x]	[ ]
Natural Habitats (OP/BP 4.04)	[ ]	[x]
Pest Management (OP 4.09)	[ ]	[x]
Physical Cultural Resources (OP/BP 4.11)	[ ]	[x]
Involuntary Resettlement (OP/BP 4.12)	[x]	[ ]
Indigenous Peoples (OP/BP 4.10)	[ ]	[x]
Forests (OP/BP 4.36)	[ ]	[x]
Safety of Dams (OP/BP 4.37)	[ ]	[x]
Projects in Disputed Areas (OP/BP 7.60)*	[ ]	[x]
Projects on International Waterways (OP/BP 7.50)	[ ]	[x]

a. *Environmental Assessment (OP/BP 4.01):* Safeguards policy 4.01 is triggered, as components of the PPP supported by APL 1 include civil works such as interior office refurbishment and small-scale office rehabilitation works, as well as the construction of new infrastructure in APL 2. The exact locations and impacts of the sub-projects have not yet been identified, though the pipeline includes possible "first movers" for APL 2. An ESMF was prepared and disclosed on April 20, 2012 as part of environmental due diligence covering these activities. The ESMF also includes an indicative budget for such mitigation activities.

b. *Involuntary Resettlement (OP/BP 4.12):* Many of the transactions in the PPP program could involve minimal or moderate land acquisition and/or restriction of access to usual means of livelihood. Most of the transactions will largely consist of rehabilitation of existing infrastructure. However, some of the transactions may involve significant land acquisition. As part of safeguards due diligence, an RPF was prepared and disclosed on April 20, 2012.

c. *During APL 2, other safeguard policies may also be triggered*, such as 4.04 (Natural Habitats), 4.09 (Pest Management), 4.10 (Indigenous Peoples), 4.11 (Physical Cultural Resources), 4.36 (Forests), 4.37 (Dam Safety), and/or 7.50 (Projects on International Waterways). The safeguards instruments prepared for any sub-projects will address the requirements of any applicable policies.

90. **Environmental and Social Management Framework:** The ESMF outlines the process and procedure to be followed when a PPP transaction has the potential to trigger any of the World Bank safeguards policies. It includes: details of the existing environmental laws and regulatory framework in the country; World Bank safeguard policies; analysis of environmental and social impacts including alternatives; institutional arrangements for implementing the ESMF; capacity building needs; and public consultation carried out during project preparation. In addition, the ESMF contains a detailed checklist for screening all potential PPP transactions for their potential environmental and social impacts to determine: (i) Environmental Assessment (EA) category; (ii) applicable World Bank environmental and social safeguards policy triggers; (iii) potential for liability related to environmental and social impacts; (iv) cultural or other sensitivities; (v) relevant stakeholders; and (vi) the nature and extent of engagement for each stakeholder category. Finally, the ESMF contains an annex with Terms of Reference (TORs) for conducting an ESIA if and when required

Annex 1: Results Framework and Monitoring

Kenya: Infrastructure Finance and Public-Private Partnership (IFPPP) Project
Results Framework

Project Development Objectives:

The overall objective of this two-phase APL Program is to increase private investment in the Kenya infrastructure market across sectors and to sustain this participation over an extended period of time. This involves three key areas of development: (i) enabling environment; (ii) pipeline of potential transactions; and (iii) financing.

The specific objective of APL 1 is to improve the enabling environment to generate a pipeline of bankable PPP projects.

PDO Statement

Improve the enabling environment to generate a pipeline of bankable Public -Private Partnership (PPP) projects.

Project Development Objective Indicators

Indicator Name[14]	Core	Unit of Measure	Baseline	Cumulative Target Values YR1	YR2	YR3	YR4	End Target	Frequency	Data Source/ Methodology	Responsibility for Data Collection
Expression of Interests (EOIs) issued to prospective sponsors for three targeted PPP transactions	☐	Number	0	0	1	2	3	3	Annual	Quarterly Progress Reports	PPPS/Ministry of Finance
PPP Regulations associated with the new Law agreed to with MoF	☐	Yes/No	No		Yes	Yes	Yes	Yes	By due date	Regulations Gazetted	PPPS/Ministry of Finance
PPP Fiscal Commitment and Contingent Liability Framework operationalized as measured by: upstream DMD due diligence on prospective (feasibility stage) transactions completed in line with Law.	☐	Yes/No	No		Yes	Yes	Yes	Yes	By due date	Official Annual DMD Reports disclosing FCCL and Due Diligence Reports to the PPPS on project exposure	DMD/Ministry of Finance
Regular issuance of Government benchmark bonds in medium and long-term maturities up to 7/10 year tenures	☐	Number	Stopped issuing incipient benchmark bonds in 2011	0	0	Medium term benchmark bonds (2 or 3 year and 4 or	Sustained medium term and long term benchmark	At least one issue by maturity bucket per year and minimum size of benchmark issue	Annual	Government issuance report	MoF

[14] This core indicator "Direct Project Beneficiaries (number) of which female (percentage)" is not applicable to this APL 1 Technical Assistance (TA) project. However, it will be incorporated in APL 2.

						5 year bonds)	bonds (2 or 3 year and 4 or 5, year and 7 or 10 year bonds)	(size of KSH25 billion)			

Intermediate Results Indicators

Indicator Name	Core	Unit of Measure	Baseline	Cumulative Target Values					Frequency	Data Source/ Methodology	Responsibility for Data Collection
				YR1	YR2	YR3	YR4	End Target			
Component 1											
Capital Markets Authority Bill 2011 approved by Cabinet for submission to Parliament		Yes/No	No	No	Yes	Yes	Yes	Yes	By due date	Letter of notification from MoF	Capital Markets Authority (CMA)
Securities and Investments Bill 2011 approved by Cabinet for submission to Parliament		Yes/No	No	No	Yes	Yes	Yes	Yes	By due date	Letter of notification from MoF	CMA
Component 2											
Five feasibility studies completed and submission by contracting authorities to the PPPSC acceptable to the Association, including Safeguards		Number	0	2	4	5	5	5	On completion	Quarterly progress reports	PPPS/Ministry of Finance
Line Ministries and Agencies “Nodes” for First Mover Transactions established and operational		Number	0	1	2	2	2	2	On completion	Copies Letters from line Ministries and Agencies to MoF outlining the team, modus operandi and measureable actions recorded.	PPPS/Ministry of Finance
Component 3											
PPP Fiscal Commitment and Contingent Liability Framework, including Disclosure Procedures approved by Cabinet Secretary, Finance.		Yes/No	No	Yes	Yes	Yes	Yes	Yes	By due date	Letter of notification from MoF including the final framework	DMD/Ministry of Finance

Annex 2: Detailed Project Description

Kenya: Infrastructure Finance and Public-Private Partnership (IFPPP) Project

A. APL Program Background

1. APL 1 addresses the technical and institutional capacities to develop and manage properly structured PPP transactions. This includes focused technical assistance in key ministries and agencies, resources to support project preparation, ongoing legal and regulatory reform, support for determining the business case of given projects, transaction advisory services, and state-level PPP support. APL 1 activities will be implemented over a four-year period while APL 2 is expected to be implemented over a six-year period. It is expected that both APLs will run concurrently during an overlapping period once APL 2 becomes effective.

2. Project Termination Dates

Completion Date	June 30th, 2016
Closing Date	December 31, 2016
Final Payment	April 30, 2017

B. APL Design

3. APL 1 of **US$40 million** focuses on technical support, support for preparation of PPPs, improvements in the fiscal risk management framework, and support for program management. A detailed APL 1 budget breakdown is provided below.

Table 5: Preliminary APL 1 Budget (including contingencies) and Financing

Category	**Amount of the Financing Allocated (expressed in USD)**	**Percentage of Expenditures to be Financed (inclusive of Taxes)**
(1) Goods	900,000	100%
(2) Works	500,000	100%
(3) Consulting Services	28,100,000	100%
(4) Training	5,300,000	100%
(5) Non-Consulting Services	100,000	100%
(6) Operating Costs	1,200,000	100%
(7) Refund of Project Preparation Advance	2,000,000	Amount payable pursuant to Section 2.07 of the General Conditions
(8) Unallocated	1,900,000	
TOTAL AMOUNT	40,000,000	

		Cost Estimates & Financing Plan (US$M)			
Component	**Category**	**Base Cost**	**Contin-gencies**	**Total**	**IDA**
Component 1: Institutional Support and Regulatory Reform					
1.A.1.1 Technical assistance for activities in the PPPS such as advisors for policy works, sector analyses, investment planning financing and analysis and other PPP advisory support such as Financial/Transaction, Social, Environmental Advisors including resident and short-term	**Cons**	4.31	0.79	5.10	5.10
1.A.2.1 PPP Training for Key GoK stakeholders on both broad and sector specific topics. This includes resources for in house training on PPP, international workshops, study tours and local training	**Training**	0.59	0.11	0.70	0.70
1.A.3 Public awareness campaigns and investment conferences to manage the launched of the PPP program, including media coverage press releases, media coverage, workshops coordination for launching PP and website unit	**Cons**	0.68	0.12	0.80	0.80
1.A.2.2 Training and investment workshops for private sectors partners and conferences	**Training**	0.42	0.08	0.50	0.50
1.A.3.1 Establishment of the PPPS minor civil works	**CW**	0.42	0.08	0.50	0.50
1.A.3.2 Equipment for the PPPS	**Goods**	0.25	0.05	0.30	0.30
1.A.4.1 Operating Cost for PPPS	**OC**	0.51	0.09	0.60	0.60
Subtotal - 1A		**7.18**	**1.32**	**8.50**	**8.50**
1.B.1.1 International and locals consultants for Regulation and PPP Guidelines and for Sectors Laws and Regulations in differences areas of expertise such as transportations	**Cons**	0.76	0.14	0.90	0.90
1.B.2.1 Training and Workshops for implementation of PPP policy and regulation framework as need it e.g. environmental safety, labor laws etc.	**Training**	0.46	0.04	0.50	0.50
Subtotal - 1B		**1.22**	**0.18**	**1.40**	**1.40**
1.C.1.1 Lengthening the Government debt yield curve; Issuance policy and primary market, secondary market and repurchase market framework and regulations	**Cons**	0.28	0.02	0.30	0.30
1.C.1.2 Training in Primary, Secondary and repurchase market frame work and regulations	**Training**	0.18	0.02	0.20	0.20
1.C.2.1 Infrastructure debt market legal & institutional framework; developing new offering regime regulation, upgrading securitization regulations, pension fund investment rules, and, insurance company investment rules; developing framework for sharia-compliant securities, and analysis of options for facilitating financing institution/framework (including VGF and FIL instruments)	**Cons**	0.37	0.03	0.40	0.40
1.C.2.2 Training (regulator's staff and market stakeholders) International courses, study tours and local workshops	**Training**	0.64	0.06	0.70	0.70
Subtotal - 1C		**1.47**	**0.13**	**1.60**	**1.60**

Total component 1		**9.88**	**1.63**	**11.50**	**11.50**
Component 2: PPP Pipeline Preparation					
2.A.1.1 Technical support for five pilot projects. Local and international consultants for feasibility, transaction advisors, lawyers and technical advisors to ensure that PPPs are prepared well and are bankable	**Cons**	16.56	1.44	18.00	18.00
2.A.1.2 Training and study tour for five pilot projects	**Training**	2.00	-	2.00	2.00
Total component 2		**18.56**	**1.44**	**20.00**	**20.00**
Component 3: Improvements to Fiscal Commitment and Contingent Liability Risk Management Framework Improvements					
3.A.1.1 Development of operational guidelines and implementation support for the assessment, monitoring, managing, reporting and disclosure of fiscal risks associated with PPP, incorporating specific technical and resident advisory services for fiscal risk assessment work, including on specific projects	**Cons**	3.68	0.32	4.00	4.00
3.A.1.2 Training on all aspects of fiscal commitment and contingent risk framework issues including identification, valuation and assessment, reporting and management of fiscal risks	**Training**	0.70	-	0.70	0.70
3.A.1.2 Equipment and software for DMD	**Goods**	0.30	-	0.30	0.30
Total component 3		**4.68**	**0.32**	**5.00**	**5.00**
Component 4: Program Management					
4.A.1.1 PIU Personnel for four years, including Project Coordinator, Financial Management, Procurement, M & E Specialist Staffing.	**Cons**	2.03	0.37	2.40	2.40
4.A.2.1 PIU training in related areas	**Training**	0.10	-	0.10	0.10
1.A.3.1 Equipment for the PIU	**Goods**	0.25	0.05	0.30	0.30
1.A.4.1 Non-consultant service for the project	**NCS**	0.08	0.02	0.10	0.10
1.A.5.1 Operating cost for PIU	**OC**	0.51	0.09	0.60	0.60
Total component 4		**2.97**	**0.53**	**3.50**	**3.50**
Grand Total Components (1, 2, 3,4)		**36.09**	**3.91**	**40.00**	**40.00**

Component 1: Institutional Support and Regulatory Reform (US$11.5 million)

4. This component will provide capacity building and technical assistance support to the PPPS and other ministries and agencies that will have critical roles to play in the implementation of the PPP program and preparation of lead transactions for market and support the continuing evolution of the legal and regulatory framework for PPPs.

Sub-Component 1A- Support to PPP Institutions

5. The component aims at enhancing the PPPS's ability to manage transaction and technical advisors of PPPs, oversee project feasibility work, and negotiate with the private

sector, in addition to building Government capacity to monitor and evaluate PPP projects after financial closure and project start-up. The component will comprise of four support instruments, namely: (i) technical assistance for activities in the PPPS such as policy work, sector analyses, embedded consultancy services, investment planning and financing and analysis (both public and PPP) work, and other PPP-related advisory support; (ii) in-house and international training, workshops, study tours, and courses; (iii) public awareness campaigns and investment conferences to manage the launch of the PPP program, including press releases, media coverage, workshops to stakeholders, coordination of PPP conferences with major conference organizers, launching a website for the unit as well as an investment workshop for private sector partners who have expressed interest to prequalify or bid for PPP projects; and (iv) equipment and operating costs for the PPPS, including international communication, work supplies and overhead.

6. Annex 3, Section I on Implementation Arrangements outlines the various ministries and agencies that will be involved in the PPP process and highlights their respective roles. The final determination of principal ministries and agencies and the key central agencies to be supported will depend on the priority transactions for which the GoK requests World Bank support under the proposed credit. Capacity building will focus on the PPPS.

Institutional Framework for the PPPS

The PPPS should operate within the context of a broader reform agenda with clearly defined mechanisms, methods and institutions for implementation. This includes clear lines of authority and decision-making based upon resources allocated through 5-year budget planning for project delivery and revision of budgetary codes, practices and accounting to accommodate and record PPP commitments.

PPP Nodes do not interfere with contracting authorities' responsibility for prioritizing what should be done to improve services, but only the contracting methodology by which it is done.

Size, Staffing and Build-up of the PPPS
A core team of key technical specialists in addition to an already-appointed Director should be considered to staff the new PPPS, alongside the part-time support of external consultants and advisors. As detailed below, technical requirements within the PPPS would include PPP financial, legal, procurement, safeguard and other technical expertise (i.e. structuring transactions).

Skill Set
To be effective, the initial members of the Unit's team require a variety of skills including:

- The professional qualifications and experience to effectively deliver messages that may be unwelcome;
- A **conviction** that PPP is a positive policy that will contribute to a successful reform agenda;
- Good communication skills with an ability to convey messages across a broad range of audiences, including at the Ministerial level; and
- An appreciation of the cultural differences between public and private sectors.

They must have the background and experience to address issues requiring knowledge of:

- The workings and methods of government and the relationship between different contracting authorities and agencies;
- Private enterprise and contracting;
- Finance and investment for projects;
- Public and contract law;
- Procurement and contract negotiation; and
- Public relations and media management.

The experience of most PPPSs is that they have to attract a number of outside recruits either through attractive fixed-term packages, the secondment of experts from major private sector institutions, or short-term consulting contracts.

The Unit's Director
At the early stages of a national program, the PPPS would need to be staffed by a full-time dedicated Director who would build momentum for PPP projects as well as help establish the Unit. The Director would be responsible for implementing the mandate of a wide and complex agenda and facilitating the on- boarding of a new team coming into

place under a newly established unit.

Financial, Legal, External Affairs, Procurement and Technical Expert
In addition to the unit's Director, the PPPS will comprise Financial, Legal, Procurement External Affairs and a Technical Expert. Responsibilities are detailed below, subject to continued dialogue with the GoK. Initially, the PPPS's team members will have to be flexible and prepared to take on a variety of multi-dimensional tasks. Whilst still small, the Unit's staff members will need to simultaneously address initiatives, issues, specific audiences and projects.

- Financial Expert – Responsible for accounting, reporting, advising on capital markets/finances, financial modeling, investment funds, contingent liabilities, feasibility studies and financial evaluations.
- Legal Expert – Responsible for advising on legal issues (contracts, sponsors, PPP Bill) and ensuring legal compliance of PPP projects. Also responsible for ancillary agreements, contract compliance and ensuring appropriate chain of approvals for PPP transactions.
- External Affairs Expert – Responsible for website, donor relations, media and press, publications and conferences
- Procurement Expert – Responsible for procurement process including prequalification, tender documents, evaluation of projects, awards, contract effectiveness and steering committees.
- Technical Expert – This would likely include expertise in structuring transactions in addition to other technical expertise as needed in external affairs, market assessments, or other identified areas. Responsibility for ensuring that projects are prepared and implemented in compliance with environmental and social safeguards policies and relevant Kenyan environmental regulations and procures will reside with the Technical Expert.

A mentor
A strategy to speed the unit's set-up and to engage in the key issues is to appoint a mentor. The mentor is an executive who has experience of setting up and running PPP taskforces and his/her engagement can vary from being very much "part of the team", to being present occasionally but available regularly by e-mail. The Netherlands, Mexico, South Africa, Egypt and Malta have followed this model.

Sub-Component 1B- Legal and Regulatory Reform:

7. A robust legal and regulatory framework is key to the success of the PPP program. Following on recent approval from Kenya's Cabinet on the PPP Bill, this sub-component will support further policy dialogue and design on the legal and regulatory framework for PPPs, including support that can be provided on the development of PPP Regulations, PPP Guidelines and any other policy or documentation needed for the PPP framework. This sub-component would also support review and amendment to sector specific provisions that might constrain or be inconsistent with development of PPPs and/or assist relevant authorities to develop sector-specific guidelines and policies and carry out analysis on possible policies such as, in the road sector, a study into the implications of developing a tolling policy.

8. Kenya is currently undergoing an ambitious program of legislative reform following the passage of a new constitution in August 2010. Most sectors and authorities that would be potential contracting authorities under the PPP project pipeline will be affected to some degree and it is not clear at this juncture what institutional framework will be in place following the reforms. This is the case in the water and health sectors in particular, where the counties under the devolution program will play a significant role, although none of the "first mover" transactions are in these sectors. The constitution has also established that there will be a halving of the number of ministries to 22, which may have a positive impact on the PPP program, at least in terms of coordination efforts.

9. An early assessment of key sector policies relating to the "first mover" PPP transactions outlined in Component 2 are detailed below, covering road, airport, port and power sectors.

10. **The Roads Sector -** The roads sector is governed by a number of laws and regulations including the Roads Act 2007, Public Road Tolls Act 1989, Road Maintenance Levy Fund Act 1993 and the Kenya Roads Board Act 1999. The Roads Act of 2007 established the Highways Authority (KeNHA), the Rural Roads Authority (KeRRA) and the Urban Roads Authority (KURA). KENHA is responsible for the management, development, rehabilitation and maintenance of national roads. KURA is responsible for the management, development, rehabilitation and maintenance of all public roads in the cities and municipalities in Kenya except where those roads are national roads. KeRRA is responsible for the management, development, rehabilitation and maintenance of rural roads. Most of the potential road PPPs would be under the jurisdiction of KENHA. Some of the key issues that investors in roads will look at are the ability to charge and collect tolls in the name of the operator, and the ability to acquire land for the right of way. The Roads Act provides for each of these. Some of the constitutional changes may have implications on the road sector and in particular the extent to which road policy for a road running through a particular county will be subject to county rules. However, it is anticipated that KENHA will continue to have a mandate for highways and that the Ministry of Roads or successor thereof will continue to be responsible for road policy.

11. **The Airport Sector** –The Kenya Airports Authority (KAA) is established by the Kenya Airports Authority Act of 1991 and has umbrella responsibility for f providing and managing a coordinated system of airports in the country. According to the KAA's functions and performance of its functions under subsection (1), KAA has the power to enter into PPP arrangements with the private sector and to delegate its functions. It also has the right to levy charges and fees, subject to approval of the Minister, and to acquire land. These are all key powers which will be of interest to any potential investor in a PPP in the airport sector. The Kenya Civil Aviation Authority (KCAA) was established on 24th October 2002 by the Civil Aviation (Amendment) Act of 2002 with the primary functions of regulation and oversight of aviation safety and security, economic regulation of air services and development of civil aviation, provision of air navigation services and training of aviation personnel. KCAA operations are guided by the provisions of the convention on international civil aviation, the related ICAO Standards and Recommended Practices (SARPs), and the Kenya Civil Aviation Act of 2002, civil aviation regulations, procedures and practices. KAA's mandate is to plan, develop, manage, regulate and operate a safe, economically sustainable and efficient civil aviation system in Kenya, in accordance with the provisions of the Civil Aviation Act.

12. **The Port Sector** - The two key institutions in the ports sector are the Kenya Ports Authority (KPA) and the Kenya Maritime Authority. Kenya Railways Corporation has been responsible for inland lake ports but this responsibility is supposed to be transferred to KPA.

- **Kenya Ports Authority Act 1978 (KPAA) -** The Kenya Ports Authority is established by the KPAA, which grants powers to construct, operate, and maintain beacons and other navigational aids as well as construct new ports. The KPA can enter into agreement with any person for the purposes of the Authority. It seems clear from this that KPA has the right to enter into arrangements in respect of the seaports for delegation to the private sector of services. The inland lake ports are also now supposed to be under the responsibility of the KPA. Further to an instruction of the Minister of Transport in 2011 the inland facilities, which have historically been the responsibility of Kenya Railway Corporation, are to be transferred to KPA, however the actual transfer of assets and personnel has not yet taken place. It would be important to understand the process for such transfer before embarking on any PPPs in the inland lake ports.

- **Kenya Maritime Authority (KMA) – Kenya Maritime Authority Act 2005 -** Kenya Maritime Authority Act has the mandate to regulate, coordinate and oversee maritime affairs both at sea and inland waters. Thus, KMA is expected to enforce an effective regulatory regime on all waters under its jurisdiction for security and safety, protection against pollution and promotion of local participation. Anticipated activities to achieve these objectives are set out in the strategic plan and the Board will place at the disposal of management, adequate resources and leadership to successfully attain them. KMA is currently implementing new EAC safety regulations for inland waterways which should reduce accidents and create a safer enabling environment that should encourage the private sector.

13. **Geothermal Development Company (GDC)** - Geothermal resources in Kenya are governed by the Geothermal Resources Act 1982. Geothermal resources are vested in the Government by the Act and a license or authority is required for exploration of geothermal resources provided by the Minister for Energy. Such license is subject to requirements for proper supervision of bore closure, safety maintenance, and ensuring that the bore is left in a lasting safe condition. The license lasts for one year and is not transferable and it is renewable for one year. There is therefore potential uncertainty for investors if and to the extent that they are involved in borehole exploration. The Minister may also grant a "geothermal resources license" for a period not exceeding 30 years (renewable for 5 years). The license gives the licensee the right to enter land with geothermal resources, drill and construct necessary bore hole, construct and maintain buildings and machinery, utilize geothermal resources, construct roads and other communications and use water, subject to the water Act 2002. The license is not transferable without the Minister's authority. A licensee may forfeit the license due to cessation of work continuously for 6 months without consent or for other breaches.

14. The GDC was formed in December 2008 as a company under the Companies Act. It is 100% owned by GoK (Treasury and Min of Energy) and it has broad objects under its Memorandum of Association to carry on the business of the exploration, assessment, extraction, utilization and development of natural resources including geothermal heat and steam, water, and other resources commonly or conveniently used by persons carrying on the business of geothermal resource development, exploration, generation, production, storage, transmission, distribution, supply and sale of geothermal electricity in all. It also has the mandate to produce, purchase, refine, generate, accumulate, store, transform, distribute, supply, sell and use geothermal steam for any purpose and to manufacture and sell by-products. It may also act as a consultant and acquire businesses and land for its purposes and enter into agreements with power generation companies, authorized transmission companies etc. It may also raise finance and create security over assets. GDC's mandate is to promote rapid development of geothermal resources in Kenya.

15. It is also noted that the Geothermal Resources Act is relatively old and has not kept pace with the role of GDC or the current potential scope of geothermal power production in Kenya. There are also a number of other laws that are relevant to geothermal production and sale and create potential uncertainty to investors as there are a number of public authorities involved, so giving rise to regulatory uncertainty, including the Energy Act of 2006, the Factories Act of 1972, the Water Act of 2002, the Local Government Act, the Forests Act and the Wildlife Conservation and Management Act.

Sub-Component 1C- Institutional Development for Financial Products and Approaches to PPPs

16. This sub-component will support the GoK to assess and develop the options for different institutional arrangements necessary for the management of the prospective financing instruments to be supported under the APL 2. Kenya has made commendable progress in capital market development over the last decade, ranking third in market size in SSA after South Africa and Nigeria. An ambitious reform process partly supported by other WBG projects (e.g., the FLSTAP) ending in March 2013, Global Emerging Markets Local Currency (GEMLOC), and Efficient Securities Markets Institutional Development (ESMID) is underway, which is expected to enable both the Government and the private sector to access long-term funding on a stable basis and provide a diversified range of non-bank saving instruments to institutional and retail investors. The current capital market may be able to fund some medium-size PPP projects with local currency revenues and low risk levels (e.g. projects that are already in operation). Ongoing reforms complemented with infrastructure related legal and institutional changes would be essential to support funding of a regular pipeline of PPP projects. The World Bank recommends further enhancing the implementation of ongoing programs on capital markets and that a component is added to the proposed credit to reinforce ongoing reforms.

17. *Lengthening the Government debt yield-curve*. The Government has been following a gradual benchmark building policy with 2, 5 and 10-year maturities followed by the issuance of 20, 25 and 30 year bonds under a context of exceptional excess liquidity, from 2009-2011. This supported the non-Government fixed income market to issue at maturities up to 10 years. As of 2010 Government medium and long-term bonds represented 74 percent of total issued debt versus 24 percent in 2001. Worsening macroeconomic conditions in 2011, however, put this strategy on hold and reinforced the need to consolidate maturity lengthening through a series of already planned and ongoing reforms on the issuance policy, auction rules, secondary market architecture, broadening of the investor base and clearing and settlement infrastructure, as well as the need to add other areas such as a robust legal and operational framework for repo markets.

18. *Legal and institutional framework*. The capital markets legal and supervisory framework is robust with a relatively strong CMA. Further strengthening is required including passage of key draft bills (Capital Markets Authority Bill and Securities and Investments Bill), or amendments that have been completed and submitted to the MoF for review and submission to Parliament). There are several additional regulatory reforms that would be required to support infrastructure-funding instruments. These include i) an issuance regime aimed at institutional investors known as restricted public offer with shorter time to issuance and lower issuance costs; ii) legal changes and regulations that would enable to structure asset backed securities as trusts and facilitate future flow securitization – the required changes are incorporated in the draft Securities Industry (Asset Backed Securities) Regulations iii) changes on investment rules for pension funds and insurance companies so that there is an adequate balance between portfolio diversification, returns and risk of asset classes they can invest in- because the new private placement regime assumes a certain degree of sophistication of institutional investors, there is need to accompany these amendments with capacity building for institutional investors, particularly on credit analysis; and iv) framework for the use of Sharia compliant instruments for infrastructure funding given the reported existing and potential fund inflows in Kenya from GCC countries into long-term projects (including recently, one for a PPP –Rift Valley Railways). From an

institutional perspective the following would be needed: i) the development of a credit analysis and rating culture among investors through capacity building among institutional investors; ii) capacity building of local investment banks in PPP origination; and iii) assessing the need and role of a financial institution to provide take-out financing, partial guarantees and/or credit enhancement.

19. *Depth of the domestic demand.* There is potential domestic demand for medium and small sized projects – but this will have to be developed over time. Large projects would still need to predominantly rely on foreign investments with potentially a share of domestic investors. All interviewed banks, including the main local and international banks are very interested in a prospective PPP program –with 1-2 clear leaders in the market. Depending on the bank, there is estimated capacity to invest between Ksh 3-7 billion per bank. Building expertise would be needed in the case of the local banks, particularly given limited experience with PPPs, although the recent restructuring of the RVR PPP including financing from Equity Bank is promising. Their maximum maturity exposure would range between 7-10 years. In the case of pension funds and insurance companies current "Assets Under Management" (AUM) amount to around Ksh 648 billion, with insurance companies having the higher growth potential. Currently pension funds (the largest institutional investor) have relatively conservative portfolio consisting of Government debt, bank deposits and some equities, although they do invest important amounts into real estate (18 percent of AUM). They would be able to invest in PPPs provided their investment guidelines are amended and capacity to analyze PPP investments developed. The latter could be acquired as projects are being developed. In the short term pension funds can be expected to fund medium sized low risk projects in local currency, if well structured. Insurance companies could also invest in similar projects, provided they currently have a relatively high exposure to volatile assets (25 percent of AUM in equities and 14 percent in real estate), but paradoxically, have 16 percent of AUM in bank deposits a portion of which could be invested elsewhere.

20. Proposed activities to address existing shortcomings in the capital markets to provide long-term finance in local currency to infrastructure projects includes the following:

i. Further support to ongoing efforts to consolidate a long-term the Government debt yield curve. World Bank TA started in 2011 with the DMD and Central Bank of Kenya with the elaboration of an Action Plan, but was put on hold during the period of extraordinary high interest rates.
ii. Regulatory reforms to support the non-Government long-term bond market. These are already underway but require additional support for implementation.

    a) Regulations on securitization products within the framework provided by the Securities and Investment bill
    b) Investment rules for pension funds and insurance companies to enable them to invest in infrastructure financing products. The WB is already assisting RBA in this issue.
    c) Capacity building for pension and insurance asset managers and regulators on infrastructure financing instruments.
    d) Framework for alternative instruments capital markets instruments to finance infrastructure projects: infrastructure funds and Sharia compliant capital markets instruments.

21. *Viability Gap Fund (VGF).* Analysis of likely demand for VGF allocations will commence as part of the due diligence to be undertaken on the Lead Transactions. In some cases, for instance the airport ancillary services, it is not anticipated that there will VGF requirements. There is most likely to be VGF demand in the transport, ICT and social sector projects included as potential Lead Transactions. Annex 7 provides further background rationale for a VGF and some proposals on the prospective institutional arrangements to be put in place to establish a VGF within the Government apparatus. The further development of the VGF will need to be done in close cooperation with the ongoing Integrated Financial Management Information System (IFMIS) budget management reform process and the Fiscal Commitment and Contingent Liability (FCCL) Management component of the project.

22. *Financial Intermediary Lending:* Consideration will also be given under this proposed IDA project, to the provision of financing through a Financial Intermediary Lending in accordance with World Bank OP8.30 guidelines. The credit would – subject to pipeline requirements and further assessment by the GoK and World Bank on the substantive need for this type of facility – allow for long-term local currency debt financing directly to the private sector. The credit would, more specifically, serve to augment and extend the tenor of long-term local currency to help facilitate financial structuring, particularly for PPP projects lacking a foreign currency revenue flow. The financial intermediary lending could be deployed via an apex arrangement to qualifying "Participating Financial Institutions" (PFIs). Further assessment of this appropriateness of this instrument which would, like the VGF, be something to be introduced under the APL 2, will be undertaken once the targeted project pipeline is further confirmed. The identification of prospective PFIs will also be initiated during the course of APL 1 implementation once greater certainty as to the likely pipeline going to market can be ascertained.

23. *Partial Risk Guarantees (PRG):* Once the prospective pipeline for this project is confirmed, it will be possible also to more fully engage the World Bank Guarantees Department (FEU), IFC and MIGA in determining additional financing options – in particular the potential to deploy PRG products. If IDA PRGs are assessed to be a suitable instrument, further consideration will be given to whether this support should be incorporated into the APL 2, together with possible VGF and financial intermediary lending allocations, or whether this should be done on as a separate transaction. It is noted that in the case of other PPP projects recently approved by the Board for Nigeria and Ghana, the decision was taken to provide PRG support as and when necessary in a parallel project.

Component 2: PPP Pipeline Preparation (US$20 million)

24. This project component will support the development of an official pipeline of PPP projects (detailed pipeline in Annex 10), with a subset of "first mover" transactions confirmed by the GoK (see letter in Annex 9). Consequently, the component will provide resources for conducting detailed due diligence for particular PPP pipeline transactions to ensure a market-credible project pipeline. This will include financing: (i) investment appraisal, VfM and PPP feasibility studies (PFS) preparatory work; (ii) transactions advisory services including related embedded specialist consultant services to assist the PPPS to manage and assess transaction advisory services; (iii) safeguards due diligence work; and (iv) market outreach resources.

Summary of Possible PPP Transactions

Below is a summary assessment of the anticipated "first mover" PPP Transactions to be supported under the IFPPP in line with the Letter from the Ministry of Finance, dated June 6th, 2012. These are drawn from a longer list of GoK priority projects detailed in Annex 10. Other key transactions, the preparation of which is being supported by a parallel IDA operations and through IFC Advisory are listed here. While these will not be supported under the IFPPP APL 1, they are strong candidates for project financing support under the APL 2. This "first mover" list may change over time as due diligence is undertaken on their feasibility (economic return, VfM, affordability) and other prospective transactions are identified.

I. APL 1 "Lead Transactions"

Roads: KENHA, created in 2002, is responsible for national highways, including those running through urban areas. While KENHA has access to funding for maintenance via use of fuel levy, it has limited capital for new construction (looking primarily to budget allocations). There are plans to consider PPP mechanisms for a number of the projects in the KENHA pipeline and possibly leverage toll collection on key urban links. Under the NUTRIP project it is proposed that options for PPPs in the urban road sector in Kenya will be commissioned that will guide the approach to PPPs in the sector. The priority roads for KENHA are listed below.

- **Nyali Bridge –** there was a previous toll bridge, reportedly the first PPP in Kenya, developed as a "build-own-operate (BOO)" by the private sector in the 1930s which operated until the 1980s and then was dismantled. Increased congestion in Mombasa has caused KENHA and KURA to look at alternative routes, including a replacement bridge. A feasibility study is to be carried out under the proposed Bank transport project (NUTRIP).
- **Two to three sections of Dualling of the Mombasa-Nairobi-Malaba Road –**About 150KM of International trunk road linking Mombasa-Uganda. Three potential segments include: Mombasa-Mariakani (60KM), Naivasha-Nakuru (45KM), and Nakuru-Mau Summit (45KM).

Airports: Jomo Kenyatta International Airport-Ancillary facilities. Terminal one (units one through four) is currently under extensive expansion, supported by the World Bank, and other partners. The construction of the new terminal is expected. A second phase, particularly for the ancillary services needed for any high-quality airport that are not currently included in the DBF arrangements, for example parking facilities, offices, hotels) could be a viable PPP to provide the additional facilities.

Power: Geothermal Power Menengai Project- Kenya's Geothermal Development Corporation (GDC) is supporting the exploration of geothermal capacity in key fields in Kenya, including Menengai. The steam produced by GDC will be sold to investors who will finance, construct and operate the power plants. The first phase will be 400 MW. There is an IDA energy sector project being prepared as well.

Government Shared Service Center/National Land Information System. Establishment of a web portal to provide services to citizens, country-wide. Design implementation framework developed.

Special Economic Zones: Mombasa (and other sites) – establishment of SEZs in selected sites, more advanced for Mombasa site. Development of SEZ on a 2000km2 land parcel, based on Singapore development model. Master planning close to completion. Support is ongoing from WBG (Ministry of Trade/Kenya Ports Authority) focusing on: legal framework; site selection; market demand analysis; and developer targeting. Potential Government owned sites with titles identified. The SEZ bill was submitted to Parliament, replacing current Export Promotion Zone framework (which had limited effectiveness).

2. APL 2 Potential Projects For Financing That are Not Supported under APL 1

Preparation through the IDA - NUTRIP Project:

- **Rail - Nairobi-Kenyatta Commuter Rail** - design and provision of rolling stock and operation of the commuter rail link between Nairobi CBD and the airport (the GoK has budgeted for and is currently building and rehabilitating the railway and stations) – This is a project of the Kenya Railways Corporation (KRC). InfraCo has been retained to develop this project and it is unclear what the status of project development or detailed project design currently is. KRC has formally requested complementary support from IFPPP project (and NUTRIP project) on the commuter rail.
- **Air - Aeronautical Training Center –** The GoK is planning to separate the regulatory and operational functions of the Kenya Civil Aviation Authority. As part of the restructuring, GoK is looking to options for PPP arrangements for the training center to join forces with private training institutions to provide additional courses.

- **Ports:** Kisumu – The project involves its development into a modern commercial Lake Port to serve the growing trade in the East African Community region. Kenya Ports Authority is in the process of taking over the management of Kisumu and other Lake Victoria ports from Kenya Railways Corporation in line with the directive given by East African Community Council of Ministers of East African Community in October 2007. Which indicated that the running of Lake Ports be taken over by the Port Authorities in the Partners States. The overall goal is to develop these ports, provide requisite physical and super infrastructure, develop a mechanism to effectively manage these ports and ensure their efficient utilization for the benefit of the EAC region.

3. Preparation Through IFC Advisory:

- **Education - Kenyatta University Hostel**: Under an IFC advisory mandate, this project feasibility study is in process, and is considered a short term opportunity.
- **Tourism-Mombasa Convention Center**: The availability of land, strong support of the Minister of Tourism and increasing likelihood of an IFC advisory mandate for this project makes it a strong short to medium term opportunity.

Upstream project development financing will provided under a parallel IDA Project and IFC Advisory. If these projects go to market, targeted financing could be provided under APL 2.

Component 3: Improvements to Fiscal Commitment and Contingent Liability Risk Management Framework (US$5 million)

25. This sub-component will support the development of a Framework for Managing Fiscal Commitments and Contingent Liabilities (FCCL) for PPPs. This work will provide support to the MoF Debt Management Office (DMD) and will deliver Technical Assistance, Training and Goods and Equipment to provide the enabling environment and capacity for the key actors to implement the FCCL.

26. The FCCL framework to be developed will provide a detailed Institutional Arrangement Guideline which establishes the roles, responsibilities, activities and deliverables for the actors involved in the management of FCCLs.

27. Kenya currently has no specific framework in place for managing on-going fiscal commitments to PPP projects. The policies and processes that may be relevant to managing those commitments are therefore the framework for managing PPPs in general, and overall public financial management policies on managing long-term fiscal commitments or contingent liabilities. The PPP Bill currently before Parliament does provide some new requirements including the oversight of FCCL on a given PPP project (refer to paragraphs 52-53 and 65(2)(b)).

28. The current role of the DMD is limited to the reporting of liabilities at the end of every financial year and when called upon by Parliament or other interested parties. When a guarantee is called (for instance when an SOE defaults), the GOK when acting as a guarantor repays the liability through the Ministry of Finance. DMD makes a provision in the Consolidated Fund budget. No risk analysis is currently undertaken on guarantees to provide an indication of potential loss before default. Often "Letters of Comfort" are provided. While these are not guarantees, they do constitute contingent liabilities as they establish some basis of obligation that may result in a government payment, even if this obligation does not have full legal standing.

29. Table 1 below describes four key challenges in managing on-going fiscal commitments under PPP projects and describes the extent to which the current approach—

through the PPP framework and applicable public financial management law— addresses each one.

Table 1: Gaps in the Current Approach

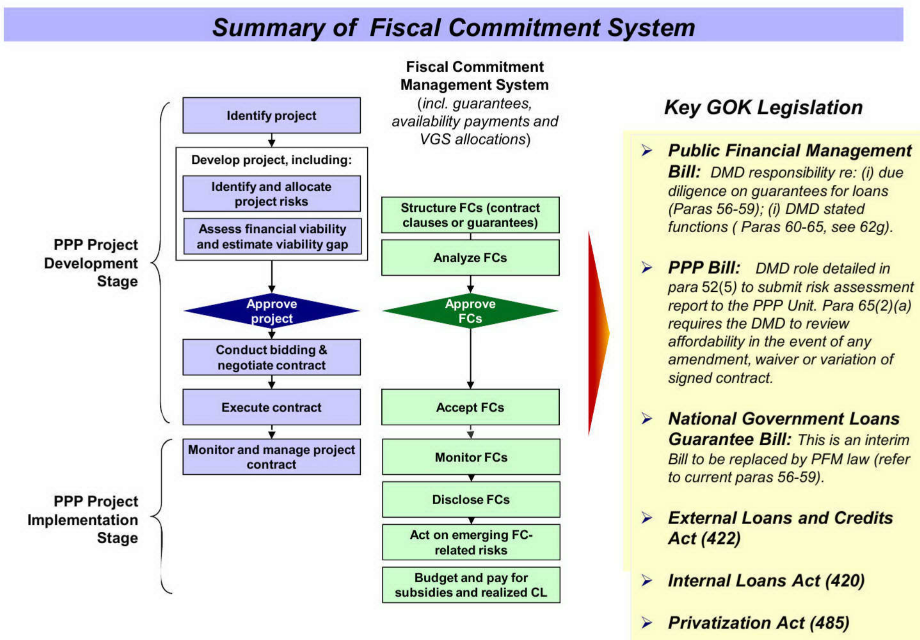
Challenge	Implications?
Long-term or contingent commitments are often not subject to the usual affordability checks on government expenditures provided by the annual budget and medium-term planning processes, since payments may be made outside the budget and planning horizon. This means decision-makers may not fully take into account the cost to government of taking on such commitments	▪ Importance of value for money and of awareness of fiscal implications are emphasized among policy principles ▪ … However, no process or guidance on how this should be done at any stage of developing a PPP project is provided.
Risks associated with contingent liabilities for the government need to be proactively managed over the lifetime of the project to achieve value for money	▪ Reference made in Policy to a Facilitation Fund which among others will provide a source of liquidity for calls under contingent liabilities accepted by Government on any given PPP project. ▪ … However, no approach is defined for whether and how the resulting fiscal exposure should be monitored and managed, in the context of the Government's overall liability management.
Uncertain payment obligations expose the government to fiscal risk that can create budgetary uncertainty and put the public debt on an unsustainable path…	▪ Contingent liabilities are not systematically analyzed for their consistency with other Government obligations ▪ The few requirements on accounting for contingent liabilities in public financial management legislation are not currently enforced.
…in turn creating uncertainty among private partners as to whether the government will be able to honor its commitments	▪ Having a defined policy and process for developing, monitoring and managing PPP projects helps give investors and analysts confidence in the Government's overall commitment to the PPP program ▪ … However, the gaps described above—particularly in how fiscal commitments are analyzed for affordability and budgeted for—could reduce credibility of Government financial commitments to PPP projects.

30. **Viability Gap Facility:** Concurrently with this assignment, the Government is planning to develop a Viability Gap Facility (VGF). The VGF is a financial facility is yet to be designed. The GoK will be assessing the pros and cons of different options, including up-front capital subsidies and/or payments to PPP projects being provided via a VGF. While guidelines on the proposed VGF in Kenya have yet been prepared, some principles for consideration include:

- PPP projects receiving VGF support will need to comply with PPP preparation and approval procedures as set out in the policy, law and subsequent regulations;
- VGF support will be provided to projects that are economically cost-benefit justified, but not financially viable, but may be capped at a certain percentage of total project cost (to preserve the incentive for performance created by the private party having significant equity at stake);
- The VGF itself will, in the case of the GoK be established as a "Fund" and funded by Government budget transfers under a "VGF" service-wide vote. Transfers could be made to the VGF once projects have been approved—that is, an amount equal to the subsequent expected payment requirements will be held in the Fund; and
- Payments from the VGF will be made as needed, following milestones that will be contractually defined (which may include construction progress and/or equity investment targets).

31. Any policies and processes will need to be well coordinated with those for a VGF, which is providing simply another form of fiscal commitment to PPPs. In the remainder of this report, we assume the VGF will be implemented along the lines described here. Ideally, policies and guidelines for both VGF and managing on-going fiscal commitments should be developed in tandem.

32. Based on discussions to date with the MoF, the following outlines the range of roles and responsibilities in respect of FCCL from project development through implementation:



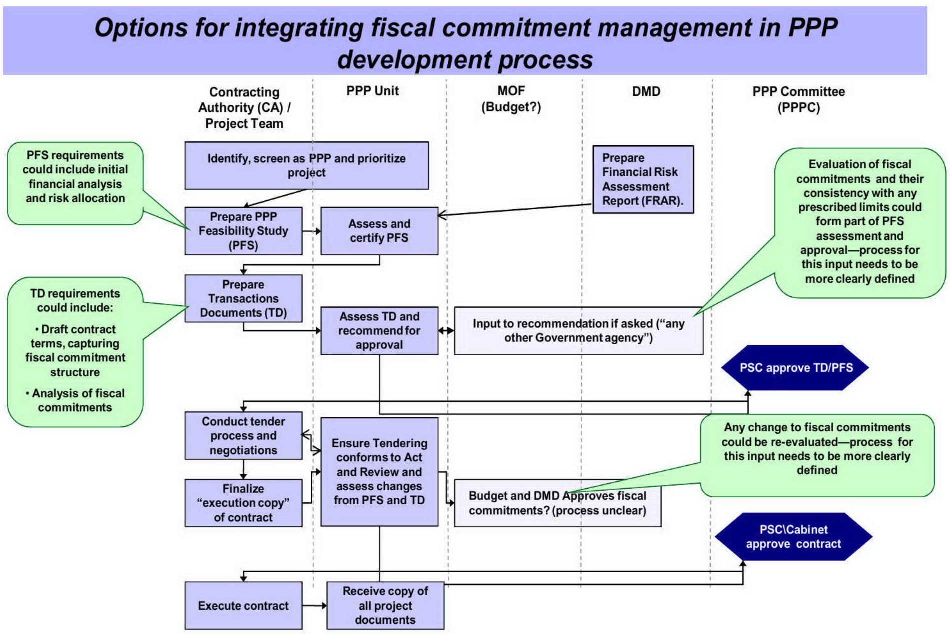
33. Under the current PPP Bill submitted to Parliament, the current allocation of roles and responsibilities across government entities is as summarized below:

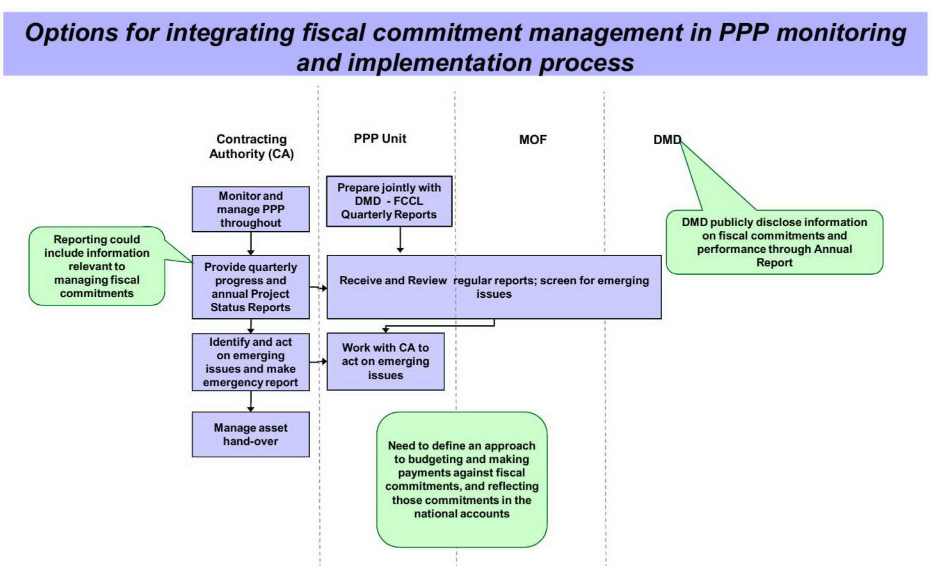
- **Contracting authorities (CAs) and their PPP Nodes:** retains the main responsibility for developing and implementing project;
- **PPPS**: (i) serves as a PPP resource centre and provides related capacity building; (ii) oversees the PPP process; (iii) assists the PPPSC in formulating guidelines and standard documentation; (iv) ensures conformity of tendering processes to the Act and procurement best practices; (v) makes recommendations on proposed projects to the PPPSC**;** and (vi) monitors PPP contingent liabilities, accounting and budget issues;
- **DMD**: mandated to assess ex ante (feasibility stage) and report ex post (implementation stage) on contingent liabilities of the GoK and advise on policies and procedures for their management—as acknowledged in PPP Policy 2011 and PPP Bill;
- **Ministry of Finance—Budget Office; Accountant General**—responsible for budget planning and execution and Government financial reporting, including where needed for PPP projects;
- **External Resource Department** – responsible for foreign financing.

34. The allocation of functions should consider capacity of different agencies including a clear delineation of DMD roles at following PPP project stages:

- **Pre-Feasibility and Feasibility Stages** (DMD Middle Office)
- **Member of Negotiating Team** (DMD Front Office)
- **Monitoring and Implementation Reporting** (DMD Middle Office)

35. With these considerations in mind, the following schemata outlines an initial prospective structuring for a FCCL system for both project development and project implementation stages:





36. A detailed Operational Note and Cabinet-approved guidelines for the set-up and implementation of the FCCL management system will be developed and put into effect with support from this IDA credit.

Component 4: Project Management - (US$3.5 million)

37. The PIU will support the implementation of activities covered under APL 1 and APL 2. The PIU will report to the Director of the PPPS. Arrangements to use an existing FLSTAP PIU under the Ministry of Finance, which has been fully operational, particularly for the last five years are in place, so that the FLSTAP PIU will be broadened to handle both the FLSTAP in its last year of operations (closing on March 31, 2013) and the proposed IFPPP project.

38. The procurement team recommended that an additional procurement specialist be hired to support the PIU team and ensure there is sufficient capacity in the procurement function to handle both projects during the transition. The FM team indicates that there is no need to hire additional FM staff, as an Assistant Project Accountant has been hired recently, in addition to the FM specialist, deemed to be sufficient to handle both projects in spite of the transition period. A technical associate will be hired to assist the PIU Coordinator and provide additional support on monitoring and evaluation, and capacity building.

39. The project will build on extensive experience of the FLSTAP PIU in handling a WB complex technical assistance project that deals with de facto 22 beneficiaries and focal points at each institution. The latter will help inform implementation of the IFPPP with regards to the interaction between the IFPPP PIU and the PPP Nodes at procuring agencies (which are specified in the PPP Bill).

Annex 3: Implementation Arrangements

Kenya: Public-Private Partnership (PPP) Project

I. Project Administration Mechanisms

1. The MoF will act as overall Implementing Agency for the IFPPP project and a senior official selected by the Ministry will be the head of the PPPS. The project will be managed on a day-to-day basis by a Project Coordinator. The PIU will be composed of at least seven positions, plus 1-2 additional technical associates as required: (1) Project Coordinator; (2) Financial Management Specialist; (3) Procurement Specialist; (4) Assistant Project Accountant; (5) M&E Specialist; (6) Safeguards Specialist; and (7) PPP Specialist. The GoK has agreed to use an existing PIU from the FLSTAP Program under the MoF with support from additional hires to the unit as required.

2. A Project Committee will serve as the PSC and this function will be developed in terms of roles and responsibilities in the PIM. It will, inter alia, require Semi-Annual Project Progress Reviews, based on reporting to be prepared by the PIU under the supervision of the PPPS Director. The Project Committee will be chaired by the PS Treasury and include the Attorney General and the PS of the Ministry of Planning. The PPPS will serve as the secretariat and technical arm of the PSC.

3. There are several beneficiaries and implementing agencies of the IFPPP project which include the PPPS, DMD and the PPP Nodes/Agencies.

II. Role of PPP Institutions in the PPP Process

4. Implementation of PPPs Based on the National Policy on PPP: The PPP Policy outlines the roles of the various Ministries and Agencies for the successful processing and implementation of a PPP program. In general the various institutions will be supporting the following broad functions: (a) PPP policy development, dissemination, monitoring and enforcement; (b) individual project sponsorship, design, preparation and execution; (c) financial management of funded and contingent obligations; (d) gate-keeping and approval functions; and (e) PPP project advice, support and promotion. See the box below for the specific roles of the various institutions.

Role of PPP Institutions in the PPP Process

Ministry of Finance (MoF) - Is spearheading the development of PPP and is responsible for developing the legal, institutional, and regulatory framework for the PPP program. MoF is also responsible for the issuing of Standardized PPP provisions and PPP Manual/Guidelines for effective management of PPP Projects.

The PPP Steering Committee (PPPSC): This Inter-Ministerial Committee will be responsible, inter alia, for PPP policy guideline formulation, project approvals and monitoring and evaluation oversight. It will be chaired by the Ministry of Finance Principal Secretary and includes, as members, the Principal Secretaries responsible for Government Coordination, National Planning, Lands, Local, and County Government and representative from the Attorney General's office as well as four representatives from outside of Government as appointed by the Cabinet Secretary.

The PPP Secretariat (PPPS) - Currently the PPPS is staffed with a Director and support staff. The proposed organization structure, including an initial scoping of job descriptions and candidates' profiles (taking into account the potential for overlap in the various fundamental roles to be played by the PPPS) has been drafted for consideration by the GoK and is included in Figure 1 below. The key role of the PPPS will be coordination of Policy implementation across the participating Ministries and Departments of Government. The PPPS will also manage donor relations in respect of the Policy, serve as the Secretariat to the PPPSC and provide a range of advisory and oversight functions that will be detailed more comprehensively in the detailed organigram currently being prepared by the PPPS (see summary below). In light of the start-up status of the Policy, it is to be expected that these roles and responsibilities will be subject to some fluidity and evolve over time in response to operational effectiveness and efficiency considerations and other lessons learned.

PPP Nodes/Contracting Authority: The PPP Nodes are satellite PPP units present in contracting authorities with a pipeline of projects which will be functionally reporting to the PPPS and administratively reporting to the Contracting Authorities. Their function is to support the development and ensure procurement and contract Management of PPPs within the national policy guidelines and implementation of the draft PPP bill, soon to be approved.

The **PPP Financial Provisions:** The GoK proposes, as part of the overall PPP Program to introduce a PPP Project Facilitation Fund (PPP-PFF, as referred to in Article 69 of the Draft PPP Bill). This PPP-PFF will provide financing for project development, a Viability Gap Fund (VGF), and for a fund to provide liquidity to meet any contingent liabilities arising from a PPP project. The specific institutional arrangements for the implementation of these different components of the PPP-PFF and the respective roles and responsibilities of the PPPSC, PPPS, the PPP Nodes and other key departments of the Ministry of Finance (e.g. Budget, Debt Management) will be developed into a draft Guideline.

MoF- Debt Management Office: The Debt Management Division will ensure fiscal sustainability for PPP projects, considering both direct and contingent liabilities on government's finances including guarantees, arising from each PPP project. Specifically, the DMD will be responsible for: (a) *fiscal impact*: assessing and managing the long-term fiscal risks and impact of the PPP project (direct or contingent, explicit or implicit) and determining whether it is acceptable, given other priority national needs; and (b) government *support*: confirming the appropriateness of the project for sovereign guarantees (debt or specific-event) or other kinds of government support.

MoF- Budget Division: The Budget Division shall establish processes to incorporate PPP project development into the annual budgeting exercise, and fund direct as well as contingent (unanticipated) calls on the budget. The Division shall therefore ensure that any payments to be made by Ministries and Agencies under the PPP contract are consistent with the national budget.

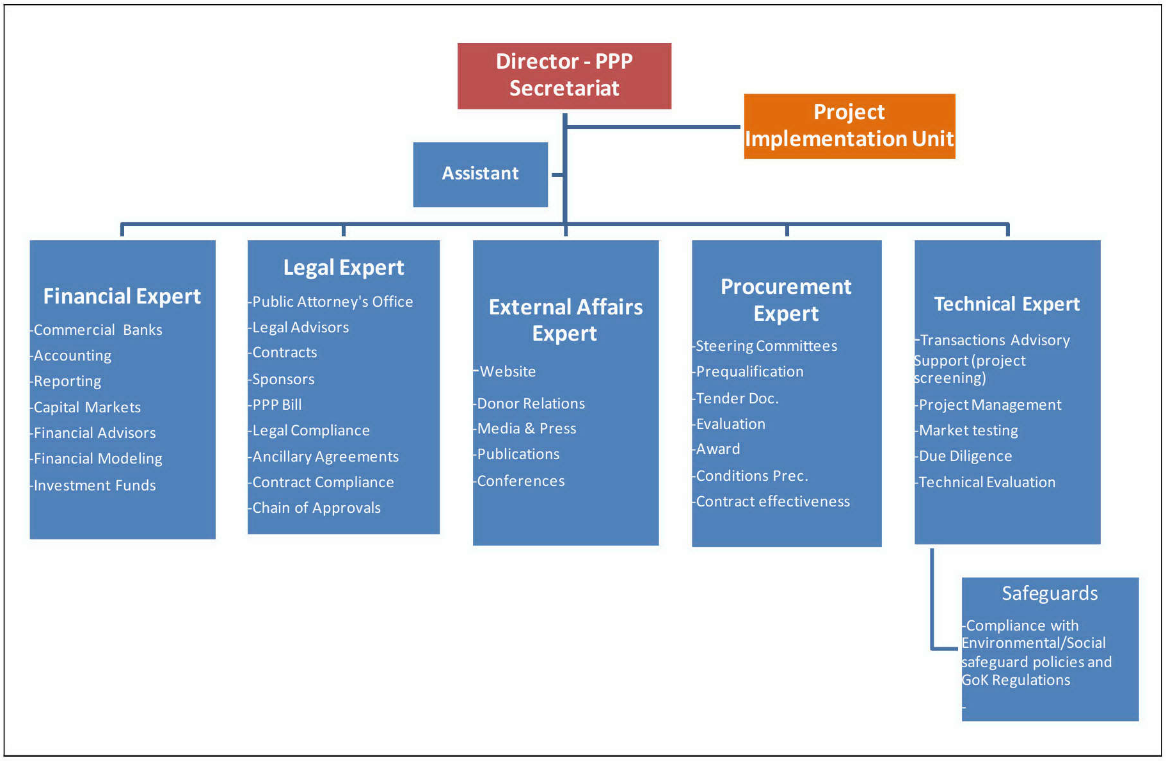
Cabinet shall be the approving authority for PPPs subject to the provisions of the Approval Schedule to this Policy and detailed regulations to be promulgated.

Parliament shall be the final approving authority where PPP projects require the approval of Parliament, subject to the provisions of the Schedule to this Policy and detailed regulations to be promulgated. This is to ensure protection of public interest.

Attorney-General's Department with the assistance and advice of PPPS legal expert shall ensure the conformity of all project agreements with Kenyan law.

Regulatory Authorities shall ensure that the PPP contract, insofar as it will have an impact on customer tariffs, is consistent with and fosters appropriate regulatory principles.

Figure 1: PPPS Organization Chart



III. Financial Management, Disbursements and Procurement

A. Financial Management and Disbursement

5. The proposed financing instrument is an APL to be implemented in two phases; the current project involves APL 1, to be implemented over a four-year period, which is the focus of the FM arrangements described below. It is expected that by the time of mid-term review, the institutional arrangements for APL 2 will have been determined and a more detailed FM assessment for APL 2 will be conducted. For an overview of APL 2 please refer to Annex 7 of the PAD.

6. In line with the guidelines as stated in the Financial Management Manual issued by the Financial Management Sector Board on March 1, 2010, the Bank's financial management team conducted a financial management assessment of the Ministry of Finance PIU that will be implementing the IFPPP. The PIU will be responsible for overall project implementation, supervision, monitoring and reporting of IFPPP project. The objective of the financial management assessment was to determine whether the financial management arrangements: (a) are capable of correctly and completely recording all transactions and balances relating to the project; (b) facilitate the preparation of regular, accurate, reliable and timely financial statements; (c) safeguard the project's entity assets; and (d) are subject to auditing arrangements acceptable to the Bank.

7. The assessment of the financial management arrangements at the MoF PIU concludes that the financial management residual risk rating is **Moderate.** There are adequate systems in place that satisfy the Bank's minimum requirements under OP/BP10.02. The PIU has submitted the format and content of the Interim Financial Report for the project, which has been cleared by the World Bank FM team and will be included in the PIM.

Budgeting Arrangements

8. The budgeting process is deemed adequate and follows the GoK procedures entitled "Government Financial Regulations and Procedures." The PIU consolidated budget shall be forwarded to the PPPS which then forwards to the MoF for approval and inclusion in the printed estimates. Budget monitoring will take place on a quarterly basis through FMRs and quarterly progress reports showing actual and planned expenditure per category. Budget monitoring will also take place on a monthly basis through management reports that show the actual versus the budgeted amounts; on a day-to-day basis, the vote book will be used to monitor the budget.

Accounting Arrangements

9. Staffing is considered adequate. There is a Financial Management Specialist (FMS) and an Assistant Project Accountant (APA). The FMS is qualified with 15 years of relevant working experience, is a graduate and a Certified Public Accountant of Kenya. The Assistant Project Accountant holds a Bachelor of Commerce (Finance Option) Degree and is a CPA (K) Finalist.

10. The project uses Quick Books Version 2006 accounting software which is able to produce the various reports and hence is deemed adequate.

11. The project uses GoK procedures manual entitled "Government Financial Regulations and Procedures" and these are considered adequate.

Internal Control and Internal Auditing

12. **Fixed Asset Register:** The PIU is expected to maintain a fixed assets register under the IFPPP. For the management of the FLSTAP, the PIU maintains manual fixed assets register showing assets bought with project funds and locations, including assets with the agencies.

13. **Bank reconciliations:** Monthly bank reconciliations are done by the Assistant Project Accountant and reviewed by the FMS. This also applies to the review of cash book entries. The Board of Survey from the Treasury conducts a cash count at the end of the year and issues a signed certificate on the state of cash and bank balances. The reconciliations of the project currently being managed are up to date.

14. **Imprest management:** Imprest is in two categories, the subsistence imprest for travel and the office standing float for the PIU. At the time of the review, there was no overdue imprest in the imprest ledger account. Per the Government Financial Regulations and Procedures, imprest should be surrendered 48 hours after the imprest holder returns from the trip.

15. **Payment approval process:** Authorization and approval procedures are in place to ensure funds are used for purposes intended.

16. The PIU will be audited by internal auditors seconded by the Ministry of Finance. Under the FLSTAP, the internal auditors conducted only one audit, in 2009. There is a need to have the IFPPP Project included in the internal auditor's annual work plan. There will be a Steering Committee (PSC) to offer oversight and direction to the project.

Governance and Accountability issues

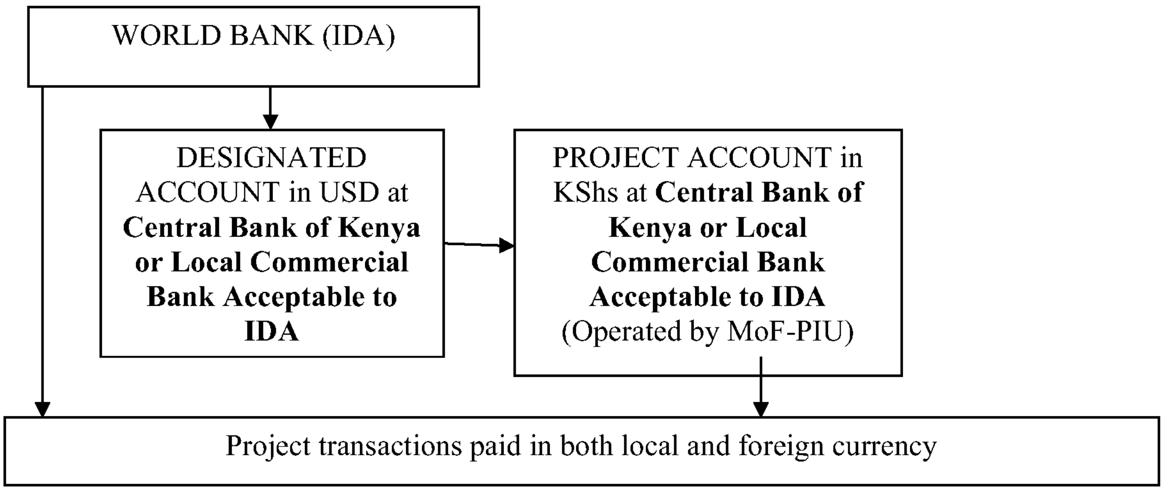
17. The MOF has committed to developing and adopting fraud and corruption prevention mechanisms that subject incidents of alleged fraud or corruption in relation to a PPP process to an appropriate review and/or investigative procedure, including referral to the Ethics and Anti-Corruption Commission. These fraud and corruption prevention measures will also articulate arrangements to enable confidential reporting (e.g., whistleblowing) using, for example, third-party complaint hotlines. It is expected that these anti-corruption measures will be developed by effectiveness, as part of the PIM.

Funds Flow and Disbursement Arrangements

18. Banking arrangements: The Ministry of Finance (Treasury) will be required to open a designated account denominated in U.S. dollars and a project account denominated in Kenya shillings. Both accounts will be opened at either the Central Bank of Kenya or with a commercial bank accepted by the World Bank. The project account will be operated by the PIU. The details should be communicated to the Bank with the signatories of the accounts within one month of effectiveness.

19. Funds Flow and Disbursement Arrangements: The project will adopt a transaction-based disbursement method. Direct payments and special commitments (letters of credit) are encouraged in cases of huge contracts. The project will submit a withdrawal application to the Bank with an initial advance per the set ceiling in the disbursement letter. Subsequently, the implementing entity will submit withdrawal applications to the bank in accordance with the instructions reflected in the disbursement letter. IDA will disburse funds to the designated account in US dollars. The MoF will transfer funds from the designated account into the project account in local currency. Project expenditures can be paid from the project account controlled by the PIU. The disbursement table indicating amounts in US dollars is included in Annex 2.

Figure 2: Funds Flow Chart for the Implementing Entity



Financial Reporting Arrangements

20. The PIU will produce quarterly unaudited Interim Financial Reports (IFRs) for the designated accounts and the related project account. The IFRs are to be produced on a quarterly basis and submitted to the Bank within 45 days after the end of the calendar quarterly period. The format of the IFR will be agreed before negotiations.

The main schedules in the IFR will include:
- Statement of Sources and Uses of Funds; and
- Statement of Uses of Funds by Project Activity/Component.

21. The project will also prepare the projects annual accounts/financial statements within 3 months after the end of the accounting year in accordance with accounting standards acceptable to the Bank. The audited financial statements and management letter should be submitted to the Bank within 6 months after the end of the accounting year. The Ministry will prepare their accounts in accordance with international public sector accounting standards.

Auditing

22. The Auditor General of the Office of the Auditor General (previously KENAO) is primarily responsible for the auditing of all government projects. The audits shall be done in accordance with international standards on auditing. The project will be audited annually and the audit report and management letter must be submitted to the Bank within 6 months after the end of the financial year. The standard audit terms of reference with Auditor General's Office are sufficient for this project.

23. The Bank encourages the disclosure of the project audit reports to the public in the spirit of transparency. The audit reports that will be required to be submitted by Ministry of Finance and the due dates for submission are shown in table below.

24. The audit of FLSTAP (implemented by the PIU) for the fiscal year ended June 30, 2011 received a clean audit opinion.

Box 3: Audit Reports and Due Dates

Audit Report	***Due Date***
Ministry of Finance Annual audited financial statements and Management Letter for the project (including reconciliation of the Designated Accounts with appropriate notes and disclosures and management letter responses).	Within **six** months after the end of each fiscal/financial year.

Box 4 : Financial Management Action Plan

25. The action plan below indicates the actions to be taken for the project to address the weaknesses that have been identified to ensure the FM system is robust and strengthened.

Action	Date due by	Responsible
Develop a corruption prevention mechanism as part of the PIM	by effectiveness	PIU

Conclusion of the Assessment

26. The conclusion of the assessment is that the financial management arrangements meet the Bank's minimum requirements under OP/BP10.02. The overall residual risk rating is Moderate hence the project will have on-site supervision at least once a year. The financial management action plan outlines the mitigating measures, which, if implemented, would strengthen financial management arrangements.

B. Procurement

General

27. Procurement for the proposed project will be carried out in accordance with the World Bank's "Guidelines: Procurement under IBRD Loans and IDA Credits" dated January 2011; and "Guidelines: Selection and Employment of Consultants by World Bank Borrowers" dated January 2011 and the provisions stipulated in the Legal Agreement. The various items under different expenditure categories are described in general below. For each contract to be financed by the Loan/Credit, the different procurement methods or consultant selection methods, the need for pre-qualification, estimated costs, prior review requirements, and time frame are agreed between the Borrower and the Bank in the Procurement Plan. The Procurement Plan will be updated at least annually or as required to reflect the actual project implementation needs and improvements in institutional capacity. The corruption prevention mechanism to be developed as part of the PIM will be implemented.

28. **Procurement of Works:** Minor civil works for office set-up and partitioning of PPPS shall be procured with local shopping and National Competitive Bidding (NCB) under APL 1 to facilitate set up of the PPPS premises.

29. **Procurement of Goods and non-Consultant services (e.g. printing services):** Goods procured under APL 1 will include computers, laptops, office and electrical

equipment, communication equipment, office equipment/furniture and other ICT-related goods, etc. for the PPPS and PIU. The procurement will be done using the Bank's SBD for all ICB and National SBD agreed with or satisfactory to the Bank.

30. **Selection of Consultants:** Consultancy services for both individuals and firms will be procured to provide support to activities under the APL 1.

> **(a) Firms** – Consultancy services will be procured in accordance with the Bank's Guidelines. Unless agreed to otherwise by the Bank, the selection method will include Quality- and Cost-Based Selection (QCBS) whenever possible, Quality-Based Selection (QBS), Fixed Budget Selection (FBS), Least Cost Selection (LCS), Selection Based on Consultants' Qualifications, or Single Source Selection (SSS) as appropriate. Short lists of consultants for services estimated to cost less than $300,000 equivalent per contract may be composed entirely of national consultants in accordance with the provisions of paragraph 2.7 of the Consultant Guidelines.
>
> **(b) Individuals -** Individual consultants (IC) will be employed for TA services.

31. Procedure of SSS would be followed for assignments which meet the requirements of paragraphs 3.8-3.11 of the Consultant Guidelines and will always require the Bank's prior review regardless of the amount. Procedures of SSS of IC would be followed for assignments which meet the requirements of paragraph 5.6 of the Consultant Guidelines.

32. **Capacity Building, Training Programs, Workshops, etc**.: Training and capacity building activities will take place including development of capacity in PPU, PPP Nodes, and the relevant line Ministries to enhance their capability to review the eligibility and compliance with procurement process of sub-projects funded through the sub-loans provided by financial intermediary lending, Training and capacity building activities would include workshops, study tours, seminars, conferences and on-the-job training. All training and workshop activities would be carried out on the basis of approved annual programs that would identify the general framework of training activities for the year, including: (i) the type of training or workshop; (ii) the personnel to be trained; (iii) the selection methods for institutions or individuals conducting such training; (iv) the institutions which would conduct the training; (v) the justification for the training, i.e., how it would lead to effective performance and implementation of the project and or sector; (vi) the duration of the proposed training; and (vii) the cost estimate of the training. Reporting would be required by trainees upon the completion of training.

33. **Operating Costs**: Operating costs for the PIU and PPPS financed by the project are incremental expenses arising under the project and based on annual work plans and budgets approved by the Association. Operating costs comprise the reasonable incremental expenses incurred by the Recipient and approved by IDA attributable to Project implementation, management, and monitoring, consisting of the following costs: office supplies and consumables; communication; operation and maintenance of office vehicles; per diem and travel costs for project staff; reasonable bank charges; and allowances and salaries of contractual staff (excluding the salaries of the Recipient's civil servants). These items will be procured using the implementing agencies' administrative procedures, which are reviewed and found acceptable to the Bank. The procedures for managing these expenditures will be governed by the Borrower's own administrative procedures, acceptable to the Association.

34. The procurement procedures and SBDs to be used for each procurement method, as well as model contracts for works and goods procured, are presented in the Project Implementation Manual.

Assessment of the agency's capacity to implement procurement

35. Procurement activities will be carried out by the PIU, which is staffed by a team of consultants. The PIU staff is headed by a Project Coordinator who is supported by technical personnel, including one Procurement Officer who reports to the Project Coordinator. The Project Coordinator reports to the PPPS. The PIU of the proposed project is currently implementing an IDA-funded project on behalf of the MoF.

36. An assessment of the capacity of the Implementing Agency to implement procurement actions for the project was carried out during project pre-appraisal. The assessment reviewed the organizational structure for implementing the project and the interaction between the project's staff responsible for the procurement function of the proposed project and the Ministry's relevant central unit for administration and finance.

37. The key issues and risks concerning procurement for implementation of the project have been identified and include systemic weaknesses in the areas of (i) procurement record keeping; (ii) capacity of procurement staff; (iii) procurement planning; (v) procurement process administration including award of contracts; (vi) contract management; and (vii) procurement oversight. The corrective measures which have been agreed are:

(a) Prepare a Procurement Guide as part of PIM which: (i) defines the roles and responsibilities of all offices that will be involved in any aspect of procurement implementation of the project; (ii) set out the sequence and timeframe for the completion of procurement decisions of all individual players as well as for coordination of the contribution of the players in procurement implementation; and (iii) establish service standards for processing of payments to contractors and suppliers;
(b) Develop and agree with the Bank a procurement training plan as part of PIM for all PIU staff;
(c) Align the preparation processes of annual Procurement Plan, annual Work Plan and budget estimates;
(d) Establish separate effective tracking systems of: (i) Procurement Plan implementation, and (ii) processing of payments to contractors and suppliers; and

38. Taking recognizance of the experience gained by the PIU staff from the ongoing project, and deployment of the same PIU personnel for the implementation of the proposed project, the overall project risk for procurement is "substantial."

Procurement Plan

39. The Borrower has prepared procurement plan for project implementation which provides the basis for the procurement methods. This plan was agreed between the Borrower and the Project Team during negotiations. It will also be available in the project's database and in the Bank's external website. The Procurement Plan will be updated in agreement with the Project Team annually or as required to reflect the actual project implementation needs and improvements in institutional capacity.

Frequency of Procurement Supervision

40. In addition to the prior review supervision to be carried out from Bank offices, the capacity assessment of the Implementing Agency has recommended supervision missions every six months to visit the field to carry out post review of procurement actions.

IV. Environmental and Social (including safeguards)

Environmental Assessment category

41. The project has been categorized as Category A (Full Assessment) for safeguards because, although many of the transactions in the overall program are likely to have moderate environmental and social impacts, some of the projects selected in the future may have significant adverse environmental impacts that are irreversible . In the overall context of the proposed PPP activities, potential negative environmental and social impacts due to project activities are likely to include loss of vegetation, soil erosion, soil and groundwater pollution, air pollution, public health impacts such as traffic hazards, noise, and dust, and loss of livelihoods. These impacts must be fully identified and the appropriate mitigating measures clearly defined and accounted to be incorporated into the project's overall budget.

42. Because the full extent of the environmental and social impacts of the two Phases of the APL program is not known at the outset, the Borrower has prepared an Environmental and Social Management Framework (ESMF) and the Resettlement Policy Framework (RPF). The ESMF ensures that the principles and procedures for the development of in-country capacity and compliance with local regulations are established: it serves as the basis for environmental assessment of all future transactions to be carried out under this APL. Most of the PPP transactions included in the APL program are not expected to result in major loss or acquisition of land or in restrictions to sources of livelihoods. However, given the possibility that some of the transactions may involve land acquisition and involuntary resettlement, an RPF has also been prepared. Where applicable, the RPF will guide the preparation of Resettlement Action Plans for sub-projects. Because the ESMF provides guidance for preparation of ESIAs, ESMPs, integrity studies, and environmental audits, it remains in effect for the duration of the APL Program. It includes a screening process that is consistent with both World Bank operational policies and Kenyan regulations, and a chapter on project processing that describes the responsibilities of each organization involved in PPPs. The ESMF and RPF were both prepared by the Borrower according to national and World Bank policies. Following public consultations on ESMF and RPF held on April 12, 2012, the documents were disclosed in Kenya and through the World Bank's InfoShop on April 20, 2012.

Safeguards policies triggered

43. The activities in the APL 1 are for the moment expected to trigger only OPs 4.01 (Environmental Assessment), 4.10 (Indigenous Peoples), and 4.12 (Involuntary Resettlement), as detailed in Table 5. However, APL 2 may trigger additional OPs, such as 4.04 (Natural Habitats), 4.09 (Pest Management), 4.11 (Physical Cultural Resources), 4.36 (Forests), 4.37 (Dam Safety), and/or 7.50 (Projects on International Waterways). The safeguards instruments prepared for any sub-projects will address the requirements of any applicable policies.

Table 5: Safeguard Policies Triggered

Safeguard Policies Triggered by the Project	Yes	No	TBD
Environmental Assessment(OP/BP 4.01)	[x]	[ ]	[ ]
Natural Habitats (OP/BP 4.04)	[ ]	[x]	[ ]
Pest Management (OP 4.09)	[ ]	[x]	[ ]
Physical Cultural Resources (OP/BP 4.11)	[ ]	[x]	[ ]
Involuntary Resettlement (OP/BP 4.12)	[x]	[ ]	[ ]
Indigenous Peoples (OP/BP 4.10)	[ ]	[x]	[ ]
Forests (OP/BP 4.36)	[ ]	[x]	[ ]
Safety of Dams (OP/BP 4.37)	[ ]	[x]	[ ]
Projects in Disputed Areas (OP/BP 7.60)	[ ]	[x]	[ ]
Projects on International Waterways (OP/BP 7.50)	[ ]	[x]	[ ]

44. *Environmental Assessment (OP/BP 4.01):* Safeguards policy 4.01 is triggered, as components of the PPP supported by APL 1 include civil works such as interior office refurbishment and small scale office rehabilitation works, as well as the construction of new infrastructure in APL 2. The exact locations and impacts of the sub-projects have not yet been identified, though the pipeline includes possible first movers for APL 2. An ESMF was prepared and disclosed on April 20, 2012 as part of environmental due diligence covering these activities. The ESMF also includes an indicative budget for such mitigation activities.

45. *Involuntary Resettlement (OP/BP 4.12):* Many of the transactions in the PPP program are expected to involve minimal or moderate land acquisition and or restriction of access to usual means of livelihood, as most of the transactions will largely consist of rehabilitation of existing infrastructure. However, some of the transactions may involve significant land acquisition. As part of safeguards due diligence, an RPF was prepared and disclosed on April 20, 2012.

Environmental Issues

46. The APL program has been assessed for both positive impacts and adverse effects on the biophysical and social environment.

47. *Positive Impacts*: If successfully implemented, the APL program could provide a number of benefits to Kenya. Although many anticipated benefits will be in the area of economic growth and improved human development, some environmental benefits are expected. Positive impacts include: an improved legal, institutional and technical environment for the expansion of PPPs; increased private sector investment; employment and improved service delivery; government fiscal efficiency and transparency; modernization; reduced risk for the public sector; the provision of alternative funding and freeing of government funds; the provision of funding to maintain infrastructure over time; improved economic growth; and other expected project results/outputs. Environmental benefits associated with the PPP project include: enhanced environmental capacity for the PPP implementing institution; availability of resources for environmental management; improved aesthetics nationally, due to more environmentally-friendly infrastructure; public safety improvements from better management of resources; and more efficient use of national environmental resources.

48. *Potential Adverse Impacts*: Some potential adverse impacts have been identified for the IFPPP program and other potential PPP projects under a list of program sectors. The scale and significance of the risks associated with a potential project depends on specific project design. Potential adverse impacts include: environmental and social impacts; increased traffic volume and possible accidents; spread of disease and public health risk; noise and vibration impacts; impact on the health and safety of construction workers; diminished air quality; solid and effluent waste hazards and pollution; chemical wastes; increased crime due to population influx; physical and economic displacement on identified project sites; loss of land; restricted access to resources; borrow pits and quarry sites; blasting and rock excavation; underground fractures and hydrogeology; soil erosion/run off; loss of vegetation; loss of flora and fauna; reduction of biodiversity due to blocking of movement of organisms; ecological niches interference; decreased water quality; visual intrusion; changes in downstream morphology of the riverbed and banks; changes in downstream water quality; and impacts on ecosystems.

49. To support improved scoping of Environmental Assessments, a preliminary Impact Table has been designed for project types identified in the PPP pipeline. The table presents the list of projects and potential environmental and social impact risks along with potential scale/significance:

- A 'negligible or no impact' or an impact of negligible significance is observed when a resource or receptor will not be affected in any way by a particular activity, or the predicted effect is deemed to be imperceptible or is indistinguishable from natural background levels.
- A 'minor impact' or an impact of minor significance is one where an effect will be experienced, but the impact magnitude is sufficiently small and well within accepted standards, and/or the receptor is of low sensitivity/value. In such instances, standard construction/ operational practices can address impacts.
- A 'moderate impact' or an impact of moderate significance is where an effect will be within accepted limits and standards. Moderate impacts may cover a broad range, from a threshold below which the impact is minor, up to a level that might be just short of breaching an established (legal) limit. In such cases, standard construction practices can take care of these impacts but additional mitigation measures may be required.
- A 'major impact' or an impact of major significance is one where an accepted limit or standard may be exceeded, or large magnitude impacts occur to highly valued/sensitive resource/receptors. In such cases, alternatives are required to address such impacts; and mitigation measures should be adopted with strict monitoring protocols.

50. The classifications as used in the Impact Table are largely subjective, and may be overruled by site-specific issues or information and detailed project activities not captured in this framework. Some of the potential environmental issues/impacts arising from these activities and other potential PPP projects under a list of program sectors, and their level of environmental significance are described in Table 6. Scale and significance of the risks associated with the potential projects depends on specific project design.

Table 6: Potential Adverse Environmental Impacts

Sector	Examples of Projects/Associated Activities	Potential Environmental and Social Impact Risks	Potential Scale/Significance
Transport	Airport facilities: expansion and rehabilitation	Air pollution Noise Public safety Waste water disposal Solid waste disposal Occupational health and safety	Moderate Moderate Moderate Moderate Minor Minor
	Roads: construction of new roads, expansion and rehabilitation of existing roads	Air pollution Noise Soil erosion Water pollution Public safety Traffic disruption Involuntary resettlement Hazardous materials disposal Solid waste disposal Chance finds of cultural resources	Major Major Major Major Major Major Major Moderate Moderate Moderate
	Rail lines: construction and rehabilitation	Public safety Involuntary resettlement Labor related issues Hazardous materials disposal Water pollution Soil erosion Destruction of flora/fauna Air pollution Occupational health and safety Noise Chance finds of cultural resources Solid waste disposal	Major Major Moderate Moderate Moderate Moderate Moderate Moderate Moderate Moderate Moderate Minor
	Bridges: construction and rehabilitation	Water pollution Solid waste disposal Contaminated sediments Negative effects on marine habitats Soil erosion Occupational health and safety Hazardous materials disposal Negative effects on fisheries Public safety	Major Major Major Major Major Major Moderate Moderate Moderate
Energy	Geothermal	Effluents Solid waste disposal Water consumption and extraction Occupational health and safety Soil erosion Air pollution Well blowouts and pipeline failures	Major Major Major Major Major Moderate Moderate
	Liquefied Natural Gas	Hazardous material management Fire/explosion Wastewater management Air pollution Solid waste disposal LNG transport Threats to aquatic and shoreline habitats Noise	Major Major Major Major Major Major Moderate Moderate
Water and Sanitation	Municipal Solid Waste	Loss of vegetation/land clearing Ground water pollution Aesthetic nuisance Destruction of flora/fauna Soil erosion Water pollution Occupational health and safety Noise Air pollution Use of pesticides	Major Major Major Moderate Moderate Moderate Moderate Moderate Moderate Moderate

Health	New Health Care Facilities/Upgrade of Existing Facilities	Health care waste management Construction waste disposal Vegetation loss/land clearing Solid waste management Noise Air pollution Hazardous material management Occupational health and safety Public safety Traffic disruption Wastewater management Chance finds of cultural resources Soil erosion	Major Moderate Moderate Moderate Moderate Moderate Moderate Moderate Moderate Moderate Major Moderate Moderate
General	Housing/Mixed-development offices, etc.	Construction waste disposal Vegetation loss/land clearing Noise Air pollution Hazardous material management Occupational health and safety Public safety Traffic disruption Wastewater management Chance finds of cultural resources Soil erosion	Moderate Moderate Moderate Moderate Moderate Moderate Moderate Moderate Moderate Moderate Moderate

Measures Taken By the Borrower to Address Safeguards Issues

51. The GoK has undertaken a number of mitigation measures to address the environmental and social issues associated with the APL program. These include implementing existing laws and regulations, preparation and disclosure of ESMF and RPF, consultation with key stakeholders, and providing budget for capacity building to ensure safeguards compliance.

52. Existence of policy and regulatory framework in Kenya: There are a number of relevant national and environmental policies and regulations that are applicable to this APL, including sector policies and reforms (some of which are discussed under Annex 2). There are over 20 institutions and departments that deal with environmental issues in Kenya. Some of the key institutions include the Ministry of Environment and Mineral Resources (MEMR), Kenya Forest Services (KFS), Kenya Wildlife Service (KWS), National Museums of Kenya (NMK), National Environment Management Authority (NEMA), Ministry of Forestry and Wildlife (MoFW), Ministry of Water and Irrigation (MOWI), Water Resources Management Authority (WRMA) and the public universities, among other organizations.

53. World Bank-financed projects are governed by a number of operational and safeguards policies that aim to prevent and mitigate undue harm to people and their environment in any development initiative involving the World Bank.

Preparation and Disclosure of ESMF and RPF:

54. The objective of the ESMF is to establish a mechanism to determine and estimate the future potential environmental and social impacts of the Bank-financed activities to be undertaken under the program, and to define the measures of mitigation, monitoring and the institutional measures to be undertaken during implementation of this program. The ESMF includes sections on: (i) Baseline Environmental Data; (ii) Environmental Policy and Regulatory Framework; (iii) Description of Environmental and Social Safeguards Policies

and Triggers; (iv) Analysis of Environmental and Social Impact Issues (including development of Management Plan to mitigate negative impacts); (v) Institutional Framework; (vi) Training Needs; and (vii) Public Consultation and Disclosure. In addition, the ESMF contains appendices with the format for Kenya's EIA Study Report as well as Generic EIA Terms of Reference. A RPF has also been prepared, and this will be translated to Resettlement Action Plan (RAPs) as and when the need arises during Program implementation.

55. The MoF PIU will be responsible for the implementation of the ESMF and RPF recommendations. Resettlement Actions Plans, Environmental and Social Management Plans (ESMPs), and/or Environmental and Social Impact Assessments (ESIAs) will be prepared as and when necessary. The PIU is to recruit one environmental specialist and one social safeguards specialist. These team members will be responsible for implementing the recommendations contained in these safeguards instruments, and they will be complemented with short-term national social/environmental safeguards consultants as and when the need arises.

Project Screening, Scoping and Categorization Mechanism

56. The project includes support for the preparation of PPP transactions, some of which may be co-financed or financed by the Bank as part of APL 2. This includes the preparation of PPP transactions, which will include initial assessments of safeguards risks and mitigation, based on the ESMF and RPF. In some cases, the Borrower may initiate the preparation of detailed safeguards assessments and plans before the PPP transactions are finalized. The project ESMF and RPF will guide the preparation of environmental and social impact assessments (ESIAs)/environmental and social management plans (ESMPs), resettlement action plans (RAPs), and/or other safeguards instruments that will be prepared for these PPP transactions, some of which will be financed by APL 2. Transactions not financed by the Bank, whether in whole or in part, will not fall within APL 2 description.

57. This APL will have a review process in place to ensure screening of all potential transactions for environmental and social impacts prior to approval by the MoF PIU. The screening can be carried out by a designated officer of the PIU (Environmental and Social Officer) or other Ministries and Agencies in accordance with the PIU procedure. This will include an environmental screening sheet showing the estimated impact category of each sub-project destined for rehabilitation and/or up-grading. The screening process will involve an assessment of the project to determine: (a) the appropriate project categorization for the EA; (b) applicable World Bank environmental and social safeguards; (c) potential for environmental and social impacts; and (d) cultural or other sensitivities. In addition, each project will be screened to identify relevant stakeholders and the nature and extent of engagement for each stakeholder category.

58. The screening decision has three parts: the assignment of the environmental assessment category; the determination of the safeguards instrument(s) that should be prepared; and the identification of applicable safeguards policies. In APL 2, there may be some PPP projects financed by the Bank classified as Category A, requiring full ESIAs. The ESMF and RPF provide guidance for screening based on the scale and type of project and the potential impacts that can be envisioned. The project screening reports will be reviewed by the safeguards specialist and the NEMA to confirm that all project-financed work falls within Environmental Category B and that the recommended action plan is appropriate. Projects

considered to fall into Environmental Category A will also be identified at that time for particular mitigation attention. The safeguards specialists will then submit the report of the screening exercise with its recommendations for clearance to the World Bank to proceed with the detailed ESMPs, ESIAs, and/or RAP, and any other safeguards instruments. The executive summaries of the Category A safeguards instruments will be circulated to the World Bank's Board of Executive Directors. As part of safeguards due diligence, a notional budget for mitigation will be specified in the contact documents to ensure provision of the necessary funds for implementation of the approved mitigation measures identified in the plans.

Environmental and Social Management Plans (ESMPs)

59. The APL program and all sub-projects will include the preparation of ESMPs to address achieve health, safety, and environmental regulatory compliance objectives, institutional responsibilities (e.g., World Bank), and other related commitments. An ESMP is an important element of the PPP program's overall environmental and social management strategy to ensure environmental, social, and health performance of the entire program and sub-projects. In addition to addressing environmental impacts, the EMP for the PIU focuses on policy, personnel management, and competence in building communications with the public and monitoring.

Capacity Building and Training Requirements

60. The capacity of the Borrower to carry out its respective design, planning, approval, permitting, monitoring and implementation roles will, to a large extent, determine the success and sustainability of the PPP program in addressing environmental and social issues. The first step in pursuing capacity building will be to identify the capacity building needs of the various stakeholders. Given the nature of the environmental and social management requirements and provisions outlined in this ESMF, competencies and capacity building will be required for personnel across several identified institutions in the following areas: (i) stakeholder engagement, consultation and partnerships; (ii) EIA law, relevant environmental policies; (iii) development of mitigation measures and Environmental Management Plans; (iv) thorough review of Country EIA procedures, Environmental Management policies & guidelines; and (v) WB safeguards as well as their implementation and enforcement. The group will also be trained in the use and application of ESMF tools (screening checklists, EA), their review, implementation and enforcement as well as environmental reporting, monitoring and follow-up of ESMF. Significant emphasis will be placed on understanding EIA procedures, environmental, management policies & guidelines, WB safeguards, implementation and enforcement, reporting, monitoring and follow-up of ESMF.

61. *Budget to Implement the ESMF*: To achieve the stated goals of this ESMF, it is important to identify financial resource requirements even if indicative, which have been incorporated into the procurement plan. This ensures upfront attention to the financial requirements and allows early planning and budgeting, accordingly.

1. Involuntary Resettlement

62. *Involuntary* land taking and/or restriction of access to economic assets and/or livelihood might not be avoidable for many of the transactions in the PPP program, as most of the transactions will largely consist of rehabilitation of existing infrastructure or new

construction of large-scale infrastructure. To mitigate the resettlement impacts, a resettlement policy framework (RPF) has been prepared in compliance with the World Bank Policy on Involuntary Resettlement OP 4.12 and relevant Kenyan laws and regulations. However, the World Bank policy will apply in circumstances where gaps exist between national laws and World Bank policy.

63. The RPF contains details of the principles and objectives governing the preparation and implementation of resettlement action plans (RAPs), including review, approval and disclosure of RAPs, screening for involuntary resettlement, establishment of baseline and socioeconomic data, and the likely categories of project-affected persons. Compensation arrangements for those being involuntarily resettled, including possibilities for land exchange, are outlined in the RPF. The RPF also contains a mechanism for resolving disputes that may arise.

64. *Key Resettlement Objectives and Principles*: The key objectives of resettlement are: (i) to explore all viable alternative project design to avoid or minimize land acquisition and other adverse impacts; and (ii) those adversely affected are compensated at replacement cost for lost assets and otherwise receive any assistance necessary to provide them with sufficient opportunity to improve, or at least restore, incomes and living standards. The key resettlement policy principles include:

(a) When possible, resettlement plans should be conceived as development opportunities, so that those affected may benefit from project activities;
(b) Lack of legal rights does not bar displaced persons in peaceful possession from compensation or alternative forms of assistance;
(c) Compensation rates refer to amounts to be paid in full to the individual or collective owner of the lost asset, without deduction for any purpose;
(d) When agricultural land is acquired, it often is preferable to arrange for land-for-land replacement. In some cases, as when only small proportions of income are earned through agriculture, alternative measures such as payment of cash are acceptable if preferred by the persons losing agricultural land;
(e) Replacement house plots, sites for relocating businesses should be of equivalent use value to the land that was lost;
(f) Transition periods should be minimized. Compensation should be paid prior to the time of impact, so that new houses can be constructed, fixed assets can be removed or replaced, and other necessary measures can be undertaken before displacement begins;
(g) Displaced persons are consulted during the planning process, so their preferences regarding resettlement arrangements are considered; resettlement plans are disclosed in a publicly accessible manner;
(h) The previous level of community infrastructure and services and access to resources will be maintained or improved after resettlement; and
(i) The borrower is responsible for meeting costs associated with land acquisition and resettlement, including contingencies.

65. *Organizational responsibilities for resettlement planning and implementation:* PPP project agencies will take the lead in project preparation and implementation. They will also be responsible for resettlement planning and implementation. In working with line ministries, they will explore project alternatives to avoid or minimize resettlement impacts, identify resettlement impacts, assess the significance of resettlement and prepare adequate

resettlement plans. The resettlement plans will go through Kenyan internal review and clearance procedures before they are submitted to Bank for final review and clearance. The PPP project will not be eligible for Bank financing if the resettlement plans are not adequately prepared, consulted upon and cleared for disclosure by the World Bank.

66. *Consultation and participation:* Extensive consultations have been conducted with various stakeholders and their feedback has been incorporated in the RPF. Consultation with project-affected persons (PAPs) and different stakeholders will continue during project preparation. The affected persons and businesses will participate in and be consulted during resettlement planning and implementation, including the census, inventory and formulation of the livelihood rehabilitation strategy, etc.

67. *Grievance Redress Mechanisms:* The grievance procedures will seek to resolve issues quickly in order to expedite the receipt of entitlements, without resulting in expensive and time-consuming legal actions. The grievance procedures will be simple and will be administered as far as possible at the sub-project level by Resettlement and Compensation Committees. The procedures will be implemented within a clear time schedule which should be adhered to. If grievance procedures fail to provide an agreed result, complainants can still seek legal redress.

68. *Monitoring and evaluation:* In order to assess whether the goals of the resettlement and compensation plan are being met, a monitoring plan will be required. This monitoring plan will indicate parameters to be monitored, institute monitoring milestones and provide resources, including responsible persons or institutions to carry out the monitoring activities. The arrangements for monitoring the resettlement and compensation activities will fit the overall monitoring program of the entire PPP program, which will fall under the overall responsibility of the different executing agencies.

69. *Vulnerable groups*: Particular attention will be paid to vulnerable groups, including the disabled, the elderly, widows, children, female-headed households, and indigenous peoples. Vulnerable persons will be identified through a census to be conducted during preparation of resettlement planning stage. Each resettlement plan developed under a PPP project will make precise provisions with respect to assistance for vulnerable persons affected.

70. *Resettlement cost and funding*: All resettlement costs will be funded by the Government of Kenya. Each resettlement plan will include detailed cost of compensation and other rehabilitation entitlements. The resettlement plan will also include information on sources of funding, flow of funds, and the compensation schedule.

2. Social impact assessment

71. The other social impacts and risks besides resettlement will be addressed through the ESMF. It has established a process of environmental and social screening which will permit the institutions in charge of project implementation to identify, assess and mitigate the environmental and social impacts of the proposed intervention. Social impacts assessment will be carried during implementation; a social management plan will be prepared accordingly and implemented during project implementation. In addition, the ESMF determines the institutional measures to be taken during program implementation, including those related to capacity building.

V. Monitoring & Evaluation

72. The M&E function within the PIU will coordinate with the project implementing Ministries and Agencies to ensure coherent and standard M&E data gathering and reporting system are in line with the Project Development Objective (PDO) and PDO level and intermediate results indicators established for the project and further explained in the Project Performance Framework in Annex 1. The scope of the work of that unit covers both APL 1 and APL 2. The function also includes coordination and capacity of participating line ministries and agencies, and ensuring adequate reporting to the MoF. Specific key areas of attention to be detailed in the PIM include: (i) data collection, analysis, and reporting plan for each indicator; (ii) M&E implementation arrangements (institutional mandate, responsibility, and partnership); (iii) work plan and budget for M&E activities (human resources, timetable, and cost); (iv) Management Information System (Data collection, storage, and analysis tools); (v) Guidelines for quarterly, half yearly and annual project monitoring reports, containing summary data on overall performance against targets.

73. Reviews during implementation support missions by IDA will include formal Annual and Semi-Annual Work program consultations at which time annual procurement and capacity building plans will be subjected to detailed review and approval actions by the PID and the World Bank. The PPP PIU will be required to prepare information necessary to inform these implementation review exercises and to ensure that all indicators in results framework of Annex 1 are reported on with recent progress data.

74. A mid-term review (MTR) will take place 24 months after the APL 1 Credit effectiveness in accordance with terms of reference agreed upon by Government/PID, the PPP PIU, IDA and other donors. The MTR will include an assessment of the five triggers identified to clarify whether the conditions to move to APL 2 have been fulfilled. The PPP PIU will prepare the mid-term report detailing implementation progress under all project components and identifying implementation issues. This report will be submitted to PID, IDA and other donors not later than two months prior to the MTR. During the MTR, implementation progress and solutions to identified implementation issues will be discussed and agreed on and, if required, project redesign will be initiated. An Implementation Completion and Results Report (ICR) will also be jointly prepared by the PPP PIU, PID, and IDA within six months after the closing date of the APL 1 and APL 2 credits.

75. The project will also investigate the baseline data and methodology issues to determine the suitability and arrangements to be put in place to implement a possible impact evaluation of this APL Program in addition to the ICR.

Annex 4: Operational Risk Assessment Framework (ORAF)

Kenya: Infrastructure Finance and Public-Private Partnership (IFPPP) Project

<table>
<tr><th colspan="9">1. Project Stakeholder Risks</th></tr>
<tr><td>1.1 Stakeholder Risk</td><td>Rating</td><td colspan="7">Moderate</td></tr>
<tr><td>Description:</td><td colspan="8">Risk Management:</td></tr>
<tr><td rowspan="2">Line Ministries (which are responsible for originating and procuring individual PPPs) will be central to the implementation of the proposed operation. Although there is overall strong support, limited technical and commercial expertise and potential for political interference presents implementation delay risks. Key stakeholders may also have divergent opinions on which first-moving transactions should be supported.</td><td colspan="8">The establishment of a cabinet endorsed Policy and passage of PPP law (currently in Parliament) will provide strong authorizing environment for PPPs. The proposed operation builds on ongoing outreach being conducted by both GoK and WBG to line Ministries on PPPs in general, the PPP program, its requirements, its risks, purpose and benefits. The project will provide key inputs to line ministry stakeholders to augment technical and commercial capacities, in close coordination with sector colleagues (and their ongoing programs).

By boosting the success of the PPP program, the IFPPP APL project will solidify policy support for PPPs within GoK. The proposed project also builds on a transaction pipeline analysis being procured, which will help inform which projects are commercially viable and can be supported.</td></tr>
<tr><td>Resp:</td><td>Client</td><td>Stage:</td><td>Implementation</td><td>Due Date:</td><td></td><td>Status:</td><td>In Progress</td></tr>
<tr><th colspan="9">3. Implementing Agency (IA) Risks (including Fiduciary Risks)</th></tr>
<tr><td>3.1 Capacity</td><td>Rating</td><td colspan="7">High</td></tr>
<tr><td>Description:</td><td colspan="8">Risk Management:</td></tr>
<tr><td rowspan="2">The MoF, the implementing agency, has little to no experience with PPP operations. Likewise, the PPPS (housed at the MoF) and the PPPSC are new entities, lacking PPP experience. This may slow implementation of IFPPP, particularly if large and/or complex projects are involved.

Procurement: Procurement practices related to PPPs are new and vary from traditional public procurement. New practices will be established and be in-line with existing GoK policies and IFC procurement policies (recently approved for WB PPP projects).</td><td colspan="8">IFPPP project is designed to build capacity of all relevant GoK agencies to prepare and procure PPPs and pays specific attention to supporting the implementing agency. This also builds off ongoing PPP training (next round scheduled for July 10-17th for different Ministries/agencies) and will include specific PPP procurement training and project-specific FM training.

The Project Preparation Advance approved on June 29th will assist the GoK/MoF to move forward promptly with the PPP Policy-approved and institutional development actions required during preparation to ready for implementation The MoF and the MoF PIU has a lot of experience implementing World Bank operations and is well-suited to assume the FM oversight for this proposed operation (FM cleared).</td></tr>
<tr><td>Resp:</td><td>Client</td><td>Stage:</td><td>Preparation/Implementation</td><td>Due Date:</td><td></td><td>Status:</td><td>In progress</td></tr>
<tr><td>3.2 Governance</td><td>Rating</td><td colspan="7">Substantial</td></tr>
<tr><td>Description:</td><td colspan="8">Risk Management:</td></tr>
</table>

<table>
<tr><td rowspan="2">The PPPS and PPPSC are in the process of staffing-up and putting in place clear governance and institutional frameworks. However, delays and/or other issues associated with the full staffing and new management of the PPC and PPPS may initially obstruct the smooth operation of this new framework and thereby affect the quality of the governance oversight of the PPP process.

Conflict of interest: There are three key sets of functions required for the implementation of a PPP Program: (i) “advisory” or project development; (ii) review and approval or “gate-keeping” processes: (iii) contract supervision and evaluation. There is a danger that the advisory and gate-keeping functions can be conflated into a single entity or across units with insufficient separation/autonomy.

In the Kenya case, the PPPS is primarily responsible for screening/approving PPPs but given low capacity within GoK for originating PPPs, PPPS may be called upon to assist in project origination and procurement (e.g., through provision of standard bid documents, programming of project development funds). This presents a potential conflict of interest between project screening and approving with project development.</td><td colspan="8">IFPPP APL project is being designed to build capacity of staff and management of the Steering Committee/PPPS (and all other relevant GoK agencies) as they are added. Semi-resident advisor (PPIAF supported) is in place to support the PPU and other training is ongoing or scheduled.

The GoK Policy involves clear separation of functions across the PPPS, PPPSC and the line ministry PPP Nodes. In addition there are specific gate-keeping roles assigned to the Debt Management Department (fiscal commitment and contingent liability) and the Budget (Government support) and Accountant General’s Office. This represents a strong set of institutions and built-in institutional checks and balances that will serve to mitigate key areas where there could be potential conflicts of interest. Moreover, these entities will be provided with upstream capacity building and, more generally, the MoF and other agencies are to be trained in identification and management of potential conflicts of interest.

The proposed operation will support technical assistance aimed at heightening awareness and reducing to the greatest extent potential institutional conflicts of interest via an institutional deepening of policy implementation arrangements and technical professionalization of roles and responsibilities across targeted staff in the key units.</td></tr>
<tr><td>Resp:</td><td>Client</td><td>Stage:</td><td>Preparation/Implementation</td><td>Due Date:</td><td></td><td>Status:</td><td>In progress</td></tr>
<tr><td colspan="9">4. Project Risks</td></tr>
<tr><td>4.1 Design</td><td>Rating</td><td colspan="7">Low</td></tr>
<tr><td>Description:</td><td colspan="8">Risk Management:</td></tr>
<tr><td rowspan="2">The proposed IFPPP APL is designed to address the key weaknesses in Kenya’s efforts to establish a coherent PPP Program. This APL 1 is essentially a technical assistance project.</td><td colspan="8">The IFPPP APL project is designed with the flexibility to meet the needs of specific client and market needs. The design is aimed at streamlining the delivery of the key support activities.</td></tr>
<tr><td>Resp:</td><td></td><td>Stage:</td><td>Preparation</td><td>Due Date:</td><td></td><td>Status:</td><td></td></tr>
<tr><td>4.2 Social and Environmental</td><td colspan="2">Rating</td><td colspan="6">High</td></tr>
<tr><td>Description:</td><td colspan="8">Risk Management:</td></tr>
<tr><td>The project’s Environmental and Social risk is rated “High” because, though many of the transaction in the overall</td><td colspan="8">The project is supporting preliminary screening by PPPS designed to identify S&E issues at early stage so they can be addressed. Strict adherence to World Bank safeguards</td></tr>
</table>

<table>
<tr><td rowspan="2">program are likely to have moderate environmental and social impacts, some of the candidate projects in the future may have significant adverse environmental impacts that are sensitive, diverse, cumulative, irreversible or unprecedented. Potential projects in the PPP pipeline will involve multiple sectors, such as transport (airport, port and railway), roads, energy, water, tourism, ICT, education. Civil works may involve new construction and/or rehabilitation of infrastructures. Land acquisition and involuntary resettlement of project affected people is also expected in some instances. The policies triggered under APL 1 are Environmental Assessment (OP/BP 4.01) and Involuntary Resettlement (OP/BP 4.12). During APL 2 other safeguard policies may be triggered, such as 4.04 (Natural Habitats), 4.09 (Pest Management), 4.10 (Indigenous Peoples), 4.11 (Physical Cultural Resources), 4.36 (Forests), 4.37 (Dam Safety), and/or 7.50 (Projects on International Waterways).</td><td colspan="8">policies will be taken and capacity building and technical assistance will be provided to the GoK to ensure compliance.

A draft Environmental and Social Management Framework (ESMF) and Resettlement Policy Framework (RPF) have been prepared and disclosed in Kenya and Bank InfoShop. ESIAs/ESMPs, RAPs and other safeguard instruments will be prepared once specific sub-projects have been cleared for preparation.

The PPP secretariat will bring on board seasoned environmental and social safeguards specialists and/or rely on a roster of safeguard specialists. Support will include training and ensuring timely upstream compliance with national and World Bank environmental and social safeguard policies to avoid delays that could reduce bankability.</td></tr>
<tr><td>Resp:</td><td>Client</td><td>Stage:</td><td>Preparation/Implementation</td><td>Due Date:</td><td></td><td>Status:</td><td>In progress</td></tr>
<tr><td>4.3 Program and Donor</td><td>Rating</td><td colspan="7">Low</td></tr>
<tr><td>Description:</td><td colspan="8">Risk Management:</td></tr>
<tr><td rowspan="2">The proposed project does not involve any co-financing from other development partners. However, several donors have already expressed interest in related activities that will be funded outside the World Bank, but likely in close collaboration.

In addition to other donor involvement, mobilizing private sector investment is key to overall program success. A new policy and new institutions without track records may not attract these private investors in a short enough timeframe to support Policy success.</td><td colspan="8">The team will work closely with other development partners (notably TradeMark and DFID), share information, and leverage other ongoing work in related sectors to maximize the development outcomes. A sustained program of outreach and consultation around the PPP Policy and evolving pipeline of prospective projects will also be maintained with support from the project to foster private sector engagement and ensure feedback is factored into policy implementation.</td></tr>
<tr><td>Resp:</td><td></td><td>Stage:</td><td>Preparation/Implementation</td><td>Due Date:</td><td></td><td>Status:</td><td>In progress</td></tr>
<tr><td>4.4 Delivery Monitoring and Sustainability</td><td>Rating</td><td colspan="7">Low</td></tr>
<tr><td>Description:</td><td colspan="8">Risk Management:</td></tr>
<tr><td>The M&E systems are not yet in place to properly assess the quality of the proposed interventions. Experience with implementing PPP projects is non-existent.</td><td colspan="8">The proposed operation will support establishing proper M&E mechanisms as well as support for the implementing agency to learn from other regions and countries in order to build of other experiences and lessons learned and improve delivery quality. A framework and baseline will be developed to undertake impact evaluations of both the Kenya and recently approved Ghana projects in line with IDA16 commitments. The need</td></tr>
</table>

	to commence the preparation work for this impact assessment will add further urgency and robustness to this aspect of the project implementation.							
	Resp:		Stage:	Implementation	**Due Date:**		**Status:**	
4.5 Approval process for each PPP project	**Rating**	High						
Description: Inter-Ministerial Coordination and thorough due diligence is required to ensure quality projects are submitted for approvals and cabinet and parliamentary approvals will be required for larger projects and for guarantees. Political economy pressures could undermine this process.	**Risk Management:** The laws and regulations will provide for clear criteria and processes for evaluation and selection of projects and a transparent mechanism for selection of private operators , allied to substantive technical assistance and fiscal oversight for which support is provided through the IFPPP should give assurance to approval authorities, including cabinet and parliament in determining whether to give relevant approvals that projects have been selected and procured using objective criteria and that they represent value for money.							
	Resp:		**Stage:**	Preparation/Implementation	**Due Date:**		**Status:**	In progress
4.6 Consumers and public	**Rating**	High						
Description: Infrastructure is considered as a public good of a country and public opinion may not be supportive of private sector involvement, particularly organized labor (already evident in efforts related to increased private participation in the Mombasa Port, which lack sufficient outreach strategy).	**Risk Management:** The proposed project would support developing mechanisms and capacity in the government for selecting projects using criteria that includes value for money and other criteria set out in the draft PPP policy to re-enforce the socio-economic benefits of the PPP approach,. Also the World Bank is providing continued support and assistance to improve the government's outreach and provide support for measures to be put in place to ensure public consultations on projects.							
	Resp:		**Stage:**	Implementation	**Due Date:**		**Status:**	
5. Overall Implementation Risk								
Substantial								

Annex 5: Implementation Support Plan

Kenya: Infrastructure Finance and Public-Private Partnership (IFPPP) Project

1. The strategy for project implementation support has been adapted to the client government's characteristics and implementation capacities. Taking into account the political economy context and the risks and challenges mentioned in the ORAF, the following aspects have been considered:

- Weak institutional and fiduciary capacity for project implementation might delay the implementation process.
- Participation of several government ministries and agencies might cause bottlenecks and hold back smooth implementation.
- Change in administration during project time might slow down implementation.

2. The World Bank team providing Implementation Support to this project will be multi-sectoral, reflecting the range of key budget, legal and institutional and multiple sector issues that will need to be addressed during the course of project implementation. In addition, the World Bank Institute (WBI) will support the project on areas related to capacity building, while coordinating closely with PPIAF, including ongoing project to support the PPPS in the immediate term with an adviser, ending in August 2012. The project will also entail close collaboration with other key World Bank agencies – namely the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) - to facilitate their advisory and investment service engagement in the GoK PPP Program.

3. More specifically, the implementation will be supported by the Bank team through the following activities:

- Fiduciary staff of project implementation and project execution units have received additional financial management and procurement training during the preparation of the project
- There will be supervision missions at least twice a year and frequent dialogue with the client led by the TTL and the team.
- Based on the recommendations of the procurement assessment, the official implementation supervision mission will be carried out twice each year, when post-review of procurement actions will be done. The procurement post-reviews would cover 100 percent of contracts subject to post-review. Post review will consist of reviewing technical, financial and procurement reports carried out by MoF/PIU and/or consultants selected and hired under the PPP Project according to procedures acceptable to the Bank
- Based on the recommendations of the FM assessment, it is expected that in the first year of implementation there will be two onsite visits to ascertain adequacy of systems and how effective the country systems are being used to support implementation. The FM supervision mission's objectives will include ensuring that strong financial management systems are maintained throughout project tenure. In adopting a risk-based approach to FM supervision, the key areas of focus will include assessing the accuracy and reasonableness of budgets, their predictability and budget execution, compliance with payment and fund disbursement arrangements, and the ability of the systems to generate reliable financial reports
- The fiduciary team based in the country office will give day-to-day fiduciary assistance and will coordinate upcoming issues with the TTL

- At least one official financial management and procurement review per year
- An MTR will be carried out about 24 months after project effectiveness to assess the progress of the project against the PDO
- Review of the interim financial reports review (IFRs) that are to be submitted quarterly.

Table 7: World Bank Team Skills Mix Required

Skills Needed	Number of Staff Weeks/year	Number of Trips	Comments
Task Team Leader	10	2 per year	Dialogue and supervision and Mid-term review
PPP Specialist	5	2 per year	Supervision and Technical input
Transaction Specialist (GET PPP)	3	1 per year	Midterm Review
Financial Institutions Specialist (FCMNB)	6	2 per year	Dialogue and supervision
Roads and bridges (SDN) Specialist	6	As Necessary	Dialogue and Supervision
Airports (SDN) Specialist	3	2 per year	Dialogue and Supervision
Geothermal (SDN) Specialist	6	From Field	Dialogue and Supervision
Special Economic Zones Specialist	3	As Necessary	Dialogue and Supervision
PREM support on Fiscal Risk	2	1 per year	Dialogue and Supervision
Financial Management Specialist	5	As necessary	FM supervision & support
Procurement Specialist	5	As necessary	Procurement review of bidding documents ; and Procurement supervision & support
Safeguard Specialist	5	As necessary	Supervision and Midterm Review
M&E Specialist	4	As necessary	Supervision

4. **Other WBG Partners**

Skills Needed	Number of Staff Weeks/year	Number of Trips	Comments
International Finance Corporation (IFC) – Advisory and Investment	As Required	As Required	Support to specific transactions.
Multilateral Investment Guarantee Agency (MIGA)	As Required	As Required	Potential guarantee Support to specific transactions.
World Bank Institute (WBI)	10	2 per year	PPP institutional and capacity building

5. **International Partners**

Name	Institution/Country	Role
DFID USAID Trademark	UK USA International Agency	To Be Detailed

Annex 6: Sector Policy Letter provided by the GoK

(Includes the National Policy on PPP)

Kenya: Infrastructure Finance and Public-Private Partnerships (IFPPP) Project

REPUBLIC OF KENYA
MINISTRY OF FINANCE

Telegraphic Address: 22921
FINANCE – NAIROBI
Telephone: 252299
When replying please quote

THE TREASURY
P. O. Box 30007-00100
NAIROBI
KENYA

Ref: ZZ/MoF253/016 'K'

25th April, 2011

THE WORLD BANK
RECEIVED IN CD'S OFFICE
Received by Joan
Date 4/26/2012 Time 2.26 p.m
Action by Yira
CC Zutt / Raj

Mr. Johannes Zutt
Country Director for Kenya
Africa Region
The World Bank
Upper Hill
Nairobi

Dear Mr Zutt,

RE: LETTER OF SECTOR POLICY
KENYA PUBLIC PRIVATE PARTNERSHIP (PPP) PROGRAMME

The Government of Kenya has in the last three years embarked on a PPP programme to improve policy, legal, institutional and regulatory environment for the implementation of PPP projects. The Government in March, 2009 issued public private partnerships Regulations under the Public Procurement and Disposal Act, 2005 to provide for the legal and regulatory framework for PPPs.

In order to further improve the environment for implementing PPP projects, the Government through a consultative process prepared a PPP Policy and a PPP Bill which were both approved by the Cabinet in December 2011. A copy of the PPP Policy is attached and constitutes a "Letter of Sector Policy" for the purpose of the PPP APL programme.

The Policy will help ensure that PPP process are uniformly coordinated and managed and expected outcomes for the government optimized. It shall serve the basis for procurement and implementation of PPP projects henceforth. Further to this, the Government is committed to enacting a PPP law and the PPP Bill is expected to be presented to Parliament for approval in the month of May/June, 2012.

The Government has also embarked on a process of developing detailed regulations to further guide the development of PPPs across sectors and different levels of government. This new policy and legislative framework will address the key binding constraints to the current legal and regulatory framework for PPPs in Kenya.

Further, to this, the Infrastructure Finance and Public Private Partnerships project with the International Development Association (IDA) support which, is under preparation will assist greatly in creating a conducive environment for PPPs in Kenya. The Government of Kenya therefore, looks forward to continued support and collaboration with the World Bank Group in support of the PPP programme.

Yours Sincerely,

Joseph K. Kinyua, CBS
PERMANENT SECRETARY/TREASURY

GoK National Policy on PPP

I. Introduction

1.1 Purpose and Key Elements of Policy

1. The purpose of this policy is to articulate the Government commitment to Public-Private Partnerships (PPP) and to provide a basis for the enactment of a PPP Law to strengthen the existing legal and regulatory framework. The policy is also expected to provide a foundation for the establishment of institutions to champion the PPP agenda, facilitate mobilization of domestic and international private sector investments, and to provide for Government support for PPP projects, as well as providing a clear and a transparent process for project development.

The key elements of the policy are:

(i) Establishment of central institutions to champion the PPP agenda, with
- the PPP Steering Committee, consisting of senior officials to guide policy and promote awareness and
- the PPP Secretariat, housed within the Ministry of Finance, as a resource centre of expertise and best practice;

(ii) Mobilization of domestic and international private sector investment - creating a level playing field and clear rules of the game, by
- establishing a clear process for project selection, preparation, procurement and implementation with project evaluation at each stage with clear objectives and criteria for selection and evaluation;
- strengthening of the existing legal and regulatory framework established under sector laws and policies as well as the PPP Implementing Regulations; and
- implementing a clear, transparent process for allocating Government support, including guarantees

(iii) Support for MDAs to encourage the development of PPP projects that provide value for money for Kenya, through
- project preparation funding,
- viability gap grants,
- easier access to Government support, and
- technical assistance from the PPP Secretariat to assist MDAs in selection, development, procurement and implementation of PPPs.

1.2 National Policy Framework

2. PPP arrangements are consistent with the Kenya's Vision 2030 which is the country's long-term plan for social and economic development in Kenya covering the period from 2008 to 2030.Vision 2030 sets forth the broad national objective of transforming Kenya into a globally competitive, middle-income country through substantially higher growth rates and more balanced development. Underpinning this broad objective are certain key principles and aspirations, namely:

i. To build a just and cohesive society with social equity for all citizens;

ii. To strengthen Kenya's democratic and political system, founded on issue-based politics, with respect for the rule of law and protection of the right of freedom of every individual in Kenya; and
iii. To eliminate the deficit in core infrastructure that currently persists in Kenya so as to provide high quality services to the citizenry and serve as a basis for improving the attractiveness of Kenya as a touristic and investment destination.

3. The Vision 2030 seeks to realize average annual GDP growth rates of 10%, through investments in priority infrastructure sectors including specific national flagship development projects to be financed and implemented through public-private partnership arrangements.

1.3 Recent Initiatives by the Government

4. The Government of Kenya has taken a number of specific steps to design and adopt an official framework of policies, laws, regulations, institutions and procedures of public-private partnerships, including:

i. The enactment of the Water Act [2002] which provides for systematic improvement of water services and new investments through commercialization and private sector participation arrangements;
ii. The enactment of the Privatization Act, 2005 which allows "concessions" as a form of privatization.
iii. The enactment of the Energy Act, 2006 creating the Energy Regulatory Commission, the energy sector regulatory agency, with responsibility for economic and technical regulation of electric power, renewable energy, and downstream petroleum sub-sectors, including projects implemented through the PPP mechanism;
iv. The amendment of Public Road and Tolls Act (Cap 407) in 2007 to allow the Minister responsible for roads to enter into an agreement with a private party to toll a road;
v. The amendment of the Kenya Communications Act in 2009 to enhance the regulatory scope and jurisdiction of Communications Commission of Kenya (CCK), CCK was transformed into a converged regulator responsible for the development of the information and communications sectors including broadcasting, multimedia, telecommunications, postal services as well as electronic commerce. All projects in these sectors, including PPP projects, fall under its tariff setting purview;
vi. The Public Procurement and Disposal Regulations were issued in 2006 under the Public Procurement and Disposal Act, 2005 providing for regulatory procedures for procurement of public-private partnerships;
vii. The Government undertook a study in 2007 on Consolidation, Strengthening, and Harmonization of Policy, Legal and Institutional Frameworks for Public-Private Partnerships in Kenya;
viii. The Government issued the Public Procurement and Disposal (Public-Private Partnership) Regulations [March 2009] outlining the regulatory and institutional framework for implementation of PPPs;
ix. The Government established in 2010, PPP Steering Committee and a PPP Secretariat within the Ministry of Finance as the institutional focal points for Kenya's emerging PPP framework;
x. In 2010, the Government undertook a review of the Kenya's legal and regulatory framework, the outcome of which was the recommendation of the enactment of a PPP law to address the identified gaps, inconsistencies, conflicts and overlaps in the legal and regulatory framework;

xi. Legislation has been passed that specifically allows private sector participation in provision of public services in the transport, water, sanitation, housing and environment sectors; and

i) The promulgation of the Constitution of Kenya in August 2010, further increased pressure on public bodies to provide adequate and quality public services. It promotes creation of more transparent governance structures within government and permits the National Assembly to legislate on any matter.

1.4 Status of Public-Private Partnerships in Kenya

5. The Government already has a track record of implementing successful PPP projects and these include:

- Mtwapa and Nyali Bridges Concessions signed in 1959;
- The 75 MW Tsavo Independent Power Project tendered in 1995, Olkaria III (48MW Geothermal Plant), Iberafrica (56MW thermal power plant), Mumias (34MW power plant);
- Port of Mombasa Grain Terminal on a Built Own and Operate awarded in 1998;
- Mobile Telephone licenses to Safaricom and Celtel in 1999 and to Econet in 2004;
- Concession of Kenya Railways Corporations freight services for 25 years and passenger services for 5 years in 2006;
- The 90 MW Rabai Independent Power Project in 2006;
- Proposed Nairobi Urban Toll Road Project approved by Government in 2009; and
- Proposes Lake Turkana Wind 300MW Independent Power Project, 2010 and several other Independent Power Producers in the pipeline.

6. Whilst these projects have been implemented without a specific PPP law or regulations being in place, investor feedback is that greater clarity in the legal and institutional enabling environment of Kenya would be likely to make Kenya's PPP program more successful and sustainable.

II. Rationale, Scope, Principles, Goals and Benefits

2.1 Rationale

7. The provision of adequate and high quality infrastructure services remains the biggest challenge to development of the country. Currently, the Government faces a growing gap between public investment needs and available resources. Indeed, the Government and development partners have in the past been the main financiers of public infrastructure and services. The level of investment that can be mobilized from these sources is however, far below the requirements needed to support the accelerated economic growth as set forth in Vision 2030. There is need, therefore, for a paradigm shift in the way Government mobilizes capital to develop and modernize infrastructure for delivery of adequate and quality service. To address this, the Government intends to engage the private sector through PPP arrangements, thereby closing the gap in investment capital, technology and know-how needed to improve the efficiency and delivery of public services.

8. The main objective of this PPP policy is, therefore, to articulate the Government commitment to be able to attract both domestic and international private sector investment, where appropriate, to help address the deficit in productive and social infrastructure and, in this way, improve delivery of public sector services.

2.2 Scope of PPP

9. A Public-Private Partnership is defined as being an agreement between a public entity and a private party under which –

a) The private party undertakes to perform a public function or provide a service on behalf of the public entity;
b) The private party receives a benefit for performing the function, either by way of
    i. Compensation from a public fund
    ii. Charges or fees collected by a private party from users or customers of a service provided to them; or
    iii. Combination of such compensation and such charges or fees.
c) The private party is generally liable for risks arising from the performance depending on the terms of the agreement.

10. The definition of private party includes a public entity where it is contracted to perform a public function by another public entity.

11. A public entity may enter into a contract with or grant concession to any qualified private party for the financing, construction, operation, equipping or maintenance of any infrastructure or any development facility of the Government.

12. The Government is committed to encouraging PPP in as many areas as possible including, but not limited to, power generation, water and sanitation, irrigation, transport, solid waste management, health, education, housing, sports facilities, information communications technology, tourism, land reclamation projects, land swaps, industrial estates, business process outsourcing, wholesale and retail markets, abattoirs, mining and other infrastructure and development projects.

13. The types of PPP arrangements, as provided in attachment 1 of this policy, shall include, but not limited to, management contracts, leases, concessions, Build-Own-Operate-Transfer (BOOT), Build-Own-Operate (BOO), Build-Operate-and-Transfer (BOT), Build-Lease-and-Transfer (BLT), Build-Lease-Maintain-Transfer (BLMT), Build-Transfer-and-Operate (BTO), Develop-Operate-and-Transfer (DOT), Rehabilitate-Operate-and-Transfer (ROT), Rehabilitate-Own-and-Operate (ROO), Land Swap and output based maintenance contracts.

14. The PPP framework will cover State Departments and public institutions, including, County Governments (CG), Local Authorities and State Corporations that express intention to use the PPP mechanism in delivery of public services.

2.3 Statement of Principles of PPPs

15. PPP should yield value for money for the Government and its citizens. The key characteristics of PPP projects will include:

- Maximizing the benefits of private sector efficiency, expertise, flexibility and innovations;
- Achieving long-term affordability within the constraints of budgetary sustainability, potential for returns for the private party and affordability by the users;

- Increasing efficiency and access to quality public services for all members of society and enhancing balanced regional development;
- Allocating risks to the party best able to control them;
- Enhancing the health, safety, and wellbeing of the public;
- Achieving value for money particularly as compared to the conventional procurement;
- Ensuring social and environmental safeguards;
- Ascertaining prior to tender the willingness of the private party to participate in the project on account of its financial viability;
- Managing fiscal risks created under PPP contracts within the Government's overall fiscal management framework;
- Respecting the employment rights and opportunities of employees;
- Promoting participation of small- and medium-sized enterprises in PPP projects;
- Ensuring good governance, transparency and accountability in the whole process of PPP development.

2.4 Goals and Benefits

16. Identification of goals for PPPs and the prospective benefits from individual projects is expected to provide more certainty in particular, for those local communities whom PPP projects are expected to serve.

17. These goals and benefits include the following:

- Speedy, efficient and cost effective delivery of projects;
- Value for money for the tax payer, thorough optimal risk transfer and risk management;
- Efficiencies from the integrated design and construction of public infrastructure;
- Creation of added value through synergies built between the public entities and private sector companies, in particular through integration and cross-transfer of public and private sector skills, knowledge and expertise;
- Alleviation of capacity constraints and bottlenecks in economy through higher productivity of labor and capital resources in the delivery of projects;
- Competition and increased construction capacity including participation of local investors through joint venture or partnerships with foreign companies;
- Innovation and diversity in the provision of public services; and
- Effective utilization of state assets to the benefit of all users of public services.

III. POLICY STATEMENTS FOR IMPROVING THE ENABLING FRAMEWORK

3.1 Legal Framework

18. Kenya already has many of the elements necessary for a successful PPP program. The Constitution of Kenya provides a firm foundation for the development of strong institutions and governance structures to promote the socio economic well-being of the citizens. However, lack of clear requisite legal and institutional framework for PPPs remains a potential barrier to effective PPP implementation and thus presents investment risks. The Public Procurement and Disposal (Public-Private Partnership) Regulations, 2009 provide for the current institutional and regulatory framework for PPPs in Kenya and are anchored on the Public Procurement and Disposal Act (PPDA), 2005. The object of PPDA is "to establish

procedures for procurement and the disposal of unserviceable, obsolete or surplus stores and equipment by public entities". The PPP Regulations, therefore, do not fit well within this Act since it does not provide for PPPs, except where it allows for the use of "concessions and design competition". The current legal framework is also not comprehensive enough in providing legal certainty to investors while the framework to deal with the entire PPP project life cycle is unclear. This Policy is therefore a key step in creating certainty to investors and to provide clarity in PPP development'.

19. In line with this policy, a Public-Private Partnerships Act shall be enacted in order to address the gaps and remove any overlaps, conflicts and impediments in the existing legal framework. The main objective of the Act shall be to facilitate the participation of private sector in financing the construction, development, operation, or maintenance of public infrastructure or development projects through concession or contractual arrangements. In addition, the Act shall establish a set of general principles and rules for PPPs based on best practices. All public entities will be expected to comply with these principles and rules, thereby ensuring high degree of consistency in approach across sectors.

3.2 Institutional Framework

20. The Government will establish an institutional framework for Implementing PPPs, consisting of the PPPSC, responsible for developing and implementing PPP policy initiatives; the PPPS, domiciled at the State department responsible for finance, to act as a national centre for PPP expertise; PPP Nodes in the public entities responsible for the development and management of PPP projects; and a Project Facilitation Fund to provide an avenue for Government support to PPP projects.

The PPPSC shall consist of:

i. Principal Secretary for the state department responsible for Finance, as Chairman of Committee;
ii. Attorney General, or his representative;
iii. Principal Secretary in the state department responsible for Government Coordination;
iv. Principal Secretary in the state department responsible for of National Planning;
v. Principal Secretary in the state department responsible for Lands;
vi. Principal Secretary in the state department responsible for coordinating County and Local Government; and
vii. Four members from the private sector.

3.3 Government Support for PPP Projects

21. The Government shall facilitate as much as possible the mobilization by private parties of international and domestic finance by deploying a wide range of instruments to support project preparation and financial viability of projects.

The Government shall establish a Project Facilitation Fund to:

i. Enable public entities to prepare the projects for tender including the conduct of project appraisals to ensure that projects are bankable and attractive to potential bidders;
ii. In selected cases where public financial resources are available, extend Viability Gap Finance to projects that are socially desirable but, either, cannot be

implemented in the absence of a Government grant because they are not bankable or are only bankable with unaffordable tariffs; and

iii. Provide a source of liquidity to meet in particular, calls on contingent liabilities extended to PPP Projects that materialize unexpectedly during operations.

Annual budgetary allocations will be made into the Facilitation Fund to create a 'guarantee fund,' capable of meeting Government contingent liabilities arising from PPP projects.

22. To be successful and sustainable, PPPs require fixed rate long-term financing, preferably, in local currency. The Government will ensure seamless interactions between Security Markets and the PPP implementation program, (i) to include the continued enhancement of the institutional capacity of market intermediaries and other licensees of the capital markets; and (ii) the issuance of new regulations which may ease the challenges for sponsors and their lenders to mobilize financial resources including regulations related to collective investment schemes and asset based securitization.

23. The Government will facilitate issuance of guarantees for PPP contracts with International Development Finance Institutions or other institutions involved in insuring country and project risks.

24. The Government will provide, where needed, binding letters of comfort/ support to the investors and their lenders in order to reduce the premiums factored on political risks. The Government, where appropriate may enter into direct agreement with the lenders or provide the lenders with step-in-rights in a contract or a Concession agreement.

25. In order to reduce the overall cost of the project the Government may, in special circumstance, with the approval of Parliament issue a Guarantee to the private party to cover some of the country or project risks.

26. To attract the best quality at least direct costs, the Government may provide some incentives to the project company such as tax benefits, assistance in acquiring land, relaxation of certain legal requirements such as licensing, new or improved infrastructure, use of project resources for no-profit related purposes or being allowed to bid for other projects.

3.4 The Project Process

27. The Government shall issue an operating framework that will assign roles and responsibilities of key Public entities in the preparation and implementation of PPP projects during their life cycle. It is essential to ensure a standardized approach to the development of the overall PPP program, while recognizing the need for sectoral flexibility to accommodate diversity at project level.

i. ***Project Identification, Selection and Prioritization***: the first step in determining the technical profile, operations, service delivery targets, and future income and costs of the project, the MDAs shall perform a needs analysis through a survey. For those PPP projects that require the collection of user fees directly from consumers, it will be necessary to confirm through such surveys that revenues paid by customers will be sufficient to make the project financially viable;

ii. ***Project Preparation and Appraisal***: the MDA will recruitment a transaction advisor, where applicable, to assist conduct a social cost benefit analysis, a full investment appraisal that determines the commercial sustainability of the project, project description, and any requirements for land acquisition or other Government support, the affordability of the project's proposed tariff path for users, the bankability of the project based on optimal risk sharing and consultations with stakeholders to ensure their interests are considered;

iii. ***Project Tendering:*** This shall be consistent with the PPP Act. As a general principle, projects should be tendered with a maximum of information provided to the potential bidders, including the level of Government Support to be extended to the undertaking;

iv. ***Project Negotiation:*** Guidelines shall include guidance to follow in preparing and organizing for the negotiations with first ranked bidders and the approval procedures required from oversight state departments such as state department responsible for Treasury and/or the state department responsible for fiscal management;

v. **Project approvals**: The approval of PPP projects shall be done in accordance with the PPP Act.

vi. **Project Monitoring and evaluation**: this step involves development of a monitoring and evaluating plan aimed at reviewing PPP project performance to ensure compliance with the project agreement during implementation and operation period and to ensure that the transfer of asset at the expiration of the project agreement is consistent with the terms and conditions in the project agreement.

3.5 Project Implementation Structures

28. PPP projects will be developed and implemented by the relevant public entities, e.g., sector state departments, statutory bodies, public enterprises, County Governments and local authorities. PPP project implementation framework shall be coordinated by the PPPSC and PPPS in the state department responsible for Finance, which shall develop and distribute PPP Operating Guidelines and Manuals for use by public entities in developing PPP projects. The PPPSC will be responsible for the approval of project concept, feasibility study, bid documents, and the negotiated contracts. The Cabinet shall be the final authority in the approval of PPP projects but will delegate such responsibilities to the PPPSC or the Contracting Authority as will be prescribed in the regulations. All Concessions of natural resources shall be ratified by Parliament as provided for in the Constitution of Kenya.

29. Public entities intending to use PPP as a method of delivering infrastructure services shall be required to have the capacity to manage the commercial processes involved and will be required to hire transaction advisors in those cases where capacity is lacking.

3.6 Options for PPP Arrangement

30. In determining whether PPP is an appropriate procurement option for public infrastructure and services, Government will consider among others:

- Value for Money: The best value for money outcome in public services is the key consideration at all stages of a project's development and procurement. Government will test value for money (VfM) by comparing the costs of PPP proposals against established benchmarks wherever possible. The key benchmark will consist of an estimate of the costs of providing an equivalent service through public finance. Because this benchmark may be unavailable, or impractical, in the early years of the PPP program, reliance must be placed on the competitive tension that can only come from well conducted competitive bidding to ensure VfM.
- Affordability: Two kinds of affordability will be tested in the assessment of PPP projects: (1) affordability to consumers which will be determined by conducting a

consumer demand, affordability and a willingness to pay survey; and (2) affordability to Government which will be assessed by determining whether the proposed PPP project can be financed from the Government budget over its life.

3.7 Risk Allocation Structure

31. In order to be viable, PPP projects must carefully allocate all relevant risks to specific parties and must determine if a project is financially and commercially viable for the project's given risk allocation structure. The principle that Government will follow in allocating the risks of a PPP project will be to optimize, rather than maximize, the transfer of project risks to the private party. Government will seek to allocate risks to the party that is best able to manage controllable risks; or best able to insure uncontrollable but insurable risks; or best able to bear the financial consequences of uncontrollable and uninsurable risks.

3.8 Contingent Liabilities

32. Government will continuously review the level of contingent liabilities arising from the PPP program in relation to national debt.

33. All public entities including county governments, local authorities and the PPPS will be required to seek approval from the state department responsible for Finance/Treasury for all direct and contingent exposure arising from any given PPP project. The Government will issue more comprehensive guidelines on how to dimension contingent liabilities and the approval process.

34. Government will establish a Project Facilitation Fund which among others will provide a source of liquidity for calls under contingent liabilities accepted by Government on any given PPP project.

3.9 Procurement of PPP Projects

35. PPP projects shall be procured in an open and transparent manner consistent with the PPP Act and in line with national and relevant international standards, procurement rules, and with the need to ensure effective competition. All public entities involved in the procurement of PPP projects shall ensure fairness, equity, transparency, competitive tension, accountability and cost effectiveness in the process. The procurement process must provide as much information into the public domain as practicable, with equal access to all bidders, particularly criteria related to the evaluation of the bids.

36. The Government recognizes that the benefits of private sector participation in infrastructure will be increased by the effective competition, including reliance on international competitive bidding for award of projects, ensuring that business activities are subject to appropriate commercial pressures, dismantling unnecessary barriers to entry, and implementing and enforcing adequate competition laws. The awarding of infrastructure contracts or concessions will be designed to guarantee procedural fairness, non-discrimination, and transparency.

3.10 Privately Initiated Investment Proposals

37. Privately Initiated Investment Proposals will be limited to projects that demonstrate genuine innovation and/or use of proprietary technology, economic viability and satisfy the principles of public interest. Detailed procedures for dealing with Privately Initiated Investment Proposals and the process by which they are guided will be described in the legal framework.

3.11 Contractual Arrangement

38. PPPs will be financed, managed and implemented under an enforceable project agreement between the contracting authority and a Special Purpose Vehicle established by the successful private party with a sole purpose of executing the project.

39. The project agreement will set forth clear guidance on the following key issues where applicable:

i. The term of the project agreement, timing of implementation and the process by which the project will be deemed to meet contractual specifications during its commissioning tests;
ii. A management plan that sets forth how the project will be operated and managed during the project agreement term;
iii. Penalties for failure to meet schedule and/or specifications at commissioning or failure to adhere to best practice standards during operations;
iv. Stepping in rights of lenders;
v. Responsibilities related to environment mitigation;
vi. A clear mechanism as to how tariffs, or user charges, will be set;
vii. A clear payment mechanism;
viii. Allocation of risks to the party best able to manage them;
ix. Process by which the project will be monitored by Government for adherence to the project agreement;
x. Events of default, remedies, timing;
xi. Provisions related to the transfer of the asset at the conclusion of the project agreement;
xii. Dispute resolution process;
xiii. Governing law and jurisdiction of the contract; and
xiv. Any other provisions

3.12 Output Specifications

40. The formal agreement between the contracting authority and the private party will be specified in terms of verifiable service standards to be provided on the basis of output or performance based specifications. The level of service quality and design should be related to the objective for the service and user requirements.

3.13 Post-Transaction PPP Contract Compliance, Performance Monitoring and Evaluation

41. Government recognizes the importance of the role played by the public sector in the implementation of public private partnerships to ensure that they are successful and sustainable. PPPs will only deliver the planned benefits if each of the parties continues to

perform, as required by the contract, for the entire term of the contract. While Government will delegate to the Public Entities, or the regulatory authority, or both, the responsibility to ensure compliance with the Project Agreement and imposition of penalties for failure to adhere to its terms, it will ensure that Public entities have the necessary support and capacity to fulfill their role in the PPPs. The public entity will establish clear procedures to monitor the contractor's performance. The PPPS and the PPPSC shall have an oversight role in this process.

3.14 Stakeholder Participation

42. Stakeholder participation builds trust amongst the participants and leads to the creation of long-term collaborative relationships. In this respect, public entities will be required to consult the stakeholders throughout the project cycle to ensure that the PPP project addresses their needs. Stakeholders to be consulted shall include employees and their trade unions, the public, the people who will use the assets and services provided, local communities, sectoral interest groups, amongst others.

3.15 Communications Strategy

43. The success of the PPP program requires widespread public support. A PPP communications and awareness strategy, led by the PPPS at the state department responsible for Finance, will be directed to key stakeholders, officials of the public service procuring agencies, employees in the sectors, where PPPs will be developed and the general public. A communication strategy shall be developed for each PPP project by the Unit in conjunction with the public entities and, where applicable with the private sector.

44. The communications strategy should be implemented through appropriate media, including website(s), television, newspapers, journals, magazines, radio and workshops. The communications strategy will focus on the objective and subjective attributes of the project, which include economic and social benefits to be realized by its implementation, relationship to Kenya's long-term development, scope, content and timing of bidding process, likely bidders and other stakeholders, implementing private party and financing structure (once this is known), length and construction period.

3.16 Human Resource Capacity

45. PPPs are different from traditional procurement methods and their preparation and implementation requires different skills and capacities. The PPPS will spearhead the development of the requisite human resource capacity within the PPPS and the Nodes to facilitate development of sustainable PPP projects. Transaction advisors engaged to work on PPP projects will be required to transfer skills to the local counterpart staff and key performance indicators put in place to monitor such transfer of skills. Also to be included in the training program are the staff of the state department responsible for Finance responsible for dimensioning and monitoring of contingent liabilities, critical review of project appraisals, and approval of contingent liabilities.

III. IMPLEMENTATION FRAMEWORK

46. The Government, in collaboration with other stakeholders, will develop an implementation framework that will include enactment of a PPP law review and amendment

of related legislation, establishment and reconstitution of PPPSC and the project facilitation fund, creation of PPP Nodes, adoption of appropriate regulations, a prioritized PPP projects implementation program and PPP operating guidelines together with standard bidding documents.

Attachment 1
Permitted PPP Arrangements

47. There are several well defined models of Public-Private Partnerships, differing in purpose, service scope, legal structure and risk sharing, and over time there have been permutations and combinations of these structures some of which are defined hereunder:

a) management contract whereby a Contracting Authority awards a private party the responsibility to manage and perform a specific service, within well-defined specifications for a specified period of time not exceeding ten years, and the Contracting Authority retains ownership and control of all facilities and capital assets and properties;
b) output performance based contract whereby the Contracting Authority awards a private party the responsibility to operate, maintain and manage infrastructure facility for a specified period of time not exceeding ten years and the Contracting Authority retains ownership of the facility and capital assets;
c) a lease whereby the private party pays the procurement entity rent or royalties and manages, operates and maintains the facility or utilizes leased land for the purpose of exploration, production and development of minerals and receives fees, charges or benefits from consumers for the provision of the service or sale of products for specified time not exceeding thirty years;
d) a concession whereby a private party through a contractual license issued by the public entity is granted the right to operate, maintain, rehabilitate or upgrade the infrastructure facility and to charge a user fee while paying a concession fee to the public entity;
e) a Build-Own Operate scheme whereby a private party designs, finances, constructs, owns, operates and maintains the infrastructure facility and provides services for an agreed time period
f) Build-Operate-and-Transfer - A contractual arrangement whereby the private party undertakes the construction, including financing, of a given infrastructure facility, and the operation maintenance thereof and transfers the facility to the Contracting Authority at the end of the fixed term which shall not exceed thirty years
g) Build-Lease-and-Transfer - A contractual arrangement whereby a private party is authorized to finance and construct an infrastructure or development facility and upon its completion turns it over to the Contracting Authority concerned on a lease arrangement for a fixed period after which ownership of the facility is automatically transferred to the Contracting Authority Unit concerned
h) Build-Transfer-and-Operate - A contractual arrangement whereby the public sector contracts out the building of an infrastructure facility to a private party such that the contractor builds the facility on a turn-key basis, assuming cost overrun, delay and specified performance risks. Once the facility is commissioned satisfactorily, title is transferred to the Contracting Authority and the private party operates the facility on behalf of the Contracting Authority under an agreement
i) Develop-Operate-and-Transfer - A contractual arrangement whereby favorable conditions external to a new infrastructure project which is to be built by a private

party are integrated into the arrangement by giving that private party the right to develop adjoining property, and thus, enjoy some of the benefits the investment creates such as higher property or rent values. The infrastructure facility shall be transferred the Contracting Authority within a period not exceeding 30 years while the developed property remain a property of the private party in perpetuity

j) Rehabilitate-Operate-and-Transfer - A contractual arrangement whereby an existing facility is turned over to the private party to refurbish, operate and maintain for a franchise period, at the expiry of which the legal title to the facility is transferred to the Contracting Authority

k) Rehabilitate-Own-and-Operate - A contractual arrangement whereby an existing facility is transferred to the private party to refurbish and operate with no time limitation imposed on ownership. As long as the operator is not in violation of its franchise, it can continue to operate the facility in perpetuity;

l) Land Swap - A contractual arrangement whereby existing public land or asset is transferred to the private party without limitation in exchange of an asset or facility developed by the private party.

Annex 7: Outline of APL 2

Kenya: International Finance and Public-Private Partnership (IFPPP) Project

1. This program is designed as an APL in order to tailor World Bank support to a start-up National PPP Program in a manner that balances: (i) initial absorptive capacity constraints that need to be eased, with; (ii) the requirement to address financing gaps that currently exist for PPPs in a way that mitigates the financial exposure risk that the World Bank and the client would have under a standard "Specific Investment Loan" (SIL). More specifically, it ensures that the larger PPP project financing that is available under the APL 2 project is only deployed and the associated commitment and service fee charges incurred once: (i) a clear pipeline of bankable projects has been developed, within: (ii) a strengthened enabling environment that gives comfort to the private sector that the political and other risks they are taking on are manageable.

2. Subject to successful progress on APL 1 and compliance with the triggers detailed below, the APL 2 will make available infrastructure financing both the public and private sides of a PPP project through two instruments. A currently estimated US$90 million is potentially available for this APL 2 operation. The first instrument will target the public side of the PPP project by making resources available for upfront capital expenditures through the Viability Gap Fund to be put in place as under the "Financial Provisions" section (Part IX) of the PPP Bill. Additional financial instruments under consideration by the GoK and World Bank for inclusion under the APL 2 include a potential financial intermediary lending that will provide long-term debt financing for eligible financial intermediaries and guarantees.

3. APL 2 will be activated based on World Bank approval of subsequent project approval documents to be submitted for approval by the World Bank Regional Vice President subject to GoK concurrence on APL 2 design and compliance with the agreed-upon triggers included in this proposed operation. Listed below are the triggers for APL 2:

a. PPP Law enacted, acceptable to the Association;
b. Submission of at least 5 PPP Feasibility Studies (PFSs) by contracting authorities to the respective sector Minister, acceptable to the Association;
c. Fiscal Commitment and Contingent Liability (FCCL) Management Framework approved by the PPPSC, acceptable to the Association;

4. What follows is an outline of the objectives, rationale and design status of the VGF and a summary of the other instruments under consideration and the outstanding issues to be addressed over the forthcoming period to finalize APL 2 preparation work. Final determination of the allocation of the US$90 million between the VGS and prospective other financing instruments will be made based on the following criteria: (i) specific financing requirements of targeted PPP Pipeline; (ii) alternative sources of financing available from GoK and other donor agencies and their preferences/capacities to direct to VGS and/or other instruments, including OP8.30 due diligence in case of prospective financial intermediary lending. This will be determined in advance of APL 2 activation.

A. Viability Gap Fund Viability Gap Fund

1. **Objective:** The Viability Gap Fund (VGF) provides public capital to fill funding gaps required to make infrastructure public-private partnerships (PPPs) projects commercially viable. In recent years, VGF's have become more common financial tools in developing economies to help crowd-in private sector investment in public-private

partnerships. The VGF is typically administered through the central finance ministry (as in the case of India) or the central budget office (Nigeria). Placing the VGF in a central unit of the Government facilitates streamlined coordination and approval processes. The VGF can provide a variety of output-based grant-based transfers to the private sector. These transfers are either straightforwardly provided in the form of up-front capital investment to the infrastructure asset, works in progress by the government or ongoing to bring it to a level where it is more commercially viable to be concessions, i.e.: an initial grant to cover a specific portion of a project's capital cost or public works or ongoing in the form of government contribution availability payment in addition to user charges for the duration of PPP Contract

2. **Rationale for VGF:** The Government of Kenya has recently prioritized the development of PPPs as a way to increase private sector investment, strengthen competitiveness, and achieve its development goals as defined in its Vision 2030. Given demand estimates and the current condition of Kenya's core infrastructure, a recent report estimates that US$4 billion, or 20 percent of GDP, will have to be spent on infrastructure over the next decade. Kenya's current expenditures are half of this required amount and an anticipated additional US$2 billion must come from other sources.15 While Kenya can half the additional amount needed by eliminating inefficiencies and improving technology for infrastructure, other sources of funding, such as private sector investment, must be leveraged to meet this goal.

3. The Government anticipates that – with the exception of telecommunications – much of a country's core infrastructure will continue to require substantial public sector investment over the coming phase of development. For works funded through public expenditures this will follow traditional public procurement procedures. However, for many planned PPP transactions, preliminary financial and economic analyses reveal that the capital cost, revenue structures, and high commercial risks preclude these transactions from being entirely dependent on private finance. This can be attributed sometimes to a mismatch between balancing social and economic considerations that require the government to keep tariff levels low and the tariff required for a private operator to provide the service. In other situations, the infrastructure asset to be concessioned requires some level of public investment to bring it up to a standard where it can be commercially viable in the eyes of a private investor. The "viability gap," needed to make it possible for an investment to move from being wholly public and one that can also involve private finance can be bridged through the creation of a Viability Gap Fund.[16]

4. **The Legal and Policy Context:** Government of Kenya has recently been proactive in improving its enabling environment for PPPs. The PPP Bill currently before Parliament includes a Project Facilitation Fund. This Fund is expected to be divided into three "sub-funds", all of which exist to support PPP transactions. The Government has allocated one "sub-fund" to serve as a Viability Gap Fund.

5. Part V- Financial Provisions- of the proposed PPP Bill sets out the legal groundwork for the Project Facilitation Fund. 69 (3) states that the Government may "extend viability gap finance to projects that are desirable but cannot be implemented in the absence

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AICD Kenya: www.infrastructureafrica.org/countries/kenya. Estimates based on 2006 data.

[16] There are also other financial ways that may serve to bridge this "gap" through such products as guarantees on the risk side and financial intermediary loans when trying to bolster the long-term local financial market on the financing side.

of Government support."69(2) defines that the sources for the Fund include: Government of Kenya, development partners, a stipulated levy from the tariffs, appropriations in Aid, donations, success fee for PPPS and any other source. The Act empowers the Public-Private Partnership Committee (PPPSC) to authorize allocations from the Project Facilitation Fund, and; the PPPS housed in the State Department in the Ministry of Finance will administer the Fund. Likewise, the PPPS is responsible for issuing Regulations that include details on the administration of the Facilitation Fund and therefore the VGF.

6. **Principles for VGF:** There are a set of principles that must be followed for the Government of Kenya to effectively deploy the VGF to PPP transactions. While some of these principles are generic to international best practices, others take into close consideration the enabling environment and political economy of Kenya.

a. *Communication and Buy-In*: The PPPS must be sure to communicate clearly and build a widespread understanding and buy-in among the key Ministries and Agencies on the definition and function of the VGF. Doing so will result in increased capacity in the line ministry level to develop PPP transactions with the knowledge of how and when the VGF is an appropriate financing mechanism.
b. *Eligibility*: The PPPS must have eligibility standards that are clearly defined and easily understood.
c. *Quality:* Ministries and Agencies that wish to access the VGF for PPP transactions must, with the support of the PPPS, carry-out the proper upstream analysis that clearly explains why the VGF is needed. This due diligence includes close compliance with the PPP procurement procedures set out in the PPP Law, Policy and Regulations and includes value-for-money analysis, cost-benefit analysis and a rationale on why the project is suitable for PPP.
d. *Efficiency*: Proper upstream due diligence for each PPP transaction requesting VGF resources will result in a streamlined analysis and approval process both in the PPPS and the PPPSC. Similarly, the analysis and approval process in the PPPS and PPPSC must be streamlined to avoid unnecessary bureaucracy and time delays.
e. *Timeliness and Credibility*: The implementation\disbursement of the VGF funds needs to be efficient and predictable in order to have the leverage impact intended for prospective private sector investors.

7. **Implementation of Kenya's VGF:** As stipulated in the draft PPP Law, the administration of the VGF will rest with the PPPS in the Ministry of Finance. The PPPS will be responsible to assist Ministries and Agencies in making VGF requests. Other key entities that will be involved in the VGF administration will be:

- *PPPS, Ministry of Finance:* The PPPS will be responsible to conduct VGF training assistance to Ministries and Agencies in developing VGF requests. The PPPS will also review and analyze VGF requests to ensure they are compliant with the PPP Law, Policy and Regulations, and also satisfy the key eligibility requirements for the Fund.
- *Budget Department, Ministry of Finance:* The Budget Department will work with the PPPS to manage the funds of the VGF, monitor the amounts in the VGF, and facilitate additional contributions from outside sources. The Budget Department will also track VGF expenditures and produce quarterly reports to the PPPS on the VGF.
- *Lead Line Ministry (Power, Transport, etc.):* While the Budget Division would be responsible for keeping track of expenditures processed through the VGF, the lead

ministries would retain responsibility over the concession-specific expenditure to which VGF funds are allocated. These expenditures must comply with specific procurement guidelines agreed upon in the VGF section of the forthcoming PPP Regulations.

- *Debt Management Department:* The Debt Management Department will monitor all contingent liabilities that are associated with VGF investment into PPP transactions such as annuity or availability payments.

8. **Sources of Funding:** Government of Kenya: Annual allocations to the VGF could be a line item in the Ministry of Finance. This funding would be based on the PPP transactions pipeline and the planned estimate of the capital investments needed over the initial 3-5 year period of each concession (construction period). The budget allocation put into the VGF based on the PPP pipeline should also take into account the number of PPP transactions a specific line Ministry commits to the PPP pipeline. In some instances, a line Ministry can channel the freed for a project by pursuing a project via PPP (and including it in the pipeline) to the VGF, in collaboration with the Ministry of Finance, to support the transaction. Doing so while assist Ministries and Agencies to have better oversight in developing PPPs according to Kenyan law and policy.

9. The Government of Kenya's contribution to the VGF could be based on a rolling 3-yearly allocation basis. This method of extended commitment might be necessary given the multi-year (up to 15-25 year) nature of PPP financing arrangements that include the private sector. Furthermore, the preparation period for a PPP to commercial closure and thereafter reaching financial closure can often take up to two years. While this timeline presents various problems, from a budget planning perspective it assists budget management by providing a long lead time to estimate and revise potential VGF allocations over the coming few years. As a result, the VGF budgeting process can usually effectively predict demand and thereby ensure that the pipeline opportunities are adjusted to budget exposure limits.17

10. External Sources: Development partners and donors considering support to the VGF would be able to do this either by contributing directly to a Government account linked to the VGF.

11. The proposed IDA Infrastructure Finance and PPP Project expect to contribute into the VGF under the APL 2. The exact amount will be determined, inter alia, by specific financing requirements of the lead transactions to be supported under the IDA credit and potential other VGF funding sources outside of the GOK and the WB. Further discussions with development partners will determine if others are interested in contributing into the first round of VGF funding.

12. **Proposed VGF Operational Structure[18]:** The formal process of receiving VGF resources can be broken down into three main phases: (i) sector and project eligibility screening, (ii) appraisal, and (iii) approval.

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[17] The Indian Federal Ministry of Finance indicated that they never found demand for VGF in excess of funds set aside in the annual budget. The Government expressed that the gestation time on a PPP project going to market provided sufficient lead-time to sufficiently provision.

[18] This method parallels the Viability Gap Funding Fund discussed in the *Guidelines for Financial Support to Public-Private Partnerships in Infrastructure* by the Government of India.

i. *Sector and Project Screening (line Ministries and Agencies have at least drafted Pre-Feasibility Study/ technical analysis that covers core areas including, inter alia, preliminary financial and economic analysis, preliminary costing, safeguards screening, risk analysis, legal and regulatory review, options analysis, and rationale for PPP):*

- For the Sector and Project Screening Phase, the sponsoring line ministry will submit a Project Brief[19] detailing all the technical analysis that has been done or is underway with an explanation on why VGF funded is being requested, an broad estimate of how much will be requested, and a proposed timeline. The PPPS will assist the line ministry in preparing these Project Briefs and provide feedback to the line ministry on any information that is missing or areas of concern.
- The PPPS will also screen the proposed project to ensure that it fits both sector and project eligibility. It should be noted that:
  - Initial upstream project Pre-Feasibility/technical analysis should be completed prior to submitting a Project Brief for review;
  - Sector and Project Screening should be completed prior to the completion of any Pre-feasibility/ technical analysis to ensure that the analysis incorporates (if suitable) VGF as a source of finance for the proposed project.

ii. *Sector Eligibility*
- The proposed PPP Law and Policy set out the sectors which can be developed as PPPs.
- This same list can be used for eligibility for VGF: Power generation; Water and sanitation, solid waste management, and irrigation; Transport; Health, education, housing, and sports facilities, tourism; Information and communication technology; Land reclamation projects, land swaps, and industrial estates; Business process outsourcing, wholesale and retail markets, and abattoirs; Mining; and other infrastructure and development projects.

iii. *Project Eligibility*
- For projects to be eligible for VGF funding, certain requirements would have to be met. It is proposed that these would include:
  - Proper due diligence, as detailed in the PPP Law and Policy, has been completed and, at a minimum, a draft Pre-Feasibility Study/technical analysis prior to Sector and Project Screening. This would include proper value-for-money analysis and EIRR estimates as part of the Pre-Feasibility work to indicate the proposed project suits the GOK fiscal priorities and development objectives;
  - The concession will be awarded in favor of a private company in which 51 percent or more of the subscribed and paid up equity is controlled or owned by a private sector party or entity;
  - The private sector concessionaire will selected through open competitive bidding compliant with the PPP Law and international best practices;
  - All procurement and safeguards standards (including compliant Social and Environmental Impact Assessments) will be met;

[19] Details on contents of Project Brief to be included in PPP Regulations.

- The private sector concessionaire will be responsible for, inter alia, financing, construction, maintenance and operation of the project during the contract/concession period. A more extensive list of private sector risk assumptions will be developed to expand on this.
- The amount of VGF funding to be requested will not exceed 20 percent[20] of total project capital cost. Exceptions could potentially be made on a case-by-case basis, but the VGF amount must not render PPP option unaffordable or unviable from the public perspective.

iv. *Appraisal (line Ministries and Agencies have at least drafted Feasibility Study with initial estimates of VGF requested)*

- The PPPS should work closely with the requesting line ministry to ensure that VGF requests are done according to procedure and that the transactions under development fit PPP criteria and build on the feedback provided in the Project Briefs. These procedures will be provided in detail in the PPP Regulations to be drafted following the approval of the proposed PPP Law. The submission and review of VGF applications can be considered in a two-stage application and review process.

  Stage 1 Appraisal: Line Ministries and Agencies will submit an Appraisal Package to the PPPS, including, at a minimum, draft Feasibility Study. The PPPS will review the Appraisal Package to ensure that it satisfies VGF principles and eligibility criteria and that the VGF has ample fiscal space to support the project should it move forward to financial closure. The estimated amount of VGF requested should be based on preliminary estimates included in the Feasibility Study that has been drafted prior to requesting VGF resources. The PPPS will agree with the line ministry the maximum amount of VGF to be made available for the proposed project. This will result in an 'in principle' approval for the sponsoring Ministries and Agencies to move forward with/without VGF as a financing option, prior to finalizing the Feasibility Study and seeking Expressions of Interest (EOI) for a private operator. It should be noted that:

  - The Application should only come from the sponsoring line ministry's Project Appraisal Team. The Application should be accompanied by the final and approved (by the sponsoring line Minister) Pre-feasibility/Feasibility or other upstream technical analysis already conducted on the project.
  - The same Project Eligibility requirements met during the Sector and Project Screening phase are still being met.
  - The selection of the preferred bidder will be based on selected criteria which could include: the lowest amount of total VGF funding proposed as stated in the bid document, or the lowest tariff to end users.[21]

  Stage 2 Appraisal: Following the finalization of the Feasibility Study and the selection of a preferred private operator, the sponsoring Ministries and

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[20] This is the currently proposed percentage share. It may merit review, based on the project financial analysis that will be completed as part of Pre-Feasibility/Feasibility Study or other upstream technical analysis on each proposed PPP project. This proposed amount requires further consultations prior to finalization.

[21] This could include what would – in effect – be a negative VGF. In other words the concessionaire is sufficiently confident of profit-realizing revenues and rates of return that the proposal involves a concession fee paid the GOK. This, too, requires more consultation with GOK prior to finalization.

Agencies can submit a final Appraisal Package to the PPPS detailing the exact amount of VGF resources desired to reach financial closure.

- It should be noted that Final Appraisal Packages should include copies of all (draft) project documents and agreements (i.e. information memorandum, concession agreements, guarantees, direct agreements, shareholder/consortia agreements, as applicable) and a final Feasibility Study.

v. Approval

- VGF resources will receive final approval on a "first come – first served basis." Subject to compliance with bidding requirements and PPP procurement procedures**,** authorizing level of approval will be from Cabinet on any Application.

13. **Next Steps:** Additional work is needed to clarify and finalize the proposed institutional roles and responsibilities, eligibility criteria, processing procedures, and approval levels for the VGF. This will most effectively be accomplished through stakeholder consultations and a VGF workshop involving the line Ministries and Agencies and other key stakeholders. From these consultations and workshop, this Technical Note can be finalized and used as input into the PPP Regulations.

14. In parallel with the recommended stakeholder consultations and thereafter workshop, project preparations should include preliminary estimates of VGF funding required. These estimates will help the Government of Kenya to determine the initial amount of capital required for the VGF. Much of this will depend on the ongoing formation of a strong PPP pipeline.

15. The Government must also determine quickly how the VGF will be included in its budget process. Given PPP projects requiring VGF are likely to come on line rapidly, the Government should attempt to include the VGF on its next budget call process.

16. Under APL 1, a comprehensive VGF Operations Manual will be drafted and approved before the commencement of APL 2. This VGF Operations Manual will detail the roles and responsibilities of the various key Ministries and Agencies involved in the VGS, application and approval processes, budgeting details, and other VGS policies. The VGF will require that all eligible projects be properly procured through competitive bidding processes, the concession be awarded in favor of a private company in which 51 percent or more is owned by a private sector party, that procurement and safeguards standards are met and proper due diligence- such as the PFS- is completed according to the National Policy on PPP.

B. OTHER PROSPECTIVE FINANCING INSTRUMENTS

17. **Credit Enhancement Support- MIGA and IDA PRGs:** Another consideration is the provision of guarantees against government failure to honor obligations to a concessionaire. There is potential, in this respect, for a MIGA guarantee to support the aforementioned VGF, albeit on an individual PPP project transaction basis. There is also potential to deploy the Bank's PRG, through the Letter of Credit structure, to provide PPP projects with liquidity support when there are delays in VGF disbursements – this could be a

critical element in structuring the project financing and project bankability. This would most likely be done on a case-by-case basis.

5. **Other Financing Products including financial intermediary lending:** The Government of Kenya will be investigating, in consultation with the private and financial sector players interested in operating in the PPP market, the full possible range of financing products that could be developed to meet requirements on the pipeline of projects. This includes: (i) infrastructure funds drawing on traditional and non-traditional sources of financing including Development Finance institutions, pensions and insurance funds, Islamic financing, private equity; (ii) better mobilization of existing financing that is constrained by lack of bankable projects; (iii) greater encouragement for the development of, e.g. SPVs to mobilize equity and transition debt funding and corporate bond instruments, particularly for re-financing requirements. Should there still prove to be difficulty getting to financial close through the deployment of the above, another option to be considered is the use of a Financial Intermediary Loan facility. This facility can be structured to provide the longer term debt finance that would serve to bring deals to a financial close. Where there is a perceived need for additional long-term debt financing, the rationale is particularly strong be in the context of prospective PPP projects with a requirement for long-term domestically denominated money, as is the case for certain of the GoK Lead Transactions in the transport sector where revenue flows are also denominated in local currency.

6. As the Lead transactions are further assessed and developed, the financing requirements will become clearer, as will the available sources of financing. Based on an ongoing assessment of both the financing demand and supply sides of the projects, a decision can be made as to the suite of financial instruments required and the actions that will need to be taken to ensure that these funding instruments are in place and operational in order to help close deals expeditiously. In this context, further assessment of FIL options can be undertaken.

Annex 8: Letter of PPP Transactions from MoF

Kenya: Public-Private Partnership (PPP) Project

REPUBLIC OF KENYA
MINISTRY OF FINANCE

Telegraphic Address: 22921
FINANCE – NAIROBI
Telephone: 252299
When replying please quote

THE TREASURY
P. O. Box 30007-00100
NAIROBI
KENYA

Ref: ZZ/MoF/253/016 'K'

5th June 2012

Mr. Johannes Zutt
Country Director for Kenya Africa Region
The World Bank, Upper Hill
Nairobi

Dear Mr. Zutt,

RE: GOVERNMENT OF KENYA SUPPORT FOR POTENTIAL PUBLIC PRIVATE PARTNERSHIP (PPP) PROJECTS KENYA INFRASTRUCTURE FINANCE (IFPPP) PROGRAMME

I refer to my earlier letter Ref ZZ/MOF/253/016 'K' dated 25th April 2011 on the above subject matter.

After further consultations, the Government of Kenya, through the Ministry of Finance has refined the potential list of fist mover PPP projects as indicated here below:

1) Nyali Bridge, Mombasa
2) Dualling of sections of Mombasa-Nairobi-Malaba Road
3) LTE - Last Mile Access Network Construction
4) Special Economic Zone (SEZ) at Dongo Kudu, Mombasa
5) Development of 400MW of geothermal power at Menengai
6) Kenyatta University Hostels
7) Conventional Centre, Mombasa
8) Jomo Kenyatta International Airport – Auxiliary services including Transit Hotel

The above list supersedes the list of fast mover PPP projects forwarded to you earlier.

The GOK is glad to note that the proposed World Bank support, through the infrastructure Finance and Public Private Partnership Project, will provide a source of funds to support the above projects. The IFPPP project under the Adaptable Program Lending (APL) initiative is therefore, key in assisting GOK prepare for the market, a well designed bankable first mover PPP projects and to improve the enabling environment for successful implementation of PPP projects.

We thank the World Bank Group for its continued support to Government's PPP program.

Yours Sincerely,

Joseph K. Kinyua, CBS
PERMANENT SECRETARY/TREASURY

THE WORLD BANK
RECEIVED IN CD'S OFFICE
Received by Hulu
Date 6/6/2012 Time 4.00pm
Action by Yira, Lucy
cc Rai, zutt, [illegible]

Annex 9: PPP Project Database Long List (First Movers in Bold)

Kenya: Public-Private Partnership (PPP) Project

Project Name	Contracting Authority	Estimated Cost (USD mm)	Timeline (short/ med/ long)	Status	PPP Type	Description of project
Transport[22]						
Road						
Nyali Bridge	KeNHA	TBC	**S**	PPP models being considered, including construction & operation through an SPV	Concession	Construction of a bridge linking Mombasa island & Northern Coast.
Thika road, Nairobi	KeNHA	TBC	**S**	Construction to be completed end of 2012, potential for PPP maintenance contract; GOK to decide whether to toll	Operation &Maintenance contract& shadow tolling	40km section of the 8-12 lanes road between Nairobi & Thika towns, with very high volume of traffic. Maintenance, operation, collection of tolls will be tendered to Private sector
Dualing of Mombasa-Nairobi-Malaba Road	KeNHA	TBC	M	PPP models being considered including construction & operation through an SPV	concession, public investment	Upgrading & development of the Northern Corridor. About 150KM of International trunk road linking Mombasa-Uganda. Three potential segments include: Mombasa-Mariakani (60KM), Naivasha-Nakuru (45KM), and Nakuru-Mau Summit (45KM).
Air						
Jomo Kenyatta Airport (ancillary facilities)	KAA	500	S/M	Concept/Feasibility: Some preliminary studies completed; EOI for works issued in August 2011 followed by RFP.	concession, public investment	Government decision pending with discussions ongoing (only one bidder); PPP expected to operate and provide additional facilities (parking, hotel, conference center).
Kisumu Airport Phase II (Ancillary facilities)	KAA	TBC	**S**	Studies will start soon	Operation & maintenance	The Airport has a new terminal with the capacity to handle 2 m passengers/yr. Public construction with scope for PPP operation & Maintenance and cargo services
Sea/Lake						
Kisumu Lake Port (Maritime) Development	KPA	20	**S/M**	Concept. Port facilities minimal, but need significant investment in shipping. Need to improve Uganda/Tanzania in parallel.	Concession	This does not need a big PPP. Each country KN, TZ and UG should address each port individually. Further analytical work expected.
Power						
Geothermal IPP-Menengai	KPLC/GDC	400	S/M	GDC developing wells -IPP to follow	BOO	The steam produced by GDC will be sold to investors who will finance, construct and operate the power plants.1st phase will be 400 MW.

[22] Projects in this list which are highlighted are the GoK “First Mover” project are identified by bolding in this first column of the Table.

Project Name	Contracting Authority	Estimated Cost (USD mm)	Timeline (short/ med/ long)	Status	PPP Type	Description of project
ICT						
E-government services (PPP)- land/ vehicle registration, passports, etc.		200	**S/M**	Feasibility ongoing		D:E assumes availability payment
Government Shared Service center/ National Land Information System		360	S/M	Feasibility study done	BOOT	Establishment of a web portal to provide services to citizens countrywide. Design implementation framework developed.
Other Sectors						
Special Economic Zone (SEZ), Dongo Kundu-Mombasa	KPA/Min Trade	TBC	S/M	SEZ bill sent to Parliament. Master plan completed; WBG team supporting Min of Trade on site selection; market demand analysis; and developer targeting.	Not yet determined	Development of SEZ on a 2000km2 land parcel, based on Singapore development model, including PPP aspects.
Projects under IFC advisory services agreement ongoing:						
Kenyatta University (KU) Hostels PPP Project		14	**S**	IFC advisory Mandate Dec 2011	Build Operate Transfer (BOT) with SAP payment structure	Building, Maintaining and operations of a Hostel for 3500 undergraduate students& 500 graduate & 200 married students. Reports by Consultants finalized. The next step is to prepare and launch the EOI.
Mombasa Convention Centre	KTDC	200	**S/M**	Feasibility –KTDC; IFC advisory mission mid-June 2012 preparing for Mandate signature.	BOT with SAP Payment Structure	Land acquired; Min Tourism ownership. D:E assumes availability payment
Projects with NUTRIP support related to PPPs:						
Rail						
Nairobi- Kenyatta Airport Commuter Rail	Kenya Railways Co.	400	**S**	Structuring: InfraCo completed feasibility study with further analysis needed, progress has slowed; Request sent to IFPPP/NUTRIP team; meeting with InfraCo expected shortly.	Concession	Public support in Rehabilitation of existing 100km railway line, doubling of sections & support Infrastructure. Design and provision of rolling stock and operation of the commuter rail link between Nairobi CBD and the airport will be tendered to Private Sector. One station built & 2nd, 3rd under construction with Public support
Air						
Aeronautical Training Center	Kenya Civil Aviation Authority	TBC	**S/M**	Concept linked to East Africa Aviation Training School, to be delinked from Kenya Civil Aviation Authority, with private Sector; studies will start in late 2012 (NUTRIP)	SAP Structure	Development of a flying school on 4300 hectares, including a runway, training buildings & establishment of a hanger