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OVERVIEW OF THE PPP PROGRAM IN KENYA

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with

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Kenya is located East in Africa, along Equator…

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KENYA:

- Area: 583,000 sq. km
- Capital: Nairobi
  - Also, the safari capital of the world. Nairobi National Park - the World's only Game Reserve within a major city
- Geographical size: 49th largest country in the world
- Devolved system of Government: 1No. National Government and 47No. County Governments
- Lies on the equator
- Has 536 kilometres of coastline
- Shares land borders with 5 other countries - Ethiopia, Somalia, South Sudan, Tanzania and Uganda.
- Also, borders on to the big Lake Victoria and the Indian Ocean

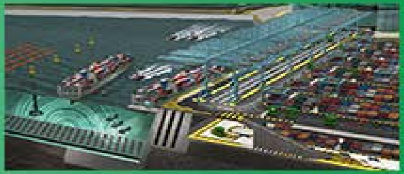


Rationale of PPPs in Kenya…

- Vision 2030 aims to transform Kenya into a middle income country by 2030. Heavy infrastructure investment is thus paramount
- Additional funding from private sector, hence reduction of funding gap
- Reduce Government sovereign borrowings

  Govt. strategy - reduce debt to GDP (ratio) to below 45% in the medium term
- Utilize private sector efficiency & innovation to deliver public services
- Increase business opportunities for the domestic market





Pillars of PPP Legal Framework

- The Constitution of Kenya
- PPP Policy Statement 2011
- The PPP Act No.15 of 2013
- National PPP Regulations
- County PPP Regulations
- The Public Finance Management Act 2012
- County Governments Act 2012

2-tiered Institutional Enabling Framework
(PPP Act, 2013)

PPP Institutional Framework

PPP Project Implementers i.e. Contracting Authorities

PPP Regulatory Bodies



What the PPP Act does…

Institutional
&
Procedural Benchmarks

- Sets up critical institutions to chaperone the PPP life cycle
- Prescribes a structured and predictable process and method to be followed in undertaking PPPs
- Imposes mandatory gate-keeping mechanisms to police and discipline FCCLs
- Provides a clear mechanism for project identification/origination, development and implementation
- Stabilizes PPP contracts, entrenching the sanctity of property rights, by establishing effective structures for disputes management

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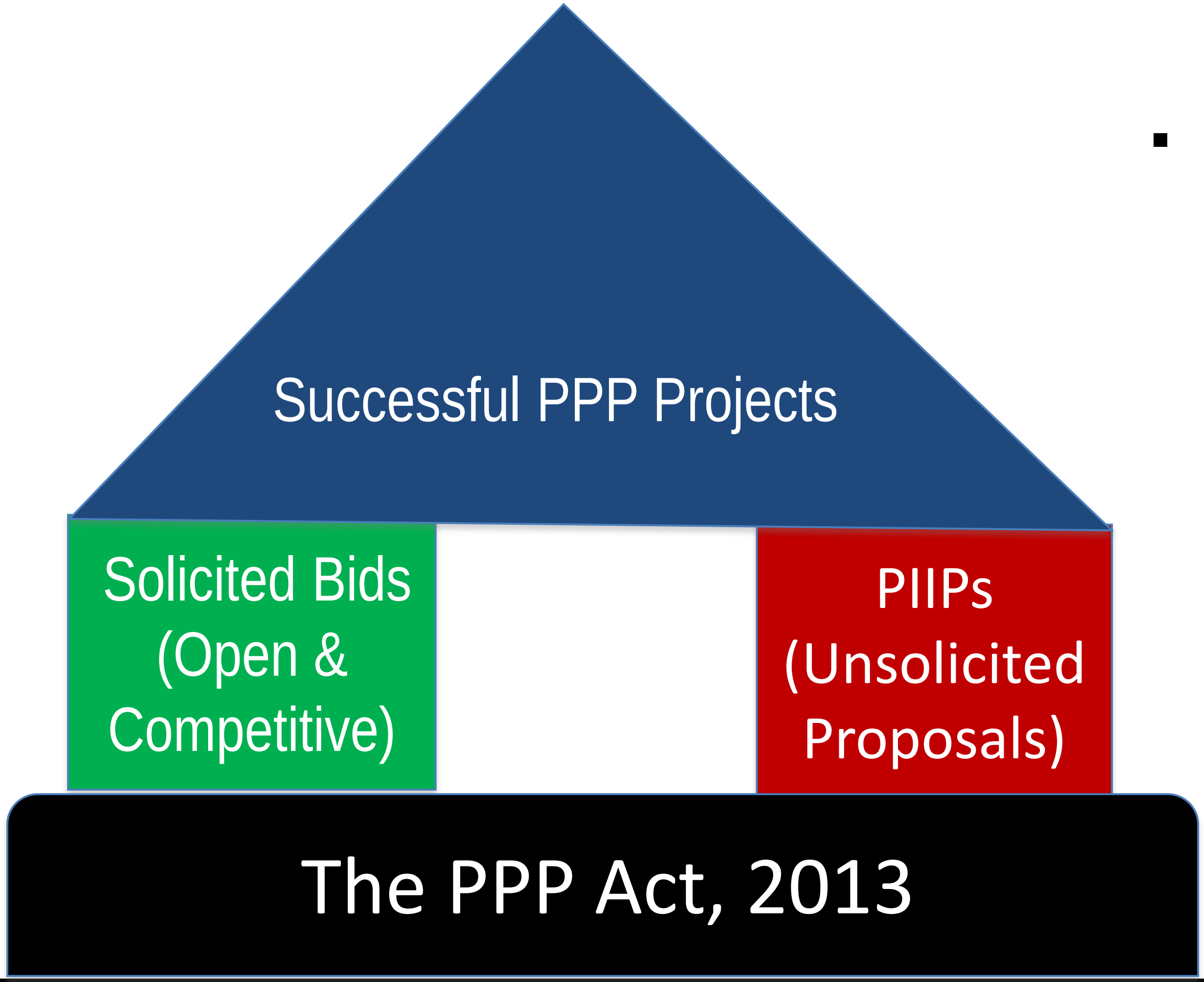
PPP Projects can be initiated in two ways:



- The 3 Core Principles in PPP Procurement:
  - **Value for Money**
  - **Affordability; and**
  - **Risk Transfer (optimal allocation)**

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Preparation and Approval of a PPP Project

Project Identification

- Two primary sources - solicited/unsolicited
- identification through sector studies

Project Screening & Prioritization

- Coordination with CAs
- Both high-level screening & detailed screening
- Pre-feasibility studies
- systematic application of evaluation criteria

Project Development

- Prepare project for procurement - TAs here
- Full feasibility studies, scope, design, schedule, regulatory approvals, initial VfM, select procurement method

Project Procurement

2-stage competitive procurement process
Develop procurement docs
Conduct procurement process
Update VfM analysis
Select preferred proposer
Negotiate & finalize contract
Award contract

by Contracting Authority

The PPP process is structured and sequential with review and approval steps built-in at various stages of the project's life cycle

Step 1
PPP Project Proposal

- Pre-feasibility
- Pre-viability

*PPP Committee Approval**

Step 2
Feasibility Study Report

PPP Committee Approval

Step 3
Evaluation Report

PPP Committee Approval

Step 4
Project & Financial Risk Assessment Report

PPP Committee Approval

Step 5
Contract Execution

Cabinet Approval

Financial Close

Transaction Advisor

*Cabinet Approval of the National Priority List

Phase 1: Project identification, Appraisal and Approval

Stage 1:

PPP Project Identification

- Two primary sources: (a) CA through sector diagnostic studies , or (b) Unsolicited proposals
- Sector diagnostic study (prefeasibility analysis) to cover: technical, legal, institutional capacity status; commercial, financial and economic issues of the potential project

Stage 2:

PPP Project Concept Note

- Project Description;
- Project site and its ownership;
- Preliminary cost estimates;
- Demand analysis;
- Anticipated project revenue stream;
- Project Benefits (Socio-economic & strategic);
- Proposed project structure: Roles of private and public parties; and
- Risk mechanism

Stage 3:

Project Appraisal Team (PAT)

- After PPPC approval of concept note, CA is to constitute a Project Appraisal Team (PAT) to oversee the project preparation;
- PAT is to comprise members of the established Node, and any such other persons deemed necessary

Stage 4:

Feasibility Study

- General & specific description of the project
- Strategic, Socio Economic benefits of the project
- Land situation
- Role of Private sector
- Form of PPP
- CAPEX and OPEX
- Project revenues
- Duration of contract
- VfM Analysis
- Project Risks
- Contact person

Stage 5:

PPPC Approval of Feasibility Report

- Does project meet the requirements of a PPP?
- Does the project potentially represents better value for money?
- Is risk allocation adequate?
- What level of VGF support is required?
- Any implicit or explicit government guarantees?
- Budgetary consequences and financial affordability of the project;
- Suitability of the proposed procurement strategy,
- Adequacy of the plan to manage and monitor the PPP project.

Phase 2: Selection of a Private Party

Stage 6:

Invitation of Requests for Qualification

- CA invites requests for qualification (also known as expressions of interest)

Stage 7:

Prequalification Committee

- CA to constitute a pre-qualification committee for the purpose of prequalifying bidders/ applicants.
- Pre-qualification committee to consist of a representative of the PPP Unit, a member of the CA's Node and such technical, financial and legal experts as may be considered necessary.

Stage 8:

Preliminary Bidders Meeting

- CA may, in consultation with the PPP Unit, hold a preliminary meeting with the shortlisted bidders, to deliberate on issues related to the project specifications.
- As a result of this process, it may become necessary to alter the specifications to the PPP project

Stage 9:

Invitation to Bid

- CA is to prepare an invitation to bid and tender documents.
- Tender documents shall include information prescribed in Section 43 (2) of the PPP Act, 2013.
- Interested bidders are to submit a technical and a financial bid

Stage 10:

Evaluation of Bids and approval by the PPPC

Stage 11:

Negotiations

CA shall enter into negotiations with successful bidders on the financial and technical terms of a project

Stage 12:

Approval by Cabinet

Stage 13:

Award and signing of contract

Stage 14:

Financial close and development of project

Key Challenges to the PPP Program in Kenya

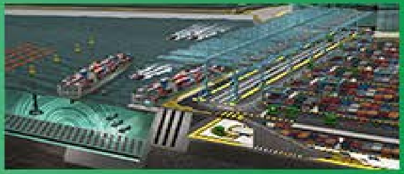
a. Time

b. Misperceptions about PPPs

c. PPP Capacity Constraints
   - Technical know-how; and
   - Inadequate funds by CAs for PPP Project Preparation

d. Political Input





Enhancement of Kenya’s PPP Enabling Environment



1. Operationalisation of the PPP Project Facilitation Fund

- The PPP Project Facilitation Fund (PFF) is established under section 68 of the PPP Act, 2013 as a **multi-purpose revolving fund** to:
  - a) Support **contracting authorities** in the preparation, appraisal and tendering phase of their PPP projects;
  - b) Extend **viability gap finance** to PPP projects; and
  - c) Provide a **source of liquidity to meet any contingent liabilities** arising from a PPP project;
  - d) Support the **activities of the PPP Unit** in its delivery of its mandate;
- It is established to receive moneys from sources including: grants and donations; such levies or tariffs as may be imposed on a project; **success fees paid by a project company to the PPP unit**; appropriations-in-aid; and moneys from a source approved by the National Treasury

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2. Deepening of the Domestic Capital Markets

- Kenya has by far the largest capital markets in East Africa and also Eastern Africa.

- Highly developed government bond market (2014: $10.5bn)
- Rapidly growing pension funds and insurance companies
- Dominant market in the region (>70% of all Gov. bonds outstanding and approx. 90% of all corporate bonds)

However:

- Market infrastructure is outdated
- Corporate bond markets a nascent
- Regional integration waiting for Kenyan market re-organization

➡ Capital Markets are not playing significant role yet in Kenya’s infrastructure development and PPP program

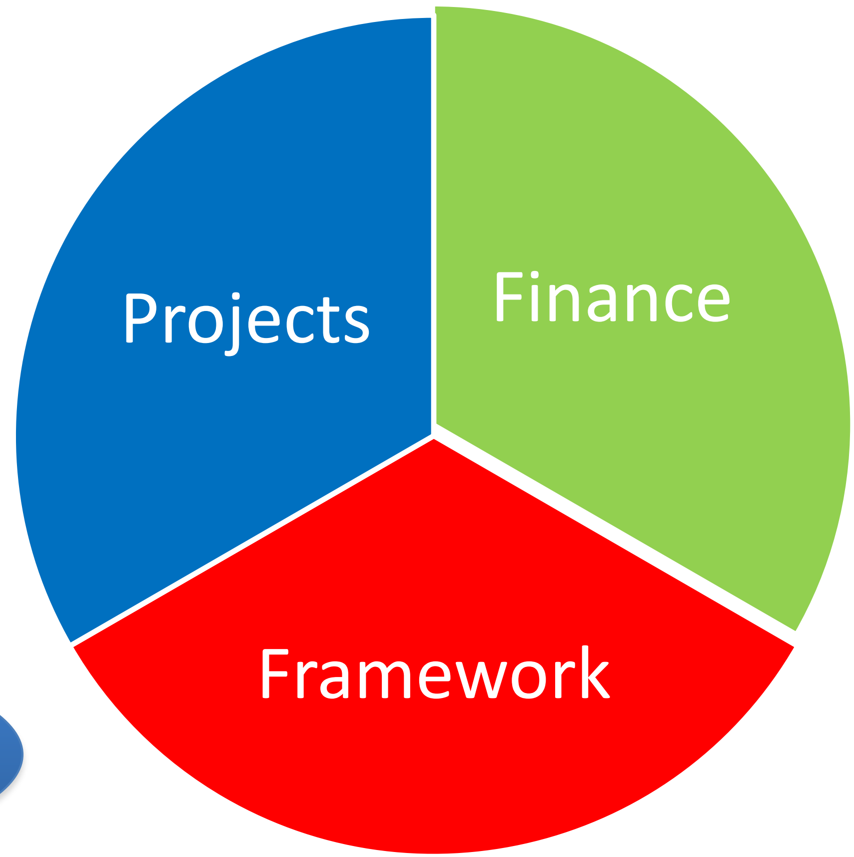
3. Development of PPP FCCL Management Framework

- The PPP Act, 2013 aspires to a **fiscally responsible** implementation of the PPP program and in doing so, NT has:
  - ❖ Developed a draft a sound **Fiscal Commitment and Contingent Liability (FCCL) Management Framework**;
  - ❖ Established an **FCCL Unit** within PDMO, to oversee the **implementation** and **institutionalization** of the FCCL Management Framework.

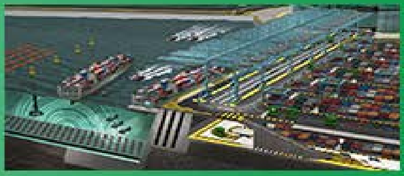
Requirements of a Successful PPP Program

To facilitate a healthy PPP market the following are essential:

- Enabling **framework**
- Available private **finance**
- Viable PPP **projects**
- **Political Will, Championship and Public Support**







Conclusion

The PPP programme in Kenya is being promoted as a long-term programme and not as a series of independent projects.

Consequently, public and private sector support, cooperation and commitment is paramount to its success.