Fiscal Risks Arising from Public Private Partnerships

Introduction to PPPs in Kenya

This section provides details on Fiscal Risks stemming from Public Private Partnerships (PPP) Projects. The Public Private Partnerships Act, 2013 established the framework for the development and implementation of PPP projects in the country. Prior to implementation of the PPP Act. 2013 a number of PPP projects were done in the energy sector through Independent Power Producers (IPPs). Whereas there is a limited number of PPP projects in other sectors, the Government has identified a series of priority sectors for development of PPPs including Ports, Roads, Rail, Power Transmission, Health, Housing, Water and Sanitation and Blue Economy.

The Government of Kenya appreciates the significant importance of monitoring Fiscal Risks stemming from PPP projects, and has such, developed a policy approach to providing support and guarantees to private entities transacting public investment projects in October 2018[1]. The policy provides clarity on the types and means of providing various Government Support Measures (GSMs) to privately-financed public investment projects; and the way in which they, with associated liabilities, are to be disclosed.

Table 1 below details advanced[2] PPP projects in the roads sector and energy sector projects approved by the PPP Committee.

Table [1]: Advanced PPP Projects in Kenya

Project	Government Implementing Entity	Project Value (USDm)	Current Status	Project Term (Years)	Financing structure
Energy Sector Projects					
Malindi Solar-40 MW	Kenya Power	82	Construction Ongoing	20	Debt- 75% Equity-25%
Alten Solar – 40 MW	Kenya Power	105	Financial Close	20	Debt- 84% Equity-16%
Cedate Solar Power	Kenya Power	77	Commissioning underway	20	Debt- 75% Equity-25%
Chania Green	Kenya Power	102	Construction ongoing	20	Debt- 70% Equity-30%
Selenkei Solar Power- 40MW	Kenya Power	84	Commissioning Ongoing	20	Debt- 75% Equity-25%
Road Sector PPPs					
Roads Annuity Lot 33- Ngong to Isinya ("Ngong-Kiserian-Isinya")	Kenya Rural Roads Authority (KeRRA)	98.8	In operation	10	Debt- 62% Equity-7% Government-32%
Nairobi Expressway Project	Kenya National Highways Authority (KeNHA)	667.8	Financial Close Process Ongoing	30	Debt- 75% Equity-25%

[1] "Policy on the Issuance of Government Support Measures in Support of Investment Programmes"

[2] Advanced projects refer to projects that are either operational, under implementation or have achieved financial close, and have been issued with Government Support Instruments

The National Treasury recognizes the need for fiscal responsibility with respect to issuance and monitoring GSMs for these projects, this is achieved through continuous management of fiscal costs and risks arising from issued GSMs. Measures include an ex-ante assessment of the Fiscal Costs and Contingent Liabilities (FCCL) in PPP projects at the various approval stages as outlined in the PPP Act, 2013, and a clear approval mechanism for GSMs. In the interest of keeping up with consistency and transparency, GSM requests can only be channeled through the National Treasury and approved by both Cabinet and the Attorney General. The GSM policy outlines a clear accounting, disclosure and monitoring framework for the various GSMs.

PPP Contingent Liabilities

Contingent liabilities (CLs) are defined as obligations that arise from particular uncertain future event(s) that is outside the control of the government and the private party. The occurrence, value and timing of a payment arising from (CLs) may all be unknown or cannot be definitively determined.

The estimation of contingent liabilities for PPPs is conducted based on a worst-case scenario that involves the assessment of the key risk event that would have the greatest financial impact on government i.e., early termination of the PPP contract due to government default.

Table 2 below provides estimates of the total maximum termination payments, per sector, in the event of GoK default including the likelihood of occurrence and resulting impact.

Table [2]: Level of government Contribution to Contingent Liabilities

Sector	Estimated Total Termination Payment (USD m)	Likelihood (High/Medium/Low)	Impact (High/Medium/Low)
Energy Sector PPPs	510.9	Low	High
Road Sector PPPs	926.7	Low	High

Mitigation Measures

Government manages the risk emanating from PPP contingent liabilities by closely monitoring each party's performance against their contracting obligations and enforcing regulatory requirements.

The National Treasury through the PPP Directorate is focusing on revitalizing the PPP program, including cleaning up the current PPP pipeline and review of the PPP legal framework to ensure that projects to be delivered as PPPs are affordable and fiscally sustainable. Additionally, all new energy sector projects that are financed through the private sector, in whole or part, will also be assessed through the PPP Directorate and any GSM application will be assessed in line with the GSM Policy.