

REPUBLIC OF KENYA



THE NATIONAL TREASURY AND PLANNING

REGULATORY IMPACT STATEMENT ON THE DRAFT PUBLIC PRIVATE PARTNERSHIPS (PPP) REGULATIONS, 2022

(1) The objectives of and reasons for the proposed PPP Regulations, are mainly the following:

- (a) To give effect to the Public Private Partnership Act, 2021(the Act) and provide detail for effective implementation of the provisions in the Act;
- (b) To provide for procedures for project conceptualisation, identification and prioritisation, project preparation and appraisal;
- (c) To provide guidance on feasibility studies, approval of feasibility reports and value assessment reports;
- (d) To provide guidance on the appointment of transaction advisors;
- (e) To provide for the methods of procurement of public private partnership (PPP) projects;
- (f) To provide guidance for procurement of PPP projects at the County Government level;
- (g) To provide guidance on the issuance of Government Support Measures;
- (h) To provide guidance on how project companies are set up to undertake PPP projects;
- (i) To provide for the procedure for entering into and contents of Project Agreements; and
- (j) To provide for the composition, scope and procedures of the Petition Committee.

(2) The effect of the proposed PPP Regulations include the following:

- (a) The Regulations provide a consistent and predictable process for the public and private actors involved in the PPP contracting process, as well as the main distinctive elements of the type of contracting;
- (b) The Regulations will ensure the implementation of controls necessary and pertinent to each PPP project to guarantee correct execution, in accordance with its scope, duration, risks and fiscal and economic implications;
- (c) The Regulations will enable and make available to public entities, the private actors, and other interested parties the mechanisms and avenues necessary to raise concerns on the proper execution

REPUBLIC OF KENYA

of PPP projects, the bidder selection process and in general any concern related to the initiation, selection, award, contracting, execution, monitoring and termination of PPP projects;

- (d) The Regulations will repeal and replace the PPP Regulations, 2014.

(3) Possible alternative and practicable means of achieving the foregoing objectives, including other regulatory as well as non-regulatory options:

Self-regulation entails actors in the PPP space developing a framework to self-regulate. This may be achieved through the use of codes of conduct, service level agreements, standards or accreditation. In many cases, rules and codes of conduct will be formulated by the industry representatives or organizations under their own initiative.

(4) Cost of Implementing the Regulations;

- (a) A minimal fee to cater for administrative costs associated with conducting stakeholder engagements.
- (b) The PPP Directorate of the National Treasury will conduct three (3) stakeholder engagement exercises in the counties of Mombasa, Kisumu and Nakuru with various stakeholders from the public and private sectors.

(5) Reasons why the other means set out in section (3) are not appropriate:

In the absence of well-developed and all-inclusive regulations, self-regulation cannot be effectively implemented as the architecture of the PPP framework entails process leadership and regulation from the public sector.

(6) Any other matters specified by the guidelines:

The net impact of the proposed Regulations is positive on both the Kenyan economy and the private investors. The benefits outweigh the costs, many times over.

(7) A draft copy of the proposed statutory rule.

A draft copy of the PPP Regulations, 2022 can be downloaded from www.pppunit.go.ke or www.treasury.go.ke.