



**STRATHMORE LAW SCHOOL  
MASTER OF LAWS (LL.M)  
END OF MODULE EXAMINATION  
LLM 8310: PUBLIC PRIVATE PARTNERSHIPS**

DATE: Thursday, 19<sup>th</sup> January 2023

Time: 3 Hours

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**Instructions**

1. This examination consists of **FIVE** questions.
2. Answer **Question ONE (COMPULSORY)** and any other **TWO** questions.

**QUESTION 1**

Homa Bay County is stated to be home to about 80% of Kenya's portion of Lake Victoria. Fishing is one of the County's core economic activities, with fish being drawn from both the lake as well as numerous fish farms within the county. While Homa Bay is a major producer of fresh lake fish in Kenya, this is done on a small scale as the county lacks a fish processing plant. Although the national government, as part of its obligation to protect the environment and natural resources under the Fourth Schedule of the Constitution of Kenya, is mandated to develop systems that would ensure sustainability in activities such as fishing, the primary responsibility for agriculture including fisheries is bestowed on county governments. On this basis, the Governor of Homa Bay County is considering exploring a Public Private Partnership (PPP) option for the building and operation of a fish processing plant within the County, with a project commissioning date falling within her current 5-year term in office. It's projected that this would increase the scale of production allowing fishermen to farm and sell more, improve the quality of the fish sold within and outside the county while also generally improving the livelihood of both those involved in the trade as well as those projected to benefit from created jobs. The County's Executive Committee has provisionally identified an ideal location for the plant that is adjacent to the Ruma National Park and a short distance from the Lake. The County Executive Member for Finance has approached you to advise the County on what it needs to do to undertake the project as a Public Private Partnership. Specifically, the County would like your advise on whether Kenya's legal framework enables counties to engage in Public Private Partnerships, what would be the most appropriate PPP model to be adopted, and, importantly, a step by step guide on the processes involved and what the county needs to do in order to implement the project. As part of the latter, you've been requested to include at least five anticipated project risks and your opinion on how they should be mitigated. Outline your advice to the County. (30 Marks).

## QUESTION 2

“PPPs are used to conceal public borrowing, while providing long-term state guarantees for profits to private companies. This long-term profit maximization imperative that underlies the private sector’s involvement in PPPs is antithetical to and incompatible with the public sector’s obligation to provide universal access to quality public services in a sustainable manner.” Assess the validity of this statement. (15 Marks)

## QUESTION 3

Privately Initiated Investment Proposals (PIIPs) constitute one of the ways in which PPP projects may be initiated in Kenya. Discuss the merits and demerits of PIIPs and provide your assessment on whether Kenya’s current legal framework is facilitative of PIIPs? (15 Marks)

## QUESTION 4

- a. Typically, PPP projects take long to reach financial close. Discuss the merits and/or demerits of this? (10 Marks)
- b. Distinguish between Greenfield, brownfield and yellow field project types. (5 Marks)

## QUESTION 5

- a. Terms such as “value for money”, “affordability”, “bankability” and “public sector comparator” represent key concepts in public private partnerships. Explain what each denotes and what role they play in public private partnerships (10 Marks)
- b. Distinguish between “financing” and “funding” in relation to PPP projects? Provide examples of each. (5 Marks)