



Strathmore
UNIVERSITY

**STRATHMORE LAW SCHOOL
MASTERS OF LAW (LL.M)
SUPPLEMENTARY EXAMINATION
LLM 8310: PUBLIC-PRIVATE PARTNERSHIPS LAW**

Date: **Monday, 6th May 2024**

Time: **3 Hours**

Instructions

1. This examination consists of **THREE** questions.
2. Answer **ALL THREE** Questions.
3. This is a **CLOSED-BOOK** examination. You are not permitted to bring any written or electronic information to the examination room or to make reference to such material in any way.
4. You should spend a fair amount of time organising your thoughts before starting to write.
5. Careful organisation and clarity will be highly valued.
6. Please start each question on a new page.

Question 1

The world over, corruption is said to have an adverse impact on public-private partnerships transactions in Kenya. Enumerate the institutional safeguards against corruption that are in Kenya's Public-Private Partnerships Act. In your learned assessment, have they been effective? Why or why not? What changes to the Act would you propose to address the challenge of corruption in these mega projects?

[20 Marks]

Question 2

Fiba International was founded in 2010 and incorporated Delaware in the United States. It was established to promote digital connectivity across Africa nations through fibre optic cabling, among other investments. The company must determine which country or countries to invest in. Its senior executives will visit Kenya next week to meet with government officials for discussions that will lead to decisions by the board whether the company should invest in Kenya. The proposed investment capital is 500 billion US dollars.

You are part of a team of legal and financial experts who have been charged by the Government of Kenya to prepare the presentation to be made to the investor, Fiba International, when they visit the country next week to assess the country's suitability for the proposed investment. Enumerate the key points that the presentation should cover, highlighting areas that would be a plus as well as those that would be a negative for the Government. For those that would be a negative, advise the Government regarding ameliorative proposals it should make.

[20 Marks]

Question 3

According to political philosophy, governments come into existence by entering into a social pact with citizens. The social pact requires government to protect the public interest. Law makes this possible through legal systems where citizens give their consent through democratic elections to be governed, to be taxed, and development decisions to be made on their behalf through their elected representatives.

1. With this in mind, what is the legal justification for public-private partnerships? In your answer make reference to Kenya's Public-Private Partnerships Act, enumerating whether it preserves the government's obligation to protect the public interest against the threat of private interests.

[10 Marks]

2. Enumerate the role governmental measures as mechanisms allowed by the Public-Private Partnerships Act play in promoting development of public projects.*[10 Marks]*