PROJECT APPRAISAL DOCUMENT

ON A

PROPOSED CREDIT

IN THE AMOUNT OF SDR 73.7 MILLION
(US$115 MILLION EQUIVALENT)

TO THE

FEDERAL REPUBLIC OF NIGERIA

FOR THE FIRST PHASE

OF THE

PUBLIC/PRIVATE PARTNERSHIP APL PROGRAM

February 18, 2011

Finance and Private Sector Development
Western and Central Africa
Africa Region

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CURRENCY EQUIVALENTS

(Exchange Rate Effective January 31, 2011)

Currency Unit = Nigerian Naira
US$1 = 149.157
US$1 = SDR .64023

FISCAL YEAR
January 1 – December 31

ABBREVIATIONS AND ACRONYMS

AADT Average Annual Daily Traffic
AFC African Finance Corporation
AfDB African Development Bank
AFD Agence Française de Développement
AFTFP Africa Technical Finance and Private Sector Development
APL Adaptable Program Lending
BoC Breach of Contract
BOF Budget Office of the Federation
BOT Build, Operate, Transfer
BPE Bureau of Public Enterprises
BPP Bureau of Public Procurement
CAS Country Assistance Strategy
CBA Cost-Benefit Analysis
CBN Central Bank of Nigeria
CCC Contract Compliance Center
CFAA Country Financial Accountability Assessment
CEM Country Economic Memorandum
CPS Country Partnership Strategy
DA Designated Account
DFID Department for International Development
DMO Debt Management Office
DSA Debt Sustainability Analysis
EA Executing Agency
ECA Excess Crude Account
EIA Environmental Impact Assessment
EMT Economic Management Team
EOI Expression of Interest
ESMF Environmental and Social Management Framework
ESIA Environmental and Social Impact Assessment
ESMP Environmental and Social Management Plan
ESW Economic Sector Work
ERGP Economic Reform and Governance Project
FAD Finance and Accounts Department in Federal Ministry of Finance
FBC Full Business Case
FCTA Federal Capital Territory Authority
FCT Federal Capital Territory
FCC Federal Communications Commission
FDI Foreign Direct Investment
FEC Federal Executive Council
FERMA Federal Roads Maintenance Agency
FGN Federal Government of Nigeria
FIL Financial Intermediary Loan
FIRR Financial Internal Rate of Return
FIRST Financial Sector Reform and Strengthening Initiative
FM Financial Management
FMEnv Federal Ministry of Environment
FMHW&UD Federal Ministry of Works, Housing and Urban Development
FMOF Federal Ministry of Finance
FPM Financial Procedures Manual
FPFMD Federal Project Financial Management Division
FRA Federal Roads Authority
FRC Fiscal Responsibility Commission
FSP Fiscal Strategy Paper
GDP Gross Domestic Product
DFD Development Finance Department in Central Bank
DG Director General
GIFMIS Government Integrated Financial Management Information System
GTB Guaranty Trust Bank
IBRD International Bank for Reconstruction and Development
IAU Internal Audit Unit
ICA Investment Climate Assessment
ICB International Competitive Bidding
ICRC Infrastructure Concession Regulatory Commission
ICR Implementation Completion and Results Report
ICT Information and Communication Technologies
IDA International Development Association
IDPs Institutional Development Plans
IFC International Finance Corporation
IFRs Interim Financial Reports
IERD International Economics Relations Department
IMF International Monetary Fund
IOCs Independent Oil Companies
IPPs Independent Power Producers
IPSAS International Public Sector Accountability Standard
ISA International Standards on Auditing
IT Information Technology
ITWG Infrastructure Technical Working Group
KPIs Key Performance Indicators
L/C Letter of Credit
LRT Light Rail Transit
MOP Ministry of Power
MDAs Ministries, Departments and Agencies
MDGs Millennium Development Goals
M&E Monitoring & Evaluation
MFWFN Making Finance Work for Nigeria
MIGA Multilateral Investment Guarantee Agency
MOU Memorandums of Understanding
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>MSME</td>
<td>Micro, Small and Medium Size Enterprises</td>
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<tr>
<td>MTBS</td>
<td>Maritime and Transport Business Solutions Consultants</td>
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<tr>
<td>MTEF</td>
<td>Medium-Term Expenditure Framework</td>
</tr>
<tr>
<td>MTEP</td>
<td>Medium-Term Expenditure Plan</td>
</tr>
<tr>
<td>MTR</td>
<td>Mid-Term Review</td>
</tr>
<tr>
<td>MTSS</td>
<td>Medium-Term Sector Strategies</td>
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<tr>
<td>NBA</td>
<td>Nigerian Basin Authority</td>
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<td>NCC</td>
<td>Nigeria Communications Commission</td>
</tr>
<tr>
<td>NCP</td>
<td>National Council and Privatization</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-Governmental Organization</td>
</tr>
<tr>
<td>NEEDS</td>
<td>Nigeria Economic Empowerment and Development Strategy</td>
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<tr>
<td>NEGIP</td>
<td>Nigeria Electric and Gas Improvement Project</td>
</tr>
<tr>
<td>NHSFO</td>
<td>Non-Honoring of Sovereign Financial Obligation</td>
</tr>
<tr>
<td>NIAF II</td>
<td>Nigerian Infrastructure Advisory Facility II</td>
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<tr>
<td>NITEL</td>
<td>Nigerian Telecommunications</td>
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<td>NIWA</td>
<td>National Inland Waterways Authority</td>
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<td>NPC</td>
<td>Nigerian Planning Commission</td>
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<td>NRC</td>
<td>Nigeria Railway Corporation</td>
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<td>NSE</td>
<td>Nigerian Stock Exchange</td>
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<tr>
<td>NTC</td>
<td>National Transportation Commission</td>
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<tr>
<td>OAGF</td>
<td>Office of Accountant General of the Federation</td>
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<td>OBC</td>
<td>Outline Business Case</td>
</tr>
<tr>
<td>PAP</td>
<td>Project Affected Persons</td>
</tr>
<tr>
<td>PCN</td>
<td>Project Concept Note</td>
</tr>
<tr>
<td>PHCN</td>
<td>Power Holding Company of Nigeria</td>
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<td>PDO</td>
<td>Project Development Objective</td>
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<td>PDT</td>
<td>Project Delivery Team</td>
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<td>PFIs</td>
<td>Participating Financial Institutions</td>
</tr>
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<td>PIM</td>
<td>Project Implementation Manual</td>
</tr>
<tr>
<td>PIU</td>
<td>Project Implementation Unit</td>
</tr>
<tr>
<td>PPIAF</td>
<td>Public Private Infrastructure Advisory Facility</td>
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<td>PPPI</td>
<td>Public/Private Partnership Initiative</td>
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<td>PPPs</td>
<td>Public/Private Partnerships</td>
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<td>PRC</td>
<td>Project Resource Center</td>
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<td>PRGs</td>
<td>Partial Risk Guarantees</td>
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<td>PSC</td>
<td>Project Steering Committee</td>
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<td>PSP</td>
<td>Privatization Support Program</td>
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<td>PUK</td>
<td>Partnerships UK</td>
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<td>RAP</td>
<td>Resettlement Action Plan</td>
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<td>RPF</td>
<td>Resettlement Policy Framework</td>
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<td>RFP</td>
<td>Request for Proposal</td>
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<td>RFQ</td>
<td>Request for Qualifications</td>
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<td>SBD</td>
<td>Standard Bidding Documents</td>
</tr>
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<td>SEAs</td>
<td>Strategic Environmental Assessments</td>
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<tr>
<td>SIL</td>
<td>Specific Investment Lending</td>
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<td>SNATA</td>
<td>Sub-National Technical Assistance</td>
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<td>SOEs</td>
<td>Statement of Expenses</td>
</tr>
<tr>
<td>SWOT</td>
<td>Strengths, Weaknesses, Opportunities and Threats</td>
</tr>
<tr>
<td>TORs</td>
<td>Terms of Reference</td>
</tr>
<tr>
<td>UBA</td>
<td>United Bank for Africa</td>
</tr>
<tr>
<td>VfM</td>
<td>Value-for-Money</td>
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</tbody>
</table>
VGF  Viability Gap Facility
WA  Withdrawal Application

Vice President:  Obiageli Katryn Ezekwesili
Country Director:  Onno Ruhl
Sector Director:  Marilou Jane Uy
Sector Manager:  Paul Noumba Um
Task Team Leader:  Peter Mousley
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<thead>
<tr>
<th>Transaction Year</th>
<th>Number of Transactions</th>
</tr>
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<tbody>
<tr>
<td>2010</td>
<td>25</td>
</tr>
<tr>
<td>2011</td>
<td>30</td>
</tr>
<tr>
<td>2012</td>
<td>35</td>
</tr>
<tr>
<td>2013</td>
<td>40</td>
</tr>
<tr>
<td>2014</td>
<td>45</td>
</tr>
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### Table 2: Critical Program Risks

<table>
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<tr>
<th>Risk Category</th>
<th>Description</th>
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<tr>
<td>Legal</td>
<td>Environmental and Social Safeguards advisory issues</td>
</tr>
<tr>
<td>Financial</td>
<td>Project financing challenges</td>
</tr>
<tr>
<td>Technical</td>
<td>Technical feasibility and design issues</td>
</tr>
</tbody>
</table>

### Figure 1: Majority of Nigerian Firms Rank Poor Infrastructure

- Poor Infrastructure: 70%
- Good Infrastructure: 30%

### Figure 2: Transactions Reaching Financial Closure, 2006-2008

- 2006: 10 transactions
- 2007: 15 transactions
- 2008: 20 transactions

### Figure 3: Results Causal Chain

1. Poor Infrastructure
2. Increased Costs
3. Financial Instability
4. Reduced Competitiveness

### Figure 4: Program Implementation Flow Chart

1. Identification
2. Feasibility Assessment
3. Contractual Agreement
4. Execution
5. Monitoring and Evaluation
6. Closure

### Box 1: Infrastructure Concession Regulatory Commission Act, 2005

- Act is designed to promote infrastructure development
- Establishes regulatory framework for PPPs

### Box 2: Nigerian Viability Gap Facility

- Facility is established to fund infrastructure projects
- Provides financial support for projects in need of additional funding
FEDERAL REPUBLIC OF NIGERIA
PUBLIC/PRIVATE PARTNERSHIP PROGRAM
PROJECT APPRAISAL DOCUMENT
AFRICA
AFTFW

Date: February 18, 2010
Country Director: Onno Ruhl
Sector Manager/Director: Marilou Jane D. Uy
Project ID: P115386
Lending Instrument: Adaptable Program Loan

Team Leader: Peter J. Mousley
Sectors: Finance and Private Sector (60), Infrastructure (40)
Themes: Infrastructure services for private sector development (100%)
Environmental category: Full Assessment A
Joint IFC:
Joint Level:

**Project Financing Data**

[ ] Loan  [X] Credit  [ ] Grant  [ ] Guarantee  [ ] Other:

For Loans/Credits/Others:
Total Bank financing (US$m.): 115.00
Proposed terms: Regular IDA Credit; maturity period of 40 years with grace period of 10 years

**Program Financing Plan (US$m)**

<table>
<thead>
<tr>
<th>Source</th>
<th>Total US $m</th>
<th>Effectiveness Date</th>
<th>Closing Date</th>
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</thead>
<tbody>
<tr>
<td>APL Phase I</td>
<td>115</td>
<td>September 30, 2011</td>
<td>December 29, 2017</td>
</tr>
<tr>
<td>APL Phase II</td>
<td>200</td>
<td>July 31, 2012</td>
<td>December 29, 2017</td>
</tr>
<tr>
<td>Total:</td>
<td>315</td>
<td></td>
<td></td>
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**Borrower:**
Federal Government of Nigeria
Abuja
Nigeria

**Responsible Agency:**
Infrastructure Concession Regulatory Commission
Abuja
Nigeria
### Estimated disbursements Phase I (Bank FY/US$m)

<table>
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<tr>
<th></th>
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<tr>
<td>Annual</td>
<td>3</td>
<td>7</td>
<td>20</td>
<td>25</td>
<td>25</td>
<td>25</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td>Cumulative</td>
<td>3</td>
<td>10</td>
<td>30</td>
<td>55</td>
<td>80</td>
<td>105</td>
<td>115</td>
<td>115</td>
</tr>
</tbody>
</table>

Project implementation period: Start March 17, 2011   End: December 29, 2017  
Expected effectiveness date: September 30, 2011  
Expected closing date: December 29, 2017

---

**Does the project depart from the CAS in content or other significant respects?**  
*Ref. PAD I.C.*  
[ ] Yes  [x] No

**Does the project require any exceptions from Bank policies?**  
*Ref. PAD IV.G.*  
[ ] Yes  [x] No

**Have these been approved by Bank management?**  
[ ] Yes  [ ] No

**Is approval for any policy exception sought from the Board?**  
[ ] Yes  [x] No

**Does the project include any critical risks rated “substantial” or “high”?**  
*Ref. PAD III.E.*  
[x] Yes  [ ] No

**Does the project meet the Regional criteria for readiness for implementation?**  
*Ref. PAD IV.H.*  
[ ] Yes  [ ] No

---

**Project development objective**  
*Ref. PAD II.C., Technical Annex 3*

The overall development objective (PDO) for this APL Program is to increase private investment in the Nigeria PPP infrastructure market and specifically the core infrastructure sectors. The development objective for Phase I is to establish effective institutional and technical mechanisms and instruments for origination and development of PPP projects.

**Project description**  
*Ref. PAD II.D., Technical Annex 4*

This APL Program will be sequenced in two main phases spread over a six year period. It comprises four components of which the first three will be implemented as part of the Phase I project and the fourth under Phase II.

Component 1 will provide capacity building to key ministries, departments and agencies (MDAs) and Infrastructure Regulatory Concession Commission (ICRC) in the area of Public/Private Partnerships (PPPs), as well as technical support for legal/regulatory reform.

Component 2 will provide upstream support for project preparation and transaction advisory services to help develop commercially viable PPP transactions in Nigeria.

Component 3 will provide support for the management, monitoring and evaluation of the APL Program.

Component 4 will make available infrastructure financing for projects prepared under the first Phase via the Viability Gap Facility (VGF) and a financial intermediary loan (FIL) facility.
Which safeguard policies are triggered, if any?  *Ref. PAD IV.F., Technical Annex 10*

1. Environmental Assessment (OP/BP 4.01)
2. Involuntary Resettlement (OP/BP 4.12)

**Conditions of Effectiveness:**

1. The Subsidiary Agreement has been executed on behalf of the Recipient and the ICRC;
2. The Recipient has prepared and adopted, or caused to be prepared and adopted, a Project Implementation Manual, in form and substance satisfactory to the Association;
3. The Recipient has appointed, or caused to be appointed, an accountant and an internal auditor for the Project with experience, qualifications and terms of reference satisfactory to the Association; and
4. The Recipient has established, or caused to be established, an accounting and financial management system for the Project satisfactory to the Association.

**Covenants Applicable to Phase I Implementation:**

1. The Recipient shall, not later than three months after the Effective Date, appoint a monitoring and evaluation specialist for the ICRC PIU, as well as the external auditors for the Project, with qualifications, experience and terms of reference satisfactory to the Association;
2. The Recipient shall, not later than six months after the Effective Date, install or cause to be installed a computerized accounting and financial management system for the Project, satisfactory to the Association;
3. The Recipient shall, not later than three months after the Effective Date, establish or cause to be established a centralized procurement complaints online database for the Project, satisfactory to the Association;
4. The Recipient shall, not later than six months after the Effective Date, establish a procurement filing and tracking system for the Project, satisfactory to the Association.

**Other Program-related Covenants:**

1. The Borrower will maintain a project steering committee and a project implementation unit for the purposes of the project;
2. The Borrower will prepare and implement the project in accordance with a project implementation manual satisfactory to the Association;
3. The Borrower will prepare annual work plans and budgets containing all eligible project activities and expenditures planned for each fiscal year during project implementation;
4. The Borrower will ensure that the project is carried out in accordance with the provisions of the ESMF and the RPF and will, in respect of any PPP transactions prepared under the project, prepare, adopt and disclose satisfactory ESIs, ESMP and/or RAP as and when required under the ESMF and RPF;
5. The Borrower will prepare and submit semi-annual progress reports, and carry out a mid-term review on or about 36 months after project effectiveness.

**Other:**

1. A Project Preparation Facility Refund of US$ 3 million is included in the Program.
2. A retroactivity clause providing funding back to March 1, 2011 up to a total of US$ 3 million for select activities related to the PPP Program.
I. STRATEGIC CONTEXT AND RATIONALE

A. Country Issues

Commitment to Growth and Reform

1. Nigeria’s most recent decade has been marked by significant political and economic progress. The elections in 2007 represented the third consecutive national elections and the first handover of power from one civilian government to another in Nigeria’s history. Economic reforms have also put the country on the road to middle-income status. Stable macroeconomic policies and the implementation of structural reforms have spurred a strong growth performance. As part of these reforms, Nigeria also addressed its overhanging debt through the Paris Club debt deal in 2006.

2. Prior to the global economic slowdown, economic indicators measuring growth also looked optimistic. The external current account balance improved from a deficit of 9.6 percent in 1999 to a surplus of 20.4 percent of Gross Domestic Product (GDP) in 2008.\(^1\) Foreign Direct Investment (FDI) doubled from US$1.1 billion to US$6 billion from 1998 to 2007 and GDP is expected to average 6.5 percent over 2011-2015. Private investment in infrastructure was also on the rise prior to the global economic slowdown. By the end of 2009, the private sector had invested around US$23.5 billion in infrastructure projects.\(^2\)

3. Nigeria has undertaken impressive steps to implement significant financial and budgetary structural changes that enabled robust growth. The government passed the Fiscal Responsibility Act of 2007 to institutionalize prudent and sound management of public resources, a new Procurement Act in 2007 to standardize traditional public procurement activities, and has reinforced its debt management practices as fiduciary and governance reforms; and the government delinked the budget from fluctuations in oil revenues and the establishment of the Excess Crude Account (ECA), underwent a banking consolidation in 2004 that raised the minimum capital requirements for banks and finalized a microfinance policy for regulation and supervision of micro-financial institutions.\(^3\) This reform effort has yielded encouraging economic results. On the eve of the global financial crisis, non-oil growth was at an all-time high of 9 percent of GDP growth in 2007 and inflation was kept low.\(^4\) Nigeria averaged GDP growth in excess of 6 percent between 2003 and 2007.

4. The Federal Government of Nigeria continues to implement the “Seven-point Agenda” with its priority on the provision and rehabilitation of critical infrastructure. This involves expansion and development in the power, transportation, gas distribution and telecommunications sectors. More specifically, the initiative calls for increased public-private participation in service delivery and infrastructure. Other key areas of the seven-point agenda are: the Niger Delta, food security, human capital, land tenure changes and home ownership, national security and wealth creation.

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\(^2\) See Annex 14: Country at a Glance for more detail. Also see PPI Database. This figure includes investment into telecoms. See p. 8 for more detail.


Recent Challenges

5. The onset of the 2008 financial crisis disrupted Nigeria’s steady path of growth. This has been felt through the falling of commodity prices, the reduced net capital inflows of FDI and remittances, consequent pressures on the balance of payments, reduced government revenue and the drying up of finance and credit. Windfall oil savings were used to close Nigeria’s budget deficits. As of September 2009 Nigeria’s external reserves dropped from US$53 billion to US$43.3 billion.\(^5\) Non-oil growth are estimated to be around 4 and 3 percent respectively for 2009 and 2010. These figures are lower than the 7.7 percent in 2008. The global crisis is perhaps most visible in the context of Nigeria’s current account balance; Nigeria’s account balance is likely to move from a surplus of 4.5 percent of GDP in 2008 to a deficit of 9 percent of GDP in 2009 and the deficit is likely to rise to 4.8 percent of GDP.\(^6\) Other negative signs coming out of 2009 are: first, lower share prices and market capitalization on the Nigerian Stock Exchange Market (NSE).

Sector Issues

6. The 2005 Country Partnership Strategy (CPS) Completion Report detailed varying success in private sector development in Nigeria during the last CPS period of 2005-2009. Satisfactory progress has been recorded in non-oil growth, in part due to the liberalization undertaken in the context of the privatization program – particularly in telecommunications and, to a lesser extent, the port concessions that generated efficiency gains and created new job opportunities.\(^7\) However, Nigeria’s private sector still suffers from a range of growth inhibiting factors. These factors are found at all levels of the industry chain. Beginning with the business environment, unreliable power, transport delays, crime, and corruption add substantially to the cost of doing business.

Weak Infrastructure

7. The Government has faced challenges in its efforts to deliver on its intention to have provided 6000 Mw of power by December 2009. Other constraints continue to repress private sector growth as well. Limited access to finance continues to push firms to the informal sector and illiquidity in the market reduces new investment for small and medium enterprises. The most recent Investment Climate Assessment (ICA) report showed that although 80 percent of firms would like the option of taking a loan only 5 percent actually had one. Likewise, the cost of moving goods is prohibitively high. Nigeria ranked worst amongst eight countries including Kenya, Venezuela, Brazil, Indonesia, South Africa, India and China, for the typical charge for a 40-foot export and import container.

8. The cost of poor infrastructure on doing business can also be observed through the indirect costs borne to Nigeria firms. Figure 1 below shows these indirect costs – costs which are predominantly infrastructure related - are well in excess of their competitors. These figures amount to 2 percent of sales in a South African firm, 5 percent in a Chinese firm, 10 percent in an Indian firm and a massive 16 percent in a Nigerian enterprise. This competitive deficit translates into foregone income and lost jobs.

Figure 1: Majority of Nigerian Firms Rank Poor Infrastructure, Transport and Electricity, as Major Constraints


9. Nigeria’s great infrastructure deficit and lack of competition in service delivery is also retarding its ability to achieve the Millennium Development Goals (MDGs). The Debt Management Office has estimated that the infrastructure gap Nigeria faces requires capital investments in the order of US$100 to US$111 billion. This does not include the subsequent maintenance and recurrent costs. Broken down by sub-sector this includes: US$18-20 billion in power, US$8-17 billion in rail, US$14 billion in roads, and US$60 billion in oil and gas. Nigeria is currently investing around 7 percent of GDP on infrastructure. This figure includes both public and private investment sources. This is above the average for Sub-Saharan Africa, but well below some of its highest investors (e.g.: Mozambique with 12 percent of GDP) or when compared to certain non-African countries (notably China with 14 percent of GDP).

10. The 2010 budget indicates a total spend of Naira 4.1 trillion. This represents a 32 percent increase from 2009 levels. About Naira 1.3 trillion (US$8.6 billion equivalent) of this spending relates to capital projects targeted at infrastructure, power and the development of the Niger Delta region. These capital investments cover all major infrastructure sub-sectors. The remaining balance is expected to fund recurrent expenditures.8

Limited Infrastructure Finance

11. Nigeria has been adversely affected by budget shortfalls caused by drops in commodity prices and the drying up of credit. In mid-August 2009, the Central Bank of Nigeria had to infuse US$2.6 billion into five banks to prevent their collapse and diverted other funds to plug liquidity shortfalls and stabilizing markets and currency. The recent financial crisis has had associated effects to the Nigerian capital market through the international and local banking systems, the equity market, the bond market,

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8 Afrinvest 2010 Market Outlook Report. These estimates assume an average oil price of US $57.0 per barrel and an exchange rate of N150/$1.
and the system of public finance. Private appetite for infrastructure investment is constrained by short tenors for finance and high cost of issuance and trading in the Nigerian equity market.\(^9\)

12. The Nigerian bond market, including infrastructure-related bonds, has experienced a surge in activity as investors seek to hedge against the losses in the weak equity market. The total volume of bonds traded in 2009 grew by an estimated 65.3 percent. Additionally, the sub-national bond market grew in 2009. Four states- Lagos, Ogun, Imo and Kwara- raised a total of N91 billion all to reduce deficits and fund infrastructure projects. Bayelsa, Benue and Niger followed in 2010 by issues sub-national bonds valued cumulatively at N69 billion. While this growth in the bond market reflects the improved financial sector environment, appetite for the bond market taken as a whole- including corporate bonds- as seen through the recent bond offering from Guaranty Trust Bank (GTB) still faces some limitations. The GTB effort to raise N50 billion (US$33.3 million) via a 5-year tenured instrument with a 13 percent coupon only succeeded in attracting N13.6 billion (US$9.07 million) implying a 27.2 percent success rate.

_Private Participation in Infrastructure_

13. While sub-Saharan Africa and Nigeria have experienced increases in private participation in public service delivery in recent years, levels are lagging behind other regions of the world. From 2006-2008, the overall number of transactions meeting financial close in sub-Saharan Africa are lower than those in the South Asia region and Latin America. Furthermore, this figure for all of sub-Saharan Africa is lower than all transactions meeting financial closure in this same time period in India and in Brazil as seen in Figure 2 below.

_Figure 2: Transactions Reaching Financial Closure, 2006-2008_

14. These figures represent transactions in the sectors of energy, telecom, transport, and water and sewage. The total estimated investment of all of these in sub-Saharan Africa during this time period is US$37.2 billion with telecom and energy being the most frequently invested two sectors and transport and water lagging behind; US$108 billion was invested over the same time period in the Latin America region. Of the 71 transactions reporting financial close, 28 were in telecoms, 25 in energy, 12 in transport

and 6 in water and sewage. In comparison, Latin America region reported 145 transactions reaching financial closure with 10 in telecom, 51 in energy, 67 in transport and 17 in water and sewage.

15. Nigeria’s experience with Public/Private Partnerships (PPPs) is quite limited. Since 2001, only 45 transactions have reported financial closure, most in telecoms and transport sector (24 in ports). In more recent years from 2006-2008, only 12 projects have reached financial closure. These are mostly limited to the telecom and transport sectors. These transactions contribute largely to a total figure of about US$9.2 billion of private investment in PPPs in Nigeria from 2006-2008 (US$8.29 billion in telecoms). Table 1 below provides the full breakdown of these transaction figures.

Table 1: PPP Transactions Reaching Financial Closure in Nigeria 2006-2008

<table>
<thead>
<tr>
<th>Nigeria</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Energy</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Telecom</td>
<td>4</td>
<td>2</td>
<td>0</td>
<td>6</td>
</tr>
<tr>
<td>Transport</td>
<td>4</td>
<td>0</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>Water &amp; Sewage</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Investments (US$ mil)</td>
<td>2797</td>
<td>3041</td>
<td>3377</td>
<td>9215</td>
</tr>
<tr>
<td>Financial Close</td>
<td></td>
<td></td>
<td></td>
<td>12</td>
</tr>
</tbody>
</table>

Source: PPI Database.

Recent Sector Developments

16. Nigeria’s priority to liberalize its economy and foster private sector led growth has been founded, inter alia, on a series of sector reforms (telecommunications, electricity, banking) undertaken in the context of a broad economy-wide privatization program launched in 1999. The World Bank provided support to this major micro-economic policy reform via the Privatization Support Project Cr. 35200. This support included a wide range of institutional, legal and regulatory development work to create an enabling environment for private sector growth and investment. Building on the lessons learned from this first generation of reforms, the Federal Government of Nigeria (FGN) wishes to deepen this reform agenda by facilitating additional private sector investment in public infrastructure services via public-private partnerships and successive technical assistance and capacity building programs.

17. Large developing economies that reflect investment characteristics similar to Nigeria have also taken important steps towards strengthening their PPP Programs. India recently collaborated with the World Bank and other development partners to capitalize its India Infrastructure Facility with long-term debt financing to fund properly developed PPPs. Similarly, Indonesia has developed its own PPP financing facility to encourage private sector investment. Drawing on these international experiences, Nigeria has committed itself to building its own PPP Program using international best practices and tailoring them to Nigeria’s own needs.

ICRC Act of 2005

18. Recognizing the need to stimulate PPPs and private sector involvement in Nigeria, the government passed the Infrastructure Concession Regulatory Commission Act in 2005. The Act contains two main provisions: (i) provides for any government agency to enter into a PPP arrangement with a private sector party to develop, finance, construct, maintain and/or operate infrastructure services or facilities and (ii) establishes the Infrastructure Concession Regulatory Commission (ICRC) to monitor the PPP transactions. Following the 2007 elections, the Infrastructure Summit and change of administration, the ICRC was finally commissioned in late 2008 together with the appointment of the Director General.
and charged with the responsibility of acting quickly to bring together the Ministries, Departments and Agencies (MDAs) in support of the PPP Program. As of March 2009 under the leadership of the Director General, the ICRC has been actively collaborating with MDAs to build support and a clear understanding of the institutional role of the ICRC in stimulating PPPs in Nigeria.

The National Policy on Public Private Partnerships

19. Building on the institutionalization of ICRC and in the interest of moving forward with the PPP program, the Federal Executive Council (FEC) approved the National Policy on Public Private Partnerships in April 2009. This policy document is intended to ensure adherence to best-practices and set forth standards by which the FGN engages in PPP transactions. Central to these practices are provisions for the institutional framework on how FGN will reinforce the accountability of MDAs for the delivery of public services and how these responsibilities will be divided between the key MDAs with respect to the sector-specific PPP project. Likewise, the PPP Policy sets the standards for PPP financial framework including provisions for value-for-money analysis, assessment of project risk, unsolicited bids, and proper procurement procedures.

Box 1: Infrastructure Concession Regulatory Commission Act, 2005

In 2005, the Obasanjo Administration approved the Infrastructure Concession Regulatory Commission Act. The Act was generated in the context of Nigeria’s interest in an overall agenda of privatization and private participation in infrastructure service and delivery. The Explanatory Memorandum of the Act states:

“This Act provides for the participation of private sector in financing the construction, development, operation, or maintenance of infrastructure or development projects of the Federal Government through concession or contractual arrangements; and the establishment of the Infrastructure Concession Regulatory Commission to regulate, monitor and supervise the contracts on infrastructure or development projects”

The ICRC Act of 2005 contains two major sections: (i) terms of private sector participation in federal infrastructure and (ii) the establishment of the ICRC. The first section provides general outlines on the prioritization of projects, the authorizing channels for guarantees on concession agreements, competitive and non-competitive public bidding procedures, duration of concessions, recovery of investment, authentication of project cost, and project supervision. However, the Act is limited in detail and has policy and legal lacunae that must be addressed prior to engaging in PPPs.

The second part of the Act establishes the ICRC. The ICRC is managed by a 12 member board that includes a part-time Chairman, the Attorney-General of FGN, the Minister of Finance, the Secretary to the Government of the Federation, the Governor of the Central Bank of Nigeria, one person from each of the six geopolitical zones of Nigeria with experience and expertise in law, business administration, engineering, economics or public administration and two of whom shall be women, and the Director-General of the Commission. The Commission’s main functions are to take custody over every concession agreement and ensure the efficient execution of any concession agreement or contract entered into by FGN.

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10 Note that central to the formulation of the ICRC in 2008 was the Public Private Infrastructure Advisory Facility’s support with providing resources to commission a study on the Nigeria Public Private Partnerships Program. This report reviewed existing legislature and made policy recommendations on the institutional arrangements, review of PPP related legislature, review of the institutional environment including analysis on State-level PPP programs where they exist, and recommendations for division of PPP activities and capacity building amongst the key MDAs.

20. Efforts by the FGN to develop the enabling environment for PPPs have focused increasingly over the past two years on the following factors: (i) development of viable project pipeline; (ii) institutional, legal and regulatory sector work; and (iii) development of instruments to support long-term infrastructure financing. There has been some significant progress in these key areas.

**PPP Pipeline**

21. The FGN, with World Bank and Public/Private Infrastructure Advisory Facility (PPIAF) assistance and considerable inter-ministerial collaboration, has produced a pipeline of potential projects suitable for private investment. In support of this PPP pipeline, the FGN has adopted – as detailed in the ICRC National PPP Policy - a standard “Outline Business Case (OBC)” guideline intended to be used to assess a project’s viability as a PPP and develop a project’s structure. This includes upstream project appraisal procedures including cost benefit analysis and value-for-money (VfM) assessments in line with international best practices. Following ICRC-organized consultations with key line ministries that had indicated an interest in collaborating with the ICRC to develop PPP initiatives in conformity with the National PPP Policy, the “long-list” of potential first round transactions was compiled amounting to a total investment of US$5.13 billion for potential World Bank support. This pipeline currently contains up to 12 roads and bridge initiatives, various infrastructure initiatives within the Federal Capital Territory and port concessions at KiriKiri in Lagos. A second tier of projects such as the National Railway Corporation is also included. These second tier transactions retain great PPP potential but require clarification on outstanding sector and contractual issues for them to move forward. It must be noted that the list is not exclusive and other potential transactions may be considered as they become developed by the line ministries in consultation with ICRC.

**Institutional, Legal and Regulatory Work**

22. Also being strengthened is the legal and regulatory sector work that is fundamental to the success of PPPs. The ICRC and FGN with support from PPIAF and the World Bank is in the process of addressing outstanding legal and regulatory legislation by establishing new PPP related operational regulations and guidelines. Following upstream review of the PPP legal and regulatory enabling environment, the ICRC has initiated the writing of robust PPP Regulations. This work will also identify those laws and regulations which are not aligned with the objectives of the PPP Policy or which may act as an impediment to the execution of PPP transactions. Specifically, this will involve a review of: (i) the Infrastructure Concession Regulatory Commission (Establishment) Act 2005; (ii) the Public Procurement Act 2007; (iii) the Public Enterprises (Privatization and Commercialization) Act 1999; (iv) the Debt Management Act 2003; (v) the Fiscal Responsibility Act 2007; (vi) the National Planning Act 1993; and (vii) sector legislation (existing and proposed) relating to transport, roads, railways, ports and harbors, aviation, inland waterways, water resources, communications, energy, water, competition and other sectors for which PPP transactions are or will become an integral component of the government’s infrastructure reform agenda.

**Infrastructure Financing**

23. Advancements in Nigeria’s financial environment comprise the third ongoing area of development critical to the evolution of the PPP Program. A PPIAF-funded analysis on the appetite for Nigerian PPP projects in the wake of the global financial crisis provided insights into the sources of infrastructure finance for PPP investments in Nigeria. The main limitations to the private sector to date

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12 See National Policy on PPPs. P. 31.
are twofold: first, a lack of quality and properly developed PPP projects and secondly, a void of long-term debt financing.\textsuperscript{13}

24. To date, the FGN has taken serious financial environment reforms. In mid-2009, FGN agreed to the terms of a US$500 million Development Policy Credit for financial sector and public financial management reform. The thirteen prior actions attached to this Credit are aimed at strengthening the financial sector management skills and implementing best practices in public financial management. In continuation with the FGN’s improved financial environment, on January 28, 2011, the FGN issued a fixed price bond for US$500 million for 10 years on the London Stock Exchange with a coupon rate of 6.75 percent p.a. Demand was so great that the bond was oversubscribed by 2.6 times.\textsuperscript{14}

B. Rationale for World Bank involvement

25. Building on lessons learned and recognizing financial and technical constraints, the FGN has endorsed a reform agenda for core infrastructure provision via PPPs that is in line with the government’s past and current commitment to reforms in the finance and private sectors at both the macroeconomic and microeconomic levels. While a programmatic approach to PPPs is a new endeavor, the FGN over the past decade has set in motion related activities that have contributed to this current PPP agenda. Such activities have seen the government reaching out to the private sector and adjusting policies to facilitate more private involvement. Examples of this include the privatization of over 100 state-owned enterprises under the Privatization Support Program (PSP), the concessioning of Nigeria’s most commercially viable ports, and the robust support for the Nigeria Electric and Gas Improvement Project (NEGIP). Most recently in the power sector, with support from the NEGIP project, efforts to complete gas supply agreements that will be essential to overcoming deep constraints to power provision in the country are nearing a successful conclusion.

26. Despite these successes, there have been only a limited number of PPP initiatives reaching financial closure. At the federal level, the government is in the process of concessioning some major roads such as Lagos-Ibadan Expressway and Benin-Shagamu Expressway; at the state level the Lekki Toll Road is a transaction that attracted significant international financing. But a number of potential PPPs, particularly some notable Independent Power Producers (IPP) projects, have failed to date to reach financial closure for a variety of reasons. This includes a range of political, technical and operational risks associated to date with PPPs, on top of the absence of long-term money.

27. This project seeks to address a number of the main failures that have to date prevented Public/Private Partnership Initiatives (PPPIs) from successfully coming to market and providing sustained services to the population. This includes the “coordination” and “demonstration effect” failures. PPPI projects are complex and require a predictable and transparent framework of collaboration across a range of public sector ministries, departments and agencies (MDAs), private sector investors/developers and financial institutions and banks. In the absence of a disciplined roadmap, including specified roles, responsibilities, effective dispute resolution and boundary rules between the MDAs, high transaction costs persists that can prevent “market clearing” of PPPIs. In addition to the coordination failure, there exists a “demonstration effect” failure. In the absence of proven performance in government and private sector operations, neither party has practical benchmark against which to calibrate the different risks associated with doing PPPI transactions. This failure, which is effectively a barrier to entry problem, is borne out of information asymmetry; it pushes up cost estimates for both public and private sector


counterparties (price-risking and can threaten the bankability of the deal. Once a “first-mover” investment occurs, one where the government and investor successfully complete a project based on a rigorous technical assessment and transparent and competitive market procurement process, information gaps will start to close and the private sector can draw on track record evidence of government performance when costing the different risks involved in their investment decisions.

28. In recognition of these constraints and building on international best practice, FGN requested World Bank support in developing and strengthening their PPP Program. This World Bank project will build on the extensive contribution made to date first through, inter alia, the support to the privatization program under the Privatization Support Project (PSP) and more recently through the technical assistance provided to FGN through the PPIAF funded analysis of the development of the Nigeria PPP Resource Center. Through this proposed engagement, the World Bank will leverage its local and global experience with infrastructure PPPs to strengthen the ICRC’s capacity to fulfill its mandate. This will include, inter alia, strengthening the key MDA’s capacity at the policy, legal and operational level to handle PPP deal flow in areas such as PPP screening, institutional arrangements, financial modeling and financial management, environmental and social assessment or project risks, PPP negotiations, contract monitoring and evaluations, PPP-specific procurement, and risk assessment. Support to key MDAs that have critical roles in core infrastructure PPP projects will be administered in the form of targeted technical assistance, resources for systems and equipment, and PPP training. The World Bank participation will also provide transaction support to usher the PPP pipeline projects to financial closure using best practices and proper financial and risk analyses. The World Bank involvement will also contribute to the financing of PPPs, from both the public and private sides. This will take the form of funding through the proposed Viability Gap Facility (see Annex 4 Appendix 1 for more detail), with long-term infrastructure financing made available through the proposed Financial Intermediary Loan (see Annex 4), and with IDA/MIGA Guarantee (see Annex 4 Appendix 2) products that will enhance the debt and equity financing for specific infrastructure projects.

C. Higher level objectives to which the Program contributes

29. The central objective of this initiative is to assist the Government of Nigeria to tackle the binding infrastructure constraints that hamper firm productivity and employment generating growth. This project seeks to increase infrastructure service levels and quality through institutional development and PPP financing. These objectives are aligned with the 2010-2013 Country Partnership Strategy which supports the non-oil economic growth via infrastructure support and the promotion of private sector involvement being supported by this program.

II. PROGRAM DESCRIPTION

A. Lending Instrument

30. The proposed operation will use an Adaptable Program Loan (APL) instrument with two phases that also incorporates a Financial Intermediary Loan (FIL) sub-component in the second phase. An APL is best placed to suit the Government’s ongoing efforts to expand its ability to develop and manage PPPs while providing funding at a later stage once the projects are ready for concessioning. The current total estimate cost for the APL Program is US$315 million to be disbursed over a six year period, of which the Phase I is valued at US$115 million and Phase II estimated at US$200 million. This APL Program will have four components: (i) PPP capacity building to ICRC and other MDAs including a small allocation for preliminary work at the state level; (ii) PPP project preparation and transaction advisory support; (iii) project implementation, monitoring and evaluation; and (iv) infrastructure financing through two
instruments- a financial intermediary loan (FIL) facility and a Viability Gap Facility (VGF). Phase I credit will finance components 1-3 and Phase II credit will finance component 4.

B. Program Objective and Phases

31. The overall project development objective of this APL Program is to increase private investment in the Nigerian PPP infrastructure market and specifically the core infrastructure sectors. The key performance measures against which this APL Program will be measured are:

   (i) The number of PPP projects taken to financial close (minimum of 3) and;
   (ii) The increase in private investment realized in the PPP market during the life of the APL Program (reaching US$1bn of US$5.13 billion identified in the pipeline).

32. Phase I will run the entire length of the APL Program and overlap with Phase II once it becomes effective to ensure that the proper technical assistance and capacity building resources are kept in-place as PPPs are developed. The first phase will facilitate the key capacity building and technical assistance to the ICRC and select MDAs that is needed to enable the FGN to carry-out PPP transactions according to international best practices. This capacity building and technical assistance work will include the institutional strengthening for ICRC and support for legal and regulatory change. In addition, transaction advisors will be mobilized, pending identification of viable PPP projects, to prepare the “first-mover” PPP transaction that will be considered for funding under Phase II.

33. Phase II will provide infrastructure financing in support of PPP transactions in core infrastructure sectors. These resources will be made available through both public and private financial products. Public funds deployed for upfront capital investment will be channeled through the Viability Gap Facility (VGF). Private infrastructure financing will be provided via a financial intermediary loan (FIL) facility, with funds channeled through an apex arrangement with the Central Bank of Nigeria (CBN). CBN will on-lend this money to qualifying financial intermediaries who will be investing in the PPP projects.

34. Triggers: The three triggers that will need to be met for the activation of Phase II are derived from targeted Phase I intermediate outcomes and are detailed below:

   • Presidential approval of the PPP Regulations in accordance with Article 34 of the ICRC Act;
   • Completion of the first 5 OBCs submitted to the respective line Minister\textsuperscript{15} with one first-moving transaction acceptable to IDA;
   • FEC approval of the Viability Gap Facility (VGF) as included in the Fiscal Strategy Paper (FSP) as well as included in the Budget Call Circular.

35. These triggers, which are aligned with the strategy adopted under the government’s evolving PPP Program (see Annex 4 Appendix 1 for detail explanation of triggers) as well as the most recent Country Partnership Strategy, have been selected in view of their integral importance to the promotion of private sector investment in PPPs and the effective and timely utilization of the infrastructure financing provided under the Phase II.

\textsuperscript{15} The completion of the OBC’s includes completion of due diligence work on key social and environmental safeguards, fiduciary and legal issues for each transaction satisfactory to Bank standards. Respective line Minister refers to the Minister who presides over that MDA which has the project lead over a specific transaction.
C. Phase I Program Development Objective and Key Indicators:

36. The specific development objective of Phase I is to establish effective institutional and technical mechanisms and instruments for PPP project origination and development. This will be measured by having five transactions reach commercial close.

37. The results causal chain is detailed below and the Results Framework is set out in Annex 3.

Figure 3: Results Causal Chain

D. Program Components

Phase I Component 1: Capacity Building and Legal/Regulatory Reform (US$39.6 million)

38. This component will provide resources for ICRC institution building as well as other key MDAs central to the success of the PPP Program. On the recommendation of ICRC, fourteen key MDAs will be the recipients of targeted capacity building support and technical assistance. The identified list includes, inter alia: Ministry of Works and Housing, Ministry of Transportation, Ministry of Environment, Ministry of Aviation, Ministry of Power, Ministry of Health, Federal Capital Territory, Ministry of Finance (the Budget Office, the International Economic Relations Department and the Debt Management Office), National Planning Commission, Central Bank of Nigeria, Bureau of Public Procurement, and Bureau of Public Enterprises. Support for relevant legislative Assembly stakeholders (particularly the key Committees with PPP responsibilities) will also be provided. This component aims to enhance the capacity of the FGN to handle PPP deal flow at the policy, institutional and operational levels.

39. The design of this component followed a detailed three-staged Needs Assessment and Capacity Building Framework identification process carried out with all key MDAs. ICRC and FMOF provided guidance on the targeted MDAs that will have critical roles to play in the implementation of the PPP Program. Initial consultations with these MDAs gauged the overall level of knowledge of PPP transactions and general PPP characteristics. The second series of consultations were aimed at recognizing the MDAs ability to manage transaction and technical advisors for PPPs and the MDAs ability to oversee both the completion of Outline Business Case (OBC) work (pre-feasibility work) and negotiations with the private sector. The final consultations resulted in detailing specific technical
weaknesses in each MDA that could serve as a hindrance to carrying out well-formed and well-managed PPP transactions. These consultations also focused on outlining support activities to central agencies with project implementation responsibilities. This includes specifically ICRC as the lead implementing agent, the Central Bank of Nigeria and the Budget Office of the Federation, both of which will have critical implementing responsibilities under APL Phase II and require capacity building support to be delivered under the Phase I activities. Likewise, the Debt Management Office (DMO), which will take on fiscal and contingent liability responsibilities under the National PPP Policy, requires technical and institutional capacity building support to be brought to satisfactory levels of effectiveness.

40. The other principal beneficiaries receiving support under this component are prospective Participating Financial Institutions (PFIs) that are seeking to access the APL Phase II FIL resources and State Governments. In regard to PFIs, subject to compliance with eligibility criteria, the project will provide funding to support Institutional Development Plans approved by both the Central Bank and World Bank that PFIs will need to implement in order to draw down FIL funds.

41. While this APL Phase I project is not targeting substantial support to State Government PPP programs, the ICRC will provide some seed support to first-moving “demonstration effect” State Governments interested in developing a PPP Program in line with the National PPP Policy approach. As noted in section III of this document, the African Development Bank (AfDB) will be developing a more substantial program of state-level support that will build on the activities supported under the IDA project.

42. Building on this needs assessment process, as well as the recommendations suggested by the PPIAF study, the Capacity Building and Technical Assistance component was formed to comprise of three support instruments: technical assistance, goods and equipment and training. Technical assistance can cover a wide variety of activity but mainly focus on specific advisory services to assist in the development of policy work and project preparation. These activities will be instrumental in assisting the MDAs to develop their PPP programs and projects across different sectors. The second area of support is for systems and equipment. This includes support for ICT systems that will help MDAs manage and track PPP projects and performance and interface with other PPP units within the government to share information, monitor and evaluate the progress of the overall National Policy and build a database for private sector parties to access information on the PPP program and project pipeline. The final area of support is training to MDAs. The training component includes general PPP training for key staff and “subject-specific” training and workshops. This project component will be managed by the Commission’s PPP Resource Center (PRC) with implementation support from the PIU. An annual Capacity Building andTechnical Assistance Program Plan will be prepared under the PRC leadership in collaboration with the MDAs. This will be submitted to IDA each November and will describe the recipients, activities, and resource amount necessary for the activities scheduled for a twelve month period from January-December. While the MDAs will likely have contractual arrangements with technical advisors, receive significant support for their Project Delivery Teams (PDTs), and capacity building assistance funded under this component, ICRC will maintain financial management over these activities to ensure the work comports with the National PPP Policy guidelines and directives. Memorandums of Understandings (MOUs) will be signed between the ICRC and the participating MDAs detailing the terms, implementation arrangements and procedures for support under the PPP Program.

43. The resources under this component currently provides US$8.5 million to ICRC, US$8.7 million for line ministries, US$9.9 for central agencies, US$5 million for state-level PPP support, US$2.5 million to co-finance Institutional Development Plans (IDPs) for participating financial institutions (PFIs), and US$5 million to support ongoing, legal, regulatory and fiduciary reforms. Aggregating across all MDAs, the projected capacity building commitments are: (i) Technical Assistance: US$24.75 million; (ii) Equipment and Goods: US$6.05 million; (iii) Training: US$8.8 million. The remaining funds for Phase I totaling US$4.8 are made up unallocated resources (US$1.8) and a PPF refund (US$3 million).
Phase I Component 2: PPP Preparation and Transaction Advisory Support (US$62.7 million):

44. This component will provide resources for the detailed due diligence to be done for particular PPP pipeline transactions. Current PPP pipeline projects have had minimal or no upstream analysis necessary for the financial and economic analysis of these projects as well as the drafting of the concession agreement. There are four sub-components to this project component: (i) Outline Business Case preparatory work (US$6.7 million); (ii) transactions advisory services (US$50 million) including related embedded specialist consultant services to assist MDAs to manage and assess transaction advisory services; (iii) safeguards due diligence work (US$3.5 million); and (iv) market outreach resources (US$2.5 million).

45. Activities to be supported under this project component will be tied to the official pipeline of projects confirmed by the Federal Government of Nigeria as being the first mover transactions under the National PPP Policy. ICRC has, since the promulgation of the National Policy, been in dialogue with the line ministries to agree on this pipeline. The indicative list of projects in the pipeline is detailed more fully in Annex 4. The specific package of OBC, transactions advisory, safeguards and outreach activities will be detailed in workplan agreements to be established between the ICRC PRC and the respective ministry implementing the approved PPP transaction as part of its MOU with ICRC.

Phase I Component 3: Project Implementation and Monitoring and Evaluation (US$7.9 million):

46. A Project Implementation Unit (PIU) will be established within ICRC to implement the activities under APL Phase I in line with IDA fiduciary guidelines and other requirements established for the project. More specifically, the PIU will oversee the implementation of the Program’s components I and II including the provision of core financial management, procurement, monitoring and evaluation and project management services for the program. Additionally, the PIU will house ICRC embedded and short-term technical consultants recruited to assist in different program activities. The PIU manager will report to the Director General of the ICRC.

47. An additional US$1 million has also been included in this component to provide for the resources that will be channeled to both the CBN to fulfill its fiduciary roles with respect to the FIL and VGF and to the Budget Office of the Federation to support its implementation responsibilities for the VGF when these instruments come into effect under the Phase II. Greater detail on the implementation arrangements for the VGF and FIL will be provided in Phase II.

Phase II Component 4: Infrastructure Financing- (US$200 million):

48. This final component of this Program - to be delivered under APL Phase II, subject to FGN compliance with the agreed-upon triggers- has an effectiveness target date of July 31, 2012.

49. The component will make available infrastructure financing to both the public and private sides of a PPP project through two instruments. The first instrument will target the public side of the PPP project by making available resources available for upfront capital expenditures through the Viability Gap Facility (see Box 2 below). Phase II will initially contribute US$50 million into the VGF. This amount will be complemented by a government contribution. An initial rough estimate of the total amount needed for the VGF based on the “first-mover” projects discussed in Annex 1 Appendix 1 is US$335 million.

50. The second financial instrument will be a financial intermediary loan (FIL) facility that will provide long-term debt financing for eligible financial intermediaries. The FIL component has a proposed budget of US$150 million. It must be noted that the allocations between the VGF and FIL will remain
flexible and will be determined more precisely as upstream due diligence on the “first-mover” projects provides more exact cost estimates and the FGN fulfills the required triggers. The FIL structure, apex arrangements and currently proposed participating financial intermediary have all been appraised in line with OP8.30 and a compliance review has endorsed the proposals, subject to follow up actions that will be addressed through APL Phase I activities and in advance of seeking approval for the Phase II funding.

51. While the FIL will be open to all eligible financial intermediaries, the African Finance Corporation (AFC) has been identified and appraised as a viable first mover (see Annex 4 for details on AFC). Upon Phase II approval, other prospective financial institutions will be invited by the Federal Government to apply to become a PFI to the prospective FIL. This will entail an eligibility assessment and subsequent due diligence in line with OP8.30 guidelines. The project will provide financial support to PFIs that are determined to be eligible but are assessed to need to implement IDP’s, particularly to ensure the PFIs capacity for procurement and safeguards methods that are consistent with IDA.

52. The FIL will provide both domestic and foreign long-term loans of between 15-25 years with both fixed and variable interest rate options. The price for the domestic lending will be benchmarked to a moving average of the longer term 10 and 20 year government bond prices. For foreign currency loans, the price benchmark will be US$ 30 year Treasury bond. A risk premium of 3 percent will be added to the benchmark rate to account for commercial and foreign exchange risk (over and above what is already captured in the interest rate on the domestic bond benchmark). This will be subject to ongoing review and revision based on market information and FIL uptake rates.

Box 2: Nigerian Viability Gap Facility

The Viability Gap Facility (VGF) provides public capital to fill funding gaps required to make infrastructure PPP projects commercially viable. The VGF will be administered by the Budger Office in the Federal Ministry of Finance. The VGF will provide up-front funding to cover a certain amount of a project’s capital cost (capital subsidies or grants). The viability gap funds are useful where initial up-front capital subsidy is needed for the PPP project in order to make the project financially or commercially viable and so increase the appetite for private sector investment.

Given demand estimates and willingness and ability to pay assessments across many of the infrastructure sectors in emerging and developing markets, it is anticipated that – with the exception of telecommunications – much of a country’s core infrastructure will continue to require substantial public sector investment over the coming phase of development. The capital cost and revenue structures of many infrastructure developments will preclude wholly commercial financing solutions, but do not need to exclude private sector investment and expertise, provided the commercial “viability gap” can be closed.

The balancing of social and economic considerations often results in tariff rates for different infrastructure (power, water, transport) that are not cost recovering. This can be due to limited traffic – for instance on key road networks – that would imply exorbitant tariff rates for the investment to be viable with private finance. In other instances, where the end user has become habituated to low prices and poor service – for instance in the Nigerian power sector – there may be widespread consumer (ie voter/political) resistance to an abrupt move to higher tariffs, particularly before there is any credible evidence of improved service. Where this is the case, private investment is not going to be forthcoming. The government has two policy routes from which to choose. It can decide that the investment has sufficiently high social and longer-term economic value to make it a priority for full public procurement. Alternatively it can decide to consider a PPP that would require a public contribution – either in the form of an upfront capital investment and/or transfers over the life of the prospective PPP contract. In both cases, the objective

16 See Annex 4 for a detailed explanation of Component 4, the African Finance Corporation, and FIL details.
17 These operational subsidies may be subject to change each year as determined case-by-case. This model is based on the India model.
is to close a “viability gap” and provide a potential profit margin to the transaction sufficient to crowd-in private investors.

For a VGF to effectively perform its function there will need to be thorough screening for VGF eligibility. First there will need to be robust determination as to whether an investment is justified from an economic viewpoint and then an assessment whether it is suitable for a PPP structure. Under the Nigerian PPP Policy, this assessment is contained in what is referred to as an “Outline Business Case” (OBC). The OBC would entail first the standard cost-benefit analysis (CBA) to determine the overall economic merits. Then a “value-for-money” (VfM) exercise to determine if there is a PPP arrangement that could deliver the investment at an overall lower cost and better service quality through the involvement of private operators and financiers versus a strictly public financing arrangement. The OBC is a fundamental first step in determining the public merit of an investment, the PPP rationale and to lay the foundation for the detailed PPP project development, structuring and financing that will then follow.

E. Lessons learned and reflected in the Program design

53. Nigeria’s endeavor to build a strong PPP Program builds on the extensive experience and lessons learned with the implementation of its Privatization Program under the 1999 Privatization and Commercialization Act and with recent disappointing experiences in promoting IPPs (independent power producer) in the power sector. The privatization program, which involved the establishment of comprehensive legal and institutional arrangements and a strong political leadership and a cadre of skilled expertise to manage the initiative, experienced many challenges, as it often the case in implementing a privatization policy. The IDA Privatization Support Project (PSP) that closed on December 31, 2009 has provided the World Bank country team with deep and valuable understanding and insight into the specific challenges that Nigeria must confront as it seeks to open its economy up to increased private sector financing and expertise. The lessons learned, both on the side of the Federal Government and the World Bank are reflected in the design of this PPP project. The most significant relate to: (i) the coordination and governance arrangements across key Ministries, Departments and Agencies (MDAs) of the FGN; (ii) the importance of effective legal and regulatory frameworks for PPPs and; (iii) the importance of thorough project origination and development procedures and standards. Both the FGN National PPP Policy and evolving implementation arrangements and the World Bank project pay careful attention to these three factors.

54. For PPP transactions to succeed there must be effective and sustained cooperation between the key government agencies and in their dealings with the private sector. In the case of privatizations, which involve the outright sale of a public asset, the coordination challenge proved difficult for the Bureau of Public Enterprises (BPE), the lead agency tasked with the implementation of the Privatization Program. The task required close cooperation with the line ministries but frequently triggered conflicts with ministries that resisted the BPE role. This, in turn, created problems in terms of outreach to the private sector. In the case of PPPs - where the institutional resistance within the bureaucracy may not be so inextirpate- it arguably is even more important to garner line ministry support. As is often said, “privatization is like a divorce, PPP is like a marriage,” which puts additional onus on effective long-term cooperation both within the government and with the private sector. To this end, the FGN inaugurated the ICRC in November 2008 to lead the PPP program. ICRC management has since worked assiduously to establish effective working arrangements with the line ministries and delineate a role that is highly supportive of the line ministry leadership of PPP transactions. The World Bank has sought to contribute to this complementary partnership between ICRC and the line ministries by providing support to the

18 Refer to “National Policy on Public Private Partnership (PPP)”, approved by the Federal Executive Council (FEC) in April 2009.
cooperative arrangements and capacity building that targets not just ICRC but substantively also the technical and other institutional and skill requirements of the participating MDAs.

55. **A transparent and predictable legal and regulatory environment for PPPs is essential.** While there is much to be done to reach this point, the promulgation of the National PPP Policy together with the ICRC Act represents key building blocks in creating the right environment. It is not just the legal framework – but also how parties go about implementing that framework. This has been shown to be hugely constrained by the lack of ownership and buy-in from key interested parties. The principal laws and regulations that will - over the coming months and years - need to be put in place to deepen and broaden PPP market opportunities across the different sectors need to involve extensive stakeholder consultation and dialogue. This will need to encompass not just the MDAs, but also the private sector, labor, civil society groups and the legislature. This is something that ICRC and the other lead MDAs have strongly advocated.

56. In many PPP markets, particularly in Africa it is noted that the principal constraint is a lack of “bankable” projects. This is in part due to difficult institutional and legal/regulatory environments as highlighted in the above discussion on lessons learned. It is also due to poor project origination and development – i.e. the technical due diligence required to determine the economic, financial and other (eg safeguards) viabilities of the project. To address this constraint, the project provides funding to undertake this technical work, but within a strong institutional context (as set out in the National PPP Policy) and with due consideration to the location of this work – namely within the line ministries responsible for the transactions. ICRC will provide a “one-stop” source of funding and resource back-up, but will not lead the transaction. The other important factor to note is that the preparation of a PPP is essentially a full-time job. The participating MDAs have fully recognized this fact and – once the potential PPP pipeline to be championed under the National Policy and supported through this IDA project is approved – will be establishing permanent project teams within their institutions to manage each transaction. This provides easily identifiable beneficiaries to whom the project preparation work support can be targeted.

57. In addition to the knowledge accumulated from the Privatization Program and IDA PSP project, this Program also draws on the extensive analytical and advisory work done by PPIAF. This includes specific Nigeria assessments provided by PPIAF to the FGN covering a range of key issues including: (i) guidance on the different governance and operational issues that relate to the principal gate-keeping, project development and compliance aspects of PPP market development; (ii) financial market conditions affecting PPPs and actions that would deepen domestic capacity to provide long-term financing; (iii) assessment of the 2006 concessioning of 24 port terminals. This, together with extensive South-South outreach particularly to date with South Africa, India, and Brazil and in partnership with Partnership UK (PUK), has enabled ICRC to draw on international best practices and tailor these to the specific needs and challenges facing Nigeria. These different sources of guidance have all served to steer project design decisions and the upstream program of advisory work.

58. The project preparation has also benefitted from the recent Investment Climate Analysis (ICA), Doing Business, and the Country Partnership Strategy lessons learned, PPP policy work and framework

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studies, infrastructure deficit studies, and the “Making Finance Work for Nigeria” (MFWFN) ESW that is currently being published.

59. Specifically related to Safeguards, lessons have been incorporated from the IIFCL (India Infrastructure Finance Company Limited) IDA project as well as other infrastructure investments in the Bank portfolio that have triggered key safeguard policies in the World Bank. This project has taken diligent actions to ensure that all World Bank-financed infrastructure investments adhere to an international best practice social and environmental safeguards framework.

F. Alternatives considered and reasons for rejection

60. Since the time of the Concept Note review in December 2008, the project has considered different approaches to packaging this PPP Program in a manner that best addresses the institutional, operational and socio-political priorities of the Government of Nigeria.

61. **Lending Instrument - APL versus SIL:** The decision to employ an Adaptable Program Loan (APL) instead of a Specific Investment Loan (SIL) followed extensive consultations with key FGN stakeholders. Originally, it was intended to proceed with a Specific Investment Loan (SIL) but this was predicated on having a strong “first mover” transaction that could be taken to the market within 12-18 months of project effectiveness. There was strong expectation, building off project assessment work being financed under the now closed PSP project, that a concession could be undertaken for the narrow gauge railway line from Lagos to Kano. However, a recent government decision with regard to the initiation of a parallel standard gauge Greenfield investment has foreclosed on this first mover option. As a result, it was not possible to move forward with a SIL operation.

62. One alternative option considered was to proceed with a stand-alone capacity building project and return with a separate investment operation for financing specific transactions when they came to market. This approach was declined by the Federal Government of Nigeria as it posed an unwanted trade-off between the immediate and the strategic. The immediate concern was not to hold hostage urgently required capacity building and transactions advisory support to the affirmation of one “first mover.” But while this need could be addressed with a SIL, there was a significant strategic concern to maintain the institutional and political momentum as well as the significant policy leverage that the project’s financing instruments provided. After working closely with the key institutional champions for this PPP Program – which includes the Infrastructure Concession Regulatory Commission, Federal Ministry of Finance, the National Planning Commission, the Central Bank of Nigeria as well as the principal line ministries (Works and Housing, Transport and Aviation which between them are responsible for all the federal transport infrastructure in the country) – and appreciating the political economy considerations that was being faced in implementing the PPP Policy - the IDA project team concurred on the need to ensure both objectives are expressly and definitely supported under the same project. As a result, an Adjustable Program Lending (APL) option was proposed. This is done taking into account also some essential enabling conditions, namely the clear political, institutional and operational readiness of the key protagonists in the PPP program to fulfill the stipulated triggers for Phase II activation. This includes also FGN’s dedication to procuring PPP transactions and implementing a PPP Policy safeguards framework

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22 See “Africa’s Infrastructure: A Time for Transformation.” April 2009;
23 The *Making Finance Work for Nigeria*, which builds on a three-year advisory program supported by FIRST Trust Funds, also provided the opportunity to work closely with the Central Bank of Nigeria, which in turn was key in determining the feasibility/necessity of the FIL component of this project and its implementing arrangements.
consistent with IDA guidelines. The APL Program most optimally supports Nigeria’s commitment to sector reform.

63. **Infrastructure Financing Products:** The Project Concept Note (PCN) envisioned that the infrastructure financing component would include resources to be deployed as Partial Risk Guarantees (PRGs) as a mechanism to encourage and crowd-in private sector investment in Nigeria. The PRGs would reduce investment risk by providing guarantees over a range of project-related risks. However, during the course of project preparation three key factors required a significant re-think of the financial instruments to be used in the project. First, there were the implications of the 2009 financial downturn in Nigeria. Second, there was the initial evidence of the limited commercial viability of prospective PPP pipeline. Finally, there was the feedback that was being gathered from the private sector. Each of these above points is dealt with in turn.

- **Financial Sector Developments from 2006-2009 and implications for Infrastructure:** In the 2007 Country Economic Memorandum (CEM)

  24, initial work done into prospective infrastructure financing options for Nigeria identified a potential liquidity pool of some US$10 billion that the commercial banking sector could deploy. At that time, as the Nigeria Banking consolidation was concluding and the remaining Banks were mobilizing new and more concentrated capital resources, there was optimism that Banks would be moving into new markets, including infrastructure. However, the margin lending problems that came to light in mid-2009 also revealed a lack of liquidity in the financial system. In this context, the more immediate need was to provide longer term liquidity rather than enhancement products that could nevertheless still be provided via different vehicles.

- **Project Pipeline Review and implications for priority claims on project funds:** The preliminary assessment of the anticipated project pipeline, together with more in-depth analysis of a potential railway concession indicated that, for the most part, the transport projects likely to be pursued under PPP arrangements would entail capital cost and revenue structures that would preclude wholly commercial financing solutions but can still include private sector investment and expertise provided the commercial “viability gap” is closed. In light of this finding, it was concluded that support to a Viability Gap Facility (VGF) would be a more essential use of the funds available under the APL Program, while also recognizing that enhancement products- IDA PRG’s and MIGA products- could also be deployed alongside the IDA credit where necessary.

- **Private Sector Feedback:** In discussions with financial sector players and prospective PPP investors, both international and domestic, key concerns emerged related to the absence of local long-term funds in Nigeria. This was a major consideration given the largely domestic currency revenue potential of most of the initial pipeline of PPPs and the inability to hedge foreign exchange risks for financiers who did have local funds available for PPP projects in Nigeria. Additionally, the commercial viability issues were highlighted as well as the uncertainties as to the sources of public funding that were needed to support PPPs. This pointed again to the need to adjust project design to incorporate the FIL and the VGF instruments over a guarantee facility-type arrangement.

64. Given the current status of the PPP pipeline in Nigeria and current priority financing needs, it was determined to divide the initial infrastructure financing component resources between the Financial Intermediary Loan (FIL) and the Viability Gap Facility (VGF) and keep PRG’s as stand-alone products that could be introduced for specific transactions as they come online without tying up existing project funds. The PRGs would also be deployed in close cooperation with MIGA and the IDA PRG team who,

as the project proceeded into VGF and FIL instruments, confirmed their intention to bring MIGA and IDA guarantees into play (see Annex 4 Appendix 2). The IDA project funds could then focus on its comparative advantage in this instance – namely addressing primary public and private weaknesses in the domestic infrastructure financing market in Nigeria.

65. The design and inclusion of financial products (VGF, FIL), coupled with capacity building and legal and regulatory strengthening as part of the overall APL Program, provides a well structured and robust framework for other donors to contribute resources to either the FIL or the VGF. These include procurement, safeguards, financial management, and monitoring and evaluation aspects that the IDA project will be supporting. This APL Program gives greater comfort to other donors that these financial products will be in support of well planned, designed, procured and implemented PPP transactions.

III. IMPLEMENTATION

A. Partnership Arrangements

66. Other Donors: IDA anticipates strong ongoing collaboration particularly with DFID, the Agence Française de Développement (AFD) and the African Development Bank in support of the FGN National PPP Policy.

67. In the case of DFID, which is financing a £20 million Nigerian Infrastructure Advisory Facility (NIAF II), the World Bank already has two years of collaboration experience in Nigeria. The NIAF program has been providing targeted, short-term technical assistance to the ICRC as well as other key MDAs involved in developing PPPs. These include NPC, Ministry of Power, and the FCTA. NIAF has also been involved in supporting Lagos State’s PPP Program. Going forward, it is anticipated that NIAF will focus in a more concentrated and sustained basis on the Lagos PPP work and some specific sector transaction and compliance support.

68. The African Development Bank is currently preparing its US$27.9 million Nigeria Capacity Building Project for Public-Private Partnerships in Infrastructure. The main objective of this program is to bolster Nigeria’s PPP Program in PPPs specifically in the power/electricity and transport sector with a specific focus on the state level. This complements the proposed project which is targeting the Federal Government program, although there is a small amount of funds set aside within the program to undertake some preliminary legal regulatory institutional assessment work with selected states and to prepare the foundations for the AfDB project. This AfDB project addresses the urgency to commence with the creation of a systematic support to the State Governments, given the increasing appetite to pursue PPPs and the risks entailed in doing this without the type of policy and legal framework now in place at the Federal level. It is also agreed that this support to States – whether via the IDA project or the planned AfDB project - would, at least in the initial stages, be channeled through the ICRC. This will serve to reinforce consistency with the Federal Government Policy and institutional approach.

69. AFD have also indicated their strong interest in supporting the Nigeria PPP Policy in a partnership with the World Bank. They have indicated a preference to contribute investment funds to either or both the VGF and FIL instruments that comprise Phase II. IDA, in cooperation with the ICRC, will continue collaboration with AFD over the coming period up to the anticipated launch of the APL Phase II to facilitate their participation.
70. **MIGA Role in Mitigating Project Risk:** A range of MIGA enhancement products have been considered to support a PPP in the preparation of this APL, including: breach of contract (BoC), non-honoring of sovereign financial obligation (NHSFO), and sub-sovereign risk guarantee coverage to address the anticipated PPP investor/financier concerns over credit and/or long-term political risks. MIGA has also extensively outlined other ways by which they can enhance the PPP project for private sector investors. This includes assisting the ICRC in the concession/partner selection, providing a “wrap” to the Viability Gap Facility to ensure the minimum FGN support to a specific project is met, PPP financial market support, risk mitigation for the financial intermediary loan (FIL) facility and specific transactions support. Annex 4 Appendix 2 details each of these different potential MIGA roles in greater detail. Upon Program approval, MIGA will work closely with FGN to develop the “wrap” for the VGF.

71. **Role for IDA Partial Risk Guarantees:** The private sector and government have indicated strong interest in the PRG as an instrument that can help address some of the political risks surrounding Nigeria’s nascent, largely untested PPP agenda and regulatory environment. FGN will be using the PPP model as part of its strategy to reform (and finance) sector operations, and these operations will be dependent on government support/undertakings – exactly the environment where PRG operations can add value. An IDA PRG has been specifically discussed to be developed for the VGF. An IDA PRG/Letter of Credit (L/C) structure can be deployed to backstop the FGN’s obligations to the concessionaire in the event of temporary budgetary problems (budget lapses between the end of one fiscal year and the commencing of the next). Annex 4 Appendix 2 details the role that IDA PRGs can serve for this APL in greater detail.

72. **International Financial Corporation (IFC):** The World Bank has been consulting closely with the IFC in the development of this PPP project. While the IFC’s current PPP focus is at the state level in Nigeria, ongoing cooperation will continue in order to facilitate IFC advisory and/or investment engagement should a suitable Federal level PPP project opportunity develop that is attractive to IFC.

73. **Private Sector:** A strong partnership with the private sector is also anticipated and will be key to the eventual success of the project and the realization of the PDO. This partnership will come not just through the support the project provides either through its capacity building (mostly via support to Institutional Development Plans that will need to be implemented as a condition of FIL access) or directly via the VGF and/or FIL financing, but also through the program of investor outreach and consultation which is an essential aspect of Phase II Component 2. Under Phase II, it is expected that the lead relationship will be with the AFC, although the target is to have a minimum of three participating financial institutions.

**B. Institutional and Implementation Arrangements**

74. Designed as an APL, the Program will be implemented in two phases. Phase I will comprise three project components, Capacity Building to ICRC MDAs and other government stakeholders (eg relevant committees of the legislative assembly), PFIs and States and Legal/Regulatory Reform; PPP Project Preparation and Transactions Advisory Support; and the APL Program Implementation, Monitoring and Evaluation. Phase II, which will be activated once targeted triggers are satisfied, will bring into operation the fourth “Infrastructure Financing” component of the program. The entire APL Program is projected to be implemented over a six-year period from March 2011 to end-December 2017. The period from July 2016- October 2016 would provide the normal four month disbursement grace period. Within this timeframe, Phase I will run for the full six years. Phase II is scheduled to become effective within one year of APL Phase I and have a five year life. Both Phase I and Phase II will conclude at the same time. A schemata of the Program’s implementation structure is set out below:
**Project Steering Committee (PSC)**

75. The Infrastructure Technical Working Group (ITWG), one of the five technical working groups making up the President’s newly reconstituted Economic Management Team (EMT), will serve as the Project Steering Committee for this APL Program. The Infrastructure Technical Working Group focuses on reducing the infrastructure deficit, rebuilding and expanding infrastructure and managing PPPs. The Economic Research and Policy Management Department under the Permanent Secretary of the Ministry of Finance will serve as the Secretariat for the Project Steering Committee. The Infrastructure Technical Working Group will meet on a weekly basis and the Chairman will meet with the Chairman of the EMT on a weekly basis. More specifically, in terms of the ITWG oversight role for the PPP Project, there will be two formal ITWG meetings to review the detailed annual and semi-annual reviews of the project performance reports as well as the annual workplan proposals. The quarterly Interim Financial Reports (IFRs) will also be distributed to the ITWG and reviewed as an agenda item during one of the regular weekly ITWG meetings.

76. The Infrastructure Technical Working Group will be co-chaired by the Director General of ICRC and the Secretary of the National Planning Commission. Membership will include a representative of the Federal Ministry of Finance, Director of the Center for Policy and Economic Research, the President of the Nigeria Economic Society, the Director General of Bureau of Public Enterprises, and representatives of the Ministries of Power, Petroleum Resources, Transport and Works. Additional members may be co-opted at the prerogative of the Committee who could be identified as instrumental to the oversight of the Program. The ICRC Audit and Technical Committee of the ICRC Board will constitute the finance and audit sub-committee as they have the appropriate qualifications and skills.
Executing Agency

77. **APL Program**: The ICRC will serve as the FGN’s overall executing agency (EA) for this APL Program. It will have project management responsibilities on behalf of the FGN and will be responsible for coordination across Federal and State Government agencies with respect to the project activities.

78. **Phase I**: ICRC will manage the three Phase I Program components: the Capacity Building and Legal/Regulatory Reform Component, the PPP Project Preparation and Transactions Advisory Support Component, and the Project Implementation, Monitoring and Evaluation Component. Phase I will also provide support, inter alia, in form of technical assistance to assist the CBN and the BOF to effectively implement their responsibilities in respect of the FIL and VGF under Phase II. Memorandums of Understandings (MOUs) will be signed between the ICRC and the participating MDAs detailing the terms, implementation arrangements and procedures for support under APL Phase I.

79. **Phase II**: The Central Bank of Nigeria will serve as the apex institution and manage the FIL sub-component and serve as the government banker for the VGF. The VGF will be managed by the Budget Office of the Federation (BOF) within FMOF. The Federal Ministry of Finance will hold a central vote for the VGF from which mandates will be released to the CBN when the criteria set out in the VGF Operations Manual are met. CBN will cooperate with the ICRC, particularly in reporting progress and meeting the monitoring and evaluation requirements of project execution.

80. **PIU**: The Project Implementation Unit (PIU) within the ICRC will ensure that the operational safeguards, procurement, disbursement, financial management, outreach and communications requirements, monitoring, and reporting of the Project are implemented in accordance with the Financing Agreements for Phases I and II and the Project Implementation Manual (PIM). The PIM describes in detail the PIUs general functions, core membership and terms of references, specific responsibilities for each Program component, and other umbrella tasks that contribute to the implementation and success of the country’s PPP work.

- **Phase I**: The PIU within the ICRC, alongside the PRC, will manage the entirety of Phase I activities. This includes the capacity building and technical assistance component. In the case of the PPP preparation and transaction advisory, the respective line ministry will take the technical lead, but ICRC – via the PIU - will provide all the necessary fiduciary services related to services provided under the IDA credit as well as supply key additional services such as safeguards, other specialized technical expertise and monitoring and evaluation. The PIU will be responsible to submit all the proper reports and materials on a timely basis including quarterly reports. The PIU will also support the CBN and the BOF to scale up implementation capacities in preparation for the activation of their roles under the APL Phase II. The PIU will also manage any specialized services provided under APL Phase I component I to the CBN and/or the BOF, including, eg, support for FIL due diligence of PFI candidates and IDP design and implementation activities.

- **Phase II**: The PIU in ICRC will - in addition to its APL Phase I implementation role - maintain itself as the Program implementing agency for Phase II but work closely with project implementation teams placed in the CBN and Budget Office to manage Phase II activities. For the FIL, the team will be located in the CBN’s Development Finance Department (the Apex) and the Banking and Payment Systems Department (for the FIL). The VGF implementation team will be located in the BOF. The embedded consultants to be appointed to assist in CBN and BOF will work closely with the PIU in the ICRC to provide all required reports and materials on a timely basis. This will include the delivery of the IFRS reports and annual financial audits of the project. The PIU fiduciary and safeguards specialists will also provide support to the CBN and BOF implementing teams with responsibility for the VGF and FIL. Phase I will provide support,
inter alia, in form of technical assistance to assist the CBN and the BOF to effectively equip these units with the skills needed to carry-out their responsibilities with respect to the FIL and VGF under Phase II.

81. Financial Management of for the Program will be divided as follows: Phase 1 financial management will be handled by the Finance Unit in ICRC; Phase II financial management for the VGF will be handled by the Finance and Accounts Department in the FMOF; financial management for the FIL will be handled by the Banking and Payment Systems Department of the CBN working in collaboration with Infrastructure Finance Office in the Development Finance Department (DFD) of CBN. The FIL embedded team will account and prepare agreed reports and information for on-lent loans and forward the same to DFD of the CBN for purposes of disbursements under the FIL. ICRC will coordinate to ensure the all financial reporting on the Program is consolidated and delivered according to the procedures detailed in the PIM.

C. Monitoring and evaluation of outcomes/results

82. The M&E function of the PPP PIU will focus primarily on:

- Generating and assessing information required for monitoring and reporting on key operational and performance indicators and outcome objectives established for the APL Program as detailed in approved workplans and in the Results Framework set out in Annex 3.
- Promoting accountability by drawing on information on efficiency and effectiveness to assess and communicate whether project activities are likely to achieve expected results and/or realize its objectives;
- Identifying and promoting the actions necessary to improve implementation;
- Preparing and implementing an approved Evaluation Plan to ensure effective assessment of intermediate and Program Outcome Evaluations;
- Overseeing the preparation of the Borrower’s Mid-Term Evaluation Report and Borrower’s End-of-Project Evaluation Report;
- Identifying lessons learned and fostering the mainstreaming of these lessons learned and best M&E practices through workshops and seminars.

83. An M&E specialist will be housed within the PIU in the ICRC. This specialist will coordinate with the PRC and Contract Compliance Center of the ICRC as well as other project implementing agencies to ensure coherent and standard M&E data gathering and reporting system are in line with the Project Development Objective (PDO) and Key Performance Indicators (KPI) established for the project and further explained in the Project Performance Framework in Annex III. Critical tasks for the M&E function include setting up the M&E system and ensuring it is implemented effectively by the key stakeholders, namely the implementing partners, primary project beneficiaries and other stakeholders. This is undertaken through the joint development of a shared M&E system among key stakeholders. This needs to be supported by facilitating stakeholders to undertake their own M&E activities and to link these into an overall assessment of project progress and needed actions. A “demand-based third party” review of the M&E system and reporting will be carried out by key stakeholder groups related to specific PPP project initiatives as well as private sector stakeholders with defined interests and roles in PPP development in Nigeria. Information gathering and dissemination will also be supported by a well-defined communications program.

84. Full information on project outputs and intermediate outcomes will be reported on a quarterly basis. The M&E team will also be required to prepare an evaluation plan, detailing data collection, management and evaluation implementing arrangements with other project stakeholders, factoring in the desired “third party demand-based” process mentioned earlier. Specialist evaluation consultant service
requirements (including, as required, with academic institutions) will also be detailed in this evaluation plan. The plan will also include time bound budget projections. The Evaluation Plan will cover the life of the APL Program and be updated on an annual basis as part of the overall project reporting requirements.

85. The PPP PIU will monitor the Program based on the overall project performance framework and specific performance agreements and contractual outputs required from project beneficiaries and consultants. Each of the project implementing agencies (ICRC-PRC for the institution-building and transactions support, CBN for the FIL, and FMOF/BOF for the VGF), beneficiaries and consultant agencies will develop instruments for monitoring their respective components while the ICRC, through the PPP PIU, will consolidate and analyze statistical, financial, and physical data on the rate of implementation. Quarterly progress reports will be prepared by the PPP PIU and submitted to ICRC and IDA. The monitoring and outcome indicators will provide the PPP PIU, the ICRC, the Government, IDA, with measures to determine progress and form the basis for joint supervisions.

86. Ongoing program implementation reviews by IDA will include formal Annual and Semi-Annual Workprogram consultations at which time annual procurement and capacity building plans will be subjected to detailed review and approval actions by the ICRC and the World Bank. The PPP PIU will be required to prepare information necessary to inform these implementation review exercises.

87. A mid-term evaluation of the Program will take place 36 months after the APL Phase I Credit effectiveness in accordance with terms of reference agreed upon by Government/ICRC, the PPP PIU, IDA and other donors. The PPP PIU will prepare the mid-term report detailing implementation progress under all Program components and identifying implementation issues. This report will be submitted to ICRC, IDA and other donors not later than two months prior to the mid-term review. During the mid-term review, implementation progress and solutions to identified implementation issues will be discussed and agreed on and, if required, project redesign steps will be taken. An Implementation Completion and Results Report (ICR) will also be jointly prepared by the PPP PIU, ICRC, and IDA within six months after the closing date of Phase I and Phase II credits.

D. Sustainability

88. Key strategic goals for this project is not just to finance specific PPP transactions but also help to establish a robust and sustainable PPP market for core infrastructure. It is anticipated this will entail: (i) ongoing financial sector reforms coupled with the technical assistance and capacity building supported by this program to foster the deepening of the bond market at the federal and state level; (ii) enhancement of the government’s project development capacity; (iii) momentum to push forward ongoing legal, regulatory and fiduciary reforms at the sector level; and (iv) over time, the establishment of a track record and reputation for well-developed and implemented PPP transactions. Furthermore, the FGN has showed strong commitment and ownership for the PPP Program as represented by the establishment of the ICRC and the approval of the National Policy on PPPs. Given this strong commitment, certain risks still exists. The critical factors associated with this project and how this Program addresses these are detailed in the following section.

E. Critical risks and possible controversial aspects

89. The matrix that follows sets out the currently assessed risks related to the project. The most critical – in the absence of any major policy reversals – is related to the feasibility of ensuring MDA cooperation and to develop a sound pipeline of adequately assessed projects to take to market. The FGN are going to considerable lengths to ensure the commitment and buy-in of key agencies. The introduction of MOUs to be signed between the ICRC and the PPP-sponsoring Line Ministry is further evidence of the “ways and means” being introduced to promote discipline in this key area of PPP development. This,
combined with the introduction of standardized appraisal and VfM assessments as set out in the Outline Business Case (OBCs) exercises, will represent a significant step forward in addressing past weaknesses establishing market-credible project pipelines.

90. Another critical risk resides in the legal and regulatory environment. Currently there are a number of challenges facing the FGN as it seeks to implement the PPP Policy. In summary, there are: (i) discrepancies between the ICRC law and the roles and responsibilities assigned to the ICRC under the Policy; (ii) current laws including the Public Procurement Act and some of the existing new sector legislation (telecommunications and electricity) where anomalies and inconsistencies with current PPP Policy will need to be addressed; and (iii) a corpus of pending sector draft bills that will need to be reviewed and brought in line with the PPP Policy before passage through the Assembly. The project will support the FGN to address these various issues and, most immediately, through the preparation and Presidential approval (in accordance with the authorities granted ICRC under its Act) of a detailed set of PPP Regulations that will govern PPP activities, procedures and processes. While the establishment of these Regulations is vital and reflects the serious intent of the FGN to move towards a rule-based and best practice PPP system, it needs to be recognized that, in the absence of full coherence to the Policy across different legislation (which is not feasible over the short to medium term), there will be the space for “gaming”. This will need to be managed and this, in turn, will require senior political commitment on which the ICRC will need to depend to support its regulatory and leadership responsibilities.

91. With respect to the FIL, while this sub-component entails no credit or foreign exchange risk to CBN, which will be borne entirely by the Federal Government, there is the risk of non-repayment of loans by private sector that may have a knock-on effect to the PFIs that are borrowing funds from the PFI. This will put a premium on high quality appraisal and monitoring of Participating Financial Institutions (PFIs) to ensure that have the capacity to adequately appraise their project finance exposures. This will be a key feature of the due diligence to be performed on the PFIs in order for them to draw down FIL funds.

92. PPP infrastructure projects can take a long time to gestate and reach financial close. This raises the concern that project funds will not be utilized sufficiently within the relatively limited timeframe of the APL Program. This risk is being addressed by the upstream attention being paid to project origination and assessment work under the APL Phase I components as well as the related focus on capacity building. Also the design of APL Phase II, with both the VGF and the FIL instruments and active engagement of the World Bank Group enhancement instruments (eg IDA PRG and MIGA guarantee), is explicitly intended to address these risks and provide the sort of catalytic financing support that will service best to ensure financial closure objectives are realized in the Program timeframe.
### Table 2: Critical Program Risks

<table>
<thead>
<tr>
<th>Risk Factor</th>
<th>Mitigation Measures</th>
<th>Rating of Residual Risk</th>
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<tbody>
<tr>
<td><strong>I. Sector Governance, Policies and Institutions</strong></td>
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<tr>
<td>Policy Shifts: The FGN development agenda and focus on PPP in infrastructure and related institutional reforms changes significantly. Furthermore, with the recent political instability and the anticipated 2011 elections, new administrations could instigate further policy shifts in the Government</td>
<td>Federal Government PPP Policy Consistency: The FGN has repeatedly shown its commitment to pursuing PPPs programmatically and along the lines of international best practice. The Government has consistently and in a sustained manner across three administrations made infrastructure development, specifically PPPs, part of its 7-point agenda and has been reinforced, as evidenced by the inauguration of the ICRC, the approval of the National Policy on PPP in 2009 and the continued strong support to the PPP Policy from President Jonathan. This project reinforces FGN’s commitment to sector reform and the PPP policy agenda by advancing these reforms both through the components of the project and the triggers that must be met to activate APL Phase II. These triggers, including the completion of PPP Regulations, further solidify FGN commitment to this policy agenda.</td>
<td>Moderate</td>
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<tr>
<td></td>
<td>Sector Policy Coherence: Important measures have been taken to collaborate with the MDAs to facilitate their active participation and input in the drafting of the PPP Regulations and drafts of amended legislations. An MDA-led approach to reforming sector legislation will allow the appropriate MDA to take ownership over drafting new legislation that will improve private sector participation. Capacity building under the PPP APL Program will encompass key committees and members of the legislature to increase awareness and engagement in National PPP Policy and objectives.</td>
<td>Moderate</td>
</tr>
<tr>
<td>Governance: Lack of PPP expertise within the government, inter-departmental competition and limited track record of effective collaboration with the private sector in respect of infrastructure development limits sustainability of the project in the medium-term.</td>
<td>Governance: Existing FGN expertise will be supplemented with specialized expertise in component I to ensure robust capacity to handle PPP deal flow. Upstream PPP training exercises has also established an initial group of PPP-literate key stakeholders across participating MDAs. Likewise, this APL includes resources for transaction advisors recruited at market rates to provide assistance to FGN in preparing viable PPP transactions for market readiness. Particular attention has been paid during the design of this program to develop transparent and</td>
<td>Substantial</td>
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accountable PPP project cycle processes and procedures that provide standardized models of upstream due diligence and PPP-related supporting material. This will enable FGN to use common practices to develop its own capacity across key MDAs by relying on materials applicable to all PPPs.

The current mandate of the ICRC (PPP monitoring and enforcement) and the nonexistence of a separate agency to carry out transactions puts ICRC in the difficult position of being both a strong force in developing PPPs as well as the regulator. **ICRC Initial Dual Mandate:** Recognizing the immediate imperatives to move forward on prospective deal flow and absence of best-case institutional and governance structure for PPPs, the Government have recognized that the ICRC role in origination and development will need to be temporary and subject to a time-bound exit strategy within which period a long-term institutional solution, along the lines of the PPIAF study recommendations, would be implemented.

**Governance Solutions:** Short-term conflict of interest for ICRC as both developer and regulator of PPPs is mitigated by the institutional structure. The PPP Resource Center and the Contract Compliance Center are managed by different oversight committees of the Board and do not share members. The DG of ICRC has consulted Bank specialists and taken serious steps to ensure that the dual role of ICRC is preserved until more statutory changes can be enacted through legislation.

MDA’s with divergent sector priorities do not adhere to the National Policy on PPPs and instead follow their own methods of pursuing PPPs. **Strengthening the PPP Regulatory Compliance Environment:** The development of PPP Regulations and the National Policy on PPPs provides strong incentives to MDAs to adhere to proper procedures for developing PPPs. These incentives include sending strong signals to private sector investors that the lead MDA has followed international best practices in the evolution of its PPP transactions. This will attract better investors and more attractive private sector investment.

Additionally, the establishment of the Viability Gap Facility and the use of the financial intermediary loan (FIL) reinforce this policy commitment further by providing potential streams of resources that can serve to further leverage Policy compliance. The potential to attract other donor partner contributions to these two financial mechanisms provides further potential incentives for other agencies of government to support the PPP policy agenda.

### II. Operation-Specific Risk

| Technical Design: This program will take the form | This APL design was proposed to reduce the operational risk of implementing the components | Substantial |
of an Adaptable Program Loan. This two-phased approach seeks to reduce the overall risks of the project. The risks it poses is to leave open a potential gap between PPP institutional development and financing that diminishes implementation momentum and realization of demonstration impact first movers. This market demonstration effect is critical to long term PPP market sustainability.

The triggers are activities included in this APL Program designed to also to advance the key upstream requirements necessary to move to and implement Phase II. The APL triggers have been consulted upon in terms of their feasibility and potential for success in close collaboration with the FGN and have been determined to be well placed and achievable. Work has commenced on all the triggers with strong government support with a view of fulfilling the triggers expediently to advance the PPP agenda.

<table>
<thead>
<tr>
<th>Under the APL Phase I</th>
<th>Under APL Phase II: Subject to successful implementation of Phase I activities and compliance with triggers, the establishment of a Viability Gap Facility and the provision of the financial intermediary loan will facilitate access to long-term debt financing and money for upfront capital investments.</th>
<th>Implementation Capacity And Sustainability: Capacity of World Bank to manage a multi-sector program that requires strong cross-departmental collaboration to monitor, evaluate and supervise the project developments, components, contracts, and related activities</th>
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<tr>
<td>Moderate</td>
<td>Substantial</td>
<td>Low</td>
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Bank Supervision Strategy: The World Bank team has worked cooperatively with all key departments and specialist to prepare this project. While overall APL implementation oversight will be the responsibility of AFTFP, PPP transactions covered under this project will be managed by World Bank sector specialised units and departments.
**Financial Management:** Updated CFAA and PEMFAR 2006 indicate weaknesses in audit efficiency and budget monitoring at the federal level.

Weaknesses in the effective use of public funds and oversight on transparency and accountability. Government’s periodic budget reports are still untimely and delays are experienced in the preparation of public accounts as well as audit and review by PAC. Poor linkages between strategic planning and long term budgeting at the sector levels.

There is a risk of government not allocating and disbursing funds as promised for the VGF. Also, the government may not have a viable contingent liabilities framework and monitoring systems in place prior to expanding its portfolio of Bank funded transactions.

**Low Capacity:** In line with the Country Partnership Strategy (CPS) 2010-2013, the Bank Group and other partners are helping the government strengthen its own systems over the long term. It has governance as its core theme and supports on-going initiatives to strengthen procurement and public financial management amongst others. This could minimize opportunity for misapplication of funds and ensure efficiency, accountability and transparency.

Robust financial management arrangements are being established at the project implementing levels to mitigate the country level risk.

Capacity building and technical assistance is included in components 1 of the project.

**Procurement:** Misprocurement, delays in project implementation due to submission of poor quality documentation and unsolicited bids are principal risks. Furthermore, complications regarding what investments under FIL-related resources are comporte with World Bank procurement standards could lead to delays and other investments into poorly procured projects.

**PPP Regulations:** FGN and ICRC recognize that failure to put in place a transparent and competitive process for dealing with PPP procurement would eventually undermine the sustainability of the overall program and prevent the World Bank from providing support through the project. The ICRC is working closely with the Bureau of Public Procurement (BPP) to address outstanding lacunae in Federal Government approaches to PPP procurement. In particular, the PPP Regulations currently being drafted and set as a trigger for APL II will address and outline PPP procurement procedures for the FGN.

The Regulations will provide standard guidelines easily used by all MDAs. Furthermore, as part of the capacity building and technical assistance programs, ICRC will provide procurement technical assistance to key MDAs as well as participating financial institutions using FIL resources.

**Procurement Practices of MDAs and Financial and Private Sector Program Partners:** The project has included technical assistance and capacity building resources for MDAs and for PFIs to work with the CBN and ICRC to develop Institutional Development.

**Participating financial intermediaries and/or MDA’s leading a PPP transaction do not adhere to procurement procedures supported by the World Bank.**
Plans which address institutional weaknesses such as procurement that will need to be addressed before PFIs can access FIL funds. Prospective concessionaires, accessing IDA supported VGF funds will also be fully informed to ensure compliance with IDA Procurement Guidelines.

The project is making available capacity building and technical assistance to the MDAs and PFIs to address any weaknesses to ensure adherence to World Bank procurement requirements.

<table>
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<tr>
<th>Social And Environmental Safeguards: Participating financial intermediaries and/or MDA’s leading a PPP transaction do not adhere to safeguards standards acceptable to the World Bank</th>
<th>Safeguard Practices of MDAs and Financial and Private Sector Program Partners: The importance of adherence to social and environmental safeguards has been emphasized through public consultations held in preparing this project.</th>
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<tr>
<td>As a result of these discussions, the FGN and ICRC have agreed to incorporate World Bank safeguards standards into all its PPP transactions supported by this project. To do so, ICRC has hired a full-time safeguards specialist to ensure adherence to these policies. Furthermore, an Environmental and Social Management Framework (ESMF) and Resettlement Policy Framework (RPF) have been created and disclosed. These documents outline the safeguards procedures that must be followed for any PPP transaction for this project.</td>
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<tr>
<td>In addition to these activities, the project has allotted money and initiated select Strategic Environmental Assessments (SEAs) to provide a more thorough treatment of safeguard issues. These SEAs will provide a more robust safeguards treatment of the infrastructure interventions being covered through the PPP Program. This adheres to international best practices and is intended to reinforce further the FGN’s strong support of safeguard policies.</td>
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<tr>
<th>PPP Pipeline Risk: FGN fails to produce a viable PPP pipeline with cross-ministerial support.</th>
<th>Strong Emphasis on High Quality Preparatory Due Diligence of Potential PPP Projects: Support is being provided to the MDAs and ICRC to assist in the development of the PPP pipeline. Extensive consultations with MDAs to identify viable PPP projects have resulted in the refining of a long-list of projects to undergo upstream feasibility analysis of these projects.</th>
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<td></td>
<td>Institutional Accountability: Memorandums of Understanding (MOUs) will be required to be signed between ICRC and the lead MDA on a transaction to clarify roles and responsibilities.</td>
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Furthermore, under Phase I, resources are being made available through ICRC to provide technical assistance to lead MDAs—Ministry of Works and Housing, Ministry of Transportation, and Ministry of Aviation—to prepare these projects properly and efficiently with strong support and ownership from the MDAs.

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<tr>
<th>Financial Closure</th>
<th><strong>Addressing Risk of Financial Closure Failure:</strong> The establishment of a Viability Gap Facility (VGF) and the provision of the Financial Intermediary Loan (FIL) will facilitate access to long-term debt financing and money for upfront capital investments. This is intended to crowd-in private investment and push deals to closure by providing financial resources to fund the PPP transactions on both the public and private sides.</th>
<th>Moderate</th>
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<tr>
<td><strong>PPP Project Contractual Risks:</strong> Transactions fail to meet financial and commercial closure.</td>
<td><strong>Deployment of Enhancement Instruments:</strong> IDA PRGs and MIGA Guarantees will be deployed for transactions to ensure contracts entered between Government and Concessionaire are upheld and payments are made, compliant with the terms of contracts.</td>
<td>Moderate</td>
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<tr>
<td><strong>Regulatory Framework for PPPs:</strong> PPP Regulations are not enacted in a timely manner nor have MDA support.</td>
<td><strong>Defining Operational Procedures:</strong> Important measures have been taken to collaborate with the MDAs to facilitate their active participation and input in the drafting of the PPP Regulations and drafts of amended legislations. These regulations will also detail operational procedures for PPP project preparation, negotiation and ongoing implementation. An MDA-led approach to reforming sector legislation will allow the appropriate MDA to take ownership over drafting new legislation that will improve private sector participation.</td>
<td>Moderate</td>
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<tr>
<th>Overall Risk</th>
<th><strong>Substantial</strong></th>
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<tr>
<td>Rating of risks on a four-point scale – High, Substantial, Moderate, Low – according to the likelihood of occurrence and magnitude of potential adverse impact</td>
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</table>
F. Loan/Credit Conditions and Covenants

93. The following credit conditions and covenants will apply to the project:

Effectiveness Conditions:

- The Subsidiary Agreement has been executed on behalf of the Recipient and the ICRC;
- The Recipient has prepared and adopted, or caused to be prepared and adopted, a Project Implementation Manual, in form and substance satisfactory to the Association;
- The Recipient has appointed, or caused to be appointed, an accountant and an internal auditor for the Project with experience, qualifications and terms of reference satisfactory to the Association; and
- The Recipient has established, or caused to be established, an accounting and financial management system for the Project satisfactory to the Association.

Dated Covenants:

- The Recipient shall, not later than three months after the Effective Date, appoint a monitoring and evaluation specialist for the ICRC PIU, as well as the external auditors for the Project, with qualifications, experience and terms of reference satisfactory to the Association;
- The Recipient shall, not later than six months after the Effective Date, install or cause to be installed a computerized accounting and financial management system for the Project, satisfactory to the Association;
- The Recipient shall, not later than three months after the Effective Date, establish or cause to be established a centralized procurement complaints online database for the Project, satisfactory to the Association;
- The Recipient shall, not later than six months after the Effective Date, establish a procurement filing and tracking system for the Project, satisfactory to the Association.

Other Program-related Covenants:

- The Borrower will maintain a project steering committee and a project implementation unit for the purposes of the project;
- The Borrower will prepare and implement the project in accordance with a project implementation manual satisfactory to the Association;
- The Borrower will prepare annual work plans and budgets containing all eligible project activities and expenditures planned for each fiscal year during project implementation;
- The Borrower will ensure that the project is carried out in accordance with the provisions of the ESMF and the RPF and will, in respect of any PPP transactions prepared under the project, prepare, adopt and disclose satisfactory ESIs, ESMP and/or RAP as and when required under the ESMF and RPF;
- The Borrower will prepare and submit semi-annual progress reports, and carry out a mid-term review on or about 36 months after project effectiveness.

94. In addition to the above conditions, specific Phase II conditions will be detailed in the APL Phase II PAD, but will include:

- Compliance with CBN regulations and OP 8.30;
- Compliance with the provisions of the manuals for project preparation and appraisal and private sector selection;
• Compliance with requirements regarding environmental protection and social safeguards and ensuring the sub-project enterprises comply and implement the same;
• Maintenance of a financial management system and records and accounts adequate to reflect expenditures in respect to the sub-projects, and provision of relevant reports to the World Bank;
• Provision of audited financial statements, which have been audited by independent auditors in line with international audit standards.

95. The project will also permit retroactivity payments up to a total of US$3 million dating back to March 1, 2011 (consistent with OP 6.0). In particular, this to assist the ICRC in financing any existing consultant work, relating to the PPP Pipeline agreed with the World Bank, that has been previously procured in accordance with Bank guidelines and/or activities and approved under the PPP Phase I project workplan to be undertaken in advance of the IDA Board approval and effectiveness of the Program.

IV. APPRAISAL SUMMARY

A. Economic and Financial Analyses:

96. The economic and financial analysis for this APL Program will comprise of two phases. For Phase I, which is a capacity building and technical assistance set of activities, the appraisal is based on institutional and qualitative analysis. Phase II will be based on detailed economic and financial analysis drawn from the Outline Business Case (OBC) work that is currently underway and which will provide the basis for one of the key Phase II triggers (see Annex 4 Appendix 1 for detail on Phase II triggers).

Phase I:

97. Given the capacity building and technical assistance character of activities to be supported under the Phase I, a quantitative economic and financial analysis would not be the appropriate tool to assess their significance. However improved MDA coordination, strengthened institutional capacities within key MDAs and augmented PPP legal and regulatory environment is widely recognized to be essential to any long term sustainable development of a private investment market for infrastructure.

98. The other component of the Phase I – the preparation and transactions advisory work- is similarly not conducive to quantitative analysis. However, it provides the solid economic, financial and safeguards assessment platform on which to generate the quantitative analysis that will be essential in order to proceed with Phase II.

99. The project also involves support to the development of a new budget instrument - the VGF - within the Federal Government. Further details on the appraisal decisions that contributed to the inclusion of this initiative in the project are included in Annex 4.

Phase II:

100. The economic and financial appraisal for Phase II will be based on the OBC work to be undertaken on up to 15 potential PPPs under consideration for support through the project. This includes projects in the roads/bridges, ports, urban water sectors. This analysis will focus on the following project appraisal factors: (i) technical cost estimation (capital, maintenance, operating); (ii) social and environmental impact costs and benefits; and (iii) traffic and revenue projections.

101. Financial appraisal will be carried out to determine which projects can support a tariff and which cannot. The methodology will differentiate fully self-supporting tariff projects from those likely to require subsidy (capital grant and/or availability payment/revenue guarantees) and those likely to be fully
publicly financed. The financial model will evaluate full project life costs, affordability limits, risks and their costs and optimal value-for-money methods of delivery, and include, at minimum, the following inputs: (i) cost of year expenditure; (ii) construction costs; (iii) annual routine maintenance (where relevant); (iv) periodic major maintenance by annual drawdown amount; (v) toll station operating costs (where relevant); (vi) security and safety; (vii) other ancillary operating costs; (viii) tariff revenue income based on proposed tariff structure (or tariff structure options); (ix) other sources of funds such as VGF, debt financing, and concessionaire equity. Based on this analysis, the overall pipeline of potential PPP projects will be aggregated to arrive produce an overall IRR estimate.

B. Technical

102. The technical design of the project has benefited from the considerable Economic and Sector Work (ESW) going back to the 2007 CEM and including the Africa Infrastructure Country Diagnostic work, a series of key PPIAF-funded studies covering institutional and governance, legal and regulatory and project pipeline and infrastructure financing issues. This work has been fundamental in determining the design, not just of the project (and particularly the proposed VGF and FIL instruments), but also the FGN institutional reforms (including in particular the specific design of the ICRCs organization and operation and the role of the Debt Management Office in terms of contingent liability management).

C. Fiduciary

103. Financial Management: The overall financial management risk in the project is substantial. All the implementing entities are relatively new to PPP implementation and IDA financial management and disbursement arrangements. The implementing entities are compliant with the Bank's financial management requirements; and there are no overdue audit reports and interim financial reports from these entities.

- **Phase I**: The ICRC will be the responsible entity for the financial management of Phase I. It is noted that ICRC is newly created and is in the process of setting up its financial management systems. Financial management staff will need to be engaged by the PIU to handle the financial management of the project, supported by the Finance and Accounts Department of ICRC. The existing internal audit unit in ICRC would carry out a risk based audit. All financial management staff will require training and exposure to IDA financial management and disbursement procedures.

- **Phase II FIL**: The CBN, specifically the Financial Systems Department working in collaboration with the Infrastructure Finance Office in Development Finance Department (DFD) of CBN, will be responsible to financially manage the Phase II FIL. The CBN had handled a Bank Assisted Project in 1987 and is presently involved in the Commercial Agricultural Credit Scheme of the Federal Government which also involves on-lending facilities. The PFIs will account and prepare agreed reports and information and forward same to DFD for purposes of disbursements under the FIL. Project activities for the FIL and VGF will be included in the internal audit and reporting arrangements of the Central Bank and Federal Ministry of Finance respectively. Internal audit Units in all PFIs will include the concessionaire funding in their review and reports. Finance Units in each PFI is expected to include professionally qualified and experienced project accountants and internal auditors. ICRC and the PIU will provide oversight and maintain Program implementation and ensure that all required reports and procedures are consolidated through the PIU.

- **Phase II VGF**: The financial management for the VGF will be handled by the Finance and Accounts Department in the FMOF in collaboration with the Budget Office of the Federation.
The PIU and ICRC will ensure overall Program oversight and collaborate with the BOF to ensure that proper accounting and financial management and consolidated reports are submitted accordingly.

104. Formats of unaudited interim financial reports, annual consolidated financial statements and terms of reference for the auditor will be agreed with the borrower. A Designated Account will be opened by ICRC with a commercial bank acceptable to IDA for components 1, 2 and 3 while the DFD in the CBN will open a Designated Account with the Banking and Payment System Department in the CBN for the FIL funds. The Bank’s contribution to the VGF will be paid as reimbursements based on incurred eligible expenditures to the Government’s PPP VGF fund opened with the CBN. ICRC will produce a Project Financial Procedures Manual (FPM) as part of the Project Implementation Manual (PIM) which will incorporate the specific financial management arrangements for all aspects of the Program as well as the chart of accounts.

105. Measures to mitigate financial management risks and strengthen the financial management system include setting clear eligibility criteria for PFIs, setting up of accounting systems as well as appropriate financial management staffing for the PIU within ICRC and proper internal control and governance structures. Detailed internal control framework and risk management strategy will be outlined in the Financial Procedures Manual.

D. Procurement

106. Procurement under Phase I and II of the APL Program will follow the World Bank’s “Guidelines for Procurement under IBRD Loans and IDA Credits,” dated May 2004 and revised in October 2006 through May 2010; and “Guidelines: Selection and Employment of Consultants by World Bank Borrowers,” dated May 2004 and revised in October 2006 through May 2010; and the provisions stipulated in the Program’s legal agreement. The ICRC will be solely responsible for procurement under Phase 1 of the APL Program- components 1-3. The procurement under these components are expected to comprise of: (i) the selection of consultants (Transaction Advisory services, Sector Specialists etc); (ii) Outline Business Case and other preparatory work; (iii) safeguards due diligence work; (iv) training; and (v) the acquisition of ICT-related goods and other goods and equipment that will help MDAs manage and track PPP projects and perform PPP-related activities. Procurement will be carried out by the ICRC in accordance with the same Bank procurement guidelines referred to above. The Procurement rating for this APL Program is substantial.

107. Under Phase II, the following types of procurement will be eligible for World Bank financing and, therefore, applicable to sub-loans provided to the beneficiaries using the Viability Gap Facility (VGF) and Financial Intermediary Loan (FIL) facility: (i) If the concessionaire/entrepreneur to be financed by the Bank through the FIL is selected under ICB procedures acceptable to the World Bank, as further spelled out in paragraph 3.13(a) of the World Bank’s guidelines, then the said concessionaire/entrepreneur may undertake the procurement of goods, works, and services required for the infrastructure facility from eligible sources, using its own procedures which will be in accordance with established private or commercial practices; (ii) If the said concessionaire/entrepreneur has not been selected in the manner set forth under paragraph 3.13(a) above, then the procurement of goods, works, and services required for the infrastructure facility and to be financed by the World Bank will be conducted by the concessionaire/entrepreneur in accordance with the ICB procedures of Section II of the World Bank’s guidelines referred to above; (iii) If the entrepreneur whose Sub-project is to be financed by the Bank through the FIL is a private-sector enterprise or any of the other types of enterprises specified in paragraph 3.12 of the World Bank’s guidelines referred to above, then the entrepreneur may undertake the procurement of goods, works, and services from eligible sources, in accordance with established private or commercial practices. Such commercial practices of the entrepreneur should be compatible
with World Bank procurement principles in order to be deemed acceptable by the World Bank. Even in this case, the purchase of large single items or cases where large quantities of like goods can be group together for bulk purchase, ICB method of procurement will be used.

108. An assessment of the capacity of the ICRC to implement procurement actions for the project was carried out in accordance with Procurement Services Policy Group (OCSPR) guidelines dated August 11, 1998. The following aspects were reviewed: legal aspects; procurement cycle management; organization and functions; support and control systems; staffing; record keeping; general procurement environment etc. The detailed assessment is in the project files. The following paragraphs summarize the key issues relating to procurement.

109. The ICRC was established by an Act approved in 2005. The agency does not have any history of implementing World Bank-financed projects. However, some of the agency staff has relevant experience in PPP project implementation. The review found the need to strengthen ICRC’s procurement capacity which the agency has addressed by hiring an experienced Senior Procurement Specialist (SPS) who has gained experience on PPP procurement process from the recently closed Privatization Support Project. The SPS will be supported by ICRC’s procurement unit which is also adequately staffed. As part of its capacity building initiatives under component 1 of the APL, the ICRC will organize, on a regular basis during project implementation, training in World Bank procurement procedures for its officers and relevant staff of the agency. ICRC is developing an appropriate Project Implementation Manual which includes a Procurement Manual that will be review and cleared by the World Bank before its finalization. The procurement environment of ICRC is conducive and assessed as satisfactory. This is because the agency is staffed with various specialists with prior private sector work experience. The agency activities are also overseen by a Board with most membership from the private sector and civil society, resulting in less political interference in ICRC operations.

110. It is also clear that a legal framework will need to be further developed to address gaps and other variances between the Procurement Act and the PPP Policy. Given the time and difficulty involved in passing legislation in Nigeria, and particularly also as the Procurement Act has only recently been amended after a protracted process, further amending the 2007 Public Procurement Act to provide that PPP procurement was considered not a viable option. The PPP Regulations currently being drafted are aimed at resolving, or at least reducing, this procurement challenge. ICRC is expressly given the power under section 34 of its Act to issue regulations on PPPs, subject to Presidential approval, and guidelines. This would mean, however, that for any PPP transaction some aspects of the procurement process (such as engagement of advisors, purchase of goods and services, etc) may continue to be governed by the current Procurement Regulations while other aspects would be governed by new ICRC regulations. These PPP Regulations will, to the extent possible through secondary legislation, address a number of these outstanding issues and provide for a consistent and transparent PPP procurement process built on MDA collaboration and consensus prior to any financing of transactions in Phase II. IDA review and clearance of the PPP Regulations during Phase I implementation period will ensure that there are no inconsistencies between the provisions of the Public Procurement Regulations and that of the PPP Regulations. Assurance was given by at negotiation by Government that the PPP Regulations will not be inconsistent with the Public Procurement Regulations.

111. “Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants”, dated October 15, 2006 and updated January 2011 shall apply to the project.
E. Social

112. The impact of the APL Phase I is anticipated to be positive, with improvements in the quality, availability and reliability of public social services. Phase I of the APL will not fund activities that involve any large scale land acquisition or restriction of access to sources of livelihoods. However, Phase II of the APL may include projects with potential for major land acquisition. The Resettlement Policy Framework (RPF) prepared by the client and disclosed on November 3, 2009 outlines the processes and procedures for addressing land acquisition and involuntary resettlement according to the World Bank’s safeguards policy on involuntary resettlement. During preparation, ICRC held consultations in Lagos, Abuja, and Kano with various stakeholders, including representatives of civil society organizations, private sector, and the Nigerian labor congress to discuss key issues in the ESMF and RPF. Additional ongoing consultations will take place during implementation and the feedback provided will be used to facilitate dialogue with government and stakeholders and address such issues as environmental, social, and economic impact. The focus of social safeguards work will include environmental and social impact assessments and management plans as parts of the ESMF. Nevertheless, the PPP may have some adverse social impacts, such as labor issues, population influx and damage to physical cultural property. The ESMF provides guidelines on how these issues would be handled, in line with World Bank standards. Some specific considerations are as follows:

- **Labor Issues:** The PPP Program may have some impact on labor unions, including possible staff layoffs if certain public enterprises are privatized. While more efficient and economically viable infrastructure facilities and services will generally support increased and sustained employment there is the possibility that a few of the PPP transactions may involve temporary hiring and disengagement of workers at various stages of the project implementation, as well as conflicts between the project owner or contractor and local communities. To mitigate the potential social impacts, the ICRC has been engaged with the trade unions, including the Nigeria Labor Congress.

- **Labor Influx:** The construction phase of many projects requires a relatively large number of construction workers. Much more than urban areas, rural and peri urban areas typically feel the effects of the resulting influx of people, whose population comprises project workers and job seekers. Others are itinerant traders. Thus, while there is often increased commerce around project areas, some types of infrastructure (e.g., housing, transport, health care and others) become stretched as these social services are often inadequate for the pre-project population and become even more stretched as a result of project-associated influx. Additionally, social pathologies such as crime, prostitution, and erosion of traditional authority are well known risks associated with influx and so are health risks from increased communicable and non-communicable diseases and HIV/AIDS. Infractions on cultural norms and beliefs, and changes in the micro-economic structure leading to increased prices of general goods and services in affected areas have also been recorded. In addition to the guidelines in the ESMF, the EIAs and ESMPS that would be prepared would include section dealing with influx of labor and HIV/AIDS intervention.

- **Loss of Cultural Resources:** Physical cultural resources are important as sources of valuable scientific and historical information, as assets for economic and social development, and as integral parts of a people’s cultural identity and practices (World Bank, 2006). Examples of cultural resources include traditional art, burial grounds, sacred forest and waters and totems (the latter include animals, such as the python, iguana and leopard). The ESMF outlines procedures to be followed if the World Bank policy on physical cultural resources is triggered during Phase II of the APL. The main thrust of social safeguards work will be to include social impact management plans as parts of the ESMF.
• **Involuntary Resettlement:** Phase I of the APL is not expected to involve land acquisition. However, as indicated above, Phase II includes candidate projects with major land acquisition potential. At the time of project preparation it was not possible to establish the location and extent of involuntary resettlement that may be involved in the PPP program. Consequently, a resettlement policy framework (RPF) was prepared and disclosed by the borrower. The RPF contains details of the principles and objectives governing the preparation and implementation of resettlement action plans (RAPs), including review, approval and disclosure of RAPs, screening for Involuntary Resettlement, establishment of baseline and socioeconomic data, and the likely categories of project affected persons. Compensation arrangements for those being involuntarily resettled, including possibilities for land exchange, are outlined in the RPF. In particular, the RPF also contains a mechanism for resolving disputes that may arise.

• **Grievance Redress Mechanism:** The grievance redress procedure provides a mechanism to mediate conflict and cut down on lengthy litigation which often causes delay in infrastructure projects. It will also provide people with concerns about project impacts a public forum to raise their objections and, through conflict resolution, ensure issues are adequately addressed. The grievance procedure adopted for the project will not entail complex processes or procedures; administered as far as possible at the local and State levels to facilitate access; be flexible and open to various proofs, taking account of the fact that many project-affected people are illiterate; and, will entail timely, and fair resolutions of their grievances.

113. The PIU will include an environmental and social safeguards specialist with specific responsibilities to oversee all safeguards work to be undertaken through the project in support of PPP transactions.

**F. Environment**

114. The project is a Category A for safeguards because, though many of the transaction in the overall program are likely to have moderate environmental and social impacts, some of the candidate projects in the future may have significant adverse environmental impacts that are sensitive, diverse, cumulative, irreversible or unprecedented. During project preparation, the exact locations and potential impacts have not yet been determined in sufficient detail. The FGN thus prepared and disclosed on November 3, 2009 an Environmental and Social Management Framework (ESMF) and the RPF (cited above). The ESMF outlines the process and procedure to be followed when a PPP transaction has the potential to trigger any of the World Bank safeguard policies. It includes details of the existing environmental laws and regulatory framework in the country; World Bank safeguard policies, analysis of environmental and social impacts including alternatives; institutional arrangements for implementing the ESMF, capacity building needs; and public consultation carried out during project preparation. In addition, the ESMF contains a detailed checklist for screening all potential PPP transactions for their potential Environmental and Social impacts to determine: (i) Environmental Assessment (EA) category; (ii) applicable World Bank environmental and social safeguards policy triggers; (iii) potential for environmental and social impacts liability; (iv) cultural or other sensitivities; (v) relevant stakeholders; and (vi) the nature and extent of engagement for each stakeholder category. Finally, the ESMF contains an annex with TORs for conducting an ESIA if and when required.

115. The project includes support for the preparation of PPP transactions, some of which may be co-financed or financed by the Bank as part of Phase II of the APL. This includes the preparation of Outline Business Cases (OBCs), which will include initial assessments of safeguards risks and mitigation, based on the ESMF and RPF. In some cases, the Borrower may initiate the preparation of detailed safeguards assessments and plans before the OBCs are finalized. The project ESMF and RPF will guide the preparation of environmental and social impact assessments (ESIAs)/environmental and social
management plans (ESMPs), resettlement action plans (RAPs), and/or other safeguards instruments that will be prepared for these PPP transactions, some of which will be financed by the Bank Phase II of the APL. Transactions not financed by the Bank, whether in whole or in part, will not fall within the Phase II APL Program description.

116. For those transactions financed by the Bank, the safeguards specialist at the ICRC PIU will then submit the report of the screening exercise with its recommendations for clearance to the World Bank to proceed with the detailed Environmental and Social Management Plans (ESMP) or Environmental and Social Impact Assessment (ESIA), Resettlement Action Plan (RAP), and any other safeguards instrument. Some specific considerations for Bank-financed transactions are as follows:

- **Environmental and Social Management Plans:** The Program and all sub-projects will include the preparation of ESMPs to address health, safety, and environmental regulatory compliance objectives, institutional responsibilities (e.g., World Bank), and other related commitments. During the proposal stage, each intending concessionaire will as part of its proposal, submit an overview of how environmental issues of the project will be addressed on a continuous basis. The plans will also specify standards proposed for the sub-project to ensure environmental sustainability. Standards and plans proposed to address social issues including labor relations will be particularly important. This could include, inter alia, structures to handle retrenchment, special packages for workers that have attained retirement age, retraining of staff to acquire the needed skills.

- **Capacity building and training requirements:** The capacity of the Borrower to carry out its design, planning, approval, permitting, monitoring and implementation roles will, to a large extent, determine the success and sustainability of the PPP program in addressing environmental and social issues. The first step in pursuing capacity building will be to identify the capacity building needs of the various stakeholders. Given the nature of the environmental and social management requirements and provisions outlined in this ESMF, competencies and capacity building will be required in the following areas: (i) Environmental Impact Assessment Process, (ii) Environmental Due Diligence, and (iii) Monitoring and Evaluation.

- **ESIAs/Strategic Environmental Assessments (SEAs):** The PPP Program is financing Environmental Impact Assessments (EIAs) for all prospective PPP projects financed by the Bank and has set aside funds for Strategic Environment Assessments (SEAs) of specific sectors in furtherance of a broader strategic dialogue on environmental and social impacts, as well as safeguards compliance. Given existing sectoral environmental work done to date in the road sector, it is anticipated that the SEAs will focus on ports, roads, railways and urban water. The Program will also be supporting the EIA unit in the Federal Ministry of Environment (FMEnv) to strengthen its capacity, particularly with respect to monitoring. This will complement the capacity-building being provided to the Ministry for upstream assessment work through the recently approved Nigeria Electricity and Gas Improvement Project (NEGIP – P106172).

117. Terms of Reference (TORs) for the SEAs for specific sub-sectors will be prepared and discussed in consultations involving a broad range of stakeholders from government, legislative assemblies, private sector, NGOs and civil society organizations, academia, and unions. ICRC, in cooperation with other MDAs, will prepare the SEAs after project approval, based on the agreed TORs. The principal objectives of the SEAs will be to help the FGN examine the implementation of government strategies in the transport sectors with a view to considering key environmental and social impacts, as potential challenges and opportunities are identified in rehabilitating and expanding key transportation networks. The SEA will also consider the policy, legal, regulatory and institutional adjustments required to improve social and environmental management. The SEA will take into account not only the environmental and social aspect
directly linked to the development of the sector, but also the broader issues induced by such development, such as population movement, health and safety, increased local and regional socio-economic inequalities and others. Analysis will draw on an assessment of baseline conditions in the select sub-sector and data on transportation links. The SEA will include policy analysis, assessment of risks and opportunities, and examination of cumulative impact, as well as mitigation of negative environmental and social impacts. The SEAs will include scoping to: define the boundaries of the study area; analyse opportunities and risks for environment, social and institutional impacts in the sector; analyse alternatives and develop optimal transport routes. It will also identify: key stakeholders; spatial extension of different impacts; the main environmental and social issues and associated management practices and; critical issues for focus and the level of detail required for the chosen sub-sector SEA.

118. Public consultations are a critical part of the SEA process. The first scoping consultation will involve relevant stakeholders who stand to gain/lose from the changes being pursued. Subsequent consultations will be held in different parts of the country where it was agreed there are opportunities for further development of the sector.

119. Stakeholder Engagement: In tandem with World Bank safeguards policy 4.01 governing EA Category A projects, the ICRC recognizes that stakeholder involvement is an important element of the PPP Program and the EA process and that stakeholder identification and analysis at an early stage of a project is critical in the assessment of interests, concerns, relationships, assumptions, their level of influence and the ways in which they affect project risks. To this end, the preparation of the ESMF and RPF drew on input by three stakeholder consultations in Lagos, Abuja and Kano. One of the key agreements reached out of these consultations was the establishment of a demand-based monitoring arrangement involving key national and local civil society groups likely to be impacted by prospective PPP projects. This consultation which started early during the project preparation phase will continue during project implementation.

G. Safeguard Policies

120. The table below identifies the different safeguard policies that could be triggered by this APL Program, covering both Phase I and II:

<table>
<thead>
<tr>
<th>Safeguard Policies Triggered by the Project</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Environmental Assessment (OP/BP 4.01)</td>
<td>[x]</td>
<td></td>
</tr>
<tr>
<td>Natural Habitats (OP/BP 4.04)</td>
<td></td>
<td>[x]</td>
</tr>
<tr>
<td>Pest Management (OP 4.09)</td>
<td></td>
<td>[x]</td>
</tr>
<tr>
<td>Physical Cultural Resources (OP/BP 4.11)</td>
<td></td>
<td>[x]</td>
</tr>
<tr>
<td>Involuntary Resettlement (OP/BP 4.12)</td>
<td>[x]</td>
<td></td>
</tr>
<tr>
<td>Indigenous Peoples (OP/BP 4.10)</td>
<td></td>
<td>[x]</td>
</tr>
<tr>
<td>Forests (OP/BP 4.36)</td>
<td></td>
<td>[x]</td>
</tr>
<tr>
<td>Safety of Dams (OP/BP 4.37)</td>
<td></td>
<td>[x]</td>
</tr>
<tr>
<td>Projects in Disputed Areas (OP/BP 7.60)*</td>
<td></td>
<td>[x]</td>
</tr>
<tr>
<td>Projects on International Waterways (OP/BP 7.50)</td>
<td></td>
<td>[x]</td>
</tr>
</tbody>
</table>

121. Environmental Assessment (OP/BP 4.01): Safeguards policy OP 4.01 has been triggered, as components of the PPP include civil works including the rehabilitation and refurbishment of existing infrastructure, as well as the construction of new infrastructure. The exact locations and impacts of the sub-projects have not been identified, though the pipeline includes possible first movers for Phase II. The

* By supporting the proposed project, the Bank does not intend to prejudice the final determination of the parties' claims on the disputed areas.
ESMF was prepared and disclosed in November 2009 to addresses the mitigation of adverse impacts. The ESMF also includes and indicative budget for such mitigation activities.

122.  **Involuntary Resettlement (OP/BP 4.12):** Many of the transactions in the PPP program could involve minimal or moderate land acquisition and or restriction of access to usual means of livelihood as most of the transactions will largely be rehabilitation of existing infrastructure. However, some of the transactions may involve significant land acquisition. As part of safeguards due diligence, an RPF was prepared and disclosed in November 2009.

123.  During Phase II, other safeguards policies may be triggered, such as Natural Habitats (OP/BP 4.04), Pest Management (OP/BP 4.09), Physical Cultural Resources (OP/BP 4.11), Safety of Dams (OP/BP 4.37) and Projects on International Waterways (OP/BP 7.50).

**H. Policy Exceptions and Readiness**

124.  There are no policy exceptions. Readiness for implementation is on track. In addition to the implementing arrangements that have been put in place on the FGN side, ongoing work is being done to fulfill all effectiveness conditions before the deadline. A draft of the Project Implementation Manual has been drafted and is being reviewed in collaboration with ICRC and sector specialists; the core PIU team is in the process of being recruited including the finalization of the contract for the qualified accountant; ICRC has also initiated the work for establishing a computerized accounting and financial management system for the Program as well as proper procurement filing and tacking system.
Annex 1: Program Background

NIGERIA: Public/Private Partnership Program

1. The National PPP Policy aims to reduce Nigeria’s infrastructure deficit by leveraging private sector investment through public-private partnerships. What follows below is an explanation of the key country and sector considerations that have factored into the structuring of this project in collaboration with the Federal Government of Nigeria.

A. Improved Macroeconomic Performance Critical for Private Sector Investment

2. Nigeria’s improved macroeconomic environment has had a positive effect on the growth of the private sector over the last decade. GDP growth remained steady, inflation kept at manageable levels and non-oil growth increased its contribution of overall GDP growth. Following on from its reform agenda that dates back to 1999, the non-oil economy grew by 9 percent per year in 2003-07, in contrast to 3.5 percent per year between 1997 and 2000 (see Table 1). Growth was driven largely by the agriculture, wholesale and retail sectors, which dominate the economy, with particularly strong growth in general commerce and telecommunications. These macroeconomic indicators can be seen in Table 1 below.

<table>
<thead>
<tr>
<th>Table 1: Key Economic Indicators, 1997-2008</th>
<th>Average annual percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>GDP growth*</td>
<td>2.9</td>
</tr>
<tr>
<td>GDP non-oil growth</td>
<td>3.5</td>
</tr>
<tr>
<td>Agriculture</td>
<td>4.2</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>0.1</td>
</tr>
<tr>
<td>Services</td>
<td>3.2</td>
</tr>
<tr>
<td>Inflation</td>
<td>8.0</td>
</tr>
</tbody>
</table>

*A statistical break in national accounts distorts growth rates for 2002; 2001 and 2002 data are therefore excluded from this table. 2008 is estimate.

Source: IMF.

3. The associated effects of this macroeconomic stability on the microeconomic investment climate boded well for the private sector. Foreign direct investment has increased from US$2.5 billion in 2002 to US$4.7 billion in 2008. Similarly, claims on the private sector as a percent of GDP has also been on the rise, jumping from 13.1 percent in 2002 to 28.9 percent in 2008. These figures show the increased demand for private sector resources to invest in various sectors with great growth potential such as manufacturing, construction, wholesale/retail, meat and poultry, oil palm and cocoa. With steadier economic performance and the outlook of continued good fiscal management, private sector interest in Nigeria markets has been growing. To assist in maintaining this momentum, the FGN has simultaneously pursued ongoing sector reforms that are aimed at opening up the economy to crowd-in more private sector investment.

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25 Shares of agriculture and services in GDP are 40 percent and 30 percent, respectively. See Nigeria: Employment and Growth Study. November 2009.

26 IMF.
B. Sector Reform

4. The Federal Government of Nigeria has displayed strong adherence to sectoral reforms ranging from finance to infrastructure. The Nigerian reform effort has sought to open its different sectors to private investment. The first sectors approached were the telecoms, ports and power sectors. In addition, new efforts have been made to foster more commercial-based MSME lending and commercial microfinance development. The results of these activities are visible through the World Bank's Privatization Support (PSP) and Micro, Small and Medium Enterprise Project (MSME) projects. The PSP program provided a range of capacity building, technical assistance, and support for reform activities to key MDAs through the Bureau of Public Enterprises (BPE). Early activity under PSP supported the privatization of state-owned enterprises (SOEs) in the real and banking sectors. However, as the project developed, the FGN facilitated private sector investment in key core infrastructure sectors through public-private partnerships. In sectors like telecommunications and ports, FGN encouraged private delivery of public service delivery through long-term concessions. This experience, along with the ongoing reform agenda, is the background against which this PPP Program is set.

5. Private sector investment in infrastructure has also been identified as a key priority in moving Nigeria to the status of a top 20 economy by the year 2020. The current Administration, early in its tenure after the 2007 elections, articulated its Seven Point Agenda which outlined the seven key drivers for Nigerian development. Box 1 details these seven priority areas. Atop this list is the provision of critical infrastructure as a means to catalyze economic growth with the transport sector as a high priority for PPP investment.

6. Over the past two years, FGN has taken serious steps to pursue its infrastructure targets set under the Seven Point Agenda. With specific regard to PPPs, the FGN inaugurated the Infrastructure Concession Regulatory Commission in late 2008 to lead the PPP Program in Nigeria. As a first step towards establishing the proper legal and regulatory environment to attract private sector investors, the Federal Executive Council approved the National Policy on Public Private Partnerships, sponsored by ICRC, after stakeholder consultations and technical input from, inter alia, the World Bank and DfID. This Policy sets forth the basic methods of engaging in a PPP transactions at the federal level. It is modeled according to international best practices and includes steps for the upstream due diligence to determine the viability of a project as a PPP transaction.
Box 1: The Government’s Seven Point Agenda

- **Critical Infrastructure** - The critical infrastructure includes power, transportation, national gas distribution and telecommunications. In power: develop an integrated, lowest cost, expansion plan for the development of the Nigerian electricity industry in the medium and long-term; upgrade and reinforce distribution networks; develop appropriate gas policy to encourage production and supply of gas for electricity generation; develop gas production and supply infrastructure; and develop a policy on IPPs. In transport: provide platforms for PPP, with capacity building in Ministries and agencies. In roads, explore mechanisms to ensure funding for maintenance investments. In railways, revive the system and involve the private sector. In aviation, the priority is to establish the National Civil Aviation Authority as the cornerstone of reform, including a recertification project.

- **The Niger Delta** - The Niger Delta region, more than any other region, faces a number of physical and geographical challenges including environmental degradation, pollution, oil spills and human, economic, social and political problems. The 7-Point Agenda aims to address the existing issues in the Niger Delta region through the implementation of the existing Master Plan and appropriate funding of the Niger Delta Development. The implementation of the plan will also result in improving the living standards of the people, as well as improved governance at the grassroots level.

- **Food Security** - Going forward, the emphasis of this government is on the production and development of the agricultural sector. Improvements in this sector will include the use of modern technology in agricultural development and financial injection into research which together will lead to an increase in yield and production. The reforms in the agricultural sector will lead to massive domestic and commercial outputs and the technological knowledge transfer to local farmers.

- **Human Capital** - The provision of health, education and social protection is core to empowering the population to achieve sustainable national development under the 7-Point Agenda. In education: improve the efficiency and effectiveness of funds in MDG and Universal Basic Education program implementation, particularly at the state level; design and implement education reforms at the state level based on Federal education reforms. In health: define and coordinate health care responsibilities at the federal, state and local government levels; revitalize the primary health care system; utilize potential of PPP; increase access to Anti-retroviral drugs; reduce infant and child mortality rates; achieve 100 percent success rate in child immunization; and provide Nigerians with easy access to health insurance.

- **Land Tenure Changes and Home Ownership** - Nigeria ranks as the most populous country in Africa, with approximately 64 percent residing in the rural areas. The pressure of rural-urban migration is currently impacting on the social amenities and infrastructure in the major metropolitan areas and as such urgent action is required to provide sufficient affordable housing. The 7-Point Agenda proposes changes in the land laws.

- **National Security** - Addressing the country’s security is a high priority of the present administration. In this regard, the government plans to create a Central Directorate of Intelligence and also encourage more neighborhood policing to curb the crime rate. The general welfare and conditions of service of the men and officers of the Police Force will be improved as a morale boost to discourage corruption.

- **Wealth Creation** - To reduce the level of poverty, the government is determined to create more wealth by creating an enabling environment for economic growth and increase in the personal incomes of individual citizens. The government will concentrate on areas such as skills development for productivity and wealth creation, facilitating access to credit for small to medium sized businesses and the self employed.

*Source: Federal Ministry of Information and Communications.*
C. Nigeria’s Infrastructure Deficit

7. Nigeria’s strong political support for pursuing PPPs with the ongoing sector reforms are crucial elements to solving Nigeria’s infrastructure deficit. The Federal Ministry of Finance (FMOF) has estimated that the infrastructure gap confronting Nigeria requires capital investments in the order, conservatively, of US$100 to US$111 billion, and this does not include the subsequent maintenance and recurrent costs. Such a deficit dwarfs Nigeria’s current expenditure on infrastructure. Nigeria is currently investing around 7 percent of GDP on infrastructure. This figure includes both public and private investment sources. This is above the average for Sub-Saharan Africa, but well below some of the countries on the continent (e.g.: Mozambique with 12 percent of GDP) or when compared to certain non-African countries (notably China with 14 percent of GDP).

8. While private investment in core infrastructure has improved over the past decade it is still low and concentrated in few sectors. Recent infrastructure investment - and most particularly from the private sector - is currently overwhelming skewed to the telecommunications sector. Estimates provided by the Nigeria Communications Commission (NCC) and the Bureau of Public Enterprises (BPE) indicate that around N 97 billion (about US$650 million) have been grossed from the sale of state-owned enterprises and an additional N 90 million (about US$600,000) of revenue has been received from the proceeds from private companies payments to the FGN for lease and rent arrangements of core infrastructure assets.27 In part, this low investment is due to the shallow market for infrastructure finance.

D. Infrastructure Finance in Nigeria

9. Core infrastructure project needs can be visualized as a layered pyramid (as shown in Figure 1 below). Each level of the pyramid represents the relative scale of the infrastructure project and provides a summary of the type of financing most often associated with each respective project size. At the top of the pyramid there are a small number of mega-projects projects of national or international scale; in the middle layers there are some large scale projects of regional or national scale as well as a substantial numbers of medium-sized projects; and at the base there are a very large number of small projects. One current challenge in Nigeria in developing an infrastructure market finance system is to design ways that sponsors of projects can prudently use market finance to address the needs at each size range and in each basic sector. Central to achieving this objective is the ability to identify financial institutions that have the capabilities and appetite to provide financing appropriate for each project.

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27 These figures reflect data provided to the World Bank by FGN in December 2009 for the implementation completion report (ICR) of the Privatization Support Project (PSP). Note these estimates mostly include proceeds and revenue from sale figures from the ports and IT sectors.
10. Multi-national and large domestic commercial banks, investment banks, IFIs, and large international and domestic debt and equity investment fund/facilities are likely to have the asset bases and expertise to play a leading and/or supporting role in project finance for mega- and large-scale projects at the national or transnational scale. For small- and medium-scale projects (local and regional), a different mix of institutions is likely to be appropriate, including domestic commercial and investment banks, domestic equity and debt funds and facilities, and pooled lending facilities. Very small projects at the neighborhood or village scale are often those which can be planned and executed most expeditiously through still another range of institutions, including pooled lending facilities, small and medium sized enterprise equity and debt investors, and micro-finance institutions.

11. Reasonably priced, locally denominated, and long-term available capital is at the heart of a vibrant project finance market for core infrastructure developed and financed as public/private, or via purely private financing. Sources of capital meeting such criteria are typically found in local markets, but may also be found in international equity and debt markets. This is particularly true where cost-efficient, mid- to long-term foreign exchange hedging is available. For emerging and developing economies, the international financial institutions and bilateral donor assistance can be tapped for additional sources of financing. The Nigerian experience to date in drawing on these financial sources remains limited. Nigerian infrastructure investment is still overwhelming through traditional public procurement, even in those sectors and projects that would be suitable for PPP approaches.28

12. Private appetite for infrastructure investment is low due to short tenors for finance and high cost of issuance and trading in the Nigerian equity market.29 Bond markets, which offer the principal local source of long-term financing for public infrastructure, are limited. The federal bond market, while growing and vibrant, has only become active in the past decade. While this does include a relatively significant and increasingly traded longer-term bond market (ten and twenty years) amounting to almost Naira 500 billion (secondary market activity on these bonds is valued at well in excess of N 2000 billion), it remains a relatively thin and still somewhat volatile market. However, this is the length of yield curve

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28 The 2009 Budget had an estimated Naira 2.98 trillion on core infrastructure. The 2010 Budget has an amount of Naira 4.1 trillion. But beyond the allocation, there have been significant obstacles to efficient allocation and disbursement of these funds. Data accessed January 26, 2010. http://www.infrastructureafrica.org/aicd/tools/data
that Nigeria must establish in order to develop a domestic market for PPP financing. At the state (sub-national) level, the bond market is even more embryonic. This market amounts to the occasional issues from certain of the 36 states that, with one exception, have not gone beyond a seven year maturity.

13. The corporate bond market is even smaller. The cost of issue and, until the recent decision to provide a holiday on the tax treatment vis-à-vis government bonds (which are not taxed), represented significant discouragements to the use of corporate bonds to finance private investment in infrastructure. The thinness of these markets in turn limits the potential for institutional investors such as pension and insurance funds to include infrastructure more significantly in their investment portfolios. An additional issue is the limited capacity of financial institutions to undertake project origination and finance due diligence - this is in short supply in the commercial banking sector in Nigeria, and reinforces their tendency to invest in less risky and simpler government paper and shorter-term investment options.

14. Bond markets are traditionally reliable sources of long-term financing for infrastructure investments. With stronger financial management systems in place both federal and state governments have increased bond issuances significantly since 2003. Domestic government debt increased by 61 percent from 2003 (N1.330 billion) to September 2007 (N 2.147 billion) as a result of the FGN bonds issued by the Debt Management Office (DMO). Available government securities also related to infrastructure financing include treasury FGN development stocks, FGN bonds (with maturities between 2 and 20 years) and Special Purpose FGN bonds. These instruments are primarily held by intermediaries (i.e. limited number of retail investors) with banks holding roughly 50 percent of the debt stock, the Central Bank of Nigeria (CBN) holding about 25 percent and the rest held by institutional and foreign investors. Trading (principally OTC trading) is also mostly concentrated within a professional market, with 79 percent of primary dealer secondary market activity carried out with other primary dealers, 16 percent with domestic clients, and 5 percent with foreign clients in 2007.

15. On the sub-national level, Nigerian States are also looking to their own bond issues for sources of infrastructure financing. Currently, state debt is required to be back-stopped by an irrevocable first lien pledge of oil revenue sharing allocations from the FGN. Until the recent successful launch of Lagos State’s shelf registration issuance program and Niger, Bayelsa and Benue State’s state bonds in 2010, state government bond issuances had been in decline, with only two issues still outstanding. Eight states issued ten bonds from 2000 through 2008, including Kebbi, Cross River, Akwa Ibom, Ekiti (two tranches), Lagos (two issues), Yobe, Delta and Edo (note there were no state issues during 1993–2000). The proceeds of these issuances have been used to finance various infrastructure projects. The issues range in maturity from three to seven years and, with the exception of Lagos state, offer a fixed coupon ranging from 14 percent to 24.5 percent. Secondary market trading in state government bonds is reportedly limited. Prior to the 2009 Lagos State issuance’s closing, the Nigerian state bond issuance experience has been tenuous yet no defaults have yet to be recorded. Table 2– presents a summary of sub-national bond issuances since 2000.

30 State bonds are priced with a spread over the FGN bond rate.

16. The Nigerian corporate bond market has actually shrunk substantially, declining from 40 corporate debt issues from 1990 to 2002 to only 12 issues between 1999 and 2007 (face value of about US$178 million), of which only four remain outstanding. While demand is high for corporate debt among institutional investors seeking to diversify their fixed income portfolios away from nearly exclusive reliance on FGN bonds, possible corporate issuers view the bond market as unattractive. As with the equities market, the high fees (particularly when including underwriting fees) levied by regulators and intermediaries, the long approval time for an issue (four months for a bond issue as compared to a few weeks for a bank loan), the aforementioned previous tax treatment of corporate bonds and disclosure rules that are similar to the requirements for equities make corporate bonds an inferior financing option compared to bank loans. |
17. The key financial market constraint is therefore the void of locally denominated longer-term financing at reasonable rates and is necessary for private equity investors to leverage their own investments in projects with debt that is well protected from foreign exchange risk. Infrastructure financing is also hindered by the lack of access to other key sources of long-term finance such as pension funds, insurance funds, and mutual funds. Whereas in developed markets these funds provide steady sources of long-term financing, in Nigeria they are greatly limited by both the number of contributors and the regulatory environment in which they must function.

18. The above financial market and institutional factors all play their part in determining the price, quality and volume of financing that is made available from the private sector for infrastructure development. But a key point must not be lost – to a significant extent these are symptoms not causes. They reflect some of the deeper core constraints impacting the PPP market in Nigeria – namely the evolving policy, legal and institutional environment within which this market is struggling to develop. Additionally, building a strong financial market for infrastructure requires a steady deal flow of quality projects. Experienced private investors want to devote human capital and time to projects that are well designed, make sense in the context of the larger national infrastructure development plan, and have been developed with the assistance of top quality advisors. The government, however, currently lacks the technical and institutional capacity to develop a bankable project pipeline. A coherent project pipeline and project development process will increase the appetite for private investment.

19. A further indication of this fact is the extent to which potential private sector sponsors seek guarantees. PPPs entail a set of contractual agreements between the government and the private sector sponsor. These agreements will entail a range of commitments such as government tariff policies, land access rights, issuance of licenses, compliance with off-take agreements, terms of payment if the government arbitrarily terminates the agreement and capacity to pay where availability/unitary payments are involved. Where the private sector has doubts about the policy, legal and operational environment for PPPs and government capacity to honor the contractual obligations, they will often seek a third party guarantee. In the case of a sub-national (e.g. State) PPP this can be from the sovereign government. In the case of the sovereign government this can be from international institutions which provide political guarantee products. The extent to which these guarantees are forthcoming is also dependant on the risk considerations of those providing these credits. International Financial Institutions are not going to extend guarantees if there is sufficient probability that they will be drawn down. And the Federal Government will not want to extend guarantees to sub-sovereign parties where the same risk is perceived. What then can Nigeria to do to address these fundamental and symptomatic constraints to infrastructure financing? Three inter-dependent areas of action present themselves – relating to enabling environment, public sector funding and financial sector innovation and deepening.

E. Enabling Legal and Regulatory Environment

20. In line with the FGN’s efforts to address key weaknesses in the PPP enabling environment beyond the financial constraints, an analysis of the existing legal and regulatory legislation relevant to PPPs highlighted key areas that must be addressed to facilitate the growth of the PPP market in Nigeria. The findings have contributed to a Legal Implementation Plan that will guide the ongoing legal, regulatory and fiduciary capacity building and technical assistance provided to the FGN under component 2 of this project.

32 Such as the World Bank’s Partial Risk Guarantee (PRG), MIGA’s Political Risk Insurance and IFC’s guarantee products.
The Infrastructure Concession Regulatory Commission Act 2005 (ICRC Act):

21. The FGN enacted the ICRC Act in 2005 to provide the legal framework for Nigeria’s PPP Program. The ICRC Act has two distinct subject matters set out in Part I and Part II. Part I provides that Federal Government entities can enter into agreements with the private sector for the provision of infrastructure. Part II establishes the ICRC Commission and provides that its functions are to: (a) take custody of every concession agreement made under the ICRC Act and monitor compliance with the terms and conditions of such agreement; (b) ensure efficient execution of any concession agreement or contract entered into by the government; (c) ensure compliance with the Act; and (d) perform such other duties as may be directed by the President.

22. The ICRC Act is the closest legal instrument that Nigeria has to a comprehensive infrastructure law. However, as the PPP Policy recognizes, there are parts of the ICRC Act that would benefit from further clarification and detail. Gaps remain in the Nigeria legal framework that may impede the new PPP regime. Some of the key are the following:

- The Act gives MDAs power to enter into PPP agreements, following approval of the FEC, without any mention or consideration of the other entities of government that may be impacted by such agreements or other applicable legislation. There is no mention, for instance, of the need to take into account the impact of proposed PPP transactions on FGN finances;
- The Act does not provide for the ownership of infrastructure assets by the private sector, nor does it provide for private sector operators to collect fees from the general public for the use of infrastructure assets. Nor does the Act provide for the possible acquisition of land;
- The Act is not clear regarding the approval process for PPP projects and, in particular, the granting of a concession;
- The powers of the Commission are relatively weak and are limited to taking custody of already signed agreements and monitoring them. There is no specified role for the Commission in the evaluation/tendering process for PPP projects and no mention of the relationship and coordination between the Commission and other agencies that may have a role in monitoring such contracts (e.g. MDAs, FMOF, economic/sector regulators);
- There lacks reference to the scale of projects to be considered for private sector participation;
- The Act does not provide a mechanism for dealing with unsolicited proposals;
- There is an absence of provisions for a fair, efficient appeal process for illegal awards or aggrieved parties;
- The Act makes no mention of a proper audit/review of processes and outcomes or for the need for proper public financial management.

23. The functions of the Commission are also limited in scope.

- The Commission’s role is limited to monitoring and ensuring compliance of post-transaction activities;
- The ICRC Act does not refer to the role of the Commission as it relates to evaluating or approving proposals, and makes no reference to processes for preparing or analyzing projects or for deciding which projects should be prioritized by federal agencies;
- The word ‘Regulatory’ in the title of the Act and in the title of the Commission is misleading as the Commission does not have any powers of industry regulation and is not intended to have such powers; and
- There are no specific links to any other legislation impacting infrastructure, including how the Public Procurement Act might impact on PPP procurement processes.
24. Section 20 of the ICRC Act does empower the Commission, however, to “perform such other duties as may be directed by the President from time to time, as are necessary or expedient to ensure the efficient performance of the functions of the commission…” and the Commission may pursuant to section 34 make regulations, with the approval of the President, and issue guidelines to give full effect to the provisions of the Act and administration thereof.

25. The authorities have acknowledged the shortcomings with the ICRC Act and the eventual need for a modern, comprehensive PPP law that provides consistency across sectors and clarity of the decision-making processes. However, the ICRC Commission believes that a number of these gaps can be resolved or mitigated through the issuance of detailed regulations under the ICRC Act, developed in consultation with the MDAs and other interested agencies, and through operational guidelines, PPP Regulations and, where necessary, amendments to other applicable legislation.

Organization and Governance Arrangements:

26. The PPP Policy envisages a significant change in the governance arrangements for the ICRC. To support the work of the Commission two Centers have been established. A PPP Resource Center (PRC) will be created inter alia to:

- provide advice to the FGN on the development of policy for PPPs;
- issue guidance, in conjunction with the National Planning Commission, on the identification of PPP projects and programs within the government’s overall investment strategy;
- assist MDAs with project appraisal, the appointment of external advisers where required, and the preparation of Outline and Final Business Cases;
- provide, through the ICRC Board, advice to the Federal Executive Council on the approval of all significant infrastructure projects; and
- coordinate the PPP policies and programs of the State and Federal Governments, working with similar units in the States or Ministries to ensure consistency of approach and a steady flow of projects to the market.

27. In addition, a Contract Compliance Center (CCC) will be established to take custody of every concession agreement and monitor compliance with the terms and conditions of such agreement; to ensure efficient execution of any concession agreement or contract entered into by the government; to develop guidance and procedures for the monitoring of such agreements; and to maintain a database on concession and other PPP contracts entered into by the government.

28. Several issues arise in relation to this proposed structure. The first is whether the functions proposed for the Resource Center go beyond the scope of the functions of the Commission authorized under the ICRC Act. As noted above, Section 20.d empowers the Commission to “Perform such other duties as may be directed by the President, from time to time, as are necessary or expedient to ensure the efficient performance of the functions of the Commission…” Whilst it may be argued that the “duties” envisaged for the Resource Center go beyond what is necessary to ensure the performance of the Commission’s functions, the proposed activities of the PRC are focused on it acting as an enabler, providing guidance and capacity building to MDAs and states. As such it is less likely to cause concern or give rise to a challenge. The Board of the Commission has taken the view that this is a transitional arrangement which will be reviewed and regularized as necessary, once the Resource Center has become fully operational and in light of its experience.

29. The second issue concerns a perceived conflict between the functions of the PRC and the CCC. The Resource Center will be working with MDAs to help them design PPP transactions and in
recommending that they be approved by the FEC, while the CCC is charged with monitoring the performance of those same transactions. While there arise potential conflict of interests within ICRC, the Commission has taken significant steps to mitigate such conflicts. While both Centers share the same Board they are governed by separate Committees that do not share members. Each Center is headed by a separate Executive Director each of who report separately to the Director General. Furthermore, the personnel composition of the two Centers is quite distinct and each have an independent set of responsibilities. In addition, each Committee overseeing the Centers include four non-Board members who also have vast commercial experience and who can be relied upon to ensure independence from the views of ICRC’s Board. Finally, it should also be remembered that primary responsibility for each individual transaction will rest with the relevant MDA. The Commission has an enabling role. Its mandate is to ensure the integrity of the entire PPP process and the scope for conflict at this very early stage of the process is perceived to be minimal. The governance walls that have been established are considered adequate at least until such time as final governance arrangements are put in place.

30. A third issue concerns the potential for conflict between the Resource Center’s role to work closely with the MDAs and its role in providing advice through the ICRC to the FEC. Again, this conflict is considered more apparent than real at this early stage in the Center’s operations and is capable of being addressed by appropriate language in the Center’s operating guidelines.

31. The ICRC Commission places considerable importance on the fact that the PPP Policy has been formally adopted by the FEC and is binding on all MDAs. The FEC Secretariat has issued a Circular to all MDAs requiring that they give the ICRC “maximum cooperation” in the implementation of the new PPP Policy. Where demonstrable conflicts in the applicable legislation exist amendments may need to be introduced. Otherwise, the intention is to work within the spirit of the existing legal framework until such time as a more comprehensive PPP law is considered possible and essential.

The Public Procurement Act 2007 (Procurement Act)

32. The Procurement Act applies to all procurement of goods, works and services carried out by: (a) the Federal Government of Nigeria and all “procuring entities”; and (b) all other entities which derive at least 35 percent of the funds appropriated, or proposed to be appropriated, for any type of procurement from the Federation share of the budget. A procuring entity is defined as any public body engaged in procurement and includes a Ministry, extra-Ministerial office, government agency, parastatal and corporation. The term procurement is defined simply as “acquisition”. The Procurement Act does not apply to procurement by the States except to the extent that such procurement falls within (b) above. It will be necessary to determine the extent to which States have enacted a procurement law and regulations that are a mirror reflection of the Federal law and regulations.

33. The Procurement Act applies to traditional public procurement of goods, works and services. There is no express reference to infrastructure procurement or to public private partnerships. Where the procurement of goods, works and services necessary for infrastructure projects is involved the Act will apply but it is silent on the non-tender or concession aspects of PPP transactions. Nor is there any reference to unsolicited bids or to the interaction between procurement under the Procurement Act and multilateral donor procurement rules. There are numerous other variances between the provisions of the Procurement Act and the Procurement Regulations on the one hand and the PPP Policy on the other hand. For instance, the conduct of due diligence by third party investors, the potential renegotiation of terms over the life of a project, financing by third party investors, the use of variant bids and the right of the FGN to step-in in the event that the contractor fails to perform are all matters that are specific to PPP projects and not contemplated by the Procurement Act or the Regulations.
34. A legal framework is currently being drafted to satisfy these outstanding procurement issues. Following consultations with key government officials, it was agreed to move forward with drafting a comprehensive set of regulations which will include proper provisions for PPP procurement. This should enable ICRC to oversee PPP procurement actions while traditional public procurement will continue to be the supervision mandate of the Bureau of Public Procurement.

35. The Transitional Arrangements apply to PPP projects which started the procurement process before June 2007 (the date of enactment of the Public Procurement Act, 2007) but where FEC approval is required under the ICRC Act. They apply to projects based on unsolicited proposals by a private sector party as well as projects which are financially free-standing (i.e., which do not require funding from the Federal budget) but which involve the transfer of rights to exploit public assets and/or to charge users of an unregulated service through a concession.

36. The Operational Guidelines address procedures which will apply to all new infrastructure facilities selected for implementation as PPP projects. Specifically, the Guidelines spell out the roles of the different MDAs within the FGN with regard to the identification, selection, appraisal, procurement, negotiation and monitoring of PPP projects. The authority of these Arrangements and Guidelines needs to be reinforced by issuing them in the form of regulations approved by the President. The proposed ICRC Regulations will strengthen the role of the Commission and seek to provide clarity and consistency for all aspects of a PPP transaction. A preliminary review of the Arrangements and Guidelines indicates, however, that there are areas of overlap with the Procurement Regulations. To avoid uncertainty and inconsistency, the proposed ICRC Regulations will be limited to those matters that are outside the present Procurement Regulations and these Regulations will be incorporated by reference or appropriately cross-referenced.

The Bureau of Public Enterprises (Privatization and Commercialization) Act 1999

37. This Act governs the privatization program of Nigeria and establishes the National Council on Privatization (NCP) and the Bureau of Public Enterprises (BPE) as the supervisory and implementing agencies respectively for privatization transactions. The Act only applies to the privatization and commercialization of the list of public enterprises set out in the Act. A number of these have been concessioned to private operators through PPP-style contracts on an ad hoc basis. The Act does not apply to the primarily greenfield nature of PPP transactions going forward and, further to discussions between the ICRC and BPE, it was agreed that all assets noted in the Privatization Act that are to be developed into PPPs would be led by the MDA with ICRC coordinating and BPE providing technical advice.

The Debt Management Office (DMO) Act 2003

38. The Debt Management Office (DMO) is responsible for preparing and implementing a plan for the efficient management of Nigeria’s external and domestic debt obligations. It has specific responsibilities with respect to all loans and borrowings of the FGN and empowers the Minister of Finance to give guarantees for such borrowings and to approve loans from financial institutions to the Federal, State or Local Governments or any of their agencies. As PPP transactions are likely to involve FGN borrowings and guarantees and other long term contingent liabilities the DMO’s approval will be required.

The Fiscal Responsibility Act 2007

39. The objectives of the Fiscal Responsibility Act are to:
• Provide for the prudent management of the nation’s resources;
• Ensure long-term macro-economic stability of the national economy;
• Secure greater accountability and transparency in fiscal operations within a medium term fiscal policy framework; and
• Establish the Fiscal Responsibility Commission (FRC) so as to ensure the promotion and enforcement of the nation’s economic objectives and for related matters.

40. The main focus of the FRC is the preparation of the Medium Term Economic Framework and the requirements of the Annual Budget. The Act secures fiscal responsibility through imposing limits on spending and borrowing. Section 55 of the Act provides that the President may make regulations generally for the purpose of carrying into effect the provisions of the Act. This power might potentially be useful in order to introduce requirements, procedures, practices and guidelines for PPPs in the short-run given the absence of a comprehensive PPP legal framework.

The National Planning Commission Act 2007

41. The National Planning Commission Act establishes the National Planning Commission (NPC) with responsibility for promoting national unity and integration, through formulating and coordinating national plans for infrastructure development. The NPC has more of a macroeconomic than project-oriented function and its role seems limited to coordinating projects within an overall master plan framework and prioritizing projects within the overall capital budget of the FGN. There is no mention of PPP within the Act but clearly the ICRC Commission will need to coordinate its activities with the NPC.

Pending Sector Bills

42. A number of industry-specific Bills have been drafted which provide generally for the following:

• Unbundling of the industry;
• Removal of the state monopoly over the provision of facilities and service delivery;
• An independent economic and technical regulator outside the traditional civil service/ministerial structure; and
• Facilitation of competition in the industry through the regulator.

43. These Bills appear to be well drafted and represent a thorough effort to provide an enabling environment for private sector participation and PPP transactions. However, the various Bills have been drafted in relative isolation and do not seem to reference each other or other economy-wide legislation (e.g. the ICRC Act, the Public Procurement Act, or the Fiscal Responsibility Act). There are inconsistencies in definitions and concerns relating to the relationship between the proposed regulatory authorities and the ICRC and the relevant MDAs and how these authorities will interact with respect to the monitoring of PPP transactions. Some of the Bills were drafted before the enactment of the Public Procurement Act and need to be harmonized with that Act. The separation of economic regulation from technical and safety regulation may also be a concern to a private investor. A brief synopsis of the scope and status of each of these Bills follows:

44. Inland Waterways Bill: This Bill seeks to reform the inland waterway sector by unbundling service delivery from basic infrastructure and creating a landlord infrastructure authority with service delivery to be carried out by the private sector. The objective is to encourage operating efficiency and rapid development of the sector. Regulation is also separated into economic and technical regulation, with economic regulation to be carried out by the proposed multi-sector National Transport Commission
(to be established under the National Transport Commission Bill), and the existing NIWA Authority to carry out day-to-day technical and safety regulation under the oversight of the NTC.

45. **Ports and Harbor Reform Bill:** Pursuant to this Bill the port structure will be changed from a vertically integrated to an unbundled structure, a state company will become the landlord owning the core port infrastructure, and the services functions will be financed and operated by the private sector. The Bill also provides for the creation of a National Ports and Harbors Authority to perform technical and safety regulatory functions and to issue guidelines on standards, subject to oversight by the NTC. Additionally, the NTC will be provided with the mandate to perform the economic regulation functions. The Bill also provides for the establishment of two subsidiary port administration companies to perform landlord functions and with power to encourage and facilitate private investment and to be responsible as the concessioning party. These companies will be allowed to lease or concession their premises to private sector operators, shipping companies and shipbuilding companies, as well as to grant concessions for the erection of jetties, piers, and wharves to private investors for up to 25 years. They are expected to follow a competitive and transparent process and will be subject to the oversight of the NTC.

46. **Railway Bill:** This Bill provides for the unbundling of the railway system into basic rail infrastructure-permanent way, stations and communication systems and for a Federal authority to be the landlord on behalf of the FGN. The Bill also makes provision for transport services to be provided by private operators. There is to be separation of ownership of the infrastructure from rail transport delivery service. The Bill establishes a National Railway Infrastructure Authority (NRA) empowered to own all railway infrastructures, prepare guidelines for concessioning and procure the services of operators through concessions. Importantly, the new NRA will have authority to grant a State Government the right to develop, construct and operate mass transit railways and the State Government will be able to enter into PPP agreements to build and operate railway services and necessary infrastructure.

47. **Federal Roads Authority Bill:** Under this Bill, a Federal Roads Authority (FRA) will be established to replace the existing FERMA. The Bill gives the FRA power to ensure the efficient and effective development and maintenance of all federal roads and to become responsible for managing all road assets. This executing power includes power to enter into any form of contracts for private sector participation for the purposes of executing relevant projects and to set guidelines for the operation of contracts and other forms of PSP.

48. **National Roads Fund Bill:** This Bill provides for the establishment of a Road Fund and an autonomous body to be known as the National Roads Board to manage and allocate the funds required for road provision and maintenance in Nigeria. The Fund is essentially to be used to finance routine and periodic maintenance of the national road network and administrative expenses. The proposed sources of finance for the Fund include a fuel levy on petroleum products, grants and loans from any agency or foundation, any fees payable to the Road Board, Vehicle Import Tax and any other assets. There is no direct reference to the private sector in the Bill.

49. **Federal Competition and Consumer Protection Bill:** This Bill provides for the establishment of the Federal Competition and Consumer Protection Commission with responsibility for the maintenance and promotion of competition by prohibiting restrictive business practices that substantially lessen competition, preventing the abuse of dominant positions of market players, regulating mergers likely to create monopolistic markets, promoting the balanced development of the national economy, as well as promoting and protecting the welfare and interests of consumers. The Bill also applies to infrastructure services and public utilities. In the case of those industries with an independent regulatory agency, the Commission is required to consult with such agency before it exercises any of its powers in relation to such industries.
Status of these Bills

50. Each of these Bills, outstanding under the previous administration, were submitted to the Federal Executive Council for approval in 2008 but all were then withdrawn at the initiative of the Attorney General and referred to the Ministry of Justice for further consideration. A preliminary review of the Bills indicates that they have been well-drafted. However, as all the Bills were drafted before the promulgation of the PPP Policy they will need to be brought into harmony with the principles set forth in that document. The newly established ICRC proposes to request the Attorney General to refer each Bill to the ICRC Contract Compliance Center so as to ensure that all relevant PPP policies and procedures are fully reflected in the draft legislation. For this purpose the ICRC will be assisted by consultants and the Nigerian Institute of Advanced Legal Studies.

Existing Sector Laws

51. In addition to the above Bills, a number of Acts were passed before the country’s economic reform program was introduced and which placed emphasis on the public sector delivering infrastructure services. These include:

- The Federal Airports Authority of Nigeria Act 2004;
- The Civil Aviation (Repeal and Re-enactment) Act 2006;
- The National Inland Waterways Authority Act 2004;
- The Water Resources Act 2004; and

52. Laws which anticipated the reform program and specifically provided for the private sector to deliver infrastructure and utility services included (these laws will be the subject of a separate review at a later stage):

- The Nigerian Ports Authority Act 2004;
- The Nigerian Communications Act 2003; and
- The Electric Power Sector Reform Act 2005.

Tolling Policy

53. A key factor in the preparation of federal highway concessions by the Ministry of Housing, Works, and Urban Development and as a key priority in the Legal Implementation Plan is developing a tolling policy. Given that road concessions in Nigeria are in nascent stages, the Ministry has yet to develop policies regarding tolling. In fact, for the first concessions led by the Ministry, toll provisions were not detailed in the concession contracts. Rather decisions on tolling were delegated by the Minister of Works to a Committee comprised of the Ministry, the Concessionaire and the Council of Nigerian Engineers. The FMHW&UD is, however, currently developing, with the support of the ICRC, tolling guidelines that will be applied to PPPs executed by the Ministry going forward.

54. In the context of road PPPs, tolling regimes are of critical importance to both public authorities and their private sector partners. In many, perhaps most road PPPs in Nigeria, income generated by user-paid tolls will comprise the principle source of revenue for private concessionaires. As a result, toll provisions will be critical factors in determining financial viability and, as a result, the certainty and transparency surrounding those provisions will be vital to attracting the private sector on terms that maximize value for money for the public sector. On the other hand, the acceptability of tolling often presents a challenge for public authorities. Initial tolling often leads to strong protest, political debate and
lobbying, and sometimes even legal challenges. Even when accepted as a principle, the level of toll rates must be carefully determined. User-paid tolls are often politically charged and raise important public policy issues. Toll rates obviously have an influence on traffic demand which affects both the economic and the financial viability of a project. Users’ ability and willingness to pay must be taken into account. The revenue-maximizing toll rate for a private operator may not be the most desirable rate from a policy perspective.

55. Tolling policy involves decisions regarding the level of tolls and limits on amount and frequency of increases. These elements should be stipulated in advance, in specific provisions of concession agreements: maximum toll rates by vehicle category, formula and procedures for toll rate adjustments (often inflation-indexed), and frequency of adjustments. Public authorities often also incorporate broader considerations into their tolling policies, for example whether alternative free roads are or should be made available to users along the toll road corridor, whether there should be a requirement for public consultations in cases where new tolls are being considered, exemptions from tolls for certain categories of users (e.g. emergency services), tolling system (open versus closed), and method of toll collection on (manual, electronic, etc.). In most countries around the world with PPP programs tolling decisions with respect to levels of tolls for PPP concessions are made on a case by case basis taking into account project-specific factors such as capital investment requirements of the road, toll rates on nearby or contiguous roads, or specific policy objectives. In some countries (Brazil, for example), lowest tolls have been used as the basis for awarding some toll road concessions. India presents an exception. In an effort to foment transparency and predictability in toll charges on national highways, the Ministry of Shipping, Road Transport, and Highways has adopted a national toll policy which provides for, inter-alia, uniform per-km toll rates (regardless of whether the roads are funded by the public or private sectors). There is, however, a scheme established within the national toll policy to provide for additional, higher tolls for structures such as bridges, bypasses, and tunnels which require much larger capital outlays.

56. The table below, which presents per km toll rates for a range of privately-operated toll roads world-wide, shows significant variance in toll rates around the world. Even within countries, toll rates per km often vary dramatically from one road to another. A number of factors account for these differences including capital invested on a particular stretch of road, availability of non-tolled alternatives, urban versus inter-urban toll roads, predominant road usage (commuter, tourism and freight), criteria for PPP procurement, and the presence of public capital or operating subsidies. In Nigeria, a balance will have to be struck between, on the one hand providing access in light of users’ ability and willingness to pay, and on the other, ensuring financial viability for private sector partners. To the extent that there is a discontinuity between these two objectives on a given project, instruments such as the VGF or ongoing subsidy payments will need to be considered. Note that ability to pay is related to per capita income and in that sense countries with similar per capita incomes to Nigeria probably provide the most relevant toll rate benchmarks.
Table 3: Tolling Rates Around the World

<table>
<thead>
<tr>
<th>Country</th>
<th>Toll Road</th>
<th>USD cent /km (2010, auto rates)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>M5</td>
<td>0.158</td>
</tr>
<tr>
<td>Canada</td>
<td>407</td>
<td>0.210</td>
</tr>
<tr>
<td>UK</td>
<td>M6</td>
<td>0.173</td>
</tr>
<tr>
<td>Croatia</td>
<td>A6</td>
<td>0.073</td>
</tr>
<tr>
<td>South Africa/Mozambique</td>
<td>N4</td>
<td>0.037</td>
</tr>
<tr>
<td>India</td>
<td>various</td>
<td>0.014</td>
</tr>
<tr>
<td>Brazil</td>
<td>Nova Dutra</td>
<td>0.048</td>
</tr>
<tr>
<td>Mexico</td>
<td>Mexico City-Puebla</td>
<td>0.086</td>
</tr>
<tr>
<td>Chile</td>
<td>Autopista Los Libertadores</td>
<td>0.044</td>
</tr>
<tr>
<td>Colombia</td>
<td>Bogota-Cartagena</td>
<td>0.047</td>
</tr>
<tr>
<td>Costa Rica</td>
<td>Autopista del Sol</td>
<td>0.046</td>
</tr>
<tr>
<td>China</td>
<td>Hua Nan Expressway</td>
<td>0.044</td>
</tr>
<tr>
<td>United States</td>
<td>Indiana Toll Road</td>
<td>0.032</td>
</tr>
<tr>
<td><strong>Average</strong></td>
<td></td>
<td><strong>0.078</strong></td>
</tr>
</tbody>
</table>

Summary of Legal and Regulatory Reform Priorities

57. Based on the above analysis, the following represents the scope of legal and regulatory reform to be considered in fostering the PPP market in Nigeria:
   - Issue of regulations, preferably by the ICRC, dealing with the procurement and coordination aspects of the PPP Policy including, in particular, the many issues addressed in Parts 1 to 4 of the PPP Policy that are not otherwise addressed in the Public Procurement Act;
   - Issue road tolling policy in collaboration with Ministry of Works and Housing;
   - Detailed review of the various outstanding sector bills with a view to aligning them with the objectives of the PPP Policy and the early enactment of these Bills into law;
   - Development of VGF Policy and Operational Guidelines and, potentially, over the longer term, a VGF law;
   - Potential drafting of a new PPP law.

F. PPP Viability Gaps

58. Given the magnitude of demand estimates, and willingness and ability to pay assessments across many of the infrastructure sectors in emerging and developing markets, it is anticipated that – with the exception of telecommunications – much of a country’s core infrastructure will continue to require substantial public sector investment over the coming phase of development. The capital cost and revenue structures of many infrastructure developments will preclude wholly commercial financing solutions, but do not need to exclude private sector investment and expertise, provided the commercial “viability gap” can be closed.

59. The balancing of social and economic considerations often results in tariff rates for different infrastructure sectors (power, water, transport) that are not cost recovering. This can be due to limited traffic – for instance on key road networks – that would imply exorbitant tariff rates for the investment to be viable with private finance. In other instances, where the end user has become habituated to low prices

and poor service – for instance in the Nigerian power sector – there may be widespread consumer (i.e. voter/political) resistance to an abrupt move to higher tariffs, particularly before there is any credible evidence of improved service. Where this is the case, private investment is not going to be forthcoming. The government has two policy routes from which to choose. It can decide that the investment has sufficiently high social and longer-term economic value to make it a priority for full public procurement. Alternatively it can decide to consider a PPP that would require a public contribution – in the form of an upfront capital investment subsidy and/or transfers over the life of the prospective PPP contract. In both cases, the objective is to close a “viability gap” and provide a potential profit margin to the transaction sufficient to crowd-in private investors.

60. Determining first whether an investment is justified from an economic viewpoint and then assessing whether it is suitable for a PPP structure are key assessments that the government would need to undertake. Under the Nigerian PPP Policy this assessment is contained in an “Outline Business Case” (OBC). The OBC would entail first the standard cost-benefit analysis (CBA) to determine the overall economic merits. Then a “value-for-money” (VfM) exercise to determine if there is a PPP arrangement that could deliver the investment at an overall lower cost and better service quality through the involvement of private operators and financiers versus a strictly public procurement arrangement. The OBC will also identify any key environmental and social safeguards that will be triggered in the Environmental Impact Assessment. The OBC is a fundamental first step in determining the public merit of an investment, the PPP rationale and to lay the foundation for the detailed PPP project development, structuring and financing that would then follow.

61. One challenge is to determine the way in which the government provides the viability gap funding (VGF). One option is to allow individual line ministries to provide the VGF from its own annual budget allocation on a project-by-project basis. This can work, but it has disadvantages. In the first instance, line ministry budgets in Nigeria are allocated on a lapsing year-on-year basis. The funds are also to a significant extent fungible both within year and certainly from one fiscal year to the next. This presents a number of risks to the private sector. In the first instance, within a budget year, they would have to weigh the political risks that the line ministry, whatever its commitment to the PPP, finds other priorities that lay claim to funds at critical points when government obligations to PPP expenditures is required. This could have significant negative consequences to the cash flow and overall viability of the PPP project. Alternatively, the line ministry budget is revised in succeeding years eliminating the fiscal space it originally had to provide the VGF. All these risks come with a price that the private sector sponsor must factor into the bid. The result is, at minimum, a higher cost PPP. At worst, the private interests – especially higher quality international PPP sponsors/investors - may simply withdraw from the opportunity. What will be key if VGF is to successfully “crowd in” private sector financing, is its credibility. This in turn will be a function of the certitude of its financing over the life of the PPP it will be supporting and the predictability and clarity of allocation and disbursement procedures and practices. This suggests something more structured than a simple year-on-year line ministry commitment.

62. The Federal Government of Nigeria is developing a VGF facility along the lines of the India model. A centralized VGF mechanism has three key comparative advantages. First, by managing it out of the Federal Ministry of Finance, it provides an additional degree of government authority relative to line ministries and comfort to the private sector that this funding is reliable. Second, it enables the government as a whole to ensure closer alignment to National PPP policies and practices and mitigate the challenges in ensuring coordination across the different MDAs to conform to the PPP guidelines set out in the National Policy. Third, it provides a clear mechanism with its own governance and reporting

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35 Refer to www.pppinindia.com.
requirements that can attract other international and donor funding looking to target measureable contributions to PPP infrastructure financing. Rough estimates on the initial amount needed for the VGF based on the “first-mover” projects listed in Appendix 1 is US$335 million.

G. Financial Sector Innovation and Deepening

63. Efforts to establish a long-term domestic financing market remain the outstanding first order objective. The evolution of bond markets both at the national and sub-national levels is the principal long-term development need that must be addressed. This is underway. The success of, and pace at which this proceeds, and the capacity of the market to extend, for example, into “revenue-fenced” infrastructure bonds, is in turn closely related to the extent that the government is able to credibly address the enabling and viability gap issues that have been outlined in this paper.

64. What can be done in the nearer term to provide some additional impetus to the development of the longer term financial market? And what, if successful are some of the medium term options that the government could then consider? Here there is a role for the official development industry and the IFIs, as well as for guarantee instruments. More specifically, to provide some leadership in the longer term market the government should consider, in collaboration with supportive IFIs, the establishment of a longer term local currency debt facility that would, priced off the existing longer term end of Nigeria’s current yield curve, provide market-based long term lending to local financial intermediaries interested in supporting infrastructure investments developed in accordance with the National PPP Policy.

65. This facility should be complemented by the mobilization of guarantees that would help mitigate the political risks of a still insufficiently developed and tested PPP enabling environment. The guarantees would, as mentioned earlier, be available to address private sector concerns related to a range of risks such as listed below in Table 4 (this details the types of risks for which the World Bank Group currently provides guarantees). The introduction of long-term domestic financing and guarantees would facilitate international project financing by reducing foreign exchange risks and mitigating political risks.

**Table 4: World Bank Guarantee Products**

<table>
<thead>
<tr>
<th>Areas Covered</th>
<th>World Bank (IDA)</th>
<th>MIGA</th>
<th>IFC (Credit)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Risks covered:</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Changes in Law</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Failure to meet contractual obligations</td>
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<tr>
<td>Obstruction of an arbitration process Expropriation and nationalization</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Foreign currency availability and convertibility</td>
<td></td>
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<tr>
<td>Non-payment of a termination amount or an arbitration award following a covered default</td>
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<tr>
<td>Failure to issue licenses, approvals and consents in a timely manner</td>
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<tr>
<td>Transfer Restrictions:: local currency conversion, hard currency transfer</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Expropriation/Nationalization: discriminatory acts of government</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Breach of Contract: failure of government to honor contracts</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>War and Civil Disturbance: physical damage, business interruption, terrorism and sabotage</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commercial Risk: interest rate instability, foreign exchange instability, fraud, marketing, foreign relations, and contract performance</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Political risk: currency conversion, regulatory changes, expropriation, civil disturbance</td>
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</tr>
</tbody>
</table>
66. As a viable, well developed pipeline of PPP projects develop and Nigeria is perceived to have an increasingly effective framework (comprising policy, legal, regulatory, institutional and fiscal aspects) for project origination, development, transaction and dispute resolution with a corroborating track record, other currently absent sources of infrastructure financing will become interested. Bankable projects and an evolving track record of PPP implementation will attract/encourage the establishment of infrastructure funds which require more predictable levels of return in order to invest. Also, infrastructure facilities, where investors place funds with no particular exit date, will be considered less risky.

H. Background Development of Project Pipeline

67. Carrying on the momentum of the ports and telecom concession success in Nigeria, Nigeria has begun to build its own experience in PPPs at both the federal and state levels. These projects, to date, vary at their stage of completion. Some have reached both financial and commercial close whereas others are in the more upstream stage. Box 2 summarizes the most notable ongoing PPP transactions to date in Nigeria.

68. The World Bank has previously supported the concessioning of the ports sector in Nigeria through the PSP with the Bureau of Public Enterprises (BPE). In the wake of this success the FGN MDAs and States have embarked on a number of PPP initiatives in the transport sector. However, the success of these initiatives has been limited and not without political and commercial controversy. Box 5 summarizes the status of the most notable of these PPP projects. Many of these initiatives have failed to close, or have faltered in implementation, for a number of reasons, including:

- Lack of transparent, competitive procurement process;
- Insufficient project preparation (e.g. lack of feasibility studies/OBCs; EIAs; proper transaction design and risk structuring; well crafted concession agreements; effective government project delivery teams; hiring experienced/competent PPP transaction/financial advisors);
- Lack of effective stakeholder consultation and buy-in (e.g. federal and state MDA coordination);
- Lack of MDA capacity to ensure contractual compliance and performance delivery.

69. These PPP initiatives have given the FGN and its MDAs considerable experience in developing PPP projects. The FGN and its MDAs are building on and learning from these experiences in developing their PPP project pipelines – in line ICRC’s National PPP Policy and with support from the World Bank.

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36 These options were detailed in the World Bank Country Economic Memorandum (CEM), May 2007. See Technical Annex 5D.
Box 2-Recent PPP Experience in Nigeria

A number of PPP concessions have been launched in Nigeria over the course of the past 5-6 years. These have met with varying levels of success, and include the following projects:

Ports
- **Port Concessions.** 24 port terminals were successfully concessioned by the National Ports Authority beginning in 2004. Today the 24 terminals are operated by 16 different international and domestic companies.

Highways and Bridges
- **Lagos-Ibadan Expressway.** Heavily trafficked artery providing access from Lagos to the north. Estimated project cost of US$600 million. Concession awarded in 2009 for 25 years with a four year construction period; project currently in design stages.
- **Benin-Shagamu Highway.** PPP procurement was cancelled because the preferred bidder insisted on shadow tolling. The Government is now proceeding with an Outline Business Case to develop properly this highway as a PPP toll road.
- **Second Niger Bridge at Onitsha.** Estimated project cost of US$400 million. 30-year concession with 3 year construction period has been approved but has yet to be awarded due to pending issues with the preferred bidder.
- **Lekki Toll Road.** Estimated total project cost of about US$350 million. 30-year concession granted by Lagos State for the upgrading, widening, and tolling of the major 50km link between Victoria Island in Lagos and the Lekki Peninsula to the Lekki Concession Company (LCC). Major investors included Stanbic Bank, Macquarie’s Africa Infrastructure Investment Fund and a consortium of local banks. To date, the first 6km of the toll road as well as the first toll gate has been completed.

Airports
- **Abuja International Airport.** 25-year concession for the Abuja international airport. A concessionaire was selected but the concession has not been awarded due to ongoing controversies.
- **Lagos Airport (Domestic Terminal, MMA2).** Concessioned for 36-years amid controversy regarding the terms of the concession agreement.
Appendix 1: Viability Gap Facility: Rationale and Perspective Design

Introduction

1. The FGN has made infrastructure development through PPPs a priority as a mechanism that can help it address the major infrastructure gaps in the country. The Infrastructure Concession Regulatory Commission has been tasked with the responsibility to oversee the implementation of FGN’s PPP Program and infrastructure PPPs (see ICRC Act of 2005). In order to finance infrastructure PPP projects – particularly in the case of investments with high economic returns but where, for a variety of reasons, commercial viability requires additional government investment - Viability Gap Facility (VGF) mechanisms can play a key “crowding in” role for private sector investment. The following note outlines some of the issues, guiding principles and design considerations for establishing a Viability Gap Facility (VGF) arrangement for infrastructure projects undertaken through Public Private Partnerships (PPP).

Rationale for VGF

2. Given demand estimates and willingness and ability to pay assessments across many of the infrastructure sectors in emerging and developing markets, it is anticipated that – with the exception of telecommunications – much of a country’s core infrastructure will continue to require substantial public sector investment over the coming phase of development. The capital cost and revenue structures of many infrastructure developments will preclude wholly commercial financing solutions, but do not need to exclude private sector investment and expertise, provided the commercial “viability gap” can be closed.

3. The balancing of social and economic considerations often results in tariff rates for different infrastructure (power, water, transport) that are not cost recovering. This can be due to limited traffic – for instance on key road networks – that would imply exorbitant tariff rates for the investment to be viable with private finance. In other instances, where the end user has become habituated to low prices and poor service – for instance in the Nigerian power sector – there may be widespread consumer (ie voter)political) resistance to an abrupt move to higher tariffs, particularly before there is any credible evidence of improved service. Where this is the case, private investment is not going to be forthcoming. The government has two policy routes from which to choose. It can decide that the investment has sufficiently high social and longer-term economic value to make it a priority for full public procurement. Alternatively it can decide to consider a PPP that would require a public contribution – either in the form of an upfront capital investment and/or transfers over the life of the prospective PPP contract. In both cases, the objective is to close a “viability gap” and provide a potential profit margin to the transaction sufficient to crowd-in private investors.

4. For a VGF to effectively perform its function there must be thorough screening for VGF eligibility. First, there must be robust determination as to whether an investment is justified from an economic viewpoint and then an assessment whether it is suitable for a PPP structure. Under the Nigerian PPP Policy this assessment is contained in what is referred to as an “Outline Business Case” (OBC). The OBC entails first the standard cost-benefit analysis (CBA) to determine the overall economic merits. Then a “value-for-money” (VfM) exercise to determine if there is a PPP arrangement that could deliver the investment at an overall lower cost and better service quality through the involvement of private operators and financiers versus a strictly public financing arrangement. The OBC is a fundamental first step in determining the public merit of an investment, the PPP rationale and to lay the foundation for the detailed PPP project development, structuring and financing that would then follow. As described in the

National Policy on PPPs, the OBC also makes a rough estimate on the amount of VGF funding needed based on certain analysis and investment projections.

5. The Federal Government of Nigeria is establishing a central VGF facility that resembles the structure used in India\textsuperscript{38}. A centralized VGF model suits Nigeria’s PPP Program since:

a. Managing the VGF from the Ministry of Finance provides a degree of government authority relative to line ministries and gives a centrally controlled budget-backed signal that the government is committed to prioritizing PPP options. This provides considerably more comfort to the private sector that this funding is reliable.

b. It enables the government as a whole to ensure closer alignment to national PPP policies and practices and mitigates the coordination challenges across the different MDAs to ensure conformity with the PPP guidelines set out in the National Policy.

c. It provides a clear mechanism with its own governance and reporting requirements that can attract other international and donor funding looking to target measureable contributions to PPP infrastructure financing. This in turn can contribute significantly to the market signaling highlighted in the first bullet.

Nigeria Viability Gap Facility Defined

6. \textit{Viability Gap Funding:} The Viability Gap Facility (VGF) provides public financing to fill capital investment funding gaps required to make infrastructure PPP projects commercially viable. The VGF, which would be a line item in the Ministry of Finance budget, would be administered by the Budget Office of the Federal Ministry of Finance with technical support from the ICRC. This funding would focus on key capital investments over the initial 3-5 year period of a concession. These are capital investments that are shown to be essential for the PPP to become operational and revenue-earning but cannot be financed by the private sector without undermining required levels of commercial rates of return.

7. \textit{Management of the Viability Gap Facility:} Management of the Viability Gap Facility will rest in with the Budget Office within the Ministry of Finance. The VGF will enjoy the same status as the service-wide vote allocations in the federal budget. It should be noted that the lead ministries sponsoring the PPP transaction as well as the Central Bank and Debt Management Office will have key roles in the management of the VGF.

- **Budget Office:** Following consultations with the relevant MDAs, it was determined that the Budget Office within the Ministry of Finance is best suited to manage the Viability Gap Facility. The Budget Office will have a dedicated team that will oversee the VGF and work with the ICRC and the line ministries to process VGF funding applications and withdraw requests\textsuperscript{39}

- **Lead Line Ministry (Works, Transport, Aviation, etc.):** While the Budget Office will be responsible for keeping track of expenditures processed through the VGF, the lead ministries will retain responsibility over the concession-specific expenditure to which VGF funds are allocated. These expenditures must comply with specific procurement guidelines agreed upon in the VGF Operations Manual.

- **Central Bank of Nigeria:** The CBN will play a “banking” role for all the funds processed through the Viability Gap Facility. The CBN’s Accounting Department will disburse funds that are requested by the Budget Office directly to the concessionaire. The CBN will be responsible to

\textsuperscript{38} Refer to www.pppinindia.com

\textsuperscript{39} Details on exact withdraw processes and accounting of these requests will be explained in the Viability Gap Facility Operations Manual.
keep track of these disbursements. Funds contributed by the Federal Government of Nigeria as well as funds allocated to the VGF from international development institutions will be channeled through the Central Bank.

- **Debt Management Office**: The DMO will be required to monitor all contingent liabilities that are associated with VGF investment into PPP transactions.

8. **VGF – Sources of Funding**: The VGF will be funded through FGN’s national budget (with potential co-financing of government allocations by donor partners), with budgetary allocations being committed on a rolling 3-yearly basis in line with planned Medium Term Expenditure Framework (MTEF). This method of extended commitment is necessary in light of the multi-year (up to 15-25 year) character of PPP financing arrangements with the private sector. The preparation period for a PPP to commercial closure can frequently be two years and often much longer to financial closure. While this poses various problems, from a budget planning perspective it assists budget management by providing a long lead time to estimate and revise potential VGF allocations over the coming few years. As a result, the VGF budgeting process can usually effectively predict demand and thereby ensure that the pipeline opportunities are adjusted to budget exposure limits. An annual report for the VGF will be prepared and made publicly available as part of the accountability arrangements set forth in the PPP Policy and VGF Operations Manual.

9. **Initial Amount of Funding**: Allocations will be made based on the expected funding requirements of FGN’s approved PPP project pipeline. Pipeline projects undergoing OBC work will suggest preliminary VGF funding requirements based on making the proposed PPP transactions commercially viable. The initial estimated total amount of capital needed for the initial 2-3 year period of VGF is US$335 million.

10. **PPP Sector Eligibility**: Over the initial phase of the proposed life of the VGF mechanism, project eligible for its financing will be limited to following sectors:

- Roads and bridges, railways, seaports, inland waterways, airports;
- Power;
- Urban: transport, water supply, sewerage and sewage treatment, solid waste management and other core infrastructure in urban areas;
- Social infrastructure: health, education (from government funds)

11. This sector eligibility list will be subject to revision over time, reflecting FGN priorities and available 3-year funding capacity for the VGF envelope. What will be critical is to ensure that the VGF builds and maintains credibility in the market. This will be a function of establishing a track record of delivering the financing approved, including releases the money in a timely and efficient manner.

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40 The Indian Federal Ministry of Finance indicated that they had at no time found demand for VGF in excess of funds set aside in the annual budget. The Government has stated that the gestation time on a PPP project going to market provided sufficient lead-time to sufficiently provision.

41 This figure is based on initial estimates of the first four “first mover” PPP pipeline projects as detailed in Annex II. It makes assumptions about tariff rates and traffic levels that will need to be revisited and more robustly determined as part of the OBC exercise.
12. The formal process of receiving viability gap funding can be broken down into four main phases: (i) eligibility, (ii) submission, (iii) appraisal, and (iv) approval.

13. Project Eligibility Requirements: For projects to be eligible for VGF funding, certain requirements must be met. It is proposed that these include:

   a. The concession is awarded in favor of a private company in which 51 percent or more of the subscribed and paid up equity is controlled or owned by a private sector party or entity;
   b. The private sector concessionaire has been selected through open competitive bidding;
   c. All ICRC procurement and safeguards standards (including compliant Social and Environmental Impact Assessments) are met;
   d. The private sector concessionaire is responsible for financing, construction, maintenance and operation of the project during the contract/concession period;
   e. Proper due diligence, as detailed in the National Policy on Public Private Partnerships, has been completed and Outline Business Case (OBC) approval gained prior to submission for VGF funding;
   f. The amount of VGF funding requested cannot exceed 50 percent of total project cost. Exceptions could potentially be made on a case-by-case basis, but the VGF amount must not render PPP option unaffordable or unviable from the public perspective.

14. Submission and Appraisal: Specific institutional arrangements and procedures must be followed to process VGF requests. The application and review of VGF requests will consist of a two-step process.

   Qualification Round: The first step will be a qualification round. Applications for VGF qualification will be submitted to a VGF Review Committee housed in the Ministry of Finance. The Review Committee will be made up of representatives from ICRC (PPP Resource Center as mentioned in Section 3.2 of the Part 4: Roles and Responsibilities for PPP in the Federal Government of the National Policy on Public-Private Partnerships), DMO, Budget Office, FMOF and NPC. The Committee will review the VGF application to ensure that it satisfies VGF policy and financial criteria and that the project has followed OBC procedures. The amount of VGF requested is based on preliminary estimates included in the OBC. This will result in an ‘in principle’ approval for the sponsoring MDA to move forward with or without VGF as a financing option, prior to formally seeking Expressions of Interest (EOI). It should be noted that:

   a. The line ministry under which the proposed concession contract will be managed will be responsible for submitting the VGF Application.
   b. The Application should only come after the ministry Project Delivery Team and Project Steering Committee have approved the Application on the basis of the upstream due diligence work. The Application should be accompanied by the approved OBC for the project.
   c. The VGF Unit within the Federal Ministry of Finance, specifically the Budget Office, will be the recipient for all VGF submissions.

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42 This method parallels the Viability Gap Funding Scheme included in the Guidelines for Financial Support to Public Private Partnerships in Infrastructure by the Government of India.
43 This is the currently proposed percentage share. It may merit review, based on the project financial analysis that will be completed as part of OBC exercise on the priority project pipeline.
44 Roles and responsibilities matrix for members of the VGF Review Committee are included in full detail in PPP Regulations currently being prepared for Presidential approval.
Project Review Round: For those projects given “in principle” approval and following completion of the FBC as part of transaction advisory services, the sponsoring MDA can submit a detailed Project Approval VGF Application to the VGF Review Committee. The Committee will review the application and determine the maximum amount and type of VGF funding. It should be noted that:

- Applications should include copies of all (draft) project documents and agreements (e.g. information memorandum, concession agreements, guarantees, direct agreements, shareholder/consortia agreements, as applicable).
- Applications for VGF funding should be made in consultation with the ICRC to maximize technical expertise for each PPP project.

Selection and Approval: Projects will be approved on a “first come – first served basis”, subject to sector eligibility and priority. The selection of the preferred bidder will include as a criterion the lowest amount of total VGF funding proposed as stated in the bid document. Subject to compliance with pre-identified bidding variables, three different authorizing procedures will be available to manage VGF applications within the FMOF. Each procedure is dependent on the amount requested by the sponsoring line ministry and PPP project sponsors:

- Approval from FMOF VGF Unit head: Applications up to US$100 million;
- Approval from VGF Review Committee: Applications greater than US$100 million and less than US$200 million;
- Approval from Hon. Minister of Finance: Applications greater than US$200 million.

The updated Application for final approval shall be accompanied by copies of all the agreed project documents and agreements, together with a financial appraisal report for the proposed transaction.

Disbursement: Upon approval, a multi-party agreement will be signed between the lead ministry, the ICRC, the FMOF and the private sector. VGF disbursements will only be made following agreed, scheduled equity payments, and – to the extent possible – pro rata to subsequent debt disbursements being made to the concessionaire, or in accordance with meeting pre-agreed construction milestones (in close collaboration with the Budget Office).

Funds will be paid directly from an FMOF account against the VGF budget item based on authorization received from the sponsoring line ministry confirming payment terms are met by concessionaire (e.g. invoices for payment received and approved against deliverables set out in the concession agreement).

Donor Funding and Use of Guarantees

Capital Contribution to VGF: Donors considering support to the VGF would be able to do this either by contributing directly to a government account linked to the VGF or by paying directly eligible

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45 This could include what would – in effect – be a negative VGF. In other words the concessionaire is sufficiently confident of profit-realizing revenues and rates of return that the proposal involves a concession fee paid the FGN.

46 This can include such factors as road traffic loads, numbers of lanes and technical and environmental specifications.

47 The pro rata requirement is to ensure incentives for both parties to maintain timely and effective funding and project implementation. Whatever the pro rata arrangement is and whether at times, due to the size and lumpiness of upfront investments, a portion of the VGF contribution is disbursed without a matching concessionaire contribution, it is sine qua non that the equity contribution is fully deposited to the concessionaire company before release of any VGF contribution.
invoices submitted to the donor by the concessionaire. Whichever option is adopted, close monitoring and management of these funds by the FMOF will be required.

20. **Credit Enhancement Support: MIGA and IDA PRGs:** Another consideration is the provision of guarantees against government failure to honor a VGF payment to a concessionaire. As indicated, for instance, by MIGA there is potential a MIGA guarantee support to the VGF, albeit on an individual PPP project transaction basis. There is also potential to deploy the Bank’s PRG, through the Letter of Credit structure, to provide PPP projects with liquidity support when there are delays in VGF disbursements – this could be a critical element in structuring the project financing and project bankability (see Annex 13 on MIGA enhancements for the VGF and Annex 14 on the Role of World Bank Partial Risk Guarantees).

**Proposed Policy Trigger for VGF Support under APL Phase II**

21. As supported under the PPP Project, the completion of proper policy actions for the VGF must be completed prior to capitalization. The policy “trigger” as it is included in the PPP Project Appraisal Document requires “FEC approval of the Viability Gap Facility (VGF) as included in the Fiscal Strategy Paper (FSP) as well as included in the Budget Call Circular.” In addition to these actions, the operating framework for the VGF will be detailed in a VGF Operations Manual. The drafting of this manual will describe how the VGF will be included in the Fiscal Strategy Paper and the Budget Call Circular.
Figure 1: VGF Financing Processing Chart

Step 1: Qualification Round

- MDA-led Project Team submits VGF Application following completion of initial OBC work
- Application follows completion of proper due diligence work and includes approved OBC
- VGF Committee determines if VGF funding is merited (in principle approval)
  - If YES: Project Team follows PPP Policy to contract transaction advisory services (to complete FBC as well); project preparation work to include VGF as potential financing option available to concessionaires
  - If NO: VGF Review Committee finds VGF funding is not merited then the VGF process ends (project may still move forward without VGF funding)

Step 2: Project Review Round

- Upon concession award, the VGF Review Committee reviews the FBC to determine in detail the type and maximum amount of VGF funding to be made available for the PPP Project
- The ICRC provides PPP technical advice on project structuring and risk allocation to assist this analysis
- The VGF Review Committee with MDA-led Project Team submits VGF recommendation for Approval

Step 3: Approval

- Concession awarded to winning bidder with lowest VGF funding request as a criterion for determining the winning bidder;
- The applicable Approval Process and associated level of approval is determined according to the amount of VGF funding requested
Preliminary Indicative VGF Scoping

22. A preliminary and very basic analysis has been undertaken to begin to size the potential VGF requirements for the first mover projects during the first few years of the project. Initially this exercise has focused on a subset of the road and bridge projects presented by the Ministry of Works and included in the project pipeline some traffic data, albeit dated, is available for these projects. The scope of this analysis will, however, be expanded to include other roads and bridges, ports, FCTA, rail, and other projects as more project-specific information becomes available.

Initial Viability Gap Estimation

23. As shown in the graph below, estimates of the viability gap range from 36 percent to 73 percent and average 49 percent (expressed as a percentage of the up-front costs). For the four first-mover projects that are expected to go to market in 2011/2012, the viability gap totals US$335 million. Given that these concessions will involve the rehabilitation and upgrade of existing roads as opposed to new construction, it is reasonable to expect that the bulk of capital expenditures, and by extension, the need for viability gap funds, would occur over the first two years of the projects.

Figure 2: VGF Scoping

24. The following graph indicates that the viability gap is highly dependent on toll rate assumptions.
25. For example, by increasing the average toll rate per km from ₦1.80 (US$0.012) to ₦3.50 (US$0.023) the viability gaps are, on average, almost entirely eliminated (in fact at ₦3.50/km certain projects have a negative viability gap – the concessionaire would make a payment to take on the concession, while other projects would still require considerable viability gap funding; there would still be a net VGF requirement in absolute terms). The table below shows how these tariff assumptions compare with international benchmarks.

Table 1: Tolling Fares

<table>
<thead>
<tr>
<th>Country</th>
<th>Toll Road</th>
<th>USD cent/km (2010, auto rates)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>M5</td>
<td>0.158</td>
</tr>
<tr>
<td>Canada</td>
<td>407</td>
<td>0.210</td>
</tr>
<tr>
<td>UK</td>
<td>M6</td>
<td>0.173</td>
</tr>
<tr>
<td>Croatia</td>
<td>A6</td>
<td>0.073</td>
</tr>
<tr>
<td>South Africa/Mozambique</td>
<td>N4</td>
<td>0.037</td>
</tr>
<tr>
<td>India</td>
<td>various</td>
<td>0.014</td>
</tr>
<tr>
<td>Brazil</td>
<td>Nova Dutra</td>
<td>0.048</td>
</tr>
<tr>
<td>Mexico</td>
<td>Mexico City-Puebla</td>
<td>0.086</td>
</tr>
<tr>
<td>Chile</td>
<td>Autopista Los Libertadores</td>
<td>0.044</td>
</tr>
<tr>
<td>Colombia</td>
<td>Bogota-Cartagena</td>
<td>0.047</td>
</tr>
<tr>
<td>Costa Rica</td>
<td>Autopista del Sol</td>
<td>0.046</td>
</tr>
<tr>
<td>China</td>
<td>Hua Nan Expressway</td>
<td>0.044</td>
</tr>
<tr>
<td>United States</td>
<td>Indiana Toll Road</td>
<td>0.032</td>
</tr>
</tbody>
</table>
This analysis demonstrates an important reason why, in the context of the VGF, the development of a tolling policy (addressed in the Legal Implementation Plan) is important.

C. Assumptions

There are a number of assumptions underlying this analysis. These can roughly be divided into the following categories: (i) investment requirements (ii) traffic; (iii) tolling and revenue; (iv) operating; and (v) private sector financing. Key assumptions used for the analysis in each of these categories are shown below.

### Table 2: Key Assumptions for VGF Calculations

<table>
<thead>
<tr>
<th>Traffic Inputs</th>
<th>Assumption</th>
<th>Source/Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005 Traffic Figures</td>
<td>various</td>
<td>AADT by vehicle class provided by FMHW&amp;UD</td>
</tr>
<tr>
<td>Nigeria Real GDP Growth:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2006</td>
<td>6.00%</td>
<td>Economist Intelligence Unit</td>
</tr>
<tr>
<td>2007</td>
<td>6.40%</td>
<td>Economist Intelligence Unit</td>
</tr>
<tr>
<td>2008</td>
<td>6.00%</td>
<td>Economist Intelligence Unit</td>
</tr>
<tr>
<td>2009</td>
<td>4.50%</td>
<td>Economist Intelligence Unit</td>
</tr>
<tr>
<td>2005-2009 Cumulative Traffic Growth Factor</td>
<td>1.25</td>
<td>Own assumption, based on 1:1 relation with GDP growth</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Toll &amp; Revenue Inputs</th>
<th>Assumption</th>
<th>Source/Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Auto toll rate (Naira)/km</td>
<td>3</td>
<td>Own assumption based on international rates and affordability</td>
</tr>
<tr>
<td>HGV toll rate/auto toll rate</td>
<td>3</td>
<td>Own assumption based on international experience</td>
</tr>
<tr>
<td>HGV toll rate (Naira)/km</td>
<td>9</td>
<td></td>
</tr>
<tr>
<td>Naira/USD</td>
<td>150</td>
<td>Own assumption</td>
</tr>
<tr>
<td>Non-Toll Revenue as % of Total Revenue</td>
<td>5.00%</td>
<td>Own assumption based on international experience</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Investment Assumptions</th>
<th>Assumption</th>
<th>Source/Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Required Upfront Capital Investment</td>
<td>Various</td>
<td></td>
</tr>
<tr>
<td>FMHW&amp;UD Investment Requirement Discount</td>
<td>15%</td>
<td>Own assumption based on discussions with FMHW&amp;UD</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Operating Assumptions</th>
<th>Assumption</th>
<th>Source/Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Operating Expenses/Revenue</td>
<td>24%</td>
<td>Own assumption based on international experience</td>
</tr>
<tr>
<td>Annual Major Maintenance/Revenue</td>
<td>4%</td>
<td>Own assumption based on international experience</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Financing Assumptions</th>
<th>Assumption</th>
<th>Source/Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest Rate</td>
<td>16%</td>
<td>Own assumption based on current rates</td>
</tr>
<tr>
<td>Weighted Average Debt Maturity</td>
<td>20</td>
<td>Own assumption based on availability of finance</td>
</tr>
<tr>
<td>Base Case CAPADS growth rate for model</td>
<td>8.0%</td>
<td>Own assumption based on availability of finance</td>
</tr>
<tr>
<td>Debt/capital ratio financing</td>
<td>0.70</td>
<td>Own assumption</td>
</tr>
<tr>
<td>Required DSCR</td>
<td>1.4</td>
<td>Own assumption</td>
</tr>
<tr>
<td>Concession term (yrs)</td>
<td>25</td>
<td>Own assumption</td>
</tr>
<tr>
<td>Target equity IRR</td>
<td>21%</td>
<td>Own assumption</td>
</tr>
</tbody>
</table>
## Annex 2: Major Related Projects Financed by the World Bank and/or other Agencies

### NIGERIA: Public/Private Partnership Program

<table>
<thead>
<tr>
<th>Sector Issue</th>
<th>Project Description</th>
<th>Latest Supervision Ratings (World Bank-funded)</th>
<th>Summary of Project</th>
<th>Closing Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constraints in power sector</td>
<td>Nigeria Electricity and Gas Improvement Project (P114277)</td>
<td>IP S</td>
<td>USD$600 million project providing capacity support and partial risk guarantees to improve power delivery</td>
<td>Board 5/09</td>
</tr>
<tr>
<td>Facilitation of private sector participation</td>
<td>Nigeria Privatization Support Program (P071278)</td>
<td>MS MS</td>
<td>USD$114 million project supported capacity building and technical assistance aimed at increasing private sector investment and participation in State-owned enterprises</td>
<td>Closed 12/09</td>
</tr>
<tr>
<td>Access to finance</td>
<td>Nigeria MSME (P083082)</td>
<td>S MS</td>
<td>USD$32 million support to micro, small and medium size enterprises</td>
<td>Closing 6/10</td>
</tr>
<tr>
<td>Private business support at state-level</td>
<td>Nigeria Growth Employment and Market in States (P103499)</td>
<td>IP S</td>
<td>USD$160 million support to state-level private sector growth sectors</td>
<td>Board 6/11</td>
</tr>
<tr>
<td>Weak transportation infrastructure</td>
<td>Nigeria Federal Roads Development Project (P090135)</td>
<td>MU MU</td>
<td>USD$330 million support for performance-based maintenance contracts for key federal roads</td>
<td>Board 3/11</td>
</tr>
<tr>
<td>Trade Facilitation</td>
<td>Abidjan-Lagos Trade and Transport Facilitation Project APL Phase 2 (P116323)</td>
<td>MU MU</td>
<td>USD$225 million project to facilitate trade corridor between Lagos and Abidjan</td>
<td>Board 3/11</td>
</tr>
<tr>
<td>Urban Transport</td>
<td>Nigeria Lagos Urban Transport Project II (P112956)</td>
<td>IP S</td>
<td>USD$190 million support to LAMATA to increase public transportation in Lagos including BRT enhancement</td>
<td>Board 6/10</td>
</tr>
<tr>
<td>Air transport and safety</td>
<td>West and Central Africa Air Transport Safety and Security Project- APL Phase 2 (P100785)</td>
<td>MU S</td>
<td>USD$46.65 million to strengthen safety and security oversight and compliance with international air safety standards</td>
<td>Closing 6/11</td>
</tr>
<tr>
<td>Private participation in public infrastructure</td>
<td>ADB Nigeria Capacity Building Project for PPP in Infrastructure</td>
<td></td>
<td>USD$27.9 million capacity building support program to assist in FGN's PPP Program</td>
<td>Tbc</td>
</tr>
<tr>
<td>Support Infrastructure Development</td>
<td>DFID Nigerian Infrastructure Advisory Facility (NIAF) II</td>
<td></td>
<td>To be finalized £20 million technical assistance facility</td>
<td>Tbc</td>
</tr>
</tbody>
</table>
Annex 3: Results Framework and Monitoring

NIGERIA: Public/Private Partnership Program

<table>
<thead>
<tr>
<th>PDO for Overall APL Program</th>
<th>Project Outcome Indicators</th>
<th>Use of Project Outcome Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Increase in private investment in the Nigerian infrastructure PPP market.</td>
<td>- Completion (financial closure) of a minimum of three (3) PPP projects; - Private investment in total core infrastructure investment reaches US$1 billion (of US$5.13 billion estimated in the project pipeline).</td>
<td>1. Assess impact of project and effectiveness of the different components. The indicators will provide guidance on: - extent to which the PPP Policy and Program has achieved its principal objective of attracting private investment and capacities into the delivery of infrastructure services that are key to the country’s growth and employment objectives.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Phase I Objectives</th>
<th>Phase I Outcome Indicators</th>
<th>Use of Phase I Outcome Monitoring</th>
</tr>
</thead>
<tbody>
<tr>
<td>Establish effective institutional and technical mechanisms and instruments for origination and development of PPP projects.</td>
<td>Five (5) transactions meet commercial close.</td>
<td>The Phase I Outcome indicator will provide evidence that the institutional and technical arrangements put in place under the PPP Policy are generating the required high quality projects to take to market. It is a critical measure of the market relevance and quality of the project preparation work being supported under the project.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Phase I Intermediate Outcomes</th>
<th>Intermediate Outcome Indicators</th>
<th>Use of Intermediate Outcome Monitoring</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phase 1 Component 1: Capacity Building and Legal and Regulatory Reform:</td>
<td>1. Key coordinating mechanisms as defined in the PPP policy including the functions assigned to the ICRC.</td>
<td>1. The data collected under the M&amp;E component of the project will also provide critical guidance on:</td>
</tr>
</tbody>
</table>
1. **Improved coordination** of PPP process across key MDAs in line with provisions of the National PPP Policy:

   - Signing of MOUs between Sponsoring Ministries (SP is defined here to include Works, Transport, Aviation, Power, FCT) and ICRC;
   - Promulgation of detailed Roles and Responsibilities Matrices for these different coordinating mechanisms;
   - Schedule of meeting times for these coordinating bodies and recorded minutes for these meetings;
   - Completion of Presidential Retreat on the PPP Program;
   - Completion with 90 percent attendance of a minimum of three Strategic Management Training Program.

2. **Strengthened institutional capacity** within key MDAs to fulfill PPP responsibilities:

   - Establishment of PPP Project Teams/Units in each of Sponsoring Ministries to effectively manage PPP development work in line with approved Long-List Pipeline;
   - Operationalisation of an MIS systems in all key Sponsoring Ministries to record and manage key PPP origination, development and transactions activities;
   - Operationalisation of an effective PPP contingent liability tracking and monitoring system in the DMO;
   - Operationalisation of an effective VGF mechanism in the Ministry of Finance/BOF.

   - Determination of Trigger compliance for Phase II;
   - Degree to which the different “moving parts” of the PPP Program are working smoothly and highlight areas where remedial actions are needed;
   - Establishment of the data assimilation, management and monitoring system that will be essential to effective “evidence-based” assessment of the PPP program.

2. The intermediate impact data collected under the M&E component of the project will also provide input to be used in:

   - Quarterly and Annual project progress reports and any remedial project actions to be taken;
   - Mid-Term Review (MTR) of project progress and any remedial measures to be taken.

   - Annual FGN PPP Report delivered by ICRC to President detailing progress, successes and challenges;
   - Input to FGN “information decks” for planned market outreach through roundtables and road shows to domestic and international private sector PPP investors.
<table>
<thead>
<tr>
<th><strong>Phase 1 Component 2: PPP Preparation and Transaction Advisory Support:</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. <strong>Strengthened upstream economic, financial and safeguards appraisal due diligence on prospective PPP Pipeline for market:</strong></td>
</tr>
<tr>
<td>- Completion of up to 15 Outline Business Case (OBC) proposals and related safeguards assessments submitted to Minister of Finance for clearance in line with National PPP Policy Guidelines;</td>
</tr>
<tr>
<td>- Completion of up to 10 Full Business Case (FBC) proposals to be submitted to FEC in line with National PPP Policy Guidelines;</td>
</tr>
<tr>
<td>2. <strong>Establishment of viable PPP project pipeline ready for market:</strong></td>
</tr>
<tr>
<td>- Evidence on the extent to which projects are adequately readied for market and the extent to which market is responding.</td>
</tr>
<tr>
<td>- Development of sector and project economic and financial baseline data to improve country:</td>
</tr>
<tr>
<td>(i) Medium-Term Sector Strategies (MTSS) processes under the NPC Long-Term Vision 2020 Initiative,</td>
</tr>
<tr>
<td>(ii) Budget Implementation Reports (BIR) under the FMOF:BOF and,</td>
</tr>
<tr>
<td>(iv) DMO Debt Sustainability Assessments,</td>
</tr>
<tr>
<td>(v) Ministry of Environment Safeguard Assessment and Monitoring Reports</td>
</tr>
<tr>
<td>This will overall contribute to the long-term development of a robust PPP market.</td>
</tr>
</tbody>
</table>

2. The data collected under the M&E component of the project will also provide critical input to: |
| - Determination of Trigger compliance for Phase II; |
| - Quarterly and Annual project progress reports and any remedial project actions to be taken; |
| - Mid-Term Review (MTR) of project progress and any remedial measures to be taken. |
**Phase II Objectives**

- Annual FGN PPP Report delivered by ICRC to President detailing progress, successes and challenges;
- Input to FGN “information decks” for planned market outreach through roundtables and road shows to domestic and international private sector PPP investors;

<table>
<thead>
<tr>
<th>Phase II Objectives</th>
<th>Intermediate Outcome Indicators</th>
<th>Use of Intermediate Outcome Monitoring</th>
</tr>
</thead>
<tbody>
<tr>
<td>See PDO for Overall Program Outcome.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Phase II Intermediate Outcomes</th>
<th>Intermediate Outcome Indicators</th>
<th>Use of Intermediate Outcome Monitoring</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Phase II Component 1:</strong> 1. Catalyzing Private and International Finance for PPPs in Nigeria;</td>
<td>- SUS1 billion increase in amount of private capital (including long-term debt and equity) and other institutional financing (IFIs, including MIGA/PRG Guarantees) over the IDA contribution;</td>
<td>1. These indicators will provide the necessary information to:</td>
</tr>
<tr>
<td>2. Catalyzing Public Finance for PPPs in Nigeria;</td>
<td>- Improvements in the volume and effectiveness of public funds deployed in support of commercially viable PPP projects in Nigeria over the life of the IDA project as measured by: (i) VGF announcements in Budget Call letters; (ii) budget allocations approved and disbursed of a minimum 20% of total project costs where VGF allocations have been awarded.</td>
<td>- determine whether the financial instruments supported under the project contribute to the required overall program outcomes;</td>
</tr>
<tr>
<td>3. Building long-term project finance capacity from the commercial banking sector in Nigeria.</td>
<td>- a minimum of three financial institutions operating in Nigeria sign and implement Institutional Development Plans (IDPs) that involve strengthening key technical aspects of internal project finance capacities.</td>
<td>- highlight in quantifiable terms areas where additional effort adjustments are required to improve effectiveness of the instruments and/or need to identify alternative products.</td>
</tr>
</tbody>
</table>

2. The data collected under the M&E component of the project will also provide critical input to:
- Quarterly and Annual project progress reports and any project remedial actions to be taken;
- Mid-Term Review (MTR) of project progress and any remedial measures to be taken.
- Annual FGN PPP Report delivered by ICRC to President detailing progress, successes and challenges;
- Annual VGF Report on FGN Budget Performance in priority investments;
- Input to FGN “information decks” for planned market outreach through roundtables and road shows to domestic and international private sector PPP investors.
### Table 1: Arrangements for Results Monitoring

<table>
<thead>
<tr>
<th>Program Outcome Indicators</th>
<th>Target Values</th>
<th>Data Collection and Reporting</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Baseline</td>
<td>YR1</td>
</tr>
</tbody>
</table>
| - Completion (financial closure) of a minimum of three (3) “Demonstration Effect” PPP projects;  
- Private investment in core PPP infrastructure investment reaches US$1 billion. | 0  
048  
- Establish PPP Pipeline for project;  
- Determine baseline for private investment in the PPP Sector | 0  
Baseline | 0  
Baseline | 1  
+ US$200 million | 1  
+ US$500 million | 1  
+ US$300 million | Semi and Annual | Semi and Annual | Project supported IT data system managed by ICRC, FMOF, NPC and DMO Reporting | Key Ministries and ICRC PIU |

**Intermediate Outcome Indicators**

| Phase I, Component 1: Capacity Building and Legal and Regulatory Reform:  
1. **Improved coordination** of PPP process across key MDAs as determined by:  
- Signing of MOUs between Sponsoring Ministries (SP is defined here to include Works, Transport, Aviation, Power, FCT) and ICRC;  
- Promulgation of detailed Roles and Responsibilities Matrices for these different coordinating mechanisms; | Baseline | YR1 | YR2 | YR3 | YR4 | YR6 | Frequency and Reports | Data Collection Instruments | Responsibility for Data Collection |
|---------------------------------------------------------------|---|---|---|---|---|---|-----------------|-----------------|-----------------------------|
| 0  
N/A49  
Completed | 2  
Schedule | 2  
Schedule | 1  
Schedule |  
Quarterly, Semi and Annual |  
PIU Reporting  
ICRC Annual Report  
DMO and BOF Annual Reports |  
PIUCRC  
DMO  
BOF |

48 Baseline for private investment in PPP core infrastructure (excluding telecoms) currently estimated at 0 due to lack of properly structured PPP transactions currently in Nigeria, as well as unavailability of data on those that do exist.
49 N/A signifies no baseline figure available due to non-existence.
- Schedule of meeting times for these coordinating bodies and recorded minutes for these meetings;
- Completion of Presidential Retreat on the PPP Program;
- Completion with 90 percent attendance of a minimum of three Strategic Management Training Program.

<table>
<thead>
<tr>
<th>2. Strengthened institutional capacity within key MDAs to fulfill PPP responsibilities as measured by:</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Establishment of PPP Project Teams/Units in each of Sponsoring Ministries to effectively manage PPP development work in line with approved Long-List Pipeline;</td>
</tr>
<tr>
<td>- Operationalisation of an MIS systems in all key Sponsoring Ministries to record and manage key PPP origination, development and transactions activities;</td>
</tr>
<tr>
<td>- Operationalisation of an effective PPP contingent liability tracking and monitoring system in the DMO;</td>
</tr>
<tr>
<td>- Operationalisation of an effective VGF mechanism in the Ministry of Finance/BOF.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Approved</th>
<th>Schedule implemented</th>
<th>Schedule implemented</th>
<th>Schedule implemented</th>
<th>Schedule implemented</th>
<th>Schedule implemented</th>
</tr>
</thead>
<tbody>
<tr>
<td>N/A</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>N/A</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>N/A/</td>
<td>2 (Works and Transport)</td>
<td>2 (Aviation and FCT)</td>
<td>1 (Power)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>N/A</td>
<td>Completed</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>N/A</td>
<td>Completed</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>N/A</td>
<td>Completed</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
3. **Improved legal and regulatory framework** governing FGN PPP activity as measured by:

- Presidential approval of detailed PPP Regulations and evidence of the active application of these regulations to the PPP business activities:
  - Inter-MDA agreement on key legislative amendments and new legislation required to strengthen the enabling environment for PPPs as detailed in MOU signed between ICRC, Sponsoring Ministry and MOJ.

<table>
<thead>
<tr>
<th>Phase I, Component 2:</th>
<th>0</th>
<th>5</th>
<th>5</th>
<th>5</th>
<th>0</th>
<th>3</th>
<th>4</th>
<th>3</th>
<th>1</th>
<th>2</th>
<th>2</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Completion of up to 15 Outline Business Case (OBC) proposals and related safeguards assessments submitted to Minister of Finance for clearance in line with National PPP Policy Guidelines;</td>
<td>0</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>0</td>
<td>3</td>
<td>4</td>
<td>3</td>
<td>1</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>- Completion of up to 10 Full Business Case (FBC) proposals to be submitted to FEC in line with National PPP Policy Guidelines;</td>
<td>0</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>0</td>
<td>3</td>
<td>4</td>
<td>3</td>
<td>1</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>- Up to 5 transactions reach commercial closure.</td>
<td>N/A</td>
<td>Completed</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Phase II, Component 4:</th>
<th>Baseline established</th>
<th>- Determine baseline for</th>
<th>Baseline</th>
<th>Baseline</th>
<th>US$200 m</th>
<th>US$500 m</th>
<th>US$300 m</th>
<th>Semi and Annual</th>
<th>PIU Reporting</th>
<th>ICRC Annual Report</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Private investment in total core</td>
<td>Baseline established</td>
<td>- Determine baseline for</td>
<td>Baseline</td>
<td>Baseline</td>
<td>US$200 m</td>
<td>US$500 m</td>
<td>US$300 m</td>
<td>Semi and Annual</td>
<td>PIU\ICRC and CBN project</td>
<td>ICRC\PIU CBN</td>
</tr>
</tbody>
</table>
Infrastructure investment reaches US$1 billion.

- Other institutional financing (IFIs) up to 50 percent over IDA contribution.

- Improvements in the volume and effectiveness of public funds deployed in support of commercially viable PPP projects in Nigeria over the life of the IDA project as measured by: (i) VGF announcements in Budget Call letters; (ii) budget allocations approved and disbursed of a minimum 20 percent of total project costs where VGF allocations have been awarded.

- A minimum of three financial institutions operating in Nigeria sign and implement Institutional Development Plans (IDPs) that involve strengthening key technical aspects of internal project finance capacities.

<table>
<thead>
<tr>
<th>under the M&amp;E Plan</th>
<th>private investment in the PPP Sector</th>
<th>VGF Announced</th>
<th>VGF Allocation (based on OBC estimate)</th>
<th>VGF Allocation (based on OBC estimate)</th>
<th>VGF Allocation (based on OBC estimate)</th>
<th>VGF Allocation (based on OBC estimate)</th>
<th>Semi and Annual</th>
<th>PIU/ICRC and BOF Reports</th>
<th>ICRC\PIU CBN</th>
<th>Semi and Annual</th>
<th>PIU/ICRC Reports</th>
<th>PFIs</th>
<th>ICRC\PIU PFIs</th>
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Annex 4: Detailed Program Description

NIGERIA: Public/Private Partnership Program

A. APL Program Background

1. The Federal Government of Nigeria sought World Bank assistance in the design of a comprehensive investment program that would bolster private sector investment in core infrastructure. The World Bank has worked with the Infrastructure Concession Regulatory Commission and other key MDAs to design this two-phased Adaptable Program Lending operation. Whereas other lending instruments such as Specific Investment Loan (SIL) were originally considered, an APL approach gives the proper mix of institutional development and investment support to the FGN necessary to strengthen the PPP market. Furthermore, the project is designed to maximize the effectiveness of providing support to the FGN by matching support activities with the FGN’s timeline building its capacity to manage large-scale PPP transactions.

2. As made evident in early upfront diagnostic work, although Nigeria has made great progress in creating an institutional structure to manage and regulate PPPs (through the ICRC), the country still has significant gaps in its institutional, legal and regulatory capacity to implement, monitor and evaluate PPP transactions. The World Bank with the FGN held a series of consultations to identify the most binding of these legal, regulatory and institutional constraints and design initiatives within the PPP project to address these obstacles.

3. The first Phase of this APL addresses the technical and institutional capacities to develop and manage properly structured PPP transactions. This includes focused technical assistance in key MDAs, resources to support project preparation, ongoing legal and regulatory reform, support for outline business cases, transaction advisory services, and state-level PPP support. This work run continuously as the infrastructure financing component under Phase II becomes effective.

4. A central part of this program is to design financial products that would alleviate the binding constraints on the infrastructure finance market in Nigeria. While partial risk guarantees were considered throughout to offset many of the investment risks for private sectors, diagnostic work revealed that mechanisms to address shortages in long-term debt finance as well as resources for upfront capital investment in infrastructure projects was in high demand. A two-pronged approach was undertaken to address these constraints; on the private side employing a financial intermediary loan to extend long term debt finance for private investment in infrastructure; on the public side a Viability Gap Facility that would provide money for upfront capital expenditures for specific projects with PPP market viability.

5. The VGF instrument was considered as a result of the initial economic and financial return considerations arising out of the initial review of prospective projects. Following on from this, a senior delegation from the Federal Government of Nigeria undertook a week-long South-South exchange mission to India. This allowed the Nigerian authorities to discuss first hand with Government of India (GOI) officials the pros and cons and design and operational parameters of the GOI Ministry of Finance VGF instrument that has been in operation since 2005. On this basis, the FGN proceeded to scope out a model that could be introduced into the Nigerian budget framework and requested that the World Bank provide support to its further development and implementation and then direct funding to it, in parallel with the allocations that the Ministry of Finance would be making through the Medium-Term Expenditure Plan (MTEP).
6. The development of the Financial Intermediary Loan sub-component of the project is directed at providing commercially-based long-term debt finance to the private investment market. In the preparation of this project, the World Bank worked closely with the FGN to identify potential financial intermediary institutions that would be interested in using resources from the FIL with an eye towards investing into core infrastructure PPPs. After thorough evaluation of the market, the team reached preliminary agreements with the FGN to select the African Finance Corporation as the “first-mover” off-taker of FIL money. Other PFIs will be invited to participate in the FIL once Phase II is approved.

B. APL Design

7. This APL is structured with a first phase of US$115 million focused on institutional capacity building and PPP project preparation activities. A subsequent US$200 million phase of infrastructure financing to be activated based on meeting key triggers related to PPP pipeline preparedness, preparation of PPP Regulations, VGF structures, and completion of capacity building actions on behalf of the Federal Government and “first mover” participating financial institution (PFI). Project components 1-3 will be launched under the first phase of the APL but continue in parallel with APL Phase II activities. Phase II activities would be scheduled over a five year timeframe with the Phase II component expected to commence within 1 year of effectiveness of Phase I. The total Project Budget (Phases I and II) is US$315 million. A detailed project budget breakdown is provided below.

<table>
<thead>
<tr>
<th>Table 1 - PPP Program Budget Allocations by Component (US$ mil)</th>
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<tbody>
<tr>
<td><strong>APL Phase I</strong></td>
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<tr>
<td>Component 1: Capacity Building Support and Technical Assistance and Legal/Regulatory Reform,</td>
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<tr>
<td>Infrastructure Concession Regulatory Commission (ICRC)</td>
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<tr>
<td>Technical Assistance to key MDAs</td>
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<td>Systems and Equipment to key MDAs</td>
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<td>PPP Training to key MDAs</td>
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<td>State Level PPP Support</td>
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<td>Legal, Regulatory Reform</td>
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<td>Sub-total</td>
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<td>Component 2: PPP Project Preparation and Transaction Advisory Services</td>
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<tr>
<td>Outline Business Case (OBC) Workflow</td>
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<td>Transactions Advisory Workflow</td>
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<tr>
<td>Safeguards Workflow- SEA's and EIA's</td>
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<tr>
<td>Market Outreach- Roundtables and Road Trips</td>
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<td>Sub-total</td>
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<tr>
<td>Component 3: Project Implementation and Monitoring and Evaluation</td>
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<td>Project Implementation Unit (PIU)</td>
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<td>Evaluation Activities</td>
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<td>Sub-total</td>
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<tr>
<td>Other</td>
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<tr>
<td>Unallocated</td>
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<tr>
<td>PPF Refund</td>
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<tr>
<td><strong>APL Phase II</strong></td>
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Viability Gap Facility- Expected Allocation of $50 million*
Financial Intermediary Loan- Expected Allocation of $150 million*

<table>
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<tr>
<th>Sub-total</th>
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<tr>
<td>Total Phase I Cost</td>
<td>115.0</td>
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* The precise division of resources between VGF and FIL will be determined at a later point.

B.1 Component 1: Capacity Building and Legal/Regulatory Reform (US$39.6 million)

8. This component will provide resources for ICRC institution building as well as other key MDAs central to the success of the PPP Program. On the recommendation of ICRC, fourteen key MDAs will be the recipients of targeted capacity building support and technical assistance. The identified list includes, inter alia: Ministry of Works and Housing, Ministry of Transportation, Ministry of Environment, Ministry of Aviation, Ministry of Power, Ministry of Health, Federal Capital Territory, Ministry of Finance (the Budget Office, the International Economic Relations Department and the Debt Management Office), National Planning Commission, Central Bank of Nigeria, Bureau of Public Procurement, and Bureau of Public Enterprises. Support for relevant legislative Assembly stakeholders (particularly the key Committees with PPP responsibilities) will also be provided. This component aims to enhance the capacity of the FGN to handle PPP deal flow at the policy, institutional and operational levels.

9. The design of this component followed a detailed three-staged Needs Assessment and Capacity Building Framework identification process carried out with all key MDAs. ICRC and FMOF provided guidance on the targeted MDAs that will have critical roles to play in the implementation of the PPP Program. Initial consultations with these MDAs gauged the overall level of knowledge of PPP transactions and general PPP characteristics. The second series of consultations were aimed at recognizing the MDAs ability to manage transaction and technical advisors for PPPs and the MDAs ability to oversee both the completion of Outline Business Case (OBC) work (pre-feasibility work) and negotiations with the private sector. The final consultations resulted in detailing specific technical weaknesses in each MDA that could serve as a hindrance to carrying out well-formed and well-managed PPP transactions. These consultations also focused on outlining support activities to central agencies with project implementation responsibilities. This includes specifically ICRC as the lead implementing agent, the Central Bank of Nigeria and the Budget Office of the Federation, both of which will have critical implementing responsibilities under APL Phase II and require capacity building support to be delivered under the Phase I activities. Likewise, the Debt Management Office (DMO), which will take on fiscal and contingent liability responsibilities under the National PPP Policy, requires technical and institutional capacity building support to be brought to satisfactory levels of effectiveness.

10. The other principal beneficiaries receiving support under this component are prospective Participating Financial Institutions (PFIs) that are seeking to access the APL Phase II FIL resources and State Governments. In regard to PFIs, subject to compliance with eligibility criteria, the project will provide funding to support Institutional Development Plans approved by both the Central Bank and World Bank that PFIs will need to implement in order to draw down FIL funds.

11. While this APL Phase I project is not targeting substantial support to State Government PPP programs, the ICRC will provide some seed support to first-moving “demonstration effect” State Governments interested in developing a PPP Program in line with the National PPP Policy approach. As noted in section III of this document, the African Development Bank (AfDB) will be developing a more substantial program of state-level support that will build on the activities supported under the IDA project.
12. Building on this needs assessment process, as well as the recommendations suggested by the PPIAF study, the Capacity Building and Technical Assistance component was formed to comprise of three support instruments: technical assistance, goods and equipment and training. Technical assistance can cover a wide variety of activity but mainly focus on specific advisory services to assist in the development of policy work and project preparation. These activities will be instrumental in assisting the MDAs to develop their PPP programs and projects across different sectors. The second area of support is for systems and equipment. This includes support for ICT systems that will help MDAs manage and track PPP projects and performance and interface with other PPP units within the government to share information, monitor and evaluate the progress of the overall National Policy and build a database for private sector parties to access information on the PPP program and project pipeline. The final area of support is training to MDAs. The training component includes general PPP training for key staff and “subject-specific” training and workshops. This project component will be managed by the Commission’s PPP Resource Center (PRC) with implementation support from the PIU. An annual Capacity Building and Technical Assistance Program Plan will be prepared under the PRC leadership in collaboration with the MDAs. This will be submitted to IDA each November and will describe the recipients, activities, and resource amount necessary for the activities scheduled for a twelve month period from January - December. While the MDAs will likely have contractual arrangements with technical advisors, receive significant support for their Project Delivery Teams (PDTs), and capacity building assistance funded under this component, ICRC will maintain financial management over these activities to ensure the work comports with the National PPP Policy guidelines and directives.

13. The resources under this component currently provides US$8.5 million to ICRC, US$8.7 million for line ministries, US$9.9 million for central agencies, US$5 million for state-level PPP support, US$2.5 million to co-finance Institutional Development Plans (IDPs) for participating financial institutions (PFIs), and US$5 million to support on-going, legal, regulatory and fiduciary reforms. Aggregating across all MDAs, the projected capacity building commitments are: (i) Technical Assistance: US$24.75 million; (ii) Equipment and Goods: US$6.05 million; (iii) Training: US$8.8 million.

ICRC

14. As part of the project design first outlined in the Project Concept Note, the PPP Program will direct significant resources to the ICRC to facilitate their responsibility over the PPP program. The capacity building and technical support sub-component specifically for ICRC will function on two levels. First, ICRC will be the recipient of capacity building and technical assistance directly in order to facilitate its responsibility to regulate concession agreements. Secondly, capacity building and technical advisory resources housed in the ICRC will fund PPP training programs, advisory services, study tours and other PPP-related technical studies in support of the key MDAs and sub-national PPP Units. The PPP Resource Center (PRC) based in the ICRC Project Development Department will administer these programs.

15. The ICRC Governance and Business Plans were used as the basis to structure the capacity building sub-component directed at ICRC specifically. The ICRC’s organizational structure is divided into three main clusters of offices- the PPP Resource Center (PRC) the Contract Compliance Center (CCC) and other supporting offices including legal, accounting, and the Director General’s Office (DGO). With these three clusters the team prepared initial cost estimates according to the suggestions put forth in the Governance Plan and guidance from ICRC. Support is targeted to the two operational departments of the ICRC, the PRC and the CCC and in particular their core mandate work. In addition, there is IT and equipment support provided across all departments (including the DG office and the administrative and legal departments). Key areas of capacity building include the following:
• PRC: technical assistance to implement their PPP capacity building responsibilities to the MDAs, develop PPP regulations, foster sector PPP strategies and knowledge exchange and provide outreach support to the States;
• CCC: technical assistance in contract design, assessment and monitoring and provision of legal services.
• DG Office: A strategic management training program will be led out of the DGO, given the importance of high level institutional engagement that will be necessary for this sort of training to be a success. This will require it be championed from the DG’s office.

Support to Key MDAs

16. The focus of support for the central and line ministries will include a range of technical assistance covering procurement, PPP project development and planning, PPP contract preparation. This will be complemented by PPP IT system development and training that will deepen PPP skills and increase exposure to international best practices. Initially, it is not anticipated that the capacity building program will be extended to the Ministry of Power, given the extensive support it is currently receiving through the IDA Nigeria Electricity and Gas Improvement Project (NEGIP) and DfID NIAF projects.

Environment

17. The FMEnv will need to play a considerable role, together with the sponsoring ministry and ICRC to ensure quality safeguards work is conducted on all prospective PPP transactions. The focus of the PPP Program support will be on extending the FMEnv Environmental Assessment Unit capacity to oversee PPP safeguards assessment work and monitor compliance. The technical assistance will support this unit with structuring an environmental management system and audit system, risk assessment policy and ecotoxicology policy. In addition to these activities, the project will support the Ministry with PPP training for environmental and monitoring and evaluation issues as they relate to PPP projects. Given that the IDA NEGIP project is providing substantial assistance to the unit assessment work, the PPP project will direct funding principally to the monitoring and audit phases of the Environmental Assessment Unit’s mandate. A database of EIA and Audits will be created to tie-in to the database the NEGIP project is supporting to the Ministry of Environment’s Department of Petroleum Resources. This will also include goods and equipment supplies which will entail vehicles to assist with monitoring activities, toxicology and laboratory equipment.

Ministry of Works

18. Support to the Ministry of Works PPP Unit is designed to build their capacity to plan, initiate, analyze and carry out PPP transactions in line with the National Policy on PPPs. The technical assistance will consist of supporting sector planning activities, PPP contract design specifically with roads, highways and bridges, procurement assistance and legal services. An IT system that will integrate with ICRC’s PPP tracking system will also be supported under this component. Finally, PPP training focused on toll roads and bridges will be provided.

Ministry of Transportation

19. The Ministry of Transportation will play an important role in PPP pipeline projects. Specifically, the Ministry has interest in pursuing PPPs in the railways, ports, and inland waterway sectors. To do so, the project will provide assistance with sector planning aimed at helping the Ministry to develop a coherent sector strategy that is harmonized with the long and medium term investment plans set forth by the National Planning Commission. IT systems and PPP training for this Ministry will also be included.
Ministry of Aviation

20. Support to the Ministry of Aviation will include sector technical assistance to help the Ministry increase its capacity to manage properly concessions and concession contract design. Following guidance from ICRC, support will be provided to Federal Airports Authority of Nigeria (FAAN). The technical assistance will also provide resources for an integrated IT systems harmonized with the same system used in the other line ministries and ICRC. PPP training, general private investment in airport operations and project finance will also be supported.

Ministry of Health

21. The Ministry began pursuing its own PPP Policy back in 2005 and passed its own PPP Policy for the health sector in 2006. The Ministry of Health has requested capacity building and technical assistance to further build their PPP capacity. Of top priority is assistance to harmonize the 2006 Health PPP Policy with the National Policy on PPPs. Other forms of assistance will include PPP training as it pertains to health PPPs and systems upgrades to access ICRC’s PPP tracking system.

Debt Management Office (DMO)

22. The DMO will, like the MOE, have a significant role to play in the implementation of the FGN’s PPP Program. After discussions with DMO management, including the Director General, it was confirmed that the DMO will be the lead federal agency tasked with the oversight and management of the contingent liabilities that will accompany a growing pipeline of PPP investments. This will have fiscal implications and will need to be managed carefully to ensure that the Federal government is able to effectively provision for these liabilities and maintain strong fiscal management stance in the PPP market. To this end, the project will be providing technical assistance to the DMO to increase contingent liability management capacity, as well as the necessary IT and other systems upgrades and training necessary to effectively fulfill their functions.

FMOF/Budget Office

23. Under the project, the FMOF/Budget Office of the Federation (BOF) will be designing and implementing a VGF mechanism. This will require, in addition to additional technical capacity, considerable stakeholder consultation and ongoing workshops to ensure that the mechanism is designed taking into account MDA concerns. This system development and outreach will need to be done in a way consistent with the ongoing budget systems reform program that the government is currently implementing under the IDA Economic Reform and Governance Project (ERGP). The capacity building support will also include financing of goods and equipment related to the installation of the necessary budget management and expenditure systems that will be required for the VGF. Support will go to assisting the Budget Office with structuring the Viability Gap Framework and harmonizing the VGF with all relevant budget and PPP policies and procedures. As a first step, the current development of the new Chart of Accounts will need to take into consideration the VGF requirements.

FMOF/IERD

24. IERD, as a key project stakeholder has responsibilities encompassing coordination between the project, the ICRC, the Minister of Finance and the World Bank as well as more broadly championing the PPP program with the wider international community and across the FGN. The department also has responsibilities for monitoring and assessing project activities and evaluation of results. To this end, the
project will support IERD in the areas of PPP structuring and performance assessment and management and evaluation.

CBN

25. The Central Bank plays an important role in working with the ICRC and the PFIs to manage the financial intermediary loan and track the use of the FIL money. The Development Finance Department has been identified to work closely with ICRC to manage the FIL resources. For these reasons, it will be important to provide this department with the proper IT systems and equipment to monitor and track these activities. Furthermore, CBN will be instrumental in facilitating the entrance of other PFIs into the infrastructure finance market for PPPs. A project finance advisor will assist in providing technical assistance to the CBN.

NPC

26. The success of the PPP Program will require a systematic contribution from the NPC in terms of the development of robust Medium-Term Sector Strategies (MTSS) that will provide the sector frameworks of priority investments from which the PPP pipeline will be developed. Projects to be considered for VGF funding will need to be included in the approved MTSS and the NPC will be integral to the investment appraisal and PPP selection process set out under the PPP Policy. The project will support these different functions through technical assistance to develop MTSS that incorporate PPP options and ensure that this process is effectively linked into procedural requirements for PPP project approval. These activities will need to be closely coordinated with ICRC.

BPP

27. The defining characteristic of PPP transactions is the unique form of procurement they entail, with significant differences from the traditional public procurement process. BPP has stewardship of all federal government procurement and will work closely with BPE and the PIU procurement team to implement the Program and support implementing agent project efforts. As part of the PPP program capacity building, the project will support technical assistance, training and IT PPP procurement tracking system development.

BPE

28. While the BPP mandate focuses on privatization and commercialization, nevertheless it has been extensively involved in a wide range of PPP work, including the successfully concessioning of 24 port terminals. The agency has a considerable set of technical and transactional know-how that is currently not readily available to the rest of the FGN. Building on an extensive IT development program financed under the recently closed PSP project, support will be provided for BPE to electronically capture its corpus of technical work and to assist BPE to develop its role as a knowledge agency to the rest of FGN and, in respect of its sector and PPP work, as an advisor to ICRC.

State Component

29. FGN and ICRC have also advised the Bank team to make available resources for capacity building and technical assistance for sub-national state-level PPP entities. Bank support for these state-level units would be similar to the design of the capacity building program for the federal-level MDAs. The team met with representatives from Cross Rivers State, Delta State, and Niger State to get a better understanding of their current capacity to handle PPP deal flow and their prioritization of PPP-related activities. Central to the design of assistance made available to these States is the request that the State
PPP Units work cooperatively with the ICRC in an effort to standardize much of the components of a PPP Unit. These components can include procurement practices, PPP legal frameworks, regulations, financial management practices, and project analysis skills. Furthermore, standardizing such design work will make downstream PPP transactions more efficient for the public sector and more appetizing for the private sector. The current estimated amount of capacity building and technical assistance to be made available for participating states is US$5 million.

30. This state support will build on ongoing sub-national PPP work being done in collaboration with PPIAF’s SNTA program. This program is currently in the process of providing sub-national technical assistance to two lead states with promising potential to access domestic credit market. Components under this TA include: (i) Sub-national credit advisory services; and (ii) Sub-national shadow credit ratings. The tasks together are expected to develop the state level capacity, legal and institutional ability and framework for raising capital from domestic financial markets, without explicit central government guaranties.

Participating Financial Institutions (PFIs)

31. For Financial Institutions (FI) to be eligible to access the FIL, they will need to meet certain eligibility criteria related to governance, financial and portfolio management, staffing and expertise (particularly project finance, procurement and safeguards). Where the FI is not fully compliant, there will be a need to implement an agreed-upon Institutional Development Plan (IDP). While the expectation is that a significant portion of the costs of the IDP will be borne by the FI, there are other more public good costs which the FI would not invest in, expect to access the FIL. This is an area where the project would consider providing capacity building assistance from the IDA credit, based on an overall IDP cost-sharing agreement. Over time, as the FIL generates its own revenue flow back to FGN, this income can be deployed in support of the IDP activities. However, in the short-term any FGN funding would need to come from the IDA credit. A budget of US$2.5 million has been allocated for this FI capacity-building (US$0.5 million for up to five PFIs).

Legal and Regulatory Reform

32. A key element of the National Policy on Public Private Partnership (PPP Policy) adopted by the Federal Government of Nigeria (FGN) in April 2009 is a review of the legal and regulatory framework currently governing the operation of PPPs. Such a review is intended to identify those laws and regulations which are not aligned with the objectives of the PPP Policy or which may act as an impediment to the execution of PPP transactions. Specifically, this will involve a review of:

- The Infrastructure Concession Regulatory Commission (Establishment) Act 2005;
- The Public Procurement Act 2007;
- The Public Enterprises (Privatization and Commercialization) Act 1999;
- The Debt Management Act 2003;
- The Fiscal Responsibility Act 2007;
- The National Planning Act 1993; and
- The sector legislation (existing and proposed) relating to transport, roads, railways, ports and harbors, aviation, inland waterways, water resources, communications, energy, water, competition and other sectors for which PPP transactions are or will become an integral component of the government’s infrastructure reform agenda. 
33. Where necessary and feasible, these laws will need to be amended or new laws enacted in order to:

- ensure that public authorities are empowered to enter into agreements for the implementation of privately financed infrastructure projects and can delegate their statutory functions to private companies;
- ensure that the regulation and licensing of public service operators and operations is transparent, timely and effective;
- provide appropriate remedies for protecting the safety and integrity of public infrastructure from vandalism and other criminal activity;
- create a center of PPP expertise within the ICRC (the PPP Resource Center) to issue guidance to all public authorities on the procurement of PPP projects and the drafting of PPP contracts;
- ensure that there are no distortions created by existing tax, banking, company or any other laws that would bias the investment decisions of public authorities for or against PPP as a procurement option, or would distort the commercial decisions of PPP investors, contractors, or operators;
- provide for transparent, efficient and competitive procurement procedures for PPP-type contracts that encourage innovation from bidders, and allow dialogue to optimize the allocation of risks between the contracting parties;
- ensure that there is an effective dispute resolution process which can operate independently and in a timely manner to provide alternative procedures such as arbitration and expert determination; and
- ensure that the proposed institutional and financial framework for PPP projects and the issuance of guarantees, partial risk insurance or other financial instruments by, or through, the FGN is consistent with the Fiscal Responsibility Act 2007 and corresponding legislation proposed in each State.

34. An overview of the existing set of legislation and regulations impacting PPP activity as well as a consideration of the governance issues this set of legislative and regulatory arrangements generates is detailed in Annex 1. After due consideration of the different options available to bring legislation in line to most effectively promote PPPs, the practical challenges in introducing and enacting new legislation at this juncture, and to address underlying institutional governance concerns, agreement was reached to develop detailed PPP Regulations to guide the details of FGN PPP activities. It was agreed that given Nigeria’s political dynamics, the regulations be promulgated under the ICRC Act that authorizes the institution to issue regulations. Other key legal work to be done is listed below:

- Issue of a regulation, preferably by the ICRC, dealing with the procurement and coordination aspects of the PPP Policy including, in particular, the many issues addressed in Parts 1 to 4 of the PPP Policy that are not otherwise addressed in the Public Procurement Act;
- Issue road tolling policy in collaboration with Ministry of Works and Housing;
- Detailed review of the various outstanding sector bills with a view to aligning them with the objectives of the PPP Policy and the early enactment of these Bills into law;
- Development of VGF Policy and Operational Guidelines and, potentially, over the longer term, a VGF law;
- Potential drafting of a new PPP law.

35. PPIAF funding is currently being deployed to further develop a detailed and annotated outline of the Regulations. On this basis and subject to FGN approval, the project will then fund the detailed work to prepare and finalize the Regulations, including the extensive stakeholder outreach that will be
necessary to ensure their effectiveness and broad MDA compliance. The budget allocated for this work stream is US$5 million.

**B.2 Component 2: PPP Preparation and Transaction Advisory Support (US$62.7 million):**

36. This component will provide resources for proper due diligence and preparatory work to be done for particular PPP pipeline transactions. Current PPP pipeline projects have had minimal or no upstream analysis that is critical in the financial and economic analysis of these projects as well as the drafting of key documents such as concession agreements. There are four sub-components to this project component: (i) Outline Business Case preparatory work (US$6.7 million); (ii) transactions advisory services (US$50 million); (iii) safeguards due diligence work (US$3.5 million); and (iv) market outreach resources (US$2.5 million). The overall budget for this component is based on the targeted long-list of projects, together with additional activities agreed to, but not included in the long list of transactions where the World Bank anticipates providing financial support.

37. To facilitate timely implementation of the project activities and to support the FGN to move forward, the project will provide retro-active financing arrangements dating back to March 1, 2011 related to transaction preparatory work.

**Pipeline Development – Approach Adopted:**

38. Following federal approval of the National PPP Policy, the ICRC and key ministries (Works, Transport and the Federal Capital Territory) agreed to develop an initial long-list of potential PPP transactions on which IDA could support the FGN to undertake upstream investment appraisal and Value for Money (VfM) assessments. This work will be undertaken in accordance with the National PPP Policy guidelines for “Outline Business Case” (OBC) assessments which provide the basis for progressing PPP projects. Subsequent to satisfactory outcome of the OBCs, transaction advisors will be retained to assist the MDAs in successfully bringing the transactions to market and reaching commercial and financial close.

**Establishing a Long-List of Projects for Preparation:**

39. Only PPP projects that have been developed and procured in compliance with the National PPP Policy and the Bank’s Procurement Guidelines will qualify for World Bank support under this project. The ICRC organized consultations with the key line ministries that were prepared to collaborate with the ICRC to develop PPP initiatives meeting this eligibility criterion. As a result of these consultations, an initial long-list pipeline comprising 16 transactions has been identified, for potential World Bank support under APL Phase I and Phase II. The total estimated investment value of these projects is US$5.13 billion.

40. Consistent with the APL structure, these pipeline projects are those projects for which there is strong commitment from the sponsoring MDA (to develop and execute as PPPs), and that appear sufficiently mature to undertake an OBC appraisal.

41. This pipeline will form the basis for further review and consultation with the ICRC and line ministries for inclusion in the project budget. The pipeline comprises 11 federal road and bridge projects, various infrastructure initiatives within the Federal Capital Territory (FCT), a port concession in Lagos and an inland port in Onitsha. It should be noted, however, that this list is not exclusive and other potential transactions may be considered as they are developed by the line ministries in consultation with the ICRC. It should also be noted that some of the long-listed projects may eventually not be pursued or
only receive support under the Phase I activities – much will depend on their OBC feasibility appraisal and federal priorities.

42. The Pipeline has been divided into two parts: i) “first-movers” and ii) short-medium term prospects. A category of “Additional Prospects” has also been included to describe some projects that could potentially be supported pending prior contractual commitments are clarified and/or FGN chooses to include these projects under this PPP Program.

43. There are four projects which have been identified as “first movers.” These projects present the strongest near term prospects for PPP transactions, considering key factors such as MDA capacity and interest, level of project complexity and size, project status, and potential for commercial viability. OBC and feasibility work has already begun on these four projects with reputable international consultants.

First Mover Transactions (Immediate Prospects)

44. The “first-mover” projects are all in the roads sector. Note that a key factor in the preparation of federal highway concessions by the Ministry of Housing, Works, and Urban Development will be tolling policy. Given that road concessions in Nigeria are in nascent stages, the Ministry has yet to develop policies regarding tolling. The FMHW&UD is, however, currently developing, with the support of the ICRC, tolling guidelines that will be applied to PPPs executed by the Ministry.

Abuja-Kaduna Highway (Ministry of Works)

45. This is an existing, heavily trafficked 166 km corridor connecting the capital with Kaduna. The road is not currently tolled, but has been tolled in the past. Average annual daily traffic (AADT) is estimated to be close to 10,000 (though this figure will be updated shortly to reflect ongoing traffic counts), and the estimated cost of the project is US$138 million. SNC Lavalin has been engaged to undertake a feasibility study on this project; its’ scope is broad and reasonably well articulated for an early viability study and explicitly includes the delivery of an OBC report. ICRC is working with the Ministry of Works to ensure that Lavalin is undertaking traffic studies, detailed costing analysis, as well as economic and financial appraisal for this project. This work is expected to be concluded by mid-2010.

Kaduna-Kano Highway (Ministry of Works)

46. This project involves the rehabilitation and upgrade of 212 km of highway connecting Kaduna with Kano. Project costs are estimated by the Ministry to be US$177 million, and AADT is thought to be in the range of 13,000. Feasibility/OBC work is being carried out by Lavalin under the same TOR/contract as the Abuja-Kaduna project.

Shagamu-Benin (Ministry of Works)

47. This project calls for the rehabilitation and upgrading of 268 km of highway between Shagamu and Benin. Project costs are estimated at US$423 million, and AADT is estimated to approach 30,000, with a significant percentage of truck traffic (14 percent). Roughton, a UK-based engineering firm, has been engaged to conduct a feasibility study/OBC for this project (under the same TOR as Lavalin). Several consultations between ICRC, the Ministry and Roughton’s project team have been held to ensure that the OBC work covers all key areas required. Delivery of the OBC is expected in mid-2010.
<table>
<thead>
<tr>
<th>Name of the Project</th>
<th>Sector</th>
<th>Sponsoring MDA</th>
<th>Brief Project Description</th>
<th>Project Development Stage</th>
<th>Approximate Project Cost (USD, Millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FIRST MOVER TRANSACTIONS</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Abuja-Kaduna Carriageway</td>
<td>Transport</td>
<td>Ministry of Works</td>
<td>166km, dual carriageway, estimated AADT: 9,994</td>
<td>SNC engaged for pre-feasibility/OBC</td>
<td>138.3</td>
</tr>
<tr>
<td>Kaduna-Kano Carriageway</td>
<td>Transport</td>
<td>Ministry of Works</td>
<td>212km, dual carriageway, estimated AADT: 13,118</td>
<td>SNC engaged for pre-feasibility/OBC</td>
<td>176.7</td>
</tr>
<tr>
<td>Shagamu-Benin Carriageway</td>
<td>Transport</td>
<td>Ministry of Works</td>
<td>268km, dual carriageway, estimated AADT: 27,485</td>
<td>Roughton engaged for pre-feasibility/OBC</td>
<td>422.7</td>
</tr>
<tr>
<td>Benin-Asaba Carriageway</td>
<td>Transport</td>
<td>Ministry of Works</td>
<td>139km, dual carriageway, overlay &amp; upgrading, estimated AADT: 14,367</td>
<td>Roughton engaged for pre-feasibility/OBC</td>
<td>139.0</td>
</tr>
<tr>
<td><strong>OTHER PIPELINE TRANSACTIONS</strong></td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td><strong>Roads, Bridges, and Highways</strong></td>
<td></td>
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</tr>
<tr>
<td>Niger River Bridge at Napeko</td>
<td>Transport</td>
<td>Ministry of Works</td>
<td>1.2km, 11m wide, single carriageway, greenfield</td>
<td>RFP Issued for pre-feasibility/OBC</td>
<td>44.0</td>
</tr>
<tr>
<td>River Katsina Ala Bridge at Buruku</td>
<td>Transport</td>
<td>Ministry of Works</td>
<td>.8km, 11m wide, single carriageway, greenfield</td>
<td>RFP Issued for pre-feasibility/OBC</td>
<td>29.3</td>
</tr>
<tr>
<td>Ibadan-Ilorin Road</td>
<td>Transport</td>
<td>Ministry of Works</td>
<td>11,119</td>
<td>RFP Issued for pre-feasibility/OBC</td>
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</tr>
<tr>
<td>Lagos-Iseyin-Kishi-Kaiama</td>
<td>Transport</td>
<td>Ministry of Works</td>
<td>375km, construction &amp; rehab</td>
<td>RFP Issued for pre-feasibility/OBC</td>
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<tr>
<td>Kaiama-Konkweso-Kaoje-Tugar Gwanbe-Fo</td>
<td>Transport</td>
<td>Ministry of Works</td>
<td>410km, extension of Lagos-Kaiama</td>
<td>RFP Issued for pre-feasibility/OBC</td>
<td>547.0</td>
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<tr>
<td>Onitsha-Enugu Road</td>
<td>Transport</td>
<td>Ministry of Works</td>
<td>122km, rehab &amp; upgrading, estimated AADT: 22,488</td>
<td>RFP Issued for pre-feasibility/OBC</td>
<td>122.0</td>
</tr>
<tr>
<td>Enugu-Port Harcourt Road</td>
<td>Transport</td>
<td>Ministry of Works</td>
<td>215km, upgrade &amp; modernization, estimated AADT: 11,993</td>
<td>RFP Issued for pre-feasibility/OBC</td>
<td>148.3</td>
</tr>
<tr>
<td><strong>Ports</strong></td>
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<td></td>
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<td></td>
</tr>
<tr>
<td>Kiri Kiri Terminal, Phases I and II</td>
<td>Transport</td>
<td>Ministry of Transport / NPA</td>
<td>Early project preparation; Steering committee formed</td>
<td>TBD</td>
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</tr>
<tr>
<td><strong>Inland Waterways</strong></td>
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<td></td>
</tr>
<tr>
<td>Onitsha River Port</td>
<td>Transport</td>
<td>Ministry of Transport / NIWA</td>
<td>First concession attempt canceled</td>
<td>TBD</td>
<td></td>
</tr>
<tr>
<td><strong>Urban Infrastructure</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Abuja District Infrastructure Development</td>
<td>Urban Devel</td>
<td>FCTA</td>
<td>4 districts</td>
<td>Most of technical work complete</td>
<td>200</td>
</tr>
<tr>
<td><strong>Light Rail</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Abuja Light Rail, Lot II</td>
<td>Transport</td>
<td>FCTA</td>
<td>Lots I, III ongoing, conceptual design on Lot II</td>
<td></td>
<td>1,200</td>
</tr>
<tr>
<td><strong>Water</strong></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kuje Water Works</td>
<td>Water</td>
<td>FCTA</td>
<td>Most of technical work complete, EIA complete</td>
<td></td>
<td>466.7</td>
</tr>
</tbody>
</table>

**Table 2 - PPP Program Long List**
Benin-Asaba (Ministry of Works)

48. Under the same contract as Shagamu-Benin, the Ministry of Works has also engaged Roughton to conduct an OBC for the overlay and upgrading of the 139km highway between Benin and Asaba. Projects costs are estimated to be US$139 million, and AADT of 15,000. Traffic counts are currently being undertaken by Roughton on the Shagamu-Benin route, and will provide much more reliable traffic figures. This OBC is expected to be completed in mid-2010.

Short-Medium Term Prospects (Short-list)

Niger River Bridge at Nupeko (Ministry of Works)

49. This is a greenfield 1.2 km bridge crossing the Niger at Nupeko which is expected to cost US$44 million. There is no existing bridge and there is currently only a road connection to the bridge on one side. An EOI for consultants to conduct a feasibility/OBC study was issued in December 2009. Responses have been received and evaluated, and an RFP has been issued to shortlisted firms. Proposals are expected to be received in early April. This should permit an OBC to be delivered by the end of the year. The OBC will clarify if the size of this project merits a stand-alone PPP.

River Katsina Ala Bridge at Buruku (Ministry of Works)

50. This is a greenfield 0.8km bridge crossing the Katsina River at Buruku and connecting the states of Benue and Taraba and is expected to cost US$29 million. There is no existing bridge though there are connector roads on both sides leading to the bridge site. An EOI for consultants to conduct a feasibility/OBC study was issued in December 2009. Responses have been received and evaluated, and an RFP has been issued to shortlisted firms. Proposals were expected to be received in early April 2010. This should permit an OBC to be delivered by the end of the year. Note that given the relatively small size of the project there is some concern as to the project’s feasibility as a stand-alone PPP. The viability of bundling this bridge with other nearby road projects or bridges will be assessed in the OBC.

Ibadan-Ilorin Highway (Ministry of Works)

51. This project is for the upgrade and modernization of the 150 km highway connecting Ibadan and Ilorin, an important stretch of highway linking Lagos to central and northern parts of the country. The project is estimated to cost US$250 million, and have AADT of over 11,000 (over 20 percent of it consisting of trucks). An RFP for OBC work has been issued to a shortlist of firms Proposals are expected to be received in early April. This will permit an OBC to be delivered by the end of the year.

Lagos-Kaiama (Ministry of Works)

52. The project brownfield rehabilitation of 375 km of highway. The estimated project cost is US$500 million. The economic and financial analysis of the OBC will be particularly important given that this route does not appear to be as important as some of the others included in the pipeline. An RFP for OBC work has been issued to a shortlist of firms Proposals are expected to be received in early April. This will permit an OBC to be delivered by the end of the year.

Kaiama-Sokoto Highway (Ministry of Works)

53. An extension of the Lagos-Kaiama corridor, this project involves greenfield construction. Project costs are estimated at US$547 million. The same viability considerations discussed above for Lagos-Kaiama are applicable to this stretch of road. An RFP for OBC work has been issued to a shortlist of firms Proposals are expected to be received in early April. This will permit an OBC to be delivered by the end of the year.
54. This project involves the upgrade and rehabilitation of 122 km of highway between Onitsha and Enugu, and is estimated to cost US$122 million. Traffic is estimated to be 22,500. An EOI for consultants to conduct a feasibility/OBC study was issued in December 2009. Responses have been received and shortlisted firms contacted to submit responses to a RFP.

55. This project is for the upgrade and modernization of the 215 km highway connecting Enugu with Port Harcourt. Expected costs are US$148 million, and AADT is estimated to be in the neighborhood of 10,000. Responses have been received and shortlisted firms contacted to submit responses to a RFP.

56. The Ministry has proposed this terminal as a PPP project. The facility is currently underutilized, and there are a number of major issues (e.g. existing incumbent concession arrangements, resettlement, and scope of concession) that need to be resolved. The Ministry has established a Steering Committee to resolve these issues and develop the project further. The Steering Committee has agreed to move forward with the issuing of an EOI for the OBC work. The TORs have been finalized and the EOI is expected to be released in early June.

57. The Ministry of Transport has identified this project as a priority, in particular given the investment it has made to dredge the lower Niger (beginning last year). The Government plans to develop six ports along its inland waterways. Onitsha is the first and most important of these given its strategic position and good land transport interconnections. The port was constructed in the 1980’s but never used, and the Ministry is already investing in its rehabilitation. Recent meetings with the Ministry indicate that a working-level project delivery team will also soon be established to advance the Onitsha River Port project.

58. The inland waterways PPP feasibility study consultants (MTBS) have highlighted some serious commercial and political risks, notably significant ongoing dredging requirement, security issues, and the status of restructuring the National Inland Waterways Authority (NIWA). Nevertheless there is political commitment to revitalizing inland waterway transportation (on the Niger River), and Onitsha would be the inland port offering greatest commercial potential. In order to better assess the feasibility of this prospect a full OBC appraisal is required.

59. Lot 2 represents the third of the first three of six lines that are planned for a light rail system in Abuja. The estimated cost of the Lot 2 project is US$1.2 billion. Lots 1 and 3 are said to be under development by a Chinese contractor under a US$841 million contract to design, build and maintain (for five years only), with plans to subsequently procure a concessionaire to provide rolling stock and systems, and to operate the LRT service (similar to the current arrangements for the Lagos LRT PPP projects). The FCTA has stated a clear preference to undertake Lot 2 as an integrated PPP (BOT/concession). However, if an integrated PPP structure is found not to be viable then Lot 2 may also be procured along the lines of the contractual arrangements for Lots 1 and 3.
60. CPCS Transcom has conducted feasibility work on the light rail system intermittently since 2006, including conceptual design, ridership studies, and economic and financial analysis. Ridership on Lot 2 is projected to be substantially higher than for Lots 1 and 3. Given the capital intensive nature of light rail, this project is highly likely to require VGF support and a unitary payment/revenue guarantee scheme. The very large size of the project, relative complexity of light rail transit PPPs, and the involvement of Chinese contractors on the first two lines of the system make this a challenging PPP project. International transaction/financial advisors will be needed to assess the bankability of PPP structuring and procurement options.

_Kuje Water Works (FCTA)_

61. This project is an integrated water resources/treatment/supply system with an estimated investment cost of US$467 million. The project comprises a new dam, treatment plant, primary/secondary pipelines, storage reservoirs, and local distribution. The project would serve some lower (Pegi) and middle (Kuje) income areas in the Federal Capital. Although technical work on the project appears to be well advanced (e.g. EIA), critical financial/economic analysis has yet to be undertaken. The FCTA has requested support from ICRC in this respect, and consultants may be hired to carry out the full OBC appraisal. Given the political and social sensitivity of water tariffs, the OBC consultants will need to consider PPP structuring and financing options – including VGF and political risk mitigation mechanisms (e.g. partial risk guarantees). TORs have been finalized and an EOI release is expected for mid-2010.

_Abuja District Infrastructure Development (FCTA)_

62. The FCTA is exploring the possibility of developing primary infrastructure in four districts using PPPs. The average investment cost of each district is estimated to be US$200 million, and the development of each district is expected to take 4-5 years. FCTA is proposing that land use charges paid by developers would fund the investment. A key issue will be whether the private sector will assume revenue risk from developers. This seems highly unlikely, and therefore the FCT will probably have to assume this risk. An FCT payment obligation upon completion (possibly backed by a PRG) is probably the most likely structure. The FCTA needs help with economic/financial viability analysis, which has not been done and would be critical to completing an OBC.

_An Additional Prospects_

_Second Niger Bridge at Onitsha (Ministry of Works)_

63. This is a US$500 million project comprising a six lane, 1.7km span bridge and 12km of connecting highways along with motels, restaurant and cafeterias. The project is likely to require a substantial public contribution. It is understood that discussions with a preferred bidder under a previous procurement process have failed to come to a conclusion on concession arrangements, and there is a possibility that the Ministry will rebid this toll bridge project according to the national PPP policy and with World Bank support. The project was taken off the pipeline long list due to concerns that the project could face substantial political and/or legal complications in light of this failed concessioning. If the current contractual situation can be clarified satisfactorily and an OBC undertaken, this project could become a very strong candidate for the pipeline by virtue of the fact that there appears to be strong demand for the bridge, it is located strategically, and it forms part of a corridor with several PPP pipeline transactions (Shagamu-Enugu Corridor). While the Ministry PPP unit is considering incorporating a feasibility/OBC study for this project into Roughton’s current scope for Shagamu-Benin-Asaba (due to geographical proximity of the bridge to Asaba), the Ministry is also considering public financing in the short-term.
64. The NRC and Ministry of Transport are moving forward with project preparation for the concessioning of the NRC’s existing narrow guage rail network. Following extensive due diligence work completed in late 2009, transaction advisors are currently being procured in accordance with ICRC and World Bank guidelines. The transaction has attracted a wide field of prospective transaction advisors, including several highly qualified international advisory firms. The concession of the existing rail network has great potential as a PPP, particularly for freight, but would also entail a complex and very large transaction. Though project preparation is ongoing, the transaction has not been included in the current longlist pipeline due to concerns that announced plans to let a contract to a Chinese contractor to build a new standard guage line effectively parallel to the line to be concessioned injects an untenable degree of uncertainty into the proposed concession for the private sector.

65. While this transaction holds great potential as a PPP there have been significant challenges to the procurement of the concessionaire as issues over ownership - the Ministry of Works or Lagos State - which has caused concern. Although Lagos State has already started work on the first section of the road, there now appears to be some agreement between the parties. The Ministry is moving ahead with an OBC study, which is being conducted by SNC Lavalin, and has agreed to share the results with Lagos State before deciding how to proceed further.

66. In addition to the 16 prospective transactions described above, there is growing and substantial interest from a number of other MDAs, including states, to develop infrastructure projects using the PPP model. Although few specific projects have yet been identified (or projects are still in very preliminary stages of preparation), it is likely that a number of these initiatives will eventually require support under the project, subject inter alia, to technical, timing and budget availability considerations.

67. One example is in the aviation sector. The Ministry of Aviation has expressed its desire to concession a number of its international airports and in August 2009 it established an Airport Concession Steering Committee. This Committee was tasked with assessing the feasibility of and developing a model for the concessioning of four airports: Lagos International - Murtala Muhamed Airport-, Port Harcourt, Kano, and Calabar. The Steering Committee has engaged ICAO to undertake preliminary feasibility studies on these four airports, and is also beginning to work with the ICRC.

68. Other sectors showing potential interest in PPPs are in power (IPPs and distribution companies), and health (hospitals), as well as state-initiated PPP projects. The potential for PPPs in the power sector is huge, but until a number of sector reform initiatives are satisfactorily completed there is limited scope for further development at present.

69. Some of the preparatory work for the Ministry of Works pipeline projects is already underway, financed out of the Ministry’s own budget. As detailed in the OBC TORs, this OBC work is focused on:

- Definition of project concept - a clear description of the project concept, including description of policy context;
- Technical scope- description of the key technical parameters envisioned for the project;
• Needs analysis- high-level review of the project’s commercial rationale, and analysis of the demand for and desirability of the project;
• Cost estimation- preliminary project costing, including expected capital outlays, environmental and social safeguards, and ongoing maintenance costs, as well as a discussion of non-quantifiable costs;
• Preliminary assessment of social and environmental impacts of the project;
• Project traffic and revenue forecasting.

70. Development of a preliminary financial model to carry out the initial PPP screening to determine which projects can support a tariff and which cannot (and capital grant and/or availability payment/revenue guarantees options), and ultimately suitability for PPP execution. The financial model will evaluate full project life costs, affordability limits, risks and their costs and optimal value-for-money methods of delivery.

• The economic and financial conclusions deriving from the financial model, including sensitivity analysis and reporting of standard financial and economic evaluation parameters including post-tax Financial Internal Rate of Return (FIRR)
• Affordability analysis- Where a PPP concession scheme is found to be viable, including indications of minimum Viability Gap Funding and/or operating subsidies, if appropriate, required to attract private sector participation, along with justifications for such indications;
• Risk analysis- preparation of risk register identifying all the reasonably foreseeable risks and possible mitigation measures, and preliminary risk allocation among the public and private sectors;
• Options analysis- If the project is found to be suitable for a PPP, presentation of the range of technical, legal and financial options for structuring a PPP transaction for the project(s), including key contract terms for the recommended option. If it is found to be not suitable, evaluation of alternative options for meeting project objectives;
• Implementation recommendations: if applicable, preliminary recommendations on proposed approach to PPP tendering process, timetable, etc.

71. In order for the MDA Project Teams to effectively support the line ministries and other PPP sponsoring MDAs within the FGN, embedded consultant expertise has been assessed to be required for project preparation for a period of up to five years each. These embedded consultant experts will assist the Project Delivery Teams to prepare the OBC work and ready the PPP transaction.

72. Based on an estimated cost of up to US$300,000 for the completion of this OBC work, the total cost for this sub-component for the long-listed projects, excluding the four for which work has commenced and including a contingency of 25 percent to allow for additional OBC work coming on stream during project implementation (e.g. for the airports) amounts to US$4.5 million.

Transaction Advisory Work:

73. This will entail a range of due diligence, building on the OBC preparatory work, and take a given PPP initiative to Full Business Case (FBC) at which point the project will be submitted to the FEC for its approval. The transaction advisory team would then be expected to work with the FGN Project Delivery Team (PDT) to take the project to market and complete actions necessary to bring the project to commercial and financial closure. This will entail the following range of services:

• Project Management: Design of project workplan and timetable. Management of advisory inputs, and overall management of the advisory team;
- **PPP Structuring:** Advisory on key issues, including concession term, payment mechanism and tariff strategy, provision of passenger services, number of concessions and unprofitable assets, risk allocation, labor issues, termination provisions, etc.

- **Readiness for Market Assessment:** Assessment of when the project is ready to be taken to market.

- **Market Sounding:** Interaction with the local and international market to confirm decisions on scope, timing and structure of the transaction, marketing the project broadly to the investor and financier communities, interaction with potential private sector partners (possibly including domestic and international road shows).

- **Procurement:** The Transaction Advisor is to provide all necessary support to the PDT for the efficient and professional management of the bidding process.

74. **Pre-qualification:** The Transaction Advisor must design and administer a pre-qualification (request for qualification) process with the intention of (i) ensuring that the FGN's exact interest is communicated clearly to the market; (ii) determining the extent and nature of interest of the private sector, and (iii) pre-qualifying a competitive number of qualified consortia in an equitable and transparent way. The Transaction Advisor must prepare all the necessary RFQ documentation, including advertising material, and set up and administer the process by which the PDT can pre-qualify the parties.

75. **Evaluation Plans:** Preparation of RFQ and RFP evaluation plans, assistance with evaluation and preparation of evaluation reports. The Transaction Advisor must set up a bid evaluation system and criteria; design a suitable bid process that will ensure comparable bids; devise effective systems for communicating with bidders; inspire market confidence. If appropriate, a system that allows for variant bids may be required.

76. **RFP:** The Transaction Advisor must prepare an RFP document in accordance with best practices. The RFP must concisely set out, at minimum:

- output specifications
- requirements for compliant bids
- the payment mechanism
- the bid process
- evaluation criteria
- bidder communication systems.

77. **Negotiations with Preferred Bidder:** Assistance in negotiation with one or more parties prior to contract award. The Transaction Advisor must assist the PDT in final negotiations with the preferred bidder. This will involve support in preparing suitable negotiations teams, categorizing issues appropriately, developing timelines for completion, and planning negotiation tactics and processes for reaching agreement. The Transaction Advisor must ensure that all commercial agreements reached are incorporated into the financial, commercial and legal documentation.

78. **Finance:** The Transaction Advisors should provide financial advice both with respect to financial markets as well as financial analysis and modeling. Specific tasks may include:

- Assistance with preparation of revenue/business cases and/or investment appraisal;
- Assistance on risk analysis and quantification of risk;
- Ensuring that the selected payment structure offers the optimum risk/reward balance;
- Development and management of financial model;
- Recommendations with respect to relevant procurement terms in light of current financial market conditions;
- Providing detailed financial evaluation criteria;
• Assistance with reviewing financial proposals, including advising on the deliverability of funding structures and review of bidders’ financial models; and
• Providing advice on financial issues during negotiations with preferred bidder.

79. **Legal**: Review and analysis of existing legal and regulatory framework; preparation of project Information Memorandum, Request for Proposals, Concession Agreement. Drafting and settling of final contracts with Preferred Bidder; other more general advice, as required, for example, on issues taxation, property, planning, environmental law, banking, competition law and intellectual property; verification of bidder performance against any conditions precedent to financial close.

80. **Technical**: Provision of technical advice required for a successful procurement. Specific tasks may include:

• Review of technical due diligence and assessment of investments to be undertaken on track rehabilitation, port extensions, locomotives, and rolling stock;

• Review of future investment and maintenance cost estimates;

• Advise on technical aspects of risk assessment;

• Assistance in the definition of output specifications and specific services to be provided under the proposed concessions;

• Provision of technical assumptions to be used in financial analyses;

• Technical input for drafting of tender documentation; and

• Technical evaluation of bids, including capability of bidding parties.

81. Based on up to 20 transactions (not assuming some may be bundled together such as roads) being taken to this stage of the PPP preparation process, including the currently initiated NRC transaction and using an estimated US$2.5 million for each transaction advisor contract, the total budget for this sub-component is estimated at US$50 million.

**Safeguards Work:**

82. In addition to the completed ESMF and RPF documents, consideration is also being given to the preparation of Strategic Environmental Assessment (SEA) work in the key sectors where there is a high probability that the World Bank will be pursuing further investment support. This currently includes potential SEA work in the roads/bridges, airports, port and railway subsectors. Decisions on which SEA to take up will be made based on the agreed long-list of potential PPP projects to be supported under the project.

83. On the assumption that initiatives are pursued in the aforementioned four subsectors and assuming a cost of US$250,000 for each SEA, the total cost will be US$1,000,000. Assuming up to 10 transactions get taken forward under the project and estimating a budget of US$250,000 for each EIA, total costs will be US$2.5 million for a total allocation to Safeguards work amounting to US$3.5 million.  

**Market Outreach:**

84. This involves domestic, regional and international roundtable and roadtrip events to engage with prospective private sector PPP investors and financiers related to sectors where the government is prioritizing PPP initiatives or in regard to specific transactions. The budget, at US$2.5 million, is based on an estimated two trips per year over a five year period of the project at a unit cost of US$250,000.

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50 It is assumed that not all OBC work will result in a viable PPP transaction. Thus, these figures have assumed only 10 of the 15 OBCs required will need EIAs.

85. A Project Implementation Unit (PIU) will be established as to oversee the activities covered under the two phases of the PPP Program. It will provide financial management, procurement, monitoring and evaluation and overall project management services. Embedded consultants in the CBN and BOF will form project implementation teams to cover the activities for the VGF and FIL under Phase II (see Annex 6 for detailed implementation arrangements). The PIU will maintain Program supervision and support these implementation teams to follow proper monitoring and evaluation procedures.

86. Four aspects of project management arrangements for the project will be supported: (i) Executing Agency Arrangements for Phase I and Phase II and implementation readiness; (ii) Project Implementing Unit (PIU); (iii) Monitoring and Evaluation; (iv) Flow of Funds. The overall estimated cost for this project component is US$7.9 million.

B.4. Phase II- Component 4: Infrastructure Financing (US$200 million);

87. This final component of the APL Program will make available infrastructure financing to both the public and private sides of a PPP project through two instruments. The first instrument will target the public side of the PPP project by making available resources available for upfront capital expenditures through the Viability Gap Facility. An initial US$50 million dollars will be put into this Facility in addition to the government’s contribution. The second financial instrument will be a financial intermediary loan (FIL) that will make provide long-term debt financing for eligible financial intermediaries. US$150 million will be made available for this sub-component. Subject to FGN compliance with the agreed-upon triggers included in this proposed operation, this second phase has an anticipated effectiveness date of July 31st, 2011. Listed below are the triggers for Phase II. Appendix 1 offers a detailed explanation of each trigger as well.

- Presidential approval of the PPP Regulations in accordance with Article 34 of the ICRC Act;
- Completion of the first 5 OBCs submitted to the respective line Minister with one first-moving transaction acceptable to IDA;
- FEC approval of the Viability Gap Facility (VGF) as included in the Fiscal Strategy Paper (FSP) as well as included in the Budget Call Circular.

88. What follows is a summary of the design status of each of the instruments and outstanding issues to be addressed in order to finalize the work. Final determination of the allocation of the US$200 million between the VGF and the FIL will be made based on the following criteria: (i) specific financing requirements of targeted PPP Pipeline; (ii) alternative sources of financing available from FGN and other donor agencies and their preferences/capacities to direct to VGF and/or FIL. This will be determined in advance of Phase II activation.

Viability Gap Facility (VGF) (US$50 million)

89. The Viability Gap Facility will be administered by the Federal Ministry of Finance’s Budget Office. The Budget Office will work closely with the lead MDA that is sponsoring the PPP transaction as well as the ICRC to determine from the OBC work the initial VGF amount needed. Following a precise revision and approval process, the VGF resources will be made available to the concessionaire/contractor from the Budget Office. The formal process of receiving viability gap funding can be broken down into four main phases: (i) eligibility, (ii) submission, (iii) appraisal, and (iv) approval. Annex 1 Appendix 1 explains in great detail these phases.

51 The completion of the OBC’s includes completion of due diligence work on key social and environmental safeguards, fiduciary and legal issues for each transaction satisfactory to Bank standards. Respective line Minister is defined that Ministry which assumes project leadership over the transaction.
90. Under Phase I, a comprehensive VGF Operations Manual will be drafted and approved before the commencement of Phase II. This VGF Operations Manual will detail the roles and responsibilities of the various key MDAs involved in the VGF, application and approval processes, budgeting details, and other VGF policies. The VGF will require that all eligible projects be properly procured through competitive bidding processes, the concession be awarded in favor of a private company in which 51 percent or more is owned by a private sector party, that ICRC procurement and safeguards standards are met and proper due diligence- such as the OBC- is completed according to the National Policy on PPPs.

91. The total amount of VGF funding will not exceed 50 percent of the total project cost. IDA resources will be limited to funding 20 percent of each project receiving VGF money. Following the completion of the submission, appraisal and approval rounds for the VGF, final approvals will fall into the following three categories:

- Approval from FMOF VGF Unit head: Applications up to US$100 million;
- Approval from VGF Review Committee: Applications greater than US$100 million and less than US$200 million;
- Approval from Minister of Finance: Applications greater than US$200 million.

92. Upon approval, a multi-party agreement will be signed between the lead ministry, the ICRC, the FMOF and the private sector. VGF disbursements will only be made following agreed, scheduled equity payments, and – to the extent possible - pro rata to subsequent debt disbursements being made by the concessionaire (in close collaboration with the Budget Office). IDA PRG Letter of Credit and MIGA guarantee “wrap” will be provided, depending on government request, to hedge against potential disbursement and budgetary risks.

**Financial Intermediary Loan (FIL) (US$150 million)**

93. Complementing the VGF and in recognition of the absence of long-term funds in the market, agreement has been reached with the FGN for the introduction of a FIL facility as a key financing sub-component to Phase II. The financial intermediary loan will provide a limited source of long-term infrastructure financing to the market. An initial US$150 million will be made available for the FIL. The government will on-lend the funds to financial intermediaries through the CBN which will act as the apex administrator of the facility. These arrangements once FGN concurrence is subjected to a review and assessment of their compliance with the critical World Bank Operational Policy Guideline (OP 8.30) that all FIL operations are assessed against.

**Participation of AFC and Other Financial Intermediaries**

94. As part of the financial intermediary loan, the team conducted meetings to identify possible first-mover financial intermediaries who would be interested in drawing on the FIL for long-term infrastructure financing. While the FIL will be open to all eligible financial intermediaries, with the guidance of ICRC the team has identified the African Finance Corporation as a viable first mover (see Box 1 below for further background details on the AFC).

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52 The pro rata requirement is to ensure incentives for both parties to maintain timely and effective funding and project implementation. Whatever the pro rata arrangement is and whether at times, due to the size and lumpiness of upfront investments, a portion of the VGF contribution is disbursed without a matching concessionaire contribution, it is sine qua non that the equity contribution is fully deposited to the concessionaire company before release of any VGF contribution.
Apex

95. The Central Bank’s Development Finance Development (working with the Banking and Payment Systems Department) is the best suited apex institution to administer the FIL facility. There are several reasons for selecting the Development Finance Department. First, the Department, which has a total of 12 professional staff in 4 divisions, has significant relevant experience in the form of its existing Commercial Agriculture Credit Scheme which involves onlending to commercial banks and previous experience for a World Bank SMSE project. Secondly, managing the FIL fits in well with the department’s strategy. The department has already prepared a draft development strategy which inter alia puts emphasis on studying how to finance infrastructure. Third, the Department’s staff can use it as a focal point to attract other donor financing, as they have the impression that some donors find having to deal with a Ministry on issues and the need for processing support poses a formidable obstacle which discourages them. Fourth, the department is providing significant money from its own budget, as well as the CBN budget, for the line of credit operations.

Box 1 - African Finance Corporation and Other Prospective PFIs

The AFC was created by two constitutive legal agreements: (i) the Agreement for the establishment of the Africa Finance Corporation (AFC Treaty); and (ii) the Charter of the Africa Finance Corporation (AFC Charter). The AFC is headquartered in the city of Lagos in the Federal Republic of Nigeria as agreed upon by the Headquarters Agreement of 2007. The current member States that make-up the AFC are Nigeria, Sierra Leone, Guinea Bissau, The Gambia, Liberia, and Guinea Conakry. Ghana is currently in the process of completing due-diligence on AFC with the intention of joining. Other countries have also expressed interest in joining. These include: Zambia, Zimbabwe, Mozambique, and Mauritania.

AFC is a private-sector-led investment bank and development finance institution created to help mobilize and channel required capital towards driving Africa’s economic development. AFC’s central mission is to address Africa’s development needs in a profitable way with a focus on infrastructure development. AFC orients its investments along four pillars: fostering private sector solutions to Africa’s development, driving Africa’s competitiveness and industrialization, catalyzing private sector participation in Africa’s infrastructure and facilitating Africa’s private sector access to capital markets.

AFC is a hybrid investment bank and multilateral development financial institution. The AFC is majority owned by private sector investors and has a 21-member board. The Board is made up of 15 independent directors and 6 seats reserved for shareholders from African countries (excluding Nigeria). The Board has range of responsibilities including tasked with the functioning of three Committees: (i) Board Risk and Investment Committee; (ii) Board Audit and Compliance Committee; and (iii) Board Nominations and Governance Committee. As of December 31, 2008 11.1 percent of AFC shareholding was held by individuals and corporations, 46.4 percent was held by African Commercial Banks and 42.5 percent was held by the Central Bank of Nigeria. It has been agreed that the Central Bank of Nigeria will reduce its holding to 10 percent within a five year period. As of December 31, 2008, the AFC was well capitalized. AFC showed a total equity of $1,093,738,000 and with total liabilities valued at $4,616,000. In 2008, AFC had an operating income of $83,312,000, $53,873,000 was lost to exchange and $25,020,000 was paid for administrative expenses. This resulted in $4,419,000 profit for the period 2008.

Other potential PFIs in the market that would potential utilize FIL resources in include: FIRST Bank, UBA, Stanbic, Standard-Chartered and Guarantee Trust. These Banks have exhibited strong financial management and are considered to be amongst the more sound financial private institutions with reliable balance sheets. A detailed set of eligibility criteria should be established and any potentially eligible PFI who wishes to participate should prepare a detailed application file to be submitted to IDA and the CBN which supplies all requested data and demonstrates that the institution meets all eligibility requirements.
96. The CBN will review subproject (sub-loan) applications from eligible participating financial intermediaries (PFIs) to ensure that they fully meet all criteria that have been stipulated for sub-loans that will be financed under the project. The CBN will administer the FIL facility on behalf of the government under a subsidiary agreement between FMOF and CBN, i.e., it will receive funds from the government that have sourced from the IDA loan, using procedures and a mechanism approved by the World Bank, and onlend to PFIs under contractual agreements between the CBN and PFIs acceptable to the Bank at the agreed onlending interest rate for that type of loan, and under terms and conditions agreed with the financial intermediary that match the intermediaries that have been drawn. IDA will also enter into a Project Agreement with the CBN delineating its fiduciary responsibilities under the project.

97. Under its subsidiary agreement with the government, the CBN will be responsible for making loan commitments to PFIs for eligible projects, making disbursements to the PFI as required by the PFI to make disbursements to the client project, collecting interest, principal repayments and, where assessed, commitment fees from the PFIs, and, if necessary, agreeing to one rescheduling of any one PFI sub-loan at the request of the PFI at the time project implementation is complete.

98. Credit risk and, in those cases in which the loan to the sub-borrower is denominated and repayable in dollars, will be taken by the PFI which will, in turn, pass that risk on to its borrower. The Apex-CBN will not take any credit risk or foreign exchange risk. The CBN will draw down funds to meet its needs from government in two ways: i) receiving an initial float deposit of US$2 million equivalent in Naira, which can be used for a variety of small disbursements, as needed, and can be replenished upon requested after submitting documentation showing that the initial funds were used appropriately and in accord with agreed priority; and ii) in accord with requests associated with specific disbursement schedules pre-agreed with PFIs for each individual subproject.

99. The Apex, itself, will not be responsible for reviewing the substance of all required technical analysis and background tests for validity, only to make sure that all such required analyses and tests have been undertaken by qualified entities and have been submitted.

100. The CBN, before making a commitment will: i) ensure that all technical analyses, background tests, and required approvals have been obtained; ii) the subproject and the PFI meet all established criteria; iii) all environmental and social safeguard requirements have been fully complied with; iv) all procurement will be conducted in full compliance with the requirements for that type of borrower; v) the PFI's project appraisal and origination documents are appropriately performed; vi) IDA approvals have been obtained for those subprojects for which it is needed; vii) the loan will not be denominated in foreign exchange except in those cases in which the final borrower can convincingly demonstrate its ability to take that risk; viii) the loan will not be a variable rate loan for projects for which borrower projections show that it cannot fully service the debt if interest rates were to move to the ceiling level allowed under the loan agreement; ix) that there is an assurance that other sources funding to bring the project to full implementation are either paid-in or legally secured as being in place when needed such that there is no risk the funding would build “half a bridge”; x) a detailed projected disbursement schedule (which should be amended at the time of the first disbursement) has been submitted; and xi) submission of the standard legal documentation needed for loans.

101. Once significant disbursements have begun, the CBN will be responsible for ascertaining that the PFI used the earlier disbursement for the purpose intended and that all scheduled repayments of interest, fees (if any), and principal are being made as scheduled. New disbursements, even if scheduled, will not be made, if the PFI does not submit required documentation to show that the previous disbursement was used for the purpose intended.

102. The CBN will pay for the costs associated with managing the FIL facility out of its own budget in accord with its own procedures. CBN will be paid a fee equal to 1 percent of disbursements

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for its services, but to be paid out as a deduction from repayment collections. There should be no mixing of project funds and CBN administration expenditures. Consideration will be given to treating it as a “managed fund” in CBN’s financial statements, i.e., disclosed but not added into its own assets or liabilities.

103. Funds repaid by the PFIs, after deduction of the 1 percent fee, will not be relent long-term. The Authorities will stipulate how these funds will be used. Adding it to the Viability Gap Fund and/or using it for capacity support to participating PFIs using the FIL are options. Further detail will be included in preparation of Phase II.

On-lending terms and conditions and financial markets

104. Fundamental structure of the funding will be as follows:

i. Funds will be made **available in either foreign exchange or naira**, at the choice of the PFI and client with the proviso that foreign exchange can only be lent to clients that can relatively fully hedge that risk because they have de facto dollar revenues (excluding dollar based contracts where the final user of services can’t hedge foreign exchange risk, e.g., highway tolls. Moreover, as long-term local currency is in shorter supply than long-term foreign exchange (e.g., AFC still has large amounts of long-term foreign exchange derived from its paid-in capital) it is important that the foreign exchange borrowing interest rates for PFIs should not be seen as more attractive to PFIs than the local currency option.

ii. Tenor to loan must match tenor of loan to final borrower and **can vary between 10 and 25 years**, with full right of prepayment after an initial period of three years. A maximum subproject loan size should be set as a percentage of the total size of the FIL (20 percent), which would apply equally to all eligible PFIs. Grace periods will be allowed for at least three years, possibly more where there are specific circumstances relating to the needs of a particular final borrower, e.g., one where the implementation period is unusually long. PFI must repay CBN if and when they receive prepayment of principal.

iii. Repayments will be **either monthly or quarterly** but exact schedule can take client seasonal revenue patterns into account.

iv. Consideration will be given to allowing clients and PFIs to choose **either a fixed interest rate or a variable interest rate** with exact matching of the subloan and underlying loan to the client. Initial interest rate will be 150 basis points less than fixed rate will be adjustable only after a two year period at the initial rate, and should be subject to a maximum ceiling or floor, of 4 percent above and below the initial rate. FIL funds will not be available to intermediaries for making equity investments.

v. **Benchmark interest rate for foreign exchange** loans will be the US$ 30 year treasurybond rate (presently 4.375 percent), plus a premium for risk.

vi. **Benchmark interest rate for local currency loans** will be the simple average of the 10 year and the 20 year government bond rate (using at least a 30 day moving average) which is the best market proxy for the cost of long-term sovereign risk debt. A risk premium for the higher risk associated with a PFI than government and a foreign exchange risk insurance fee will be added to this base, although not necessarily separately identified. Adjustments under loan contracts tied to this benchmark to be adjusted semi-annually. There will be a nominal interest rate ceiling limit of 15 percent even if domestic interest rates move higher than that.

vii. **Addition of a risk premium over the benchmark interest rates, both for foreign exchange and local currency subloans of 3 percent** This risk premium, which will be the same for all
eligible PFIs, will be subject to negotiation as it needs to find the middle ground between the potentially conflicting objectives of being a true proxy for a market determined rate and being sufficiently low that it will be attractive and hence actively used by PFIs and their clients and will be affordable for most viable projects under consideration. If any of the subloans are for 10 years rather than 15 or more, there is a reason to reduce the interest rate by about .3 percent from what is at that time being charged for the longer maturity loans.

viii. PFI will be **allowed to add any spread they wish** and will be encouraged to vary the spread to take relative risk into account. If there are economically viable projects that cannot service debt at the proxy for market rates that result, adjustments should be made by lengthening maturities and/or using viability gap funds, and not by subsidizing interest rates. Subsidized interest rates will crowd out privately mobilized funding for this market.

ix. The interest rate to intermediaries for 15-20 year foreign exchange fixed interest rate loans will be 6.5-7.5 percent and the final rate to borrowers (assuming an average 3-4 percent spread) will probably be 9.5 to 11.5 percent.

x. At present, the 20 year local bond rate is 8.49 percent, the 10 year bond rate is 8.16 percent, and there is a relatively active secondary market, albeit largely made-up of churning by market makers (real investors constitute somewhat less than 20 percent of the market). However, there isn’t a lot of history, as 20 year bonds have been in the market for only about one year and 10 year bonds a couple of years longer. Amount outstanding for the 20 year bonds is N 230 billion and the volume of secondary trading since November 2008 has been N 1126 billion. The amount of 10 year bonds outstanding is roughly that same amount, and trading volumes have been higher. While there is a positive yield curve for government paper, present rates are significantly negative in real terms as the market place thinks inflation is 11-14 percent, so they are likely to increase.

xi. The rate for local currency loans is 8.35 percent plus 3 percent for risk premium (assuming local currency loans are less often less risky, **resulting in a cost of 11.35 percent to the PFI and, assuming a 3 percent spread, 14.35 percent to the final borrower**. Variable interest rate loans are 2 percent less with a ceiling 4 percent higher. A market expert estimated that highly credit-worthy corporate bond issuers (if they existed) will have to pay 14-15 percent in the present market. Presently, overdraft rates average 19-20 percent and 3 year money about 22 percent. Borrowers may be reluctant to pay long-term fixed interest rates above 15 percent. UBA (US$150 million) and FIRST have ADB funds for 5 years at libor plus 5 percent, but have to draw it down front end, whether or not they have a use for it. Apparently, Zenith, Stanbic and Standard Chartered also have long term funds. Banks are making 5 and 7 year loans in foreign exchange loans from these types of sources.

xii. AFC will be required to find **commercial bank cofinancing for at least 15 percent of total project cost** as a condition for each individual subproject request before approval and should not be allowed to finance more than 40 percent of total project cost with funds borrowed under the FIL. Other PFIs will also be limited to financing not more than 40 percent of project cost using FIL monies.

xiii. PFIs will be **charged a .25 percent per annum commitment fee on undisbursed commitments**, at least for any funds that are available on a first come, first served basis to more than one PFI.
Appendix 1: Detailed Description of Program Triggers for Phase II

1. Three key performance indicators have been identified in close collaboration with the ICRC and key stakeholders in the Federal Government of Nigeria as the criteria to be met for the activation of Phase II and the Infrastructure Finance component of this APL Program. These triggers have been developed in the context of the ongoing PPP legal, regulatory and financial reforms being undertaken by relevant MDAs in the government. They are designed to support Nigeria’s PPP Program at the transactional, financial and legal levels. These three triggers fit with the Country Partnership Strategy’s strategic focus areas. Specifically, this fits into the CPS’s strategy to scale-up support to PPPs, increase non-oil growth, and advance governance and accountability reforms through procurement practices, transparency and proper fiscal management.

2. Presidential approval of the PPP Regulations in accordance with Article 34 of the ICRC Act: The first trigger addresses many of the outstanding legal, regulatory and fiduciary issues that must be addressed to encourage robust private participation in PPPs in Nigeria. The drafting and approval of PPP Regulations indicates the FGN’s dedication to sector reform and establishing standardized procedures that reduce investment risk to the private sector and send a strong signal of cross-MDA collaboration. These Regulations will address the following key areas: (i) determination of PPP Projects including standard procedures for identifying, screening and approving projects; (ii) procurement policies as they pertain specifically to concessions; (iii) contract implementation and management; and (iv) general provisions on registration such as dispute resolution, fees and payments, disclosure procedures, and financial provisions.

3. These PPP Regulations are currently in draft stage and have been shared with ICRC. It is intended that they will also be shared with key participating MDAs for feedback including the Federal Ministry of Justice. Thereafter, these Regulations will undergo a stakeholder consultation process before being finalized and submitted to the President for final approval. Following approval, ICRC will disseminate these PPP Regulations and conduct ongoing workshops to build a core understanding of the PPP Policy and Regulations in all key MDAs and in the private sector.

4. Completion of the first 5 Outline Business Cases submitted to the respective line Minister with one first-moving transaction acceptable to IDA: As an indication that the FGN is prepared to move to Phase II of the APL program, lead MDAs in collaboration with ICRC will oversee the completion of the first 5 Outline Business Cases (OBCs). Following the procedures set down in the National Policy on PPPs, these OBCs will be approved by the line Minister after receiving a No Objection from ICRC advising that the OBC is compliant with the PPP Policy. It should be noted that proper environmental and social safeguards procedures, fiduciary and legal review acceptable to the Association will be included in this upstream due diligence work. The OBCs approval will culminate in the preparation of one first-moving transaction, acceptable to IDA, ready for further transaction support and financing.

5. FEC approval of the Viability Gap Facility (VGF) as included in the Fiscal Strategy Paper (FSP) as well as included in the Budget Call Circular: The third trigger aims at deepening the financial market on the public side vise-a-vi the establishment of the Viability Gap Facility to assist in reaching commercial and financial close for PPP transactions. The FGN has expressed interest in establishing this VGF and harmonize it with its budget processes. In order to move to Phase II, the Federal Executive Council must approve the Viability Gap Facility. This approval will come in two forms: first, the VGF will be included in the Fiscal Strategy Paper (FSP); secondly, the Budget Call Circular will contain details of the operating arrangements of the VGF and how the budget for the VGF will be captured in the Chart of Accounts. The operating framework for the VGF will be detailed in a VGF Operations Manual. The drafting and finalization of this manual will undertaken in parallel with the policy work that will need to be completed and reflected in the Fiscal Strategy Paper and the Budget Call Circular. The Medium Term Expenditure Framework (MTEF) and an analysis of the PPP project pipeline will be used to determine the government’s contribution to the VGF.
Appendix 2: Role of MIGA and IDA PRGs

MIGA

1. MIGA sees great potential for a robust support of the FGN PPP agenda. A range of enhancement products could be considered to support a PPP, including: breach of contract (BoC), non-honoring of sovereign financial obligation (NHSFO), and sub-sovereign risk guarantee coverage to address the anticipated PPP investor/financier concerns over credit and/or long-term political risks. Moreover, creative use of such instruments as the NHSFO and BoC could be made to enhance the credit appeal (or ‘enhancement’) of the Viability Gap Fund (VGF) backed by minimum revenue guarantees, or such downstream market-potential instruments as infrastructure-asset backed securities, or private placement bond issues. In order however for the FGN to ensure a continued role for MIGA in the PPP project initiative, due consideration must be made to the critical issues noted in the Critical Risk section below.

2. **Concession/partner selection process.** In its discussions with the FGN and the World Bank, MIGA noted that a competitive and transparent concessioning process throughout the critical stages of the PPP project development cycle is considered vital, not only for the future ability of MIGA and its private market reinsurance partners to support specific PPP project investments, but also because of the potential risk implications of a non-competitive and/or non-transparent concession process. Projects which arise from non-competitive or non-transparent concession processes are generally more prone to controversy, future political fallout, and disputes between the parties, and hence present a greater degree of reputational and claims risks to a political risk guarantor such as MIGA. Accordingly, such increased risks are likely to (severely) limit the quantum and coverage scope of guarantee capacity made available for the affected project, and with all certainty the associated (perceived) risk will be adjusted for in the final price (i.e. ‘premium rate’) for the guarantee. MIGA therefore recommended that preference be given to putting in place a robust, best-practice based competitive process for the PPP Project concession/partner selection process.

3. Concession Party: The concession approach decided upon by the FGN presents significant implications for the ability of MIGA to support the various PPP projects under consideration. In terms of ability to offer its BoC coverage (the key risk coverage sought by investors and/or financiers to PPP projects from MIGA) in support of a particular PPP project, MIGA has traditionally been restricted to only issuing such coverage on agreements with the ‘host government’ (i.e. FGN in this case). Provision of BoC coverage on ‘sub-sovereign’ (e.g. state governments, state owned enterprises, municipal bodies, etc), has until recently been only possible on the basis of clear attribution to the Host Government of the responsibility for the obligation(s)/actions of such sub-sovereign entity vis-à-vis the concerned agreement. Recent (2009) liberalizations to MIGA’s operating regulations however now permit BoC risk coverage against agreements with sub-sovereign bodies, subject to satisfaction of a number of key eligibility criteria, key among which is the demonstrated – ‘stand alone’ - credit capacity of the concerned sub-sovereign. In the absence of such demonstrated credit capacity, MIGA would have to then rely on a written affirmation from the host government that it would stand behind the obligations of the concerned sub-sovereign entity. With regards to the currently anticipated FGN PPP Project, it is MIGA’s understanding that much of the concessions/agreements related to the specific PPP projects would be awarded/executed at the level of the relevant sub-sovereign (e.g. NRC in the case of the rail PPP). Using the NRC case as an example, if it is the designated FGN signatory to the PPP agreement/concession, and in view of its current financial deficit status, in order for MIGA, or any private PRI market provider for that matter, to provide BoC coverage against such agreement/concession, it would require the aforementioned affirmation from the FGN.

4. **General Risk Issues/Lessons Learned:** General lessons learned and potential risk guarantor considerations can be relevance to the FGN evaluative process for the currently anticipated PPP project pipeline. These lessons can be summarized in four main points: (i) projects must be economically viable and provide essential services on an affordable and profitable basis. This requires
a sector framework and sound sector strategies, good policy planning, and willingness to uphold contracts even in adversity; (ii) poor project economics enhance pressures to renege on commitments (e.g. ‘take or pay contracts,’ commitments to raise rates). Often this comes as a result of poor project/policy design, poor economic rationale; (iii) better structured and drafted agreements pose less risk of partner disputes and potential for future MIGA claims payouts; and (iv) generally agreements tend to be subject to two instances of negotiation- immediately following partner/concessionaire selection and post-investment execution where belief that the initial stage allocation of risks may be longer be appropriate. Beyond the general applicability of its standard risk protection coverages to PPPs in general, MIGA has identified the following specific possibilities of exclusive relevance to the anticipated FGN PPP project in three ways. MIGA products can be used effectively in the design of the Viability Gap Fund, to enhance PPP market support and in the financial intermediary loan.

5. **Viability Gap Facility (VGF):** a potential application of the MIGA NHSFO coverage would be to ‘wrap’ a VGF-backed minimum revenue guarantee issued by the FGN to support a specific PPP project. Given the NHSFO would require that such guarantee be unconditional on its face, and not subject to defenses against payment as principle conditions for eligibility, and unlike the BoC coverage carries no requirement for arbitral process, it presents a significant ‘credit enhancement’ value to the FGN guarantee. In other words, it can ‘wrap’ the FGN revenue guarantee to result in a higher value mitigant to the viability concerns of potential investors / financiers to a concerned PPP project. Credit enhancements of such nature can result in significantly improved pricing from project financiers, reduced cost of capital ‘hurdle rates’ underpinning investor decision-making over involvement in a specific project, and potentially better terms and conditions overall for the FGN under the concession / agreement. Other possible applications of the VGF vis-à-vis MIGA support could be its general use to bolster the standalone credit capacity of a relevant sub-Sovereign entity, thereby potentially removing the need altogether for the written affirmation document described above. Overall it is the MIGA mission participant’s strong belief that the potential for a creative use of the MIGA product suite to support the various VGF configurations is high. MIGA therefore recommends that it be involved in the discussions over the scope and general design of the VGF, principally to provide insights on the various ways in which it could assist in optimizing the VGF’s impact.

6. **PPP Financial Market Support:** The Aide Memoire for last Follow-up Technical Mission PPP Project highlighted among other issues, the continued existence of an appetite for infrastructure-related capital market issues, albeit under considerable constraints related to limited tenors and relatively high pricing. Through a structured use of MIGA’s BoC and NHSFO coverages there exists the potential to alleviate the noted constraints via the credit enhancement value and long term nature of these coverages (15 – 20 years), resulting in more competitive pricing on offer for such issues and longer maturities. Over time such MIGA coverage could contribute to the type market deepening that could provide benefit to cross-border investors interested in Nigeria Infrastructure Assets (e.g. via a dedicated offshore bond fund pooling together Infrastructure Asset-backed Securities). It is noteworthy however there are a number of significant structuring and MIGA eligibility considerations which would have to be taken into account, nonetheless the potential for MIGA support in this area is high.

7. **FIL: Financial Intermediary Loan (FIL):** There is a similarly strong prospect for MIGA guarantee support to the anticipated FIL component of the PPP project. As MIGA understands it, the currently anticipated structure for the FIL is one where up to US$150 million will be provided by IDA as a credit to the FGN (via Central Bank of Nigeria) under the PPP project, which would then be on-lent by the CBN to local financial intermediary for the purposes of providing competitively priced, long term PPP project financing. Provided the FGN/CBN is willing to consider extending eligibility for the FIL to local branches of foreign banks / foreign investment partners, and possible use of the FIL program resources to issue guarantees (e.g. “take out” guarantees for example), there is the possibility of MIGA support in the following areas:
i. Use of the MIGA BoC coverage to provide guarantee support to banks and/or investors concerned over a FGN/CBN breach of specified FIL financing agreement terms and conditions;

ii. Use of the BoC or NHSFO coverages to underpin the FIL-backed guarantee obligations of the FGN/CBN vis-à-vis PPP financing banks and/or foreign investors. Using the “take out” guarantee approach as an example, in a situation where, using the FIL, the FGN/CBN issue a guarantee to “take out” the financing provided by bank(s) and/or foreign investors (providing a shareholder loan facility for example) following a specified period, through use of the BoC or NHSFO coverages MIGA may help alleviate the concerns of such banks / financiers over a failure to realize on such guarantee. Use of such an approach could potentially alleviate the identified constraint of limited availability of long term project financing from local banks given it could present such banks / foreign investors with a number of viable structuring options for ensuring long term funding for a PPP project (e.g. using a partial amortization w/balloon rollover structure).

8. **Transactions Support:** Overall MIGA’s support model for the FGN PPP project agenda is a value-added partnership one vs. a hands-off service provider. Hence MIGA stands ready to support the specific PPP project development and design process via the following specific means, among others:

- Review of the individual PPP project EOI, RFP, and agreements to confirm eligibility (e.g. in the official RFP documents) for MIGA guarantee, and specification on the available coverages;
- Participation in FGN roadshows and/or investor forums aimed at increasing interest in specified PPP projects;
- Providing advisory on specific guarantee program elements to consider for possible inclusion in the PPP project.

9. It must be noted, however, that while the above are considered feasible for the MIGA BoC NHSFO coverages, the specifics of the FIL will need to be further developed before MIGA would be in a position to confirm such eligibility, which would be subject to additional due diligence by MIGA on the FIL program and anticipated form of the financing / guarantee agreements which would be used under it.

**IDA Partial Risk Guarantees**

10. **IDA/IBRD Partial Risk Guarantees** are intended to ease the transition of countries that are clearly on the path of reform. PRGs cover private lenders or investors through shareholder loans against the risk of a government (or government-owned entity) failing to perform its contractual obligations with respect to a private project. Payment is only made therefore, if the debt service default is caused by risks specified under the guarantee. PRG risk coverage may vary, including but not limited to: government contractual payment obligations (periodic and/or termination payments), contractual performance of public counterparties, regulatory risk (including tariff adjustments), collection risk, subsidy payments (eg VGF), change of law, and traditional political risks. PRGs typically cover outstanding principal and accrued interest of a debt tranche in full. PRGs benefit project lenders, or can be structured to directly benefit the project company through the letter of credit structure or deemed loan structure.

11. By covering government performance risks that the market is not able to absorb or mitigate, the Bank’s guarantee mobilizes new sources of financing at reduced financing costs and extended maturities, thereby enabling commercial/private lenders to invest in projects in developing countries.

12. In addition, the Bank’s guarantees have played a valuable role in easing the entry of several emerging economies into international capital markets or syndicated loan markets, improving
borrowing terms and in maintaining market access even during the financial crisis. Evidence shows that countries that first benefited from the Bank’s guarantees also benefited from successful transactions and enhanced credibility in the commercial debt markets.

13. For private sector projects, the following circumstances typically apply to the deployment of PRGs:

- *Transactions in sectors in early stages of reform*, where the risk of reversal is seen as significant, and where the involvement and influence of the World Bank in the sector dialogue, and related structural reforms, are seen as central to the viability and private financeability of the project.

- *Riskier and larger-size operations*, where booking of the risk on the Bank’s balance sheet and remedies attached to World Bank operations are seen as preferable or superior from a risk management perspective.

- *Operations highly dependent on government support and/or undertakings (eg PPPs)*, where the explicit counter-guarantee and the clout of the Bank are seen as critical to mobilize private financing or enhance leverage in the market.

**Deployment Potential for PRGs in Nigeria**

14. Discussions with a number of local and international banks and investors have indicated strong interest in the deployment of the Bank’s PRG to support the financing of infrastructure PPP projects in Nigeria. With the regulatory environment for PPPs largely undeveloped or untested, and the patchy track record to date of Nigerian PPPs (with the notable exception of the ports concessions), lenders/investors (international in particular) have expressed significant concerns over political risks. Without World Bank guarantees, or similar risk mitigation mechanisms, they would be wary of participating in bidding or investing.

**Roads Sector**

15. Risk allocation and risk sharing arrangements may vary from PPP project to project, but there will be a range of common risks which will need to be addressed in the contractual arrangements. One of the biggest risks is traffic or demand risk (traffic volumes). Public traffic forecasts have proved notoriously over-optimistic, and allocation of this risk is critical to achieving value for money. This risk can either be transferred to the private party, shared (e.g. government offers minimum traffic/revenue guarantees) or kept with the public party (e.g. government makes availability payments). Other risks to project cash flows will include toll adjustments (e.g. annual inflation) and collection, timely commissioning of access roads, and government commitments relating to the construction or upgrading of competing roads. A toll road or toll bridge PPP PRG could, therefore, cover a range of project specific risks of particular concern to lenders/investors – for example:

- Toll adjustment & collection
- Government payments (e.g. VGF, guaranteed revenues, availability payments)
- Expropriation
- Currency Inconvertibility
- Political Force Majeure:
  - sabotage, war
  - civil disorder, national & regional strikes
  - finds (archaeological-mineral)
- delay in award of permits
- Changes in Law
- No competing or access roads
Other Infrastructure Sectors

16. The PRG has recently been deployed in the power sector to backstop PHCN’s payment obligations towards international oil companies under the Gas Supply and Aggregation Agreements (a series of IDA PRGs in the amount of US$ 400 million). As with this operation and the potential road sector projects, the PRG could be similarly deployed across a range of PPP project opportunities (e.g. covering government payment and regulatory obligations for planned urban water supply and urban rail PPP projects).

Viability Gap Facility (VGF)

17. The VGF will be utilized where PPP projects require capital subsidy to make them commercially viable. The VGF will be funded through FGN’s national budget (with potential co-financing of government allocations by donor partners), with budgetary allocations being committed on a rolling 3-yearly basis in line with the planned Medium Term Expenditure Framework (MTEF). The Budget Office within the Ministry of Finance will manage the VGF. Preliminary discussions with the Budget Office have indicated that potentially there could be some temporary liquidity problems with budget allocations/disbursements, especially around year end/new budget cycles. This could lead to delays in VGF disbursements to the approved PPP projects, which in turn could have a significant impact on project cash flows and the PPP’s ability to finance its construction activities.

18. To help mitigate this risk the Bank’s PRG/Letter of Credit (L/C) structure could be deployed (see diagram below). The proposed PRG would backstop FGN’s obligations to commercial banks, based in Nigeria that have, on behalf of FGN, paid under Standby Letters of Credit issued by such banks for the account of FGN for the purpose of backstopping its payment obligations towards PPP concession companies under the VGF scheme. This structure would provide liquidity support to the PPP concession companies in the event of temporary budgetary problems in the Federal Ministry of Finance. FGN would have a reasonable cure period within which to repay the L/C bank for the credit drawn by the PPP concession company before any call on the PRG by the L/C bank. This concept was discussed in outline with the Budget Office and well received.
## Annex 5: Program Costs

### NIGERIA: Public/Private Partnership Program

### Project Cost By Component

<table>
<thead>
<tr>
<th>Component</th>
<th>Total US$million</th>
</tr>
</thead>
<tbody>
<tr>
<td>Borrower</td>
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<tr>
<td>IDA Phase I</td>
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<tr>
<td>Component 1</td>
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<tr>
<td>Component 2</td>
<td>62.7</td>
</tr>
<tr>
<td>Component 3</td>
<td>7.9</td>
</tr>
<tr>
<td>Phase II</td>
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<tr>
<td>Component 4</td>
<td>200.0*</td>
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</table>

**Total Phase I Financing Required**  
115.0

* Exact Phase II amounts to be determined at a later time

### Estimated Disbursement Schedule of the IDA Credit (US$m)

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
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<tr>
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<td>25</td>
<td>25</td>
<td>25</td>
<td>10</td>
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<tr>
<td>Cumulative</td>
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<td>10</td>
<td>30</td>
<td>55</td>
<td>80</td>
<td>105</td>
<td>115</td>
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### APL Phase I

<table>
<thead>
<tr>
<th>Component 1: Capacity Building Support and Technical Assistance and Legal/Regulatory Reform,</th>
<th>Total (US$ mil)</th>
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<tbody>
<tr>
<td>Infrastructure Concession Regulatory Commission</td>
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<tr>
<td>Technical Assistance to key MDAs</td>
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<tr>
<td>Systems and Equipment to key MDAs</td>
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<tr>
<td>PPP Training to key MDAs</td>
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<td>State Level PPP Support</td>
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<td>Participating Financial Institutions</td>
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<td>Legal, Regulatory Reform</td>
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<td><strong>Sub-total</strong></td>
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</table>

<table>
<thead>
<tr>
<th>Component 2: PPP Project Preparation and Transaction Advisory Services</th>
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<tbody>
<tr>
<td>Outline Business Case (OBC) Workflow</td>
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<tr>
<td>Transactions Advisory Workflow</td>
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<td>Safeguards Workflow- SEA’s and EIA’s</td>
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<tr>
<td>Market Outreach- Roundtables and Road Trips</td>
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<td><strong>Sub-total</strong></td>
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</table>

<table>
<thead>
<tr>
<th>Component 3: Project Implementation and Monitoring and Evaluation</th>
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<tr>
<td>Project Implementation Unit (PIU)</td>
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<table>
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<th>Other</th>
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<tr>
<td>Unallocated</td>
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<tr>
<td>PPF Refund</td>
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<td><strong>Total Project Cost</strong></td>
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### APL Phase II

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<tr>
<th>Component 4: Infrastructure Financing</th>
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<tr>
<td>Viability Gap Facility</td>
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<tr>
<td>Financial Intermediary Loan</td>
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<tr>
<td><strong>Sub-total</strong></td>
<td></td>
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</table>

<p>| Total Project Cost | 115 |</p>
<table>
<thead>
<tr>
<th></th>
<th>Technical Assistance</th>
<th>Systems and Equipment</th>
<th>Training</th>
<th>Infrastructure Financing</th>
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<tr>
<td>Phase I Component 1</td>
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<td>Phase I Component 2</td>
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<td>500,000</td>
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<tr>
<td>Phase II Component 4</td>
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<td>200,000,000*</td>
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<tr>
<td>Total</td>
<td>93,650,000</td>
<td>7,250,000</td>
<td>9,300,000</td>
<td>200,000,000*</td>
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</tbody>
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* Specific allocation for Phase II Component 4 to be finalized (includes VGF and FIL)
Annex 6: Implementation Arrangements

NIGERIA: Public/Private Partnership Program

1. Designed as an APL, the operation will be implemented in two phases. Phase I will comprise three project components, Capacity Building to ICRC, MDAs and other government entities, States and PFI's and Legal/Regulatory Reform; PPP Project Preparation and Transactions Advisory Support; and the Project Implementation, Monitoring and Evaluation. Phase II will bring into operation a fourth, Infrastructure Financing component. Effectiveness of the second phase will commence once triggers have been met (now projected to be within one year of effectiveness of Phase I) and subject to further World Bank approval in accordance with APL guidelines: (i) Presidential approval of the PPP Regulations in accordance with Article 34 of the ICRC Act; (ii) completion of the first 5 OBC submitted to the respective line Minister with one first-moving transaction acceptable to IDA and (iii) FEC approval of the Viability Gap Facility (VGF) and its inclusion in the Fiscal Strategy Paper and in the 2011 Budget Call Letter.

2. Phase I is projected to be implemented over a 6 year period from March 2011 to December 2017. Phase II is projected to be implemented over a five-year period, from July 2012 to June 2017. Phase I will run concurrently once Phase II is activated. The closing date of the project would be end-December 2017, which includes the normal six month project winding-down period and a further four month grace period to allow for expenditures to be made against eligibly invoices submitted for goods and services delivered before project closure date.

3. A schematic diagram of the project’s implementation structure is set out below:

**Project Implementation Scheme**

Institutional Arrangements

4. **Project Steering Committee (PSC)** The Infrastructure Technical Working Group (ITWG), one of the five technical working groups making up the President’s newly reconstituted Economic Management Team (EMT), will serve as the Project Steering Committee for this APL Program. The Infrastructure Technical Working Group focuses on reducing the infrastructure deficit, rebuilding and
expanding infrastructure and managing PPPs. The Economic Research and Policy Management Department under the Permanent Secretary of the Ministry of Finance will serve as the Secretariat for the Project Steering Committee. The Infrastructure Technical Working Group will meet on a weekly basis and the Chairman will meet with the Chairman of the EMT on a weekly basis. More specifically, in terms of the ITWG oversight role for the PPP Project, there will be two formal ITWG meetings to review the detailed annual and semi-annual reviews of the project performance reports as well as the annual workplan proposals. The quarterly Interim Financial Reports (IFRs) will also be distributed to the ITWG and reviewed as an agenda item during one of the regular weekly ITWG meetings.

5. The Infrastructure Technical Working Group will be co-chaired by the Director General of ICRC and the Secretary of the National Planning Commission. Membership will include a representative of the Federal Ministry of Finance, Director of the Center for Policy and Economic Research, the President of the Nigeria Economic Society, the Director General of Bureau of Public Enterprises, and representatives of the Ministries of Power, Petroleum Resources, Transport and Works. Additional members may be co-opted at the prerogative of the Committee who could be identified as instrumental to the oversight of the Program. The ICRC Audit and Technical Committee of the ICRC Board will constitute the finance and audit sub-committee as they have the appropriate qualifications and skills.

6. The PSC will review the funding proposals in accordance with the Project Implementation Manual, the semi-annual and annual progress reports, audit, and mid-term reports and will address any major problems affecting project implementation. In addition, it will provide technical advice to the EA and PIU as required; assist the EA and the PIU in resolving ambiguities and uncertainties associated with project implementation; and participate in the preparation and review of the implementation completion report.

**Executing Agency**

7. The ICRC will serve as the government’s overall executing agency (EA) for the APL Program. It will have project oversight responsibilities on behalf of the FGN and will be responsible for coordination across Federal and State Government agencies in respect of the project activities.

8. For Phase I, ICRC (with support from the PIU) will serve as the executing agency for components 1-3: the Capacity Building and Legal/Regulatory Reform Component, the PPP Project Preparation and Transactions Advisory Support Component, and the Project Implementation, Monitoring and Evaluation Component. Memorandums of Understandings (MOUs) will be signed between the ICRC and the participating MDAs detailing the terms, implementation arrangements and procedures for support under the PPP Program.

9. For Phase II, the infrastructure financing component, the CBN and Budget Office will serve as the two executing agencies. The Central Bank of Nigeria will serve as the apex institution and manage the FIL sub-component and serve as the government banker for the VGF; the Budget Office will be managed by the Budget Office of the Federation (BOF) within Federal Ministry of Finance. While these two entities will take the lead in executing this component, ICRC will provide (with support from the PIU) ongoing oversight, financial management coordination, and technical assistance to the CBN and Budget Office during Phase II. Further details on the coordination between the executing agency ICRC and the two executing entities in Phase II- CBN and Budget Office- will be detailed in preparation of Phase II.

10. As the executing agency, ICRC will:

   a) take the lead role in facilitating the PPP Project to promote private sector as a major provider of infrastructure services;

   b) develop and distribute guidelines on the PPP Project;
c) promote infrastructure investments worldwide to both domestic and international investors through promotion materials and overseas road shows;
d) work closely with other institutions and agencies to promote and facilitate agreements providing, where appropriate, incentives and financing through the Project’s components;
e) provide assistance and oversight to formulate government policy, support and provide incentives to projects that can be made attractive to private sector actors;
f) facilitate information dissemination and dialogue with partners, potential investors and financiers;
g) coordinate and liaise with donor initiatives to develop a multi-donor and cross-sector framework of cooperation.

11. Specifically, as the overall executing agency for the PPP Program, it will be responsible for the implementation of the IDA credit on behalf of the FGN in line with the FA, the PIM and the PAD.

Overall Project Administration

12. ICRC will serve as the Credit Administrator of the Project and provide project administrative support to the ICRC and the PSC. The main responsibilities of Credit Administrator are summarized below:

- Implement the project following the project design and implementation arrangements as defined primarily in the Development Credit Agreement.
- Organize quarterly meetings to assess progress, identify implementation constraints and recommend remedial actions with key actors across all project components;
- Collect from the project beneficiaries and consultants, review, and transmit to ICRC, the Government and IDA all information for quarterly progress, audit, mid-term, and implementation completion reports;
- Maintain dialogue with IDA, in consultation with ICRC, on all aspects of project preparation and implementation, including semi-annual review meetings at the time of the IDA Supervision Missions;
- Prepare and consolidate annual and quarterly work plans and budgets for the Project for review and approval by ICRC on a quarterly basis and review by the Project Steering Committee on an annual basis;
- Prepare the minutes and record decisions and actions arising from the quarterly review meetings with the ICRC.

PPP Project Implementation Arrangements

13. The PPP Project Implementation Unit (PIU) will ensure that the operational, safeguards, procurement, disbursement, outreach and communications requirements, monitoring, and reporting of the Project are implemented in accordance with the Financing Agreement and the Project Implementation Manual (PIM). The PIU will be housed in the ICRC. As discussed previously, ICRC will oversee the project components: the Capacity Building and Legal/Regulatory Reform Component, the PPP Project Preparation and Transactions Advisory Support Component, and the Project Implementation, Monitoring and Evaluation Component. The PIU will support ICRC to carry out these implementing responsibilities and ensure it follows the agreed-upon procedures.

14. The Project Implementation Unit (PIU) within the ICRC will ensure that the operational safeguards, procurement, disbursement, financial management, outreach and communications requirements, monitoring, and reporting of the Project are implemented in accordance with the Financing Agreements for Phases I and II and the Project Implementation Manual (PIM). The PIM describes in detail its general functions, core membership and terms of references, specific responsibilities for each Program component, and other umbrella tasks that contribute to the implementation and success of the country’s PPP work.
Phase I: The PIU within the ICRC, alongside the PRC, will manage the entirety of Phase I activities. This includes the capacity building and technical assistance component. In the case of the PPP preparation and transaction advisory, the respective line ministry will take the technical lead, but ICRC – via the PIU - will provide all the necessary fiduciary services related to services provided under the IDA credit as well as supply key additional services such as safeguards, other specialized technical expertise and monitoring and evaluation. The PIU will be responsible to submit all the proper reports and materials on a timely basis including quarterly reports. The PIU will also support the CBN and the BOF to scale up implementation capacities in preparation for the activation of their roles under the APL Phase II. The PIU will also manage any specialized services provided under APL Phase I component I to the CBN and/or the BOF, including, eg, support for FIL due diligence of PFI candidates and IDP design and implementation activities.

Phase II: The PIU in ICRC will - in addition to its APL Phase I implementation role - maintain itself as the Program implementing agency for Phase II but work closely with project implementation teams placed in the CBN and Budget Office to manage Phase II activities. For the FIL, the team will be located in the CBN’s Development Finance Department (the Apex) and the Banking and Payment Systems Department (for the FIL); for the VGF, the team will be located in the BOF (for the VGF). The embedded consultants to be appointed to assist in CBN and BOF will work closely with the PIU in the ICRC to provide all required reports and materials on a timely basis. This will include the delivery of the IFRS reports and annual financial audits of the project. The PIU fiduciary and safeguards specialists will also provide support to the CBN and BOF implementing teams with responsibility for the VGF and FIL. Phase I will provide support, inter alia, in form of technical assistance to assist the CBN and the BOF to effectively equip these units with the skills needed to carry-out their responsibilities with respect to the FIL and VGF under Phase II.

15. The PPP Project Implementation Unit (PIU) will be created and appropriately staffed, within ICRC and reporting to the Director General, who will in consultation with IDA:

- Approve the annual work plan and budgets for each project component in consultation with IDA and other implementing partners;
- Ensure the provision the financial management systems, procurement, monitoring and evaluation and strategic communications services for the project;
- Approve specialist services to the ICRC to carry out key project-related work including: (i) safeguards; (ii) transport; (iii) project development services; (iv) training and capacity building services;
- Ensure the PPP PIU is able to carry out its management, operational, procurement, monitoring and evaluation responsibilities and oversee its operations;
- Monitor the Project implementation to ensure that it is consistent with the PIM and review reports received from all the implementing agencies, including quarterly progress reports, semi-annual reports, audit reports, and the Implementation Completion Report;
- Chair annual and semi-annual Project portfolio review meetings with the PIU, the PSC and with other implementing partners, and other key Project partners and beneficiaries in relation to IDA implementation review exercises;
- if required, review and authorize, in consultation with IDA, the PSC and the PPP PIU, the reallocation of resources across the various components of the project as lessons emerge as to patterns of demand and development impact.

Capacity Building and Legal/Regulatory Reform

16. ICRC. In implementing its capacity building program, ICRC will target the core mandate work of two of its operational departments, the Project Development and Resource Center (PRC) and
the Contract Compliance Center (CC) with the objective of facilitating their regulatory role on concession agreements and providing the PPP training programs, advisory services, study tours and other PPP-related technical studies to key MDAs and sub-national PPP Units. IT development and equipment will be funded across all departments to enable ICRC to manage and track PPP projects and interface with other PPP units within the government and to share information, monitor and evaluate the progress of a PPP, and build a database for private sector parties to access information on the PPP program and project pipeline. Key specific areas of assistance include the following:

- PRC: technical assistance to implement their PPP capacity building responsibilities to the MDAs, develop PPP regulations, foster sector PPP strategies and knowledge exchange and provide outreach support to the States; IT development;
- CCC: technical assistance in contract design, assessment and monitoring and provision of legal services; IT development;
- Director General’s Office and the administrative and legal departments: strategic management training program; IT development.

17. ICRC’s PPP Resource Center will administer the capacity building program. In support of the capacity building efforts designed for the Ministry of Works, Ministry of Transport, Ministry of Environment, Ministry of Aviation, Ministry of Power, Ministry of Health, Federal Capital Territory, Ministry of Finance (Budget Office and IERD), Debt Management Office (DMO), National Planning Commission, Central Bank of Nigeria, Bureau of Public Procurement, and the Bureau of Public Enterprises, development efforts will focus on: policy work that clarifies the MDA’s role in the PPP Program, increasing exposure to international best practices and deepening PPP skills. Technical and legal advisory work, sector studies, training, workshops and study tours will be utilized to meet specific training requirements of key staff and IT system development and training will be extended to enable MDAs to manage and track PPP projects and interface with other PPP units within the government to share information, monitor and evaluate their PPP progress. Capacity building assistance will be provided also at the sub-national state-level PPP to standardize the components of their PPP units, particularly in procurement practices, PPP legal frameworks, regulations, financial management practices, and project analysis skills.

Monitoring and Evaluation

18. The M&E function of the PPP PIU will focus primarily on:
- Generating and assessing information required monitoring and reporting on key operational and performance indicators and outcome objectives established for the APL Program as detailed in approved workplans and in the Results Framework set out in Annex 3.
- Promoting accountability by drawing on information on efficiency and effectiveness to assess and communicate whether project activities are likely to achieve expected results or realize its objectives;
- Identifying and promoting the actions necessary to improve implementation;
- Preparing and implementing an approved Evaluation Plan to ensure effective assessment of intermediate and Program Outcome evaluations;
- Overseeing the preparation of the Borrower’s Mid-Term Evaluation Report and End-of-Project Borrower’s Evaluation Report;
- Identifying lessons learned and fostering mainstreaming of these lessons learned and best M&E practices through workshops and seminars.

19. An M&E specialist will be housed within the PIU in the ICRC. This specialist will coordinate with the PRC and Contract Compliance Center of the ICRC as well as other project implementing agencies to ensure coherent and standard M&E data gathering and reporting system are in line with the Project Development Objective (PDO) and Key Performance Indicators (KPI) established for the project and further explained in the Project Performance Framework in Annex III. Critical tasks for the M&E function include setting up the M&E system and ensuring it is implemented effectively by
the key stakeholders, namely the implementing partners, primary project beneficiaries and other stakeholders. This is undertaken through the joint development of a shared M&E system among key stakeholders. This needs to be supported by facilitating stakeholders to undertake their own M&E activities and to link these into an overall assessment of project progress and needed actions. A “demand-based third party” review of the M&E system and reporting will be carried out by key stakeholder groups related to specific PPP project initiatives as well as private sector stakeholders with defined interests and roles in PPP development in Nigeria. Information gathering and dissemination will also be supported by a well-defined communications program.

20. Full information on project outputs and intermediate outcomes will be reported on a quarterly basis. The M&E team will also be required to prepare an evaluation plan, detailing data collection, management and evaluation implementing arrangements with other project stakeholders, factoring in the desired “third party demand-based” process mentioned earlier. Specialist evaluation consultant service requirements (including, as required, with academic institutions) will also be detailed in this evaluation plan. The plan will also include time bound budget projections. The Evaluation Plan will cover the life of the APL Program and be updated on an annual basis as part of the overall project reporting requirements.

21. The PPP PIU will monitor the Program based on the overall project performance framework and specific performance agreements and contractual outputs required from project beneficiaries and consultants. Each of the project implementing agencies (ICRC-PRC for the institution-building and transactions support, CBN for the FIL, and FMOF/BOF for the VGF), beneficiaries and consultant agencies will develop instruments for monitoring their respective components while the ICRC, through the PPP PIU, will consolidate and analyze statistical, financial, and physical data on the rate of implementation. Quarterly progress reports will be prepared by the PPP PIU and submitted to ICRC and IDA. The monitoring and outcome indicators will provide the PPP PIU, the ICRC, the Government, IDA, with measures to determine progress and form the basis for joint supervisions.

22. Ongoing program implementation reviews by IDA will include formal Annual and Semi-Annual Workprogram consultations at which time annual procurement and capacity building plans will be subjected to detailed review and approval actions by the ICRC and the World Bank. The PPP PIU will be required to prepare information necessary to inform these implementation review exercises.

23. A mid-term evaluation of the Program will take place 36 months after the APL Phase I Credit effectiveness in accordance with terms of reference agreed upon by Government/ICRC, the PPP PIU, IDA and other donors. The PPP PIU will prepare the mid-term report detailing implementation progress under all Program components and identifying implementation issues. This report will be submitted to ICRC, IDA and other donors not later than two months prior to the mid-term review. During the mid-term review, implementation progress and solutions to identified implementation issues will be discussed and agreed on and, if required, project redesign steps will be taken. An Implementation Completion Report will also be jointly prepared by the PPP PIU, ICRC, and IDA within six months after the closing date of Phase I and Phase II

Communications Management

24. The PPP PIU, in consultation with ICRC, will elaborate and implement a strategic communications plan following the completion of a needs assessment under the Program. Specifically, this task will cover the following:

- Preparation of a communication strategy for the project by assessing the key information dissemination needs of the main stakeholder groups, identifying the most appropriate medium, frequency, audience and content;
• Timely, regular and easily accessible communication, such as quarterly newsletters, radio programs and bulletin boards, which include up-to-date M&E information and are targeted to the audience;
• Maintenance of a project website, including up-to-date M&E information and lessons learned;
• Responses to the wide variety of information requests from stakeholders in the project area, including the media;
• Preparation, printing and dissemination of documents, including liaising with authors, printers and graphic designers;
• Organization of seminars, workshops and other meetings on priority project issues for stakeholders;
• Work with technical staff and management to ensure that information on progress, problems, impacts and lessons learned are stored in the appropriate location for enabling access to the intended user;
• Assistance with the work of technical consultants, facilitating their access to the information they require.

Environment and Social Safeguards

25. The PPP PIU will be responsible for ensuring the Government/IDA-agreed environmental and social safeguards policy framework is adhered to and appropriately serves to guide the preparation and implementation and manage the environmental and social impact of the project components. It will advise the government specifically on: (i) the terms of reference for the environment and social assessments; (ii) key issues and methods for preparing the assessments; (iii) recommendations and findings of the assessments; (iv) implementation of the environment and social management framework through the preparation of environmental and social impact assessments, environmental and social management plans, and other safeguards documentation, as required; and (v) development of environmental and social management capacity with the objective to predict and control the impacts of the project and its sub-components and to ensure practical and cost-effective actions are taken to prevent or reduce significant impacts to tolerable levels. A safeguards specialist will be housed in the PIU to monitor all safeguards activities and provide technical assistance and support to all safeguards related activities at the policy and transactional level. The safeguards specialist will work closely with the MOE as well as provide technical support to the PFIs in developing their IDA-compliant IDPs.

Anti-Corruption Guidelines

26. The World Bank’s fraud and corruption clauses will be stipulated in the legal agreements between the Government, ICRC, implementing agencies, and any other recipient of the project proceeds. ICRC will make this information available on its website.

APL Phase II Overview of Additional Implementing and Disbursement Arrangements:

27. **FIL:** The Central Bank of Nigeria (CBN) will serve as the Apex agency for the FIL. For Financial Institutions (FI) to be eligible to access the FIL, they will need to meet certain eligibility criteria related to governance, financial and portfolio management, staffing and expertise (particularly project finance, procurement and safeguards). Where the FI is not fully compliant, there will be a need to implement an agreed-upon institutional development program (IDP). While the expectation is that a significant portion of the costs of the IDP will be borne by the FI, there are other more public good costs which the FI would not invest in. This is an area where the project would consider providing capacity building assistance from the IDA credit, based on an overall IDP cost-sharing agreement. Over time, as the FIL generates its own revenue flow back to FGN, this income can be deployed in support of the IDP activities. However, in the short-term any FGN funding would need to come from the IDA credit. Details of these responsibilities will be documented in a Subsidiary Loan Agreement between IDA and CBN and a Project Agreement between IDA and CBN.
28. Disbursements would be made for expenditure incurred on eligible *sub-projects* to be financed through participating financial intermediary institutions (PFIs). Operating independent of government, the CBN will review subproject (sub-loan) applications from eligible participating financial intermediaries (PFIs) to ensure that they fully meet all criteria that have been stipulated for sub-loans that can be financed under the project’s line of credit. It will receive project funds and, using procedures and a mechanism agreed with the World Bank, it will onlend these funds to PFIs at an agreed onlending interest rate for that type of loan, and under terms and conditions agreed with the financial intermediary that match the intermediaries that have been drawn (see Annex 4 for onlending arrangements). IDA funds on-lent in this manner would be for goods, works and services.

29. Amortization of IDA loans will be on standard IDA terms applicable to Nigeria and would not be back-to-back with amortization of IDA funds on-lent by Borrower to FILs. Financial flows relating to amortization of FIL sub-loan to Sub-project and interest accruing on these sub-loans should therefore be separate from those for IDA disbursements.

30. The CBN Development Finance Department will execute this apex institution for the FIL facility and with all accounting and management of funds will be done on its behalf by the Banking and Payment Systems Department. Follow up on projects after commitment will be on a management by exception basis, monitoring actual disbursements compared with the schedule for disbursements. Where it falls significantly behind, investigating the reasons for that to ascertain what implementation problems there may be and whether they can be of assistance.

31. Disbursement arrangements for this component include these disbursement conditions:

   a. On-lending agreement between CBN and PFI has been duly executed and is in a form approved by WB.

   b. Loan agreement between PFI and Sub-Project / Concessionaire has been duly executed and is in a form approved by IDA.

32. The disbursed method authorized for this Component will be *Advances*. IDA advances will be disbursed through a segregated Designated Account (in US$) maintained at CBN and managed by DFD. The designated account (DA) will have flexible ceilings, to be determined each quarter based on cash forecasts received by CBN from PFIs and approved by the Bank. Applications for Withdrawal (WA) will be prepared by CBN-DFD based on interim financial reports, including cash forecasts, received from each participating financial intermediary (PFI).

33. Cash forecasts should cover FIL transactions only where on-lending agreement (CBN with PFI) and Loan Agreement (between PFI and Concession) have been completed, the sub-project has been approved by Govt. and meets IDA criteria. In the forecast, the PFI will identify the drawdown schedule relevant to each Sub-project (Concession). The amount of the credit withdrawal sought in the WA and disbursed to CBN should normally not exceed the amount of the next tranche for approved sub-loans, as indicated in PFI cash forecasts, and should normally be requested no more than 4 weeks before the intended tranche drawdown.

34. CBN will release funds from the DA to a PFI dedicated bank account to be maintained at either a commercial bank acceptable to IDA and CBN. Release of IDA funds by CBN to the PFI’s dedicated bank account will be on the basis of a written request from the PFI, supported by a copy of an approved Early Investment Memorandum / Drawdown Memo (or equivalent) from PFI, which will be sent to CBN relating to a specific sub-project that has met IDA criteria. The amount to be released to PFI should normally not exceed the next tranche payment normally due for approved sub-loans and should normally be released no more than one week before the intended tranche drawdown. Upon receipt of IDA funds, PFIs would promptly release tranche payments to the identified and approved Sub-project, in accordance with relevant sub-project loan conditions and following PFI procedures for authorization. If drawdown of IDA funds to sub-projects is unduly delayed, (say more than one month after receipt of funds from CBN), these funds shall be returned to CBN and requested again at a later
date. CBN will be required to report to the Bank on use of Advances every month, through a ‘transactional financial report’, with appropriate supporting documents. Replenishment of Advances into the DA will be based on Quarterly IFR, with Cash forecast as above. CBN will need to receive and compile all such reports from each PFI under this project before submission to IDA. Replenishments will be made only after all earlier advances disbursed for a PFI have been accounted for, as above.

35. **VGF:** Disbursements would be made for expenditure incurred on eligible *sub-projects* to be financed through the Viability Gap Facility (VGF) managed by the Federal Ministry of Finance (FMOF). Under this facility, IDA funds will be utilized by the Borrower to finance approved sub-projects executed by sponsoring Line Ministries / Concessionaire under this component.

36. A sub-project would be specific contracts for capital expenditure, comprising goods, works and services only that is part of a concession that is approved by Government and IDA as meeting the project criteria. The IDA financing through VGF is intended to co-finance up to a specified percentage of the total financing amounts allocated from VGF and authorized for selected projects that meet specified criteria under this project. The balance VGF financing would be provided by the Borrower. All such sub-projects will be budgeted centrally at FMOF. Operational implementation risk for such sub-projects will stay with the Concessionaire.

37. Disbursement conditions would include adoption of Governance arrangements for management of VGF funds, acceptable to IDA and the execution of agreements between FMOF and the Sub-project. The disbursement method authorized for this Component will be *Reimbursement*. IDA reimbursements will be disbursed into a VGF dedicated bank account maintained at CBN and operated by Federal Ministry of Finance. IDA funds meant for VGF will be reimbursed into this account, pooled with Borrower contributions to the VGF. It is anticipated that the Borrower may initially transfer VGF funds to the Concessionaire and cause them to pay contractors before seeking reimbursement from IDA. VGF funds, after receiving certifications from the Concession. IDA Reimbursements will be to the Borrower. Additional supporting documents that would be requested for disbursements would include attestation by Borrower on compliance with legal agreements with Concessions and with criteria under VGF.
Annex 7: Financial Management and Disbursement Arrangements

NIGERIA: Public/Private Partnership Program

A. SUMMARY

1. The financial management assessment was carried out in line with OP 10.02 and the Financial Management Manual (March 2010) of the Financial Management (FM) Board. It also takes into cognizance OP8.30 in respect of financial intermediary lending in Phase II of the project. The objective is to determine whether the implementing entities have acceptable financial management arrangements, which will ensure: (i) that funds are used only for the intended purposes in an efficient and economic way; (ii) the preparation of accurate, reliable and timely periodic financial reports; and (iii) safeguarding of the entity’s assets.

2. Phase I financial management will be handled by the Finance Unit in ICRC. Phase II financial management for the VGF will be handled by the Finance and Accounts Department in the FMOF; financial management for the FIL will be handled by the Banking and Payment Systems Department of the CBN working in collaboration with the Infrastructure Finance Office in the Development Finance Department (DFD) of CBN.

3. A Financial Procedures Manual (FPM) is being developed by ICRC as part of the Project Implementation Manual for all aspects of the project and would include accounting and reporting arrangements, detailed internal control framework and risk management strategy, chart of account and formats of financial statements specific to the project. In addition, the internal audit units in ICRC will carry out a regular risk-based review of the project’s FM activities and systems to ensure it is sufficiently robust. Internal Audit Units at the CBN and the FMOF will include the project activities in their periodic review and report thereon. External audit and Bank supervision will also ensure adherence to implementation guidelines and expeditious remedial actions where necessary. Each PFIs will be expected, as part of the Institutional Development Plan (IDP) and criteria for selection, to have Operational Manuals which includes FM Procedures Manual; Investment and Asset Portfolio Management Manual; and Monthly Investment Monitoring Reports for each concessioner, with clear guidelines on accounting and reporting for investment monitoring, physical progress and sources and uses of PPP funds.

4. While a single external auditor will be engaged by ICRC to cover the entire project, entity audited financial statements of each PFI will be required to include an opinion on the sub-projects as well as related disclosures in form of schedules in the notes to the financial statements on the PPP investments and use of funds.

5. The overall project FM risk is substantial. This will be reviewed during various supervision missions.

Country issues

6. A review of implementation of the recommendations of the Country Financial Accountability Assessment (CFAA 2000) carried out in January 2005 and a 2006 PEMFAR indicates that the Federal Government of Nigeria (FGN) has made significant efforts to advance reform of the PFM system since 2003. PFM initiatives and reforms are stated in the Government’s PRSP – NEEDS, and further articulated in the 7-Point Agenda, which sets out policy priorities that will strengthen the reforms and build the economy so that the gains of reforms are felt widely. Major achievements so far have been: (i) the adoption of an oil-based fiscal rule that has greatly improved the quality of macroeconomic management; (ii) launching of significant steps toward increased transparency of the budget process; (iii) more efficient cash management; (iv) procurement reforms; (v) updating the legislative framework for PFM; (vi) reallocation of budget resources in support of MDG-related government
functions; (vii) strengthening monitoring and evaluation (M&E); and (viii) introducing a more strategic longer-term focus in budget management. Existing challenges include weaknesses in audit efficiency and budget monitoring. The Bank supports government’s PFM initiatives through Bank assisted projects including EMCAP, SCBGP and the ERGP.

7. The government approved the ICRC Act in 2005 which provides for participation of private sectors in financing the construction, development, operation or maintenance of infrastructure or development of projects of the federal government through concession or contractual arrangement. Also, the CBN regulates financial institutions and carry out supervisions in this regards. The first mover of the FIL, AFC, is not subject to CBN regulation and supervision. However, they have a very robust Board of Directors which meets regularly and monitors all the activities.

**B. Risk Assessment and Mitigation**

<table>
<thead>
<tr>
<th>Risk</th>
<th>Risk Rating</th>
<th>Risk Mitigating Measures Incorporated into Project Design</th>
<th>Conditions for Negotiation, Board or Effectiveness</th>
<th>Residual Risk Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inherent Risks</td>
<td></td>
<td>In line with the Country Partnership Strategy (CPS) 2010-2013, the Bank Group and other partners are helping the government strengthen its own systems over the long term. It has governance as its core theme and supports on-going initiatives to strengthen procurement and public financial management amongst others. This could minimize opportunity for misapplication of funds and ensure efficiency, accountability and transparency.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 Country Level</td>
<td>H</td>
<td>Robust financial management arrangements are being established at the project implementing levels to mitigate the country level risk.</td>
<td>None</td>
<td>S</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Capacity building and technical assistance is included in components 1 of the project.</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>Bank’s contribution to the VGF will be through reimbursements of incurred eligible expenditure.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 Entity Level</td>
<td>S</td>
<td>Substantial capacity will be carried out for all implementing entities, MDAs and PFIs involved in the project under Component 1. The ICRC will support in identification of concessioners as well as review of the sub-project.</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>IDPs will be agreed with each PFI and would form part of the basis for eligibility.</td>
<td>None</td>
<td>S</td>
</tr>
</tbody>
</table>

 Apart from AFC, which
commenced operations in 2007, other FIs are yet to be identified.

3 **Project Level**

There are risks associated with effective monitoring of Sub-projects by ICRC as well as by the PFIs due to likely limited monitoring capacity. ICRC has not undertaken similar activities since it is relatively new and could have challenges monitoring the sub-projects and activities. Also, while AFC, the first mover of the FIL has very clear governance and project monitoring mechanism, the same may not be for the other PFIs which are yet to be identified.

No previous experience in project implementation which could impact on FM. Also no FI in Nigeria has previously implemented Bank Assisted Projects and this could impact on the FIL in the project.

<table>
<thead>
<tr>
<th>Control Risks</th>
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<tbody>
<tr>
<td><strong>4</strong> <strong>Budgeting</strong></td>
</tr>
<tr>
<td>Failure to prepare comprehensive budgets, effectively monitor periodic budgets and incorporate project finances in budgets and financial records.</td>
</tr>
<tr>
<td>M</td>
</tr>
<tr>
<td>Budget execution to be monitored through quarterly Financial Reporting.</td>
</tr>
<tr>
<td>M</td>
</tr>
<tr>
<td>Project budget to be synchronized in national budget.</td>
</tr>
<tr>
<td>M</td>
</tr>
<tr>
<td>Budget preparation procedures will be documented in the FPM.</td>
</tr>
<tr>
<td>M</td>
</tr>
<tr>
<td><strong>5</strong> <strong>Accounting</strong></td>
</tr>
<tr>
<td>Failure to appropriately account for project funds and provide full supporting documentation particularly on funding to concessioners under the VGF and FIL.</td>
</tr>
<tr>
<td>M</td>
</tr>
<tr>
<td>Accounting and internal control procedures including chart of accounts established and documented in the project FPM. Consolidated IFRs will be prepared by ICRC for the entire project. Recruitment of additional qualified accountants in ICRC and use of the Finance Department of the CBN and FMOF.</td>
</tr>
<tr>
<td>M</td>
</tr>
<tr>
<td>Use of entities’ integrated computerized accounting system</td>
</tr>
<tr>
<td>None</td>
</tr>
<tr>
<td><strong>6</strong> <strong>Internal Control</strong></td>
</tr>
<tr>
<td>Inadequate documentation of transactions. Compliance with laid down procedures may be</td>
</tr>
<tr>
<td>S</td>
</tr>
<tr>
<td>Independent and effective internal audit and risk management function will be deployed by the project. A risk-based internal audit would be provided by ICRC. CBN and FMOF will</td>
</tr>
<tr>
<td>S</td>
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</tbody>
</table>
ignored by management and project staff.

incorporate project activities in their entity internal audit functions. Each PFIs internal audit unit will incorporate project activities in their internal audit work. These internal audit functions will complement the internal control environment and enforce compliance with the laid down procedures. Internal audit units exist in all implementing entities.

| 7 | Funds Flow | S | Capacity building in Bank FM procedures and disbursement guidelines; Skills enhancement will be arranged to strengthen weak areas including in use of client connection and e-disbursement. | None |
| 8 | Financial Reporting | S | Computerized financial accounting system will be used for reporting purposes at the ICRC, CBN, and each PFIs. VGF activities in the budget office will be reported on excel. Each entity will produce quarterly FMRs/IFRs and forward same to Bank at agreed timing. PFIs are also expected to produce agreed physical and financial reports and forward to DBD in CBN, ICRC and the Bank. | Formats of reports and Annual Financial Statements agreed at appraisal. |
| 9 | Auditing | M | Independent external auditors will be appointed by ICRC based on TOR acceptable to IDA. Consolidated audit will be prepared for the entire project. Audits of the activities in the PFIs will be incorporated in their respective entity AFS with clear opinions and additional notes on the PPP activities. | Formats of reports and Annual Financial Statements agreed at appraisal. |
Strengths

8. The Development Finance Department in the CBN has professionally qualified staff as well as a robust financial management system which would be able to account and generate the necessary reports required for the FIL. Also, the First FIL mover, AFC, is an international institution with a robust FM and investment team as well as systems that is able to account and report on funds given to the concessioners as well as monitor the project implementation. It has a strong and highly professional Board of Directors and Board Committees which meets regularly and are focused on risk management, audit and compliance; and Governance.

Weaknesses

9. ICRC is still in the process of putting the proper project financial management staff in place; the financial management system remains manual and would currently not be able to support the quantum of activities expected in this project.

10. The “first-mover”PFI, AFC, is not registered as a financial institution in Nigeria, but operates by way of international treaty and hence outside CBN and NDIC regulations and monitoring with respect to prudential norms. As a mitigating measure, the AFC has a very strong Board of Directors who regulates and reviews their activities. The Board has well structured committees as indicated in the strength above.

Implementing Entities

11. The project is an APL and will be implemented in two phases; Phase I will compose of the first three components comprising goods, consulting services for transactions advisory work, training and project management expenditures; while Phase II, which is expected to commence subsequently, will compose of all four components including the FIL and VGF and will be activated when agreed triggers are satisfied. The implementing entities are ICRC, Budget Office of the FMOF and the DFD of the CBN. PFIs will be selected based on clearly laid down criteria to implement the FIL.

Phase I

12. ICRC: for components 1, 2, and 3, the PIU Project Accountant will be recruited and with support from the Finance and Accounts Department (FAD) in ICRC will be responsible for managing the financial affairs. Modern risk-based internal audit functions will be performed by the Internal Audit Unit (IAU) of ICRC.

Phase II

13. FMOF, Budget Office: For the VGF, the Budget Office in FMOF is the implementing entity. The responsibility for accounting and reporting for this component will be with the Finance and Accounts Department in the FMOF. A dedicated accountant will be designated and would have the responsibility of accounting and reporting on the funds for the VGF. The internal audit unit in FMOF will include the VGF in their periodic review and report thereon.
14. **DFD, CBN:** For the FIL, while the funds will be domiciled with the Banking and Payment System department of the CBN, accounting and reporting on the funds will be done by the Finance Department. The Infrastructure Finance Office in the DFD of CBN will work closely with the Finance Department to ensure that the necessary reports are received as due. The Finance unit has professionally qualified accountants and a robust computerized Oracle based accounting system with a robust Globus Taminus 24 reporting system which can generate reports as required. The internal audit department audits the DFD twice a year and will include the FIL in their audit and reports.

15. The FAD in each of the implementing entities (ICRC; FMOF, Budget Office; and DFD CBN) mentioned above will be responsible for managing the financial affairs of project and will ensure compliance with the FM requirements of the Bank and the government including preparing budgets, monthly reports, quarterly unaudited Interim Financial Report (IFRs), annual financial statements and progress reports respectively. In addition, they will be responsible for ensuring compliance with the financial management requirements of the Bank and the government, including forwarding the quarterly IFRs and audited annual financial statements to the Office of the Accountant-General of the Federation and IDA. The Internal Audit Units in each of these entities will carry out risk-based internal auditing, including a systematic review, appraisal and reporting on the adequacy of the systems of managerial, financial, operational and budgetary control and their reliability in practice. All the accounting personnel will be sufficiently trained in Bank procedures, computer applications and necessary financial management skills.

16. **Participating FIs (PFIs):** PFIs are the primary borrowers of the FIL funds and will loan the funds to eligible concessionaires. They will be selected based on a detailed application and will need to meet the agreed eligibility criteria or implement an agreed-upon IDP. Presently, AFC has been identified as the ‘first mover’ off-taker of the FIL funds. Each PFI will specifically account and report on the PPP funds obtained from the CBN as well as on its proper use for intended purpose. PFIs will be assessed as they are indentified to ensure that they have the requisite FM arrangements to handle the accounting, reporting and management of funds. The AFC assessment indicates that they have necessary professionally qualified staff in the Finance and Control; internal audit and investment unit to properly account, report, monitor the loans to concessioners, and capture expenditure to sub-projects.

17. FM risk in the project is rated as substantial. This will be reviewed during various Bank implementation support and supervision missions.

**FM Arrangements at the PFIs for Sub-project Level**

18. FM arrangements at the PFIs are required to follow acceptable accounting principles to report on the sub-projects. They are required to:

- Maintain proper books of accounts (in accordance with GAAP) to truly, accurately, and fairly reflect the financial condition and results of operations of the sub-projects and of specific contracts financed on Sub-projects, as the case may be;
- Operate a dedicated bank account for all inflow and outflow of funds to ensure total segregation of project funds and control over their disbursement for the purposes for which they are intended;
- Submit an annual budget/operational budget, as appropriate, before the commencement of each financial year, along with the previous year’s actual data with explanations for material variance;
- Submit certificate on use of funds at sub-project and financial progress;
- Submit the entity audited financial statements from their statutory auditors which includes opinion and schedules on PPP funds utilization and reports on physical and implementation progress of the project.
19. Prior to release of funds/loans by CBN, PFIs will submit:

- periodic reports comprising quarterly loan utilization statements, details of payments made by PFI to each concessionaire/sub-project including expenditures incurred by sub-projects, IDA portion and balances; and a quarterly report on the progress of project implementation and financial statements of income and cash flow;
- financial reports on the contractual expenditures sought to be financed;
- evidence of the ability of the concessionaire and sub-project to meet the loan covenants agreed between the PFI and the concessionaire;
- evidence of existence of audit committee to monitor sub-project operations and previous similar reviews by same committee; and
- copies of designated bank account and reconciliation.

Planning and Budgeting

20. Budget preparation will follow the Federal Government procedure. Financial projections or forecasts for the life of the Program (analyzed by year) will be prepared. On an annual basis, the Project Accountant in each implementing entity (in consultation with key members) will prepare the cash budget for the coming period based on the work program. The cash budget should include the figures for the year, analyzed by quarter. The cash budget for each quarter will reflect the detailed specifications for project activities, schedules (including procurement plan), and expenditure on project activities scheduled respectively for the quarter. All annual cash budgets will be sent to the TTL at least two months before the beginning of the calendar year. Detailed procedures for planning and budgeting will be documented in the FPM.

Internal Control and Internal Auditing

21. The key elements to ensure a sound internal control system include internal control environment; risk assessment; control activities; information and communication; and monitoring. A risk-based review of project activities will be carried out by the Internal Audit Units (IAU) of ICRC, CBN and FMO respectively. They will report to the Project Coordinators and at a minimum they will (i) carry out periodic reviews of project activities, records, accounts and systems; (ii) ensure effectiveness of financial and accounting policies and procedures, as well as compliance with internal control mechanisms; (iii) review transactions; (iv) physically verify purchases and assets; and (v) carry out other functions as stated in the approved charter. They will undergo training in the Bank financial management and disbursement procedures, as well as training on risk-based auditing.

22. A finance and audit sub-committee with appropriate qualifications and skills will be constituted under the oversight of the ICRC PRC Board, with responsibilities of: (i) monitoring implementation of the risk management framework; (ii) reviewing annual operational budgets and financial performance; and (iii) reviewing and clearing annual financial statements; (iv) monitoring and ensuring timely implementation of recommendations made by internal and external auditors, project monitoring agencies and IDA supervision missions on various fiduciary oversight operations under the project; (v) overseeing the continuing efficacy of accounting and internal control standards, policies and practices; and (vi) overseeing the effectiveness of the internal audit functions.

Accounting

23. In the PIU, as well as the implementing units in CBN and BOF, IDA funds will be accounted for on a cash basis, augmented with appropriate records and procedures to track commitments and to safeguard assets. Accounting records will be maintained in dual currencies (i.e. Naira and U.S Dollars).
24. The Chart of Accounts will facilitate the preparation of relevant monthly, quarterly and annual financial statements, including information on the following:

- Total project expenditures.
- Total financial contribution from financiers.
- Total expenditure on each project component/activity.

25. Annual financial statements for ICRC with respect to the entire project and will be prepared in accordance with relevant International Public Sector Accounting Standards (IPSAS) and those of PFIIs in accordance with International Financial Reporting Standards (IFRS).

26. All accounting and control procedures will be documented in the FPM, regularly updated by the Project Accountants, approved by the NPCU and SPCUs and shared with IDA and the Government.

27. With respect to accounting systems, the ICRC will procure a computerized financial management system which will be capable of accounting and reporting for the project activities. The FMOF and CBN will report using the accounting system they have in place currently. While that of the FMOF is akin to manual, the CBN uses the Oracle with a Globus Taminus 24 reporting module that is flexible enough to produce reports as required. The FIs will be required to have a computerized accounting system to account for the specific project activities and concessionaire. The AFC uses the Flex Quick accounting package, an oracle based package with business object as a reporting tool. This system is capable of producing adequate financial and investment monitoring reports as required. The eligibility criteria for other PFIIs will include availability of a computerized financial management system that is able to report on project activities.

Financial Reporting

28. Within the ICRC, FMOF and CBN, the project coordinators will ensure that the project accountants will produce relevant reports on a timely basis. Reporting on the use of advances will be through quarterly reports using a report based disbursement method. Payments through direct payments, reimbursements and special commitments (if any) will be for expenditures in excess of 20 percent of DA advances. In compliance with government reporting requirements, monthly returns will be made to the Accountant - General of the Federation for incorporation in the government accounts. The FMOF and CBN will forward their monthly reports to ICRC for consolidation and to IDA – for the purpose of monitoring project implementation.

- Monthly Reports: On a monthly basis, the ICRC, FMOF and CBN will prepare and submit the following reports to the Project Coordinators:
  - A Bank Reconciliation Statement for each bank account;
  - A Monthly Statement of Cash Position for project funds from all sources, taking into consideration significant reconciling items;
  - A Monthly Statement of Expenditures classified by project components, disbursement categories, and comparison with budgets, or a variance analysis; and
  - A Statement of Sources and Uses of funds (by Credit Category/ Activity showing IDA and Counterpart Funds separately).
  - CBN will also produce a monthly Investment Monitoring Report from the PFIIs.

29. Quarterly Reports: Interim Financial Reports (IFRs) will be prepared by the ICRC, FMOF and CBN on a quarterly basis and submitted to Project Coordinators in the respective implementing units. FMOF and CBN will submit reports to ICRC not later than 45 days after the quarter for consolidation and submission to IDA within 60 days of the end of each quarter. Reports will include, at a minimum:
Financial Reports, which include a statement showing for the period and cumulative (project life or year to date) inflows by sources, and outflows by main expenditure classifications; opening and closing cash balances of the project; and supporting schedules comparing actual and budgeted expenditures. The reports will also include cash forecasts for the following two quarters as well as analysis of disbursements against contracts;

Transaction withdrawal schedule, listing individual withdrawal applications relating to disbursements, by reference number, date and amount; and

Designated account statement reconciliation, showing deposits and replenishments received, payments supported by withdrawal applications, interest earned on the account and the balance at the end of the reporting period.

30. Indicative formats for the reports (IFRs) are available in a Bank guideline called “Financial Monitoring Reports: Guidelines to Borrowers”.

31. Annual Financial Statements: The annual Project Financial Statements, which will be prepared and submitted to the Bank within 6 months of the end of the government fiscal year by the PIU within ICRC (i.e. consolidation of the entire project financial activities), will include the following:

- A Statement of Sources and uses of funds (by Credit Category and Activity showing IDA and other Funds separately);
- A Statement of Cash Position for Project Funds from all sources;
- Statements reconciling the balances on the various bank accounts (including IDA Designated Account) to the bank balances shown on the Statement of Sources and Uses of Funds;
- SOE Withdrawal Schedules listing individual withdrawal applications relating to disbursements by the SOE Method, by reference number, date and amount; and
- Notes to the Financial Statements.

Auditing

32. ICRC will appoint a relevantly qualified, experienced, competent and independent external auditor based on Terms of Reference acceptable to the Bank to perform an audit of all components and all PIUs. Adequate measures will be put in place to ensure that the joint activity does not undermine the timeliness and quality of the audit report.

33. The auditor will express an opinion on the Annual Financial Statements in compliance with International Standards on Auditing (ISA). In addition to the audit report, the external auditors will prepare a Management Letter giving observations and comments, and providing recommendations for improvements in accounting records, systems, controls and compliance with financial covenants in the Financing Agreement.

34. The PFIs will be required to include in their entity audited financial statements, a separate opinion on sub-projects and use of the PPP funds as well as related disclosures in form of schedules in the notes to the financial statements analyzing the details of funds as well as PPP investments, disbursements and activities with concessionaires and qualifications (if any).

35. The audit report that will be submitted to IDA by the ICRC and each FIs is as follows:
### Audit Report

<table>
<thead>
<tr>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual consolidated Project Specific Financial Statements for all components and related management letter. Submitted within six months after the end of each financial year.</td>
</tr>
<tr>
<td>Entity Financial Statements for each PFI</td>
</tr>
</tbody>
</table>

### Fraud and Corruption

**Possibility of circumventing the internal control system with colluding practices as bribes, abuse of administrative positions, mis-procurement etc, is a critical issue and may include:**

1. **Late submission of supporting document**
2. **Poor filing and records**
3. **Lack of system integration**
4. **Lack of budget discipline**
5. **Unauthorized commitment to suppliers, bypassing budget and expenses vetting procedures**
6. **Unsecured safekeeping and transportation of funds**

These are mitigated as follows:

1. **Specific aspects on corruption auditing would be included in the external audit TOR**
2. **The internal auditor would report directly to the Steering Committee as well as quarterly report to the Bank**
3. **FM procedures manual approved before project effectiveness**
4. **Strong FM arrangements (qualified FM staff recruited under TORs acceptable to IDA, quarterly IFR including budget execution and monitoring)**
5. **Measures to improve transparency such as providing information on the project status to the public, and involvement of the Steering Committee for the project are built into the project design.**

### Financial Management Action Plan

**Actions to be taken for the project to further strengthen its financial management system are as follows:**

<table>
<thead>
<tr>
<th>Ref No.</th>
<th>Action</th>
<th>Date due by</th>
<th>Responsible</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Agreement of un-audited consolidated Interim Financial Report (IFR) formats; Annual Consolidated Financial Statement formats, and external auditors Terms of Reference.</td>
<td>Negotiations.</td>
<td>ICRC</td>
</tr>
<tr>
<td>2</td>
<td>ICRC to open Designated Dollar Account, Current Drawdown account in a commercial bank for Designated Account 1, 2 &amp; 3. FMOF and IDA advised of authorized bank signatories</td>
<td>Prior to disbursement of IDA Credit proceeds.</td>
<td>ICRC</td>
</tr>
<tr>
<td>3</td>
<td>CBN to open a Designated Dollar Account for the FIL. FMOF and IDA advised of authorized bank signatories</td>
<td>Prior to APL Phase II activation.</td>
<td>CBN</td>
</tr>
<tr>
<td>4</td>
<td>Engagement of external auditors for the Program</td>
<td>Within 90 days after Effectiveness.</td>
<td>ICRC</td>
</tr>
<tr>
<td>5</td>
<td>Engage one qualified project accountant and one assistant project accountant for ICRC</td>
<td>Effectiveness.</td>
<td>ICRC</td>
</tr>
<tr>
<td>6</td>
<td>Prepare ICRC FPM and incorporate the chart of accounts for the projects (to be included in PIM)</td>
<td>Effectiveness</td>
<td>ICRC</td>
</tr>
<tr>
<td>Ref No.</td>
<td>Action</td>
<td>Date due by</td>
<td>Responsible</td>
</tr>
<tr>
<td>--------</td>
<td>------------------------------------------------------------------------</td>
<td>------------------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>7</td>
<td>Install computerized FMS for ICRC and train staff on its use</td>
<td>6 months after effectiveness</td>
<td>ICRC</td>
</tr>
</tbody>
</table>

**Fund Flows and Disbursement Arrangements**

38. Project funding will consist of IDA credit. IDA will disburse the credit through two US$ Designated Accounts (DA). DA1 will be opened with a reliable commercial bank and managed by ICRC for components 1, 2, and 3; while DA2 will be opened with the Banking and Payments System Department in the CBN for the FIL in component 4 and managed by the DFD department in CBN. The Bank’s contribution to the VGF will be paid through reimbursements of agreed percentages and/or activities in respect of incurred eligible expenditure and would be paid directly into the governments dedicated accounts for the PPP –VGF maintained with the CBN. The specific funding, banking and accounting arrangements are as follows:

**Phase I**

39. **ICRC** will open the following account at a commercial bank acceptable to FMOF and IDA:
   - One US$ DA for components 1, 2 and 3 to which the initial deposit and replenishments from IDA funds will be lodged.
   - One Current (Draw-down) Account in Naira to which draw-downs from the DA will be credited in respect of incurred eligible expenditures, maintaining balances on this account as close to zero as possible after payments.
   - One US$ interest account
   - Payments for eligible incurred expenditure to all suppliers by ICRC and/or MDAs, FIs, CBN and other agencies will be made directly from accounts maintained by ICRC using the government’s e-payments systems based on instructions from the MDAs of satisfactory adherence to the contract terms.

**Phase II**

40. **Budget Office FMOF** will open the following account with the Banking and Payments System department of CBN for the VGF under component 4:
   - A dedicated US$ DA to which the initial deposit and replenishments from IDA funds will be lodged.
   - One Current (Draw-down) Account in Naira to which draw-downs from the DAs will be credited in respect of incurred eligible expenditures, maintaining balances on this account as close to zero as possible after payments.

41. **DFD in CBN** will open the following account with the Banking and Payments System Department of the CBN for the FIL under component 4:
   - A dedicated US$ DA to which initial advance and subsequently, incurred eligible expenditures from FILs which meets with agreed criteria will be credited.

42. **PFIs** will open the following account with the Banking and Payments System department of the CBN or a commercial bank (subject to agreement between FIs and the CBN):
- A dedicated US$ DA to which agreed/approved dollars requests from concessioners will be lodged in tranches as agreed with the concessioners.
- A dedicated account in Naira to which agreed/approved naira requests from concessioners will be lodged in tranches as agreed with the concessioners.

43. All bank accounts will be reconciled with bank statements on a monthly basis with detailed review of copies of bank reconciliation statements and the relevant bank statements with expeditious investigation of identified differences. Detailed banking arrangements, including control procedures over all bank transactions (e.g., check signatories, transfers, etc.) will be documented in the FPM.

44. Additionally, the PIU and the other implementing units will maintain an IDA Ledger Loan Account in US Dollars/Naira/SDR to keep track of withdrawals from the IDA credit. The account will show (i) deposits made by IDA, (ii) direct payments by IDA, and (iii) opening and closing balances. The cumulative record of draw-downs from the IDA credit will be reconciled monthly with the Disbursement Summary provided by the Bank.

45. All implementing units will be responsible for preparing and submitting to the Bank applications for withdrawal, as appropriate. Appropriate procedures and controls, which will be documented in the FPM, will be instituted to ensure disbursements and flow of funds is carried out in an efficient and effective manner. The Withdrawal Applications will be supported by a Bank statement and a reconciliation of the Designated Account, and such other appropriate supporting documents for expenditures as may be required until such time as the Borrower may choose to convert to report-based disbursement. Detailed disbursement procedures will be documented in the FPM.

46. The Project will use the SOE-based Disbursement Procedures (as described in the World Bank Disbursement Handbook), for all aspects of the project except the VGF component which will be based on reimbursements of eligible incurred expenditure. The format of the quarterly reports which includes the financial, procurement and physical progress report will be agreed during the appraisal. Detailed disbursement procedures are documented in the FPM.

47. To the extent possible, all of IDA’s share of expenditures should be paid through the Designated Account and all disbursements will be channeled through the Designated Account. Other disbursement methods i.e. direct payment and special commitment may also be used.
The currency for DA will be United States Dollar and will be segregated from other financing partners. Considering the cash flow requirements and project design, a flexible ceiling will be determined for the operation, based on 6 months forecast as provided in Annual Work Plans, Budgets and quarterly reports.

Financial Management Supervision Plan

FM supervision will be consistent with a risk-based approach, and will involve a collaborative approach with the TTL, LOA and procurement. The supervision intensity will be based initially on the PAD FM risk rating and subsequently on the updated FM risk rating during implementation.
Given a substantial risk rating, on-site supervision is expected to be carried out twice a year. On-Site review will cover all aspects of FM, internal control systems, overall fiduciary control environment and tracing transactions from the bidding process to disbursements. Additional supervision activities will include desk review of quarterly IFRs, quarterly internal audit reports, audited Annual Financial Statements and Management Letters as well as timely follow up of issues arising, and updating the financial management rating in the Implementation Status report (ISR) and the Portfolio and Risk Management (PRIMA) System. FM supervision for Phase II will occur annually and include a review of activities in the PFIs including sub-projects funded by IDA funds. The Bank project team will support in monitoring the timely implementation of the action plan. The overall FM risk for Phase II is substantial and will be reviewed as necessary based on the results of the supervision during implementation.
Annex 8: Procurement Arrangements
NIGERIA: Public/Private Partnership Program

1. Procurement for this Program will be carried out in accordance with the World Bank’s "Guidelines: Procurement Under IBRD Loans and IDA Credits" dated May 2004 revised October 2006 and in May 2010; and "Guidelines: Selection and Employment of Consultants by World Bank Borrowers" dated May 2004 revised October 2006 and May 2010, and the provisions stipulated in the Legal Agreement. The various items under different expenditure categories are described in general below. For each contract to be financed by the Loan/Credit, the different procurement methods or consultant selection methods, estimated costs, prior review requirements, and time frame for activities described in Annex 4 paragraphs 38-40 of the PAD, will be agreed between the Borrower and the World Bank in the Procurement Plan. The Procurement Plan will be updated at least annually or as required to reflect the actual project implementation needs and improvements in institutional capacity.

2. The following procurement procedures will apply for financing under the Program and sub-loans provided by the FILs.

Phase I

3. The ICRC will be solely responsible for procurement under Phase 1 of the APL i.e. Components 1-3 focusing on institutional capacity building and PPP project preparation activities. Procurement under this component will comprise of: (i) the selection of consultants (transaction advisory services, hiring of sector specialists etc); (ii) Outline Business Case preparatory work; (iii) safeguards due diligence work; and (v) the acquisition of ICT-related goods that will help MDAs manage and track PPP projects. The component will further support the development of procurement capacity in ICRC and the relevant line Ministries to enhance their capability to review the eligibility and compliance with procurement process of subprojects funded through the sub-loans provided by the FILs. ICRC will carry out procurement in accordance with the same Bank procurement guidelines referred to above.

4. Consultancy services, both individuals and firms, will be procured to provide support to activities under the Program. Advertisements requesting expressions of interest for short-listing of consultants for services costing more than US$200,000 equivalent will be published in UNDB and dgMarket. For consulting contracts estimated to cost US$200,000 equivalent or less, the short list may comprise only of national consultants if a sufficient number of qualified firms is available and if foreign consultants have not expressed interest in accordance with the provisions of paragraph 2.7 of the “Guidelines”: Guidelines: Selection and Employment of Consultants by World Bank Borrowers” dated May 2004 revised October 2006 and May 2010. Quality- and cost-based selection may be used as the preferred selection method. However, other selection methods as defined in the World Bank’s Guidelines may be used as necessary.

5. Goods procured under this APL Program will include: computers, office equipment/furniture, vehicles, ICT-related goods, etc. Procurement will be done using the World Bank’s SBD for all ICB and National SBD agreed with or satisfactory to the World Bank. All the goods required by the participating agencies will be packages together and centrally procured by the PIU (ICRC) using the ICB, NCB or appropriate procedure in line with the Procurement Plan. Procurement for readily available off-the-shelf goods that cannot be grouped, or standard specification commodities for individual contracts of less than US$50,000 equivalent or less, may be procured under shopping procedures as detailed in paragraph 3.5 of the "Guidelines: Procurement under IBRD Loans and IDA Credits" dated May 2004, revised October 1, 2006 and May 2010; and the Guidance on Shopping Memorandum” issued by IDA, June 9, 2000. All other procurement activities for goods and consultant services beyond first 18 months of project implementation may be identified and agreed to
by the Association and the Procurement Plan may be revised and updated accordingly during project implementation.

**Phase II**

6. Under Phase II, the following types of procurement will be eligible for Bank financing and, therefore, applicable to sub-loans provided to the beneficiaries by PFIs and funds from the VGF. Further detailed procurement arrangements will accompany the preparation for approval of the APL Phase II Program.

   (i) If the concessionaire/entrepreneur to be financed by the Bank through the FIL is selected under ICB procedures acceptable to the Bank, as further spelled out in paragraph 3.13(a) of the World Bank’s guidelines then the said concessionaire/entrepreneur may undertake the procurement of goods, works, and services required for the infrastructure facility from eligible sources, using its own procedures which shall be in accordance with established private or commercial practices;

   (ii) If the said concessionaire/entrepreneur has not been selected in the manner set forth under paragraph 3.13(a) above, then the procurement of goods, works, and services required for the infrastructure facility and to be financed by the World Bank will be conducted by the concessionaire/entrepreneur in accordance with the ICB procedures of Section II of the World Bank’s guidelines referred to above;

   (iii) If the entrepreneur whose Sub-project is to be financed by the Bank through the FIL is a private-sector enterprise or any of the other types of enterprises specified in paragraph 3.12 of the World Bank’s guidelines referred to above, then the entrepreneur may undertake the procurement of goods, works, and services from eligible sources, in accordance with established private or commercial practices. Such commercial practices of the entrepreneur should be compatible with the Procurement Principles in order to be deemed acceptable by the World Bank. Even in this case, the purchase of large single items or cases where large quantities of like goods can be group together for bulk purchase, ICB method of procurement will be used. The procedures acceptable to the Association to finance contracts procured by Concessionaires using their own procedures are detailed in the Project Implementation Manual.

**Procurement Principles Applicable to Commercial Practices.**

7. Procurement principles application to commercial practices will require that:

   a) All procurement actions be based on economy and efficiency, i.e., value for money, with due consideration toward the promotion of sustainable and competitive markets.

   b) Transparency to the maximum extent possible and consistent with achieving sound procurement results is a key component of the applied procedures.

   c) Procurement procedures be effective and provide for a wide range of modalities, including competitive bidding, prequalification for critical processes, single-sourcing, etc.

   d) Competitive bidding is based on bidding documents that explicitly identify all bidding requirements, bid evaluation criteria, and contract award criteria.

   e) The contract documents define the rights and obligations of the contracting parties, as well as the remedies available to them in case of disputes and nonperformance.

   f) Bidding documents require potential contractors, suppliers, or service providers to disclose actions or temporary suspensions imposed on them by the Association.

The above principles must be well documented and included in the Project Implementation Manual. In addition to the above, the document should include mandatory provisions that beneficiaries of the loan shall not award contracts to close relatives or affiliates. The document shall define the main
responsibilities of financial intermediary institutions (or other designated agencies) such as: (a) assessing the capacity of the beneficiaries to carry out procurement efficiently; (b) approving acceptable plans for goods, works and services as may be applicable; (c) agreeing to supervision and oversight arrangements under each sub-loan (consistently with the provisions under the Bank loan) for the procurement to be carried out by the beneficiaries so as to ensure compliance with the agreed private sector methods and commercial practices under the sub-loans; and (d) maintaining all relevant records for the Bank’s post review and audits when requested. The financial intermediary or its designated agency should satisfy itself with the reasonableness of the price of contracts awarded by the beneficiaries, if necessary through the hiring of an independent entity or auditors.

Procurement Capacity Assessment

8. Procurement activities will be carried out and coordinated by the Infrastructure Concession Regulatory Commission (ICRC) which will be supported by an in situ PIU. ICRC is currently establishing an adequately staffed Procurement Unit. It also has a PPP Resource Center staffed with qualified experts. The MDAs under close supervision and coordination of ICRC will manage the concessionsing process under Phase II of the APL. Within the first year of project implementation i.e. Phase II activities, the procurement capacity assessment of the MDAs shall be conducted and detailed finding reflected in Phase II preparatory work. The MDAs are also staffed with the relevant specialists but will require capacity building in the area of procurement processes to improve their efficiency.

9. An assessment of the capacity of the ICRC to implement procurement actions for the project was carried out in accordance with Procurement Services Policy Group (OCSPR) guidelines dated August 11, 1998. The following aspects were reviewed: legal aspects; procurement cycle management; organization and functions; support and control systems; staffing; record keeping; general procurement environment etc. The detail assessment is in the project files.

10. The ICRC, the implementing agency, was established by government by an Act in 2005. The agency does not have any history of implementing Bank-financed projects. However, most of the agency staff has relevant experience in PPP project implementation. The review found the need to strengthen ICRC’s procurement capacity which the agency is addressing through the recruitment of a Senior Procurement Specialist who has requisite experience in PPP procurement processes. The SPS will be supported by ICRC’s procurement unit which is also adequately staffed. As part of its capacity building initiatives under component 1 of the APL, the ICRC will organize, on a regular basis during project implementation, training in the World Bank procurement procedures for its officers and relevant staff of the agency. ICRC has also prepared a PIM which includes a Procurement Manual that will be reviewed for IDA compliancy. IDA review will ensure that the procurement arrangement described above is incorporated into the PIM. The procurement environment of ICRC is conducive and assessed as satisfactory. This is because the agency is staffed with various specialists with prior private sector work experience. Commission activities are also overseen by a Board with membership from the private sector and civil society resulting to less political interference in ICRC operations.

11. The FGN enacted the ICRC Act in 2005 to provide the legal framework for Nigeria’s proposed PPP program. The ICRC Act provides that Federal Government entities can enter into agreements with the private sector for the provision of infrastructure. Also the Act establishes the ICRC Commission and provides that its functions are to: (a) take custody of every concession agreement made under the ICRC Act and monitor compliance with the terms and conditions of such agreement; (b) ensure efficient execution of any concession agreement or contract entered into by the government; (c) ensure compliance with the Act; and (d) perform such other duties as may be directed by the President.

12. The FGN also passed into law the Public Procurement Act in June of 2007. The Procurement Act applies to all procurement of goods, works and services carried out by; (a) the Federal Government of Nigeria and all “procuring entities”; and (b) all other entities which derive at least 35
percent of the funds appropriated, or proposed to be appropriated, for any type of procurement from the Federation share of the budget. A procuring entity is defined as any public body engaged in procurement and includes a Ministry, extra-Ministerial office, government agency, parastatal and corporation. The term procurement is defined simply as “acquisition”. The Procurement Act does not apply to procurement by the States except to the extent that such procurement falls within (b) above. It will be necessary to determine the extent to which States have enacted a procurement law and regulations that are a mirror reflection of the Federal law and regulations.

13. There is no express reference to infrastructure procurement or to public private partnerships in the Public Procurement Act. Where the procurement of goods, works and services necessary for infrastructure projects is involved the Act will apply but it is silent on the non-tender or concession aspects of PPP transactions. Nor is there any reference to unsolicited bids or to the interaction between procurement under the Procurement Act and multilateral donor procurement rules. There are numerous other variances between the provisions of the Procurement Act and the Procurement Regulations on the one hand and the PPP Policy on the other hand. For instance, the conduct of due diligence by third party investors, the potential renegotiation of terms over the life of a project, financing by third party investors, the use of variant bids and the right of the FGN to step-in in the event that the contractor fails to perform are all matters that are specific to PPP projects and not contemplated by the Procurement Act or the Regulations.

14. A legal framework is currently being drafted to satisfy these outstanding procurement issues. Given the FGN mandate to pursue PPPs as seen with the ICRC Act and in the interest of building a sustainable and consistent enabling environment, the FGN is undertaking the drafting of PPP Regulations to fill the gaps regarding PPPs and PPP Procurement not covered in the ICRC Act nor the Public Procurement Act. The PPP Regulations are aimed at resolving this procurement challenge, to the extent possible through secondary legislation. This is because ICRC is expressly given the power under section 34 of its Act to issue PPP regulations, subject to Presidential approval, and guidelines. This would mean, however, that for any PPP transaction some aspects of the procurement process (such as engagement of advisors, purchase of goods and services, etc.) will continue to be governed by the current Public Procurement Regulations while other aspects would be governed by new ICRC Regulations. These Regulations will seek to address a number of these outstanding issues and provide for a consistent and transparent PPP procurement process built on MDA collaboration and consensus prior to any financing of transactions in Phase II. Presidential approval of the PPP Regulations in accordance with article 34 of the ICRC Act will be one of the three triggers for activation of Phase II.

15. The overall Program risk for procurement is Substantial.

Table 1: Procurement Action Plan

<table>
<thead>
<tr>
<th>Action</th>
<th>Responsibility</th>
<th>Due Date</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Strengthening of PIU capacity to manage and coordinate Bank financed projects.</td>
<td>PIU</td>
<td>On a continuous basis.</td>
</tr>
<tr>
<td>2</td>
<td>Procurement Plan for the first 18 months prepared and agreed with the World Bank.</td>
<td>PIU</td>
<td>Appraisal</td>
</tr>
<tr>
<td>3</td>
<td>Preparation of Project Implementation. Manual (PIM) including adoption of the Generic Procurement manual for World Bank financed Projects in Nigeria.</td>
<td>PIU</td>
<td>Effectiveness</td>
</tr>
<tr>
<td>4</td>
<td>Adoption of the Bank Standard Bidding Documents for use under NCB since National Standard Bidding Document is yet to be finalized</td>
<td>PIU</td>
<td>Negotiations</td>
</tr>
<tr>
<td>Action</td>
<td>Responsibility</td>
<td>Due Date</td>
<td>Remarks</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------</td>
<td>----------------</td>
<td>------------------------------</td>
<td>-------------------------------------------------------------------------</td>
</tr>
<tr>
<td>6 Engage well qualified training institution or individual to conduct project training on Bank’s Procurement Procedures and PPP Regulations for project team comprising of staff of PIU, MDAs, CBN, AFC FM, BOF etc</td>
<td>PIU</td>
<td>During Phase I implementation Period</td>
<td>Effectiveness.</td>
</tr>
<tr>
<td>6 Establish a central complaint database/website/internet.</td>
<td>PIU</td>
<td>Not later than 6 months after Effectiveness.</td>
<td>To enhance accountability and reduce the risk of misuse of project funds</td>
</tr>
<tr>
<td>8 Establish proper procurement filing system and develop procurement tracking system</td>
<td>PIU.</td>
<td>Within 3 months of effectiveness.</td>
<td>To ensure easy retrieval of information/data.</td>
</tr>
<tr>
<td>9 Publication of Contract awards and list of beneficiaries.</td>
<td>PIU.</td>
<td>On quarterly basis.</td>
<td>On a continuous basis.</td>
</tr>
</tbody>
</table>

**Procurement Plan**

16. The Borrower has developed a Procurement Plan for the first phase of project implementation that provides the basis for the procurement methods. This Plan has been agreed between the Borrower and the Association at Negotiation. It will be made available in the project’s database and in the World Bank’s external website. The Procurement Plan will be updated annually or as required to reflect the actual project implementation needs and improvements in institutional capacity. The Procurement Plan shall set forth those contracts which shall be subject to the Association’s Prior Review. All other contracts shall be subject to Post Review by the Association.

17. The project will also permit retroactive financing of up to a total of US$3 million (dating back to March 1, 2011) to assist the ICRC in financing any existing consultant work, relating to the PPP Pipeline agreed with the World Bank, that has been previously procured in accordance with Bank Guidelines and/or activities and approved under the PPP Phase I project workplan to be undertaken in advance of the IDA Board approval and effectiveness of the Program. The Bank will review the selection process used for all existing consultant work to verify consistency with Bank Guidelines.

**Frequency of Procurement Supervision**

18. In addition to the prior review supervision to be carried out from World Bank offices, the capacity assessment of the Implementing Agency has recommended at least two supervision missions annually to visit the field to carry out post review of procurement actions.

**Details of the Procurement Arrangements Involving International Competition**

**Goods, Works, and Non Consulting Services**

(a) List of contract packages to be procured following ICB and direct contracting: None

**Consulting Services**

(a) List of consulting assignments with short-list of international firms.

(b) Prior Review Threshold:
Table 2: Indicative List of International Consulting Contracts

<table>
<thead>
<tr>
<th>Ref. No.</th>
<th>Description of Assignment</th>
<th>Estimated Cost</th>
<th>Selection Method</th>
<th>Review by Bank (Prior / Post)</th>
<th>Expected Proposals Submission Date</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Contract Design</td>
<td>200,000</td>
<td>QCBS</td>
<td>Prior</td>
<td>Oct 2011</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>VGF Framework and TA</td>
<td>250,000</td>
<td>QCBS</td>
<td>Prior</td>
<td>May 2011</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>PPP Financial Advisory Services</td>
<td>100,000</td>
<td>QCBS</td>
<td>Post</td>
<td>May 2011</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Contingent Liability Management Framework</td>
<td>250,000</td>
<td>QCBS</td>
<td>Prior</td>
<td>May 2011</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Sub national Bond Management Framework</td>
<td>250,000</td>
<td>QCBS</td>
<td>Prior</td>
<td>Jun 2011</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Strategic Management Training Course</td>
<td>1,000,000</td>
<td>QCBS</td>
<td>Prior</td>
<td>June 2011</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>PIU Technical Specialists</td>
<td>500,000</td>
<td>QCBS</td>
<td>Prior</td>
<td>March 2011</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Legal/Regulatory Work Technical Assistance</td>
<td>2,500,000</td>
<td>QCBS</td>
<td>Prior</td>
<td>March 2011</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Participating Financial Intermediaries Technical Assistance</td>
<td>2,500,000</td>
<td>QCBS</td>
<td>Prior</td>
<td>Sept 2011</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Transaction Advisory Services for First-Mover PPP Roads</td>
<td>3,000,000</td>
<td>QCBS</td>
<td>Prior</td>
<td>July 2011</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Transaction Advisory Services for Port Transaction</td>
<td>3,000,000</td>
<td>QCBS</td>
<td>Prior</td>
<td>July 2011</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>OBC Advisory Services (3)</td>
<td>900,000</td>
<td>QCBS</td>
<td>Prior</td>
<td>May 2011</td>
<td></td>
</tr>
</tbody>
</table>

(b) Consultancy services estimated to cost above US$200,000 per contract and single source selection of consultants (firms) for assignments estimated to cost above US$100,000 will be subject to prior review by the World Bank.

c) Short lists composed entirely of national consultants: Short lists of consultants for services estimated to cost less than US$200,000 equivalent per contract may be composed entirely of national consultants in accordance with the provisions of paragraph 2.7 of the Consultant Guidelines.

Publication of Results and Debriefing

19. On-line (DG Market, UN Development Business, and/or Client Connection) publication of contract awards will be required for all ICB, NCB, Direct Contracting and the Selection of Consultants for contracts exceeding a value of US$200,000. In addition, where prequalification has taken place the list of pre-qualified bidders will be published. With regard to ICB and large-value consulting contracts, the Borrower will be required to ensure publication of contract awards as soon as IDA has issued its “no objection” notice to the recommended award. With regard to Direct Contracting and NCB, publication of contract awards can be in aggregate form on a quarterly basis and in local newspapers. All consultants competing for an assignment involving the submission of
separate technical and financial proposals, irrespective of its estimated contract value, should be informed of the result of the technical evaluation (number of points that each firm received) before the opening of the financial proposals. The ICRC will be required to offer debriefings to unsuccessful bidders and consultants should the individual or firms request such a debriefing.
Annex 9: Economic and Financial Analysis

NIGERIA: Public/Private Partnership Program

1. The economic IRR analysis is run on two levels: (i) amounts to be deployed under the FIL and VGF as part of Phase II, and (ii) total capital invested for rehabilitation/road works (private sector plus public sector funding via VGF, if any). The analysis is only with respect to the four “first-mover” transactions included in the pipeline. The analysis is run over a 20-year time horizon, using a discount rate of 12 percent.

2. With respect to Phase II amounts, an assumption is made that the full amount available under Phase II is spread among the four “first-mover” projects being developed by the Ministry of Works. This is reasonable, and in fact it is very possible that US$200 million in combined VGF and FIL funding could be consumed by a smaller number of projects. Further, to simplify the analysis it is assumed that the full Phase II amount is deployed through the VGF, rather than the FIL. This is because the VGF will be used to pay for upfront capital costs, and is therefore easier to account for in a return analysis than the FIL, which will provide access to long-tenor financing for the concessionaire. In order to consume no more or less than the Phase II amount on the first mover projects, a uniform per km toll rate was solved for such that the cumulative viability gap of the four first mover projects equaled the amount available under Phase II (US$200mm). This resulted in an auto toll rate of US$.016/km (₦2.39/km). Phase II funding was spread among the first mover transactions in the following manner:

<table>
<thead>
<tr>
<th>Use of Phase II Funding</th>
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<tr>
<td>Shagamu - Benin City</td>
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<tr>
<td>Benin City - Onitsha</td>
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<tr>
<td>Abuja – Kaduna</td>
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<tr>
<td>Kaduna – Kano</td>
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<tr>
<td>Total</td>
</tr>
</tbody>
</table>

3. With respect to returns in relation to total capital invested, returns were run on the total amount of capital invested to rehabilitate the road (regardless of the source of funds).

4. The economic analysis is based solely on the benefits derived from savings in vehicle operating costs. A more comprehensive analysis would also take account of various other benefits such as savings in passenger time and time for shipment of goods, safety gains (reduction in injuries and deaths due to traffic accidents), etc. (The other benefit quantified in the Federal Roads PAD is passenger time savings. However there is insufficient information in to determine currently how improvement in road conditions relates to passenger time savings).

5. Savings in vehicle operating costs are based on improvements in the road surface, as measured by IRI. IRI is assumed to improve on average from 4.5 before concessioning to 2.5 after concessioning. The table below demonstrates operating costs for various vehicle categories according to IRI.\(^{53}\)

\(^{53}\) See Federal Roads Project Appraisal Document.
Roughness (IRI) | Car | Pickup | Bus Light Truck | Medium Truck | Heavy Truck | Articulated Truck |
---|---|---|---|---|---|---|
2 | 0.244 | 0.235 | 0.436 | 0.203 | 0.383 | 0.717 | 0.980 |
3 | 0.245 | 0.237 | 0.439 | 0.205 | 0.386 | 0.722 | 0.988 |
4 | 0.250 | 0.244 | 0.457 | 0.213 | 0.403 | 0.757 | 1.033 |
5 | 0.256 | 0.253 | 0.477 | 0.221 | 0.422 | 0.794 | 1.077 |
6 | 0.264 | 0.266 | 0.499 | 0.230 | 0.442 | 0.831 | 1.118 |

6. Traffic was estimated using 2005 AADT figures grown by GDP to 2010. From 2010 onward, traffic is assumed to grow at 4 percent per annum. The proportion of truck traffic is assumed to stay constant at 2005 levels. Traffic levels are assumed to be unaffected by the implementation of tolls—there is neither induced traffic due to improved road conditions nor diverted traffic due to toll avoidance.

7. The economic IRR on Phase II funds ranges from 51 percent to 14 percent on particular projects. For the four first mover transactions taken as a whole the return on Phase II funds is 29 percent. The higher range of these IRRs is comparable to the IRRs calculated under the Federal Roads Project.

8. The economic IRR on total capital invested ranges from 6 percent to 9 percent on particular projects. For the four first mover transactions taken as a whole the return on total capital invested is 8 percent. Note that net present value of benefits considering total capital invested is negative in all cases, reflecting the fact that the IRR is less than the assumed discount rate of 12 percent.

9. Note that it is likely that the economic returns presented above probably severely underestimate the true economic returns given that only one of the benefits (savings in vehicle operating costs) of these projects is being evaluated. Nevertheless, even when only considering vehicle operating cost savings, the returns to Phase II are attractive.
Annex 10: Safeguard Policy Issues

NIGERIA: Public/Private Partnership Program

1. **Environmental Assessment category.** The project has been Categorized as A because, even though most of the proposed program activities are expected to have positive environmental and social impacts, some of the planned transactions may have significant adverse impacts that are sensitive, diverse, cumulative, irreversible or unprecedented. In addition, some of these potential impacts may affect areas broader than the sites or facilities subject to physical works. In most cases, however, the transactions will involve limited adverse social or environmental impacts that are few in number, generally site-specific, largely reversible, and readily addressed through mitigation measures.

2. Because the full extent of the environmental and social impacts of the Program is not known in advance, the Borrower has prepared an Environmental and Social Management Framework (ESMF) and the Resettlement Policy Framework (RPF). The ESMF ensures that the principles and procedures for the development of in-country capacity and compliance with local regulations are established and it serves as the basis for environmental assessment of all future transactions to be carried out under this APL. Most of the transactions in the PPP Program are not expected to result in major losses or acquisition of land or in restrictions to sources of livelihoods. However, given the possibility that some of the transactions may involve land acquisition and involuntary resettlement, an RPF has also been prepared. Because the ESMF provides guidance for preparation of ESMPs, integrity studies, and environmental audits, it remains in effect for the Program. It includes a screening process that is consistent with both World Bank operational policies and FGN regulations, and a chapter on project processing that describes the responsibilities of each organization involved in PPP. The ESMF and RPF were both prepared by the Borrower according to national and World Bank policies and were disclosed in-country in Nigeria and through the World Bank’s InfoShop in November 2009.

**Safeguards Policies Triggered**

3. The following table indicates the safeguard policies triggered by the first phase of the PPP Program. Phase II may trigger additional safeguard policies, as the specific transactions and project sites are identified. The safeguards policies that are likely to be triggered by Phase II include: (i) Natural Habitats (OP/BP 4.04); Pest Management (OP/BP 4.09); Physical and Cultural Resources (OP/BP 4.11); Safety of Dams (OP/BP 4.37); and (ii) Projects on International Waterways (OP/BP 7.50).

<table>
<thead>
<tr>
<th>Safeguard Policies Triggered by the Project</th>
<th>Yes</th>
<th>No</th>
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<tbody>
<tr>
<td>Environmental Assessment (OP/BP 4.01)</td>
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<td>Natural Habitats (OP/BP 4.04)</td>
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<td>Pest Management (OP 4.09)</td>
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<td>Physical Cultural Resources (OP/BP 4.11)</td>
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<tr>
<td>Involuntary Resettlement (OP/BP 4.12)</td>
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<tr>
<td>Indigenous Peoples (OP/BP 4.10)</td>
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<tr>
<td>Forests (OP/BP 4.36)</td>
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<td>Safety of Dams (OP/BP 4.37)</td>
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<tr>
<td>Projects in Disputed Areas (OP/BP 7.60)*</td>
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<td>[x]</td>
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<tr>
<td>Projects on International Waterways (OP/BP 7.50)</td>
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*Policy Exception: So far no policy exceptions and are being sought in this project.*

*By supporting the proposed project, the Bank does not intend to prejudice the final determination of the parties’ claims on the disputed areas.*
4. **Environmental Assessment (OP/BP 4.01):** Safeguards policy OP 4.01 has been triggered, as components of the PPP include civil works including the rehabilitation and refurbishment of existing infrastructure, as well as the construction of new infrastructure. The exact locations and impacts of the sub-projects have not been identified, though the pipeline includes possible first movers; thus, the ESMF was prepared and disclosed in November 2009. The ESMF addresses the mitigation of adverse impacts, and includes a budget for such mitigation.

5. **Involuntary Resettlement (OP/BP 4.12):** Many of the transactions in the PPP program could involve minimal or moderate land acquisition and or restriction of access to usual means of livelihood as most of the transactions will largely be rehabilitation of existing infrastructure. However, some of the transactions may involve significant land acquisition. As part of safeguards due diligence, an RPF was prepared and disclosed in November 2009.

6. **Natural Habitats (OP/PB 4.04):** Phase I of the APL is not anticipated to have any adverse impacts on critical natural habitats (forests, wetlands, mangroves, etc.) or environmentally sensitive areas. However, activities envisaged in the second phase of the Program may involve civil works that transverse sensitive ecosystems, such wetlands. In addition, the Program may support port concessions that include rehabilitation and dredging of existing ports and harbors which could have potential impacts on marine life.

7. **Pest Management (OP/BP 4.09):** This APL will not fund directly procurement of pesticides or pesticide application equipment. However, associated or induced projects may introduce new pest management practices, or expand of alter existing practices and increased pesticide use and subsequent environmental and health risks. Thus, the procurement of any pesticide in a World Bank-funded project is contingent on an assessment of the nature and degree of associated risks, taking into account the proposed use and intended users and in line with World Bank, WHO and FAO standards.

8. **Physical Cultural Resources (OP/BP 4.11):** Activities during Phase II of the APL may include civil works that could expose chance finds. The ESMF includes provisions for addressing such cultural heritage chance finds.

9. **Safety of Dams (OP/BP 4.37):** This PPP Program will not be directly involved in the construction of new dams. However, the Phase II of the APL may support projects that depend on water from existing dams or water reservoir. The ESMF and RPF checklists would be used to screen such projects for their potential and environmental and social impacts. Dam safety reports and environmental and social audits of the associated facilities would be carried as required.

10. **Projects on International Waterways (OP/BP 7.50):** Some of the water projects that may be funded during Phase II of the APL may rely on water resources from other countries, thus triggering the World Bank’s OP for projects on International Waterways. The nine riparian countries of the Nigeria Basin Authority (NBA) are all signatories of the 1980 Faranah Convention, which establishes the Authority, and empowers it to ensure the overall coordination of activities within the Basin. In line with this agreement, Nigeria is obliged to inform the Executive Secretariat of the NBA of all the projects and works they might intend to carry out in the Basin. The NBA will in turn inform, through official correspondence, all members countries for the requisite non objections prior to the commencement of the project.

11. **Legacy Issues:** Finally, though not a safeguard policy, the activities in Phase II of the APL may have legacy issues. These could include a situation where the World Bank is asked to participate in a relatively small or narrowly defined component of a much larger or broader project whose design has been completed and construction has progressed significantly or is near completion, with the exception of the component for which World Bank participation has been requested. The component for which World Bank support is solicited could be an associated facility in some cases. A rapid assessment would be prepared to assess the existing safeguards documents and/or implementation
measures, taking into account Bank safeguard requirements. Appropriate follow-up terms of safeguards due diligence, including updating or preparing new safeguards instruments, would be undertaken once the rapid assessment is completed.

12. **Cumulative and Induced Impacts:** No long term or cumulative adverse impacts were identified in the ESMF and the RPF. However, the combination of multiple impacts from existing projects, the proposed project, and/or anticipated future projects may result in significant adverse and/or beneficial impacts that would not be expected in case of a standalone project. The ESMF’s baseline study identifies relevant existing environmental and social conditions in Nigeria. In addition, the proposed Strategic Environmental Assessment (SEA) for the program would give priority to assessing cumulative impacts stemming from the proposed program activities, including those scheduled for phase two.

13. **Alternatives considered:** The ESMF and RPF of the PPP Program contain sections on “Analysis of Alternatives”. They conclude that the “do nothing” scenario would worsen the present situation in the proposed government infrastructure.

**Environmental Issues**

14. The PPP Program has been assessed for both positive impacts and adverse effects on the biophysical and social environment.

15. **Positive Impacts:** If successfully implemented, the PPP Program could provide a number of benefits to Nigeria. Although anticipated benefits will be in the area of economic growth and improved human development, some environmental benefits are expected. Positive impacts include: increasing efficiency and speed in the execution of projects; modernization of facilities and services; enhancing implementation capacity; reducing risk for the public sector; providing alternative funding/freeing government funds; providing funding to maintain infrastructure overtime; improved environmental performance; and improved economic growth.

16. **Potential Adverse Impacts:** Adverse impacts have been identified for this Program and also for typical sub-project activities. Most of the identified impacts are limited, site-specific, and can be mitigated. The program-level impact analysis has focused on how the Program can affect or could be affected by attendant conditions, which also has an impact on the environmental sustainability of policies or programs. Identified program-level impacts are: poorly regulated monopolies; social exclusion and poor ethnic/regional coverage; and, increased corruption and rent seeking.

17. **In addition, the associated and potential impacts of the sub project activities include such issues as:** access creation, land acquisition, increased traffic, emissions and increased air pollution, noise, solid waste generation and handling, effluents and wastewater generation, chemical handling, use of natural resources, population influx, labor issues, occupational and public health, biodiversity loss, endangered and exotic species, and loss of cultural resources. However, not all project types will involve interactions that lead to all types of adverse impacts. To support improved scoping of Environmental Assessments, a preliminary impact analysis matrix (Table 2) has been designed for all project types identified in the PPP pipeline. The matrix presents the list of projects as rows while each of the impact types are listed in header columns. The rows are matched against the columns and the following entries provided as considered applicable:

- **Low (L)** - if there is either a low or close to nil chance of the project type causing the specific impact type or if anticipated impacts will be minimal
- **Medium (M)** - if there is a low to medium chance of the impact occurring from the project type or if anticipated impacts will not be severe and are largely reversible
- **High (H)** - if there is a high chance of the impact occurring from the project type and or if anticipated impacts could be severe and or long term.
<table>
<thead>
<tr>
<th>Project Sector or Type</th>
<th>Access Creation</th>
<th>Landtake</th>
<th>Increased Traffic</th>
<th>Air Emissions</th>
<th>Noise</th>
<th>Effluents</th>
<th>Solid Wastes</th>
<th>Use of Natural Resources</th>
<th>Chemical Handling</th>
<th>Labour Relations</th>
<th>Population Influx</th>
<th>Occupational and Public Health</th>
<th>Biodiversity Loss and Endangered Species</th>
<th>Impacts on Vulnerable Groups</th>
<th>Loss of Cultural Resources</th>
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<tbody>
<tr>
<td>Power generation plants and transmission /distribution networks;</td>
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<td>Roads and bridges</td>
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<td>Ports</td>
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<td>Railways</td>
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<td>Inland container depots and logistics hubs</td>
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<td>Gas and petroleum infrastructure such as storage depots and distribution pipeline</td>
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<td>Water supply, treatment and distribution systems</td>
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<td>Solid waste management;</td>
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<td>Educational facilities (e.g., schools, universities</td>
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<td>Urban transport systems</td>
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<td>Housing</td>
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<td>Health care facilities</td>
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Measures Taken By the Borrower to Address Safeguard Issues

18. The FGN has undertaken a number of mitigation measures to address the environmental and social issues associated with the PPP Program. These include implementing existing laws and regulations, preparation and disclosure of ESMF and RPF, consultation with key stakeholders, and budget provision for capacity building in the project to ensure safeguards compliance.

19. **Existence of policy and regulatory framework in Nigeria:** There are a number of relevant national and international environmental policies and regulations that are applicable to this APL and its sub-projects. Some labor laws were also identified. The Federal Ministry of the Environment (FMEnv) enforces all activities that may affect the Nigerian environment. Its mandate includes co-ordination of environmental protection and conservation of natural resources for sustainable development in Nigeria. A number of other government Ministries Departments and Agencies (MDAs) have enabling laws that support the objectives of this ESMF. Some of these laws also seek to eliminate or minimize environmental and social impacts of activities associated with their various functions. Most of the 36 States in Nigeria have also issued environmental regulations backed by State laws. Nigeria is signatory to a number of international treaties and conventions, including those regarding climate change, medical waste management oil and chemical pollution, labor and others. Further, the World Bank financed projects are governed by a number of operational and safeguard policies that aim to prevent and mitigate undue harm to people and their environment in any development initiative involving the World Bank.

Preparation and Disclosure of ESMF and RPF:

20. The objective of the ESMF is to establish a mechanism to determine and estimate the future potential environmental and social impacts of the Bank-financed activities to be undertaken under the program, and to define the measures of mitigation, monitoring and the institutional measures to be undertaken during implementation of this Program. The ESMF includes sections on: (i) Environmental Screening and scoping; (ii) Environmental Policy and Regulatory Framework; (iii) Current Environmental Situation; (iv) Analysis of Environmental Impact Issues; (v) Development of Management Plan to Mitigate Negative Impacts; (vi) Institutional Framework; (vii) Training Needs; and (viii) Public Consultation. In addition, the ESMF contains appendices explaining the EIA process of the FMEnv, guidelines for preparing terms of reference for EIAs, national guidelines for environmental audit in Nigeria, World Bank interim guidelines for addressing legacy issues and the list of participants at stakeholder workshops and meetings. As stated above, an (RPF) has also been prepared, and this will be translated to Resettlement Action Plan (RAPs) as and when the need arises during Program implementation.

21. The PIU will be responsible for the implementation of the ESMF and RPF recommendations. Resettlement Actions Plans, Environmental Management Plans (EMPs), and/or Environmental Impact Assessments (EIAs) will be prepared as and when necessary. The PIU has recruited an environmental and social safeguards specialist. This team member will be responsible for implementing the recommendations contained in these safeguards instruments, and he/she will be complemented with short-term national social/environmental safeguards consultants as and when the need arises.

Project Screening, Scoping and Categorization Mechanism

22. The project includes support for the preparation of PPP transactions, some of which may be co-financed or financed by the Bank as part of Phase II of the APL. This includes the preparation of Outline Business Cases (OBCs), which will include initial assessments of safeguards risks and mitigation, based on the ESMF and RPF. In some cases, the Borrower may initiate the preparation of detailed safeguards assessments and plans before the OBCs are finalized. The project ESMF and RPF will guide the
preparation of environmental and social impact assessments (ESIAs)/environmental and social management plans (ESMPs), resettlement action plans (RAPs), and/or other safeguards instruments that will be prepared for these PPP transactions, some of which will be financed by the Bank Phase II of the APL. Transactions not financed by the Bank, whether in whole or in part, will not fall within the Phase II APL Program description.

23. This APL will have a review process in place to ensure screening of all potential transactions for environmental and social impacts prior to approval by the PIT. The screening can be carried out by a designated officer of the ICRC or other MDA in accordance with the ICRC procedure. This will include an environmental screening sheet showing the estimated impact category of each sub-project destined for rehabilitation and/or up-grading. The screening process will involve an assessment of the project to determine: (a) the appropriate project categorization for the EA; (b) applicable World Bank environmental and social safeguards; (c) potential for environmental and social impacts and (d) cultural or other sensitivities. In addition, each project will be screened to identify relevant stakeholders and, the nature and extent of engagement for each stakeholder category.

24. The screening decision has three parts: the assignment of the environmental assessment category, the determination of the safeguards instrument(s) that should be prepared, and the identification of applicable safeguards policies. In Phase II, there may be some subprojects financed by the Bank classified as Category A and FGN Category I, requiring full EIAs. In cases where the categorization is split, e.g., Category B under OP 4.01 and Category I under the Nigerian EIA Act, the more stringent category will apply. The ESMF and RPF provide guidance for screening based on the scale and type of project and the potential impacts that can be envisioned. The project screening reports will be reviewed by the safeguards specialist and the FMEnv to confirm that all project-financed work falls within Environmental Category B and that the recommended action plan is appropriate. Projects considered to fall into Environmental Category A will also be identified at that time for particular mitigation attention. The safeguards specialist will then submit the report of the screening exercise with its recommendations for clearance to the World Bank to proceed with the detailed ESMPs, ESIAs, and/or RAP, and any other safeguards instruments. The executive summaries of the Category A safeguards instruments will be circulated to the World Bank’s Board of Executive Directors. As part of safeguards due diligence, a notional budget for mitigation will be specified in the contact documents to ensure provision of the necessary funds for implementation of the approved mitigation measures identified in the plans.

Environmental Management Plans (EMPs)

25. The Program and all sub-projects will include the preparation of EMPs to address achieve health, safety, and environmental regulatory compliance objectives, institutional responsibilities (e.g., World Bank), and other related commitments. An EMP is an important element of the PPP program's overall Environmental and Social Management strategy to ensure environmental, social, and health performance of the entire program and sub projects. In addition to addressing environmental impacts, the EMP for the PMU focuses on policy, personnel management, and competence building communications with the public and monitoring. Environmental Management Plans for each sub-project will be required at two stages. During the proposal stage, each intending concessionaire will as part of its proposal, submit an overview of how environmental issues of the project will be addressed on a continuous basis. The plans will also specify standards proposed for the sub-project to ensure environmental sustainability. Standards and plans proposed to address social issues including labor relations will be particularly important. This could include, inter alia, structures to handle retrenchment, special packages for workers that have attained retirement age, retraining of staff to acquire the needed skills.
Capacity Building and Training Requirements

26. The capacity of the borrower to carry out their respective design, planning, approval, permitting, monitoring and implementation roles will, to a large extent, determine the success and sustainability of the PPP program in addressing environmental and social issues. The first step in pursuing capacity building will be to identify the capacity building needs of the various stakeholders. Given the nature of the environmental and social management requirements and provisions outlined in this ESMF, competencies and capacity building will be required in the following areas: (i) Environmental Impact Assessment Process – Basic Concepts, Screening, scoping, impact analysis, mitigation measure and monitoring, reviewing EIA Reports, (ii) Environmental Due Diligence – Types of due diligence, screening projects for liabilities, scoping due diligence investigations and reviewing due diligence reports and (iii) Monitoring and Evaluation – Understanding the importance of M&E in project implementation, M&E requirements for environmental and social sustainability of projects.

27. Budget to Implement the ESMF: To achieve the stated goals of this ESMF, it is important to identify financial resource requirements even if indicative. This ensures upfront attention to the financial requirements and allows early planning and budgeting accordingly.

Social Issues

28. The overall impact of the PPP Phase I is anticipated to be positive, with improvements in the quality, availability and reliability of public social services. Phase I of the APL will not fund activities that would cause any large scale land acquisition or restriction of access to sources of livelihoods. However, Phase II of the APL may include projects with potential for major land acquisition. The Resettlement Policy Framework (RPF) prepared by the client outlines the processes and procedures for addressing land acquisition and involuntary resettlement according to the World Bank’s safeguards policy on involuntary resettlement. During preparation, ICRC held consultations in Lagos, Abuja, and Kano with various stakeholders, including representatives of civil society organizations, private sector, and the Nigerian labor congress to discuss key issues in the ESMF and RPF; additional ongoing consultations will take place during implementation; feedback provided will be used to facilitate dialogue with government and stakeholders and address such issues as environmental, social, and economic impact. The focus of social safeguards work will include social impact management plans as parts of the ESMF. Nevertheless, the PPP may have some adverse social impacts, such as labor issues, population influx and damage to of physical cultural property. The ESMF provides guidelines on how these issues would be handled, in line with Word Bank standards. Some specific considerations are as follows:

29. Labor issues: The PPP Program may have an impact on local situations in the country. While more efficient and economically viable infrastructure facilities and services will generally support increased and sustained employment, many government establishments, including infrastructure providers such as Nigerian Telecommunications (NITEL) and the Power Holding Company of Nigeria (PHCN) carry a burden of excess personnel. The Bureau of Public Enterprises had earlier identified the possibility of staff layoffs once these establishments are privatized. Currently also, some establishments carry a huge pension burden. Apart from the larger labor issues, each PPP transaction will involve hiring and disengagement of workers at various stages of the project implementation. Conflicts between the project owner or contractor and local communities could take place. To mitigate the potential social impacts the ICRC has been engaged with the trade unions, including the Nigeria Labor Congress.

30. Labor influx: The construction phase of many projects requires a relatively large number of construction workers. Much more than urban areas, rural and peri urban areas typically feel the effects of the resulting influx of people, whose population comprises project workers and job seekers. Others are
itinerant traders. Thus while there is often increased commerce around project areas, some types of infrastructure (e.g., housing, transport, health care and others) become stretched as these social services are often inadequate for the pre-project population and become even more stretched as a result of project-associated influx. Additionally, social pathologies such as crime, prostitution, erosion of traditional authority are well known risks associated with influx and so are health risks from increased communicable and non-communicable diseases and HIV/AIDS. Infractions on cultural norms and beliefs, and changes in the micro-economic structure leading to increased prices of general goods and services in affected areas have also been recorded. In addition to the guidelines in the ESMF, the EIAs and EMPS that would be prepared would include section dealing with influx of labor and HIV/AIDS intervention.

31.  **Loss of cultural resources:** Physical cultural resources are important as sources of valuable scientific and historical information, as assets for economic and social development, and as integral parts of a people’s cultural identity and practices (World Bank, 2006). Examples of cultural resources include traditional art, burial grounds, sacred forest and waters and totems (the latter include animals, such as the python, iguana and leopard). The ESMF outlines procedures to be followed if the World Bank policy on physical cultural resources is triggered during Phase II of the APL. The main thrust of social safeguards work will be to include social impact management plans as parts of the ESMF. The Program will prepare Environmental and Social Management Plans (ESMPs) for the investments in civil works.

32.  **Involuntary resettlement:** Phase I of the APL is not expected to involve land acquisition. However, as indicated above, Phase II includes candidate projects with major land acquisition potential. At the time of Program preparation it was not possible to establish the location and extent of involuntary resettlement. Consequently, a Resettlement Policy Framework (RPF) was prepared and disclosed by the borrower. The RPF contains details of the principles and objectives governing resettlement action plan preparation, review and approval of RAPs, screening for Involuntary Resettlement, establishment of baseline and socioeconomic data, preparation of resettlement action plans, and the likely categories of project affected persons. Others aspects of the RPF are: methods of identifying of project affected persons, including criteria and eligibility for compensation of various categories of Project-Affected Persons (PAPs), methods to determine the cut-off dates, institutional framework and methods of valuing affected assets in lieu of compensation and procedures for delivery of compensation. Compensation arrangements for those being involuntarily resettled, including possibilities for land exchange, are outlined in the RPF. In particular, the RPF also contains a mechanism for resolving disputes that may arise.

33.  **Grievance Redress Mechanism:** The grievance redress procedure provides a mechanism to mediate conflict and cut down on lengthy litigation which often causes delay in infrastructure projects. It will also provide people with concerns about project impacts a public forum to raise their objections and, through conflict resolution, ensure issues are adequately addressed. The grievance procedure adopted for the project will not entail complex processes and procedures; administered as far as possible at the local and State levels to facilitate access; flexible and open to various proofs, taking cognizance of the fact that most people are illiterate; and, will entail timely, and fair resolutions of their grievances.

34.  Given potential conflicts of interest, the Project Implementing Unit would not be the best office to receive, handle and rule on disputes. Therefore, a grievance redress committee comprising administrative head of local governments and community/village chiefs will be set up to address complaints, and, at the time that the individual resettlement and compensation plans are approved and individual compensation contracts are signed, affected individuals would be informed of the process for expressing dissatisfaction and to seek redress. Grievances likely to arise include: failure to register as a Project-Affected Person (PAP), or the identity of individual is disputed; losses not identified correctly; assistance as per entitlement matrix; dispute about ownership; delay in disbursement of assistance; and improper distribution of assistance.
35. Grievances related to any aspect of the project will be handled through negotiation, which will aim at achieving a consensus settlement. The RPF contains a detailed flowchart for grievance mechanism. Affected PAPs may follow the procedures outline below:

- grievance form will be filed by persons affected by the project with the Grievance Committee which will act on it within 10 working days on receipt;
- if no understanding or amicable solution is reached, or the affected person does not receive a response from the Committee within 15 working days, the affected person can appeal to a designated office in the PIU, which should act on the complaint/grievance;
- if an affected person is not satisfied with the decision received, he can as a last resort appeal to a court of competent jurisdiction. Affected persons will be exempted from all administrative and legal fees incurred pursuant to grievance redress procedures.

36. Cost and Source of Funding: Each RAP will include a detailed budget for compensation and other rehabilitation entitlements. It will also include information on how the funds will flow as well as the compensation schedule. The RAP will also clearly state where the sources of land and funds will come from. The Borrower is responsible for meeting the terms of this framework, including financial obligations associated with land acquisition.

**Strategic Environmental Assessments**

37. Terms of Reference (TORs) for Strategic Environmental Assessments (SEAs) for select sub-sectors will be prepared and discussed in consultations involving a broad range of stakeholders from government, legislative assemblies, private sector, NGOs and civil society organizations, academia, and unions. ICRC, in cooperation with other MDAs, will prepare the SEAs after project approval, based on the agreed TORs.

38. The principal objective of the SEAs will be to help the FGN examine the implementation of government strategies in the transportation sector with a view to considering the key environmental and social impacts, as potential challenges and opportunities are identified in rehabilitating and expanding key transportation networks. The SEA will also consider the policy, legal, regulatory and institutional adjustments required to improve social and environmental management. The SEA will take into account not only the environmental and social aspect directly linked to the development of the sector, but also the broader issues induced by such development, such as population movement, health and safety, increased local and regional socio-economic inequalities and others.

39. The scope of the SEA is anticipated to include:

- Defining boundaries of study area: Location of enhanced/new transportation links
  - Setting the baseline (in cooperation with local communities): vulnerability mapping; location of sensitive areas
  - Analyzing opportunities and risks for:
    - Natural resources
    - Socio-cultural conditions
    - Cultural heritage sites
    - Economic issues
    - Institutional issues (e.g. standards, codes, legislation, regulation, enforcement, human resource needs)
• Analyzing alternatives, including no action, for upgrading and building new transportation links
• Developing optimal routes that avoid vulnerable or sensitive areas, with due consideration on priorities (e.g. cost, impact on environment, impact on communities).

40. The scoping exercise would also identify:

• Key stakeholders, based on their roles and responsibilities
• Spatial extension of different impacts – national, regional, and local
• Key environmental and social issues and associated management practices
• Critical issues to be focused on and the level of detail required for the SEA of the select sub-sector.

41. Drawing on the scoping exercise, the SEA will:

• define baseline conditions for the specified sub-sector based on data for transportation links, including traffic, usage, regional distribution, kilometres of coverage, and passengers/cargo;
• include policy analysis, based on current policies and planning for the sectors, and legislative and regulatory issues;
• assess opportunities and risks in the sub-sector, including institutional, environmental, and social issues;
• examine cumulative impact and evaluation of potential impacts (major/minor, direct/indirect, distribution of impacts, and mitigation);
• include indicators for broad environmental and social impact; and
• examine the scope for mitigating negative environmental and social impacts.

42. Public participation and consultations are a key part of preparing the SEA. As indicated above, the first scoping consultation would involve relevant stakeholders who both stand to gain and/or lose from changes to sub-sector. Subsequent consultations would be held in parts of the country where it was agreed that there are opportunities for further development of the sub-sector.

43. The legislative provisions in Nigeria EIA law emphasize the participation of those parties that have a stake in the environmental impact assessment. Drawing on this principle, formal and informal meetings, focus group discussions, and public forums will be utilized in the preparation of the SEA to: inform and educate stakeholders on all aspects of the proposed strategy, including alternatives considered; gather relevant information and data; and understand critical stakeholder issues and concerns. Accordingly, the SEA will include a substantial section on public consultations with stakeholders and meetings, indicating the concerns that were raised and how they have been addressed in the SEA.

Implementation of the ESMF and RPF:

44. Preparation of Safeguards Instruments. Preparation of the applicable safeguards instrument for the Bank-financed subproject is the responsibility of the subproject proponent/sponsor, whether it is a private investor or a government agency. Where an EIA is being required for a subproject, its proponents should take note of Article 2(4) of the EIA Act that requires direct liaison with FMEnv: All agencies, institutions (whether public or private) except exempted pursuant to this Decree, shall before embarking
on the proposed project apply in writing to the Agency, so that subject activities can be quickly and surely identified and environmental assessment applied as the activities are being planned.

45. **Public disclosure and consultation.** The procedure for consultations on Bank-financed subprojects will comply with OP 4.01 and the EIA Act. OP 4.01 requires consultation with stakeholders at least twice during EIA preparation for Category A projects – once early in the environmental studies to ensure that the terms of reference reflect all issues of concern and once after the final draft has been publicly disclosed but before the approval decision is taken. Both Nigeria and the World Bank require public disclosure of EIAs, EMPs, and RAPs. The World Bank’s policy requires that, safeguards documents for the PPP subprojects will be disclosed at public locations in the area affected by the project as well as in appropriate State and Federal agencies, and at the Public Information Centers and the InfoShop.

**Safeguards Review and Approval**

46. No proposed subproject financed by the Bank can be approved for the PPP projects support until the required ESMP or integrity study has been approved by the appropriate agency. For any project requiring an EIA, approval from FMEnv is the first formal step. FMEnv has the discretion to require a public hearing as part of its review process, and to refer projects to a Joint Review Panel when it deems that to be appropriate. FMEnv’s review report is a public document, and the EIA Act requires that it be provided to any interested party. The PIU with the help of the embedded safeguards specialist and the World Bank will also review and approve EIAs for Category A subprojects, after FMEnv has issued the certificate that indicates satisfactory completion of the environmental assessment.

47. Table 3 below summarizes potential environmental and social issues, as well the probable safeguards instruments required for the first movers identified in Annex 4 of the PAD.

**Table 3: Likely Phase 2 Subprojects and Potential Environmental and Social Issues**

<table>
<thead>
<tr>
<th>s/n</th>
<th>Likely Phase 2 Subproject Types (First Movers)</th>
<th>Potential Environmental and Social Issues</th>
<th>Safeguards Instruments to be prepared and disclosed by the borrow</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Rehabilitation of Major Highways (Abuja-Kaduna, Kaduna-Kano, Shagamu-Benin, Benin-Asaba)</td>
<td>Pollution and noise due to construction; establishment of base camps and the opening or re-opening of borrow pits and quarries which could result in soil erosion and pollution; dumping of construction materials and spillage of machine oil and lubricant; Loss of properties (business and private houses); construction of fences could affect access to means of livelihood (by kiosk owners and beggars, lepers) and spread of diseases, including HIV/AIDS.</td>
<td>EIA, ESMPs and (A)RAPs</td>
</tr>
<tr>
<td>3</td>
<td>Kiri Kiri Port Terminal</td>
<td>Some major new construction and rehabilitation of existing works; noise, air and water pollution; dredging of the harbor and ports may endanger some marine flora and fauna; traffic congestion during civil works; waste generation</td>
<td>EIA, EIA, ESMPs and (A)RAPs, Environmental Audit and Riparian Notification</td>
</tr>
</tbody>
</table>
Funding of Safeguard Mitigation Measures

48. Costs for safeguard mitigation measures will be covered by a combination of the credit and government’s resources and will be incorporated into the bills of quantities of the civil works.

References to Mitigation Plans in the Project Legal Arrangements

49. The policy requirements of the safeguards instruments prepared (ESMF and RPF), will constitute part of the body of reference texts to the credit agreement. Environmental and social clauses will also be incorporated into the works contract documents.

Mechanisms to Monitor the Implementation of Agreed Mitigation Plans

50. The PPP Program will support the FMEnv and sectoral environmental agencies to monitor the implementation of the safeguards instruments prepared. The mandates of the sectoral environmental agencies are supported by federal and state environmental laws. The Program will also seek to strengthen the capacity of the sector environmental agencies and the ICRC through hands on training. The implementation of the EMPs and the RAPs will be launched prior to commencement of civil works. Program progress reports will include progress in mitigation of environmental and social safeguards measures.

Supervision Arrangements Including Staffing and Resources

51. Supervision and monitoring will be a continuous process. The day-to-day field supervision will be conducted by the Resident Engineers and documented in the monthly and quarterly progress reports, which will be subject to review by the ICRC-PIU and the federal ministry of environment and its agencies. Periodic supervision will be conducted by the ICRC-PIU environmental and social safeguards specialists, which will also continuously take stock of all expropriation and compensation reports and discuss them on regular basis. The environment and social safeguards unit of the PIU will produce quarterly progress reports on environmental and social performance. The reports will form part of the overall project monitoring system. Resources to carry out the work will be ensured by each project. Experience with prior and ongoing World Bank projects in Nigeria confirms that the PIUs have the capacity for staffing and resources.

Capacity of the Borrower to Implement the Safeguards Compliance

52. Nigeria has demonstrated its commitment to mitigating adverse social and environmental impacts in the implementation of a range of World Bank projects. The FGN and the states have environmental management agencies. There are adequate legal and institutional frameworks in the country to ensure compliance with World Bank safeguards policies triggered by the PPP program. In Nigeria, the FMEnv is responsible for setting policy guidelines on environmental issues and ensuring compliance with national environmental standards. It has different departments with field offices in every region of the country. In particular, the EIA Division, which is responsible for the review of EIA of all new projects, requires that: the required level of assessment is conducted; the various review mechanisms for an EIA are properly applied, with emphasis on the participation of the stakeholders; and the periodic environmental audits are conducted and reviewed. This division is also responsible for issuance of environmental certificates and permits.

53. The Standards and Monitoring Division sets environmental standards, monitors compliance through review of self-monitoring data, and applies necessary sanctions for non-compliance. Some of the challenges faced by the FMEnv include: low capacity for data collection and monitoring, lack of adequate
operating budget, operational vehicles and other equipment needed for site visits and monitoring of compliance with EIAs and the duplication of EIA responsibilities in other government line ministries and agencies. There are loopholes in the different sets of legislation for EIA, and the legislation allows projects to be excluded from EIA requirements in the case of a national emergency or if they are considered to be in the interests of the public health and safety. To ensure safeguards compliance, the cost for environmental mitigation measures will be incorporated in the works contracts, including daily monitoring and supervision. Importantly, Component 1 in Phase I of the APL addresses capacity building and will provide the needed capacity building support to the EIA unit of the FMEnv in this respect.

Monitoring and Evaluation

54. Monitoring will be conducted to ensure the program's compliance with program-level mitigation measures, appropriate specification and inclusion of applicable operational and regulatory standards in concession agreements, as well as to evaluate the effectiveness of operational controls and other measures intended to mitigate potential impacts of sub projects. Quarterly Monitoring Reports shall be issued by the E&S Department on compliance with mitigation measures. As may be applicable, monitoring reports shall provide information on: Overview of PPP transactions, EA Category of each transaction, environmental due diligence findings, stakeholder interaction summary, E&S actions required of concessionaires, compliance of concessionaires with mitigation measures, and areas of non-compliance and proposed corrective actions. The above M&E system will be underpinned by stakeholders (NGOs, CBOs, CSO and other independent non state actors) participation including the utilization of feedback System on important environmental and social issues for this PPP Program.

Consultation with Various Stakeholders and Affected Groups

55. To strengthen participation and enhance inclusion, public consultations were carried out throughout the project preparation phase. The identification of project components, were based on consultations with local communities, federal government, state governments and local administrations. The preparation of the ESMF, RPF and the RAP included social assessment and various forms of participation, from individual consultations to focus group discussions. Consultations with local communities will be continuously organized during project implementation at all stages of the civil works, to minimize conflicts, enhance cooperation, and improve social benefits and performance of the works contracts; consultations will also be a critical aspect of the SEAs. In addition, project stakeholders, local governments, local communities and PAPs, will be continuously consulted at various stages of the project cycle, from planning, design review and to implementation. Meanwhile, the participatory approach of the PPP program is underscored by the engagement with civil society organizations and labor unions outreach which started during the preparation of the ESMF and RPF when several open public consultations were held in Lagos, Abuja and Kano in 2009. The quality consultation with free and active participation of different stakeholders served as a baseline for the design of a strategic communication program. This strategy of the program was effective in supporting consumer's concerns regarding the PPP program through TV and radio programs, outdoors advertising, corporate advertising, media relations, events, community communication, and public opinion research. During the preparation of the ESMF and the RPF, the consultations embarked on (i) informed constituencies about the Program and its potential impact on their livelihoods; (ii) involved the public, listened to their needs and concerns; (iii) created an inclusive, two-way dialogue with the different stakeholders; (iv) generated and sustained level of participation and adhesion to the project; and (v) built trust in the managing institutions. Key issues raised in the consultations concerned the process for PPP transactions, civil society input to the identification and implementation of the transactions, including monitoring results and outcomes.
## Annex 11: Program Preparation and Supervision

**NIGERIA: Nigeria - Public/Private Partnership Program**

<table>
<thead>
<tr>
<th>Event</th>
<th>Planned</th>
<th>Actual</th>
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<td>PCN review</td>
<td>December 11, 2008</td>
<td>December 11, 2008</td>
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<tr>
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<td>Initial ISDS to PIC</td>
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<td>Negotiations</td>
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<td>Board/RVP approval</td>
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<td>Planned closing date</td>
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Key institutions responsible for preparation of the project:
ICRC, FMOF

Bank staff and consultants who worked on the project included:

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
<th>Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Peter Mousley</td>
<td>Lead Private Sector Specialist</td>
<td>AFTFW</td>
</tr>
<tr>
<td>Zachary Kaplan</td>
<td>Economist</td>
<td>AFTFW</td>
</tr>
<tr>
<td>Iain Menzies</td>
<td>Senior Infrastructure Specialist</td>
<td>FEUFG</td>
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<tr>
<td>Roberto Colindres</td>
<td>Infrastructure Finance Consultant</td>
<td>AFTFW</td>
</tr>
<tr>
<td>Amos Abu</td>
<td>Senior Environmental Specialist</td>
<td>AFTEN</td>
</tr>
<tr>
<td>Alexandra Bezeredi</td>
<td>Regional Safeguards Advisor</td>
<td>AFTOS</td>
</tr>
<tr>
<td>Mary Asanato</td>
<td>Senior Procurement Specialist</td>
<td>AFTPC</td>
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<tr>
<td>Bayo Awusemusi</td>
<td>Lead Procurement Specialist</td>
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<tr>
<td>Adenike Oyeyiola</td>
<td>Senior FM Specialist</td>
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<tr>
<td>Peter Kyle</td>
<td>Legal Consultant</td>
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<tr>
<td>Victoria Delmon</td>
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<td>LEGPS</td>
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<tr>
<td>Elzbieta Sieminska</td>
<td>Lead Procurement Specialist</td>
<td>AFTFC</td>
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<tr>
<td>Binyam Reja</td>
<td>Senior Transport Economist</td>
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<tr>
<td>Pierre Pozzo di Borgo</td>
<td>Program Coordinator</td>
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<tr>
<td>Manush Hristov</td>
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<td>Rajiv Sondhi</td>
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<td>CTRFC</td>
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<tr>
<td>Luis Schwarz</td>
<td>Senior Finance Officer</td>
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<tr>
<td>Anna Ba</td>
<td>Program Assistant</td>
<td>AFTFW</td>
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Bank funds expended to date on project preparation:
1. Bank resources: US$560,155.48
2. Trust funds: US$53,404.88
3. Total: US$613,560.36

Estimated Approval and Supervision costs:
1. Remaining costs to approval: US$20,000
2. Estimated annual supervision cost: US$140,000
Annex 12: Documents in the Project File

NIGERIA: Public/Private Partnership Program

Project Implementation

1. Project Implementation Manual
2. First Year Project Procurement Plan
3. Executing Agency Procurement Capacity Assessment
4. Needs Assessment Capacity Building Framework

Bank Documents

Project Concept Stage

1. Project Concept Note
2. Project Information Document (PCN Stage)
3. Integrated Safeguards Data Sheet (PCN Stage)
4. Minutes of PCN Review

Pre-Appraisal/ Appraisal Stages

1. Minutes of Regional Operations Committee
2. Project Information Document (Appraisal Stage)
3. Integrated Safeguards Data Sheet (Appraisal Stage)

Project Design

1. Project Appraisal Document (PAD)

Safeguards

1. Environmental and Social Management Framework (ESMF)
2. Resettlement Policy Framework (RPF)

Project Studies and Reports

## Annex 13: Statement of Loans and Credits
### NIGERIA: Public/Private Partnership Program

<table>
<thead>
<tr>
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Total: 3,564.10 0.00 0.00 0.20 2,235.54 531.23 - 28.73
## NIGERIA
### STATEMENT OF IFC’s
#### Held and Disbursed Portfolio
##### In Millions of US Dollars

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<tr>
<th>FY Approval</th>
<th>Company</th>
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Total portfolio: 427.97 23.99 119.25 15.00 311.57 21.82 38.83 6.94
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<td>Total pending commitment:</td>
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Annex 14: Country at a Glance

NIGERIA: Public/Private Partnership Program

Nigeria at a glance

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<th>Sub-Saharan Africa</th>
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<tr>
<td>2008</td>
<td>Nigeria</td>
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<tr>
<td>Population (millions)</td>
<td>151.2</td>
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<tr>
<td>GNI per capita (Atlas method, US$)</td>
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<tr>
<td>GNI (Atlas method, US$ billions)</td>
<td>177.4</td>
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Average annual growth, 2002-08:
- Population (%): 2.4 2.5 12
- Labor force (%): 2.6 2.8 16

Most recent estimate (latest year available, 2002-08):
- Poverty (% of population below national poverty line): 46 36 41
- Urban population (% of total population): 46 36 41
- Life expectancy at birth (years): 48 52 68
- Infant mortality (per 1,000 live births): 96 89 48
- Child malnutrition (% of children under 5): 27 27 20
- Access to an improved water source (% of population): 47 58 86
- Literacy (% of population age 15+): 72 82 83
- Gross primary enrollment (% of school-age population): 93 98 109
- Male: 99 93 109
- Female: 87 93 106

**KEY ECONOMIC RATIOS and LONG-TERM TRENDS**

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<td>GDP (US$ billions)</td>
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<td>Gross capital formation/GDP</td>
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<tr>
<td>Exports of goods and services/GDP</td>
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<td>-</td>
<td>-</td>
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<tr>
<td>Exports of goods and services/GDP</td>
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<td>33.5</td>
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<tr>
<td>Gross domestic savings/GDP</td>
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<tr>
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<tr>
<td>Current account balance/GDP</td>
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<td>Interest payments/GDP</td>
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<td>11.6</td>
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<td>Total debt/GDP</td>
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<tr>
<td>Present value of debt/exports</td>
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(average annual growth)
- GDP: 3.3 9.0 6.4 6.0 4.4
- GDP per capita: 0.7 3.5 4.0 3.6 16
- Exports of goods and services: - - - - -

**STRUCTURE of the ECONOMY**

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<td>Services</td>
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<td>Household final consumption expenditure</td>
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<td>General govt final consumption expenditure</td>
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<td>-</td>
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<tr>
<td>Imports of goods and services</td>
<td>22.0</td>
<td>36.1</td>
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(average annual growth)
- Agriculture: 7.0 7.4 - - -
- Industry: 3.8 -2.9 - - -
- Manufacturing: - - - - -
- Services: 14.4 12.9 - - -
- Household final consumption expenditure: - - - - -
- General govt final consumption expenditure: - - - - -
- Gross capital formation: - - - - -
- Imports of goods and services: - - - - -

Note: 2008 data are preliminary estimates.
This table was produced from the Development Economics LDB database.
* The diamonds show four key indicators in the country (in bold) compared with its income-group average. If data are missing, the diamond will be incomplete.
### Prices and Government Finance

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<td>(percentage change)</td>
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<td>Consumer prices</td>
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<td>10.3</td>
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<td>(as % GDP, includes current grants)</td>
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### Trade

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<td>Fuel and energy</td>
<td>64</td>
<td>123</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Capital goods</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Export price index (2000*=100)</td>
<td>58</td>
<td>45</td>
<td>253</td>
<td>344</td>
</tr>
<tr>
<td>Import price index (2000*=100)</td>
<td>96</td>
<td>112</td>
<td>138</td>
<td>181</td>
</tr>
<tr>
<td>Terms of trade (2000*=100)</td>
<td>61</td>
<td>40</td>
<td>133</td>
<td>214</td>
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</tbody>
</table>

### Balance of Payments

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>(US$ millions)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exports of goods and services</td>
<td>7,403</td>
<td>10,972</td>
<td>66,601</td>
<td>86,077</td>
</tr>
<tr>
<td>Imports of goods and services</td>
<td>7,052</td>
<td>10,671</td>
<td>43,039</td>
<td>51,685</td>
</tr>
<tr>
<td>Resource balance</td>
<td>351</td>
<td>-703</td>
<td>23,022</td>
<td>34,972</td>
</tr>
<tr>
<td>Net income</td>
<td>-2,904</td>
<td>-2,862</td>
<td>-10,853</td>
<td>-9,085</td>
</tr>
<tr>
<td>Net current transfers</td>
<td>-63</td>
<td>1,516</td>
<td>11,016</td>
<td>11,295</td>
</tr>
<tr>
<td>Current account balance</td>
<td>-2,490</td>
<td>-3,075</td>
<td>31,185</td>
<td>42,262</td>
</tr>
<tr>
<td>Financing items (net)</td>
<td>2,159</td>
<td>2,960</td>
<td>-22,150</td>
<td>-40,594</td>
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<tr>
<td>Changes in net reserves</td>
<td>331</td>
<td>115</td>
<td>-9,035</td>
<td>-166,7</td>
</tr>
</tbody>
</table>

**Memo**

- Reserves including gold (US$ millions) | 513,333 | 77,484 |
- Conversion rate (DEC, b = US$) | 6.4 | 88.0 |

### External Debt and Resource Flows

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(US$ millions)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total debt outstanding and disbursed</td>
<td>29,621</td>
<td>30,204</td>
<td>8,806</td>
<td>11,221</td>
</tr>
<tr>
<td>IBRD</td>
<td>2,728</td>
<td>2,278</td>
<td>381</td>
<td>211</td>
</tr>
<tr>
<td>IDA</td>
<td>31</td>
<td>564</td>
<td>929</td>
<td>2,243</td>
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<tr>
<td>Total debt service</td>
<td>2,210</td>
<td>1,332</td>
<td>1,877</td>
<td>699</td>
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<tr>
<td>IBRD</td>
<td>429</td>
<td>467</td>
<td>201</td>
<td>205</td>
</tr>
<tr>
<td>IDA</td>
<td>1</td>
<td>1</td>
<td>30</td>
<td>37</td>
</tr>
<tr>
<td>Composition of net resource flows</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Official grants</td>
<td>36</td>
<td>33</td>
<td>1,321</td>
<td>843</td>
</tr>
<tr>
<td>Official creditors</td>
<td>72</td>
<td>-473</td>
<td>150</td>
<td>63</td>
</tr>
<tr>
<td>Private creditors</td>
<td>150</td>
<td>25</td>
<td>-312</td>
<td>-37</td>
</tr>
<tr>
<td>Foreign direct investment (net inflows)</td>
<td>379</td>
<td>1,051</td>
<td>6,032</td>
<td>3,636</td>
</tr>
<tr>
<td>Portfolio equity (net inflows)</td>
<td>0</td>
<td>0</td>
<td>1,447</td>
<td>-4,684</td>
</tr>
<tr>
<td>World Bank program</td>
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<td></td>
</tr>
<tr>
<td>Commitments</td>
<td>793</td>
<td>0</td>
<td>685</td>
<td>887</td>
</tr>
<tr>
<td>Disbursements</td>
<td>244</td>
<td>221</td>
<td>335</td>
<td>353</td>
</tr>
<tr>
<td>Principal repayments</td>
<td>196</td>
<td>314</td>
<td>196</td>
<td>209</td>
</tr>
<tr>
<td>Net flows</td>
<td>49</td>
<td>-93</td>
<td>139</td>
<td>144</td>
</tr>
<tr>
<td>Interest payments</td>
<td>235</td>
<td>87</td>
<td>41</td>
<td>34</td>
</tr>
<tr>
<td>Net transfers</td>
<td>-187</td>
<td>-250</td>
<td>99</td>
<td>110</td>
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</tbody>
</table>

**Note:** This table was produced from the Development Economics LDB database.

12/9/09