Infrastructure Investment in Emerging Markets
The Case of Lake Turkana Wind Power in Kenya

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Photo from Nairobi
Abstract

In light of the lack of public funding to close the infrastructure gap in emerging markets, the purpose of this paper is to find strategies for foreign private investors to deal with the institutional challenges in these markets. The paper is motivated by the limited literature on the dynamics between institutions and infrastructure investment strategies; therefore a case study of Lake Turkana Wind Power in Kenya was applied as a force of example. Based on existing literature, five propositions were derived and evaluated on the case on the foundation of in-depth interviews with stakeholders and industry experts. The results indicate that the unique institutional context require several tailored strategies that are demanding for the investors. The right team of partners is required to support navigation through the institutional context and increase bargaining power over the state. In particular, the investors need to safeguard against the informal institutions and contracts with the state. In regards to the existing literature, the propositions were confirmed to a moderate extent. The findings of the paper can be generalized in an analytical nature to derisk future infrastructure projects in emerging markets and offer a new line of thoughts on the dynamics between institutions and strategies.

Keywords: Infrastructure investments, institutions, Lake Turkana Wind Power, emerging markets
List of Abbreviations

AfDB - African Development Bank

CSR - Corporate Social Responsibility

DFI - Development Financing Institution

EAfDB - East African Development Bank

EIB - European Investment Bank

EU-AITF - EU-Africa Infrastructure Trust Fund

FDI - Foreign Direct Investment

GIH - Global Infrastructure Hub

GoK - Government of Kenya

IECI - International Energy and Climate Initiative

IPP - Independent Power Producer

IRENA - International Renewable Energy Agency

KEPSA - Kenya Private Sector Alliance

KETRACO - Kenya Electricity Transmission Company

KPLC - Kenya Power & Lighting Co.

LCIA - London Court of International Arbitration

LTWP - Lake Turkana Wind Power

MNC - Multinational Corporation

MOU - Memorandum of Understanding

PPA - Power Purchase Agreement

PPP - Public-Private Partnership

PRG - Partial Risk Guarantee

SPV - Special Purpose Vehicle

WEF - World Economic Forum
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Introduction
“Infrastructure is not about bricks and mortar, it is about people”
- Cyril M. Ramaphosa, Deputy President of South Africa

Problem Area
The Need for Infrastructure in Emerging Markets
By 2030, the total global infrastructure investment gap for transport, electricity generation, transmission and distribution, water and telecommunications is estimated to hit USD 71 trillion. Especially emerging markets are in increasing need for infrastructure in order to meet the rapid economic growth and social needs (OECD, 2015a). According to the World Bank (2017a), economic growth in emerging markets is expected to reach 4.5% in 2018 and 4.6% in 2019, and as the demand for infrastructure continue to rise with economic growth, trade, urbanization and growing expectations for improved quality of life, emerging markets struggle to address this growing need for infrastructure (OECD, 2015b).

Without adequate infrastructure, emerging markets will not reach its long-term growth potential, as infrastructure has a strong correlation to the FDI attractiveness of a country and is a vital catalyst for growth (OECD, 2015a; PwC, 2014; World Bank, 2017a; Deloitte, 2013; Khanna and Palepu, 2010). For instance, extensive road networks and efficient port systems reduce the time and costs related to delivering goods to a country, as well as access to water significantly increases the capacity for the production of agriculture (OECD, 2015a). The United Nations has recognized that the infrastructure challenge is a global issue by listing ‘Clean water and sanitation’, ‘Affordable and clean energy’, and ‘Industry, innovation and infrastructure’ as three out of their 17 sustainable development goals (United Nations, 2017). According to the World Bank, more than half of the costs required to meet these goals will not be met by 2030 (GIH, 2018).

When considering the size of the economy and infrastructure need, the infrastructure deficit in Africa is particularly noteworthy (GIH, 2018; WEF, 2017). Foreign investors want to do business in Africa, but are limited by the poor infrastructure, which hinders domestic private investments, slow down FDI, reduces productivity and limits the provision of services to the local population (Deloitte, 2013; WEF, 2017). Consequently, the inadequate infrastructure prevents the
improvement of the quality of life of the Africans and remains a major hurdle for the continent to fulfill its economic growth potential (WEF, 2017).

The largest infrastructure deficit of Africa is in the power sector, where more than half of Africans have no access to power. Power consumption in Africa represents only a fraction of power consumption in OECD countries (WEF, 2017). In addition to the increasing need for electricity, the continent has a road access rate of just 35%, compared to 50% in other parts of the developing world and there is a great need for water, information and communication technology, and new transport networks (BCG/AFC, 2017; WEF, 2017). Africa’s infrastructure gap is commonly identified as a major bottleneck of doing business in the continent and it is estimated that Sub-Saharan countries lose as much as 2.1% of GDP every year because of inadequate infrastructure (WEF, 2017; BCG/AFC, 2017).

**Private Participation**

It is widely recognized that governments cannot afford to close these increasing infrastructure gaps by themselves through tax revenues and aid (OECD, 2015a; OECD, 2015b; BCG/AFC, 2017). It is therefore critical for the governments in emerging markets to attract private investors to increase the investments in infrastructure in order to increase productivity, facilitate domestic and international trade and promote sustainable growth (Cavallo and Daude, 2011; Bougheas, Demetriades and Morgenroth, 1999; Esfahani and Ramírez, 2003). As a result of the inadequate infrastructure in emerging markets, a significant opportunity represents for foreign private investors to finance these assets, such as ports, power stations, hospitals, and roads (Deloitte, 2013; OECD, 2015a; OECD; 2015b United Nations, 2017; BCG/AFC, 2017).

As institutions are paramount in private sector development, they are essential to be understandable in order to attract private foreign investors to close the infrastructure demand gap in emerging markets (Banerjee, Oetzel and Ranganathan, 2006). From the perspective foreign private investor’s perspective, infrastructure investments involve complex risk analysis, risk allocation and risk mitigation because each investment is to a great degree unique and are typically illiquid (OECD, 2015b). The inherent risks that occur over the long lifespan of infrastructure projects are most often complex and difficult to assess for investors (OECD, 2014). Successful private infrastructure investments in emerging markets, like Sub-Saharan Africa, depend on how well the investors, governments and additional stakeholders recognize the unique challenges of this industry (BCG/AFC, 2017). Naturally, they prefer a supportive enabling investment climate,
which will reduce the costs and risks of their investment. This environment is influenced by a high number of factors, including political instability, legislative standards, and enforceability of contracts, among others. Therefore, the foreign private investors must carefully analyze the risk-return profile of infrastructure investments throughout the long lifespan of the underlying asset, while deciding upon an acceptable compensation for bearing such risks (OECD, 2015b).

It is therefore of great importance to understand the institutional challenges that foreign private investors are facing when investing in infrastructure in emerging markets and how they best can derisk their position (Estache, Serebrisky and Wren-Lewis, 2015; Henisz, 2002). However, every region and every country in emerging markets is unique, which is a critical assumption to consider when approaching this topic. Countries have different legal and regulatory systems, financial sector maturity, cultures, human capacity, diverse levels of political stability, and so on (BCG/AFC, 2017). When looking at Africa specifically, the continent consists of 54 countries with low connectivity between them and the levels of development vary enormously (PwC, 2013). As a result, it leaves a significant challenge for private infrastructure investors to identify an appropriate strategy to deal with these complex variables, as well as selecting the specific countries to invest in. The strategies that work in the home market do not fit in emerging markets and standardized approaches seem unrealistic considering the uniqueness of each country and each infrastructure project.

The challenge to bridge the infrastructure gap in emerging markets is huge, but so are the opportunities. For foreign private investors, filling this void can potentially result in positive financial returns; the governments are incentivized to improve the social and economic development; and the citizens of emerging markets stand to improve their quality of life (BCG/AFC, 2017).

**Research Purpose and Approach**

This study aims to contribute with specific strategies and tactics applied by foreign private investors in a specific infrastructure project in an emerging market. In order to gain specific knowledge about the unique institutional challenges in an emerging market, the paper uses a case study to make analytical generalizations, which will contribute to the limited academic knowledge pool of how these investors can deal with the institutional challenges in emerging markets regarding infrastructure investments. The complexity of institutional challenges and the
The uniqueness of the institutional context in each emerging market have been the main reasons behind the choice of analyzing a case study.

The case study of this paper is the LTWP project located in the Northern Kenya, which is the largest wind farm in Africa and the largest private investment in the history of Kenya. This project is partly financed by foreign private investors from the Northern Europe and has a complex financial structure (LTWP, 2018; AfDB, 2018a). The management of the project has, at the time of writing, managed to take the initial idea of a wind farm in Kenya to be at a stage where they only need to be connected to the national grid in order to produce sustainable electricity to the Kenyan population, despite facing several challenges. The LTWP project has a fair amount of data available and stakeholders involved due to the size of the project and are therefore assessed to provide valuable lessons, both in terms of academic contribution and practical knowledge. The project is in terms of CSR “a huge challenge, which we have not seen before in this scale”, which will provide a great number of examples of how the investors of this project have worked to derisk their investment (Heydenreich, 2018).

Kenya is in United Nations’ Development Report of 2016 identified as a medium developed country and the World Bank’s Country Classification System sets Kenya as a lower middle-income economy (United Nations, 2016; World Bank, 2018a). Although emerging markets can be defined in various ways, Kenya is in this research considered to be such a market. The country delivered in 2016 solid economic growth numbers by reaching 5.8% but are still limited by a great deal of institutional challenges (World Bank, 2017b).

Research Question

When looking at the problem area it is clear that there is a critical need for infrastructure investments in emerging markets. While this shows a great opportunity for foreign private investors to earn an attractive return on their investments, investing in these markets include unique institutional challenges for the investors, which can lead to a complete financial write-off if not handled correctly. The paper will seek to investigate this problem area; thus, the following research question has been devised:

**How can foreign private investors deal with the institutional challenges when investing in infrastructure in emerging markets; the case of Lake Turkana Wind Power?**
To answer this research question, existing literature will be used to form propositions in order to allow the research to expand on the literature with knowledge gained from a case study. Moreover, as the existing literature on infrastructure investments in emerging markets had limited studies from an institutional perspective, despite the broad understanding of the significance of institutions on foreign investments, the paper will seek to minimize this gap in the literature. With this approach, the paper will present and evaluate specific strategies which may be analytical generalized.

**Structure of the Paper**

The structure of the paper is visualized in figure 1. First, the methodology section presents and evaluates the methodological approach of the paper. Thereafter, the theoretical section will review the theory behind institutions, emerging markets and infrastructure investments, which will enable the formation of five propositions about how the existing literature suggests that foreign private infrastructure investors can deal with the institutional challenges in emerging markets. To illustrate the relationship between the institutional challenges and strategies found in the literature, a simple analytical framework will be presented. Following the analytical framework, the case study in which the propositions will be analyzed is presented. First, by providing insights to the business- and political environment in Kenya, in order to offer a background view on the conditions of which LTWP operates in. Second, insights to the LTWP including the financial construction and the specific challenges of which the investors are faced with will be presented. Subsequently, the analysis section will analyze to what extent each proposition is true in the case of LTWP by integrating the empirical data with the case descriptions. The analysis concludes with a discussion on the importance of each proposition in relation to each other. Following the analysis, the implications section discusses the practical and theoretical implications of the findings. Finally, the main points are concluded in the conclusion.
Figure 1: Structure of the paper
Methodology

The methodology section will explain and justify the methods applied for this research and explain the process of which the research question is answered. It includes a detailed discussion of the research philosophy, research approach and strategy. Subsequently, the data collection is argued for with an explanation of the data collected. Finally, the validity of the research is evaluated through internal and external validity, as well as the reliability of the chosen research methodology.

In figure 2 is the research process depicted, which is adapted from Saunders, Lewis and Thornhill’s (2015) research onion:

![Methodological adaptation](image)

**Figure 2: Methodological adaptation**

Research Philosophy

Research philosophy refers to the development and nature of knowledge and is a helpful way to clarify the assumptions about the way the world is viewed (Saunders, Lewis and Thornhill, 2015; Burrell and Morgan, 1979). Moreover, the research philosophy underpins the strategy and methods used in the paper of which the main view conforms to pragmatism. The pragmatic research philosophy recognizes different ways of interpreting the world and no single point of view is sufficient (Badley, 2003). For the research to be significant and follow the pragmatic view, it requires to have a philosophical perspective with a practical application, which includes a problem-oriented approach, “concerned to provide practical solutions to practical problems” (Burrell and Morgan, 1979, p. 26). Pragmatism claims that the most important determinant of the research philosophy is the research question, and that there may be better approaches than others to answer this question (Saunders, Lewis and Thornhill, 2015).
As the paper has a causal relationship approach that specifically aimed to contribute practical solutions that inform future project practice, the research took a pragmatic view. In contrast to the positivist view, the research did not take a solitary objective truth as subjectivity was needed in relation to the practical solutions, as advocated by the pragmatist. Equivalent to the pragmatic perspective, the paper acknowledged different perspectives and interpretations of individuals and organizations as their comments and statements were viewed as context-dependent. The empirical data gathered for the research was therefore perceived to carry both objectivity and subjectivity as each individual represent a certain corporate or governmental institution, especially as the empirical data was collected on a social concept of institutions, which is subject to a complex discussion that presents different views and opinions. Therefore, the empirical data were collected and analyzed by understanding the meanings of the social constructs, at the same time as the researchers were aware that the interpretation of the data was affected by meanings and interpretations from the researches as well. The reconciliation of objectivism and subjectivism, knowledge and different contextualized experiences take the research towards a pragmatic research philosophy.

It was recognized that the social world of business and management is too complex to be theorized into explicit laws. Theories, propositions and findings in the paper were not viewed as in their abstract form but were seen as instruments of thought and action and in terms of their specific contexts. Hence, law-like generalizations were not the end goal, as advocated by the positivist, but rather practical knowledge, which is of high value to enable actions to be carried out successfully, which may improve future navigations through the complex topic of institutional challenges. Furthermore, as the research question did not define a specific adopted philosophy, it corresponds to the pragmatic view.

**Research Approach and Strategy**

According to Saunders, Lewis and Thornhill (2015), the way a research makes use of theory will determine if an inductive approach or a deductive approach has been obtained. The deductive approach concerns development of theory and propositions and designs a research strategy around analyzing the extent to which the propositions are true in a case study, whereas the inductive approach concerns the collection of empirical data to develop understandings and theory as a result of data analysis (Saunders, Lewis and Thornhill, 2015). A combination of the two was applied in
the paper, which according to Saunders, Lewis and Thornhill (2015) often is advantageous, with an overall main focus of the deductive approach in the acquisition of new knowledge.

Despite an overall deductive approach through an analysis of propositions, the process of structuring propositions came with elements of an inductive approach. Theory was made explicit in the design of the paper and was clear at the beginning of the research. Existing literature on institutional theory in emerging markets and infrastructure investments were used to formulate propositions, and to construct an interview guide (see appendix 1). Hence, the propositions and interview guide were constructed with an inductive approach (Saunders, Lewis and Thornhill, 2015). In addition, according to Yin (1994), the quality of the research increases by relying on previous research within the same field of study. The inductive approach in the formulation of propositions was chosen as an open-minded strategy to answer the research question with explanations of the context based on existing theory.

These analyses were then examined deductively by the search for explanations of causal relationships between specific institutional challenges and the foreign private investors’ strategies to overcome these challenges, and the propositions were then examined to what extent they were confirmed in the case of LTWP. The use of an inductive approach based on known theory to form propositions, together with the use of a deductive approach to analyze the propositions result in a broad understanding of the interplay between theory and empirical data and the possibility to further improve the propositions.

To answer the research question, explanatory analysis was used with propositions determining a causal relationship between the institutional challenges as the independent variable, and foreign private investors’ strategies as the dependent variable, turning the research into an explanatory analysis. The process revealed however, both explorative and descriptive analysis, which helped to uncover the context of the research question. First, the propositions were derived through exploratory analysis, which revealed the nature of the problem. This was done through a search for new insights together with an assessment of phenomena in a new light (Saunders, Lewis and Thornhill, 2015). Second, descriptive analysis was used to understand the context of the case study.

To analyze a case study, both quantitative- and qualitative data collection techniques can be applied, where quantitative is mainly used as a synonym for a technique that uses numerical data and qualitative is used to describe non-numerical data, such as words (Saunders, Lewis and
Thornhill, 2015). For this paper, a mono-method qualitative data collection technique was chosen. Qualitative research is applicable in this paper as it seeks to uncover foreign private investors’ patterns of behavior in a complex environment. The investors’ perception of the context and how to navigate within the institutions are reflected in their decisions on which strategy to use and how it should be formed.

**Case Study**

To answer the research question through propositions, a case study was applied, which is an in-depth research strategy, as it gains a rich understanding of the nature of the research and processes performed and is a worthwhile way to explore existing theory (Saunders, Lewis and Thornhill, 2015). A cross-sectional study was found to be most applicable, as the strategies for the investors were determined by the environment of institutions, which may change as the country develops and strengthens their institutions. This is in accordance to Peng (2003), as he argues that strategies change over time to fit the changes in the big picture. Flyvbjerg (2006, p. 2) simply describes a case study as a “*detailed examination of a single example*”. In addition, case studies are argued to be the preferred research approach when ‘how’ questions are being posed as it “*investigates a contemporary phenomenon within its real-life context; when the boundaries between phenomenon and context are not clearly evident; and in which multiple sources of evidence are used*” (Hyde, 2000; Yin, 1994, p. 3).

In Flyvbjerg’s (2006) article, he argues that practical, context-dependent knowledge is more valuable than predictive theories. Thus, it was applicable for this research of human behavior and a complex social phenomenon to apply the theoretical propositions to a case study. The case study took the approach of an embedded study, where not only investors and the manager of the particular project are studied, but knowledgeable individuals from the industry as well. An embedded case study seeks to understand more than one unit and collects data from different levels and sources (Yin, 1994). As the focus is on foreign private investors investing in emerging markets, the wider context is studied, with industry experts serving as sub-units for the context in which the case project operates.

The case study applied in this research was LTWP, which is located in Kenya. The choice of a single case study is justified by the wind farm being the largest in Africa and the project being the largest private investment in the history of Kenya, which makes it a project of a considerable large
size expected to be exposed to extensive risks (LTWP, 2014; AfDB, 2018a). The structure of the project includes several foreign private investors, including Danish investors, and various lenders and development banks (LTWP, 2014; AfDB, 2018a). This represents an extreme case of large and complex nature located in an emerging market.

Data Collection

The paper made use of both primary data and secondary data to investigate the research question, where the empirical section was grounded in primary data from in-depth interviews. Primary data is data that is collected with the sole purpose for this research to answer the research question, whereas secondary data is data collected for another research usually for another purpose (Blumberg, Schindler and Cooper, 2011).

Primary Data: In-depth Interviews

A total of nine in-depth interviews were conducted in order to provide different perspectives to the research question to provide findings and learnings. Interviewees were all either investors in Kenya or knew about the investor challenges within the country. Three of the interviewees were stakeholders from LTWP, whereas six had the function as knowledgeable of the industry. All interviewees were approached by a personal mail in which the research topic and their relevance to the research were explained. Most interviewees accepted the enquiry themselves whereas others forwarded the request to more suitable colleagues, which only increased the quality of the research.

Few days before the interview was to take place, a confirmatory mail containing the most important questions were sent, for the interviewee to be able to reflect on the questions, as to obtain responses of higher quality. It was stressed that the interview and the research paper was to be confidential if the person wished it to be so, however, no participant had the desire of confidentiality, except one interviewee who did not wish to share the whole interview as an appendix, but accepted quoting. Below in table 1 is an overview of the interviewees:
**Table 1: List of interviewees**

<table>
<thead>
<tr>
<th>Interviewee</th>
<th>Organization</th>
<th>Role in research</th>
<th>Date</th>
<th>Location</th>
<th>Length</th>
</tr>
</thead>
<tbody>
<tr>
<td>Henrik Frøsig</td>
<td>Investment Fund for Developing Countries (IFU)</td>
<td>Case project</td>
<td>February 2 &amp; 26, 2018</td>
<td>By telephone</td>
<td>65 minutes</td>
</tr>
<tr>
<td>Kristian Heydenreich</td>
<td>Vestas A/S</td>
<td>Case project</td>
<td>March 5, 2018</td>
<td>Vestas Corporate Hub, Copenhagen</td>
<td>60 minutes</td>
</tr>
<tr>
<td>Phylip Leferink</td>
<td>Lake Turkana Wind Power Ltd.</td>
<td>Case project</td>
<td>March 12, 2018</td>
<td>Lake Turkana Wind Power Ltd. Head Office, Nairobi</td>
<td>70 minutes</td>
</tr>
<tr>
<td>Lars Tejlgaard</td>
<td>Frontier Energy</td>
<td>Industry professional</td>
<td>February 28, 2018</td>
<td>Frontier Energy Corporate Hub, Copenhagen</td>
<td>60 minutes</td>
</tr>
<tr>
<td>Jens Thomassen</td>
<td>A.P. Møller Capital</td>
<td>Industry professional</td>
<td>March 28, 2018</td>
<td>A.P. Møller Capital Head Office, Copenhagen</td>
<td>60 minutes</td>
</tr>
<tr>
<td>Tina Kollerup Hansen</td>
<td>Danida Business Finance</td>
<td>Industry professional</td>
<td>March 2, 2018</td>
<td>Investment Fund for Developing Countries Head Office, Copenhagen</td>
<td>60 minutes</td>
</tr>
<tr>
<td>Henrik Petersen</td>
<td>The Danish Trade Council</td>
<td>Industry professional</td>
<td>March 7, 2018</td>
<td>Danish Royal Embassy, Nairobi</td>
<td>65 minutes</td>
</tr>
<tr>
<td>Hannah Rose Elliott</td>
<td>Centre for African Studies at University of Copenhagen</td>
<td>Researcher on land disputes in Kenya</td>
<td>February 8, 2018</td>
<td>University of Copenhagen, South Campus, Copenhagen</td>
<td>60 minutes</td>
</tr>
<tr>
<td>Mercy Chemoiwo and Rogers Amisi</td>
<td>Kenya Investment Authority</td>
<td>Governmental body</td>
<td>March 9, 2018</td>
<td>Kenya Investment Authority Head Office, Nairobi</td>
<td>90 minutes</td>
</tr>
</tbody>
</table>

Before each interview, an explicit explanation of the topic of the research were formulated to the interviewee, where it was stressed which problem the paper researched and which particular role the interviewee was perceived to fill out. This was done to assure the interviewee understood the research and the interviewee’s relevance, to receive responses and perspectives in accordance to the research to increase internal validity. The questions in all the interviews were open-ended as data in this way became more reflected and unbiased.

The interviews were conducted as semi-structured in-depth interviews to get the interviewees to speak freely about the topic, but topic areas that the interview had to touch upon were constructed and followed (Saunders, Lewis and Thornhill, 2015). In-depth semi-structured interviews are
beneficial in exploratory research, and a helpful tool to investigate what is happening and seek new insights. Moreover, this method is usually used to understand the reasons behind research participants’ decisions (Saunders, Lewis and Thornhill, 2015). This method was furthermore chosen, due to the complex topic and open-ended need of questions and due to the need of variance in logic of questioning, depending on which role the interviewee had within the research.

The interview guide consisted of two main focus points; the first being an open question where the interviewee had the opportunity to provide his or her elaboration of what was perceived as the most dominant institutional challenge of infrastructure investments in emerging markets, and how it affected their strategies or the industry’s strategies in general. This was done to avoid any biased responses and encourage the interviewee to think of all possible outcomes of the investments. The other being a desire to gain feedback on the propositions and how their organization safeguarded or how they experienced the industry safeguarded against them.

The interviews varied in lengths, reaching from 60 to 90 minutes, and were all transcribed in its original language and can be found in the appendices for full disclosure, except one. Transcription of interviews ensured the analysis to become more thorough by familiarizing with the data and enabled categorization. The following is a description of the nine in-depth interviews gathered for this research, including an elaboration of the relevance and reliability of each interview, together with a critical evaluation of each interviewee.

*Henrik Frøsig, Regional Director at IFU*

As this research seeks to analyze the lessons learned from the LTWP case in order to draw conclusions for future foreign private investors to benefit from, an in-depth interview was conducted with the Regional Director of the East African region of IFU, Henrik Frøsig. He has first-hand information about the LTWP project as he is a member of its board due to IFU’s investment in the project. IFU is an independent government investment fund that operates on commercial terms and seeks to create economic and social progress in developing countries by offering consulting and capital to project companies with a Danish interest (IFU, 2018). IFU is an investor in the LTWP project through its capital fund Danish Climate Investment Fund, which is a public private initiative to secure funding for climate projects in emerging markets as well as promoting

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2 Appendix 2
3 The interview with Henrik Frøsig was divided into two parts on two different days
sales of Danish climate technology (KIF, 2018). Danish Climate Investment Fund has invested DKK 87m in the project and hence owns 6.25% of the largest private investment in the history of Kenya. Due to IFU’s high degree of involvement in the project, this interview reflects a high level of reliability regarding questions about how the project has dealt with the institutional challenges. It is taken into consideration that information may have been biased as he as an investor may avoid too negative comments about the project and the other partners and prefer to reflect positive project management skills. Furthermore, he is often in Kenya and hence may avoid too negative comments about the state. The data from Henrik Frøsig was conducted over the phone.

Kristian Heydenreich, Head of CSR at Vestas

In addition to the IFU interview, an in-depth interview was conducted with the Head of CSR at Vestas, Kristian Heydenreich, in order to gain perspective from more than one investor in the LTWP project. He was according to Vestas’ Project Director on LTWP “instrumental” on the LTWP project to strategize and de-risk the non-technical portions for Vestas. Vestas is a contractor to the project as they supplied the 365 wind turbines to the wind farm and is also an investor in the project with stakes of 12.5% (LTWP, 2018; EU-AITF, 2014a). The company is the world’s leading supplier of wind-turbines and is based in Denmark (Vestas, 2018).

In this interview, Kristian Heydenreich represented Vestas’ corporate view on CSR and the importance of local context and implementation of a CSR strategy in the case of LTWP. He also provided a risk perspective from an investor’s point of view, when entering an emerging market like Kenya. In the position as both an investor and a contractor, Vestas is in a reliable position in regards to how LTWP has dealt with the institutional challenges, and in particular the local communities. It is taken into consideration that information may have been biased as he as an investor may avoid too negative comments about the project and the other partners and prefer to reflect positive project management skills. Furthermore, Vestas plans to do more projects in Kenya and hence may avoid too negative comments about the state (Heydenreich, 2018). The in-depth interview was conducted at Vestas’ office at Copenhagen Towers. Noticeably, the interviewee did not wish the entire interview to be public, hence; no full transcription of the interview is included in the project. However, he did allow for the use of direct quotations to the analysis of the paper.

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4 In LTWP, the Danish climate technology is represented by Vestas
**Phylip Leferink, General Manager at Lake Turkana Wind Power Ltd.**

In order to ensure that the research includes all lessons from the LTWP case, an in-depth interview was conducted with the General Manager of Lake Turkana Wind Power Ltd., Phylip Leferink. This interview focused on his perspectives and experiences with the institutional challenges regarding the LTWP project and how they have worked to limit the risks. Prior to becoming the General Manager of the project, Phylip Leferink was the Vice President Sales for Vestas in Europe and Sub-Saharan Africa, so he has many years of experience within the field of infrastructure projects in emerging markets. Phylip Leferink has the ultimate insights to the project’s strategy and tactics to how they have dealt with the institutional challenges of the project, which makes him highly reliable regarding these topics. However, his comments about the impact of certain challenges, such as the impact of NGOs and the degree of negative impact of the local communities, might be slightly biased as he might downplay these negative impacts on the project. The latter point was considered when phrasing the interview questions, and the questions were therefore focused on how they have dealt with these challenges instead of focusing on the impact on the project. Moreover, the General Manager lives in Kenya and may therefore avoid too negative comments about the state and may avoid negative comments about the project as well, as he is hired in contrast to the investors. The in-depth interview was conducted at the Karen Office Park in Nairobi, Kenya, where the project company is located.

**Lars Tejlgaard, Investment Director, Partner and Co-founder at Frontier Energy**

This interview was both relevant and reliable for two main reasons. First, Frontier Energy actually declined to be an investor in the LTWP project, because of the risk of delays on the transmission line as well as the fact that they would be a minor investor in a big consortium (Tejlgaard, 2018). Second, the Danish capital fund is investing in more than 40 renewable energy projects in sub-Saharan Africa, and they therefore know how to deal with the institutional challenges in this sector. The investor base in their funds consists of pension funds, insurance companies, family offices, fund of funds, European government investment funds and private investors (Frontier Energy, 2018). Lars Tejlgaard was selected for this interview because he focuses on projects in Kenya, so the interview focused on his perspectives and experiences with the institutional challenges regarding foreign private infrastructure investments in Kenya and how Frontier Energy has worked
to derisk their projects in Kenya. As he is often in Kenya and Frontier Energy works closely with the government in some of their projects, it is taken into consideration that negative comments about the state may have been downplayed or held back. Furthermore, he may have downplayed the risks in the country, not to scare of future investors of the fund. The interview was conducted at Frontier Energy’s office in Copenhagen.

**Jens Thomassen, Partner in A.P. Møller Capital**

The interview with newly established A. P. Møller Capital was conducted to gain knowledge on how a new private foreign investor approaches the market. This interview was perfectly relevant for these matters as A.P. Møller Capital was established in 2017 as an affiliate of A.P. Møller Holding A/S to manage stand-alone funds focusing on infrastructure in emerging markets (A.P. Moller Capital, 2018a). Its first fund, Africa Infrastructure Fund, was launched in August 2017 and had not by the time this interview was conducted made its first investment yet. The Africa Infrastructure Fund has an initial target of 10-15 investments and includes Danish and Swedish institutional investors, including A.P. Moller Holding (A.P. Moller Capital, 2018a). After the second financial close, the fund reached a total commitment of USD 865 million and targets a fund size of USD 1 billion (A.P. Moller Capital, 2018b).

Before joining A.P. Møller Capital as a partner, Jens Thomassen was a director at a leading energy private equity firm focusing on emerging markets. Thus, he is considered to have a deep knowledge about the institutional challenges facing foreign private investors investing in infrastructure in emerging markets. The interview focused on how the management team of A.P. Møller Capital is evaluating the challenges and risks associated with infrastructure projects in Africa. As the team is often in Africa and intends to work closely with the government in some of their projects, it is taken into consideration that negative comments about the states in Africa may have been downplayed or held back. Furthermore, he may have downplayed the risks in investments, not to scare of future investors of the fund. The interview was conducted at the A.P. Møller Capital office in Copenhagen.

**Tina Kollerup Hansen, Investment Director at Danida Business Finance**

In addition to the private investors and stakeholders in the LTWP, this interview was conducted to understand the general institutional risk of infrastructure projects in emerging markets, as well as

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7 Appendix 5
8 Appendix 6
to examine the different approaches used by a governmental investor in contrast to private investors. Danida Business Finance offers subsidized loans on favorable terms to infrastructure projects in developing countries with a Danish representation (UM, 2018a). The projects must contribute to sustainable development in the recipient country in line with the UN Sustainable Development Goals and the borrower will pay only a commitment and a management fee (UM, 2018a). Noticeably, Danida Business Finance only finance - primarily public - projects that are commercially non-viable, which means that only projects that cannot generate enough profit to service a loan on commercial terms will be supported (UM, 2018a). This, obviously, creates a slightly different framework for them to work in, in contrast to the private investors. Nevertheless, Tina Hansen still contributes with her experiences with the institutional risks and challenges that Danida Business Finance is exposed to when investing in infrastructure projects in emerging markets. On September 1, 2017, IFU took over the administration of Danida Business Finance from the Ministry of Foreign Affairs, hence, Tina Hansen also knows about the case of LTWP. As they work closely with the states in emerging markets, it is taken into consideration that some negative information about them may have been downplayed or held back. The interview was conducted at the Danida Business Finance office in Copenhagen.

*Henrik Petersen, Commercial Counsellor at the Trade Council*

The in-depth interview with Henrik Petersen from the Danish Trade Council was conducted in order to get a different perspective on problem statement. Henrik Petersen is the Team Leader of the Business Sector Team and Commercial Counsellor at the Trade Council, where he offers consulting services about how Danish companies can enter and expand on the Kenyan market (UM, 2018b). Thus, he knows about the institutional challenges in the context of Kenya, including the infrastructure sector. This interview therefore focused on how he consults Danish companies to mitigate these risks. The Trade Council operates out of the Danish embassy in Nairobi, so they have a strong local presence and a large network in the local business and government communities (UM, 2018b). His knowledge about how to do business in Kenya is therefore considered to be highly reliable and his perspectives and experiences will hence contribute well to this research. As he lives in Kenya and is often in contact with the authorities and cooperates closely with them, it is taken into consideration that negative comments about the state may have been downplayed or held back. The interview was conducted at the Royal Danish Embassy in Nairobi, Kenya.

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9 Appendix 7
Research on the institutional challenges when investing in infrastructure in Kenya, one does not need to search long to identify the issue about land as a major and complex challenge. It was therefore beneficial for this research to make an in-depth interview with Hannah Rose Elliott, who recently successfully defended her PhD thesis at the Centre of African Studies at the University of Copenhagen. Her thesis was a study of the people that were living in the edges of a provincial town in northern Kenya, and what they were doing in terms of protecting their land in the case of the LAPSSET project (University of Copenhagen, 2018; Elliott, 2018). With her research in Kenya she is considered to have knowledge about the issues at play regarding foreign infrastructure investments in Kenya, however, she is mainly reliable in regards to comments on the issue of land disputes. This interview was conducted at the University of Copenhagen.

Mercy Chemoiwo and Rogers Amisi from Kenya Investment Authority

In order for this research to expand its understanding of how foreign private investors can derisk their infrastructure investments in Kenya and to understand the Kenyan institutional challenges, it is important to include Kenya Investment Authority. This governmental body has the main objective to promote investments in Kenya, and therefore they have a deep understanding of the Kenyan institutional challenges (Kenya Investment Authority, 2018a). To represent Kenya Investment Authority, an in-depth interview was conducted with Rogers Amisi, who is a manager in charge of investment information and enquiry management, as well as Mercy Chemoiwo, who is a Project Analyst. It was important to include this interview to see if Kenya Investment Authority - with a Kenyan perspective - might contribute with any challenges, strategies or tactics that none of the interviewees above had mentioned. As Kenya Investment Authority is a governmental body, negative comments about the state may have been downplayed or some information may have been held back. Furthermore, the extent of risk in the country may have been downplayed as well, in order to not scare off partners or future investors. The interview was conducted at the UAP Old Mutual Towers in Nairobi, Kenya, where Kenya Investment Authority is located.

10 Appendix 8
11 Lamu Port South Sudan Ethiopia Transport corridor is a large-scale infrastructural development project that is part of Kenya’s long-term development strategy ‘Vision 2030’
12 Appendix 9
Secondary Data

In addition to the primary data, a long list of academic articles, websites, books, press releases, reports and videos were gathered as secondary data, all from sources that are trusted research institutions. The data include quantitative as well as qualitative, and it consists of compiled data, that have had some form of summarizing or processing (Kervin, 1999). The combination of empirical data and existing literature aims to complement and enhance each other to obtain a bigger sample of data. To combine the two data collection techniques, means that the paper has sought to place the empirical data within a more general context, and has been used to assess how representative the empirical data is to the total population (Saunders, Lewis and Thornhill, 2015). There are some pitfalls of using secondary data which was encountered for, such as the data had to be detailed, cover the same population and not being outdated (Blumberg, Schindler and Cooper, 2011). Furthermore, secondary data may have been collected for another purpose that differs from this paper’s objectives, which too have been encountered for in this research (Saunders, Lewis and Thornhill, 2015).

One book which is essential to highlight from the secondary data is Khanna and Palepu’s (2010) book ‘Winning in Emerging Markets’. This book has first and foremost given inspiration to the academic framework of this research, as well as the institutional view as this paper has applied. However, the research in the book is general and not industry specific. It was therefore necessary for the paper to develop a model that was infrastructure specific, due to the many unique features of this sector. Moreover, Khanna and Palepu’ perspective on emerging markets and institutional voids have been discussed in the literature review.

In addition, reports from major well-known organizations were also included, such as consultancy groups, like PwC and Boston Consulting Group, investment banks, like J.P. Morgan, and industry reports on infrastructure from intergovernmental economic organizations as OECD and the World Bank. All of these sources were perceived to be reliable and trustworthy in relation to the research, as they are international organizations with operations in a large number of countries, including emerging markets, hence, it is argued that these organizations have a profound knowledge about the industry.

As Lake Turkana Wind Power Ltd. is not a publicly owned company and therefore has no public annual reports, their website was the most reliable, available secondary information about the
project. However, the most basic financial data related to the project was found at websites and reports belonging to various stakeholders of the project, which all were considered to be credible sources of information.

Data Analysis and Implications

Data analysis should according to Yin (1994) not be seen as an easy option, but rather as a demanding process. As mentioned earlier, all interviews were transcribed in order to prepare it for analysis. The transcribed interviews were cleaned and then categorized according to the propositions, in line with the deductive approach, and rearranged to be able to recognize themes and relationships. The analysis of this research was structured on the basis of the propositions. Each proposition was analyzed to firstly conclude to what extent each proposition was true in the case of LTWP, and subsequently evaluate the strategies in regards to the most optimal response to the institutional challenges. By analyzing the propositions based on empirical and secondary data, the research developed valid and well-grounded conclusions (Saunders, Lewis and Thornhill, 2015). In light of the analysis, the implications section deliberated the propositions in relation to the findings from the empirical data.

Validity

According to Saunders, Lewis and Thornhill (2015), it is impossible to know if the answer to the research question is right, but one can seek to reduce the possibility of getting it wrong. Therefore, a solid research design is important. To reduce the possibility, attention has to be put to three factors; reliability and internal and external validity.

Reliability

Reliability refers to the extent chosen data collection techniques and analysis procedures would produce and conclude consistent findings by alternative researchers (Saunders, Lewis and Thornhill, 2015). The use of several sources of data brings higher validity to the research as this enables triangulation, which is important to validate findings (Yin, 1994). Triangulation was established in this paper by a use of a number of sources of both primary and secondary data, such as, thorough assembling of secondary data of literature to form the literature review based on peer reviewed studies and industry studies from reliable organizations. Primary data from many different perspectives including LTWP stakeholders, and individuals concerned with infrastructure investments both in Kenya and other emerging markets together with advisors and government
body increase the reliability of the study. Additionally, the inclusion of organizations with knowledge of working procedures from different investors further increase the number of perspectives included. The many viewpoints the study takes, limit the over-reliance on one company and one interpretation.

The lack of standardization in semi-structured interviews may threat the reliability of the research; however, the research merely intended to analyze the reality at the time of collection. As institutions are in a constant transition, the research was not intended to be repeatable (Marshall and Rossman, 1999). Due to the complexity of this topic, the value from a semi-structured interview stems from the flexibility used to explore the topic (Saunders, Lewis and Thornhill, 2015). Thus, the strength from this semi-structured, non-standardized research may perhaps be undermined if it was constructed to be replicable. According to Yin (1994), it is not about replicating the findings from one case study, but rather repeating the same study with the same methods and then present a coherent conclusion. In this light this paper has followed a proper protocol with clear clarification and documentation in order to minimize errors and biases, as advocated by Yin (1994), to provide trustworthy and reliable results.

**Internal Validity**

Internal validity is concerned with whether the findings measure what was the intention to measure, and if the findings are caused by something completely different than what they appear (Saunders, Lewis and Thornhill, 2015). It is concerned with the causal relationship between the variables. According to Yin (1994), it is important to construct the correct measures for the concepts being studied and by using a case study it is about establishing a phenomenon in a credible manner.

Semi-structured interviews, which followed an interview guide, contributed to ensure high internal validity as the strategic propositions made the foundation of the interviews. This way it was ensured that the intended findings correspond to the actual findings. Moreover, to increase internal validity all interviews were recorded with the permission from the interviewee so the researchers had a direct replication of what was said and to ensure data was not lost (Saunders, Lewis and Thornhill, 2015).

The broad approach the research paper takes in accordance to data gathering has a significant contribution to internal validity. The study aimed to represent the common approach foreign
External Validity

External validity refers to the generalizability of the research results, meaning whether the findings are equally applicable to other organizations or projects outside the one examined as the case study. There is a general concern of the generalizability of findings from qualitative research based on small and unrepresentative number of cases (Saunders, Lewis and Thornhill, 2015). However, Saunders, Lewis and Thornhill (2015) counter argue this point with two arguments which fit this paper well. Firstly, the use of a single case study may present a complex case examined thoroughly with several people interviewed, compared to several cases examined superficially. Saunders, Lewis and Thornhill (2015, p. 327) add “a well-completed and rigorous case study is thus more likely to be useful in other contexts than one that lacks such rigour”. Secondly, the use of existing literature to study the case proves that findings have a broader theoretical significance, which allows for testing applicability of existing theory to the environment that is examined.

Case studies are generally criticized because of the external validity of research, which aims to capture the rich complexity of social situations (Saunders, Lewis and Thornhill, 2015). In a response to the criticism, Flyvbjerg (2006) advocates the value of case studies for different reasons. He emphases that all human knowledge is beginning with the experience of cases and he specifically states that “the force of example is underestimated” (Flyvbjerg, 2006, p. 12). He additionally concludes that “One can often generalize on the basis of a single case, and the case study may be central to scientific development via generalization as supplement or alternative to other methods” (Flyvbjerg, 2006, p. 12). Therefore, only generalizations of an analytical nature can be drawn from this case study, and not from a statistical nature (Yin, 1994). Noticeably, with a pragmatic perspective, generalizability is not the end goal. Instead, the objective to apply the propositions to the LTWP case were to display specific strategies and tactics enforced by a large and complex project, which may be duplicated in future projects, if similar characteristics exist.

Thus, the case study will answer the research question through the “force of example”; studying the issues in depth and providing specific strategies and tactics for future foreign private investors investing in infrastructure in emerging markets, rather than seeking to reach a general profile regarding all infrastructure projects. The findings cannot be formally generalized, but they will instead contribute to a knowledge pool. “Often it is not desirable to summarize and generalize case
Good studies should be read as narratives in their entirety” (Flyvbjerg, 2006, p. 25). The case of LTWP is complex because as an infrastructure investment, it is a function of specific circumstances and human behaviors, as well as the project itself has some unique features. Therefore, it cannot be seen as a standard project for how all future infrastructure projects in emerging markets ought to deal with the institutional challenges, only analytical generalizations can be drawn from the case study.

**Delimitations**

By the time of writing, the LTWP project has still not moved into operation. It is important to emphasize that the institutional challenges of emerging markets are unique to each market, so this study solely investigates the Kenyan institutional context. If the paper were to study a different infrastructure project in another emerging market, other institutional challenges may emerge and other lessons would be learned. In addition, simply studying a different infrastructure project would most likely have provided different lessons and conclusions.

This thesis does not seek to address all the institutional challenges facing foreign private investors in emerging markets and it does not intend to offer all the possible solutions to all the challenges in these markets. By selecting a case study of a large infrastructure project with a complex financial structure, the lessons learned from this case is to a large extent limited to projects of a similar size. Several strategies implemented by LTWP require a substantial size in terms of financial capacity and cannot be duplicated by smaller infrastructure projects. Although smaller projects may face similar institutional challenges, they may not be able to implement the same strategies as LTWP has done.

This study analyzes the problem of limited infrastructure by looking at the situation from the perspective of the foreign private investors. It is an entirely different issue when looking at the problems and challenges from the perspective of the government, which is not included in the study as it is outside the scope of this research. The insights from this study are therefore limited to how the foreign private investors deal with the institutional challenges and how they derisk their investments. Moreover, the research of this paper is solely focused on institutional challenges, which means that macroeconomic risks such as a global economic recession, exchange rate fluctuations, inflation, interest rates, and unemployment rates are not given much attention in this research.
Theory and Analytical Framework

In order to address the research question, the theory section will focus on institutional theory and the market failures and challenges that lie in navigating institutions in emerging markets. There is a general agreement in academic literature that institutions matter and they have an effect on business practices, however, scholars still lack knowledge of the extent institutions work and to what extent they affect practices due to them being very complex (Williamson, 2000). Meyer and Nguyen (2005, p. 28) describe the institutional perspective as “a new line of theorizing in strategic management research that holds particular potential for explaining strategies in emerging economies”. The last quarter of century has seen a development in research from “institutional economics” moving towards “new institutional economics” that extends the economic perspective to include social and legal norms and rules (Rutherford, 2001; Williamson, 2000). New institutional economics combines the views of neoclassical economics and earlier institutional economics and have been used to analyze ways of reducing transaction costs and reducing uncertainty and producing collective benefits through a coordination or cooperation in behavior (Rutherford, 2001). The main assumption of the new institutional economics is that the more stable the institutional environment in a country is, the more investment will take place in a country (Pongeluppe and Saes, 2014).

The paper is inspired by the new institutional economics’ view of the interplay between institutions and FDI and builds on work started off by Ronald Coase “The Nature of the Firm” (1937) and extended by institutional economists Oliver Williamson and Douglass North (Harriss, Hunter, and Lewis, 1995). Furthermore, inspiration is found in scholars such as Tarun Khanna, Krishna Palepu, Mike Peng, and Klaus Meyer, who further developed and investigated the new institutional economics and applied it to emerging markets.

Structure of the Theory Section

The following literature review begins by providing an overview of the theory behind institutions and its importance for foreign private investors entering emerging markets. The importance of institutional challenges will further be explained through the transaction cost theory and the uniqueness of the institutional context in emerging markets. In response to the institutional challenges, adaptable strategies for the foreign private investors will be discussed. In the last part of the literature review, the characteristics of infrastructure investments will be emphasized including the specific typical investor characteristics, PPPs and SPVs. Following the literature
review, a simple analytical framework will be used to explain the relationship between the institutional challenges and strategies needed for foreign private investors investing in infrastructure in emerging markets. This connection is shown by deriving five propositions based on the literature, which will be outlined following the analytical framework.

Institutional Perspective

“The term ‘institutions’ has become ubiquitous in the literature on emerging markets” (Rottig, 2016, p. 2). When describing institutions, several scholars refer to the explanation by North (1990) as the ‘rules of the game in a society’ (Meyer and Peng, 2005; Peng, 2003; Rottig, 2016). More formally, institutions are the “humanly devised constraints that shape human interaction”, which include both formal rules like laws, regulations, constitutions and property rights, and informal constraints like customs, norms, traditions and cultures, that are supported by the general society (North, 1991, p. 3; Peng, 2003; Rottig, 2016; Williamson, 2000). Institutions play a fundamental role in a market economy in order for firms to engage in market transactions without obtaining any unnecessary costs or risks (Meyer et al., 2009). Specifically, institutional theory suggests, in the case of MNCs, that the rules of the game in a society affect the structure and actions of MNCs and at the same time require the MNCs to conform to the rules of the local social environment to be perceived as legitimate (Rottig, 2016). Thus, MNCs must be able to respond to the formal regulatory as well as informal rules of a foreign institutional environment if they want a chance to succeed in that market (Kostova and Zaheer, 1999).

When discussing the economics of institutions, Williamson (2000) suggests that there are four levels in which an institution functions and describes the time it typically takes to change institutions at each level, which imposes constraints on the previous level. Level one is the social embeddedness where customs and norms play a large role. These informal institutions take centuries to change and they have a lasting grip in the way society is controlled. Level two is the formal institutional level, which design instruments include legislative, judicial, and bureaucratic functions of the government, such as constitutions, laws and property rights. The formal institutions change faster than the informal institutions, and there is a chance for firms to have an impact on the change, however, it normally takes between a decade to a century for these to change. The third level describes the governance structures of the firm that are realized in response to the informal and formal institutions in level one and two and should be reexamined periodically on an order of a year to a decade. The fourth level is where the neo-classical economics works
and will be dismissed in this paper (Williamson, 2000). The paper will focus on the three first levels of social analysis; the informal and formal institutional environment, as well as the governance structure of these institutions.

**Institution-Based View**

Institutions directly determine the abilities and opportunities for a firm as it struggles to formulate and implement strategy, which is what led to the emergence of the institution-based view based in strategic management (Peng et al., 2009). The institutional perspective suggests that no one can understand business strategies if they do not understand the institutional context (Meyer and Nguyen, 2005). The industry-based and resource-based views are the two traditional views, but both have been criticized for their lack of attention to contexts (Peng et al., 2009). On the other hand, institutional literature generally agrees that institutions matter (North, 1990; Peng et al., 2009). Treating institutions as the independent variable, this view of strategy focuses on “the dynamic interaction between institutions and organizations and considers strategic choices as the outcome of such an interaction” (Peng et al., 2009).

According to Peng et al. (2009) the institution-based view holds two core propositions. The first states that managers and firms rationally change their strategic choices in accordance to the formal and informal constraints in the institutional framework (Peng et al., 2009; Lee, Peng and Barney, 2007). The institutional framework affects the strategic choices because the most fundamental role of institutions is to reduce uncertainty and provide meaning by adapting the norms of behaviors and defining what is legitimate (Peng et al., 2009; North, 1990). Several studies highlight the importance of developing intermediary institutions and processes to deal with uncertainty (Marquis and Raynard, 2015). Noticeably, a study of Meyer and Nguyen (2005) points out that foreign investors can observe most formal institutions, but the informal institutions are much less transparent and are therefore the main source of uncertainty. In addition, the second proposition states that formal and informal institutions united govern firm behavior and when the formal institutions are unclear, informal institutions will at a larger extent provide guidance, reduce uncertainty, and conferring legitimacy (Peng et al., 2009).

**Emerging Markets**

Although the term ‘emerging markets’ is loosely defined and does not provide a universally recognized definition, there are still some commonly acknowledged aspects that make up an emerging market (Mody, 2004). The term ‘emerging markets’ was first used in 1981 by Antoine
van Agtmael and is today commonly used as these markets have gained significant importance both economically and politically (Rottig, 2016). Academic literature has a long list of interpretations of emerging markets with traditional criteria including poverty, recent economic growth, and how open the country is to FDI (Khanna and Palepu, 2010). However, Khanna and Palepu (2010) provide a new perspective on emerging markets, in their book ‘Winning in Emerging Markets’. The two Harvard Business School professors argue that the emerging aspect in emerging markets is not only related to the forecast potential or liberalizing investment environments, but also the “institutional infrastructure needed to support their nascent market-oriented economies” (Khanna and Palepu, 2010, p. 13). In fact, exactly the institutional differences between countries may explain the difference in the stage of economic development (Banerjee, Oetzel and Ranganathan, 2006). In the development process of an emerging market the importance of physical infrastructure is beyond discussion, however, institutional development is less recognized as a critical function to establish the functioning of a mature market (Khanna and Palepu, 2010). These markets are usually characterized by high growth rates and high level of risk and volatility (Mody, 2004).

**Institutional Voids**

Emerging markets have several unique features that distinguish them from developed markets. The most significant feature of any market is the ease with which buyers and sellers can unite to do business (Khanna and Palepu, 2010). In developed markets, a range of contract-enforcing mechanisms, regulatory systems, and specialized intermediaries with the requisite information, are required to consummate transactions, such as credit card systems, intellectual property adjudication and data research firms (Khanna and Palepu, 2010). These market-supporting institutions are almost invisible when markets work smoothly in developed economies (Peng et al., 2009). In contrast, emerging markets fall short on this count, hence, it is this absence of these market intermediaries that Khanna and Palepu (2010) refer to as ‘institutional voids’. Some examples of institutional voids include the lack of reliable information, less-effective legal systems that are incapable of enforcing contracts in a predictable way, and the absence of financial intermediary institutions to facilitate economic transactions (Khanna, Palepu and Sinha, 2005). There are a number of intermediaries that is the source of market failures, which affect the cost of doing transactions.
Thus, the institutional challenges in emerging markets lead to higher transactions costs, and it is therefore costlier to facilitate market transactions in these markets in comparison to developed markets. In addition to the higher costs, it is also riskier for MNCs to do business in emerging markets, as the institutional changes in emerging markets are more unpredictable than developed markets (Khanna and Palepu, 2010). According to Zhao, Park and Zhou (2014): “regulatory systems in emerging markets are relatively unstable, inconsistent, and arbitrarily enforced”. Khanna and Palepu (2010) illustrate the three market definitions as developed markets having only few institutional voids, dysfunctional markets having many institutional voids, and finally emerging markets located somewhere in between.

**Transaction Costs**

The transaction cost theory was the forerunner to the new institutional economics and is an important tool to investigate governance structures in foreign markets, where market failures may affect the cost of doing business (Brouthers and Hennart, 2007; Harriss, Hunter, and Lewis, 1995). Transaction cost theory, first coined by Ronald Coase (1937), investigates why transactions between two participants in the market are organized the way they are (Williamson, 1994). It claims that transactions in a market are organized upon determination of the cost of making an economic transaction between the two parties (Coase, 1937). The theory was initially used to predict when a transaction would be optimally performed by the firm and when it would be optimally performed on the market (Coase, 1937). However, transaction cost economics is now also used to study different economic phenomena of both formal and informal contractual relationships (Shelanski and Klein, 1995).

Transactions can take different forms depending on the degree to which a relationship specific asset is involved, the amount of uncertainty, the degree of complexity of the arrangement, and the degree to which trading partners may act upon opportunism, where each matter to determine the preferred governance structure (Shelanski and Klein, 1995; Williamson, 1985; Brouthers and Hennart, 2007). A governance structure that generates the least amount of transaction costs is preferred as firms see the largest profits in a reduction of transaction costs (Williamson, 1985). The institutional environment can be seen as parameters that change the costs of governance or transaction costs (Williamson, 1994). Both formal and informal institutions in a society are key determinants of transaction costs, and some institutional arrangements govern this better than others (North, 1987; Shelanski and Klein, 1995). This supports Shelanski and Klein’s (1995)
claim that transaction cost theory “tries to explain how trading partners choose, from the set of feasible institutional alternatives, the arrangement that offers protection for their relationship-specific investments at the lowest total cost” (Shelanski and Klein, 1995, p. 337).

According to Meyer (2001), foreign firms entering emerging economies have to adjust to the local condition in order to avoid the high transaction costs in a volatile institutional environment. The study also points to the effect of a broad set of institutions that influence transaction costs. For instance, a lack of information about local partners force the MNCs to negotiate with inexperienced agents, face unclear regulatory frameworks, and corruption by (Meyer, 2001). In perfect or nearly perfect markets firms would go to the external market for transactions as these would experience the least transaction costs and be more efficient. However, there are a number of risks related to exchange relationships, that involved partners try to protect themselves from such as opportunism, both internal and external uncertainty and asset specificity, which are described below (Shelanski and Klein, 1995).

**Risks of Exchange Relationship**

One of the major risks in exchange relationships is termed opportunism by Williamson (1985), which is the potential self-interest from trading partners leading to unpredictable and exploitable behavior. It happens when a trading partner may try to take economical advantage of changing circumstances by expropriate rents on the asset through a lack of honesty in transactions (Shelanski and Klein, 1995; Williamson, 1973). As the risk of opportunism increases, transaction costs increase as safety mechanisms have to be added to the transaction, such as monitoring (Williamson, 1985). According to Brouthers and Hennart (2007), opportunism is decreased when transactions are performed within the firm as the propensity to engage in opportunism reduces, hence; costs of additional safety mechanisms decrease. Furthermore, Hoskisson et al. (2000) state that opportunistic behavior is normally reduced by contract law, trust or reputation, which often lacks in emerging markets. An increase in the likelihood of opportunistic behavior make measurement and enforcement costs go up as it is expensive to obtain monitoring information and difficult to create legal contracts (Hoskisson et al., 2000).

Other major risks in exchange relationships are the external and internal uncertainty. External uncertainty is also known as market uncertainty as it is the uncertainty of the unobservable or not verifiable outcomes that comes in operating in complex environments with risks originating in the host country (Brouthers and Hennart, 2007). The higher the market uncertainty stemming from the
institutional environment, the higher the transaction costs (Shelanski and Klein, 1995). Internal uncertainty stems from the performance and experience of partners. The less experience partners have in an international market and the host market in particular, the more uncertainty is experienced. Thus, more monitoring and safeguards have to be put in place increasing transaction costs (Brothters and Hennart, 2007). According to Williamson (1985), uncertainty gets particularly problematic when coupled with asset specificity. Hoskisson et. al. (2000) have suggested using a form of pooling and coordination of resources whereby firms will achieve economies of scale and scope and firms will achieve organizational learning, which was suggested to reduce uncertainty.

The third major risk in exchange relationships is asset specificity. This concept is defined as “the degree to which assets cannot be redeployed except at a significant loss” (Schepper, Haezendonck, and Dooms, 2015, p. 444). Brothters and Hennart (2007) argue that it arises when suppliers have to make investments that are specific to the buyer. Asset specificity is claimed by Shelanski and Klein (1995) to be particularly important when choosing the preferred governance structure. Once asset specificity exists, the firm is exposed to opportunistic behavior from the trading partner where it may alter the price of the product, a state termed ‘hold-up’ by Brothters and Hennart (2007). Firms are warned of investments of asset specific nature when environments are uncertain, due to the increase of exposure to opportunistic behavior, especially from an emerging market government (Hoskisson et al., 2000; Schepper, Haezendonck, and Dooms, 2015). Brothters and Hennart (2007) suggest a safeguard for a holdup being a contract that specifies the price of the product for the intended useful life of the transaction specific investment (Brothters and Hennart, 2007; Williamson, 1985).

With high asset specific investments in emerging markets, the MNC will experience a changing nature of bargaining relations between the MNC and the host country government based in goals, resources and constraints (Eden, Lenway and Schuler, 2005). Vernon (1971) described this phenomenon as the problem of the ‘obsolescing bargain’. The obsolescing bargain model suggests that host governments will attract MNCs under favorable terms but retract on the promises once the MNC has established themselves and its bargaining power has weakened with sunk capital, absorbed risks, transferred technology, and trained local staff (Vernon, 1971). Once the bargaining power has shifted to the host country government, these may impose conditions on the MNC or expropriate assets (Eden, Lenway and Schuler, 2005).
To deal with these risks most effectively, the governance structure that gives less transaction costs are preferred. Governance structures can according to Shelanski and Klein (1995) be performed in a variety of hybrid modes with the anonymous spot market and the fully integrated firm as the two poles, with complex contracts and partial ownership arrangements as hybrids of the two poles. The fully integrated firm is preferred over the spot market in the case of high transaction costs (Hoskisson et al., 2000). However, scholars suggest the optimal governance structures in emerging markets are hybrid structures, due to a lack of property rights and political instability (Shelanski and Klein, 1995). Noteworthy, when trading parties engage in specialized assets in weak institutions, bilateral coordination of investments are desired with combined ownership and with the trading partner under control (Hoskisson et al., 2000).

**Information Asymmetry**

The market failure of asymmetric information is especially severe in emerging markets where it has a negative impact on the investment flows (de Wet, 2004). A market is challenged by dealing with situations where some people have knowledge of something that others do not (Krugman and Wells, 2013). Information asymmetries and incentives conflicts in a market will lead to loss of confidence among the participants and can distort economic decisions and prevent transactions taking place (Khanna and Palepu, 2010; de Wet, 2004; Krugman and Wells, 2013). However, developed economies have proved that it is possible to construct institutional arrangements to mitigate these problems (Khanna and Palepu, 2010). An increase in asymmetric information might cause adverse selection and moral hazard to occur, which is described below (de Wet, 2004).

Adverse selection is the information asymmetry in a pre-contract negotiation when one party lacks knowledge of a transaction prior to a contract (Krugman and Wells, 2013). The challenge to operate in a market with institutional voids and lack of well-functioning infrastructure can be illustrated by economist George Akerlof’s (1970) Nobel Prize winning example of a used car market to capture the problem of adverse selection. Without trust and with asymmetrical knowledge about a product between a buyer and a seller, leads to the buyer being cautious about taking the seller’s claims of quality at face value and is likely reluctant to pay the price asked (Khanna and Palepu, 2010). Adverse selection may be limited by a screening of the party, and investors may feel safer to invest if the market or state has established a good reputation (Krugman and Wells, 2013).
Moral hazard is the information asymmetry in a post-contract situation when one party lacks knowledge about performance of an agreed-upon transaction (Krugman and Wells, 2013). Krugman and Wells (2013, pp. 587-588) further explain moral hazard as “the problem of distorted incentives arises when an individual has private information about his or her own actions but someone else bears the costs of a lack of care or effort”. They furthermore suggest that moral hazard can be dealt with if all parties are given a stake in the performance of the agreed-upon transaction, hence each party are exposed to more risk if moral hazards should appear (Krugman and Wells, 2013).

Property Rights
An institutional element that is of great importance and will reduce investment uncertainty is the credible commitment of the state to respect private property, which hereby will promote private investment and will reduce transaction costs in the market (Banerjee, Oetzel and Ranganathan, 2006; Furubotn and Richter, 1997). The lack of well enforced property rights in emerging markets that convey exclusivity, transferability, and quality of title affects FDI negatively (Hoskisson et al., 2000). This is because the firms may experience efficiency problems when the costs for specifying and monitoring property rights are high (Furubotn and Richter, 1997). Ownership is crucial for efficiency when these transaction costs occur; however, a firm may wish to avoid full ownership, and make use of other legal arrangements, such as leasing, to avoid market risks (Furubotn and Richter, 1997). Legal problems in emerging markets affect the ability to enforce property rights and make enforcement costs high, in particular due to the fact that emerging markets often are defined by official discretion instead of rule of law (Hoskisson et al., 2000).

Emerging economies’ definition and protection of property rights are to a large extent incentivized by the government, and are not absolute, hence, firms need to use other strategies for the protection of these as they cannot depend solely on the legal system (Lyer, 2016). Lyer (2016) mentions examples where governments in emerging markets have tried to violently control protestors, after rights to properties were given to MNCs, but later lacked incentives to step in and enforce the property rights due to negative publicity caused by the violent incidents. This highlight that MNCs may be forced to be responsive to all stakeholders including local population and opposition political parties, even though that may traditionally be the role of the government. Furthermore, due to the poor definition and enforcement of property rights in emerging markets, legal property owners may experience not to have control over their land due to informal
squatters. Projects are in danger of stalling as emerging market governments often fail to reconcile the demands of several different stakeholders, which means the firm is required to take action themselves to enforce property rights (Lyer, 2016).

**Ineffective Contract-Enforcing Institutions in Emerging Markets**

The use of contracts in governance of transactions has been proven useful by Williamson (1985) in the transaction cost theory. Roles, rights and responsibilities of each party are well defined together with the rules and procedures of transactions, and the remedies for contingencies. These specifications help firms to safeguard against opportunism and achieve efficient transactions (Shou, Zheng and Zhu, 2016). An important condition for efficient exchange and investments in economic activities is the enforcement of contracts, but the extent of effectiveness to which contracts are enforced are shaped by the institutional environment in which they are designed.

In emerging markets, a firm may experience limits to the safeguarding of contracts as contract-enforcing institutions, such as official courts, are either absent or ineffective (Shou, Zheng, and Zhu, 2016; Gow, Streeter, and Swinnen, 2000). Designing contracts in weak institutions may expose parties to additional costs related to sunk investments in relationship specific assets, which is the occurrence of hold-ups (Gow, Streeter, and Swinnen, 2000). This contract ineffectiveness increases with a lack of information transparency and legal enforceability and can according to Shou, Zheng and Zhu (2016) make a firm seek long-term personalized relationships in business and politics to overcome this ineffectiveness (Rodrik, 2008).

In order to decrease the risk of a hold-up, Gow, Streeter and Swinnen (2000) suggest the use of private sanctions and legal enforcement. They furthermore claim that it is in some cases not feasible to use legal enforcement mechanisms as there may occur litigation costs and ineffective contract laws with court decisions being highly uncertain and non-transparent. When public contract enforcement mechanisms are weak, private enforcement mechanisms may work (Gow, Streeter, and Swinnen, 2000). Private sanctions are both losses from a termination or non-renewal of a contract and a damage to the reputation of the party holding up the transaction. Contract ineffectiveness may increase future costs of doing business by preferring written contracts to verbal promises (Gow, Streeter, and Swinnen, 2000). Furthermore, Rodrik (2008) states that firms must be willing to renegotiate if terms of a contract are not fulfilled.
Strategies to Deal with the Institutional Challenges in Emerging Markets

Recognizing the unique institutional challenges and higher transaction costs in emerging markets force the foreign private investors entering these markets to come up with strategies that fit these circumstances. As the role of institutions is to reduce uncertainty by establishing a stable structure to human interaction, the economy is affected by institutions due to their effect on the costs of exchange and production (North, 1990). Correspondingly, Peng (2003, p. 278) describes market-oriented institutional transitions as “moving from one primary mode of exchange to another mode in order to reduce uncertainty”. Simultaneously, as institutions in most countries constantly evolve and change, political tension is produced in many poorly performing economies as new individuals and organizations in the economy, who might gain from a change, try to change the rules of the game (Peng, 2003). These institutional transitions are fundamental changes in the formal and informal rules of the game, which will affect organizations (Peng, 2003).

Fundamental institutional changes can happen overnight and the creation of new institutions do not always close the gap after the vanish of old institutions, thus leaving a period of expanding uncertainties (Peng, 2003). “Institutions do not appear in the world fully formed; rather, they must be used into existence” (Sun, 2017, p. 140). Therefore, foreign investors must be willing to deal with the institutions in emerging markets no matter how problematic they seem (Sun, 2017).

One additional fundamental lesson is found by North (1990) arguing that although formal rules may change rapidly and unexpected, informal constraints are much more resistant to deliberate policies. Although the institutions in developed markets also change over time, it happens at a noticeably slower and incremental pace than in emerging markets and are therefore calculable and manageable (Rottig, 2016; North 1990).

As MNCs based in developed markets cannot simply transfer their strategies employed at home, they need to develop strategies to engage the entire value chain with those in emerging markets in order to remain competitive (Khanna, Palepu and Sinha, 2005). There are no universal truths about how to succeed in emerging markets, and best practices in one market may not be applicable in another. Although it would be tempting to view all emerging markets as one, the most obvious implication for MNCs is how essential it is to realize that all emerging markets have unique institutional contexts and must be distinguished collectively from developed markets and individually from each other, and even within the host economy (Wright et al., 2005; Khanna and Palepu, 2010; Meyer and Nguyen, 2005; Khanna, 2014). While this implication seems negligible
it is surprising to comprehend how few MNCs that either ignore it or simply do not understand the importance of the institutional context (Rottig, 2016; Khanna and Palepu, 2010). The institutional-based view argues that institutional forces lead to differences in firm performance (Peng et al., 2009). According to several studies, as firms seek to expand internationally, it is critical to exercise significant due diligence regarding formal and informal rules of the game in overseas markets (Luo and Peng, 1999; Hitt et al., 2004; Globerman and Shapiro, 2008).

The rapid change of institutions is a major challenge for foreign investors in emerging economies (Meyer and Nguyen, 2005). Formal institutions are affected directly by regulatory changes, whereas the impact on informal institutions can first be observed a significant period of time after the fact (Meyer and Nguyen, 2005; North, 1990). However, the mechanism to which these changes of informal institutions impact MNCs are not fully understood (Hoskisson et al., 2000). Thus, in the context of emerging economies, the ideal strategy might change during different phases of the transitions, like moving from a network-based strategy, emphasizing interpersonal relationships, to a market-based strategy, concentrating on competitive resources and capabilities (Peng, 2003).

Adaptability

As institutions constantly change and institutional voids cannot be mandated away through deregulation and liberalization, MNCs must adapt to the unique institutional environment of emerging markets (Khanna and Palepu, 2010; Rottig, 2016). This adaptability can be divided into political-, social-, and economical adaptability, which can be considered as a dynamic capability (Rottig, 2016).

Political Adaptability

In the context of emerging markets, political adaptability refers to the need for MNCs to accept the importance of local governments and to adjust to the governments’ institutional requirements in order to build legitimacy in emerging markets (Rottig, 2016). The local government is a central player in the corporate governance system in emerging markets as they often act as the legally authorized regulatory body in control of the approvals, acceptance, and support that is crucial to MNCs (Cuervo-Cazurra et al., 2014; Boubaker and Nguyen, 2014). The literature also agrees that in order for businesses to deal with the underdeveloped market infrastructure in emerging markets they rely on alternative strategies such as creating an informal connection to the local government (Khanna and Palepu, 1997; Nee, 1992; Peng and Luo, 2000). Several scholars show evidence
stating that well managed relationships with the government gain access to important state resources and receive preferential policy status as an informal connection substitutes for weak market structures and hence will enhance a MNC’s political legitimacy. Therefore, MNCs often have strong incentives to partner up with local governments in emerging markets (Hillman, Keim and Schuler, 2004; Marquis and Qian, 2014; Zhao, 2012).

The strong power of the local governments in emerging markets possess a constant threat to the MNCs operating in these markets as a withdrawal of the acceptance and support from the MNCs are more likely to be exercised in unanticipated and unpredictable ways compared to the standards in developed countries (Rottig, 2016). Different studies have shown how local governments in emerging markets may discriminate against foreign MNCs by establishing regulations that give local firms preferential advantages (Murtha and Lenway, 1994; Zaheer, 1995).

Moreover, due to the more influential role of informal social institutions in emerging markets compared to formal legal institutions, the local governments often have great social orientation and have more control over firms than governments in developed countries (Aturupane, Gleewe and Isenman, 1994; Boubaker and Nguyen, 2014). Thus, MNCs in these emerging markets are pressured to be actively involved in the local communities to signal to the local government that they have a lasting stake in the local market by hiring locals, financing through local sources or find local suppliers (Rottig, 2016). Noticeably, in the context where the state frequently intervenes in business, control local financing, access to raw materials and energy, MNCs will likely focus on establishing a relationship with the state over other stakeholder groups when deciding on relational strategies (Marquis and Raynard, 2015).

Social Adaptability
In order to fill the intermediary roles, in particular informal institutions have developed in many emerging markets and have become crucial for economic activity compared to formal institutions that drive economic activity in developed markets (Khanna and Palepu, 2010). Market failures are beneficial to some participants in a market, but not all, so institutions that reduce market failures are not consistently accepted by all actors in the market (Khanna and Palepu, 2010). “Building market infrastructure is thus a matter of both economics and politics” (Khanna and Palepu, 2010). The understanding of the impact of local social institutions in emerging markets and the importance of engaging in CSR, building trust with local stakeholders, and meeting local stakeholders’ expectations are referred to as social adaptability (Zhao, Park and Zhou, 2014).
Beside the local government, the stakeholders include among others local organizations and business partners, the media, and the general public (Rottig, 2016). To deal with these informal institutions, Rottig (2016) suggests the strategy for MNCs to become a member of influential local business groups that have complementary relationships and cooperation.

**Economical Adaptability**

Even basic business assumptions are different in emerging markets, so the economical adaptability to adjust to unpredictable and dynamic economic environments is important to MNCs when navigating markets that are profoundly based on informal relationships and transactions (Rottig, 2016). Previous academic research has highlighted the importance of developing local social relationships when operating in the local environments, which allow the MNCs to access location-specific knowledge and be part of a local informal network that are important factors in emerging markets (Peng and Luo, 2000; Peng and Zhou, 2005; Sun, 2017; Rottig, 2011). In volatile countries, local partners can also help foreign investors to navigate political risk (Sun, 2017). Thus, institutions may induce foreign investors to overcome barriers by allowing access to local resources, by partnerships with local firms (Meyer and Nguyen, 2005). However, with significant institutional voids in a market MNCs cannot rely on local partners fully as potential corporate scandals at these partners could lead to negative legitimacy spill-overs (Pavlovich, Sinha and Rodrigues, 2016).

**Infrastructure Investments**

The institutional challenges in emerging markets affect all actors in the market, however, there are some institutional challenges that significantly affect infrastructure investments due to the specific characteristics they possess. These challenges force the foreign private investors to safeguard in ways that fit the unique features of infrastructure in the environment of which they operate.

**Infrastructure Characteristics**

Infrastructure denotes a combination of diverse industries with specific characteristics, however, it is common in the literature to speak of infrastructure as a group due to unique features that differentiates it from other industries like manufacturing (Ramamurtia and Doh, 2004). Infrastructure assets has been described as "the physical structures and networks that provide essential services to the public and community" (OECD, 2014, p. 15). As a relatively new asset class, the infrastructure sector faces the challenge of data collection as related to a shortage of
data, hence, this limits the opportunities to benchmark the investment performance, which is seen as a major obstacle for infrastructure investments, because of the lack of transparency (OECD, 2015b; OECD, 2015c; Bahçeci and Leh, 2017). However, it is clearly stated by literature that one thing is certain: private investors investing in infrastructure in low-income countries can be sure to face high costs and risks (OECD, 2015b). This is partially due to certain infrastructure financing specific characteristics that differentiate this asset class from other assets (OECD, 2015c).

The specific characteristics of infrastructure projects comprise natural monopolies, which shows increasing returns to scale and high fixed costs (Ramamurtia and Doh, 2004; OECD, 2015a; OECD, 2015c; Della Croce, 2011). These investments also have high transaction cost specific investments, due to the high up-front investments of limited alternative uses (Schepper, Haezendonck, and Dooms, 2015; Williamson 1999). In addition, the asset specificity of infrastructure projects is a major disadvantage for the private owners, but although the owners of the infrastructure project risk not to earn a positive return on their investment, the economy as a whole will likely still benefit from it (OECD, 2015a; OECD, 2015c). In addition, infrastructure services are non-tradable, or at best limited to trades to neighboring countries compared to manufacturing, so the projects are hereby not threatened by importing competition (Ramamurtia and Doh, 2004).

Other infrastructure project characteristics include the lack of liquidity and the long asset life, which requires the often large number of different financial stakeholders to be dedicated to the long run, as the project might not generate positive cash flow in the development- and construction phase (OECD, 2015c; Della Croce, 2011). However, once an infrastructure project is in its operational phase, it typically generates stable and predictable cash flows, as infrastructure provides essential services and tends to have low usage volatility during economic recessions or when prices increase (OECD, 2015c; Della Croce, 2011; Bahçeci and Leh, 2017). Moreover, infrastructure projects are typically heterogeneous and unique in terms of the service they provide and the structure of the project (OECD, 2015c). The complexity of these projects often needs complex legal arrangements to ensure appropriate risk-sharing and distribution of payoffs to all parties (OECD, 2015c). Thus, infrastructure investors are particular vulnerable to changes in government regulations, compared to other industries, which can negatively impact profitability (OECD, 2015a).
In terms of the maturity of a project and the specific project knowledge, infrastructure projects can be divided into two: greenfield- (or primary) and brownfield (or secondary) projects (Della Croce, 2011). Greenfield projects are newly constructed assets at a specific site, whereas brownfield projects are already operational, but may need a renovation or expansion (Della Croce, 2011). In comparison, greenfield projects hold a considerably higher degree of uncertainty and risk, and do not immediately generate a profit when the facility is operative; providing a cash flow characterized by a J curve (Della Croce, 2011).

Another way that infrastructure investments differentiate from other investments is the importance of considering and engaging the local community. This is especially the case in emerging markets, not only in the development phase but a continuous engagement should be a high priority for the project management. According to BCG/AFC (2017), projects need to see the local community as a partner and stakeholder; hence, a local promoter should continuously engage with community leaders and promote the project. Furthermore, it is necessary to explain to the community how the project benefits them and employ people from the community (BCG/AFC, 2017).

**Infrastructure Investor Characteristics**

Traditionally, infrastructure investments were financed by the government, given the nature of public good and the positive perceptions often generated by such facilities (OECD, 2015c). However, due to issues including increased public budgetary constraints and increased public debt-to-GDP ratios, public funding of infrastructure has decreased (OECD, 2015c). The conflicting issue with the solution of the private participation in the infrastructure sector is that not all private investors have an appropriate financing structure to invest in this asset class, because only the largest investors have the capacity to invest directly in infrastructure projects (OECD, 2015c).

Therefore, collective investment vehicles, like infrastructure funds, are an option for institutional investors to invest in this industry (OECD, 2015c; OECD, 2014). However, the issue is that the long-time horizon of these assets may limit the number of potential investors (OECD, 2015c). Although infrastructure investors range from specialized businesses to diversified conglomerates, the typical institutional investors attracted to this private equity type structure within this asset class are pension funds, public pension reserve funds, life insurance companies, mutual funds, and sovereign wealth funds (OECD, 2015b; OECD, 2015c). These equity investors that invest in
especially unlisted projects that cannot benefit from liquid secondary markets typically have a long-term perspective and seek diversification benefits (OECD, 2015c; Bahçeci and Leh, 2017).

The long-term perspective is especially important in emerging markets where the shortage of human and financial capacity and institutional challenges lead to delays in approval for projects, that may take twice as long as in developed markets, which means higher project costs and longer project life cycles. Developers typically see a longer development period, which means investors need large and patient capital and must be prepared for ongoing renegotiation of contracts, and therefore expect higher internal rates of return (BCG/AFC, 2017). Large upfront capital development costs of feasibility studies and impact assessments are also significant to private investors in emerging markets. Furthermore, narrow financial markets mean most commercial banks lack capital and experience to finance large infrastructure projects (BCG/AFC, 2017).

Institutional private investors can access infrastructure projects through different channels: unlisted equity, listed equity or by issuing debt (OECD, 2015c). From a portfolio investment perspective, as listed infrastructure projects tend to follow the general market trends, these types of investors are typically looking to diversify their portfolio through debt instruments and unlisted equity (OECD, 2015c). Although unlisted infrastructure projects are illiquid they have a long-term investment horizon and low correlation to traditional asset classes and can thereby ensure the private institutional investors great diversification opportunities within a multi-asset class portfolio (OECD, 2015c). In addition, long-term investors prefer to invest in large, mature operating assets with stable and predictable cash generative ability as consumer demand is typically relatively price inelastic (Della Croce, 2011; OECD, 2015c).

As not all institutional investors have the capacity and knowledge needed to make direct investments in infrastructure projects, the market has recognized the demand for co-investment platforms like specific infrastructure funds. It is therefore necessary to identify the different competencies required as a direct investor or indirect investor. Making direct investments in unlisted infrastructure projects require significant financial capacity and industry specific expertise (OECD, 2015c). Moreover, the investor needs to be able to assess the risk and return profile of the investment in all phases of the project’s life. On the other hand, an indirect investor, i.e. an investor in a private equity infrastructure fund, still needs sophisticated valuation skills.

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13 Exceeding ten years
but this risk analysis can be done by the asset management company on behalf of the investor (OECD, 2015c).

**Policy Uncertainty and Corruption**
The weaker the political and institutional environment, the higher the risks for the private participants, which both lowers the probability of private investment in the market and the amount invested (Moszoro et al., 2014). Infrastructure investments are highly sensitive to sovereign risk, which means that country risk rating is a predictor, on average, of private participation in infrastructure levels in emerging markets and are positively correlated to an improvement in sovereign risk (Araya, Schwartz and Andres, 2013). Noticeably, private participation in infrastructure investments are more sensitive to country risks than FDI in all sectors, which means that FDI in other sectors in high risk environments expect to receive returns proportionate to the perceived risks than infrastructure investors (Araya, Schwartz and Andres, 2013; OECD, 2015b).

Policy uncertainty is a great risk in emerging markets, especially when infrastructure projects are characterized by long time horizons combined with the important involvement of the public sector. Policies, regulations and political support for a project may change instantly when a new administration steps into power, or even when a new minister or public official takes office within the same administration. In addition to the political instability, corruption and the lack of transparency are still big issues in emerging markets and these mindsets may take time to shift (BCG/AFC, 2017). The less corruption in a country, the higher the average level of infrastructure investments with private participation (Moszoro et al., 2014; OECD, 2015b).

**Private-Public Partnerships and Special Purpose Vehicle**
The growing need for infrastructure development in emerging markets is an enormous job for governments alone, particularly because of fiscal constraints and other monetary liabilities. This has encouraged the governments to include private sector entities resulting in the PPP model has emerged as a leading mode of funding infrastructure (Kateja, 2012). A PPP is defined as a “long-term commercial arrangement for the delivery of public services, where there is a significant degree of risk-sharing between the public and private sectors” (Yong, 2010). This type of arrangement is therefore well-suited for emerging market governments with fiscal constraints (Yong, 2010).

Although the private investments have contributed to a far greater extent than how far sole government financing could have reached, those investments have traditionally mainly been in
less risky subsectors, reflecting the more risk averse private sector (Kateja, 2012). Private institutional investors simply respond to returns and are only willing to take on certain amounts of risk associated with the investments (World Bank, 2017c; OECD, 2017). The key for the government is therefore to strategically establish the most appealing risk-return investment profile in developing countries to attract private investors (Kateja, 2012; OECD, 2017).

The fundamental principle of establishing a PPP is that the project related risks of the underlying infrastructure project should be allocated to the party best able to manage it. Typically, the private investor can best control the commercial asset-specific risk, regarding demand and revenue fluctuations, whereas, the public partner can best control legal, regulatory and political risks (OECD, 2015a). In many cases, PPPs establish a SPV to be responsible for the development, building, operations, and maintenance of the asset during its limited lifespan (Liu et al., 2014; Zheng, Roehrich and Lewis, 2008). A SPV differs from a joint venture by providing the service on behalf of both parties and has the objective to meet both the goals of the company and at the project level (OECD, 2014).

The strategy of establishing a SPV allows for project finance, which is becoming increasingly common in infrastructure PPPs to attract private investors (OECD, 2015c; OECD, 2014). This financial structure allows the investors and lenders to rely on the cash flow generated by the project to directly pay back the project debt and equity, rather than using the balance sheets of the shareholders (OECD, 2015c). Thus, liability to the shareholders is limited to the equity capital they have contributed to the project because the lenders have no or limited recourse to the shareholders (OECD, 2015c). Moreover, the stable cash flows of infrastructure projects allow for higher levels of leverage than most assets, as well for mezzanine finance from for example development banks, which increase solvency for the project (OECD, 2015c).

As PPP projects are long-term arrangements, appropriate and balanced risk sharing should be achieved, as the long-term and complex nature of the contracts cannot specifically mention every risk the project may come across (World Bank, 2017c). It is widely recognized that it is important to partner up with a stable political, economic and legal regime, with a strong regulatory environment to implement successful PPP infrastructure projects. When these conditions are not met private parties may be exposed to too high risks (World Bank, 2017c; Romero; 2015). In these cases, the involvement of export credit agencies and DFIs can give investors and lenders greater confidence. This is done through favorable financing terms, insurances and their
relationships to government level (World Bank, 2017c).

In addition, the concept of opportunistic behavior can be applied to track the logic behind a government’s equity involvement in a PPP-SPV structure, as the public and the private sector may have self-interests and may attempt to take economical advantage of changing circumstances. This is especially relevant in emerging markets where public legal regulations are not fully established. Voting power and management involvement is usually reflected in the share in equity of the SPV (Moszoro, 2014). The relationship in a PPP between the public and private sector tends to have a positive character, where the interaction is based on mutual trust and support (Parker et al., 2018). However, control mechanisms such as screening and monitoring to reduce adverse selection, moral hazard and delays often function as a dysfunctional factor, which lead to lower trust and less cooperation between the partners (Mahaney and Lederer, 2003; Parker et al., 2018).

**Analytical Framework**

The institutional challenges are the most predictable feature of an emerging market in the short and medium term and require significant time and expertise to close these gaps (Khanna and Palepu, 2010). Therefore, it is according to Khanna, Palepu and Sinha (2005) the firms that best seek to understand the institutional voids that are most likely to choose the best markets to enter select optimal strategies and exploit emerging markets best. By having an institutional approach when examining emerging markets allows the foreign private investors to determine the institutional challenges that prevent efficient exchange in each market (Khanna and Palepu, 2010). Thus, spotting and responding to the institutional context is the most essential part of the decision making for MNC’s considering expanding operations into emerging markets.

Summarizing all the institutional challenges of infrastructure investments in emerging markets for foreign private investors it is evident that tailored strategies are needed. To address these challenges a simple analytical framework has been created. By treating the institutional challenges as independent variables, the institution-based view of strategy will explain the changes in the dependent variables. These strategies include all the tactics, actions, and long-term strategies that the foreign private investors implement in their infrastructure projects in order to derisk their investment. Thus, this analytical framework will analyze the dynamic interaction between infrastructure characteristics, institutions and strategies formulated by the foreign private investors investing in infrastructure in emerging markets, as visualized in figure 3.
The following section will derive five propositions, which is based upon the literature review. Each proposition will state a strategy for how foreign private investors must deal with the identified institutional challenges in emerging markets when investing in infrastructure. Later in the paper, these propositions will be applied to the case of LTWP in order to analyze each proposition.

Propositions

Proposition 1
Due to influential informal institutions that according to Peng et al. (2009) take over when formal institutions are weak the informal institutions will provide guidance, reduce uncertainty and confer legitimacy. Therefore, the foreign private investors need to be on the ground to be able to understand the different stakeholders of the project and navigate the informal institutions. As weak property rights are a challenge in emerging markets, the local community may act as a threat to the success of the project if they do not accept or support the construction of the infrastructure investment.

Due to the large influence of informal institutions and weak property rights, the investors need to enforce property rights themselves by considering the local community as a stakeholder. Investors achieve acceptance and support from the local population around the project site.
through a continuous engagement, hiring and illustrations to the community of the benefits of such a project. A locally influential promoter that will communicate with local leaders will therefore be a great advantage for the foreign private investors to have (BCG/AFC, 2017; Zhao, Park and Zhou, 2014).

Moreover, as the local government often acts as the legally authorized regulatory body with a strong social orientation the investors are forced to be active in the local community, to show their long-term interest and their benefit to the community. This local engagement is not only a requirement from the local government, but also from the local population around the project site as they have a large impact on the project performance. Hence, the investors need to be responsive to all local stakeholders in an informal institutional environment. Thus, following proposition is derived:

Proposition 1: Foreign private investors in infrastructure projects in emerging markets can deal with weak property rights, powerful local governments and influential informal institutions by engaging with the local community.

Proposition 2
Informal institutions in emerging market economies are influential, consequently foreign private investors need to understand and be able to navigate them. However, this can be difficult due to non-transparency, and are therefore a source of uncertainty. As the informal institutions only change slowly, the investors do not have power to influence them but instead need to adapt to the unobservable rules of the society in order to decrease transaction costs. Therefore, to adjust to a market that is profoundly based on informal relationships and transactions, the foreign private investors need to bring in local investors or advisors to help navigate in the non-transparent informal institutional environment (Peng and Luo, 2000; Peng and Zhou, 2005; Rottig, 2011).

This local knowledge is of great importance due to each country has unique contextual environments even within the host country. Local investors will allow access to local resources such as location-specific knowledge and be part of a local informal network. Furthermore, acceptance from the local community may increase if local investors are involved in a project and it may also decrease discrimination from local governments. Therefore, they need to bring in local investors or advisors who know how to navigate in the environment and communicate with governments. Thus, the following proposition is derived:
Proposition 2: Foreign private investors in infrastructure projects in emerging markets can deal with influential informal institutions and unique institutional contexts by collaborating closely with local investors or advisors.

Proposition 3
In emerging markets, protection of property rights is to a large extent incentivized by the government, so the foreign private firms need unique strategies that can safeguard their contracts when contract-enforcing institutions are either absent or ineffective, which may lead to a hold-up problem. Although judicial laws might be in place in a given emerging market, the judicial environment is inefficient, costly, and lacks information transparency, which also builds a foundation for corruption. Shelanski and Klein (1995) suggest that the most optimal form of governance to navigate unstable contract-enforcing institutions is a hybrid form of governance with complex contracts or partial ownership. However, the institutional theory claims that the effectiveness of these contracts depends on the institutional environment (Gow, Streeter, and Swinnen, 2000; Shou, Zheng, and Zhu, 2016).

In response, foreign private investors should meet these institutional shortcomings of the contract-enforcing mechanisms by adapting to the influential informal institutions through a long-term personalized relationship with businesses and different political parties (Shou, Zheng and Zhu, 2016). This will reduce opportunistic behavior, which consequently will lower the measurement and enforcement costs. They also have to be willing to renegotiate contract terms when conditions change to try to avoid ending up in court with a dispute. The foreign private investors can also seek to include export credit agencies and DFIs in their projects to protect against political instability, through favorable financing terms, insurances and relationships to government level. In addition, by giving all parties a stake in the performance of the agreed-upon transaction will result in less moral hazard as each party involved in the contract is exposed to more risk. Thus, the following proposition is derived:

Proposition 3: Foreign private investors in infrastructure projects in emerging markets can deal with ineffective contract-enforcing institutions by applying informal and financial safeguards to their contracts.
Proposition 4
As formal institutions constantly evolve and change it is critical for foreign private investors to influence the direction of the legislative environment. As infrastructure projects have long lifespans, high asset specificity and have a monopolistic nature, which result in frequent political intervention, the investors are vulnerable to changes in government regulations. Moreover, the non-tradeable nature of infrastructure projects means that the investors cannot use exportation as bargaining, nor can they divert local production to foreign markets if disagreements with the government may occur (Ramamurtia and Doh, 2004). In response to these conditions, several scholars argue that the foreign private investors need to establish a well-managed relationship with the state in order to gain control of the risky regulatory systems and political instability in emerging markets (Hillman, Keim and Schuler, 2004; Marquis and Qian, 2014; Zhao, 2012). This relationship with influential state officials may be through an informal connection, which will act as a substitute for the weak regulatory system as it will likely lead to gained access to critical resources and preferential policy status. Thus, the following proposition is derived:

Proposition 4: Foreign private investors in infrastructure projects in emerging markets can deal with political instability and frequent political intervention by exerting influence on the political environment.

Proposition 5
The weak institutions experienced in emerging markets demand specific characteristics of the infrastructure investor to fill out an intermediate void, which reduces transaction costs. Investors may not possess these characteristics on their own, hence, they resort to a combined investor group in which these are met, which leads to economies of scale and scope and organizational learning. The constant market uncertainty and changing circumstances in the market require investors to have experience in emerging markets, and investors with a lack of experience and market knowledge lead to increasing uncertainty, which will result in higher transaction costs. The investors need for have cumulative host market experience, as well as a hands-on approach with an end-to-end view of the project. According to BCG/AFC (2017), the investors that travel to the site and are constantly aware about what is happening on site are the most likely to succeed.

As infrastructure characteristics comprise of a long asset life and lack of liquidity, investors are required to have a long-term perspective with patient capital, especially in emerging markets where institutional challenges often lead to delays. The requirement for large financial capacity is
especially needed in unlisted projects, to cover the high costs of the underlying assets. Furthermore, the weak financial markets in the host country will force projects to include international lenders such as development banks. Thus, the following proposition is derived:

*Proposition 5: Foreign private investors in infrastructure projects in emerging markets can deal with market uncertainty, weak financial markets and high capital intensity by establishing an international investor group with experience, large financial capital, hands-on approach, and by including DFIs and export credit agencies in the financial structure.*
Kenya

“We are world champions in installing wind turbines, that is not the problem. The problem in Kenya is the context of installing them.”

Kristian Heydenreich, Head of CSR at Vestas

As this research seeks to answer the research question by studying the case of LTWP, it is critical to understand the business- and political environment in the host country of the case study; Kenya. This section aims to break down the conditions of which the foreign private investors have to deal with when investing in infrastructure in this country. In context of the case presentation of Kenya as a host country for infrastructure investments, it will be possible to identify critical institutional challenges that will be further analyzed in relation to the propositions in the analysis section later in the paper.

The Kenyan Investment Climate

Located by the important Indian Ocean port and a strategic great location bordering Ethiopia, South Sudan, Uganda, Tanzania, and Somalia, Kenya is a major communications and logistics hub on the east coast of Africa. It has a population of more than 48 million, which is growing at around 2.6% per annum (World Bank, 2017d; PwC, 2013). The Kenyan workforce is relatively well-educated in comparison to other East African countries, mainly because of the government’s work to provide free secondary education and boost technical and vocational skills (PwC, 2013).

Noticeably, foreign investors get the same treatment as domestic investors from administrative and judicial authorities, which makes it easier for foreign investors to access capital markets to support growth through debt and capital market funding (Santander, 2018; PwC, 2013; Odero, Reeves and Chokerah, 2017). Moreover, the finance bill that intended to guarantee 30% local ownership of foreign companies registering in Kenya was dropped in September 2016 after pressure from the private sector and the same year Kenya enacted legislation to remove restrictions on foreign ownership of public companies (Odero, Reeves and Chokerah, 2017). The government also guarantees capital repatriation and remittance of dividends and interest to foreign investors. The foreign investors can this way convert freely and repatriate profits. Also, in favor for foreign private companies and investors, they can according to the Companies Act of

14 Heydenreich, 2018
15 People who are Kenyan citizens by birth
2015, freely establish, acquire, and dispose other companies and the national constitution of Kenya provides protection against the expropriation of private property (Kenya Investment Authority, 2018b). These are all policies and conditions that encourage foreign investors to invest in Kenya.

When comparing with the rest of the world, Kenya is climbing the rankings of the World Bank’s Ease of Doing Business Index, which means that the regulatory environment is becoming more attractive. In the 2017 ranking, Kenya rose 12 spots to 80th out of 190 countries, which currently ranks Kenya third in the sub-Saharan Africa region (World Bank, 2018b). In fact, Kenya has jumped 33 spots in two years despite FDI falling from USD 1,450 billion in 2011 to USD 393 million in 2016 (World Bank, 2018b; World Bank, 2018c).

**Vision 2030 and Economic Development**

The GoK has big plans for the future, which includes infrastructure, where the government is actively seeking bids to improve and expand infrastructure networks (Kenya Investment Authority, 2018b). Recognizing the need to promote investment, former president Kibaki and former Prime Minister Odinga adopted in 2008 the ‘Vision 2030’; a blueprint for the future development of the country. The development plan aims to transform Kenya into an industrializing middle-income country based on the foundation of developing infrastructure to fuel economic growth (KEPSA, 2017). As part of the early process, one of the objectives was to identify national flagship projects and investments for both foreign and domestic private investors that would provide economic growth (KEPSA, 2017; Amisi and Chemoiwo, 2018).

Under Vision 2030, the target GDP growth is 10% (World Bank, 2017b). However, Kenya has grown economically at a consistent pace at around 5-6% a year since 2013, although dealing with high youth unemployment and political tensions (Sun, 2017; Deloitte, 2018). When looking into the short-term future, the World Bank predicts the economy in Kenya to continue to increase to 5.5% and 5.9% in 2018 and 2019 respectively (World Bank, 2017b). Overall, the economy in Kenya is stable and as of 2016, GDP stood at USD 70.5 billion with a per capita income of USD 1,587; in fact, Kenya’s GDP has increased by 68% from 2011 to 2017 (AfDB, 2018b; Kenya Investment Authority, 2018b; World Bank, 2018c).

Private investment, both domestic and foreign, contributes massively to facilitate economic growth and development, through an increase in capital, employment and inflow of foreign exchange (KEPSA, 2017; Aglionby, 2017a). However, Kenya’s FDI per capita is still
comparatively low even to neighboring countries like Tanzania and the Democratic Republic of Congo. Although the official data collection numbers might be inaccurate and incomplete due to the lack of an effective data collection mechanism, including FDI numbers, Kenya nonetheless must significantly increase private investment to achieve its development objectives (KEPSA, 2017).

**Public-Private Partnership Act**

Infrastructure needs in Kenya are vast and the public resources available to fund these projects are insufficient, although the infrastructure gap remains critical to the economy of Kenya (World Bank, 2017b). According to the World Bank (2017b), addressing this infrastructure deficit will require nearly USD 4 billion per year in the medium-term, which equals around 6–7% of the GDP of Kenya. There is therefore great potential for the foreign private sector to invest in infrastructure in Kenya. As a result of the need for private investments in infrastructure, the GoK passed in 2013 a law on PPPs that aims to attract foreign infrastructure investment (KEPSA, 2017; PwC, 2014). In certain scenarios, such as the energy and transportation sector, private investors may need public investment in order to move forward, which makes the fit for a PPP (KEPSA, 2017). This PPP act endorses such PPPs and inter-agency cooperation to provide the best chances for the investments to succeed, as in fact, more PPP structured projects in Kenya have been developed since the act was enacted (KEPSA, 2017; PwC, 2014). However, while PPPs are often a great initiative in developed countries, “Down here [in Kenya] it is like the democracy - they are practicing” (Petersen, 2018).

**Kenya’s Reliance on Debt from DFIs**

Although President Kenyatta aims to develop Kenya through the Vision 2030 plan by building infrastructure like roads, ports, and airports, at the same time the economy needs to be balanced (Petersen, 2018). Within the past decade, the public debt of Kenya has ballooned at a high rate, mainly from China, and then from the EU, the World Bank, and other development banks (Petersen, 2018; World Bank, 2017b). This is according to the World Bank (2017b) attributed to the financing of Kenya’s expansionary fiscal policy and underperformance in revenue generation. However, in December 2016 the IMF/World Bank Debt Sustainability Analysis indicated that Kenya’s risk of debt distress was low despite the government’s budget deficit equal to 8% of the GDP and a public debt–to-GDP ratio of 57.2% in June 2017 (AfDB, 2018b; IMF, 2016; World Bank, 2017b). Of the total debt–to-GDP ratio, external debt represents 29.8%, and of that external debt, multilateral debt represents 38% (World Bank, 2017b). Multilateral debt is debt owed to
international financial institutions such as the IMF, AfDB and the World Bank, which has been provided as low-interest loans (World Bank, 2017b; IMF, 2016). These types of commitments, including financial guarantees from e.g. development banks, give the debtor governments the highest priority to repay these loans as they represent a significant part of the external debt provided by a few major institutions.

Even though the Debt Sustainability Analysis by the IMF and the World Bank notes that Kenya’s risk of external debt distress remains low, the public debt–to-GDP ratio has risen throughout the past decade (see figure 4) (World Bank, 2017b). The three major credit rating agencies Standard and Poor's, Moody's, and Fitch Group all give the GoK a highly speculative credit rating but note the outlook as being stable. These credit ratings are typically used by sovereign wealth funds, pension funds and other institutional investors to measure the credit worthiness of a country (Trading Economics, 2018). This is in line with the African Economic Outlook16 that expects the debt–to-GDP ratio to stabilize at around 54-55% in 2018 and to gradually decline thereafter (Odero, Reeves and Chokerah, 2017).

![Figure 4: Public debt in Kenya as a percentage of GDP (World Bank, 2017b)](image)

**Political Instability**

Although Kenya sustains a relatively well-developed civil society by regional standards and has traditionally a relatively stable political environment, the recent 2017 presidential election led to an upgrading of the political risk in the country (PwC, 2013; World Bank, 2017d). The supreme court’s nullification of the incumbent president Uhuru Kenyatta’s victory in the election in August 2017, citing irregularities and mismanagement by the electoral commission, led to an

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16 The African Economic Outlook is a product of collaborative work by AfDB, OECD and the UN
unexpected and deadly election period (Moore, 2017a; Moore, 2017b; Burke, 2017). However, the main opposition leader Raila Odinga boycotted the second election due to lack of credible election procedures, which resulted in Kenyatta being sworn into office for a second and final term (World Bank, 2017d; Burke, 2017). As the supreme court upheld the victory of President Kenyatta, it officially ended the worst political violence in a decade, resulting in more than 60 people killed (Burke, 2017). Nevertheless, the atmosphere of political uncertainty and the setback of the democratic consolidation will have a negative effect on the economic activity in Kenya in the short term (World Bank, 2017d; Moore, 2017b). In fact, the political crisis resulted in both the World Bank and the finance minister of Kenya downgraded the economic outlook for the remaining part of 2017 (Aglionby, 2017a; Aglionby, 2017b). Although Kenya is characterized by political instability, the country operates as a free market economy, which promotes trade and investment, as price and exchange controls have been canceled by the government (Santander, 2018; Kenya Investment Authority, 2018b).

**Powerful Local Government**

The new constitution of Kenya in 2010 introduced a tenured judiciary and bicameral legislative house, but just as importantly; Kenya began a process of fundamental devolution (World Bank, 2017d; World Bank, 2012; Heydenreich, 2018). A more decentralized government has been increasingly adopted worldwide as a guarantee against discretionary use of power by bringing the public policies and the needs of the local constituencies closer together - and Kenya is now doing the same (World Bank, 2012; World Bank, 2017d). Kenya has two levels of political authority - national and county - but they are both independent, which means that the county governments are not subordinate to the national government but are supposed to work in a collaborative and equal manner (World Bank, 2012; OECD, 2016). The public sector in Kenya is already fairly decentralized and consists of 47 counties, to which both political power and government functions will be devolved (World Bank, 2012; Heydenreich, 2018). In addition, the county government has, like the national government, autonomous executive and legislative arms, thus the county governments have a great deal of political and legislative power (World Bank, 2012). With the additional responsibilities enforced by the new constitution, the county governments have a long list of responsibilities, including the implementation of the national environmental policies, trade development and regulations, business licenses, water provision and distribution, and public transport (OECD, 2016).
Weak Financial Markets

Foreign investors state the lack of access to capital in the Kenyan market as a critical barrier to obtain finance (IECI, 2012). The Kenyan banking system is characterized by limited competition as the six largest banks own just over half of the total assets in the market. In comparison, the small banks in Kenya only control around one tenth of the market. The limited competition is one of the main reasons for the expensive interest rates in the country. A joint study by the Central Bank of Kenya and the World Bank found that across all types of financial institutions the average annual interest rate for large enterprises was 15.3%. Another reason is that the banking sector typically lacks accurate and reliable information about the borrowers’ ability to repay their loans, which increases credit risk and thereby the interest rates (Central Bank of Kenya, 2015). Moreover, African banks typically cannot issue loans that exceed 6-7 years and the Kenyan financial institutions simply do not have enough liquidity to make the long-term loans required by infrastructure projects (Frøsig, 2018; IECI, 2012).

In particular in the relatively nascent market of renewables in Kenya, the local banks have only limited technical knowledge about these projects and are therefore unwilling to bear the risk of issuing loans to these projects. At the same time, it is also a challenge for foreign private infrastructure investors to find local partners with sufficient technical skills to do assessment studies (IECI, 2012). Thus, the financial markets in Kenya is considered to be weak and represents an institutional challenge for foreign private investors.

Corruption

Corruption is one of the major stumbling blocks when doing business in Kenya (Petersen, 2018; Deloitte, 2018). In the 2017 Corruption Perception Index released by Transparency International, Kenya is ranked 143 out of 180 countries, behind countries like Paraguay, Russia and Myanmar (Transparency International, 2018a). Several studies show that corruption has a negative effect on FDI inflows in general (Freckleton, Wright and Craigwell, 2012; Canare, 2017; Pupović, 2013). Institutional factors like corruption increases the costs of firms doing business and as a result, corruption can be anticipated to lower the expected profitability of investment projects. In addition to the higher transaction costs, corruption increases uncertainty for foreign investors because corruption agreements are not enforceable in the courts of law. Foreign investors will therefore consider the level of corruption in the host country before committing to an investment.

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17 Corruption is the abuse of entrusted power for private gain (Transparency International, 2018b)
According to Petersen (2018), foreign investors entering the Kenyan market will be exposed to less corruption if they only operate in the private market in contrast to dealing with the public sector.

**Inefficient Judicial System**

When looking at the World Bank’s Ease of Doing Business Index, the Contract Enforcement indicator\(^\text{18}\) ranks Kenya 90th globally and 10th in the Sub-Saharan Africa region. The fact that this ranking places Kenya behind countries like South Sudan and Ethiopia indicate that the Kenyan judicial system is slow and inefficient (World Bank, 2018b; Santander, 2018; Central Bank of Kenya, 2015). The commercial courts are “relatively unskilled, greatly understaffed, beset with an ad hoc attitude and excessive exercises of judicial discretion, and not given the material support they need and deserve” (Central Bank of Kenya, 2015, p. 25). Noticeably, the financial sector in Kenya experience difficulties with contract enforcement and when cases are moved to court the matter can take years to resolve because of the inefficiency of the judicial system (Central Bank of Kenya, 2015).

**Weak Property Rights**

“Land in Kenya is a huge issue” (Elliott, 2018). Access to land is a major burden for foreign investors in Kenya as the process is characterized by heavy bureaucracy and uncertainty, as well as community resistance (KEPSA, 2017; Elliott, 2018; Petersen, 2018). When Kenya in 2010 promulgated its new constitution, new law reforms relating to land was introduced (Kenya Law, 2018). The new constitution divides land into three categories: public land (mainly land occupied by a state organ), private land (registered land held by any person under freehold tenure\(^\text{19}\)), and community land (land lawfully registered in the name of group representatives) (Kenya Law, 2018). Community land is often inhabited by local community, which is in the constitution “identified on the basis of ethnicity, culture or similar community of interest” (Kenya Law, 2018). Moreover, in accordance to the constitution “Any unregistered community land shall be held in trust by county governments on behalf of the communities for which it is held”, hence; the county governments do not own the land, but rather manages the land for the people (Kenya Law, 2018; Elliott, 2018). The problem is that the local communities often do not recognize the national rules

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\(^18\) The Contract Enforcement indicator evaluates how well the country has adopted a series of good practices that promote quality and efficiency in the court system (World Bank, 2018b)

\(^19\) Freehold land is the greatest interest a person can have on land as it gives the holder absolute ownership of the land for life (Kenya Law, 2018)
and the property rights are not properly enforced (Thomassen, 2018; Tejlgaard, 2018).

**Insecurity**

As the dominant economy in East Africa, it is crucial for Kenya to guarantee a safe business environment within and beyond its borders in order to attract FDI (Kinyanjui, 2014; Deloitte, 2018). However, Kenya is faced with various types of crime and insecurity, such as ethnically-based political rivalries and terrorism (PwC, 2013; Sun, 2017; Deloitte, 2018). Terrorist activity threatening the national security - most notably from Al-Shabaab - have occurred mostly in areas close to the coast of Somalia (Sun, 2017; Deloitte, 2018; Elliott, 2018). In particular in the Northern Kenya, weapons are common among the local communities as the region is bordering to countries that all have had civil conflicts and terror incidents. Moreover, the region has been neglected by the national government, which has led to the formation of a semi-formal security organization, called the Home Guards. This security organization is not the police, but they are supplied with guns by the different parts of the government, in part to threat opposing political groups (Elliott, 2018). Thus, Kenya - and in particular the Northern part of the country - is a volatile environment that must be taken into account before investing in the area.

**Sub-conclusion**

The Kenyan infrastructure gap cannot be closed by government funding alone, so the government has worked to attract foreign private infrastructure investors through different policies and initiatives. Kenya has overall a sound investment climate for foreign private investors looking to invest in infrastructure, but the Kenyan market is still faced with major institutional challenges that these investors need to deal with. Although Kenya is a market economy, the country is still characterized by political instability, an inefficient judicial system, corruption and safety concerns, as well as weak property rights as they are not properly enforced or recognized by the local communities. This all contributes to a general market uncertainty in addition to the fact that the renewables industry finds it difficult to find technical skilled people despite a well-educated workforce in comparison to the neighboring countries. Moreover, the foreign private investors need to deal with weak financial markets and the influential county governments when investing in infrastructure projects due to their political and legislative power. Finally, as 38% of Kenya’s external debt is financed by multilateral debt, from primarily development banks, force the government to repay these loans in order to secure future funding.
Lake Turkana Wind Power

As the case study of this paper, the LTWP project will in this section be explained and clarified in details in order to understand the dynamics and different components of the project. Therefore, this section will present the full structure of the project, including the financial construction. In addition, specific project related challenges and conditions will be explained. In this way, this case description of LTWP will provide insights which will be valuable to the following analysis section.

General Description

The LTWP project is the largest private investment in Kenya’s history and the largest wind farm in Africa (LTWP, 2018; AfDB, 2018a; AfDB, 2011). The main objective of the project is to “provide clean, reliable, low cost power by increasing Kenya’s national power generation capacity by approximately 17%” (AfDB, 2018a). It comprises of the development and construction of a 310 MW wind farm, a high voltage switchyard and an associated 428 km overhead transmission line. In addition, the project also needed to build a 200 km road in order to be able to go to the project site (AfDB, 2011). This road is critical as it is the only way to get to the wind farm and was during the construction phase used to transport the windmills to the project site (Heydenreich, 2018).

The wind farm comprises of 365 wind turbines supplied by the Danish wind turbine firm Vestas, which will utilize the natural resource of wind produced in the valley between two mountains producing predictable wind streams accelerating to high speeds (LTWP, 2018; EU- AITF, 2014a; AfDB, 2018a). According to power specialists, the site of the project provides wind speed and consistency at a level that is among the best anywhere in the world (EU-AITF, 2014a). The project is located in Loiyangalani District, on the eastern shores of Lake Turkana, in the northwestern Kenya (LTWP, 2018; AfDB, 2018a). An area that “for a very long time, was just seen as a no man’s land, a place not worth investing in”, but since 2010 northern Kenya has suddenly become “a frontier of growth and opportunity” (Elliott, 2018).

The project is a significant strategic benefit to Kenya, and as a great endorsement to the project, the Vision 2030 Delivery Board has signed a MOU20 with LTWP, promoting the project as a flagship

20 A nonbinding agreement representing mutually accepted expectations and is often the first stage in the formation of a formal contract
project in the national development plan, Vision 2030 (Kenya Vision 2030, 2012; LTWP, 2014). Among many reasons, the government has great interest in the project as for example that it will save the government up to EUR 100 million a year in fuel subsidies and will help address the unmet and growing electricity demand using a renewable energy resource (EU-AITF, 2014a). Thus, the project will support the economic development of the country, while providing renewable and affordable energy that will reduce the overall energy cost to the local population from a reliable source, which is essential for the Kenyan economy (EU-AITF, 2014a; AfDB, 2018a; AfDB, 2011).

The first wind tests in the area were carried out in 2005, and in 2006 the developers were granted exclusive rights to study the project site by the Kenyan Authorities. Then in 2008, a MOU was signed between LTWP and the national utility KPLC. LTWP has been forced to apply for a number of permissions for their undertaking of construction and rehabilitations in relation to the project, and assessments have had to be done in close collaboration with several government bodies and key stakeholders (AfDB, 2011). The process altogether took eight years to achieve financial close on December 11th 2014, where after the project was considered a PPP with the private in terms of generation of the electricity and public in terms of transmission (AfDB, 2018a; LTWP, 2018; Ray, 2018). In June 2017, all 365 wind turbines were erected and the substation completed on time (LTWP, 2017).

**Financial Structure**

The initial developers of LTWP was KP&P21, which is a consortium of four Dutch, a Norwegian and a Kenyan businessman, where all have either experience from the Kenyan business environment or in wind energy (KP&P Africa, 2018; Ray, 2018). Later in the development phase, the British power company Aldwych22 was brought in as a co-developer as they had experience in constructing IPP’s in Kenya (Ray, 2018). At equity close, the initial developers sold 74.5% of the existing share to incoming foreign private investors in order to attract additional capital, and an additional developer23 was awarded 0.25% equity stake in the project for his work in the development phase (Frøsig, 2018).

The total cost of LTWP is EUR 622 million, whereas 25% is equity financed. More than half of

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21 KP&P Africa B.V. (KP&P)
22 Aldwych International (Aldwych)
23 Sandpiper
the equity finance belongs to the co-developers of the project (KP&P, Aldwych, and Sandpiper). The remaining equity stake is owned by three Scandinavian state-run DFIs (IFU, Finnfund, and Norfund) and the main contractor of the project: Vestas, a global Danish wind turbine manufacturer (LTWP, 2018; LTWP, 2014; AfDB, 2018a). The complete overview over the investor group is shown in table 2. Upon completion of the project, Google will acquire Vestas’ stake in LTWP (Vestas, 2015). Google will have little involvement in the day-to-day operations of the project and will earn a return on its investment through a share in profits (Cusick, 2016). Finally, to reach financial close the European Union provided a grant of redeemable shares of EUR 25 million, through the EU-AITF, which improves the debt coverage ratio of the project (EU-AITF, 2014b).

**Table 2: Investor overview of LTWP (Aldwych International, 2014; EIB, 2014; OECD, 2014)**

<table>
<thead>
<tr>
<th>Investor</th>
<th>Equity (EUR millions)</th>
<th>Ownership of common share</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aldwych</td>
<td>38</td>
<td>30.75%</td>
</tr>
<tr>
<td>KP&amp;P</td>
<td>31</td>
<td>25.25%</td>
</tr>
<tr>
<td>Vestas</td>
<td>16</td>
<td>12.5%</td>
</tr>
<tr>
<td>Norfund</td>
<td>16</td>
<td>12.5%</td>
</tr>
<tr>
<td>Finnfund</td>
<td>16</td>
<td>12.5%</td>
</tr>
<tr>
<td>IFU</td>
<td>7.5</td>
<td>6.25%</td>
</tr>
<tr>
<td>Sandpiper</td>
<td>0.5</td>
<td>0.25%</td>
</tr>
<tr>
<td>EU-AITF (pref. share)</td>
<td>25</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>150</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

The project is further financed by 70% senior debt and 5% mezzanine debt, where the two major providers of senior debt were AfDB with USD 135 million and EIB with EUR 200 million (AfDB, 2018a; Aldwych, 2014; AfDB, 2014a; EIB, 2014). To cover these long-term loans, the

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24 Investment Fund for Developing Countries (IFU)
25 Finnish Fund for Industrial Cooperation Ltd (Finnfund)
26 KLP Norfund Investments AS (Norfund)
27 Capital issued to meet an urgent need of funding and may be reclaimed by the issuer at its nominal value at some stated date in the future. In return, the issuer will receive cumulative preferred dividends
28 Cash flow available to pay current debt obligations

62
Danish export credit agency provided a guarantee for both political and commercial coverage, which covers the bank’s loss equivalent to EUR 100 million for EIB and EUR 20 million for AfDB (AfDB, 2014b; Frøsig, 2018). In addition to providing capital, AfDB was also instrumental in providing environmental, social and technical assessments of the project, as well as helping the investors to structure the project in collaboration with the GoK (Ray, 2018; AfDB, 2014b). LTWP was further financed by senior loans of a total of EUR 100 million and mezzanine loans of EUR 37 million provided by both commercial banks and DFIs (Aldwych, 2014; AfDB, 2014a). Hence, this complex financing structure of LTWP consists of mainly common equity and senior debt, but also includes hybrid forms of financing such as mezzanine debt and preferred equity (see the full financing structure in figure 5).

![Financial Structure of LTWP](image)

**Figure 5: Financial Structure of LTWP (OECD, 2017)**

To manage the development, construction, operations, and maintenance of the project, the investors established a SPV with its own management team, called Lake Turkana Wind Power Ltd. (LTWP, 2018). LTWP is constructed as an unlisted subsidiary company, so all its assets, liabilities and legal status will remain although one or all of the investors goes bankrupt. The IRR of the project had increased by early 2018 to 18% due to more favorable wind conditions

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29 It is however not possible to evaluate the IRR as the WACC of the project is unknown as well as other performance
than expected (Frøsig, 2018). The two large lenders AfDB and EIB both have a stable long-term Aaa credit rating from Moody’s, and AfDB has a double A-plus rating on its subordinated debt (Moody’s, 2018a; Moody’s, 2018b; AfDB, 2018c). The complex financial structure has been recognized as being innovative by winning several awards including the African Renewable Deal in 2014 (AfDB, 2014b; LTWP, 2015).

**Transmission Line Delay**

As the wind park is located in a remote area of Kenya, it required the construction of a 428 km transmission line, which is owned by the state owned KETRACO who will have a tolling arrangement with KPLC (AfDB, 2011). It is partly funded by the Spanish government, and partly funded by the GoK (EU-AITF, 2014a; LTWP, 2018; AfDB, 2011). The transmission line is considered a separate project, but it is an associated facility to the wind farm, meaning the transmission line is required for LTWP to carry the electricity generated from the wind farm onto the national grid. It was initially supposed to be constructed by a Spanish contractor with completion in September 2016, but meanwhile the company filed for bankruptcy (Leferink, 2018). The financial distress of the contractor and uncertainties of government-to-government funding in Kenyan law resulted in a delay of the construction of the transmission line (AfDB, 2011; AfDB, 2014a; Ray, 2018). The transmission line is yet to be finished, by the time of writing, and is expected to be completed by Q2 2018 as a new Chinese contractor has taken over the construction of the transmission line (LTWP, 2017; EAfDB, 2018; Leferink, 2018).

**Power Purchase Agreement**

The PPA is a contract between the seller (LTWP) and the buyer (GoK) of the electricity (Frøsig, 2018). It is a main focus for the investors as; “the most important thing it [external funding] requires is a Power Purchase Agreement” (Leferink, 2018). As an IPP, LTWP will sell the electricity at a fixed price of 7.52/kWh Euro cents to the national utility, KPLC, over a 20-year period (EU-AITF, 2014a; LTWP, 2017; LTWP, 2018). In accordance with the PPA, KPLC will purchase the entire power generated by the plant (EAfDB, 2018). Moreover, the PPA states that the GoK has to pay LTWP monthly fines of USD 10 million in case of a delay to the transmission line construction, which the investors so far have received (Frøsig, 2018).

The track record of the state owned KPLC is trustworthy, but it may have potential difficulty in securing future payments and confirm its creditworthiness as the ambitious Vision 2030 plans to
expand the power sector and thereby commits to more financial agreements (Ray, 2018). Therefore, in 2013 LTWP agreed with the GoK to sign a Letter of Support, which is a guarantee from the state to ensure funding for the project (LTWP, 2017). KPLC is experienced in negotiating with IPPs as they have signed many PPAs in the past, which gives them an awareness of typical requirements from international investors and lending community, but this institutional knowledge is held within a small handful of individuals (Ray, 2018). KPLC is on the Nairobi securities exchange with the government as a majority shareholder holding just over 50% of the company with private shareholders holding the remaining stakes (KPLC, 2018). There have been no defaults on PPA payments by KPLC but, their ratings have not improved since the 2000’s by DFIs and foreign institutions (IECI, 2012).

**Land Disputes**

LTWP is located on unregistered community land in the northern Kenya in a district that is inhabited by four main ethnic groups, who move around with their livestock in search for water and certain kind of materials, who all were estimated to be affected by the project area (Elliott, 2018; AfDB, 2011). Rustling of animals happens frequently between the groups leading to tribal fights over livestock or water (AfDB, 2011). AfDB (2011) and the World Bank Group cooperatively prepared an assessment of the social impact of the project area, before the construction began, and estimated the population to be 20,000 in the Loiyangalani District in which the project is located. The inhabitants in the area are some of the poorest people in the country, and the area had no decent roads before the project was established. The households in this area are highly dependent on charity of food and basic needs from international and religious organizations (AfDB, 2011). Moreover, in contrast to Nairobi, the inhabitants in the area are poorly educated and unskilled due to a lack of schools, and poor health conditions (AfDB, 2011; Heydenreich, 2018). The local people had no electric power connection, but in several institutions, such as schools, hospitals and tourist facilities, the electricity was generated through diesel powered generators. The absence of financial institutions and poorly managed infrastructure discourage potential investors and limit commercial activities in the area (AfDB, 2011).

As the LTWP management group applied to lease the land they had to go through a process called ‘Setting apart’, where the county government demarcates the boundaries of the land.

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30 Non-citizens cannot own Kenyan land, but only lease land for up to 99 years (Kenya Law, 2018)
In this process, the Trust Land Act ensures full compensation to the residents of the area of land that was set apart (The Republic of Kenya, 2012). Thus, the investor group behind the project was forced to pay compensation to and offer consultation with the people who lived and used the area (Elliott, 2018). This act is also in line with the 18th principal of the UN Guiding Principles on Business and Human Rights, which require firms to pursue “meaningful consultation with potentially affected groups” (National Council for Law Reporting, 2016; United Nations, 2011). Moreover, international human rights standards, including the United Nations, recognize the right to free, prior, and informed consent to the local communities (FAO, 2018).

Considering the living conditions of the local people in the Loiyangalani District and the Trust Land Act’s protection, it is rational to anticipate compensation when a major infrastructure project is about to be set up in the area (Elliott, 2018). According to Elliott (2018), the local communities fear that handing over the land to investors they will lose the access to the land forever. It is therefore not surprising that they demand as much compensation as possible (Elliott, 2018). The website of LTWP states that the unoccupied 99.8% of the 600 km2 actual project site is “open to the public and continues to be used by the local nomadic population for settlement, grazing of livestock, and access to water points” (LTWP, 2018; AfDB, 2011).

According to a report from DanWatch (2016) about the land disputes in the case of LTWP, the project has driven to an increase in alcoholism, violence and prostitution in the area. The project has been given a lot of attention to the issue of land rights, with a Danish NGO present in the area to investigate the case of illegal land acquisition, and if LTWP treats the indigenous people according to human rights - which is a large challenge in infrastructure projects (Frøsig, 2018). This culminated in 2014 when local residents filed a lawsuit against LTWP and different government bodies for illegal land acquisition, after the investor group leased the land for 99 years from the state (Cormack and Kurewa, 2016; Elliott, 2018; Frøsig, 2018). In addition, human rights bodies and international media have highlighted the same illegal land acquisition as well as the lack of compensation and proper consultation with the local communities (Cormack and Kurewa, 2016; DanWatch, 2016). As an investor, IFU does not classify this still ongoing court case as being a risk for the project now as the wind farm is already built, so the worst case is expected to be small payments to the local communities (Frøsig, 2018). It is worth noticing that the locals in this area are armed, so the construction of the LTWP project was both in terms of
security and CSR “a huge challenge, as we have not seen before on that scale” (Heydenreich, 2018).

Sub-conclusion
The construction of the largest wind farm in Africa, LTWP, was completed in June 2017, but is not yet operating due to delays in the construction of the associated 428 km transmission line. These two independent projects are combined by a PPP, where the LTWP is responsible for the wind farm and the GoK is responsible for the transmission lines. The two parties have signed a 20-year PPA, where LTWP will sell all of the electricity generated at a fixed price to the state-owned offtaker31 KPLC. The PPA also ensures that the GoK will pay for the electricity despite the delays of the transmission lines. Although KPLC generally has a trustworthy track record of their payments, LTWP signed a Letter of Support with the GoK as a guarantee for KPLC to pay for the electricity. Moreover, LTWP has a complex project financing structure with a long list of different lenders, investors and providers of various financial instruments. The financing structure includes many DFIs, such as AfDB. Lastly, the investors have faced a lawsuit for illegal land acquisition from local residents. Despite the transmission line delay, LTWP receives the agreed-upon monthly payments from KPLC, and expects to be able to send generated electricity to the national grid in Q2 2018, almost a year after planned.

31 The buyer of electrical energy for the purpose of selling the electricity to the consumers
Analysis

“Things go wrong in every country. The question is not if the thing will go wrong. The question is; is the process in place to deal with it fairly and quickly?”

-Howard Buffett, Chairman and CEO, Howard G. Buffett Foundation

This analysis section will analyze to what extent each proposition is confirmed in the case of LTWP, with the analysis concluding to either weakly, moderately, or strongly confirm the propositions. During the analysis of each proposition, the institutional challenges in Kenya affecting the specific characteristics of LTWP will be identified and linked to the analytical framework. Moreover, the strategies and tactics applied by the investors will be analyzed and evaluated in order to conclude how well the investors worked to derisk their investment. Subsequently to the analysis of each proposition, all the strategies and tactics are discussed in relation to each other and which strategies are the most significant in which stage of the project.

Proposition 1

Foreign private investors in infrastructure projects in emerging markets can deal with weak property rights, powerful local governments and influential informal institutions by engaging with the local community.

The literature states that weak property rights, powerful local governments and influential informal institutions can be dealt with by engaging with the local community. As acceptance and support from the local community and local governments are crucial to the success of an infrastructure project, it will in this proposition be analyzed to what extent LTWP has engaged with the local community.

Property Rights Challenges for Lake Turkana Wind Power

The ability to enforce property rights in emerging markets is, according to Hoskisson et al. (2000), affected by legal problems, which is in line with the challenge in Kenya. Access to land in Kenya is a major institutional challenge for the foreign private investors investing in infrastructure. The main problem is that it is often unclear who owns the land (Elliott, 2018). Some parts of the country are worse than others, and especially community land, on which LTWP is located, is

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32 WEF, 2016b
set up for conflict and debate. The weak property rights in Kenya will, according to Lyer (2016), lead to more powerful informal institutions, which is in line with the influential local leaders and tribes in the communities of Kenya (Amisi and Chemoiwo, 2018). The local communities in Kenya are generally multi-tribe communities and are usually represented by their leaders.33

The challenge in Kenya regarding setting land apart is that the local communities may not recognize the national rules, and if they do not approve that the land is leased to a group of foreign investors or accept their compensation, they may show up with their AK-47s as a threat and demand the returning of the land (Thomassen, 2018; Tejlgaard, 2018; Heydenreich, 2018). Often, the local communities know the official rules, but they simply see an opportunity to take advantage of the situation. Right or wrong, the reality is that it is a serious institutional challenge that the investors must deal with. This is in accordance with Lyer (2016) who states that poor enforcement of property rights in emerging markets may lead to the legal property owners experiencing loss of control over their land due to informal squatters.

The risk regarding unsupportive local communities varies from project delays to threats of physical harm. In the case of LTWP, as the project was highly depended on the only road going to the project site, there was a major risk for the local communities to cause a road blockade for trucks transporting equipment and materials (Heydenreich, 2018). The fact that the local communities often are armed, force the investors to take them seriously and ensure that they accept the project. Moreover, the county governments want to feel informed and respected. This requires a constant coordination between LTWP and the county government because the main responsibilities of this government body are to exercise the laws and executive power at county level (World Bank, 2012). Thus, as the investors cannot solely depend on the legal system and is threatened by the local community, they need to respect the local government and continuously engage with the community, to protect their property and the transportation of equipment.

The first thing foreign private investors need to do when acquiring land in Kenya is to do a thorough due diligence whether the intended land has a registered owner and if there are any claims on that land by either going to the National Land Commission or make a local partner do the investigation (Amisi and Chemoiwo, 2018; Tejlgaard, 2018). The trick is that the investors cannot simply go to the local community after the land is leased from the government and inform

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33 The local leaders are often simply the oldest people in the community (Amisi and Chemoiwo, 2018)
the community that they have acquired the land to build an infrastructure project. Instead, the investors are forced to call a community meeting to hear the compensation requirements to the local community (Amisi and Chemoiwo, 2018). According to Elliott (2018), “a thorough consultation is very important”. Through the leaders of the tribes, the investors will have to provide relevant information about the project and agree on some kind of compensation for the community (Amisi and Chemoiwo, 2018; Petersen, 2018).

**Lake Turkana Wind Power’s Engagement with the Local Community**

The investors of LTWP have implemented an array of strategies in order to ensure that the local communities are supportive of the project and make them feel that they also are benefitting from this project. All the CSR related activities done by the investors have according to Heydenreich (2018), aimed to derisk the project and not only to meet, but exceed the expectations of the local community in order to prevent project delays. Throughout all the CSR activities, first and foremost, LTWP has consulted the locals through community meetings, which aimed to allow the locals to see the benefits of the project to the community (BCG/AFC, 2017). Moreover, LTWP also had a close collaboration with the powerful county government through consultation and information of their plans for the community (Heydenreich, 2018).

A typical requirement from the locals is employment, which also was a requirement from LTWP by both the local community and the local government (Tejlgaard, 2018; Amisi and Chemoiwo, 2018; Heydenreich, 2018). As the locals in the area are poorly educated and often highly unskilled the typical jobs are in the development phase where garbage needs to be collected, the wind turbines need to be washed, and stones need to be moved in order to build a road (Heydenreich, 2018; Amisi and Chemoiwo, 2018). Local employment is however not a matter of simply offering the jobs to the best qualified candidates. The multi-tribe communities were something that LTWP did take into consideration when allocating 500 jobs (Leferink, 2018; Heydenreich, 2018). This was particular important as the four tribes living in the area of the LTWP project site, are in a conflict (Heydenreich, 2018). Therefore, instead of simply allocating an equal share of jobs between the different tribes, LTWP first offered the jobs to the local leaders of the communities and then requested their support to help identify potential candidates, through equitable distributing among the different tribes for the remaining jobs, who then finally were selected by LTWP (Leferink, 2018; Heydenreich, 2018). In this way “we have never had any problems” (Leferink, 2018).
In addition to offering employment to the local communities, LTWP established a CSR program called ‘Winds of Change’, which basically aims to improve the lives of the local community (LTWP, 2018; Heydenreich, 2018; BCG/AFC, 2017). The investor group committed to invest a portion of the operating revenues to fund this program (LTWP, 2018). The Winds of Change program is expected to contribute around EUR 10 million to the local community over the life span of the project through partnerships with the local governments, local leaders and NGOs (LTWP, 2018; Frøsig, 2018). The program aims to support the following three developmental areas in the local community: education, health, and water distribution (LTWP, 2018; Frøsig, 2018). The educational contribution has so far included, for instance, the construction of school- and computer facilities with solar driven electricity, and books (Heydenreich, 2018; LTWP, 2018). Moreover, medical clinics have been built to take care of maternal and infant health and the program has contributed with potable water distribution and sanitation for both human consumption and for their livestock (Heydenreich, 2018; Leferink, 2018). In the process, LTWP maintained a close relationship with the local government in the implementation of these charities, to be informed of any plans for the specific facilities they intended to support, and consultation on which ones were best suitable for upgrades (Heydenreich, 2018).

Another way that LTWP seeks to control community resistance to the project is by hiring 16 Community Liaison Officers. Their only job is to talk to the local communities and hear about their options, help them with water wells or quickly settle a conflict if a Vestas truck has run over one of their livestock (Frøsig, 2018; Heydenreich, 2018). It is important to realize that “These are billion-dollar assets, but ultimately it’s a people’s business”, therefore it is critical for infrastructure investors to find the “right people who can come in and build partnerships with everybody - every related stakeholder” (Thomassen, 2018).

**Evaluation of the Implemented Strategies**

The management of LTWP is confident that 95% of the local community supports the project and adds that “You will never get an approval rating of 100%” (Leferink, 2018). The actions taken by LTWP aim to show tangible change in the communities, through a hiring of locals and contributions to education, health and water distribution, including being close to the locals through the Community Liaison Officers.
Through local employment, LTWP gains acceptance from large parts of the local community, as they feel they are benefitting directly from the project in income due to the construction of the project. As the local people in the area are some of the poorest in the country with a high reliance on charity for food and basic needs, local employment will increase their standards of living and thereby increase the support from the community. Each investor may also be associated with job creation, which will benefit the support for potential future projects in the country. The challenge of tribal conflicts within the local communities was solved through an equitable distribution of jobs to the tribes through the leaders, which shows that the investors successfully approached the challenge by adapting to the informal institutions. As part of the strategy to be considered a good corporate citizen, it is planned to have locals take over the job of maintaining the windmills after the team of expats has returned home (Frøsig, 2018). Moreover, the initiatives behind the Winds of Change foundation shows that the investors intend to make the local communities feel that they also are benefitting from the project both during the constructional- and operational phase, which will make them less likely to attempt to ruin the operations of the project.

The investors expressed the importance of being on the ground close to the locals, through the employed Community Liaison Officers. Their job to go around in the communities to settle disputes and inform about the benefits to the project shows that the investors’ identified information and promotion to the locals as crucial. As representatives from the LTWP are visible in the communities and continuously inform the locals about the benefits of the project, it increases the acceptance from the community towards LTWP. Moreover, due to the influential county governments, the engagement with the local communities were coordinated with the county government, which confirms the theory of (Rottig, 2016; Hillman, Keim and Schuler, 2004; Marquis and Qian, 2014; Zhao, 2012).

Despite all of the strategies implemented by LTWP to gain acceptance and support and despite LTWP firmly confirms that the land was set apart correctly, the investors were still faced with resistance. The formal way to settle a land dispute in Kenya is by addressing the Ministry of Land for both parties to agree on the ownership of the land (Petersen, 2018; Amisi and Chemoiwo, 2018). However, the unregistered community land that LTWP has leased from the county government was not set apart in a way that was accepted by all local communities. This led to some locals filing a lawsuit against both the government and the investors of the project, which still is unsettled at the time of writing (Frøsig, 2018). However, if the investors lose the court case it will according to Frøsig (2018) not threat the project in any major way.
In addition, the NGO ‘DanWatch’ published a report advocating for illegally acquired land, and states that the influx of unemployed people expecting a job at the project has led to prostitution, violence and alcoholism in the local communities (DanWatch, 2016). Even though the management and the investors of the project strongly disagreed with parts of this report, it can still be argued to have had a negative impact on the investors in terms of bad reputation. However, the degree of negative impact depends on the individual investor as an institution. In particular KP&P, which is a group of private individual investors, does not necessarily need to do another infrastructure project after LTWP and therefore may have a clear profit perspective (Frøsig, 2018).

On the other hand, IFU, Norfund, and Finnfund are all DFIs required to leave a development impact with their investments and cannot only focus on their ROI in terms of money (Frøsig, 2018). “It is not just about profit optimization” because it would not have any major impact on the project if the land dispute ultimately would result in a monetarily compensation to the local community (Frøsig, 2018). Also, in contrast to KP&P, Vestas operates as an MNC with customers all over the world and is not only focused on this single project. Therefore, organizations like Vestas and IFU have to be able to do similar investments in Kenya in the future, so they need a positive reputation from both the GoK, the local communities, and international media. A bad reputation would simply mean that they would not be able to sign future PPAs with the GoK; the only potential customer (Frøsig, 2018). In relation to the local communities, a bad reputation could potentially result in a blockade during the construction phase or violent threats at the project site, which would lead to a delay of the project.

When looking at the LTWP project from a purely financial perspective, a blockade by the local communities could have been solved simply by bringing in the military to move the protesters, but Vestas as an MNC cannot do that (Heydenreich, 2018). Such a violent act would, according to Lyer (2016), result in negative publicity, which would make it even more difficult to enforce property rights in the future. Finally, bad reputation in the international media would have a different impact on each of the investors depending on their global presence. Thus, the investors like IFU and Vestas have great interest to be responsible to all stakeholders, including NGOs and the local communities, as for example one of UN’s guiding principles on business is to provide meaningful consultation with the local communities with free, prior, and informed consent.
**Sub-conclusion**

No matter how much CSR-related work is done and how close the relationship is to the county government, investors are almost certain to face land disputes when investing in infrastructure in Kenya. Therefore, many investors put money aside for lawsuits when investing in a new infrastructure project in Kenya (Petersen, 2018). The question is not if the investors will face land disputes, but to what extent it will impact the project. Community engagement is therefore not a check box for the investors to mark, but a long-term commitment to meet the needs and demands of the local communities to decrease the impact of the land disputes on the success of the project (Elliott, 2018). As the wind farm was constructed on time without major disputes threatening the success of LTWP, it is considered that the risk mitigations against weak property rights were successfully implemented although the project did encounter some negative publicity and a lawsuit.

The Winds of Change initiative and the employment of locals are great examples of how LTWP both worked to be on good terms with the local communities and with the local government (Frøsig, 2018). Through these initiatives the investors adapted to the informal institutions of the influential local communities by empowering the locals through jobs and increasing their standards of living in order to gain their accept and support for the project. The consultation with the local governments regarding the local community engagement proved that the investors recognized their influence and gained their appraisal. Moreover, with the use of the Community Liaison Officers, the project sought to understand the local stakeholders and tried to promote and illustrate the benefits of the project with an ‘on-the-ground’ approach.

There are various ways to engage with the local community, but LTWP identified and sought to mitigate the risks as according to literature. No matter the approach, it is proven from the case of LTWP that it is critical for the foreign private investors to spend time on the ground in the local communities to listen to their needs and demands and respects the different tribes. Due to the weak property rights in Kenya and the powerful local communities and county governments; community engagement certainly plays a key role when investing in infrastructure in Kenya. Thus, the proposition is strongly confirmed in the case of LTWP.
Proposition 2

*Foreign private investors in infrastructure projects in emerging markets can deal with influential informal institutions and unique institutional contexts by collaborating closely with local investors or advisors.*

As argued in the literature, influential informal institutions and unique institutional contexts can be dealt with by collaborating closely with local partners such as investors or advisors. These local partners will help navigate and understand the non-transparent rules in the unique institutional environments to provide location specific knowledge and local acceptance. Therefore, it will in this proposition be analyzed to what extent LTWP has collaborated closely with local investors or advisors.

**Informal Institutional Challenges in Kenya**

Foreign investors in Kenya get formally the same treatment as domestic investors and benefit from a number of recent favorable improvements of the investment climate, such as the cancellation of the requirement of reserving 30% of the ownership in the company to Kenyan citizens. This means that according to the formal institutions in Kenya, foreign investors are not required to have a local investor in their company in order to do business in the country. However, in line with Meyer and Nguyen (2005), the informal institutions in Kenya are not transparent and they are considered a major challenge for the foreign investors because of their political and legislative power (Amisi and Chemoiwo, 2018). If the investors are not aware of the informal institutions it will increase uncertainty and thereby increase transaction costs. One case where informal institutions clearly have power is in regards to land where the Kenyans local communities has taken over a great deal of power as a result of the weak property rights, which is in accordance with Peng et al. (2009), who stated that informal institutions will provide guidance when formal institutions are weak. Thus, informal institutions are important to understand and navigate.

From the perspective of foreign private investors, two of the most critical problems within the Kenyan informal institutions are corruption and insecurity, which also increases political instability. Corruption in Kenya is in particular a problem in the public sector and it forces the investors to find ways to know how to navigate around it (Petersen, 2018; Amisi and Chemoiwo, 2018). Moreover, insecurities in Kenya, including terrorism and civil conflicts, make it even more critical for the investors to understand the environment, not only for commercial reasons, but for
security reasons as well. This is especially the case in northern Kenya, where LTWP is located, as this area is inhabited by conflicting armed tribes.

Foreign private investors in Kenya will benefit from partnering up with local investors or advisors, to gain location-specific knowledge of in particular the unique informal institutions (Amisi and Chemoiwo, 2018). Such a partnership will decrease transaction costs, as the foreign investor will adjust to the local conditions, which is in line with Meyer (2001). A local partner can benefit the foreign investors with, for instance, their network to influential and skilled people and to acquire the required licenses from the county government. According to Thomassen (2018), the local partners can help the investors to find out “who are the real people to deal with, what are their agendas, and what is their track record”. This partner will according to Tejlgaard (2018) “help you [the foreign investor] get past some of the barriers because they have the network to help”. In addition, in line with Williamson (1985), it is important for the investors to find a local partner with experience of similar projects in the country, which will decrease the internal uncertainty in the investor group (Amisi and Chemoiwo, 2018; Leferink, 2018).

Finding a partner may be a time-consuming process, but it will offer the investors better information, which likely will lead to better decision-making (Thomassen, 2018). A useful way to find local guidance in Kenya is through the embassy, because they have both the experience of dealing with the institutional challenges and the network to the GoK and businesses (Petersen, 2018; Hansen, 2018). Moreover, in line with Rottig (2016), an embassy can help the investors to become members of influential local business groups with complementary relationships to find a partner that can deal with some of the informal institutions on behalf of the investor (Tejlgaard, 2018). These business groups can also be beneficial in terms of sharing experiences between the different investors and companies, of how to deal with certain institutional challenges (Petersen, 2018). In addition, Kenya Investment Authority is able to help finding a partner, as they have an overview of Kenyan businesses looking for foreign partners within a specific industry (Amisi and Chemoiwo, 2018). In this context and in accordance to several scholars (Wright et al., 2005; Khanna and Palepu, 2010; Meyer and Nguyen, 2005), local partners in Kenya are important to serve the foreign investors by provide access to both formal and informal institutions, navigating complex licensing, finding local talent, dealing with legal challenges, and generally understand the local context, which can be unique even to different parts of the country (Petersen, 2018, Amisi and Chemoiwo, 2018; Tejlgaard, 2018).
Local Partners in LTWP

KP&P, as the initial developers and investor in LTWP, is by the investor group considered to be a local investor despite their foreign origin and being “Mzungu” (Leferink, 2018; Frøsig, 2018). The members of KP&P are all long time Kenyan residents, although five out of six of them are from the Netherlands and Norway, with the final member being a Kenyan citizen. All of them have experience in doing business in Kenya, and some with experience in renewable energy projects in the country (KP&P Africa, 2018). KP&P has negotiated with the GoK and businesses through nine years for LTWP, and they have been, according to Frøsig (2018), important for the project, and according to Leferink (2018) they have a strong position in the country.

The use of local network and guidance are obviously complex in a large infrastructure project such as LTWP, but besides the considered local investors of KP&P, LTWP has not incorporated other local investors into the ownership of the financial structure. According to Frøsig (2018) and Leferink (2018), KP&P fulfills the local knowledge and network needed for this project. The only other local partner that has contributed to the project were local advisors from AfDB early in the development phase, where they provided environmental, social and technical assessments of the project, as well as acting as the lead arranger to the financial structure for the project. Other than that, LTWP has not had any official local advisors (Frøsig, 2018).

Evaluation of the Approach to Local Partners

It is noteworthy that although all the stakeholders interviewed for this paper agreed that local partners were critical to LTWP, the only local partner identified by the stakeholders is KP&P (Frøsig, 2018; Heydenreich, 2018; Leferink, 2018). The members of KP&P undoubtedly have deep knowledge about the Kenyan institutional context from their many years working and living in Kenya, however, there is a risk that some elements of their local institutional understanding might be lacking, as most people from the organization are not native Kenyan. They may have some understanding of how to navigate the informal institutions, but native Kenyan will arguably be able to navigate these institutions with more ease and be more easily accepted by the local communities (Frøsig, 2018).

The experience of KP&P was considered by Leferink (2018) to be large, but this experience is in regards to general business in Kenya, and less in infrastructure. The unique characteristics of infrastructure may require different knowledge about the institutions rather than normal business.

34 The Swahili word for “white man”
affairs in the country. However, the lack in specifically experience in infrastructure projects may be outweighed by the experience of IFU and Vestas in the country. These investors have even greater experience from other emerging markets, as well as the project manager, Phylip Leferink has a long career working for Vestas. Nonetheless, the context of Kenya is unique to other emerging markets, as stated by Heydenreich (2018) from Vestas, “We are world champions in installing wind turbines, that is not the problem. The problem in Kenya is the context of installing them.”

Although KP&P is considered by LTWP to be locals, the fact that almost all of the members are Mzungu is considered not to bring the full benefits of having a local partner. In particular the acceptance from the local communities and the county government may not have been easily acquired, considering the colonial history of the country and local communities’ isolated lifestyle. As informal institutions in Kenya are influential and are thereby dealt with through informal relationships, trust is considered to be an important factor, and foreign white people may not be given trust easily from the local communities, in particular in terms of acquiring land. Furthermore, KP&P is a Dutch company, which also does not give the impression of them being locals (KP&P Africa, 2018). The local community would likely have had an even higher acceptance rate of the project if LTWP had native local investors to represent the project because a native local investor would likely have been perceived to have the best interest in the local community.

Another risk of having KP&P in the investor group, from the perspective of the foreign investors, is that KP&P only need this project to earn their personal profit and may be less worried about their reputation and international development standards. In contrast to KP&P, an investor like Vestas as an MNC will likely require higher standards in terms of managing the local communities and dealing with the local government by avoiding the use of corruption. Moreover, the investors like IFU, Norfund and Finnfund as DFIs have high standards for how they need to treat the local communities and NGOs. Non-ethical behavior by the local partner would lead to a bad legitimacy spillover effect on the rest of the investor group, which would be a corporate scandal for investors like Vestas and IFU. Therefore, in accordance with OECD (2014), the objectives of the SPV must be aligned with the corporate objectives of Vestas and the DFIs.

There have been no explicit indications of such behavior or intentions by KP&P, but according to Frøsig (2018), there have been discussions with shared opinions in LTWP board meetings about
how tasks should be prioritized; especially in relation to how to deal with stakeholders as NGOs like DanWatch. It is therefore important that the foreign investors in LTWP ensure that the decisions within the investor group, including KP&P, is kept at a high standard in regards to local communities, NGOs and other stakeholders, as a shortage of this would damage the reputation of each investor. However, the foreign investors would have been exposed to risk of low ethical standards no matter the local partner.

Sub-conclusion
In accordance with literature, local partners were found to be of great importance for the foreign private investors, even though no formal institutions restraints foreign investors in Kenya. The investor group in LTWP considered KP&P, consisting of mainly foreign individuals, as the local partner in the project. KP&P has arguably provided valuable knowledge about the institutional context to the investor group, through decades of experience from Kenya, leading to better decision making for the investor group.

Despite KP&P’s experience, it is argued that their knowledge about and network to informal institutions are not as sophisticated as what a native partner could have provided. Moreover, acceptance from local communities may not have been given with ease to a group of foreign investors, compared to native investors. Therefore, by incorporating native local partners, LTWP may have dealt with land acquisition accusations with more ease, and the entire development process to financial close may have been quicker due to acceptance and greater knowledge about the informal institutions. KP&P is considered as the local partner by the investor group and has arguably helped the investor group with informal knowledge from decades of work experience in Kenya. However, it is considered that KP&P have not given LTWP the full benefits of a local partner in regards to acceptance from the local communities and full informal institutional knowledge. Thus, the proposition is moderately confirmed in the case of LTWP.

Proposition 3

*Foreign private investors in infrastructure projects in emerging markets can deal with ineffective contract-enforcing institutions by applying informal and financial safeguards to their contracts.*

As stated in the analytical framework, the literature suggests that ineffective contract-enforcing institutions can be dealt with by applying informal safeguards to the contracts with the government. This is according to Shou, Zheng and Zhu (2016) and the World Bank (2017c) done
through personalized relationships in business and politics and through an inclusion of export credit agencies and DFIs. Furthermore, Rodrik (2008) suggests that investors have to be willing to renegotiate their contracts and Krugman and Wells (2013) further suggests that moral hazard can be dealt with if all parties are given a stake in the project. Therefore, it will in this proposition be analyzed to what extent LTWP has applied informal and financial safeguards to their contracts.

**Contract-Enforcing Challenges for Lake Turkana Wind Power**

The LTWP project is an investment of highly asset specific nature due to the limited redeployment of the assets, with only one possible off-taker of the generated electricity. The lifeblood of the project is the signed PPA with the only off-taker, the state-owned KPLC, for the entire 20-year life span of the project, as it secures the income of LTWP. Therefore, it is of significant importance that the contract is fulfilled by KPLC, otherwise it may leave LTWP with a sunk investment in an illiquid project of EUR 622 million, with no other off-taker of the electricity. As LTWP is the largest private investment in Kenya and largest wind power project in Africa; the amount of credit and the number of lenders in this project is significant, which means the financial structure may be less flexible in regards to repay period if contracts are not enforced.

The project is relying significantly on the state through the PPP, in regards to the transmission line, and the PPA in regards to the off-taker of generated electricity. KPLC has a sound record of payments of PPAs, but their rating has not improved by international organizations for almost 20 years. Moreover, with the expansion of the power sector in the ambitious vision 2030 it may decrease the creditworthiness of KPLC, which may endanger payments according to the PPA. As the transmission line is considered an associated facility to LTWP, it is essential for the wind farm project to distribute generated electricity and thereby requires timely finish. LTWP does not have control of the construction of the transmission line as it is in the hands of the state. To be relying on the state to construct the associated facility comes with high risk, due to the political instability in the country, and the risk of opportunistic behavior from the state.

The legal system in Kenya is British law, which works fairly well, but the judicial system is inefficient, costly and is a driver for corruption (Frøsig, 2018; Tejlgaard, 2018). In contrast to Williamson (1985) who states that contracts are a useful governance structure in transactions, the uncertain conditions and inefficient judicial institutions in Kenya mean that LTWP needs to safeguard by other means for the enforcement of contracts. The high risk of opportunism, the high asset specificity, and the high amount of uncertainty involved in the project increase the
transaction costs for the project in regards to ensuring timely finish of the transmission line and fulfillment of the PPA. With a mediocre score of enforcing contracts on the World Bank’s Ease of Doing Business Index and corruption being a large hurdle, the ineffective court systems of Kenya need to be avoided and contracts have to be safeguarded by other means than relying on the judicial institution.

**The Judicial System and International Arbitration**

According to Frøsig (2018), LTWP has secured the use of international arbitration in the contracts with both KPLC through the PPA, and the state through the PPP agreement. The project utilizes the LCIA, which means that LTWP will benefit from an efficient and trustworthy court system if any disputes were to occur between the project and the state (Frøsig, 2018). This was incorporated in the contracts by the investors due to the high degree of corruption present in the Kenyan courts, which lowers investors’ trust in the judicial environment (Frøsig, 2018).

The GoK accepted requirement of international arbitration in the case of LTWP, but, they do not accept such requirements in all cases as this has been a deal breaker in other projects in the past (Tejlgaard, 2018; Eberhard et al. 2016; Thomassen, 2018). International arbitration seems to be broadly used and accepted among the interviewees in cases where the state is the counterpart (Eberhard et al., 2016; Tejlgaard, 2018; Thomassen, 2018; Frøsig, 2018). Foreign private investors simply do not want to be entangled in the Kenyan legal system, as “it [the legal system] is extremely corrupt” (Tejlgaard, 2018) and inefficient (Thomassen, 2018). LCIA is widely used for international arbitration, as foreign private investors feel safe by using it (Tejlgaard, 2018). Moreover, Hoskisson et al. (2000) argue that opportunistic behavior normally is reduced by contract law, therefore, in case of inefficient contract laws, it may be beneficial to make use of an international efficient contract law, and thereby reduce opportunistic behavior.

The use of LCIA will not only be an advantage for the foreign private investors once a dispute is in court, but it also has a deterrent effect on the state and may reduce the risk of a dispute occurring in the first place. This is due to the fact that a legal process in London is expensive, and it will result in a bad international reputation in regards to attracting investment if a country has many cases in London, therefore the government put a lot of emphases on mediation to resolve a dispute (Amisi and Chemoiwo, 2018). Despite foreign private investors generally agree international arbitration is important, Kenya Investment Authority claims that the Kenyan court system does work and they try hard to prove that it is a separate entity not related to the political environment.
within the country. Amisi and Chemoiwo (2018) from Kenya Investment Authority claim that the bad reputation of the Kenyan courts is simply a false assumption by foreign investors.

The requirement of international arbitration seems like a wise choice, as disputes between the government and the project are more likely to be mediated than end up in court, which also is the case in the transmission line delay. International arbitration in London is a common standard for large scale infrastructure projects when derisking inefficient local judicial systems, and it is a must to demand a fair and legal process, despite the possibly extra costs of London, instead of the inefficient and corrupt Kenyan legal system.

**Risk Transfer to Third Parties**

A major hurdle to reach financial close of LTWP was the risk of a transmission line delay, as the investors feared to face liquidity problems as a result (IRENA, 2016, Leferink, 2018; Frøsig, 2018). Since the construction of the transmission lines was outside the investors’ span of control, they needed a guarantee for the timely finish of the associated facility, together with an assurance that the PPA would be fulfilled (Leferink, 2018).

Political risk was a considerable factor in both cases, given KPLC and KETRACO are state-owned. Managing a project in an emerging market, Frøsig (2018) states that additional safeguards for these risks were needed. Therefore, on request from the investors, the GoK issued a Letter of Support to LTWP, in which the government guaranteed protection for the project against political risks. It stated protection against tax obligation of the investor, civil strife, nationalization, and political issues regarding the transmission line (AfDB, 2018d). However, it is according to the World Bank doubtful to what extent emerging market governments will live up to sovereign guarantees in IPP commitments (Eberhard et al., 2016). Tejlgaard (2018) stated that the GoK does not have the best track record of living up to commitments in sovereign guarantees but argued that it is rarely they are tested. According to Eberhard et al. (2016) and World Bank (2017c), the risk of not fulfilling contracts and sovereign guarantees may be mitigated by transferring the risk to third parties by the use of insurances, in particular political risk insurance or multilateral development bank guarantees.

The Letter of Support, as a sovereign guarantee, was needed for LTWP to attract DFIs and other lender by ensuring the payments from the GoK. LTWP asked the World Bank’s International
Development Agency to provide a PRG\textsuperscript{35}, but the World Bank declined after a lengthy due diligence process which concluded a too high risk of power oversupply (IRENA, 2016). After the decline, the investors succeeded in attracting AfDB to offer a PRG of €20 million to cover the potential delay in the construction of the transmission line. The PRG also guarantees the risk of non-payment of electricity by the off-taker, KPLC, and termination of the PPA (AfDB, 2018d). Payment security of the PPA for the first six months was deposited into an escrow account in favor of the lenders, with AfDB depositing €20 million out of €90 million, and the remaining €70 million covered by the GoK. The payment security covered by the GoK was raised via a tariff increase passed on to the consumers (Eberhard et al. 2016).

The PRG that LTWP obtained provides additional comfort for possible project lenders and thereby made the investment more attractive (AfDB, 2014a). As the GoK is to a great extent financed by loans from these DFIs, they are forced to fulfill the payment obligations to LTWP. Otherwise the state will likely no longer receive financial support from the development banks involved in the project, which would have serious consequences for the development of Kenya. Therefore, the development banks have a strong voice within the government (Eberhard et al., 2016; Tejlgaard, 2018; Thomassen, 2018).

Often, PRGs do not monetarily cover as much as the full coverage from a political risk insurance from the commercial insurance market, which some infrastructure projects purchase (IRENA, 2016; Tejlgaard, 2018). However, insurances may lead to moral hazard from the state, as they see a third party bears the cost of their behavior, and hence they may behave opportunistically, with a lack of care and effort. Furthermore, a claim on an insurance is a process that usually takes several years and is both difficult and expensive to obtain for large scale projects with a wider range of political risks and a longer tenure than smaller investments (IRENA, 2016). Nonetheless, both have a strong deterrent effect on the state (Thomassen, 2018; IRENA, 2016).

An additional financial safeguard was adopted by LTWP, through a cross-default clause in the PRG. A cross-default clause means that AfDB as a DFI will default all its loans to Kenya if the state fails to fulfill the payment obligations to LTWP (Frøsig, 2018). This would have a significant negative impact on Kenya, as 38% of the country’s external debt is financed by DFIs. This financial safeguard is effective as it will, in line with Hoskisson et al. (2000), decrease the

\textsuperscript{35}Partial Risk Guarantees cover private investors through shareholder loans, against the risk of a government failing to perform its contractual obligations with respect to a private project
GoK’s international investment grade rating and risk future loans to the GoK and investments, if triggered (Eberhard et al., 2016; Hansen, 2018).

The PRG including a cross-default clause is considered to be a wise choice by LTWP, as Kenya is to a great extent financed by loans from DFIs, such as AfDB (Frøsig, 2018; Hansen, 2018). According to Frøsig (2018), the cross-default clause from AfDB has been an important negotiation strategy. He believes that the GoK would not have paid the fees for the delay of the transmission line if LTWP had not had the cross-default clause and DFIs as lenders (Frøsig, 2018). Overall, it seems like the risk mitigation done by LTWP has been successful, as the GoK pays LTWP compensation for the transmission line delay.

**Renegotiations of the PPA**

The investors were pressured by the GoK into a renegotiation of the initial PPA before receiving payment of generated electricity, as the GoK took advantage of the project’s limited bargaining power due to the high asset specificity. The investors favored a renegotiation compared to a lengthy and costly court case in London, which possibly would have been the result, as the investors believed it would most likely be difficult for the GoK to compensate for the large sums of missed income from electricity tariffs, due to the transmission line delay (Leferink, 2018). Therefore, the parties had to find a middle way, which is supported by Leferink (2018), “we knew that if we pushed the envelope it was not going to work, because there is too much resistance”. The restructuring of the initial PPA took some months, but now LTWP receives compensation fees from the state to cover their lost income due to the delayed construction of the transmission lines (Leferink, 2018).

**State as Equity-Owner**

In the PPP between the GoK and LTWP, the state is only responsible for constructing the transmission line and is not involved in the SPV ownership structure. However, Moszoro (2014) suggested the involvement of the state as an equity owner in a PPP-SPV structure, as a safeguard for the foreign private investors against weak contract-enforcing institutions. By involving the government in the ownership of the high asset specific project, they are to a greater extent given a stake in the success of the project, which may lower the risk of delays and broken promises and adverse selection and moral hazard are avoided.

According to Frøsig (2018), it would have been an advantage for the investors to bring in the GoK as an equity owner to finish the construction of the transmission lines on time and on budget.
as they are the counterparty in the negotiations. Furthermore, Frøsig (2018) claims that giving the state ownership in the project may have led to smoother legal processes for LTWP because of individuals may not wish to sue the state. It is however not always easy to understand the agenda of the state in a partnership, in contrast to commercial partners whose objectives are clearly to make a profit (Tejlgaard, 2018). This strategy may have lowered the risk of opportunistic behavior by the government and made the investment more attractive for the investors, as it would make the state more likely fulfill the contracts and negotiate in favor of a fair agreement. However, even if the state would have been an equity owner in the project, the additional use of international arbitration and PRGs to safeguard against weak contract enforcing institutions, would still have been necessary in LTWP, as investors still would not have secured their investment simply by giving an equity stake to the state.

**Sub-conclusion**

Contracts are only as efficient as the institutions in which they were designed. As the contract-enforcing institutions in Kenya are costly, inefficient and corrupt, additional safeguards have to be implemented by the foreign private investors. LTWP’s use of international arbitration, Letter of Support, PRG, and a PPA with a cross-default clause has safeguarded the project against the GoK. These safeguards led to successful enforcement of the contracts, but the parties had to go through renegotiations of the contract before the investors started to receive payments for the delayed transmission line. On the other hand, LTWP has not acquired any insurance from commercial banks or export credit agencies.

The reason for the renegotiation of the PPA was twofold. Despite the renegotiations, Leferink (2018) is grateful for the support from the GoK, which indicates that LTWP rather wants to renegotiate the PPA than exercise the cross-default clause, the PRG or go into an expensive and lengthy court case in London. The safeguards are therefore simply strategies that will give the investors more bargaining power. In other words, they expected this kind of situation. On the other hand, the GoK see the hold-up problem as an opportunity to enforce better payment terms in the PPA, while at the same time seeking an equilibrium, where it is just not worth for the investors to exercise their guarantees. Thus, it is a game between LTWP and the GoK; both parties want to close the infrastructure gap in Kenya, but the investors want to derisk their investment in the best and cheapest way and the GoK wants to save as much money as possible.

LTWP’s use of several safeguards as a PRG, a cross-default clause, international arbitration, and the inclusion of DFIs into the financial structure, were all in line with the proposition of
implementing financial safeguarding against the inefficient contract-enforcing institutions to limit uncertainty and opportunistic behavior by the GoK. However, the use of informal safeguards such as personalized relationship to the state or business was not found to be used nor necessary in the case of LTWP. Moreover, Moszoro’s (2014) suggestion of involving the state as an equity owner in a PPP-SPV structure to deal with weak contract-enforcing institutions was not a strategy implemented by LTWP, although it might have been a way to derisk the project. Instead, LTWP was willing to renegotiate the PPA, just as Rodrik (2008) suggested. The investors of LTWP only applied financial safeguards to deal with the inefficient contract enforcing institutions in Kenya and they applied no informal safeguards. Thus, the proposition is moderately confirmed in the case of LTWP.

Proposition 4

*Foreign private investors in infrastructure projects in emerging markets can deal with political instability and frequent political intervention by exerting influence on the political environment.*

As stated in the analytical framework, the literature suggests that frequent political interventions in a politically unstable economy can be dealt with by exerting influence in the political environment through a well-managed relationship with the state. This will according to literature secure control in the political system and an understanding of the direction of legislative work in the country. Therefore, this proposition will analyze to what extent LTWP has worked to exert influence in the political environment.

**Legislative Challenges for Lake Turkana Wind Power**

In contrast to literature, LTWP is not of a monopolistic nature, which may decrease political intervention, although the project has a large impact on the Kenyan electricity supply by an increase of 17%. The Vision 2030 proves that electricity is an important resource for Kenya, which makes LTWP an important project as it is identified as a national flagship project under the Vision 2030. This means that the GoK officially supports the project, which too lowers the risk of negative political intervention in the project.

Kenya has been going through a violently election period, which has increased the political uncertainty that worries the business society. This is underpinned by the downgrading of the economic outlook in the country since the election. Businesses as LTWP are uncertain of the future political agendas, as the credibility of the president’s winnings are questioned and due to
Parties in the parliament do not have specific party manifestos, which means it is difficult to assess the direction of their politics (Petersen, 2018). Moreover, the new constitution of 2010 proves that major legislative changes are happening in the country in these years, which may affect businesses and how they adapt their strategy. This political instability is a threat to LTWP, in particular considering the project’s long-term lifespan of 20 years and its limited redeployment.

Partnerships with the state may be challenging for foreign private investors, as it is hard to know what is happening at parliament level behind closed doors. In fact, according to Petersen (2018) many foreign private investors decide not to partner with the state as it is too risky due to non-transparency. However, as KPLC had the rights in transmitting and distributing electricity, LTWP was forced to make a contract with the state-owned company, to be able to sell the electricity. Despite the project received a Letter of Support from the GoK, the unstable political environment still requires LTWP to have additional safeguards against changes in legislation, which also is underpinned by the GoK’s poor track record of Letters of Support (Tejlgaard, 2018).

As identified in the case description, corruption is a major problem in Kenya and it thrives in the bureaucratic processes experienced in the country (Amisi and Chemoiwo, 2018). The corruption is apparent in the Kenyan parliament with blockages of i.e. applications of permits, in hopes of receiving money under the table. In fact, all official stakeholders in infrastructure projects often take advantage of blocking applications, which is a large risk for LTWP due to the number of permits necessary for the project (Tejlgaard, 2018). Unfortunately for LTWP, corruption is in particular apparent in partnerships with the public sector (Petersen, 2018).

The DFIs and MNCs in the LTWP investor group do not want to be associated with corruption and therefore need to find other ways than using corruption to obtain permits (Heydenreich, 2018; Thomassen, 2018). By simply following the official procedures of obtaining permits is a cumbersome, time consuming and costly process because the procedures in the country are quite unclear, as they are still practicing PPP procedures (Thomassen, 2018; Petersen, 2018). Furthermore, culturally the Kenyan people in the parliament are risk averse, as incorrect decisions most likely will result in a dismissal (Thomassen, 2018). This means that investors may run in circles to find the right people to speak to and to get the approvals or signatures needed, hence, they end up getting several ministries involved during the process, with several of them expecting something in return (Thomassen, 2018, Tejlgaard, 2018).
As a result, in accordance to several of the interviewees, it is important for LTWP to have a connection to the Kenyan politicians to understand what is happening in the political environment. This network is also beneficial to influence any legislative changes that may cause LTWP and its investors harm, such as what the Letter of Support is supposed to cover. Furthermore, it will gain much needed support for the project to smoothen processes and avoid corruption (Petersen, 2018; Heydenreich, 2018; Tejlgaard, 2018; Thomassen, 2018; Leferink, 2018). According to Leferink (2018) and Heydenreich (2018), a large infrastructure project like LTWP will have difficulties in succeeding without support and connections to top politicians both at the national and country level.

**How the Political Environment may be influenced**

According to Leferink (2018), the GoK has been supportive of the project from the beginning, which also is apparent in their endorsement of LTWP as a flagship project in the Vision 2030. As stated by Heydenreich (2018), both project investors and lenders have been in close dialogue with politicians from both the government and opposition parties to ensure full support in case of any changes in the governmental environment. He stated that the investors have worked with Kenyan politicians, but specific information about the extent of work by LTWP has not been available and can therefore not be evaluated upon.

A main promoter within the government will be to an advantage, to gain a support for the project and ease processes, but this main figure in the political arena may play a risk to the project as well. According to Amisi and Chemoiwo (2018), a large and important infrastructure project may be used by a specific politician as a platform for his political agenda. The opposing candidate to this specific politician may then try to undermine the project to make the supporting politician look bad (Amisi and Chemoiwo, 2018). This political game may be a risk to LTWP; therefore the project should seek to avoid having the project aligned to one particular candidate or even to one particular party (Thomassen, 2018). However, this may be difficult as these projects often have a political angle to them (Amisi and Chemoiwo, 2018).

To overcome this, Thomassen (2018) suggests that a project will make sure that the support and network to the political environment is to different levels in the parliament. This can be done through the use of local partners who are politically well connected but at the same time politically neutral, and who can speak to both sides of the political spectrum (Thomassen, 2018; Tejlgaard, 2018). “So super sensitive that you [the investors] make sure that you [the investors]
are respected, recognized, seen as a good corporate citizen, but not seen as anyone’s close buddy” (Thomassen, 2018). This is in particular important when change in government happens, because if the investors are too close to the previous government, they will be out of favor with the new government (Thomassen, 2018).

The 2017 elections in Kenya was a threat to LTWP, as a new president may not have the same focus and support to the project as the former president - so the fact that President Kenyatta remained, was an advantage to LTWP (Heydenreich, 2018; Petersen, 2018). Thus, it is risky for LTWP to be too close to one particular political party or politician in case of a new government is coming to power. However, it is important to have a network to the political environment at several layers in Kenya to gain support for the project and an understanding of the political agendas.

Sub-conclusion

Although LTWP is identified as a flagship project under the Vision 2030, the project is still threatened by changes in regulations as the energy sector is of great importance to Kenya. The political instability and market uncertainty in Kenya furthermore threatens LTWP as the project is highly asset specific and has a long lifespan. Therefore, the Letter of Support is not sufficient for the investor and they need to implement additional safeguards against the political risk. Moreover, the corruption in the bureaucratic processes is a major hurdle for LTWP, as blockages of applications happen frequently, which is a threat to LTWP due to the many permits and signatures needed in the large and complex project. In response, the investors need to find ways to avoid this as they cannot be associated with corruption.

It was found in the case of LTWP that support to the project was necessary to avoid any legislative changes that may affect the project. In this regard, LTWP has gained support from the GoK and a great deal of political work has been implemented by the investors. Unfortunately, empirical data about the specific actions done by the investors of LTWP to connect to the government was not available. The analysis found that a diversified political network to different influential political parties was critical and the investors should not be too close to one politician or political party as it is too risky - not even the president. The reason is that in the case of government changes, they would be out of favor with a potential new government. Therefore, instead of simply focusing on exerting influence on the political environment, a broad political network will benefit LTWP in order to avoid corruption, smoothen processes and understand what is
Proposition 5

*Foreign private investors in infrastructure projects in emerging markets can deal with market uncertainty, weak financial markets and high capital intensity by establishing an international investor group with experience, large financial capital, hands-on approach, and by including DFIs and export credit agencies in the financial structure.*

According to the literature, market uncertainty, weak financial markets and high capital intensity can be dealt with by establishing a coherent investor group with long term investment strategies and that cumulative has experience with both the industry and the market. Moreover, the investors have to bring large financial capital from international markets, as well as spending a great amount of time on the site and have a hands-on approach. According to the literature, the foreign private investors also need to include DFIs and export credit agencies in the financial structure of the project. Therefore, it will in this proposition be analyzed to what extent LTWP has formed a financial construction that deals with the market uncertainty and weak financial markets in Kenyan as well as the high capital intensity of the project.

**Intermediary Institutional Challenges in Lake Turkana Wind Power**

LTWP are faced with several institutional challenges in Kenya, especially the absent or inefficient intermediary institutions. The lack of basic information about the Kenyan market and the low credibility of the available information, define the Kenyan market uncertainty (Thomassen, 2018). Moreover, as the Kenyan economy is to a large extent characterized by influential informal institutions, it creates a great deal of uncertainty in the market as these institutions are hard to understand for foreign investors.

The main challenge related to the intermediary institutions, in the case of LTWP, is the weak Kenyan financial markets. With LTWP being a capital-intensive project with a long payback period for the investors, it has been impossible for LTWP to raise capital from the weak Kenyan financial institutions (IECI, 2012). Furthermore, as the local banks have only limited knowledge about the renewables market, they would likely have been unwilling to bear the risk of issuing loans to an industry they know little about, and even if it would have been possible, the high interest rates offered by Kenyan banks make Kenyan lenders unattractive for the investors. In
In accordance with BCG/AFC (2017), due to the long asset life of LTWP and the high risk for delays of the transmission line, the project needed investors with long term investment strategies and investors that were not too risk averse. According to Frøsøg (2018), the capital intensity required in large infrastructure projects in Africa, such as LTWP, often results in a complex structure.

**Evaluation of Financial Construction in Lake Turkana Wind Power**

The lack of access to capital in Kenya forced the developers of LTWP to go to the international markets to obtain capital, in which they succeeded to reach financial close by involving both international commercial institutions and DFIs. The involvement of several DFIs as both investors and lenders were crucial for the project. In the development phase, the developers benefitted from the due diligences of the project by AfDB, which tested the financial viability and technical feasibility of the project and ensured that the project would hold high standards in terms of environment, social and ethics (Thomassen, 2018). The debt financing from the DFIs also put pressure on the GoK to fulfill the PPA with LTWP with the threat of cross default (Eberhard et al., 2016; Amisi and Chemoiwo, 2018). Furthermore, DFIs usually have a good connection to the GoK and have experience in working with them, which makes them a good partner in PPPs (Amisi and Chemoiwo, 2018). Thus, the involvement of DFIs in LTWP makes the project more attractive for both investors and additional lenders as it improves the likelihood of the GoK fulfilling promises.

In accordance with OECD (2015c) and Della Croce (2011), LTWP was able to find investors in IFU, Norfund, and Finnfund with strategic long-term perspectives that was able to bring permanent equity to the project. These investors invested in LTWP first of all to benefit from an asset that would bring a stable and predictable cash flow and which would at the same time further close the infrastructure gap in Kenya. In addition, the investors behind the IFU-managed fund that invested in LTWP is pension fund based who all seek diversification benefits, as infrastructure projects in emerging markets often have a different business life cycle than the traditional economic development in developed economies (IFU, n.d.).

In addition to the DFIs and the initial developers, the LTWP investor group also consists of Vestas, which is the main contractor of the wind farm. According to Heydenreich (2018), Vestas became an investor only because the project was short in equity in order to reach financial close, hence providing Vestas with a large order. By having Vestas as an investor has arguably provided the investor group full access to the technical knowledge related to the construction of the wind
farm. Moreover, the non-technical experience of Vestas has benefitted the other investors in relation to strategies to deal with the institutional challenges. As an MNC, they are forced to deal with the local communities, local government and the NGOs in a professional manner to protect the brand name (Heydenreich, 2018). Therefore, Vestas was the leading advocate for initiatives like World of Change, which also is aligned with the objectives of IFU, Norfund and Finnfund (Heydenreich, 2018). However, it was the plan all along that Vestas would sell their stake upon completion of the project. Google’s acquisition of Vestas’ shares will according to Frøsig (2018) and Leferink (2018) not bring in any new or complementary knowledge to the optimization of the wind farm, and they will not be involved in the operations.

According to Heydenreich (2018) and Frøsig (2018), experience of investors is of great value, which is in line with Williamson’s (1985) view on how to decrease internal uncertainty. Experience with both the renewable energy sector and with the Kenyan market has been important to the project (Heydenreich, 2018; Frøsig, 2018). Vestas and Aldwych both have experience with the renewable energy sector and all of the investors have experience with the Kenyan market, which according to Heydenreich (2018) will lower transaction costs and risks for the investors. This is in particular perceived to be important due to the uniqueness of the market, where copying a business strategy is to a large extent impossible.

This experience cannot simply be acted upon from the home market, as “you [the investor] cannot sit in London or Copenhagen and negotiate a project like this [LTWP]” (Frøsig, 2018). Due to the market uncertainty in Kenya, it is important that investors have a hands-on approach and are involved in the project by being on the ground and in the country to know the conditions of the market and how to safeguard against them. Several of the interviewees supported this view, as they often travel to the sites they are involved in to gain information and understand the challenges of the project. This was also an approach obtained by LTWP investors (Frøsig, 2018; Heydenreich, 2018).

The financial structure of LTWP is complex, but according to Frøsig (2018) it is as simple as possible. Risks have been plentiful in this project, in particular the transmission line, and attracting finance has therefore been challenging. Nonetheless, it is an advantage to have as few investors as needed, as it will result in fewer disagreements within the group (Frøsig, 2018). According to Leferink (2018) in the process of finding capital, the project was not looking for specific skill sets in the investors, but rather a cohesive group with similar goals and with long
term perspectives. In general, it is perceived to be important to have an investor group with similar intentions and goals, thereby, the group will reach agreement on how to mitigate risks and agree on specific standards the project should embrace. According to Tejlgaard (2018), misalignment happens when agreements are a little more advantageous for one part compared to the other, or when one party promises one thing but cannot deliver said promises. Therefore, experience from past agreements is an advantage and a close connection to partners is important (Tejlgaard, 2018).

As Danida Business Finance now is a part of IFU, synergies can be made in future investments between the two entities (Hansen, 2018). In LTWP, this coordination would have been a major advantage, as Danida Business Finance could have financed the transmission line, and hereby given IFU much more financial control over the entire project. According to Frøsig, if IFU had been responsible for the transmission line it would have been completed on time, but internal worries about land disputes related to the construction of a 428 km transmission line led to the decision of letting the GoK be responsible for this. However, he added that IFU would seek to build both the wind farm and the transmission lines in future wind farm projects (Frøsig, 2018). The upside of letting the GoK construct the transmission line is therefore that LTWP has avoided further land disputes with the local communities (Frøsig, 2018).

Sub-conclusion
Although Leferink (2018) stated that no specific investor characteristics were desired in the project, the investor group still fulfills most of the characteristics suggested by the literature. In accordance with literature, the weak Kenyan financial markets and the capital intensity of LTWP required investors to seek capital in international markets. Moreover, the long asset life span, the illiquid nature of the wind farm and potential delays caused by institutional challenges required investors to have long-term investment strategies. The inclusion of DFIs in the financial structure has lowered the risk levels of the project, as they provide due diligences, have experience working with the state and put pressure on the GoK. The DFIs may have been used as a substitute for the lack of export credit agencies in the financial structure. Furthermore, all of the investors have had a hands-on approach by consistently visiting the site to understand the challenges of the project and to find ways to safeguard the project. The investor group also consists of investors with both industry experience and market experience, which have limited the needed safeguards and lowered the transaction costs. Thus, the proposition is strongly confirmed in the case of LTWP.
Analysis Discussion

The analysis identified the specific strategies implemented by the investors of LTWP in response to the identified institutional challenges in Kenya. Through the analysis of each proposition, it was concluded to what extent the proposition was confirmed in the case of LTWP. It was found that the institutional challenges identified by the literature were to a large extent coherent with the most significant institutional challenges for the investors in LTWP. However, the strategies implemented by LTWP to safeguard against these risks were not found to be fully coherent to the literature. The following table 3 displays an overview of the analysis:
### Table 3: Evaluation of each proposition in the case of LTWP

<table>
<thead>
<tr>
<th>Propositions</th>
<th>Institutional Challenges for LTWP</th>
<th>Applied Strategies in LTWP</th>
<th>Evaluation of propositions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foreign private investors in infrastructure projects in emerging markets can deal with...</td>
<td>Weak property rights, powerful local government and influential informal institutions</td>
<td>Local employment, consultation and information, CSR program and Community Liaison Officers</td>
<td>Strongly confirmed</td>
</tr>
<tr>
<td>...weak property rights, powerful local governments and influential informal institutions by engaging with the local community</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>...influential informal institutions and unique institutional contexts by collaborating closely with local investors or advisor</td>
<td>Political instability, influential informal institutions and unique institutional context</td>
<td>No native co-investors, but long time Kenyan residents in the partner company KP&amp;P</td>
<td>Moderately confirmed</td>
</tr>
<tr>
<td>...ineffective contract-enforcing institutions by applying informal and financial safeguards to their contracts</td>
<td>Political instability, market uncertainty and ineffective contract-enforcing institutions</td>
<td>No informal safeguards, but financial safeguards through int. arbitration, PRG and cross default, and the inclusion of DFIs</td>
<td>Moderately confirmed</td>
</tr>
<tr>
<td>...political instability and frequent political intervention by exerting influence on the political environment</td>
<td>Political instability and market uncertainty</td>
<td>No one-sided political influence but a neutral broad political network</td>
<td>Weakly confirmed</td>
</tr>
<tr>
<td>...market uncertainty, weak financial markets and high capital intensity by establishing an international investor group with experience, large financial capital, hands-on approach, and by including DFIs and export credit agencies in the financial structure</td>
<td>Market uncertainty, weak financial markets and high capital intensity</td>
<td>An international investor group with experience, large financial capital, hands-on approach including DFIs in the financial structure</td>
<td>Strongly confirmed</td>
</tr>
</tbody>
</table>

In the case of LTWP, there was found to be many institutional challenges that are of great risk for the investors. In response, the investors have been forced to safeguard their investment from the challenges through tailored strategies and tactics, in order to derisk their project and increase the likelihood of successful completion and operation. It was found that some challenges were more critical to the project than others and therefore some strategies had higher priority over others.
Nonetheless, all of the identified strategies were important at different phases of the project.

In accordance with Tejlgaard (2018), the development phase, starting from the original idea to financial close, was found to be the riskiest phase of the project. The reason for this is mainly due to the lack of secured financing and lack of a signed PPA, of which both are required in order to realize the idea. Once the project has reached financial close, only 3.2% of infrastructure projects in Africa go into default (Thomassen, 2018). In order to reach financial close despite the weak financial markets and political instability, the investor group of LTWP established a financial structure consisting of international financiers with large financial capital and long-term perspectives. In addition, the investors have worked to establish a neutral political network to gain broad government support. The importance of political support decreased following financial close, as the project was given a Letter of Support from the GoK. After reaching financial close, new strategies are required for the investors in order to derisk their investment.

In the construction phase, two main risks were found to have the highest priority for the investors. The first risk was the local communities causing delays in the construction of the wind farm or even a complete write off, because of the weak property rights and influential informal institutions. Although it may be impossible for the investors to avoid land disputes completely, the goal is to ensure that the local communities will not cause the project to halt. This was found to require a long-term commitment of the investors to be on the ground and work to understand the informal environment thoroughly and satisfy the demands of the local communities. However, the investors need local partners with experience in dealing with informal institutions in Kenya to know how to engage with the local communities. Noteworthy, it was perceived that if the project has had native local partners then the extent of needed community engagement would have decreased, because the initial acceptance would have been higher and exposure to negative publicity and court cases may have been diminished.

At the same time, community engagement has to be coordinated with the powerful county governments in order to maintain the political support of the project. Again, local partners with a strong political network will make political support for the project more accessible for the investors. Noteworthy, community engagement was found to be a requirement for the government, so if the investors exceed the expectations from the government then the need for political network decreases, because of the government’s social orientation. Ultimately, community engagement cannot be compensated, even if the investors have the highest insured
contracts and strongest political network, because a failure to make the informal institutions accept the project may result in the project halting. Thus, community engagement is the most demanding risk mitigation for the investors.

The second major risk for the investors was the risk of non-fulfilment of the contract by the GoK, due to market uncertainty, political instability and ineffective contract-enforcing institutions. This risk forced the investors to implement financial safeguards to ensure fulfilment of the contracts. This is a major risk as the project is highly asset specific with illiquid capital and the profitability relying on the single off-taker payments throughout the project lifetime. If LTWP had been responsible for the transmission line then the need for financial safeguards would decrease in the construction phase.

As LTWP has incorporated several powerful financial safeguards to ensure contract fulfilment, the need for a political network in the construction- and operational phase is limited. The reason is that the financial safeguards seek to cover the same risks as a neutral broad political network was intended to cover, only in a more powerful way. In other words, even though a diversified political network will gain some sort of political security in an uncertain and political unstable environment, the need for financial contract-enforcing mechanisms to ensure fulfilment of the contracts are still highly important. Thus, the financial safeguards were found to be a requirement for the investors as it cannot be compensated by any other strategy.

In conclusion, there was identified a number of required strategies to secure the investments from the many institutional challenges identified in Kenya, as one strategy does not necessarily compensate another. It was found that investors needed to be well-equipped to safeguard properly against the institutional challenges that may affect the project throughout its entire lifetime, with preparation starting already prior to financial close. Therefore, the most important and risky phase of the project lifecycle was identified to be the development phase. To safeguard satisfactorily against the unique institutional challenges are very demanding, with a higher chance of successful project execution if taken notion to establishing the right team prior to financial close. In sum, to deal with the institutional challenges identified in Kenya, LTWP investors had to be well prepared.
Implications

The process of answering the research question has led to the discovery of several implications. This section is divided into two; the first set of implications will discuss what other foreign private infrastructure investors in emerging markets can take away from this case study, and the second set of implications is for the literature, which will provide a discussion of what this research has contributed with to the literature.

Implications for the Industry

Instead of pursuing the sample-to-population logic in statistical generalizations, the findings of this paper can relate to future infrastructure projects in emerging markets through a generalization in an analytical nature as an appropriate logic. Obviously, other infrastructure projects in different emerging markets may not experience the exact same institutional challenges as LTWP, but future projects can still learn from the logic behind the interplay between the institutions and the implemented strategies. This means that future investors cannot simply copy the strategies implemented by LTWP, as these strategies might not be the ideal fit in the institutional context. Rather, the investors need to adapt to the unique institutional challenges.

Overall, emerging markets are in great need for infrastructure investments and private participation is needed in order to close this infrastructure gap because public funding and aid are not sufficient. Therefore, all new infrastructure investments will in principal meet unmet demand, which means that host governments will welcome FDI (Thomassen, 2018). However, the problem is not a lack of available private funding but promising properly structured projects to invest in (Petersen, 2018).

Support the Developers

One of the fundamental reasons behind the mismatch between supply and demand of infrastructure finance is simply a lack of developers (Petersen, 2018). The development process of large infrastructure projects like LTWP can take up to ten years before they reach a financial close, because they entail complex legal and financial arrangements (Petersen, 2018). It requires the developers to make expensive feasibility studies with both technical and financial elements in order to attract investors and lenders to the project. These costly and demanding prerequisites make it unattractive for most potential developers to develop infrastructure projects (Petersen, 2018; Frøsig, 2018). In order to increase the supply of bankable infrastructure projects, there is a growing need for closer collaborations between project developers and foreign private investors, which include early financial involvement from investors.
The development phase is basically a venture business, so it is highly risky for the developers because they might suffer personally from the financial loss if their single project is not realized. In contrast, an example of a type of investor with a more diversified portfolio of projects is DFIs. Hence, with their risk profile, financial capacity and development perspective, supporting infrastructure developers are in line with the characteristics and objectives of DFIs. By supporting the promising developers financially in the early phases of the development, will lead to more bankable infrastructure projects for foreign private investors to invest in, in spite of a fair share of the developers will not accomplish successful realization of their project. One way DFIs could support the developers, is by offering credit access by issuing convertible loans, which will increase the likelihood for the projects to be realized. In return, the DFIs will convert their loan into common stock if the project reaches financial close. This way foreign private investors, including DFIs, will have more bankable projects to invest in, which will further close the infrastructure gap in emerging markets.

**The Right Team of People is more powerful than a Standardized Investment Approach**

Another reason behind the lack of bankable projects is that each infrastructure project is to a large extent unique, in particular in terms of its institutional environment, which requires the investors to invent the wheel in every transaction (Petersen, 2018). There is no universal truth or best practices about how to succeed in emerging markets because the institutional context is unique even within a country, which inflates the transaction costs (Thomassen, 2018; Hansen, 2018; Petersen, 2018). This is also stated by Heydenreich (2018): “In emerging markets, it is not about the project, but the context”. However, Hansen (2018) argues that some elements of the challenges in a certain type of infrastructure project (e.g. windfarm) might be universal, no matter the country.

In addition to the complexity of infrastructure projects and the uniqueness of the institutional context, the fact that it usually takes many years to develop a project limits the number of bankable projects (Petersen, 2018). The long development process is a problem for foreign private investors who are looking for projects that are ready to be realized so they can invest their capital (Petersen, 2018). For instance, a fund like Danish Climate Investment Fund, which is managed by IFU, only has a limited amount of years to invest the committed capital from its private investors. Most private investors do not see it as their responsibility to contribute to the initial development of the projects. This is the chicken-and-egg problem; the developers need risky capital, but many infrastructure investors find it too risky to invest in projects that are not yet bankable.

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36 Danish Climate Investment Fund is the fund from which IFU invested in LTWP
Although this implication seems inevitable, the problem could in principle be solved by establishing a more standardized approach for these investments consisting of global standards that foster a common understanding and procedures of business practices. In fact, IFC\textsuperscript{37} is trying to implement a program called Scaling Solar that aims to standardize the financing package (PPA) within the solar energy sector, which will make it easier and faster to develop the financial part of such a project (Scaling Solar, 2018; Thomassen, 2018). However, the initiative has not really worked as planned. The problem is still that unique institutional challenges and the complex financial structures of large infrastructure projects make it difficult to standardize the investment approach (Thomassen, 2018). Instead of seeking a standardized approach, Thomassen (2018) suggests that the essential thing is to put the right team of people together “\textit{that can go in and can proactively negotiate with governance}”. This multi-discipline approach require developers, lawyers, engineers, and financiers, who all needs to “\textit{run in a unit like a machinery}” (Thomassen, 2018). Thus, it really comes down to finding the right people to help develop the infrastructure project in emerging markets, which will lead to more bankable projects for the foreign private investors to invest in (Heydenreich, 2018; Thomassen, 2018).

\textbf{Know the Main Risks of the Project}

Although the infrastructure industry and emerging markets have unique institutional challenges, future foreign private investors can still take away valuable lessons from the case of LTWP. Arguably the biggest risk of the project has been the construction of the transmission line as it could have resulted in a write-off for the investors, if their financial safeguards against the GoK were not in place. The investors went into the PPP to share the risk of the project with the state, which in principle may be the right strategy from the investors’ perspective. However, the two-year long delay displayed a major risk for the investors because the completion of the entire project depends on the GoK. This raises the question whether the GoK really was the best suited of the two, to manage this task. By allocating the transmission line in the hands of the government forces the investors to implement various financial safeguards in compensation for the high risk because of the limited trust to the political system. Thus, in infrastructure projects in emerging markets where it is politically possible and make sense financially, the foreign private investors should seek to establish the project without the state. However, it is recognized that in some cases it can be an advantage for the investors to sign a PPP, especially when a part of the project is expensive and of a non-profitable nature, like transmission lines.

\footnote{International Finance Corporation is part of the World Bank Group}
Nonetheless, in a situation where the investors are obliged to sign a PPP forces them to make an assessment of the investor group whether they cumulative have the capabilities to deal with the state. The reason is that in contrast to how the theory stated that PPPs tends to be based on mutual trust and support, this research found that was not the case in emerging markets, which is hindered by political instability and market uncertainty. Therefore, it requires the investors to have a large financial capacity and access to critical financial safeguards such as a cross- default clause and international arbitration in order to derisk their investment against the state.

On the other hand, investors without large financial capacity and access to such safeguards should thoroughly consider the risks against the potential return. In fact, no matter if the investors sign a PPP or are able to do the project without the state, investing directly in infrastructure projects in emerging markets is still a highly risky asset class. Thus, the investors cannot only have monetary profit as their only objective, because simply completing the construction of the project requires the investors to pass several risky barriers, which can end the project. The high risks, long term nature of these investments and the large amount of hands-on work required, force the investors to have a development perspective as well, where they additionally actively seek to close the infrastructure gap as one of their main objectives.

Another major risk of the LTWP project that the industry can learn from is the importance of engaging with the local communities, because no matter if they pose a security risk to the employees or not, they can still halt the project. The local communities may not recognize the national rules and norms and hence, it is clear that investors need to connect with the local leaders at a social level in order for the project to be accepted by the local communities. Therefore, the investors need to implement strategies to make the local community feel that they are benefitting from the project, otherwise, resistance from the local communities can lead to project delay or even a complete shutdown.

The paradox of LTWP’s strategies is that most of them do not fill an institutional void in the market, but rather secure the individual investors own investment. To illustrate this, imagine the following puzzle: “Suppose you walk by a pond, and you see that a child is drowning. But it’s a really busy day - you have lots to do. Do you have to stop and help the child?” (Sun, 2017, pp. 159-160). The answer is obvious, but the puzzle continues: “But suppose you walk by a pond every day, and every day there’s a drowning child and you’re still really busy. Is it unethical to not stop and help the child every day?” (Sun, 2017, p. 160). This can be related to infrastructure investments in emerging markets. The same institutional challenges will remain for future foreign
private investors. The question to the puzzle of the institutional challenges is not how the investors can overcome the challenges, but rather how can the investment climate in a certain emerging market be improved? Although it can be argued that the infrastructure projects are the pillars supporting the development of any emerging market, most of the strategies analyzed in the case of LTWP is only thought to support the project and will not benefit future foreign private investors besides inspiring them to implement similar strategies.

**Implications for the Literature**

In the process of investigating the infrastructure gap in emerging markets it was found that there was a great deal of literature on the problems and challenges in emerging markets and on the importance of infrastructure investments for the development of emerging markets. In response, a fair amount of literature exists on how a host government can improve the investment conditions for foreign private investors to attract more infrastructure investments. At the same time, the institution-based view suggests that business strategies cannot be understood without understanding the institutional context. However, there was only limited literature on specific strategies that the foreign private investors could implement to overcome the institutional challenges. Thus, this research paper investigated how foreign private investors can deal with the institutional challenges when investing in infrastructure in emerging markets by exploring the case of LTWP.

By answering the research question, this paper has sparked the discussion of the dynamics between institutions and strategies on the topic of infrastructure investments in emerging markets and has in this way contributed to the literature. It was found from existing literature that institutional challenges in emerging markets are unique and require tailored strategies to a large extent, therefore, this research focused on the specific strategies and dynamics in a case study, which is new in the literature. The institution-based view was found to be highly relevant to this research as it was concluded that the characteristics of an infrastructure project like LTWP were sensitive to institutional challenges. Thus, this research has contributed with practical and context-dependent knowledge to the research topic in the form of specific strategies.

This research answers the research question through a case study because all human knowledge is beginning with the experience of cases, which was particularly relevant to this topic with only little existing literature. The case study of LTWP provided an in-depth examination of a single case within its real-life context with the use of multiple sources of evidence. This allowed the research to discover specific strategies that will contribute to a knowledge pool rather than seek
to formally generalize the findings. These strategies may be duplicated by future projects with similar characteristics and challenges, but the specific strategies are not universal solutions to how all infrastructure projects ought to deal with institutional challenges. Instead, the use of existing literature to develop an analytical framework to study the case proves that the research seeks to expand the literature, so future research can equally apply the five propositions to other case studies. In this way, analytical generalizations can be drawn from several case studies by comparing the findings to the existing literature.
Conclusion

The aim of the paper was to investigate how foreign private investors can deal with the institutional challenges when investing in infrastructure in emerging markets through the case study of LTWP. The focus on foreign private infrastructure investments and specific strategies to overcome the institutional challenges in emerging markets is driven by the great need to close the infrastructure gap in emerging markets. To investigate this problem area, five propositions were derived from existing literature and subsequently analyzed in the case of LTWP to evaluate the extent to which the propositions were confirmed in the case study. This was done mainly on the basis of several in-depth interviews with LTWP stakeholders and industry experts. In this way, the research found and evaluated the specific strategies implemented by the investors of LTWP to deal with the unique institutional challenges in Kenya.

By focusing on the dynamics between the institutions and the infrastructure characteristics this paper has found specific strategies from a case study, which has expanded the literature and can be generalized in an analytical nature. The findings of this paper were to a large extent coherent with the existing literature in regards to the institutional challenges in emerging markets, whereas the strategies to deal with them were to a moderate extent coherent with the literature. Moreover, it was found that there are many unique institutional challenges that display a high risk for the investors. Noteworthy, as the formal institutions are weak in Kenya, the informal institutions have considerable influence, which expose the investors to great uncertainty and additional risk. Thus, this requires the investors to implement both formal and informal safeguards.

In regards to the informal institutions, there was found to be no compensation for community engagement because the local communities may be able to delay or even completely halt the project. However, there was found to be no universal right way to engage with the local communities as their acceptance of the project depends on how well the investors meet their demands, offer consultation and make them feel that they are benefitting from the project. In order to deal with the unique informal institutions, it was found to be critical for the investors to have local partners and that the navigation of the informal institutions will be easier if the local partners are native. However, the goal with community engagement and the use of local partners are not to avoid land disputes but rather limit the negative impact of the local communities on the project.
In addition to the informal institutions, it was found that no compensation for powerful financial safeguards exists against the inefficient formal institutions of contract-enforcement. The importance of the state for the success of the project was found to be significant, as they are the only offtaker of the generated electricity in a project of which completion additionally depends on the state. However, as the contracts only are as efficient as the institutions in which they were designed, investors have to impose financial safeguards against the state to ensure contract fulfilment in an unstable political environment with inefficient contract-enforcing institutions. These safeguards are implemented to increase bargaining power over the state to reach a renegotiation of the contracts rather than a possible termination in order to ensure payments. Some of the most important safeguards for the survival of the project throughout its lifetime were international arbitration, PRG and cross-default clause, due to the highly asset specific nature of the investment in weak formal institutions.

Ultimately, when investing in infrastructure in emerging markets the foreign private investors are challenged by the unique institutional context, which require tailored strategies. This is a demanding process, which obligates the investors to have a long-term commitment and a hands-on approach. Therefore, this paper is of great value for future infrastructure investors as the lessons learned from the case study may assist in how to deal with the institutional challenges. If the strategies are well adapted to the institutional challenges, the investors are more likely to succeed, which will serve to close the infrastructure gap in emerging markets.
Bibliography


• Leferink, P. (2018). The institutional challenges regarding the LTWP project.


Appendices

Appendix 1 - Interview Guide

This interview guide has been the main structure of all of the interviews, although it has been modified to each individual interview:

- What have been the main challenges and risks for this project in the role as a foreign private investor in infrastructure in Kenya and how have you dealt with these challenges?
- What actions will you implement in order to understand the local context of the country?
- To what extent have you engaged with the local community?
- How have you worked to engage with local authorities?
- When keeping in mind the political instability of many African countries, how have you worked to derisk your partnerships with the state?
- In what ways have you worked closely with the state and why?
- When investing in infrastructure in Africa, are there any specific characteristics of financial partners that are specifically desired?
- To what degree are local partners a necessity in the project and how have you worked with local partners?
- How well have contracts been enforced in the project and which actions have you done to ensure contracts have been enforced?
- What other stakeholders do this project need to consider?

Appendix 2 - Interview with Henrik Frøsig, IFU

Phone interview - February 2, 2018:

Kan du fortælle lidt om de generelle risici der er ved et projekt som LTWP og hvordan I har afdekket disse risici?


Phone Interview - February 26, 2018:

Hvorfor valgte I at investere i Lake Turkana i sin tid? - Hvilke overvejelser havde I dengang? Og hvilke udfordringer oplever I ved investeringer i LTWP?

Lake Turkana er startet mange år siden, omkring 12 år siden. Det er meget normalt med sådanne

I en stor investeringsgruppe - har I samme ønsker om at skabe development impact?


Hvorfor skal man give tilbage til landet - hvordan bliver man straffet?

Så får man ikke lov til at lave forretnings dermede - så går staten ind og ødelægger det. Man får ikke en PPA hvis det er et firma der kun er inde for at hente profit ud af landet - så vælger de en anden.

Er der andre institutionelle udfordringer I oplever ved investeringer i landet?


**Hvilken rolle har staten i projektet udover at sætte transmissionslinjer op?**

De skal betale for energien - de er kunden. Det er det lokale “Ørsted”, de hedder så Kenya Power. Det er statskontrolleret. Så man kan sige staten er en vigtig del af aftalen, det er modparten. Vi kunne også have bygget transmissionsledningerne, men det valgte vi ikke at gøre. Vi var bange for jordrettigheder. Ligesom vi har retssag på vindmølleparkens jord, så er transmissionsledningen lang og løber hen over 2000 forskellige parceller, og vi var bange for følgende retssag og parceller vi skulle kompensere. Så vi tænkte det var bedst staten gørde det. Set i bakspejlet skulle vi have gjort det. Det havde måske være dyrt med kompensationer til ejere af jordstykker som vi ville have gået igennem, men vi ville have fået den færøg til tiden. Næste gang vi bygger sådan en vindmøllepark, så vil vi bygge den sammen med en transmissionsledning.

**Er det ikke en fordel at have staten med som partner?**

Jo det er en fordel. Vi ved ikke hvorfor de ikke var med som ejer - det havde i hvert fald været en fordel. De er jo en modpart - så dermed en fordel i forhandlinger. I forhold til retssag ville det være sværere at lægge retssag mod staten - dermed ville det give en hvis sikkerhed ved uenigheder. Det er også staten der skal betale for strømmen så dermed vil man gerne have staten med som ejer. Men normalt er infrastrukturprojekter bygget op sådan at det er 100% statslig eller 100% privat. Er det helt privat hedder det IPP - Independent Power Producer. Er det helt statslig er der ingen aftale der skal på plads. Skal private med indover kan man lige så godt lave det 100% privat da man alligevel skal udeløje sig med aftaler og garantier. I dette tilfælde kunne vi ikke få staten med som medejere, vi forsøgte men de ville ikke - da staten ønskede det skulle være 100% privat. Staten har sine egne vindmøller rundt omkring. Normalt er det enten eller.

**I hvilket omfang har I involveret lokale partnere og rådgivere i projektet?**


**Har der været nogen grund til I ikke har lokale investorer i investorgruppen?**


**Har der været en fordel at have lokale partnere?**

Det betyder ikke noget i dette tilfælde. Når der er 50 ejere er der intet problem i at nogle stykker er fra udlandet, men i et anden type af projekt med få ejere, en dansk virksomhed, lokal og IFU er det en anden diskussion. Men et stort projekt som LTPW er det ligegyldigt om der er et par udenlandske fra eller til. Dem som bor der er dem som har udviklet det, og være hovedmotor - Carlo Van Wageningen og Rizwan Fazal - som er en del af KP&P. Det er dem som har forhandlet med alle
lokale parter igennem 9 år - havde det ikke været dem, så skulle vi have nogle andre lokale som skulle have taget sig af det. Man kan ikke sidde i London eller København og forhandle sådan et projekt på plads.

Hvorfor har det været nødvendig at lave den finansielle struktur så kompleks?
Den er så lidt kompleks som muligt. Man forsøger altid at have så få ejere og banker med som muligt. Det er alene fordi bankerne ikke ville tage mere risiko, derfor må man gå til flere ejere og banker. Der er ikke en for meget med. Man starter fra en og bygger det op derfra baseret på hvor meget hver enkelt vil tage - og presser dem til at tage så meget som muligt.

Har der været tanker på specielle typer banker eller investorer?

Er der specifikke kompetencer man leder efter i sådan et stort projekt i investorgruppen?
Man vil selvfølgelig gerne have nogle med som har forstand på det. Vestas er jo også medejer, da de har forstand på det. De andre udviklingsbanker som IFU har drevet forretningsdøgner i over 50 år, så vi har meget erfaring med at behandle de NGO’s, og hvad der sker der. Man skal have forstand på hvordan man styrer lokalbefolkningen, og om du skal tage ansvar for transmissionsledningen eller ej, og hvor svært det er at transportere vindmøller fra Mombasa til området, og hvordan du forhandler med regeringen, og hvem der i virkeligheden ejer jorden. Lokale og investorer med erfaring i landet har kompetencer i de forhandlinger og land disputes, dog ved de lokale som har vokset op dernede mere om det.

Har der været gnidninger mellem investorerne?
Der har ikke været store gnidninger - men der har været diskussioner i bestyrelsesmøder hvordan opgaver skal prioriteres. Man er ikke altid enige om alt. Dem som styrer samarbejdet og informationen til NGO’er som Danwatch har vi været uenige om. De private ejere har konsekvent været mindre interesserede i at behandle de NGO’s. IFU, Finnfund og Norfund har været mere interesserede i at behandle NGO’erne på en ordentlig måde, og forklare dem hvad der foregår. Der har ikke været gnidninger, men diskussioner - intet alvorligt.

Hvem er Sandpaper i investor gruppen?
Det er Riswan Fazal, som udviklede i starten. Han har 0.25% i aktier.

Vil Google’s overtagelse af Vestas’ aktier have nogen indflydelse?
Overtagelsen kommer til at ske når vindmøllerne bliver koblet på nettet og det hele virker - vi forventer det sker i løbet af i år. Det vil ikke ændre på noget i gruppen. Vestas vil have oplært lokale til at gøre vedligeholdelse. Google vil ikke bringe nogle kompetencer til investor gruppen.

Hvad er jeres nuværende forventninger til projektet og hvordan har det ændret sig i forhold til starten?
Forventninger til afkastet er en IRR på ca. 18% - faktisk er vores forventninger steget på trods af udfordringer da vinden er bedre end regnet med ud fra budgettet.
Appendix 3 - Interview with Phylip Leferink, LTWP

What have been the main challenges and risks for this project?

A project like this has a long perception period. So it depends at which phase of the project you are looking at – development phase, implementation, operations. Each phase has its own challenges. So it is not as if there is ‘a’ challenge in a project like this, of this scale and this nature, in a country like Kenya; there is only challenges. It is one big challenge. But if we look at various phases; if we take the development phase to start with. The challenge is that you have an idea - that idea was conceived a long time ago; Dutch people traveled to the area. You have heard the story. The idea has that they wanted to build a wind farm. So the idea is great and it was a great idea because we are where we are. But actually to transform the idea to something that can become a reality - the conception of the idea versus the actual implementation or conclusion of the development phase is two completely separate issues. So the idea always has to start somewhere and a few of the still current shareholders they had this idea of this fantastic wind in the area where we are. From that moment one you start to look at what it takes; what it takes to a situation where you can attract capital - equity - where you find interesting finances, i.e. how do you bring your project from the conception to an actual delivery. In that development phase there are many challenges; technical challenges, logistical challenges, financial challenges, and so on. So, what you need to do in a project like this is that you start with the basics; the wind needs to be good, but how do you prove to your lenders and to your shareholders that there is good wind? So you need to do wind measurements for at least a year - that is standard in the wind energy sector. But we actually started to measure the wind very quickly after we decided to push the idea prove that the wind was there and it was of the level we thought it would be, so it would justify the investment on this project because this is not a normal wind farm. There was absolutely nothing; there was no infrastructure in the area, so every large part of the infrastructure we had to build, like the excess road of 200km. But other projects where you do not have that challenge, you do not have to build a 200km road or they do not have to build a village because they are much closer to the living world and they do not have to rely on everything they do themselves. So actually, what you start doing is once your core - your wind, that’s where everything starts - and the wind really justifies the project of this scale at an attractive cost of energy; an attractive price to the Kenyan consumer. The technical challenges - connecting the the windfarm to the Kenyan grid system. Once we concluded that technically it is possible, financially it is possible, then you get to the next phase where you start the project and you start approaching potential equity partners. But we found that it was actually quite easy to get interest for the project. Although we had changes in the development phase, where one party would withdraw, but there was always who were interested to join. So that actually worked out quite well. When you have the technical and the financial elements in place, you start looking at the bankability of the project; what does it take to attract external funding - debt in this particular case to bring it to financial close. That actually requires quite a few things, because beside the environmental pyramids and what have you, the most important thing it requires is a Power Purchase Agreement. That is an agreement, which came to the Kenyan government, became a very lengthened process to get to a conclusion of the PPA and get to the understanding that both sides of the table agreed to what we were going to do, that took time. But we also managed that in the end, while we were talking to our lenders at the same time. Actually, our lenders required certain government guarantees for the construction of the transmission lines for instance that it would begin on time and stop on time. And we are actually looking at a very long delay right now. So we needed to have certain guarantees for the government that in case infrastructure required to connect would not be finished on time that we would be entitled to compensation. Not so much compensation, but we would be entitled to invoice the government for the energy we would have produced, so we actually would fulfill our financial obligation. Because the moment you reach financial close - when the development phase is finished - financial close means that money will be disbursed to you. But at the same time it also triggers your repayment schedule and that goes hand in hand; once you have financial close, you know exactly when you need to repay the interest and the principal, etc. So your financial obligations start to kick in right there and then. Although the money flow initially is in our direction, once you complete with
construction the money flows into the other direction - not all of it of course because we need to make a return as well. And that is why these government insurances need to be in place because in case the transmission line would have been delayed - which it is right now - our financial obligations continue. So, that was also a challenge to get that done with the government, so that we all were on the same page. The insurance we got from the government was necessary because we got an delay.

**What are the risks in a project like this besides the guarantee from the government -**
**I’m thinking of the context of Kenya, in comparison to a project in Germany?**
That would have been the same in Germany. There would have been no difference in banking the deal. That reassurance would have guaranteed from the German government - or whatever bankable German institution it may be - there has to be a guarantee in place because we are relying on certain infrastructure which is not in our span of control, because if the transmission construction would be in our span of control then that insurance from the Kenyan government would not have been necessary. Because then the wind farm and the transmission line would be in our hands. Then the lenders would take a view; do you trust the capability of the Lake Turkana Wind Power to build a transmission line as well as a wind farm and can everything be connected to the grid? If the answer is yes; they are good. With the wind farm, that was actually the case, because there is no other collateral or no other guarantee than the money that the shareholders are putting in; that is really the security that lenders have because out shareholders are not putting in money if they do not think it can work. So, that would have been a different scenario. So, if the transmission lines would have been in our hands then the nature of the project changes, but since we have infrastructure outside of our span of control - since the government is building the transmission lines - the insurances have to come from the government of Kenya; so the guarantees have to come from the government of Kenya.

**What is the status of the transmission lines?**
The transmission lines should have been there in September of 2016, so we are now a year and a half down the line. It was not going well with the Spanish company Isolux Ingeniera SA; they were not able to get a good grip on the project. The government decided to terminate it last year in August and find a new contractor. They found a new contractor and I am actually very positive about that one; it is a Chinese consortium between NARI Group Corporation and Guizhou Engineering Company, and they came together and were awarded the balance of the transmission lines construction works. So, that was in the end of January this year [2018] and we will see how it goes, but knowing Chinese companies for what they can do, if they put their mind to it I am actually quite optimistic that we will see a predictable completion date of the transmission line evolving in the coming two or three months.

**But you have received payment already, right?**
We have received the payment last year.

**The PPA?**
Yeah.

**What effect has the long delay had on the investors?**
In principle, it should not have had an impact on the investors at all - that was the whole structure of the transaction. But obviously, Kenya is not a country where money is floating in the streets - neither in the Kenyan government, and we understand that. So, we have restructured the PPA in what we call The Second Variation Agreement on the Power Purchase Agreement. So, we had a variation on the PPA, where we restructured these payments to actually softens the blow to the government, so that they would not have to dish out all the cash. It was also in our interest because we knew that if we pushed the envelope it was not going to work because there is too much resistance. In my view, the Kenyan government - at that time - had a view that the risk was almost zero, but when the risk transpires, which is perceived to be almost zero, and when it transpires it becomes a very expensive risk and they would have needed help. So we sat with the government for a couple of months to get a
restructured document like this, but that is what we have achieved. Did we get what we really wanted? Probably not. But did we receive from the government what we needed in order to continue our operations? Absolutely. So, we are actually grateful for the government for the support they have been able to give us.

**So you don’t get a specific amount according to the PPA?**
Yeah, we do, because we have varied PPA, so the PPA today is a different PPA compared to a year ago. So, we get exactly what we have agreed in the renegotiation with the government and we are content with that.

**But did you say that they might be resisting paying?**
No no no no, we have received what we have to receive. The government has paid in accordance with what we have agreed. But before - based on the PPA that was in place until 8-9 months ago - they said “guys, can we sit down and look at a solution that also works for us in a better way”. We needed to play a little game there of course, but they are our one and only client.

**How well have contracts been enforced in LTWP?**
If you mean enforcing in the sense that there is a contractual dispute and you go to court, we have not had those cases.

**What we mean is more contracts with the government.**
You do not want to take the government to court, do you? So you negotiate if there is an issue. Whenever there is an issue, we believe in the dialog and not in the confrontation.

**Also in Kenya?**
Also. It is the same. There is no difference. We always find a solution somewhere. If both sides are reasonable and if they think logically, there is always a solution. So we want to stay out of court or disputes situations as much as we can. There is another project here in Kenya called Kinangop and Kinangop actually is in court, in arbitration right now. Will they ever be able to bring it back to the normal run? I don’t know, but don’t think so. I don’t think it can happen anymore. There is too much pain in that whole process, which actually takes away the foundation for a proper cooperation. Our view is quite different; we are always going to listen and to discuss reasonably. It is when people get unreasonable it becomes very difficult to - in general - come to an agreement. If you only want to have it your way; it does not work.

**What is going to happen after the 20 years of the PPA?**
The official answer is that the project ends there. The PPA can be extended, but then you need to renegotiate. If you look at all the wind projects globally, after a 20 year term it normally pays a good dividend. If you can be granted the construction for another 20 years to repower - because technology has advanced in 20 years time, there will be better alternatives. I can’t predict what will happen, but the project’s life span is the duration of the PPA. And if the PPA - for whatever reason - is not extended we need to demobilize. The whole project is financially written off. The business case is the duration of the PPA, so if there is no extension to it nobody is losing anything, because our shareholders actually are working on that duration, so your business case has that end date and your return is based on that and not on an expectation that you might add on another 10 years.

**Which actions have you done to ensure contracts have been enforced by the government, so they do not cancel contracts?**
Well, they can’t cancel because that is actually not possible - a contract cannot just be cancelled like that. The PPA we have cannot just be cancelled, because then the other guarantees kick in and the government still needs to take responsibility of the investment. The Kenyan government has been very supportive to this project all the time. You cannot do this project if you don’t have support from the government - you cannot. Do we need an advantage over the government? We have never felt it like that. The government has been a good partner to us.
Do you feel you can trust the government?
Can you trust any government? Being the Danish or the Dutch. I have seen thing in my country were I thought that the credibility of the government was at stake. I mean, the Kenyan government is not different; it is Eastern Africa, but that does not mean that the fundamentals of governing are different from Europe or whatever. The government is also has the best interest for the Kenyan citizens - that is what they are here for.

We wanted to ask you to what extent it was an advantage to have a partnership with the state, but it sounds like the project could not be done without the state.
The government has no stake in the project; they are not a shareholder or anything. But if you don’t have political support to large scale projects like this - or from the county government, national government - you can’t really do this without the support. You need to have certain exemptions.
Otherwise the project is financially not feasible. Stuff like that are things that the government actually can give without any problem. Without it [the government] it would be very difficult to do it. The facility role that the government is playing - also in Kenya - is mandatory for projects like this to succeed. So it is these enablers that a government can give you, or refuse to give you. We did not get any special treatment in the sense that we got something from the government that nobody else has.
But there are thing where they say that it is in the national interest to do this so we will support it.

You were talking earlier about that it was easy to attract investors.
Yeah, let me put it this way; we were never short of interest.

So, what was it about this project that made it interesting?
This is of course a unique adventure. This has never been done globally. This project is the largest infrastructure investment in this country ever. Look at the operational environment we need to work in - it is a boy scout’s dream to be able to do this. Also the engagement we have with the communities around us; it’s actually one big PR. I mean, what is wrong about this project? Nobody can give me anything that is wrong; it is clean energy, it is cheap, we provide huge employment in the area, we are doing projects all over the place in order to support the communities, and we have shareholders which are making a return at the same time. So, this project was very sexy for our shareholders, because out shareholders are active in the energy sector and African infrastructure, so to them it was a golden opportunity.

Was there any characteristics of the investors that you wanted to be part of the project or was it simply a question of a certain amount of equity?
You want to have a group of shareholders that feel good. If an investor has something that the other investors can agree with as a reasonable expectation for the project to deliver on and the chemistry in the shareholder group is there; you can move on. But if you have shareholders that - whatever it is, risk appetite, risk perception or whatever - are not cohesive, you can’t do it. Because if you have diverse opinions all the time you cannot move together as a group. So, we were not looking at a specific profile investor. We have Norfund, IFU, Finnfund, this project is typically a project that they love. This is what they want to do in Africa. This is a big project, big impact, this is making a difference; perfect project for them. The other shareholders we have are private shareholders as well. The private investors are slightly different, they also want to do the right thing, for sure, but for them the return appeals a bit higher. But that does not prohibit the relationship between the shareholders because everybody want the same; realize a project which makes a difference and make a return at the same time.

To what degree does it affect the project that Vestas sells its stakes to Google?
This is pre discussed as well with all the shareholders because the deal has been on the table for a long time. Vestas will sell their stake at actual project completion, which means that me need to be connected to the transmission line. And actually they cleared Google as a potential buyer already.
before financial close with all the shareholders, so that’s fine. This is happening and we know it; Vestas will at some point leave the project and Google will come in, which is fine.

**Which knowledge will Google contribute with?**
Google is a very cash rich company and they have a lot of renewable investments and also if you look at what Google are doing from a RD point of view; yes, it is a search engine, but they do a lot more than that. Actually, renewables, Africa, making a difference, that actually appeals to Google. They don’t bring any specific knowledge to the equation to which we run a better wind farm than before for instance - that is not the case. Google is an investor, which feels that this project actually fits their profile well and the investment funding they have available needs to go somewhere, and in this case it goes to Lake Turkana.

**To what degree are local partners a necessity for this project in the context of Kenya?**
The initiators of the project actually were all living here. Even though they were Dutch, they have been here for many, many years. In a project like this, you need to have a strong position in this country; you need to have done bigger projects beforehand. The original initiators of the project - even though they were here since a long time - they knew they would not have the capabilities to actually develop it into the next phase. So, they found three gentlemen - a Norwegian, a Dutch guy, and a Kenyan person - they said “we have this idea, but we can’t develop it to the level it needs to go”. “Are you willing to sell it?” And they said “interesting, we have never build a wind farm, but it sounds like a very interesting idea, so let’s go”. So, we actually have a group of people, who were here since many, many years, have done larger projects in the country and they know their way around and they know how to open the door into the ministry or what have you. Even though they were “Mzungu” - white people - they were actually considered to be locals.

**To what extent is that important in the context of Kenya?**
Well, it is your presence, it is your visibility, it is your accessibility, you are always there, because you live there, you work here. So, it is important that the personal relationships are developed properly with the right people, so you get the support you need and that you actually can move forward with the development of your project, it is very important.

**How do you work with local partners now?**
We actually don’t really work with local partners to the extent that we have long contractors in the project and with whom we are still working today. We don’t have formal Kenyan partners, like we are working on a platform with whatever partner we have in Kenya - no; we don’t have that. So, we have contractors, but the project has shareholders where that is an important Kenyan presence and that is how we work.

**Okay, you don’t find any difficulties [by having no formal local partner]?**
No, because these people working with us - even though they are white - are actually as local as you can get.

**How have you worked in order to avoid land disputes? And to what extent is that a risk to the project?**
We can talk about this forever, which we won’t do, but I will give you just our view on this. That community land or that trust land is managed by the county government. And there is legal preremators to which it needs to comply, if they grant because we have bought the land, so we have not taken the land; we have leased the land. The land is not gone - the land will return at some point. Now, the legal question at hand is how the land was set apart. Did the county government, the national land commission, and Lake Turkana Wind Power do that right process? Yes or no? Obviously we say yes because I know we have done it. We had the most expensive lawyers in this country, because we there is a potential problem you have to make absolutely sure that things cannot be contested and that the law has been followed. We have followed the law to the last letter - and probably more. Still, this court case came in 2014 and will go to trial next month. The issue is, was
the land set apart correctly, yes or no? And it is our 100% conviction that it was. Let the court decide and the legal process run its course - that is where we are today. So let’s see how it goes. Do we have support in the communities? Overwhelming support and we can prove it. 95% of the people will support the project. You will never get an approval rating of 100%. There will always be people who disagree. The communities around us really appreciates the way we are working in this project. There is continuous employment, we have done a lot of projects. We just did a mid-term review from a social point of view, as we are finishing construction and it is time to go to operations, and it is time to review our social performance. This was an independent consultant; it was an overwhelmingly positive review. People are just happy that we are there, because otherwise they would still be sitting under a tree with no opportunities. We have given a lot of opportunities to thousands of people. We have gone out of our way - big time - by making sure that up to 125 km from the site that people would have water. That is not in the DanWatch report, but it is a fact. And the support we have given; we have babies born in our clinics. There is an emergency medical; we take care of everybody.

Is that how you have gained support from the local authorities as well?
That’s who we are. The consultants actually said “the most striking thing I have seen of the last couple of weeks when going into the communities is that you are labeled as a ‘caring company’. You care about what you do”. And that is actually who we are. We are not Mother Teresa, make no mistake, but we care. If there’s a problem, we always try to assist. Without us, dozens of people would have died. Not because of gunshots or whatever, but simply because of the lack of healthcare or whatever. I mean, it is just a fact.

If we focus on the 1% that are still negative, what have you done to limit these stories and what effect do they have on the project?
They have had no effect. Because we have been engaged with DanWatch quite a bit initially. No matter what we said, no matter what we did, the cup remained half empty, instead of half full. At some point in time we said “you do whatever you want, it’s fine”. So, we stopped engaging with them. Because we were simply not making any progress at all. While there is a lot of NGOs actually with whom we work with. Because to them it is a constructed partnership where we do not try to do the right thing, but we are actually doing the right thing. So, we have worked with NGOs from the Netherlands, other NGOs from Kenya, we worked with the World Food Programme. By now, if you quantify everything we have put into the community in terms of employment and all the projects we did, I think we are looking at Euro 13-14 million, which is a huge amount of money for that area. Huge! People actually had no opportunities before, today they have. Is it all the smell of roses? Prostitution, alcoholism - that happens everywhere. It also happens there. Is it the norm? Absolutely not; 95% of the people actually are spending their money smart. They are buying new livestock, they send their kids to school, they start a small business. Because of the road we build, it is much more open now. It is a vast difference if you compare it to like three years ago. These communities have grown economically to the benefits of themselves because we are actually not doing that - we are facilitating by having access to the area, by actually paying the people who work in the project a proper wage. Wages, which nobody here in the same phase in Nairobi makes. I’m actually very proud of what we have achieved because we are a caring company. The communities actually are very important to us; we want them to be comfortable with the project and what we say is what we do. If you promise and you deliver on that promise, you can trust. Trust is a very slow process of getting to. But it runs away with the speed of light if you break a trust. So, you must be that reliable partner.

Did everybody in the area get a job or did you have to look into the different tribes and make sure that an even portion of each tribe was employed?
Well, we don’t look at tribes, because the communities are generally not single-tribe communities. So if you look at a tribe and start to quantify that then you will see that you will have an inequitable allocation of employment opportunities throughout the community. Because single tribe communities do not exist in the area. We look at the size of the communities and we provide the job
opportunities to the chiefs and elders of that community. We go through a process and that process has worked very well because the communities knew that the allocation of the employment was very fair. And we requested the support of the chiefs and the elders to help us find the right people. The job of the chiefs and elders is to ensure that the allocation of job opportunities are equitable. So, we have never had any problems.

Given the long-term propensity of infrastructure investments, how do you keep all parties onboard when you have committed to a project?
I think that each and every investor are looking at this project as something they intended to be in for the long run. But, investors are investors, and they might say after eight years and the project is running really well “maybe I can capitalize by selling and try to find a new buyer for the Lake Turkana shares”. That is all possible. But they are all very proud of the project, so I don’t expect to see any short term changes at all.

What impact would it have had if you did not have the African Development Bank to take over the guarantee that the World Bank withdrew?
That guarantee is actually important. It was one of those insurances that our lenders required, because AfDB is a lender, but a separate part of the AfDB is actually putting up the Partial Risk Guarantee (PRG). A Partial Risk Guarantee is actually political, so if there is a political event through which we are not paid, we can call on that Partial Risk Guarantee in order to keep the company afloat. It was a bankability issue, so without debt our lenders would have been a little more hesitant. When the World Bank pulled out - the World Bank was not pulling out as a lender, they were pulling out as the provider of this guarantee.

Are there any challenges that you want to highlight, which we have not touched upon?
The main challenge we had to overcome - but that went very well - is our logistics, because the isolation of the site is a challenge. So, to get our turbines all the way from Mombasa to the site was a big, big logistical operation. Vestas was in charge of that and they have done extremely well. A big challenge, which has been handled very well; not a single say of delay throughout the whole logistical process. The project was very well prepared, so actually we identified a lot of our problems in the development phase. So, if you are aware of what you can potentially encounter - you cannot predict everything of course - but if I look at the preparation we have done I think out of 100% of the problems we could encounter, I think we identified 80% beforehand. Was everything correct? No. But was the majority correct? I would say yes, but we learned a lot during the execution. Did we have no challenges along the way? Of course, in a project of this size you have your daily challenges, for sure. Failure is no option; the show must go on.

Appendix 4 - Interview with Lars Tejlgaard, Frontier Energy
Kan du starte kort med at fortælle lidt om nogle af de udfordringer i typisk står overfor når I skal investere i infrastruktur projekter i Kenya?
Når vi laver en investering kigger vi helt grundlæggende om der er ressourcer. Det er sådan helt grundlæggende hvad vi kigger på først. Og hvis den så findes så kigger vi på en række andre ting. Først og fremmest, er det muligt at levere strømmen? Både det tekniske og regulatory fordi der skal typisk en masse tilladelsel til for at bygge et netværk og en elledning - og der skal købes noget jord. Så kigger vi selvfølgelig på land, som er et issue der er så stort i de her lande så man ikke kan forestille sig det - hvor svært det er at købe land eller lease land, eventuelt skal relokere folk fordi de bor her. Til sidst er der så eventuelle regeringsaftaler. Typisk får de fleste projekter en form for statsgaranti - gerne på betting. Men også som change in law eller change in taxes. Hvis man så kigger på Kenya specifik som case så kan man sige med hensyn til ressourcer så er der fantastiske vindressourcer og så er der god sol og termisk energi. Der er et veludbygget elnet. Vi har nogle ret store solprojekter som vi er i gang med at få financial close på. Land - det tager bare tid. Og når det kommer til hele frameworket omkring det så har vi arbejdet siden 2012 på at få en hovedaftalen -

Hvor sikker er sådan en statsgaranti?
Nu har de jo ikke den bedste track record for statsgarantier. Det er ret sjældent de her statsgarantier bliver testet, men lige præcis Lake Turkana er et eksempel hvor det er blevet testet fordi der var nogle regeringsaftaler på Lake Turkana omkring transmission line hvor man fik staten til at betale for forsinkelserne igennem sådan en statsgaranti. Og den har de faktisk betalt.

Vi har hørt at de var pga cross default ved at få den Afrikanske Udviklingsbank involveret at der var statsgaranti. IFU har sikkert den fulde historie så hvis I har hørt det der så skal I endelig tage det det for gode varer. Men det er korrekt at African Development Bank ringede og sagde at hvis I ikke betaler det her så taler vi aldrig med jer igen. Hvilket så ville give et ordentlig knald på elregningen til forbrugerne for at få den regning betalt.

I [Frontier Energy] bruger ikke cross default?
Nej.

I [Frontier Energy] læner jer kun kun op af en statsgaranti?

Så hvis I stod i samme situation så ville I have sagt nej?
Ja, det er faktisk det der har gjort at vi har sagt nej. Der er to ting ved det: vi ville være en lille investor i et meget stort konsortium og det andet er at vi transmissions risikoen var for stor.

Hvad er det for en risiko?
Bare forsinkelser - mange års forsinkelser.

På grund af at staten skal bygge den?
Nej… Ja, det er det så også delvist, men mere pga det er, altså nu tager I jo selv til Kenya - prøv at tage til Lake Turkana og så se hvad det er for et sted. Altså alle er svært bevæbnede og land ejerforhold er uafklaret og det er ikke særlig nemt at bygge der. Men det er primært fordi at der er rigtig mange interesser i land og i det øjeblik du skal til at købe noget eller lease noget - det tager bare tid. Det er ikke det samme som at sige at det ikke kan gøres men det kan blive rigtig dyrt og tage rigtig lang tid.

Vi har selv et projekt i Turkana og der har vi så valgt at sige at det er afhængig af den bliver bygget. Fordi der ligger vi så tæt på den ledning som bliver bygget. Når ledningen er bygget så er det ikke risikabelt, men det er indtil den dag hvor det bliver bygget.

Så det er egentlig pga land disputes?
Jaa, reglerne for propriation i Kenya er ikke særlig stærke. Og hvis man prøver at ekspropriere i Turkana så kommer der bare 50 stammefolk som er besværvne med AK-47 og så kan vi ellers ekspropriere lige så meget vi vil. Så derfor er det sådan semi-lovløst. Så det siger bare lidt om problemerne om at tage den risiko på lange transmissionslinjer - i særdeles i det nordlige Kenya. Andre steder er det måske ikke helt så voldsomt men hvis der er nogle der har et stykke land så er de jo interesseret i at få den maksimale værdi ud af det land - det er jo helt rationelt. Og der er ikke en mechanism der nødvendigvis tilsiger at det her er den pris I får. Sådan er det i Rwanda, der er det meget nemt; der kan man bare bygge sin linje. Dem som har landet får ikke engang rigtig noget kompensation. I Kenya er kulturen at man blokere maksimalt for at få flest mulig penge.

Udover land disputes og problemer med transmission lines hvad er det så for nogle udfordringer og risks der er ved sådanne store projekter?
Nu nævnte jeg de her fire ting: hvis man har ressourcen på plads, hvis du kan få land, hvis du kan nå transmission lines og så først de regeringsaftaler og så de aftaler du kan få med offtaker og så de tilladelser - der er en masse licenser. Du skal for eksempel laver sådan en fuld environmental-social-impact assessment som skal afleveres til National Environmental Management Authority. Det er det samme i alle lande; der skal man godkendes, du skal udstedes en environmental license når du har fået din Power Purchase Agreement underskrevet så skal den godkendes af regulator som så skal udstede en generation license, der er mange byggetilladelser man skal have og alt det tager tid og det her er relativt korrupte lande så hvis man har en ret fast anti-corruption policy som vi har så bliver man nødt til at sørger for at man får de her ting uden at betale noget under bordet og det tager selvfølgelig tid.

Hvordan gør I så det?
Altså det er generelt på flere forskellige måder. Altså typisk for det først ved at følge proceduren meget nøje og så generelt tage projekter for der er politisk støtte til dem fordi de er vigtige for landet. Og så ellers være irriterende; vi er gode til at sidde på kontorer rundt omkring og sidde og vente på den person som skal skrive under på det dokument og blive ved med at gøre ham opmærksom på at nu er det altså nu det skal gøres og få nogle til at ringe til ham som er højere oppe i systemet og sige at nu skal du skrive under. Og det system går hele vejen op til præsidenten. Så man kan sige på vores Turkana projekt lige nu der prøver vi at få præsidenten til at løse et problem vi har med guvernøren i Turkana som ikke vil skrive under på en aftale selvom han bør og det er fordi han vil have penge under bordet og det vil vi ikke levere så nu har vi eskaleret det hele vejen op til præsidenten.

Har I nogle støtte inde i regeringen?
Ja, altså vi har selv vores kontakter - vi har jo på været på markedet i lang tid og så har vi partnere som har regerings kontakter og som gør brug af dem hvis vores projekter går i stå som de også har investeret i. Så der er en fælles interesse i at få tingene til at fungere.
Tror du det har været alfa og omega for at få jeres projekter i gennem?
Det er lidt afhængig af landet. I Kenya er det ekstremt nødvendigt, i Uganda lidt mindre og i Rwanda endnu mindre og i Tanzania måske lidt mere.

Hvorfor er det så nødvendigt i Kenya?

Så det partnerskab i har med staten det er nogle enkelte individer som sidder inde i regeringen?
Nej nej, det er typisk - man opbygger jo et netværk over mange år og vi har jo også medarbejdere der har forskellige kontakter i forskellige dele af systemet og så har vi jo også selv været der i så lang tid at vi selv kender nogle folk, og vores partnere kender folk som man kan ringe til “prøv at hør, vi har det her problem kan du ikke hjælpe os med at løse det?”. Så er vi medlem af nogle erhvervsorganisationer - altså lobbyorganisationer - som går ind og højler os hvis der er noget der er gået i stå og lave nogle kold og sige “prøv at hør, det kan ikke være sandt at det her sker”. Vi har i et enkelt tilfæld brugt ambassaden til presse på. Så der er forskellige muligheder for at få skubbet tingene videre. Og engang imellem må man bare erkende at det flytter sig ikke og så kan man risikere at sidde i to år med et projekt som ikke flytter sig nogle steder og det må man så bare acceptere og så komme videre med nogle af de andre i stedet for. Det er ligesom vilkårene. Det er infrastruktur. Altså jeg sidder i en lille investeringskomitee i en anden lille fund som investere i klimavirksomheder; der er ingen regerings involvering, man køber bare nogle aktier og her er et lån og så er det ligesom overstået. Og så skal de så ud og finde et marked. Det er jo en hel anden business end det her, som ligesom har brug for at få en masse aftaler på plads. Når det så er på plads så er risikoen ret lav. Altså hvis bygge-risikoen kan håndteres gennem at vi vores kontrakter, hvor man i virkeligheden sigter til contractor “nu skal I bygge det her for os” og så leverer de nøgen til sidst. Så hele risikoen for vores projekter; en meget stor del af det ligger i udviklingsfasen. Når vi først går i gang med at bygge kan der være forsinkelser, det kan ske men der har man en masse beskyttelse under de her kontrakter, for eksempel at contractor skal betale dagbøder hvis de bliver forsinket.

Kan man stole på de kontrakter der bliver lavet?
Jaja, så bliver der betalt dagbøder. Altså de prøver også at vride kontrakten på en eller anden måde så vi skal betale dem lidt mere; det er det der hedder ‘change order’. Så der er forskellige muligheder for begge sider, men det fungerer fint.

Har I været udsat for at kontrakterne har skulle håndhæves?
Det er helt normalt. Alle forsøger at trække i alle tråde for at få lidt mere ud af det. Det er ikke rigtig nogen der gider at gå til arbitration; det er alt for tidskrævende og dyrt, så typisk finder man en form for løsning med modparten - det er en del af spillet. Det er helt standard i alle kontrakter. Det er ikke engang noget man bekymrer sig om, så sætter man sig ned og finder ud af det og så i nogle enkelte gang finder man kontrakten frem og siger “prøv at hør, sådan her er det”.

Det var nemlig ikke helt vores billede af Kenya at man bare kunne håndhæve de her
kontrakter så nemt.
Det er sådan set rimelig standard. Man kan sige, det man helst ikke vil er at have det ind i retssystemet, fordi det kan være ekstremt langsomt, så derfor går man typisk til arbitration, [men] det vil man så heller ikke fordi det er også typisk meget langsomt. Men inde for kontraktens rammer er det typisk at man kan finde en løsning.

Har I haft nogle sager, hvor I har skulle gå i retten og hvad er dit indtryk af deres retssystem dernedne?
Det er ekstremt korrupt, derfor vil man gerne holde sig ude af retssystemet. Det er også derfor at du typisk har i det her kontrakter har arbitration uden for Kenya så du slet ikke kommer ind i retssystemet.

Brugte I London?
Ja og i nogle enkelte tilfælde har vi brugt Tanzania, vi har brugt Mauritius. Men standarden for det er ICC.

Har [den Kenyanske] stat det helt fint med det?
Nej det har de så ikke. Man kan sige da vi filled den sidste runde af regeringskontrakter i Kenya ville de gerne have at der var arbitration i Nairobi. Og det viste sig at være en dealbreaker, det var der ingen der ville acceptere og det er der måske god grund til. Altså det kan simpeltthen ikke lade sig gøre. Så er der snak om at måske kan lægge det i Tanzania, det var der noget bekymring for fordi der er nogle enkelt tilfælde i et land som Tanzania - det er måske 1 ud af 10 sager - der kan det lige pludselig bliver local costs der faktisk har jurisdiction over den problemstilling og det vil man rigtig gerne undgå. Så det varierer lidt fra land til land [om] de juridiske systemer om de lover at de lokale courts kan klare at de har jurisdiction. Det er ikke tilfældet i London; det kender man og det er testet og derfor er alle trykke med det. Men du kan ikke være 100% sikker på at hvis du tager ned til Tanzania, selvom det er en Kenyansk sag, at der ikke lige pludselig er en Tanzaniansk domstol der siger “hov, det her er vores sag, den afgør vi” og det vil man rigtig gerne undgå.

Hvilke partnerskaber har I ellers med staten, specielt i udviklingsfasen?
Der er en formel proces man går igennem, for eksempel i Kenya hvis man vil have et projekt så er der forskellige muligheder for at få projekter. De har det der hedder en Feed-In Tariff Policy som siger indenfor sol kan du få sådan en tariff, for vind kan du få sådan en tariff og der er så en procedure man følger hvor man skriver Expression of Interest som så bliver godkendt af energiministeriet om dette projekt er viable og så får man så tilladelse til at lave feasibility studier og så giver man det til energiministeriet og the Feed-In Tariff Committee kigger på det og godkender og så kan man så forhandle en PPA med offtaker og det er der så en process for. Omkring den her process er der selvfølgelig bliver local costs der faktisk har jurisdiction over den problemstilling og det vil man rigtig gerne undgå. Derefter har vi så typisk i alle projekter og der er hvis du vil have et regeringsamarbejde, fordi det er skrevet under af finansministeren og energiministeren og witnessed af Kenya Power’s CEO at det her er den aftale vi indgår og PPA periode at der er de her garantier for at man bliver kompenseret hvis staten begår nogle ting som de ikke før gøre.

I har ikke staten med onde som medinvestor?
Nej. Det er simpeltthen Kenya Power der skriver under på aftalen. Der er så den her undertegne fra den kenyanske stat som er de her Government of Kenya Letter of Support som så giver de her beskyttelse i mod ‘change in laws’. Den har vi så typisk i alle projekter og der er hvis du vil have et regeringsamarbejde, fordi det er skrevet under af finansministeren og energiministeren og witnessed af Kenya Power’s CEO at det her er den aftale vi indgår og PPA periode at der er de her garantier for at man bliver kompenseret hvis staten begår nogle ting som de ikke før gøre.

Men I forsøger ikke at få staten med ind som medinvestor?
Det kan både være en fordel og en ulempe, men typisk nej. Der er et enkelt projekt, hvor vi regner
med at få dem som hedder KenGen ind som partner. Det er et af vores geotermiske projekter, hvor de har en ret stor viden der, men det er ikke nent.

**Er det ikke nemt at få dem med?**

Interessen er der nok men hvis du har en kommerciel partner så er det ret tydeligt hvad formålet er; det er at man gerne vil tjene nogle penge og helst ikke begå for mange unoder. Hvis det er en statslig investor så kan der være mange individuelle agendera så det kan være svært at håndtere. Så typisk er svaret nej, men i enkelte tilfælde kan det vise sig at være en fordel.

**Når I ikke har der her direkte samarbejde med staten, hvor stor betydning ville det have haft hvis der havde været regeringsskifte?**

Vi har jo været igennem et enkelt regeringsskifte før, som ikke havde den store effekt. Der bliver skiftet ministre ud med jævne mellemrum. Altså systemet består i et eller andet omfang når der er et skifte fra den ene til den anden. Kenya er jo stadig ret kraftigt stamme-baseret, så hvis man vil være nogenlunde forsikret imod de her risici der er hvis den ene stamme der kommer til magten i stedet for den anden, så har man typisk partnere der kan snakke med begge sider. Så vores vurdering så ville det formentligt have betydet 3-6 måneders total stop, men det er mere pga det skifte der så kommer pga nye individer der træder ind, så bliver der ikke skrevet under på nogen aftaler. Men når det ville være op og stå så så tingene forlyde stille og roligt. Altså formålet er stadig det samme. Der er ikke nok generation, du har simpelthen brug for at få flere projekter igennem. Og det ville en ny regering have set det på samme måde.

**Men ville netværket smuldre hvis nye personer kom ind?**

Jo, men kun på topniveau. Og man ved jo ikke hvem der kommer ind, det kan jo sagtens være nogle vi kender.

**Så I forsøger ikke at afdække jer fra et regeringsskifte, hvis der bliver ansat en minister som I ikke kender?**

Det kan vi jo ikke rigtig gøre noget ved. Der er jo ikke rigtig nogen måde man kan forudsige hvem der bliver udpeget. Men det er meget få af de personer som kan blive udpeget som vi ikke - hvis vi ikke kender dem - ville være mere end et eller to skridt væk fra dem fordi vores netværk er så bredt.

**Kan du give et billede af hvor attraktivt energisektoren er i Kenya i de kommende år?**

Hvis vi tog til Kenya nu, så ville det ikke være særlig attraktivt, fordi det er for svært at komme ind på markedet. De fleste af de projekter der kommer til at blive bygget over de næste 10-15 år er på en eller anden måde allerede afdækket og de har investorer. Vi regner med at demand stiger. Altså der er omkring 2.600 MW installeret nu og demand stiger omkring 8-10% pr år; så hvor meget ny kapacitet skal der bruges, det er omkring 200 MW pr år der skal tilføjes og det bliver så et kraftigt tempo. Så der er sådan tænket om muligheder for at de projekter som er godkendte bare stille og roligt skal bygges for at følge med det demand der er. Og der er vi som fond sådan set meget godt med. Så vi ser mulighederne som være ret gode, men vi ser også at returns kommer til at blive lavere og lavere som tiden går. Så som fond, det må man så forholde sig til, men i hvert fald i den næste periode - 5-10 år - på projekter som er godkendte og har PPA'er så ser det meget godt ud. Derefter er det svært at sige. Der er en tendens mod at man går mere mod projekter - især på sol - hvor folk går ind og byder en pris og så vinder på basis af den pris. Og det er et lidt andet spil end det vi har været vant til. Vi har ikke specielt gode erfaringer med auctions, fordi det typisk er meget store europæiske virksomheder der vinder dem - der har de typisk et helt andet syn på finansiering, hvor de kan typisk lave corporate finance og vi laver project finance, så de kan få meget billigere lån så det kan være svært at konkurrere med. Men det er ikke noget der har haft en effekt på vores pipeline endnu. Det må vi jo så se om det får.

**Er det vigtigt at få lokale partnere med ind som medinvestor? Eller går i nogle gange ind som ene investor?**

I meget få tilfælde har vi været inde som ene investor. Det er typisk fordi der kommer nogle til os
som har en rettighed eller en idé og siger “prøv at hør, det her vil vi gerne gøre og kan I eventuelt gå med os ind i det og hjælpe os med at få det igennem”. Vi har nogle enkelte gang sagt at det kan vi godt selv. Så der er de forskellige muligheder, men typisk vil vi gerne være sammen med en partner eller også skal vi være sammen med en partner fordi de har rettighederne til projektet. Men vi har endnu ikke på noget tidspunkt selv udviklet et projekt og så sagt “nu har vi brug for en partner”. Hvis man udvikler noget selv så tager man beslutningen om at det her kan vi godt gennemføre selv.

Så det er ikke så vigtigt at få lokale partnere med?
I langt størstedelen af vores projekter har vi lokale partnere - måske 95%. Altså partnere er jo både godt og skit, sommetider kan du lide dem og sommetider synes du ikke om dem. Men generelt er erfaringen at især i Kenya, i mindre omfang i Uganda og i endnu mindre omfang Rwanda er det godt at have lokale partnere der kan hjælpe en med at komme forbi nogle af de har barrierer fordi de har netværket til at hjælpe.

Så er det kun pga netværket?
Altså det er typisk os som tilfører viden om finansiering og teknisk, så det er mere netværksbaseret, men det er godt nok også vigtigt! Altså det er jo ret let at afklare om solen skinner nok. At det tager tid at få land er typisk også noget en lokal partner står for, at få købt eller leaset land og få snakket med de lokale. I det øjeblik ser mit ansigt så tynd tøj, så ryster prisen jo ti gange op. Så erfaringen er at hvis man kan finde et godt partnerskab så giver det god mening at have en partner. Vi har så også nogle rigtig dårlige partnerskaber og så er det noget fort.

Hvordan bliver det dårligt med en dårlig partner?
Det er typisk hvis man har en form for misalignment. Det er typisk hvis den aftale man har lavet er lidt for god til den ene side og lidt for dårlig til den anden side, så kommer der sådan en intern kamp. Eller hvis der er nogen der har lovet at det her kan vi sagtens få gjort, vi kan sagtens købe det her land, den her tilladelse kan vi sagtens få, og så viser det sig at det kan de ikke rigtig. Så kan sådan et partnerskab løbe i problemer.

Hvordan sikre I at en investor gruppe forbliver aligned?
Altså vi har jo en vis erfaring med at lave de her aftaler efterhånden så vi ved hvad vi kan acceptere. Vi sørger for at være meget transparente med omkring hvad aftalen går ud op. Og så gør vi generelt meget for at holde vores partnere glade indtil et vispunkt. Hvis en aftale er dårlig, så er den dårlig. Hvis der ikke bliver performet så bliver der aftalt at aftalen skal ophøre og der er typisk nogle muligheder for at komme ud af en aftale. Men typisk så arbejder vi rigtig hårdt på at vi har et godt partnerskab; vi snakker ekstremt meget med vores partnere. Jeg tror jeg snakker med vores partnere 4-5 gange om dagen og ofte mere end det. Der er rigtig mange måder at sørger for at man har et godt forhold og hvis det så går galt så kan man lige snakke om det i stedet for.

Skal der være en typisk konstellation af investorer, synes du, som ville have en fordel i Kenya?
Altså typisk med et rimelig godt netværk i det område hvor projektet ligger og så et netværk i Nairobi, hvor regerings institutionerne ligger. Termisk energi i Kenya er virkelig world class, så det er faktisk det eneste sted hvor vi har teknisk input fra lokale. Ellers henter du den tekniske ekspertise udefra.

Hvilke initiativer, som vi ikke har snakket om, gør I for at afdække risici ved de har projekter?
Ikke sådan noget forskning præget hvis det er det du tænker på, det er mere praktisk erfaring. Vi starter et eller andet sted i sådan en proces og i den forbindelse prøver vi at følge den til ende og så lære vi typisk hvad barriererne er og så bruger vi det så i projektet efter. Vi er ikke større - vi er 12 mennesker nu - end at vi bare spørge ham der sidder ved siden af om hvad han gjorde.

I hvilket omfang har de lokale myndigheder magt i Kenya?
Kenya vedtog en ny grundlov her for nogle år siden som havde en masse devolution som gjorde at man flyttede en del magt fra centralregeringen til de forskellige counties. Så der er sådan et helt nyt
regeringssystem der blev etableret i blandt alle de her countries, som egentlig har en del at skulle have sagt omkring land, omkring visse lokale tilladelser og så om den generelle accept der er der i det område om det her projekt er godt eller dårligt. Det er ikke nødvendigvis en formel ret men en eller anden form for vigtig uformel ret. Den store risiko der er ved de her projekter er de folk der bor omkring der hvor man bygger projektet og der har de lokale regeringslag en del at skulle have sagt om hvordan de opføre sig. Der findes jo stadig høvdinge og vice høvdinge osv. nede i området som har både formelle og uformelle ret. Der er et gammelt system hvor man havde man noget der hed district commission og et district office og de findes stadig væk og dem skal man også være gode venner med. Og så har du så på county level, der har du ministere og en guvernør og en viceguvernør og nogle county assembly og den lokale MP og den lokale senator osv., som i et eller andet omfang har en formel eller uformel effekt eller mulighed for at påvirke de her projekter. Så alle de personer skal vi meget gerne have en venlig kontakt til så de accepterer og har et projekt som også er godt for dem. Som eksempel for vores sol projekt bygger vi en skole lige der omkring - et CSR tiltage. Det er for at vise the local community at ud over vi kommer og bygger det her og meget gerne vil ansætte dem så prøver vi også at få dem involveret.

Er det for at få accept for de lokale ledere eller de lokale samfund?

Det er fra dem alle sammen. Da vi havde en åbning af denne her skole så havde vi inviteret hele pøvstøjet. De holde endeløse taler og vi sad og var ved at falde i søvn af kedsomhed, men det kan de godt lide og de kunne alle samme tage ærenen for den her skolen selvom det var os der betalte for den og så vi de glade og så var vi glade. Det er sådan et lidt pudsig eksempel fordi vi gør meget andet. Det vi prøver aller mest er at ansætte folk. Det de gerne vil have er jobs. Det er begrænset hvad vi kan gøre, vi har mange ansatte i byggefasen men når man driver et solanlæg så skal man altså lede længere for at finde en ansat ud over nogle vager. Så i byggefasen prøver vi så meget vi overhovedet kan at give jobs til de lokale og at få dem trænet så de kan mere bagefter, det er det der virkelig giver en effekt. De synlige ting er sådan noget som en skole eller en brønd.

Så der er ikke noget krav fra regeringen eller den lokale guvernør til at I skal gøre de her ting?

Nej egentlig ikke. Det er en del af vores egen policy og det er også en eller anden form for risiko, at hvis du har glade folk omkring dig så er risikoen for at de kommer og ødelægger et eller andet lavere end hvis du har rigtig sure folk. Men det er der mange der glemmer, så der er rigtig mange eksempler på hvor community bare har stoppet projekter.

Hvad gør I for at sikre at I har property rights?

Der er i virkeligheden et veletableret system i nogle områder, ikke i alle. Nede ved kysten i Kenya er det totalt kaos; hvis du kommer land dermede risikerer du at der er tre andre der kommer og siger “hov det var sku os der ejede det”. Og så skal man igennem mange års søgsmaal - jeg har mange venner der har været igennem det. Men der er nogle steder i landet hvor det er relativt afklaret hvem der ejer hvad. Der er faktisk ingen tvivl om hvem der ejer hvad. Man får normalt en lokal til at lave en søgning på om der er nogle claims; hvis man så ikke kan finde noget så kan du så gå i gang med at købe land.

Det køber man af staten?


Men er der ikke mange stammer som mener at de af krav på landet?

Jo, og vi har faktisk også i vores geotermisk projekt som ligger tæt på Naivasha havde vi et kæmpe søgsmaal, hvor alle masaier havde beslutet sig for at det her land - som for øvrigt har været i privat ejerskab i de sidste 70 år - at det havde de en eller anden ancestral right fordi de havde græsset der kør siden. Og det var til Højesteretten for at blive afgjort i nuværendes ejers favør så den blev fuldstændig dismissed den der sag. Problemet er at hvis du først giver mulighed for sådan et claim så
ejere masaierne og de andre stammer principielt hele Kenya. Derudover var den bevisførelse de første simpelthen så ringe.

**Har der været nogle NGO’er efter jer?**
Masser! Med stor fornøjelse. Men igen, når du får sådan et NGO brev så kan det jo sagtens være at der er noget om snakken og så må man jo undersøge hvad det er de påstår. Men det de typisk påstår er at vi har flyttet nogle folk eller har købt noget land som om vi har gjort det overhovedet på de lokale og vi er nogle fælles investorer der kommer og bare vil tjene en masse penge. Og så har vi typisk, når vi går ind og laver et projekt, så har vi en ret stor exercits der hedder stakeholder engagement. Det betyder at vi har en fast proces som regulerer et stort omfang af de lokals og vores egne standarder og hvordan får man oplyst community, hvordan får man deres accept. Og alle dem der møder op, vi får deres navn og de skriver under og de modtager også typisk nogle papirer. Så det er rigtigt dokumentation for hvem der har været der. Den typiske påstand er at vi har flyttet nogle folk eller har købt noget land, så der står at de har været nogle af vores møder. Og så dør historien stille og roligt fordi vi har vores dokumentation på plads.

**Holder I mange møder for at oplyse dem?**
Ja, rigtig mange.

**Så i hvilket omfang er det så et problem for investorerne at de her NGO’er kommer?**
Vi svarer dem sagligt og har vores egen dokumentation fordi der kan være at nogle af vores investorer læser det. Så det er ikke rigtig noget problem for os. Vi er relativt velforberedte og har typisk en eller anden form for beredskab hvis der kommer et eller andet negativt.

**Er der nogle emner som vi ikke har snakket om, som vi bør være opmærksomme på vedrørende de problemer som opstår for udenlandske private investorer?**
Nej, jeg synes vi kom meget godt rundt om det. Igen, det er selvfølgelig de fire hovedkategorier som vi snakkede om i starten. Så man kan sige at for sådan en afhandling som jeres, så er det mest interessante være omkring land, og så reguleringerne af de her sektorer. Så det burde dække det ret godt.

**Man kan sige at der er ret stor forskel på landene.**
Måske ikke på overfladen, men når det kommer til stykket er det det forskellige systemer. Vi var ret trygge ved at afdække Østafrika og nu udvider vi stille og roligt mod det sydlige Zambia og Mozambique og også til Zimbabwe.

**Jeg så på jeres hjemmeside at fond nummer to havde fået…**
Fond 1 er på EUR 60 millioner. Vi har nu fået fond 2 på plads; den blev etableret i marts 2017 med en first close. Nu har den så en second close her i marts 2018 og så forhåbentlig en final close til september 2018. Så vi har to fonde under management. Så den første var ligesom sådan en test-fond. Fond 1 ender med at have seks projekter og alle andre projekter ryger til Fond 2.

**Appendix 5 - Interview with Jens Thomassen, A.P. Møller Capital**

**We believe you have worked with power before, right?**
Let me give you a quick background on me. Pretty much 20 years ago I finished the same kind of degree that you are doing now; a master of business from the Norwegian equivalent of CBS. Then I moved to London pretty quickly and then I started getting some exposure to emerging markets. Over time I got some African exposure and later on in India, Congo, Angola, and South Africa. And in the last ten years I have been in private equity, firstly working in Europe doing renewables and the last five years working almost exclusively on African power opportunities out of a fund called Denham Capital, which the part that I was in was in came out of Harvard’s endowment. That was pretty much an emerging market power developer. So we spent a lot of time looking at how you get
comfortable with investing in frontier emerging jurisdictions. How do we make sure that we get paid, how do we make sure we get our money out and how do you get comfortable having a project that is bankable because you are often dealing with large infrastructure that we have not done before. So when I heard about the sort of questions that you guys were asking - it is something that I am quite interested in. So if I can be of assistance later on as well if you want clarification I would be happy to help you. And if you wouldn’t mind, I wouldn’t mind getting a copy of the thesis when it is done. So what we do here is that we are focusing entirely on Africa. And I think you had a question on why we would pick up Africa. And I think it is a combination of the opportunity, our past experience, and a competitive assessment of how we can differentiate ourselves. The opportunities here is driven by a 1.2 billion dollar population is going to grow to 2.5 in thirty years. You are looking at an environment where if living standard are held on par you are looking at a few percentage GDP growth, which is 50% higher than the European average at the time being. On top of that, you are looking at a place where worst living standards will hopefully increase. So you are looking at a on average five percent GDP environment. You are in an industry that is short in infrastructure in any kind, whether it is power, transportation, transmission, distribution, telecoms. And there is an opportunity to go in and build purpose-fit infrastructure. With that infrastructure, you help to enable further growth. But it is a tough place to operate for all the reasons that you guys are looking at and many, many more. I think the interesting part of the group we put together is that we got a group of people who have done this before and we can hopefully deliver projects that are built to the local standard needed and make sure works but also to the international standards, so you actually will meet our ESG-test, our governance-test. It is something we are proud to stand behind. We have a zero-tolerance for corruption; we have a high standard for ESG. Simply because we need to build these projects on the basis that they are going to be running at year five but we are going to sell it to someone who is going to hold on to these forever. So the cash-flows in year 25, 30, 40, no matter how long these projects are distant to live are actually important in our investment thesis.

**Your mandate in the Africa Infrastructure Fund is all of Africa; can you tell us about your approach to evaluating the institutional context?**

The challenge you have in Kenya - you may be familiar with the project Kinangop; that was a project that was declared bankrupt before they even put a shovel in the ground. There are many reasons - one of the reasons is that the community felt they lost touch with the project. You are building a project there and you are not embracing the community, you are not bringing them on board. You can do that in a number of ways; you can have community trust - which is quite normal when building infrastructure projects, you can get them a share - which is a bit more tricky. The other part of it is that you have a legal title to use the land from the government of Kenya, but you have people that have used this land for generations; they may not necessarily recognize the national rules, because they may be nomadic people. So you need to be on the ground developing these projects. These are billion dollar assets, but ultimately it’s a people’s business. And you need to find the right people who can come in and build partnerships with everybody - every related stakeholder. You need to make sure that you have buy-in from the federal government, from the state government, the municipalities, from formal and informal stakeholders, and regular users of the land. So that is the practical side of it. Then there is the economic fundamental part, which is; you need to build economically and socially sustainable infrastructure. So that means that whatever you build has to be a low-cost option. Maersk Infrastructure is about commodity; if you want to transport a container from A to B you don’t really care about whether it is ship A or ship B, you just want it delivered there reliably and cost efficiently. So everything we do has to be a lower cost option. We focus on cost but we also have good contacts. We were in Nigeria a couple weeks ago and there is a huge network there because of the Maersk connection. There are different people doing different things. We are looking at one advisor who is politically well connected, but it is very important to have this on a neutral basis so she is not too close to one particular political party. Because then you have the

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problem when the election comes, then you are out of favor with the government because you were too close to the previous government. So super sensitive that you make sure that you are respected, recognized, seen as a good corporate citizen, but not seen as anyone’s close buddy.

You mention the importance of local partners, but do you have that in all 54 independent African countries?
No. It becomes sort of project specific very quickly. So we are looking at one project in Ghana where the local partner will be most likely a joint venture company with Maersk. So they will have a local partner ready, they have people on the ground, so we feel we are that plus our existing connection probably fairly well covered there. You may be aware that we are putting a bid on a transmission company in Zambia. That’s about a 400 million dollar deal. That is one of the countries we know, but it is not one of our strongest countries. So what we have done there is to partner up with CDC - the UK version of IFU - who have been operating in that country for 70 years, more of the board members live in Zambia and they have a reach and a history in the country which give us a lot more comfort around Zambia, which on paper seems like a beautiful place to visit, they got Victoria Falls, but politically - we are very comfortable with the situation because of the investment and think that will survive political changes - but it is a country that is going through some tough times.

What actions will you implement in order to understand the local context of the country - besides having local partners who live there?
One of the biggest challenges you have in a place like Africa is actually a lot of basic information. I will give you an example: we were looking at building a power plant in my previous life and you do a market analysis - supply/demand - how much power is available and how much power is needed in the country. In Denmark, you go on a website, you probably go to Nord Pool and figure out exactly the consumption of that customer. In Ghana, I’m not sure we did it but we are pretty close to actually sending somebody down to open the door to see if its running or not and we figured out that it is running at 20%. So that’s an example of how difficult it is to get basic information. And you are dealing with complex situations, we are dealing with complex issues that often are emotional so for us to get all this information is super important. When you look at your academic methodologies, you obviously want to verify statements. If you get a data point from someone else you want to find some way to validate it - and the same goes for this kind of work. What we do is to spend a lot of time looking around ourselves. I am traveling three out of four weeks myself and most of the team has similar traveling patterns. We have local partners and local advisors that we have dealt with before or currently that we use. Lawyers and financial advisors are good connections. Government contacts are good connections to figure out what’s going on. And then when we go into DD mode we will hire advisors that will do some market studies and basically go into the country and do some investigations for us and that can be lawyers and that can be market consultants or so on; try to figure out who are the real people to deal with, what are their agendas, and what are their track record. It is very time consuming, but that also comes back to the attraction; I think that if we can get hold on information better, then we should hopefully make better decisions, which should ultimately make us more competitive in investing in the African infrastructure space.

Considering that you have not made any investments yet, which institutional challenges do you expect to find the most significant across Africa?
I will say that there are three main categories. I will start with a simple one but it sort of comes back to your institutional question. So, the first thing we look at when buying infrastructure projects is basically to put together a financial model and the most important part is obviously your revenue line. In the world of power in Africa you typically get a 20 year Power Purchase Agreement, so you got a fixed price for 20 years. Sometimes you will take some volume risk, but on paper it is a pretty secure revenue stream. In ports you will probably take some market risk on volume, but have a fixed price. And in some other models you may actually have repricing risk at various intervals. This is not
a Facebook-type valuation. You are basically going to do a DCF with this cash flow; you are going to take how many years is going to take to get this cash flow and then put a discount rate against it. The more certain this revenue line is the more confident you will be with that. The credit quality behind that becomes paramount. The challenge you are dealing with in Africa is; the gold standard you get is that you get a long term contract with a government entity, backed by sovereign guarantee - in simple terms. But that sovereign guarantee will at best be minus 20; that is not an investment grade. Then what you would do typically is that you then will credit enhance that with political risk insurance from for instance the World Bank. So that will get the investors more comfortable. The reason they will be comfortable is that first of all economically it has to be a low-cost product. There is an example with a power plant in the Ivory Coast called Azito that has been operating through three presidents and one civil war - they got paid. They were running through the civil war because that was the cheapest way to keep their lights on and the market was short of electricity. The credit enhancement basically means that if the government defaults on this project then the government does not have a problem, but they have a problem with this project; they have a problem with the World Bank. And then suddenly this becomes a government to government issue. If they were to default on political risk insurance, more often than not the World Bank will say that we will no longer support financing projects in this country. We will stop donor programs to this country. Then it becomes pretty dramatic. So category one is building that bankable revenue stream. So the way we are dealing with that - and the way we will get around challenge two and three, which I will get to in a moment - is that we try to focus on business-to-business relationships. So, instead of us selling power to the government of Ghana, another investment we could have done is what APM Terminals is doing, which is to build a container port in Ghana. The way they get comfortable with credit risk is; this is the fastest and cheapest way to bring any container to Ghana. If you are sending in a boatload of Samsung televisions you probably want to sell them, you won’t get hold of these televisions until you have paid your port fees and duties, so then you probably have a better credit risk profile on that cash flow than you would have on selling power to the government. So that is how they get around the constraint on this revenue line issue. The second challenge - and then I will get to the third which is part of the solution as well - is that the governments have not done this before. If you want to develop a windfarm in Denmark it has been done over and over again; when you go to Aarhus Kommune they know exactly want to do, they may not like it, but the rules are there, and they know exactly on what basis will they say yes and on what basis will they say know. In my previous life we were trying to build a power plant in Sierra Leone and nobody in the government had any idea what they were going to do. So we there sitting there in a meeting with 14 different representatives from the government and they were all looking at each other to try to figure out what their job was. And it is not because people are necessarily no motivated or interested, but it is just complex. As a government official, if you do your job well nobody cares, you may get a pat on the shoulder, but if you do something wrong you get fired. And that is a pretty prestigious job and a fairly secure job, so you are dealing with people that are very risk averse - naturally - and not necessarily in training to do all that they should do. So the risk you then have is that it is not clear who needs to sign up for the deal and that means that you are running in circles a lot and it can take a long, long time. And often because of the scale of the investments in relation to the country you are looking at, more often than not you find that an infrastructure project need parliamentary approval. You at least deal with four or five different ministries. Ultimately it comes down to the Ministry of Finance because there are often some sort of commitment from the government. You are dealing with the Ministry of Power, the Ministry of Environment, the Ministry of Transportation and a few others. So that is number two. Number three is people. You need people who here can put together a puzzle that is super complex. So step number one is that you need to know what the end product is going to look like. So if you have done project finance you have a pretty good feel for what it takes to get a project into construction. And now you are playing multidimensional chess, because that is the end-line; that is fairly well defined, and now you are sort of three years before that - how do you start putting together all these various work streams. Very soon you are going to sit there and have

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millions of dollars committed already; this is venture capital risk in this phase of the game. So it is super high risk and it is often very unclear who demands are because a lot of times you are waiting something coming back from the ministry.

**For the first challenge, you mentioned the World Bank; will this fund be able to attract these international finance institutions?**

Absolutely. It is harder to do smaller projects than bigger projects because although the level of complexity and if you are dealing with development banks, they are institutions that have very rigorous standards whether it is social, environment, governments, ethics and at the same time they have a very low risk appetite because they do not want to be seen as supporting a project that gets bad reputation. The Kinangop is a terrible example, I mean that is exactly what you do not want to happen; you open the Wall Street Journal and you are on the front page. The problem with that is that you get involved with lots of advisors; they cost time and money. The challenge with the development bank is to get smaller projects done in time efficient manner. Because of the revenue certainty you are going to be size constrained very quickly in Africa unless you find other business models. So, I think that the long and short of it is that development banks are super supportive and very keen to do more in Africa, but they are not necessarily the most nimble and dynamic organizations.

**Besides the development banks, are there any specific characteristics of financial partners that are specifically desired?**

In the perfect world you would get a development bank in because that gives you the international government support. You will bring in project financing because then you have a third party test about the financial viability and most often the the development banks would be its lenders in Africa, so that gives you a third party validation that this has been done to a high standard. And then you come to the local land, so in a perfect world what you would have is a strong local industrial [partner] - that is not a political affiliate, that is clean who puts their own money in the project. That is hard to come by!

The other avenue is that you find a local pension fund. The reason for that is that the risk that you have in infrastructure projects is that you get something like what happened in Spain; the government comes in a changes the rules for whatever reason after you spent all the money and now you look to cover the money. These projects - even in Africa - you are probably looking at a six-seven year payback on a project and by that time you are looking at just getting your money back. If you are in South Africa and you have PIC or Eskom Pension [and Provident] Fund as a co-investor, if the government then sort of makes changes that are seen as aggressive towards a project, they are not just hurting a Danish pension fund, which they do not necessarily care about, they are hurting their own people, their own constituents. So, it is about creating alignment. And then I think that the other part is surrounding yourself with smart and well informed people; good advisors, good board members, you may reinforce management teams to bring other skills that may be missing.

**To what extent is it important to have local partners that understand the local context?**

Very. Absolutely. Local can mean many things, so I think that it is important to recognize the borders of Africa are man-made by people who didn’t live there. So, we are looking at projects in Kenya you need to deal with a lot more than just the Kenyan government, if you are in the north you need to make sure that you have the Maasai [people] on your side because they are nomadic people living in that part of the country and they think of that part of the country as their own. Right or wrong it does not matter, but it is a reality that we need to deal with.

**If you have to be specific, what are some actions you can do to engage the local community?**

I think the wind industry, in particular South African, has been relatively good at institutionalizing a standard for how to empower and give something back to the local community. Many projects have a pool of capital that comes from the operating cash flow of the project, which then is put aside to help

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improve the local community. The challenge is how it is being managed. Instead of paying 100 dollars to person number one and nothing to person number two, maybe paying 50 to each. I think a lot of this is driven by spending time on the ground. We looked at one project in Nigeria in my previous life and it was a huge project. We put one person, an American trained lawyer from that part of Nigeria, to basically spend two month in that part of the area. She went around and talked to people and figured out that actually there is a big dispute within two parts of the community. So, what we ended up doing was that instead of building this big project we sort of scaled it down to focus. We just used land from one of the communities, so we didn’t get in the middle of a fight between two neighbors. So I think a lot of it is just trying to understand what is going on on the ground and that means bringing people you trust and knows that [context] into the project pretty early.

When keeping in mind the political instability of many African countries, how do you intent to derisk partnerships with the state?

First I think there is a perception issue that is important to deal with up front, which is that there are 54 different [African] countries and even within countries there are better parts and worse parts of the country. But it is a hard jurisdiction throughout the continent, that is pretty clear. If you look at the track record - and this is just a financial metric and there are other metrics we can look at - but the track record on project finance in infrastructure projects in Africa are actually remarkably well performing. So in terms of project that have hit default; I think about 3.2% of projects are going to default. To put that in context if you look at the US power industry about one in ten would go into default. Now, I think the data pool is very small. But the risk is still there. And I think the reason for the 3.2% projects is that a lot of hard work, a lot of care and attention goes into derisking these projects. And it comes down to the social ankle and the economic ankle. You are building infrastructure in a market that is short of infrastructure capacity. So whatever capacity you bring in - in principal - is meeting unmet demand. So you always have a customer. You are proving a commodity that is a demand for and modern infrastructure is cheaper than other infrastructure typically. So that give you a very strong alignment between most parties. So the government will always welcome foreign direct investment, they will welcome you to bridge the infrastructure gap. If you are building a container port it means that you will bring more food and goods into the country, in a country where the population is growing and there is a shortage of those things. The other part is the social angle and I think this is where you need to make sure that you are being seen as a good corporate citizen. What does that mean? You have to make sure that you live up to the highest standards and that you have support from all political parties. Beyond that you got to start building local champions. What is really exciting about the company in Zambia - and this is an exception - you have the company being runned by Zambians, the CEO is from the country, the CFO is Zambian, 80% of the board is Zambian; that’s fairly rare. I think what is not quite as welcome is that you bring in a bunch of expats who builds a foreign company. You should try to build it up as slow as possible and create local jobs.

You mentioned that you need people who represent all the parties. Can you be more specific on how you [implement that]?

I don’t think you need people who represent all parties. I think you just want to make sure that you are not being seen as too close with one party. So I will give one example; this is six years ago, we are in Ghana and we are introduced to a potential partner and he was not from Ghana, but he has been operating there for 10-15 years and lives in the country. And I don’t think he has ever done anything wrong, but he was a very entrepreneurial gentleman and he was not necessarily familiar with the standards of how you deal with politically exposed people, because you can deal with people who have political links. First we were super impressed because we came down, we had a meeting with the president. If you ever go to Africa and meets ministers and presidents, one out of two times they will not be in the country. And then they are in the country they have trouble telling that they are not in the country and sneak out of the backdoor. And if they are in the country and meets you, they may not meet you on time. And that is probably more limited to Africa. So you fly down there, super
excited, we are going to meet the president and first we were a little disappointed [due to the president’s cancellation of the meeting], but then a gentleman picks up the phone and calls the president and the day after we had a meeting with the president. Intuitively, you think that it is a phenomenal resource to have because he can pull a lot strings and if you ever have problem you can go straight to the president. Mostly, if you have a problem with a large infrastructure project, because of the scale and importance to the country, the default mechanism is that the president will be the one that will give you support or no, the problem for us is that if we team up with this guy here, first of all; there is an election coming up in two years - and the former president actually lost the following election. So if we were seen as being too close with the former president, then the new government comes in and of course politics is competition and you use the tools that you have so then they start to look into allegations of corruption. So if we were too close, even if we haven’t done anything we were running the risk of being out of favor with the current government. The other part of it is that if you are so close to a president that you actually have direct influence then you start to become too powerful. So then you would have to start to withdraw and try to do that in a fairly elegant manner without upset the current president. So it is sort of diplomacy in many ways at a fairly complex level.

What actions will you make use of to ensure contract enforcement in African countries?
So that is a super, super good question. I think it has been very clear that a lot of people have gone through complex structures for tax reasons. Many people have optimized to what is legally possible to minimize taxes. But when you look at the corporate structure, the other aspect that is super important is exactly enforceability of contracts. In the first case we had solar parks in Spain. Spain changed the tariffs and we had invested through a Dutch company and we basically took this to international oppression under the Energy Charter Treaty, which was actually set up in the late 90’s to give people confidence going to invest in energy infrastructure in the former Soviet Union and Eastern Europe. Funny enough, I think half of the claims that are in fill has been against Spain. Looking at international arbitration opportunities, looking at bilateral investment treaties, we [Africa Infrastructure Fund] have ten focus countries, it is the larger economies in Africa. I think eight out of ten have lateral investment treaties with Denmark. So as a Danish fund, if we have a problem in Nigeria we can go to LCIA 41 in London and fill an arbitration that is being dealt with by arbitrators appointed in England, using international arbitration rules. The first ruling against Spain was given last year, Spain is refusing to pay for whatever reason. So what I will try to do is to try to take a claim against some Spanish assets sitting in the US. So they will go to a Spanish state-owned company that owns real estate or assets and they will go to a court in the US and say “I have a claim here. I want to enforce my claim. I will pursue these assets”. So I think it is super important that you don’t rely on the local courts because the systems are inefficient. In some cases you will have corruption in the legal system. But the biggest constraint is just to have the special competencies to deal with complex arbitration matters. We had one arbitration case in Africa in my previous life in South Africa, where we had South African arbitrators using London rules. South Africa has a pretty deep pool of well trained lawyers and arbitrators. So that is the enforcement part of it. And then I think of the contracts that you want to make sure that you get as much disputes resolution offshore as possible. It won’t be perfect. So if you have a dispute with the government of Ghana, you try to push for arbitration outside of Ghana.

But the Ghana government will try to make it in Ghana, right?
Yeah.

And isn’t difficult to tell the government “no, we want it outside”?
It is a tough conversation. But then the other aspect you can put on top of this is a political risk insurance, which gives you an insurance against nationalization, extreme tax changes. So then you have the World Bank or someone else stepping in there as an intermediary. To make a claim on such an insurance that’s a multiyear process, so it is not perfect and if you ever go down of that route you

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are not in a good place. But it is a good deterrent for the government to go and do something else. So there is this case in Ghana of a desalination plant built by a Spanish construction company, which went bust a couple of years ago. They had basically build this plant, but it was completely unaffordable, but they had World Bank political risk insurance and partial risk guarantee, which basically is a liquidity support mechanism, so if there is a delay in payment you can draw upon that partial risk guarantee, which then gets topped-up when the government repays you. If a call was made on that insurance then the World Bank would stop all their projects in Ghana. So that forces that government of Ghana to say “okay, we are not going to stop paying, but we are going to sit down and renegotiate”. So now they are working on a restructuring of that agreement. If you get that international political risk insurance, you get contract enforcement in a reliable legal system, you build fundamental low-cost infrastructure that is needed, then I think you have a good all-around risk profile. All we ask for is that you have a fair legal process.

As long as you have the arbitration, in most cases the state will respect [the rules]? Legal is a long conversation, but that is as much a game as a contract, but it gives you much better protection.

You obviously have a lot of experience within this field. To what extent is it possible to standardize the approach and procedure when investing in infrastructure in emerging markets? Because every project is so unique and it is almost like you are inventing the wheel every time.

I think that is the challenge. I think in certain countries you can have a standardized approach because you have scale. So South Africa has a renewables program, they have four tenders now and the contracts are pretty standardized, so that has gone pretty well. I think Morocco is trying to do the same. I think the challenge is if you go to a place like Nigeria, the way to get pace is getting the right people together rather than trying to standardize an approach. IFC, which is part of the World Bank is trying to roll out a program called Scaling Solar, where they try to standardize a financing package, a Power Purchase Agreement, and develop the project. The idea was that it was going to move quicker and you basically have a one-stop shop, where you bid on price and develop the project quicker. It hasn’t really worked as planned. I think, to me, it is really around putting together the right team of people that can go in and can proactively negotiate with governance to make sure that they get back with a fair deal, but in the end that works. It is a multi-discipline approach where you need development people, you need lawyers, you need engineers, you need finance people and all of this is going to run in a unit like a machinery. I think in Africa that is the more likely route to go down. Government do not like to do bilateral deals, the World Bank is not a big fan of it because there is a risk that somebody does somebody a favor, we are super sensitive to that. But I think the problem is that if you want to run a broad and standardized tender, you are going to spend three years putting the package together and five million dollars on advisors. And unfortunately, the problem is that if you don’t have someone who really knows the product then you don’t have somebody to do proper project management consultancy. Because they will spend as many hours as they can, because that is the business model. So then you run the risk that on paper look good but in practice does not work or you may get something that takes you three, four, five years and is not quite there yet. One case study there is in Nigeria, there is a solar program for the last two years the government has not been able to agree with investors how the Power Purchase Agreement should look like because even though they spent three years negotiating one project, over those three years God knows how much money was spent on finding a risk-sharing agreement that everybody was okay with. And then they come back the year later and change it. So I think it is really hard to standardize it. Hopefully at some point there will be a way to deal with it. I think in power it is easier than in other infrastructure, because power is a more standardized product. In terms of structuring and government agreements it is probably the most complex sector. I think in the world of ports and other logistics it is easier because you are dealing much more with commercial risk and commercial counterparts.

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How does the Africa Infrastructure Fund serve the interest of Maersk?

It doesn’t necessarily. It is set up to be independent. A.P. Møller [Holding] holds a controlling interest in the listed company [A.P. Møller Maersk A/S], but this is where, I think, the third generation of the family put that controlling stake into what is a foundation. The way we sat this [A.P. Møller Capital] up is that there is no cross ownership, cross control, so all decisions that A.P. Møller Capital make are made by the four investment partners. Robert Mærsk Uggla sits on the board of the listed company, but he is not on the investment committee here. We have here a handshake agreement that says that we will try to work together where it makes sense. This company [A.P. Møller Maersk A/S] has its fiduciary to all of its shareholders. We have fiduciary not only the [A.P. Møller] holding, that has invested $150 million in us, but the other Danish and Swedish pension funds who also have invested another $715 million. So there is no mandate that we will help the listed company, where there is relationship is; let’s say A.P. Møller [Maersk A/S] has a container port in Ghana. A.P. Møller [Maersk A/S] has a strategy; they invest in containers, they do not necessarily build power plants, roads, railways. We [A.P. Møller Capital] could go in and build a road from that container port though the highway where we would have a commercial agreement with the container group on the revenue model to make sure that we get a more creditworthy revenue line that rely on the government. We could develop a power solution which would have to be more cost effective than the current basis for ports that are owned by the listed company. I think that if they [A.P. Møller Maersk A/S] are in Zambia and they have a problem, they can call up Lars Jakobsen or me and say “do you know anyone who can help me understand this problem”. And we may share contacts. And vice versa, when we were in Ghana we met up with A.P. Møller people there and they advised us to get their view on what’s going on Ghana. So it is more sharing of intelligence, not where it is competitive, so that is probably the real value added.

So the strategies are not more aligned than when it makes sense you will try to work together.

In theory, we [A.P. Møller Capital] can go in and buy a container port in Africa, which on paper would be competitive with A.P. Møller [Maersk A/S]. I don’t think it would make sense because these guys have done this for 100 years. We can probably figure it out but we don’t have all the resources as the listed company has. So it is complicated, but that is also one of the reasons why we raised third party capital, to make sure that first of all we got independent verification of the business model, but also to show that this is not a corporate venture market. I have done corporate venture in the past and it is really difficult to get that to work properly because you run the risk of having a non-financial motivated agenda. And this is a commercial enterprise. I mean the objective here is to do well while doing good, so we want to make money, but we want to do that in the right way. But ultimately I am pretty sure my mother’s pension is in there somewhere as well, so there are people getting more money back than what they put into us.

Appendix 6 - Interview with Tina Kollerup Hansen, Danida Business Finance

Kan du starte med kort at fortælle lidt dit arbejde?

Det program jeg sidder og arbejder med er jo ikke klassisk IFU; det er et program som hedder Danida Business Finance, hvor det ikke er kommercielle projekter med offentlige myndigheder. Bare så I er klar over at det er to meget forskellige typer investeringer vi kaster os ud i.

Det er faktisk også derfor vi synes det ville være spændende at snakke med dig fordi det kunne være der var nogle andre udfordringer du ville bringe op.

Det er der nok ingen tvivl om at der er fordi hvor IFU’s almindelige investeringer kigger selvføl dig meget på de mere kommercielle risici; om det er en god forretnings - det gør vi jo overhovedet ikke. Vi er sådan set ligeledes hvad det giver i afkast fordi det skal helst ikke give

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Senior Partner at A.P. Møller Capital
Skal det bare betale sig hjem?
Danida Business Finance giver 10 årig lån som gives til offentlig myndigheder til projekter som ikke er kommersielle. Det er simpelthen et krav fra OECD - vi er underlagt OECD regler på det område fordi det er bundet bistand; det er kun danske virksomheder der må byde ind på de projekter vi finansierer. Så det skal være projekter som alligevel ikke ville kunne blive finansieret på kommersielle vilkår og derfor nogle projekter som det er rigtig vanskelig for myndighederne at få finansiering til hvis de ikke har midlerne på deres egne projekter.

Så det er kun infrastrukturprojekter som vil gavne vækst?
Det vi går ind og kigger på når vi vurderer projekter er om det er noget som der er behov for i det pågældende land. Er det noget som er del i deres overordnet strategiplanner. Så det skal være efterspørgselsdrevet. Det skal ikke være os der kommer ud med en dansk virksomhed og siger “vil I ikke købe det her udstyr”? Det er den anden vej rundt; det skal være baseret på deres behov. Men når de så kommer med at projektforslag så går vi ind og vurderer om det er noget danske virksomheder kan levere til en pris som er internationalt konkurrencedygtigt. Og det betyder at mange af de projekter vi laver er inden for vand, osv, hvor danske virksomheder har nogle særlige kompetencer.

Så det er staten der vi have det her bygget og så udbyder de det til private?
Ja, de [staten] tager et lån - det er så finansministeriet der går ind og er låntager. Det er dem som skal garantere over for os at det her lån bliver tilbagebetalt. Vi vil ikke tage risikoen på en eller anden by i Kenya, hvor man ikke rigtig ved hvad der kreditranging egentlig. Så vi tager risikoen på selve landet og det betyder også at den eneste situation hvor vi ikke får vores penge tilbage det er hvis hele Kenya går nedenom og hjem. Og der er risikoen trods alt relativ lille. Så det er finansministeriet der tager et lån fra en dansk bank og vi går så ind og dækker alle de renteudgifter der er på det lån - dem betaler vi direkte til den danske bank. Plus vi giver også en kontant gave som bruges til at nedbringe lånets hovedstol. Så hvis de for eksempel skal indgå en kontrakt med Vestas på EUR 100 millioner, så behøver de kun at låne - lad os sige - EUR 70M af en bank fordi de EUR 30M giver vi så i en gave. Grunden til at vi gør det er at vi committer os til at give et rentefrit lån, dvs vi dækker alle de renteudgifter der er i hele vores løbetid. Men derudover siger OECD reglerne også at vi skal give minimum 35% i subsidy i udviklingslande og 50% i ‘least developed countries’. Og med de relativt lave renter der er i dag på det kommersielle marked så er det slet ikke nok bare at dække renteudgifterne, kommer aldrig op på et subsidy på 35% og 50%. Så vi bliver nødt til at give noget gave oveni for at komme på det her minimumskrav fra OECD.

Så det er alle OECD lande som har sådan en “Danida”.
Alle gør det men der er mange forskellige måder at gøre det på og der er mange forskellige måder at sætte de her programmer op på og “blende” på den måde som vi gør. Det som måske er specielt ved os er at vi helt åbent og ærligt siger at vi har et bundet instrument. De fleste af afbundet programmer og så prøver de på alle mulige andre måder at sætte nogle konstruktioner op som gør at det er deres nationale virksomheder som tit render med kontrakterne, men officielt er de afbundet så de behøver ikke følge OECD reglerne så de behøver ikke giver helt lige så meget i subsidy.

Hvilke risici ser I typisk i infrastrukturinvesteringer i udviklingslande?
De typiske risici i infrastrukturinvesteringer i udviklingslande er de nu også ordentligt til stede? Tarif strukturen - hænger den sammen i forhold til projektet kan løbe rundt. Plus når vi laver en aftale så laver vi det sammen med regeringen
på et tidspunkt hvor når vi så når længere hen i projektforløbet og vi når dertil hvor der ligger en kontrakt og nu skal vi lave en endelig binding-commitment så er der lige pludselig en ny regering som er kommet til siden. Er de nu også committet til det her eller skal man ligesom igennem hele processen en gang til? Så det er nogle mere politiske risici vi har med vores projekter. Det kan også være - nu kigger vi for eksempel på et lille projekt i Etiopien, hvor man kan sige at selve projektet ser rigtig fornuftigt og spændende ud, men så er der samtidig nogle uroligheder med regeringen oppe i den provins hvor det her projekt skal foregå; der er en masse demonstrationer, regeringen skyder på befolkningen. Kan vi så gennemføre vores projekt?

Så det er mere sådan nogle risici vi står med. Hvorimod de kommercielle risici kan vi nemmere håndtere fordi der har vi en klar setup med leverandørerne; det er danske virksomheder der kender os. Og det er typisk de samme 5-6-7 virksomheder der samarbejder med os på de her projekter fordi skal være nogle som har en vis kapacitet for at kunne håndtere de her kæmpe store kontrakter. Så de kender os og de ved også godt hvad vores krav er og de ved også godt at hvis de ikke performer så skal de herind og stå skoleret og det har de ikke lyst til. De ved godt at det her er den danske stat og der har man ikke lyst til at fremstå som en der ikke leverer varen. Så hele det kommercielle setup - altså selvfølgelig er der også nogle risici der men det er begrænset. Det er de institutionelle risici der er det helt afgørende i vores projekter.

**Hvad gør i så ved de politiske risici, fordi det er vel begrænset hvad I egentlig kan gøre ved det hvis der er regeringsskifte, men er det så noget i tager ind til overvejning før? Alle projekter I går ind i er der vel politisk ustabilitet lige meget hvad?**

Det er der! Nogle steder mere end andre. Men det er klart, det er der altid. Når vores projekter skal godkendes så er det første skridt er - på baggrund af et eller andet feasibility studie - at vi går ind i Udenrigsministeriets program komité - som en intern komité - hvor man drøfter om det her er noget der falder fornuftigt ind for Danmarks prioriterer. Og det er selvfølgelig også her hvor hele den institutionelle viden og netværk der ligger i Udenrigsministeriet og ambassader, osv., at de kommer på banen og siger “det vi skal være opmærksom på dette konkrete projekt er at der er nogle udfordringer i Vandministeriet, hvor Vandministeren ikke er lige så stærk som Energiministeren” og der kan foregå alle mulige forskellige ting. Det er ambassadørerne der har det lokale kendskab og viden. Så de er en vigtig partner for os ift at gå ind og tage de her mere strategiske overvejelser i forbindelse med de enkelte projekter. Når vi så har fået et OK fra program komitéen så laver vi en appraisal af projekterne hvor vi hiver eksterne konsulenter ind som tager ud og taler med alle de forskellige stakeholders og ser på projekt site; bor der nogle i forvejen som skal flyttes og hvad kan der være af forskellige ting man skal tage højde for. Vi har nogle krav om at IC Performance Standards skal overholdes i vores projekter. Så det går man også ind og kigger på om der kan være nogle problemer. Og når vi så lægger et projekt om i Udenrigspolitisk Råd - som er dem der godkender alle Danida projekter og rådgiver Udenrigsministeren - der laver vi også en risikoanalyse der hvor vi kigger på hvad der er af contextual risk og kigger på hvad er Low Risk, High Risk, hvad er der af forskellige mitigation measures man kan indarbejde i projekterne for at minimere de her risici.

**Hvilke kan det være?**

Det kan jo netop være sådan nogle politiske risici med at der udbryder borgerkrig i landet, hvilket selvfølgelig er svært at håndtere. Det kan også være netop nogle af de her IC Performance Standards at der er risiko for at de ikke bliver overholdt. For eksempel i Etiopien bliver menneskerettighederne overhovedet ikke overholdt. Hvad kan vi så gøre for at imødegå den risiko for at det ikke bliver overholdt. Så stiller vi et krav til myndighederne at de skal overholde det og det og vi hyrer konsulenter som skal sikre at det bliver gjort og i så fald at de ikke overholder dem så har vi en mulighed for at kræve at vi skal have vores penge tilbage. Så vi prøver at bygge sådan forskellige elementer ind i vores programmer og projekter.

Så det I gør er at se efter hvor det kan gå galt i landet i forhold til projekterne og så stiller i
krav til staten at hvis det ikke bliver overholdt så beder I om pengene tilbage?

Det er i hvert fald en mulighed vi altid har. Vi har sådan nogle erklæringer som de skal underskrive inden vi endelig undtager vores penge, hvor de netop committer sig til at overholde en lang række punkter som vi har opsat og hvor vi helt eksplicit skriver ind at hvis den her erklæring bliver overtrådt så forbeholder vi os retten til at kræve vores penge tilbagebetalt. Det er altid sket fordi det er altid lykkedes at få løst problematikkerne. Der er tit og ofte problemer i vores projekter - det er nærmest umuligt at undgå i de lande vi arbejder i, men vi håndterer dem undervejs. Sådan noget som borgerkrig er jo voldsomt og er selvfølgelig en af de type problemer som er altid vanskelige og selvfølgelig også sværest at håndtere. Så det er mere sådan nogle projekt-nære risici som er mest sandsynligt og nemmest for os at håndtere. For eksempel er det ikke altid at sådan et vandselskab i en eller anden by i et afrikansk land har erfaringen og kapaciteten til at håndtere de her store projekter - de skal jo selv køre en udbudsproces. Kan de finde ud af at køre sådan en udbudsproces i henhold til god international praksis og stå for kontraktfarhandlinger med internationale leverandører og styre hele project implementeringen det er jo ikke altid at de er i stand til det. Så det er sådan en klassisk risiko der er i vores projekter. Og der har vi så heldigvis en klassisk måde at imøde og beslutte den risici ved at vi går ind og finansierer en bygherreraadgiver som hjælper og assisterer bygherrerne, hjælper både under udbudsprocesser og under implementeringsfasen. Og vi hyrer også konsulenter til at måte og assistere. Tit er det kapacitets spørgsmål, hvilket er lidt nemmere at afhjælpe fordi det er et spørgsmål om at kaste nogle flere penge efter projektet.

Så det stage I går ind i projekterne er før det egentlig er tidligt.

Ja, det er når der ligger en rapport der siger “vi har brug for vand til den her by, der bor så og så mange mennesker, der er brug for så og så meget vand, så vi forestiller os et renseanlæg med den og den kapacitet”. Nogle gange går vi også ind hvor der ikke engang ligger et feasibility studie men måske bare en master plan; nu har man lavet en plan for hele vandsektoren i hele Kenya, hvor man kan se at der er brug for vand der og der, men man har ikke defineret de enkelte projekter. Der kan vi så også gå ind og finansiere de her feasibility studier og der har vi facilitet hvor vi kan gå ind og finansiere op til 75% på de omkostninger der er forbundet med at lave sådan nogle feasibility studier. Det er en relativ ny facilitet vi fik sidste år på 50 millioner fra regeringen. Grunden til at vi gør det er også at der hvor den helt store hulde er, er at få udviklet projekter når først projekterne er udviklet og ligger klar så skal man nok finde finansiering et eller andet sted. Der er masser af finansierings puljer og midler til rådighed, men det at tage risikoen ved at udvikle projekterne det er der ikke ret mange der vil. Så der er behov for at man går ind med bistandsmidler går ind og støtter op om det. Samtidig ser vi det som en mulighed for at gå ind og være med til at være med til at påvirke projekterne i højere grad. Fordi først når vi et feasibility studie forelægter så var projektet sådan set mere eller mindre defineret - så kunne man selvfølgelig gå ind og skrue på nogle små elementer - hvorimod hvis vi er med til at lave feasibility studier med danske konsulenter, så kan vi med deres store viden om hvad Danmark kan på vandområdet så kan man sørge for at tænke det ind i projekt designet fra start af. Så når projektet kommer i udbud så det man efterspørger er i virkeligheden det bedste teknologi der findes og det mest bæredygtige projekt.

Er der nogle projekter der ikke er blevet til noget efter I er startet med at arbejde med dem?

Ja, det er der. Altså procenten der falder fra har været kraftigt faldende og tror jeg primært et spørgsmål om at vi er gået ind i projekternes udvikling og har været mere hands-on i processen. Vi går nu også kun ind i lande, hvor vi har en ambassade - førsthen kunne vi gå ind i en store landekreds. Førsthen var vi også mere tilbøjelige til at gå ind i projekter hvor det var danske virksomheder der kom og foreslog og sagde “vi har det her projektforslag og vi er i dialog med de lokale myndigheder i det og det land, er det noget I vil finansiere”? Men hvor nu har vi vendt den lidt rundt; virksomheder kan stadig komme og lægge nogle projektforslag på bordet, men så tager vi dialogen med myndighederne derefter for at få afdøkket om hvorvidt det her nu er efterspørgselsdrevet og passer ind i det nationale planer som ligger. Vi kan tidligt se om det er en dansk virksomhed som prøver at sælge noget teknologi eller om det er drevet af efterspørgslen. Det tror jeg helt sikkert har været en medvirknings faktor til at der ikke er så mange af projekterne som ikke bliver til noget fordi
commitment og interesserne i projekterne er der ude lokalt.

Vi så også på jeres hjemmeside at I er i alt fra Vietnam til Kenya. I hvilken grad er udviklingslande forskellige fra hinanden?

Der er meget stor forskel. Vi sidder jo fem mand i teamet som sidder med hver deres landeporteføljer og følger projekterne fra start til slut. Men vi bruger også ekstremt mange eksterne konsulenter til at hjælpe os fordi vi kan jo ikke tage ud og se alle projekterne hele tiden; så kunne vi jo ikke bestille andet end at rejse hele tiden. I forvejen rejser vi ret meget. Vi bruger rigtig meget konsulenter til detaljerne og så prøver vi at holde snor i det hele her hjemme fra. Der er stor forskel og der er stor forskel på de udfordringer der er klassiske i de forskellige lande. Jeg har siddet med det her program i 14 år efterhånden og jeg har også selv i årenes løb siddet med forskellige landeporteføljer og kan godt se at der er kæmpe forskel på det. Vi sidder jo fem mand i teamet som sidder med hver deres landeporteføljer og følger projekterne fra start til slut. Men vi bruger også ekstremt mange eksterne konsulenter til at hjælpe os fordi vi kan jo ikke tage ud og se alle projekterne hele tiden; så kunne vi jo ikke bestille andet end at rejse hele tiden. I forvejen rejser vi ret meget. Vi bruger rigtig meget konsulenter til detaljerne og så prøver vi at holde snor i det hele her hjemme fra. Der er stor forskel og der er stor forskel på de udfordringer der er klassiske i de forskellige lande. Jeg har siddet med det her program i 14 år efterhånden og jeg har også selv i årenes løb siddet med forskellige landeporteføljer og kan godt se at der er kæmpe forskel på det.

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Hvad er det for nogle gennemgående ting som er overordnet set?

Altså udbudsprocesser og implementerings delen; hvad er det for nogle tekniske løsninger og hvordan håndterer man bedst sådan nogle store anlægsinvesteringer, hvad er det for nogle ting der er vigtige i forhold til organisationen af projekterne eller hvad det er for nogle kompetencer folk har som styrer de her projekter. Der er jo nogle ting som ligner meget hinanden. Men så er der selvfølgelig også sådan noget med hvad er den institutionelle setup i de forskellige lande, hvem er det der har indflydelse over de forskellige ting, hvad er processerne i de nationale godkendelsesprocesser og hvem bestemmer hvad og hvornår bliver vi projekt godkendet det ene sted og hvad betyder det for budgettet. Altså der kan være en masse forskellige ting. Bare for eksempel i Vietnam der er det sådan at alle projekter før myndighederne overhovedet henvender sig til en international donor for at få finansiering så skal det godkendes i deres nationale planlægnings ministerium med et budget og først derefter kan de gå ud og finde finansiering og sætter hele den her lange proces i gang. Det betyder så at planlægnings ministeriet har godkendt et projekt og det ligger fast. Og så kan der altså bare gå 5-6-7-8 år før man står med en endelig kontrakt. Og der kan ske rigtig meget med priserne i den periode. Og der er problemet med Vietnam at det med at gå tilbage til planlægnings ministeriet og bede om et forhøjet budget det er næsten umuligt. Så skal man nærmest starte helt forfra. Så der er man nødt til at være meget opmærksom på at man holder sig inden for de her priser, sørger for at lægge nogle optioner ind i udbuddet så man skalere kontraktstørrelsen efterfølgende. Det forhold er der ikke i ret mange af de afrikanske lande, der får man et eller andet cirka projekt godkendet og så er det først når man har en endelig kontrakt og så skal det op til en kabinets godkendelse og så er det det der man kender den endelig pris. Så sådan nogle ting er forskellige for hvordan præcis processerne kører.

Hvilke kriterier er vigtigst når i evaluerer projekter, set fra Danida’s synspunkt?

Helt basic, er det overhovedet et land vi må være i. Og der er kravene at vi for det først skal have en ambassade derude i det pågældende land.

Hvorfor er det vigtigt?

Jamen det er simpelthen en afgrænsning man besluttede for nogle år tilbage fordi man ville gerne fokusere det her program på de lande hvor man har en særlig dansk interesse. Og denne særlige danske interesse er ligesom repræsenteret ved at man har en ambassade i landet. Når man har en ambassade så har man typisk også andre relationer, andre programer, andre samarbejdsfader med myndighederne og det giver et andet lokal kendskab end hvis det er et land hvor man overhovedet ikke har en tilstedeværelse; så kan det være svært at vide hvad er de primære institutionelle risici i det pågældende land end hvis man slet ikke har nogen tilstedeværelse. Så det er et af de kriterier vi arbejder efter. Og så er det også et spørgsmål om landets indkomstniveau; der er det kun de
fattigste lande vi må arbejde i. Det er igen et krav fra OECD, som lægger de her regler ned over programmet. Så landet må maksimalt have en BNI pr. capita på USD 4,000. Så det er low and middle income countries vi fokuserer på. Så det er det allerførste vi kigger på. Og så ser vi selvfølgelig på hvad det er for projekt. Altså er det vandrensning, er det vindmøller, hvad er det for noget. Fordi vi ved at der er nogle projekter som danske virksomheder er interesseret i at byde på. Det er noget de kan, det er noget de gerne vil være med til, så det er fint. Så er der nogle projekter som waste-to-energy, hvor der måske er nogle danske produktleverandører men de kan ikke bære et projekt alene, de bliver nødt til at have nogle de kan gå sammen med og er det muligt at finde sådan et setup? Så der må vi nogle gange gå i dialog med virksomhederne for at høre om det har interesse. Vi skal minimum have to danske virksomheder der er interesseret i at byde for at få en konkurrence på prisen. Så det kan udelukke nogle projekter. For eksempel, vi laver ikke sol her i Danida Business Finance, fordi det er ikke danske virksomheder der er forende på det. Til gengæld så laver vi rigtig meget vand. Og så går vi selvfølgelig også ind og kigger på om det er noget der er lokalt forankret, er det en del af de nationale udviklingsplaner, er Finansministeriet indførstået med at gå ind og tage lån ansvar. Det er de primære elementer vi kigger på når vi vurderer projekter.

**Hvorfor låner stater fra jer, i modsætning til the World Bank eller store internationale udviklingsbanker?**

Det gør de også. Der er rigtig mange donorer på det her område. Der er jo et gigantisk behov for finansiering til infrastruktur i Afrika. Og det er slet ikke noget bistandsbudgetter kan løfte alene. Så der er behov for virkelig, virkelig mange milliarder. Så der er rigtig mange donorer på det her område og Verdensbanken er jo en kæmpe spiller også - de laver rigtig, rigtig meget; mange infrastrukturprojekter. Og også mange lokale udviklingsbanker gør også rigtig meget. Vi møder jo alle de andre donorer derude også når vi er ude i de her lande og har møder med dem. Tit så opsøger vi dem selv når vi er på missioner for netop at uddele erfaringer og udveksle ‘lessons learned’ og nogle gange overtager vi også hinandens feasibility studier. Der har for eksempel været et eksempel i Etiopien hvor African Development Bank havde finansieret et feasibility studie men endte måske at ikke at have finansiering til selve projektet af forskellige årsager som budgetbegrænsninger eller hvad. Og der fik vi så lov til at overtage det feasibility studie og finansiere projektet. Der er nogle af de andre donorer som franskmændene, tyskerne, KFW og AFD de samarbejder meget, meget tæt på det her område og også med den Europeiske Investeringsbank. De har sådan nogle halvårige koordineringsmøder hvor de drøfter pipeline og nærmest deler projekter imellem sig.

**Er der mere samarbejde end hvis det var to private institutioner eller er der også konkurrence?**

Dette kræver selvfølgelig også noget samarbejde fordi man selvfølgelig gerne vil donor koordinere. Dette er et eksempel på, at der er nogen konkurranse også og det ved mange af de almindelige feasiability studier. Det er udført i Etiopien hvor African Development Bank havde finansieret et feasibility studie men endte måske at ikke at have finansiering til selve projektet af forskellige årsager som budgetbegrænsninger eller hvad. Og der fik vi så lov til at overtage det feasibility studie og finansiere projektet. Der er nogle af de andre donorer som franskmændene, tyskerne, KFW og AFD de samarbejder meget, meget tæt på det her område og også med den Europeiske Investeringsbank. De har sådan nogle halvårige koordineringsmøder hvor de drøfter pipeline og nærmest deler projekter imellem sig.

**Hvordan sikrer i kontrakter bliver overholdt?**

Altså de kontrakter som er i vores projekter det er jo en kontrakt mellem en dansk virksomhed og en lokal myndighed på den anden side og den kontrakt skal vi ind og godkende. Så vi læser den igennem og sikrer at det ser fornuftigt ud og at det er det projekt som vi i sin tid har godkendt og at det indeholder de elementer som vi har godkendt. Og så har vi en række betingelser som skal stå i de her kontrakter. Det er blandt andet noget omkring anti korruption og den slags. Og den danske virksomhed skal også underskrive en erklæring over for os at de også overholder de her forskellige betingelser. Fordi hvis de ikke gør det så er det dem der skal tilbagebeta. Danida er ikke part i hverken den kommercielle kontrakt eller i låneaftalene; det er nogle aftaler mellem nogle kommercielle aktører som vi bare står op sidelinjen og bidrager noget finansiering til, men vi er ikke part i de aftaler. Derfor har vi behov for at have nogle andre former for aftaler med de forskellige involverede parter for at vi også har noget snor i det her og at de også skal stå til ansvar over for os.
Dvs at danske virksomheder også har en forpligtelse over for Danida til at performe på en række krav. Og de ved også godt at det er noget vi følger med i; vi har konsulenter som følger projekt implementering og blander sig meget i disse processer. Og danske virksomheder kan ikke holde til at de bliver taget i nogen form for urent trav. Og mange af dem siger også til os at det faktisk er en hjælp for dem at vi er involveret i de her projekter fordi det gør det nemmere for dem at bruge os lidt som “bussemanden”; hvis der kommer forespørgsler om noget som ikke er efter bogen, så kan de sige at det må vi ikke for Danida. Men nogle gange dukker der nogle ting som bare ikke er helt efter bogen og så går vi jo ind og blandes os og så tager vi dialogen med de forskellige parter og alt efter hvor alvorligt det er kan vi så også tage ud og tage møderne på højt niveau i regeringen hvis det virkelig ser skidt ud. Og vi har også den mulighed at vi kan sende vores ambassadør i byen. Så det er sådan nogle ting vi bruger til at imødegå de her kontrakter.

Er jeres penge ikke givet der?
Jo, men vores penge ligger i den danske bank så vores penge kommer aldrig ud i landet kan du sige fordi vi kanaliserer dem igennem banken. Så det de har er at de har adgang til et lån men de har ikke selv råderet over nogle midler som de skal udbetales. Så det gør også at vi har lidt snor i pengene; vi ved at de ikke Ryder de forkerte steder hen fordi vi udbetaler den direkte til den dansk bank som så administrer lånet på vores vegne. Når så projektet går i gang og leverandøren er gået ud og er begyndt at bygge, så sender leverandøren - den danske virksomhed - en invoice til bygherren og siger nu har vi udført så og så meget arbejde, nu vil vi gerne have udbetalt så og så mange penge. Så assisterer bygherre denne invoice og så sender de den her invoice til den danske bank som så udbetaler pengene til den danske virksomhed. Så pengene bliver i Danmark; de går fra Danida, til den danske bank og så til den danske virksomhed. Så på den måde miniminer vi lidt nogle risici der. Der hvor risikoen for korruption er størst er hos de lokale aktører som ikke er vant til at samarbejde med os. Og så er det også bare meget mere almindeligt og normalt at man bruger korruption, hvor noget ikke engang bliver anset for at være korruption i de her lande. Men der ved danske virksomheder godt - og de danske konsulenter som vi anvender - at det er bare totalt no-go.

Når lånet skal tilbagebetales, er der så problemer med at kontrakt håndhævelsen?
Vi har en lånafaktale mellem den danske bank og finansministeriet og det er klart, nogle gange kan de der betalinger godt være lidt forsinket fra finansministeriets side og så går banken ud og siger “hey”. Og ellers går vi ind og kalder lånet default. Og det er der altså ingen finansministerier i nogen lande der har lyst til fordi der sådan nogle forskellige cross defaults som gør at hvis du først ikke betaler på nogle af deres lån og erklærer deres lån for default så får det sådan nogle kryds effekter og så er det lige pludselige hele landet; så vil bankerne sige “hvis Finansministeriet i Tanzania ikke betaler på det her lån så anser vi nu at for alle de lån vi måtte have i Tanzania som potentielt værende i default. Så der er noget omkring landet eget kreditværdighed i det internationale lånemarked.

Men det sker kun med de danske lån ikke?
Jo, men det hele er jo reguleret. For hvis den danske bank ikke får deres penge så går de til EKF som har udstedt en garanti - det er Danida/Udenrigsministeriet der i sidste ende betaler EKF hvis der sker nogle tab på vores sager. EKF er med i en OECD-kreds af eksportkredit institutioner hvor de mødes jævnligt og drøfter forskellig landes kreditværdighed. Dvs at hvis der er ét land der har et issue med finansministeriet i Tanzania så bliver det delt med alle andre eksportkredit institutioner. Det er også de her eksportkredit institutioner som gør ind og kreditvurdere de enkelte lande og giver dem en klassifikation fra 1 til 7, hvor 7 er meget, meget dårlig kreditværdighed. 1 er rigtig godt - det er noget vi har her i vesten. Og det er rigtig dyrt for landene er ryge ned på den liste fordi hvis de ryger helt ned på listen så får de rigtig svært ved at optage nogen som helst kommericielle lån. Så kan de kun få lån fra sådan nogen som os og ikke længere fra nogen på det kommercielle marked. Så det har sådan en masse kryds effekter, hvis de begynder at defaulte bare på ét lån så kan det sætte gang i en masse dominoeffekter som gør at deres kreditværdighed bare rusker ned ad. Det her program har eksisteret i 25 år og vi har aldrig haft et tab. Og det er pga af det her - det er der slet ingen tvivl om.
Har I nogensinde oplevet lokal modstand på jeres projekter?
Jeg ved ikke om jeg rigtig har oplevet det efterfølgende, mere som undervejs - også i optakten til når projektet skulle forberedes osv. Det er jo især i de situationer hvor der er nogle mennesker der skal flyttes. Og det er selvfølgelig noget som er rigtig vanskeligt og noget som vi så vidt muligt prøver at undgå. Nogle gange kan man ikke undgå det men vi prøver i hvert fald at minimere det. Altså sådan nogle projekter hvor der skal flyttes 200 familier det vil vi bare helst ikke ind i. Det er bare rigtig, rigtig svært at håndtere de her processer og sikre at det kommer til at foregå ordentligt. Vi havde et projekt engang hvor en havn skulle bygges på et sted hvor der ikke var en havn i forvejen. Der var en strand og der var en masse lokale fiskere der brugte den her strand til at trække deres både op på. De mistede jo så adgangen til den her strand og de skulle så kompenseres. Og der skete sjovt nok det at i starten var der identificeret 20 fiskere i området men inden processen var slut var der altså 150 fiskere i området. Så det er rigtig, rigtig svært. Nu har vi også et projekt i Etiopien, hvor der vil være to familier der skal flyttes og der er 20-30 familier hvor deres jordlodder bliver påvirket i en periode. Så der går man også ind og ser på noget kompensation der og noget resettlement. Og det er klart at det er noget der giver anledning til rigtig meget uroligheder. Vi har lige, i forbindelse med det her Etiopien projekt, haft mange møder med NGO-krydsen herhjemme - 92-gruppen - fordi det er sådan noget de også kigger på og bekymrer sig om. De sidder i Udenrigspolitisk Råd og skal være med til at beslutte om hvorvidt de her projekter skal godkendes eller ej. Så derfor har vi taget en meget tidlig dialog med dem for både at lade dem komme med deres input; hvad er det vi skal sørge for at tænke over i den videre proces i forbindelse med projektudviklingen. Men også forklare dem hvordan vi har tænkt os at håndtere de her ting så de bliver lidt beroliget omkring at vi ikke er helt blinde for hvad der potentielt kan ske. Og det er så her vi lægger vægt på at det er CI Performance Standards der er det afgørende for sikre en god proces. Vi har lavet nogle Gap analysen på reglerne der er i Etiopisk lovgivning, holdt op imod CI Performance Standards; er der nogle afvigelser? Hvor er den nationale lovgivning ikke god nok i forhold til CI Performance Standards; vi har selvfølgelig altså i vores projekter haft øje for de her ting. Det har altid været noget Danida har kigget på og gået op i at det her skal gavne lokalbefolkningen og folk skal behandles ordentligt. Det er jo ikke fordi man førhen har blindt fulgt derudaf. Men der er blevet en meget større bevidsthed internationalt omkring det her, det er kommet til at fylde meget mere, hele det her Global Compact, IC Performance Standards, UNs Guiding Principles - det er bare blevet noget som der er meget opmærksomhed omkring fra alle leder og kanter.

Er der andre institutionelle udfordringer som vi ikke har snakket om som du vil point out?
Noget der tit er meget vigtigt for infrastrukturinvesteringer i udviklingslande? Det er jo et selvstændigt mål i SDG og der er andre [UN SDG] mål der også afhænger af ordentlig infrastruktur og der er lavet mange studier der viser at ordentlig infrastruktur er afgørende for private kommersielle processer, for at drive væksten. Så der er ingen tvivl om at det er meget, meget vigtigt for...
at skubbe et land frem på udviklingsområdet. Det vi så har fokus på er at det skal være bæredygtig vækst - det har altså været et hovedformål med det her program og det er også der hvor danske virksomheder har noget at komme med fordi det er typisk nogle mere bæredygtige løsninger end hvis de køber noget fra Kineserne eller hvor det nu ellers skulle komme fra. Indtil 1 september 2017 der lå det her program - Danida Business Finance - jo over i Udenrigsministeriet men så valgte man at flytte det herover til IFU og os der sad over i Udenrigsministeriet blev ansat her i IFU i stedet for til at håndtere programmet fordi man netop gerne ville se hvordan vi bedre kunne komplementere hinanden i de investeringer vi laver og skabe nogle synergier. Og der er Lake Turkana [Wind Power] jo et glimrende eksempel, hvor IFU er gået ind og investeret i det her vindmølleprojekt. Og det var jo først svært at finde finansiering til transmissions delen men det lykkedes jo så med noget spansk finansiering, men der var jo så problemer med den spanske leverandør. Altså havde vi nu ligget her i sin tid da man skulle lukke dealen på Lake Turkana så IFU jo sagt “vi har faktisk også et program der kan finansiere transmissions delen og så har IFU jo samlet set haft hånd i hanke med den samlede investering i stedet for kun at sidde på vindprojekt delen. Vi [Danida Business Finance] finansierer også transmission systemer, det gør vi i Mozambique for eksempel; der bygget vi et kæmpe stort transmissionsnet. Så der ville vi også kunne gå ind - i stedet for det var spanierne der involverede den del - så kunne vi have gjort det med Danida Business Finance. Og så ville vi fra dansk side have haft det fulde kontrol over hele projektet - på finansieringssiden i hvert fald. Det mener vi jo at det ville kunne skabe nogle bedre resultater og det er der hvor vi ser at de her instrumenter kan spille rigtig godt sammen. Fordi IFU investeringer - og private investeringer i hele taget - kan noget, men der er bare behov for noget basal infrastruktur som private investorer ikke kan investere i fordi det ikke er kommercielt. Vi går jo kun ind i det som ikke er kommercielt. Altså offentlig infrastruktur giver bare ikke noget afkast så man kan få private investorer involveret i det. Det har så lykkedes over årene at få det et setup at vind nu kan finansieres kommercielt med private investorer. Der har man lavet hele det her PPA system så man har nogle private utilities. Vi prøver lige nu at se på; kunne man lave en tilsående model på vandområdet. Fordi vand er jo også vigtig infrastruktur - både drikkevand og spildevand - men det er bare overhovedet ikke kommercielt. Der prøver vi også at se om vi kan finde nogle finansieringsmodeller - med lidt inspiration fra vind området - om man kunne lave noget tilsående på vand så man også kan få noget privat investering ind. Der har man en udfordring; en ting er en risiko for en privat investors side, men en forretning som ikke er kommerciel ville de jo aldrig gå ind i. Så det er helt klart også et vigtigt område på bistandsområdet og også noget som vi bruger rigtig meget knyttet sammen med Udenrigsministeriet. Der er en erklærelse af at bistands budgetter kan ikke løse det her finansieringsbehov. Man er nødt til at have private investorer med. Hvordan får man dem så med? Hvad er det for nogle risikoelementer som bistandsmidlerne kan gå ind og afdække så private investorer er komfortable med at investere?

Appendix 7 - Interview with Henrik Petersen, The Danish Trade Council

Kan du starte med at fortælle lidt om infrastruktur udviklingen i Kenya?


Er det okay for staten?

De siger de har ingen alternative. Transmissionslinjen i LTWP har de gået og ventet på. Det er jo spansk bla. - de gik konkurs, man troede man kunne samle stumperne og bygge noget op fra spansk side, det kunne man så ikke. Vi forsøgte også fra Danida og IFU’s side at vi kunne også gå ind og lave noget, men det tog for lang tid, så var det de sagde vi tager kineserne, de kommer med penge de kommer med mandskab, de kommer med kinesere. Og det er jo ikke så godt for udviklingen i landet - det ville være bedre hvis de brugte kenyanerne.

Har investerings forholdene ændret sig over de seneste år?


Er der de samme udfordringer i infrastruktur som i andre industrier for udenlandske private investorer?

Ja det er der. De taler meget om og prøver at gøre det nemmere for infrastruktur investeringer da de ved det er vigtigt for udviklingen, men det er ikke rigtig som om vi kan se det. Altså “Ease of doing business” er steget - det er blevet bedre, men det er ikke blevet markant bedre. Det er afhængig fra projekt til projekt. Det der er meget vigtigt hermed det er at have en lokal partner, der har fødderne solidt plantet, sådan at de har erfaring og netværk. Ved store projekter er det vigtigt at man via sin stakeholderanalyse finder ud af, hvem sidder med nøglen til at få sådan et projekt igennem. Vi har i øjeblikket et projekt hvor en dansk investor jagter det oppe i Turkana området. Og det er et
projekt hvor guvernøren, og country er med på det. Nu skal man så have lokalsamfundet med på det, da der er mange emotionelle bånd i Kenya, da man har haft folk til at bo på det land i måske 1.000 år, og pludselig kommer der en foreign investor og sætter hegn op osv, dermed føler folk de tager et eller andet vi mister noget - får vi kompensation for det? Det er de første tanker for lokalbefolkningen.

Derfor skal man have nogle man partner op med hernede som har netværk, som kan læse hvad sker der. Vi gør ofte det, at sammen med en investor, har tæt kontakt med myndighederne. Danmark har jo været her i over 50 år gennem DANIDA. Vi er meget vellidt hernede som danskere og den danske ambassade har et højt navn hernede. Så hvis vi for eksempel skal holde møde med energiministeren, så kan vi lave sådan et møde i løbet af ingen tid, og få den danske investor med på banen. Vi kan få afgjort hvad er det der skal ske i dette projekt. Og så kan vi få en form for offentlig opbakning til det - det er en af måderne at sætte det igang. Så skal man have lokalsamfundet med på det og forstå det. Det er typisk guvernøren og counties, hele den lokale regering man har der, og så det lokale samfund i området. I har også hørt i LTWP skal man også give noget tilbage til lokalsamfundet, hvor man har bygget veje, flytet en landsby i samarbejde med landsbyens beboere, man har givet tilskud til sundhed, og skole undervisning osv. Og det forventes af de store projekter - at de bidrager med noget også. En anden vigtig ting - ligesom LTWP har været inde på, det er at når man ansætter folk, der skal man sørge for man ansætter ligeligt, så det ikke kun er én stamme der får hele opgaven. Hernede er der ca. 42 forskellige stammer. De stammer der bliver holdt udenfor føler de ikke får noget fra projektet. Man skal have en balanceret tilgang til hvem man ansætter - derfor er lokal vejledning vigtig. Og det får man via en partner - samt den danske ambassade vejleder også. Både store og små firmaer kommer ofte til os for at få vejledning til hvordan man laver business i Kenya. Vi sammensætter ofte en form for et stakeholder panel når nye virksomheder kommer hernede - hvor vi kigger på hvem er det der har noget at sige i sådan et stort projekt, såsom en minister, guvernør, departementschef, investor - så kan vi sætte dem sammen til sådan et møde, så man kan få åbnet op for det her. Det er fordi det er vigtigt at kende spillerelgerne. Og så kan man udvikle projektet - men det tager altså tid.

Så den lokale partner er vigtig for at forstå kultur og samfund?

Ja.

Hvad med netværk til stat og lokale myndigheder hernede?

Det er også meget vigtigt - og det er her ambassaden kommer ind. Dels kan vi åbne dørene, vi har gode kontakter og så blæstempler vi virksomheden når ambassaden er engageret i et projekt. Dvs over for en kenysansk myndighed så bakker vi op omkring den danske virksomhed. Og det kan de godt lide hernede da vi er sikkerhed. Der er mange der er blevet snydt hernede igennem tiden - så det at man bakker op det er vigtigt. Netværk er meget vigtigt. Vi har her på ambassaden forankret noget der hedder Danish Business Network, bestående af 45-50 små og store virksomheder, ud af i alt 80, har valgt at være med i det netværk, hvor vi er sekretariat her på ambassaden, hvor vi holder møder 4-5 gange om året, og networker med andre med tilsvarende udfordringer.

Er netværket nødvendigt for at lave business med staten?

Ja. Du kan smidiggøre din egen entre ind til markedet ved at have et network du kan trække på. Hvis ikke du har det så skal du ud og øve dig i alt muligt - hvilket tager tid. Man kan komme foran i bunken, eller misforstå signaler, og så har man forfulgt noget som kan vise sig at være forkert. Det giver ingen mening. Derfor meget vigtigt at have nogle som kan læse signalerne.

Bliver aftaler med staten kun overholdt hvis man har et godt netværk?

Er du så heldig at have en aftale med staten, så bliver de overholdt. Men for eksempel i energiprojekter - så skal man have en sikkerhed at man komme af med sin strøm. Det gør man via en Power Purchase Agreement. Bare det at få den på plads, at staten vil købe noget fra dig, det kan tage lang tid. Typisk vil du starte med at indgå et memorandum of understanding (MOU), så har vi en aftale, derefter skal du have en PPA, der er flere der skal engageres mht hvad kan du levere, hvad er

Din erfaring med kontrakter det er der ingen problemer hvis der er en kontrakt på bordet?

Hvis regeringen har indgået en aftale, så står den som udgangspunkt ved den aftale.

Også hvis der kommer et regeringsskifte for eksempel?


Ud over land disputes og kontrakter, og de lokale, hvilke udfordringer er så typiske?

Korruption er en stor ting hereder desværre. Så man kan jo sige at hvis man entret i det private marked alene, så bliver man ikke udsat for så meget korruption som hvis man entret i den offentlige sektor, hvor der typisk er rådne kar. Et eksempel som LTWP er et fastsat projekt hvor de nu har en PPA, når den aftale er på plads er de ikke udsat på samme måde som hvis det var noget andet man skulle lave for staten. Hvis du skulle lave landeveje og der kommer nye licitationer ud hele tiden. Det er ofte når man udyber licitationer der kan opstå korruption, da det er den offentlige sektor der udyber noget, for eksempel et stykke vej der skal laves, hvem skal beslutte hvilken virksomhed der skal bygge den og hvad er kriterierne for det, så der kan rigtig opstå muligheder for korruption.

Hvordan afdækker man korruptionen?

infrastrukturprojekter hvor man er meget afhængig af, hvor der måske er en lokal partner fra den kenyanske regering med, i dette tilfælde ministry of public health. Men styret gennem UNICEF i København. Sådan kan man også handle ind.

Hvilke udfordringer er typiske ved infrastrukturprojekter?
Det tager meget lang tid oftest. Man skal have tid, penge, og forståelse for at der er mange myndigheder der er involveret. Og man kan ikke få det rigtige svar fra den rigtige myndighed førstegang. Og det vil sige man får at vide man skal snakke med de mennesker, og så gør man det, og så får man at vide de skal lige overveje det, så går der en måned med det, så finder man ud af det slet ikke er dem der har myndigheden til at træffe beslutninger her, og så sender de en videre i byen til andre. Så hele overblikket over hvem der er stakeholders i det her, det er virkelig vigtigt. Så skal man også lave en masse afrapporteringer som i LTWP, påvirker det miljøet, befolkningen, osv. Alt det skal man også være opmærksom på. At man får lokalsamfundet med er også utrolig vigtigt, hvilket kan være utrolig svært i områder som Turkana som LTWP ligger i, hvor befolkningen lever i en helt anden verden end den vi kender, og forklare for dem f.eks. at vi ikke stjæler vinden er svær. Der er mange lokale forhold at tage hensyn til - derfor er en lokal partner meget vigtig. Både for at forstå samfundet men også at have netværk.

Hvordan håndterer man sig med konflikter om land (land disputes)?
Der bliver man nødt til at sætte penge af til det og have en god advokat. Man har land disputes og man bliver nødt til at forholde sig til det. Man skal også sikre sig før man går i gang at de skøder/lejekontrakter man har er korrekte.

Hvordan ved man om skøderne og aftaler er korrekte?
Ultimativt bliver man nødt til at tage ned til ministry of land og så gå ned og snakke med ministeren og blæstemple at dette er ok, så man afdækker risiko for svindlere, og man er sikker på at det der står i bogen det er det korrekte, og stemmer overens med skødet man har. Vi har et dansk firma som investorede og fik skødet i hånden - tre år senere kom han til landet hvor der var sat nye skelpæle op, hans navn var visket ud og der stod et andet. Ambassaden gik så til ministeren som fik det undersøgt hvor man kiggede i skødet for at se om det var korrekt, og derefter kigger man i bogen for at se hvem der har ændret det - det er man igang med at kigge på nu. Enten bør han få det igen da han har et originalt skøde, eller også er han blevet snyttet ved at have købt landet baseret på et falsk skøde. Derfor går vi til ministry of land og får en aftale med dem om det er korrekt. Her er det godt med ambassaden, vi vil gerne hjælpe virksomheder med at udvikle deres forretnings ideer for at skyde deres forretning og hjælpe med at redde kastanjeerne ud af landet hvis det går galt, og det gør vi desværre en gang imellem for det kan gå galt hvis man ikke har dækket sin hale af.

I hvilket omfang råder I til at indgå partnerskaber med staten?
Som udgangspunkt er det svært. Vi har lige udviklet noget nyt i efteråret - P for G, tidligere havde vi noget der hed 3GF Green, Growth, Development. P for G er hvor man siger vi skal ind og indgå Public Private Partnerships – bl.a. I Kenya. Det er ikke helt på plads endnu, vi har lige etableret et sekretariat i Washington, hvor man kan søge om tilskud til at indgå i indledende aftaler og indledende undersøgelser, man kan søge USD 100.000 til det. PPP er kommet for at blive og det er i gang for at det kan gå galt hvis man ikke har dækket sin hale af.

I hvilket rum (land) er det en god ting for virksomheder.
I velfungerende lande der kan det sikkert være rigtig godt. Hernede er det ligesom demokratiet, de er
i gang med at øve sig. Lige nu har vi for eksempel to præsenter herhede, den anden er slået op som folquets præsident. Så siger man det er lovstridigt, men ja han er folquets præsident - og nu går han rundt og prøver at samle oprør. Lokalforankring, lokal partnerskab og blåstempling for eksempel igennem ambassaden er vigtig - derfor er vi ofte med i de indledende faser. Andet eksempel er at man har fundet olie i Turkana området hvorefter præsidenten siger vi skal vise vi er gode til at eksporterere olie. Han entreer så med et firma og siger vi skal transportere olie i tankbiler ned til Mombasa - som vil tage to dage. Da det ikke kan svare sig skal man til at bygge en stor pipeline. Det koster måske 2 mia. Kr. at bygge. Skal staten eller skal internationale selskaber bygge den. Total kunne være interesseret i at bygge den, så ved de den bliver bygget, hvornår den bliver færdig og kvaliteten af det og vi kan styre licitationen. Er det staten som sidder med det så bliver det brækket ned i forskellige licitationer og så ved man ikke hvem der sidder med det, hvornår det bliver færdig og om kvaliteten er der. De private vil hellere bygge den selv. Staten vil nok godt bygge den selv, hvis der var penge til det, for så var der nogle penge der nok faldt af hi stik i disse store projekter.


Hvilke karakteristika er vigtigt at have i en investorgruppe? Netværk, kapital og indflydelse. Og optimisme og tid.


 Hvordan er presse friheden? Der er pressefrihed, men det er svært at vide det der kommer ud fra staten om hvad der er sandt eller fælsk.

Hvordan snakker de lokale om præsidenten? Det kommer an på hvilken stamme de kommer fra, modsatte stammer fra Kenyatta vil sige det er forfærdeligt. Nogle siger de ikke er enige med Kenyatta, men de stemmer på ham da de er fra samme
stamme. Det ligger dybt i dem.

**Er det godt med et større fokus på at investere i infrastruktur i stedet for bare at give i udviklingsbistand?**


**Det billede vi har researchet os frem til er at man hellere vil give penge til infrastruktur projekter i stedet for direkte bistand.**


**Hvad mener du med gode projekter?**

Veldokumenterede projekter hvor man kan se der er en mulighed man kan se de vil blive gennemført inden for kort tid. Og fundamentet for at få det på plads er struktureret sådan at man kan se projektet bliver til noget. Mange projekter tager jo 10 år før de udvikler sig. Mange der kommer med pengene vil gerne ind lidt senere i forløbet. IFU, der skal bruge så og så mange millioner hvert år, for eksempel har ikke tid til at vente på at modne et projekt, de vil gerne have et projekt der er lidt modnet. Alle de penge er til rådighed. Amerikanerne har meget hernede, verdensbanken har meget, alle de individuelle lande har penge. Der mangler dog de enkelte individer som uvilket. Projekterne og laver studier på det ene og et andet. Vi er ved at få på plads i snart tre år, og de mangler stadig en MOU. Vi har arrangeret at ambassadøren har haft møde med guvernøren og investorer og members of local parliament og alle var enige om nu skulle vi lave en MOU. For indtil videre har investeringsprojekter den kenyanske og danske partner brugt en halv million kroner. Nu skal de så til at bore huller for at finde ud af hvor er der varmt vand, og det koster rigtig mange penge per hul. Derfor vil de have en MOU med lokal government og lokale societies skal med underskrive og være bevidst og bekendt med det og bakke det op. Når MOU er underskrevet vil de bore huller. Når de har fundet vand, skal de have lavet en PPA, og efter 3-4 år har de fået investeret 4-5 millioner dollars i det projekt, og så har de taget 10 år igen. Så de enkelte individer skal have virkelig mange penge og god tid. Den modsatte ting er at staten siger de skal have bygget en vej, og så får de penge stillet til rådighed for eksempel fra verdensbanken, og så bliver der skabt en licitation, og en eller anden vinder den og så går de i gang med at bygge den. Men som sagt mange er bekymrede for hvad der sker i den. Der er masser af muligheder og det er et spændende sted at være, og et sted hvor der er behov for alle de tiltag.
Can you start by giving us about a status on the LAPSSET project?
It is a huge project and it requires a huge amount of money. A lot of the investments come from foreign private investments. There is a lot of components of the project and some are underway. So there is this Port of Lamu on the Kenyan coast that is being built at the moments. Some of the roads are also being built on this project. But the project has a long history so there is a lot of different components of the project that was not a part of the project initially and then became part of the project. The components that are completed or near completions are actually components that were not initially LAPSSET, so they started longer ago. My research was looking at what was happening at this town Isiolo, which is a keynote on the LAPSSET route. LAPSSET consists of a road, a highway, a oil pipeline, which is the main piece of infrastructure. In my research I was looking at the anticipation of this development project, which had not yet actually happened. In my research, the effects and the anticipation of LAPSSET was mostly manifested through people’s claiming of land and acquiring of land. And that is a consistent theme that I think you will also find your research on the LTWP project - is that land is a huge issue. Land in Northern Kenya is not clearly owned - in other parts of Kenya, which is agricultural land and cultivated, land in Kenya is a huge issue. But in Northern Kenya, because this land is arid it is not really cultivated, so it is not farming land - it is a desert basically. Pastoral people occupy this territory, and they move from area to area in search for water and certain kind of minerals for their livestock. So it is not as if the region was not been made clear with signs that “this place belongs to me”, because it sort of a common system where people move in and out and there are complex rules around who can use what and when, but there is a flexible, negotiable kind of arrangements around that use, and the use of particular water points and so on. So when these big infrastructure projects come in there is a lot of scrambling around who owns what, because people anticipate compensation when these companies come, they anticipate that they will be giving something in return from that. What my research looked at the anticipation of the land market, which was not even always related to the infrastructure itself - it was related to the anticipation of the value and price. So this huge kind of real estate market at kind of cropped up in the edge of this town, which at this time had been considered a less prosperous in the middle of nowhere. And then suddenly all this people - not just international investors, not actually more local elites, so the people from Nairobi and people who were thinking this is the place where if we get land there now in ten years time we are going to make a massive profit on it. My research was looking at the people that were already living in the edges of this town that was now becoming valuable - what they were doing to trying to protect their land. And I think that there is some similar sort of stuff going on in the context that you are looking at. As I understand from the small amount I have read on the LTWP project, there are different group that claim that this land was originally their. As I said, infrastructural investment in northern Kenya has risen dramatically with the ‘discovery’ of resources like wind and oil, and local people are witnessing a level of state and investor attention that they haven’t experienced before. My research found that this was creating the anticipation of the whole of northern Kenya being colonized by national state and investor interests in the future. People fear that once they have handed over their land to such investors that they will never again have access it – i.e. that they will lose it forever. In this context, it isn’t surprising that people are seeking to demand as much as they possibly can (where they feel they have and can make a legitimate claim) in the way of compensation.

What can be done about this?
The land in Northern Kenya has historically been governed under the Trust Land Act. The local authority is the country government. The act says that the country government holds the land on behalf of the people - it does not own the land, but it manages the land for the people. And there is a whole process within the Trust Land Act whereby the land is given out to
different groups and individuals or whoever is applying for it, through a process that is called Setting Apart. The country government set apart that land for the Lake Turkana project to the investor group behind that project without going through any consultation process with the people who lived and used that area. So the people that live in this area have raised this court case against the country government and the National county government. So it is a complex issue; it is not just the people against the investors. You have a lot of intermediaries actors; you have the national government, the county government, which is supposed to be the closest government to the people and the people are saying that the county government has betrayed us from this because they have given the land away without consulting with us. There are all this kind of intermediaries basically who are between the investors and the people. So then you ask how we solve this issue with the land - it’s an incredible complicated question... You could say it is an issue of legal frameworks. I mean if you look at all the literature on land not only in Kenya but also in Africa more generally this whole sort of negotiability and unclear ownership has been a very very steady theme throughout the literature since independence basically. In all the policy documents, in all kind of grey literature about these kinds of investments the message is again and again is that the community was not consulted with. ‘Free, prior and informed consent’ that is what the companies are told that that have to give these communities. That is the conditions that they have to live up to in order to continue with their projects. This is actually difficult because new people keep popping up and say that this land is mine. But the consultation can surely be done better by these kind of investors. I think if there is a lot of consultation over price/compensation - I think in the LTWP project the issue was that no one was compensated.

To what extent do you think that these issues with the lack of compensations might later on hurt the investors and the project itself?
I think security is a big concern for a lot of these investors. Especially in the Northern Kenya, which has a reputation for being badlands, there is a lot of violence between Pastoral groups. Think about Northern Kenya has South Sudan, Southern Ethiopia, Somalia and Northern Uganda and they have all had civil conflicts, so there is a lot of weapons around. And this whole region has also been neglected by the national government, so there is a lot of sort of semi formal security organization who are supposedly acting to control security; they are called Home Guards. They are not the police, but they are supplied with guns by the government. People are sometime supported by people who work in the government - by the government is multilayered; you have the national government and then you have different kind of counselors who are responsible for different areas. And there is a lot of competition between these different layers of government. Sometimes you might find that the local government might give weapons to one group in order to combats the threat of another group that is also supported by an opposing political leader. So it is a volatile situation. What I think the investors should do is really know the situation and really understand the political dynamics and the relationships between different groups. And it is very complicated because you then have to map out who is the local representatives here, who are the counselors, who are the board representatives, who are the chiefs, what is that relationship, etc. It is a lot of work and it probably requires hiring some researchers basically.

What changes have you seen in Africa over the past decade that have improved the prospects of infrastructure investing?
Probably within the last ten years is where the biggest changes have taken place. Northern Kenya, for a very long time, was just seen as a no man’s land - a place not worth investing in, a place where the colony/British were not interested in. There was not anything of economic value there; you could not farm. It has only been since 2010 that an atomic road has been built. Suddenly, wind is a resource, which was never considered a resource before, suddenly they discovered oil, they also discovered this massive amount of underground water, which is a huge thing given the incredible dry area. Suddenly the Northern Kenya is a frontier of growth and opportunity and I think a lot of people is excited about that. But people are also worried; who is going to benefit? So to answer your question really shortly,
it is a big shift.

All the opportunities is obviously beyond discussion, but beside the security issues and the land disputes, what do you see as the biggest threats for foreign investors in Kenya?

An extensive consultation is needed, maybe it is possible to meet with everybody - not just a few elders. Ensure you got proper translators who can translate into all the appropriate languages. Hiring local educators - young people who has been to a high school who can do a very good translation. Employ them. Do it thoroughly. I think with this local consultation/CSR stuff it can be a bit of a check box. "We talked to the local". Actually allowing some time for it, allowing some resources for it so you can hiring some local staff, take the time to explain, make sure women are included, maybe have several meeting and say the same things several times. Make it a thorough consultation is very important.

Appendix 9 - Interview with Mercy Chemoiwo and Rogers Amisi, Kenya Investment Authority

We would like to know from your point of view, what do you perceive as risks and what do you normally encounter here as risks and what do you advise foreign investors who comes here to invest in infrastructure?

MC: Ourselves as Kenya investment authority we are an investment promotion agency, sort of like any other that you will find around the world. Our role is to promote and facilitate investments. So its hands over promotion, we talk about the various opportunities, including infrastructure, that are available in the country for uptake for investors who are interested in coming to the country, and they are not sure where to start, what kind of opportunity they got. So we carry out a lot of marketing activities, sort of like inward marketing and outward marketing. With regards to outward marketing, we do a lot of missions with the support of the ministry of foreign affairs through the department of trade. So we support them in doing outward missions. So you put together delegations, Kenya delegations who are interested in a particular country to do business with or trade with, and then we support them while they are getting partners and identify also the best linkages they can get. In inward we support delegations coming in, in the marketing department to make sure they meet with the right partners or business people, within the same industry or doing the same line of business. We also do a lot of promotion through other channels, in example we align with foreign embassies in the country, we also align with the Kenyan missions abroad to try and inform as much as possible investors interested in coming to the country. So we provide them information about the opportunities, the procedural of investing in Kenya, the cost implication with every single project or every single business industry, and then we also advise in case an investor does come here and did not possibly come through the investment agency, and we got issues thereafter we act as mediator in terms of trying to resolve the issues. Most of them tends to be with government agencies or probably with the locals. So if we are talking about some of the risks when you come in, one risk would be like specific land. For infrastructural projects majority of them cover huge chunks of land and some of those land if an investor is not well informed, in terms of who owns that particular land, then they run a risk. For example, you come in through an agency, maybe a travel agency, business agency or business contact and none due diligence had been done prior to you identifying that particular property to take advantage of that opportunity to do the project, then you find that probably the land had incumbrances. For example, if the land had been idle for a while, it is genuinely for the private investor or it is available for private uptake, however it had been idle for a period of time. So you find squatters have come in to the piece of land. Though legally they should be removed, but there is a process, so you find that, yes you rightfully own that property, rightfully own that land, but it had been idle for a while, so people start coming in to the land. What happens is, through the national land commision, they have created a platform that has allowed investors to have a channel of discussion.
Once you get squatters within your private land, then you will be forced to call a community meeting, to see how you can get them out. That tends to bring a lot of issues. Not because they do not know, but sometimes we find that people want to take advantage. They are aware that, that land is for someone. Land in Kenya is divided into four. Community land, like you will find in areas in Masai Mara, the majority of the land there is community land for the Maasai, so you will find that if you want to put up a hotel, which are the prime projects in Masai Mara, you cannot just go to a community leader and say I want land and he allocates you land - no. It does not work like that. So what happens is, they have a community that you have to sit and agree, though right now there is a moratorium, so you can not actually get any land for Masai Mara. But they call a community meeting and they try to establish how you as an investor are coming in, how the community can benefit from your project being there. And then they agree if, let us say in terms of employment, you will employ their people in your project, to try to uplift their livelihood. It is also investors need to do due diligence, that is the mitigating part.

**They do that together with you?**

*MC:* Yes, so as an agency we actually support them to do due diligence. We act as a mediator in between the investor, the national land commission and the community. That is how we support you for due diligence. Then there is also political risk.

**Can I ask you about land disputes? What more do you do to help investors other than help them to do the due diligence? Because this is obviously a problem often for the investors - because the rules are so unclear about land. How do you help them to deal with this issue?**

*MC:* As I said, you also do a lot of sensitization for investors, in terms of information - information is key. If you already know that you are interested in a project, let us say in Lamu, because of Lamu tends to have huge chunks of land, then we give you the procedure of actually acquiring land in Lamu. The due diligence comes in, in the aspect of you having now identified a specific land. Then you tell us now this is the land I am interested in and I have been proposed to. So we ally us with the national land commission to confirm that that land is owned by private, that is you can be able to purchase it as an investor, or if it is owned by the county government, then how are they listening to you. So a part of offering the information of how to go about that infrastructural project, we do due diligence to confirm that land is available for uptake and it has no incumbrances. If you have those two informational strategies then you can able to do ... so it becomes a much easier way of operating.

**So you go to the national land commission to confirm - But there can still be some issues about the land? As we have heard you can have a title deed, but people who has been living there for centuries they still claim that it is their land, they could maybe go in and stop an infrastructure project. We heard that in Kinangop Wind Project, it stopped because of these issues, and I believe that they had a confirmed title deed, but the local community still halted the project. So how could you safeguard against that?**

*MC:* For the Kinangop Wind Power project there are two differentiations. There is the political risk that came up on that particular project. So politics played a big role in terms of no inciting the locals, just by preying on their lack of information, or lack of awareness on the benefits of that particular project within that particular area. Then secondly, the issue about squatters is, what happens is, the community engagement plays a key role. Let me give you a good example, The Standard Gauge railway (SGR) was just done. The areas that we had identified or drawn up is actually government land, the entire stretch was government land. However, there were sections within the SGR that had preexisting locals. Land has been idle for a while. It needed for the government to engage with the locals, so you basically have all-round discussion to see how both parties can benefit, so it brings about a lot of community engagement, and sensitization to allow for the projects to happen. It needed for the squatters to be reallocated, and that was a cost to the government, but it allowed for the project to take off. So there are ways we go about it, as long as it is not politically incited it is just people who settled. Then it is a much easier process.
Could you be more specific on how you can engage with the local community?

MC: At the beginning of any project, even if you know for sure that you will actually do the project then you do research and identify that there are people there. In Africa we are community based, so you will find that someone plays the leadership role and tries to be the local leader. You will find that that person, as long as you can get that person to be at your seating and be able to explain the kind of project you do, it is easier for him to able to bring the community together and give information. Sometimes it is just information.

But are they easy to convince?

MC: As long as they are not politically incited, they are very reasonably people. The leader is normally the oldest person.

Is that the only criteria?

MC: Yes it is. It is very hard for me not to listen to my father. And it is hard for my father not to listen to my grandfather. That is how African culture is, we sort of fall back to our traditions. So if you get the elders, who are usually about two or three guys and they sit down and they are able to actually agree - the issue is for them to actually agree with you. Once you have that, the rest usually just fall in line.

It is just to try to convince them that this is a good thing?

MC: Yes. It is just continuous engagement. And also allow them to see that the project will not only benefit you guys, but also the community.

So in order to get them to agree with you, what means something to them? What are the main factors you have to convince them about?

MC: In fact you are coming to their land means you are taking away something that was generating money for them. So how are you filling that gap? So this is how the government usually approaches it, in the sense that if they were farmers, farming on that particular land, and your project is an infrastructural project, that means - it is not like an agri-processing project - because what you do is, agricultural processing project, they just convert, if the farmers were doing bananas, you tell them now, let us do mangos, because then they fit into your value chain. So it is easier when you do an agri-processing project, because all you have to do is change them, that means you get them the seedlings, and you give them fertilizer and supervise for quality control. They fit into your agricultural processing value chain. That is easier. But if you are doing an infrastructural project, that means you are completely cutting them off from that livelihood, if they were supported by the food they were harvesting there and then based on that they were getting some money to support themselves. Coming through an infrastructural project is a totally new thing that you are doing, so you are cutting them off from what they used to sustain themselves. How do you do that? You either 1) The government relocates the settlers, that way they still have what they were doing to sustain themselves, or 2) the company takes up the young people and give them employment. That be moving stones from here to there or light activities, as some of them are not well educated. Something that allows them to get back money. So you have to fill that gap in some form of way.

So they have to feel that they get some kind of compensation for this project?

MC: Exactly.

You said there was a political risk about the community?

MC: That is another kind of risk. Political risk is with regards to… Unfortunately for Kenyans we intend to be too engaged with politics. You will find that in a certain area, the political leader, we are talking about member of assembly or member of parliament, or existing governor or opposition, any person within the political rim can play a very huge risk to an investor. Supposing your project was championed or spearheaded by let us say the existing governor of Lamu, let us say the project is in Lamu. That means they are using your project as a platform for their political ambition. So if in any case the opposing or anyone who wants to oppose the existing governor in the next election, will try
to underpin you, or try to cause issues to the project. Then that is a political risk. Usually what we tell investors, have your project not aligned to any political associate. It is really hard, because you find most times projects that has really progressed have some form of support from political background, from one or a group of people - a political angle to it. If the infrastructural project allows the county of Lamu to be, if we assumes it is a damme project, then it allows for water to be harnessed to the people of Lamu. That already is something that any person within the political arena would be interested in, it would already attract political interest. Because you are bettering the people of Lamu, and they want to use that as a platform to propelle their political career. So you will find that you will get support from various players, political players and that already attracts attention. Once one person looks like he is the face of the project, then it will already be attractive, because then you have cut off others who would have used that project.

**It would attract others in the government you mean?**

*MC*: Yes. For example if your project allows, the fact that I brought you to Lamu, that is the angle to use - I brought this investor to Lamu and you see it is bettering the people, they are going to be able to get water - and when you boil down to the lady who is in Lamu and they are benefitting directly from that project, of course they will vote for me. Because basically they have linked my betterment through the project to this political person who brought this investor to Lamu. So it takes on a different angle that the investor probably did not want. That is not why they wanted to do the project. So political risk comes in to place.

**In the case of LTWP we know that Vision 2030 they endorsed the project, and now Kenyatta is in power, does that mean, because that he somehow have endorsed the project, that there is a risk that Odinga might have incentives to harm the project?**

*MC*: For projects that are not within the vision 2030 - see the vision 2030 is somehow our blueprint - do not go through the political change, because they are approved at various levels. The president is usually only given an update, usually they do not play any role. I am talking about projects that are not in the vision 2030. Those that are outside the national plan, those tend to attract attention - because they are small in size. Vision 2030 projects are huge.

**What does it mean that the vision 2030 endorses a project?**

*MC*: That it is a national project. The national projects they would not be targeted that much, but the smaller projects tend to attract more political risk.

*RA*: You must have touched on the ATIA. As a country we have signed what we call African Trade Insurance Agency (ATIA). It is the only insurance in the world that covers an investor against political risk. It is part of the African union. For example if an investor engages in a project, and there are political risks, then the agency compensates you to the value for your loss. Then we have MIGA. So in terms of political risks, the insurance will cover you. More importantly I want to explain that you from Europe look at some risks as risks that can hit investment. The issue is yes and no. Political risk does not hit investment in any way. An investor does not give a damn whether you are killing each other or not, an investor is interested in profits. No one should lie to you that Africa is a political risked country. Nigeria, one of the most corrupt countries in the world: Shell has heavily invested in the oil industry in Nigeria. Almost twice a year there is an attack on the pipeline. Has Shell moved out of Nigeria? They are expanding. Their concern, of many, D.R.C. is the most politically unstable country in the region, and the instability is in eastern D.R.C., for your information the late president of Zaire (D.R.C), Mobutu, never stepped in eastern D.R.C. in the first two years of his power - because of political unrest. However, D.R.C. gets more FDI than Kenya. Do you know where it comes from? Eastern D.R.C. Chad, the same thing. Angola used to attract more FDI when they were at war than they do now. Investors worry about the resource you have. They would rather have you to be in war so they are able to pay less in terms of resource mining, than when you are stable and pay more. So, you need to look at it from a different perspective, not from where you learn in class, that in Africa you cannot go and invest there, politically it is not safe, people die, I know all that
nonsense. When Ethiopia had the hunger, when the world came together, mainly from the song “we are the world”, basically to raise funds for Ethiopia. That is when an investor sees an opportunity to invest in Ethiopia, not in food, in other areas that are linked to food. When they get food now, they need shoes. Nigeria had and still has one of the best footwear value chains in the world - better than Italy. They export footwear to Italy. So people will always take advantage. An investor worry about time of investment. An investor does not worry about you, and does not give a damn. An investor does not invest as a hobby.

Is it also good to have a champion who can speak good about your project and then have that network or connection into the government?

MC: There is no harm, however you will find politically guys do not do it for free. It is free when they are supporting you, but it is not free when you want them to do something. Let us say you have issues with an infrastructural project such as power, and you seem to have reached a deadlock in terms of trying to get connectivity to power. So you have this politically person who can connect you to the necessary person who will unlock the power issue.

But is it important to have that connection into the government?

MC: It is not important but there is no harm in having it.

It will not harm the project in not having that connection?

MC: No it does not. There are some projects that exists fine, without any political mileage person. So there is no harm when you do have it, where you find a project that tends to attract a lot of political attention are large projects - projects that are big - they are not nationally big, but they are not also small.

Is it important to work closely with the government in infrastructure projects, to have them as a partner in some way?

MC: It is good to work with them, because when it comes to infrastructural projects - majority you will find that it has to fall within a specific county, it falls within a mandate of any government institution. If it is a road infrastructural project, then if it is a major highway it covers within Kenya National Highways authority. Is it a county road then it covers county government. Infrastructural projects they vary at what level and what they are doing. But at any point it will engage a government agency.

How do you advise investors to do a PPP which is common in infrastructure projects? Is that a risk in Kenya?

MC: Exactly for us we have the PPP unit under the national treasury, so they have outlined the process, and removed any ambiguity or lack of clarification. That means if the government of Lamu wants to make a PPP project, the process is very clear. You have to present a proposal to the PPP unit for them to actually confirm that it can be a PPP. That becomes the first step - once they have approved that, then the county government is to do a feasibility study. This is sort of way to protect the investors of getting into PPP that are not viable, in any sense. The technical unit within the PPP unit are tasked to do for the investors due diligence. So by the time the project is being presented any investor, it has been vigorously vetted and confirmed it is actually viable. So for Kenya that is working for us, and that is how we are protecting investors.

How do you advise investors about the government being a co-investor in any project - like in example LTWP, it is a complex financial structure - so maybe they tried to attract the government to be a co-investor. How would you advise investors on that?

MC: How PPP works, a project has to be domiciled somewhere. There are two categories for PPP projects Kenya focuses on. 1) solicited - meaning it originates from a government institution and they are looking for private partners to come and deliver that project. 2) Unsolicited - meaning the other way around, where the private sector has identified an opportunity they believe should partner with a government agency. If it is water project, it has to go and partner with the ministry of water. So
basically what happens in the procedure for unsolicited projects; you will do your proposal and present for the PPP unit. They identify which government agency your project fits with their mandate. Then have that government agency present that project as their own. However in terms of the design of the project it comes from the private sector - how the project will be done, the financial aspect of it. However to bring in the government, they identify the agency that will be the public institution, so it then follow the same process. However they don't do the technical due diligence, they assume that you as a private investor has done the due diligence, and can confirm it is viable.

We spoke to some investors that mentioned it is important to have a close connection to some parts of government. Is it possible to succeed if you do not have connections in the government? MC: When they mean a connection do they mean an influential in the government?

Both politically and also business parts of government.
MC: You do not have to be that politically correct. We have investors that call us at 2am in the morning and tell us they have been caught by the police at the airport, and they will get to jail. We as an institution, our role is that this is our investor, we know them and we need to find out the problem. There is that. And there is an influential that means you as a project you know his excellency Kenyatta as a personal connection in business or otherwise. Then you know the project has an influencer.

The investors implied that you need a connection to some part of the government.
MC: If there were a community issue to arise within the project, you would like to have someone who can support you.

Will the process be easier, and take less time if you know someone?
MC: I know it happens, I will not defend it. Because it happens. Government operates on bureaucracy. There are people who are thriving on the bureaucratic processes, so you will find that someone tell you, find you have your project and you need an approval signature, let me introduce to you, and you connect to that person.

How do you get that connection?
MC: For investors who come to KenInvest, we do that introduction. Because if a particular infrastructural project were to take place in Lamu, so if it is a health project, we work closely with the county government, we know the minister of health so we would make a formal introduction. That means we will write a letter to the government and direct it to the minister, address it and explaining the details and you intend to come and sit down with you, then it becomes formal - that is how we support you.

In terms of infrastructural projects in Kenya - Is it of your impression that corruption is a problem, and to what extent is it a problem for the investors? And how do you advise them to deal with it?
MC: I am trying to see how to answer that question. You see there is only so much that you can shield an investor from corruption. As an institution we shield them at the usual stage, for example if your infrastructural project in Kenya you have to register your company, you wish to get your permit and wish to get your equipment brought in and you wish to hire people - both we do from here - however once you are on the ground, you will find some institutions do not understand the importance of having investors here. They will just harass an investor for no reason, maybe for extortion. They just want a pay. You know as investor you are legally here. You have not committed a crime, nothing you have done that warrant someone to harass you. But anyway he is taking you to jail. That is corruption. As an institution I am not with you, however, you have a contact you call: “I have been arrested”.
Especially Chinese investors, they prefer shortcuts - they pay. So when one Chinese pays it is assumed Chinese pay. What will stop that same person going to stop another Chinese. Sometimes investors - not that they are at fault - but it is a fifty-fifty percent blame game. Because if an investor
stand firm, and will not pay, they will not have any reason to charge you. So the impression of
danish guys is that, don't even bother taking money from them.

**Corruption in infrastructure projects is that more than other investments?**

*MC:* I do not think it is more, it just depends on what level of corruption. I cannot explain
corruption. It is a problem, we know it is, but we as an institution we try to shield as much as
possible. If you as an investor feel you are being targeted, we advise that you approach an institution
as KenInvest. We can help if you inform us.

**According to research Chinese investors can get a headstart in licitations as they have a more
relaxed culture about corruption compared to Danish companies. Are there any ways Danish
companies can shelter from that?**

*MC:* It is not just Danish companies who have been kicked even Japanese companies have been
kicked. For example the project in Grungukundo in Lamu, it is a national project. They are doing a
Special Economic Zone (SEZ) in that port, Lamu port. When the president went to Japan, they
signed a Government to government agreement (G2G), and agreed that, since Japan was doing the
masterplan for Rwanda, and Rwanda, Uganda and Kenya have signed a northern Transit and
Transport Corridor, it was agreed that they just do the entire master plan, that included
Grungukundo. So When the international tender went out, the company that won initially was a
Chinese. The Japanese government presented that G2G, and said you cannot award the Chinese a
Japanese agreed G2G project. So it became a contention. So this Chinese agreement - everybody
knew how they got it - it was an under table affair. But at least for the Japanese they had that backing
so they were able to cancel the tender and had to be advertised and a Japanese company won, legally.
What we normally tell investors: In the spaces that you feel are full of Chinese, because the Chinese
do not do everything. People have started to see their lack of quality. If you are able to identify
your interest for a specific country. Like for example I see Japanese and Chinese they cannot work
together. What can happen is, if a Danish company can present a proposal for a specific
infrastructural project, and they are able to say this we can deliver on, then I don't think you will find
a Chinese company in that space, it is not possible. Or have the Danish to present a case, like as
Kenya presented the case for the Japanese. The Chinese bring the SGR, they even wanted to bring X
so I told them OK, you bring the standard for the X and we will bring the standard for our X of
Kenya. Translate this, and then we had a Kenyan who speak Chinese to translate, just in case they lie
to us. So they realized when you presented the two, Kenya was like; our standard is superior to you,
so there is no way to bring for us your … and that ended like that. The phase 2 stretch almost 60% of
products being used on phase 2 are from European countries and Kenya, that is it. So the standards
are becoming a contention that many investors are using as a platform. Because you cannot fight against under the
table agreements, there is no evidence for that. We had about five different projects that were
cancelled because of quality.

**If they were to go in court, would it benefit the foreign investor? Because of how is the
quality and respect to time, when they go into Kenyan courts? Will it benefit the Danish
company or will it take so long and cost so much money that they will just leave it as it is?**

*MC:* It depends on how strong you feel in cases. Like the project for Muniu, a damme project. It has
been cancelled three times. Because within a procurement procedure you have a window of 14 days
from the date that the tender was awarded. So you have 14 days to complain. And those 14 days the
institution has to confirm that they did do due process within the procurement procedure, and if it
was an infrastructural project that went through the PPP, then PPP has to vet. So they vet projects. So
even the valuation of tender the PPP will vet. So if you bring a PPP infrastructure project, they
confirm. So unless the Chinese pays the promoter and pay the PPP, and pay the national treasury, I
don’t think it is possible. So I think about five infrastructural PPP projects have been awarded to the
Chinese has been cancelled. It is just a lack of information, you need to know you cannot just pay
people, the institutions are informed to assure. I cannot shield investors from corruption. I think it is just lack of information, and there is only so much I can do to protect from corruption.

So beside the land disputes, political risk, corruption are there other risks that you advise investors about?

MC: Yes. First with any investment comes with challenges. So we usually advise investors even if you will find a local partner, don’t do it alone. Because you will never know the intention of that local is. And then we also advise if you have identified land, allow us to do due diligence. It is very hard for a government agency to extort another government agency. But if you come as an individual, it is easier to find someone in the office like Mercy, and ask for someone. And it is hard for me to answer because there is no record of that. Allow us to play our role, allow us to be the face and try to shield as much as possible from corruption. Also understand the Kenyan culture. You will find investors with whom we have become friends. Basically because when you deal with someone for so long you become friends. So when there is an issue the first person you know, if it is me, they call me.

So it is important to have a local partner?

MC: It is important to have a local partner to get to know the culture and understand the rules of the game.

Is it important to have a local partner as a co-investor?

MC: It is not a must, but it is good.

How would they find a partner to co-invest?

MC: Usually we maintain a database of Kenyan businesses who are looking for partners. So if you have a company that is coming in to the country and they would like to partner, as a way of entering this market, then we usually do a very good check. If we do not have, then we ally us with specific institutions or departments.

Are there any specific characteristics in a local partner that you look for in infrastructural projects?

MC: First it has to be someone who has an existing project, who actually are doing business in Kenya - has experience in this industry. Secondly they have to have done business in minimum five years, profitable. Then in addition to that they also should have shown interest in looking for a partner, and want percentages. And then we also do vetting of the individual.

Often you help the investors to find local partners?

MC: Yes. We also expect that Kepsa, since they have members within the association, they also go through the same, because they also vet their members. If we do not have anyone with that specific interest, I coordinate with Kepsa and chamber of commerce to find a partner. Then we do the initial conversation, before we bring the investor.

So once the due diligence has been done and an investor is ready to launch the project, they have good support, then they need capital. Do you advise where that specific capital should come from, i.e. if they need to involve development banks?

MC: We advise, but we don’t maintain. Unfortunately we don’t maintain a business looking for financials. The institution that does that for us is East African Venture Capital Association. They have an entire databank of all financial institutions from angel investors to venture capital to development banks, national banks, foundations that can support investors coming into the country.

In your opinion, are there any i.e. development banks, is that important to have onboard?

MC: In infrastructure projects, yes - they are huge. They are important basically because most of the development banks that are in the country have a very good standing with working with government. So they already have infrastructural projects they have done with the government, so they are in very good position to advise an investor, especially in infrastructure projects. That becomes a very good
partner. It is easier when you have someone who have dealt with government. Especially in infrastructure, then it is easier to understand the process, understand the risks that come up and how to mitigate against those risks.

**How long time have you working here in KenInvest?**

*MC:* I have been here 5 years. I have seen it all.

**Over that period of time how have you seen the investment climate change from the perspective of the foreign private investors?**

*MC:* It has changed over the 5 years. The Asians tend to become easier targets as they make quick decisions. They figure out as they go. It is not like the way you find americans think or europeans think when it comes to business. So you find that Europeans will take a bit longer. Americans would identify a partner, and have that partner and run with it. If it falls they still have a fallback. But if you have a local partner it is very hard for a project to collapse. Because they are every day on the ground. Europeans prefer to come in and do the project themselves, but lately they have started to have a partnership approach, because where the Chinese would use money the locals would really inspire, so they become an easier alternative and can compete with the Chinese. So I think that is now working for a lot of European companies coming here to Kenya. The Chinese would come with money because their government is sponsoring them. So I am seeing a lot of various companies also having now financial backing from their countries. While they are venturing in and fall short on funding they go back to their countries and are able to get funding which helps here.

**When there is a contract in infrastructure projects or in general how well are they forced? Do you perceive the contract enforcing mechanism as weak?**

*MC:* They are enforced better than other countries because they come from an institutional angle. You would find if a road project has been awarded, it is the work of Kenya National Highways Authority to deliver on that. They would be the one who are pushing the investor to complete the project, because they have deadlines. So it is easier as well as that particular contract, you can use it to sue or be sued. So if you are not able to deliver on the agreed terms within that contract the institution can sue you.

**Do contracts normally use London for their arbitration and not Kenya?**

*MC:* Yes, we used to use London. But we now do it here.

**We have understood that in infrastructure projects they normally use London or somewhere outside of Kenya.**

*MC:* For infrastructural projects the arbitration has taken two different strategies. First what they are doing in London is that you have to have tried to mediate it at the project home country and show that it has not been working, secondly is that you have tried the local court before going to London. What governments try to avoid is London, because it is very expensive to transfer. So they try to ensure that a mediation occurs, because the court takes time and is expensive. So government put a lot of emphases on mediation as a strategy to resolve some of the issues. Then if you have a lot of cases in London it gives a bad image of the country in regards to investment.

**So the courts in Kenya they work?**

*MC:* They work. You find that government fights with the tradition because they are totally separatists and they try to prove a point that they are dependable. They want to really try to unalign themselves from the government.

**Some investors we have talked to mentioned that court cases takes a lot of time and are expensive that is why they want to do arbitration in Tanzania or London etc. Why do you think they would say that?**

*MC:* Maybe the investor have not attempted - or they just took the word of someone and assumed. Once you have heard something like that you do not want to try because then you can just imagine
how long time or how many costs you have wasted doing that.

**So once you have a contract in infrastructure projects they are safe?**

*MC:* It is really hard in infrastructure. Maybe if we talk about agri processing - but in infrastructure and energy it is hard not for the contracts to be fulfilled. As long as the contract is with the government it is really hard.

**Then we were trying to understand these Memorandum of Understanding (MOU) because we saw that LTWP they had a MOU with the Vision 2030. How does it differ from an actual contract? And how important is it in infrastructure projects?**

*MC:* In Kenya the government likes the MOU sort of like, it is a way of doing business. It puts down what we have agreed to do. The obligations, gather information about infrastructure in Kenya in its entirety - it is just what we have agreed. It is just in writing, you cannot really use that. It even has a clause within the MOU that says about none financial obligations.

**Why is it so important in infrastructure projects?**

*MC:* Because government has to see that yes this is the person who will be delivering this wind power project. It is just how we do it.

**Is it a step to an actual contract?**

*MC:* The one for LTWP the MOU was in regards to the project being documented as a Vision 2030 project. That was the reason for that MOU, if i have my facts right. But with regards to the PPA that is a contract.

**Is it only to align goals a formal way - and does it normally leads to a contract?**

*MC:* It is only to formalize things. For the LTWP that was not a thing it was just an agreement that it was to be listed for the Vision 2030. Even though the MOU was not done they would still have gotten a PPA. It does not matter really. There is no guarantee in MOU leading to a contract. You do not have to have a MOU. MOUs are good as they show we have a formal relationship with LTWP but with or without it does not really do anything. If you asked LTPW about how many MOUs they have signed, they would say a couple. It must be really many.