# AKWA IBOM STATE FCCL FRAMEWORK

# Table of Contents

# Acronyms/Abbreviations

| | |
|---|---|
| AG | Accountant General |
| AO | Accounting Officer |
| CA | Contracting Authorities |
| CL | Contingent Liabilities |
| DMO | Debt Management Office |
| DML | Debt Management Law |
| FCCL | Fiscal Commitments and Contingent Liabilities |
| FDMO | Federal Debt Management Office |
| ExCo | Executive Council |
| FBC | Full Business Case |
| FC | Fiscal Commitments |
| FCCL register | Fiscal Commitments and Contingent Liabilities Register |
| FRC | Fiscal Responsibility Commission |
| FRL | Fiscal Responsibility Law (FRL) |
| IFI | International Financial Institutions |
| IPSAS | International Public Sector Accounting Standards |
| AKSG | Akwa Ibom State Government |
| AKICORP | Akwa Ibom Investment Corporation |
| LTFP | Long Term Fiscal Planning |
| MAGA | Material Adverse Government Actions |
| MDA | Ministry, Department and Agencies |
| MTEF | Medium-Term Expenditure Framework |
| OBC | Outline Business Case |
| P&BC | Planning and Budget Commission |
| PDT | Project Delivery Team |
| PFF | Project Facilitation Fund |
| PFS | Pre-Feasibility Study |
| PFM | Public Financial Management |
| PFRAM | PPP Fiscal Risk Assessment Model 2.0 |
| PFRM | Project Fiscal Risk Matrix |
| PFRR | Project Fiscal Risk Register |
| PIM | Public Investment Management |
| PO | Project Officer |
| PPIAF | Public-Private Infrastructure Advisory Facility |
| PPP | Public Private Partnership |
| PPPManual | Public Private Partnership Manual |
| VfM | Value for Money |

# 1. Introduction

## 1.1 Purpose of developing an FCCL framework

This Fiscal Commitments and Contingent Liabilities (FCCL) Framework provides a structured approach for Akwa Ibom State to identify, assess, manage, and report fiscal risks arising from Public-Private Partnerships (PPPs). PPPs are essential for addressing infrastructure gaps in sectors such as transportation, energy, housing, healthcare, and agriculture, leveraging private sector expertise and capital to accelerate development under the State's ARISE Agenda. However, without robust governance, PPPs can create long-term fiscal burdens through direct commitments (e.g., availability payments, subsidies) and contingent liabilities (e.g., guarantees, termination payments), potentially straining the State's budget and debt sustainability.

## 1.2 Components of the FCCL Framework

**The FCCL Framework is divided into two main sections:**

i **FCCL Guidelines**: This provides a detailed description of fiscal liabilities arising from the execution of PPP agreements. It presents how they should be managed through the project life cycle in accordance with the legal, institutional and regulatory framework.

ii **FCCL Technical Guidance**: This presents the methodologies for measuring and valuing direct and contingent liabilities. It describes how they are applied in the Long- Term Fiscal Planning (LTFP)Tool which has been developed to monitor these liabilities.

# 2. FCCL Guidelines

## 2.1 Overview

### 2.1.1 Introduction

The objective of the FCCL Framework is to provide a platform for officials of the Akwa Ibom Investment Corporation (AKICORP), Akwa Ibom State Ministry of Finance, Akwa Ibom State Ministry of Budget and Economic Planning, Fiscal Responsibility Board (FRC), Debt Management Office (DMO) and the Contracting Authorities, to assess and manage PPP projects.

### 2.1.2 Regulatory framework

This section summarizes the existing regulatory framework for PPPs and PFM in Akwa Ibom State and its impact on developing the FCCL Guidelines.

Effective governance is the backbone of fiscal risk management. Without clearly defined responsibilities, fiscal costs can be underestimated, and moral hazard may arise when line ministries push ahead with projects assuming the Finance Ministry will cover any shortfall. Akwa Ibom State therefore assigns roles to multiple institutions and establishes coordination mechanisms to ensure that no single entity dominates the process.

### 2.1.3 Key institutions and their roles

| Institution | Role |
|---|---|
| **Office of Public-Private Partnerships (OPPP)** | Coordinates PPP project development, procurement and contract management. Provides technical assistance to line ministries ensures compliance with PPP law and maintains standardised procurement documents. |
| **Ministry of Economic Planning and Budget (MEPB)** | Integrates PPP fiscal commitments into the **Medium Term Expenditure Framework (MTEF)** and annual budgets. Ensures that long-term payment obligations are consistent with fiscal ceilings and sectoral priorities. |
| **Ministry of Finance (MoF)** | Leads fiscal policy, assesses guarantees, viability gap funding and payment obligations. Maintains the fiscal commitment tracker and contingent liability dashboard, performs scenario analysis and approves risk mitigation instruments. International experience shows that having the finance ministry centrally review PPP proposals demonstrates government commitment to private partners and reduces uncertainty. |
| **Debt Management Office (DMO)** | Evaluates whether PPP debt should be recognized as public liabilities for debt sustainability analysis; manages guarantees and monitors contingent liabilities. |
| **Attorney General's Office** | Provides legal vetting of PPP contracts, ensures enforceability of risk allocation and termination clauses. |
| **Akwa Ibom State House of Assembly** | Approves fiscal commitments and guarantees exceeding statutory thresholds, providing democratic oversight. |
| **Line Ministries and Contracting Authorities** | Identify projects, prepare business cases, implement projects and monitor performance. They are responsible for first level risk identification and must cooperate with PPP and MoF for fiscal assessments. |

### *2.1.4 COORDINATION MECHANISM*

To ensure that fiscal risk management is not fragmented, the framework establishes a **PPP Fiscal Risk Management Committee (PFRMC)** comprising senior representatives from the OPPP, MEPB, and MoF. The committee:

- **Reviews fiscal risk assessments** during the Outline Business Case (OBC) and Full Business Case (FBC).
- **Approves risk mitigation strategies**, including guarantees, reserve funds and insurance instruments.
- **Monitors compliance with aggregate fiscal ceilings** and recommend corrective actions when limits are approached.
- **Reports to the State Executive Council and the House of Assembly**, ensuring accountability and transparency.

### *2.1.5 Legal and policy instruments*

| Instrument | Purpose |
|---|---|
| **Akwa Ibom State PPP Law** | Provides the legal foundation for PPPs, defines institutional roles, sets procurement procedures and specifies approval requirements. |
| **Fiscal Responsibility Law** | Sets fiscal rules, defines debt and deficit limits and requires disclosure of contingent liabilities. |
| **Debt Management Guidelines** | Establish criteria for issuing guarantees, managing public debt and determining when PPP obligations should be recognized as public liabilities. |

| Instrument | Purpose |
|---|---|
| **Public Procurement Law** | Ensures competitive and transparent procurement, outlines bidding procedures and prohibits direct negotiation without competitive tendering. |
| **Budget Rules and MTEF Procedures** | Require that PPP commitments be integrated into multi-year budgeting and disclosed in fiscal risks tatements. |

## 2.1.6 Application of FCCL framework

The FCCL Framework will be mandatory for all PPP projects submitted for consideration and approval by AKICORP.

The FCCL Framework is a dynamic document that will be refined and revised periodically as the PPP program evolves. The framework describes the management of FCCL across the PPP project life-cycle, including milestones for assessment and approvals.

It also provides detailed technical guidance for the identification and assessment of FCCL at project development stage and their monitoring and reporting during project operation.

### 2.2 PPP Fiscal Liabilities and Risks

While PPPs can offer a range of benefits both qualitative and quantitative, they have fiscal implications. PPPs are not “cost-free” to government. Although PPPs are viewed as means of leveraging financial resources from the private sector, government assumes fiscal commitment over the life of the contract as set out under the PPP agreement.

### 2.2.1 Public liabilities under PPP

Under a PPP arrangement, the government almost always bears some risk which can take the form of support that gives rise to a non-going Fiscal Commitment (FC)-either a CL or an actual direct liability.

- A **Direct Liability (DL)** takes the form of a defined and quantified undertaking to pay or carry a funding obligation for a feature, phase or item in a PPP project essential to its development, operation and/or completion. Its salient characteristic is that the occurrence of the payment obligation is known, although uncertainty may remain as to the size. Examples of such direct liabilities include: (i) supplying the land needed for the project; (ii) upfront "viability funding gap" payments, in which the government makes a capital contribution to ensure a project that is economically desirable but commercially unattractive can proceed; and (iii) annuity or availability payments in which a regular unitary payment over the life of a project is conditional on the availability of the service, etc.

- A **Contingent Liability (CL)** is an obligation that arises from a particular discrete but uncertain future event (i.e. one that may or may not occur) that is outside the control of the government. For CL, the occurrence (trigger event), value, and timing of a payment may all be unknown or cannot be definitively determined. Such liabilities include guarantees on specific risk variables e.g. exchange rate, inflation, prices and traffic, force majeure, termination payments and credit guarantees, among others.

Most FCs are explicitly specified in PPP agreements. However, FCs can also come from implicit sources. For example, a letter of support for a specific project may be considered a type of guarantee for some stakeholders. Also, political or socially sensitive projects maybe expected to be rescued by government in the event of financial distress.

Additionally, increase of existing obligations or creation of new obligations may arise from contract adjustments and re-negotiations. They may, for example, significantly modify the costs of the projects and the payments to be made by Government.

Even though direct liabilities are often considered more predictable than contingent liabilities, there can also be some uncertainty with respect to certain components. For example, the project agreement of a toll road project may include a service payment defined as an annual payment to be made by the government to the concessionaire based on the availability indicators set out in the agreement. This service payment can change due to a change in several factors - inflation, exchange rate, local interest rate, change of scope, increase of road size, and other components which may lead to change in the amount and/or timing of payments. Hence, direct liabilities can also carry a significant amount of uncertainty.

## 2.2.2 Contingent Liabilities Management

Contingent liabilities are potential obligations that may crystallize if specified events occur. They include guarantees of debt, revenue or demand, termination payments and compensation arising from legal claims. When triggered, they can have a significant impact on public finances. Proper identification, quantification and management are therefore critical.

### *i. Types of contingent liabilities*

| Liability Type | Description |
|---|---|
| **Demand guarantees** | Payments triggered if user demand falls below an agreed threshold (e.g. minimum revenue guarantee). |
| **Debt guarantees** | The State agrees to cover debt service if the private partner defaults. This ensures lenders recover their principal but exposes the State to credit risk. |

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| **Termination Payments** | Compensation owed to the private partner if the contract is terminated prematurely |
| **Legal Claims and Arbitration** | Costs arising from disputes, litigation or arbitration. Many claims occur when risk allocation is ambiguous or the government changes policy. |
| **Operational Guarantees** | Assurances covering specific inputs or exchange rate fluctuations. |

### *ii Identification and classification of Contingent liabilities*

Contingent liabilities should be identified early in the project cycle and documented in a **Contingent liability register**. Each liability is classified by:

1. **Trigger event**–The specific circumstance that would cause the liability.
2. **Risk owner**–The party (State, private partner, insurers) responsible for the liability. Good risk allocation assigns risks to the party best able to manage them.
3. **Probability**– An assessment of how likely the trigger event is to occur, based on historical data, market analysis and expert judgment.
4. **Time horizon**–When the liability might materialize.

### *iii. Mitigation strategies*

Mitigation reduces the probability or impact of contingent liabilities:

| Strategy | Description |
|---|---|
| **Contractual safeguards** | Clear clauses allocate risks to the party best able to manage them. Termination compensation should be capped and formula based to avoid negotiation disputes. |
| **Insurance instruments** | Transfer specific risks to insurers. Premium costs must be weighed against expected savings. |
| **Reserve funds** | Dedicated funds set aside to meet contingent liabilities, such as a PPP contingency reserve or maintenance reserve. Annual contributions should be made during fiscal surpluses to build buffers. |
| **Performance bonds and parent-guarantees** | Require the private partner to post financial guarantees that can be called upon if the partner defaults or fails to deliver. |

| Strategy | Description |
|---|---|
| **Indexed tariffs and revenue adjustment mechanisms** | Adjust user charges based on inflation or demand to reduce the likelihood that demand guarantees are triggered. |

### *iv. Monitoring and reporting*

Contingent liabilities are monitored through the **contingent liability dashboard** Maintained by the MoF and DMO. Key practices include:

- **Regular updates** to reflect changes in contract conditions, macro-economic variables and project performance.

- **Annual disclosure** in the fiscal risk statement, including the estimated probability weighted cost of contingent liabilities and the amounts covered by reserve funds or insurance.
- **Independent audits** of the contingent liability register and dashboard to verify accuracy and completeness.
- **Alert mechanisms** – When a liability is likely to be triggered, the PFRMC is alerted so that budget reallocations or draws on reserve funds can be planned.

# 3. Risk Mitigation Instruments

This section describes instruments available to Akwa Ibom State to transfer or reduce fiscal risks. The choice of instruments should balance cost and risk exposure.

## *3.1 Contractual safeguards*

Well drafted PPP contracts are the first line of defence against fiscal risk. Key clauses include:

| Clause | Purpose |
|---|---|
| **Termination clause** | Specifies conditions for early termination and a formula for compensation. Limits the government's exposure by capping payments and distinguishing between termination due to government default, private partner default, or force majeure. |
| **Force majeure clause** | Defines events beyond the control of both party (e.g. war, natural disasters) and sets out the fiscal consequences. May include suspension of payments or early termination rights. |
| **Step in rights** | Allows the State or lenders to temporarily take over operations if the private partner fails to perform. Reduces the risk of prolonged service disruptions and ensures continuity. |
| **Revenue sharing** | Allocates excess revenue between the State and private partner, aligning incentives and providing upside for the government. |
| **Change in law and currency clauses** | Provide mechanisms to adjust payments if laws or tax regimes change or if significant exchange rate movements occur, thereby reducing uncertainty for both parties. |

## *3.2 Reserve fund structures*

Creating dedicated reserve funds helps the government meet potential obligations without disrupting general budgets:

| Fund type | Description |
|---|---|
| **PPP Contingency Reserve Fund** | A pool of resources earmarked for meeting contingent liabilities like guarantees and termination payments. Contributions may come from budget surpluses, project user fees or earmarked taxes. The fund should have clear rules governing deposits and withdrawals, be managed by the MoF/DMO and be audited annually. |

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|---|---|
| **Viability Gap Reserve** | A fund dedicated to capital grants for socially beneficial projects that are not financially viable. Helps spread the fiscal impact of large grants over time. |
| **Maintenance Reserve Fund** | Ensures that adequate funds are available for major maintenance and asset renewal, thereby protecting service quality and reducing the likelihood that poor maintenance leads to contingent liabilities. |

Annual contributions should be budgeted in the MTEF. Withdrawals must be reported in the fiscal risk statement.

## 3.3 Insurance instruments

Insurance can transfer specific risks to third parties. Common products include:

| Insurance type | Coverage |
|---|---|
| **Political risk insurance** | Covers losses arising from expropriation, currency in-convertibility, civil unrest and government actions. Offered by multilateral agencies and commercial insurers. |
| **Construction risk insurance** | Covers delays, cost overruns and accidents during construction. The private partner usually procures this but the government should verify coverage as part of due diligence. |
| **Revenue guarantee insurance** | Ensures minimum revenue levels for private partners. Premiums may be expensive; alternatives include capped guarantees or revenue adjustment mechanisms. |

## 3.4 Performance bonds and guarantees

The private partner may be required to provide:

- **Performance bonds** to guarantee completion of construction and delivery of services.
- **Advance payment guarantees** to protect government funds disbursed before work begins.
- **Parent company guarantees** or corporate guarantees, ensuring that obligations are backed by financially strong entities.
- **Letters of credit** issued by banks to guarantee payment obligations. The PFRMC should verify that guarantees are sufficient and enforceable.

### 3.5 Institutional oversight

The **PFRMC** oversees risk mitigation instruments and ensures that contracts comply with legal and fiscal requirements. Legal and financial advisers review complex instruments and monitor market developments to update guidelines. The Auditor General conducts periodic reviews to assess whether instruments are used appropriately.

# 4. Monitoring and Evaluationand Reporting

Monitoring and evaluation (M&E) systems enable Akwa Ibom State to track project performance, ensure compliance and manage fiscal risks. The framework mandates continuous M&E.

### 4.1 Monitoring framework

| Component | Description |
|---|---|

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|---|---|
| **Contract compliance** | Tracks adherence to contractual obligations, including service quality, maintenance standards and payment mechanisms. |
| **Performance indicators** | Measures service delivery, financial performance and user satisfaction. Indicators should be clearly defined in the contract and monitored regularly. |

| Component | Description |
|---|---|
| **Risk monitoring** | Updates risk registers, fiscal trackers and contingent liability dashboards. Identifies emerging risks and triggers corrective actions. |
| **Financial reporting** | Tracks payments, liabilities, budget alignment and reserve fund balances. Financial reports should reconcile with the fiscal commitment tracker. |

### *4.2 Evaluation mechanisms*

- **Mid-term reviews**–Conducted at key milestones to assess whether the project meets performance targets and remains affordable. Recommendations may include renegotiation of terms, adjustment of tariffs or reallocation of risks.
- **Post-implementation reviews**–Undertaken after the contract closes to evaluate outcomes, fiscal impact and lessons learned. Findings inform future project preparation and updates to the framework.
- **Independent audits** – Annual audits by the Auditor-General or external auditors cover both financial compliance and performance. Audit reports are submitted to the House of Assembly and published.

### *4.3 Reporting requirements*

| Reporttype | Frequency | Responsibleagency |
|---|---|---|
| **Performance dashboard** | Quarterly | OPPP, in coordination with line ministries and private partners |
| **Fiscalrisk statement** | Annually | MoF/MEPB |
| **Auditreports** | Annually | Auditor-General |
| **Public disclosure** | Ongoing | MEPB & OPPP – publishes project summaries, contracts (redacted where commercially sensitive), fiscalcommitmentdataandcontingentliabilitiesonthe State's website |

Additionally, the PFRMC prepares a brief **PPP fiscal risk bulletin** after each meeting summarizing new approvals, emerging risks, mitigation actions and decisions taken. The bulletin is circulated internally and to oversight bodies.

Overall, it is important to note that Government commitments to PPPs are materially different to Government's public debt and require a different management approach. When a government borrows, it uses the borrowed funds, and the Government is obliged to repay the debt regardless of how well the borrowed funds are used. Government liabilities to PPPs are non/limited recourse in nature, structured as performance-based payments for services delivered and/or assets/infrastructure developed/made available for use.