

THE USE OF FUNDS IN TERMS OF SECTION 16 OF THE PUBLIC FINANCE MANAGEMENT ACT (ACT 1 OF 1999) (PFMA)

GOVERNMENT FINANCIAL SUPPORT TO Eskom

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BACKGROUND

- Minister of Finance (Minister) announced that the government has allocated R23 billion a year over the medium term to support Eskom during its reconfiguration.
- The allocated amounts intended to enable Eskom to service its debts and meet redemption requirements, while making resources available for urgent operational improvements.
- It had been anticipated that shortfalls in the capital structure of Eskom could be dealt with through the normal Appropriation process and the money was envisaged that it will be disbursed in October 2019.
- This approach was partly premised on the assumption that Eskom will continue to raise the required funding.
- Hence, National Treasury did not submit a Special Appropriation Bill for consideration by Parliament before it rises as there were no indication that Eskom will experience difficulty in raising the required borrowing.

ESKOM CASH FLOW CHALLENGES

- Although the China Development Bank (CDB) had committed to disburse R7 billion to Eskom by 25 March 2019, the bank was unfortunately unable to timeously execute this planned drawdown due to its Central Bank exchange control requirements.
- As a consequent of this delay, on 29 March 2019, Eskom experience cash flow challenges.
- In order to avert this liquidity challenge, National Treasury engaged the Corporation for Public Deposits (CPD) to assist Eskom by advancing a bringing facility while Eskom was still waiting for the CDB funds.
- After following its internal processes, the CPD declined to provide Eskom with the requested funding which resulted in Eskom facing a severe liquidity crisis.
- As a contingency measure, Eskom obtained a bridging facility from ABSA Capital which matured on 02 April 2019 and which was backed by Government Guarantees.

SECTION 16 OF THE PFMA

- The failure to meet its obligations could have had negative consequences for Eskom and the fiscus, hence, the Minister had to intervene.
- On 2 April 2019, the Minister of Finance invoked Section 16 of the Public Finance Management Act (PFMA) and authorize the payment of R5 billion to Eskom to honour its obligations that were due.
- The section 16 approval was part of the R23 billion allocation announced in the 2019 budget which was tabled in February 2019.
- Section 16(1) of the PFMA enables the Minister of Finance to “*authorise the use of funds from the National Revenue Fund to defray expenditure of an exceptional nature which is currently not provided for and which cannot, without serious prejudice to the public interest, be postponed to a future parliamentary appropriation of funds*”.
- Section 16(2) of the PFMA limits the amount that the Minister of Finance may authorise in emergency situations to 2 per cent of the annual national budget for that year. Therefore, the maximum allowable amount that could be transferred amounted to R17,652 billion.

SECTION 16 OF THE PFMA CONTINUED

- As the maximum allowed amount for each financial year that can be transferred using section 16 has been exhausted, the Minister cannot use such powers again during the 2019/20 financial.
- The use of emergency powers to transfer these funds to Eskom was necessitated by the entity's urgent cash flow requirements that could not wait for the normal Parliamentary appropriation process which could not be followed due to the rising of Parliament in March 2019.
- On 16 April 2019, the Minister wrote letters and reports to Parliament and the Auditor-General on the use of these funds as required by section 16 (4)(a) of the PFMA.
- Section 16(4)(a) of the PFMA states that *an amount authorised in terms of section 16(1) must be reported to Parliament and the Auditor-General within 14 days, or if the funds are authorised for the deployment of security services, within a period determined by the President. Minister's report to parliament must also be made public.*

GOVERNMENT INTERVENTION

- To date, Government has transferred R13,5 billion to Eskom from the R17, 652 billion that was approved using the section 16 of the PFMA.
- The disbursement of the remaining R4,1 billion of the R17,652 billion is anticipated to be disbursed in accordance with Eskom's cash flow requirements.
- Moreover, the disbursement of the remainder of the R23 billion is envisaged to happen after the normal Parliamentary appropriation process have been followed.
- National Treasury and the Department of Public Enterprises continues to work closely with Eskom Treasury to monitor the Company's daily cash flow requirements and its financial position.
- These engagements are meant to assist Eskom as the Company continues to raise its identified funding in accordance with its funding plan.
- The failure to secure or drawdown on the existing funding sources would mean that Eskom would require additional funding in order to honour its obligations.

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