national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

TO ALL: ACCOUNTING AUTHORITIES OF PUBLIC ENTITIES LISTED IN SCHEDULES 2, 3A AND 3B TO THE PUBLIC FINANCE MANAGEMENT ACT (PFMA)

: ACCOUNTING OFFICERS OF DEPARTMENTS

NATIONAL TREASURY INSTRUCTION NO. 09 of 2020/21

MINIMUM CRITERIA TO BE MET BY DEPARTMENTS AND PUBLIC ENTITIES LISTED IN SECHEDULE 2, 3A AND 3B TO THE PFMA WHEN SUBMITTING REQUESTS FOR MINISTER OF FINANCE TO APPROVE OR TO CONCUR WITH THE ISSUANCE FOR GUARANTEES, SECURITIES, INDEMNITIES AND RESTRICTIONS ON BORROWING

1 PURPOSE

1.1 The purpose of this Treasury Instruction is to provide accounting authorities of public entities listed in schedules 2, 3A and 3B to the Public Finance Management Act, 1999 (Act No. 1 of 1999) (PFMA) and shareholder departments with the minimum criteria that must be met when submitting new requests for approval or concurrence with the issuance of guarantees, securities, indemnities and restrictions on borrowing.

1.2 To inform accounting authorities of public entities listed in schedules 2, 3A and 3B to the PFMA and shareholder departments that requests that do not meet the minimum criteria will not be considered by the Minister of Finance.

2 LEGISLATIVE BACKGROUND

2.1 Section 218(1) of the Constitution of the Republic of South Africa, 1996 (the Constitution), stipulates that "The national government, a provincial government or a municipality may guarantee a loan only if the guarantee complies with any conditions set out in the national legislation";

2.2 Sections 66 to 70 of the PFMA, gives effect to Section 218(1) of the Constitution and grants authorisation for the issuance of guarantees to institutions to which it applies. The PFMA determines the responsible persons for the issuance of guarantees for the respective institutions and also stipulates the conditions under which the guarantees may be issued. These conditions stipulate that the issuance of guarantees must:

a) be authorised by the PFMA;

b) in the case of public entities, be also authorised by other legislation not in conflict with the PFMA; and

c) in the case of loans issued by a provincial government business enterprise under the ownership control of a provincial executive, be within the limits as set in terms of the Borrowing Powers of Provincial Governments Act, 1996 (Act No. 48 of 1996).

The PFMA also stipulates that:

a) A Cabinet member, with the written concurrence of the Minister of Finance (Minister), may issue a guarantee, indemnity or security which binds the National Revenue Fund in respect of a financial commitment incurred or to be incurred by the national executive;

b) The Cabinet member who seeks the Minister's concurrence for the issue of a guarantee, indemnity or security, must provide the Minister with all relevant information as the Minister may require regarding the issue of such guarantee, indemnity or security and the relevant financial commitment;

c) Any payment under a guarantee, indemnity or security is a direct charge against the National Revenue Fund, and any such payment must in the first instance be defrayed from the funds budgeted for the department that is concerned with the issue of the guarantee, indemnity or security in question; and

d) The responsible Cabinet member must at least annually report the circumstances relating to any payments under a guarantee, indemnity or security issued in terms of the PFMA.

Guidelines for the issuance of government guarantees

On 20 March 1996, Cabinet approved guidelines for the issuance of government guarantees based on the following principles:

a) Limiting the issuance of guarantees to reduce the gross contingent liability obligation;
b) Allowing public entities to borrow on the strength of their balance sheets;
c) Using guarantees, in exceptional cases, to support restructuring objectives;
d) To meet international agreement obligations; and
e) Levying guarantee fees to equalise benefits on borrowing costs margins of public entities borrowing with a guarantee and those borrowing without a guarantee.

3. MINIMUM CRITERIA TO BE MET BY DEPARTMENTS AND PUBLIC ENTITIES WHEN SUBMITTING REQUESTS FOR MINISTER OF FINANCE TO APPROVE OR TO CONCUR WITH THE ISSUANCE FOR GUARANTEES, SECURITIES, INDEMNITIES, AND RESTRICTIONS ON BORROWING

3.1 Over the past several years, the quality of government's contingent liability exposure from the issuance of guarantees has deteriorated significantly. This deterioration has also resulted in this exposure becoming a significant risk to the country's sovereign credit rating. Alarmingly, most requests that have been received over the past several financial years have not been in line with Cabinet approved guidelines and have also not been in line with prudent credit risk guidelines.

3.2 In order to improve the quality of government's exposure accounting authorities of public entities and accounting officers of the shareholder departments are required to meet the following criteria when requesting approval for or concurrence with the issuance of guarantees, securities, indemnities and restrictions on borrowing:

a) There should be a demonstrable need for government to accept the risk (i.e. the underlying transaction must be necessary in the fulfilment of the applicant's mandate in accordance with government's overall strategy);

b) The applicant must demonstrate adequately that it will generate sufficient cash flows during the term of the underlying transaction (e.g. debt obligation) that will enable it to settle its obligation in line with the terms of the transaction timeously;

c) The guarantee, security, indemnity, borrowing limit, or transaction for which an approval is being applied for, should be offered by government and should be in line with all applicable legislation;

d) The type of project that the underlying financing is needed for should be in line with the applicant's mandate;

e) Sufficient evidence that, a clear assessment of the underlying project viability or lending activity in the case of a development finance institution (DFI), has been conducted by the relevant Ministry should be submitted as part of the application. Where it is determined that the underlying project will yield social benefits without generating enough revenue and returns that will enable the public entities to service the required debt, then the project or lending activity should be funded through the budget appropriation process; and

f) Public entities that have previously not adhered to guarantee conditions should not submit applications for new guarantees.

3.3 Departments and public entities are therefore requested to submit each application for a guarantee, security, indemnity and restrictions on borrowing (borrowing limit and borrowing authorization) with the attached checklist indicating that each request meets the minimum criteria.

4 APPLICABILITY OF THIS TREASURY INSTRUCTION

This Treasury Instruction applies to public entities listed in Schedules 2, 3A and 3B of the PFMA and their respective shareholder departments.

5 DISSEMINATION OF INFORMATION CONTAINED IN THIS INSTRUCTION

Executive Authorities of public entities are requested to bring the contents of this Treasury Instruction to the attention of accounting authorities of their respective public entities.

6 AUTHORITY FOR THIS INSTRUCTION

This Treasury Instruction is issued in terms of section 76(4)(g) of the PFMA.

7 EFFECTIVE DATE FOR THIS INSTRUCTION

This Treasury Instruction takes effect from the date of issue.

8 CONTACT INFORMATION

Ms Tshepiso Moahloli
Acting Deputy Director-General: Asset and Liability Management
Telephone No: 012 315 5140
E-mail: Tshepiso.moahloli@treasury.gov.za

TT MBOWENI, MP
MINISTER OF FINANCE
DATE: 26/10/2020