



**NATIONAL TREASURY  
REPUBLIC OF SOUTH AFRICA**

Private Bag X115, Pretoria, 0001 Tel: +27 12 315 5111, Fax: +27 12 315 5234

**Enquiries:** J M Nair      **Ref:** 14/3/4/1/1      **Tel:** 315 5482      **Fax:** 326 5445  
**E-mail:** [Jayce.Nair@treasury.gov.za](mailto:Jayce.Nair@treasury.gov.za)

**TO : ACCOUNTING OFFICERS OF ALL NATIONAL DEPARTMENTS  
AND CONSTITUTIONAL INSTITUTIONS**

**: ACCOUNTING AUTHORITIES OF ALL PUBLIC ENTITIES**

**CONTRACTS CONTAINING PROVISIONS RELATING TO INDEMNITIES,  
LIMITATION OF LIABILITIES AND WARRANTIES**

1. The Minister of Finance is frequently requested to provide his concurrence for departments, constitutional institutions and public entities to conclude transactions of an operational nature, where such transactions contain indemnity, limitation of liability and warranty clauses. Such concurrence is always requested in terms of sections 66 and 70 of the Public Finance Management Act (PFMA), 1999, (Act No. 1 of 1999).
2. Section 66 of the PFMA read together with section 70 provides that a Cabinet member may only issue a guarantee, indemnity or security with the written concurrence of the Minister of Finance, given either specifically in each case or generally with regard to a category of cases and subject to conditions approved by the Minister.
3. Whilst it was not the intention of the PFMA to require concurrence of the Minister of Finance when concluding transactions of an operational nature, the Act with its current wording (and on strict interpretation of the law) would require such and all Cabinet members would therefore need to obtain concurrence of the Minister of Finance prior to the conclusion of any contract, if such a contract contains clauses related to indemnities, limitation of liabilities and warranties.
4. Clauses related to indemnities, limitation of liabilities and warranties are, however, standard clauses in most contracts of an operational nature and these clauses are generally aimed at protecting both contracting parties against claims for damages.

5. Taking cognisance of the foregoing, the view of the National Treasury is that the Minister's concurrence would not be required where:
  - 5.1 The indemnity, limitation of liability or warranty is integral or incidental to expenditure that has already been approved by the relevant legislature or executive authority in the annual budget of the department/constitutional institution or public entity respectively; and
  - 5.2 Such indemnity, limitation of liability or warranty is necessitated by the day-to-day operational requirements of the department, constitutional institution or public entity, which include the acquisition of equipment such as photocopiers, PABX boards and computer hardware, the procurement of professional services and the hosting of events.
6. Thus the mere fact that such authorized expenditure may be incurred in a manner that requires an indemnity, limitation of liability or the issuance of a warranty, does not necessarily mean that concurrence is required from the Minister of Finance.
7. The written concurrence of the Minister of Finance is, however, required in respect of the issuing of an indemnity, limitation of liability or warranty related to transactions for which funds have not been provided on the budget of the department, constitutional institution or public entity.
8. The inherent ambiguity in sections 66 and 70 of the PFMA will be addressed in forthcoming amendments that are to be effected to the Act.
9. In the case of national departments, it would be appreciated if the contents of this circular are also brought to the attention of all public entities reporting to the executive authority responsible for your Department.
10. I trust that this arrangement will facilitate the easier conclusion of contracts that contain indemnity, limitation of liability and warranty clauses.



**LESETJA KGANYAGO**  
**DIRECTOR-GENERAL**

**DATE:** 20/09/2005