

DEPARTMENT OF FINANCE

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PUBLIC FINANCE MANAGEMENT ACT, 1999: DRAFT TREASURY REGULATIONS FOR PUBLIC ENTITIES

The Draft Treasury Regulations for Public Entities are hereby published for public comment in terms of Section 78 of the Public Finance Management Act, 1999 (Act No 1 of 1999).

**Draft Treasury Regulations
for Public Entities**

**Issued in terms of the
Public Finance Management Act, 1999**

National Treasury

Republic of South Africa

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Comments on these Draft Regulations should be submitted no later than
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General definitions

1.1 General definitions

In these *Treasury Regulations*, a word or expression to which a meaning has been assigned in the Act has the same meaning, unless the context indicates otherwise:

“accounting authority” as defined in the Act;

“act” means the Public Finance Management Act (Act No. 1 of 1999), as amended by Act No. 29 of 1999;

“employee” means a person in the employment of a public entity;

“executive authority” as defined in the Act;

“designated department” refers to that Department who’s executive authority designates it to be responsible for that public entity under the responsibility of the executive authority in terms of sections 52 and 53 of the Act;

“designated accounting officer” refers to the accounting officer of the designated department;

“Schedule” means Schedules 2 and 3 of the Act.

Application and Listing

2.1 Application [Sections 47 and 76(4) of the PFMA]

- 2.1.1 These regulations are applicable to all public entities as listed on Schedules 2, 3B and 3D.
- 2.1.1 These regulations are applicable to public entities listed on Schedules 3A and 3C until 31 March 2001; thereafter the treasury regulations applicable to departments will apply unless:
- (a) the executive authority has submitted an application by 31 December 2000 to the Minister of Finance motivating why such an entity must be re-classified as a national or provincial government business enterprise and listed on Schedule 3B or 3D; or
 - (b) there being exceptional reasons relating to business activity by the public entity why such entity should not comply with the treasury regulations applicable to departments; and
 - (c) the Minister of Finance has approved such an application, and has published a list of Schedule 3A and 3C public entities that are exempted from compliance with Regulations applicable to Departments.
- 2.1.3 Public entities must submit all information required by the national treasury in terms of the Act to the Registrar of Public Entities established within the national treasury.

2.2 Listing [Sections 38(1)(m), 47, 52 and 53(2) of the PFMA]

- 2.2.1 An accounting authority of a public entity not listed in terms of section 47(2) of the Act must submit the following information to the executive authority and Registrar of Public Entities no later than 1 September 2000:
- (a) name of the public entity;
 - (b) mandate of the public entity;
 - (c) executive authority responsible for the public entity;
 - (d) enabling legislation;
 - (e) date of incorporation;
 - (f) board members;
 - (g) registered address and telephone numbers;
 - (h) chief executive officer;
 - (i) chief financial officer;
 - (j) company secretary;
 - (k) responsibility for the appointment of the chief executive officer;
 - (l) responsibility for the appointment of the board of directors;

- (m) subsidiaries;
 - (n) audited annual financial statements;
 - (o) amount of budgetary transfers received over the past three financial years;
 - (p) corporate plan as contemplated in section 52 of the Act.
- 2.2.2 The executive authority must inform the Minister of Finance no later than 1 October 2000 of any public entities under his or her authority not listed in either Schedule 2 or 3 of the Act.
- 2.2.3 The accounting officer of a department should, in terms of section 38(1)(m) obtain Treasury approval if the department intends to establish a public entity. The following information must be submitted to the executive authority and Registrar of Public Entities:
- (a) motivation for the establishment of an entity;
 - (b) in the case of a provincial entity, the approval of the provincial treasury;
 - (c) intended mandate of the public entity;
 - (d) name of the proposed entity;
 - (e) executive authority;
 - (f) proposed date of incorporation;
 - (g) responsibility for the appointment of the chief executive officer ;
 - (h) responsibility for the appointment of the board of directors;
 - (i) proposed subsidiaries;
 - (j) enabling legislation;
 - (k) contact person(s);
 - (l) company secretary;
 - (m) financial implications for the relevant revenue fund;
 - (n) written approval by the executive authority; and
 - (o) corporate plan, as contemplated in section 52 of the Act, indicating:
 - (i) capital needs;
 - (ii) future financial demands on a revenue fund.

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Corporate management

3.1 Chief financial officer

- 3.1.1 The accounting authority must appoint an official as chief financial officer (CFO) no later than 1 April 2001, to serve in the management team of the public entity unless directed otherwise by the relevant treasury.
- 3.1.2 In exercising his or her responsibilities, the CFO is directly accountable to the accounting authority.
- 3.1.3 Without limiting the right of the accounting authority to assign specific responsibilities, the general responsibility of the CFO is to assist the accounting authority in discharging the duties prescribed in Section 51 of the Act.

3.2 Monthly and annual reports

- 3.2.1 The *Treasury Regulations* in this section apply to a public entity listed in Schedule 3A or 3C.

3.2.2 Cash flow

- 3.2.2.1 The accounting authority must annually submit to the relevant treasury a breakdown of anticipated revenue and expenditure in the format determined by the national Treasury, no later than 1 month before the start of the financial year to which it relates, or as determined by the designated accounting officer.
- 3.2.2.2 Once such amounts have been approved, modified as necessary after consultation with the relevant treasury, the accounting authority may not draw from the revenue fund more than the amount approved for a month, without prior written approval from the relevant treasury.

3.2.3 Monthly reports

- 3.2.3.1 The accounting authority must submit to the designated accounting officer within 15 days of the end of each month, information on—
 - (a) the actual revenue and expenditure for that month, in the format determined by the national Treasury;
 - (b) projections of anticipated expenditure and revenue for the remainder of the current financial year in the format determined by the national Treasury; and
 - (c) any material variances and a summary of actions to ensure that the projected expenditure and revenue remain within the budget.

3.2.4 Financial year-end

- 3.2.4.1 The financial year-end of all public entities listed on Schedule 3A or 3C must end on 31 March from August 2002.

3.3 Management of debtors [Section 51(1)(b)(i) of the PFMA]

- 3.3.1 The *Treasury Regulations* in this section apply to a public entity listed in Schedule 3A or 3C.

3.3.2 Responsibility for management of debtors [Section 51 of the PFMA]

- 3.3.2.1. The accounting authority of a public entity must take effective and appropriate steps to collect all money due to the public entity including, as necessary–
- (a) maintenance of proper accounts and records for all debtors, including amounts received in part payment; and
 - (b) referral of a matter where economical, to consider a legal demand and possible legal proceedings in a court of law

Audit Committees & Internal Audit

- 4.1 Audit committees** [Sections 51(1)(a)(ii) and 76(4)(d) of the PFMA]
- 4.1.1 The accounting authority must establish an audit committee in consultation with the executive authority.
- 4.1.2 The chairperson of an audit committee may not be an executive director or employee of the public entity or a political office bearer.
- 4.1.3 The majority of members of an audit committee may not be in the employment of the entity.
- 4.1.4 The termination of the services of a person serving on the audit committee must be done with the concurrence of the relevant executive authority.
- 4.1.5 The audit committee must, together with the head of internal audit, establish an audit committee charter to guide the committee's approach, as well as its *modus operandi*, which should spell out the rules that govern the audit relationship. The accounting authority must approve this charter.
- 4.1.6 The audit committee and senior management must facilitate a risk assessment to determine the material risks to which the public entity may be exposed and to evaluate management strategy for managing those risks. The strategy must be used to direct audit effort and priority, and to determine the management skills required to manage these risks.
- 4.1.7 The audit committee must report and make recommendations to the accounting authority, but the accounting authority retains responsibility for implementing such recommendations.
- 4.1.8 In addition to the above, the audit committee must-
- (a) evaluate the financial statements of the institution for reasonability and accuracy; and
 - (b) report on the effectiveness of internal audit in the annual report of the institution.
- 4.1.9 Should a report from internal audit (or any other source) to the audit committee implicate any or all members of the accounting authority in fraud, corruption or gross negligence, the chairperson of the audit committee must promptly report this to the relevant executive authority.
- 4.1.10 The audit committee may communicate any concerns it deems necessary to the designated accounting officer, executive authority and/or the Auditor-General.

- 4.2 Internal controls and Internal audit** [Sections 51(1)(a)(ii) and 76(4)(d) of the PFMA]
- 4.2.1 The accounting authority must ensure that a fraud prevention plan is developed no later than 31 March 2001.
- 4.2.2 The accounting authority must establish an internal audit function.
- 4.2.2 The internal audit unit may be contracted to an external institution with specialist audit expertise, provided that its selection is in accordance with preferred tendering procedures and the external auditors do not perform the internal audit function.
- 4.2.4 Internal audit must be conducted in accordance with the standards set by the Institute of Internal Auditors.
- 4.2.5 The internal audit unit must prepare in consultation with, and for approval by, the audit committee:
- (a) a rolling three-year strategic internal audit plan based on its assessment of key areas of risk for the public entity, having regard to its current operations, those proposed in its strategic plan and its risk management strategy;
 - (b) an annual internal audit plan for the first year of the rolling plan;
 - (c) plans indicating the proposed scope of each audit in the annual internal audit plan;
 - (d) a modus operandi, with management inputs, to guide the audit relationship; and
 - (e) a quarterly report to the audit committee detailing its performance against the plan, to allow effective monitoring and possible intervention.
- 4.2.6 The internal audit unit must be independent, with no limitation on accessing information

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Annual Report and Annual Financial Statements

5.1 Financial statements [Section 55 of the PFMA]

- 5.1.1 For the financial year ending on or after 31 March 2001, the following reporting standards comprise *generally recognised accounting practice* and must be adhered to by public entities, unless otherwise approved by the national treasury:
- 5.1.2 The annual report must include the annual financial statements, accompanied by the audit opinion of the Auditor-General or the relevant auditor.
- 5.1.3 Annual financial statements must consist of:
- (a) a balance sheet;
 - (b) an income statement;
 - (c) a cash flow statement;
 - (d) notes to the annual financial statements; and
 - (e) such other statements as may be prescribed by the Accounting Standards Board.
- 5.1.4 Unless otherwise approved by the national treasury, the annual financial statements must, in conformity with *Statements of Generally Accepted Accounting Practice* issued by the South African Institute of Chartered Accountants, fairly represent the financial position, financial performance and cash flows of the public entity at the end of the financial year concerned.
- 5.1.5 The annual financial statements must, by means of figures and a descriptive report, explain any other matters and information material to the affairs of the public entity.
- 5.1.6 The relevant treasury may where it considers it appropriate, exempt a public entity listed on Schedule 3A or 3C from submitting an annual report, and include its financial statements and audit report in the annual report of the designated department.

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Shareholder's Compact

6.1 Shareholder's Compact

- 6.1.1 The accounting authority of a public entity must prepare a shareholders compact for approval by the relevant executive authority.
- 6.1.2 The approved shareholder's compact must be submitted to the relevant treasury before 1 April 2002.
- 6.1.3 The shareholder's compact must—
 - (a) cover a period of three years and be consistent with the public entity's corporate plan;
 - (b) include the programme objectives and outcomes identified by the executive authority, as well as any service delivery improvement programme;
 - (c) include multi-year projections of revenue and expenditure for the forthcoming budget;
 - (d) include the key performance measures and key indicators for assessing the public entity's performance in delivering the desired outcomes and objectives;
 - (e) be updated annually on a rolling basis;
 - (f) form the basis for the annual reports of accounting authorities in terms of section 55 of the Act.
- 6.1.4 None of the above precludes the Executive Authority to request additional information to be included in such shareholder's compact.

6.2 Evaluation of performance

- 6.2.1 The accounting authority of a public entity must establish procedures for quarterly reporting to facilitate effective performance monitoring, evaluation and corrective action.
- 6.2.2 The accounting authority must issue quarterly reports to the executive authority no later than 15 days after the end of each quarter.

6.3 Budgeting and related matters [Section 52 and 53 of the PFMA]

- 6.3.1 The accounting authority of a public entity receiving a transfer payment from either a revenue fund or a public entity, tax, levy or other statutory money must comply with any annual budget circulars issued by the relevant treasury to public entities.
- 6.3.2 The accounting authority of a public entity must submit its corporate plan together with the projections of expenditure, revenue and borrowings or proposed budget via the designated accounting officer.

- 6.3.3 Any transfers from a revenue fund to a public entity must be from the vote of the designated department.
- 6.3.4 The following information must be included in the projections of income and expenditure or budget submission:
 - (a) the information on a proposed transfer from any revenue fund, tax or levy, or from any revenue fund; and
 - (b) The current and proposed remuneration of members of the accounting authority and executive management.

7

Loans, Guarantees and Other Commitments

7.1 **Borrowing** [Sections 66 and 69 of the PFMA]

- 7.1.1 National public entities listed in Schedule 3A may only borrow for bridging purposes with the approval of the Minister of Finance, subject to the following conditions:
- (a) the debt must be cleared within the current financial year;
 - (b) borrowing may not exceed a limit predetermined by the Minister, in concurrence of the executive authority, in each case;
 - (c) foreign borrowing may not be undertaken;
 - (d) the request for borrowing for bridging purposes must be submitted to the Minister of Finance 30 days in advance of the proposed borrowing;
 - (e) a detailed cash flow and income and expenditure statement must accompany the request, indicating how the debt will be cleared during the current financial year; and
 - (f) the terms and conditions of the proposed bridging finance must also accompany the request.
- 7.1.2 Public entities listed in Schedules 2 or 3B must, in their corporate plan, submit to the national treasury a three-year borrowing programme beginning with the next financial year. Quarterly reports on the borrowing programme must be submitted to the relevant treasury, reflecting actual borrowing for that quarter and any update in the borrowing programme.
- 7.1.3 Provincial government business enterprises listed in Schedule 3D and authorised to borrow by the Minister, must, in their corporate plan, as approved by the executive authority, submit to the MEC for finance in that province, a three-year borrowing programme beginning with the next financial year. Quarterly reports on the borrowing programme must be submitted to the MEC for finance in that province, reflecting actual borrowing for that quarter and any update in the borrowing programme.
- 7.1.4 The MEC mentioned in section 3.1.4 must forward a copy to national treasury of the corporate plan and approved borrowing plan as well as the quarterly updates reflecting actual borrowing for that quarter and any update in the borrowing programme of all Provincial Government Business Enterprises listed in Schedule 3D authorised to borrow.

- 7.1.5 The indicative terms and conditions of the borrowings must accompany the borrowing programme and the entity must, in the quarterly submissions, show how it addressed the national treasury's concerns regarding its borrowing programme. The borrowing programme must include:
- (a) information on proposed domestic borrowing;
 - (b) information on proposed foreign borrowing within the prescribed limit, where applicable;
 - (c) short- and long-term borrowing;
 - (d) the relation of borrowing to a pre-approved corporate plan;
 - (e) the maturity profile of all debt;
 - (f) the confirmation of compliance with existing and proposed loan covenants;
 - (g) debts guaranteed by government; and
 - (h) motivations for government guarantees, if required;
 - (j) approval of borrowing programme by the executive authority should such approval be required in terms of own enabling legislation.
- 7.1.6 The provisions in this chapter do not preclude the use of credit cards, fleet management cards or other credit facilities repayable within 30 days from the date of statement.

7.2 Contingent liabilities [Sections 66 and 69 of the PFMA]

- 7.2.1 A public entity listed in either Schedule 2 or 3 must, by way of a note, report in their financial statements on all contingent liabilities.
- 7.2.2 Where such contingent liability has a reasonable prospect of realizing in the current financial year, and an amount can be established, it should be provided for in the current financial statements and corporate plan and budget for the ensuing 3 years.

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Financial misconduct

8.1 Investigation of alleged financial misconduct [Sections 85(1)(b) and (d) of the PFMA]

- 8.1.1 If an employee is alleged to have committed financial misconduct, the accounting authority of the public entity must ensure that disciplinary proceedings are carried out in accordance with the relevant prescripts.
- 8.1.2 The accounting authority must ensure that the investigation is conducted within a reasonable period.
- 8.1.3 If an accounting authority or any of its members is alleged to have committed financial misconduct, the executive authority, as soon as he/she becomes aware of the alleged misconduct, must ensure that appropriate disciplinary proceedings are initiated against the member(s) responsible.
- 8.1.4 The relevant treasury may, after consultation with the executive authority—
 - (a) direct a person other than an employee of the public entity conducts the investigation; or
 - (b) issue any reasonable requirement regarding the way in which the investigation should be performed.

8.2 Criminal proceedings [Section 86 of the PFMA]

- 8.2.1 The executive authority or relevant treasury may direct a public entity to lay charges of criminal financial misconduct against any person should an accounting authority fail to take appropriate action.

8.3 Reporting [Section 85(1)(a) and (e) of the PFMA]

- 8.3.1 The accounting authority must, on an annual basis, submit to the designated accounting officer, executive authority, relevant treasury and Auditor-General a schedule of—
 - (a) the name and rank of employee facing disciplinary hearings or criminal charges;
 - (b) the outcome of any disciplinary hearings and/or criminal charges; and
 - (c) the sanctions and any further action taken against the relevant employee.
- 8.3.2 Such a report must refer to any changes to the public entity's systems of financial and risk management or any other matter dealt with in the Act, as a result of the investigation.

9

Public-Private Partnerships

9.1 Application of these *Treasury Regulations*

- 9.1.1 The *Treasury Regulations* in this chapter apply to a public entity listed in Schedule 3A or 3C.

9.2 Definitions

“**public-private partnership agreement**” means an agreement between a public entity and a private party in terms of which–

- (a) the private party undertakes to perform an institutional function on behalf of the between a public entity for a specified or indefinite time;
- (b) the private party receives a benefit for performing the function, either by way of:
 - (i) compensation from a revenue fund or a transfer from public entity;
 - (ii) charges or fees collected by the private party from users or customers of a service provided to them; or
 - (iii) a combination of such compensation and such charges or fees;
- (c) the private party is generally liable for the risks arising from the performance of the function; and
- (d) depending on the specifics of the agreement, public entity facilities, equipment or other resources may be transferred or made available to the private party.

9.3 General responsibilities of accounting officers

- 9.3.1 The accounting authority is responsible for ensuring that the public entity complies with these *Treasury Regulations* and, to this end, for implementing systems and procedures that–
- (a) are open, competitive and transparent; and
 - (b) provide safeguards against favouritism, improper practices and opportunities for fraud, theft and corruption.

9.4 Treasury approval

- 9.4.1 The accounting authority may not enter into a PPP agreement without the prior written approval of the relevant treasury.
- 9.4.2 The relevant treasury may give such approval only if it is satisfied that the proposed PPP agreement will—
 - (a) provide value for money;
 - (b) be affordable for the public entity; and
 - (c) transfer appropriate technical, operational and financial risk to the private party.
- 9.4.3 When a provincial treasury gives such approval, it must exercise its delegated powers subject to any limitations and qualifications in terms of the national Treasury's delegation.