

# CONDITIONS: SPECIAL APPROPRIATION BILL FOR ESKOM



**national treasury**

Department:  
National Treasury  
REPUBLIC OF SOUTH AFRICA

# Provisions of Special Appropriation Bill (1)

- **The Bill as tabled provides**
  - for R26 billion & R33 billion for 2019/20 and 2020/21 financial years, respectively (cl 1(1)(a))
  - that appropriations for 2019/20 & 2020/21 financial years are to assist Eskom with its financial obligations (cl 1(1)(b))
  - that amount to be transferred in portions and on dates that Minister of Finance determines, taking into account Eskom's financial position as verified by National Treasury (cl 1(2)(a))

# Provisions of Special Appropriation Bill (2)

- **The Bill as tabled further provides that**
  - to promote transparency & effective management of amount, Minister of Finance, in writing-
    - may impose conditions to be met by Eskom before any part of amount is transferred
    - must impose conditions to be met by Eskom after transfer of any part of amount
    - must stop use of any part of amount iro which conditions imposed, have not been met & report stoppage to Parliamentary committees (cl 1(2)(b) & (c))
  - any part of amount not transferred to Eskom by end of relevant financial year reverts to National Revenue Fund (cl 1(2)(c))

# **PROPOSED CONDITIONS**

# Background

- The Standing and Select Committees on Appropriations conducted public hearings on the Special Appropriation Bill from 03 to 17 September 2019
- National Treasury lead by its Director-General made presentations to these Committees and stated that the National Treasury is in the process of developing conditions to be imposed to Eskom on this Special Appropriation Bill
- Both Committees have formally requested the Minister that National Treasury formally share the proposed conditions on the Special Appropriation Bill for consideration before the Committees adopt the Bill
- National Treasury has consulted with the Department of Public Enterprises (DPE)

# Financial Conditions... (1)

1. Eskom must continue providing daily liquidity position updates and include sufficient detail to identify underlying income, operational expenditure (OPEX), working capital, capital expenditure (CAPEX) and financing cash flows.
2. Eskom to submit and present monthly management reports that are signed off by the GCEO, to include IFRS standard Profit and Loss (P&L), Cash flow and balance sheet update, including commentary addressing all deviations from the annual budget that individually exceed ZAR100 million during the month. This should be for each division such as Generation, Transmission and Distribution, as well as at group level.

# Financial Conditions... (2)

3. Eskom must submit a quarterly Board approved schedule of redemptions and interest payments for the full duration of loan agreements within a week after the enactment of the Bill
4. The recapitalisation will only be use to settle debt and interest payments and nothing else
5. Eskom must submit a monthly report on the amount and actions underway to recover all and any sums outstanding for electricity sales, for any debtor who owes in excess of ZAR 100 million. The first report is to be provided not more than a month from the enactment of the Bill.
6. Eskom to provide monthly updates on the status of actions being taken to dispose of Eskom Finance Company – target disposal prior to 31 March 2020.

# Financial Conditions... (3)

6. Eskom to provide a justification for the continued use of the Eskom Insurance Captive for risk written outside the Eskom group, and an independent valuation of the insurance captive by 31 December 2019.
7. Eskom to submit a plan to manage the cash of the business within its available resources not more than a month from the enactment of the Bill
8. Eskom to report on the initiatives being implemented to reduce the primary energy costs by not more than a month from the enactment of the Bill. Such report will thereafter be provided monthly.
9. Detailed cost, timing and benefit plan for completion of Kusile and Medupi not more than a month from the enactment of the Bill.
10. Capital plans to be approved by NT and DPE . Quarterly update of progress to be provided from 31 December 2019.



# Operational Conditions

11. Eskom to provide a monthly statement of expected capex spend and rationale for each item individually in excess of ZAR 100 million, including investment rationale and impacts of any deferral. The first report to be provided by 31 December 2019.
12. Eskom must provide a report on the defects on the build programme and how they will be fixed by not more than a month from the enactment of the Bill, and quarterly thereafter.
13. Eskom to provide monthly reports on the measures being implemented to improve the Energy Availability Factor (EAF) to 80%.

# Governance Conditions

14. Eskom must provide a report on the initiatives being implemented to address all matters relating to the irregular expenditure that have been reported by the external auditors by not more than a month from the enactment of the Bill , and thereafter quarterly.
15. Eskom must submit a report on the measures that have been implemented to deal with all the individuals that have been involved in the irregular, fruitless and wasteful expenditure incurred for the period ending 2018/19 that was reported by the external auditors, and provide an update quarterly.
16. Ensure full implementation of the SOCs remuneration standards by 31 March 2020.
17. No incentive bonus payouts to executives in the years where equity support is provided.

# Shareholder Conditions

18. DPE to ensure appointment of the permanent group CEO by not more than a month from the enactment of the Bill
19. DPE to ensure that that Board is strengthened by 31 December 2019.
20. DPE through the Board to ensure that Eskom's executive management performance agreement are linked to the deliverables as contained in the shareholder compact and the conditions as set out by the Minister Finance by 31 December 2019.
21. DPE to publish a special paper on Eskom restructuring roadmap by not more than a month from the enactment of the Bill
22. DPE to provide quarterly reports to Parliament (Standing Committee on Appropriation and Select Standing Committee on Appropriation) on adherence to conditions

# Restructuring Conditions

23. Eskom must produce the separate financials for generation, distribution and transmission March 2020.
24. Eskom to provide monthly updates on the progress of the restructuring of the business.

# General Conditions

25. The repayment of any loans will be pre-agreed with National Treasury.
26. National Treasury will have the right at any time to appoint advisors to review information provided by Eskom, and Eskom will provide such support and information to National Treasury advisors as National Treasury may request.
27. The cost of such advisors, which may include financial and legal advisors, will be borne by Eskom, and will be settled by National Treasury from the sums that National Treasury may advance to Eskom.
28. All the required reports must be submitted to both Ministers of Finance and Public Enterprises

# **MECHANISMS FOR IMPOSING CONDITIONS**

# Mechanisms to impose conditions

## Option 1 - Primary legislative conditions

- Legislation itself imposing conditions
- Conditions so imposed = primary legislation

## Option 2 - Subordinate legislative conditions

- Legislation enabling Minister of Finance to make regulations to impose conditions
- Conditions so imposed = subordinate legislation

## Option 3 - Ministerial conditions

- Legislation enabling Minister of Finance to impose conditions, *as proposed in the Bill*
- Conditions so imposed = administrative decision

## Option 4 - Combination of options 1 & 2 or options 1 & 3

# Option 1 - Primary legislative conditions, i.e. in the Bill

- May only be amended by Parliament
- Only conditions, especially for 2019/20, that are unlikely to require changes should be included in the Bill
- Conditions also to be written in such way that they are obtainable
  - If not, may result in funds not being transferred & Eskom defaulting on debt repayments as well as possible cross defaults
- Least flexibility to adjust conditions
- Least flexibility to add conditions except if subordinate legislative conditions (regulation-making powers) or ministerial conditions are also enabled



# Option 2 - Subordinate legislative conditions (regulations)

- No role for Parliament unless provision is made for Parliamentary scrutiny before issued
- Funds transferred later because of public consultation on draft regulations and, if included, Parliamentary scrutiny
- Lesser flexibility (compared to Ministerial conditions) to adjust or add conditions, if required, given public consultation on draft regulations and, if included, Parliamentary scrutiny
- Better flexibility (compared to Primary legislative conditions) to adjust or add conditions

# Option 3 - Ministerial conditions (Recommended)

- No role for Parliament unless provision is made for Parliamentary scrutiny before issued
- Funds transferred later, if Parliamentary scrutiny is provided for
- ***Enables quickest transfer of funds and therefore least chance of default by Eskom and possible cross defaults because of unobtainable conditions in the Bill or time required to issue first regulations on conditions or amending regulations***
- Most flexibility to adjust or add conditions according to changed circumstances
- This option is therefore proposed in the Bill
- ***Whether conditions in regulations or Ministerial conditions are not met, expenditure will be irregular as defined in the PFMA***
- This option could be strengthened by providing in the Bill for Parliamentary scrutiny of draft conditions, including amendments, and monthly reporting to relevant Parliamentary Committees on compliance with conditions

# Thank You