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Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

MEDIA STATEMENT

NATIONAL TREASURY'S DECISION NOT TO INVOKE SECTION 216(2) OF THE CONSTITUTION AGAINST THE 27 DEFAULTING MUNICIPALITIES THAT HAVE NOT HONOURED THEIR PAYMENT ARRANGEMENTS

On 13 March 2015 National Treasury warned 59 municipalities across the country that the March 2015 tranche of the Local Government Equitable Share (LGES) would be withheld because of their failure to pay creditors, including Eskom and Water Boards, as required by section 65(2) of the Municipal Finance Management Act, 2003 (MFMA, Act No. 56 of 2003).

Municipalities were advised to comply with National Treasury's prerequisite conditions to ensure the release of the March 2015 tranche of the LGES. In terms hereof municipalities were required to enter into reasonable, affordable and realistic repayment arrangements to settle their arrears to Eskom and Water Boards, while maintaining payment of the current accounts to these service providers. These municipalities were required to table these repayment plans in Council to demonstrate their commitment to settling this debt.

National Treasury met with the 59 affected municipalities to discuss their plight and to jointly agree on the remedial actions required to assist them. These individual municipal engagements were attended by representatives from SALGA, DCoG, the relevant provincial treasury, Eskom and the relevant Water Boards. Subsequently, National Treasury released the LGES to all affected municipalities that met the prerequisite conditions.

Furthermore, National Treasury advised that, should these municipalities fail to honour the agreed repayment arrangements, the consequence would be dire as Section 216(2) of the Constitution would be invoked in response to their persistent breach.

Among the positive outcomes of this process is that municipalities concluded signed repayment agreements with Eskom and Water Boards as follows:

- Of the 59 municipalities, 51 municipalities required signed Eskom agreements and to date 49 have signed.
- Of the 59 municipalities, 14 municipalities required signed Water Boards agreements and to date 12 have signed.

Unfortunately, the September 2015 Section 41 reports in terms of the Municipal Finance Management Act, 2003 (MFMA, Act No. 56 of 2003) submitted to National Treasury by Eskom and the Water Boards showed that 27 municipalities had breached their repayment agreements with either one or both of these entities.





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On the 20 October 2015 National Treasury communicated, in writing, to these municipalities (27) affording them an opportunity to provide a written response as to why National Treasury should not invoke Section 216(2) of the Constitution for their persistent breach.

SALGA had been informed of this process at a prior engagement with National Treasury at which it committed to meet with the 27 defaulting municipalities on the 27 October 2015. The purpose of this engagement was for SALGA to alert these municipalities of National Treasury's impending decision to invoke Section 216(2) of the Constitution for persistent breach and to communicate the seriousness of this process and the associated accountability.

Section 216(2) of the Constitution permits the National Treasury to stop the transfer of all funds (equitable share and conditional grants) to any organ of state that commits persistent and material breach of their financial obligations. Although the decision to invoke Section 216(2) of the Constitution does initially make it difficult for municipalities to meet their immediate financial obligations, it ultimately requires municipalities to be consistent in implementing measures to improve their financial management practices.

All the 27 municipalities responded positively to the correspondence dated 20 October 2015, and committed themselves to implementing sustainable measures to address the root causes of their operational management failures and to honour their financial obligations. Furthermore, the MECs for Finance and CoGTAs, together with SALGA have committed to collectively assist municipalities. The Minister of Finance has therefore decided not to invoke Section 216(2) of the Constitution against these municipalities for now.

This provides all stakeholders, including the municipalities affected by this process, sufficient time to resolve the matters tabled at the engagements with the 59 municipalities, with the understanding that section 216 will be invoked in case of default on payments. A summary of concrete measure and commitments that have been made by municipalities with the support of SALGA and provinces to restore financial sustainability and honour commitments include the following:

- SALGA's commitment to facilitate a process where the institutional arrangements between District municipalities, local municipalities, Eskom and Water Boards will be properly documented and updated with the support of the relevant sector departments;
- Where municipal budgets were not funded in line with Section 18 of the MFMA, provincial treasuries are committed to assist municipalities to correct in their Adjustments Budget process supported by provincial treasuries;
- Municipalities have committed to put measures in place to monitor the total consumption of both electricity and water within their area of jurisdiction, whether they are the service provider or not; and
- Some Municipalities have committed to initiate a process to install water and electricity meters to verify the invoices from Eskom and Water Boards, this will assist in establishing which part of the community is consuming more than the Council policy with regard to the provision of free basic services; and





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- Municipalities will decisively deal with water and electricity losses that are spiralling out of control and work towards National Treasury's norms and standards as articulated in MFMA Circular No. 71.

Provinces will now be responsible for monitoring and overseeing these commitments and a comprehensive progress report per municipality per province will be submitted jointly by the MECs for Finance and provincial CoGTAs by the end of January 2016 and quarterly thereafter. National Treasury will report this information quarterly to the various Parliamentary Committees as committed by the Minister of Finance. The information reported will inform National Treasury's release of the March 2016 LGES to these municipalities.

Issued on behalf of National Treasury

Date: 27 November 2015

