

## Notes to the presentation to UNCTAD Debt Management

### 1. Legislative Framework

Public Finance Management Act, Act 1 of 1999

Section 66 of the PFMA prescribes:

The powers of Government and the Public Entities to borrow money, issue guarantees, indemnities and or securities that may bind the National Revenue Fund. Restrictions on borrowing, guarantees and other commitments

- (1) An institution to which this Act applies may not borrow money or issue a guarantee, indemnity or security, or enter into any other transaction that binds or may bind that institution or the Revenue Fund to any future financial commitment, unless such borrowing, guarantee, indemnity, security or other transaction-
  - (a) is authorised by this Act
  - (b) in the case of public entities, is also authorised by other legislation not in conflict with this Act
  - (c) Provincial business enterprises within confines of borrowing powers of Provincial Government Act
- (2) A government may only through the following persons borrow money, or issue a guarantee, indemnity or security, or enter into any other transaction that binds or may bind a Revenue Fund to any future financial commitment:
  - (a) The National Revenue Fund: The Minister or, in the case of the issue of a guarantee, indemnity or security, the responsible Cabinet member acting with the concurrence of the Minister in terms of section 70.
  - (b) A Provincial Revenue Fund: The MEC for Finance in the province, acting in accordance with the Borrowing Powers of Provincial Governments Act, 1996.
- (3) Public entities may only through the following persons borrow money, or issue a guarantee, indemnity or security, or enter into any other transaction that binds or may bind that public entity to any future financial commitment:
  - (a) A public entity listed in [Schedule 2](#): The accounting authority for that [Schedule 2](#) public entity.
  - (b) A national government business enterprise listed in [Schedule 3](#) and authorised by notice in the national Government Gazette by the Minister: The accounting authority for that government business enterprise, subject to any conditions the Minister may impose.

- (c) Any other national public entity: The Minister or, in the case of the issue of a guarantee, indemnity or security, the Cabinet member who is the executive authority responsible for that public entity, acting with the concurrence of the Minister in terms of [section 70](#).
  - (d) A provincial government business enterprise listed in [Schedule 3](#) and authorised by notice in the national Government Gazette by the Minister: The MEC for finance in the province, acting with the concurrence of the Minister, subject to any conditions that the Minister may impose.
- (4) Constitutional institutions and provincial public entities not mentioned in subsection (3) (d) may not borrow money, nor issue a guarantee, indemnity or security, nor enter into any other transaction that binds or may bind the institution or entity to any future financial commitment.
  - (5) Despite subsection (4), the Minister may in writing permit a public entity mentioned in subsection (3) (c) or (d) or a constitutional institution to borrow money for bridging purposes up to a prescribed limit, including a temporary bank overdraft, subject to such conditions as the Minister may impose.
  - (6) A person mentioned in [subsection \(2\)](#) or (3) may not delegate a power conferred in terms of that subsection, except with the prior written approval of the Minister.
  - (7) A public entity authorised to borrow money—
    - (a) must annually submit to the Minister a borrowing Programme for the year; and
    - (b) may not borrow money in a foreign currency above a prescribed limit, except when that public entity is a company in which the state is not the only shareholder.

Section 70 of the PFMA stipulates:

- (1) A Cabinet member, with the written concurrence of the Minister (subject to any conditions approved by the Minister), may issue a guarantee, indemnity or security which binds- (a) the National Revenue Fund, or (b) a National public entity.
- (2) Any payment under a guarantee, indemnity or security issued in terms of subsection 1 (a) is a direct charge against the National Revenue Fund and in terms of subsection (b) is a direct charge against the national public entity concerned.
- (3) A Cabinet member who seeks the Minister's concurrence for the issuing of a guarantee, indemnity or security must provide the Minister with all the relevant information as the Minister may require