

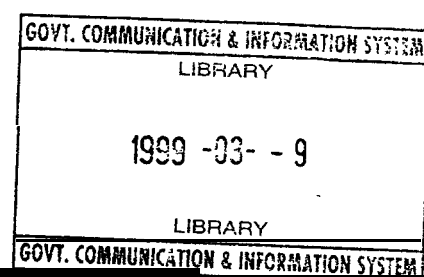
REPUBLIC OF SOUTH AFRICA

PUBLIC FINANCE MANAGEMENT BILL

*(As presented by the Portfolio Committee on Finance (National Assembly) as a section 75
Bill pursuant to the resolution adopted by the National Assembly on 16 September 1998)*

(MINISTER OF FINANCE)

[B 119B—98]



REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP OPENBARE FINANSIËLE BESTUUR

*(Soos voorgelê deur die Portefeuljekomitee oor Finansies (Nasionale Vergadering) as 'n
artikel 75-wetsontwerp ooreenkomstig die besluit op 16 September 1998 deur die Nasionale
Vergadering aangeneem)*

(MINISTER VAN FINANSIES)

[W 119B—98]

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BILL

To regulate financial management in the national government; to ensure that all revenue, expenditure, assets and liabilities of that government are managed efficiently and effectively; to provide for the responsibilities of persons entrusted with financial management in that government; and to provide for matters connected therewith.

BE. IT ENACTED by the Parliament of the Republic of South Africa. as follows:—

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SCHEDULES

CHAPTER 1

INTERPRETATION, OBJECT, APPLICATION AND AMENDMENT OF
THIS ACT

- Definitions 15

1. In this Act, unless the context otherwise indicates—
- “accounting officer” means a person mentioned in section 36;
 “accounting authority” means a body or person mentioned in section 49;
 “Accounting **Standards** Board” means the board established in terms of section 87; 20
 “annual **Division of Revenue Act**” means the Act of Parliament which must annually be enacted in terms of section 214(1) of the Constitution;
 “constitutional institution” means an institution listed in Schedule 1;
 “department” means a national department;
 “executive **authority**”— 25
 (a) in relation to a national department, means the Cabinet member who is accountable to Parliament for that department; and
 (b) in relation to a national public entity, means the Cabinet member who is accountable to Parliament for that public entity or in whose portfolio it falls;
 “financial year”— 30
 (a) means a year ending 31 March; or
 (b) in relation to a national public entity that existed when this Act took effect and that has a different financial year in terms of other legislation, means that financial year, provided the National Treasury has approved that other financial year; 3s
 “financial **statements**” means statements consisting of at least—
 (a) a balance sheet;
 (b) an income statement;
 (c) a cash-flow statement;
 (d) any other statements that may be prescribed; and 40
 (e) any notes to these statements;
 “fruitless and wasteful expenditure” means expenditure which was made in vain and would have been avoided had reasonable care been exercised;
 “**generally recognised accounting practice**” means an accounting practice complying in material respects with standards issued by the Accounting Standards Board; 45
 “irregular expenditure” means expenditure, other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation, including—
 (a) this Act; or 50
 (b) the State Tender Board Act, 1968 (Act No. 86 of 1968), or any regulations made in terms of that Act;
 “main division within a vote” means one of the main segments into which a vote is divided and which—

- (a) specifies the total amount which is appropriated for the items under that segment; and
- (b) is approved by Parliament as part of the vote;
- “Minister”** means the Minister of Finance;
- “national department”** means— 5
- (a) a department listed in Schedule 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994), but excluding a provincial administration; or
- (b) an organisational component listed in Schedule 3 of that Act;
- “national government business enterprise”** means an entity which—
- (a) is a juristic person under the ownership control of the national executive; 10
- (b) has been assigned financial and operational authority to carry on a business activity;
- (c) as its principal business, provides goods or services in accordance with ordinary business principles; and
- (d) is financed fully or substantially from sources other than— 15
- (i) the National Revenue Fund; or
- (ii) by way of a tax, levy or other statutory money:
- “national public entity”** means—
- (a) a national government business enterprise; or
- (b) a board, commission, company, corporation, fund or other entity (other than a national government business enterprise) which is— 20
- (i) established in terms of national legislation ;
- (ii) fully or substantially funded either from the National Revenue Fund, or by way of a tax, levy or other money imposed in terms of national legislation; and 25
- (iii) accountable to Parliament;
- “National Treasury”** means the National Treasury established by section 5;
- “overspending”**—
- (a) in relation to a vote, means when expenditure under the vote exceeds the amount appropriated for that vote: or 30
- (b) in relation to a main division within a vote, means when expenditure under the main division exceeds the amount appropriated for that main division, subject to section 43;
- “ownership control”**, in relation to an entity, means the ability to exercise any of the following powers to govern the financial and operating policies of the entity in order to obtain benefits from its activities: 35
- (a) To appoint or remove all, or the majority of, the members of that entity’s board of directors or equivalent governing body;
- (b) to appoint or remove that entity’s chief executive officer;
- (c) to cast all, or the majority of, the votes at meetings of that board of directors or equivalent governing body; or 40
- (d) to control all, or the majority of, the voting rights at a general meeting of that entity;
- “prescribe”** means prescribe by regulation or instruction in terms of section 76;
- “public entity”** means a national public entity; 45
- “Revenue Fund”** means—
- (a) the National Revenue Fund mentioned in section 213 of the Constitution;
- “this Act”** includes any regulations and instructions in terms of section 69, 76, 85 or 91;
- “trading entity”** means an entity operating within the administration of a department for the provision or sale of goods or services, and established— 50
- (a) in the case of a national department, with the approval of the National Treasury;
- “treasury”** means the National Treasury;
- “unauthorised expenditure”** means— 55
- (a) overspending of a vote or a main division within a vote;
- (b) expenditure not in accordance with the purpose of a vote or, in the case of a main division, not in accordance with the purpose of the main division;
- “vote”** means one of the main segments into which an appropriation Act is divided and which— 60
- (a) specifies the total amount which is usually appropriated per department in an appropriation Act; and

(b) is separately approved by Parliament before it approves the relevant draft appropriation Act as such.

Object of this Act

2. The object of this Act is to secure transparency, accountability, and sound management of the revenue, expenditure, assets and liabilities of the institutions to 5 which this Act applies.

Institutions to which this Act applies

3. (1) This Act, to the extent indicated in the Act, applies to—

- (a) departments;
- (b) public entities listed in Schedule 2 or 3; 10
- (c) constitutional institutions; and
- (d) Parliament, subject to subsection (2).

(2) To the extent that a provision of this Act applies to—

- (a) Parliament, any controlling and supervisory functions of the National Treasury in terms of that provision are performed by the Speaker of the 15 National Assembly and the Chairperson of the National Council of Provinces, acting jointly.

(3) In the event of any inconsistency between this Act and any other legislation, this Act prevails.

Amendments to this Act

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4. Draft legislation directly or indirectly amending this Act, or providing for the enactment of subordinate legislation that may conflict with this Act, may be introduced in Parliament—

- (a) by the Minister only; or
- (b) only after the Minister has been consulted on the contents of the draft 25 legislation.

CHAPTER 2

NATIONAL TREASURY AND NATIONAL REVENUE FUND

Part 1: National Treasury

Establishment

30

5. (1) A National Treasury is hereby established, consisting of—

- (a) the Minister, who is the head of the Treasury; and
- (b) the national department or departments responsible for financial and fiscal matters.

(2) The Minister, as the head of the National Treasury, takes the policy and other 35 decisions of the Treasury, except those decisions taken as a result of a delegation or instruction in terms of section 10.

Functions and powers

6. (1) The National Treasury must—

- (a) promote the national government's fiscal policy framework and the co- 40 ordination of macro-economic policy;
- (b) co-ordinate intergovernmental financial and fiscal relations;
- (c) manage the budget preparation process;
- (d) exercise control over the implementation of the annual national budget, including any adjustments budgets; 45
- (e) facilitate the implementation of the annual Division of Revenue Act;
- (f) monitor the implementation of provincial budgets;
- (g) promote and enforce transparency and effective management in respect of revenue, expenditure, assets and liabilities of departments, public entities and constitutional institutions; and 50

- (h) perform the other functions assigned to the National Treasury in terms of this Act.
- (2) To the extent necessary to perform the functions mentioned in subsection (1), the National Treasury—
- (a) must prescribe uniform treasury norms and standards: 5
 - (b) must enforce this Act and any prescribed norms and standards, including any prescribed standards of generally recognised accounting practice and uniform classification systems. in national departments;
 - (c) must monitor and assess the implementation of this Act, including any prescribed norms and standards, in national public entities and in constitu- 10 tional institutions;
 - (d) may assist departments and constitutional institutions in building their capacity for efficient, effective and transparent financial management:
 - (e) may investigate any system of financial management and internal control in any department, public entity or constitutional institution; 15
 - (f) must intervene by taking appropriate steps, which may include steps in terms of section 100 of the Constitution or the withholding of funds in terms of section 216(2) of the Constitution, to address a serious or persistent material breach of this Act by a department, public entity or constitutional institution; and 20
 - (g) may do anything further that is necessary to fulfil its responsibilities effectively.
- (3) Subsections (1)(g) and (2) apply to public entities listed in Schedule 2 only to the extent provided for in this Act.

Banking, cash management and investment framework 25

7. (1) The National Treasury must prescribe a framework within which departments, public entities listed in Schedule 3 and constitutional institutions must conduct their cash management.

(2) A department authorised to open a bank account in terms of the prescribed framework, a public entity or a constitutional institution may open a bank account only— 30

- (a) with a bank registered in South Africa and approved in writing by the National Treasury; and
- (b) after any prescribed tendering procedures have been complied with.

(3) A department, public entity listed in Schedule 3 or constitutional institution may 35 not open a bank account abroad or with a foreign bank except with the written approval of the National Treasury.

(4) The National Treasury may prescribe an investment policy for public entities, constitutional institutions and those departments authorised to open a bank or other account in terms of the prescribed framework. 40

(5) A bank which has opened a bank account for a department, a public entity listed in Schedule 3 or a constitutional institution, or any other institution that holds money for a department, a public entity listed in Schedule 3 or a constitutional institution, must promptly disclose information regarding the account when so requested by the National Treasury or the Auditor-General 45

Annual consolidated financial statements

8. (1) The National Treasury must—

- (a) prepare consolidated financial statements in accordance with generally recognised accounting practice for each financial year in respect of— 50
 - (i) national departments;
 - (ii) public entities under the ownership control of the national executive;
 - (iii) constitutional institutions;
 - (iv) the South African Reserve Bank;
 - (v) the Auditor-General; and
 - (vi) Parliament; and 55
- (b) submit those statements for audit to the Auditor-General within three months after the end of that financial year.

(2) The Auditor-General must audit the consolidated financial statements and submit an audit report on the statements to the National Treasury within three months of receipt of the statements.

(3) The Minister must submit the consolidated financial statements and the audit report on those statements within one month of receiving the report from the Auditor-General, to Parliament for tabling in both Houses.

(4) The consolidated financial statements must be made public when submitted to Parliament.

(5) If the Minister fails to submit the consolidated financial statements and the Auditor-Generals audit report on those statements to Parliament within seven months after the end of the financial year to which those statements relate—

(a) the Minister must submit to Parliament a written explanation setting out the reasons why they were not submitted; and

(b) the Auditor-General may issue a special report on the delay.

Financial statistics and aggregations

15

9. The National Treasury may annually compile in accordance with international standards, and publish in the national Government Gazette, financial statistics and aggregations concerning all spheres of government.

Delegations by National Treasury

10. (1) The Minister may—

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(a) in writing delegate any of the powers entrusted to the National Treasury in terms of this Act, to the head of a department forming part of the National Treasury, or instruct that head of department to perform any of the duties assigned to the National Treasury in terms of this Act.

(2) A delegation, instruction or request in terms of subsection (1) to the head of a department forming part of the National Treasury—

(a) is subject to any limitations or conditions that the Minister may impose;

(b) may authorise that head, in the case of subsection (1)(a)—

(i) to sub-delegate, in writing, the delegated power to another National Treasury official, or to the holder of a specific post in the National Treasury, or to the accounting officer of a constitutional institution or a department, or to the accounting authority for a public entity; or

(ii) to instruct another National Treasury official, or the holder of a specific post in the National Treasury, or the accounting officer for a constitutional institution or a department, or the accounting authority for a public entity, to perform the assigned duty; and

(d) does not divest the Minister of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.

(3) The Minister may confirm, vary or revoke any decision taken by the head of a department forming part of the National Treasury, as a result of a delegation, instruction or request in terms of subsection (1)(a), or by a treasury official or accounting officer or accounting authority as a result of an authorisation in terms of subsection (2)(b), subject to any rights that may have become vested as a consequence of the decision.

Part 2: National Revenue Fund

Control of National Revenue Fund

45

11. (1) The National Treasury is in charge of the National Revenue Fund and must enforce compliance with the provisions of section 213 of the Constitution, namely that—

- (a) all money received by the national government must be paid into the Fund, except money reasonably excluded by this Act or another Act of Parliament; and
- (b) no money may be withdrawn from the Fund except—
- (i) in terms of an appropriation by an Act of Parliament; or 5
 - (ii) as a direct charge against the Fund, subject to section 15(1)(a)(ii).
- (2) Draft legislation that provides for a withdrawal from the National Revenue Fund as a direct charge against the Fund, may be introduced in Parliament only after the Minister has been consulted and has consented to the direct charge.
- (3) Money that must be paid into the National Revenue Fund is paid into the Fund by 10 depositing it into a bank account of the Fund in accordance with any requirements that may be prescribed.
- (4) The National Treasury must establish appropriate and effective cash management and banking arrangements for the National Revenue Fund.
- (5) The National Treasury must ensure that there is at all times sufficient money in the 15 National Revenue Fund.

Deposits and withdrawals by South African Revenue Services in Revenue Funds

12. (1) The South African Revenue Services must promptly deposit into a Revenue Fund all taxes, levies, duties, fees and other moneys collected by it for that Revenue Fund, in accordance with a framework determined by the National Treasury. 20
- (2) The South African Revenue Services may, despite section 15(1), withdraw money from the National Revenue Fund—
- (a) to refund any tax, levy or duty credits or any other charges in connection with taxes, levies or duties;
 - (b) to make other refunds approved by the National Treasury; or 25
 - (c) to transfer to a member of the South African Customs Union any money collected on its behalf.
- (3) The National Treasury must promptly transfer all taxes, levies, duties, fees and other moneys collected by the South African Revenue Services for a province and deposited into the National Revenue Fund, to that province's Provincial Revenue Fund. 30
- (4) Withdrawals in terms of subsection (2) or (3) are direct charges against the National Revenue Fund.

Deposits into National Revenue Fund

13. (1) All money received by the national government must be paid into the National Revenue Fund, except money received by— 35
- (a) Parliament;
 - (b) a national public entity;
 - (c) the South African Reserve Bank;
 - (d) the Auditor-General;
 - (e) the national government from donor agencies which in terms of legislation or 40 the agreement with the donor, must be paid to the Reconstruction and Development Programme Fund;
 - (f) a national department—
 - (i) operating a trading entity, if the money is received in the ordinary course of operating the trading entity: 45
 - (ii) in trust for a specific person or category of persons or for a specific purpose;
 - (iii) from another department to render an agency service for that department; or
 - (iv) if the money is of a kind described in Schedule 4; or 50
 - (g) a constitutional institution—
 - (i) in trust for a specific person or category of persons or for a specific purpose: or
 - (ii) if the money is of a kind described in Schedule 4.

(2) The exclusion in subsection (1)(b) does not apply to a national public entity which is not listed in Schedule 2 or 3 but which in terms of section 47 is required to be listed.

(3) Draft legislation that excludes money from payment into the National Revenue Fund may be introduced in Parliament only after the Minister has been consulted on the reasonableness of the exclusion and has consented to the exclusion.

(4) Any legislation inconsistent with subsection (1) is of no force and effect to the extent of the inconsistency.

(5) Money received by Parliament, a national public entity listed in Schedule 2 or 3, the South African Reserve Bank or the Auditor-General must be paid into a bank account 10 opened by the institution concerned.

Withdrawal of exclusions

14. (1) The National Treasury may withdraw, from a date determined by it, any exclusion granted to a national department, a constitutional institution or a national public entity in terms of section 13(1), either with regard to all money or with regard to 15 money of a specific kind received by that department, constitutional institution or public entity, if—

(a) the exclusion is not reasonable within the context of section 213 of the Constitution; or

(b) the National Treasury regards the withdrawal of the exclusion to be necessary 20 for transparency or more effective and accountable financial management.

(2) The exclusion in terms of section 13 (1) of the following public entities may not be withdrawn:

(a) A national government business enterprise which is a company and in which the state is not the sole shareholder; and 25

(b) the national public entities listed in Schedule 2.

(3) From the date on which the withdrawal of an exclusion in terms of subsection (1) takes effect until the end of the relevant financial year, the National Treasury may transfer money from the National Revenue Fund, as a direct charge against the Fund, to the national department or public entity affected by the withdrawal, provided that the 30 amount of the transfer does not exceed the amount that would otherwise have been excluded from payment into the Fund.

(4) The Minister must promptly inform Parliament of any withdrawal of an exclusion in terms of subsection (1).

Withdrawals and investments from National Revenue Fund

35

15. (1) Only the National Treasury may withdraw money from the National Revenue Fund, and may do so only—

(a) to provide funds that have been authorised—

(i) in terms of an appropriation by an Act of Parliament; or

(ii) as a direct charge against the National Revenue Fund provided for in the 40 Constitution or this Act, or in any other Act of Parliament provided the direct charge in such a case is listed in Schedule 5;

(b) to refund money invested by a province in the National Revenue Fund; or

(c) to refund money incorrectly paid into, or which is not due to, the National 45 Revenue Fund.

(2) A payment in terms of subsection (1)(b) or (c) is a direct charge against the National Revenue Fund.

(3)(a) The National Treasury may invest temporarily, in the Republic or elsewhere, money in the National Revenue Fund that is not immediately needed.

(b) When money in the National Revenue Fund is invested, the investment, including 50 interest earned, is regarded as part of the National Revenue Fund.

Use of funds in emergency situations

16. (1) The Minister may authorise the use of funds from the National Revenue Fund

to defray expenditure of an exceptional nature which is currently not provided for and which cannot, without serious prejudice to the public interest, be postponed to a future parliamentary appropriation of funds.

(2) The combined amount of any authorisations in terms of subsection (1), may not exceed two per cent of the total amount appropriated in the annual national budget for 5 the current financial year.

(3) An amount authorised in terms of subsection (1) is a direct charge against the National Revenue Fund.

(4) An amount authorised in terms of subsection (1) must—

(a) be reported to Parliament and the Auditor-General within 14 days, or if the 10 funds are authorised for the deployment of the security services, within a period determined by the President; and

(b) be attributed to a vote.

(5) A report to Parliament in terms of subsection (4)(a) must be submitted to the National Assembly for tabling in the Assembly and made public. 15

(6) Expenditure in terms of subsection (1) must be included either in the next adjustments budget for the financial year in which the expenditure is authorised or in other appropriation legislation tabled in the National Assembly within 120 days of the Minister authorizing the expenditure, whichever is the sooner.

CHAPTER 4

20

NATIONAL BUDGETS

Annual appropriations

26. Parliament must appropriate money for each financial year for the requirements of the state.

National annual budgets

25

27. (1) The Minister must table the annual budget for a financial year in the National Assembly before the start of that financial year or, in exceptional circumstances, on a date as soon as possible after the start of that financial year, as the Minister may determine.

(3) An annual budget must be in accordance with a format as may be prescribed, and 30 must at least contain—

(a) estimates of all revenue expected to be raised during the financial year to which the budget relates;

(b) estimates of current expenditure for that financial year per vote and per main 35 division within the vote;

(c) estimates of interest and debt servicing charges, and any repayments on loans;

(d) estimates of capital expenditure per vote and per main division within a vote for that financial year and the projected financial implications of that expenditure for future financial years;

(e) estimates of revenue excluded in terms of section 13(1) from the Revenue 40 Fund for that financial year;

(f) estimates of all direct charges against the Revenue Fund and standing appropriations for that financial year;

(g) proposals for financing any anticipated deficit for that financial year;

(h) an indication of intentions regarding borrowing and other forms of public 45 liability that will increase public debt during that financial year and future financial years;

(i) the projected—

(i) revenue for the previous financial year;

(ii) expenditure per vote, and per main division within the vote, for the 50 previous financial year; and

(iii) borrowing for the previous financial year; and

(j) any other information as may be prescribed, including any multi-year budget information.

(4) When the annual budget is introduced in the National Assembly, the accounting 55 officer for each department must submit to Parliament measurable objectives for each

main division within the department's vote. The treasury may co-ordinate these submissions and consolidate them in one document.

Multi-year budget projections

28. (1) The Minister must annually table in the National Assembly a multi-year budget projection of— 5

- (a) the estimated revenue expected to be raised during each year of the multi-year period; and
- (b) the estimated expenditure expected to be incurred per vote during each year of the multi-year period, differentiating between capital and current expenditure.

(2) A multi-year budget projection tabled by the Minister must contain the 10 Minister's key macro-economic projections.

Expenditure before annual budget is passed

29. (1) If an annual budget is not passed before the start of the financial year to which it relates, funds may be withdrawn in accordance with this section from the Revenue Fund for the services of the state during that financial year as direct charges 15 against the Fund until the budget is passed.

(2) Funds withdrawn from a Revenue Fund in terms of subsection (1)—

- (a) may be utilised only for services for which funds were appropriated in the previous annual budget or adjustments budget: and
- (b) may not— 20
 - (i) during the first four months of that financial year, exceed 45 per cent of the total amount appropriated in the previous annual budget;
 - (ii) during each of the following months, exceed 10 per cent of the total amount appropriated in the previous annual budget: and
 - (iii) in aggregate, exceed the total amount appropriated in the previous annual 25 budget.

(3) The funds provided for in subsection (1) are not additional to funds appropriated for the relevant financial year, and any funds withdrawn in terms of that subsection must be regarded as forming part of the funds appropriated in the annual budget for that financial year. 30

National adjustments budgets

30. (1) The Minister may table an adjustments budget in the National Assembly as and when necessary.

(2) A national adjustments budget may only provide for—

- (a) adjustments required due to significant or unforeseeable economic or financial 35 events affecting the fiscal targets set by the annual budget;
- (b) unforeseeable and unavoidable expenditure recommended by the national executive or any committee of Cabinet members to whom this task has been assigned ;
- (c) any expenditure in terms of section 16: 40
- (d) money to be appropriated for expenditure already announced by the Minister during the tabling of the annual budget;
- (e) the shifting of funds between and within votes or to follow the transfer of functions in terms of section 42;
- (f) the utilisation of savings under a main division of a vote for the defrayment of 45 excess expenditure under another main division of the same vote in terms of section 43; and
- (g) the roll-over of unspent funds from the preceding financial year.

Publishing of reports on state of budget

32. (1) Within 30 days after the end of each month, the National Treasury must 50 publish in the national Government Gazette a statement of actual revenue and expenditure with regard to the National Revenue Fund.

- (3) The statement must specify the following amounts and compare those amounts in each instance with the corresponding budgeted amounts for the relevant financial year:
- (a) The actual revenue for the relevant period, and for the financial year up to the end of that period ; 5
 - (b) the actual expenditure per vote (distinguishing between capital and current expenditure) for that period, and for the financial year up to the end of that period; and
 - (c) actual borrowings for that period, and for the financial year up to the end of that period. 10
- (4) The National Treasury may determine—
- (a) the format of the statement of revenue and expenditure: and
 - (b) any other detail the statement must contain.

Withholding of appropriated funds

33. The treasury— 15
- (a) may withhold from a department any remaining funds appropriated for a specific function if that function is transferred to another department or any other institution; and
 - (b) must allocate those remaining funds to that other department or institution.

Unauthorised expenditure 20

34. (1) Unauthorised expenditure does not become a charge against a Revenue Fund except when—
- (a) the expenditure is an overspending of a vote and Parliament approves, as a direct charge against the Revenue Fund, an additional amount for that vote which covers the overspending; or 25
 - (b) the expenditure is unauthorised for another reason and Parliament authorises the expenditure as a direct charge against the Revenue Fund.
- (2) If Parliament does not approve in terms of subsection(1)(a) an additional amount for the amount of any overspending, that amount becomes a charge against the funds allocated for the following or future financial years under the relevant vote. 30

CHAPTER 5

DEPARTMENTS AND CONSTITUTIONAL INSTITUTIONS

Part 1: Appointment of accounting officers

Accounting officers

36. (1) Every department and every constitutional institution must have an accounting officer. 35
- (2) Subject to subsection (3)—
- (a) the head of a department must be the accounting officer for the department; and
 - (b) the chief executive officer of a constitutional institution must be the accounting officer for that institution. 40
- (3) The treasury may, in exceptional circumstances, approve or instruct in writing that a person other than the person mentioned in subsection (2) be the accounting officer for—
- (a) a department or a constitutional institution; or 45
 - (b) a trading entity within a department.
- (4) The treasury may at any time withdraw in writing an approval *or* instruction in terms of subsection (3).
- (5) The employment contract of an accounting officer for a department, trading entity or constitutional institution must be in writing and, where possible, include performance standards. The provisions of sections 38 to 42, as may be appropriate, are regarded as forming part of each such contract. 50

Acting accounting officers

37. When an accounting officer is absent or otherwise unable to perform the functions of accounting officer, or during a vacancy, the functions of accounting officer must be performed by the official acting in the place of that accounting officer.

Part 2: Responsibilities of accounting officers

General responsibilities of accounting officers

38. (1) The accounting officer for a department, trading entity or constitutional institution—
- (a) must ensure that that department, trading entity or constitutional institution has and maintains—
 - (i) effective, efficient and transparent systems of financial and risk management and internal control; 10
 - (ii) a system of internal audit under the control and direction of an audit committee complying with and operating in accordance with regulations and instructions prescribed in terms of sections 76 and 77; 15
 - (iii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;
 - (iv) a system for properly evaluating all major capital projects prior to a final decision on the project;
 - (b) is responsible for the effective, efficient, economical and transparent use of the resources of the department, trading entity or constitutional institution; 20
 - (c) must take effective and appropriate steps to—
 - (i) collect all money due to the department, trading entity or constitutional institution;
 - (ii) prevent unauthorised, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct; and 25
 - (iii) manage available working capital efficiently and economically;
 - (d) is responsible for the management, including the safeguarding and the maintenance of the assets, and for the management of the liabilities, of the department, trading entity or constitutional institution; 30
 - (e) must comply with any tax, levy, duty, pension and audit commitments as may be required by legislation;
 - (f) must settle all contractual obligations and pay all money owing, including intergovernmental claims, within the prescribed or agreed period;
 - (g) on discovery of any unauthorised, irregular or fruitless and wasteful expenditure, must immediately report, in writing, particulars of the expenditure to the treasury and in the case of irregular expenditure involving the procurement of goods or services, also to the relevant tender board; 35
 - (h) must take effective and appropriate disciplinary steps against any official in the service of the department, trading entity or constitutional institution who— 40
 - (i) contravenes or fails to comply with a provision of this Act;
 - (ii) commits an act which undermines the financial management and internal control system of the department, trading entity or constitutional institution; or 45
 - (iii) makes or permits an unauthorised expenditure, irregular expenditure or fruitless and wasteful expenditure;
 - (i) when transferring funds in terms of the annual Division of Revenue Act, must ensure that the provisions of that Act are complied with;
 - (j) before transferring any funds (other than grants in terms of the annual Division of Revenue Act to a constitutional institution) to an entity within or outside government, must obtain a written assurance from the entity that that entity implements effective, efficient and transparent financial manage- 50

- ment and internal control systems, or, if such written assurance is not or cannot be given, render the transfer of the funds subject to conditions and remedial measures requiring the entity to establish and implement effective, efficient and transparent financial management and internal control systems;
 - (k) must enforce compliance with any prescribed conditions if the department. 5 trading entity or constitutional institution gives financial assistance to any entity or person;
 - (l) must take into account all relevant financial considerations, including issues of propriety, regularity and value for money, when policy proposals affecting the accounting officer's responsibilities are considered, and when necessary, 10 bring those considerations to the attention of the responsible executive authority;
 - (m) must promptly consult and seek the prior written consent of the National Treasury on any new entity which the department or constitutional institution intends to establish or in the establishment of which it took the initiative; and 15
 - (o) must comply, and ensure compliance by the department, trading entity or constitutional institution, with the provisions of this Act.
- (2) An accounting officer may not commit a department, trading entity or constitutional institution to any liability for which money has not been appropriated.

Accounting officers' responsibilities relating to budgetary control 20

39. (1) The accounting officer for a department is responsible for ensuring that—
- (a) expenditure of that department is in accordance with the vote of the department and the main divisions within the vote; and
 - (b) effective and appropriate steps are taken to prevent unauthorised expenditure.
- (2) An accounting officer, for the purposes of subsection (1), must— 25
- (a) take effective and appropriate steps to prevent any overspending of the vote of the department or a main division within the vote;
 - (b) report to the executive authority and the treasury any impending
 - (i) under collection of revenue due;
 - (ii) shortfalls in budgeted revenue; and 30
 - (iii) overspending of the departments vote or a main division within the vote; and
 - (c) comply with any remedial measures imposed by the treasury in terms of this Act to prevent overspending of the vote or a main division within the vote.

Accounting officers' reporting responsibilities 35

40. (1) The accounting officer for a department, trading entity or constitutional institution—
- (a) must keep full and proper records of the financial affairs of the department, trading entity or constitutional institution in accordance with any prescribed norms and standards; 40
 - (b) must prepare financial statements for each financial year in accordance with generally recognized accounting practice;
 - (c) must submit those financial statements within two months after the end of the financial year to—
 - (i) the Auditor-General for auditing; and 45
 - (ii) the treasury to enable that treasury to prepare consolidated financial statements in terms of section 8;
 - (d) must submit within five months of the end of a financial year to the treasury and, in the case of a department or trading entity, also to the executive authority responsible for that department or trading entity— 50
 - (i) an annual report on the activities of that department, trading entity or constitutional institution during that financial year;

- (ii) the financial statements for that financial year after those statements have been audited; and
 - (iii) the Auditor-General's report on those statements;
 - (e) must, in the case of a constitutional institution, submit to Parliament that institution's annual report and financial statements referred to in paragraph (d), and the Auditor-General's report on those statements, within one month after the accounting officer received the Auditor-General's audit report; and
 - (f) is responsible for the submission by the department or constitutional institution of all reports, returns, notices and other information to Parliament, an executive authority, the treasury or the Auditor-General, as maybe required by this Act.
- (2) The Auditor-General must audit the financial statements referred to in subsection (1)(b) and submit an audit report on those statements to the accounting officer within two months of receipt of the statements.
- (3) The annual report and audited financial statements referred to in subsection (1) must—
- (a) fairly present the state of affairs of the department, trading entity or constitutional institution, its business, its financial results, its performance against predetermined objectives and its financial position as at the end of the financial year concerned; and
 - (h) include particulars of—
 - (i) any material losses through criminal conduct, and any unauthorised expenditure, irregular expenditure and fruitless and wasteful expenditure, that occurred during the financial year;
 - (ii) any criminal or disciplinary steps taken as a result of such losses, unauthorised expenditure, irregular expenditure and fruitless and wasteful expenditure;
 - (iii) any material losses recovered or written off, and
 - (iv) any other matters that may be prescribed.
- (4) The accounting officer of a department must—
- (a) each year before the beginning of a financial year provide the treasury in the prescribed format with a breakdown per month of the anticipated revenue and expenditure of that department for that financial year;
 - (b) each month submit information in the prescribed format on actual revenue and expenditure for the preceding month and the amounts anticipated for that month in terms of paragraph (a); and
 - (c) within 15 days of the end of each month submit to the treasury and the executive authority responsible for that department—
 - (i) the information for that month;
 - (ii) a projection of expected expenditure and revenue collection for the remainder of the current financial year; and
 - (iii) when necessary, an explanation of any material variances and a summary of the steps that are taken to ensure that the projected expenditure and revenue remain within budget.
- (5) If an accounting officer is unable to comply with any of the responsibilities determined for accounting officers in this Part, the accounting officer must promptly report the inability, together with reasons, to the relevant executive authority and treasury.

Information to be submitted by accounting officers

41. An accounting officer for a department, trading entity or constitutional institution must submit to the treasury or the Auditor-General such information, returns, documents, explanations and motivations as may be prescribed or as the treasury or the Auditor-General may require.

Accounting officers' responsibilities when assets and liabilities are transferred

42. (1) When assets or liabilities of a department are transferred to another department or other institution in terms of legislation or following a reorganisation of functions, the accounting officer for the transferring department must—

- (a) draw up an inventory of such assets and liabilities; and
 - (b) provide the accounting officer for the receiving department or other institution with substantiating records, including personnel records of staff to be transferred.
- (2) Both the accounting officer for the transferring department and the accounting officer for the receiving department or other institution must sign the inventory when the transfer takes place.
- (3) The accounting officer for the transferring department must file a copy of the signed inventory with the treasury and the Auditor-General within 14 days of the transfer.

Virement between main divisions within votes

43. (1) An accounting officer for a department may utilise a saving in the amount appropriated under a main division within a vote towards the defrayment of excess expenditure under another main division within the same vote, unless the treasury directs otherwise.
- (2) The amount of a saving under a main division of a vote that may be utilised in terms of subsection (1), may not exceed eight per cent of the amount appropriated under that main division.
- (3) An accounting officer must within seven days submit a report containing the prescribed particulars concerning the utilisation of a saving in terms of subsection (1) to the executive authority responsible for the department and the treasury.
- (4) This section does not authorise the utilisation of a saving in—
- (a) an amount specifically and exclusively appropriated for a purpose mentioned under a main division within a vote;
 - (b) an amount appropriated for transfer to another institution; and
 - (c) an amount appropriated for capital expenditure in order to defray current expenditure.
- (5) A utilisation of a saving in terms of subsection (1) is a direct charge against the Revenue Fund.
- (6) The National Treasury may by regulation or instruction in terms of section 76 regulate the application of this section.

Part 3: Other officials of departments and constitutional institutions

Assignment of powers and duties by accounting officers

44. (1) The accounting officer for a department, trading entity or constitutional institution may—
- (a) in writing delegate any of the powers entrusted or delegated to the accounting officer in terms of this Act, to an official in that department, trading entity or constitutional institution; or
 - (b) instruct any official in that department, trading entity or constitutional institution to perform any of the duties assigned to the accounting officer in terms of this Act.
- (2) A delegation or instruction to an official in terms of subsection (1)—
- (a) is subject to any limitations and conditions prescribed in terms of this Act or as the treasury may impose;
 - (b) is subject to any limitations and conditions the accounting officer may impose;
 - (c) may either be to a specific individual or to the holder of a specific post in the relevant department, trading entity or constitutional institution; and
 - (d) does not divest the accounting officer of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.
- (3) The accounting officer may confirm, vary or revoke any decision taken by an official as a result of a delegation or instruction in terms of subsection (1), subject to any rights that may have become vested as a consequence of the decision.

Responsibilities of other officials

45. An official in a department, trading entity or constitutional institution—
- (a) must ensure that the system of financial management and internal control established for that department, trading entity or constitutional institution is carried out within the area of responsibility of that official; 5
 - (b) is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official's area of responsibility;
 - (c) must take effective and appropriate steps to prevent, within that official's area of responsibility, any unauthorised expenditure, irregular expenditure and fruitless and wasteful expenditure and any under collection of revenue due; 10
 - (d) must comply with the provisions of this Act to the extent applicable to that official, including any delegations and instructions in terms of section 44; and
 - (e) is responsible for the management, including the safeguarding, of the assets and the management of the liabilities within that official's area of responsibility.

CHAPTER 6 15

PUBLIC ENTITIES

Part I: Application of this Chapter

Application

46. The provisions of this Chapter apply, to the extent indicated, to all public entities listed in Schedule 2 or 3. 20

Unlisted public entities

47. (1) The Minister, by notice in the national Government Gazette—
- (a) must amend Schedule 3 to include in the list all public entities that are not listed; and
 - (b) may make technical changes to the list. 25
- (2) The accounting authority for a public entity that is not listed in either Schedule 2 or 3 must, without delay, notify the National Treasury, in writing, that the public entity is not listed.
- (3) Subsection (2) does not apply to an unlisted public entity that is a subsidiary of a public entity, whether the latter entity is listed or not. 30
- (4) The Minister may not list the following institutions in Schedule 3:
- (a) A constitutional institution, the South African Reserve Bank and the Auditor-General;
 - (b) any public institution which functions outside the sphere of national government; and 35
 - (c) any institution of higher education.

Classification of public entities

48. (1) The Minister may by notice in the national Government Gazette classify public entities listed in Schedule 3 in accordance with the relevant definitions set out in section 1, as— 40
- (a) national government business enterprises; and
 - (b) national public entities.
- (2) A public entity is for the purposes of this Act regarded as belonging to the class in which it is classified in terms of subsection (1).

Part 2: Accounting authorities for public entities

Accounting authorities

49. (1) Every public entity must have an authority which must be accountable for the purposes of this Act.
- (2) If the public entity—
- (a) has a board or other controlling body, that board or controlling body is the accounting authority for that entity; or
 - (b) does not have a controlling body, the chief executive officer or the other person in charge of the public entity is the accounting authority for that public entity unless specific legislation applicable to that public entity designates another person as the accounting authority. 10
- (3) The treasury, in exceptional circumstances, may approve or instruct that another functionary of a public entity must be the accounting authority for that public entity.
- (4) The treasury may at any time withdraw an approval or instruction in terms of subsection (3). 15
- (5) A public entity must inform the Auditor-General promptly and in writing of any approval or instruction in terms of subsection (3) and any withdrawal of an approval or instruction in terms of subsection (4).

Fiduciary duties of accounting authorities

50. (1) The accounting authority for a public entity must— 20
- (a) exercise the duty of utmost care to ensure reasonable protection of the assets and records of the public entity;
 - (b) act with fidelity, honesty, integrity and in the best interests of the public entity in managing the financial affairs of the public entity;
 - (c) on request, disclose to the executive authority responsible for that public entity or the legislature to which the public entity is accountable, all material facts, including those reasonably discoverable, which in any way may influence the decisions or actions of the executive authority or that legislature; and 25
 - (d) seek, within the sphere of influence of that accounting authority, to prevent any prejudice to the financial interests of the state. 30
- (2) A member of an accounting authority or, if the accounting authority is not a board or other body, the individual who is the accounting authority, may not—
- (a) act in a way that is inconsistent with the responsibilities assigned to an accounting authority in terms of this Act; or 35
 - (b) use the position or privileges of, or confidential information obtained as, accounting authority or a member of an accounting authority, for personal gain or to improperly benefit another person.
- (3) A member of an accounting authority must—
- (a) disclose to the accounting authority any director indirect personal or private business interest that that member or any spouse, partner or close family member may have in any matter before the accounting authority; and 40
 - (b) withdraw from the proceedings of the accounting authority when that matter is considered, unless the accounting authority decides that the member's direct or indirect interest in the matter is trivial or irrelevant. 45

General responsibilities of accounting authorities

51. (1) An accounting authority for a public entity—
- (a) must ensure that that public entity has and maintains—
 - (i) effective, efficient and transparent systems of financial and risk management and internal control; 50
 - (ii) a system of internal audit under the control and direction of an audit committee complying with and operating in accordance with regulations and instructions prescribed in terms of sections 76 and 77; and

- (iii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;
 - (iv) a system for properly evaluating all major capital projects prior to a final decision on the project;
 - (b) must take effective and appropriate steps to— 5
 - (i) collect all revenue due to the public entity concerned; and
 - (ii) prevent irregular expenditure, fruitless and wasteful expenditure. losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity: and
 - (iii) manage available working capital efficiently and economically; 10
 - (c) is responsible for the management, including the safeguarding, of the assets and for the management of the revenue. expenditure and liabilities of the public entity;
 - (d) must comply with any tax, levy. duty. pension and audit commitments as required by legislation; 15
 - (e) must take effective and appropriate discipline steps against any employee of the public entity who—
 - (i) contravenes or fails to comply with a provision of this Act:
 - (ii) commits an act which undermines the financial management and internal control system of the public entity; or 20
 - (iii) makes or permits an irregular expenditure or a fruitless and wasteful expenditure;
 - (f) is responsible for the submission by the public entity of all reports, returns, notices and other information to Parliament, and to the relevant executive authority or treasury, as may be required by this Act; 25
 - (g) must promptly inform the National Treasury on any new entity which that public entity intends to establish or in the establishment of which it takes the initiative. and allow the National Treasury a reasonable time to submit its decision prior to formal establishment: and
 - (h) must comply, and ensure compliance by the public entity, with the provisions of this Act and any other legislation applicable to the public entity. 30
- (2) If an accounting authority is unable to comply with any of the responsibilities determined for an accounting authority in this Part. the accounting authority must promptly report the inability. together with reasons. to the relevant executive authority and treasury. 35

Annual budget and corporate plan by Schedule 2 public entities and business enterprises

52. The accounting authority for a public entity listed in Schedule 2 or a government business enterprise listed in Schedule 3 must submit to the accounting officer for a department designated by the executive authority responsible for that public entity or 40 business enterprise, and to the treasury. at least one month. or another period agreed with the National Treasury. before the start of its financial year—

- (a) a projection of revenue, expenditure and borrowings for that financial year in the prescribed format; and
- (b) a corporate plan in the prescribed format covering the affairs of that public 45 entity or business enterprise for the following three financial years. and, if it has subsidiaries, also the affairs of the subsidiaries.

Annual budgets by non-business Schedule 3 public entities

53. (1) The accounting authority for a public entity listed in Schedule 3 which is not a government business enterprise must submit to the executive authority responsible for 50 that public entity. at least six months before the start of the financial year of the department designated in terms of subsection (2) or another period agreed to between the executive authority and the public entity, a budget of estimated revenue and expenditure for that financial year, for approval by the executive authority.

(2) The budget must be submitted to the executive authority through the accounting 55 officer for a department designated by the executive authority, who may make recommendations to the executive authority with regard to the approval or amendment of the budget.

(3) A public entity which must submit a budget in terms of subsection (1), may not budget for a deficit and may not accumulate surpluses unless the prior written approval of the National Treasury has been obtained.

(4) The accounting authority for such a public entity is responsible for ensuring that expenditure of that public entity is in accordance with the approved budget. 5

(5) The National Treasury may regulate the application of this section by regulation or instruction in terms of section 76.

Information to be submitted by accounting authorities

54. (1) The accounting authority for a public entity must submit to the treasury or the Auditor-General such information, returns, documents, explanations and motivations as may be prescribed or as the treasury or the Auditor-General may require. 10

(2) Before a public entity concludes any of the following transactions, the accounting authority for the public entity must promptly and in writing inform the treasury of the transaction and submit relevant particulars of the transaction to its executive authority for approval of the transaction: 15

- (a) establishment or participation in the establishment of a company;
- (b) participation in a significant partnership, trust, unincorporated joint venture or similar arrangement;
- (c) acquisition or disposal of a significant shareholding in a company;
- (d) acquisition or disposal of a significant asset; 20
- (e) commencement or cessation of a significant business activity; and
- (f) a significant change in the nature or extent of its interest in a significant partnership, trust, unincorporated joint venture or similar arrangement.

(3) A public entity may assume that approval has been given if it receives no response from the executive authority on a submission in terms of subsection (2) within 30 days or within a longer period as may be agreed to between itself and the executive authority. 25

(4) The executive authority may exempt a public entity listed in Schedule 2 or 3 from subsection (2).

Annual report and financial statements 30

55. (1) The accounting authority for a public entity—

- (a) must keep full and proper records of the financial affairs of the public entity;
- (b) prepare financial statements for each financial year in accordance with generally accepted accounting practice, unless the Accounting Standards Board approves the application of generally recognised accounting practice for that public entity; 35
- (c) must submit those financial statements within two months after the end of the financial year—
 - (i) to the auditors of the public entity for auditing; and
 - (ii) if it is a business enterprise or other public entity under the ownership control of the national government, to the treasury; and 40
- (d) must submit within five months of the end of a financial year to the treasury, to the executive authority responsible for that public entity and, if the Auditor-General did not perform the audit of the financial statements, to the Auditor-General— 45
 - (i) an annual report on the activities of that public entity during that financial year;
 - (ii) the financial statements for that financial year after the statements have been audited; and
 - (iii) the report of the auditors on those statements. 50

(2) The annual report and financial statements referred to in subsection (1) (d) must—

- (a) fairly present the state of affairs of the public entity, its business, its financial results, its performance against predetermined objectives and its financial position as at the end of the financial year concerned; 55
- (b) include particulars of—

- (i) any material losses through criminal conduct and any irregular expenditure and fruitless and wasteful expenditure that occurred during the financial year;
 - (ii) any criminal or disciplinary steps taken as a consequence of such losses or irregular expenditure or fruitless and wasteful expenditure; 5
 - (iii) any losses recovered or written off,
 - (iv) any financial assistance received from the state and commitments made by the state on its behalf; and
 - (v) any other matters that may be prescribed; and 10
- (c) include the financial statements of any subsidiaries. 10
- (3) An accounting authority must submit the report and statements referred to in subsection (1) (d), for tabling in Parliament, to the relevant executive authority through the accounting officer of a department designated by the executive authority.
- (4) The treasury may direct that, instead of a separate report, the audited financial statements of a Schedule 3 public entity which is not a government business enterprise 15 must be incorporated in those of a department designated by the treasury.

Part 3: Other officials of public entities

Assignment of powers and duties by accounting authorities

56. (1) The accounting authority for a public entity may—
- (a) in writing delegate any of the powers entrusted or delegated to the accounting authority in terms of this Act, to an official in that public entity; or 20
 - (b) instruct an official in that public entity to perform any of the duties assigned to the accounting authority in terms of this Act.
- (2) A delegation or instruction to an official in terms of subsection (1)—
- (a) is subject to any limitations and conditions the accounting authority may 25 impose;
 - (b) may either be to a specific individual or to the holder of a specific post in the relevant public entity; and
 - (c) does not divest the accounting authority of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty. 30
- (3) The accounting authority may confirm, vary or revoke any decision taken by an official as a result of a delegation or instruction in terms of subsection (1), subject to any rights that may have become vested as a consequence of the decision.

Responsibilities of other officials

57. An official in a public entity— 35
- (a) must ensure that the system of financial management and internal control established for that public entity is carried out within the area of responsibility of that official;
 - (b) is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official's area of responsibility; 40
 - (c) must take effective and appropriate steps to prevent, within that official's area of responsibility, any irregular expenditure and fruitless and wasteful expenditure and any under collection of revenue due;
 - (d) must comply with the provisions of this Act to the extent applicable to that official, including any delegations and instructions in terms of section 56; and 45
 - (e) is responsible for the management, including the safeguarding, of the assets and the management of the liabilities within that official's area of responsibility.

Part 4: External auditors**Appointment of auditors**

58. (1) The annual financial statements of a public entity must be audited annually by—
- (a) the Auditor-General; or 5
 - (b) a person registered in terms of section 15 of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), as an accountant and auditor, and engaged in public practice as such.
- (2) A public entity may appoint, as its auditor, a person referred to in subsection (1)(b) only if the audit is not performed by the Auditor-General. 10
- (3) A public entity must consult the Auditor-General on the appointment of an auditor in terms of subsection (2).

Discharge of auditors

59. (1) An auditor appointed by a public entity in terms of section 58 (1) (b) may not be discharged before the expiry of that auditor's term of appointment except by the executive authority responsible for that public entity acting— 15
- (a) after consultation with the accounting authority for that public entity; and
 - (b) with the concurrence of the Auditor-General.
- (2) If an executive authority intends discharging an auditor in terms of subsection (1), the executive authority must— 20
- (a) in writing give notice of the proposed discharge to the auditor, with reasons; and
 - (b) give the auditor an opportunity to make written representations to the executive authority and the Auditor-General within 20 days of receipt of the notice. 25
- (3) The Auditor-General must report any discharge of an auditor in terms of this section to Parliament.

Duties and powers of auditors

60. (1) An auditor appointed in terms of section 58(1)(b) must perform the functions of office as auditor in terms of section 20 of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991). 30
- (2) In exercising the powers and performing the duties as auditor of a public entity the auditor—
- (a) has access at all reasonable times to the accounting records, including all books, vouchers, documents and other property of the public entity; 35
 - (b) may require from the accounting authority for that public entity such information and explanations as are necessary for the purpose of the audit; and
 - (c) may investigate whether there are adequate measures and procedures for the proper application of sound economic, efficient and effective management. 40
- (3) An auditor appointed in terms of section 58(1)(b) may consult the Auditor-General or any person in the Office of the Auditor-General concerning any matter relating to the auditing of the public entity concerned.
- (4) An auditor appointed in terms of section 58(1)(b)—
- (a) must receive notice of every meeting of the public entity's audit committee; and 45
 - (b) may attend, and participate in, any meeting of the audit committee at the expense of the public entity.

Reports of auditor

61. (1) The report of an auditor appointed in terms of section 58(1)(b) must be addressed to the executive authority responsible for the public entity concerned and 50

must state separately in respect of each of the following matters whether in the auditor's opinion—

- (a) the annual financial statements of the public entity fairly present the financial position and the results obtained by the entity in accordance with subsection 55(1)(b) applied on a basis consistent with that of the preceding year; 5
 - (b) if required by the Auditor-General, the performance information furnished in terms of subsection 55(2)(a) is fair in all material respects and, if applicable, on a basis consistent with that of the preceding year; and
 - (c) the transactions that had come to the auditor's attention during auditing were in all material respects in accordance with the mandatory functions of the public entity determined by law or otherwise. 10
- (2) The auditor—
- (a) must report to the executive authority responsible for the public entity the results of any investigation carried out under subsection 60(2)(c); and
 - (b) when reporting in terms of paragraph (a), must draw attention to any other matters within the auditor's investigation which, in the auditor's opinion, should in the public interest be brought to the notice of Parliament. 15

Duties and powers of Auditor-General

62. (1) The Auditor-General may—
- (a) investigate any public entity or audit the financial statements of any public entity if the Auditor-General is not appointed as auditor and the Auditor-General considers it to be in the public interest or upon the receipt of a complaint; and 20
 - (b) recover the cost of the investigation or audit from the public entity. 25
- (2) An investigation or audit in terms of section (1) may be carried out either by the Auditor-General or a person appointed by the Auditor-General.
- (3) The executive authority responsible for a public entity in respect of which the Auditor-General has issued a special report in terms of subsection (1) or (2), must promptly table the report in the National Assembly.
- (4) The Auditor-General may— 30
- (a) claim the reasonable cost of performing the duties and exercising the powers in terms of this section from the public entity concerned; and
 - (b) annually report to Parliament on specific and general findings regarding the accountability of public entities. 35

CHAPTER 7

35

EXECUTIVE AUTHORITIES

Financial responsibilities of executive authorities

63. (1)(a) Executive authorities of departments must perform their statutory functions within the limits of the funds authorised for the relevant vote.
- (b) In performing their statutory functions executive authorities must consider the monthly reports submitted to them in terms of section 39(2)(b) and 40(4)(c). 40
- (2) The executive authority responsible for a public entity under the ownership control of the national executive must exercise that executive's ownership control powers to ensure that that public entity complies with this Act and the financial policies of that executive. 45

Executive directives having financial implications

64. (1) Any directive by an executive authority of a department to the accounting officer of the department having financial implications for the department must be in writing.
- (2) If implementation of the directive is likely to result in unauthorised expenditure, the accounting officer will be responsible for any resulting unauthorised expenditure 50

unless the accounting officer has informed the executive authority in writing of the likelihood of that unauthorised expenditure.

(3) Any decision of the executive authority to proceed with the implementation of the directive, and the reasons for the decision, must be in writing, and the accounting officer must promptly file a copy of this document with the National Treasury and the Auditor-General.

Tabling in legislatures

65. (1) The executive authority responsible for a department or public entity must table in the National Assembly.—

(a) the annual report and financial statements referred to in section 40(1)(d) or 55(1)(d) and the audit report on those statements, within one month after the accounting officer for the department or the accounting authority for the public entity received the audit report; and

(b) the findings of a disciplinary board, and any sanctions imposed by such a board, which heard a case of financial misconduct against an accounting officer or accounting authority in terms of section 81 or 83.

(2) If an executive authority fails to table, in accordance with subsection (1) (a), the annual report and financial statements of the department or the public entity, and the audit report on those statements, in the relevant legislature within six months after the end of the financial year to which those statements relate—

(a) the executive authority must table a written explanation in the legislature setting out the reasons why they were not tabled; and

(b) the Auditor-General may issue a special report on the delay.

CHAPTER 8

LOANS, GUARANTEES AND OTHER COMMITMENTS

25

Part 1: General principles

Restrictions on borrowing, guarantees and other commitments

66. (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; and

(b) in the case of public entities, is also authorised by other legislation not in conflict with this Act.

(2) Only the following persons may borrow money, or issue a guarantee, indemnity or security, or enter into any other transaction that binds or may bind the Revenue Fund to any future financial commitment:

(a) Transactions that bind or may bind 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.

(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 public entity.

(b) A national government business enterprise listed in Schedule 3 and authorised by notice in the *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.

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(4) Constitutional **institutions may not borrow money**, nor issue a guarantee, indemnity or security, nor enter into any other transaction that binds or may bind the 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 a constitutional institution to borrow money for 5 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— 10

(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 15 shareholder.

Consequences of unauthorised transactions

68. If a person, otherwise than in accordance with section 66, lends money to an institution to which this Act applies or purports to issue on behalf of such an institution a guarantee, indemnity or security, or enters into any other transaction which purports to bind such an institution to any future financial commitment, the state and that institution 20 is not bound by the lending contract or the guarantee, indemnity, security or other transaction.

Regulations on borrowing by public entities

69. The Minister may by regulation in terms of section 76 regulate the borrowing of money by or for or on behalf of public entities referred to in section 66 (3) (b) and (c). 25

Guarantees, indemnities and securities by Cabinet members

70. (1) A Cabinet member, with the written concurrence of the Minister (given either specifically in each case or generally with regard to a category of cases and subject to any conditions approved by the Minister), may issue a guarantee, indemnity or security which binds— 30

(a) the National Revenue Fund in respect of a financial commitment incurred or to be incurred by the national executive; or

(b) a national public entity referred to in section 66(3)(c) in respect of a financial commitment incurred or to be incurred by that public entity.

(2) Any payment under a guarantee, indemnity or security issued in terms of— 35

(a) subsection (1)(a), is a direct charge against the National Revenue Fund, and any such payment must in the first instance be defrayed from the funds budgeted for the department that is concerned with the issue of the guarantee, indemnity or security in question; and

(b) subsection (1)(b), is a charge against the national public entity concerned. 40

(3) A Cabinet member who seeks the Minister's concurrence for the issue of a guarantee, indemnity or security in terms of subsection (1)(a) or (b), must provide the Minister with all relevant information as the Minister may require regarding the issue of such guarantee, indemnity or security and the relevant financial commitment.

(4) The responsible Cabinet member must at least annually report the circumstances 45 relating to any payments under a guarantee, indemnity or security issued in terms of subsection (1)(a) or (b), to the National Assembly for tabling in the Assembly.

*Part 2: bans by national government***Purposes for which Minister may borrow money**

71. The Minister may borrow money in terms of section 66(2)(u) for the following purposes only:

- (a) To finance national budget deficits; 5
- (b) to refinance maturing debtor a loan paid before the redemption date;
- (c) to obtain foreign currency;
- (d) to maintain credit balances on a bank account of the National Revenue Fund;
- (e) to regulate internal monetary conditions should the necessity arise; or
- (f) any other purpose approved by the National Assembly by special resolution. 10

Signing of loan agreements

72. The Minister, on conditions determined by the Minister, may authorise another person to sign a loan agreement when the Minister borrows money in terms of section 66(2)(a).

Interest and repayments of loans to be direct charges 15

73. The following payments in connection with loans are direct charges against the National Revenue Fund:

- (a) the repayment of money borrowed by the Minister in terms of section 66(2)(a) or repaid in terms of section 74;
- (b) the interest payable on money borrowed; and 20
- (c) any costs associated with such borrowing and approved by the National Treasury.

Repayment, conversion and consolidation of loans

74. The Minister may, on such terms and conditions as the Minister may determine, and, when necessary, with the concurrence of the lender— 25

- (a) repay any loan prior to the redemption date of that loan;
- (b) convert the loan into any other loan; or
- (c) consolidate two or more loans into an existing or new loan.

Obligations from lien over securities

75. Neither the Minister, nor the National Treasury is responsible for the fulfillment of 30 any obligation resulting from any lien, whether expressed, implied or construed, held over any security issued in terms of this Act, despite the fact that the Minister or the National Treasury was notified of the lien.

CHAPTER 9**GENERAL TREASURY MATTERS 35****Treasury regulations and instructions**

76. (1) The National Treasury must make regulations or issue instructions applicable to departments, concerning—

- (a) any matter that must be prescribed for departments in terms of this Act;
- (b) the recovery of losses and damages; 40
- (c) the handling of, and control over, trust money and property;
- (d) the rendering of free services;
- (e) the writing off of losses of state money or other state assets or amounts owed to the state;

- (f) **liability for losses and damages and procedures** for recovery;
 - (g) the cancellation or variation of contracts to the detriment of the state;
 - (h) the settlement of claims by or against the state;
 - (i) the waiver of claims by the state;
 - (j) the remission of money due to the Revenue Fund, refunds of revenue and 5
payments from the Revenue Fund, as an act of grace;
 - (k) the alienation, letting or other disposal of state assets: and
 - (l) gifts or donations by or to the state.
- (2) The National Treasury may make regulations or issue instructions applicable to
departments, concerning— 10
- (a) any matter that may be prescribed for departments in terms of this Act;
 - (b) the charging of expenditure against particular votes;
 - (c) the establishment of and control over trading entities;
 - (d) the improvement and maintenance of immovable state assets;
 - (e) fruitless and wasteful, unauthorised and irregular expenditure; 15
 - (f) the determination of any scales of fees, other charges or rates relating to
revenue accruing to, or expenditure from, a Revenue Fund;
 - (g) the treatment of any specific expenditure;
 - (h) vouchers or other proofs of receipts or payments, which are defective or have
been lost or damaged; 20
 - (i) assets **which** accrue to the state by operation of any law: or
 - (j) any other matter that may facilitate the application of this Act.
- (3) Regulations in terms of subsection (1) or (2) may prescribe matters for which the
prior approval of a treasury must be obtained.
- (4) The National Treasury may make regulations or issue instructions applicable to all 25
institutions to which this Act applies concerning—
- (a) any matter that may be prescribed for all institutions in terms of this Act;
 - (b) financial management and internal control;
 - (c) the determination of a framework for an appropriate procurement and
provisioning system which is fair, equitable, transparent, competitive and 30
cost-effective;
 - (d) audit committees, their appointment and their functioning;
 - (e) internal audit components and their functioning;
 - (f) the administration of this Act; and
 - (g) any other matter that may facilitate the application of this Act. 35
- (5) A treasury regulation or instruction in terms of this section may—
- (a) differentiate between different categories of—
 - (i) institutions to which this Act applies;
 - (ii) accounting officers; or
 - (iii) accounting authorities; 40
 - (b) be limited in its application to a specific category of-
 - (i) institutions to which this Act applies;
 - (ii) accounting officers: or
 - (iii) accounting authorities.

Audit committees 45

77. An audit committee—
- (a) must consist of at least three persons of whom, in the case of a department—
 - (i) one must be from outside the public service;
 - (ii) the majority may not be persons in the employ of the department, except
with the approval of the treasury: and 50
 - (iii) the chairperson may not be in the employ of the department;
 - (b) must meet at least twice a year; and
 - (c) may be established for two or more departments or institutions if the treasury
consider it to be more economical.

Publishing of draft treasury regulations for public comment

78. Draft regulations in terms of section 76 must be published for public comment in the national Government Gazette before their enactment.

Departures from treasury regulations, instructions or conditions

79. The National Treasury may on good grounds approve a departure from a treasury 5 regulation or instruction or any condition imposed in terms of this Act and must promptly inform the Auditor-General in writing when it does so.

Determination of interest rates for debt owing to state

80. (1) The Minister, by notice in the national Government Gazette, must determine— 10

- (a) a uniform interest rate applicable to loans granted out of the Revenue Fund; and
- (b) a uniform interest rate applicable to all other debts which must be paid into the Revenue Fund

(2) An interest rate determined in terms of subsection (1)(b) may differentiate 15 between different categories of debt.

CHAPTER 10

FINANCIAL MISCONDUCT

Part 1: Disciplinary proceedings

Financial misconduct by officials in departments and constitutional institutions 20

81. (1) An accounting officer for a department or a constitutional institution commits an act of financial misconduct if that accounting officer willfully or negligently—

- (a) fails to comply with a requirement of section 38, 39, 40, 41 or 42; or
- (b) makes or permits an unauthorised expenditure, an irregular expenditure or a 25 fruitless and wasteful expenditure.

(2) An official of a department, a trading entity or a constitutional institution to whom a power or duty is assigned in terms of section 44 commits an act of financial misconduct if that official willfully or negligently fails to exercise that power or perform that duty. 30

Financial misconduct by treasury officials

82. An official of the treasury to whom a power or duty is assigned in terms of section 10 commits an act of financial misconduct if that official willfully or negligently fails to exercise that power or perform that duty.

Financial misconduct by accounting authorities and officials of public entities 35

83. (1) The accounting authority for a public entity commits an act of financial misconduct if that accounting authority willfully or negligently—

- (a) fails to comply with a requirement of section 50, 51, 52, 53, 54 or 55; or
- (b) makes or permits an irregular expenditure or a fruitless and wasteful 40 expenditure.

(2) If the accounting authority is a board or other body consisting of members, every member is individually and severally liable for any financial misconduct of the accounting authority.

(3) An official of a public entity to whom a power or duty is assigned in terms of section 56 commits an act of financial misconduct if that official willfully or negligently 45 fails to exercise that power or perform that duty.

(4) Financial misconduct is a ground for dismissal or suspension of, or other sanction against, a member or person referred to in subsection (2) or (3) despite any other legislation.

Applicable legal regime for disciplinary proceedings

84. A charge of financial misconduct against an accounting officer or official referred to in section 81 or 83, or an accounting authority or a member of an accounting authority or an official referred to in section 82, must be investigated, heard and disposed of in terms of the statutory or other conditions of appointment or employment applicable to that accounting officer or authority, or member or official, and any regulations prescribed by the Minister in terms of section 85. 5

Regulations on financial misconduct procedures

85. (1) The Minister must make regulations prescribing— 10
- (a) the manner, form and circumstances in which allegations and disciplinary and criminal charges of financial misconduct must be reported to the National Treasury and the Auditor-General, including—
 - (i) particulars of the alleged financial misconduct: and
 - (ii) the steps taken in connection with such financial misconduct: 15
 - (b) matters relating to the investigation of allegations of financial misconduct:
 - (c) the circumstances in which the National Treasury may direct that disciplinary steps be taken or criminal charges be laid against a person for financial misconduct;
 - (d) the circumstances in which a disciplinary board which hears a charge of financial misconduct must include a person whose name appears on a list of persons with expertise in state finances or public accounting compiled by the National Treasury: 20
 - (e) the circumstances in which the findings of a disciplinary board and any sanctions imposed by the board must be reported to the National Treasury. and the Auditor-General; and 25
 - (f) any other matters to the extent necessary to facilitate the object of this Chapter.
- (2) A regulation in terms of subsection (1) may— 30
- (a) differentiate between different categories of—
 - (i) accounting officers;
 - (ii) accounting authorities;
 - (iii) officials: and
 - (iv) institutions to which this Act applies: and
 - (b) be limited in its application to a particular category of accounting officers. 35
accounting authorities, officials or institutions only.

Part 2: Criminal proceedings

Offences and penalties

86. (1) An accounting officer is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that accounting officer willfully or in a grossly negligent way fails to comply with a provision of section 38.39 or 40. 40

(2) An accounting authority is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that accounting authority willfully or in a grossly negligent way fails to comply with a provision of section 50.51 or 55. 45

(3) Any person, other than a person mentioned in section 66(2) or (3), who purports to borrow money or to issue a guarantee, indemnity or security for or on behalf of a department, public entity or constitutional institution, or who enters into any other contract which purports to bind a department, public entity or constitutional institution to any future financial commitment, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years. 50

CHAPTER 11

ACCOUNTING STANDARDS BOARD

Establishment

87. (1) The Minister by regulation in terms of section 91 must establish a board to be known as the Accounting Standards Board. 5
- (2) The Accounting Standards Board is a juristic person.

Composition

88. (1) The Accounting Standards Board consists of no more than 10 members as the Minister may determine.
- (2) The Minister, after consulting the Auditor-General, appoints the members of the Board. 10
- (3) The Board may establish its own operating procedures.

Functions of Board

89. (1) The Accounting Standards Board must—
- (a) set standards of generally recognised accounting practice as required by section 216(1)(a) of the Constitution, for the annual financial statements of— 15
- (i) departments;
 - (ii) public entities;
 - (iii) constitutional institutions;
 - (iv) municipalities and boards, commissions, companies, corporations, funds or other entities under the ownership control of a municipality; and 20
 - (v) Parliament;
- (b) prepare and publish directives and guidelines concerning the standards set in terms of paragraph (a);
- (c) recommend to the Minister effective dates of implementation of these standards for the different categories of institutions to which these standards apply; and 25
- (d) perform any other function incidental to advancing financial reporting in the public sector.
- (2) In setting standards the Board must take into account all relevant factors, including— 30
- (a) best accounting practices, both locally and internationally; and
 - (b) the capacity of the relevant institutions to comply with the standards.
- (3) The Board may set different standards for different categories of institutions to which these standards apply. 35
- (4) The standards set by the Board must promote transparency in and effective management of revenue, expenditure, assets and liabilities of the institutions to which these standards apply.

Powers of Board

90. The Accounting Standards Board may do all that is necessary or expedient to perform its functions effectively, which includes the power to— 40
- (a) determine its own staff establishment and appoint employees to posts on its staff establishment;
- (b) obtain the services of any person or entity to perform any specific act or function; 45
- (c) confer with any person or entity;
- (d) acquire or dispose of any right in or to property, but ownership in immovable property may be acquired or disposed of only with the consent of the Minister;
- (e) insure itself against any loss, damage, risk or liability;
- (f) perform legal acts, or institute or defend any legal action in its own name; 50
- (g) do research and publish reports; and
- (h) do anything that is incidental to the exercise of any of its powers.

Regulations on accounting standards and Board

91. (1) The Minister, after consulting the Auditor-General, may make regulations—
- (a) concerning the qualifications, remuneration, term of office and removal of members of the Accounting Standards Board, the filling of vacancies, the chairperson of the Board, and the finances and administration of the Board; 5
 - (b) prescribing the standards set by the Board in terms of section 89; and
 - (c) concerning any other matter that may facilitate the proper functioning of the Board or the implementation of those standards.
- (2) The Minister must consult the Board on the implementation date of a regulation made in terms of subsection (1)(b). 10
- (3) Different regulations may be made in terms of subsection (1)(b) for different categories of institutions to which the standards set in terms of section 89 apply.
- (4) Draft regulations prescribing standards in terms of subsection (1)(b) must be published for public comment in the national Government Gazette before their enactment. 15

CHAPTER 12

MISCELLANEOUS

Exemptions

92. The Minister, by notice in the national Government Gazette, may exempt any institution to which this Act applies, or any category of those institutions, from any specific provisions of this Act for a period determined in the notice. 20

Transitional provisions

93. (1) Anything done in terms of a provision of the Exchequer Act, 1975 (Act No. 66 of 1975), which can be done in terms of a provision of this Act, must be regarded as having been done in terms of this Act. 25
- (2) All treasury regulations and instructions made or issued in terms of the Exchequer Act, 1975, remain in force until repealed in terms of section 76 of this Act.
- (3) Until the Accounting Standards Board is established, the National Treasury may perform the functions of the Board.
- (4) The provisions of the Revenue Funds Interim Arrangements Act, 1997 (Act No. 95 of 1997), despite the fact that they have lapsed, must be regarded as forming part of this Act until 1 April 2000.

Repeal of legislation

94. The legislation mentioned in Schedule 6 is repealed to the extent specified in the third column. 35

Short title and commencement

95. This Act is called the Public Finance Management Act, 1999, and takes effect on 1 April 2000 except—
- (a) Chapter 11 and section 93(4) which take effect on the date of publication of this Act; and 40
 - (b) those provisions determined by the Minister by notice in the national Government Gazette which will take effect on a date determined in the notice, but which may not be a date later than 1 April 2003.

SCHEDULE 1**CONSTITUTIONAL INSTITUTIONS**

1. The Public Protector.
2. The Human Rights Commission.
3. The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.
4. The Commission for Gender Equality.
5. The Independent Electoral Commission.
6. The Independent Broadcasting Authority.
7. The Financial and Fiscal Commission.
8. The Commission on the Remuneration of Persons Holding Public Office.
9. The Pan South African Language Board.
10. The Municipal Demarcation Board.

SCHEDULE 2**MAJOR PUBLIC ENTITIES**

1. Air Traffic and Navigation Services Company
2. Airports Company
3. Alexander Bay Development Corporation
4. Armaments Corporation of South Africa
5. Atomic Energy Corporation of South Africa Limited
6. Central Energy Fund
7. DENEL
8. Development Bank of Southern Africa
9. ESKOM
10. Independent Development Trust
11. Industrial Development Corporation of South Africa Limited
12. Land and Agricultural Bank of South Africa
13. SA Abattoir Corporation
14. SA Broadcasting Commission
15. SA Forestry Company Limited
16. SA Post Office Limited
17. Telkom SA Limited
18. Transnet Limited
19. Trans-Caledon Tunnel Authority
20. Any subsidiary or entity under the ownership control of the above public entities

SCHEDULE 3**OTHER PUBLIC ENTITIES****Part A: National Public Entities**

1. Accounting Standards Board
2. Agricultural Credit Board
3. Agricultural Research Council
4. Air Services Licensing Council
5. Board on Tariffs and Trade
6. Competition Board
7. Certification Council for Technikon Education
8. Commission for Conciliation, Mediation & Arbitration
9. Compensation Board
10. Council for Geoscience
11. Council for Mineral Technology (Mintek)
12. Council for Nuclear Safety
13. Council for Scientific and Industrial Research
14. Financial Services Board
15. Human Sciences Research Council
16. Judicial Services Commission
17. Legal Aid Board
18. National Agriculture Marketing Council
19. National Economic, Development and Labour Council
20. National Electricity Regulator
21. National Film Board
22. National Housing Board
23. National Housing Finance Corporation
24. National Monuments Council
25. National Parks Board
26. National Road Fund
27. National Small Business Council
28. National Youth Commission
29. Road Accident Fund
30. SA Bureau of Standards
31. SA Certification Council
32. SA Civil Aviation Authority
33. SA Housing Development Board
34. SA Housing Fund
35. SA Housing Trust Limited
36. SA Medical Research Council
37. SA Qualifications Authority
38. SA Revenue Service
39. SA Road Board
40. SA Road Safety Council
41. SA Telecommunications Regulatory Authority
42. SA Tourism Board
43. State Information Technology Agency
44. Unemployment Insurance Fund
45. Wage Board
46. Water Research Commission
47. Any subsidiary or entity under the ownership control of the above public entities

Part B: National Government Business Enterprises

1. Albaniekus Waterraad
2. Bala-Bala Farms (Pty) Ltd
3. Bloem Water
4. Bosveld Waterraad
5. Goudveld Water
6. Iniala Farms (Pty) Ltd

7. Kalahari-Oos Waterraad
8. Kalahari-Wes Waterraad
9. Karos-Geelkoppen Waterraad
10. Khula Enterprises
11. Lanok (Pty) Ltd
12. Magalies Water
13. Mhlathuze Water
14. Mjindi Farming (Pty) Ltd
15. Mpendle-Ntambanana Agricultural Company (Pty) Ltd
16. Namakwa Water
17. Ncera Farms (Pty) Ltd
18. Noord Transvaal Water/ Meetse
19. Ntsika Enterprises
20. Overberg Water
21. Pelladrift Water
22. Phalaborwa Water
23. Rand Water Board
24. SA Rail Commuter Corporation Limited
25. Umgeni Water Board
26. Any subsidiary or entity under the ownership control of the above public entities

SCHEDULE 4**EXCLUSIONS FROM REVENUE FUNDS****(In terms of section 13(l)(g))**

1. SA Schools Act (covering school fees)

SCHEDULE 5**DIRECT CHARGES AGAINST NATIONAL REVENUE FUND**

1. Payments in terms of the following Acts:
 - 1.1 Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998) (Covering the President's salary and the salaries of members of Parliament sections 2(7) and 3(7));
 - 1.2 Remuneration and Allowances of Deputy Presidents, Ministers and Deputy Ministers Act, 1994 (Act 53 of 1994) (Covering the salary of the Deputy President section 4(u));
 - 1.3 Judges' Remuneration and Conditions of Employment Act, 1989 (Act 88 of 1989) (Covering salaries and allowances of Judges and Judges seconded to governments of other countries in terms of section 2).

SCHEDULE 6

REPEAL OF LEGISLATION

(Section 87)

No. and year of act	Short title	Extent of repeal
(a) Act No. 66 of 1975	Exchequer Act, 1975	The whole, except sections 28, 29, 30
Act No. 106 of 1976	Financial Arrangements with the Transkei Act, 1976	The whole
Act No. 93 of 1977	Financial Arrangements with Bophuthatswana Act, 1977	The whole
Act No. 105 of 1979	Financial Arrangements with Vends Act, 1979	The whole
Proclamation No. R.85 of 1968	South West Africa Constitution Act, 1968 (Act No. 39 of 1968)	Part 3
Act No. 67 of 1980	Railways and Harbours Acts Amendment Act, 1980	Section 19
Act No. 29 of 1981	Railways and Harbours Acts Amendment Act, 1981	Section 21
Act No. 118 of 1981	Financial Arrangements with Ciskei Act, 1981	The whole
Act No. 100 of 1984	Exchequer and Audit Amendment Act, 1984	The whole
Act No. 9 of 1989	Legal Succession of the South African Transport Services Act, 1989	Schedule 2 Part 6 of the act insofar as it relates to the Exchequer Act, 1975
Act No. 120 of 1991	Finance Act, 1991	Sections 14, 15 and 16
Act No. 96 of 1992	Part Appropriation Acts Abolition Act, 1992	The whole
Act No. 69 of 1993	Exchequer Amendment Act, 1993	The whole
Act No. 123 of 1993	Finance Act, 1993	The whole
Act No. 142 of 1993	Exchequer Second Amendment Act, 1993	The whole
Act No. 182 of 1993	Exchequer Third Amendment Act, 1993	The whole
Act No. 41 of 1994	Finance Act, 1994	Sections 17 and 18
(b) Act No. 93 of 1992	Reporting by Public Entities Act, 1992	The whole
(c) Act No. 66 of 1975	Exchequer and Audit Act, 1975	The whole insofar as it is in force in the area of the former Republic of Transkei
Act No. 102 of 1976	Finance Act, 1976	Sections 23, 24 and 25 insofar as it is in force in the area of the former Republic of Transkei
(d) Act No. 29 of 1992 (Bophuthatswana)	Exchequer Act, 1992	The whole
Act No. 16 of 1993 (Bophuthatswana)	Exchequer Amendment Act, 1993	The whole
(e) Act No. 66 of 1975	Exchequer and Audit Act, 1975	The whole insofar as it is in force in the area of the former Republic of Vends
Act No. 111 of 1977	Finance Act, 1977	Sections 9, 10 and 11 insofar as it is in force in the area of the former Republic of Vends
Act No. 94 of 1978	Finance Act, 1978	Sections 12, 13 and 14 insofar as it is in force in the area of the former Republic of Vends
Proclamation No. R.85 of 1979	Exchequer and Audit Proclamation	Sections 16 and 17 insofar as it is in force in the area of the former Republic of Vends

No. and year of act	Short title	Extent of repeal
Act No. 21 of 1983 (Vends)	Exchequer and Audit Amendment Act, 1983	The whole
Act No. 18 of 1987 (Vends)	Exchequer and Audit Amendment Act, 1987	The whole
Act No. 28 of 1989 (Vends)	Exchequer and Audit Amendment Act, 1989	The whole
Proclamation No. 25 of 1993 (Vends)	Exchequer and Audit Amendment Act, 1993	The whole
(f) Act No. 28 of 1985 (Ciskei)	Exchequer and Audit Act, 1985	The whole

MEMORANDUM ON THE OBJECTS OF THE PUBLIC FINANCE MANAGEMENT BILL

1. INTRODUCTION

The Public Finance Management Bill, 1999, gives effect to sections 213, 215, 216, 217, 218 and 219 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996). These sections require national legislation: to establish a National Treasury, to introduce generally recognised accounting practices, to introduce uniform treasury norms and standards, to prescribe measures to ensure transparency and expenditure control in all spheres of government, and to set the operational procedures for borrowing, guarantees, procurement and oversight over the various National and Provincial Revenue Funds.

This Bill is being split into two bills to comply with the constitutionally determined procedures for the passage of bills which affect both the national and provincial governments. The Bill is being passed as a section 75 Bill which will only apply to the national government, with most references to provinces removed from this Bill. The numbering of the consolidated bill is being retained, hence the missing numbers in the section 75 Bill. A second Bill will amend the section 75 Act after its enactment—it is this bill that will broaden the provisions to apply to provinces. This second bill will be introduced in Parliament in terms of the section 76(1) procedure as outlined in that section of the Constitution.

2.1 CURRENT POSITION

2.2 National departments are governed by the Exchequer Act (Act No. 66 of 1975), whilst provinces are governed by their own provincial Exchequer Acts. Other public entities are governed by their own legislation or the Reporting of Public Entities Act.

2.2 Financial accountability is undermined by the fact that different legislation applies for different entities. Further, existing legislation regulating financial management is narrowly focused on expenditure control.

3. BACKGROUND AND APPROACH

3.1 The Public Finance Management Bill gives effect to section 216(1) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), which requires national legislation to “establish a national treasury and prescribe measures to ensure both transparency and expenditure control in each sphere of government, by introducing—

- (a) generally recognised accounting practice;
- (b) uniform expenditure classifications; and
- (c) uniform treasury norms and standards”.

3.2 The Bill also gives effect to other sections in Chapter 13 of the Constitution. These sections are:—

- (a) Section 213 that limits exclusions and withdrawals from the National Revenue Fund through an Act of Parliament,
- (b) Section 215 which notes that budgets and the budgetary process “must promote transparency, accountability and the effective financial management of the economy, debt and the public sector” and for national legislation to “prescribe” budget formats for all the spheres of government.
- (c) Section 217 on procurement to be “in accordance with a system which is fair, equitable, transparent, competitive and cost-effective”.
- (d) Section 218 on the conditions for the issue of guarantees by a government in any sphere.
- (e) Section 226 that limits an exclusion from a provincial revenue fund through an Act of Parliament.
- (f) Sections 100 and 216 on intervention by the national government when an organ fails to perform an executive function related to financial management, circumstances under which funds may be withheld.

- 3.3 The Bill adopts an approach to financial management which focuses on outputs and responsibilities rather than the rule-driven approach of the current Exchequer Acts.
- 3.4 This Bill assumes that the political head of a department (Cabinet Minister or a provincial MEC) is responsible for policy matters and outcomes; this includes seeking Parliamentary (or provincial legislature) approval and adoption of the line-function budget vote. The head official (Director-General of a national department or provincial head of department) is responsible for outputs and implementation, and is accountable to Parliament for the financial management in the implementation of that budget. This approach is in line with the approach of the new Public Service regulations, which relies on a performance-driven system based on measurable outputs.
- 3.5 The Bill is part of a broader strategy on improving financial management in the public sector. The Bill itself assumes a phased approach towards improving the quality of financial management in the public sector. This Bill lays the foundation for the first phase, as it focuses on the basics of financial management, like the introduction of proper financial management systems, appropriation control and the accountability arrangements for the management of budgets. Subsequent phases will focus on the efficiency and effectiveness of programmed and best-practice financial management—these can only be systematically introduced after the basics of financial management are in place.
- 3.6 This Bill will replace or override the national and provincial Exchequer Acts, and supersede any other financial management provisions in other Acts.

4. KEY POLICY ISSUES

4.1 Application of this Act: Departments and Public Entities

This Bill gives effect to section 216 and other sections of the Constitution. This Bill will apply to the national and provincial spheres, and public entities under their ownership control. Parliament, provincial legislatures and independent institutions established by the Constitution are also covered in this Bill.

An important objective of this Bill is to put in place a more effective financial accountability system over public entities. All entities are required to be listed—the major public entities are listed in Schedule 2, and enjoy full managerial autonomy, with the government only able to intervene through its power as a shareholder. Other public entities are listed in Schedule 3, and enjoy various degrees of autonomy.

4.2 Composition of the National Treasury

The National Treasury comprises of the Minister together with the Departments of Finance and State Expenditure. The Minister is the head of the Treasury.

4.3 Powers of the National Treasury

The Constitution confers extensive powers on national government to determine the financial management framework over all organs of state, in all spheres of government. National government must, through national legislation, determine uniform treasury norms and standards.

The National Treasury is further expected to monitor and enforce these norms, The National Treasury, therefore, not only implements the budget of the national government, but plays an oversight role over the practices of other organs of state in all spheres of government.

4.4 Establishment of Provincial Treasuries— their Role and Function

This Bill establishes provincial treasuries, which are responsible for preparing and managing provincial budgets, and enforcing uniform treasury norms and standards as prescribed by the National Treasury and this Act. Note that this chapter is excluded in the first bill as it applies to provinces, and has to be in the second section 76 Bill.

4.5 Accounting Officers

This Bill confers specific responsibilities on accounting officers. The Bill vests four key responsibilities, which are:—

- (a) the operation of basic financial management systems, including internal controls in departments and any entities they control;

- (b) to ensure that departments do not overspend their budgets;
- (c) to report on a monthly and annual basis, including the submission of annual financial statements two months after the end of a financial year; and
- (d) to publish annual reports in a prescribed format which will introduce performance reporting.

Accounting officers who are negligent and make no effort to comply with these responsibilities will face strict disciplinary sanctions, including dismissal. Similar sanctions will apply to treasury officials failing to carry out their responsibilities. The new Public Service Act regulations and the trend towards performance contracts will complement this approach.

Similar fiduciary responsibilities and sanctions are also outlined for the boards (called accounting authorities) of public entities.

4.6 Voting by main division and virement

The Bill requires Parliament to vote by **programme** (“main divisions within a vote”) rather than departmental votes. This will require further information on outputs per programme, and limit the powers of accounting officers to move funds between programmed. Such movement or **virement** is restricted to 8% of the total allocation for a programme.

4.7 Improved information and timely submission of financial statements

The Bill aims to address the problem of the late submission of financial statements within government, to comply with the constitutional obligations for generally recognised accounting practices and greater transparency, and to improve financial management and accountability through better and more timely information flows.

5. SUMMARY OF BILL

Chapter One of the Bill deals with definitions, objects, application and amendment of this Bill. The Bill will apply to national and provincial government institutions, which includes national and provincial departments, and the entities under their ownership control. Key definitions to note are those of ownership control, government enterprises, main division within a vote, unauthorised, irregular and **fruitless** and wasteful expenditure. A procedure to amend this Bill is included and is intended to prevent other Acts of Parliament from amending or inadvertently by-passing the provisions of this Bill.

Chapter Two of the Bill establishes the National Treasury, **deals** with its composition, functions, powers and responsibilities. The National Treasury is comprised of the Minister and the Departments of Finance and State Expenditure. The Minister is empowered to delegate the day-to-day operations of the Treasury to the heads of the two departments. The National Treasury is empowered to develop the overall macro-economic and fiscal framework, co-ordinate intergovernmental fiscal relations and the budget-preparation process, manage the implementation of a budget and promote and enforce revenue, asset and liability management. The National Treasury is also empowered to determine a banking and cash management framework, and is empowered to require banks to provide information on the banking accounts of national and provincial institutions. The chapter also gives effect to sections 213 of the Constitution, on the management of the National Revenue Fund, any exclusions to depositing money received, and the authorization required before any expenditure.

Chapter Three establishes provincial treasuries and deals with their composition, powers and functions, and the management of provincial revenue funds.

Chapter Four on the Budget process gives effect to section 215 of the Constitution on the timing and content of national and provincial budgets, and the reporting requirements that will promote greater transparency in the implementation of a budget. It also outlines what adjustments budgets must deal with, and also outlines the minimum content for multi-year budgets. This section also contains a clause on unfunded mandates.

Chapter Five ensures that all national and provincial institutions and entities have accounting officers, and spells out their responsibilities, and the disciplinary sanctions that will apply in the event of negligence in fulfilling these responsibilities. This chapter obligates accounting officers to produce monthly and annual financial reports for their political heads (executive authority), and outlines the responsibilities for political heads

and accounting officers to prevent overspending on budgets. The shifting of funds between programmed (or main divisions within a vote) or virement is also dealt with in this Bill.

Chapter Six of the Bill ensures that all public entities are listed in two Schedules. Schedule 2 covers the major public entities, and confers maximum autonomy to these entities. Schedule 3 covers all other public entities with varying degrees of autonomy. This chapter outlines the fiduciary and other responsibilities of the governing boards of these entities, similar to the responsibilities of accounting officers.

Chapter Seven covers the responsibilities of Ministers and MECs, who are referred to as the executive authorities of departments and public entities.

Chapter Eight of the Bill outlines general principles on borrowing and the issuing of guarantees. This chapter gives effect to section 218 of the Constitution on the issuing of guarantees. The chapter also regulates the borrowing operations of the national government, and determines the person who can borrow on behalf of any national or provincial government entity. It makes illegal any other forms of borrowing or financial commitment, with strict sanctions applying.

Chapter Nine of the Bill lists the areas over which the National Treasury is empowered to issue uniform norms and standards.

Chapter Ten of the Bill defines financial misconduct, and deals with the procedures for disciplining those public officials guilty of financial misconduct. It also includes a provision for criminal prosecution to apply where there is gross financial misconduct.

Chapter Eleven establishes an Accounting Standards Board which will have the power to determine the generally recognised accounting practices for the public sector.

Chapter Twelve deals with transitional and other miscellaneous issues related to the implementation of this Bill and when it takes effect. Some of the provisions of the Bill cannot be implemented immediately, and could take up to five years to implement fully (eg the sections relating to consolidated financial statements). The transitional arrangements will allow the Minister to phase in such provisions.