



**MINISTRY: FINANCE
REPUBLIC OF SOUTH AFRICA**

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Ref: M4/1/5(304/2023)

Mr. Mpho Makwana
Eskom Board Chairperson
Eskom Holdings SOC Ltd
PO Box 1091
JOHANNESBURG
2000

Dear Mr Makwana,

RE: REQUEST FOR EXEMPTION FROM SECTION 55(2)(b) OF THE PUBLIC FINANCE MANAGEMENT ACT, No. 1 OF 1999 AND APPROVAL TO DEPART FROM NATIONAL TREASURY REGULATIONS, INSTRUCTIONS AND CONDITIONS ISSUED IN TERMS THEREOF

1. Your letter dated 09 March 2023 with regards to the above bears reference.
2. It is understood in your letter that Eskom requests an exemption from section 55(2)(b)(i)(ii) and (ii) of the Public Finance Management Act, 1999 (Act No. 1 of 1999 – “PFMA”) and departures from Treasury Regulations 28.2.1 and National Treasury Instruction No. 4 of 2022/2023 not to disclose the following in their annual financial statements (AFS) –
 - (a) any material losses through criminal conduct and any irregular and fruitless and wasteful expenditure that occurred during the financial year;
 - (b) any criminal or disciplinary steps taken because of such losses or irregular expenditure or fruitless and wasteful expenditure; and
 - (c) any losses recovered or written off from irregular expenditure of fruitless and wasteful expenditure.
3. I have taken note of the challenges raised by Eskom on the risks of disclosing the items mentioned in paragraph two (2) above and the risk of a qualified audit opinion due to –
 - (a) inadequate systems of controls to timeously detect and record irregular and fruitless and wasteful expenditure;
 - (b) inadequate controls to ensure completeness of assessment of expenditure linked to transgression of supply chain management processes, investigations, and tracking of internal audit and forensic report findings;
 - (c) removal of irregular expenditure from the register prior to conclusion of assessment test;
 - (d) lack of supporting documentation -
 - (i) to substantiate adjustment of opening balances; and
 - (ii) record complete and accurate losses linked to criminal conduct.
 - (e) use of outdated methodology for estimation of non-technical losses.

4. It is also understood that the risk of a qualified audit outcome may have a negative outlook on the entity's corporate rating and credit assessment with the credit rating agencies and an exemption is required for the period of three (3) years starting from the financial year 2022/23, 2023/24 and 2024/25.

Legislative framework in relation to the disclosure of irregular expenditure

5. Section 55 (2)(b) of the PFMA require the accounting authority to ensure that the annual report and annual financial statements (AFS) of the entity includes – (i) any material losses through criminal conduct and any irregular and fruitless and wasteful expenditure that occurred during the financial year, (ii) any criminal or disciplinary steps taken because of such losses or irregular or fruitless and wasteful expenditure, and (iii) any losses recovered or written off.
6. Furthermore, a public entity is required to disclose in their AFS any material losses through criminal conduct and any irregular expenditure and fruitless and wasteful expenditure as required by Treasury Regulations 28.2.1.
7. The PFMA Compliance and Reporting Framework issued in terms of the National Treasury Instruction No. 4 of 2022/2023 require accounting authorities of public entities to disclose in their AFS, any irregular and fruitless and wasteful expenditure incurred in the current year with one year comparative showing (amounts that were under assessment in the previous financial year, amounts relating to previous year but identified in the current year and amounts incurred in that previous financial year.
8. The framework further stipulates that any material losses, criminal conduct and disciplinary process must be disclosed in the AFS. The detail to these disclosures is required to be reported in the annual report of the entity in line with the reporting guideline provided to institutions (subject to the PFMA).

Conclusion

9. Based on the application received, and after due consideration of the risk of a possible negative outlook on Eskom's corporate rating and credit assessment with the credit rating agencies, I hereby grant a section 92 PFMA exemption for Eskom to disclose any amounts of irregular and fruitless and wasteful expenditure that occurred during the financial year in the annual report of Eskom with the exception of items indicated in paragraphs (a) to (c) below which must be disclosed in both the annual report and annual financial statements of Eskom for the financial years starting from 2022/2023 to 2024/2025:
 - (a) any material losses through criminal conduct¹,
 - (b) any criminal and disciplinary steps taken as a consequence of such losses or irregular expenditure, or fruitless and wasteful expenditure²; and
 - (c) any losses recovered and written off³.

AND

10. This approval is on condition that the following is addressed by Eskom:–
 - (a) Eskom must develop an action plan to address weaknesses mentioned in paragraph 12 of your letter and report progress on implementation of the action plan (where necessary).
 - (b) Report material losses, criminal conduct identified and irregular and fruitless and wasteful expenditure for the current and previous financial year in the annual report of

¹ Section 55(2)(b)(i)- the first part of the paragraph

² Section 55(2)(b)(ii)

³ Section 55(2)(b)(iii)

the entity for the periods starting from 2022/23 to 2024/25 as prescribed in chapter 8 of the PFMA compliance and reporting framework (National Treasury Instruction No. 4 of 2022/2023).

- (c) Report quarterly on progress made on irregular and fruitless and wasteful expenditure that is under assessment, determination or investigation and any historical amounts in progress in line with the framework at the following address:
PFMAComReports@Treasury.gov.za
- (d) The Auditor-General of South Africa is engaged on an agreed upon procedures engagement on items to be disclosed in the annual report of Eskom due to challenges raised in the tracking of internal audit and forensic report findings. The objective is to enhance accountability and oversight by the Board.

I hope you find the content of this letter to be order.

Yours sincerely,



ENOCH GODONGWANA, MP
MINISTER OF FINANCE
DATE: 31/03/2023