

# THE ISSUING OF GUARANTEES BY SOUTH AFRICAN GOVERNMENT

- The South African Government is a shareholder in State Owned Companies (“SOCs”)
- The Minister of the line Department in which the SOC reports, is the Shareholder Representative
- In instances where a SOC cannot raise debt on the strength of it’s balance sheet or where the lenders



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insist on security, the Minister who is the Executive Authority of that particular SOC, may issue a guarantee with the concurrence of the Minister of Finance

- This is because in terms of the Public Finance Management Act (“PFMA”), specifically sections 66 and 70 thereof, it is only a Cabinet Member with the concurrence of the Minister of Finance that can bind

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the National Revenue Fund to any future commitments

- Once the Government has agreed to issue a guarantee, it becomes a contingent liability in the Government's books
- It therefore becomes important that the best possible terms are negotiated with the beneficiaries in order to mitigate the risk of the guarantee



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being called

- As a general principle, in terms of South African law, a guarantor is a secondary obligor, however one of the things we have managed to negotiate is to have the government as a primary obligor and not merely as a surety
- This enables the government to step-in in the “shoes” of a SOC should it experience financial difficulties which could lead to a default



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- The government is then able to pay whatever instalment is due by the SOC or the balance outstanding without this resulting in an act of default by the SOC
- We further managed to negotiate that in the event of a default occurring, and government not exercising its step-in rights, it be afforded 30 days from demand to make payment in terms of the guarantee



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- In order to encourage the SOCs to rely on the strength of their balance sheets as opposed to guarantees, government charges a guarantee fee on the guaranteed amount
- The Minister of Finance can in terms of section 70 of the PFMA, impose any conditions on the guarantees
- In the event that the guarantee is called and payment has to be made, 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



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- The responsible cabinet member must at least annually report on any payments made under a guarantee to Parliament

Thank you