

BORROWING POWERS OF PROVINCIAL GOVERNMENTS ACT, 1996.

PRESIDENT'S OFFICE

No. 1600. 4 October 1996

NO. 48 OF 1996: BORROWING POWERS OF PROVINCIAL GOVERNMENTS ACT, 1996.

It is hereby notified that the President has assented to the following Act which is hereby published for general information:-

ACT

To provide for norms and conditions in respect of the borrowing powers of provincial governments and for matters incidental thereto.

PREAMBLE

WHEREAS section 157(1) of the Constitution provides that a province shall not be competent to raise loans for current expenditure, but shall be competent to raise loans for capital expenditure, provided it does so within the framework of reasonable norms and conditions prescribed by an Act of Parliament;

AND WHEREAS section 157(2) of the Constitution provides that loans for current expenditure may be raised by means of bridging finance during a fiscal year, subject to the condition that they shall be redeemed within 12 months and subject to such further, reasonable conditions as may be prescribed by an Act of Parliament;

(English text signed by the President.) (Assented to 27 September 1996.)

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:-

Definitions

1. In this Act, unless the context otherwise indicates-

(i) "bridging finance" means funds raised during a financial year in the Republic and denominated in rand to finance current expenditure in anticipation of the receipt of current revenue during that particular financial year, and includes an overdraft on a bank account which the provincial government concerned has opened in terms of its Exchequer Act; (xii)

(ii) "capital expenditure" means any payment by a provincial government for the procurement of new or existing tangible or intangible assets with a value higher than a prescribed value and with a normal life expectancy of more than one year, and includes-

(a) payment for the acquisition of goods and services for the purpose of improving, prolonging the expected working life of, and rebuilding or reconstructing an existing fixed asset;

(b) a capital transfer to another person or body;

(c) the granting and payment of a money loan of which the proceeds will be used by the recipient of such a loan for capital expenditure;

(d) any other expenditure which is from time to time classified by regulation as a capital expenditure;

(e) the repayment of an outstanding loan which is due for redemption or conversion, provided that the proceeds of such conversion shall be used for the financing of expenditures contemplated in subparagraphs (a), (b), (c) and (d),

but excludes a payment by a provincial government in connection with the normal maintenance of a capital asset intended to keep such asset in its original state of repair;

(v)

(iii) "capital revenue" means all income of a provincial government, other than a loan, intended for the financing of capital expenditure and includes proceeds from the sale of capital assets; (iii)

(iv) "capital transfer" means a non-repayable, unrequited payment to, through or by a provincial government for the purpose of financing capital expenditure; (iv)

(v) "Commission" means the Financial and Fiscal Commission established by section 198 of the Constitution; (vii)

(vi) "Committee" means the Loan Co-ordinating Committee referred to in section 2; (vi)

(vii) "current expenditure" means any payment by a provincial government which is not a capital expenditure; (x)

(viii) "current revenue" means all income of a provincial government, other than-

(a) receipts from bridging finance and loans;

(b) receipts of capital revenue; and

(c) receipts of capital transfers; (ix)

(ix) "financial year" means the period from 1 April in any year to 31 March in the next succeeding year; (i)

(x) "interest incurred during a financial year" includes the gross amount of any finance charges, discounts or premiums attributable to that financial year, irrespective of whether such interest is deferred, paid in advance, or is calculated with reference to a fixed or variable rate of interest or in any other manner; (xiii)

(xi) "loan" means money borrowed to finance a capital expenditure; (viii)

(xii) "Minister" means the Minister of Finance; (xi)

(xiii) "prescribed" means prescribed by regulation; (xv)

(xiv) "responsible member" means the member of the Executive Council of a provincial government who is responsible for the financial affairs of the province concerned and who acts, for purposes of this Act, on behalf of that government; (xiv)

(xv) "this Act" includes the regulations. (ii)

Loan Co-ordinating Committee

2. There is hereby established a Loan Co-ordinating Committee-

(a) which shall consist of the Minister, as chairperson, and the responsible member of each province, or his or her duly authorised representative; and

(b) which shall during a financial year co-ordinate the borrowing requirements of provincial governments, after taking into account estimates of the aggregate demand for capital market funds during that year; and

(c) which shall in its deliberations take account of the total debt of each provincial government and the bodies controlled by it and of their contingent liabilities, risks, and ability to service their debt, and which shall report thereon to the Commission in a manner which will allow the Commission to effectively fulfil its functions in terms of section 157(3) of the Constitution.

Borrowing powers of provinces

3. (1) No person or body other than the responsible member may borrow moneys on behalf of a provincial government.

(2) A department of or a body established by a provincial government may only with the written approval of the responsible member accept financial assistance from any person, other than the national government.

(3) A provincial government shall not commit itself to any financial product, other than bridging finance, loans or such other product as may be prescribed, which creates an interest or any other exposure of a financial or equivalent kind.

(4) Bridging finance shall not be raised by a provincial government as a continuous and unlimited revolving credit.

(5) The responsible member shall not obtain loans denominated in a foreign currency by the issue of marketable financial instruments or incur a liability or risk payable in a foreign currency otherwise than in terms of subsection (6)(d).

(6) The responsible member may during a financial year raise loans to finance an expected loan requirement which shall be determined in accordance with section 4(b)(vi): Provided that-

(a) the aggregate amount of loans to be raised by each provincial government during that financial year has been considered and consensus thereon has been reached by the Committee and the Commission has been informed by the Minister in writing of such consensus having been reached;

(b) if the Committee cannot reach consensus on the aggregate amount contemplated in paragraph (a) within 21 days after being tabled for discussion for the first time at a meeting of the Committee, the Minister, who may request a recommendation from the Commission on the matter, shall determine the aggregate amount that may be borrowed by each provincial government, and he or she shall make public the reasons for such determination;

(c) the total amount of outstanding loans raised by the responsible member in terms of this section during such financial year shall, notwithstanding paragraphs (a) and (b), at no time exceed the expected loan requirement by more than half a per cent;

(d) subject to subsection (5), loans denominated in foreign currency may be raised only-

(i) with the approval of the Minister and subject to the conditions determined by him or her; and

(ii) after the reasons for the conclusion of such a loan have been fully motivated by the responsible member to the Minister and to the Commission; and

(iii) if the Minister, after recommendations of the Commission on the matter have been considered, is satisfied that the conditions of such a loan comply with the generally accepted principles of loan agreements and the conclusion of the loan is in the public interest;

(e) loans raised in the Republic and denominated in rand shall, subject to this Act, be obtained by a provincial government-

(i) through the conclusion of loan agreements with the national government, with the concurrence of the Minister, and the Minister may advise the provincial government to

raise a loan in terms of subparagraph (ii) or (iii); or

(ii) through an institution established by an Act of Parliament, or an institution approved by the Minister, to conclude loans and make loans to subnational governments; or

(iii) by-

(aa) entering into loan agreements with banks or financial institutions; or

(bb) making issues of public stock and bonds; or

(cc) entering into loan agreements through the issue of financial instruments,

on such terms and conditions as the responsible member may deem fit, and he or she may furnish any security required.

(7) (a) The total expected amount of interest incurred during a financial year by a provincial government on its expected outstanding debt at the end of that financial year, shall not exceed an amount equal to a percentage-

(i) of the total budgeted current revenue of that provincial government, recorded in terms of section 4(a)(i); and

(ii) annually determined for each provincial government by the Minister, who may request a recommendation in this connection from the Commission.

(b) The Minister shall make public the reasons for the determination contemplated in paragraph (a).

(8) Any moneys borrowed by the responsible member, and the interest thereon, shall be the financial obligation of the provincial government concerned and shall be chargeable to and payable from the revenues and assets of that provincial government.

Statements of current and capital transactions

4. Every provincial government shall for each financial year, in respect of all its budgeted and actual transactions, make provision in its books of account for-

(a) a statement, which shall be called the statement of current transactions, in a prescribed form, which shall on a cash basis record-

(i) the amounts of all current revenue received by the provincial government concerned in terms of any law or otherwise;

(ii) all amounts-

(aa) of current expenditure with which the provincial government is charged in terms of any law;

(bb) recorded in terms of paragraph (a)(i) as current revenue and which have been made available by the legislative authority of the province concerned for the financing of capital expenditure; and

(iii) the amounts-

(aa) of receipts from bridging finance; and

(bb) in respect of the repayment of bridging finance; and

(b) a statement, which shall be called the statement of capital transactions, in a prescribed form, which shall on a cash basis record-

(i) the amounts of-

(aa) capital revenue;

(bb) current revenue recorded in the statement contemplated in paragraph (a) and which has been made available by the legislative authority of a province for the financing of capital expenditure; and

(cc) receipts of capital transfers;

(ii) all expenditures and amounts with which the provincial government is charged in terms of any law and which are capital expenditure;

(iii) outstanding loans which are due for redemption or conversion;

(iv) proceeds from loans;

(v) the excess of-

(aa) the total amount recorded in terms of subparagraphs (i) and (iv), over

(bb) the total amount recorded in terms of subparagraphs (ii) and (iii),

and which excess shall be referred to as the capital surplus for the financial year concerned; and

(vi) the difference between-

(aa) the total amount of budgeted appropriations for that financial year recorded in terms of subparagraph (ii), together with the budgeted amounts recorded in terms of subparagraph (iii), and

(bb) the total of the budgeted amounts recorded in terms of subparagraph (i), together with the amount of the capital surplus for the immediately preceding financial year,

and which difference shall be referred to as the expected loan requirement for the financial year concerned.

Guarantees

5. (1) Notwithstanding anything to the contrary in this or any other law, no guarantee shall be furnished by the national government in respect of the fulfilment of a financial commitment incurred or to be incurred by a provincial government pursuant to the raising of bridging finance or conclusion of a loan denominated in rand.

(2) Notwithstanding anything to the contrary in this or any other law, a guarantee by the national government in respect of the fulfilment of a financial commitment incurred or to be incurred by a provincial government pursuant to the conclusion by the responsible member of a loan denominated in a foreign currency may be furnished only in terms of a national Exchequer Act.

(3) All documents issued in respect of the incurring by a provincial government of a financial commitment, shall prominently contain a statement indicating whether or not such a financial commitment is guaranteed by the national government.

Signatories to documents

6. (1) Loans or agreements entered into in terms of section 3(6)(d), (e)(i), (e)(ii) and (e)(iii)(aa) and securities issued in terms thereof shall be signed by the responsible member of the provincial government concerned.

(2) Financial instruments other than those referred to in subsection (1), issued by a provincial government, shall be signed by the officer responsible for the administration of the financial affairs of the provincial government concerned or a person authorised thereto by him or her in writing.

Regulations

7. The Minister may, after consultation with the responsible members, make regulations regarding-

(a) any matter which in terms of this Act is required or permitted to be prescribed;

(b) disclosure requirements in respect of the borrowing operations of provincial governments; and

(c) generally, any matter which the Minister deems necessary or expedient to prescribe in order to achieve the objects of this Act.

Short title

8. This Act shall be called the Borrowing Powers of Provincial Governments Act, 1996.