

In bilateral discussions between the SA Government and the African National Congress the following document on Finance: Existing Assets and Liabilities of the State (of National and SPR-Governments) was formulated for submission to the Technical Committee on Constitutional Issues. This is a preliminary draft and both parties may propose modifications in due course.

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CHAPTER 11

Finance

EXISTING ASSETS AND LIABILITIES OF THE STATE (OF NATIONAL AND SPR-GOVERNMENTS)

143.(1) There shall be an equitable, objectively based and transparent re-allocation of public assets amongst the national government and different SPR-governments, based on the principle that, where possible, assets are transferred in accordance with the transfer of functions.

(2) The SPR-Commission shall make recommendations concerning those matters referred to in Clause 143(1), including the management and procedures governing the transfer of such assets : provided that National Parliament approves such recommendations and do so during the same session of Parliament.

144.(1) There shall be an equitable, objectively based and transparent re-allocation of public liabilities amongst the national government and difference SPR-governments, according to the following principles :

(a) Those liabilities which can be directly linked to any asset/s, which shall be transferred according to Clause 143(1), shall be re-allocated to the government entity/ies which are responsible for the related function, provided that factors such as the developmental value, revenue earning potential and other benefits associated with such assets shall also be considered before allocating their accompanying/concomitant liabilities to SPR-governments.

(b) All liabilities other than those in subsection 1(a), including those loans granted in terms of Act No. 68 of 1968 (Economic Co-operation Promotion Loan Fund Act), shall be re-allocated to the national government.

(c) National Government loan guarantees which remain after the re-allocation process of assets and liabilities has been completed shall be fully binding on the national government which comes into being in terms of this Constitution.

(2) The Financial and Fiscal Commission shall make recommendations to the National Parliament concerning the re-allocation of liabilities, taking into account amongst other factors the principles related in subsections (1)(a) and (1)(b).

145.(1) The Auditor-General shall audit the re-allocation of both assets and liabilities in terms of the principles and procedures which have been established in terms of Clauses 143 and 144.

(2) The national government shall not in any manner be bound by subsections 144(1)(a), (b) and (c) in terms of honouring liabilities which have been granted male fides by any institution after this constitution has been enacted. Any liabilities incurred after this date which have not been subjected to proper appropriation procedures will be open for review and action by the new National Parliament.

NATIONAL REVENUE FUND

146.(1) There shall be established a National Revenue Fund into which shall be paid all revenues, as defined in national legislation, raised or received by the National Government, and from which appropriations shall be made by Parliament for the purpose of the National Government in a manner prescribed by this

Constitution and any other law, and subject to the charges imposed thereby.

(2) No money shall be withdrawn from the National Revenue Fund, except under appropriation made by law in accordance with the provisions of this constitution and by any other law.

(3) Revenue received on behalf of a SPR Revenue Fund referred to in section 121(2), shall form a direct charge against the National Revenue Fund to be credited to the relevant SPR Revenue Fund.

APPROPRIATION BILLS

147. Any bill which appropriates or authorises the appropriation of revenue or money for the services provided by the National Government shall deal only with such appropriation.

APPROPRIATION TO BE INITIATED BY A MINISTER

148. The National Assembly shall not consider any bill for the appropriation of any part of the public revenue, or of any tax or impost, for any purpose if such bill has not been initiated by a Minister.

ANNUAL BUDGETS

149. The Minister of Finance shall in respect of every financial year cause to be laid before the National Assembly annual budgets reflecting the estimates of revenue and expenditure of the National Government for that year.

PROCUREMENT ADMINISTRATION

150. Central and SPR tender boards shall be instituted by legislation as independent statutory bodies.

151. Tender Board members shall be appointed by the national/SPR cabinet for nominations by

representative bodies, as defined by an act of Parliament of both the supplier group (private sector) and the user group (public sector), but shall exclude any member of the political executive.

152. Procurement shall be effected with the maximum possible competition by means of a prescribed tendering system and with maximum exposure in appropriate media.
153. The tender boards' decisions shall be final^{*}, but transparent decision-making shall be enforced by making it compulsory for the tender boards to provide details to specific tenderers, on request, as to why their particular tenders were not successful.
154. No member of the Cabinet or the legislature or of any organ of the state or any other person shall improperly interfere with the decisions and operations of the Tender Boards.
155. All decisions of any tender board shall be recorded.

AUDITOR-GENERAL

ESTABLISHMENT AND APPOINTMENT

161.(1) There shall be an office of Auditor-General for the Republic to which shall be appointed, in terms of subsection (2), an Auditor-General who shall have the functions, powers and duties prescribed by this Constitution and by any other law.

(2) A joint standing committee of Parliament, composed of one member of every political party represented in the National Assembly and the Senate, shall, at the request of the President

* Footnote : It is not intended that this should mean that a court of law is excluded from adjudicating on tenders.

nominate a person to be appointed by the President as Auditor-General and such nomination shall be approved by resolution adopted by two-thirds of the members present at a joint sitting of the National Assembly and the Senate : provided that, in connection with such resolution, no debate shall be allowed; and provided further the post of Auditor-General shall not be vacant for more than 90 days.

(3) The Auditor-General shall be a South African citizen who is a fit and proper person to hold such office and who shall be appointed with due regard to his or her specialised knowledge of or experience in auditing, state finances and public administration.

(4) Unless the Constitution adopted in terms of Chapter 5 provides otherwise, the Auditor-General will hold office for a period of not less than 5 years and not more than 10 years and shall not thereafter be eligible for reappointment.

(5) The remuneration and other conditions of service of the Auditor-General shall be determined in accordance with the provisions of an Act of Parliament, and such remuneration and the other conditions of service shall not be altered to his or her detriment during his or her term of office.

(6) The Auditor-General may be removed from office by the President, but only on the grounds of misconduct, incapacity or incompetence determined by the joint standing committee of Parliament referred to in subsection (2) and upon receipt of an address from both the National Assembly and the Senate during the same session of Parliament requesting such removal.

(7) An Auditor-General who is the subject of investigations by the joint standing committee of Parliament in terms of subsection (6) may be suspended by the President pending such investigation.

(8) The President may permit the Auditor-General to vacate his or her post.

INDEPENDENCE AND IMPARTIALITY

162.(1) The Auditor-General shall be independent and impartial and carry out his or her functions, powers and duties subject only to this Constitution and the law.

(2) The Auditor-General and the persons appointed in terms of section 164(1) shall have such immunities and privileges as may be assigned to them by an Act of Parliament for the purpose of ensuring the independent and impartial exercise of their powers and functions.

(3) No member of the Cabinet or the Legislature or of any organ of the state or any other person shall improperly interfere with the Auditor-General or a person appointed in terms of section 164(1) in the exercise of his or her powers, duties and functions.

(4) All organs of the state shall accord such assistance as may be reasonably required for the protection of the independence, impartiality, dignity and effectiveness of the Auditor-General in the execution of his or her functions, powers and duties.

POWERS, FUNCTIONS AND DUTIES

163.(1) The Auditor-General shall audit and report on all the accounts and financial statements of all the accounting officers at national and SPR government level, other than that of the Office of Auditor-General, and of all other persons in the national and SPR public services entrusted with public assets, trust property and other assets.

(2) The Auditor-General shall audit and report on all the accounts and financial statements of any local authority, board, fund, institution, company, corporation or other organization established or constituted by or under any law and of which the accounts and financial statements shall in terms of law be audited by the Auditor-General and of all persons in the

employment of such body entrusted with own, trust or other assets.

(3) The Auditor-General shall also, at the request of the State President, conduct performance audits.

(4) The Auditor-General may, whenever he or she considers it to be in the public interest, or upon receipt of a complaint, investigate, audit and report on the accounts and financial statements of any statutory body or any other institution in control of public funds.

(5) No further duty or function may be imposed upon or assigned to the Auditor-General other than by means of an Act of Parliament.

(6) Whenever the Auditor-General or a person appointed in terms of section 164 exercises his or her powers and functions in terms of this Constitution, he or she shall have access to all books, records and other documents and information relating to the accounts and financial statements referred to in this section.

(7) The Auditor-General shall report on the accounts examined by him or her and submit such reports to the authorities designated by an Act of Parliament to receive them, and, unless otherwise provided by an Act of Parliament, such reports or a report on any other matter shall be tabled in Parliament within 7 days after receipt thereof by such authority; or if Parliament is not in session, within seven days of the next ensuing session.

(8) The Auditor-General shall make public any report referred to in subsection (7) after the expiry of a period of 14 days from the date on which such report was submitted to the authorities concerned.

STAFF AND EXPENDITURE

164.(1) The Auditor-General may appoint, in a manner prescribed by law, such persons as may be necessary for the discharge of the work of the Office of the Auditor-General.

(2) The Auditor-General may delegate any of his or her functions to persons referred to in subsection (1) subject to such conditions as shall be prescribed by law.

(3) Expenditure incurred during the performance of the functions of the Auditor-General in terms of this Constitution or under any other law shall be defrayed from money appropriated by Parliament specifically for that purpose and from fees raised or money obtained in a manner authorised by an Act of Parliament.

SOUTH AFRICAN RESERVE BANK

CENTRAL BANK

165. The South African Reserve Bank, established and regulated by an Act of Parliament, shall be the central bank of the Republic.

PRIMARY OBJECTIVES

166.(1) The primary objectives of the South African Reserve Bank shall be to protect the internal and external value of the currency in the interest of balanced and sustainable economic growth in the Republic.

(2) The South African Reserve Bank shall, in the pursuit of its primary objectives referred to in subsection (1), exercise its powers and perform its duties independently : Provided that there be regular consultation between the South African Reserve Bank and the Minister of Finance.

POWERS AND DUTIES

167. The powers and duties of the South African Reserve Bank shall be those customarily performed by central banks, which shall be determined by an Act of Parliament and shall be subject to such conditions as may be described by such Act.

168. All decisions of the Board of Governors and the Board of Directors of the South African Reserve Bank shall be recorded.

FINANCIAL AND FISCAL COMMISSION

ESTABLISHMENT

170. A Financial and Fiscal Commission shall be appointed by the President in terms of this Constitution within 60 days of its coming into operation.

OBJECTS AND FUNCTIONS

171.(1) The objects and functions of the Commission shall be to apprise itself of all financial and fiscal information relevant to national, SPR and local government, administration and development and, on the basis of such information, to render advice and make recommendations to the relevant legislative authorities in terms of this Constitution regarding the financial and fiscal requirements of the Republic, SPRs and local government, including -

- (a) financial and fiscal policies;
- (b) equitable fiscal and financial allocations to National government, SPRs and local governments from revenue collected nationally;
- (c) taxes, levies, imposts and surcharges that a SPR government intends to levy;

- (d) the raising of loans by a SPR or local government and the financial norms applying thereto;
- (e) criteria for the allocation of financial and fiscal resources to SPRs; and
- (f) any other matter allocated to the Commission by law.

(2) In carrying out its functions the Commission shall, inter alia, take into consideration the provisions of this Constitution, the national interest, economic disparities between and within the SPRs, the population and developmental needs of the SPRs, and other legitimate interests of each SPR.

CONSTITUTION, EXPERTISE AND IMPARTIALITY

172.(1) The Commission shall consist of -

- (a) a chairperson and deputy chairperson, who shall also be the chief executive officer and deputy chief executive officer of the Commission's staff, appointed by the President on the advice of the Cabinet;
- (b) 9 members each of whom shall be nominated by a different SPR executive and who shall be appointed by the President; and
- (c) 7 members appointed by the President on the advice of the Cabinet.

(2) No person shall be qualified to be appointed to the Commission unless he or she -

- (a) is a South African citizen; and
- (b) is a person who, by reason of his or her training and experience, has expertise in the fields of economics or public finance or public administration.

(3) Unless the Constitution adopted in terms of Chapter 5 provides otherwise, a member of the Commission may only be removed from office by the President on account of misconduct, incapacity or incompetence : Provided that removal of a member of the Commission from office and the reasons therefor shall be communicated by the President by message to Parliament and to the SPR legislatures within 14 days after such removal or, if Parliament or a SPR legislature is not then in session, within 14 days after the commencement of its next ensuing session.

(4) Vacancies in the Commission shall be filled in accordance with the provisions of this section.

(5) A member of the Commission shall be eligible for re-appointment.

(6) A member of the Commission shall perform his or her duties fairly, impartially and independently.

(7) A full-time member of the Commission shall not perform or commit himself or herself to perform remunerative work outside his or her official duties.

(8) A member of the Commission shall not hold office in any political party or political organisation.

(9) It shall be an offence to influence or attempt to influence a member to act otherwise than in accordance with the provisions of subsection (6).

(10) The chairperson and deputy chairperson shall be the only full-time members.

(11) The persons in subsection 1(a) are appointed for a period of 5 years and the persons in subsections 1 (b) and 1 (c) for a period of 2 years.

MEETINGS OF THE COMMISSION

173.(1) The first meeting of the Commission shall be held within 30 days of its appointment at a time and place to be determined by the Chairperson, and subsequent meetings will be held at a time and place determined by the Commission or, if authorised thereto by the commission, by the Chairperson. If both the Chairperson and Deputy Chairperson are absent from a meeting the members present shall elect one from amongst their members to act as Chairperson.

(2) A quorum for a meeting of the Commission shall not be less than one half of all its members.

(3) A decision of two-thirds of all the members of the Commission shall constitute a decision of the Commission.

(4) All the decisions of the Commission shall be recorded.

COMMITTEES

174.(1) The Commission may establish committees from amongst its members.

(2) Any such committee shall consist of such number of members as the Commission may determine.

(3) The Commission shall designate one of the members of the committee as chairperson thereof, and if any such chairperson is absent from a meeting of the committee the members present shall elect one from amongst their number to act as chairperson.

(4) (a) The Commission may, subject to such directions as it may issue from time to time -

(i) delegate any function entrusted to it by or under section 171 to such a committee; and

(ii) grant authority that a duty assigned to it by or in terms of section 171 may be performed by such a committee.

- (b) The Commission shall not be divested of a function so delegated and the performance of a duty so authorised, and may amend or set aside any decision of a committee.

CO-OPTION OF PERSONS TO SERVE ON OR ADVISE COMMITTEES

175.(1) A Committee may co-opt any person to serve on such a committee or to attend a particular meeting thereof in connection with a particular matter dealt with by the committee.

(2) Such a person may take part in the proceedings of the committee in connection with the matter or at the meeting in respect of which he or she has been co-opted, but shall not be entitled to vote.

REMUNERATION AND ALLOWANCES OF MEMBERS OF THE COMMISSION AND OTHER PERSONS

176. Members of the Commission and persons referred to in section 175 who are not in the employment of the State, shall be paid, from moneys appropriated by Parliament for that purpose, such remuneration and allowances as the Minister responsible for national financial matters may determine.

APPOINTMENT OF STAFF

177.(1) The Commission may appoint and accept secondment of staff as it may deem necessary in consultation with the Commission for Administration.

(2) Expenditure incidental to the performance of the functions of the Commission in terms of this Constitution or under any other law shall be defrayed from money appropriated by Parliament specifically for that purpose.

REGULATIONS

178. The President may make regulations regarding -

- (a) procedures in connection with any function of the Commission; and
- (b) any other matter in connection with the achievement of the objects of the Commission.

8 November 1993

In bilateral discussions between the SA Government and the African National Congress the following document on Clause 42 was formulated for submission to the Technical Committee on Constitutional Issues. This is a preliminary draft and both parties may propose modifications in due course.

ADD TO LIST OF DISQUALIFICATIONS (Clause 42)

1. by the deletion after paragraph (d) of subsection (1) of section 42 of the word "or";
2. by the addition after paragraph (e) of subsection (1) of section 42 of the word "or"; and
3. by the addition after paragraph (e) of subsection (1) of section 42 of the following paragraph:

"(f) cannot within a period of six months after the adoption of this constitution and on an annual basis thereafter, provide adequate proof to the Secretary of Parliament, that he or she -

(i) is registered as a taxpayer for income tax purposes; and

(ii) has, subject to any extension granted by the Commissioner, submitted all such returns of income as are required to be submitted by him or her in terms of the Income Tax act, 1962 (Act No 58 of 1962)."

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In bilateral discussions between the SA Government and the African National Congress the following document on Chapter 4 was formulated for submission to the Technical Committee on Constitutional Issues. This is a preliminary draft and both parties may propose modifications in due course.

CHAPTER 4

1. An independent statutory commission, the Commission on the Remuneration of Political Representatives and Political Office-Bearers, will make recommendations on the remuneration and allowances of members of all elected legislative bodies at central, SPR and local government level.
2. All reports by the Commission will be tabled in Parliament.
3. The receiver of Revenue shall be required to assess all income tax returns of elected representatives of all levels of government.